I. Clinical vs. Forensic Roles

- Forensic Psychology is a specialty recognized by ABPP.
- "Forensics" refers to the juncture where medicine/psychology and the adversarial legal system meet.

Clinical vs. Forensic Roles

DIAGNOSES:
- Clinicians use dx to inform tx strategy & for insurance reimbursement
- In Forensics, dx is usually less of a critical issue, sometimes not needed at all (Personal Injury, Child Custody): Dx are based on statutes which define relevant behaviors to the court.

Ethical Issues in Forensic Psychology

I. Clinical vs. Forensic Roles

II. Ethical Guidelines for Forensic Practice

III. Avoiding Ethical Pitfalls
- Think Like a Forensic Psychologist
- Case Examples
- Acquire Competency

Clinical vs. Forensic Roles

- Clinicians help the client; What is learned is used to benefit the patient.
- FP's use results of assessment to inform or educate the court (without regard to the potential benefits or detriments to the examinee).

Clinical vs. Forensic Roles

- These statutes define the psycholegal issue and, hence, the focus of the evaluation (e.g., Miranda Rights Waivers: The ability to waive Miranda rights is defined as being able to do so "knowingly, intelligently, and voluntarily" – in legal, not psychological, terms).
Clinical vs. Forensic Roles

The job of the forensic psychologist is to translate legal terms into psychological concepts, which can be objectively evaluated (Grisso, 1986).

Clinical vs. Forensic Roles

CONCEPTUALIZATION OF BEHAVIOR

- Clinicians see behavior as existing on a continuum (behavior is complex)
- The legal system views behavior as dichotomous (guilty v. non-guilty; sane vs. insane)

Ethical conflicts arise when those who view behavior on a continuum are asked to sort individuals into discrete categories.

Clinical vs. Forensic Roles

WORK PRODUCT

- Clinicians seek to explain behavior in assessments (e.g. intellectual or personality functioning)
- In forensics, explanations of behavior are typically irrelevant: To be valuable, written reports should address the psycholegal question, not IQ, psychodynamics, or other “excuses” for conduct.

Clinical vs. Forensic Roles

TRUST OF THE CLIENT’S REPORTS

- Clinicians rarely question the truthfulness or motivation of the client/patient; An inaccuracy is a “lack of insight” or a “cognitive distortion,” not a deliberate intent to deceive.
- FPs must question the veracity of reports, seek outside corroboration across multiple sources; We suspect malingering on tests.

Clinical vs. Forensic Roles

TEMPORAL FOCUS OF THE EVAL

- Most clinical assessments are present-oriented (client’s state at time of testing)
- Some forensic reports have some of the focus on the present (which parent can best meet needs of child now), but will often involve exclusive or partial focus on the past or future.

Clinical vs. Forensic Roles

TEMPORAL FOCUS OF EVAL

Insanity assessments focus on the defendant’s state of mind at the time the crime occurred

Personal injury will focus on what state is in the present, but also before the accident.
**Clinical vs. Forensic Roles**

**LEVEL OF PROOF**
- Clinicians define "proof" in scientific terms, such as the .05 level of probability/95% certain that the results of the study are attributable to the variables under investigation
- FPs must define proof in legal terms ("beyond reasonable doubt," "clear and convincing evidence," "preponderance of the evidence")
- FPs are asked if they are certain "to a reasonable degree of clinical certainty"

**PROFESSIONAL ACCOUNTABILITY**
- Clinicians conduct themselves, typically, behind closed doors with only the patient as a witness
- FPs work is public (clinical interviews are often taped, counsel may sit in on interviews, reports are dissected by opposing counsel; FPs are subjected to close and probing cross-examination)

**WHO IS THE CLIENT?**
- Easily defined in clinical work
- FPs serve multiple clients (Monahan, '80)
  - Person being evaluated
  - Retaining attorney
  - Judge
  - Jury
  - Those impacted by FPs expert opinion: Society

**Other Differences:**
- Clinicians are supportive, empathic
- FPs are detached, neutral, objective and sometimes adversarial
- Clinical relationships are less structured
- Forensic relationships are highly structured

