

## COVER STORY

## 10 ways practitioners can avoid frequent ethical pitfalls

Boost your ethical know-how with these practical tips on avoiding common ethical quandaries.

By DEBORAH SMITH

*Monitor Staff*

January 2003, Vol 34, No. 1

Print version: page 50

Talk to the ethics experts, and they'll tell you the best defense against an ethical problem is a good offense. By looking out for foreseeable conflicts and discussing them frankly with colleagues and clients, practitioners can evade the misunderstandings, hurt feelings and sticky situations that lead to hearings before ethics boards, lawsuits, loss of license or professional membership, or even more dire consequences.

However, being vigilant doesn't mean psychologists should spend their days worrying about where the next pitfall could be, says Robert Kinscherff, JD, PhD, former chair of APA's Ethics Committee, which adjudicates ethics complaints. "Instead of worrying about the ways [they] can get in trouble, psychologists should think about ethics as a way of asking 'How can I be even better in my practice?'" he explains. "Good ethical practice is good professional practice, which is good risk management practice."

When psychologists do end up in ethical quandaries, it's often because they unwittingly slid too far down a slippery slope—a result of ignorance about their ethical obligations or thinking they could handle a situation that spiraled out of control.

Many problems are what Ethics Committee member Anne Hess, PhD, calls "stealth" dilemmas: situations that develop gradually, moving step by small step beyond once-firm professional boundaries. Although each step seemed harmless at the time, many practitioners later realize that they have landed themselves in deep trouble.

The *Monitor* interviewed some of psychology's leading ethics experts to talk about how practitioners can avert common ethical dilemmas, from multiple relationships to whether to breach confidentiality, to terminating treatment. Here's their advice, boiled down to 10 ways to help avoid ethical pitfalls.

### 1. Understand what constitutes a multiple relationship

Is it ethical to volunteer at your daughter's softball team fund-raiser if you know a client is going to be there? Can you buy a car from a client who owns the only dealership in your small, rural town? Can you ask an intern to drive you to the airport?

"A central question in any multiple relationship situation is whose needs are being met here?" says Stephen Behnke, JD, PhD, director of APA's Ethics Office, which advises psychologists on ethical dilemmas. "Whenever the answer is the needs of the psychologist, that's a time when the psychologist needs to take great care and get a consultation."

According to the Ethics Code, psychologists should avoid relationships that could reasonably impair their professional performance, or could exploit or harm the other party. Behnke emphasizes, however, that multiple relationships that are not reasonably expected to have such effects are not unethical.

That's because sometimes it's impossible for psychologists to completely avoid multiple relationships, explains Steven Sparta, PhD, immediate past-chair of APA's Ethics Committee. For example, the psychologist in a rural town may decide to buy a car from his client because going elsewhere could signal that the car dealer was in therapy.

How do you weigh the pros and cons in such situations? APA Ethics Committee member Michael Gottlieb, PhD, suggests in a *Psychotherapy* (Vol. 30, No. 1) article that psychologists think about three factors:

- **Power.** How much of a power differential is there between the psychologist and the other person? Since you also supervise the intern, it might be better to ask a colleague to drive you to the airport.
- **Duration.** Will it be brief contact or will it be continuous or episodic contact over a long time? "We usually don't know how long professional contact will last except in very specific circumstances," says Gottlieb. Before entering into a dual relationship, psychologists should consider whether, for example, a client could return for additional services.

- **Termination.** Has the therapeutic relationship been permanently terminated, and does the client understand that as well? If a psychologist sees patients with chronic illnesses, they should keep in mind that treatment could stop and start for years, precluding some relationships that might be all right otherwise.

"It's only an ethical problem when there's a reasonable basis to see a foreseeable risk, and the psychologist fails to see it or ignores it and goes forth anyway," Sparta explains.

Moreover, one type of multiple relationship is never acceptable: "Sexual relationships with current clients are never permissible," says Behnke.

While sexual relationships with previous clients are not automatic violations of the Ethics Code if they occur more than two years after therapy's termination, "psychologists need to be mindful of the harm that can come from a sexual involvement with a client no matter when it occurs," Behnke adds.

