

Ethical Decision-Making Model

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A Proposed Model of Ethical Decision-Making in Forensic Psychology

Determining a course of professional behavior that not only avoids ethical misconduct according to an ethics code but also adheres to high aspirational principles requires a commitment to ethical ideals. Determining such a course of action requires access to the necessary tools, and it requires effort and time. Some practitioners may find adherence to the letter of enforceable ethical standards to be sufficient. In our view, however, it is difficult to justify choosing not to pursue the highest standard of ethical behavior available to psychologists. As Knapp and Vandecreek (2003) stated, “Ethics Codes of professions are, by their very nature, incomplete moral codes” (p. 7). Positive ethics requires a shift from an emphasis on misconduct and disciplinary action to an emphasis on the pursuit of one’s highest ethical potential (Handelsman, Knapp, & Gottlieb, 2002). The forensic psychologist must understand not simply that certain practices are unethical, but rather *why* they are unethical (Shuman & Goldberg, 1998).

Ethical decision-making models for psychologists have previously been provided (e.g., Canadian Psychological Association, 1991; Haas & Malouf, 2002; Kitchener, 2000; and Koocher & Keith-Spiegel, 1998). Knapp and Vandecreek (2003) reviewed these models and identified five common steps: (a) identification of the problem, (b) development of alternatives, (c) evaluation of alternatives, (d) implementation of the best option, and (e) evaluation of the results. Knapp and Vandecreek (2003) also noted that these models, while valuable, do not adequately consider emotional and situational factors or the need, in some situations, for an immediate response. When considering emotional and situational factors, they propose that psychologists engage in self-care activities, become aware of when their own emotional needs begin to interfere with sound

professional judgment, and be alert to situational pressures. To best address the need for urgent ethical decision-making, they recommend that psychologists anticipate the types of problems that may be encountered in one's practice and then develop decision-making steps for such problems that can be implemented when needed.

The model proposed in this text incorporates the five common steps of the models reviewed by Knapp and Vandecreek (2003) and integrates the decision-making components that were found to be lacking in those models. This model was designed to provide forensic psychologists with a means to resolve ethical challenges. Given the complexity of many ethical challenges and the range of information and consultation that may be needed to determine an appropriate course of action, it may be beneficial, as Knapp and Vandecreek suggested, for practitioners to anticipate potential ethical conflicts and determine *a priori* optimal courses of action. Table 4 provides a summary of the forensic psychology ethical decision-making model.

Table 4. Forensic Psychology Ethical Decision-Making Model

1. Identify the problem
2. Consider the significance of the context and setting
3. Identify and utilize ethical and legal resources
4. Consider personal beliefs and values
5. Develop possible solutions to the problem
6. Consider the potential consequences of various solutions
7. Choose and implement a course of action

8. Assess the outcome and implement changes as needed

Identify the Problem or Dilemma. Some professional activities considered by or requested of forensic psychologists are clearly appropriate and ethical, and some are clearly not. However, many options considered by practitioners are ambiguous or present complex layers to be considered. Forensic psychologists must keep in mind that a wide range of potential behaviors may be appropriate when considering courses of action and when reviewing the work of colleagues. A distinction may need to be made between ethical, legal, moral, and professional perspectives. These overlapping concepts may need to be parsed out in order to clarify the ethical problem or dilemma.

Clearly ethical or unethical behaviors need little explanation or discussion. If one engages in blatantly unethical behavior, one risks a host of negative consequences. If one observes such behavior in a colleague, a course of action must be taken to remedy the situation. However, in the less clear circumstances often encountered in practice, a psychologist may encounter a request or a situation that arouses feelings of uneasiness, a sense that something may be wrong with the situation. In such situations, the psychologist must consider possible reasons for the unease and attempt to narrow down the possibilities, eventually focusing on those elements of the situation that are contributing to the initial feelings of discomfort. For example, a psychologist treating a patient who sustained posttraumatic stress in a motor vehicle accident may be called by the patient's attorney with a request for a report that describes the patient's symptoms, degree of disability, and link between the accident and the posttraumatic stress. The

psychologist may be conflicted about the appropriateness of writing such a report. A request such as this that may seem straightforward on the surface may involve a host of issues that would need to be considered by the psychologist. The psychologist would benefit from determining, as specifically as possible, what it is about the situation that is troubling. If such a situation had been considered in advance, the psychologist would likely know exactly how to respond to the request.

Consider the Significance of the Setting and Context. Forensic psychologists work in widely varying settings and contexts. Professional activities that are appropriate in one forensic setting or context may be inappropriate in others. Consequently, some professional guidelines that are relevant in one setting or context may be less relevant or wholly inapplicable in other situations. For example, a forensic psychologist's fee structure may differ, quite appropriately, depending on the nature of the services provided. To the extent that the fee structure may compromise objectivity, the distinction made regarding context is of ethical importance.

