

Should AAPL Enforce Its Ethics? Challenges and Solutions

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Ethics enforcement in psychiatry occurs at the district branch and American Psychiatric Association (APA) levels under the guidance of American Medical Association (AMA) and APA ethics documents. Subspecialty ethics consequently have no formal role in the enforcement process. This reality challenges practitioners to work according to guidelines that may not be sufficiently relevant and challenges ethics reviewers to apply frameworks not intended for the subspecialties. This article offers the theoretical and practical support to amend APA *Procedures* to permit formal consideration of subspecialty ethics during ethics complaints and to include forensic practitioners on panels reviewing them. This is the first step toward an integration of two conflicting models of ethics enforcement, regulatory and aspirational, that bring together specialty and subspecialty ethics.

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Divergent ethics guidance in forensic psychiatry arises from the varied nature of the organizational documents used in ethics enforcement. Historically, psychiatrists have been guided by the *Principles of Medical Ethics* of the American Medical Association (*Principles*).¹ Now, the primary code for psychiatric ethics in the United States is *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry (Annotations)*.² This document, traceable to the first American Psychiatric Association (APA) Code of Ethics in 1950, has guided psychiatrists for over 60 years. Nevertheless, the *Bylaws of the American Psychiatric Association*³ continue to require its members to follow the ethics codes of both the AMA and the APA (Section 7.1). Although both ultimately stem from the same key principles, the AMA's Coun-

cil on Ethical and Judicial Affairs (CEJA) has created an extensive array of opinions and publications expounding on these core principles, and the APA has done similarly with its Annotations. Moreover the Opinions of the APA Ethics Committee also offer guidance, although to a lesser degree. Amid this complexity, we look at the challenges of enforcing organizational ethics and offer a potential model for enforcing the ethics of our subspecialty.

More recently, and further increasing the complexity of the ethics landscape, psychiatric subspecialties have created their own ethics codes, either complementary to those of the APA or independent of APA procedures. For instance, in recognition of the different ethics terrain encountered in child psychiatry, the American Academy of Child and Adolescent Psychiatry (AACAP) created its own code in 1980.⁴ AACAP members pledge to adhere to the AACAP Code of Ethics as a condition of membership. The AACAP does not enforce its ethics guidelines and refers complainants to the state medical board or the APA. AACAP notes that it also subscribes to the ethics principles of the AMA and APA, although it requires membership in neither.

In recognition of the unique aspects of forensic psychiatry, the American Academy of Psychiatry and the Law (AAPL) developed the specialty-specific *Eth-*

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ics Guidelines for the Practice of Forensic Psychiatry (Guidelines) in 1987, and updated them most recently in 2005.⁵ AAPL does not review or adjudicate complaints of unethical conduct by members, but it does require membership in the APA or the AACAP for members living in the United States. Any ethics complaints against an AAPL member can be investigated and adjudicated within the APA's *Procedures for Handling Complaints of Unethical Conduct*.⁶ Therefore, if AAPL receives a complaint alleging unethical member conduct, it is returned to the complainant "...for referral to the local district branch [DB] of the American Psychiatric Association (APA), the state licensing board, and/or the appropriate national psychiatric organization of foreign members." Ironically, AAPL subsequently offers the services of the AAPL Ethics Committee to these other organizations "to aid them in their adjudication of complaints of unethical conduct or the development of guidelines of ethical conduct as they relate to forensic psychiatric issues."⁵

Although AAPL takes no part in ethics enforcement, the AAPL *Guidelines* declare that if APA or an international psychiatric association "...expels or suspends a member, AAPL will also expel or suspend that member upon notification of such action. AAPL will not necessarily follow the APA or other organizations in other sanctions."⁵ AAPL has not suspended anyone in recent memory, but the expulsion or suspension of a member based on external information can be interpreted technically as a form of enforcement, since AAPL metes out punishment beyond that of other professional organizations. The individual member, temporarily or permanently, loses the benefits of AAPL membership and may have to report the action in licensure renewal applications. The link is not particularly tight, however, because in practice the APA does not typically inform AAPL of APA suspensions. Nor does AAPL routinely seek such information. It is conceivable that individuals suspended by the APA could retain their membership in AAPL until their inability to renew their APA membership forces them out of AAPL.

