Chapter 2

ETHICS IN REAL LIFE

Even the simplest ethical concept, standard, or guideline can fool us. We hear it in class. We read it in the code. We understand it. We can explain it in a test, give a lecture on it, or explain it to a jury. We know the concept, standard, or guideline, but it fools us when it shows up unexpected in the messiness of real life. It comes dressed in different clothes—and sometimes camouflage—and we don't recognize it.

Therapy offers countless challenges to recognizing how a specific ethical concept, standard, or guideline might be helpful or vital. One reason is that concepts, standards, and guidelines tend to be abstract, general, and sometimes ambiguous. Another reason is that psychotherapy can be such a complex set of interactions between unique people. Yet another is that psychotherapy can serve as the intense focus of need, hope, risk, and expectation. Lives can be at stake.

In the midst of this work, as it actually happens in real life, it can be hard to recognize those moments when we need to consider an abstract ethical concept, standard, or guideline.

This chapter provides examples of those moments as they happen in the messy textures of real life. None is based on a specific case (and none of the people are based on an actual clinician or patient), but each represents the kinds of challenges that therapists and counselors face in their day-to-day practice.

In each of the following fictional scenarios, the clinicians were trying to do their best. Readers may disagree over whether each clinician met the highest or even minimal ethical standards, and such disagreements can form the focus of classroom discussions, case conference presentations, or supervision consultation. In at least one or two instances, you may conclude that

what the clinician did was perfectly reasonable and perhaps even showed courage and profound ethical awareness. In some cases, you may feel that significant relevant information is missing. But in each instance, the professional's actions (or failures to act) become the basis of one or more formal complaints.

As you read each scenario, consider the situation from the point of view of each person mentioned as well as a member of an ethics committee, licensing board, or jury hearing the complaint.

RECORDS

Should reported to the police and clients

After a full day of Zoom and Facebook sessions with her clients, Dr. Soo sits down at the computer to update her clinical files, making sure all the notes, billing information, digital copies of the day's Zoom and Facetime sessions (recorded with the full informed consent of her clients), and other records are current. She turns on the computer and … nothing. Just a blank screen. That's never happened before. Wait: A message scrolls into view:

> Greetings, Dr. Soo! I was able to hack into your computer—obviously!—and copy all your files. Yes, even your video files, which I found quite interesting. I even accessed those files you stashed in the cloud as backups. Your passwords weren't much of a challenge for my software and finding your key to unencrypt your encrypted files was something I did while multitasking. I left your files on your computer, but I used a much more sophisticated program to encrypt them so that you can't access them.
>
> I'll bet you're upset, even angry, but you needn't be. All can be set right as rain in just a step or two. All you need do is deposit $25,000 U.S. in bitcoin into the account specified at the bottom of the page within 72 hours, I'll send you the key that will unencrypt your files, and you'll never hear from me again.
>
> Easy, isn't it? A simple quid pro quo.
>
> Oh, one more thing, Dr. Soo. What if you don't pay within 72 hours? What if you think you don't even *need* to pay because you've got another copy of all your records hidden somewhere on a disk that is not connected to the internet and so inaccessible to me and my merry band of fun-loving rascals? Well, you should know that were I not to receive the bitcoin within 72 hours—and I have full confidence you won't let that happen—unencrypted copies of all your files will start appearing on all sorts of anonymous websites, and your clients and all others in your address book will receive notification along with links to some of those websites.
>
> In closing, allow me to wish you well, Dr. Soo, especially next Tuesday, where I see in your scheduler and notes you're expected to testify as an expert

witness on the clinical records you reviewed and the tests you administered. It would be *such* a shame if the judge and attorneys in that case were to be notified before you testified that you had guarded the confidentiality of all those records so well that they were now available for all to see on a whole array of websites. Bet that would lead to an interesting cross-examination? Might even lead to a little chat with the licensing board.

Bye-bye, doc! And thank you for making me feel so welcome. No two-factor identification when signing in to your computer, no ransomware protection, not even a virtual private network when you connect to the internet. I felt you were inviting me in.

To avoid having her clients' records and videos flashed across the web, Dr. Soo manages to get together $25,000 by emptying her savings and borrowing the rest, and sends off the bitcoin under the deadline. However, the files are never returned to her—They show up on a variety of anonymous websites. Several clients sue.

