Management of Ethical Issues and Conflicts of Interest

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Child welfare and domestic relations cases typically involve a constellation of professionals including social workers, medical providers, educators, therapists and attorneys. With overlapping and sometimes conflicting professional codes of ethics, and a multitude of statutory requirements, the helpers in these complex cases can often find themselves lost in ethical dilemmas. As practitioners, it is imperative that basic ethical principles be understood. Further, a clear method for identifying, preventing and resolving these conflicts must be a part of every professionals practice.

Many have written about basic moral or ethical principles that guide the helping professions. N. M. Meara, L.D. Schimdt and J.D. Day describe six basic characteristics that seem to serve as the foundation of most professional codes of ethics (Principles and Virtues: A foundation for ethical decisions, policies and character, The Counseling Psychologist. 24(1), 4-77, 1996.) These are: autonomy, nonmaleficence, beneficence, justice, fidelity and veracity.   The principle of autonomy involves the promotion of client self-determination and the freedom of people to choose their own direction. Nonmaleficence requires the practitioner to avoid doing harm and to refrain from actions that risk hurting other, either intentionally or unintentionally. Beneficence requires the promotion of good for others in general and the greater good for all. Justice is the basic concept of fair and equitable treatment for all, regardless of individual characteristics such as race, gender, socioeconomic level, religion, etc. The principle of fidelity holds the professional to honoring promises and commitments made to others, and veracity is the responsibility to tell the truth. Each of these principles can be found in the codes of ethics for social workers, psychologists, physicians, nurses, teachers, attorneys and other professionals involved in child welfare and domestic relations cases.

While these principles appear fairly universal, there is, of course, considerable cultural diversity in the way in which these appear in values and behaviors. For example, in 1985, D.Y.E. Ho studied the differences between people raised in the United States and in Hong Kong (Cultural values and professional issues in clinical psychology: Implications from the Hong Kong experience. American Psychologist, 40(11), 1212-8). Ho found considerable diversity between the two cultures on such seemingly basic values and ethical principles as independence vs. interdependence, competition vs. cooperation, individual responsibility vs. collective responsibility and nonconformity vs. conformity. It is important for child welfare practitioners to become familiar with the various cultures within their community, as it is clear there is not an absolute and universal framework for ethical decision-making.

With a basic understanding of the foundation of ethical principles, and a realistic appreciation of cultural diversity, the child welfare professional needs to recognize that ethical issues and the potential for conflicts of interests are a daily part of his/her practice. While most professions require members to follow the 'official' code of ethics, and perhaps even have annual training on the topic, it is the rare practitioner who actually has good knowledge of their profession's code. For example, most social workers in the United States are members of the National Association of Social Workers (NASW).

There is a code of ethics for NASW that, in theory, has been studied and understood by all the members of the organization. In a recent workshop at a conference for social workers, the authors asked participants if they had a copy of the NASW code of ethics at their offices. Not a single social worker in the workshop could state definitively that this document was in their office or that any of their colleagues had a copy of it either!

Even if a code of ethics was reviewed on a daily basis by a helping professional, such a document is inherently limited in its ability to guide ethical practice. Many codes lack clarity or are contradictory, making ethical decision-making and enforcement difficult if not impossible. Practitioners who belong to more than one association or profession, or who hold more than one license, may have different and/or contradictory codes of ethics. Personal values, agency policies, governmental policies or statutes may be in conflict with professional codes of ethics. Some issues, quite frankly, just can't be addressed completely by any code of ethics. In 1996, NASW issued the following statement: "A code of ethics cannot guarantee ethical behavior. Moreover, a code of ethics cannot resolve all ethical issues or disputes, or capture the richness and complexity involved in striving to make responsible choices with a moral community. Rather a code of ethics sets forth values, ethical principals and ethical standards to which professionals aspire and by which their actions can be judged."

In general, ethical violations tend to fall in to the following categories: confidentiality, duty to warn others about potential harm, personal value conflicts, dual or sequential relationships, financial issues, professional competence and cultural competence. What are the limits of confidentiality? Can a practitioner refuse to tell a parent about the content of therapy sessions? If child abuse must be reported to authorities, is elder abuse a mandatory report too? If it is believed a client is going to physically harm another person, can confidentiality be broken and that person be warned? If the practitioner believes that abortion is morally wrong, can she advise a client to not get this procedure? Is it ever acceptable to become sexually involved with a current or former client? Can a counselor provide mental health treatment to the child of her best friend? Should a practitioner terminate services because the client can't pay and the insurance benefits have ended? Can a professional who is suffering from active substance abuse continue to work in an alcohol treatment center? If a professional has no knowledge of the family values of Yupik Eskimos, should s/he accept a position as a counselor at a school in the Alaskan Arctic?

