

THE ETHICS CODE INTRODUCTION AND PREAMBLE, AND RELATIONSHIP TO ENFORCEMENT AND LAW

How Is the Ethics Code Applied?

Psychologists are committed to increasing scientific and professional knowledge of behavior and people's understanding of themselves and others and to the use of such knowledge to improve the condition of individuals, organizations, and society. Psychologists respect and protect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching, and publication. They strive to help the public in developing informed judgments and choices concerning human behavior.

—Ethical Principles of Psychologists
and Code of Conduct (APA, 2017a)

The APA Ethical Principles of Psychologists and Code of Conduct (APA, 2017a) begins with the Introduction and Applicability section followed by the Preamble and a set of five General Principles that reflect the underlying values and ideals of the discipline. The remainder of the code is composed of 151 enforceable standards that describe required, prohibited, and permitted behaviors. This chapter highlights the implications for ethical conduct and enforcement of the Ethics Code Introduction and Applicability section and the Preamble.

UNDERSTANDING THE INTRODUCTION AND APPLICABILITY SECTION AND THE PREAMBLE

To Whom Does the Ethics Code Apply?

Membership in the APA commits members and student affiliates to comply with the standards of the Ethics Code. Many psychology programs adopt the Ethics Code into their faculty and student policies, and throughout the United States portions of the Ethics Code are integrated into state laws, rules, and regulations governing the licensed practice of psychology.

To What Does the Ethics Code Apply?

The answer to this question is all activities, all persons, all settings, and all communication contexts that are conducted, encountered, or used in one's role as a psychologist.

- *Activities* include, but are not limited to, clinical, counseling, and school practice; research; teaching and supervision; public service and policy development; program design, implementation, and evaluation; construction, administration, and interpretation of assessment instruments; organizational consulting; forensic activities; and administration.
- *Persons* include individual clients/patients, research participants, and students; children and adults of all ages; individuals with or without mental disorders; individuals with disabilities; persons of diverse cultural and language backgrounds and different sexual orientations; individuals within families, groups, and organizations; medical and social service providers; attorneys; and other professionals.
- *Settings* include military bases, schools, research laboratories, universities, private or group practice offices, business organizations, hospitals, integrated care systems and patient-centered medical homes, managed care companies, the courts, private and public social services programs, government agencies, and public spaces where research or intervention is carried out.
- *Communication contexts* include research, consultation, and the delivery of services in person or via post, telephone, fax, internet, mobile phone, television, radio, and other electronic transmissions.

Psychologists should be aware that the Introduction and Applicability section clearly states that lack of awareness or misunderstanding of any part of the Ethics Code is not itself a defense to a charge of unethical conduct.

Professional Versus Personal Activities

The Ethics Code applies only to psychologists' activities that are part of their scientific, educational, professional, or consulting roles. The Code does not apply to the purely private conduct of psychologists, although the APA may take action against a member after their conviction for a felony, whether or not it directly resulted from activities performed in the member's role as a psychologist.

In some situations, distinctions between professional and personal activities may appear ambiguous. For example, if psychology professors have personal web pages that includes racist comments, will these comments be relevant to their professional role if some of their students have access to this page? If a counseling psychologist criticizes the professionalism of a school psychologist during a parent meeting at their children's school, will other parents perceive their statements as at least partially professional? Pipes et al. (2005) suggested the following criteria to help psychologists determine when their personal actions overlap their role as a psychologist and thus are subject to the Ethics Code:

- Is the behavior linked to a role played by psychologists?
- Does the behavior, on its face, seem at least partially professional?
- Is there a high probability that those with whom the psychologist works will be affected?
- Does the action threaten the professional credibility of the psychologist or the discipline of psychology?

Professional Versus Personal Values

Actions that are contrary to the Ethics Code principles and standards can arise when psychologists apply values that may be virtuous in personal relationships to professional contexts in which the same values may be harmful (Knapp et al., 2013). For example, the personal values of family caring and connectedness may lead a clinical child psychologist to believe it ethically appropriate to agree to a request from their brother to help set up a behavioral management program for his daughter (the psychologist's niece) who has been diagnosed with pervasive developmental disorder. An understanding of professional values would alert the psychologist to the potential harm of adding a professional relationship to their close personal relationship with their brother and his family and lead to the more ethical decision to provide an appropriate referral (Principle B, Fidelity and Responsibility; Standard 3.04, Avoiding Harm; Standard 3.05, Multiple Relationships).

At the same time, displacing a set of personal values with mechanical and narrow interpretations of specific ethical standards and laws can lead to thoughtless or unethical responses in the context of the complex moral issues encountered by psychologists across the full spectrum of role responsibilities. For example, a research psychologist specializing in ethnographic studies of youth gangs who has just learned from a participant about the planned murder of another youth might apply a strict interpretation of Standard 4.01, Maintaining Confidentiality, to dictate a decision not to alert the youth or law enforcement rather than the more nuanced moral evaluation called for by Principle A, Beneficence and Nonmaleficence and Standard 4.05, Disclosures.

To best ensure psychologists appropriately balance professional and personal values, Handlesman and colleagues (Anderson & Handelsman, 2010, 2013; Handelsman et al., 2005) recommended that training in the discipline of psychology must help students integrate new professional and scientific values with their preexisting moral values in ways that promote the adoption and internalization of the unique ethical responsibilities and social roles expected of psychologists. This issue is further addressed in the discussion of aspirational principles and the treatment of virtues in Chapter 3.

NEED TO KNOW

Is there a Distinction Between Personal and Private Political Acts?

The Introduction and Applicability section of the Ethics Code clearly states that requirements apply only to psychologists' activities that are part of their scientific, educational, professional, or consulting roles and not to the purely

private conduct of psychologists. However, the extent to which political advocacy is a personal or professional activity continues to be debated. For example, as described in greater detail in Chapter 3, the General Principles call for

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psychologists to be alert to and guard against political factors that might lead to misuse of their influence (Principle A, Beneficence and Nonmaleficence), to be aware of their professional and scientific responsibilities to society (Principle B, Fidelity and Responsibility), and to take precautions to ensure their actions do not lead to unjust practices (Principles D, Justice, and E, Respect for People's Rights and Dignity).

