
Elevating Ethical Awareness And Resolving Ethical Dilemmas in EA Practice

Paul J. Fitzgerald, PsyD, LCPC, CEAP
Northern Illinois Chapter
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Acknowledgements

- Contains materials created by the Ethics Education Panel of Experts of EAPA
- Conforms to the EAPA standards for Ethics Training for Chapters and Branches
- Some case examples are provided by my former clients and employers!

Goal

- To apply an ethical decision making process to employee assistance (EA) practice in areas such as:
 - Multiple relationships (a core feature of EA practice)
 - Client organization
 - Employee clients
 - Confidentiality within an EAP framework

Goal

- Role of consultation in maintaining ethical practice
 - Importance of professional association participation
- Boundaries/conflicts of interest
 - Conflicting expectations of organizational & individuals clients
 - Ethical considerations when making referrals
- Distinction between ethical and legal issues
- Ethical Issues in EA business practices

Objectives:

- To educate EA professionals on the role and significance of ethics in professional practice
- To identify for EA professionals, the underlying tenants and codes of ethics relevant to EA practice
- To Equip EA professionals with tools and resources to support ethical decision-making

Ethics Definitions

- Ethics: the study of moral behavior
 - Normative ethics: norms of standards or conduct (e.g., ethical codes)
 - Ethical dilemma: the collision of two values; benefit or harm may result
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Ethics is:

- Based upon *choice* rather than mandate
- Contingent on a specific set of facts
- Derived from experience (“reasonable man”)
- Consideration of other’s interests

Ethics is:

- Not about law, or about policy
 - Not judgementalism or imposition or personal values
 - Different from morality
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Purpose of Professional codes

- Practitioner Behavior and a Profession's Identity
 - A profession's identity is built upon the cumulative effect of the practitioner behavior
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Foundation of all Professional Codes

The Fundamental Principles:

- Foster Good (Beneficence) and Do No Harm (Nonmalificence)
- Fidelity & Responsibility (Trust)*
- Integrity (Honesty)
- Justice (Fairness to all)
- Respect for people's rights and dignity

Codes of ethical conduct date back to at least 400 B.C.
(Hippocratic oath)

*Focus of ethics in government

EA Professional Codes

- EAPA Code of Ethics
 - CEAP Code of Conduct (EACC)
 - EASNA Code of Ethics
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Other Professional Codes

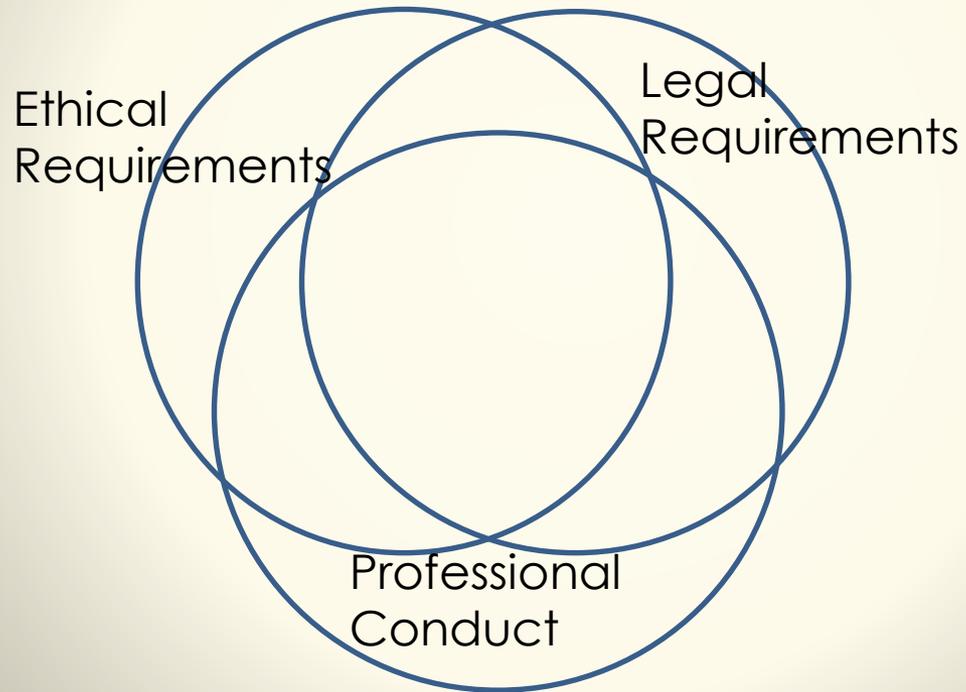
- NASW Code of Ethics (2017)
- ACA Code of Ethics (2014)
- APA Ethical Principles of Psychologists and Code of Conduct (2016)
- Drug & Alcohol Counselor Ethical Standards:
 - NAADAC/NCC AP Code of Ethics (2016)
 - Illinois Certification Board (ICB) Code of Ethics for Certified Alcohol and other Drug Abuse (AODA) Professionals

