

# Ethical Decision-Making:

## A Case Example Approach

Jennifer Wheeler, Ph.D.

Washington Association for the Treatment  
of Sexual Abusers (WATSA)  
March 5<sup>th</sup>, 2016

## Today's agenda

9:00–9:15	Introduction, Clarification, & Credits
9:15–10:15	Ethical Decision making: Sources of Authority, Definitions & Framework
10:15–10:45	Break
10:45–12:00	Ethical Decision-Making: Case Examples 1
12:00–1:30	Lunch
1:30–3:00	Ethical Decision-Making: Case Examples 2
3:00–3:30	Break
3:30–5:00	Special Topic: Dual Roles & CSOTPs
5:00–5:30	Questions & Discussion

## Topics covered:

- Informed Consent
- Privacy & Confidentiality
- Collateral information
- Assessment issues
- Documentation & Record Keeping
- Fees
- Dual Roles

## Brief Introduction

- My background and training:
  - Clinical & Forensic Psychology
  - Human Sexual Behavior & Sexual Abuse
  - Criminal Forensic: Adult & Juvenile (DOC/JRA; WSH/CSTC; SCC)
  - Civil Forensic: Parenting & Personal Injury Evaluations
- My current practice:
  - Clinical & Forensic
  - Civil & Criminal
  - Adult & Juvenile
  - Individuals & Couples

## Clarifications:

- ▶ We will be talking about issues relevant to forensic mental health evaluation AND/OR mental health treatment
- ▶ Although everyone here might be a CSOTP, there are many different underlying credentials- it is up to you to know the standards and guidelines for your profession, e.g.
  - Psychology
  - LMFT
  - LMHC
  - MSW
  - MD
  - RN

## Credits:

- ▶ Today's slides were mostly adapted from other presentations:
  - Covell, C.N. & Wheeler, J.G. (October 2009). Ethics in Mental Health Care: Emerging Issues and Controversies. Western State Hospital, Steilacoom, WA.
  - Randy Otto, Ph.D. (April 2015) Ethics in Forensic Psychological Practice: A Case Study Approach. American Academy of Forensic Psychology Continuing Education Workshop, Chicago, IL.
  -

## Ethical Decision-Making: Foundational Issues

### Sources of Authority, Definitions & Decision-Making Framework

## Sources of Authority

- Law
  - RCWs, WACs
- Ethics
  - ATSA Professional Code of Ethics
  - APA Ethical Principles of Psychologists and Code Of Conduct
  - AAMFT Code of Ethics
  - NASW Code of Ethics
  - AMA Code of Medical Ethics
- Clinical Practice Consensus ("Guidelines")
  - Specialty Guidelines for Forensic Psychologists
  - APA Guidelines
  - AFCC Guidelines for Court Involved Therapy

## Definitions

- Ethics
- Standards of care
- Aspirational guidelines
- RCWs
- WACs

## Definitions

- **Ethics:** Guiding philosophies and/or moral values of a group or individual
  - Theoretical in nature
  - Underlying principles that guide the conduct of a society, profession, or individual
- Example:
  - APA's "Ethical Principles of Psychologists and Code Of Conduct"
  - ATSA Professional Code of Ethics

## Definitions

- **Standard of care:** Required and enforceable mandate that directs professional conduct and decision-making
  - Provides the minimum expectations for a particular profession
  - Violations are addressed by a governing body that is empowered to enforce consequences
- Example:
  - APA's "Ethical Principles of Psychologists and Code Of Conduct"
  - ATSA Professional Code of Ethics

## Definitions

- **Aspirational guideline:** A principle, similar to a standard, in that it provides professionals with information to help guide conduct and professional judgment
  - Not a mandate, not enforceable
  - Integrated with other sources of information to help guide professional decision-making
- Examples:
  - AP-LS's "Specialty Guidelines for Forensic Psychology"
  - ATSA Professional Code of Ethics (includes guidelines)