**Goldstein (@ 2000):** “The fundamental differences between clinical and forensic roles shape and determine the approach of FPs to conducting their assessments, their methodology, and the structure of their opinions and testimony. Only by recognizing and addressing these major differences can forensic psychologists function in an effective, ethical manner.”
Ethics and Professional Competencies

• Bear in mind that no area of psychological practice receives the scrutiny of FP
  – Reports and testimony are open to scrutiny, criticism, and cross-examination
  – Findings have PROFOUND impact on the lives of litigants/respondents (TPR, C A/N, criminal proceedings, MHIW)

Ethics and Professional Competencies

• FPs are EXPECTED to possess specialized knowledge of statutes, case law, familiarity with Rules of Evidence, to have experience with forensically relevant instruments

• Clinicians who accept a forensic role must beware of the potential damage they can cause individuals and the profession as a whole

II. Ethical Guidelines for Forensic Practice

• A. Specialty Guidelines for Forensic Practice

• B. Record Keeping Guidelines

SPECIALTY GUIDELINES FOR FORENSIC PSYCHOLOGISTS (1991)

• Published in Law & Human Behavior, Vol. 15 No. 6, 1991

• Access online: www.ap-ls.org/links/22808sgfp.pdf

SPECIALTY GUIDELINES FOR FORENSIC PSYCHOLOGISTS (1991)

• Authored by Div 41 - Psychology and the Law and American Academy of Forensic Psychology

• Informed by Ethical Principles of Psychologists (1990)

• Applies to psychologists who “regularly engage in the practice of forensic psychology”

Specialty Guidelines

• SGs take into account and are informed by the Ethical Principles of Psychologists (1990), but are designed to provide more specific guidance to FPs in “monitoring their professional conduct when acting in assistance to the courts, parties to legal proceedings, and legislative agencies.”
Primary Goal of Specialty Guidelines

“… improve the quality of forensic psychological services offered to individual clients and the legal system and thereby to enhance forensic psychology as a discipline and profession.”

SGs: Definition of Forensic Psychology

All forms of professional psychological conduct when acting (with foreknowledge) as a psychological expert on explicitly psycholegal issues, in direct assistance to the courts, parties to legal proceedings, correctional and forensic mental health facilities, and administrative, judicial, and legislative agencies acting in an adjudicative capacity.

SGs Do Not Apply

• Psychologists who are not informed at the time of delivery of services that they work product was intended to be used in a forensic capacity

• If you are in this predicament, the guidelines may be useful in preparing clinical data for the forensic arena

SGs

• The SGs take precedence for forensic psychologists. Thus, the Ethical Principles of Psychologists should be referenced, but the SGs take precedence for forensic psychologists if there is a conflict

II. RESPONSIBILITY

• FPs have an obligation to provide services in a manner consistent with the highest (“best practice”) standards of the profession

• Responsible for self and supervisees

III. COMPETENCE

– “FPs provide services only in areas of psychology in which they have specialized knowledge, skill, experience, and education”

– Have an obligation to describe to court the limitations in their competence or expertise

– Understand legal and professional standards that govern their participation in legal proceedings

– Understand the civil rights of parties and conduct themselves in a way that does not threaten those rights
IV. RELATIONSHIPS

– Must inform party regarding factors that might affect decision to contract services
  • Fees
  • Prior relationships
  • Limits of competence
  • Scientific bases and limitations of procedures and methods

– No contingent fee arrangements

IV. RELATIONSHIPS

– Must recognize and seek to minimize impact of conflicts created by dual relationships (Hardin County Case, Mr. Psychologist; When can this be acceptable?)

