

# When Laws and Ethics Collide: What Should Psychologists Do?

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At times the laws under which psychologists function may appear to contradict generally recognized ethical values and/or good clinical care. When these circumstances arise, psychologists must determine if a conflict really exists and, if so, seek solutions that reconcile respect for the law with their ethical values. At times, psychologists may decide to follow the law despite their ethical concerns. At other times, they may determine that a conscientious objection is warranted. The authors recommend options to consider when these situations arise and offer a decision-making process.

*Keywords:* laws, virtue ethics, principle-based ethics, ethical decision making

Laws governing psychologists come from a variety of sources such as court decisions, federal and state statutes (including psychology licensing laws and regulations), and the enforceable standards of the American Psychological Association's "Ethical Principles of Psychologists and Code of Conduct" (American Psychological Association, 2002; hereinafter referred to as the Ethics Code) if they are adopted by state psychology licensing boards. For the most part, the laws regulating the practice of psychology are consistent with generally recognized ethical values. For example, almost every ethical psychologist would agree that, among other things, psychologists should (a) not have sex with patients, (b) keep information about patients confidential (except in a few unusual circumstances), (c) be competent when delivering services, and (d) refrain from insurance fraud. When Knapp and VandeCreek (2004) examined the Ethics Code from the

standpoint of principle-based ethics, they found that almost all of its enforceable standards could be justified from the perspective of overarching ethical principles.

The consistency between ethical and legal requirements generally allows practitioners to adhere to both without disruption of their daily functioning. Nevertheless, circumstances may arise in which a law (broadly defined to include state and federal laws and regulations, binding case law, administrative rules, or court orders) may require psychologists to do something that could harm patients, limit patient autonomy, and/or otherwise offend the personal and professional ethical values of most psychologists (Knapp & VandeCreek, 2006). When such conflicts arise, psychologists need to engage in an ethical decision-making process to evaluate the alternatives available to them and determine the best possible (or least harmful) course of action.

If a conflict arises between a specific law and an enforceable standard of the Ethics Code, Standard 1.02 provides the following guidance:

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.

Nevertheless, Pope and Bajt (1988) surveyed senior-level psychologists, including those knowledgeable about ethics, and found that 57% of the respondents acknowledged intentionally breaking a law or a formal ethical standard at least once "in light of client welfare or another deeper value" (p. 828). Of the 34 instances reported, 7 involved the refusal to report child abuse, 7 entailed illegally divulging confidential information, 3 involved having sex with a patient, 2 concerned unspecified dual relationships, 2 involved refusing to fulfill a legal mandate to warn about a dangerous patient, and the remainder fell into no clear category. When these situations arise, they may cause *moral distress* or "a situation where one is constrained from acting on a moral choice" (Austin,

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Rankel, Kagan, Bergum, & Lerner, 2005, p. 199). These findings demonstrate that the guidance provided in Standard 1.02 is not sufficient in many cases and that ethical decision making is seldom as simple as we would like it to be.

Furthermore, when some legal requirements arise, the Ethics Code may be silent or ambiguous regarding how psychologists should proceed. In these cases, psychologists turn to a variety of additional resources for assistance in their decision making. One resource that is seldom mentioned is that of one's personal values. As Handelsman, Knapp, and Gottlieb (2002) have noted, psychologists can think of ethics not only in terms of the ethical "floor," or the enforceable minimal standards of the profession, but also in terms of how they can practice to the best of their ability and in a manner consistent with their own ethical values and highest ethical aspirations.

The purpose of this article is to show how psychologists' personal values can be of assistance in addressing some of these vexing situations. In this article, we offer a decision-making process for psychologists facing conflicts between the law and their personal ethical values.

### A Decision-Making Process

Consider the following clinical situation:

*Example 1.* A psychologist in solo practice who was compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) terminated a patient for nonadherence with treatment. Shortly after treatment terminated, the patient made harassing and threatening phone calls to the psychologist. The psychologist refused to respond to these phone calls, believing that doing so would harm the patient by reinforcing her preoccupation with him. Later, citing HIPAA requirements, the patient demanded a face-to-face meeting with the privacy officer (who was the psychologist himself).

In this situation, the law appears to demand so much respect for the patient's autonomy that it might violate the ethical principle of nonmaleficence (seeking to avoid harming patients) and the virtues of compassion and prudence. The psychologist feared that meeting with the patient, regardless of the reason, would only enhance her preoccupation with him and make it more difficult for her to accept a referral to another practitioner.