In addition to lobbying for support of its members' professional and scientific activities, APA has organized support for criminal justice reform, women's reproductive rights, the rights of sexual and gender minorities, antiracist and other social justice reforms. As a result, some have argued that political actions taken by psychologists, regardless of their personal or public nature, and including political actions supporting

or criticizing policies or political parties, are bound by the Ethics Code General Principles (Allen & Dodd, 2018). At the same time, support of political action can lead to a conflict between psychologists' obligation to protect the welfare and respect the autonomy rights of those with whom they work. For example, advocacy for laws that support mandatory wearing of masks to protect public health during disease or other pandemics can lead to legal sanctions against those who choose not to or are unable to comply with the law. Thus, some have argued that political activity in support of laws aimed at promoting social justice and health equity may nonetheless limit the voluntary decisions of and lead to unequal outcomes for individuals or organization that psychologists serve and thus may not be "purely private conduct" (Allen & Dodd, 2018, p. 44).

WHAT IS THE RELEVANCE OF SPECIFIC LANGUAGE USED IN THE ETHICS CODE?

To fulfill the Ethics Code's professional, educational, public, and enforcement goals, the language of the Ethics Code needs (a) to have the clarity necessary to provide adequate notice of behaviors that would be considered code violations, (b) to be applicable across many multifaceted roles and responsibilities of psychologists, and (c) to enhance and not impede good scientific and professional practice. The language of the Ethics Code must be specific enough to provide guidance yet general enough to allow for critical thinking and professional judgment.

This section includes some general guidance for interpreting the language of the Ethics Code. The implications of specific terminology for specific standards are addressed in greater detail in relevant chapters.

Due Notice

Adjudicatory decisions based on an ethics code remain vulnerable to overturn on appeal if defendants can argue they had no forewarning that specific behaviors were ethical violations (Bersoff, 1994). For example, language in enforceable standards requiring psychologists to be "alert to," "to guard against," or "to respect" certain factors is problematic because the behaviors expected by these terms remain undefined and are thus vulnerable to subjective interpretation by psychologists, consumers, and ethics committees. Accordingly, the language of the enforceable standards in the Ethics Code was crafted to describe the behaviors that are required and those that are proscribed in a manner that readers would reasonably understand.

Applicability Across Diverse Roles and Contexts

Psychologists teach, conduct research, provide therapy, administer and interpret psychological tests, consult to business, provide legal testimony, evaluate school programs, serve in public service sectors and the military, and take on a multitude of scientific and professional roles. An enforceable ethics code for psychologists must therefore be worded broadly enough to ensure that (a) standards apply across a broad range of activities in which psychologists are engaged; (b) role-specific standards are clearly presented as such; and (c) standards do not compromise scientific, practice, or consulting activities through inattention to or inconsistencies with the constantly changing realities of professional and legal responsibilities.

This requirement, viewed alongside the need for language providing due notice, means that some standards reflecting generally accepted ethical values in one work area were not included in the current Ethics Code because they could not be worded in such a way as to prevent undue burden on psychologists working in another area. For example, the Ethics Code Task Force (ECTF) struggled with appropriate wording for a general “honesty” standard within the Human Relations section that would reflect the aspirational principle of integrity (Fisher, 2003a). However, such a general standard was abandoned because it risked prohibiting practices, such as paradoxical therapy and deception research, debates about which have not yet been settled. The principle of integrity is reflected in more circumscribed standards, including Standards 5.01, Avoidance of False or Deceptive Statements; 5.02, Statements by Others; 6.06, Accuracy in Reports to Payors and Funding Sources; and 8.10, Reporting Research Results. For additional discussion of this issue, readers may wish to refer to the Hot Topic “Avoiding False and Deceptive Statements in Scientific and Clinical Expert Testimony” (Chapter 9).

NEED TO KNOW

The Use of Modifiers

A modifier is a word or phrase that qualifies the meaning of an ethical rule. Modifiers in the Ethics Code include terms such as *appropriate*, *potentially*, *to the extent feasible*, and *attempt to*. An explanation of the use of modifiers is provided in the Introduction and Applicability section of the Code. The use of modifiers is necessary in standards that are written broadly to allow for professional judgment across a wide range of psychological activities and contexts. For example, the term *feasible* in a standard permits psychologists to evaluate whether factors within the

specific context in which they are working justify delaying or not implementing behaviors required by a particular standard. Modifiers are also used to eliminate injustice or inequality that would occur without the modifier. For example, a modifier such as *appropriate* signals that the behaviors required to comply with a standard can vary with the psychological characteristics of the persons involved, psychologists' roles, or specific situational demands. A modifier such as the term *relevant* is used in standards to guard against language that would create a rigid rule that

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would be quickly outdated. Below are three examples of the use of modifiers:

- Standard 10.01a, Informed Consent to Therapy, requires psychologists to obtain informed consent from clients/patients as early as is feasible in the therapeutic relationship. The phrase *as early as is feasible* provides decisional latitude when fully informed consent during an initial therapy session may not be possible or clinically appropriate. A client/patient may be experiencing acute distress that requires immediate psychological intervention and for which informed consent procedures may be clinically contraindicated. As another example, psychologists may need to wait for feedback from a client's/patient's health insurer before consent discussions regarding fees can be completed.
- Standard 3.10b, Informed Consent, requires that for persons who are legally incapable of giving informed consent, psychologists "provide an appropriate explanation." The term *appropriate* indicates that the nature of the explanation will vary depending on, among other factors, the person's developmental level, cognitive capacities, mental status, and language preferences and proficiencies.
- Under Standard 2.01c, Boundaries of Competence, psychologists planning to engage in activities new to them must undertake relevant education, training, supervised experience, consultation, or study. By including the term *relevant*, this standard can continue to be applied to new roles, new techniques, and new technologies as they emerge over time.