Ethics Differs From Law

“Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience then?...It is not desirable to cultivate a respect for the law, as much as for the right.”

Henry David Thoreau
Civil Disobedience

Overlapping Domains



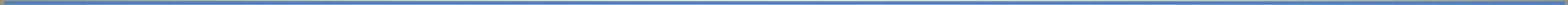
Ethical Decisions: Two Perspectives

- Kantian – belief in the existence of absolutes (deontological, universal law)
- Consequentialist – rightness or wrongness determined by the consequences (teleological)
- Echoed by Kohlberg's stages of moral development

Ethical Decisions

Ethical decisions are situational. For example:

- Confidentiality
- Proprietary information and products
- Management referrals



Ethical Dilemmas

Four basic types:

- Truth vs. Loyalty
- Individual vs. community
- Short-term vs. long-term
- Justice vs. mercy

Author Rushworth Kidder

Ethical Conduct in EA Practice

- Personal conduct
 - Professional conduct
 - Conduct in relation to clients
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Ethical Conduct: Personal

- Violating community standards of law/morality
 - Alcohol and drug use
 - Self-care
 - Use of knowledge from professional role for personal gain
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Ethical Conduct: Professional

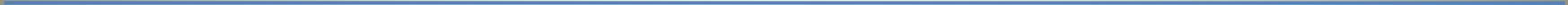
- Boundaries of competence
 - Representation of credentials
 - Referral and follow-up practices
 - Withdrawal of service
 - Proprietary information and products
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Ethical Conduct: Professional

- Handling a colleague's ethical issues
 - Making a complaint
 - Working to minimize harm to clients
 - Additional proprietary complications with unethical colleagues (i.e., business practices of competitors)
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Ethical Conduct: Clients

- Confidentiality
- Management or mandatory referrals
- Documentation
- Informed consent

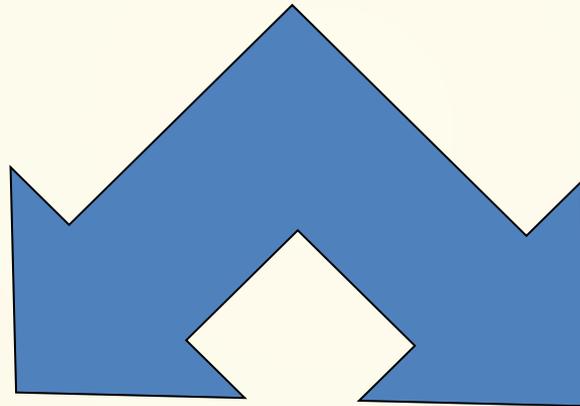


The “Two Clients” Issue in EAP

Employee Assistance Programs
Serve Two Clients



Companies



Employees

There May be Multiple Clients

- Employee
- Family Member (e.g., adult child)
- Supervisor
- Human Resources
- Compliance Officer (e.g., DER)
- Local Organization
- Parent Company

Look at *Roles* as well as “Clients”

Clinical Role – Providing services to individual(s) who should expect and receive assistance

Consulting Role – Providing expertise and knowledge to an organization to help them solve problems or improve some aspect of their organizational functioning

Fiduciary Responsibility (Duty)

Definition of “Fiduciary (fr. Latin *fidere*, to trust):
Involving trust, especially with regard to the relationship between a trustee and a beneficiary:

“A fiduciary duty is the highest standard of care. The person who has a fiduciary duty is called the fiduciary, and the person to whom he owes the duty, is typically referred to as the principal or the beneficiary.” (Cornell Law School)

Often used in financial context, but can apply to any situation in which one person places their trust in another, and expects them to act in their best interest.

