



The Ethics Guidelines are produced by the Office of the Syndic in collaboration with the Professional Inspection Committee. These guidelines do not constitute legal opinions; each case is particular and must be analyzed in the light of the circumstances peculiar to it.

WORKING IN THE FRAMEWORK OF EMPLOYEE ASSISTANCE PROGRAMS (PART 2)

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INTRODUCTION

As a continuation of the discussion begun in our last ethics guideline, published in November 2005, on employee assistance programs (hereafter called EAP), we will now turn our attention to those psychologists who provide such services themselves. We will examine the requirements applying to psychologists who either work as subcontractors for an EAP firm, or are employed by an organization and provide assistance services to other employees of the same organization.

Our discussion will focus on the same ethical principles as those considered in the previous guideline, that is, professional secrecy, consent, conflict of roles and conflict of interest, maintenance and accessibility of client records, and compensation.

We will end this guideline with some situational scenarios presenting problems which illustrate the application of the regulatory framework.

CLARIFICATION

Services provided privately or as an employee

The fact that a psychologist works in private practice and receives clients referred by an EAP, or is employed for this purpose by an organization, does not alter his or her obligations towards the client. But in these situations, the psychologist deals with a mandator who requests the services or with an employer, and it may set down certain rules defining the framework of the service provision. It is necessary for the psychologist to strike balance between his obligation, as a subcontractor or employee, to comply with these rules, and the need to take into account certain ethical principles.

We will now consider how these ethical principles apply in the two situations under discussion.

Professional Secrecy

Professional secrecy is an essential dimension of the work of a psychologist who provides assistance services on behalf of another party is professional secrecy.

It must be recalled that neither the mandator nor the employer of the psychologist or the client seen under an EAP may be given information about the client's identity, the content of the therapy sessions or even whether therapy was provided unless there is written authorization to this effect from the client, as stipulated by the Code of Ethics (sec. 41 and 46). Moreover, if the firm managing the EAP is involved, for example, in coordinating delivered services or discussing emergency cases, the client must be made aware of this fact, as it affects professional secrecy. Therefore, if the psychologist finds that it is difficult to maintain professional secrecy when working for an EAP, he or she must make this clear to the client and obtain his free and informed consent.

Psychologists are often asked to provide information for statistical purposes, for use in determining the level of usage of EAP services or the types of problems observed. As this information does not reveal the identify of the persons concerned, the psychologist may provide it without restriction; however, he must ascertain that, given the organizational context, this does not make it possible to trace any clients' names.

Consent to Services

Obtaining the client's free and informed consent is also important because of the constraints and limitations on EAP services. As mentioned earlier, the best approach is to foresee from the start the issues that may arise.

The EAP may have certain associated conditions, such as a limit on the number of appointments allowed, non-accessibility of the client's record and impossibility of receiving a report on the therapy for use as evidence in a dispute with the employer. The psychologist must ensure that clients understand these conditions, as well as any other limitations stemming from the rules set by the mandator or employer, for example, regarding reports or the psychologist's undertaking not to act as a witness in a dispute against the client's employer. While these requirements may be justified from the ethical standpoint (see sec. 50.3), it is important that the client be informed of them from the start.

The psychologist must remain independent with regards to his professional duties. He may find himself having to demonstrate that he took the necessary precautions to satisfy his professional responsibilities. He has to keep in mind his obligations towards the employer, the mandator and the client. It should be noted that EAP services are offered on a voluntary basis and are subject to confidentiality and to the psychologist's concern for this client's well-being.

For all the above reasons, the Office of the Syndic believes that the best way to ensure that the Code of Ethics requirements are met is to have a written agreement, documenting the process for obtaining consent to the rules in effect in the EAP.

Conflict of Roles and Conflict of Interest

A recent decision by the Disciplinary Committee (decision no. 33-03-00283) found the existence of a conflict of roles and a conflict of interest in the case of a psychologist who gave a theoretical information session to the employer of a client whom she had previously assessed. The session dealt with a problem involving the client, who was engaged in a dispute with her employer. In this case, before accepting the employer's invitation, the psychologist should have checked with the client on the possible impact of this action and obtained the client's consent.

In this case, the therapy was provided on a private basis. As often happens, the ethical breach could have been avoided if the client's consent had been duly obtained.

To avoid conflicts of interest, the psychologist must be aware of his obligations with regards to each client. This means that he cannot simultaneously provide therapy to different individuals from the same family or to persons involved in a reporting relationship or personal relationship having the potential to affect the quality of the therapy. Clearly, professional judgement has to be exercised. However, the decisions of the Disciplinary Committee¹ show that there is a limit to the exercise of this judgment, given the ethical rules on conflict of interest. The Disciplinary

Committee's findings on this subject are quite consistent, as can be seen from other judgments² rendered on similar situations.

Record Keeping

When therapy is provided under an EAP, a record must be kept for each client. This record should contain only interpreted data, that is, progress notes.