What Is "Reasonable"?

In the Introduction and Applicability section, the term *reasonable* is defined as the "prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time." The use of this term serves two functions. It prohibits psychologists from exercising idiosyncratic ethical judgments inconsistent with the prevailing values and behaviors of members of the profession. In doing so, it provides other psychologists and recipients of psychological services, students, and research participants a professional standard against which to judge psychologists' ethical behaviors. At the same time, by requiring that criteria for compliance or violation of an ethical standard be judged against the prevailing practices of peers, the use of the term *reasonable* guards against unrealistic or unfair expectations of responsible conduct. The wording enables psychologists to launch a legitimate defense of their actions based on current best practices in the field and documentation of efforts to resolve problems in an ethical manner. The examples that follow illustrate these two applications of the term *reasonable*:

- Standard 4.07, Use of Confidential Information for Didactic or Other Purposes, prohibits psychologists from disclosing in public statements confidential and personally identifiable information about those with whom they work unless they have taken "reasonable steps to

disguise the person or organization.” The term *reasonable* recognizes that despite steps to protect confidentiality that would be considered ethically acceptable by other psychologists (i.e., the use of pseudonyms; disguising gender, ethnicity, age, setting, and business products), persons to whom the statements refer may recognize (or erroneously attribute the description to) themselves, or others may be privy to information not under the psychologist’s control that leads to identification.

- Standard 2.05, Delegation of Work to Others, requires that psychologists who delegate work to employees, supervisees, research or teaching assistants, interpreters, or others “take reasonable steps to authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided.” In this case, a psychologist who asked a secretary who spoke the same language as a client/patient to serve as an interpreter during an assessment would not have taken steps considered *reasonable* in the prevailing view of the profession. In contrast, a psychologist who hired an interpreter based on an impressive set of credentials in mental health evaluation would not be in violation if the interpreter had fabricated the credentials.

“Client/Patient” and “Organizational Client”

Throughout the Ethics Code, the combined term *client/patient* refers to individual persons to whom a psychologist is providing treatment, intervention, or assessment services. The term *organizational clients, organizations, or clients* refers to organizations, representatives of organizations, or other individuals for whom the psychologist is providing consultation, organization or personnel evaluations, test development, research, forensic expertise, or other services that do not involve a treatment, intervention, or diagnostic professional relationship with the person to whom services are provided. For example, a bank hired a psychologist to provide counseling services to employees who had experienced trauma during a recent robbery. In this context, the bank was the psychologist’s “client” or “organizational client,” and the employees who sought the psychologist’s counseling services were the clients/patients. To further illustrate this distinction, readers can compare the use of the term *client* in Standard 3.11, Psychological Services Delivered To or Through Organizations, with the use of the term *client/patient* in Standard 10.01, Informed Consent to Therapy.

HOW IS THE ETHICS CODE RELATED TO APA ETHICS ENFORCEMENT?

The APA Ethics Committee investigates complaints against APA members alleging violations of the APA Ethics Code that were in effect at the time the conduct occurred. The APA Ethics Committee Rules and Procedures detail the ethics enforcement process and can be obtained online at <https://www.apa.org/ethics/committee-rules-procedures-2018.pdf> (APA 2018a). What follows is a brief summary of these rules and procedures.

Ethics Complaints

Complaints to the Ethics Committee may be brought by APA members or nonmembers or initiated by the Ethics Committee against other members (*sua sponte* complaints) within less than 3 years after alleged conduct has occurred or discovered (as long as it is filed less than 10 years after the conduct is alleged to have occurred). A complaint may be dismissed prior to review by the Ethics Committee if it does not meet jurisdictional criteria or if, on preliminary review, the Ethics Office director and the Ethics Committee chair or their designees fail to find grounds for action. If the Ethics Committee does have jurisdiction and the complaint provides grounds for action, the case is opened, violations of specific Ethical Standards are charged, and an investigation is begun. The psychologist against whom the complaint is made receives a charge letter and is given an opportunity to provide the committee with comment and materials regarding the allegations. Under no circumstances are complainants or respondents permitted to submit individually identifiable patient information (e.g., name, social security number, email address) without a valid patient authorization (see also Standard 1.05, Reporting Ethical Violations).

Failure of the respondent to cooperate with the Ethics Committee is itself an ethical violation (APA Ethics Code Standard 1.06, Cooperating With Ethics Committees; see Chapter 5). However, in response to a request by a respondent, the committee may proceed or stay the ethics process if the respondent is involved in civil or criminal litigation or disciplinary proceedings in other jurisdictions. Psychologists who do not wish to contest the allegations may submit to the APA an offer of “resignation while under investigation.”

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Outsourcing Adjudication of Ethics Complaints

In 2018 the APA Board of Directors made changes to its adjudication program announcing that they would accept complaints against APA member psychologists only if there is no alternative forum to hear the complaint (APA Ethics Office, 2018). Specifically APA will not review a complaint if a state licensing board has jurisdiction over the psychologist's behavior, if a university has an appropriate grievance process for complaints against faculty who are psychologists, or if in matters involving complaints against a psychologist's involvement in a custody case the complaint can be filed by an attorney and submitted to a judge. The decision was made in light of the fact that unlike the aforementioned alternatives, the APA cannot revoke a psychologist's license, order a monetary award, or require a psychologist to take actions to remediate a harm. The organization does retain the ability

to expel a member found in violation of Ethical Standards from the organization.

The decision of the APA Board of Directors to accept this recommendation, without what some viewed as sufficient discussion among the organization's Council of Representatives, raised concern among some APA members. For example, on August 3, 2018, 14 former chairs of the Ethics Committee wrote an open letter to the APA Board of Directors expressing this concern. Others have argued that outsourcing ethics adjudication and enforcement to other bodies (e.g., state licensure boards, government agencies, and institutions) means that members may not be held to the Ethical Standards and policies adopted by APA and allows the APA Ethics Code standards to be replaced by Ethical Standards reflecting priorities of different governmental and organizational authorities (Pope, 2018).

