

CHAPTER 7

Ethical Decision-Making

Ms. Wicks: You know, this job seemed easier when I was in school. All the case examples used in class were so clear-cut. It was easy to understand what was ethical and what was not.

Mr. Harolds: You would think there would be clear-cut answers to what you are supposed to do, and when you are supposed to do it.

Ms. Wicks: That's certainly not the case in my fieldwork! Professional practice in real life is not always that clear.

The student's reflection of how real life differs from the somewhat "artificial" life of the textbook or academic setting highlights the fact that ethics and ethical practice are not as simple or as clear-cut as may be assumed or certainly desired. As one in the early stage of your professional life, the thought of committing a violation against your professional ethics may seem foreign and remote. Sadly, violations or at least behavior approaching ethical violations are neither foreign nor remote. As reported by one organization, nearly 5,000 ethical inquiries regarding counselor decisions and practices were made in 2011 (ACA, 2012).

Our professional codes are "guidelines," neither recipes nor clear directives. While it is essential to understand and embrace our ethical codes, it is equally important for each professional and professional-in-training to understand, embrace, and employ a process that will facilitate the application of these codes, especially in those situations where clear, ethical pathways are less than evident.

● OBJECTIVES

The current chapter will review models for ethical decision-making and provide an integrated model that helps clinicians move from the recognition and assessment of an ethical dilemma through planning, implementing, and evaluating the impact of their practice decisions. Case illustrations and guided exercises are provided to not only add to the clarity of understanding but to facilitate, your valuing of the need for an ethical decision-making process to guide your own practice decisions.

After reading this chapter you should be able to do the following:

- Not only understand but also value the need and importance of employing ethical decision-making models to guide practice decisions;
- describe a number of step-wise and value-based models of ethical decision-making;
- identify and explain common elements that can be crafted into a more generic, integrated model for ethical decision-making; and
- apply an integrated model of ethical decision-making to illustrated cases.

● CODES OF ETHICS: GUIDES NOT PRESCRIPTIONS

A set of rules and directives that would result in efficient and ethical professional practice would be something clearly welcomed by student and professional alike. However, as should be clear by now, such prescriptions or recipes for professional practice do not exist, nor does every client and every professional condition provide clear-cut avenues for progress.

Professional practice is both complex and complicated. The issues presented are often confounded and conflicting. The process of making sense of the options available and engaging in the path that leads to effective, ethical practice cannot be preprogrammed but rather needs to be fluid, flexible, and responsive to the uniqueness of the client and the context of helping. The very dynamic and fluid nature of our work with clients prohibits the use of rigid, formulaic prescriptions or directions. Never is this so obvious as when first confronted with an ethical dilemma.

Consider the subtle challenges to practice decisions presented in Case Illustration 7.1. The case reflects a decision regarding the release of information and the potential breach of confidentiality. The element confounding the decision, as you will see, is that the client was deceased and it was the executrix of the estate providing permission to release the information to a third party.

As noted, the main question to be considered in this case is, does confidentiality extend into the grave and if not, under what conditions can

Case Illustration 7.1

Conditions for Maintaining Confidentiality

While all clinicians have been schooled in the issue of confidentiality and the various conditions under which confidentiality must be breached (e.g., prevention of harm to self or another), the conditions of maintenance of confidentiality can be somewhat blurred when the material under consideration is that of a client who is now deceased. Consider the case of Dr. Martin Orne, MD, PhD.

Dr. Orne was a psychotherapist who worked with Anne Sexton, a Pulitzer Prize winner. Following the death of Ms. Sexton, an author, Ms. Middlebrook, set out to write her biography. In doing her research, Ms. Middlebrook discovered that Dr. Orne had tape-recorded a number of sessions with Ms. Sexton in order to allow her to review the sessions, and he had not destroyed the tapes following her death.

Ms. Middlebrook approached Linda Gray Sexton, the daughter of the client and the executrix of the estate, seeking permission to access these tapes of the confidential therapy sessions as an aid to her writing. The daughter granted permission for release of the therapeutic tapes.

A number of questions could be raised around this case, including the ethics of tape-recording or the ethics of maintenance of the tapes following the death of the client. However, the most pressing issue involves the conditions under which confidentiality should be maintained. The challenge here is, should Dr. Orne release the tapes in response to the daughter's granting of permission, or does his client have the right to confidentiality even beyond the grave?

(should) it be violated? You may find it informative to discuss that question with your classmates or colleagues, and to aid in that discussion, you may want to consult the following website for additional information on the case (<http://www.dianemiddlebrook.com/sexton/tpg12-91.html>).

While our standards and professional codes of practice can help us in resolving questions, such as that found in Case Illustration 7.1, they do not (nor do they purport to) provide clear direction and solution in any and all situations. Even principles such as *informed consent*, *confidentiality*, and *boundaries*, while appearing clear and easily applied, can be challenging to enact in professional practice. Consider these principles in light of some challenging practice conditions (see Table 7.1).

Clearly, as a human service provider, you will encounter situations in which you are confronted by an ethical dilemma. The situation may include if and when

Table 7.1 Challenges to Clarity

<i>Issue/Code</i>	<i>Challenge</i>	<i>Real Life Challenge: Case Scenario</i>	<i>Direction? Decision?</i>
<p>Confidentiality</p> <p>Keep information confidential unless legal requirements demand that confidential information be revealed or a breach is required to prevent serious and foreseeable harm to the student. (ASCA, 2016, A.2.e)</p>	<p>To act or not to act requires the counselor to interpret the meaning of <i>serious and foreseeable harm</i> and judge a client's/student's behavior as serious enough to break confidentiality.</p>	<p>A 17-year-old high school senior discloses the fact that she is trying to "secretly" get pregnant as a way of making her boyfriend make a commitment to her.</p> <p>A 12-year-old middle school student has shared that she is actively engaging in sexual activity, including intercourse, with one of her eighth-grade peers.</p>	<p>How might you apply the concept of "prevent serious and foreseeable harm to the student"?</p> <p>Could a case be made in either illustration for breaking confidentiality? How about maintaining confidentiality?</p>
<p>Boundaries</p> <p>A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists. (APA, 2010, 3.05)</p>	<p>The challenge is to define those conditions where the multiple relationships could be expected to impair one's objectivity, competence, or effectiveness. While some situations are clear, as in having a romantic relationship with a current client, others may fall in those shades of gray.</p>	<p>A clinical psychologist in private practice is invited to serve as head coach for the high school girls' soccer team. To her surprise, she arrived at the first team meeting to discover that the team's star player is also her client.</p> <p>While participating in a single-parents group at her local church, a practicing psychologist is approached by a previous client who "invites" her out for a drink following one of the meetings.</p>	<p>Can the clinician engage in both roles—as coach and therapist?</p> <p>Is "socializing" with this previous client allowable?</p>