If the AAPL *Guidelines* are intended to maintain organizational neutrality during ethics complaints, AAPL might be better served by stating that it does not accept ethics complaints, and nothing more. AAPL currently receives such complaints, however, and refers the complainants to other organizations who enforce ethics practice. Also, connections to the

AMA and its *Principles*, and to the APA and its *Annotations* suggest several regulatory links to enforcement that cannot be easily dismissed. Indeed, Section 2 of the APA *Principles* states, "A physician shall uphold the standards of professionalism . . . and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities."² AAPL, through its organizational guidelines, standards, and membership is certainly an appropriate entity for judging standards of professionalism in the subspecialty.

Let us explore this connection by looking at the automatic suspension or expulsion of AAPL members more closely. What if an ethics complaint involves a forensic matter and the APA adjudication process is conducted only by nonforensic practitioners? Is the membership requirement linking APA and AAPL enough to support the process and outcome of the decision? Or should AAPL's organizational experience, writings, and guidelines be applied formally? What if experienced AAPL members believe that the APA *Principles*, largely patient care centered, were unfairly applied? Or what if a key practice guideline was ignored by APA adjudicators?

Perhaps the forensic context alters the principles that are applied or the balance between them. Perhaps, given the circumstances, a group of forensic peers believes that automatic suspension from AAPL is too harsh a sanction. Is it fair for AAPL members to be deprived of specialty-specific due process? We raise the question, therefore, of whether, given the growing complexity of organizational ethics, the time has come for AAPL members to be judged by their specialty peers.

How might AAPL respond to these questions about the usual assessment of ethical behavior by forensic practitioners? Before offering a model and process for resolving this concern, we describe two approaches to enforcement that will come together in our proposal for a solution.

The Regulatory Reality

Despite its use as a resource document in ethics adjudications, AAPL's code of ethics is not easily considered regulatory. There are admonitions against examining a defendant before access to counsel and a prohibition against participating in torture. However, the intent and language are more aspirational and educational, an observation made by many of those who have written and revised *The*

Guidelines over the years. Indeed, the code's aspirational Preamble notes that AAPL is dedicated to the "highest standards of practice in forensic psychiatry."

Certainly, the AAPL *Guidelines* could become regulatory merely by virtue of a parent organization's (e.g., AMA or APA) intent to enforce them and establishing a process for doing so, but there is no such process in place. In fact, before a district branch (DB) reviews an ethics complaint, the alleged misconduct must first be framed as a violation of the applicable APA *Principles* and their *Annotations*. The APA *Annotations* form the applicable standards for investigation and adjudication in the same way that laws, regulations, and case law form applicable legal standards in criminal, civil, and administrative procedures.

Problems arise when the APA *Annotations* do not address the specific areas of ethics risk in forensic psychiatry. The result is that ethics adjudications of forensic psychiatrists rely on a set of regulatory standards that may be a poor fit for the conduct that is being judged. Forensic psychiatrists may not be sufficiently protected. In adjudication, then, the *Guidelines* give way to the *Annotations*. In fact a DB, which is technically bound only to APA standards, is under no obligation to consider the AAPL *Guidelines* at all.

How does this work in practice? Of the nine AMA *Principles* and their APA *Annotations*, there are two principles and one annotation that are most often relied on to assess the conduct of a forensic psychiatrist:

AMA Principle 2: "A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities."¹

APA Annotation 3: "A psychiatrist who regularly practices outside his or her area of professional competence should be considered unethical. Determination of professional competence should be made by peer review boards or other appropriate bodies."²

AMA Principle 4: "A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law."¹

How might these regulatory principles be applied in a forensic psychiatric complaint, and how would they differ from the more aspirational AAPL *Guidelines*? Consider a hypothetical but common complaint against a testifying expert. The complaint alleges that the expert's testimony was unethical because of some or all of the following: the expert misrepresented his expertise, testified beyond his expertise, and testified in a biased and misleading fashion.

The findings, if any, of the DB will be most influenced by consideration of the APA's "standards of professionalism," and whether the psychiatrist was "honest in all professional interactions." Some forensic psychiatrists and others familiar with the controversy over the status of medical testimony argue that testimony is not the practice of medicine. They assert, correctly, that there is no offer of treatment. Moreover, in the absence of a clinical context, the ethics rules concerning patients and relationships with physicians do not necessarily apply. Conversely, the AMA's Council on Ethical and Judicial Affairs (CEJA Opinion 9.07), has left no doubt that it considers medical testimony the practice of medicine.⁷ This tension is left to the DBs to resolve and underscores a persistent observation about the lack of interpretive standardization across district branches.

