

Laws & Ethics: The Basics



Oh, that my actions
would consistently
reflect your principles!
Psalm 119





(originally titled)

How Come Dentists can Sleep with Their Clients and We Can't?



....substance abuse treatment professionals have the highest rate of ethical violations among all other human service professionals.

Certified Addiction Counselors had a 12.4% higher rate of ethical violations compared to Licensed Social Workers, a 17.1% higher rate than Licensed Psychologists, an 18.8% higher rate than Licensed Professional Counselors, and a 26.3% higher rate than Licensed Marriage and Family Therapists.

From: "Ethical Violations: A Quantitative Study Comparing Human Service Professions"
John Gallagher, MSW, LAODAC, 2008



Good news and bad news

- What do you want first?



Bad news

- I am not a lawyer



Good news

- I am not a lawyer





**"Drug dealer, or just an addict?
There's no way to know how my client
intended to use the 500 kilos of cocaine."**



Individuals

- Must be registered within 6 months of working
- Fully certified within 4 ½ years after that



A question

- A friend of yours visits you after getting a new hairstyle
- You look at it and think “Yuck!”
- She asks what you think...
- You say?



Your choice is between

- Kindness

- And

- Honesty



If you were a doctor, should you

- Give enough morphine to a dying patient to keep them very comfortable, yet knowing it will make death come quicker?
- Turn off a respirator at the request of a patient, even though she might live indefinitely with it? What if the PTs family is against it?
- Fudge a diagnosis a little bit so that a patient can keep coming in for TX?



How do we make decisions
like this?

What things do we take into
consideration?



Our own sense of
morality.....

What we believe is right
and wrong

And.....





Laws

and



Ethics





After murder,

What is the worst crime you can think of?





Should possession of child
pornography be illegal?





How about virtual (completely
computer generated) porn?





Who's the victim?

Can you prove it?





This is a MORAL* LEGAL
dilemma

--not an ethical one
(except for pornographers)



Societies, Groups & Individuals

- All come up with ways to determine and manage right & wrong, good and bad
- Individuals come up with might best be called **MORALITY**



Morality is about right and wrong

- As determined by individuals or groups
- Can apply to individuals and groups
- Not necessarily determined by logic and reasoning
- Can argue from authority
- May or may not be backed up by law



Morality is influenced by

- Family
- Peer group
- Culture
- Media
- Religion
- Education
- Politics
- Personal history
- Gut feelings



Societies/governments

- Laws
- For everyone in the society
- Altho perhaps designed to achieve a greater good, acts themselves are judged as right or wrong = legal or illegal
- You must stop at the stop sign
- Deontological



Ethics deals with right and wrong

- As determined by a group for members of the group/profession
- Applies ONLY to individuals in the group
- Based on common experience of the group and is ultimately a practical application of accepted principles
- Concerned with the effect more than the act



Law

- Imposed by society
- From politicians
- Coerced
- Based on???
- Jail or fines
- Deontological

Ethics

- Imposed on members of a group
- From members of the group
- Freely chosen
- Based on application of principle
- Fines and exclusion
- Eudaimonic / Consequential



Law vs. Ethics

- Most of the time we get along well
- But because of a different focus there can be conflicts (society vs. individual)
- Law generally respects the need for professionals to have confidentiality, but will sometimes say the interests of society outweigh the interests of the counselor and patient



We need both...

- Sometimes we need to protect our patients from the law
- Sometimes the law needs to protect our patients from us



Conflict of Law vs. Ethics: Henry

- While in prison has a spiritual awakening, goes to NA, becomes a 12step guru
- After prison continues to stay clean and sober for 20 years, sponsors hundreds of people, popular speaker, etc.
- One day he takes someone to a meeting who was under surveillance; both get busted for possession with intent to sell



Henry is screwed

- Accepts a 6 month sentence to your residential treatment program in lieu of incarceration
- After a brief period of resentment he becomes a model patient & a joy to have around
- At 5 ½ months his beloved mother dies



