

Introduction

Thoughts of forensic involvement evoke mixed reactions from psychologists. Some psychologists find forensic practice very appealing, others are extremely frightened by the prospect of being involved in the legal system, and still others fall somewhere in between. Psychologists involved in forensic practice perform wide-ranging professional services in varied settings, with a broad spectrum of referral sources and examinees. Yet, providing forensic services tends to be quite different from providing the clinical services for which most practitioners were trained. In forensic practice, psychologists are likely to confront competing expectations from the consumers of our services, the profession of psychology, and the guardians of public welfare. Successfully negotiating competing expectations in an adversarial context is required for both professional survival and the protection and benefit of those receiving services. Although psychologists who are drawn to forensic activities will undoubtedly face the unique ethical challenges associated with forensic practice, many psychologists with little or no interest in professional legal involvement will also find themselves thrust into the adversarial process and confronting ethical challenges for which they are not adequately prepared.

The practice of psychology in forensic contexts can be both rewarding and challenging. Successful negotiation of the challenges can itself be rewarding. To establish ethical practices and successfully negotiate the challenges, psychologists involved in forensic practice activities must have both a personal commitment to maintaining high standards of ethical practice and the information and tools needed to achieve and maintain ethical practice. This book

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Ethical Practice in Forensic Psychology, Second Edition: A Guide for Mental Health Professionals,
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is intended to help fulfill both of those requirements by emphasizing the importance of and modeling high standards of ethical practice, as well as by serving as a source of information and some of the tools needed to achieve and maintain ethical practice.

It has been said that ethics papers and books raise more questions than they answer (Goodman, 1998). The extent to which that is true of this text, like most ethical matters, depends upon what questions are asked. If one asks, “What are the ethical issues of greatest concern in forensic psychology?” or “What model can one follow to negotiate ethical challenges in forensic psychology?” then this text will likely provide the answers sought. In contrast, if one asks for guidance to an ethical dilemma, such as, “What should I do when I’m asked to have my evaluation of an examinee recorded?” then the information provided may be less specific than desired. The specific ethics questions with which psychologists struggle do not lend themselves to cookbook answers that apply to everyone. Nevertheless, through use of a structured decision-making process, the ethical issues can be clarified and good solutions can be established. Our vision for the book is to provide essential information and tools that promote the ethical practice of forensic psychology.

GOALS OF PUBLICATION

This second edition provides an update on common ethical issues confronting psychologists practicing in forensic contexts, including updated illustrations of ways to negotiate ethical challenges in civil, criminal, and family law cases. With this book, we strive to present and integrate the principles and standards provided in the American Psychological Association’s (APA’s; 2017a) *Ethical Principles of Psychologists and Code of Conduct* (APA Ethics Code) with many of the other guidelines that have relevance for forensic practice in order to form a more proactive, long-term, and positive approach to ethical practice. A number of important resources have emerged since the first edition of this book was published more than a decade ago, including the revised *Specialty Guidelines for Forensic Psychology* (SGFP; APA, 2013), the *Standards for Educational and Psychological Testing* (SEPT; American Educational Research Association, APA, & National Council on Measurement in Education, 2014), and new position statements/practice guidelines promulgated by the APA (e.g., *Assessment of Older Adults With Diminished Capacity* [American Bar Association (ABA)/APA, Assessment of Capacity in Older Adults Project Working Group 2008]) and other professional organizations that are directly relevant to forensic practice. Additionally, journal articles and book chapters in subspecialty areas (e.g., forensic practice with older adult and pediatric populations) have advanced the understanding of ethical issues in forensic psychology and have been integrated into this edition of the book. Furthermore, as the forensic psychologist’s understanding of relevant ethical issues evolves, so does the field of psychological ethics in general. Scholarly publications that contribute knowledge to general ethical psychological practice (e.g., the work by Knapp, VandeCreek, &

Fingerhut, 2017, on positive ethics) are relevant for, and should apply to, forensic practice.