The APA Ethics Code states, "If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard" (p. 1062). In addition, Standard 1.02 instructs us to "adhere to the requirements of the law, regulations, or other governing legal authority." Thus, psychologists who follow the law will not be subject to disciplinary action by the APA Ethics Committee as long as they have taken steps to resolve the law-ethics conflict responsibly. Although this guidance is somewhat helpful, it does not absolve psychologists of the need to choose whether to violate their ethical values and follow the law or to violate the law to uphold their values.

Using this example as well as others below, we offer a decision-making process for psychologists who may find themselves in a conflict between the law and their personal system of values (see summary in Table 1). First, psychologists should ensure that they understand what the law requires of them. Sometimes psychologists misunderstand or misconstrue their legal requirements and assume a conflict between the law and ethical values when, in fact, no such conflict exists. Second, psychologists should ascertain if they understand their ethical obligations correctly. Third, if a genuine conflict is found to exist, psychologists can seek creative ways to satisfy both their legal and ethical obligations. Fourth, if the conflict between the law and ethics is real and cannot be avoided, psychologists should either obey the law in a manner that minimizes harm to their ethical values or adhere to their ethical values in a manner that minimizes the violation of the law. In either situation, psychologists should anticipate and be prepared to live with the consequences of their decisions. Finally, psycholo-

Table 1  
*Considerations to Address*

Question	Action to reflect upon
1. What does the law require?	1. Consultation or research may be needed.
2. What are your ethical obligations? Will the standards of the APA Ethics Code inform you of your obligations? If not, how can you use your personal values to frame your response?	2. You may need to explore your underlying values (e.g., gain clarity about the overarching virtues that you want to characterize your professional and personal life). This is often best done in the context of a supportive, yet honest consulting relationship.
3. How can you reconcile the demands of the law and your ethical concerns?	3. Search for ways to meet both your legal and ethical obligations.
4. Should you follow the law or your ethical values? How do you balance your legal obligations with the consequences to the patient or other interested parties?	4. If the law is followed, seek ways to minimize infringement of the ethical values; if ethical values are followed, seek ways to minimize the infringement of the spirit or letter of the law.
5. Can you anticipate conflicts and take preventive measures?	5. Anticipate and appreciate the ethical nuances and complications of your work (e.g., use practical wisdom). Emphasizing informed consent often helps circumvent or reduce law-ethics conflicts.

gists can avoid or mitigate many of these ethical conflicts by anticipating potential conflicts between laws and ethics and taking proactive measures. Examples of proactive or preventive measures are described below.

### *What Does the Law Require?*

In Example 1, the psychologist determined that it was clinically contraindicated to intermittently reinforce the patient by allowing her to meet with him under the pretense that she was meeting with the privacy officer. Doing so might violate the ethical principle of nonmaleficence, as well as Standard 3.04 (Avoiding Harm) and Standard 1.02 (Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority). Thus, the psychologist was left with an apparent conflict between ethics and the law. However, Example 1 does not represent an actual conflict between ethics and the law. The HIPAA Privacy Rule does not require privacy officers to meet face-to-face with complainants, although the privacy officer has to review the complaint (45 C.F.R. 164.524; U.S. Department of Health and Human Services, 2002). The psychologist does have to communicate to the patient, but it does not have to be a face-to-face meeting.

Also, consider the following:

*Example 2.* A patient states that he feels strong urges to harm a third party with whom he had a fight the week before over a former girlfriend. The treating psychologist, who works in a state that has a duty-to-protect law, believes that notifying the threatened third party would precipitate the very violence that the psychologist wants to prevent.

Here is another case in which the relevant standard of the Ethics Code (Standard 4.05b) does not provide clear direction in that it permits disclosures if mandated by law but fails to provide guidance for an extenuating ethical circumstance such as that seen in Example 2. Thus, a response to this situation requires a thorough knowledge of the relevant state law and illustrates the need for legal consultation. Standards regarding the duty to warn or protect vary from state to state. In some states, psychologists must warn whenever a patient presents an imminent danger to identifiable third parties. In other states, psychologists have more flexibility and may take protective actions to prevent harm to third parties that may include actions other than warning the intended third party.

The issuance of a verbal threat by a patient may or may not, depending on the totality of the circumstances, context, and clinical features, indicate imminent danger. Psychologists who are aware of the clinical literature on assessing risk of violence are better able to determine whether the threshold for immediate harm has been reached. Even if the threshold is reached, competent psychologists can often use clinical interventions other than warning intended victims (hospitalizations, partial hospitalization, referral for medication, increased frequency of outpatient sessions, family therapy, between-session phone contacts, etc.) to diffuse the immediate danger. From the information given in Example 2, it is not clear if the psychologist has a legal duty to warn. Consequently, the treatment might proceed on the basis of clinical considerations and appropriate safeguards without a clinically and ethically questionable warning.

