

EAP Ethics and the Professions

The application of ethical principles is perhaps more vital to EAPs that serve the professions than to any other client base

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The prevalence of impaired physicians has been estimated to be at least as high as the population at large, and one study shows they are 30 to 100 times more likely to become addicted to narcotics (Angres & Busch, 1989). McNees & Goodwin (1990) found that 19% of pharmacists and 41% of pharmacy students had used a controlled substance without a prescription order.

These statistics lend attention to special circumstances for EAPs that serve clients who take others into their confidence or have responsibility for the well-being of others. These professionals typically work in hospital, legal, law-enforcement and other such settings.

The risk factors for professionals are the result of increased stress, higher incomes and, in many professions, accessibility to drugs. The impaired professional presents a serious and complex problem for EAPs. [See the boxed article, "What is impairment?"]

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The authors are concerned that EAP professionals may inadvertently place themselves at malpractice risk if they are not as informed as need be regarding ethical dilemmas. To date, however, the authors are not aware of any legal precedent that "holds harmless" an EAP provider who follows an "ethical decision tree." Usually, hold-harmless statutes are a matter of state law for professional peers that intervene with an impaired colleague, not an EAP professional.

It is serious in that possible malpractice and/or poor judgment potentially damaging and even fatal risks for consumers who use the impaired professional's service. It is complex in that different and seemingly contradictory ethical actions may be indicated for an EAP provider who is working with the impaired professional. In addition, there are risks for the impaired professional's employers, as well as for the profession. The organization may lose income, public relations may suffer, there may be mismanagement of resources, increased liability, and losses due to litigation.

There are many different and complex ethical dilemmas for the EAP provider who works with impaired professionals:

- the duty to warn clients (i.e. those who use the impaired professional's service) vs. the impaired professional's confidentiality.
- the impaired professional's voluntary treatment vs. coerced treatment or even refusal of treatment.
- informed consent on the part of the consuming public, EAP provider paternalism, and oversight vs. au-

tonomy of the impaired professional.

These are complex issues. There are times when the ethical code is insufficient and offers little direction for the EAP professional. The *EAPA Code of Ethics* is one level of justification in the decision-making process when confronted with ethical dilemmas encountered while delivering services to impaired professionals from other disciplines. There are additional levels of justification one can consider in making complex ethical decisions. How can the EAP provider think through these dilemmas to ensure that s/he is working with the impaired professional in an ethical manner? This article provides a framework in assisting the EAP provider in ethical decision making by demonstrating the utility of using multiple tiers of justification when thinking through employee assistance ethical dilemmas.* To this end, this article briefly reviews the "tiers of justification" in ethical decision making (Beauchamp & Childress, 1989, p. 16; Kitchener, 1984), describes five ethical principles, and then applies these principles to a specific ethical dilemma.

What is impairment?

The definition of impairment that is used determines the parameters of the EAP's involvement or intervention. Although impairment is most often thought of in terms of drugs and alcohol, the problem is broader. In its "sick doctor statute," the AMA defines impairment as "the inability to practice medicine with reasonable skill and safety due to physical or mental disabilities including deterioration through the aging process or loss of motor skill or abuse of drugs or Alco-

hol" (American Medical Association Council on Mental Health, 1973). In a similar vein, Laliotis and Grayson (1985) defined impairment as "interference in professional functioning due to chemical dependency, mental illness, or personal conflict." Kütz (1986) indicated that there is a "diminishment from a previously higher functioning" (p. 220). For the purpose of this article, a broad view encompassing the above definitions is used.

The first tier is that of **moral intuition**. This includes the gathering of facts and ordinary moral senses. At times, this level of reasoning may be sufficient and/or necessary. In instances of immediate action, the EAP provider does not have the luxury of time and reflection. However, as Kitchener points out, sometimes our "moral intuition is not enough" (p. 44). Beseachings or petitions by a client may sway the EAP provider away from his/her moral sense of what is ethical. When situations like this occur, it is necessary for the EAP provider to enter into more of a reflective thinking process.

The second tier is the **critical-evaluative level of reasoning**. At this level, the EAP provider can "evaluate or justify (his/her) ordinary moral judgements" (p. 45). This level is hierarchical and includes (1) rules, professional codes, or law, and (2) ethical principles.