The AMA *Principles* and APA *Annotations* apply to such cases in a broad way and are judged by such general factors as whether the testimony was honest, competent, and free of deception. The AAPL *Guidelines*, although they directly address the ethical aspects of testimony, are not the first-line resource for deciding the question.

It is open to argument whether testifying outside one's expertise is analogous to practicing outside one's expertise. Some may argue that if Principle 2 applied to testimony, it would say so explicitly. An expert's credentials and expertise have central importance in medical testimony. They are keystones to the court's admission of expert testimony and to the expert's credibility. If credentials and expertise were relevant to this critical function, the *Principles* would say so. Their silence is more consistent with the relatively small role that the description of a physician's training and experience plays in the patient encounter. The *Principles* offer no specific guidance on how to apply this forensic standard of professionalism beyond the general language provided by AMA Principle 2.

Similarly, allegations of bias against a testifying expert are not uncommon. Yet, the APA *Annotations* give no guidance on how to frame the understanding of improper medical testimony. Forensic commentators argue that poor testimony is not necessarily synonymous with dishonest testimony.⁸ Yet, unlike AAPL's *Guidelines*, there is no guidance in the *Annotations* about what constitutes honesty in a forensic context. In fact, the AAPL *Guidelines* accept bias as inevitable, noting that experts should strive to reach an objective opinion.

In addition, the word "regularly" (e.g., "who regularly practices outside his or her area") in Annotation 3 confers ambiguity. Does "regularly" mean testifying unethically across many trials, or many times in a single trial? Meeting the probative standard of multiple trials may be difficult for resource-poor ethics committees, whereas the standard of a single trial may be unduly harsh for an expert who makes an uncharacteristic misjudgment in a single case.

In contrast to the relative silence and ambiguity of the *Annotations*, AAPL's *Guidelines* offer more direct guidance to members of the organization, the public, and investigators. For example, AAPL's *Guidelines* are specific in defining the ethics-based description of credentials: "Expertise in the practice of forensic psychiatry should be claimed only in areas of actual knowledge, skills, training, and experience."⁵ By using the conjunction "and" rather than "or," AAPL underscores that expertise rests on a foundation of not one but several pillars. Knowledge acquired in a library is no surrogate for actual training and experience.

Similarly, on the topic of avoiding partisanship in an adversarial proceeding, the *Guidelines* offer ethics guidance that goes beyond purely regulatory language:

The adversarial nature of most legal processes presents special hazards for the practice of forensic psychiatry. Being retained by one side in a civil or criminal matter exposes psychiatrists to the potential for unintended bias and the danger of distortion of their opinion. It is the responsibility of psychiatrists to minimize such hazards by acting in an honest manner and striving to reach an objective opinion.

Psychiatrists practicing in a forensic role enhance the honesty and objectivity of their work by basing their forensic opinions, forensic reports, and forensic testimony on all available data. They communicate the honesty of their work, efforts to attain objectivity, and the soundness of their clinical opinion, by distinguishing, to the extent possible, between verified and unverified information as well as among clinical "facts," "inferences," and "impressions."

Psychiatrists should not distort their opinion in the service of the retaining party. (Section IV)⁵

The *Guidelines* do not attempt to provide a simple or binary answer to a complex question. They provide educational guidance for reasoning about a complex set of circumstances. They remind practitioners and reviewers that an opinion of what is medically true should include all available data and not just those that may be most supportive.

Consequently, the *Guidelines'* aspirational text does provide context for APA DBs, whose ethics committees are frequently required to review and adjudicate forensic ethics complaints. Although APA DBs have traditionally focused on enforcing the *Annotations* alone, it is not uncommon for DB members to consult the AAPL *Guidelines* or other resources to shed light on forensic cases. In fact, this practice is becoming not only more common but necessary as the field grows increasingly complex, specialized, and fragmented. Nonetheless, it remains optional, meets occasional resistance, and leads to variability among DBs. DBs are under no obligation to consult outside sources.

Without greater consensus and discussion within AAPL we cannot resolve here the question of whether the AAPL *Guidelines* should apply to psychiatrists who are not members of the organization. As aspirational guidelines that reach beyond minimal regulatory standards and aspire to the kinds of ideals we strive for in our profession, they may be considered to apply to all who practice forensic psychiatry.