The overarching purpose of this book is to provide information and a decision-making process that assists psychologists engaged in forensic practice activities to (a) understand relevant ethical issues; (b) aspire to practice in a manner that is consistent with high standards of ethical practice; and (c) anticipate, avoid, and address ethical challenges. To achieve the overarching purpose, this book (a) describes ethical issues involved in forensic psychology; (b) reviews ethical requirements, professional guidelines, and other published literature relevant to forensic psychology; (c) provides an ethical decision-making model; (d) describes ethical decision making in forensic psychology from the perspective of positive ethics; and (e) illustrates the application of the decision-making model through clinical vignettes that represent a sample of ethical challenges experienced in different subspecialties of forensic psychology. The present edition incorporates the ethical and professional resources and thinking that have emerged since the first edition was published. It integrates evolving psychological ethical principles with the evolution of forensic psychology, relying on contemporary theory and research, where it exists. Although the wide variety of potential forensic activities for psychologists prohibits exhaustive coverage of issues and practices, it is hoped that readers will benefit from an enhanced understanding of relevant ethical issues and the structured approach to ethical decision making.

In addition to updating the text based on new and revised ethical and legal materials that have become available since publication of the first edition, notable changes in this edition include (a) a description of ethics as a foundational competency; (b) increased focus on evidence-based practice; (c) increased emphasis on cultural considerations, technology, and teaching and supervision; (d) modification of the decision-making model and implementation of a mnemonic to facilitate recall of the decision-making steps; and (e) revision and updating of case analyses based on the new resources and decision-making mnemonic.

Coverage of ethical issues and challenges involves consideration of areas of controversy that, by definition, lack universal agreement. As a result, readers may disagree with some points made or positions taken in this book. In ethical decision making, there can be more than one sound decision or course of action for a given situation. Well-reasoned, evidence-based divergence of opinions enhances ethical thinking and promotes the evolution of forensic psychology.

ETHICS AS A FOUNDATIONAL COMPETENCY

Professional competence is the foundation of ethical practice in psychology in general and in specialties such as forensic psychology specifically. Professional competence establishes the foundation upon which practitioners of forensic

psychology can provide services that are informative and beneficial to referral sources and triers of fact. However, professional competence is not a unitary concept, and it is not as easily defined as some practitioners and consumers might wish. Multiple competencies underlie the forensic practitioner's various activities and responsibilities. Rodolfa et al. (2005) provided a conceptual framework for competency development in psychology in general. Known as the cube model, this conceptual framework covers both foundational competencies (knowledge, skills, attitudes, and values) and functional competencies (professional activities, e.g., forensic psychological evaluations). Fouad et al. (2009) explained how competency benchmarks are attained at different stages of training and professional development. Packer and Grisso (2011) and the American Board of Forensic Psychology (ABFP; 2015) described functional and foundational competencies for forensic practitioners.

Consistent with the cube model, ABFP (2015) described core competencies in forensic psychology. Foundational competencies include (a) relationships, (b) individual and cultural diversity, (c) ethics legal standards policy, (d) professionalism, (e) reflective practice/self-assessment/self-care, (f) scientific knowledge and methods, (g) interdisciplinary systems, and (h) evidence-based practice. Functional competencies include (a) assessment, (b) intervention, (c) consultation, (d) research and/or evaluation, (e) supervision, (f) teaching, (g) management/administration, and (h) advocacy. For each of the foundational and functional competencies, behavioral anchors are provided that further describe and clarify the forensic specialist's required knowledge or skills. As the cube model and ABFP illustrate, the ability to practice in an ethical manner is a core foundational competency.

The functional competencies include assessment strategies, forensic consultation, and supervision, training, and management. The foundational competencies consist of ethics, interpersonal dimensions of the forensic relationship, and laws relevant to the practice of forensic psychology.

