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Social Work Ethics: Decision Making and Accountability

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INTRODUCTION

The purpose of this course is to provide ethics and accountability education for clinical social work practitioners in a manner that will significantly enhance their decision making and management of ethical and other risks they are likely to face in practice. This intermediate-level course speaks to practitioners who are at the outset of their careers as well as seasoned practitioners interested in sharpening their skills and thinking about advanced challenges. This course is designed for social workers, but it also serves behavioral health professionals from various other disciplines who want to know about social work ethics for the sake of improving practice and enhancing risk management. This course discusses the *Code of Ethics of the National Association of Social Workers* (NASW, 2008) in such a way that professionals bound to other professional codes will find useful. See the Resources section for information on the codes of ethics for cognate professions.

An important theme of this course is that, although modern professionals can and should turn to guidelines and codes for help in addressing ethically challenging practice situations, the ultimate responsibility is to *think* about the problems that are encountered. Moreover, this course argues that helping professionals need to develop the "habit of thinking" carefully about ethical problems. The course discusses practical methods for addressing complex ethical and accountability problems, and as much as possible, it uses evidence-based approaches to understand and address these methods.

Professional ethics is a branch of moral philosophy that places special emphasis on both doing good for clients and avoiding harm to them. Although this mandate sounds simple, a review of the development of the National Association of Social Workers (NASW) *Code of Ethics* reveals that such codes have a complex relationship to the purpose of the profession. In addition to specific ethical obligations mandated by a professional organization, licensed social workers must respect additional laws and

regulations. Collectively, the aim of these laws, regulations, and ethical obligations is to protect clients by assisting professionals in their obligation to "do no harm." However, the ultimate purpose of professional ethics is primarily concerned with enhancing the well-being of clients and society. This course will discuss the historical roots of these issues.

Social workers face a range of ethical challenges that must be recognized and managed. Findings in the field of decision research show how human evolution has helped establish particular "habits of mind" or "shortcuts" that have proved advantageous to those who must make swift decisions in dangerous circumstances. In fact, such swift decision making has often been considered a signature of professional expertise. However, when dealing with complex decisions that must be made under conditions of uncertainty, such shortcuts (introduced later as heuristics) can bias decision making and lead to increased rates of judgment error. These problems apply to clinical decision making and ethical decision making.

The key message is that clinicians need to remain skeptical about their own decision processes and use decision tools for individual and organizational decision making to enhance ethical and clinical practice. The three-pronged approach presented in this course allows clinicians to examine the clinical facts and the ethical and risk management dimensions of problematic cases. This approach relies on critical thinking and ethical analysis. Although errors are inevitable in clinical work, when possible, errors can and should be managed and reduced. This course will describe and apply strategies clinicians can use to accomplish these aims.

Although ethical reasoning has sometimes been portrayed as a hyperrational process, in fact, the moral reasoning necessary for doing professional ethics requires both rational and emotional processes to be fully available to the clinician. As such, this course also discusses the social worker's effective "use of self." It is also important to recognize that cognitive and emotional processing are associated with the clinician's experience and expertise level. The clinician's life experience and location in the individual and family life cycles influences his or her judgment and suggests the types of errors he or she is likely to commit in clinical practice. This course will help clinicians explore healthy skepticism and self-awareness, both important tools for ethical practice.

Textbook theories of ethical practice provide general guidance about how to think about the purposes, methods, and outcomes of doing ethics. However, these theories may sometimes not be helpful to clinicians dealing with the concrete and complex realities of contemporary practice. Social work approaches to ethical problem solving typically use hierarchies of values and ethical standards. Although sometimes helpful and successful, such approaches are vulnerable to advancing particular cultural and situational biases that can create ethical error. This course will present and apply Bernard Gert's (2007) common morality approach, which provides a productive approach to analyzing the moral rules that all persons must respect, and will present clinicians with a set of questions to analyze the morally relevant features of complex cases (Bryan, Sanders, & Kaplan, 2016). Additionally, the course will use Anthony Weston's (2013) creative problem-solving approaches for *doing ethics* (a concept described in Chapter 1) that encourage professionals to reframe and transform ethical issues so win–win solutions might be found.

