**Chapter 9**

**CODES AND COMPLAINTS IN CONTEXT: HISTORICAL, EMPIRI**CAL, **AND ACTUARIAL**

**FOUNDATIONS**

As therapists, we are members of the mental health profession. Exactly what *we* profess has been subject to debate from the beginning. We have a hard time defining what we do.

The 1949 Boulder Conference tried to define psychotherapy so it could be taught to clinical and counseling psychologists. Carl Rogers, president of the American Psychological Association (APA) in 1947, appointed David Shakow to chair a committee on defining and teaching psychotherapy. The Shakow report, adopted at the 1947 APA convention, resulted in the Boulder Conference two years later.

On August 28, 1949, the recorder for the Boulder task force for defining

psychotherapy and setting forth criteria for adequate training provided this

85

I JWBT356·09.indd 85 10/4/10 6:21:09 PM I

I

86 CODES AND COMPLAINTS IN CONTEXT

summary: "We have left therapy as an undefined technique which is applied to unspecified problems with a nonpredi ctable outcome. For this techniqu e we recommend rigorous training " (Lehner, 1952, p . 547).

Since the Boulder Conference, other conferences and various groups have tried to define psychotherapy and the practice of psychology. The "2002 Com­ petencies Conference: Future Directions in Education and Credentialing in Professional Psychology" (Kasiow et al. , 2004), for exam ple, id entified compe­ tenci es in professional psychology and discussed effective strategies for teach­ ing and assessing these competencies (Ka slow, 2004; see also Belar, 2009; Foua<l et al., 2009; Kaslow et al., 2009). Chapter 6 presents a more detailed discussion of competence.

Forces outside the profession also influence practice. For example, man­ aged care companies can require a diagnosis from a specific manual, can limit or deny assessment and therapy sessions, can require therapists to document that therapy is a matter of medical necessity, can require specific interventions for particular disorders, and can require that ou tcome be measured u sing a limited number of criteria defined by the company.

Not surprisingly, these measures-often described as cost cutting -can create conflict between company administrators and therapists (Reed & Eisman, 2006). The requirement that only certain intervention s be used for a particular diagnosis highlights a controversy within the profession: Should the definition and practice of psychotherapy be limited to interventions sup­ ported by research and, if so, what kind of research? Must th e research use rand om assignment in a double-blind model, be published in peer-reviewed journals, be independently replicated by other researchers, and meet other sta ndards?

The answer to this question will profoundly affect what therapies are seen

as legitimate and reimbursable by third parties. Kazdin ( 2008b; see also Kazdin, 2008a; Du n can , M iller, Wa mpold , & Hubble, 2010) points out that th ere are over 5 50 psychological interventions designed for children and adolescents but that only a relatively small percentage have been researched.

Littell (20 I 0) describes the ten sions between the work of therapists and

researc hers:

Clinicians and social scientists have distinct imperatives and sensibilities. Therapy requites action and faith in the process, whereas science demands observation and skepticism. Most scientific knowledge is tentative and nomo­ thetic, not directly applicable to individual cases. Experts have stepped into this breach by packaging empirical evidence for use in practice. Sometimes this i>; little more than a ruse to promo te favorite theories and therapies. Yet, wrapped in scientific rhetoric, some authoritative pronouncements have become ortl10doxy. (pp. 167-168)

I JWBT356-09 .indd 86 10/4/10 8:21 :10 PM I

Mechanisms of Accountability 87

Westen and Bradley (2005) note that

evidence-based practice is a construct (i.e ., an idea, abstraction, or theoreti­ cal entity ) and thus must be operationalized (i.e., turned into some concrete form that comes to define it). The way it is operationalized is not incidental to whether its net effects turn out to be positive, negative , or mixed. (p. 226; see also Western, Novotny , & Thompson-Brenner, 2004)

Psychotherapy researchers Crits-Christoph , Wilson , and Hollon (2005) believe that "randomized controlled trials remain th e most powerful way to test notion s of causal agency" (p. 412) . Yet Kazdin (2006), previous editor of the Association for Psychological Science's journal *Current Directions in Psy­ chological Science,* wrote: "Psychotherapy outcome research has been domi­ nated by randomized controlled trials. ... However, pivotal features of these trials make them not very relevant for clinical practice" (p. 170; see also Good­ heart, 2006; Sternberg, 2006).

The APA's (2006) Pr esidential Task Force on Evidence-Based Practice noted

both the limits of clinical hypothesis testing and need for clinical expertise:

Yet clinical hypothesis testing has its limits, hence the need to integrate clini­ cal expertise with the best available research. Perhaps the central message of this task force report---and one of the most heartening aspects of the process that led to it-is the consensus achieved among a diverse group of scientists, clinician s, and scientist-clinicians from multiple perspectives that EBPP [evi­ dence-based psychology practice] requires an appreciation of the value of multiple sources of scientific evidence. In a given clinical circumstance , psy­ chologists of good faith and good judgment may disagree about how best to weigh different forms of evidence; over time, we presume that systematic and broad empirical inquiry-in the laboratory and in the clinic-will point the way toward best practice in integrating best evidence. What this document *[ Report of the* APA *Presidential Task Force* on *Evidence-Based Practice]* reflects, however, is a reassertion of what psychologists have known for a century: The scientific method is a way of thinking and observing systematically, and it is the best tool we have for learning about what works for \vh om . (p. 282)

**MECHANISMS OF ACCOUNTABILITY**

Difficulties in defining psychotherapy and psychological practice with preci­ sion do not free the profession from the basic responsibility of setting forth its ethics. The hallmark of a profession is the recognition that the work its mem­ bers carry out affects the lives of their clients, sometimes in direct, profound,

and immediate ways. The powerful nature of this influence makes the cus­ tomary rules of the marketplace (often resting on variations of the principle "Let the buyer beware") inadequate (see Chapter 4).

I JWBT356-09.indd 87

10/4/10 8:21:10PM I

88 CODES AND COMPLAINTS IN CONTEXT

Society asks that the profession set forth a code to which the members of the profession agree to be held accountable. At its heart, this code calls for the professional to protect and promote the we lfare of clients and avoid letting the professional's self-interests place the client at risk for harm . In addition to the fundamental code of ethics, there may be codes or statements of the rights of patients (see, e.g., APA, 1997) or of the ethics as applicable in a specific setting, such as managed care organizations (see, e.g., National Acad ­ emies of Practice, 1997).

Perhaps because society never completely trusts professions to enforce their own standards and perhaps because the professions have demonstrated that they, at least occasionally, are less than effective in governing their own behav­ ior, society has established its own means for making sure that professions meet minimal standards in their work and that those whom professionals serve are protected from in competent, negligent, and dishonest practitioners.

Four major mechanisms hold therapists and counselors accountable to explicit standards: professional ethics committees, state licensing board s, civil (e.g., malpractice) courts, and criminal courts. Each of these four mechanisms uses different standards, though they may overlap. Behavior may be clearly unethical and yet not form the basis for criminal charges.