These questions and more have no simple and definitive answers. This is the challenge for child welfare professionals on a daily basis. How does one make ethical decisions and avoid conflicts of interest?

Every practitioner needs to follow a logical, and thorough, process to prevent and address these many dilemmas. First, it is important to obtain knowledge of relevant laws and governmental policies that apply to the professional's area of practice. A teacher, for example, would want to know specifically how the child abuse reporting laws apply to educators, or a physician would want to know if there is a law in his/her community that requires reporting of gunshot wounds or sexually transmitted diseases.

Next, it is important to have a thorough understanding of one's own professional code of ethics. If a person is a member of more than one profession, it is imperative that both codes be compared to identify, in advance, any conflicts or discrepancies. It is also useful to have an understanding of the codes of ethics for similar professions. For

example, while the National Association of Social Workers does not have specific ethical guidelines for conducting custody investigations in divorce litigation, the American Psychological Association (APA) does have such standards in place for their members. While a social worker would not be legally bound to the APA requirements, it is wise to be aware of the other professions standards to avoid the appearance of inappropriate or unethical practice.

Agencies should maintain clear and comprehensive policies and procedures manuals, and these should be reviewed and, if needed, revised on an annual basis. Staff at agencies should actually read and understand these policies, not just put the big manual up on the shelf to collect dust! The professional should compare the laws, codes of ethics and agency policies to ascertain if there are any inherent conflicts between them.

Individual practitioners should be aware of their own personal values as they practice every day. As much as possible, these values should not be in overt conflict with the codes of ethics, laws and policies that govern the person in his/her work. If there is an irreconcilable conflict that exists, the practitioner may well have to seek another line of work or, at least, employment in a different social service setting. For example, if a person vehemently opposed capital punishment, it would present an ongoing ethical dilemma to accept employment as a counselor for inmates on 'Death Row' in a correctional facility.

After examining ones personal values, relevant laws and regulations, codes of ethics and agency policies, it is important to identify the exact role the professional is playing in the current job. Many helping professionals have a wide area of practice, changing roles several times through the course of a week. For example, a social worker in a school setting might act as a counselor for two children arguing on the playground, report a parent to the authorities for child abuse, advocate for a child's special education needs, and present a lesson to students on birth control choices---all in one afternoon! Each of these distinct roles may well have different ethical issues to address, and it is important for the practitioner to be aware of his/her role to avoid ethical violations or conflicts of interest.

Prevention of ethical conflicts is imperative. Clients need to be informed, for example, of confidentiality limitations. If a client is told prior to beginning counseling that the therapist is required by statute and agency policy to notify the police if a crime has been committed, it would come as no surprise to the client when their confidentiality is violated upon disclosure of an assault or an armed robbery. Likewise, clients need to be made aware of their financial responsibilities, and any repercussions for non-payment of fees, i.e. only ten sessions will occur or collection litigation could ensue if bills aren't paid within 60 days. Any issue, which the practitioner believes might result in an ethical conflict, should be addressed proactively with the client in advance of service delivery if at all possible.

Having done all this and a conflict still arises, the practitioner needs to immediately begin a problem-solving process. First, identify what ethical issue or conflict of interest is believed to exist. Next, research the law, governmental regulations, agency policies and codes of ethics for guidance. If there is conflicting information in these various documents, attempt to prioritize them to identify the controlling rule. For example, in general, federal laws in the United States take precedence over state laws, and state laws take precedence over city laws. When in doubt, it is wise to consult with

an attorney when attempting to determine which law or ethical code is controlling for the exact situation.

It is also useful to examine ones' own personal values and biases again in this analysis to be sure that these are not clouding one's judgment or interpretation of an ethical issue. Using colleagues and supervisors to 'brainstorm' these issues is critical. To attempt to examine ethics and conflicts in a vacuum is futile and dangerous.