Henry is devastated

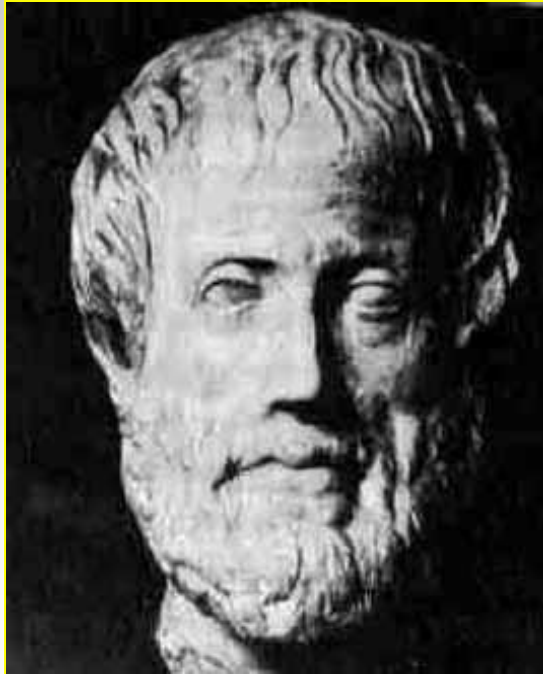
- He wants to go to the funeral in Phoenix, and your staff is all okay with that
- Probation refuses to give him permission to leave the state; he wants to go anyway.
- Ethics demands that you do what is best for your patient; the law demands you turn him in (= prison) if he leaves





SOUTHERN BALKANS
150 Miles
150 km





The Question

- What is the purpose of human existence?



The Question

- Eudamonia
- “Happiness”
- Serenity



How does it happen?

Human Excellence (*arete*) (an internal good)

- plus
- Circumstantial Security (an external good)



Virtue: Not just what you
do.....

But who you are.....



Counselor Ethics

- Is sometimes called Virtue Ethics or Eudaimonic ethics
- *Counselors are not only expected to do good things, but be good people
- *Also Consequentialist because we try to do the same for our patients



Arete must be learned & chosen

■ We are not
naturally virtuous



Kohlberg's Stages of Moral Development





Level 1: Preconventional Ethics

- The ethics of egocentrism. Typical of children up to about age 10.
- Called preconventional because children typically don't fully understand rules set down by others.



Level 1: Preconventional Ethics Continued

■ Stage 1: Punishment-Obedience

- Consequences of acts determine whether they're good or bad. Individuals make moral decisions without considering the needs or feelings of others.

■ Stage 2: Market Exchange

- The ethics of “What’s in it for me?” Obeying rules and exchanging favors are judged in terms of the benefit of the individual.



Level 2: Conventional Ethics

- The ethics of others. Typical of 10-20 year olds.
- The name comes from conformity to the rules and conventions of society.



Level 2: Conventional Ethics Continued

■ Stage 3: Interpersonal Harmony

- Ethical decisions are based on concern for the opinions of others. What pleases, helps, or is approved of by others characterizes this stage.

■ Stage 4: Law and Order

- The ethics of laws, rules, and societal order. Rules and laws are inflexible and are obeyed for their own sake.



Level 3: Postconventional Ethics

- The ethics of principle. Rarely reached before age 20 and only by a small portion of the population.
- The focus is on the principles underlying society's rules.



Level 3: Postconventional Ethics Continued

- Stage 5: Social Contract
 - Rules and laws represent agreements among people about behavior that benefits society. Rules can be changed when they no longer meet society's needs.
- Stage 6: Universal principles
 - Rarely encountered in life. Ethics are determined by abstract and general principles that transcend societal rules.



Counselors vs. Plumbers

- Why is it so important that we be post-conventional?





A question of

Power



Power

- From society
- From the client



We have the power...

- To put people in prison
- To help or harm their recovery
- To divorce or remain married
- To get medical care and food
- To keep or lose a job



With this comes responsibility

- Our decisions and actions must be based on not only our own experience, but the wisdom and experience of our peers
- We need accountability as well as creativity: evidence-based practices
- Sincerity and good intentions are not enough