## Definitions

- ▶ Revised Code of Washington (RCW):
  - A statute written by the Washington State Legislature
  - Once legislation is signed by the Governor, it becomes law
- Examples (for all health care professionals):
- RCW 26.44.030 Abuse of Children and Adult Dependent Persons
- RCW 70.02 Medical Records–Health Care Information Access and Disclosure
- Examples for CSOTPs:
- RCW 9.94A.670 Special sex offender sentencing alternative
- RCW 13.40.162 Special sex offender disposition alternative

## Definitions

- ▶ Washington Administrative Code (WAC):
  - Provides interpretive support for the individual or other entity to whom the rule applies
  - WACs carry the full force of the law
- Examples for licensed health care providers:
- WAC 246-12 Administrative Procedures and Requirements for Credentialed Health Care Providers
- WAC 246-924 Psychologists
- WAC 246-16 WAC STANDARDS OF PROFESSIONAL CONDUCT

## General framework for Ethical Decision-Making

- ▶ Identify the ethical principal at issue
- ▶ Gather additional information
- ▶ Identify parties to whom you owe a duty
- ▶ Seek and review relevant sources of authority
- ▶ Consult with colleagues
- ▶ Brainstorm possible courses of action and likely outcomes
- ▶ Implement plan of action and evaluate

## Guidelines for today's case examples

- ▶ The purpose of the case examples is to practice applying a decision-making framework – not to be “right”
  - Think about the relevant principles FIRST
  - Try to identify the source of authority for your position
- ▶ Resist the temptation to say, “I would never do that!” (or otherwise “buck the hypothetical”)

## Ethical decision Making

### Case Examples

#### Guidelines for today's case examples

- ▶ The purpose of the case examples is to practice applying a decision-making framework – not to be “right”
  - Think about the relevant principles FIRST
  - Try to identify the source of authority for your position
- ▶ Resist the temptation to say, “I would never do that!” (or otherwise “buck the hypothetical”)

#### Topics covered in case examples:

- ▶ Informed Consent
- ▶ Privacy & Confidentiality
- ▶ Collateral information
- ▶ Assessment issues
- ▶ Documentation & Record Keeping
- ▶ Fees
- ▶ Dual Roles (special topic)

#### Case Examples: Informed Consent 1

- ▶ You are conducting a SSOSA evaluation of Mr. A, who has a history of suicide attempts.
- ▶ During your interview, Mr. A says that he will never go to jail, because he knows how to make a noose and will simply hang himself if he does not get SSOSA.
- ▶ You believe Ms. A is a risk to himself.
  - What is the ethical dilemma?
  - What are the relevant principles?
  - Etc....

## Case Examples: Informed Consent 2

- ▶ You have been retained by defense counsel to conduct a confidential / privileged mental health evaluation of Ms. B, who has been charged with a non-sexual offense.
- ▶ During the evaluation, Ms. B discloses that she has sexually abused her six year old niece, for whom she regularly babysits.
- ▶ What do you do?

## Case Examples: Informed Consent 3

- ▶ You have been court-appointed to conduct a psychosexual evaluation of Mr. C, who is in-custody.
- ▶ After you have completed the informed consent process, Mr. C says that he will not participate, and that you cannot talk to anyone else without him, including jail staff or his family members.
  - Can you evaluate and offer opinions about Mr. C without his participation?
  - Can you talk to collaterals over his objections?
  - What if you were not court-appointed, but hired by Mr. C's attorney?

## Case Examples: Privacy & Confidentiality 1

- ▶ After completing your testimony at the sentencing of one of your most high-profile clients, Ms. D, you are contacted by the Nancy Grace Show to appear on their 8pm broadcast.
  - Can you do the interview? If so, are there any limitations?
  - Will you do the interview? Why or why not?

## Case Examples: Privacy & Confidentiality 2

- ▶ During a defense-retained evaluation of Ms. E, she discloses that she had always wanted to be a ballerina but did not have the talent to actually pursue this.
- ▶ She also reported that – unknown to her husband – she had an abortion during the first year of her marriage.
  - Do you include any or all of this in your report? Why or why not?