To whom do we have a duty?

- Anyone who has trusted us to assist them, starting with “Clinical” role at the top
- Clients (Employees and families) whether they self-referred or not)
- Organizational client (They trust us to help them make their organization operate better)
- The general public, society, community (Social justice)
- Ourselves! (As professionals)

But formal fiduciary duty (in the legal sense) rests mostly with the clinical client, which is why we have a statement of understanding (informed consent), privacy notice, etc.

Organizational Services & Ethics

- Psychologists (primarily I/O) first raised awareness of this
- Was incorporated into the APA Ethical Principles beginning in the 2000's
- Covers “Who is the client” and informed consent questions
- Can be applied to anyone doing organizational work, even if not psychologists

Ethics of Organizational Consultation – APA's Standard

3.11 Psychological Services Delivered to or Through Organizations:

(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

Ethics of Organizational Consultation – APA's Standard

1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

Ethics of Organizational Consultation – APA's Standard (Cont'd)

4.06 Consultations: When consulting with colleagues, (1) psychologists do not disclose confidential information that reasonably could lead to the identification of a client/patient, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided, and (2) they disclose information only to the extent necessary to achieve the purposes of the consultation. (See also Standard 4.01, Maintaining Confidentiality.)

Major Ethical Issues in Org Consulting

- Informed Consent – Who will be included in a consultation, what may happen as a result of the consultation?
- Confidentiality – When doing org assessments or interviews, what information may be shared and with whom?
- Multiple Relationships – HR, supervisor, workgroup, employee, family members
- Conflicts of interest – Fees for org services vs. capitation, protecting org at expense of protecting employee (or vice versa)
- Competence – What training / experience / qualification has the EA professional had in specific services such as performance coaching? Assessment of fitness for duty? Disability?

Confidentiality Within the EAP

- Some disclosures are covered within clinical supervision
- Some are account-related but could include confidential information from individual employees
- If anything from an individual session were to be used in organizational way (e.g., by account manager to talk to HR about a bad supervisor), individual employee would need to give informed consent first

Reporting and Marketing

- EASNA Says to provide accurate expectations of what the program can deliver
- EAPA and EASNA both call for “Accuracy & Honesty in reporting utilization, program results, and outcomes.”
- Referral practices can be mischaracterized (Before or after the contracted # of sessions?)
- Marketing – how affiliates are portrayed (and trained)
- Do we count website visits as utilization?

Competence: Are we qualified to diagnose?

- In Illinois, LCPC, LCSW, psychologist, and psychiatrist may diagnose and treat mental health conditions (as medical doctors do) – they’re considered “licensed practitioners of the healing arts”
- Others must give a diagnostic impression or provisional diagnosis only
- Even with qualifications needed, a clinician cannot ethically or legally assign a diagnosis in the absence of a good assessment and enough information to make it solid
- This may include past records, collateral information, etc.

Competence: Differential Dx, Rule-outs, and Provisional Dx

- Each is a way of “Hedging your bets” in assessment
- Each needs to be further clarified as soon as possible – this is an ethical responsibility
- These can be informative and helpful to other clinicians in understanding your progress in assessment and where things stand (as well as what would be needed to clarify)
- However, they can also confuse matters

Ethical Issues in Practice

- Counseling is both an art and a science
- Regulated professions have standards of practice
- Mental health fields are just about the only branch of health care where practitioners may commonly differ in their theories about:
 - What causes disorders and/or problems
 - How disorders should be best treated
 - What the goals of practice should be
 - How we measure progress and success
 - We have a responsibility to *protect the public*.