Sincerity and good intentions

- NOT ENOUGH
- Post-conventional ethics: not enough



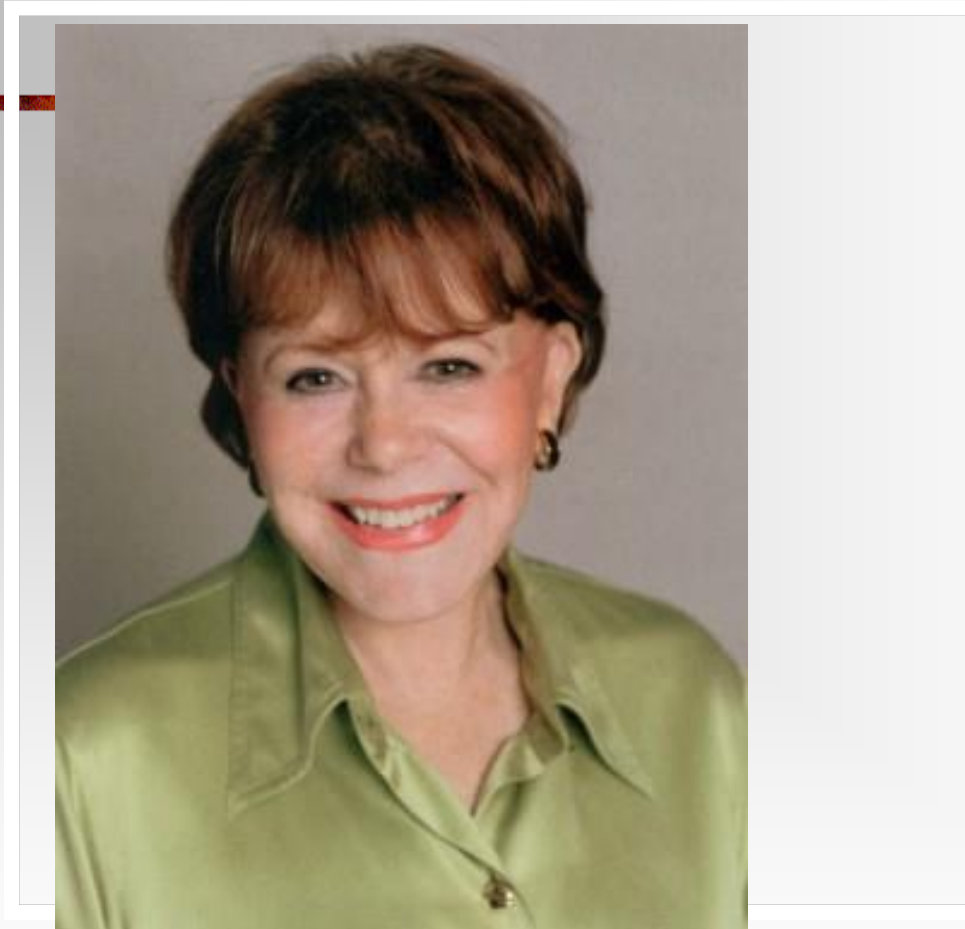
Sincerity and good intentions

- Here is an example of someone with post-conventional ethics and lots of sincerity:









Susan Forward, Ph.D.







Ethics and Being Ethical Defined

- **Ethics – A system of moral standards; the study of standards of conduct and moral judgment; the system of morals of a particular person or group, etc...**
- Is a formulation of universal principles of human conduct made specific in relation to a profession



Types of Ethics

- **Mandatory Ethics:**
 - **A term that describes a level of ethical functioning at which Human Service Professionals merely act in compliance with Minimum Standards. The Law.**

- **Aspirational Ethics:**
 - **A term that describes the highest standards of conduct to which professional Human Service Professionals can **aspire**. What we demand of ourselves. Requires that we do more!**



Most Human Service Groups Accept the following MORAL Principles as the basis for Ethics

- **Autonomy**
- **Beneficence**
- **Nonmaleficence (Primum Non Nocere)**
- **Justice**
- **Fidelity**
- **(Veracity) (Transparency)**



For us...

One paramount
principle:





Client Welfare

Client Welfare



Client Welfare

- Client Welfare
- Client Welfare
- Client Welfare
- Client Welfare
- Client Welfare
- Client Welfare
- Client Welfare



Client Welfare

Client Welfare



Oh, and did I mention...



Client Welfare!



Of course

- We need more than impressive words and big promises.
- Example of a short but impressive code of ethics from a business profession:



Operate this business in accord with the highest standards of ethical conduct.

- Treat each customer in a fair, open, and honest manner, and fully comply with all laws that prohibit discrimination.
- Meet the needs of our customers in a knowledgeable and professional manner.
- Represent our products clearly and factually, standing fully behind our warranties, direct and implied, and in all other ways justifying the customer's respect and confidence.
 - Advertise our products in a positive, factual, and informative manner.
- Resolve customer concerns promptly and courteously.
 - Put our promises in writing and stand behind them



National Automobile Dealers Association (NADA)



■ i

...and a Code of Ethics is worse than worthless if not enforceable!



Codes of Ethics

- Are supposed to protect the public
- Represent self-policing
- Are worthless if not enforceable

As far as I can tell the NADA code of ethics is worthless, which is why we need the LAW....in this case the DMV



Limits of a Code of Ethics

- Reactive rather than proactive
- Conflicts between two codes
- Conflicts with customs, personal beliefs
- Principles not virtues
- Lack of input from individuals whose welfare is at stake
- A.R. danger



Do Ethics Matter More Than Laws?