In any forensic role there may be a number of individuals or institutions to whom or to which obligations are owed. Although this will differ by context, some possible parties to whom obligations may be owed include the following: referral source, client, examinee, patient, guardians of examinee or patient, employing institution, profession of psychology, trier of fact, court, legal system, and society at large. In some contexts, these parties may overlap, whereas in others they are distinct.

Just as there exists a range of individuals or institutions owed obligations, there is a range of obligations that may be owed. In general terms, the forensic psychologist has an obligation to provide competent services that advance the welfare of the individuals

and institutions to which obligations are owed, without bringing unjust harm to the other individuals and institutions involved. The nature of the harm to be avoided has been specified as “unjust” harm. This clarification is provided because, due to the adversarial nature of the legal system, many of the opinions offered or determinations made by psychologists may be considered unfavorable and thus harmful to one of the parties involved in a case. Such opinions or determinations are only unethical if they were reached in an inappropriate manner.

Identify and Utilize Ethical and Legal Resources. This step may be the most challenging in the ethical decision-making process. There exist a number of published resources, sometimes offering conflicting guidance, relevant to ethical issues encountered in forensic psychology. Nevertheless, by utilizing both the published and interpersonal resources described in this section, the forensic psychologist can likely find solid footing when determining courses of action that are consistent with ethical practice.

The various resources are presented here in an order consistent with a deductive or top-down method of ethical reasoning and decision-making (Beauchamp & Childress, 2001). This method involves applying a general rule to a specific case.

First, assess the foundational values. General bioethical principles, the ethics codes of professional organizations, and jurisdictional laws all reflect the values of a society. Examples of North American values include the right to self-determination and the right to adequate health care. These values underlie general bioethical principles, such as respect for a client’s autonomy and the need to “do no harm” to the parties served by the health care professional. Determining the values underlying a given ethical standard or law will help to clarify the spirit behind the letter of the standard or law and,

by extension, will help to clarify the appropriate course action (Behnke, Perlin, & Bernstein, 2003). Behnke, Perlin, and Bernstein (2003) advise that an ethical dilemma be approached by first asking the following questions, “What values are at issue? And how can I act consistent with those values?” (p. 225).

Second, determine the applicable bioethical principles. Beauchamp and Childress (2001) present a model of bioethical principles reflecting society’s fundamental values. Their model, which has been widely adopted across health care disciplines, posits four core principles: autonomy, beneficence, nonmaleficence, and justice. As previously indicated in the chapter, these principles are clearly evident in the 2002 APA Ethics Code.

Applying the Beauchamp and Childress model to ethical challenges in forensic psychology can be of considerable value in determining an appropriate course of action. However, dilemmas emerge or increase in complexity in situations in which one value is pitted against another. For example, from an ethical perspective, releasing raw test data to a patient may, depending on the context, be consistent with respecting the patient’s autonomy, but it may also result in psychological harm to the patient and harm to society at large depending on the uses to which the data are put. Weighing the relative importance of the principles involved and attempting to strike a balance that satisfies the greater good is the task of the forensic psychologist. Of course, such determinations need not, and often should not, be made in isolation.

Third, review relevant professional ethics codes. Ethics codes are developed to reduce the vagueness inherent in professional values (Beauchamp & Childress, 2001). The APA Ethics Code provides guidance for ethical psychological practice. Whereas the

Code's General Principles are aspirational in nature, the Ethical Standards provide more concrete dicta for ethical practice and should be consulted in order to achieve an ethical solution. The Standards are the enforceable minimum level of ethical conduct for psychologists who are APA members or whose state boards have adopted the APA Code as the professional regulations or rules of practice for licensed psychologists.

Fourth, psychologists must be familiar with the jurisdictional laws that regulate the profession of psychology where they practice. State and federal laws offer specific guidance on how to manage fundamental aspect of psychological practice; however, more specific practices pertaining to psychological specialty areas may not be adequately addressed by statutory or case law.

Fifth, refer to position statements ("white papers") of relevant professional psychological associations. These position statements offer clarification of details of practice areas that are beyond the scope of an ethics code. Many of these statements are readily available from the websites of the organizations authoring or endorsing them. The Specialty Guidelines for Forensic Psychologists (SGFP), currently under revision, provide ethical guidance specific to forensic activities (Committee on Ethical Guidelines for Forensic Psychologists, 1991).

Sixth, review journal articles, books, and book chapters. "Theory and principle are only starting points and general guides for the development of norms of appropriate conduct. They are supplemented by paradigm cases of right action, empirical data, organizational experience, and the like" (p. 2; Beauchamp & Childress, 2001). General ethics texts provide coverage of ethical issues of concern to forensic psychologists and may offer vignettes specific to forensic practice. Forensic psychology books cover, to

varying degrees, many of the practice issues that are of ethical concern, and some provide specific ethics chapters. In addition, texts from related psychology specialty areas, such as child and family psychology and neuropsychology, include chapters that address forensically relevant ethical issues. Thus, there exist many published resources that can assist the forensic psychologist who is anticipating or experiencing ethical challenges.