LUNCH

Josefina was a Black Cuban high school student. She worked part time as a cook. During the first session with Dr. Marcus she poured out a heart full of pain from the discrimination and racist abuse she'd endured at her mostly-White high school and at her job. Just being able to talk about it made her hurt less, she said. She didn't feel so suicidal as she had the last few weeks. The next session she showed up extremely distressed. She'd lost her job as a cook and could no longer pay for therapy.

Dr. Marcus, who did *pro bono* work conducting asylum assessments at a legal aid clinic, had never offered free therapy. He believed that patients would not value or work hard if therapy cost nothing. So, he suggested various ways they might barter for the fee. Josefina had nothing tangible to barter with but Dr. Marcus suggested that, since she had been a cook, if she were to cook him a meal and bring it with her to each session, he would accept that as payment. She gladly accepted, thrilled she'd be able to continue therapy.

After four more weekly sessions, Josefina failed to show up for her appointment. Instead Dr. Marcus was served notice of a malpractice suit filed by Josefina's parents. They alleged that he had taken advantage of and mistreated a minor. Josefina had been suffering from racial prejudice, discrimination, and abuse at her high school and job, and instead of respecting her and providing valid treatment, he had treated her in the most stereotypical manner possible and turned a minor into his personal maid, telling her she must bring him his lunch. Both the subsequent therapist and the expert witness hired by the family agreed that treating Josefina in this way was unethical and damaging.

THE MECHANIC

Ms. Huang, whose family had moved from mainland China to the United States 15 years ago, is a 45 year-old automobile mechanic. She agreed, at the strong urging of her employer, to seek psychotherapy for difficulties that seem to affect her work performance. She has been showing up late at her job, has often phoned in sick, and frequently appears distracted. She complains to her new therapist, Dr. Jackson, of the difficulties she is having coping both with psychomotor epilepsy, which has been controlled through medication, and with her progressive diabetes, for which she is also receiving medical care.

Although she has no real experience treating people of Chinese descent or patients with chronic medical conditions such as epilepsy, Dr. Jackson begins to work with Ms. Huang. She meets with her on a regular basis for three months, but never feels that a solid working alliance is developing. After three months, Ms. Huang abruptly quits therapy. At the time, she had not paid for the last six sessions.

Two weeks later, Dr. Jackson receives a request to send Ms. Huang's treatment records to her new therapist. Dr. Jackson notifies Ms. Huang that she will not forward the records until the bill has been paid in full.

Some time later, Dr. Jackson is notified that she is the complainee in a licensing case and that she has been sued for malpractice. The complaints allege that Dr. Jackson had been practicing outside of her areas of competence because she had received no formal education or training and had no supervised experience in treating people of Chinese descent or those with multiple serious and chronic medical diseases. The complaints also alleged that Ms. Huang had never adequately understood the nature of treatment as evidenced by the lack of any written informed consent. Finally, the complaints alleged that "holding records hostage" for payment violated Ms. Huang's welfare and deprived her subsequent therapist of having prompt and comprehensive information necessary to Ms. Huang's treatment.

EVALUATING CHILDREN

Ms. Cain brings her two children, ages four and six, to Dr. Durrenberger for a psychological evaluation. She reports that they have become somewhat upset during the last few months. They are having nightmares and frequently wet their beds. She suspects that the problem may have something to do with their last visit with their father, who lives in another state.

Dr. Durrenberger schedules three sessions in which he sees Ms. Cain and her two children together and three individual sessions with each of the children. As he is preparing his report, he receives a subpoena to testify in a civil suit that Ms. Cain is filing against her ex-husband. She is suing for custody of

her children. During the trial, Dr. Durrenberger testifies that the children seem, on the basis of interviews and psychological tests, to have a stronger, more positive relationship with their mother. He gives his professional opinion that the children would be better off with their mother and that she should be given custody.