In some cases, therapists and counselors may feel that these different stan­

dards clash. They may, for example, feel that the law compels them to act in a way that violates the welfare of the client and the clinician's own sense of what is ethical. A national survey of psychologists found that a majority (57%) of the respondents had intentionally violated the law or a similar formal standard because, in their opinion, not to do so would have injured the client or vio­ lated some deeper value (Pope & Bajt, 1988). The actions reported by two or more respondents included refusing to report child abuse (21%), illegally divulging confidential information (21%), engaging in sex with a patient (9%), engaging in nonsexual dual relationship s (6%), and refusing to make legally required warnings regarding dangerous patients (6%) .

That almost 1 out of 10 of the respondents reported engaging in sex with a client (see Chapter 16) using the rationale of patient welfare or deeper moral value highlight s the risks, ambiguities , and difficulties of evaluating the degree to which our own individual behavior is ethical.

Pope and Bajt (1988) reviewed the attempts of philosophers and the courts to judge those times when a person decides to go against the law (e.g., engage in civil disobedience). On one hand, for example, the U.S. Supreme Court emphasized that in the United States, no one could be considered higher than the law: ''In the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespec­ tive of his race, color, politics, or religion" *( Walker* v. *City of Birmingham,* 1967, pp. 1219-1220).

I JWBT356-09.indd 88 10/4/10 8:21:10 PM I

Ethics Committees, Codes, and Complaints 89

On the other hand, courts endorsed Henry David Thoreau's ( 1849/1960) injunction that if a law "requires you to be the agent of injustice to another , then ... break the law" (p. 242). The California Supreme Court, for example, tacitly condoned violation of the law only when the principles of civil disobe­ dience are followed

If we were to deny to every person who has engaged in ... nonviolent civil disobedience ... the right to enter a licensed profession, we would deprive the community of the services of many highly qualified persons of the highest mora l courage

*( Hallinan* v. *Committee of Bar Examiners of State Bar,* 1966, p. 239)

*As* Pope and Bajt note, civil disobedience (Gandhi, 1948; King, 1958, 1964; Plato, l 956a,b; Thoreau, 1849/1960; Tolstoy, 1894/1951 ) is useful in many con­ texts for resolving this dilemma. The individual breaks a law considered to be unjust and harmful but does so openly, inviting th e legal penalty both to dem­ onstrate respect for the system of law and to call society's attention to the suppos­ edly unjust law. Counselors and therapists, however, often find this avenue of openness unavailable because of confidentiality requirements (see Chapter 19).

If we as individuals and a profession are to address the possible conflicts

between the law and the welfare of our clients, one of the initial steps is to engage in frequent, open, and honest discussion of the issue. The topic needs open and active discussion in graduate courses, internship program s, case conferences, professional conventions, and informal meetings with colleagues.

Clients may understandably wind up confused about how therapists are held accountable for their actions. They may mistakenly believe that a professional ethics committee can revoke a license or that a licensing board can expel a practitioner from a professional organization like the APA. The next sections describe the four major mechanisms of accountability.

# EliHICS COMMITTEES, CODES, AND COMPLAINTS

Profession al associations of therapists and counselors are voluntary organiza­ tions; membership is not a state or federal requirement for the practice of the profession. A psychologist can, for example, be licensed (by the state) and practice as a psychologist without being a member of the APA or any other association. An association, through its ethics committee, holds its members accountable to the ethical principles it sets forth in the code it has developed. To illustrate how such a code is developed, we will describe how two organiza­ tions approached the challenge.

The American Psychological Association, at the end of 2009, had 152,223 members, including 91,588 full members (2,771 fellows; 68,507 members; 7,737 associates; 1,234 Canadians; and 11,339 life status members) and 60,635

I JWBT356-09.indd 89

10/4/10 8:21:10 PM I

90 CODES AND COMPLAINTS IN CONTEXT

Affiliates (52,583 student', 4,007 international; 2,528 high school teachers, and 1,517 community college teachers ) (S. Wiggins, personal correspondence, January 20, 2010 ).

The 2009 Annual Report of the Canad ian Psychological Association (CPA)

cites 6,524 members (4,316 member s and fellows, 1,812 students, 236 honor­

ary life member/fellows, and 160 affiliates and retired fellows and members).

# American Psychological Association .Approach to an Ethics code

Founded in 1892 and incorporated in 1925, the A.PA first formed the Commit­ tee on Scientific and Professional Ethics in 1938. As complaints were brought to its attention, this committee improvised solutions on a private, inform al basis. There was no formal or explicit set of ethical standard s, so all of the committee's work was, of necessity, done on the basis of consensus and persuasion.

A year later, the committee was charged with determining whether a for­ mal cod e of ethics would be useful for the organization. In 1947, it decided that a formal code of ethics would indeed be useful, stating "The present unwritten code is tenuous, elusive, and unsatisfactory" ("A Little Recent His­ tory," 19';2, p. 425 ). The board of directors established the Committee on Ethical Standards for Psychology to determine what methods to use in draft­ ing the code. Chaired by Edward Tolman , the committee members were John Flanagan , Edwin Ghiselli , Nicholas Hobbs, Helen Sargent, and Lloyd Yepsen (Hobbs , 1948).

Some memb ers strongly opposed the development of an explicit set of ethi­ cal standards, and many of their argum ents appeared in *American Psycholo­ gist.* Calvin Hall (1952), for example, wrote that any code, no matter how well formulated,

plays into the hands of crooks .... The crooked operator reads the code to see how much he can get away with, and since any code is bound to be filled with ambiguities and omissions, he can rationalize his unethical conduct by pointing to the code and saying, "See, it doesn't tell me I can't do this," or "I can interpret this to mean what I want it to mean." (p. 430)

Hall endorsed accountability, but he believed that it could be enforced without an elaborate code. He recommended that the application form for APA membership contain this statement:

As a psychologist, I agree to conduct myself professionally according to the common rules of decency, with the understanding that if a jury of my peers decides that I have violated these rules, I may be expelled from the association. (pp. 430-431)

I JWBT356-09.indd 90 10/4/10 8:21:10 PM I

Ethics Committees, Codes, and Complaints 91

Hall placed most of the responsibility on graduate schools. He recom­ mended that "graduate departments of psychology, who have the power to decide who shall become psychologists, should exercise this power in such a manner as to preclude the necessity for a code of ethics" (p. 431).

The APA Committee on Ethical Standards (APA Committee) determined that because empirical research was a primary method of psychology , the code itself should be based on such research and should draw on the experience of APA members . As Hobbs (1948, p. 84) wrote, the method would produce "a code of ethics truly indigenous to psychology, a code that could be lived." The board of directors accepted this recommendation, and a new committee was appointed to con duct the research and draft the code. Chaired by Nicholas Hobbs, th e new committee members were Stuart Cook, Harold Edgerton, Leonard Ferguson, Morris Krugman, Helen Sargent, Donald Super, and Lloyd Yepsen (APA Comm ittee,1949).