Lastly, if psychologists find that, despite their efforts, a potentially harmful multiple relationship has arisen, they are ethically mandated to take steps to resolve it in the best interest of the person or group while complying with the Ethics Code.

## 2. Protect confidentiality

Psychologists are often asked to provide information about their clients to employers, spouses, school administrators, insurance companies and others. While such requests may be well-intentioned, psychologists need to carefully balance the disclosure with their ethical obligations to protect their patients' confidentiality.

Indeed, because the public puts their trust in psychologists' promises of confidentiality, it's essential for psychologists to be clear on whether and why they are releasing information.

"Ask yourself, 'On what basis am I making this disclosure?'" advises Behnke. "Is there a law that mandates the disclosure? Is there a law that permits me to disclose? Has my client consented to the disclosure?"

APA's 2002 Ethics Code stipulates that psychologists may only disclose the minimum information necessary to provide needed services, obtain appropriate consultations, protect the client, psychologist or others from harm, or obtain payment for services from a client.

To help prevent confidentiality problems, psychologists can:

- **Discuss the limits of confidentiality,** including their uses of electronic transmission and the foreseeable uses of confidential information, as soon as possible.
- **Ensure the safe storage of confidential records.** At the outset, notify people what will be done with case materials, photos and audio and video recordings, and secure their consent. Also, make sure rooms where confidential conversations occur are soundproof.
- **Know federal and state law.** Know the ins and outs of your state's laws that relate to your practice. And keep in mind how the recently implemented Health Insurance Portability and Accountability Act affects your practice (see HIPAA (/monitor/jan03/hipaa.aspx) ).
- **Obey mandatory reporting laws.** Even if a psychologist believes that reporting abuse could make the situation even worse, "these laws are mandatory reporting laws, not discretionary reporting laws," says lawyer Mathew D. Cohen, who specializes in representing human-service providers. Mandatory reporting laws were not created to have clinicians decide whether abuse or neglect is happening, says Cohen, but to have them bring the facts to the attention of authorities, who will decide.

"If you wait and nothing bad happens, you've still violated the law," he says. "[But] if you wait and something bad happens, not only have you violated the law, but you have injured a potential victim who could have been protected."

## 3. Respect people's autonomy

Psychologists need to provide clients with information they need to give their *informed* consent right at the start.

When they fail to give details, sticky situations can arise. For example, when psychologists fail to explain their duty to report abuse and neglect to an adolescent client before therapy begins, they may be unsure what to do if abuse is later revealed that the client doesn't want reported.

For psychologists providing services, the experts suggest they discuss:

- Limits of confidentiality, such as mandatory reporting.
- Nature and extent of the clinician's record-keeping.
- The clinician's expertise, experience and training as well as areas where the therapist lacks training.

- Estimated length of therapy.
- Alternative treatment or service approaches.
- The clinician's fees and billing practices.
- Whom to contact in case of emergency.
- Client's right to terminate sessions and any financial obligations if that occurs.
- Not only what services the psychologist will provide, but what they can't or won't do.

If individuals are not competent to make decisions for themselves, then the person who's giving permission must have access to that same information. Moreover, a signed consent form does not substitute for the informing process, which should occur first, say ethics experts--and that includes situations where informed consent is implied, such as in an employee evaluation.

#### 4. Know your supervisory responsibilities

Psychologists may be responsible for the acts of those who perform work under their watch, whether it's interns providing therapy or administrative assistants helping with record-keeping and billing.

That means supervising psychologists should continually assess their supervisees' competence and make sure they are managing them appropriately, say experts. Such supervision should cover everything from ensuring that supervisees conduct the informed-consent process correctly to prohibiting them from using the supervisor's signature stamp on any bill or letter that the supervisor hasn't reviewed.

"If it goes out under your name, you're responsible," says APA Ethics Committee Chair Michael D. Roberts, PhD. "If they release medical files without proper consent, they're not going to sue the receptionist, they're going to sue you."