<i>Issue/Code</i>	<i>Challenge</i>	<i>Real Life Challenge: Case Scenario</i>	<i>Direction? Decision?</i>
<p><i>Informed Consent</i></p> <p>Clients have the freedom to choose whether to enter into or remain in a counseling relationship and need adequate information about the counseling process and the counselor. (ACA, 2014, A.2.a)</p>	<p>Challenges could include the following:</p> <p>Are there conditions that inhibit a client's ability to provide informed consent?</p> <p>Do all clients have the ethical right of freedom to choose or are there conditions (e.g., age, diagnosis, court mandate, etc.) that limit that freedom?</p>	<p>The client, who is 26 years old, came to the session having been driven by his father. During the initial intake, it became clear to the counselor that the client had some form of neurological impairment not previously disclosed.</p> <p>The client is an 8-year-old, third-grade student who was referred by his teacher because of what she felt was unusually aggressive drawings and stories in his journal.</p>	<p>How might this issue of neurological damage influence the clinician's approach to "informed consent"?</p> <p>Does age, issue, or context (i.e., school) affect the client's right of freedom to choose?</p>

to disclose confidential information without a client's consent (e.g., a suicidal client) or the ethics of limiting a client's right to self-determination (e.g., when involuntary hospitalization is required) or even the appropriateness of engaging in nonprofessional relationships with a former client. These ethical dilemmas are difficult to resolve, because by one definition, that of Kitchener as cited in Shiles (2009), an ethical dilemma occurs when "there are good but contradictory ethical reasons to take conflicting and incompatible courses of action" (p. 43). As such, the ethical dilemmas we encounter are by definition often subtle and always, by definition, without a singular clear path to resolution. Consider the findings of one study assessing 450 members of the American Psychological Association's Division 29 (Psychotherapy) by Pope, Tabachnick, & Keith-Spiegel (1987). Of the 83 separate behaviors the members were asked to rate according to ethicality, very few—for example, having sex with a client or breaking confidentiality if clients are suicidal or homicidal—were clear-cut. Most of the 83 fell in what the authors termed "gray areas" between being ethical and unethical. Such data highlights the difficulty one experiences when faced with an ethical dilemma and the need for a sound model of ethical decision-making.

● ETHICAL DECISION-MAKING: A RANGE OF MODELS

Life—at least our professional lives—would be easier if all practice decisions and ethical dilemmas were black or white. As should now be evident, the ethical nature of our practice decisions are most often colored in many shades of gray, and thus the path to follow is not always clear.

For some, the goal is to follow the ethical codes from a mandatory perspective and thus be true to the letter of the law. While this is a basic level of ethical functioning and may serve to protect the human service provider to avoid legal trouble, this should not be the main focus of our ethical choices. We are called to embrace our ethics on an aspirational level. For one embracing aspirational ethics, the goal is not self-protection but rather client welfare. While it is our duty, our responsibility, to understand and embrace our codes of ethics (i.e., *mandatory ethics*), the execution of these codes in practice demands that we engage in self-reflection and the employment of a decision-making process that results in what is best for each of our clients (i.e., *aspirational ethics*). Reliance on one's "gut-feelings" or intuition, in the absence of reflection on that which is both mandatory and aspirational, presents an ethical problem in itself, given the greater risk to the public (Welfel, 2010).

In complex situations, the American Counseling Association's (ACA) Ethics Committee, for example, recommends that counselors explore professionally accepted decision-making models and choose the model most applicable to their situation (Kocet, 2006). This position has even been codified in the *ACA Code of Ethics* where it is noted: "When counselors are faced with an ethical dilemma, they use and document, as appropriate, an ethical decision making model . . ." (ACA, 2014, Code I.1.b).

While there is no one specific ethical decision-making model that has been identified as most effective and globally embraced, it is important, as noted by the ACA (2014, p. 3), for practitioners to be familiar with a credible model of decision-making. To this end, numerous authors have offered models for ethical decision-making, a sampling of which is offered in the next section. Each model offers a unique perspective or lens through which to view practice decisions and ethical dilemmas and as such are worthwhile, considering as each may reflect your style of practice and/or the context in which you work.

Ethical Justification Model

Kitchener (1984) has provided what some feel is the foundation for ethical decision-making (see Sheperis, Henning, & Kocet, [2016]). In fact, many of the ethical decision models use Kitchener's virtues as a springboard for their development (Urofsky, Engels, & Engerbretson, 2008).

Kitchener (1984) was aware of the then existing limitations to ethical codes and thus directed psychologists to consider the fundamental ethical principles that not only serve as the foundation for professional codes but provide a conceptual vocabulary for analyzing ethical issues when direction is less than clear. Kitchener invited practitioners to employ the values of autonomy, nonmaleficence, beneficence, fidelity, and justice (see Chapter 3) as reference points when making ethical decisions. From this perspective, clinicians would ensure that their decisions not only treated each client equally given equal circumstances (justice) but also supported client freedom to choose (autonomy). Further, based on these principles, a practitioner's ethical decisions would be made in a way that not only avoided harming the client (nonmaleficence) but promoted help and health (beneficence).