In 1948, all 7,500 members of the APA were sent a letter asking each member

"to share his experiences” in solving ethical problems by describing the specific circumstances in which someone made a decision that was ethically critical" (APA Committee , 1949, p. 17). The committee received reports of over 1,000 critical incidents. During the next years, the incidents, with their accompanying comments, were carefully analyzed, categorized, and developed into a draft code.

### The emerging standards, along with the illustrative critical incidents, were

published in *American Psychologist* (APA Committee, 195la,b,c). The stan­

dards were grouped into six major sections:

1. Ethical standards and public responsibility
2. Ethical standards in professional relationships
3. Ethical standards in client relationships
4. Ethical standards in research
5. Ethical standards in writing and publishing
6. Ethical standards in teaching

The draft generated considerable discussion and was revised several times. Finally, in 1952, it was form ally adopted as the Ethical Standards of Psycholo­ gists, and it was published in 1953.

In 1954, information on the complaints that the committee had handled for the past 12 years (during most of which there had been no formal code of ethics) was published in *American Psychologist* ("Cases and Inquiries," 1954). Du ing this period, the ethical principle s most frequently violated were

* Invalid presentation of professional qualifications (cited 44 times).
* Immature and inconsiderate professional relations (23).
* Unprofessional advertisement or announcement (22).
* Unwarranted claims for tests or service offered usually by mail (22).
* Irresponsible public communication (6).

I JWBT356-09.indd 91

10/4/10 8:21:10 PM I

92 CODES AND COMPLAINTS IN CONTEXT

The most recent version of the ethical principles (APA, 2010), the *Ethical Principles of Psychologists and Code of Conduct With the 2010 Amendments,* is the eleventh version. (It is reprinted in Appendix A.) APA published versions of the code in these years: 1953, 1959, 1963, 1968, 1977, 1979, 1981, 1990, and 1992, 2002, and 2010 . The 20 l 0 version consists of an introduction, a pream­ ble, five general principles, and specific ethical standards. The preamble and general principles, which include beneficence and nonmaleficence, fidelity

and responsibility, integrity, justice , and respect for people 's rights and dignity, are aspirational goals to gu ide psychologists toward the highest ideals of psy­ chology. The specific ethical standards are enforceable rules for conduct.

**Canadiian Psychological Association's Approach to an Ethics Code**

The CPA was organized in l 939 and incorporated under the Canada Corpo­ ration’s Act, Part II, in May 1950. In the mid-twentieth century, Canada was a large country with relatively few psychologists. Because it would have been hard to bring these psychologists together to create an ethics code, "the Cana­ dian Psychological Association ... decided to adopt the 1959 ... APA code for a three-year trial. This was followed by adoptions (with minor wording changes)

of the 1963 and 1977 APA revised codes" (Sinclair & Pettifor, 2001, p. i).

Disco ntent with the APA code and the perception that it was not a good fit for Canadian psychologists led the CPA to create its own code:

Prior to developing its own code, there was evidence of periodic discontent by CPA members with the APA code. For example, in a 1976 document titled "Alternative Strategies for Revising CPA's Code of Ethics," tl1e statement was made that the 10 APA ethical principles were "clearly designed for the current American social and moral climate and geared to American traditions and law." However, it was not until the 1977 revision of the APA code that the discontent became serious. Of particular concern was the fact that, in response to U.S. court applications of antitrust law to professional activities, the APA had remove d some of its restrictions on advertising. Many Canadian psychologists believed such application of antitrust laws ran the risk of changing the nature of the pro­ fessional relationship from a primarily fiduciary contract to a commercial one.

*( Sinclair,* Simon, *& Petti/or, 1996, p.* 7)

To create an ethics code, CPA began by sending out 37 ethical dilemmas (Truscott & Crook, 2004). Psychologists were asked how they would act in these situations and, equally important, to describe their reasoning. TI1e responses y iuelded four basic ethical principles (CPA, 1986):

1. Respect for the Dignity of Persons

2 . Responsible Caring

I JWBT356-09.indd 92 10/4110 8:21:10 PM I

Ethics Committees, Codes, and Complaints 93

1. Integrity in Relationship s
2. Responsibility to Society

The original CPA ethics code provided not only ethical principles but also a model of ethical decision making (see Chapter 9; see also Sinclair, 1998; Sinclair, Poizner, Gilmour-Barrett, & Randall, 1987). The third edition of the Canadian Code of Ethics for Psychologists was approved by the CPA board of directors at its meeting in June 2000 (CPA, 2000). It comprises a preamble and four ethical principle s to be considered and balanced in ethical decision making. Each principle is followed by statements of values that give definition to each principle, and those are followed by a list of standards that illustrate the application of the principles and values to the activities of psychologists (CPA, 2000; the document is reproduced in Appendix B).

## Pc1tterns of Ethics Complaints

The CPA Ethics Committee did not take action against members between 2001 and 2005. Since 2006, the CPA Ethics Committee received nine com­ plaints, and only one received full adjudication (inadequate assessment of a child). This represents a substantial change from the 1980s and 1990s, when CPA fully adjudicated one or two complaints a year.

CPA entered into a formal agreement to wait for regulatory bodies to adjudicate complaints. Consequently, complaints rarely get sent to the CPA Ethics Committee (J. Service, personal communication, May 26, 2006; C. Sinclair, personal communication, January 26, 2010). Other possible rea sons for this change include the fact that more formal problem­ re solution structures in society address issues (e.g., Research Ethics Boards [REBs], Institutional Review Boards [IRBs]), there is wider acceptance of sexual harassment complaint s by various employers, and there is a willing­ ness of regulatory bodies to accept complaints from students. In addition, CPA has increased its consultation services to psychologists. CPA does accept complaints about CPA members who are not registered with a regulatory body.

Processing complaints continues to be an important focus of the APA Eth­ ics Committee (APA Ethics Committee, 1997-2008, 2009b ), although recently it h as placed more emphasis on education (including presentations to state psychological associations, state licensing board s, at APA conventions, international programs ), monthly *Monitor on Psyc hology* publications, consul­ tation, diversity initiatives, and policy statement development. APA bylaws require that the Ethics Committee reports how many and what kinds of com­ plaints it investigates each year.

Table 9.1 provides data from *American Psychologist' s* "Report of the Ethics

Committee" for 2005, 2006, 2007, 2008.