However the *Guidelines* simply do not hold with the same rigor if a psychiatrist is not formally bound to the professional organization. AAPL is a voluntary organization with an educational, scientific, and charitable mission that cannot easily extend its jurisdiction and apply an enforcement framework that it specifically defers to the APA. Indeed, the 1986 Healthcare Quality Improvement Act provides civil immunity to healthcare agencies that engage in regulating their members, but does not extend beyond the membership.⁹ The landmark decision of *Austin v. American Association of Neurological Surgeons* (AANS), in which Dr. Austin, a neurosurgeon and member of AANS lost his lawsuit against the organization that sanctioned him, underscores the relationship between members and the organizational code of conduct.^{8,10}

One resource document that regularly provides a model for considering aspirational documents is the

APA Opinions of the Ethics Committee on The Principles of Medical Ethics (Opinions).¹¹ Often consulted by DBs, the *Opinions* contain a five-page section devoted to “Forensic Issues.” However, this booklet is in part a historical document, the opinions are only those of the APA Ethics Committee, and it does not represent formal APA policy. Nonetheless, the *Opinions* contain specific examples of forensic conduct and reasoning about its ethics, providing reviewers with increased insight on specific topics. The AMA Code of Medical Ethics, too, is a resource with some direct forensic relevance. Occasionally consulted by ethics committees, its pertinent sections include forensic topics such as the relationship between ethics and the law, confidentiality, the attorney–physician relationship, independent medical examinations, and medical testimony.

Our contention is that the AAPL *Guidelines* can fulfill a formal regulatory role for DBs as they consider ethics complaints. The *Guidelines* address, for example, the interface of confidentiality and informed consent in different legal settings. They address as well the conceptual duty to maintain honesty and strive for objectivity within an adversarial interaction. Moreover, an entire section is devoted to accurate identification of qualifications and expertise, a section critical to the courtroom where qualifying the expert is a vital gate-keeping function. In forensic circumstances, the *Guidelines* can offer important context to a DB ethics committee applying APA *Annotations*.

At first glance, however, the APA *Annotations* do not seem to allow much room for the consideration of subspecialty aspirations. They draw much of their power from their regulatory language: the brevity, terse tone, prevalence of “should” language, and the practice of using it in adjudicating ethics complaints is testament to this reality. Moreover, the *Principles* are those of the AMA, with the APA *Annotations* provided to give examples of how the principles apply to the special circumstances of psychiatry. However, although AAPL, APA, and AMA are separate organizations, a strong historical, professional, and organizational bond exists among them. The AMA House of Delegates includes representatives from the APA and AAPL. AAPL membership is contingent on the members’ agreeing to abide by APA ethics, and AAPL members must also abide by the AMA Code of Medical Ethics. The links between the ethics of med-

icine, psychiatry, and forensic psychiatry invite application of the subspecialty’s *Guidelines*.

The problem, as we have seen, is that an AAPL member responding to an ethics complaint is adjudicated according to *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* and not according to AAPL’s *Ethics Guidelines*. The APA has never formally adopted AAPL’s *Guidelines* and, in the absence of this regulatory endorsement, cannot use them as the basis for a finding of ethical misconduct. The *Guidelines* solely clarify requirements within the APA framework, and that only inconsistently across DBs.

We argue that, for forensic ethics complaints, the enforceable regulatory *Annotations* may not provide enough of a moral or informational framework to resolve them. In these circumstances, DB ethics committees should reach beyond the *Annotations* to the AMA and AAPL to provide fair and informed analysis of alleged infractions. If AAPL’s *Ethics Guidelines* are truly intended, as stated in their Preamble, to “supplement the Annotations Especially Applicable to Psychiatry. . .” recognizing them explicitly for regulatory purposes may be an important addition to the process of reviewing complaints and would also establish transparent organizational permission for their use.

We consequently propose that DBs consult subspecialty members during forensic ethics cases, and that APA and AAPL collaborate to add wording to the APA *Procedures* to encourage DBs to review documents from allied organizations like AAPL and AACAP.