According to the experts, supervisors should also:

- Establish timely and specific processes for providing feedback--and provide information about these processes at the beginning of supervision.
- Outline the nature and structure of the supervisory relationship in writing before supervision begins. Supervisors should include both parties' responsibilities as well as intensity of the supervision and other key aspects of the job.
- Document their experience with the supervisees, including supervision dates, discussions they've had and other relevant facts. Such information will help if ethical dilemmas arise later.
- Explain to patients that the therapist is in training and give clients the name of the supervisor. Note that billing may be under a supervisor's name, not the supervisee's, so that clients don't accidentally report billing problems when there are none.
- Avoid delegating work to people who have multiple relationships with the client that would likely lead to harm or the supervisee's loss of objectivity--for example, avoid using a non-English-speaking person's spouse as a translator.

#### 5. Identify your client and role

When practicing psychologists work with organizations or groups of individuals, they should understand from the start who they were hired to help and what is expected of them. Dilemmas crop up in a variety of settings:

- In couples therapy. For example, when one partner wants a better marriage but the other wants a "painless" divorce, psychologists should clarify at the beginning that they cannot decide whether the couple should stay together or offer expert opinions later on during a divorce suit.
- In court, when it's not clear whether the psychologist is serving as an expert witness or advocate for one side. Court-appointed evaluators should express well-balanced, objective opinions, says Ethics Committee member Linda F. Campbell, PhD, while advocates are often therapists for one party who have had little direct contact with the other. Because they can't provide an objective evaluation, psychologists who are therapists for one of the parties shouldn't serve as expert witnesses.
- When psychologists provide services to a person or entity at the request of a third party, such as a parent requesting therapy for their child or a police department requesting an evaluation of an officer. "You may have one legal client, but several ethical clients," cautions Kinscherff. "In each case it's important to know who it is that you're serving and what your role is in providing that service."

How can psychologists avoid role-related dilemmas?

"Knowing who your client is, what your role is and being transparent about what it is that you do and mindful about the professional boundaries that arise are good guideposts to effective practice," says Kinscherff. That means psychologists should, at the outset, have frank discussions with all parties involved about the relationship they will have with each person or organization--for example, are they hired by a business to enhance worker productivity or are they there to help individual

workers with mental health problems?

Other things to cover include confidentiality limits, what specific services will be provided to which people and how the psychologist and others could use the services or information obtained. "If you're reasonable and straightforward with people, treat them the way you would want to be treated in a similar situation, find out what their expectations are, and clarify those expectations, you'll be in good shape most of the time," adds Kinscherff.

## 6. Document, document, document

Documentation can be psychologists' best ally if they ever face ethical charges, says Ed Nottingham, PhD, an associate member of APA's Ethics Committee. However, lack of documentation--or the wrong kind of documentation--can be detrimental.

For specific guidance for practitioners, see APA's Record Keeping Guidelines (</practice/guidelines/record-keeping.pdf>) . Some specifics to include in documenting therapeutic interactions, according to the guidelines and ethics experts such as Nottingham:

- Identifying information and first contact.
- Relevant history and risk factors, medical status and attempts to get prior treatment records.
- Dates of service and fees.
- Diagnostic impressions, assessments, treatment plans, consultation, summary and testing reports and supporting data, and progress notes. Include not only the treatments chosen, but treatments considered and rejected.
- Informed-consent documentation, consent to audiotape or videotape, and release of information documentation.
- Relevant telephone calls and out-of-office contacts.
- Follow-up efforts when clients "drop out of sight."
- Details necessary, including those listed above, so that another psychologist could take over delivery of service, such as in the event of a psychologist's death or retirement.

A few other tips:

- Only include germane information. APA's Record Keeping Guidelines advise practitioners to take into account the nature of the services, the source of the information recorded, the intended use of the records and the psychologist's professional obligation.
- Never alter a record after the fact. "It's illegal, and it gets you into trouble, and more times than not you get caught," says lawyer Joseph T. Monahan. You can append additional information to records, adds Behnke, but when doing so, the record should clearly indicate that the information was added later on.
- Use documentation to your advantage. "The process of writing helps [psychologists] crystallize in their own mind what they are saying about the problem," says Sparta. "It helps pinpoint when things don't make sense or where they need to get more information."