I JWBT356-09\_indd 93

10/4110 8:21:10 PM I

94 CODES AND COMPLAINTS IN CONTEXT

**Table 9.1** Primary and Multiple Categories of Cases Opened in 2005, 2006, 2007, and 2008

Year

##### 2005 2006 -

2007- 2008 Totals

Category p M p M p M p M p M

Cases adjudicated in other jurisdictions

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Felony conviction | 4 | 4 | 7 | *7* | 4 | 4 | *2* | *2* | 17 | 17 |
| Loss of licensure | ; 225 | 26 | 15 | 16 | 20 | 21 | 8 | 8 | 68 | 71 |
| Expulsion from state |  |  |  |  |  |  |  |  |  |  |
| association |  |  |  |  |  |  |  |  |  |  |
| Malpractice |  |  |  |  |  |  |  |  |  |  |
| Other | 2 | *2* | 3 |  | 3 | 4 | 2 | *2* | IO | 11 |
| Dual relationship |  |  |  |  |  |  |  |  |  |  |
| Sexual misconduct, adult | 0 | 12 | 0 | 6 |  | 9 | 0 | 4 |  | 32 |
| Sexual misconduct, | 0 | 4 | 0 | 1 | 1 | 5 |  |  |  | IO |
| minor |  |  |  |  |  |  |  |  |  |  |
| Sexual harassment |  |  |  |  |  | 1 | 1 | 1 | 1 | 1 |
| Nonsexual dual  relations hip | 0 | 4 | 0 | 4 | 1 | 5 | 1 | *2* | 2 | 15 |

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Inappropriate professional practice  Child custody 1 1 | | | 3 | 5 |  | 2 |  | 2 | 6 | IO |
| Hospitalization | | |  |  |  |  |  |  |  |  |
| Hypnosis | | |  |  |  |  |  |  |  |  |
| Outside competence | 0 |  | 0 | 2 |  | 5 |  |  | 11 | 8 |
| Controlling client |  |  |  |  |  |  |  | 0 | 1 | 0 |
| Inappropriate response to  crisis | 0 |  | 0 | 3 | 0 |  |  |  | 0 | 5 |
| Confidentiality |  |  |  | 2 |  |  |  |  | 1 | 2 |
| inappropriate follow-up/  termination | 0 |  |  |  |  |  | 0 |  | 0 | 2 |
| Test misuse |  |  | 0 | 2 |  |  |  |  | 0 | 2 |
| Insurance/fee problems | 0 | 6 | 0 | 8 | 0 | 3 | 0 | 2 | 0 | 19 |
| inappropriate  professional relations |  |  | 0 |  |  |  |  |  | 0 | 1 |
| Other | 0 | 2 |  |  | 0 |  | 0 | 2 | 0 | 5 |

I JWBT356-09.indd 94 10/4/1 0 8:21:10 PM I

Ethics Committees, Codes, and Complaints 95

**T11ble 9.1** *(continued )*

##### 2005

2006

Year

2007

2008

Totals

Category

p M p M

p M p M p M

Inappropriate research, teaching, or administrative practice

Authorship

Contro-versies/credits

Improper research techniques

Plagiarism biasing data

Grading/violation of student rights

Termination/supervision Absence of timely

evaluations

Discrimination

Animal research subjects '

welfare

Other

JWBT356-09.indd 95

Inappropriate public statements Misuse of media

False, fraudulent, or

misleading

Did not correct

misrepresentation

Public allegation about

colleague

Other

Failure to uphold standards of the profession

Response to APA Ethics

Committee

Adherence to standards

0 1 o 1

*(continued )*

1014110 8:21:10 PM I

96 CODES AND COMPLAINTS IN CONTEXT

**Table 9.1** *(continued )*

Year

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Category | 2005  p M | | 20  p | 06  M | -20  p | 07-  lVI | 20  p | 08  M | -T-otals -  p M |
| Other | 0 | 1 | 0 |  | 0 |  | 0 |  | 0 4 |

TOTAL CASES 32 32 29 29 32 32 16 16 109 109

*Note:* P = number of cases with category of primary factor. M = number of cases with category as multiple factor. We thank the staff of the APA Ethics Office who offered guidance with this table, including Stephen Behnke , executive director.

*Sources :* Adapted from "Report of the Ethics Committee, 2005," by American Psychological Association Ethics Committee, 2006, *American Psychologist,* 61, pp . 522-529. "Report of the Ethics Committee, 2006," by American Psychological Association Ethics Committee, 2007, American *Psychologist,* 62, pp. 504-511. "Report of the Ethics Committee, 2007 ," by American Psychological Association Ethics Committee, 2008, *American* Psychologist, 63, pp. 452--459. "Report of the Ethics Committee, 2008," by American Psychological Association Ethics Committee, 2009, *American* Psychologist, *64,* pp. 464-473.

Table 9.2 provides totals from "Reports of the Ethics Committee" from 2000 to 2004 and for 2005 to 2008, along with totals for the nine years 2000 to 2008.

These figures show a declining caseload resulting from adjudicative reform s made after an extensive review of the ethics program and a discussion of th e program at the February 2001 Council of Representatives meeting (Behnke, 2005). The reforms included:

* All respondents under ethics investigation are offered an opportunity to resign. A psychologist who is the subject of an ethics matter and wants to resign from APA is not required to begin the adjudication process.
* Respondents in show-cause matters (matters in which an official, non­ APA entity has already taken serious action against the psychologist) are expelled from APA automatically unless they request that APA review their case. The committee and board do not need to follow the entire adjudication process for psychologists who do not provide a substantive response to APA notification following a significant adjudication by an organization other than APA.
* The annual dues notice sent to all members lists the names of psycholo ­

gists who resign under ethics investigation or are automatically expelled.

The Ethics Committee handles many cases secondary to actions taken by state licensure boards (APA Ethics Committee, 2009). Loss of licensure con­ tinues to be the most common reason for complaints processed. Over nine

\ JWBT356-09.indd 96 1014110 8:21:10 PM I

Ethics Committees , Codes, and Complaints 97

**Table 9.2** Summaries for Primary and Multiple Categories for Cases Opened

2000-2004 and 2005-2008

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Period of Time | | | | | | | | | | | |
| 2000-2004 | | |  | 2005-2008 | |  | Totals | |  | %P | 3M |
| Category p M | | |  | p M | |  | p | | M |  |  |
| **Cases adjudicated in other jurisdictions** | | | | | | | | | | | |
| Felony conviction | 8 | 8 |  | 17 | 17 |  | 25 | 25 | | 9 | 9 |
| Loss of licensure | 92 | 92 |  | 68 | 71 |  | 160 | 163 | | 59 | 60 |
| Expulsion from state |  |  |  |  |  |  |  |  | |  |  |
| association |  |  |  |  |  |  |  |  | |  |  |
| Malpractice |  |  |  |  |  |  |  |  | |  |  |
| Other | 13 | 14 |  | 10 | 11 |  | 23 | 25 | | 8 | 9 |
| **Dual relationship** |  |  |  |  |  |  |  |  | |  |  |
| Sexual misconduct, | 10 | 59 |  |  | 32 |  | 11 | 91 | | 4 | 33 |
| adult |  |  |  |  |  |  |  |  | |  |  |
| Sexual misconduct, minor | 0 | ) |  |  | 10 |  |  | 13 | | .3 | 5 |
| Sexual harassment |  | 2 |  |  |  |  | 2 | 3 | | .7 |  |
| Non sexual dual | 5 | 24 |  | 2 | 15 |  | 7 | 39 | | 3 | 14 |
| relationship |  |  |  |  |  |  |  |  | |  |  |
| Inappropriate |  |  |  |  |  |  |  |  | |  |  |
| professional practice |  |  |  |  |  |  |  |  | |  |  |
| Child custody | 16 | 25 |  | 6 | 10 |  | 22 | 35 | | 8 | 13 |
| Hospitalizaton | 0 | 2 |  | 0 | 0 |  | 0 | 2 | | 0 | .7 |
| Hypnos is |  |  |  |  |  |  |  |  | |  |  |
| Outside competence | I | 7 |  |  | 8 |  | 2 | 15 | | .7 | 5 |
| Controlling client | 0 |  |  |  | 0 |  |  | 1 | | .3 | .3 |
| Inappropriate response |  |  |  |  |  |  |  |  | |  |  |
| to crisis | 2 | 3 |  | 0 | 5 |  | 2 | 8 | | .7 | 3 |
| Confidentiality | 3 | 10 |  |  | 2 |  | 4 | 12 | | l | 4 |
| Inapproriate |  |  |  |  |  |  |  |  | |  |  |
| follow-up/termination |  | 4 |  | 0 | 2 |  | l | 6 | | .3 | 2 |
| Test misuse |  | 3 |  | 0 | 2 |  | 1 | 5 | | .3 | 2 |
| Insurance/fee |  |  |  |  |  |  |  |  | |  |  |
| problem s | 0 | 18 |  | 0 | 19 |  | 0 | 37 | | 0 | 13 |