For example, while having a sexual relationship with a client is clearly unethical, the question of ethics when applied to other nonsexual, multiple-role relationships with former clients may be less obvious (Anderson & Kitchener, 1998). In these situations, the codes may not be clear and directive. Kitchener (1984) would suggest that clinicians allow their concern about not undoing therapeutic gains (i.e., nonmaleficence) along with their desire to refrain from affecting client self-determination (i.e., autonomy) to guide their decision to engage or not to engage in these nonsexual, multirole relationships. To further clarify this perspective, we invite you to engage in Exercise 7.1, applying foundational values.

When exploring an ethical dilemma, reflection on these moral values or principles may offer insight into the path best chosen. However, it has been suggested (e.g., Forester-Miller and Davis, 1996) that in complicated cases the employment of a step-wise decision-making model may be useful.

Step-Wise Approach

Forester-Miller and Davis (1996) detailed one step-wise approach that was presented in the ACA document "A Practitioner's Guide to Ethical Decision Making" (http://counseling.org/docs/ethics/practitioners_guide.pdf?sfvrsn=2). The authors presented a practical, seven-step process for ethical decision-making. The steps included the following:

Step 1: Identify the problem articulating the ethical concern. During this step, the practitioner needs to gather information that sheds light on the depth and breadth of the situation. The authors suggest that the practitioner consider questions such as, is this an ethical, legal, professional, or clinical problem or perhaps some combination? Is the issue a reflection of me, the client, others in the client's life, and/or the system in which I work? Answering these questions helps focus the targets for resolution.

Exercise 7.1

Applying Foundational Values

Directions: The task is to review the following situations confronting a therapist. Your task is to first decide what you would do. Next—and this may be best done in consult with a classmate, colleague, or professor—view your decision through the values of autonomy, nonmaleficence, beneficence, fidelity, and justice. Would this process alter your initial decision?

<i>Situation</i>	<i>Your Decision</i>	<i>Autonomy</i>	<i>Nonmaleficence</i>	<i>Beneficence</i>	<i>Fidelity</i>	<i>Justice</i>
An 8-year-old, third-grade student attempts to hug the school counselor upon entering the office.						
In a group session, which is working on social skills, a client diagnosed with autism offers a hug to the therapist.						
The client, a 74-year-old religious sister (nun) brings a hand-knit scarf as a gift to the therapist.						

Situation	Your Decision	Autonomy	Nonmaleficence	Beneficence	Fidelity	Justice
At a fund raising dinner, the chair of the event introduces himself to the guest speaker, a psychotherapist within the community. He then asks how his brother is progressing in his therapy, noting that his brother is under his care and it is he who is paying for the therapy.						

Step 2: Apply the ACA Code of Ethics. While developed for use by counselors and thus the reference to *ACA Code of Ethics*, this decision-making process could be employed by all mental health professionals by making reference to the appropriate professional standard and code at this step in the process. It is important to review the codes in order to identify all standards that may apply to the situation. If the codes do not provide clear and direct insight into the path of resolution, additional steps of the decision-making process will be necessary.

Step 3: Determine the nature and dimensions of the dilemma, noting the scope of the issue engaging the current professional literature, colleagues, and even professional associations to ensure the most current perspective on this type of problem is incorporated.

Step 4: Generate a possible course of action that could result in resolution. During this step, be creative; brainstorm in order to develop the widest possible selection of options.

Step 5: Consider the potential consequences of all options. It is important to identify all possible implications of each course of actions as it may impact the client, others, and even yourself. Identify the option or combination of options that best serve the situation.

Step 6: Evaluate the selected course of action. At this step, it is especially important to be sure that the path selected will not create additional ethical concerns.

Step 7: Implement the course of action. Once the pathway has been selected and implemented, it is important to assess to ensure that the desired impact or outcomes were achieved.

The employment of such a step-wise approach DOES NOT ensure that each practitioner, in similar situations, would arrive at the same path or outcome. However, the use of this or similar systematic models allows each clinician to not only give evidence of their valuing of ethics and ethical decision-making but to be able to articulate and explain their deliberations and reflections in the selection of a course of action.

Case Illustration 7.2 highlights the use of this approach and Exercise 7.2 invites you to employ the model on simulated case dilemma.

Case Illustration 7.2

Confidentiality Violation?

The client, Mr. E., left a message on Dr. Ellis's voicemail asking that the therapist send a bill summarizing all contact over the past year. As noted on the voicemail, Mr. E. was going to submit the summary to his insurance for possible reimbursement. Mr. E. left no further instructions.

In order to expedite the process Dr. Ellis decided to send the summary to his client's office fax machine. While the cover sheet accompanying the bill had a large, very clear statement of confidentiality, it also included the doctor's name, practice name, and address at the bottom. After faxing the summary, Dr. Ellis began to be concerned, because he was unclear as to whether the fax machine was in a public place or available only to this client. As such, he attempted to call the client to inform him of the sent fax only to find that he was out sick.

Step 1: Identify the problem articulating the ethical concern. Clearly, while the client directed him to assemble a summary statement, the manner and medium for delivery could cause concern for the client. The summary not only contained specific dates of the individual sessions but also included codes indicating the diagnosis as well as codes indicating the form of treatment (i.e., individual psychotherapy). The private and sensitive nature of this material was not for public consumption, and the doctor questioned whether the cover sheet noting the information was confidential was sufficient to protect the client's privacy.

Step 2: Apply the code of ethics. Dr. Ellis was a licensed professional counselor and member of the ACA, so he consulted the *ACA 2014 Code of Ethics*. In reviewing the code, he became concerned that he may have violated the following:

A.1.a. Primary responsibility. The primary responsibility of counselors is to respect the dignity and promote the welfare of clients.

B.1.c. Respect for confidentiality. Counselors protect the confidential information of prospective and current clients. Counselors disclose information only with appropriate consent or with sound legal or ethical justification.

B.2.e. Minimal disclosure. To the extent possible, clients are informed before confidential information is disclosed and are involved in the disclosure decision-making process. When circumstances require the disclosure of confidential information, only essential information is revealed.