Finally, it is important to create an 'action plan' in writing which is consistent with the laws, policies, ethical codes and the consultation of peers and supervisors. For example, if it has been discovered that the teenaged client has become romantically involved with her counselor's son, unbeknownst initially to the counselor, an action plan would include immediately transferring the client to another therapist for continued services and, perhaps, even to another agency entirely. This plan would be given to the teen client, her parents, the current counselor and the new counselor. It would be agreed to, in writing, by all concerned and become part of the client's file at the agency. After the plan is implemented, it is important to reflect upon the outcome and to revise it as needed.

While not an absolute guarantee for ethical practice and the avoidance of conflicts of interest, the process of becoming aware of relevant laws, policies and ethical codes combined with proactively addressing potential problem areas allows one to avoid many ethical dilemmas and conflicts. When these issues still arise, the clear and consistent problem-solving process described can successfully address and resolve these issues.

Definitions

<u>Values:</u> beliefs and attitudes that provide direction to everyday living

<u>Ethics</u>: beliefs held about what constitutes right conduct, moral principals adopted by an individual or group to provide rules for right conduct

<u>Morality:</u> perspectives of proper conduct, involves evaluation of actions on the basis of broader cultural or religious standard

Theoretical Ethical Guidelines

1) Rules against basic harms to life, health and safety take precedence over rules against harms such as lying, loss of income, loss of freedom and confidentiality violations.

2) An individual's right to basic well-being takes precedence over another's individuals right to self-determination.

3) An individual's right to self-determination takes precedence over his/her own right to basic well-being.

4) The obligation to obey laws, rules and regulations to which one has voluntarily and freely consented ordinarily overrides ones' right to engage voluntarily and freely in a manner that conflicts with these laws, rules and regulations.

5) The obligation to prevent basic harms such as starvation and to promote public goods such as housing, education and public assistance overrides the right to complete control over one's property.

From: Reamer, F. G. (1994.) <u>Social work malpractice and liability: Strategies for prevention.</u> New York: Columbia University Press.

Comparisons of Western and Eastern Systems

West	**East**
Values	
Primacy of individual	Primacy of relationship
Democratic orientation	Authoritarian orientation
Nuclear family structure	Extended family structure
Emphasis on youth	Emphasis on maturity
Independence	Interdependence

Assertiveness	Compliance
Nonconformity	Conformity
Competition	Cooperation
Conflict	Harmony
Freedom	Security

Guiding Principles for Action

Fulfillment of Individual needs	Achievement of collective goals
Individual responsibility	Collective responsibility

Behavior Orientation

Expression of feelings	Control of feelings
Uniqueness of individual	Uniformity
Self -actualization	Collective actualization

Time Orientation

Future orientation	Value on past/traditions
Innovation	Conservatism

Ho, D. Y. E. (1985). Cultural values and professional issues in clinical psychology: Implications from the Hong Kong experience. *American Psychologist,* 40(11), 1212-8.

Ethical dilemmas and conflicts of interest are EVERYWHERE!

---Examine your practice daily

---If you can't identify ethical issues and potential conflicts, you're not looking hard enough!

---Conflicts of interest are more likely in smaller communities.

How to Determine Ethics and Conflicts of Interest

--Know your own profession's Code of Ethics and/or Standards of Practice.

---Know similar professions' Codes of Ethics and/or Standards of Practice.

---Know your role in a particular case.

---Know the laws of your country, state, county and town.

---Know the policies and practice guidelines of your agency.

---If you are in private practice, create policies and practice guidelines for your business.

Limitations to Codes of Ethics

--Some issues can't be dealt with simply by ethical codes.
--Some codes lack clarity or are contradictory, making enforcement difficult or
  impossible.
--Clients may not have the knowledge or emotional health to determine if a
  professional is acting unethically.
--Codes are generally designed to protect the professional more than the client.
--Conflicts exist between similar professional codes.
--Practitioners who belong to more than one association or profession, or who
  have more than one license or certification may have different and/or
  contradictory codes.
--Ethical codes usually are reactive rather than proactive. Personal values may
  conflict with professional codes. Laws may conflict with professional codes.
--Policies and procedures may conflict with professional codes.
--Ethical codes can't cover all diverse populations and cultures.

NASW Code of Ethics (1996)
      A code of ethics cannot guarantee ethical behavior. Moreover, a code of
ethics cannot resolve all ethical issues or disputes, or capture the richness and
complexity involved in striving to make responsible choices with a moral
community. Rather a code of ethics sets forth values, ethical principals and
ethical standards to which professionals aspire and by which their actions can be
judged.