This course will also cover major types of risk management problems that are often closely linked to ethical problems. Because of the complexities of contemporary practice, clinicians can no longer avoid the careful study of such issues, especially if they are in supervisory, administrative, and other advanced practice roles.

The course concludes with a discussion of the ethical obligation of social workers to advance social justice. Although some have presented this obligation as a choice for practitioners, this course will emphasize that these activities can be integrated in a manner that enriches clinicians, their clients, and the larger community.

CHAPTER 1

HISTORY AND EVOLUTION OF SOCIAL WORK ETHICS

INTRODUCTION

This chapter is an introduction to the course and begins by focusing on the importance of ethical thinking in society with the use of a few historical examples. It is important at the outset to clarify the differences between ethics and risk management. *Ethics* is a branch of moral philosophy with ancient roots. *Risk management* is a contemporary concern specific to modern professional life that offers guidance on how to follow laws and regulations to avoid professional liability. This chapter provides a brief history of social work ethics, describing how it has developed through the 20th century and where it stands at the start of the 21st century. This history includes the names of persons and entities, including the National Association of Social Workers (NASW), that have been important to the development of social work ethics. This chapter describes the NASW *Code of Ethics* and also briefly discusses "who's in charge" – meaning the structure of ethics and accountability governance by professional organizations, licensure boards, and the justice system. The approach offered in this course is a contemporary view of ethical decision making that reflects a contemporary practice environment that is in constant flux. In closing, this chapter argues for the overall principle that the purpose of doing ethics is not just to avoid trouble but to actively protect and serve clients and to contribute to the flourishing of personal and social life.

ETHICS AS AN ANCIENT CONCERN

This course is for professional social workers in the challenging practice environments of the early 21st century. The pressure to choose morally good behaviors in a society that has become extraordinarily complicated is a historically unique predicament. However, before plunging into the problems that modern times present to the professional social worker, it is important to recognize that trying to live an ethical life has been part of the story of Western civilization since its beginnings. After all, it was Hippocrates (c. 460-370 BC) who presented the first principle of ethical clinical practice, which we know as the Latin phrase, *"Primum non nocere,"* or "First, do no harm" (Nuland, 2008; Parker, 2013).

Socrates (c. 469-399 BC) philosophized about almost every problem under the Athenian sun, but he is most remembered for his core assertion that "the unexamined life is not worth living." At the trial that would result in his death sentence, he argued that his endless search for "knowledge of the good" was prescribed in Apollo's decree through his oracle at Delphi to "Know thyself!" For Socrates, the careful use of reasoning to determine how to act in an ethical and decent manner to advance the common good was the best way to spend a life. At the same time, he was convinced

that this kind of thinking could never produce a list of simple rules for all to follow. Instead, ethical reasoning had to be actively pursued by each person who wished to be a true citizen. A person's freedom was not granted by the state but enacted through thousands of personal acts of reasoning about difficult problems (Arendt, 1971). Moral problems were of the utmost importance because they ultimately determined the health and well-being of a person and society.

It is the theme of this course that, although modern professionals can and should turn to guidelines and codes for help in thinking about ethically challenging practice situations, the ultimate responsibility is for them to *think* about the problems they face. More than that, this course argues that helping professionals need to develop the *habit of thinking* carefully about ethical problems. This is an extremely difficult habit to cultivate because it demands a great deal of cognitive effort. (Chapter 2 discusses how the human mind is adept at avoiding such cognitive strains when trying to solve problems.) The natural inclination is to look to authority figures, use lists, and simply cite codes of behavior as substitutes for thinking through difficulties.

If an individual finds himself or herself on Socrates' side in this debate, he or she has to be committed to thinking a great deal about the ethical problems encountered in his or her professional life. Social workers are professionals who seek to help people and families deal with and overcome injustices and suffering, while at the same time seeking changes in society to help clients someday encounter a world that is more just and merciful. This is a tall order and a daunting professional mandate. To work toward such goals, a professional social worker must be competent in ethical thinking and open to continuous moral development (Hermsen & Embregts, 2015). It is the basis of what this course refers to as "doing ethics," and as Socrates argued, it is a lifelong pursuit.