Other documents, such as the *Education and Training Guidelines for Forensic Psychology* (Forensic Specialty Council, 2007), outline training goals and the sequential organization of training, including doctoral and internship level training, and the accreditation requirements for forensic psychology residency programs. The authors explained that

A basic principle of Forensic Psychology is that the quality of the forensic work is limited by the underlying foundational competency (i.e., the science and professional practice of psychology) of the forensic psychologist. It is therefore essential for practitioners to first obtain a broad and general education in both scientific psychology and in the foundations of practice. This generalist training should then be augmented by exposure to the forensic area, at the graduate and internship levels, followed by specialized training at the postdoctoral level. (Forensic Specialty Council, 2007, p. 3)

When career paths within forensic psychology change or consultation is requested in an aspect of forensic practice in which one's experience is limited, competence must be attained in the new areas of practice. The APA Task Force on the Assessment of Competence in Professional Psychology stated that the assessment of professional competence, including ethical competence, should be

a multitrait, multimethod, and multi-informant process that occurs throughout one's career (Kaslow et al., 2007). Board certification by way of a reasonably rigorous formal peer review process (e.g., as conducted by the American Board of Professional Psychology [ABPP]) provides evidence of professional competence in a psychological specialty, which can be readily understood by other professionals and the public. Additionally, the recent implementation of maintenance of certification requirements by ABPP helps demonstrate a commitment to a career-long pursuit of professional competence.

Achieving and maintaining an awareness of common ethical challenges and an understanding of ethics-related resources reflects an essential aspect of foundational competence and helps forensic practitioners pursue high standards of practice, reduce the likelihood of ethical conflicts, and resolve ethical dilemmas when they occur. The ability to develop and maintain ethical competence is a dynamic and ongoing process. Because ethics codes and professional guidelines are periodically drafted and updated, changes in clinical practice occur, and new laws are implemented, forensic practitioners must integrate the evolving requirements into their professional activities.

Ethical decision making would be much simpler if all ethics questions could be resolved with bottom-line answers. Bottom-line answers provide direction for resolving specific ethics questions and can be applied consistently across settings and contexts. For some ethics questions, such as, "Is it appropriate to have sex with a therapy client?" the bottom-line answer is obvious and can be applied consistently. However, more ambiguous variations may emerge, such as, "Is it appropriate to have sex with the attorney who retained me and is technically my client but is not a recipient of clinical services? And does the 2-year abstention rule apply even though the case has been settled?" Although bottom-line ethics may be refreshing and appreciated, the considerable variability of case details renders such an approach insufficient in most situations. For this reason, a structured approach to ethical decision making, such as through use of a decision-making model, helps facilitate the decision-making process and the generation of sound solutions to challenging situations.

ETHICAL ISSUES AND CHALLENGES

Bush (2015) described 10 ethical and professional issues that are of primary importance in forensic practice contexts. The list is based on the assumption that the psychologist is competent to perform the service being provided. If competence is lacking, it is unlikely that the service provided or conclusions offered will be of value to the trier of fact, and considerable harm could result. The order of importance of the issues covered in this list will vary depending on the forensic practice context, and issues not on this list may be of considerable importance to some forensic practitioners.

- Third-party requests for services
- Multiple relationships/conflicts of interest
- Informed consent/notification of purpose (including privacy and confidentiality)

- Test security/release of test data
- Explaining assessment results
- Contingency fees
- Impartiality/bias
- Third-party observers
- Accuracy and truthfulness in public statements (reports and testimony)
- Addressing ethical misconduct

Forensic practitioners should understand the potential relevance of these issues in their professional activities, anticipate challenges, and establish procedures for addressing dilemmas when they arise.

UNDERSTANDING, ADOPTING, AND APPLYING PROFESSIONAL RESOURCES

Psychologists have at their disposal a variety of ethics resources for determining appropriate professional behavior. The views psychologists take of professional ethics have a considerable influence on their professional behavior. Those who view ethics solely as a means of establishing and enforcing minimal standards of practice fail to appreciate that professional ethics, including the APA Ethics Code, represent an attempt to translate core ethical principles and their underlying human values into operationally defined guidelines for psychologists. Professional codes of ethics, despite their essential contribution to guiding behavior, need not always be the final word on how best to resolve an issue.