The record may be kept by the psychologist or by the organization managing the EAP. This fact is important because some EAP firms stipulate that they should keep all the records, despite the fact that they may not be headed by psychologists. In such cases, it must be ascertained that the conditions in which the records are kept comply with our profession's regulations. If any breaches occur, we can expect that the psychologist will be held responsible, as it is up to him to manage his "professional obligation"³. This applies whether the EAP firm has its offices in Quebec or elsewhere.

Compensation

It is up to the psychologist to decide whether he wants to accept work that is offered to him, with regard to the fees and conditions. However, if he accepts, he is responsible for providing services that meet the requirements of his profession. For this reason, agreeing to a fixed-rate formula, that is, determining in advance an amount to be paid for a set number of sessions, without having done a prior assessment of the client, goes against the principles set out in sections 10, 13 and 15 of the Code of Ethics.

Some psychologists find that the delay in the payment of fees by the organization managing the EAP is too long. However, this is a business matter. It is up to the psychologist to work out his conditions or to terminate the relationship if he is not satisfied. However, in the latter case, he must ensure that his decision does not create a negative impact on any clients still in therapy. (See section 28 of the Code of Ethics).

SITUATIONAL SCENARIOS

A psychologist works in the employee assistance service of an organization. She sees an employee presenting several symptoms of stress. At the end of the five sessions provided to this client, he files a claim to the Commission de la santé et de la sécurité du travail (CSST), citing symptoms caused by a situation at work. The CSST denies his claim. The employee then appeals to the Commission d'appel en matière de lésion professionnelle (CALP) and asks the psychologist to write a report on the treatment she delivered to him. He also says he would like her to testify.

It goes without saying that the psychologist cannot comply with the client's requests, despite his right to have a copy of the record pertaining to services rendered to him. Doing what he asks would put the psychologist in a conflict of interest, as she is herself an employee of this organization. Moreover, she would only be able to act as an ordinary witness, as she does not have the expertise to determine a causal link between his symptoms and the situation at work.

It is very important for psychologists who deliver services to other employees through an assistance program to take specific measures to prevent these types of situations. The best approach is to have the employee sign a consent form to this effect. To be able to give free and informed consent, the employee must understand the limits placed on services provided under an EAP.

A client consults a psychologist under an EAP because of difficulties at work. She claims that she is a victim of sexual harassment by an executive and she is preparing to report him. She has had two of the eight sessions to which she is entitled and she spent them talking about the impact of the situation on her life. Among the psychologist's other clients, whom he sees privately, is one he has treated for

more than two months for relationship problems. Today, this client mentions that a person working in another division of his organization has filed a complaint against him, and he will be subject to an internal investigation. The details given by the client make it clear to the psychologist that he is the person to whom the female client was referring.

This situation illustrates a problem occasionally encountered by psychologists, who may find themselves, through no fault of their own, in conflict of interest. This psychologist cannot reveal who uses his services, or interrupt a course of therapy without giving the client reasonable notice in order to avoid causing prejudice to the client. He has a responsibility to each of his two clients. In this situation, he could ask the EAP to assign the female client's case to another psychologist. This would be the preferred option, as his work with this client has just begun and it is relatively easy to refer her to someone else within the EAP. The psychologist could inform this client by telephone that due to important professional considerations, he cannot continue therapy with her. To fulfill his professional obligations, he should ensure that she obtains adequate and timely support from the EAP. He can offer to summarize the work done so far to the new therapist, verbally or in writing, through notes in the record, if he has written authorization to this effect from the client. However, this action may be insufficient; the psychologist may also find that he is unable to continue therapy with the male client. Such a decision would be necessary if the psychologist believes that he can no longer act independently towards him, in view of the new information he has obtained without the client's knowledge. In this case, the male client should also be referred.

A female client is referred by a doctor. Through the company EAP, she is eligible to receive therapy at the employer's cost. The psychologist notes that progress is slow. After several sessions, the doctor calls to discuss the client's case. The psychologist does not have written authorization to this effect from the client. The doctor insists that the client agreed to have him talk to her psychologist.

The fact that the client was referred by the doctor does not constitute authorization to discuss her case with him. Unless this is an emergency, such as a risk of suicide or homicide, the psychologist should listen to the doctor's request and, before providing any information, ensure that the client consents to this in writing (Code of Ethics, sec. 46).

Because there is a possibility that a case will be discussed with the EAP firm's clinical officer, the psychologist should ensure that this fact is stipulated in the initial agreement; otherwise, the client's written authorization should be obtained.

REFERENCES

1. See decisions 33-03-00286, 33-03-00290 and 33-04-00307.
2. See decisions 33-98-00214 and 33-01-00258.
3. See decision 33-03-00286.

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The practice of a profession is defined by two co-existing realities: on the one hand, a recognition of the professional's right to decide on the most appropriate course of action, with every decision having an underlying ethical dimension, and on the other, the existence of a regulatory mechanism aimed at ensuring the protection of the public. The ethics guidelines are intended to inform psychologists about the existing regulatory framework to help them in the process of making informed decisions.



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