B.6.b. Confidentiality of records and documentation. Counselors ensure that records and documentation kept in any medium are secure and that only authorized persons have access to them.

B.6.f. Assistance with records. When clients request access to their records, counselors provide assistance and consultation in interpreting counseling records.

Step 3: Determine the nature and dimensions of the dilemma. Dr. Ellis consulted with a colleague and attempted to research information on the use of electronic media and faxes in mental health practice. It became clear that while the use of fax transmissions is always dangerous, it should clearly be used only when the intended party has sole access to the fax or is standing by the machine and ready to retrieve it, a point that would require verification via telephone. Further, in considering ACA ethics, Dr. Ellis realized

(Continued)

(Continued)

that he should have consulted with the client, clearly identifying potential risks and costs to faxing this information and then gained written permission for the client. The other issue raised by way of his consulting was the possibility that sending billing information could be a violation of the client's company policy regarding use of company fax or even a possible violation of debt collection laws, since an outstanding balance was listed.

Step 4: Generate possible courses of action. Dr. Ellis began listing possible courses of action that included the following:

1. Go to the client's office and retrieve the fax.
2. Call the office and ask a receptionist to retrieve and destroy the fax.
3. Contact the client and after describing the dilemma ask what he would like to have done.
4. Wait, do nothing and see what happens.

Step 5: Consider the potential consequences of all options. In reviewing the first two ideas, Dr. Ellis concluded that his very presence and need to introduce himself and explain why retrieving the fax was necessary would in fact be a public disclosure of his client's engagement in therapy. Further, Option Number 4, given the potential for damage to the client's reputation and even work status, was not viable. As such, he chose to track down the client in order to discuss the situation.

Step 6: Evaluate the selected course of action. Upon reflection, Dr. Ellis realized that contacting his client and disclosing what has occurred could at minimum shake the strength of his therapeutic alliance and level of trust and even invite client legal action. However, having worked with the client for more than 8 months, Dr. Ellis felt secure that the relationship was strong enough to weather this situation and thus proceeded to call.

Step 7: Implement the course of action. On contacting the client, Dr. Ellis was relieved to find out that his client was not ill but rather taking a "mental health day" and that the only other person in the office was his personal secretary, whom he had already instructed to look for a fax and to file his insurance claim.

While any damage to the therapeutic relationship had been averted in this situation, the potential damage to future clients and client relationships remained, and as such, Dr. Ellis developed a very clear, specific policy regarding the use of social media, e-mail, and faxing, which he would distribute and discuss to all current and future clients.

Exercise 7.2

Applying a Step-Wise Model

Directions: Exercise 7.1 presented a number of situations that may place a practitioner in an awkward situation and potentially an ethical bind. Your task in this exercise is to select one of these scenarios and employ the steps identified by Forester-Miller and Davis (1996) in order to decide on the action you would ultimately take. It would be useful to share your thinking and your decision with a colleague/classmate to gain their perspective.

Situation: (select one situation presented in Exercise 7.1)

Apply Forester-Miller and Davis Step-Wise Approach

- Step 1: Identify the problem articulating the ethical concern.
- Step 2: Apply the *ACA Code of Ethics* (or employ the code that best reflects your profession)
- Step 3: Determine the nature and dimensions of the dilemma.
- Step 4: Generate possible courses of action.
- Step 5: Consider the potential consequences of all options.
- Step 6: Evaluate the selected course of action.
- Step 7: Implement the course of action.

Values-Based Virtue Approach

Jordan and Meara (1990, 1995) introduced a rather unique perspective on the issue of ethical decision-making. Their virtue ethics model focuses not on what the counselor should DO but rather on HOW as well as on WHO the counselor should be. Advocates of virtue ethics argue that practitioners should not merely seek to conform to codes but should aspire to an ethical ideal. For example, consider the situation in which a therapist approaches a termination session with a Chinese American couple. They have worked together for over a year, and the therapy has helped the couple achieve their goals. At the end of this last session, the couple presented the therapist with an original pen-and-ink drawing of their parents' village back in Mainland

China. The questions that flooded the therapist included, is it appropriate to take the gift? Is something in reciprocation required? Are boundaries being threatened? Would it be disrespectful not to take the gift?

Turning to his code of ethics, the therapist can clearly see that taking a gift as a form of bartering (AAMFT, 2015, Principle 8.5) is something that a therapist should ordinarily avoid. However, when it comes to simple reception of gifts from clients, there is not clear directive as to its appropriateness, and there even seems to be a general reluctance to discuss the issue (Zur, 2007).

While turning to one's code of ethics may help direct the clinician's response, it is, according to this model, important for the therapist to reflect upon his own personal values as they reflect his desire to both respect the persons of the clients and their culture. From this perspective and understanding that the gifts came from a desire to celebrate their success and give thanks for the professional assistance, the therapist decided to gracefully and gratefully accept this gift.

Jordan and Meara's emphasis on the values, the virtues, and the person of the therapist certainly fits with the primary theme of this text, a theme that encourages BEING ethical rather than simply knowing ethics. Jordan and Meara's approach appears to these authors as a valuable addition to any step-wise model of ethical decision-making. Further, with its emphasis on ever-increasing self-awareness and ongoing reflection and development, their model offers valuable direction for each of us as we continue to grow and evolve both personally and professionally.

Integrating Codes, Laws, and Personal-Cultural Values

Tarvydas (2012) offers an integrative approach to decision-making that highlights the need for the practitioner to view all decision-making in light of not just ethical codes and laws but cultural and social values and context. The Tarvydas Integrative Decision-Making Model of Ethical Behavior comprises four stages: (a) interpreting the situation through awareness and fact finding; (b) formulating an ethical decision; (c) weighing competing non-moral values and affirming course of action; and (d) planning and executing the selected course of action. Each of these stages is described below as applied to the following brief scenario (Case Illustration 7.3).

Stage I. Interpreting the Situation Through Awareness and Fact Finding

During this stage, the counselor will reflect upon the client's unique circumstances and characteristics as well as the nature of the specific

Case Illustration 7.3

Boundary Violation?