### Case Examples: Privacy & Confidentiality 3

- ▶ You are giving a training for the upcoming monthly WATSA meeting.
- ▶ You recently conducted a psychosexual evaluation of Mr. F that you think would be helpful to make certain points during your training.
  - Can you use your work on Mr. F's case as part of your WATSA training materials?
  - If so, do any conditions apply?

### Case Examples: Privacy & Confidentiality 4

- ▶ You are conducting a defense-retained SSOSA evaluation of Mr. G. During the evaluation, he discloses that he is responsible for a murder for which he has never been a suspect.
  - Do you document this disclosure in your notes?
  - Do you cite this disclosure in your report?
  - Would your decision-making be different if you had been retained by the court or prosecutor?

### Case Examples: Collateral Information 1

- ▶ You are conducting a defense-retained psychosexual of Ms. H., and you decide that you need to interview her father.
  - How do you go about getting access to him?

### Case Examples: Collateral Information 2

- ▶ You are conducting a court-appointed psychosexual evaluation of Mr. G.
  - ▶ As part of your evaluation, you contact Mr. G's next-door neighbor. The neighbor says he is willing to be interviewed by you, but only if he will not be identified as the source of the information.
    - What do you do?

## Case Examples: Assessment Issues 1

- ▶ You have been asked to conduct a psychosexual evaluation of client J, a 58 year old woman from Latvia, who speaks no English.
- ▶ You will have the assistance of an interpreter.
  - Can you do the evaluation?
  - Are there special considerations for using an interpreter?
  - Can you administer psychological testing as part of the evaluation?
  - If yes, are there special considerations?
  -

## Case Examples: Assessment Issues 2

- ▶ You have been appointed by the court to conduct a psychosexual evaluation of Mr. K.
- ▶ The day prior to the scheduled interview, you are informed that Mr. K's attorney has asked....
  - To sit in on the interview.
  - To allow the defense expert to sit in on the interview
  - To audio or video tape the interview.
  - What do you do, and why?

## Case Examples: Assessment Issues 3

- ▶ You conducted a psychosexual evaluation of Mr. L. You opined that he was not amenable for community-based treatment.
- ▶ Prior to trial, Mr. L asks you to provide him with a copy of your report.
  - What do you do and why?

## Case Examples: Documentation & Records 1

- ▶ Mr. M is facing civil commitment.
- ▶ During cross-examination at his trial, you are asked by his attorney to provide the notes you took during your interview of Mr. M.
- ▶ You inform the attorney that you shredded these notes already.
  - Is this a problem?
  - Why or why not?

## Case Examples: Documentation & Records 2

- Mr. M is facing civil commitment.
- During cross-examination at his trial, you are asked by his attorney whether you drafted and edited earlier versions of your report. You say yes. When the attorney asks where those drafts are, you explain that you shredded them.
  - Is this a problem?
  - Why or why not?

## Case Examples: Documentation & Records 2

- You completed a psychosexual evaluation of Ms. N.
- After you issued your report to her attorney, she contacted you directly to point out some factual and typographical errors in your report, asking if you could correct these before the report is provided to the court.
  - What do you do and why?

## Case Examples: Fees 1

- Following a recent psychosexual evaluation of Mr. O, Mr. O contacts you to ask you for a complete copy of his bill, so that he can provide this to his insurance company for reimbursement.
  - What do you do and why?

## Case Examples: Fees 2

- During your therapy with Ms. P, she is laid off from her job and can no longer afford to keep paying you for therapy. If she stops coming to therapy, she may be revoked.
  - What do you do and why?