The Implications of an Aspirational Standard

Recent developments in forensic ethics offer additional justification for this approach. Griffith and others^{12–14} have underscored the importance of social context in practicing by a professional code: neither practice nor code exists in a vacuum, but rather in a complex setting of values and perspectives. At a time when aspirational meant going beyond what is required,^{15,16} Griffith’s call for cultural sensitivity in forensic work challenged ethics theories to go beyond the more regulatory requirements of forensic practice. Presenting the cultural narrative of nondominant defendants in reports and testimony challenges practitioners to aspire to conditions that are not yet present in the legal system. Earlier commentators

had merely underscored a legal (or clinical) foundation for forensic ethics, advocating a focus on prosecutorial or defense needs, with one prominent theory calling for an elevation of principles of justice and truth-telling.^{17–19} Such approaches did not always provide guidance when parties were not actually seeking the truth and when the legal system provided limited opportunity for the forensic expert to foster justice. The evolution from this early approach required more of regulatory codes and ethics committees, an aspirational standard.

To certain writers, this more aspirational approach was an opportunity to give real-world meaning to the subspecialty's *Guidelines*.^{15,20} It acknowledged multiple cultural perspectives and approaches in forensic ethics, drawing on the viewpoint of the evaluatee, the community, and that of the retaining party. It was not enough to rely on a single framework or set of regulations. By aspiring to a more robust view of professionalism, courtroom experts would be better equipped to avoid unethical practices and the temptations of biased or exaggerated testimony.

The aspirational approach requires more than an appreciation of the perspective of members of non-dominant groups. Acknowledging other perspectives also means a familiarity with theoretical approaches that recognize different influences on the expert. The aspirational approach recognizes the uncertainty of applying a single model to all cases. It means developing one's knowledge of the ethics literature, and a comfort with the habits and skills of ethical practitioners. Developing skill in the recognition of ethics-related problems in state and correctional institutions, for example, demands more than a minimalist understanding of regulations and rules. For the practitioners and ethics committees facing ethics complaints, a healthy understanding of the profession's aspirations means raising the ethics bar.

The difficulty for the existing process is that aspirational and educative language is poorly suited for deciding actual cases. Investigators and committees would have difficulty interpreting what it means to strive for objectivity, minimize special ethics hazards, or avoid distortion (*Guidelines* Section IV).⁵ Common interpretations and language were not yet prevalent in the enforcement of forensic ethics. Also, DB ethics committees and state licensing boards have an uneven knowledge of and sensitivity to forensic matters.

Finally, as we have seen, AAPL's procedures generally refer cases to the APA, and the APA primarily applies its clinically focused and generalist *Annotations*. Is there a framework that allows procedural change and formal consultation with subspecialty practitioners during ethics complaints? Is there a model that improves the enforcement of forensic cases by finding a middle ground between the more exacting regulatory model and the more ambitious aspirational one?

A Framework for Converging Regulatory and Aspirational Enforcement Standards

Answers would begin to take shape at a debate held at AAPL's Annual Meeting in 2010.²¹ The panelists, the authors of this article, realized that it was possible to fit the two seemingly incongruous models into a framework that supports accepted practices and standards. Indeed, the hindrance could be resources and political will.

Conceptually, we argue that it may be most appropriate for AAPL to enforce its own ethics guidelines. Forensic psychiatrists know the field best, peers are available to analyze cases, and the literature and culture are more readily available. However, liability, limited organizational resources, and insufficient administrative support are major obstacles to this option. On rare occasion, adjudication of ethics complaints (among DBs) has turned expensive when accused physicians and their attorneys mount a particularly aggressive defense. Moreover, a single successful lawsuit for negligently conducting ethics enforcement could jeopardize the financial stability of an organization like AAPL.

Nor is the referral to state licensing boards ideal. Although boards may take on forensic psychiatry cases, they rely on general statutes and administrative regulations, are composed largely of nonpsychiatrists, and are often unaware of the nuances at the intersection of law, medicine, and psychiatry. Their administrative mandate remains the supervision of clinical practice, so that adjudicating standards of courtroom testimony faces the same problem of interpretation and inconsistency found in the district branches. Yet, these boards do have resources and a political mandate to enforce professionalism.