The client's response came as totally unexpected, truly catching the therapist off guard. It was a very productive yet emotionally draining and intense session. Dr. Thwarp helped to facilitate the client's review of a long-standing history of abuse, both emotionally and, in two situations, physically.

While emotionally draining, the session appeared productive. The client gave evidence of feeling empowered, no longer blaming herself as being responsible and even "deserving" of the abuse. This was truly a significant therapeutic breakthrough.

As the session came to an end and Dr. Thwarp stood to walk the client to the door, the client suddenly turned and threw both arms around Dr. Thwarp's neck, holding her tightly for a few seconds and then exiting the office saying, "Thank you for all of your support."

concerns and claims of all stakeholders. In addition, the clinician will engage in a fact-finding process that unearths all the facts reflecting the situation and the dimensions of ethical concern. For example, in reviewing the case of Dr. Thwarp (Case Illustration 7.3), she would want to process the event through her knowledge of the content and dynamic of the session; her reflections on her own responses prior to, during, and after the event; as well as the client's unique familial, cultural, and perhaps religious values.

Stage II. Formulating an Ethical Decision

An initial step in the formulation process is to review and clearly identify the various levels or elements of potential ethical concern.

Continuing our brief illustration of the unexpected hug, the therapist in this situation may identify potential concerns around issues of power, transference and countertransference, and most clearly boundary violations. Clearly, the theme of abuse and its implication of power and trust needs to be considered. Each of these concerns would then be viewed through relevant ethical codes, laws, and principles as well as institutional policies and procedures that apply to the situation.

With this clarity of situation, as contrasted to the standards and codes, the therapist would next consider both the positive and negative impacts of various potential courses of action. Perhaps in our scenario,

the therapist is considering the following potential courses of action: (a) to immediately contact the client to define boundaries of their relationship; (b) to engage in a dialogue around boundaries at the beginning of the next session; (c) to invite the client to reflect upon her actions and the meaning they may have; (d) to increase her own sensitivity to the potential for such action and to be sure to preempt it in the future with this or any client; or (e) to simply accept the hug as a reflection of a deep sense of appreciation. As directed by the model, she would then consider the positive and negative impacts of each. During this process, it is recommended that a clinician confer with a colleague or supervisor before selecting a course of action.

Stage III. Selecting an Action by Weighing Competing, Non-Moral Values, Personal Blind Spots, or Prejudices

The model reminds us that we all have blind spots and personal prejudices that can impact our decisions, and as such, it is important to engage in reflective recognition and analysis of personal, competing non-moral values and personal biases. Our illustrative therapist would need to be open to the possibility of her own seductive behavior or countertransference. She would want to consider what, if any, impact the lack of an intimate relationship in her own life may have on her feelings and her behaviors around this client and this experience. In addition, she may want to reflect on own personal experience with hugging: Was it always and only in a sexual context or was hugging a common form of social greeting?

In addition to reflecting on personal values and biases, it is important to filter the experience through an awareness of contextual influences, including institutional, cultural, and societal, before determining the best course of action.

Stage IV. Planning and Executing the Selected Course of Action

In the final stage, the clinician identifies a sequence of specific actions to be taken, with awareness of the potential personal and contextual barriers to effective implementation. For example, Dr. Thwarp recognizes that her schedule and the fact that she has a client waiting prevents an immediate reaction or follow-up response to the client. Further, as she reflected on the session in light of the client's history, she believes that any quick, impersonal response to her, like a phone call, may be received as evidence of her rejection and may result in the client's developing feelings of shame. As such, she decided to assess the nature and strength of their relationship

at the time of her next session, and if it appeared to be of therapeutic value, she would invite the client to review the hug in light of the previous session and her needs and feelings at that time. Should the nature of the next session be such that review of this incident did not seem productive, Dr. Thwarp would be aware of future attempts of physical contact, at which time she would invite the reflection while establishing a boundary.

With the implementation of a plan of action, the clinician is now invited to evaluate and document the ultimate impact and effectiveness.

Readers interested in seeing a more detailed application of this model as applied to a complex case should go to <http://www.counseling.org/docs/default-source/vistas/why-can-t-we-be-friends-maintaining-confidentiality.pdf?sfvrsn=11> and review the presentation by Heather A. Warfield, Stephen D. Kennedy, and Megan Hyland Tajlili, Winners of the 2012–2013 ACA Doctoral Student Ethics Competition.

COMMON ELEMENTS: AN INTEGRATED APPROACH TO ETHICAL DECISION-MAKING •

The previous section provided brief descriptions of a number of ethical decision-making models. These are but a few of the numerous models suggested throughout the literature. While each of these models provides a unique perspective, a number of common elements seem to run through each and as such have been extracted and presented as the following “Common Elements Integrated Approach.”

The common, recurring elements found within the various ethical decision-making models include the following: *awareness* of the existence and nature of the dilemma along with personal values and biases; *grounding* in both knowledge of the professional codes of practice, laws, and institutional policies and procedures; *support*, which is found via consultation with all parties involved and professional colleagues and supervisors; and finally, *implementation*, including documentation and evaluation. Each of these elements is described in detail below and applied to the following case scenario (Case Illustration 7.4).

Awareness

As the first step to resolving an ethical dilemma, one must first note the existence and specific nature of the dilemma. An ethical dilemma occurs

Case Illustration 7.4

How Much Do I Share?

John Kelly, PhD, a licensed psychologist, was asked to assess an 8-year-old third-grade student in a local school district because of her parents' concern over her recent withdrawal from social interaction and her failing grades. The parents' explicit concern was in ruling out a possible learning disability and in developing some strategies for returning her to her previous level of academic and social functioning.

The psycho-educational assessment included an extensive clinical interview, a developmental history, as well as the administration of a battery of tests including the following: achievement tests, behavioral observational scales, and cognitive and personality assessments. The data suggested that Tina was functioning within the normal range in achievement and cognitive functioning but did give evidence of general anxiety that appeared to be in response to parental marital discord and the occurrence of parental arguing about an issue of "infidelity."