– Must inform party regarding:
  • Purpose of the evaluation
  • Nature of procedures to be employed
  • Intended use of the product
  • Who has employed FP

IV. RELATIONSHIPS

• Unless court ordered, Informed Consent is obtained from person or attorney/legal representative

• Even if court ordered, I obtain my “Personal Miranda”

V. CONFIDENTIALITY & PRIVILEGE

– FPs must be aware of legal standards regarding limits of confidentiality and privilege
  • Must establish a system of record keeping and professional communication that safeguards privilege
  • Must maintain active control over records and information
  • Release information only with statutory requirements, court order, or client consent

– FPs must inform parties of the limits of confidentiality by providing them with a statement regarding those limitations

V. CONFIDENTIALITY & PRIVILEGE

– FPs must maintain confidentiality about information that does not bear directly on the legal purpose of the evaluation

– FPs provide parties or legal reps with access to records and explanations of those records consistent with Ethical Principals of Psychologists, Standards for Educational and Psychological Testing, and institutional rules and regulations

VI. METHODS & PROCEDURES

A. FPs must maintain current knowledge and use it consistently with accepted clinical and scientific practices (w/measures, research)

B. FPs must document and make available all data that forms the basis for evidence. The standard for documentation is higher than clinical practice. Duties and obligations for documentation apply from the moment FPs know or have a reasonable basis for knowing that data is apt to be used in a legal context
VI. METHODS & PROCEDURES
C. FPs take special care to avoid undue influence upon their work by financial considerations or other gains. Maintain integrity by examining the issue from all reasonable perspectives, actively testing rival hypotheses.

D. FPs do not provide services to any individual who are not represented by counsel, unless determined by the court to be handling their representation pro se.

E. Collateral information from 3rd parties is sought only with prior approval of legal representative or by order of the court.

VI. METHODS & PROCEDURES
F. FPs are aware that hearsay exceptions place a special ethical burden on them. Minimize sole reliance on such evidence, obtain independent verification. If not possible, acknowledge uncorroborated data and explain reasons for relying upon it. When relying upon information gathered by others, FPs ensure that such data was gathered in a manner that is standard for the profession.

VII. PUBLIC/PROFESSIONAL COMMUNICATIONS
A. FPs communicate in a way to promote understanding and avoid deception
   1. Correct misuse or misrepresentation of their products
   2. When providing test data to third parties not qualified to interpret test results and data, FPs comply with Principle 16 of the Standards for Educational and Psychological Testing. Make an effort to maintain test security.

B. FPs recognize that they have a special responsibility for fairness and accuracy in public statements

C. FPs avoid making detailed public statements about legal proceedings in which they have been involved other than to assure accurate representation of their role or evidence, not to advocate for parties in a legal proceeding. Use information from legal proceedings in publications and communications only when information is part of the public record or consent has been obtained.

D. When testifying, FPs have an obligation to present findings in a fair manner. This does not preclude forceful representation of data but it does preclude active or passive attempts to engage in partisan distortion or misrepresentation. They do not subvert the presentation of data which is contrary to their position.

E. FPs actively disclose all sources of information and which source was used in formulating a particular written product or testimony.
RECORD KEEPING GUIDELINES


Aspirational in nature, not standards. They facilitate a high level of practice and provide a framework for professional record keeping.

Standards are mandatory and often have enforcement mechanisms.

RECORD KEEPING GUIDELINES

In cases where state or federal law conflicts with GLs, state & federal law supersedes

HIPAA (1996) has an impact on record keeping, some of which is bypassed by, in particular, court ordered evaluations

GLs expire 10 years from 2007, then refer to APA Practice Directorate

Guideline 1 - Psychologists have a responsibility for maintenance and retention of records:
- Will vary depending on specialty
- Legible, accurate, organized (clinical & $)
- Maintain control for confidentiality in accordance with agency/institutional policy

Guideline 2 - Psychologists maintain records in a manner appropriate to the circumstances and as required by jurisdiction
- Records kept in context to the greater agency
- Consider the level of detail
- Intended use of records
- Legal/Regulatory

Alteration or destruction of records in the context of litigation may create liability for the psychologist (spoliation)

Guideline 3 - Psychologists take reasonable steps to insure confidentiality of records
- They are familiar with ethical standards regarding confidentiality regarding HIPAA, licensing laws, mandated reporting of abuse
- Psychologists are guided by State and Federal regulations, as well as ethical codes

Guideline 4 - Psychologists disclose record keeping procedures and limitations on confidentiality of records
- Psychologists may wish to warn parties that when properly released, client records may subsequently become part of the public domain. When released to other professionals, future distribution is beyond the control of the psychologist who released the records.