The EAP ethical codes and state laws provide the initial direction for the EAP to evaluate his/her moral intuitions. The ethical codes are established by the EAP professional organization to guide ethical behavior and decision making. At times, the ethical codes may conflict with the law. For example, on a basic level, the codes may require confidentiality while the law on child abuse requires that confidentiality be broken, even when there may not be imminent danger.

In addition, the different professional codes may contradict one another. For example, the American Psychological Association ethical code expressly prohibits sexual contact between professors and students, while the EAPA code does not address this issue directly. When these discrepancies occur, the EAP provider needs a "higher level of norms called principles" (Kitchener, 1984, p. 46). These ethical principles provide a solid framework for the EAP provider to understand ethical situations and professional codes. This level of justification involves the application of the following principles (Beauchamp & Childress, 1989; Kitchener, 1984).

FIVE ETHICAL PRINCIPLES

Autonomy has been understood to include both freedom of action (i.e. freedom of the impaired professional to do what one wants in life, as long as



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it does not interfere with similar freedoms of others) and freedom of choice (i.e. freedom to make one's own judgments) (Kitchener, 1984). Restrictions on the impaired professional's autonomy include not harming self or depriving others of autonomy, and competency on the impaired professional's part, which assumes being able to make competent and rational decisions. The most difficult ethical decisions come when the impaired professional is neither totally competent nor incompetent.

Nonmaleficence has been defined as "above all do no harm" (Kitchener, 1984, p. 47). In general, as the risk and magnitude of potential harm by or to the impaired professional increase, ethical prohibitions and limits on treatment or case management increase. Ethicists argue (Beauchamp & Childress, 1979; Kitchener, 1984) that, when all things are equal, the best possible action is to do no harm. Sometimes it is easier to document the harm vs. the potential good (Kitchener, 1984).

Fidelity is considered to be "faithfulness, promise keeping, loyalty" (Kitchener, 1984, p. 51). Issues of fidelity arise when the impaired professional enters a voluntary relationship with the EAP provider. Informed consent explicitly establishes the nature of the therapeutic relationship and the requirements of both parties which sustain it. This makes the impaired professional a joint participant in the process rather than someone who is fixed, cured, managed or processed (Kitchener, 1984).

Beneficence has been defined as contributing to health and welfare, doing good for others (Kitchener, 1984). Balancing beneficence with autonomy leads to ethical concerns regarding paternalism. Paternalism presumes that the EAP provider has knowledge of what is good for the impaired professional and undertakes to regulate the impaired professional's behavior according to what the EAP provider believes is good.

Justice in the broadest sense means fairness (Kitchener, 1984). Issues of justice arise over (1) conflicts of interest involving limited goods and services, and (2) limited human benevolence. Justice is based on the assumption that all impaired professionals seeking therapy are equal. If they are not to be treated as equal, an argument must establish a rational for differences in treatment.

Even at this level of ethical decision making, principles may conflict. Ethicists have argued about the best way to proceed. The ethical principles and levels of justification have been described. The remainder of this article will examine these concepts when applied to specific ethical dilemmas.

APPLICATION TO ETHICAL DILEMMAS

When the EAP provider sees an impaired professional, the client's confidentiality is protected by the EAPA Code of Ethics. However, as stated previously, codes can conflict with state laws. For example, in Colorado,

there is a duty to warn potential victims if the impaired professional intends to harm or kill them, a duty to report child abuse, and in cases of the impaired professional threatening suicide, to notify appropriate authorities who can intervene.

There are many situations where imminent danger is not clear-cut. An example is the impaired nurse or physician who episodically abuses alcohol or drugs which may result in miscalculating a patient, potentially resulting in death. Harm to the consumer of the impaired professional's services is an important issue. There

are degrees and types of harm, and harm is not defined in the Code of Ethics. What are the EAP provider's responsibilities to the impaired professional who is the EAP provider's client, and what are the EAP provider's responsibilities to the clients of the impaired professional, as well as to society at large?

The example of the impaired medical professional is used to apply the ethical principles. Autonomy allows for freedom of choice and would imply that the impaired professional has this as long as it does not interfere with the rights of others.