ETHICS, LAWS, AND REGULATIONS

Ethics is a branch of moral philosophy that continues to be vigorously pursued and represents a significant domain of philosophical scholarship today. Contemporary moral questions animate contentious public policy issues, such as the right to die, marriage equality, reproductive rights, and economic inequality. These types of problems often lead to such complex questions as, "Do terminally ill human beings have a right to end their lives as a dimension of their inherent freedom?" Although many advocates would like to portray the answers to such questions as self-evident, careful probing reveals just how complex these questions are and how many additional moral questions can result from careful inquiry (Reamer, 1993).

Regardless of the laws that may or may not be legislated to resolve these debates, moral questions will remain. Understanding the distinction between legal and moral problems is essential. A legal problem usually concerns the matter of properly interpreting, applying, and enforcing a particular law that exists. Thus, although the abortion question might be legally "settled" through interpretations of *Roe v. Wade* and subsequent case law, the moral questions underlying the 1973 Supreme Court decision are still hotly debated.

The same distinctions can be made in the area of professional ethics, the branch of philosophy that examines the moral problems encountered in professional life. Professional ethics differs from other branches of moral philosophy in that it sees a client's welfare as superseding a professional's welfare in almost every case. The primary focus of professional ethics is a client's well-being. Professionals serve the greater good by consistently putting clients' and society's welfare above their own (Fawkes, 2015). As

Koehn (1994) has argued, professionals pledge to serve the public good in exchange for the privilege to practice. In other words, professionals hold no inherent *right* to practice, a fact that is inadequately understood by some practitioners. Because of the autonomy and intrusiveness professional social workers often exercise, their intentions and actions must be directed toward the benefit of their clients as opposed to primarily their own gain. This concept is more specifically discussed later in this chapter with respect to licensure.

To further illustrate the distinction between legal and ethical problems, consider the well-known ethical obligation to keep client communications confidential. It is an area of endless moral inquiry. Practitioners are immediately faced with a whole range of exceptions within the profession's own code. For example, confidentiality must be revoked in situations where a child is being maltreated. Federal and state governments have passed laws making it a legal obligation to report reasonable suspicions of child maltreatment, even when doing so might "violate" the ethical obligation of confidentiality. Although the laws have existed for four decades, these ethical problems were around long before the *Child Abuse Prevention and Treatment Act* was enacted in 1974.

A more common example involves the basic treatment of clients. A social worker who treats a client disrespectfully is not violating any laws. However, this social worker is acting against the basic principles of professional ethics, which prioritize respect for clients, and is violating specific ethical mandates of the NASW *Code of Ethics* (NASW, 2008). When social workers treat clients with respect, they are then behaving in accordance with the profession's ethical standards.

A thornier legal and ethical issue is the role that psychologists played in the U.S. government's use of enhanced interrogation techniques (EITs) on war prisoners during the War on Terror. Following the September 11, 2001, attacks on the World Trade Center and the Pentagon, psychologists designed and monitored abusive detention practices to be used with detainees suspected of involvement in terrorism, and the American Psychological Association crafted ethics statements supporting psychologists' involvement in military torture activities (Eidelson et al., 2014). The use of EITs commonly elicits ethical questions related to the use of torture and the humane treatment of detainees; the employment of psychologists to advance these techniques has created a serious ethical controversy within both the profession of psychology and the global community. Whereas O'Donohue and colleagues (2014) made an ethical argument in favor of the role of psychologists in using EITs, Arrigo, DeBatto, Rockwood, and Mawe (2015) took a more legalistic approach in contending that psychologists' involvement in EITs was not legal under the terms of the Geneva Conventions that guide the humanitarian treatment of war prisoners. O'Donohue, Maragakis, Snipes, and Soto (2015) subsequently defended their original position with both ethical and legal arguments, taking issue with Arrigo and colleagues' (2005) view that international law is on the same or higher moral ground as a profession's ethics.