Sanctions

The Ethics Committee reviews the materials and resolves to either dismiss the case or recommend one of the following actions:

- *Reprimand.* A reprimand is given when a violation was not of a kind likely to cause harm to another person or to cause substantial harm to the profession and was not otherwise of sufficient gravity as to warrant a more severe sanction.
- *Censure.* The Ethics Committee may issue a censure if the violation was of a kind likely to cause harm to another person but not likely to cause substantial harm to another person or to the profession and was not otherwise of sufficient gravity as to warrant a more severe sanction.
- *Expulsion.* A member can be expelled from the APA when the violation was of a kind likely to cause substantial harm to another person or the profession or was otherwise of sufficient gravity as to warrant such action.
- *Stipulated resignation.* Contingent on execution of an acceptable affidavit and approval by the Board of Directors, members may be offered a stipulated resignation following a committee finding that they committed a violation of the Ethics Code or failed to show good cause why they should not be expelled.

The Ethics Committee may also issue directives requiring the respondent to (a) cease and desist from an activity, (b) obtain supervision or additional training or education, (c) be evaluated for and obtain treatment if appropriate, or (d) agree to probationary monitoring.

A psychologist who has been found in violation of the Ethics Code may respond to the recommendation by requesting an independent case review or, in the case of expulsion, an in-person proceeding before a formal hearing committee.

Notification

The director of the Ethics Office informs the respondent and the complainant of the final disposition in a matter, provides to the APA membership on an annual basis the names of individuals who have been expelled and those who have resigned from membership while under investigation, and informs the APA Council of Representatives in confidence who received a stipulated resignation and who resigned from membership while under investigation. The Board of Directors or the Ethics Committee may also determine that additional notification is necessary to protect the APA or the public or to maintain APA standards. The Ethics Office director may also notify state boards, affiliated state and regional associations, the American Board of Professional Psychology (ABPP), the Association of State and Provincial Psychology Boards (ASPPB), the Council for the National Register of Health Service Providers in Psychology, and other appropriate parties. In addition, the APA may provide such information to any person who submits a request about a former member who has lost membership because of an ethical violation.

Show Cause Procedure

The Ethics Committee can also take action against a member if a criminal court, licensing board, or state psychological association has already taken adverse

action against the member. The rationale for such actions can go beyond a violation of the Ethics Code and can include conviction of a felony or revocation of state licensure.

HOW IS THE ETHICS CODE RELATED TO SANCTIONS BY OTHER BODIES?

The APA Ethics Code is widely used by other bodies regulating the ethical science and practice of psychology. It is intended to be applied by the APA Ethics Committee and by other bodies that choose to adopt specific standards. The Introduction and Applicability section states,

Actions that violate the standards of the Ethics Code may also lead to the imposition of sanctions on psychologists or students whether or not they are APA members by bodies other than APA, including state psychological associations, other professional groups, psychology boards, other state or federal agencies, and payors for health services. (APA, 2017a, p. 2)

Across the country, the Ethics Code is adopted in its entirety or in part in statute by more than half the state boards responsible for licensing the practice of psychology. Insurance companies regularly require psychologists applying or reapplying for professional liability policies to reveal whether they have been the recipient of an ethics complaint or been found in ethical violation by a professional organization, state board, or state or federal agency. Many insurance companies retain the right to raise rates or cancel policies depending on the nature of the violation. In addition, the APA Ethics Committee may notify other bodies and individuals of sanctions it imposes for ethical violations. For information on the procedures for filing, investigating, and resolving ethics complaints, readers should refer to the Rules and Procedures of the APA Ethics Committee at <http://www.apa.org/ethics/code/committee.aspx>.

The Association of State and Provincial Psychology Boards Code of Conduct (ASPPB, 2018)

The ASPPB (2018) recommends to state and provincial (Canadian) licensing boards for psychology that the APA Ethics Code should be used as an aid in resolving ambiguities that may arise in interpretation of the ASPPB Code of Conduct, but the ASBPP Code prevails if there is a conflict between it and the APA or Canadian Psychology Association (CPA) ethics codes. What follow are example where the ASPPB is more specific or binding than the APA Ethics Code:

- As with APA Ethics Code standard 3.10b, Informed Consent, for minors and legally incompetent adults, the legal guardian is considered the guardian for decision-making purposes. However, the ASPPB Code includes the following specific exemption: The rights and preferences of the client/patient is prioritized for issues directly affecting their physical or emotional safety, such as sexual or other exploitative relationship, or agreed upon by the guardian prior to rendering services, for example, the right to confidentiality.

- The ASPPB adds to the prohibitions articulated in APA Ethics Code language of Standards 3.01, Unfair Discrimination; 3.02, Sexual Harassment; 3.03, Other Harassment; 7.07, Sexual Relationships With Students and Supervisees; and 10.05, Sexual Intimacies With Current Therapy Clients/Patients, prohibitions against the use of stereotypes that interfere with provision of psychological services and seductive verbal or physical behaviors directed to clients/patients and supervisees.
- The ASPPB Code expands APA Ethics Code Standards 1.03, Conflicts Between Ethics and Organizational Demands; 4.01, Confidentiality, and 4.05, Disclosures by permitting a licensed psychologist whose client is an organization or business to disclose confidential information when a problem merits and when a reasonable attempt to resolve the issue has been unsuccessful and to maintain confidentiality following the death of a client.
- The ASPPB Code specifically requires that psychologists not aid another person in misrepresenting their professional credentials or practicing psychology illegally and to provide clients who report the unethical behavior of another psychologist, information on standards of practice of psychology, and how to file a complaint with the licensing board.

NEED TO KNOW

What to Do When You Receive an Ethics Complaint

Although the number of complaints is low, receiving a formal inquiry or complaint from a licensing board, ethics committee, or other institutional body can be a stressful experience. Koocher and Keith-Spiegel (2013) provided the following excellent advice for how to handle such complaints.