Seventh, consult colleagues. Such consultation may occur informally through discussions with colleagues, formally through contact with ethics committees, or both. The experiences of colleagues who have faced similar ethical challenges and the collective knowledge and experience of ethics committees may provide invaluable assistance to the psychologist facing an ethical dilemma. Consultation with others in one's own jurisdiction may offer the advantage of sensitivity to both the legal and ethical aspects of a case. However, one might also need, in certain circumstances, to seek consultation from outside the geographic area to preserve confidentiality of case involvement or of details of the matter. It is useful to establish several collegial consultative relationships, and also to seek expertise to address the relevant issues of the matter at hand. The consultation may be formalized, even on a case-by-case basis, by establishing a consultation agreement, retaining the consultant at an hourly fee, and requesting that the consultant maintain a record of the consultation. Such consultation can then be identified, if later needed, as one of the ways the psychologist strived to meet the ethical challenge in a professional and thoughtful way.

Consider Personal Beliefs and Values. In addition to, or at times in contrast to, the collective values of a society that were described above, the psychologist may endorse a particular value to some degree along a continuum. Forensic psychologists

have a responsibility to evaluate the degree to which their personal moral positions are consistent with those of the larger society and the organizations with which they are involved. To the extent possible, they should attempt to understand their biases and the potential impact that their values and biases have on their professional and ethical decision-making. Psychologists may also draw on personal values other than those reflected in a model of professional ethics, such as their religion or cultural background. It is critically important that forensic psychologists, whose work often involves matters laden with moral and values implications, attempt to understand the potential influences of their personal beliefs on their professional behavior.

Develop Possible Solutions to the Problem. When faced with an ethical dilemma, inaction is typically not an ethical option. The legal counsel that one may obtain may address the issue from a “risk management” perspective, arguing for temporary inaction or for avoidance of efforts at resolution that might incur liability, while the principles by which the psychologist practices may argue for action that remediates potential suffering on the part of a party in the situation. The complex dilemmas that pit one ethical principle against another, or ethical against legal considerations, may tax the most thoughtful practitioner.

Generating a list of possible solutions requires integration of the significance of the context, information obtained from available resources, and personal beliefs and values. In some situations, the best course of action may be clear upon such consideration. However, in other ethically challenging situations, practitioners may need to generate a number of potential solutions in as much detail as possible. Consider the example of releasing raw test data to an opposing attorney. When provided with an

appropriate client release, there are a variety of options that the forensic psychologist should consider. Some of these options include (a) immediately releasing the data as requested, (b) refusing to release the data based on published professional guidelines, (c) offering to release the data to a psychologist retained by the opposing attorney, (d) requesting a court order to release the data, and (e) requesting a protective order from the court.

Consider Potential Consequences. Once possible solutions to the ethical problem have been developed, potential consequences must be considered. Both positive and negative consequences must be anticipated. Just as the relative importance of underlying values was assessed, the potential positive and negative consequences of each action may need to be weighed to determine the best course of action. In the example of releasing raw data, a variety of potential consequences emerge. Spending time and resources striving to safeguard the test data, which includes the materials on which responses are recorded, may seem futile in the adversarial forum where rights to discovery of such materials are legally defined. In contrast, the psychologist may believe that it is ethically preferable to minimize the opportunity for nonpsychologists to get access to test questions and stimuli, thus justifying the expenditure of time and resources. However, by taking steps that may be perceived as obstructive or oppositional, the psychologist may fear repercussions such as antagonizing the court or the attorneys, and thereby reducing good will with those with whom one wishes to work. Thus, the potential consequences may extend beyond solely ethical considerations to those with business and other implications. Forensic psychologists must consider potential consequences, weigh their options, and pursue the highest ethical option available.

Choose and Implement a Course of Action. Once potential solutions have been examined and consequences considered, the practitioner must select and implement the most appropriate course of action. The timing of the action may be critical to its success. Depending on the issues involved and the context, the course of action may need to occur quickly or may need to be delayed. Again using the example of a request for test data, the request may have attached to it an instruction to delay release for a specified period of time, to provide counsel time to consult with the litigant, if necessary, and to file a motion to quash the request or subpoena. Consultation with colleagues may be particularly valuable in weighing the best time to respond to situations in which timing must be taken into account.

Assess the Outcome and Implement Changes as Needed. With many difficult ethical decisions, the chosen action will likely be unsatisfactory to one or more of the parties involved. The psychologist should be prepared to receive and respond to feedback about the decisions made and actions taken. Similarly, the psychologist must evaluate the effectiveness of his or her own decision or action and implement changes as needed.