Mr. Cain files an ethics complaint, a civil suit, and a licensing complaint against Dr. Durrenberger. One basis of his complaint is that Dr. Durrenberger had not obtained informed consent to conduct the assessments. When Mr. and Ms. Cain had divorced two years previously, the court had granted Mr. Cain legal custody of the children but had granted Ms. Cain visitation rights. (Ms. Cain had arranged for the assessments of the children during a long summer visit.) Another basis of the complaint was that Dr. Durrenberger had made a formal recommendation regarding custody placement without making any attempt to interview or evaluate Mr. Cain. Additionally, Mr. Cain's attorney and expert witnesses maintained that no custody recommendation could be made without interviewing both parents.

STAYING SOBER

In therapy for one year with Dr. Franks, Mr. Edwards experienced alcoholism and drank heavily for four years prior to therapy. Dr. Franks uses a psychodynamic approach but also incorporates behavioral techniques specifically designed to address the drinking problem.

Two months into therapy, when it became apparent that outpatient psychotherapy alone was not effective, Mr. Edwards agreed to attend Alcoholics Anonymous (AA) meetings as an adjunct to his therapy. During the past nine months of therapy, Mr. Edwards had generally been sober, suffering only two relapses, each time falling off the wagon for a long weekend.

Now, a year into therapy, Mr. Edwards suffers a third relapse. He comes to the session having just had several drinks. During the session, Dr. Franks and Mr. Edwards conclude that some of the troubling material that has been emerging in the therapy had led Mr. Edwards to begin drinking again. At the end of the session, Mr. Edwards feels that he has gained some additional insight into why he drank. He decides to go straight from the session to an AA meeting.

One month later, Dr. Franks is notified that he is being sued. On his way from the therapy session to the AA meeting, Mr. Edwards had run a red light and had killed a mother and her child who were crossing the street. The suit alleged that the therapist knew or should have known his patient to be dangerous since he was driving while inebriated, and should have taken steps to prevent him from driving that day, specifically, as well as until his alcoholism no longer constituted a danger to the public.

THE INTERNSHIP

Dr. Larson is an executive director and clinical chief of staff at the Golden Internship Health Maintenance Organization. For one year, he closely supervises an excellent postdoctoral intern, Dr. Marshall. The supervisee shows great potential, working with a range of patients who respond positively to her interventions. After completing her internship and becoming licensed, Dr. Marshall goes into business for herself, opening an office several blocks from Golden Internship Managed Care Organization. Before terminating her work at the organization, Dr. Larson tells Dr. Marshall that she must transfer all patients to other center therapists. All of the patients who can afford her fee schedule, however, decide to continue in therapy with Dr. Marshall at her new office. The patients who cannot afford Dr. Marshall's fee schedule are assigned to new therapists at the center. Dr. Larson hires an attorney to take legal action against Dr. Marshall, asserting that she unethically exploited the health maintenance organization (HMO) by stealing patients and engaging in deceptive practices. He files formal complaints against her with the state licensing board, charging that she had refused to follow his supervision in regard to the patients and pointed out that he, as the clinical supervisor of this trainee, had been both clinically and legally responsible for the patients. He refuses to turn over the patients' charts to Dr. Marshall or to certify to various associations to whom she has applied for membership that Dr. Marshall has successfully completed her postdoctoral internship.

Dr. Marshall countersues, claiming that Dr. Larson is engaging in illegal restraint of trade and not acting in the patients' best interests. The patients, she asserts, have formed an intense transference and an effective working alliance with her; to lose their therapist would be clinically damaging and not in their best interests. She files formal complaints against Dr. Larson with the licensing board, charging that his refusal to deliver copies of the patients' charts and to certify that she completed the internship violates ethical and professional standards.

Some of the patients sue the Golden Internship Managed Care Organization, Dr. Larson, and Dr. Marshall, charging that the conflict and the legal actions (in which their cases are put at issue without their consent) have been damaging to their therapy.

THE FATAL DISEASE

When George, a 19 year-old college student, began psychotherapy with Dr. Hightower, he told the doctor that he was suffering from a fatal disease. Two months into therapy, George felt that he trusted his therapist enough to tell her that the disease was AIDS (acquired immune deficiency syndrome).