In his report, Dr. Kelly noted the hypothesized interfering impact of Tina's current anxious state and, in addition to suggesting the family engage in family therapy, provided a number of specific psycho-educational recommendations aimed at increasing her social engagement and academic performance.

A month after his contact with Tina, her school counselor sent a request, with an appropriately signed parental release for any and all information regarding his work with Tina. The request sought not only the psychologist's report but the raw data and any "working notes" the psychologist had made during his meetings with the client and client's family.

when a practitioner is confronted with a situation that offers multiple courses of action, where any one decision is less than perfect and will result in a compromise to some ethical principle. Recognition of the situation as presenting an ethical dilemma may occur as a result of the practitioner's reflection on the experience and the cognitive dissonance it creates when contrasted to his knowledge of the elements of his code of conduct (Johnson, 2012).

In addition to the identification of the principles being compromised, it is important for the practitioner to be aware of personal values and biases

that may be operative in this situation. It is possible that one's personal values could run contrary to the ethical standards of her profession. However, as a member of a profession, one has agreed to comply with the standards of that profession as articulated within its code of ethics. As such, it is important to distinguish between personal and professional dimensions and as noted by the Council on Social Work Education (2008), "manage personal values in a way that allows professional values to guide practice" (EPAS 1.1).

In terms of our case illustration, Dr. Kelly was very aware of his discomfort with the request for information that he received. While valuing the school counselor's interest in helping Tina and even appreciating the fact that some of the information he had gathered would be useful in guiding the counselor's work with Tina, he "felt" uncomfortable with releasing all of his data as requested. The discomfort seemed to arise from his awareness that some of the "family" information that might be disclosed focused more on the marital discord without direct translation to education programming or intervention. In addition, he had concerns over releasing raw test data, being unsure of the counselor's qualifications for interpreting such data. He was further concerned about sharing the hypotheses and speculations that may be listed in his working notes, all of which were not fully developed or completely supported by data.

Grounding

When confronted with a "sense" that we are entering or even in dangerous territory, the next step is to find grounding in the ethical codes, organizational policies, and legal standards that should guide our practice. As noted in the *ACA Code of Ethics* (2014, Section I.1.a), "Lack of knowledge or misunderstanding of an ethical responsibility is not a defense against a charge of unethical conduct." Thus, listing the specific codes being called into play along with any policies that may exist or laws established that have relevance to the situation provides the data and the grounding one needs to choose a path forward. Take note of how Dr. Kelly uses his code of ethics.

As a licensed psychologist in private practice, Dr. Kelly was aware of HIPPA regulations that specify patients' access rights to their health and mental health files. While HIPPA provides for the release of psychotherapy notes, it does so only under a special designation in the release or waiver signed by the client. A general request for medical records does not automatically allow for the release of these notes. Further, when it

comes to “working notes,” their impressionistic nature makes them relatively meaningless other than for the clinician drafting them. It is generally agreed that these should be temporary in nature, taking form in a more formal summary or report and subsequently destroyed. This is not the type of information that should be released to anyone, or maintained as a permanent file.

In reviewing his profession’s code of ethics (APA, 2010), Dr. Kelly was struck by the following:

“Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law (APA 2010, 9.04). He also found that his code directed that disclosure of information should be “only to the extent necessary to achieve the purposes of the consultation” (APA 2010, 4.06).

Support

The very fact that our codes are not always clear and prescriptive to every situation and that they may even be in conflict with existing organizational policies or legal standards calls practitioners to seek out support and consultation when confronted with an ethical dilemma. As noted in the *ACA Code of Ethics* (2014), “Counselors strive to resolve ethical dilemmas with direct and open communication among all parties involved and seek consultation with colleagues and supervisors when necessary” (Sec. I, Introduction). This same code further directs that “when uncertain about whether a particular situation or course of action may be in violation of the *ACA Code of Ethics*, counselors consult with other counselors who are knowledgeable about ethics and the *ACA Code of Ethics*, with colleagues or with appropriate authorities, such as the ACA Ethics and Professional Standards Department” (Sec. I.2.c).

The provision of another perspective can serve to not only bring increased clarity to the situation and the applicability of an existing code but may help to counteract our own bias.

Returning to Case Illustration 7.4, Dr. Kelly’s understanding of HIPPA law and of professional code led him to conclude that neither the raw data nor his working notes should be released as per request. However, prior to making that decision he wanted to consult with someone more schooled in and familiar with this type of issue. As such, he called the chair of his state ethics committee, who in turn consulted with the ethics committee.

The response he received supported his decision to be selective in the information released. The committee's response did note, however, that its position was not intended to serve as legal advice and was educational in nature based on members' understanding of the APA code of ethics.

Implementation

Ethical decision-making is not merely an intellectual activity, it is a process that results in action. As is evident from our previous discussion on ethical decision-making models, the implementation stage requires (a) the generation of possible pathways to resolving the dilemma; (b) an assessment of the potential positive and negative consequences for all involved parties for each of the possible pathways; (c) the selection of the path to follow; and (d) documentation and evaluation of the ultimate impact.

So in Case Illustration 7.4, Dr. Kelly considered a number of options ranging from ignoring the request to sending all the data requested. Upon reflection and consultation, he felt that the most prudent and beneficial approach would be to contact his client's parents to inform them of his reception of a request for information and explain to them his plan to respond. In talking with the parents, he explained that while his notes and actual test data were important to his understanding and assessment that these, even though requested, would be of little value to the school counselor. He suggested that it would be more productive if he sent an abbreviated report with specific focus on the educational recommendations that could be implemented within the school setting. Further, he suggested that rather than sending this report directly to the counselor, he would provide the parents with the report, and they in turn could share the information, if they so desired, with the school.

Both parents were appreciative of the suggestion. Both admitted that they had not completely thought through the implications of what was being requested when they signed the release and were very happy that Dr. Kelly was aware of the possible negative effects of releasing all of his data to the school. Also, given the fact that he had previously gone over the entire report and recommendation with them, they both felt comfortable with sharing the sections relevant to the school and the counselor's work with their daughter.