*( continue d )*

I JWBT356-09.indd 97

10/4/10 8:21 :11 PM I

98 CODES AND COMPLAINTS IN CONTEXT

**Table 9.2** *(continued)*

Period of Time

2000-2004 2005-2008 Totals **%P** %M

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Category | **p** | M | **p** | **M** | **p** | M |  | |
| Inappropriate professional relations | 1 | 2 | 0 | 1 |  | 3 | .3 | **1** |
| Other | 2 | 11 | 0 | 5 | 2 | 16 | .7 | 6 |

**Inappropriate research, teaching, or administrative pracice** Authorship

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| contro-versies/credits | 0 |  | 0 | 0 | 0 |  | 0 | .3 |
| Improper research | 0 |  | 0 | 0 | 0 | 1 | 0 | .3 |
| techniques |  |  |  |  |  |  |  |  |
| Plagiarism | 2 | 2 | 0 | 0 | 2 | 2 | .7 | .7 |
| Biasing data |  |  |  |  |  |  |  |  |
| Grading/violation of |  |  |  |  |  |  |  |  |
| student rights |  |  |  |  |  |  |  |  |
| Termination/ | 0 | 3 | 0 | 0 | 0 | 3 | 0 |  |
| superv1s1011 |  |  |  |  |  |  |  |  |
| Absence of timely evaluat ions |  |  | 0 | 0 |  |  | .3 | .3 |
| Discrimination |  |  |  |  |  |  |  |  |
| Animal research |  |  |  |  |  |  |  |  |
| subjects' welfare |  |  |  |  |  |  |  |  |
| Other | 0 |  | 0 | 0 | 0 |  | 0 | .3 |

**Inappropriate public statements** Misuse of media

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| False, fraudulent, Did not correct | 0 | 2 | 0 |  | 0 | 3 | 0 |  |
| misrepresentation |  |  |  |  |  |  |  |
| Public allegation aboutc oll.eague |  |  | 0 | 0 |  |  | .3 | .3 |
| Other |  |  |  |  |  |  |  |  |

**Failure to uphold standards of the profession**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Response to APA | 4 | 7 | 0 | 0 | ,.  4 *I* | , **2** | 2 |
| Ethics Committee |  |  |  |  |  |  |  |

I JW8T356·09.indd 98 10/4/10 8:21 :11 PM I

Ethics Committees, Codes, and Complaints 99

**Table** 9.2 *(continued)*

Period of Time

2000-2004 2005-2008 Totals %P 3M

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Category | p | M | p | M |  | p | M |  | |
| Adherence to  standards |  |  |  |  |  |  |  |
| Other | 0 |  | 0 | 4 |  | 0 | 5 | 0 | 2 |
| Total cases | 164 | 164 | 109 | 109 |  | 273 | 273 | \*99 |  |

*Note:* P = number of cases with category as primary factor. M = number of cases with cat­ egory as multiple factor. We thank the staff of the APA Ethics Office who offered guidance with this table, including Steve Behnke, executive director.

\*Rounded Percentages

The dosh indicates that a percentage is not applicable here because each case may be counted in multiple categories.

*Sources:* Summaries 2000-2004 adopted from "Report of the Ethics Committee, 2000," by the American Psychological Association Ethics Committee, 2001, American *Psychologist, 56,* pp. 680-688. "Report of the Ethics Committee, 2001," by American Psychological Associa­ tion Ethics Committee, 2002, *American Psychologist,* 57, pp. 646-653. "Report of the Ethics Committee, 2002," by American Psychological Association Ethics Committee,. 2003, *Ameri­ can Psychologist,* 58, pp. 650-657. "Report of the Ethics Committee, 2003," by American Psychological Association Ethics Committee, 2004, *American Psychologist,* 59, pp. 434-441. "Report of the Ethics Committee, 2004," by American Psychological Association Ethics Com­ mittee, 2005, *American Psychologist, 60,* pp. 523-528. Copyright American Psychological Association 2001, 2002, 2003, 2004, 2005. Adapted with permission.

From *Ethics in Psychotherapy and Counseling: A Practical Guide (3rd ed., pp. 85-87), by K.*

*S. Pope and J. T.* Vosquez, 2007, San Francisco: Jossey-Boss.

Summaries 2005-2008 adopted from "Report of the Ethics Committee, 2005,n by American Psychological Association Ethics Committee, 2006, *American Psychologist, 6),* pp. 522-529. "Report of the Ethics Committee, 2006," by American Psychological Association Ethics Com­ mittee, 2007, *American Psychologist,* 62, pp. 504-511. "Report of the Ethics Committee, 2007," by American Psychological Association Ethics Committee, 2008, *American Psycholo­ gist, 63,* pp. 452-459. "Report of the Ethics Committee, 2008," by American Psychological Association Ethics Committee, 2009, *American Psychologist,* 64, pp. 464-473.

years, there were 160 cases (59%) with loss of licensure as primary factor and 163 cases (60%) with loss of licensure as one of multiple factors.

Multiple issues per allegations reported are important because the primary

category states the basis on which APA is processing the case rather than the underlying behavior, and a secondary category is always assigned. Over the nine-year period (2000-2008) sexual misconduct (see Chapter 16), for exam­ ple, was the primary underlying behavior in cases in the category "loss of Iicensure." Over that period, sexual misconduct involving adults (11 cases as primary factor and 91 as a multiple factor) accounted for the higher number

JWBT356-09 .indd 99

10/4/10 8:21:11 PM I

100 CODES AND COMPLAINTS IN CONTEXT

of cases. Nonsexual dual relationships (7 cases as primary factor and 39 cases as multiple factor) and child custody (22 cases as primary factors and 35 cases as multiple factors) are categories with a higher numbers of cases. Confidentiality (4 cases as primary factors and 12 as multiple factors) also had a moderately high number of cases. Insurance/fee problems, although not listed as a primary factor for those nine years, are often listed as one of the mul­ tiple factors (no cases as primary factors, 37 as multiple factors).