- Laws are minimal standards of behavior
- Ethics demand an aspirational level of behavior
- The case of Michael Wempe 2003-2006



We have to ask ourselves...

- Are we in danger of following the law more than being ethical?
- Noelle Bush



■ An adult client referred by probation has a slip in the course of treatment. He is otherwise working very hard at recovery.

The agreement with the probation officer is to report any substance use and will result in a violation of probation and the client's incarceration. The substance abuse counselor decides not to report the slip.



Ethical dilemmas

- When it seems like you have more than one reasonable choice
- Consult : the code of ethics
 - your supervisor
 - the five principles
 - #9 on your speedial
 - your ethics committee/profs



In California you are required to

- Adhere to your code of ethics
- The Uniform Code of Conduct
- Your Scope of Practice
- Legally: you must be registered and under clinical supervision
 - be certified within five years



Gone are the days

- ...when you could hide behind your supervisor or administrators.
- So: if you are told to do something you suspect is illegal or unethical you should document everything and get outside consultation fast!
- Be especially careful with Medi-Cal





Can Counselors Date Their Clients?

How about dentists?



Each profession makes their own code of Ethics

- Based on common experience
- Based on the 5 principles
- Includes research and debate
- Will have different conclusions for different professions



Human Services Professionals

- Deal with people's feelings, histories, relationships, etc.
- Just like friends, family members and spouses do
- Plenty of room here to manipulate and take advantage of clients
- So what does experience & research say?



Sexual Intimacy with Clients is wrong!

- Invariably hurts the client
- Turns the relationship into a two-way street
- Compromises the integrity of the counselor
- Transference and Counter-Transference
- Prohibited in all Codes



Is it always wrong?

- Always with active clients
- Debate about this needing to be forever
- Some codes have the “two-year rule”
- Don’t mark your calendar
- We will deal with this at length in part 3



5 General Principles

- **Autonomy**
- **Nonmaleficence**
- **Beneficence**
- **Justice**
- **Fidelity**



-
- .2.1 Sexual intercourse, sexual contact or sexual intimacy with a patient, or a patient's spouse or partner, during the therapeutic relationship, or during the two years following the termination of the therapeutic relationship, is unethical.

 - 1.2.2 Other acts which would result in unethical dual relationships include, but are not limited to, borrowing money from a patient, hiring a patient, engaging in a business venture with a patient, or engaging in a close personal relationship with a patient. Such acts with a patient's spouse, partner or family member may also be considered unethical dual relationships.

CAMFT code of ethics





Can Lawyers Date Their Clients?



1.8(j), "A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced."

ABA August 2001 (!)





Can Dentists Date Their Patients?



2.G. Personal Relationships with Patients. Dentists should avoid interpersonal relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by a patient.



Ethical Decision Making



Ethical Dilemma

- Choice must be made between two or more courses of action
- Significant consequences exist for not taking one of the courses of action



Ethical Dilemma

- Each course of action can be supported by one or more ethical principles
- The ethical principles supporting the course not taken will be compromised



SECTION 3 — Principle: Beneficence ("do good")

The dentist has a duty to promote the patient's welfare.

This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist's primary obligation is service to the patient and the public-at-large. The most important aspect of this obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provision of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient's welfare first.



SECTION 5 — Principle: Veracity ("truthfulness")

The dentist has a duty to communicate truthfully.

Report and Advisory Opinion of the Council on Ethics, Bylaws and Judicial Affairs: Marketing or Sale of Products or Procedures

Background: A small but significant number of dentists sell or market dental products to their patients. One survey puts the figure as high as 17%.¹ They may also engage in the sale or marketing to their patients of non-dental products, such as vitamins and nutritional supplements.²

The sale or marketing of products in the dental office is a potential source of income. Income enhancement is a common inducement for dentists to participate in multi-level marketing programs or distribution networks.³

No one knows more about oral health care or is better qualified than the dentist to make recommendations about the safety and efficacy of dental products. Indeed, patients look to their dentists for this kind of advice. In a 1994 ADA survey, the dentist topped the list of sources Americans rely on for dental information.⁴ Dental manufacturers report that the dentist's recommendations can have substantial influence on the consumer's decision to buy a particular dental product.⁵

The fact that the dentist derives income from the sale or marketing of products does not, by itself, make the practice unethical; after all, dentists also derive income from the delivery of dental services. Any transaction for profit involves the potential for conflict between the interests of the buyer and the seller. However, dentists, as professionals, have an ethical obligation to put the interests of their patients above their own financial gain. As stated in the Preamble to the *ADA Principles of Ethics and Code of Professional Conduct (Code)*, "The American Dental Association calls upon dentists to follow high ethical standards which have the benefit of the patient as their primary goal."