## Special Topic: Dual Roles\*

### Considerations for CSOTPs

\*Many of the slides in this section were adapted from Covell & Wheeler (2009)

### Some definitions\*

- ▶ “Dual relationship” has been defined as:
  - When a practitioner has two or more kinds of relationships concurrently with the same client
  - When a therapist is acting in at least one other role besides the professional one
  - When the therapist is in another, significantly different relationship, with one of his/her patients
  - When a one-to-one contracted therapy relationship overlaps into a non-therapy context

\*Adapted from Gabriel, L. (2005). *Speaking the unspeakable: the ethics of dual relationships in counseling and psychotherapy*. New York: Routledge.

### Examples of dual roles & relationships

- ▶ Sexual dual relationships
  - Engaging in a sexual relationship with a client:
    - Current client
    - Former client
  - Engaging in a therapy relationship with a sexual partner:
    - Current sexual partner
    - Past sexual partner

### Examples of dual roles & relationships

- ▶ Non-sexual dual relationships
  - Friendship/other social relationship:
    - Friendship/social relationship with a past or current therapy client
    - Therapy relationship with a past or current friend, family member, other social contact
  - Collegial relationship:
    - Therapy with a colleague/supervisee
    - Collegial /supervisory relationship with a therapy client

## Examples of dual roles & relationships

### ► Non-sexual dual relationships

- Financial/business relationship:
  - Employ/employed by/contract with a past or current therapy client
  - Therapy with an employer/employee/contractor/contractee
- Multiple roles as a psychologist
  - Forensic evaluation of a therapy client
  - Therapy with a party you will/have evaluated in a forensic context

## Circumstances in which dual relationships arise (continued...)

- ◎ Shifts in professional roles (e.g. a subordinate is promoted to a position over his former supervisor)
- ◎ Personal and professional role conflicts (e.g. a pre-existing professional relationship is followed by a personal relationship, or vice versa)
- ◎ “Predatory professional” (professional who deliberately seduces, abuses, or exploits clients and/or employees)

◎ \*Adapted from Gabriel, L. (2005). *Speaking the unspeakable: the ethics of dual relationships in counseling and psychotherapy*. New York: Routledge.

## Justifications for non-sexual dual relationships

### ► Selective inattention

- Therapist does not acknowledge dual relationship or its implications for therapy

### ► Benefits

- Therapist claims dual relationship is good for the client, may produce therapeutic change

### ► Prevalence

- “Other people do it”

◎ \*Adapted from Gabriel, L. (2005). *Speaking the unspeakable: the ethics of dual relationships in counseling and psychotherapy*. New York: Routledge.

## Justifications for non-sexual dual relationships (continued...)

### ► Tradition

- “Bartering of services is traditional”

### ► Client autonomy

- Therapist believes the client wanted/chose the relationship

### ► Necessity

- Therapist claims the relationship was unavoidable

◎ \*Adapted from Gabriel, L. (2005). *Speaking the unspeakable: the ethics of dual relationships in counseling and psychotherapy*. New York: Routledge.

## What makes a dual relationship problematic?

- ▶ Non-maleficence

- How might the client be harmed from having more than one relationship with the practitioner?
- How might the practitioner be harmed from having more than one relationship with the client?
  - Who is at greater risk of harm?
  - Is there an alternative that would eliminate (or at least reduce) the risk(s) of harm to the client?

## What makes a dual relationship problematic?

- ▶ Fidelity:

- How might the client's trust in the therapist be compromised by having more than one relationship with the practitioner?
- How might the practitioner's ability to provide ethical and caring service be compromised by having more than one relationship with the client?
  - Is there an alternative that would eliminate (or at least reduce) the risk(s) of harm to the client's trust in the practitioner?