Restrictions on autonomy include not harming others (i.e. their patients) and being able to make competent, rational decisions. The impaired professional needs to know upon entering the EAP relationship what the scope of services are and any limitations on confidentiality prior to disclosing clinical information. This is necessary in order for the impaired professional to make an informed choice. Assuming the impaired professional has been duly informed, the EAP provider is faced with the task of defining harm to others, such as the physician's patients.

The conservative perspective on harm to others, as stated in the state law and ethical codes, considers the question of *imminent danger*. Is there an identified victim? Is there intent to harm? Is there a means to inflict the harm? In the case of the impaired medical professional, the patients are probably not identified victims. There is probably not an intent to harm. There has probably been no identified means of harm. However, there is a potential for harm to the unsuspecting public, which is not able to make an informed choice about utilizing the impaired professional's service.

Under the autonomy principle, the EAP provider is obligated to inform the impaired professional about the conditions under which confidentiality will be superceded. In this example, the rights of the impaired professional must be weighed against the interests of society. Are society's interests best served by having confidential services for impaired professionals to receive for help with their problems, or are there situations where society has the right to know about potential harm which may occur when a professional is impaired? Under this principle, with

the defined parameters of when confidentiality would be superceded, the EAP client's autonomy regarding informed consent would take priority over the duty of warn because there is no imminent danger or identified victim.

The principle of beneficence leads to a balancing of autonomy and beneficence. The EAP provider may consider the element of paternalism when thinking about the element of contributing to the health of others, and doing good. In this scenario, the danger of paternalism is that the EAP provider may presume to know what is good for the impaired professional and try to regulate the person's behavior. If the EAP provider breaks confidentiality to inform an impaired professional's employer or licensing board, or to inform the impaired professional's patients without written consent, the potential good must be defined, as well as how this is offset against potential harm.

In breaking confidentiality, there is little good to the impaired professional, possibly some good to the immediate consuming public, but potential long-term harm to the consuming public because impaired professionals will be reluctant to use services that are not confidential. As there is no imminent danger, the health and welfare of the impaired professional takes precedence over society.

The principle of nonmaleficence is the balancing principle to beneficence. The EAP provider should do no harm. With nonmaleficence, harm to the impaired professional is weighed against the harm to society. The prohibitions and limits of paternalistic action increase as the potential harm to the impaired professional increases. Thus, the EAP provider could do more potential harm to the impaired professional by breaking confidentiality without permission because the impaired professional may not follow through with treatment, may lose confidence in the EAP provider, may lose employment, and/or suffer a damaged professional reputation.

It is assumed that EAP providers treat all clients equally. The principle of justice requires that if a person or a subgroup is not treated equally, there must be a rationale established as to why their differences are significant enough to require different treatment. In the case of impaired medical pro-

professionals, is there any compelling rationale for treating their right to confidentiality differently than for a non-professional client? According to the prior discussion, probably not.

When an impaired professional enters into a relationship with the EAP provider, there is a contract that is direct or implied." The principle of fidelity is generally used in the sense of meaning faithfulness, promise keeping, or loyalty. The EAP provider has an ethical obligation to be faithful to the contract with the impaired professional. To that end, the EAP provider has defined the limits and scope of the contract. In this case scenario, the "danger to others" component of the contract is not applicable and the EAP provider has the responsibility of fidelity to the client to not break confidentiality.

CONCLUSION

In conclusion, there are different tiers of justification that the EAP professional can use in making treatment decisions when working with impaired professionals. The first level, the intuitive level, is used when quick action is necessary. At the second level, the EAP professional can consult professional ethical codes to evaluate moral intuition. Where the codes are not adequate or are in conflict, the next level of ethical principles can be utilized as the EAP professional works through the ill-structured ethical dilemmas.

EAP providers face increasingly complex ethical dilemmas as our society copes with increasingly scarce resources, as more demands are placed on professionals in all sectors, and as the potential increases for impaired professionals to be seen by the EAP. It behooves all EAP providers to consider the tiers of justification so that appropriate decision can be made with regard to impaired professional clients.

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" The "contract" is based on the premise that the EAP will provide confidential services to the impaired professional in accordance with generally accepted standards of EAP practice.

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