Section 5 – Principle: Veracity of the Code states: This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully, and without deception, and maintaining intellectual integrity.



And the policy of
the ADA?

“sovereignty of professional judgment
with respect to TX decisions”

- Regarding health plans:

The provisions and promotion of
the program should be in
accordance with the *Principles of
Ethics* of the American Dental
Association.....



Dentists seem to have
dropped the ethical ball.....

But have we?

Our involvement with Managed Care...

- Do we let bureaucrats decide what kind of TX our clients get?
- Inpatient vs. outpatient?
- Length of time?
- Same dorm; different rules?
- Confidentiality questions?

Our involvement with the criminal justice system....

- Do we let judges, probation officers/parole agents decide TX issues?
- We often say that TX should be non-punitive, yet we supported SB 803 (Ducheny), which calls for flash incarceration for Prop 36 clients.

-
- Should we support a better system of treatment (including higher wages for counselors, more treatment services for clients, etc.), even if it means less treatment slots available or forcing most people to go to outpatient treatment?

People are forced into treatment in a variety of ways. Confidentiality safeguards may be signed away by a patient under duress or while still so toxic that they are unable to appreciate the consequences.

LeClair Bissell

Principle 8: Confidentiality

- The NAADAC member working in the best interest of the client shall embrace, as a primary obligation, the duty of protecting client's rights under confidentiality.

Principle 7: Client Welfare

- The NAADAC member shall promote the protection of the public health, safety and welfare and the best interest of the client as a primary guide in determining the conduct of all NAADAC members.

■ An adult client referred by probation has relapsed in the course of treatment. He is otherwise working very hard at recovery. The agreement with the probation officer is to report any substance use and will result in a violation of probation and the client's incarceration. The substance abuse counselor decides not to report the relapse.

Client Welfare

- Who is your client? (legally; ethically)
 - When do they become your client?
 - When are they no longer your clients?
 - How do you define what is best for clients?
-

The dilemma of politics....

Marriage and family therapists recognize a responsibility to participate in activities that contribute to a better community and society, including devoting a portion of their professional activity to services for which there is little or no financial return.

Marriage and family therapists are concerned with developing laws and regulations pertaining to marriage and family therapy that serve the public interest, and with altering such laws and regulations that are not in the public interest.

So what serves “the public interest”?

- Free mental health services for everyone?
- Mandatory coverage for insurance companies?
- More state funding for grad school scholarships to ensure a good supply of therapists?
- Taking away State regs for education of MFTs?

The problems with legislation

- Because of politics/amendments bills are never exactly what we want
- Good, sincere people who might agree on ethics can vehemently disagree on legislation
- What if you are a devout Libertarian?
- What price do you pay for legislation?

How about conflicts in this room?

- CAADAC will once again push for a licensure bill; CAMFT will likely oppose it
- CAADAC pushed to have LMHPs required to have additional certification if they wanted to work with addiction; CAMFT stopped it cold.

We have to ask
ourselves: are we
serving the public
interest, or are we
being self-serving?

Dual Relationships

Dual relationships occur when professionals assume two roles simultaneously or sequentially with a person seeking help.

Dual Relationships

Social Contact

- Accidental meeting
- Infrequent
- Protect integrity of counseling relationship

Relationship

- Planned
 - Ongoing
 - Mutual
-

Dual Relationships

- Harm to clients
- Harm to counselor
- Harm to community
- Harm to profession

Dual Relationships

- Self disclosure
 - Gifts
 - Touch
 - 12 step meetings
 - Relationship after termination
 - Boundary violations
-

Sober Living Homes

- Counselors and Capping
- Counselors and fee-splitting

Self-Disclosure Guidelines

- Benefits the *client*
 - Client profile considered
 - Not a *current, unresolved* issue for counselor
 - Potential *consequences* considered
 - Frequency
-

To feel attraction to a client is
not unethical:

To acknowledge and address
the attraction is an important
ethical responsibility

Kenneth Pope

Confidentiality

- Technology
 - Supervision
 - Group counseling
 - Training
-