

Dual Agency

Jeffrey S. Janofsky, M.D.

MPS Ethics Committee Member and Past Chair

Adjunct Professor of Psychiatry UMSOM

Associate Professor, Part Time JHUSOM

PSYCHIATRIC CLINICAL ETHICS

- Primacy of the doctor-patient relationship
- Beneficence:
 - All interaction with a patient should be for the benefit of the patient.
- Nonmaleficence
 - Interactions that could potentially cause harm or misunderstanding should be avoided
- Treating psychiatrist acts as a fiduciary with a duty exclusively for the patient

APA Clinical Ethics

2. A psychiatrist may release confidential information only with the authorization of the patient or under proper legal compulsion.

APA Clinical Ethics

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.

APA Clinical Ethics

5. Ethically, the psychiatrist may disclose only that information which is relevant to a given situation.

APA Clinical Ethics

9. When the psychiatrist is ordered by the court to reveal the confidences entrusted to him/her by patients, he or she may comply or he/ she may ethically hold the right to dissent within the framework of the law. .

FORENSIC ETHICS

- No doctor-patient treatment relationship
- Beneficence and nonmaleficence not of primary concern.
- Primary Goals:
 - Truthfulness (honesty)
 - Striving for objectivity

AAPL ETHICS CODE

- III: CONSENT
 - The informed consent of the subject of a forensic evaluation is obtained when possible.
 - When consent is not required, notice is given to the evaluatee of the nature of the evaluation.

TRUTHFULNESS

- Honest
- Informed consent about purposes of exam and limits of disclosure

APA Commentary on Ethics in Practice 2015

- The treating psychiatrist has a primary, but not absolute, obligation to the patient.....
- However, as the medical system becomes increasingly complex, it is critical for psychiatrists to recognize that not all competing obligations may be resolved.
- Psychiatrists should remain committed to prioritizing patient interests as treating physicians, expecting that they will find themselves in the position of having to reconcile these interests against other competing commitments and obligations.

APA Commentary on Ethics in Practice 2015

- At a minimum, the psychiatrist should inform the person being treated as a patient or evaluated for another purpose of the
 - Purpose of the clinical encounter or evaluation,
 - The limits on confidentiality of the treatment/examination, and
 - The parameters of the relationship between the physician and the patient or evaluatee,
 - who requested the examination/evaluation,
 - whether an ongoing relationship will occur, and, if so
 - the parameters/expectations of that relationship).

APA Commentary on Ethics in Practice 2015

- **The central principle in the psychiatrist's decision about whether to testify and/or serve as an expert for the patient is the patient's overall interest and wellbeing.**
 - *Topic 3.1.3 Dual agency and overlapping roles*

On Wearing Two Hats: Role Conflict in Serving as Both Psychotherapist and Expert Witness

Larry H. Strasburger, M.D., Thomas G. Gutheil, M.D., and Archie
Brodsky, B.A.

- Results:
 - Attempting to treat and evaluate the same person typically creates an irreconcilable role conflict.
 - This role conflict manifests itself in different conceptions of truth and causation, different forms of alliance, different types of assessment, and different ethical guidelines.
- Conclusions: Although circumstances sometimes compel a practitioner to assume the dual role of treater and evaluator, the problems that surround this practice argue for its avoidance whenever possible.
 - Am J Psychiatry 1997; 154:448-456)
 - doi: 10.1176/ajp.154.4.448.
 - PMID: 9090330.

Common Scenarios

- Treatment in psychotherapy is brought about through an empathic relationship that has no place in, and is unlikely to survive, the questioning and public reporting of a forensic evaluation.
- To assume either role in a particular case is to compromise one's capacity to fulfill the other.

TRUTH AND CAUSATION

- Psychic Reality vs. Objective Reality
- Psychotherapy
 - A search for meaning more than for facts
 - Narrative truth rather than historical truth
 - The therapist strives to see the world through the patient's eyes.
 - A therapist must tolerate ambiguity to such a degree as to be often unable to answer a legal question with a "reasonable degree of medical certainty"
- Forensic Evaluation
 - Ethical standard of objectivity.
 - Looks in from outside
 - More descriptive
 - Attempt at historical truth