Identify Inherent Conflicts of Interest and Ethical Issues
---Do this BEFORE you begin working with clients.
---Discuss and clarify these issues with your supervisor and other practitioners in
  your agency or field of practice.
---If there is an irresolvable conflict of interest or ethical dilemma, quit the job.
---Be aware: you may be obligated to take further action.

Steps in Ethics Problem Solving

1) Obtain and maintain knowledge of relevant law and policy.
2) Obtain and maintain knowledge of relevant professional ethics codes.
3) Inform clients in advance and in writing of reasons to violate
   confidentiality, financial responsibilities and repercussions for non-
   payment, boundary issues, etc.
4) Initially identify ethical issue or conflict of interest you think may exist.
5) Identify the laws, policies and ethical code you believe may apply.
6) If these conflict, attempt to prioritize the laws, policies and ethical codes.
7) Examine personal values or bias which may cloud your analysis of these
   issues.
8) Consult with supervisor and colleagues regarding steps #4-7.

9) Create an action plan, in writing, which is consistent with the laws, policies, ethics and consultation.
10) Implement the plan.
11) Reflect on the outcome of the plan.
12) Revise law, policy or ethical code as needed.

NASW CODE OF ETHICS VIOLATIONS 1986-97

--Boundary Violations: 254
     Sexual Relationship: 107
     Dual Relationship: 77
     Other 65
     Supplying drugs/alcohol: 5
--Poor Practice: 160
--Competence: 86
--Record keeping: 70
--Honesty: 51
--Breach of confidentiality: 41
--Informed consent failure: 37
--Collegial violations: 33
--Billing: 23
--Conflicts of Interest: 22

From: Strom-Gottfried, Kimberly. "Ensuring Ethical Practice: An Examination of NASW Code Violations, 1986-97 , <u>Social Work,</u> Vol. 45, No.3, pp 251-261.

Ethics and Conflicts Catagories

--Confidentiality

--Duty to Warn/Do no Harm

--Personal Values

--Dual or Sequential Relationships

--Financial

--Professional Competence

--Cultural Competence

--Other

Tarasoff v. Board of Regents

--Poddar was a voluntary patient of psychologist Moore at the UC Berkeley campus health center.

--Poddar told Moore of his intent to kill an unnamed woman (readily identifiable to Moore as Tarasoff).

--Moore assessed Poddar as dangerous, needed committed for treatment and told campus police this and of death threat.

--Some investigation by campus police, no commitment. Moore ordered to destroy his records and not contact Tarasoff.

--Poddar killed Tarasoff.

--Tarasoff's parents sued the UC Board of Regents for having failed to notify the intended victim of the threat. Won appeal in 1976.

--Duty to warn and duty to protect.

DUTY TO WARN OF THREAT OF PHYSICAL HARM

State's Approaches to Therapist Duty To Warn

1)   Duty to warn when there is a general threat or threat against public at large (low threshold)
    A)   Sacrifice client confidentiality to protect public welfare
    B)   Illinois: disclosure can occur to "protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety."
    C)   No requirement that the identity of a specific victim be known to the therapist.

2) Duty to warn when there is a specific threat of harm to a readily identifiable victim (high threshold)
    A)   Client names a specific victim and a specific planned act.
    B)   Massachusetts: disclosure involves client making "an explicit threat to kill or inflict serious bodily injury upon a reasonably identified victim or victims and the client has the apparent intent and ability to carry out the threat or has a history of physical violence which is known to the social worker."

3) No law, no regulation (ignoring the issue)
    A)   No duty to report is imposed on the therapist.
    B)   Report is entirely at discretion of therapist with no guidance as to what to report.

Duty To Report Past Criminal Acts

1) No state requires mental health professional to report past criminal act.
2) Some states allow confidentiality to be violated to report a past criminal act.
3) Kansas: confidentiality is not required when a client communicates information that pertains to criminal acts or violations of the law.

4) Is there a compelling professional reason to report the prior criminal act to authorities?

Ethics Homework

l) Identify roles of staff with clients in your agency, and their applicable Codes of Ethics.

2) Identify laws that apply to your agency practice.

3) Locate policies and procedures manual.

 (Dust off the cobwebs!)

4) Identify any conflicts between ethical codes, laws and current agency policies.

5) Prioritize applicable ethical codes and laws, and revise policies accordingly.

6) Strongly consider technical assistance from someone outside your agency in assessing your policies and procedures manual to be sure you aren't 'blind' to obvious or subtle conflicts or violations.

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