First, gather facts to determine the nature of the complaint and whether it is a formal or informal charge, the jurisdictional authority and rules and procedures of the body handling the complaint, and procedures for responding and the consequences of failing to respond (Standards 1.04, Informal Resolution of Ethical Violations; 1.05, Formal Resolution of Ethical Violations; 1.06, Cooperating With Ethics Committees).

Second, do not respond to the complaint without a clear written explanation of the charges against you. Do not contact the complainant directly, and if the complainant is a client/patient, ensure that you are provided with a waiver to disclose confidential

information (Standards 1.06, Cooperating With Ethics Committees; 4.01, Maintaining Confidentiality). Obtain consultation and, if appropriate, legal advice prior to responding or providing materials.

Third, in most cases, psychologists are expected to respond personally to an inquiry, even when they have retained the services of an attorney. In crafting a response, assess the credibility of the charge. Limit your response in writing or in person to the scope of the inquiry, and provide appropriate documentation. If you have committed the offense, begin and document remediation actions immediately if possible (e.g., supervision or training to increase competencies in scientific or professional ethics or other competencies).

Fourth, understand the professional, legal, and economic consequences of any offered settlement, “consent decree,” sanction, or other resolution that is not a full dismissal of charges and seek additional professional or legal consultation.

HOW IS THE APA ETHICS CODE RELATED TO LAW?

Civil Litigation

The Introduction and Applicability section clearly states that the Ethics Code is not intended to be a basis of civil liability: “Whether a psychologist has violated the Ethics Code standards does not by itself determine whether the psychologist is legally liable in a court action, whether a contract is enforceable, or whether other legal consequences occur.” However, psychologists should be aware that it seems highly unlikely that such a disclaimer would have any legally binding effect. Compliance with or violation of the Ethics Code may be admissible as evidence in some legal proceedings, depending on the circumstances. Similarly, although the Ethics Code states that using the General Principles as a representation of obligations or to apply sanctions distorts the meaning and purpose of the aspirational principles, attorneys may introduce into litigation the General Principles or Ethical Standards as evidence of the ethical values, requirements, or prohibitions of the discipline.

Compliance With Law

Law does not dictate ethics, but an understanding of and sensitivity to relevant laws protects the integrity of the profession. Whereas few standards require psychologists to comply with the law, many standards were written to minimize the possibility that compliance with the Ethics Code would be in conflict with state laws and federal regulations. Those standards that require compliance with the law include the following:

- Work-related discrimination, Standard 3.01, Unfair Discrimination
- Obtaining consent from legally authorized persons for individuals legally incapable of giving such consent, Standard 3.10b, Informed Consent
- Legal prohibitions against disclosure of confidential information, Standards 4.05a and b, Disclosures
- Creation, storage, and disposal of records, Standard 6.01, Documentation of Professional and Scientific Work and Maintenance of Records
- Fee practices, Standard 6.04a, Fees and Financial Arrangements
- Care and use of animals in research, Standard 8.09, Humane Care and Use of Animals in Research
- Legal and contractual obligations, Standard 9.11, Maintaining Test Security

Throughout this volume, the applicability of Ethical Standards to compliance with federal regulations governing the creation and protection of health care records, third-party payments, and the conduct of research are described.

Although there are no specific Ethical Standards for which a criminal conviction is a violation, the Introduction and Applicability section and the APA Rules and Regulations clearly state that the APA may take action against a member after their conviction of a felony, including expulsion from the organization.

Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

In applying the Ethics Code to their scientific and professional work, psychologists may find relevant laws, regulations, or other governing legal authorities that conflict with the Ethical Standards. As articulated in the Introduction and Applicability section, psychologists must comply with the Ethics Code if it establishes a higher standard of conduct than is required by law. When an Ethical Standard is in direct conflict with law, regulations, or other governing legal authority, psychologists must make known their commitment to the Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights. If the conflict is unresolvable via such means, psychologists are permitted to adhere to the legal requirements but only if such adherence *cannot* be used to justify or defend violation of human rights (Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority). See also the section “The 2010 Amendments: The Controversy Over Psychologists’ Involvement in Inhumane Military Interrogations” (Chapter 1) and the section “Psychology and Human Rights” and the Hot Topic “Human Rights and Psychologists’ Involvement in Assessments Related to Death Penalty Cases” (Chapter 5).

The Relationship Between the Ethics Code and Risk Management

Professional practice psychologists committed to practicing ethically will be knowledgeable about and incorporate the Ethics Code general principles and standards as well as licensure, the Health Insurance Portability and Accountability Act (HIPAA) and other relevant laws into their work. However, good intentions are not always a safeguard against negative events (e.g., treatment failure) or actions in compliance with ethical standards and law that nonetheless result in client dissatisfaction, licensing complaints, or lawsuits (Taube et al., 2018). Risk management involves an awareness of, and practices for identifying, lessening the probability of, and mitigating the consequences of negative outcomes (Knapp et al., 2013). What follow are some areas of psychotherapy practice in which Taube et al. (2018) have offered guidance on steps that can avoid or mitigate negative consequences through risk management strategies (see also the ASPPB, 2020).

Risk Management and Informed Consent. Standard 10.01, Informed Consent for Therapy, details the type of information that should be provided at the outset to establish client expectations for psychotherapy. Sometimes in individual psychotherapy a spouse, partner, family member, or other third-party attends sessions as a collateral who participates to assist the client’s/patient’s therapy. During therapy, the conscientious psychologists will be careful to avoid or take steps to remedy instances in which the collateral begins to share concerns that go beyond information addressed at the client/patient’s therapy. This shifting of

the focus of therapy involving a collateral may create ambiguous expectations regarding who is the recipient of services and the extent to which the psychologist is obligated to protect the collateral's confidentiality (Ellis, 2012; Standards 3.05, Multiple Relationships; 4.01, Maintaining Confidentiality). In the case of a future legal dispute among the parties, the collateral may erroneously feel entitled to patient records, which if shared by the psychologist may violate not only the APA Ethics Code but HIPAA regulations. Taube et al. (2018) have recommended that during the first session that a collateral attends, psychologists should engage in a new consent process that clarifies who is the client and the legal (e.g. HIPAA) and ethical safeguards for protecting client confidentiality (Standards, 4.01, Maintaining Confidentiality; 4.02, Discussing the Limits of Confidentiality' see also the Hot Topic in Chapter 8 "Confidentiality and Involvement of Parents in Mental Health Services for Children and Adolescents").