A problem can be a professional ethics problem *or* a legal problem exclusively; alternatively, it simultaneously can be a problem of ethics *and* a problem of law (Reamer, 2015b). This is important to understand early in this course, because a professional who is accountable to a number of constituencies has to make those distinctions to correctly structure the problems and questions in any particular case. It is also important to know that *regulations* are mandates developed and enforced by the executive branch

of a federal or state government to operational-ize a piece of legislature or an appellate court decision. It is in this arena that risk management has emerged. *Risk management* is the activity of assessing and responding to difficult practice situations that have legal and regulatory implications. Risk managers are concerned with practice areas that frequently lead to litigation because of the volatile nature of the clinical situation. Examples include clinical work with suicidal clients, people involved in custody disputes, and couples who have violent histories.

Professional social workers are required to follow many laws and regulations. Following laws and regulations is an activity very different and distinct from thinking and acting ethically. Fortunately, in most cases, acting according to laws and regulations helps professional social workers to also act ethically. However, some notable exceptions exist. For example, the noto-rious Jim Crow legislation enacted throughout the Southern United States starting in the late 19th century and practiced through the middle of the 20th century made it legal to demand that an African American woman move to the back of a city bus in favor of a newly boarded Caucasian adult or child. Yet many African American and Caucasian citizens considered such an act unethical because it violated human rights (a moral construction) by penalizing per-sons of a particular race.

When Rosa Parks refused to move to the back of a bus, she acted ethically, but ille-gally. This act of civil disobedience helped the nation to see the true nature of the unjust laws that were being enforced in Montgomery, Alabama. In fact, the moral power of her cou-rageous, *ethical,* but *illegal* act launched the Montgomery bus boycott and the modern civil rights movement (Branch, 1989). The social work professionals who joined those acts of civil disobedience were acting ethically, but

illegally, in order to change unjust laws. Robert Coles (2000) has called this "moral leadership."

It is important to remember that it takes rigorous and extensive moral reasoning to make such distinctions. Professionals cannot arbitrarily choose to follow those laws and obligations that fit an idiosyncratic and per-sonal moral code. For example, a clinician who decides not to report suspected child abuse because of a personal belief that this law vio-lates the right of parental authority has sub-stituted a personal moral code for legal duty. Professionals also are obligated to consult other colleagues and experts before choosing to vio-late laws and regulations. Those who violate the law without adequate personal and commu-nal deliberations are often rationalizing unethi-cal and illegal behaviors by using unwarranted ethics language.

SOCIAL WORK PURPOSES, VALUES, AND ETHICS

Along with the rise of the social work profes-sion in the late 19th and early 20th centu-ries, the necessity for an ethical code that could guide the profession emerged. The complexity of the profession's unique historical development also made such a code very difficult to devise. Social work arose during the Progressive Era of American history, an unprecedented and argu-ably unrepeatable period of social reform. As Popple and Leighninger (2002) have observed, America inherited its jaundiced view of poor, infirm, and dependent persons from English cul-ture, which saw public assistance as rewarding irresponsibility and criminality. The leadership of reformers such as Theodore Roosevelt opened a window of opportunity for federal authority to protect the citizenry against unrestrained com-merce and other injustices.

Many people hoped that this movement toward social reform would also lead to sweeping federal action and permanent changes in the economic, class, and social structures of American society. However, it became apparent by the 1920s that the reform window had slammed shut. The reform work of early social work leaders such as Jane Addams and her colleagues was overtaken by the actions of many other social workers in the newly emerging profession who saw professionalization as the superior and necessary path for long-term survival. Many professionals and scholars hold the view that contemporary social work is an inevitably divided profession. Some argue that professionalization has come at the expense of services to clients (Gitterman, 2014), whereas others see one outcome of increasing professionalism – the increase of social workers in private practice – as congruent with social work values (Brauner, 2015).

These historical observations are made here because they provide context for the development of the profession's *Code of Ethics*. The profession's uncertain mission or purpose has been the long-standing concern of educators who find it difficult to develop a curriculum of common practice competencies or a clear professional focus for the profession's graduate students (Lloyd, 1983). A study of the mission statements of 50 social work schools in the United States found a general lack of agreement, with many schools using terms that are subject to varied interpretations (Holosko, Winkel, Crandall, & Briggs, 2015). More recent debates within the field of social work, on topics such as the role of evidence-based practices and whether social work is more of a science or an art, highlight continued struggles to define a cohesive purpose for the profession (Fong, 2012; Gitterman, 2014). In many ways, the development of the *Code of Ethics* is best

understood as the social work profession's long-term struggle to effectively articulate and practice its basic values.