Example of Theory Impacting Practice

The high-level executive who cannot give presentations in front of the audiences he is supposed to be working with

- Self-psychology practitioner – “He has no self.”
 - Therapy: Work with him to lend an “auxiliary ego” to help him, develop his own
 - Transference relationship is crucial; Long-term process
- CBT Practitioner: He needs to overcome disabling anxiety
 - Changing cognitions about the situation and his own ability
 - Behavioral strategies: Systematic desensitization, relaxation, in vivo rehearsal
 - Can be short-term as it will not focus on any other problems or goals
- Adlerian approach: His anxiety is serving a purpose
 - Therapy to help him realize what he is avoiding (e.g., fear of failure)
 - May use CBT strategies to address that

Gatekeeping and Managed Care

- EAP's use the clinician (Affiliate or staff EA counselor) to gatekeep health benefits – potential for conflict of interest when costs are incurred for affiliates
- Managed care – with parity law, has been dwindling but can still be an expectation. (Balancing client and employer interests)
- Psychologists were previously enjoined to take the client's side against managed care (not currently stated in ethical principles of APA)

Ethics in Supervision – Two Aspects

- Supervision as a means to acquire ethical skills and awareness (Ethical education and professional development)
- The ethics of the supervision relationship itself
 - Respecting the autonomy of the supervisor and supervisee
 - Protecting clients
 - Avoiding dilemmas and problems

A good supervisory relationship

- Is free of conflicts of interest
- Is clearly understood by all parties
- Respects the supervisor and supervisee role
- Provides accountability to the agency or other stakeholders

VALUES: ACA's positions – 2005 Code

- A.4. Avoiding Harm and Imposing Values
 - A.4.a. Avoiding Harm: Counselors act to avoid harming their clients, trainees, and research participants and to minimize or to remedy unavoidable or unanticipated harm.
 - A.4.b. Personal Values: Counselors are aware of their own values, attitudes, beliefs, and behaviors and avoid imposing values that are inconsistent with counseling goals. Counselors respect the diversity of clients, trainees, and research participants.
- “Counseling goals” is a term that could lead to some controversy – see the 2014 Code. Whose goals are these?

VALUES: ACA's position – 2014 Code

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 - A.4.b. Personal Values: Counselors are aware of—and avoid imposing—their own values, attitudes, beliefs, and behaviors. Counselors respect the diversity of clients, trainees, and research participants *and seek training in areas in which they are at risk of imposing their values onto clients, especially when the counselor's values are inconsistent with the client's goals or are discriminatory in nature.*
- Additional responsibilities: seeking training, avoiding discrimination
- Removed: “Counseling goals”

What prompted this change?

- Ward v. Wilbanks (Ward v. Polite)
 - Program's Issue: Academic freedom vs. ethical practice
- What happened
 - [ACLU Summary](#)
 - [Becket Fund Summary](#)
 - [Eastern Michigan University Summary and Links page](#)
- Who got involved – Case was appealed but university eventually settled
 - AG Schuette (Amicus brief)
 - Alliance Defense Fund (AKA [Alliance Defending Freedom](#))
- [ACA's response](#)

How did ACA communicate these changes?

- *New Concepts in the ACA Code of Ethics* articles: [“New Responsibilities when making referrals”](#)
- *Key concept – Counselors must be able to suspend or put aside their values without giving them up, when client needs are best served by putting them aside.*

What else did ACA add to the new Code?

- A Preamble which included a statement of the **ACA's values**:
 - Enhancing human development throughout the life span
 - Honoring diversity and embracing a multicultural approach in support of the worth, dignity, potential, and uniqueness of people within their social and cultural contexts;
 - Promoting social justice
 - Safeguarding the integrity of the counselor–client relationship
 - Practicing in a competent and ethical manner
- A section on Competence and Values in Termination and Referrals

Termination and Referrals – 2005 Code

- A.11.a. Abandonment Prohibited: Counselors do not abandon or neglect clients in counseling. Counselors assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, illness, and following termination.
- A.11.b. Inability to Assist Clients: If counselors determine an inability to be of professional assistance to clients, they avoid entering or continuing counseling relationships. Counselors are knowledgeable about culturally and clinically appropriate referral resources and suggest these alternatives. If clients decline the suggested referrals, counselors should discontinue the relationship.