The report of cases opened and closed from 2000 to 2008 reflects a

significant decline in total active cases each year (APA Ethics Committee, 2009). Interestingly, only a very small percentage of the APA membership have complaints filed against them through the APA Ethics Committee.

**Empirical Approach Half a Century Later**

Many of the early APA pioneers provided reasons that an empirical approach would be useful in constructing an ethics code. But a critical incident sur­ vey of APA members could also serve another purpose. While the actuarial data of ethics committees, licensing boards, and civil and criminal courts can reveal trends in ethical or legal violations as they are established by review agencies, empirical critical incident studies can reveal ethical dilem­ mas and concerns as they are encountered in day-to-day practice by the broad range of psychologists (i.e., not just those who are subject to formal complaint) .

The APA critical incident study undertaken in the 1940s was replicated in

the 1990s and published in the *American Psychologist* (Pope & Vetter, 1992). In this study, 1,319 randomly sampled APA members were asked to describe incidents that they found ethically challenging or troubling: 679 psychologists described 703 incidents in 2 3 categories, as shown in Table 9.3.

Here is a sample of the ethical concerns that the psychologists described in this anonymous survey:

**Confidentiality**

* "The executive director of the mental health clinic with which I'm employed used his position to obtain and review clinical patient files of clients who were members of his church. He was [clerical title] in a ...church and indicated his knowledge of this clinical (confidential) information would be of help to him in his role as [clerical title]."
* "Having a psychologist as a client who tells me she has committed an ethical violation and because of confidentiality I can't report it."
* "One of my clients claimed she was rape d; the police did not believe

her and refused to follow up (because of her mental history). Another of my clients described how he raped a woman (the same woman)."

I JWBT356-09.indd 100 10/4/10 8:21 :11 PM I

Ethics Committees, Codes, and Complaints 101

**Tc1ble 9.3** Ethical Problem s Reported by a Nation a l Sample of APA Members

|  |  |  |
| --- | --- | --- |
| Category  Confidentiality | Number  128 | Percentage  18 |
| Blurred , dual , or conflictual relationships | 116 | 17 |
| Payment sources, plans, settings, and methods | 97 | 14 |
| Academic settings, teaching dilemma s, and |  |  |
| concerns about tra ining | 57 | 8 |
| Forensic psychology | **35** | 5 |
| Research | 29 | 4 |
| Conduct of colleagues | 29 | 4 |
| Sexual issues | 28 | 4 |
| Assessment | 25 | 4 |
| Questionable or harmful interventions | 20 | 3 |
| Competence | 20 | 3 |
| Ethics and related codes and committees | 17 | 2 |
| School psychology | 15 | 2 |
| Publishing | 14 | 2 |
| Helping the financially stricken | 13 | 2 |
| Supervision | 13 | 2 |
| Advertising and (mis)representation | 13 | 2 |
| Industrial-organizational psychology | 9 |  |
| Medical issues | 5 |  |
| Termination | 5 |  |
| Ethnicity | 4 |  |
| Treatment records | 4 |  |
| Miscellaneous | 7 |  |

Source: Adapted with permission from "Ethical Dilemmas Encountered by Members of the American Psychological Associa tion: A National Survey," by K. S. Pope and V. A Vetter, 1992, American *Psychologist,* 47, 397--411, p. 399. Available at [http://kspope.com.](http://kspope.com/) Copy­ right 1992 by the American Psychological Association.

**Blurred, Dual, or Conflictual Relationships**

* + "I live and maintain a . . . private practice **in** a rural a rea. I am also a member of a spiritual community based here. There are very few other therapists in the immediate vicinity who work with transforma­ tional, holistic, and feminist principles in the context of good clini­ cal training that 'conventional' people can also feel confidence in.

I JWBT356-09.indd 101 10/4/10 8:21:11 PM I

102 CODES AND COMPLAINTS IN CONTEXT

Clients often come to me because they know me already, because they are not satisfied with the other services available, or because they want to work with someone who understands their spiritual practice and can incorporate its principles and practice s into the pro­ cess of transformation, healing, and change. The stricture against du al relationships helps me to maintain a high degree of sensitivi ty to the ethics (and potentials for abuse or confusion ) of such situa­ tions, but doesn't give me any help in workin g with the actual cir­ cum stances of m y practice . I hope revised principle s w ill address these concerns!"

* "Six month s ago, a patient I had been working with for three years

became romantically involved with my best and longest friend. I could write no less than a book on the complications of this fact! I have been getting legal and therapeutic consultations all along and continue to do so. Currently they are living together, and I referred the patient (who was furious that I did this and felt abandoned ). I worked with the other psychologist for several months to provide a bridge for the patient. I told my friend soon after I found out that I would have to suspend our contact. I'm currently trying to figure out if we can ever resume our friendship and under what conditions." [This latter example is one of many that demonstrate the extreme lengths to which most psychologists are willing to go to ensure the welfare of their patients.]

Payment Sources, Plans , Settings, and Method s

* "A 7-year-old boy was severely sexually abused and severely depressed . I evaluated the case and recommended six months treatment. My recom­ mendation was evaluated by a managed health care agency and approve d for 10 sessions by a nonprofessional in spite of the fact that th ere is no known treatment program that can be performed in 10 ses­ sions on a 7-yea r-old that has demonstrated efficacy."
* "Much of my practice is in a private hospit al that is in general very good clinically. However, its profit motivation is so very intense that decision s are often made for $ reasons that actively hurt the patients. When patients com plain, this is often interpreted as being part of their psycho­ pathology , thus reenacting the dysfunctional families they came from . I don 't do this myself and don 't permit others to do so in my presence-I try to mitigate the problem -but I can 't speak perfectly frankly to my patients and I'm constantly colluding with something that feels margin­ ally unethical."
* "A managed care company disconti nued a benefit and told my patient to stop seeing me, then referred her to a therapist they had a lower fee contract with ."

I JWBT356-09.indd 102 10/4/10 8:21 :11 PM I

Ethics Committees, Codes, and Complaints 103

Academic Settings, Teaching Dilemmas, and Concerns about Training

* + "I employ over 600 psychologists. I am disturbed by the fact that those psychologists with marginal ethics and competence were so identified in graduate school and no one did anything about it."

Forensic Psychology

* + "A psychologist in my area is widely known to clients, psychologists, and the legal community to give whatever testimony is requested in court. He has a very commanding presence, and it works. He will say anything, adama ntly, for pay. Clients/lmvyers continue to use him because if the other side uses him, that side will probably win the case (because he's so persuasive, though lying)."
  + "Another psychologist's report or testimony in a court case goes way

Beyond what psychology knows or his own data supports. How or whether I should respond."

* + "I find it difficult to have to testify in court or by *way* of deposition and

to provide sensitive information about a client. Although the client has given permission to provide this information, there are times when there is much discomfort in so doing."