## Therapeutic versus forensic roles for Sex Offense Specialists

- ▶ Role conflicts are noted in the professional standards for sex offense specialists
  - Association for the Treatment of Sexual Abusers, Professional Code of Conduct
- ▶ Principle of avoiding dual roles has been addressed for sex offense evaluations:
  - See Heilbrun, 2003; Hoberman, 1999

## Impact of SOS role violations

- ▶ Violation of treatment principles
  - Damage to therapeutic relationship
  - Poor treatment outcomes
  - Harm to long-term treatment goals
- ▶ Undermining of legal process
  - Lack of accuracy
  - Poor foundations for judicial decisions
  - Ultimate detriment to society
- ▶ Loss of professional credibility
  - ▶ Professional licensing sanctions and lawsuits
  - ▶ ***Poor outcomes lead to reductions in our efforts to increase community safety***

## Therapeutic vs. Forensic Roles: Sex Offense Specialists

	<i>Therapeutic</i>	<i>Forensic</i>
<i>Client</i>	Community & "Patient"	Attorney/Court
<i>Privilege</i>	Therapist- "patient" (with many exceptions)	Attorney-client
<i>Cognitive Set</i>	???(for later discussion)	Neutral, objective, detached
<i>Relationship</i>	???(for later discussion)	Evaluative/adversarial
<i>Competency</i>	Clinical assessment & Treatment	Forensic assessment & psycho-legal principles

## Therapeutic vs. Forensic Roles: Sex Offense Specialists

	<i>Therapeutic</i>	<i>Forensic</i>
<i>Hypotheses</i>	Symptoms for Tx	Legal issues for adjudication
<i>Structure</i>	Less, Set by client and court	More, set by evaluator
<i>Info Gathering</i>	Patient-based, with corroboration, monitoring and skepticism	Multiple sources, skeptical/scrutinized
<i>Goal</i>	Help client, protect the community	Help the Court
<i>Critical judgment</i>	Harmful to therapeutic alliance	No alliance to harm; client impact minimal

## Not therapeutic



## Not therapeutic



How do role conflicts arise for  
SOS therapists?

How do role conflicts arise for SOS therapists?

- ▶ Some SOSs are more comfortable in a “correctional” or even “punitive” role than in a therapeutic role
- ▶ SOS may confuse therapeutic “alliance” with “condoning” offense behavior
- ▶ Exchanging information may be valued over protecting the client’s confidentiality
- ▶ Limited resources
- ▶ Lack of understanding about role differences

How do role conflicts arise for  
SOS evaluators?

How do role conflicts arise for SOS evaluators?

- ▶ Referral question is generated and/or accepted by persons who may be unfamiliar with relevant psychological research
- ▶ SOS has not had formal forensic training
- ▶ SOS’s underlying professional standards do not explicitly preclude dual relationship
- ▶ SOS regards him/herself as impervious
- ▶ Institutional/contextual pressures

## Published paper on this topic available at:

Covell, C.N., & Wheeler, J.G. (2006). Revisiting the 'Irreconcilable Conflict between Therapeutic and Forensic Roles': Implications for sex offender specialists. *American Psychology-Law Society Newsletter*, 26(3), 6–8.

## Avoiding Dual Role Conflicts as Sex Offense Specialists

1. What is the referral question?
2. Am I the right person to address this question?
3. Is my role understood by all parties?

### Avoiding dual role conflicts: Question #1

#### ► What is the “referral” question?

- Is it clinical or “psycho-legal”? How do you tell?
- For what reason(s) am I gathering information from/about this client?
  - To facilitate change?
  - To provide information to a third party to assist with a decision?
- Who is the “audience” for the report?
- For what purpose will the information be used?

### What is the referral question?

#### ► Therapeutic sex offense evaluations:

- Purpose is to inform treatment planning & delivery
- Third-party may use therapeutic information for other purposes, but that is not the purpose of the evaluation

#### ► Examples:

- Intake Assessment
- Treatment Plan
- Progress Report/Reviews
- Treatment Summary

## What is the referral question?

### ► *Forensic sex offense evaluations:*

- Purpose is to provide clinically relevant data to a third party, who must make an important decision about the evaluatee
- A therapist may use the forensic eval to help guide treatment planning, but that is not the purpose of the evaluation

### ► Examples:

- Sexually Violent Predator Evaluations
- Pre-sentence risk assessment
- Pre-release risk assessment
- Post-commitment Annual Reviews

## Avoiding dual role conflicts: Question #2

### ► Am I the appropriate person to address this question?

- Do I have the relevant expertise (clinical/forensic)?
- Do I know the limits of my professional expertise/competence?
- Do I (or will I foreseeably) have another role with the individual being evaluated?
- Is my role understood by all parties?

