Comments Submitted During the 2002 Ethics Code Revision Process Regarding Ethical Standard 1.02

Below are the comments on Ethical Standard 1.02 submitted during the 2002 Ethics Code Revision Process, 1996-2002. These comments were submitted to the Ethics Code Task Force, the task force appointed by the Ethics Committee for the purpose of revising the 1992 Ethics Code.

The comments are placed and numbered in chronological order. The texts of comments are provided verbatim (that is, the texts have not been edited or corrected). Next to each comment is a notation indicating the relevant revision draft. Information identifying the commentators has been removed.

Comment 1 (comment on 1992 Ethics Code)

Text of proposed change:

1.2 Relationship of Ethics and Law.

If psychologists' ethical responsibilities conflict with law, psychologists make known their commitment to the Ethics Code and take steps to address ~~resolve~~ the conflict in a responsible manner.

Rationale: As stated, the individual psychologist is given the responsibility to resolve the issue, whereas in reality he/she may be able to only raise the ethics issue and must abide by a decision of another, for example, a court. Many psychologists are being challenged by attorneys and others for release of a "complete clinical record including test protocols" which places that psychologist in an ethical bind. This change allows the psychologist to address the issue, attempt to find compromise, and the continue without subjecting themselves to prolonged legl expense and possible court citation for contempt.

Comment 2 (comment on a possible interim revision)

Standard 1.02 (and 2.10) - In court proceedings records may be released upon a court order to persons who may have no commitment to maintaining test security. This is discussed in 2.10 and a cross reference to 2.10 might be appropriate. In addition, it might be useful to indicate that responsible resolution of the conflict may involve attempts to educate and/or persuade attorneys or judges.

Comment 3 (comment on 1992 Ethics Code)

I have one suggestion concerning the vagueness of the wording of Ethical Standard 1.02 Relationship of Ethics and Law:

"If psychologists' ethical responsibilities conflict with law, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict in a responsible manner." This terminology in quite vague, and, in fact, many psychologists might not understand that they must make known publicly or formally their commitment to the Ethics Code. For instance, I have heard of psychologists who have sent client records to attorneys when they have received a

subpoena. This is a breech of confidentiality, but in order not to send the records, psychologists need to document and make known publicly, most likely in writing, that they are not sending records in order to protect the confidentiality of the client and to uphold the ethical standards of APA. The psychologist can not refuse to send the records without letting others know why, and if a court order is issued requesting the records, the psychologist, of course, needs to send them. In my conversations with other students, this is often the type of information that is shared by word of mouth, but clearer documentation of this standard may also be helpful and educational to others.

I would therefore suggest that this standard be reworded to provide more clarification. For instance: "If psychologists' ethical responsibilities conflict with law, psychologists make known publicly or formally or in writing their commitment to the Ethics Code, and they take steps to resolve the conflict in a manner that least compromises those ethics."

Comment 4 (comment on Draft 4)

1.02 Last sentence:
"If the conflict is unsolvable via such means, the psychologist may adhere either to the course of action dictated by the ethical considerations or to the requirements of the law, regulations or other governing legal authority".

Rationale: Our code should support choosing ethics above law for those brave enough to do so. The Code should also clarify there is no ethical violation for making that choice or for choosing law above ethics.

Comment 5 (comment on Draft 4)

1.02 Conflict Between Ethics and Law, Regulations, or Other Governing Legal Authority
This subsection attempts to reconcile the potentially unreconcileable. In its present form, the text suggests that it is always ethical to obey a law if the law conflicts with the Code and no obvious resolution can be found. A more appropriate approach might be to indicate that, in such (hopefuuly rare) circumstances, the psychologist will be forced to make a choice and take the consequences. I would suggest the following text, which may (a) preserve the integrity of the Code; (b) stipulate that any violation of the Code is in fact a violation of the code; and (c) allow for some flexibility at the point at which sanctions might be imposed. Suggested text: If the conflict is unresolvable via such means, the psychologist WOULD PROBABLY [may], BY ADHERING [adhere] to the....legal authority, VIOLATE ONE OR MORE PROVISIONS OF THE CODE. IN SUCH INSTANCES, THE PSYCHOLOGIST WOULD BE ADVISED TO PLEAD EXTENUATING CIRCUMSTANCES 1F CHARGES OF ETHICAL CODE VIOLATIONS ARE BROUGHT. I'm concerned that the text, in its present form, reads too much like the "I was only following orders" excuse that has been used to disastrous and inhuman effect in the past.

Comment 6 (comment on Draft 4)

1.02 Conflict Between Ethics and Law, Regulations, or Other. Governing Legal Authority
I am glad to see an explicit and clear statement about what one's practice should be when the law and ethics are in conflict.

Comment 7 (comment on Draft 4)

1.02 Conflict Between Ethics and Law, Regulations, or Other Governing Legal Authority

If the conflict is unresolvable via such means, the psychologist may adhere to the requirements of the law, regulations, or other governing legal authority. This statement concerns me- I understand that as law abiding citizens, we need to follow regulations put forth by state and other governing bodies. However, also feel that individuals that make laws regarding how psycholgoists should practice do not always have a clear understanding of what is actually going on in the field. A case in point is the recent legislation (IDEA) mandating functional behavioral assessment for all special education studetns at risk for expulsion for more than ten days. As a practitioner- I know that functional assessment is not always an appropriate tool for students in these situations.

Comment 8 (comment on Draft 4)

1.02 Conflict Between Ethics and Law, Regulations, or Other Governing Legal Authority
HIPAA supercedes state laws, so in the event of apparent conflict. psychologists should be guided by the federal standard.

Comment 9 (comment on Draft 4)

1.02 Conflict Between Ethics and Law, Regulations, or Other Governing Legal Authority
The addition that specifies protocol for dealing with conflict between law and ethics was of critical importance. Clarifying this possibly frequent quandry helps in creating a more applicable set of ethical codes.

Comment 10 (comment on Draft 4)

1.02 Conflict Between Ethics and Law, Regulations, or Other Governing Legal. Authority
Please find some suggestions/comments on the proposed APA ethics: 1) Could you provide more clarification on how to format and present mental health issues or information on the internet, as well as how to maintain, disseminate, and dispose of confidential records if communication between psychologist-client is done over the internet, to what extent should communication be blocked or password-protected, what should never be sent over the internet, etc. 2) The section below is still unclear about the steps to follow when a psychologist is placed in conflict with the Ethical Code and applicable laws. In the process of making decisions regarding their professional behavior, psychologists must consider this Ethics Code in addition to applicable laws and psychology board regulations. If the Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. 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 in a responsible manner. If the conflict is unresolvable via such means, the psychologist may adhere to the requirements of the law, regulations, or other governing authority. If neither law nor the Ethics Code resolves an issue, psychologists should consider other professional materials and the

dictates of their own conscience, as well as seek consultation with others within the, field. It seems that this statement addresses the issue but does not specify what resolving the conflict in a responsible manner means. Clarification on this would be helpful. In addition, when you say that, "If the conflict is unresolvable via such means, the psychologist may adhere to the requirements of the law, regulations, or other governing authority. If neither law nor the Ethics Code resolves an issue," it is not clear to me why a psychologist is at first directed to follow law over ethics if the conflict cannot be resolved in a reasonable manner (which, as discussed above, is unclear itself), and then directed to other sources if neither law nor ethics can resolve an issue. How does adhering to the requirements of the law, regulations, or other governing authority resolve the issue in a reasonable manner? In sum, the wording in this passage in vague.