Dr. Kelly invited the parents to come into the office to once again review the recommendations, but neither felt that was necessary. Finally, he asked if they would send him a written request for the release of this "educational report" so that he could have it in his records. He also documented the telephone conversation as well as the suggested and agreed upon plan.

● CONCLUDING CASE ILLUSTRATION

Throughout the past chapters, you have seen Ms. Wicks, our school counselor, experience a number of ethical concerns while engaging with Maria. None of these seem to be as disruptive to the relationship as evidenced by Maria's disclosure regarding her boyfriend having AIDS and the couple being engaged in unprotected sex. Ms. Wicks has concerns about both the legal mandate and ethical concerns that should guide her response to this information. In addition, she now has information that the district "prohibits" her from talking to students about sexual issues, which arouses her concern that she has violated some boundary. The situation is complicated, and the options are not completely clear.

Reflections

1. Has Ms. Wicks given any evidence of employing one of the many models of ethical decision-making described in this chapter?
2. What one specific step discussed within the chapter as contributing to ethical decision-making do you feel Ms. Wicks needs to employ?
3. From your perspective, which of the models discussed within the chapter provides the best guidance for ethical decision-making when applied to this case?

● COOPERATIVE LEARNING EXERCISE

As noted in the beginning of the chapter, it is our responsibility to not only know and embrace our professional code of ethics but also to employ a process that will facilitate our application of these principles within our professional practice. The failure to do so is in and of itself an ethical problem (Welfel, 2010). As such, you are now invited to close this chapter by engaging in the following learning exercise (Exercise 7.3). It is hoped that engaging in this exercise will help your understanding, valuing, and employment of our common elements integrated approach.

Exercise 7.3

Making a Decision

Directions: Read the following case scenario and then respond to questions posed under each of the stages of ethical decision-making listed below. As with each of these cooperative learning exercises, benefit is accrued through personal reflection and the sharing of perspectives among your colleagues.

Dr. Mattison is a retired clinical social worker who had a large private practice for over 35 years. In retirement, she was hired as an adjunct professor to teach one graduate course a semester and also volunteered as an intake worker at the local community mental health center.

The center operated more like a crisis and referral agency seeing clients for a maximum of three sessions and making referrals when additional sessions were necessary. During the month of August, the agency experienced a high number of staff taking vacations. Dr. Mattison was asked to step in to provide direct service to new clients seeking support during the month.

In the week prior to her stepping back into the clinical chair, she remained on the phone as intake worker. The intakes she was completing were on clients whom she would see in the following week.

One caller, Kathy, was clearly very upset, crying to the point where gathering the basic information was difficult. Dr. Mattison gently calmed the caller and identified that the initial source of crisis was the fact that she had just been terminated at her job and gotten into a major argument with her boyfriend. While the caller felt as if the “world was collapsing,” Dr. Mattison was able to assess her level of crisis and the possibility of her harming herself or another. Both possibilities were felt to be of very low probability, and the caller had numerous supports in her life, living at home with her family. After setting up the appointment to meet with Kathy, Dr. Mattison did a final assessment to see how she was feeling and what her plans for the night and the days to follow were. Kathy’s response provided Dr. Mattison with the data she needed to feel that Kathy was okay and was not at risk.

After hanging up and as she was taking the next call, Dr. Mattison realized that in her focusing on the “crisis” she forgot to get Kathy’s last name or address. She felt that she could gather that information at the time of her first session, which was scheduled that coming Monday.

(Continued)

(Continued)

On Monday, as Dr. Mattison enters the office, she becomes aware that the young woman waiting is not only Kathy, her first appointment, but that Kathy is actually a student in her Tuesday night class.

Awareness: Does the case present any possible ethical or legal challenges? If so, what are they?

Grounding: Using your profession's code of ethics, what, if any, principles may be compromised or called into play given this situation?

Support: What do your colleagues or classmates see is operating in this situation? How about your professor or supervisor? Are their perspectives different from yours? If so, what is the impact of multiple perspectives on your own awareness of the situation or your own biases and values?

Implementation: Generate at least three possible paths to follow in response to this situation. Further, identify the potential positive and negative impacts of each? Which would you select to implement? Discuss with your colleagues to gain further perspective as to whether they identified similar paths, impacts, and implementation plans.

● SUMMARY

- As professionals, it is our duty, our responsibility, to not only understand and embrace our codes of ethics but to also engage in self-reflection and the employment of a decision-making process.
- Our professional organizations direct us to employ accepted decision-making models that are most applicable to our situations (e.g., ACA, 2014, I.1.b).
- One approach (Kitchener, 1984) invites practitioners to employ the values of autonomy, nonmaleficence, beneficence, fidelity, and justice as reference points when making ethical decisions.
- A more sequential approach to ethical decision-making was presented by Forester-Miller and Davis (1996) and included seven steps: (a) identifying the problem, (b) applying the code of ethics, (c) determining the nature and dimensions of the dilemma, (d) generating possible courses of action, (e) considering potential consequences of

all options, (f) evaluating the selected course of action, and (g) implementing the course of action.

- Jordan and Meara (1990, 1995) introduced a rather unique perspective on the issue of ethical decision-making. Their virtue ethics model focuses not on what the counselor should DO but rather on HOW as well as on WHO the counselor should be.
- Tarvydas (2012) offers an integrative approach to decision-making that highlights the need for the practitioner to view all decision-making in light of not just ethical codes and laws but cultural and social values and context. The Tarvydas Integrative Decision-Making Model of Ethical Behavior comprises four stages: (a) interpreting the situation through awareness and fact finding; (b) formulating an ethical decision; (c) weighing competing non-moral values and affirming course of action; and (d) planning and executing the selected course of action.
- Identifying recurrent themes or elements found within the various models of ethical decision-making can direct us to a “common elements integrated approach” that includes *awareness* of the existence and nature of the dilemma, along with personal values and biases; *grounding* in both knowledge of the professional codes of practice, laws, and institutional policies and procedures; *support* that is found via consultation with all parties involved and professional colleagues and supervisors; and finally *implementation* including documentation and evaluation.