Guideline 5 - Psychologists try to organize and maintain records to ensure their accuracy and facilitate their use by others with legitimate access

Guideline 6 - Psychologists take steps to protect records from unauthorized access, damage, or destruction
- Safe location, protected from damage or unauthorized access, passwords/encryption
• **Guideline 7** - Retention of Records
  - Length of retention is guided by needs of the individual as well as society’s interest in fair resolution of a legal dispute. Retain full records for 7 years after the last date of service for adults or 3 years after minor reaches the age of majority, which ever is later.
  - Psychologists may be guided by a cost/benefit analysis which includes considerations for both the client and the psychologist.

• **Guideline 8** – Preserving the Context of Records
  - Document extenuating circumstances that may influence later interpretation of record (e.g., violent episode, but in context of LSD intox).

• **Guideline 9** – Electronic Records
  - Like paper records, should be created and maintained to protect security, integrity, confidentiality, appropriate access, and compliance with legal/ethical requirements.

• **Guideline 10** – RK in Organizational Settings
  - Follow procedures of institution and APA Ethics Code. (What to do if a conflict?)

• **Guideline 11**: Multiple Client Records

• **Guideline 12**: Financial Records
  - Accurate
  - Fee Agreement/Policy (fee, terms, service)
  - Document barter, transactions, adjustment
  - Collection notes

• **Guideline 13** - Record Disposal
  - Shred paper
  - consult about destruction of electronic records
  - If not at institution, make a “records will”

---

**III. Avoiding Common Ethical Pitfalls**

- **A. Think Like a Forensic Psychologist**
- **B. Case Examples**
- **C. Acquire Competency**

**THINKING LIKE A FORENSIC PSYCHOLOGIST**

“Clinical judgment and decision making, which play a role in almost all clinical evaluations, have problems and limitations. Mental health professionals who conduct forensic examinations should be aware of these problems and take steps to address them.”

THINKING LIKE A FORENSIC PSYCHOLOGIST

Borum, Otto, & Golding (1993)

Processes that are likely to increase the potential for errors in judgment

1. Over reliance on memory – ethical requirement for greater record keeping
2. Tendency to ignore inconsistencies– need for alternate hypothesis testing
3. We remember striking events better than bland, expected events which may give striking events more salience in decision-making than is warranted.
4. Lack of discrimination in data collection – more is not necessarily better. Data collection should be based on clear understanding of relevant forensic questions and appropriate techniques for eliciting data
5. Underutilization of base rates – leads to over-predicting infrequent events, i.e. international kidnapping of children, murder of domestic partner, etc. Identify the population to which the client belongs. Consider factors such as age, race, gender, educational level. Then consider assessment data from individual and modify rates accordingly
6. Confirmatory bias – tendency to accrue data that fits the dominant hypothesis and ignore, or fail to seek, competing data. May be caused by primacy effects (data acquired early on may unduly influence subsequent process). Search for competing data. In comparative situations, use parallel processes. Beware of tendency to under-revise initial impressions.
7. Illusory correlation – Rely on empirical research, not clinical impressions.
8. Hindsight bias – Assessing foreseeability. When we know the outcome, the tendency is to overestimate the extent to which outcome could have been predicted.
9. Overconfidence – a particular problem that comes with experience. Identify competing hypotheses. Adjust confidence level when conclusion is based on sparse or unreliable data. Gather follow up information regarding accuracy of assessment.
10. Over-reliance on unique data – tendency to over-ride decision rules

Examples of Ethical Dilemmas

- Re-Eval (Ph.D., ABPP-based firm, utilizing MA staff and temporarily licensed Ph.D. level psychologists)
  - MMPI & CAPI results reported
  - 21 yo female, hy Spec Ed
  - No IQ test given, No reading screen
  - My results IQ = 62, Reading Lvl = 3g, 5 m

Ethical Dilemma #2

Court order to evaluate possible MSBP respondent mother (RM) in C A/N Case

At superficial review, appears DCBS has vendetta against RM

Forensic Pediatric Med consult requested by FP
Ethical Dilemma #2, con’t

- FP contacted by RM’s attorney:

  “I want to thank you for the professional manner in which you have conducted this evaluation. Based upon several events and statements made by other parties involved directly or indirectly in this action, I would like to meet with you, along with Ms. RM, to answer questions that you may have and to express some concerns that are troublesome.”