## 7. Practice only where you have expertise

Every psychologist knows they are obligated by the Ethics Code to practice only where they are competent. But sometimes difficulties arise when, for example, they practice in emerging areas where there aren't clear standards.

"The problem is that, many times, how does the psychologist know when there's something they don't know?" says Sparta. "If you don't know from the professional literature that there are certain guidelines...you may be well-intentioned, but not realize you're going beyond the boundaries of your competence."

Competence issues also come into a play in child-custody ethics, when psychologists are unfamiliar with the nuances of working with courts. Take the case of a psychologist who is asked to write a letter to a judge about the relationship of a boy in treatment to his parents. If she has little forensic training, the psychologist could land in ethical hot water if, for example, she failed to include the limitations of her opinion, such as that she's never met one of the boy's parents.

Another area to keep in mind is assessment, says Campbell: "If you find yourself falling back on instruments because you feel confident with them and you don't know which others to use, that means you haven't kept up with the advances in that particular area and need to re-examine what needs to be done to be proficient."

One of the best ways to address competence issues is to stay in touch with the profession through conferences, continuing education, seeking diplomate status, consulting with colleagues, and reading journals, guidelines and other publications, says Sparta. For example, if you begin seeing an adolescent with anorexia, but infrequently treat eating disorders, read up on the professional literature and arrange for supervision or consultation to ensure that the treatment is adequate.

"In the age of long-distance telephone, teleconference and the Internet, it's hard to argue that you couldn't have gotten the right

kinds of information," says Kinscherff.

The 2002 Ethics Code does make exceptions for psychologists in extraordinary circumstances: Psychologists with closely related experience can provide services if there's no one else who can--as long as they make a reasonable effort to obtain the competence required. See Standard 2.01 for the details.

## 8. Know the difference between abandonment and termination

Every year, APA's Ethics Office fields calls from psychologists who want to end treatment with a patient, but are anxious because they fear they're abandoning their client.

"Abandonment is not the same as treatment termination," Behnke tells them, pointing to the 2002 Ethics Code, which says in Standard 10.10 that psychologists can discontinue treatment when clients:

- Aren't benefiting from therapy.
- May be harmed by the treatment.
- No longer need therapy.
- Threaten the therapist, themselves or others.

Psychologists should provide pretermination counseling and suggest alternative service providers, says the Ethics Code, noting that this may not be possible in all cases, such as if a patient abruptly stops attending therapy. Such pretermination counseling could include explaining the benefits of the new services and why the current treatment is no longer helpful, addressing feelings of separation by emphasizing the transfer is not a personal rejection, and identifying practical issues in transferring the client, such as resolving financial arrangements with the new provider before ending treatment.

"Involve the client in the plan," advises Sparta. "Empower them to feel confident and competent. Help the client understand that the transition is a constructive step toward achieving their goals."

By contrast, abandonment occurs when a psychologist inappropriately ends treatment, such as halting needed therapy with no notice.

In his tenure on various ethics groups, Sparta says he has seen as many cases when psychologists continued treatment beyond the point necessary as when they precipitously stopped treatment. While dependent clients can make it difficult to end treatment appropriately, the blurred multiple roles that can result from prolonged relationships--giving a client a job, for example--are too risky, says Sparta.

Psychologists can often head off termination dilemmas by thinking ahead, say ethics experts. For example, a psychologist treats a woman until her insurance coverage expires, but when she can't pay out of pocket, he explains that the relationship must end and facilitates her care to another provider. To avoid the misperception that the psychologist "dumped" the client, the psychologist discusses the treatment timeline at their first session, including the differences between short- and long-term therapy and what could happen if therapy was needed beyond what the woman's insurance covered.

If there are cases in which it's apparent that a patient may have financial troubles at therapy's start, give consideration before you take the case, say ethics experts. And make sure you are aware of clients for whom financial hardship is developing.

## 9. Stick to the evidence

When you give your expert opinion or conduct an assessment, base your evaluation only on the data available. For example, psychologists in child-custody cases should be sure they aren't being biased in favor of the parent who is more financially secure.

"The best approach is to stay mindful about what you know, what you don't know and what your sources of information have been," says Kinscherff.

