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## Ethics and Forensic Psychiatry

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**E**thical issues in forensic psychiatry are perhaps more complex than ethics in the practice of general psychiatry. Many professional responsibilities and activities of forensic psychiatry are unique to the field, a subspecialty of psychiatry. Forensic psychiatrists serve as both treating and evaluating clinicians, and the latter role has drawn the most concern from an ethics perspective, given the adversarial context in which such evaluations typically occur.

The American Academy of Psychiatry and the Law (AAPL; 1995) has endorsed the following definition of forensic psychiatry:

Forensic psychiatry is a subspecialty of psychiatry in which scientific and clinical expertise is applied to legal issues in legal contexts embracing civil, criminal, correctional or legislative matters: forensic psychiatry should be practiced in accordance with guidelines and ethical principles enunciated by the profession of psychiatry.

This chapter briefly reviews some important ethical issues in the practice of forensic psychiatry, including ethical theory, codes of ethics, boundary issues, and management of allegations of ethical misconduct. For further consideration of these topics, please see Rosner 1994; Rosner and Weinstock 1990; Sales and Simon 1993 in the Suggested Reading section at the end of this chapter.

## Ethical Theory in Forensic Psychiatry

Given the interdisciplinary work of forensic psychiatry, questions arise about what principles of ethics should guide forensic psychiatry and what theory of ethics should underlie those principles.

One perspective is that forensic psychiatry is a subspecialty of psychiatry and a branch of medicine. Should forensic psychiatry be held to the same ethics, rules, and principles as general medicine? Should all physicians be held to the same ethics principles? And should all professional activities of physicians be governed by the same norms of conduct?

One common paradigm of ethical practice in medicine is based on particular principles of medical ethics. The principles reflect historical traditions and social conventions in clinical medicine. These principles include patient autonomy (respecting the decision-making capacity of an autonomous person), beneficence (providing benefits to patients), nonmaleficence (avoiding harm to patients), and justice (fairly distributing costs, benefits, and risks to others) (Beauchamp and Childress 1989). When conflicts arise in a given clinical situation because of the simultaneous application of these principles, physicians attempt to balance the principles, or apply other principles or authority, to resolve the conflict.

Even superficial reflection about the application of these principles reveals that different principles apply depending on the physician's role in the situation. Clearly, physicians, including treating psychiatrists, are obligated to act in the best medical interests of their current patients (i.e., beneficence and nonmaleficence). Physician-scientists performing clinical research, however, are not charged with acting in the best medical interests of their research subjects. Otherwise, placebo-controlled, double-blind research studies, which carry some risk to subjects and not necessarily any individual benefit to them, could not be conducted. Rather, clinical researchers are obligated to work toward the best interests of future patients by collecting valid data and obtaining informed consent for research participation.

Similarly, forensic psychiatrists do not act primarily with beneficence when they conduct pretrial evaluations of litigants in criminal or

civil justice proceedings. These evaluations do not serve the litigant-evaluee's best medical interests. Furthermore, in many cases, the results of the evaluation may be harmful to the (nonmedical) financial or legal interests of the evaluee. For example, the evaluator's conclusions may not support the evaluee's claim or defense in the litigation (e.g., nonresponsibility for criminal behavior due to mental illness, or emotional injuries resulting from accidental physical trauma). As a result of the forensic evaluation (at least in part), the criminal defendant may be incarcerated and the civil plaintiff may be denied monetary relief. Such forensic evaluations, however, may be seen as advancing the interests of justice, a larger goal that is distinguished from the interests of the particular litigant (Appelbaum 1997). The forensic psychiatrist assists in the resolution of the legal issue or dispute and, it is hoped, increases the likelihood of a valid result of the litigation by providing critical data about the person or situation.

In basing a theory of ethics for forensic psychiatry on the pursuit of justice rather than on therapeutic principles, Appelbaum (1997) noted that forensic psychiatrists must still be governed by general moral principles in society. When serving the interests of justice, forensic psychiatrists must adhere to the general moral rule of telling the truth (both in the subjective case of honesty and in the objective case of stating the limitations of the accuracy of one's opinions and testimony). Another applicable general moral rule is respect for persons, which requires that the forensic evaluator inform the evaluee of the absence of a physician-patient and treatment relationship between them and of the limits of the confidentiality of the data obtained from the evaluee. Appelbaum (1997) indicated that trying to introduce the principles of medical ethics for treatment into a theory of ethics for forensic psychiatry is perilous.

Another ethics paradigm potentially applicable to forensic psychiatry is that of the adversarial legal system in the United States. The ethical practice of law in the United States is predicated on advocacy, even vigorous advocacy, for the interests of the attorney's client, whether a particular person, an organization, or a branch of government. Forensic psychiatry cannot be governed by the ethics of attorneys, however, because this would simply convert forensic psychiatrists into junior attorneys or advocates for the side that retains them, which is unacceptable (Simon and Wettstein 1997).