Termination and Referrals – 2014 Code

- A.11 - Termination and Referral
- A.11.a. Competence Within Termination and Referral: If counselors lack the competence to be of professional assistance to clients, they avoid entering or continuing counseling relationships. Counselors are knowledgeable about culturally and clinically appropriate referral resources and suggest these alternatives. If clients decline the suggested referrals, counselors discontinue the relationship.
- A.11.b. Values Within Termination and Referral: Counselors refrain from referring prospective and current clients based solely on the counselor's personally held values, attitudes, beliefs, and behaviors. Counselors respect the diversity of clients and seek training in areas in which they are at risk of imposing their values onto clients, especially when the counselor's values are inconsistent with the client's goals or are discriminatory in nature.

What did the ADF and allies do next?

- Introduced a bill in Tennessee to specifically target counselors and attempt to exempt them from the ACA Code of Ethics
- See the Family Action Council of Tennessee [summary](#)
- Made this a model bill for other states to adopt

ACA's Response

- Urged members to contact Gov. Haslan to ask him to veto the bill
- When he did not, and signed it, they decided to move 2017 annual conference from Memphis to San Francisco
- Tennessee Counseling Association was in a difficult position

Why should counselors have to put aside (or “bracket”) their values?

- Public trust – performing a regulated service to the public (Like doctors)
- Serving diverse populations
- “Imposing values” can be very subtle
- What about counselors in a Christian counseling center, advertised as such, who expressly state to clients that they disapprove of clients having sex before marriage? What factors would make this OK or not OK?

Culture and the Counselor's Values

When do these conflict with counselor responsibilities? Examples...

- Roles of men and women in the family or society
- Attitudes about mental illness (Stigma)
- Corporal punishment of children
- Other examples?

Clients who are prejudiced

- See ACA Article in [Counseling Today](#) by Bailey McLeod
- Advocacy role vs. respect for clients' values
- Pragmatic considerations – Workplace, school, community standards and regulations
 - EEOC and sexual harassment policies
 - Title IX
 - HR and school policies
 - Company values (Discrimination hurts business)

Technology: Internet, E-mail, Text, Social Media Ethics

Uses for Social Media in EAP / Client Companies

Announcing Events (health fairs, etc.)

General information

Announcements

Meet the staff

Work/life and stress management articles/videos

Advertising

Sharing positive/informative messages

Keep up with clients

Text and E-Mail

Text: Have clients sign a consent form to send to their phone number

This should include a warning that texts sent over internet (e.g., iMessage and Google Hangouts) may not be secure

Square receipts are not HIPAA compliant – get a consent form before sending

Also be aware of potential DV issues with e-mail or texts

Best Practices for Social Media - Clinicians

- Provide a written social media policy and consent form that clients must sign

- Use privacy settings on social media accounts whenever possible

- Check with state licensing board to stay current on rules and regulations

- Have separate social media accounts for your professional and personal life

Support for Ethical Decision Making

Normative ethics involves personal discussion and interaction with others including sharing experiences and concerns with:

- Workplace Associates
- Workplace Supervisor
- Professional Association Colleagues
 - Chapter/branch members
 - ethics@eapassn.org

EAPA Ethical Decision-Making Model

To assist EA professionals in addressing potential ethical dilemmas, EAPA has developed a four-step ethical decision-making model.

- 1) Consider the potential ethical issues in the situation:
 - What are the competing values or interests in this situation?
 - What are my personal values on this issue and which ones are in conflict
 - What ethical guidelines (e.g. law, corporate policies, practice standards, codes of ethics) apply to this issue?
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EAPA Decision-Making Model

2) Consider who has a legitimate interest in this situation
(i.e. what individuals or groups may be affected by the decision?)

Individual client?

- Work organization?
- Others directly or indirectly involved?
- Society?
- Myself?

3) Consider all the possible choices of action

Which choice benefits the client?

- Which choice benefits the work organization?
- Which choice benefits others directly or indirectly involved?
- Which choice benefits society?
- Which choice benefits me?

4) Make a decision

Case Example Exercises

Break into groups of 4-6 people and consider each case vignette. Go thru the ethical decision-making process:

- What are the potential ethical issues in the situation?
- Who has a legitimate interest in the situation and outcome?
- What are the possible choices of action?
- What action would you choose?

Summary

- Codes of ethics, or conduct, help define a profession
- Ethics is the study of moral decision making
- Ethics differs significantly from law and policy statements
- Ethical dilemmas are created by two opposing values



EAPA

**International
Employee Assistance
Professionals Association**