Ethics experts recommend that psychologists:

- **Know what the referral question is and choose assessment tools that can validly answer that question.** That means psychologists need to read and understand test manuals, says Sparta. For example, personality tests appropriate for clinical use are not necessarily appropriate for employment selection.
- **Don't rely on third-party reports to formulate assessments and avoid giving an opinion of any person they haven't directly evaluated.** According to the Ethics Code, when psychologists can't evaluate a person directly, they should document the efforts they made and the result of those efforts. They also need to discuss the limited information's impact on the accuracy and certainty of their opinion, and appropriately limit their conclusions or recommendations.
- **Make sure the assessment is thorough.** Psychologists can find themselves in hot water when they give an expert opinion without consulting all of the sources available. For example, a psychologist conducting a custody evaluation fails to check

with child protection services and therefore does not learn that one parent is being investigated for child neglect--a fact that might have changed the psychologist's opinion.

- **Discuss the limitations of their work** and make statements about the certainty of their findings. If no interview is possible, note those limitations in the report. "It's equally important to offer any plausible alternative hypotheses that would account for the data," adds Kinscherff. In fact, in court cases where the facts are disputed, Kinscherff lays out the contradictions between the two parties and then makes a set of recommendations based on each party's side of the story, leaving it up to the court to decide which party is truthful.
- **Ensure that tests were developed for the target population** and that they are culturally appropriate, says Sparta. If the test isn't, make the proper adjustments and note the limitations of those adaptations in your findings. New text in APA's 2002 Ethics Code specifies that psychologists take such measures.

## 10. Be accurate in billing

There's nothing more important than accuracy when it comes to billing patients and insurers for psychological services, say ethics experts.

While sloppy bookkeeping can land some psychologists in hot water, others find themselves in predicaments because they've worked the system to get clients more benefits than a third-party payor entitles them to.

To avoid such ethical problems, a psychologist should:

- **Bill only for services you have provided** using correct procedure codes. Never bill an insurer for a service that is covered instead of the treatment actually provided. For example, it's improper to bill for individual therapy instead of couples therapy, for therapy instead of psychological testing or for psychoeducational tests as if they were health-related. Moreover, don't bill the insurance company when clients miss appointments; bill the client.

"Be accurate, conservative, and consult when in doubt," advises Ethics Committee associate Peter Mayfield, PhD.

- **Only list the dates you treated the patient.** While it may be tempting to tell an insurer that only pays for one session a week that you saw a client two Mondays in a row instead of the Monday and Friday you actually met, psychologists should never "fudge" a treatment date.
- **Call it as you see it.** Occasionally, a patient might ask for a less damaging diagnosis for fear that employers or others might find out. Or psychologists may consider exaggerating diagnoses to justify more visits to insurers. No matter what, don't do it: "Honesty is the best policy," says Mayfield.
- **Discuss billing practices up front.** "All of the financial policies need to be told to the client at the beginning of therapy," says Eric Harris, JD, EdD, a risk management consultant for the APA Insurance Trust. In fact, Harris recommends that psychologists ask clients to sign informed-consent contracts that outline the financial arrangements, such as that clients will be billed for skipped sessions and they must pay for the services if the insurer refuses coverage.
- **Be conscientious about collecting fees.** "When a client isn't paying their fees, you need to raise it with them as early as possible," says Harris. "You need to set appropriate limits." Allowing clients to run large balances isn't good for either party's finances. One solution is to accept credit cards.
- **Take caution in pursuing delinquent accounts.** When psychologists use small claims court or a collection agency to pursue debtors, they are ethically obligated to first inform the client of their intent and give them the chance to pay. If the client does not pay, psychologists are ethically permitted to provide only the minimum information necessary to pursue their claim.
- **Watch your paperwork.** Because psychologists are accountable for everything that their offices bill, regardless of whether they ever saw the paperwork, Mayfield encourages psychologists to personally review any document that goes out under their name.

Lastly, there's one, best strategy that psychologists can take to minimize their exposure to ethical and legal problems, says Behnke: "Be the best psychologist you can be."

---

### Find this article at:

<http://www.apa.org/monitor/jan03/10ways.aspx>