## Codes of Ethics for Forensic Psychiatry

Two influential groups of forensic mental health professionals have published separate and distinct guidelines for the ethical practice of forensic mental health. The AAPL initially adopted its ethics guidelines in 1987 and has periodically revised them (American Academy of Psychiatry and the Law 1995). Opinions of the AAPL Ethics Committee on particular cases have also been published, analogous to the published opinions of the American Psychiatric Association (APA) Ethics Committee. The Specialty Guidelines for Forensic Psychologists (Committee on Ethical Guidelines for Forensic Psychologists 1991) was adopted by Division 41 of the American Psychological Association, the American Psychology-Law Society, and the American Academy of Forensic Psychology.

The AAPL ethics guidelines focus on confidentiality in forensic evaluations, informed consent to forensic evaluations, honesty and striving for objectivity in conducting forensic evaluations, and the qualifications of forensic examiners. Perhaps the most significant AAPL guideline is that forensic examiners should be honest and strive for objectivity in their assessments. The commentary for this guideline notes that given our adversarial system of legal justice, being retained by one side in a civil or criminal matter exposes forensic psychiatrists to the potential for unintended bias and the danger of distortion of their opinions (American Academy of Psychiatry and the Law 1995). Indeed, even the most ethical, experienced, and conscientious forensic examiner is subject to such “unintended bias” through the process of forensic identification with the retaining side or party. For this reason, the AAPL guidelines prohibit contingency fee arrangements with forensic psychiatric evaluators, because such arrangements are likely to introduce bias into the evaluation process and impair objectivity.

The Specialty Guidelines for Forensic Psychologists is a more detailed and longer document than that published by the AAPL. These specialty guidelines amplify but do not contradict the code of ethics for psychologists published by the American Psychological Association (1991). The Specialty Guidelines for Forensic Psychologists offers an “aspirational model of desirable professional practice by psychologists” (Committee on Ethical Guidelines for Forensic Psychologists 1991, p. 656). The guidelines are useful for those psychologists who either regularly or only occasionally provide forensic psychological services.

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**Boundary Issues in  
Forensic Psychiatry**

Boundary issues in forensic psychiatric practice are common, as they are in general psychiatric practice. Simon and Wettstein (1997) applied well-known boundary guidelines for the practice of general psychiatry to forensic psychiatric consultation and evaluation. They identified 11 categories of boundary guidelines for the practice of forensic psychiatry: 1) maintain examiner objectivity and neutrality; 2) respect examinee autonomy; 3) protect confidentiality of the forensic evaluation; 4) obtain informed consent for the forensic evaluation unless the evaluation is properly compelled by law; 5) interact verbally with the examinee; 6) ensure no previous, current, or future personal relationship with the examinee; 7) avoid sexual contact with the examinee; 8) preserve the relative anonymity of the evaluator; 9) establish a clear, noncontingent fee policy with the retaining party; 10) provide a suitable examination setting for the evaluation; and 11) define the time and length of the evaluation.

One of the most common ethical dilemmas in forensic practice is the boundary confusion between the role of the treating psychiatrist and that of the forensic psychiatrist in a given case. The AAPL indicates in its ethics guidelines that “treating psychiatrists should generally avoid agreeing to be an expert witness or to perform evaluations of their patients for legal purposes because a forensic evaluation usually requires that other people be interviewed and testimony may adversely affect the therapeutic relationship” (American Academy of Psychiatry and the Law 1995, p. 3). Strasburger and colleagues (1997) have articulated the view that “fundamental incompatibilities” exist between the clinical and the forensic-legal functions of a psychotherapist, and that psychiatrists and other psychotherapists should not serve simultaneously as therapist and forensic evaluator. Attempting to serve both functions simultaneously often results in serving neither one adequately, because the psychotherapy can be compromised in the service of the forensic evaluation, and the forensic evaluation can be compromised by the therapeutic component of the relationship with the evaluatee-patient (Greenberg and Shuman 1997).

## Enforcement of Ethical Practice in Forensic Psychiatry

Allegations of unethical practice of forensic psychiatry are brought to APA district branch ethics committees, and thus the APA Ethics Committee, on a regular basis. These formal complaints are brought by patients, evaluatees, family members, and others and allege a variety of unethical practices. The district branch and APA ethics committees are obligated to apply *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (American Psychiatric Association 2001) in determining whether an allegation against an APA member constitutes ethical misconduct. Some published opinions of the APA Ethics Committee also deal with the conduct of forensic evaluations (American Psychiatric Association 1995).