During the next 18 months, much of the therapy focused on George's losing battle with his illness and his preparations for the end of life. After two stays in the hospital for pneumonia, George informed Dr. Hightower that he knew he would not survive his next hospitalization. He had done independent research and talked with his physicians, and he was certain that, if pneumonia developed again, it would be fatal due to numerous complications and that it would likely be a long and painful death. George said that when that time came, he wanted to die in the off-campus apartment he had lived in since he came to college—not in the hospital. He would, when he felt himself getting sicker, take some illicitly obtained drugs that would ease him into death. Dr. Hightower tried to dissuade him from this plan, but George refused to discuss it and said that if Dr. Hightower continued to bring up the subject, he would quit therapy. Convinced that George would quit therapy rather than discuss his plan, Dr. Hightower decided that the best course of action was to offer caring and support—rather than confrontation and argument—to a patient who seemed to have only a few months to live.

Four months later, Dr. Hightower was notified that George had taken his life. Within the next month, Dr. Hightower became the defendant in two civil suits. One suit, filed by George's family, alleged that Dr. Hightower, aware that George was intending to take his own life, did not take reasonable and adequate steps to prevent the suicide, that she had not notified any third parties of the suicide plan, had not required George to get rid of the illicit drugs, and had not used hospitalization to prevent the suicide. The other suit was filed by a college student who had been George's partner. The student alleged that Dr. Hightower, knowing that George had a partner and that he had a fatal sexually transmitted disease, had a duty to protect George's partner. The partner alleged ignorance that George had been suffering from AIDS.

LIFE IN CHAOS

Mr. Alvarez, a 45 year-old professor of physics, has never before sought psychotherapy. He shows up for his first appointment with Dr. Brinks. He shares with Dr. Brinks that his life is in chaos. Dr. Brinks was granted full professor status about a year ago and about one month after that, his wife suddenly left him to live with another man. He became very depressed. About four months ago, he began to become anxious and to have trouble concentrating. He feels he needs someone to talk to so that he can figure out what happened. Mr. Alvarez and Dr. Brinks agree to meet twice every week for outpatient psychotherapy.

During the first few sessions, Mr. Alvarez says that he feels relieved that he can talk about his problems, but he remains very anxious. During the next few months, he begins talking about some traumatic experiences in his early childhood. He reports that he is having even more trouble concentrating.

Dr. Brinks assures him that this is not surprising, that problems concentrating often become temporarily worse when a patient starts becoming aware of painful memories that had been repressed. She suggests that they begin meeting three times a week, and Mr. Alvarez agrees.

One month later, Mr. Alvarez collapses, is rushed to the hospital, but is dead upon arrival. An autopsy reveals that a small but growing tumor had been pressing against a blood vessel in his brain. When the vessel burst, he died.

Months after Mr. Alvarez's death, Dr. Brinks is served notice that the licensing board is opening a formal case against her based upon a complaint filed by Mr. Alvarez's relatives. Furthermore, she is being sued for malpractice. The licensing complaint and the malpractice suit allege that she was negligent in diagnosing Mr. Alvarez in that she had failed to take any step to rule out organic causes for Mr. Alvarez's concentration difficulties, had not applied any of the principles and procedures of the profession of psychology to identify organic impairment, and had not referred Mr. Alvarez for evaluation by a neuropsychologist or to a physician for a cognitive and medical examination.

LANGUAGE: THE INTERPRETER

Angelica, who was born in Bolivia and migrated to the US two years ago, is a 55 year-old mother of three. Following the advice of her physician and sister, she decides to seek psychotherapy to deal with insomnia, lack of appetite, and uncontrollable crying spells. Angelica only speaks Spanish and there are no bilingual therapists available at the clinic; however, Dr. Jones agrees to work with Angelica. Wanting to help Angelica, Dr. Jones agreed to do therapy with an interpreter, although this is the first time she is providing therapy services with an interpreter. She is sure that all interpreters know what to do. Dr. Jones proceeds to schedule Angelic's intake. During the clinical interview Angelica seemed to be worried and went back and forth with the interpreter. Dr. Jones, not speaking Spanish, is unable to follow what's happening and when she inquires, the interpreter only says that Angelica feels ashamed of speaking about her family's business. Dr. Jones, via the interpreter, tells Angelica not to worry and goes on to discuss informed consent and confidentiality. Angelica does not return to her second session and several months later, Dr. Jones receives a letter indicating that a civil law suit had been filed against her. According to the letter, Dr. Jones assured Angelica that all of the information that was shared in therapy would remain confidential, but somehow her husband, who has a long history of domestic violence, found out all of the details that Angelica disclosed to Dr. Jones during the intake interview. He became so violent toward Angelica that she spent several days in the intensive care unite (ICU) recuperating from the physical abuse.