Many of AAPL's ethics guidelines could be enforced according to the APA *Annotations* should the APA and its district branches elect to do so. Those elements of the guidelines that are clearly aspira-

Enforcement of AAPL Ethics

Table 1 Options for the Enforcement of AAPL's Ethics

Model	Pros	Cons
APA enforcement	Some resources, experience with model, close link to AMA Principles	Generalist, patient-centered panels are not necessarily representative
AAPL enforcement	Peer review, close familiarity with context	Limited resources, some liability concerns
Medical boards	Considerable resources, investigative powers, political mandate	Not representative, not always familiar with subspecialty ethics
Mixed model	APA resources, AAPL representation, application of both ethics codes	Cumbersome political process to modify APA <i>Procedures</i> and allow forensic representation on ethics committees

tional, perhaps because they require discerning the practitioner's intent, could apply less stringently. After all, it may be difficult to determine whether a practitioner has striven to be objective.

Nonetheless, reviewers could determine whether a concrete attempt has been made to obtain basic evidence, such as police reports and defendant psychiatric records in a criminal case, evidence that would be a likely necessity for a thorough review. Determining whether certain minimal requirements were met would be a way to gauge how much striving for objectivity had been exercised.

While striving for objectivity is historically an aspirational standard that individuals can apply in assessing their own behavior, it could be evaluated by a careful review of the actions of accused practitioners. Of course, as some commentators have pointed out, objectivity is often difficult to achieve given the many subjective forces, internal and external, that shape forensic data.^{14,22} Ethics committees and reviewers would have to take this into account when trying to use an aspirational standard, even one that can be operationalized by reviewing attempts to gather basic evidence.

As we have seen, the APA already enforces several similarly complex questions of ethics that fall within its *Annotations*. If the AAPL *Guidelines* are to be seen as more than an occasional tool for fleshing out the meaning of APA *Annotations*, it will require AAPL's support and a formal agreement within APA for how it is to be realized. This agreement would require joint revision of associated documents by the organizational memberships (APA and AAPL) and a political process akin to other policy revisions.

Such an approach would necessitate the addition of regulatory language that refers district branches to subspecialty guidelines when needed. Using specialty ethics guidelines in this way reinforces subspecialty expertise in the regulatory process and complements

recent trends in APA ethics policy. In the past 10 years, the APA has moved to supplement ethics enforcement with educational efforts (an aspirational strategy), and has established an educational option that can be applied to less serious infractions.^{6,23} This alternative educational approach decreases the burden of adversarial procedures, encourages rehabilitation of improper conduct, and implements educational interventions that improve members' understanding of ethics principles. It is also less likely to result in costly legal challenges.

The process may be as simple as an insertion into Part IIB of the *Procedures*, "Review of Allegations." For example:

DBs may supplement their review and assessment of complaints by consulting subspecialty ethics guidelines. Consulting ethics resources from respected organizations can promote an increased understanding of the nature and context of particular complaints. This practice does not supplant the primacy of the *Principles*, but aids in their interpretation, given the complex ethics landscape associated with the increased subspecialization of psychiatry.

Given the evolution of current enforcement practices, it seems most realistic for the APA to continue to enforce forensic ethics. The APA need not adopt AAPL's *Guidelines* outright, but most of the guidelines can be referred to and interpreted in ways that incorporate both regulatory and aspirational standards. With stronger representation from the forensic community on adjudicatory committees, perhaps through the presence of an AAPL member on the DB committee that reviews forensic ethics complaints, a closer tie to forensic professionalism could be forged. Certainly, agreement would have to be reached on those areas where there is not yet sufficient concordance to enforce a recognizable standard. Ultimately, the adjudicatory usefulness of the AAPL *Guidelines* would extend to clarifying the meaning of certain *Annotations* and assisting in the determination of whether a behavior was ethical or not (Table 1).

We have already intimated how such an interpretive framework could be formed. Where language is explicit and on point, the standards from both the *Guidelines* and the *Annotations* would be regulatory: no torture, no evaluation before access to counsel, and no contingency fees (*Guidelines*), combined with no sex with patients, no fee-splitting, and no unauthorized disclosure of confidential information (*Annotations*). Where the language offers guidance for reasoning through nuanced questions, such as the differences among facts, inferences, and impressions, or the meaning of striving for objectivity, enforcement using the *Guidelines* and *Annotations* together would require not only the presence of forensic expertise but greater consensus in interpreting the regulations.

How might the joint application of *Guidelines* and *Annotations* work? As we have noted, the combination of AMA and APA *Principles* is already used to adjudicate forensic ethics cases. Let us consider how they can be used together with the AAPL *Guidelines* in a mixed interpretive framework.

Example 1

AAPL's *Guidelines* Section II makes specific statements on confidentiality:

Psychiatrists should maintain confidentiality to the extent possible, given the legal context.