Research

* + "I am co-investigator on a grant. While walking past the secretary's desk, I saw an interim report completed by the PI [principal investigator] to the funding source. The interim report claimed double the number of subjects who had actually entered the protocol."
  + "I have consulted to research projects at a major university medical

school where 'random selection' of subjects for drug studies was flagrantly disregarded. I resigned after the first phase."

* + "Deception that was not disclosed, use of a data videotape in a public presentation without the subject's consent (the subject was in the audi­ ence), using a class homework assignment as an experimental manipu­ lation without informing students.''

Conduct of Colleagues

* + "As a faculty member, it was difficult dealing with a colleague about whom I received numerous complaints from students."
  + "At what point does 'direct knowledge' of purportedly unethical prac­

tices become direct knowledge which I must report--is repmting through a client 'direct' knowledge?"

* + "I referred a child to be hospitalized at a nearby facility. The mother wanted to use a particular psychiatrist. ... When I called the psychiatrist to discuss the case, he advised me that, since he was the admitting

I JWBT356-09.indd 103 1014110 8:21:11 PM I

104 CODES AND COMPLAINTS IN CONTEXT

professional , h e'd assume full responsibility for the case. . .. He advised how he had a psychologist affiliated with his office whom h e preferred to use."

* "I see foster children who have little control over their lives and case workers who have little time/interest in case management. How can I maintain good professional relationship s with those who don't function up to their duties?"
* "A director of the mental health center where I worked was obviously

emotionally disturbed , and it impacted on the whole center-quality of service to clients, staff morale, etc. He would not get professional help or staff development assistance."

* "The toughest situations I and my colleague seem to keep running into (in our small town) are ones involving obvious (to us) ethical infractions by other psychologists or professionals in the area. On three or more occasions he and I have personally confronted and taken to local board s

... issues which others would rather avoid, deal with lightly, ignore,

deny, etc., because of peer pressure in a small community. This has had the combined effect of making me doubt my reality (or experience ), making me wonder why I have such moral compunctions , making me feel isolated and untrusting of professional peers, etc."

Sexual Issues

* "A student after seeing a client for therapy for a semester terminated the therapy as was planned at the end of the semester, then began a sexual relationship with the client. . . . I think APA should take a stronger stance on this issue."
* "I cu rrently have in treatment a psychiatrist who is still in the midst of a

six-year affair with a patient. He wishes to end the affair but is afraid to

face the consequences ."

* "My psychological assistant was sexually exploited by her former super­ visor and threatened her wi th not validating her hours for licensure if she didn't service his needs."

# LICENSilNG BOARDS

Each of the United States and Canadian jurisdictions (e.g., states, province s) has its own requirements and standards for practicing as (or, in some states and jurisdictions to identify oneself as) a therapist or counselor. Some, but not all , administrative standards embody ethical principles. (e.g., some may set forth the relatively mundane obligation to pay an annual licensing fee.) For­ mal licensing actions are how therapists and counselors are held accountable to these standard s of practice. Violation of these standards can lead to the sus­ pension or revocation of the practitioner's license or certification.

I JWBT356-09.indd 104 10/4110 8:21:11 PM I

Licensing Boards 105

**Table 9.4** Reported Disciplinary Actions for Psychologists in the United States and Canada, .August 1983-December 2009

|  |  |
| --- | --- |
| Reason for Discip.linary Action -  Sexual Misconduct | Number -D-isciplined  795 |
| Unprofessional Conduct | 791 |
| Nonsexual Dual Relationship or Boundary Violation | 494 |
| Negligence | 473 |
| Conviction of Crime | 400 |
| Failure to Maintain Adequate or Accurate Records | 335 |
| Improper or Inadequate Supervision or Delegation | 247 |
| Substandard or Inadequate Care | 242 |
| Incompetence | 235 |
| Breach of confidentiality | 221 |
| TOTAL OF REPORTED DISCIPLINARY RECORDS | 4,397\* |

\*The difference in the total number of repo1ied disciplinary actions and this total is that some jurisdictions do not report reasons or the reason reported does not fall into one of the cate­ gories in this table.

Source: Compiled by the Association of State and Provincial Psychology Boards from actions reported to the ASPPB Disciplinary Dato System by member boards. Obtained through per­ sonal communication with ASPPB stoff member Janet Pippin, January 22, 2010.

The data reviewed in Table 9.4 concerning licensing disciplinary actions of psychologists were collected by the Association of State and Provincial Psychology Boards (ASPPB) from actions reported to the ASPPB disciplin­ ary data system by member boards in the United States and Canada (J . Pippin, Association of State and Provincial Psychology Boards, personal communication, January 22, 2010). The data are abstracted from the ASPPB Disciplinary Data Reports from August 1983 to December 2009. Since our last edition in 2007, ASPPB has made many changes to the disciplinary data system. It combined many reason codes in order to better match the Health­ ca:re Integrity and Protection Data Bank (HIPDB) coding system, the national reporting data bank.

Sexual misconduct, unprofessional conduct, nonsexual dual relationship

or boundary violation, negligence, and conviction of crime stand out as the top five causes of disciplinary actions by MSPB member boards. Because of changes in reporting, categories that no longer remain in the top 10 reported reasons include: continuing education (failure to complete); fraudulent acts, now split according to what type of act; impairment, now split into what type of impairment; fraud in application, now part of a new category, fraud, deceit,

I JWBT356-09.indd 105 10/4/10 8:21 :11 PM I

106 CODES AND COMPLAINTS IN CONTEXT

or material omission in obtaining a license or renewal, but is no longer in th e

top 10 (J. Pippin, personal communication, January 27, 2010 ).

Van Horne (2004) reviewed data about licensing complaints against psy­ chologi sts. She found that "few complaints arc filed, many of those complaints are n ot investigated , informal actions taken that are not reported to the ASPPB Disciplinary Data System are few, and even fewer formal actions are taken against psychologists' licenses " (p. 157). She n oted:

The perception of disciplinary actions taken by licensing board s is depen­ dent on the vantage point of the observer. If one is the subject of a licensing board action, there is no doubt the board is vigilant, if not downright victim­ izing, in the pursuit of discipline. If one is the consumer/complainant seek­ ing action by th e licensing board , there is no doubt the board is cautious, if not downright distrustful of the complainant , in the investigative process. If one is a board member, there is no doubt the b oad is fair, if not downright obsessive, in its efforts to consider the rights of all concern ed. If one is a journalist, there is no doubt the licensing board is protective of the psychol ­ ogist. if not downright negligent in its failure to hold colleagues account­ able. There is little doubt that one can find evidence for each of these perspectives. However, the larger picture of psychology licensing boa rd complaints and both informal and formal disciplinary action s reflects a much more balanced outcome of the board man date to protect consumers of psychological services. It is no surprise that fears abound in light of the high stakes involved for both complainants and licensees, but the facts should ease those fears. (p. 170)

Stephen T. DeMers, executive office r of ASPPB, described several projects that ASPPB has developed. The Certificate of Professional Qualification allows psychologists to avoid mobility problems and facilitates obtaining a license in. a new jurisdiction. In addition, an interjurisdictional practice cre­ dential has been designed to help industrial organizational and forensic psy­ chologists to engage in short-term practice in a jurisdiction in a sanctioned

and regulated way (S. T. DeMers, personal communication , November 11, 2005 ; J. Pippin, personal communication, February 16, 2010 ).