Boundaries of Competence. The ethical practice of psychotherapy requires psychologists to provide services within the boundaries of their competence based on education, training, consultation, or other supervised experience (Standard 2.01, Boundaries of Competence). It is not uncommon for clients/patients who find themselves involved in a legal case related to their mental health (e.g., trauma following a work-related accident, parental competency in a child custody case) to ask the psychologist to testify on their behalf. This can lead to professional liability when psychologists do not have the risk management skills to distinguish between their competencies to provide therapy for clients versus their ability to give legal testimony.

In a case described by Taube et al. (2018), a psychologist treating a client for posttraumatic stress symptoms following a car accident agreed to testify in court in the client's lawsuit against the driver of the other vehicle. However, once the psychologist began to provide testimony, it became clear from the opposing attorney's questioning that the psychologist had neither the forensic nor neuroscience competencies to testify regarding whether the accident had caused the posttraumatic symptoms or whether such symptoms had been present prior to the accident (see Standards 2.01f, Boundaries of Competence [when assuming forensic roles]; 9.01, Basis for Assessment). In such contexts, psychologists must also be alert to financial incentives for taking on multiple roles (therapist, forensic evaluator) that may impair their objectivity or therapeutic effectiveness (Standards 3.05, Multiple Relationships; 3.06, Conflicts of Interest).

Confidentiality and Disclosure. The Ethics Code permits psychologists to disclose confidential information without the consent of a client/patient, to provide needed services and to protect the client/patient, therapist, or others from harm (Standard 4.05b, Disclosures). The Code also requires that such limits of confidentiality be discussed with clients at the outset of the professional relationship (Standards 2.02, Discussing the Limits of Confidentiality; 10.01, Informed Consent to Therapy). However, because the Code does not provide guidance on the degree of specificity required, many psychologists use general terms, such as "harm to self or others," when describing disclosure responsibilities that may be uninformative or ambiguous to clients/patients. As discussed by Taube et al. (2018) and in the Chapter 8 Hot Topic "Confidentiality and Involvement of Parents in Mental Health Services for Children and Adolescents," failure to provide

specifics can lead to patient distrust, disruption of the therapeutic alliance, and potential lawsuits against the psychologist for violating the client's right to privacy. For example, for adolescent or adult clients who for the first time in therapy indicate serious nonsuicidal self-injury (NSSI) behaviors (such as cuttings in areas around the eyes or wrists) accompanied by suicidal ideation, psychologists may rush to disclose such behavior to family members and recommend involuntary hospitalization without discussing the reasons for the disclosure with the client/patient during the session and failing to have described during the initial informed consent specific situations that might require disclosure (see also "Need to Know: Disclosure in Response to Nonsuicidal Self-Injury in Adolescents and Young Adults" in Chapter 8).

A WORD ABOUT HIPAA

In 1996, Congress enacted HIPAA in response to the increasing costs associated with transmitting health records lacking standardized formatting across providers, institutions, localities, and states. Recognizing that uniform standards for creating, transmitting, and storing health care records would require additional patient protections, Congress included in HIPAA regulations standards giving patients greater access to and control of their records (<https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>). The ECTF responsible for the major revision leading to the current Ethics Code was aware that the scope and detail of HIPAA regulations would change the nature of health-care practice and research in the United States. The ECTF sought to ensure that ethical standards would reflect sensitivity to and avoid inconsistency with the new HIPAA regulatory landscape (Fisher, 2003a).

HIPAA has three components: (1) *privacy standards* for the use and disclosure of individually identifiable private health information (Privacy Rule, effective April 14, 2003), (2) *transaction standards* for the electronic exchange of health information (Transaction Rule, effective October 16, 2003), and (3) *security standards* to protect the creation and maintenance of private health information (Security Standards, effective April 21, 2003; compliance date April 21, 2005). The security standards were modified by the Omnibus Rule (Department of Health and Human Services, 2013) in an effort to harmonize HIPAA with rules promulgated by the Health Information Technology for Economic and Clinical Health (Department of Health and Human Services, 2009) and the Genetic Information Nondiscrimination Act (GINA, 2008).

Protected Health Information (PHI) and Covered Entities

HIPAA regulations apply to *protected health information* (PHI), defined as oral, written, typed, or electronic individually identifiable information related to (a) a person's past, present, or future physical or mental health; (b) provision of health care to the person; or (c) past, present, or future payment for health care. For health information to come under the definition of PHI, it must be created by the following *covered entities*: a health plan, a health care clearinghouse, or a health-care provider who transmits any health information in electronic form in connection with financial or administrative activities related to health care.

Educational records covered by the Family Educational Rights and Privacy Act of 1974, employment records held by a covered entity in its role as employer, and de-identified records (in which all individually identifiable information has been removed) are *not* considered PHI. Covered entities may engage *business associates* to carry out their health care activities (e.g., billing services, web hosting, technology services, accounting services), and they may share PHI with a business associate if they receive satisfactory assurance that the business associate will use the information only for the purposes for which the associate was engaged by the covered entity, will safeguard the information from misuse, and will help the covered entity comply with some of the covered entity's duties under the Privacy Rule.

Definition of Electronic Media

HIPAA regulations refer to PHI created, recorded, or stored electronically, including but not limited to computer hard drives, removable/transportable flash drives, or other digital memory media. HIPAA also pertains to any transmission media used to exchange information already created or stored electronically, including the internet, extranet, or intranet; leased lines; dial-up lines; and private networks, as well as to the physical movement of removable/transportable electronic storage media. Certain transmissions, including via paper, facsimile, and voice (e.g., telephone), are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission. Psychologists should ensure that all portable devices with electronic PHI (ePHI) such as cell phones and laptops are appropriately encrypted. Data breaches resulting from HIPAA-noncompliant ePHI devices can result in severe legal penalties (Vanderpool, 2019).