COMPUTER COINCIDENCES

What happened to these therapists was so traumatic that, even though they are fictional characters and never existed, they have fled into other lines of work, do not want to be recognized, and demand anonymity in this hypothetical scenario. The catastrophes seemed to start when one of them hit the "send" button on his computer.

For many years they had maintained a small and very successful group practice. Then they modernized, bringing in state-of-the-art computers, elegantly networked and equipped with wonderful software that made the therapists' work so much easier.

Until one day the first therapist hit the send button. He had carefully collected all the electronic records of one of his patients, who was involved in litigation, to e-mail to the patient's attorney. There were the billing records, results of psychological testing, records of therapy sessions, as well as the background records (employment, disability, etc.) that the therapist had on file. The therapist gave one last look and then hit the send button.

It was only after watching his computer send off the records that the therapist realized he had used the wrong address on the e-mail. The patient records were on their way, not to the patient's attorney, but to a large internet discussion list that the therapist belonged to. This unfortunate series of events led to a formal complaint against the therapist.

By a far-fetched coincidence typical of hypothetical scenarios, the second therapist walked into the first therapist's office just when the first therapist was hitting the send button. Here's what the second therapist said: "Can you believe it!? I'm being sued, and it's all because of my computer! When my patient temporarily moved to the east coast for a sabbatical, we thought it best to continue treatment, but because of the time difference and our heavy schedules, we couldn't find a time when we could both talk, so we decided to communicate by e-mail. But then she got mad at me about something and filed complaints against me in the other state! So now they're saying I was providing psychological services in that state without being licensed in that state, and that I failed to follow that states rules and regulations about…well you'd have to read the complaints her attorney has filed with the licensing board, the courts, and the ethics committee. It's terrible!"

As if sensing that another wild coincidence was needed to keep the story moving, the third therapist rushed into the first therapist's office at that moment and said: "You won't believe what just happened! I just got a formal notice that I'm being sued! I just found out what happened: Somehow a virus or Trojan or Worm or one of those things got into my computer and took my files—you know, all my confidential case files—and sent them to everyone listed in my address book and to all the other addresses in my computer's memory. What do I do now?"

On cue, the fourth therapist ran into the room and cried, "Help! I'm in such trouble! One of my patients is involved in a nasty law suit, and I received a court order to produce all my records. The patient had given me consent to turn them over because she and her attorney believe they will be the key to their winning the case. So, I sat down to print them out and … they're gone! My hard drive crashed and when I hired a company to rescue what they could, they retrieved some of the files but all the files for that patient are gone. What do I do now?"

Although the room was getting crowded, the fifth therapist slouched in, collapsed in a chair, and said, "I'm doomed. I kept all my records on my laptop. But while I was at lunch today, someone broke into my car and stole it. Then I got worse news. I thought at least the files would be safe because I encrypted them, but I just found out from a colleague that since the program I used to encrypt and unencrypt them is on that computer and since many thieves have software that enables them to get past passwords and gain use of the encryption program, it would be pretty easy for a hacker to unencrypt my files."

When the final member of their group practice failed to show up with bad news, they grew concerned and went down the hall to her office. She was sitting at her desk with a big smile on her face. She said, "I can't tell you how good I feel. I've been so concerned about keeping records on my computer that I finally decided it just wasn't worth the worry. I printed out all my records, made extra copies that I put in my safe deposit box, and got rid of my computer. It was such a good move for me. I haven't felt this good in days."

It was only months later that she discovered, when reading the complaint filed against her, that she had done a poor job of trying to erase her hard drive before selling her computer, and that the person who had bought it had little trouble retrieving the supposedly erased files and reading all the details about her patients.

■ ■ ■

These scenarios remind us of the need for constant alertness, constant awareness of the ways that seemingly simple and abstract ethical principles in the ethics codes can find their way into our work, often in unexpected ways and at unexpected times. Anticipating potential problems like these begins with our understanding of the ethics codes themselves, the topic of the next chapter.