Several sections of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* are relevant to the practice of forensic psychiatry:

Sections 1 and 2 relate to providing competent medical service and practicing outside the area of the psychiatrist's expertise, respectively. General psychiatrists without the necessary specialized forensic training, experience, and expertise risk violating these sections when they perform specialized forensic evaluations, such as when a psychiatrist without child psychiatry training and experience evaluates children for child custody. Sections 1 and 2 also relate to boundary violations and exploitation of the evaluatee by the forensic examiner as discussed earlier. These include having romantic or sexual relationships with current evaluatees or accepting contingency fees.

Section 1 relates to serving with compassion and respect for human dignity, which is violated by abusive behavior toward the evaluatee by the forensic examiner. Section 2 addresses dealing honestly with patients and colleagues. Examples of actions violating this section include improperly claiming credentials or experience while testifying under oath or stating that interviews were conducted, or that documents were reviewed that, in fact, were not conducted or reviewed. More complex situa-

tions, representing possible violations, include the deliberate withholding or distortion of data: the testifying psychiatrist who substantially shades the truth or neglects to disclose information that is harmful to the forensic opinion rendered or who deliberately fails to even obtain other data in the course of the evaluation, which could be harmful to the forensic opinion rendered.

Section 4 addresses the confidentiality of psychiatric data and the limits of that confidentiality. An ethics violation here includes release of otherwise confidential information obtained through the course of the forensic evaluation beyond that permitted by the consultation or the litigation process. Another violation includes failing to disclose the nonconfidentiality of the forensic evaluation process to the evaluatee. Section 4, Annotation 13, specifically prohibits pre-arraignment psychiatric examinations except to provide treatment.

Section 7, Annotation 3, prohibits a psychiatrist from offering a professional opinion without conducting a psychiatric examination, but this proscription does not relate to the psychiatrist who offers forensic opinions or court testimony in the course of forensic work (American Psychiatric Association 1995).

Because the APA has not explicitly incorporated the AAPL ethics guidelines into its own annotations, the APA and its district branches cannot specifically use or cite the ethics guidelines of the AAPL or forensic psychology in adjudicating an allegation of an ethics violation against an APA member, even if the accused is a member of the AAPL. Nevertheless, a state board of medicine could conceivably cite the AAPL ethics guidelines to prosecute a psychiatrist who has violated them.

The AAPL has explicitly decided not to investigate or adjudicate questions of unethical conduct against its members or against non-members. Specific complaints of unethical conduct against AAPL members are typically referred to the local district branch of the APA. Complaints can also be referred to the physician's state licensing board or to the psychiatric association of other countries for members outside of the United States. The AAPL, however, will consider general or



hypothetical questions regarding ethics in forensic psychiatry and will sometimes issue opinions about such matters. The AAPL will expel or suspend a member if the APA or the American Academy of Child and Adolescent Psychiatry expels or suspends the member on grounds of ethics misconduct.



## Conclusions

This brief overview of some ethics issues in forensic psychiatry has only introduced some of the complex matters raised by forensic consultation and evaluation. Many other ethics issues exist in specific areas of forensic psychiatry. For instance, ethics issues related to assessing and treating sexual offenders have gained increasing prevalence and importance; sources listed in the Suggested Reading section at the end of this chapter review these ethical issues. Moreover, psychiatry and forensic psychiatry are in search of the moral or ethical theory and operative rules for forensic activities. Much attention is paid to the problem of honesty and objectivity in forensic work, and justifiably so, although some skeptics have asserted that the “impartial expert” is a myth or fallacy, rather than a desired reality or ideal (Diamond 1973). Also, appreciation is growing for the problem of double agency, with psychotherapists wearing the two hats of therapist and forensic evaluator. Ethical standards of behavior for forensic work will continue to evolve, as they do in therapeutic work with patients.



## References

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- Strasburger LH, Gutheil TG, Brodsky A: On wearing two hats: role conflict in serving as both psychotherapist and expert witness. *Am J Psychiatry* 154:448–456, 1997

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**Suggested Reading**

**General Ethical Issues in  
Forensic Psychiatry**

- Rosner R (ed): *Principles and Practice of Forensic Psychiatry*. New York, Chapman & Hall, 1994
- Rosner R, Weinstock R (eds): *Ethical Practice in Psychiatry and the Law*. New York, Plenum, 1990
- Sales BD, Simon L (eds): *The Ethics of Expert Witnessing* (special issue). *Ethics and Behavior* 3:223–393, 1993

**Ethical Issues in Assessing and  
Treating Sexual Offenders**

- American Psychiatric Association Task Force on Sexually Dangerous Offenders: *Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association*. Washington, DC, American Psychiatric Association, 1999
- Predators and Politics: A Symposium on Washington's Sexually Violent Predators Statute*. *University of Puget Sound Law Review* 15:507–987, 1992
- Wettstein RM: A psychiatric perspective on Washington's sexually violent predators statute. *University of Puget Sound Law Review* 15:597–633, 1992