Practitioners of forensic psychology have an obligation to the profession and those who are served not to simply be guided by that which is ethically permissible but to seek that which is ethically preferable. The extra steps required to determine and pursue ethically preferable courses of action may require additional effort in the short term, but from that effort comes greater benefit to the forensic practitioner, forensic psychology, consumers of forensic psychology services, and the general public in the long run. While professional ethics codes are a primary resource for psychological practice, they typically provide only the ethical floor and do not address the more specific needs of psychological specialties. Therefore, psychologists providing forensic services benefit from an understanding and use of ethics resources that extend beyond ethics codes.

POSITIVE ETHICS AND THE 4 AS OF ETHICAL PRACTICE

Ethics codes used for disciplinary purposes represent the minimum standards of professional conduct. This remedial perspective on psychological ethics focuses more on ways to avoid harming others than on ways to promote wellbeing. In contrast to remedial ethics, positive ethics represents a voluntary commitment to pursuing ethical ideals, motivated by deeply held moral principles (Knapp

et al., 2017). Positive ethics is proactive; practitioners strive to promote exemplary professional behavior rather than only reacting when faced with ethical challenges. From the perspective of positive ethics, ethics codes represent a starting point, from which higher standards of practice are pursued (Knapp et al., 2017). When considering ethical issues, the question to ask is not, “What must I do according to the Ethics Code?” but, “What can I do that reflects the highest standard of ethical practice?” As Beauchamp and Childress (2013) noted, “If we expect only the moral minimum of obligation, we may lose an ennobling sense of excellence” (p. 49).

Positive ethics involves a deeper level of integration, the integration of practitioners’ personal ideals with their professional lives (Knapp et al., 2017). Although most members of a society, including professional societies, share common values (e.g., competent adults should have the right to make decisions about matters that affect their lives, as reflected in the bioethical principle *respect for autonomy*), individuals vary in the extent to which they embrace different values. Differences in life experiences, cultural backgrounds, religious beliefs, and other unique variations in one’s life influence the personal values that guide one’s personal and professional decisions. Practitioners who perceive a connection between their personal values and the values underlying their ethical obligations may be more likely than practitioners who lack such a connection to experience a strong commitment to their professional ethics. The pursuit of ethical ideals can require more time and expense than is required to comply with enforceable ethical standards, causing some practitioners to choose not to pursue such ideals. However, time and expense requirements are poor reasons for electing not to pursue ethical ideals.

Bush (2009) described the *Four As of Ethical Practice* as a framework for conceptualizing ethical practice. The four As are *Anticipate*, *Avoid*, *Address*, and *Aspire*. Practitioners strive to (a) *Anticipate* and prepare for ethical issues and challenges commonly encountered in their specific practice contexts, (b) *Avoid* ethical misconduct, (c) *Address* ethical challenges when they are anticipated or encountered, and (d) *Aspire* to the highest standards of ethical practice. In this way, the four As are consistent with positive ethics. Remaining mindful of the four As of ethical practice can facilitate appropriate professional activity, as well as the modeling of ethical behavior for students and trainees, other forensic specialists, and interdisciplinary professionals.

AUDIENCES

The book is intended both as (a) a resource for the forensic psychology practitioner, which is defined broadly to include all psychologists working in the various legal contexts, including civil, criminal, and family/child custody law; and (b) a text for forensic psychology students and trainees. In addition to psychologists who deliberately pursue professional involvement in the legal system, some clinicians inadvertently find themselves involved in the legal matters of their patients. Involvement of a clinician may be either requested or required.

For example, a neuropsychologist may be subpoenaed to testify about the evaluation findings of a patient who sustained a traumatic brain injury in a motor vehicle collision. Such engagement in the legal system, although not forensic practice by most definitions, nonetheless requires an understanding of the relevant professional, ethical, and legal issues. Those with little forensic experience but who are anticipating involvement in, or have been unexpectedly thrust into, a legal matter will acquire the ability to apply appropriate professional resources to ethical challenges associated with specific practice activities.