Despite all of this division about the profession's mission, the architect of the most recent NASW *Code of Ethics* (NASW, 2008), Frederic Reamer, is confident that the values or "common base" upon which the profession's ethics should be built is quite clear.

> Frequently cited values in social work are individual worth and dignity, respect for people, valuing individuals' capacity for change, client self-determination, confidentiality and privacy, providing individuals with the opportunity to reach their potential, seeking to meet individuals' common human needs, commitment to social change and social justice, seeking to provide individuals with adequate resources and services to meet their basic needs, client empowerment, equal opportunity, nondiscrimination, respect of diversity, and willingness to transmit knowledge to others. (Reamer, 1995, p. 894)

Reamer has argued that this list of values should be the basis for the profession's ethical code and that such a code would connect all practitioners to the profession's common base as they use it to guide decisions. Nonetheless, Reamer (1995) is cognizant that the profession's emphasis on any particular value on this expansive list can vary according to the particular situation or context. Values are extremely dependent on cultural, social, and historical contexts (for example, see Dubus & Greene, 2015).

NASW *CODE OF ETHICS*

A code of ethics is a central requirement for an occupation to be considered a profession. In reaction to Abraham Flexner's criticism that the field of social work lacked the necessary characteristics of a profession (Dolgoff,

tioned by a professional organization. However, legal and regulatory accountability are far more consequential as stipulated in state governments' provisions for professional practice. For example, the NASW can publish the name of a sanctioned violator in its publications and on its website, whereas a state licensing board can remove a violator's license to practice.

State licensure is an important component of a profession's viability, because most contracts for public and private reimbursement and funding require licensure as a public sign that a service provider is recognized as competent to provide services. Licensure boards are created to hold professionals accountable. Licensure signifies that colleagues and the state licensure board have recognized a professional as being habitually ethical and law abiding. Indeed, licensing boards also sometimes sanction professionals who are found guilty of misconduct by publishing their names on board websites and in board publications.

By becoming licensed, an individual professional agrees to follow the regulations and laws of the state pertaining to his or her practice and to formally recognize the state licensure board's authority to screen, monitor, and admit licensure candidates, administer required licensure tests, require and monitor continuing education, and investigate complaints. Boards are legally authorized to impose many forms of corrective action, including mandated supervision, psychotherapy, and education, and they sometimes impose sanctions, including suspending or permanently rescinding licensure. When applying for licensure, an individual social worker formally agrees to enter this accountability structure and abide by its rules and regulations. The primary responsibility of state boards (sometimes independent but usually located in the executive branch of state government) is to

protect the public, and their ultimate legitimacy derives from laws passed by state legislatures.

Although in some states social workers answer to interdisciplinary mental health consumer boards, social work licensure boards (often referred to as a social work board of examiners) are usually managed by licensed, professional social workers and must proceed with due process and exemplify fairness. The licensure boards are never designed to primarily protect or advance any professional's agenda. These boards are organized nationally as the Association of Social Work Boards and provide licensing tests and other services for member boards.

The criminal and civil justice systems are also accountability structures that professional social workers must understand, respect, and obey. Social workers are responsible for understanding the criminal and civil laws that are active in their jurisdictions and practice contexts. For example, clinical social workers who practice with children have to abide by laws that pertain to child custody, competency, and confidentiality. The courts also have rules that practitioners must follow when they testify or file reports. The civil justice system is the forum where clients and families can sue social workers for malpractice and other injuries, whereas the criminal justice system handles criminal complaints brought by local, state, or federal law enforcement and prosecutors.

All of these accountability structures operate simultaneously. To take an extreme example, a social worker could experience an ethics complaint, a state licensure board complaint, a civil lawsuit, and an arrest – for example, if he or she became sexually involved with a minor client. Fortunately, such actions usually occur only in those rare cases where a person has committed egregious offenses. But such cases demonstrate the broad spectrum of professional accountability that is always in place. Social workers who

practice risk management effectively have an excellent understanding of all the accountability structures they must respect, and they shape their decision processes and actions accordingly (Clark & Croney, 2006).