### *Discerning Ethical and Clinical Obligations*

Sometimes self-interest, prejudice, ignorance, personal distress, or other factors can cause psychologists to misconstrue the application of their ethical values or simply to act unethically. In the study by Pope and Bajt (1988), for example, is a description of three psychologists who believed that the prohibition against having sex with their patients conflicted with their ethical obligations. It is unlikely that an objective third party would have reached such a conclusion, given that sexual relationships typically harm patients and degrade the profession. In other less obvious and more common situations, it is possible that other psychologists can have their perception of their ethical obligations clouded by a number of extraneous factors. Such situations require “moral perceptions” (Fowers, 2005, p. 117), or the ability to separate the critical ethical issue in a situation from extraneous factors such as personal satisfaction or anxiety reduction. Consequently, whenever psychologists believe that a law requires them to violate an ethical value, they are wise to seek consultation as to whether they are, in fact, construing the clinical situation, the law, and their ethical values accurately.

In other situations in which psychologists act unethically, they might be motivated by overidentification with the patient’s suffering, a failure to appreciate the total ethical impact of their decisions, or unwise compassion (when their desire to be helpful becomes a personal need that leads them to clinically contraindicated interventions). For example, a psychologist motivated by a desire to assist a member of a historically disenfranchised group might, in an effort to be helpful, act in a disempowering and paternalistic manner (Gottlieb & Tjeltveit, 2006). Or psychologists could become too emotionally involved with patients and fail to maintain appropriate therapeutic distance and perspective, thus compromising their therapeutic effectiveness.

### *Taking Steps to Avoid Conflicts*

At times there may only appear to be a conflict between the demands of the law and the enforceable standards of the APA Ethics Code or the personal values of a psychologist. Consider this example:

*Example 3.* A psychologist was treating a man who, among other problems, was accused of assaulting his wife. In one session that the wife attended as a collateral contact, the husband acknowledged that he had struck her. Months later the psychologist received a court order stating that she was to appear in court to testify that the husband admitted to striking his wife. The husband did not want the psychologist to testify.

This example deals with privileged communications laws that can be complex and vary from jurisdiction to jurisdiction. It is not our intent to review the complexities of these laws but only to illustrate where the law, in the form of a court order, appears to require the psychologist to do something contrary to her promise of confidentiality and good public policy. That is, testifying would limit the willingness of this patient to be honest in his communications with future psychotherapists, and other patients or prospective patients who learn of this breach of confidentiality may be reluctant to seek treatment or if they did seek treatment, might not be forthcoming about their concerns. Although the psychologist

appreciated the wife's desire to seek a judicial remedy, she was concerned that confidentiality was being threatened. In this case the psychologist went to court and followed the course of action required in Standard 1.02 (attempting to resolve conflicts between the law and the Ethics Code). After she respectfully explained her dilemma, the judge excused her from testifying.

#### *When the Conflict Between Law and Ethics Cannot Be Avoided*

As with many situations, the response of the psychologist in Example 4 below cannot be determined by relying only on the Ethics Code, which permits disclosure without patient consent if mandated by state law (Standard 4.05b). The psychologist was forced to consult with other sources of moral and ethical guidance (beyond the Ethics Code) if she wanted to act in an ethically praiseworthy manner toward her client and with future psychotherapy patients in mind.

*Example 4.* A seriously depressed adolescent patient confided to a psychologist that she thought, but was not certain, that her father had sexually abused her. The psychologist lived in a state that mandated the report of all sexual abuse by a parent against any child under the age of 18. However, the patient stated that she would kill herself if the psychologist reported this to the local child protective services agency. The psychologist had contact with the agency in the past and lacked confidence in its ability to handle the situation with adequate sensitivity to the emotional needs of the child. The patient had not seen her father for many years, and there was no foreseeable likelihood that she would have any future contact with him.

In Example 4, the child presented information that may, upon further inquiry, cause a reasonable psychologist to suspect abuse. If the psychologist did suspect abuse, according to the laws in many states, she would be required to report it. However, the psychologist believed that reporting the abuse would precipitate the suicide that she was trying to prevent. Although the Ethics Code assures the psychologist that she would not be found in violation of the Ethics Code for following the law, this conscientious psychologist wanted to choose the best way to act, consistent with her overall virtuous aims of helping the client stay alive and live well.