IMPORTANT TERMS •

American Counseling Association (ACA)	ethical decision-making
American Association for Marriage and Family Therapy (AAMFT)	ethical justification model
American Psychological Association (APA)	fidelity
aspirational ethics	Integrative Decision-Making Model of Ethical Behavior
autonomy	justice
beneficence	mandatory ethics
common elements approach	nonmaleficence
	step-wise approach
	virtue ethics model

● ADDITIONAL RESOURCES

Print

- Hecker, L., & Associates. (2010). *Ethics and professional issues in couple and family therapy*. New York: Taylor Francis.
- Pope, K., & Vasquez, M. (2011). *Ethics in psychotherapy and counseling: A practical guide* (4th ed). San Francisco, CA: Jossey Bass.
- Sheperis D. S., Henning, S. L., & Kocet, M. M. (2016). *Ethical decision making for the 21st century counselor*. Thousand Oaks, CA: Sage.
- Sisti, D. A., Caplan, A. L., Rimon-Greenspan, H. (2013). *Applied ethics in mental health care: An interdisciplinary reader*. Cambridge, MA: MIT Press.

Web-Based

- Constable, E. G., Kreider, T. B., Smith, T. F., & Taylor, Z. R. (2011). *The confidentiality of a confession: A counseling intern's ethical dilemma*. Retrieved from http://counselingoutfitters.com/vistas/vistas11/Article_37.pdf
- Josephson, M. (2014). *The six pillars of character*. Retrieved from <http://josephsoninstitute.org/MED/MED-2sixpillars.html>
- Markkula Center for Applied Ethics. (2014). The ethical decision making assistant: Making an ethical decision app (Version 1.0) [Mobile application software]. Retrieved from <http://www.scu.edu/ethics/ethical-decision/>
- Velasquez, M., Andre, C., Thomas Shanks, T., & Meyer, M. J. (2014). *Thinking ethically: A framework for moral decision making*. Retrieved from <http://www.scu.edu/ethics/practicing/decision/thinking.html>
- Williams, R. (2007, November). Solutions to ethical problems in schools. *ASCA schoolcounselor*. Retrieved from <https://www.schoolcounselor.org/magazine/blogs/november-december-2007/solutions-to-ethical-problems-in-schools>

● REFERENCES

- American Association for Marriage and Family Therapy. (2015). *Code of ethics*. Retrieved from https://www.aamft.org/iMIS15/AAMFT/Content/Legal_Ethics/Code_of_Ethics.aspx
- American Counseling Association. (2012). Ethics committee summary—FY 11. Retrieved from <http://counseling.or/Resources/CodeOFEthics/TP/Home/CT2.aspz>
- American Counseling Association. (2014). *Code of ethics*. Retrieved from <http://www.counseling.org/resources/aca-code-of-ethics.pdf>
- American Psychological Association. (2010). *Ethical principles of psychologists and code of conduct*. Retrieved from: <http://www.apa.org/ethics/code/principles.pdf>

- Anderson, S. K., & Kitchener, K. S. (1998). Nonsexual post-therapy relationships: A conceptual framework to assess ethical risks. *Professional Psychology: Research and Practice, 29*, 91-99.
- Council on Social Work Education. (2008). Education policy and accreditation standards (EPAS). Retrieved from <http://www.cswe.org/NR/rdonlyres/2A81732E-1776-4175-AC42->
- Forester-Miller, H., & Davis, T. (1996). *A practitioner's guide to ethical decision making*. American Counseling Association. Retrieved from <http://www.counseling.org/counselors/practitionersguide.aspx>
- Johnson, C. E. (2012). *Organizational ethics: A practical approach* (2nd ed.). Thousand Oaks, CA: Sage.
- Jordan, A. E., & Meara, N. M. (1990). Ethics and the professional practice of psychologists: The role of virtues and principles. *Professional Psychology: Research and Practice, 21*, 107-114.
- Jordan, A. E., & Meara, N. M. (1995). Ethics and the professional practice of psychologists: The role of virtues and principles. In D. N. Bersoff (Eds.), *Ethical conflicts in psychology* (pp. 135-141). Washington, DC: American Psychological Association.
- Kitchener, K. S. (1984). Intuition, critical evaluation, and ethical principles: The foundation for ethical decisions in counseling psychology. *The Counseling Psychologist, 12*, 43-55.
- Kocet, M. (2006). Ethical challenges in a complex world: Highlights of the 2005 *ACA Code of Ethics*. *Journal of Counseling & Development, 84*(2), 228-234.
- Pope, K. S., Tabachnick, B. G., & Keith-Spiegel, P. (1987). Ethics of practice: The beliefs and behaviors of psychologists as therapists. *American Psychologist, 42*(11), 993-1006.
- Sheperis D. S., Henning, S. L., & Kocet, M. M. (2016). *Ethical decision making for the 21st century counselor*. Thousand Oaks, CA: Sage.
- Shiles, M. (2009). Discriminatory referrals: Uncovering a potential ethical dilemma facing practitioners. *Ethics & Behavior, 19*(2), 142-155.
- Tarvydas, V. M. (2012). Ethics and ethics decision making. In D. R. Maki & V. M. Tarvydas (Eds.), *The professional practice of rehabilitation counseling* (pp. 339-370). New York, NY: Springer.
- Urofsky, R. E., Engels, D. W., & Engebretson, K. (2008). Kitchener's principle ethics: Implications for counseling practice and research. *Counseling and Values, 53*(1), 67-78.
- Welfel, E. R. (2010). *Ethics in counseling and psychotherapy: Standards, research and emerging issues* (4th ed.). Pacific Grove, CA: Brooks/Cole.
- Zur, O. (2007). *Boundaries in psychotherapy: Ethical and clinical explorations*. Washington, DC: APA.

Draft Proof - Do not copy, post, or distribute