It is important to remember that additional accountability structures may exist, depending on the particular practice or specialty area. For example, forensic social workers have specialized requirements to follow (Rome, 2013), especially if they practice across several state jurisdictions. Practice guidelines are one way professional specialty organizations help their members integrate ethical, legal, and regulatory requirements (e.g., see Lee, Fouras, Brown, & the American Academy of Child and Adolescent Psychiatry Committee on Quality Issues, 2015). Effective and multidisciplinary supervision and consultation are essential for success. The greater the risks, the greater the need for regular legal and forensic consultation (Clark & Croney, 2006).

In sum, enormous incentives exist for social workers to act properly and within the controlling accountability structures. Chapters 2 through 6 explore areas of particular vulnerability and corresponding effective risk management approaches.

ETHICS AND THE BIG PICTURE

It is important to note that licensure accountability structures usually apply to the *clinical* social work community. Therefore, many social workers do not fall under the accountability structures described previously. In fact, many social workers and professional organizations have strived to avoid having their practice domain become subject to licensure in order to continue to practice without formal sanction and recognition by the government. Although these entities may forgo the benefits of third-party payments and other external funding that requires licensure or its equivalent, they prefer freedom and autonomy from any form of governmental control. Social workers who work as community organizers or run special advocacy organizations often create social change by opposing existing public policies (Wernet, 2008). Their work is less likely to cause *personal* injury to patients and clients. Social work educators often see licensure requirements as potential governmental intrusions into academic settings that should be protected from the state. It is especially important that professionals who are not licensed pay extra attention to the ethical implications of their behaviors. Paradoxically, although a clinical social worker might harm an individual client and family through malpractice behaviors, a policy-level practitioner's "malpractice" can threaten entire communities or classes of individuals (Bowen, 2015; Reamer, 2015b). It is naïve to believe that educators, advocates, organizers, and policy practitioners can do no harm and therefore do not require accountability structures. Although such structures might not be politically feasible to put in place, in the absence of multi-leveled social work accountability structures, unlicensed professionals must strive diligently to think and act ethically.

In some cases, such practitioners work to develop guidelines to encourage and enable ethical social work practice. For example, the Council on Social Work Education developed and promulgated a *National Statement on Research Integrity in Social Work* to assist social work researchers, educators, and their students to be alert to and have respect for ethical obligations to individual and community research participants, colleagues, employing institutions, and the general public (Council on Social Work Education, 2007). In any case, it can be expected that ethics codes and guidelines

will evolve as society changes, and professionals have the responsibility and opportunity to shape their ethical responses to the challenges they face in their work (Reamer, 2014).

Ultimately, ethics is not simply about avoiding evil or, even more superficially, about "staying out of trouble." The ultimate purpose of professional ethics is to help make individuals and societies morally prosperous by creating healthy possibilities for justice, civil friendship, and happiness (Nussbaum, 1996).

SUMMARY

This chapter has served as an introduction to ethics and accountability. Doing ethics is a human behavior that has deep roots in Western culture. Professional ethics began with the dictum "First, do no harm." It is a special branch of moral philosophy that focuses on professionals' particular obligations to clients and to society, as opposed to the rights and benefits that professionals should enjoy. The central idea is that a professional pledges to serve the public good and the best interests of his or her clients. In exchange for this pledge, he or she is granted the privilege to practice professionally. Therefore, acting ethically and responsibly are minimal expectations that professionals reasonably agree to meet.

Although the particular history of the social work profession and the ensuing social work "mission debates" have made the design of ethical codes challenging, they have nonetheless been developed over the past 50 years. This chapter looked carefully at some of the core values of the profession that have influenced the development of codes and discussed the current NASW *Code of Ethics* by examining the major categories of ethical obligation and the subsequent interpretation and practice application problems that may arise.

Chapter 2 will discuss governmental types of accountability in the forms of licensure, regulation, and the law as found in the civil and criminal justice systems. The heavy sanctions associated with violating public safety are compelling incentives to practice effective risk management. Although this differs from doing ethics, it is a necessary and parallel activity that helps protect clients. Ultimately, professional ethics strives to make society a better place for clients and, if successfully practiced, can effectively serve the common good.