The initial reaction of many psychologists may be to engage in dichotomous thinking and to consider either one option (reporting) or another (not reporting), weigh the benefits and risks of each, and decide which one to follow. Nonetheless, it may be prudent to consider a series of sequential steps before deciding how to respond. The first step is for psychologists to consult with knowledgeable colleagues who can provide them with useful information, encourage them to think through the issues (e.g., including ways the psychologists can advance virtuous aims), and challenge their clinical, legal, and ethical assumptions, if necessary. As noted above, sometimes conflicts are more apparent than real and psychologists may have more flexibility in responding than they originally thought, or they may have misinterpreted the ethical issues or legal requirements involved.

In Example 4, the psychologist needed to assess carefully whether the information she was given was sufficient for a rea-

sonable psychologist to suspect abuse or whether more information was needed. Sometimes in cases of abuse it can be difficult to determine whether the requisite threshold of certainty has been reached. The legal standard for reporting in her state ("reason to suspect") is a vague and poorly defined state of mind that exists somewhere between a passing thought and certainty (Levi & Loeben, 2004). Also, creative clinical solutions can often allow psychologists to meet both their legal and ethical obligations. For example, the psychologist first needed to ensure that the threat was not a manipulation motivated by a secondary gain. Assuming the threat was genuine, the psychologist might bring the mother or another trusted relative into the therapy to obtain more information. Additional clinical information from other sources may clarify the extent of the danger of self-harm, make more clear the likelihood that the abuse occurred, or suggest additional options for dealing constructively with the apparent conflict.

If no viable clinical solution emerges, psychologists must determine how to resolve the conflict between providing optimal care and the duty to report on the basis of their individual value systems. The decision-making process of principle-based ethics provides one way to balance the demands of a particular situation. Beauchamp and Childress (2001) would allow the trumping of one moral value over another after a thorough assessment of the dilemma. But doing so requires that the infringement is the least possible, that it is consistent with achieving the primary goal, and that efforts are made to minimize the negative impact of the infringement. The same process might be used when one is considering disobeying a law. The disobedience should be the least possible, consistent with the primary goal, and done with efforts made to limit the negative effects of the infringement. That is, the disobedience to the law should be restricted only to that portion that violates the ethical standards of the psychologist.

The perspective of virtue ethics provides another way for psychologists to address this conundrum. Psychologists relying on virtue ethics would identify the virtues most relevant to this situation (e.g., kindness, fairness, responsibility, trustworthiness, honesty), deliberate or know what actions would be most likely to reach the desired goal (e.g., help the patient live, heal, and eventually flourish), and respond in a manner that a virtuous or morally outstanding person would, given this situation (e.g., rely on collateral sources of information and consult with ethically outstanding colleagues).

*If the decision is made not to obey the law.* Civil disobedience has a long history, dating from Sophocles (440 BCE/2006), in whose play, *Antigone*, the heroine (Antigone) defies the orders of the tyrant Creon and openly performs a burial ceremony for her brother, Polyneices, even though it means her death. Proponents of civil disobedience may disagree on particulars, but most would agree with Woolman (1772/1971), Gandhi (Fisher, 1983), King (1958), and others that individuals should obey the laws except only under very limited circumstances to comply with a higher value and be willing to accept whatever punishments may occur.

When psychologists are considering disobeying a law, we recommend that they follow the sequential steps enumerated above: (a) Seek consultation to ensure that the law requires them to do what they believe it requires, (b) make certain that they understand their ethical obligations clearly, (c) consider alternatives that would allow them to follow the law while still upholding their values, and (d) contemplate violating a law only if no viable

alternative is available. If a decision is made to disobey the law, the psychologist must ask, "If I disobey the law, how can I limit my disobedience to the minimum necessary to fulfill my higher goal?" Or, "How should I act to support or advance the most relevant virtue?" For example, if clinically and ethically indicated, the psychologist may continue treatment with the possibly abused girl until her mental state improves and then involve her in the decision to make a report. Psychologists should document the reasons why they chose the action they did. If there is a disciplinary hearing, the documentation of the circumstances may lead the disciplinary body to mitigate the punishment.

*If the decision is made to obey the law.* If the decision is made to obey the law, the psychologist needs to ask, "How can I minimize the harm to the offended ethical values?" For example, the psychologist can act to minimize the negative impact of the decision by including the patient in the process as much as possible. The psychologist might inform the patient of the legal obligation and give her the opportunity to have input into the manner in which the disclosure is made. Or the psychologist could ask the child protective services agency to interview the girl in her office with the mother present, if that is what the girl prefers.

### *Anticipate Conflicts*

*Example 5.* A mother of a patient wants a copy of her child's test results. The background information from social service agencies is accurate and relevant to the needs of the child but might create great distress for the mother if she sees it. The psychologist is a covered entity under HIPAA and, accordingly, her patients (or their legal representatives) are permitted copies of their psychological test reports except in limited circumstances that do not apply here.