## Am I the appropriate person to address this question?

### ► Do I have the appropriate education and training?

- Therapeutic sex offense evaluations:
  - Basic clinical skills
  - Knowledge/experience regarding sexual offense behavior
  - Knowledge of risk-based treatment principles
  - Experience delivering cognitive-behavioral therapy

## Am I the appropriate person to address this question?

### ► Do I have the appropriate education and training?

- Forensic sex offense evaluations:
  - All of the prior slide, plus....
  - Knowledge of specific elements of psycho-legal question
  - Knowledge of/experience with empirically based risk assessment factors and procedures
  - Knowledge of/access to current relevant professional literature/research

Am I the appropriate person to address this question?

- ▶ Do I know the limits of my professional expertise/competence? With this client?
  - Clinical Expertise vs. Forensic Expertise
    - Therapist is still an “expert” person,” but that is not the same as the forensic expert
  - Therapists must acknowledge the limits of what they can accurately and reliably say based on therapeutic relationships.

Avoiding dual role conflicts as therapists:  
Respect professional limits

- When asked psycho-legal questions, therapist witnesses must be willing to respond:
- “I cannot answer that question given my role in this case”
  - “I do not have an adequate professional basis to answer that question”
  - “I did not conduct the kind of evaluation necessary to reliably answer that question”
  - “I can only tell you what I observed”
  - “I can only tell you what my patient told me”.

Am I the appropriate person to address this question?

- ▶ Do I (*or will I foreseeably*) have another role with the individual being evaluated, that might impair my objectivity and/or my credibility?
  - Note: the question is not “are you objective”?

Avoiding dual role conflicts:  
Question #3

- ▶ Is my role clearly understood by all parties?
  - ALWAYS conduct a comprehensive informed consent procedure
  - Informed consent should clarify:
    - Nature of professional relationship
    - Confidentiality issues
    - Access to information issues

## Recommendations

► DO:

- Be familiar with ethical principles and guidelines for clinical and forensic practice
- Obtain formal forensic training before accepting referrals for sex offense risk assessments or other forensic evaluations
- Clarify referral question prior to accepting the referral
  - Know the purpose of the eval, and your audience
- Conduct an informed consent procedure
  - clarify your role, nature of eval/Tx, limitations of confidentiality

## Recommendations

► DO:

- Recognize that everyone has his/her own role in management of the client
  - Know what your role is (and is not)
  - Don't do someone else's job
  - Don't diminish the value of your unique contribution
- Recognize your professional limits
  - Know the strengths and weaknesses of your professional background and training
  - Monitor behavior for erosion of basic treatment principles
  - Acknowledge and report biases and role conflicts

## Case Examples: Dual Roles

## Recommendations

► DON'T:

- Accept a third-party referral unless you have training in clinical forensic evaluation techniques AND expertise in the specific psycho-legal issue
- Accept a referral to conduct a forensic evaluation of a party you have treated, are treating, and/or will treat
- Conduct treatment/engage in treatment activities with a party you have evaluated forensically

## Recommendations

- ▶ DON'T:
  - Provide forensic expert opinions about a client for whom you are providing treatment
    - e.g. don't offer opinion about risk to re-offend
  - Be afraid to acknowledge counter-transference/vicarious trauma and seek consultation or supervision
  - Hesitate to confer regularly with colleagues regarding role issues
  - Fall prey to the erroneous belief that you are not vulnerable to bias – we are all vulnerable



## The End

- ▶ Thank you!
- ▶ Questions?
  - Jennifer Wheeler, Ph.D:
    - Email: [dr.wheeler@yahoo.com](mailto:dr.wheeler@yahoo.com)