A forensic evaluation requires notice to the evaluatee and to collateral sources of reasonably anticipated limitations on confidentiality.

Psychiatrists should indicate for whom they are conducting the examination and what they will do with the information obtained.

Care should be taken to explicitly inform the evaluatee that the psychiatrist is not the evaluatee's "doctor."

Psychiatrists should take precautions to ensure that they do not release confidential information to unauthorized persons.⁵

This more specific regulatory language (should maintain, requires notice, should indicate, explicitly inform) can be directly applied within AMA Principle 4, which requires that physicians "safeguard patient confidences and privacy within the constraints of the law." The use of the term "patient" instead of the more forensic "evaluatee" is made irrelevant in the related APA Principle 4/Annotation 6, where psychiatrists who are asked to examine individuals "for security purposes, to determine suitability for various jobs, and to determine legal competence . . . must fully describe the nature and purpose and lack of

confidentiality of the examination to the examinee at the beginning of the examination." These are parallel requirements for clinic and courtroom and unite language found in the AMA, APA, and AAPL documents.

The aspirational commentary under AAPL's Confidentiality Guideline, Section II,⁵ can then assist the APA in deciding how high a standard should be applied to breaches of confidentiality. It recommends "reasonable precautions" and "reasonably anticipated limitations to confidentiality." The reasonableness or reasonable person standard, not without ambiguity, has nonetheless been extensively analyzed in the legal and ethics literature, and will be recognizable to district branches and their reviewers.

Example 2

AAPL *Guidelines* Section III extends confidentiality to its discussion of consent:

Informed consent is one of the core values of the ethical practice of medicine and psychiatry. It reflects respect for the person. . . .

Notice should be given to the evaluatee of the nature and purpose of the evaluation and the limits of its confidentiality.

The informed consent of the person undergoing the forensic evaluation should be obtained when necessary and feasible.

If the evaluatee is not competent to give consent, the evaluator should follow the appropriate laws of the jurisdiction.⁵

Here, aspirational language on respect for persons overlaps with more specific regulatory direction on the required notice given to evaluatees (i.e., on the nature and purpose of an evaluation). An explicit regulatory requirement to obtain informed consent is tempered by the less rigid "when necessary and feasible." Attention to the client's competence and referral to local legal standards provides a clear parallel to the legal doctrine of informed consent, its jurisdictional application, and mainstream clinical practice.

Within our proposed model, AMA Principles 1 and 4 subsume forensic consent in their language on respect for "human dignity and rights," and "the rights of patients . . . within the constraints of the law."¹ These are common justifications in law and medicine for informed consent doctrine and apply in both clinical and forensic arenas. The related APA Principle 4/Annotation 6 requires that the "nature and purpose" of an examination be described, a clear connection to the consent requirement that physi-

cians describe the nature and purpose of a treatment. APA Principle 4/Annotations 10 and 11 also invoke an individual's dignity and informed consent when presentations are made to third parties (e.g., to the public or at scientific gatherings), a telling parallel to expert presentations in public testimony or reports.²

AAPL's *Guidelines* commentary in this section can help underscore the importance of context for consent in coercive settings, such as jails or prisons. The *Guidelines* clearly enrich the APA's language by providing forensic values that apply in court-ordered evaluations or before the availability of counsel.

Conclusion

With an improved understanding of regulatory and aspirational standards and where they can be found in our professional ethics codes, a more consistent application of psychiatry's ethics to forensic practice can be achieved. From a practical perspective, aspirational guidance can be used to interpret regulatory language: when asking, for example, how high a threshold we should apply or how strict a standard, or when we ask whether a behavior is obligatory, recommended, optional, or beyond the call of duty.

Although in the future it may well be desirable for the APA to integrate AAPL's *Guidelines* fully into its framework, this might not be practical or even necessary for ethics enforcement. Within the current APA framework, careful analysis of which forensic behaviors are enforceable and which behaviors lie beyond traditional regulations remains the greatest challenge. The first steps, however, should be permitting the integration of additional subspecialty resources into the DB ethics process by formally amending the APA *Procedures* and adding forensic representation to ethics panels considering forensic ethics complaints. Ultimately, the ethics language that is enforceable and regulatory may become more consistently informed by aspirational language that is more contextual and educative. Such language would result in a fairer, more representative, and more robust vision of forensic ethics.

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