The increase in smartphone platforms for mobile health (mHealth) is also providing new opportunities for health and wellness interventions. There are many industry-offered mobile apps of increasing sophistication capable of capturing a range of medical and other personal health data. Many of these are unregulated. Psychologists providing mental health services utilizing mobile health applications (apps) need to ensure that the apps are HIPAA compliant (see Guadarrama, 2018).

NEED TO KNOW

The COVID-19 Notification of Telehealth Enforcement Discretion

It should be noted that during the COVID-19 crises in the United States, the DHHS Office for Civil Rights (DHHS, 2020) which is responsible for enforcing HIPAA regulations indicated it would exercise its enforcement discretion regarding remote communication technologies that might not fully comply with the requirements of HIPAA Rules (DHHS, 2009; OCR, 2020).

The goal was to empower medical providers to serve patients wherever they were during this national emergency. The notification included using popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger, Zoom, Skype, and other applications. To protect patients, restrictions on use were placed on public-facing application such as TikTok or

Facebook Live that would not typically be used for professional health services. The notification also included a list of vendors considered appropriate HIPAA Business Associates that provide HIPAA-compliant video communication products. Psychologists who have used

HIPAA-noncompliant telehealth apps or other modalities during the COVID-19 crisis or future national health emergencies should ensure that they return to HIPAA-compliant communication technology following OCR/DHHS notification that the crises has ended.

HIPAA Protections and Requirements

The HIPAA rules protect individually identifiable health information through regulations that accomplish the following:

- standardize the format of electronically transmitted records related to individually identifiable health information;
- secure the electronic transaction and storage of individually identifiable health information;
- limit the use and release of individually identifiable health information, including honoring client/patient requests to restrict disclosure to health plans if services are paid in cash;
- increase patient control of use and disclosure of private health information;
- increase patients' access to their health records, including the right to receive electronic copies of their health information;
- establish legal accountability and penalties for unauthorized use and disclosure and violation of transaction and security standards for covered entities and business associates;
- identify public health and welfare needs that permit use and disclosure of individually identifiable health information without patient authorization;
- strengthen limitations on use and disclosure of PHI for marketing, fundraising, and sale of PHI to third parties;
- prohibit most health plans from using or disclosing genetic information for underwriting purposes;
- create a system of tiered financial civil penalties if the violation is considered more willful and not promptly fixed (DHHS can deem a violation affecting multiple patients to be separate violations).

What Do Covered Entities Need to Do to Comply With HIPAA?

Under HIPAA, covered entities must (a) provide information to patients about their privacy rights and the covered entity's privacy practices, called a

notice of privacy practices; (b) permit patient access to records and upon patient request provide an *accounting of disclosures* of PHI made to others over the past 6 years; (c) obtain patient *authorization* for use and disclosures to others in a manner and for purposes specified in the regulations; (d) implement clear privacy procedures for electronic transmission and storage of PHI; (e) designate a *privacy officer*; (f) implement security procedures that prevent unauthorized access to health records; (g) train and ensure that employees comply with privacy, transaction, and security procedures; (h) reasonably ensure that business associates, individual contractors, consultants, collection agencies, third-party payors, and researchers with whom PHI is shared comply with privacy and transaction rules; and (i) attempt to correct violations by these other entities if they occur or cease the relationship.

Notice of Privacy Practices

Prior to beginning treatment or treatment-relevant assessments or randomized clinical trials in which health care is provided, HIPAA-covered entities must provide patients with a *Notice of Privacy Practices* that describes the psychologist's policies for use and disclosure of PHI, the clients'/patients' rights regarding their PHI under HIPAA, and the provider's obligations under the Privacy Rule. In most instances, the notice will be given to prospective clients/patients at the same time as informed consent is obtained because the notice provides information relevant to the scope and limits of confidentiality. The Notice (or a summary alerting clients/patients to the availability of the full document) must also be posted in a clear and prominent location in the psychologist's office.

Right to an Accounting of Disclosures

The HIPAA Privacy Rule provides an individual with the right to receive a listing, known as an *accounting of disclosures*, that provides information about when a covered entity has disclosed the individual's PHI to others not listed in the Notice of Privacy Practices. Under the Health Information Technology for Economic and Clinical Health (HITECH) Act, clients/patients also have a right to receive information about disclosures made through a covered entity's electronic health record for purposes of carrying out treatment, payment, and health care operations.

Authorization to Release Information

HIPAA requires that covered entities obtain written valid authorization from the individual or their personal representative prior to releasing PHI. The authorization must include a specific description of information to be disclosed, specific identification of the person or class of persons who can make the authorization and to whom information may be disclosed, a description of the purpose and use of the disclosure, an expiration date, and a signature. In addition, when appropriate release and authorizations are obtained, the HIPAA Privacy Rule requires that covered entities share only the *minimum amount of information necessary* for billing agencies, other covered entities, and non-health provider internal staff to perform their roles.

Minimum Necessary

When disclosing or requesting PHI, a covered entity must make reasonable efforts to limit the information to the *minimum necessary* to accomplish the intended purpose of the use, disclosure, or request. This requirement does not

apply to disclosures to another health care provider for treatment or to the individual client/patient, disclosures required by law, or disclosures for other purposes under the HIPAA regulation. Under HIPAA, psychologists have the responsibility to determine the “minimum necessary” information they must provide to insurance companies for coverage of care. However, health insurers are not prohibited from denying care or payment if they maintain that the minimum information provided is insufficient to determine whether the proposed care is necessary (<https://www.apaservices.org/practice/business/hipaa/hippa-privacy-primer.pdf>).

Privacy Officer

Under HIPAA, “covered entities” must designate a “privacy officer” to oversee and ensure that HIPAA-compliant privacy procedures are developed and implemented. This requirement is “scalable,” in that what is required differs depending on whether a psychologist is in solo practice, directing a group practice, or administering a large institutional program.