Psychologists can avoid many disputes between law and ethics by anticipating potential conflicts. In Example 5 the psychologist feels torn between her duty to provide accurate information and avoid disclosing information that could cause pain or embarrassment to the parent. According to the HIPAA Privacy Rule, the results of psychological tests are not considered "psychotherapy notes" and therefore may be seen by the patient or the patient's legal representative except in narrow circumstances such as when there is domestic abuse and, in the opinion of the treating psychologist, it would be harmful to the child (45 CFR 164.524 [3]; U.S. Department of Health and Human Services, 2002).

Assuming that the limited exceptions enumerated in the HIPAA Privacy Rule do not apply, psychologists can minimize the likelihood of this conflict occurring by maximizing parental involvement in the assessment process as early as possible. Some psychologists, such as Brenner (2003) and Fischer (2004), conceive of psychological assessment as a cooperative or collaborative process that seeks to increase the patient's or parent's role in the assessment process, including developing the referral questions, selecting the tests, and writing the report. The psychologist could inform the agency of her policy of involving the parent in all aspects of the report, including viewing a near-final draft. Such a procedure could be described during the psychologist's informed-consent process.

In cooperative or collaborative assessments, concerns about the parent or family functioning can be brought up early in the assess-

ment process. Although discussion of these frank concerns may be uncomfortable, it may be better for the parent to hear them early in the process rather than to read about them later in a report. In addition, the open discussion of these issues may be therapeutic for the patient or parent, and it may help the psychologist better understand the life circumstances and perspectives of the patient's family.

If this process had been followed in Example 5, the parent would have had input into the phrasing used in the history or background section of the report. Although there is no guarantee that the process would avoid angering the parent, the likelihood of an extreme reaction would be reduced, and the parent would not have felt blindsided or betrayed by the content of the final report.

Even when no good alternative can be found, it may be possible to mitigate the consequences of the law by anticipating the conflict. Gottlieb (1997) urged "each practitioner [to] investigate the ethical dilemmas that commonly occur in his or her practice area and create an individualized ethics policy to address them" (p. 266). This recommendation is especially helpful regarding those dilemmas that are not explicitly addressed by the Ethics Code. Virtuous psychologists who demonstrate practical wisdom will cultivate a habit of deliberating about the salient ethical issues that they are likely to encounter, anticipate them, and develop policies to proactively address them.

In Example 4, dealing with suspected child abuse, the virtuous psychologist might have been able to minimize the conflict by being especially explicit with the patient at the start of psychotherapy concerning her obligation to report suspected child abuse and explaining what that means. This process entails more than just having the patient or parent sign the HIPAA privacy notice or providing a cursory description of the exceptions to confidentiality. Rather, it would mean explaining the common exceptions to confidentiality, giving the patient (or parent) an opportunity to ask questions, and revisiting the issues throughout the course of treatment as needed. In this way, the patient would have known the consequences of such a disclosure and could have made a better decision about what information to reveal.

### Summary and Conclusions

Fortunately, the laws governing the practice of psychology are, for the most part, based on readily justifiable ethical values. At times, however, psychologists may perceive a conflict between the law and their personal ethical values, especially in situations in which the standards of the Ethics Code do not provide explicit direction. Psychologists need to verify what the law requires and determine the nature of their ethical obligations. Often apparent conflicts between the law and ethics can be avoided if psychologists anticipate problems ahead of time or engage in integrative problem solving. At times, however, psychologists may need to choose between following the law and protecting the welfare of their patients or an ethical value. We suggest careful practical wisdom or deliberation when such decisions are made.

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### Allan G. Barclay (1930–2006)

We regret to inform our readers that Allan G. Barclay, a former editor (1977–1982) of *Professional Psychology: Research and Practice*, died on February 6, 2006. In addition to his editorial role, Barclay served in the governance of the American Psychological Association and several divisions. He received his doctorate in 1960 from Washington University in St. Louis. As a professor of psychology at Wright State University and at Saint Louis University, he was an active researcher publishing on a range of topics, including mental retardation and disabilities, measurement and assessment, psychopharmacology, and professional issues. Barclay was a fellow of the American Psychological Association and was board certified in clinical psychology through the American Board of Professional Psychology. In 1995, he received the Society of Clinical Psychology's Distinguished Award for Contributions to the Profession of Clinical Psychology. The Barclay Award was established at Saint Louis University to recognize students for excellence in clinical psychology. Barclay contributed significantly to the development of professional psychology and to this journal.