- My response:

  “I agree that this is a complex and troublesome case. My overriding goal is to produce a report that is well-informed by the records, collateral reports of Drs. X and Y, and my clinical evaluation of Ms. RM. I am unsure of the prudence of meeting with you to discuss the nuances of the case as this would likely be seen as an ex-parte communication by the prosecutor and Court. Perhaps the best way to address your concerns would be to e-mail me, cc’ing all counsel and the Court? This would allow me to have access to the information, but would ensure that I could not be accused of bias while conducting the evaluation.”

---

Ethical Dilemma #3

- Re-Evaluation
  - Psychologist #1 did a “Parental Capacity” evaluation on RM for the court
  - Psychologist #1 is a clinical, not a forensic or forensically trained, psychologist
  - Psycholegal question was “Does the RM have the capacity to adequately and safely parent the 4 special needs subject children?”

- Assessment consisted of clinical interview
  - Dx were Depressive/Anx Disorders NOS
  - PTSD also assigned
  - IQ intact, Rdg level HS level, MMPI used
  - MSE wnl
  - RM deemed to be “credible, far more credible than others who have been evaluated”
  - Based upon the above, Dr. Clinical concluded:

- Also denoted: “Despite the claims of DCBS of abuse, neither the MMPI 2 nor any evidence in this session suggested the presence of an anger problem.”

- Dr. Clinical also noted concerns re: DCBS’ failure to investigate RMs parents as kinship foster care resources.

- Dr. Clinical also suggests that as the RM provided documents of EPO/DVO and arrest notices in papers the now custodial father is a ill-advised parental resource for the subject children.
Ethical Dilemma #3, con’t

• Following provision of the report for the court, Dr. C accepted RM as a therapy patient, providing supportive and parent-skills focused treatment.

• Any ethical problems evident?

Ethical Dilemma #3, con’t

• No record review or review of court documents (so no awareness she was convicted, in Family and Criminal Court, of Abuse and Assault 2nd Degree)

• No understanding of psycholegal question and responsibility to answer the question for the Court – rather the conclusion poses questions for the court to answer (reflects poorly on the profession; resulted in delay of disposition impacting court, counsel, RM, and children; will make him easy prey for prosecutor on the stand – and we have been subpoenaed for later this month)

Ethical Dilemma #3, con’t

• Misuse of government funds for an evaluation that was of no use to the court that had to be re-ordered

• Assessed RM to be “credible” – not “reliable” (reliability should be internal and external)

• Assumes the role of the judge (“finder of fact”) and child welfare agency in conclusion

Ethical Dilemma #3, con’t

• Dual Relationship

• Biased stance readily apparent

• Outside realm of evaluation to discuss potential concerns of custodial father, and calls judge’s decisions into question

Conclusion: “Based upon a comprehensive review of Court, psychiatric, and agency records (spanning 1990-present), as well as clinical interview and psychometric testing, it is concluded with a reasonable degree of clinical certainty that the respondent mother, as a result of mental illness, is, and will remain in the foreseeable future, unable to safely and adequately parent, and the subject children, if returned to her care, would be at unacceptable risk of abuse and/or neglect.”

Ethical Dilemma #3, con’t

• Dr. Clinical, while well-intentioned, will be put on the stand, in the presence of his now therapy patient and asked if he had information below, would he still conclude RM can parent safely and adequately?

  – it is a legal fact that she beat the subject children with clothes hangers

  – 7 psychiatric hospitalizations for mania w/psychosis (w/command hallucinations)

  – shot a gun at non-respondent father (while holding an infant subject child)
Acquiring Competency

• If you are not formally trained, you have an obligation to become trained before you conduct forensic interviews and submit reports to the court

  – Attend symposia sponsored by AAFP
  – Seek supervision of a trained forensic psychologist