## CIVIL STATUTES AND CASE LAW

Each state and province has its own legislation and accumulated case law that can serve as the basis of malpractice suits against therapists and counselors . Because the states and provinces differ in their legal standard s, an act that one jurisdiction may require can violate the legal standards in another jurisdiction.

The United States and Canada provide a stark contrast in lawsuits against

psychologists. Unlike their colleagues south of the border, Canadian

I JWBT356-09.indd 106 10/4/10 8:2 1:11 PM I

Civil Statutes and Case Law 107

**T4:tble 9.5** Major ,l\reas of Professional Liability Claims Against Psychologists

##### Source of Loss

Ineffective treatment/failure to consult/failure to refer Failure to diagnose/improper diagnosis

Custody dispute

Sexual intimacy/sexual harassment and/or sexual

misconduct

Breach of confidentiality

Suicide

Supervisory issues, conflict of interest or improper multiple

relationships, all other losses less than 1 percent

Libel/slander, conflicts in reporting sexual abuse, licensing dispute, no coverage applies

Abandonment, premises liability, repressed memory, failure to monitor, countersuits resulting from fee disputes, client harmed others including homicide, business disputes,

miscellaneous liability claims, discrimination/harassment

##### % of Overall Losses

29%

16%

10%

9%

8%

4%

3%

2%

1%

psychologists apparently get sued very rarely (J. Service, personal communica­

tion, May 26, 2006).

What are the primary reasons clinician s are sued in the United States? The data reviewed in Table 9.5, provided by the American Psychological Associa­ tion Insurance Trust, are the most recent incidence stati stics ava ilable. The data present a snapshot of the relative sources of loss for the major areas of claims in the trust-sponsored professional liability program for a decade. (B . Bennett, personal communication, December 19, 2005, June 13, 2006,

January 19, 2010).

Bruce Bennett, chief executive of the trust (personal correspondence, December 19, 2005), placed these data in context:

* The data were collected and assigned to the respective categories by staff at the insurance company following a cursory review of the initial claim filed against the defendant.
* It is assumed that assignment of claims to a specific category is based on the primary allegation listed in the lawsuit; however, this is only an assumption.
* Most lawsuits contain a number of counts against the defendant. As a

malpractice suit proceeds through the judicial system, the lawsuit is fre­ quently amended to add new counts or remove certa.in counts. These data do not reflect any such amendments, subsequent filings, or final dispositions.

108 CODES AND COMPLAINTS IN CONTEXT

* Many lawsuits against psychologists are based on the shotgun approach, where the defendant is accused of multiple misdeeds, even though some of the allegations of wrongdoing may be dropped dur­ ing the settlement discussions or prior to or during trial. Regardless of the underlying alleged misconduct , it is highly likely that the law­ suit will assert ineffective treatment , failure to consult, failure to refer , failure to diagnose, and/or improper diagnosis. Thus, the first two categories account for 45 % of the claim s regardless of other alle­ gations. This would be especially true when the underlying primary issue may be something like improper financial transaction s or sexual misconduct.
* Psychologists tend to place heavy reliance on data such as provided here. In many cases, numbers tend to garner more significance than is appropriate.

With these caveats in mind , Benn ett pointed out some interesting trends:

* The percentage of claims for custody disputes has increased from 3% to

10 %.

* The percentage of claims for sexual misconduct has decreased from

20% to 9%.

* The percentage of claims involving suicide has dropped from 5% to 4%.
* Supervision should be a major area of concern for the practitioner (2%

to 3% ).

* Forensic work (custody evaluations and evaluations affecting hiring , promotion, or retention in the workplace, etc. ) represent an emerging high-risk area of practice.
* Suits filed in retaliation for fee collection appear to have decreased from

4% to 1%, probably because psychologists, knowing the dangers associ­ ated with fee collection actions, are less likely to bring such suits against current or former patients.

* One area has become apparent: The number of licensing board com­ plaints has increased dramatically. In fact, of all the claims filed against psychologists, 60% (up from 30% in 2005 ) or more are for licensing board complaints, many related to forensic work or custody and family issues (B. Bennett, personal correspondence, January 19, 2010).

# CRIMINAL STATUTES

Each state and province has its own set of criminal laws, generally set forth in the penal code. Although we were unable to find reliable actuarial data con­ cerning therapists convicted of crimes, one of the most frequently mentioned areas involves fraud, particularly related to third-party billings. Donald Bersoff ,

I JWBT356-09.indd 108 10/4/10 8:21 :12 PM I

Conclusion 109

then attorney representing the APA , emphasized the importance of conform­ i ng to all rules and regulations regarding billing practices for third-party coverage, both public and private, and noted that therapists currently serving time in prison could attest to the significance of violating those rules and regu­

lations (see APA Ethics Committee , 1988).

Another of tl1e areas in which therapists may face criminal prosecution is sexual involvement with patients (see Chapter 16). While many of the laws are civil reporting laws and injunctive relief statutes, as of October 2005, at least 25 states had enacted criminal statues regarding therapist-patient sexual contact (see Pope, 1994; Pope, Sonne, & Creen e, 2006).

#### CONCLUSION

Exceptional caution is appropriate in attempts to generalize, compare, or interpret this chapter's actuarial data from ethics committees, licensing boards, and malpractice courts. Various types of actual violations, as the research indi­ cates , may lead only rarely to a formal complaint with a criminal court, civil court, licensing board, or ethics committee . Certain types of violation can be h ard to prove. Forma l complaints may be informally resolved and not appear in archival data. And, as noted, there are significantly different ways of classifying complaints.

Nevertheless, the general trends in the archival data and critical incident

Studies can be useful to us. They call attention to aspects of our own practice where there is room for improvement. They suggest possible topics for which we might want to take continuing education courses . They provide a resource for us as individuals and as a helping profession seeking to maintain the high standard s and integrity of our work and to minimize possible h arm to those we serve.

These mechanisms of accountability and their relationship to ethical behavior warrant caution. It is so easy to confuse ethical behavior with what keeps us out of trouble with these review agencies (see Chapter 3). Our sense of what is ethical runs through a reductionistic mill and becomes, in the worst­ case scenarios, "avoiding detection," "eliminating risk," or "escaping account­ ability." Much that we may do that is unethical may never come to the light and may never trigger inquiry by one of these mechanisms of accountability.

*As* noted in Chapter 1, the principles articulated by our profession, the

licensing boards, and the civil and criminal courts should never serve to inhibit careful ethical deliberation or function as a substitute for thoughtful decision making and personal responsibility. They provide a framework that broaden s our awareness and informs our thinking. They support us in the process of ethical struggle and constant questioning that are an inescapable part of what we do as therapists and counselors .

I JWBT356-09.indd 109 10/4110 8:21 :12 PM I