Are Researchers Affected by HIPAA?

Intervention research that creates, uses, or discloses PHI will come under HIPAA. This includes research-generated information that is placed in a participant’s health records or otherwise used for treatment if the study related to treatment is paid for by the participant’s health insurance or the institution at which the intervention is conducted is a covered entity. In such instances, researchers may be considered *business associates* who are directly liable for compliance with certain HIPAA Privacy and Security Rules requirements. Researchers who are not themselves collecting health-relevant data but who plan to use in their research or consulting services PHI created by a covered entity must provide to the covered entity written assurance that they will comply with HIPAA standards. HIPAA often will not apply to health-related data generated solely for research purposes, even if a covered entity has hired the psychologist to conduct the research, if the data will not be shared with participants or third parties, will not be included in participants’ health records, and will not be collected on behalf of a covered entity. Similarly, an external or independent IRB is not a business associate regulated under HIPAA simply by virtue of its performing research review approval and continuing oversight functions for a covered entity who has permitted or hired a researcher to collect or use PHI or non-PHI-related data.

Are Industrial-Organizational or Consulting Psychologists Affected by HIPAA?

HIPAA does not apply to data collected by consulting and industrial-organizational psychologists who administer psychological tests solely for the purpose of training, employment, promotion, or quality assurance.

THE PATIENT PROTECTION AND AFFORDABLE CARE ACT (ACA)

Ongoing refinement and implementation of the Patient Protection and Affordable Care Act (2010) will continue to redefine the landscape of health-care delivery

systems in the United States. The original intent of the law was to focus on ensuring wider access to health care through enrollment in health plans supported by government financial assistance for those who qualify. It also seeks to promote the delivery of efficient, cost-effective, and quality services through expanded coverage of preventive services, evidence-based treatments, and provider accountability (Koh & Sebelius, 2010; Orszag & Emanuel, 2010). Psychology is included as a health-care profession under the law; it appears in sections on research and evaluation, and psychological services are specifically described for several patient populations (Rozenky, 2014a,b). Mental health services included under the ACA are outpatient and inpatient behavioral and mental health services and substance use disorder. Expanded Medicaid coverage under the ACA has resulted in more generous financing of mental health treatment than many private insurance policies and also provides enhanced access to Naloxone for lower-income adults to reverse the effects of opioid overdose (Frank & Fry, 2020). Parity protections built into the law means that limits on financial (costs of services), treatment (number of sessions), and care management (treatment authorization) for mental services cannot be stricter than those for medical and surgical services (<https://www.healthcare.gov/coverage/mental-health-substance-abuse-coverage/>). There are indications that since the passing of the ACA, previously uninsured non-elderly (not covered by Medicare) individuals with mental health disorders, including members of underserved racial/ethnic groups, have gained access to health insurance coverage and treatment (Novak et al., 2018); although approximately 50% of adults with mental health disorders are not receiving treatment due in part to lack of affordable local care (Baumgarten et al., 2020).

Interprofessional Organizations

Currently, two types of interprofessional organizations, the accountable care organization (ACO) and the patient-centered medical home (PCMH), are key components of the law's emphasis on delivery of efficient, safe, and cost-effective services. These—and other interprofessional organizations that will most likely emerge in the next decade—represent a transition from the traditional medical model of symptom- and illness-based episodic care to a more patient-centered, comprehensive, continuous, and team-based system that includes psychologists in the provision of proactive, preventive, and chronic medical care management across the life span (APA, 2014). This reflects the increasing behavioral health integration requirements for medical staff to work with behavioral health care providers and to communicate the availability of behavioral health care to patients. As detailed in sections of this book, the increased involvement of psychologists in all aspects of team-based health care bring benefits as well as the ethical obligation to acquire certain competencies to do the following:

- Identify and resolve ethical conflicts in ways that reflect an understanding of role responsibilities in patient-centered primary care organizations and the ethical and legal responsibilities of team members from other health care professions (Standards 1.03, Conflicts Between Ethics and Organizational Demands; 1.04, Informal Resolution of Ethical Violations; 1.05, Reporting Ethical Violations).
- Acquire the training appropriate to competently engage in coordinated care services and identify appropriate evidence-based practices for

team-based primary care (Standards 2.01, Boundaries of Competence; 2.04, Bases for Scientific and Professional Judgments).

- Develop and communicate to patients the nature of individual practitioner and team-based confidentiality policies (Standards 4.01, Maintaining Confidentiality; 4.02, Discussing the Limits of Confidentiality).
- Acquire the expertise needed to engage in treatment management consultations in response to requests for assistance by other health providers (Standards 3.09, Cooperation With Other Professionals; 4.06, Consultations).
- Create and maintain records that document continuously evolving categories of health services and treatment outcomes and appropriately bill for reimbursement for team-based services (Standards 6.01, Documentation of Professional and Scientific Work and Maintenance of Records; 6.04, Fees and Financial Arrangements).
- Design, implement, and evaluate the efficiency, quality, and cost-effectiveness of biobehavioral and team-based services within organizations (Standard 8.04, Client/Patient, Student, and Subordinate Research Participants).
- Select and interpret assessment instruments appropriate for screening and targeted interventions to help prevent and manage chronic disease and interpret results to both patients and medical team members (Standards 9.01, Bases for Assessments; 9.06, Interpreting Assessment Results; 9.10, Explaining Assessment Results).
- Provide appropriate informed consent procedures for patients receiving services within ACO and PCMH organizations consistent with models of patient-centered shared decision-making (Standards 3.10, Informed Consent; 9.03, Informed Consent in Assessments; 10.01, Informed Consent to Therapy; 10.02, Therapy Involving Couples or Families; 10.03, Group Therapy).

This chapter has set the stage for more detailed exploration in Chapters 3 and 4 of the Ethics Code General Principles and an introduction to how ethical commitment, ethical competence, and ethical decision-making lay the groundwork for applying the Ethics Code behavioral standards in ways that promote the responsible conduct of psychological science and practice.