The critical reader may find legitimate points of disagreement with positions taken in the text, given the broad range of contexts and services in which forensic practice takes place. Nevertheless, an increased understanding of the ethical issues that pertain to forensic psychology in general will assist psychologists in all forensic contexts to better serve those with whom they interact professionally. For the purposes of this text, the term *forensic psychologist* is used broadly to refer to those psychologists who perform forensic activities; it is not used solely to denote those with specialized training or board certification in forensic psychology.

CONTENTS AND FORMAT

There are many possible ways to organize a forensic psychology ethics book, including organizing the material around (a) the steps in the forensic evaluation process (e.g., the referral, data collection); (b) forensic topics areas, such as civil litigation and criminal litigation; (c) the relevant ethical issues and principles; or (d) threats to the validity of the data or the opinions provided, such as inadequate competence and compromised objectivity. We chose to organize the material around the steps in the evaluation process, because it provides clear reference points for practicing psychologists who are considering ethical issues or facing ethical challenges. Although practitioners may not always immediately be aware of the relevant ethical issues and principles or the underlying threats to the validity of data and opinions, they do know the practice activity in which they or their colleagues are engaging. Thus, organization along these lines facilitates reference to the material that is most relevant at a given time. The material was not organized according to forensic topic areas because the considerable overlap of relevant ethical issues across topic areas would require excessive redundancy in the coverage of material. The emphasis on the evaluation process is not meant to minimize the importance of ethics for the many nonevaluation forensic activities (e.g., treatment, trial consultation) in which psychologists engage; it simply reflects an element of practice that we have found to be a focus for many forensic psychologists. It is hoped that the ethical issues examined and the decision-making process described in the context of the forensic evaluation can be readily applied to a broad range of forensic practice activities.

Following this introduction, Chapter 1 provides an overview of the interface of law and psychology. The chapter includes a description of a structured, systematic ethical decision-making model with the corresponding mnemonic *CORE OPT*. The seven steps of the model are (1) Clarify the ethical issue; (2) identify *Obligations* owed to stakeholders; (3) utilize ethical and legal *Resources*; (4) *Examine* personal beliefs and values; (5) consider *Options*, solutions, and consequences; (6) *Put* plan into practice; and (7) *Take* stock, evaluate the outcome, and revise as needed. All of the case examples presented in the book are analyzed according to this model. Although applying the model can help psychologists develop ethical practices and arrive at sound solutions to ethical challenges, ethical behavior also requires personal integrity and a commitment to high standards of ethical practice.

Chapters 2 through 7 examine the various components of the forensic evaluation process, including the referral, collection and review of information, the evaluation, documentation of findings and opinions, and testimony and termination. Although much of the information applies to psychologists working in forensic treatment settings and as trial consultants, the book is structured primarily around the forensic evaluation. Issues related to neuropsychological evaluations in forensic contexts are covered. Case illustrations are provided to demonstrate application of the issues examined and the ethical decision-making process. Case illustrations cover three broad topic areas: personal injury litigation, criminal litigation, and child and family law. Chapter 7 covers the ethical challenges inherent in addressing ethical misconduct by colleagues performing forensic work. Forensic psychologists are likely exposed to more of the work of colleagues than psychologists practicing in any other specialty areas. That exposure, combined with the natural emotional reactions and the potential for bias that may emerge in adversarial situations, contribute to a context in which allegations of ethical misconduct may abound. This issue raises a need for attention to be given to the sensitive topic of responding to apparent ethical misconduct by forensic psychology colleagues. The chapter includes a checklist for reporting ethical violations that shares some similarities with the *CORE OPT* model. The Afterword offers concluding remarks, with an emphasis on the personal commitment needed by forensic psychologists in order to establish and maintain ethical conduct.

The book includes “excerpts” from fictional psychological and neuropsychological reports. These “excerpts” were created by the authors and represent an amalgam of reports by numerous psychologists that the authors reviewed over the years. Similarly, case illustrations provided in the book were created by the authors and represent an integration of scenarios encountered in practice and/or imagined by the authors. Despite any unintended similarities, excerpts and case illustrations do not represent the reports or practice of any given psychologist.