

**Ethical Issues in Forensic Psychiatry:
Minimizing Harm**

edited by Robert L. Sadoff, MD. Wiley-Blackwell, Oxford, UK, 2011, 256 pages, \$78.99 (hardcover).

The ethics of forensic psychiatry have been increasingly explored since Dr Alan Stone notably criticized the growing subspecialty in the 1980s. During that time, a group of psychiatrists, including renowned forensic expert and scholar Robert Sadoff, convened to create the first draft of formal guidelines for ethical practice within the field.

Dr Sadoff expounds on this original guide in his text *Ethical Issues in Forensic Psychiatry: Minimizing Harm*. The book provides critical guidance for walking the fine line between forensic psychiatry's duty to society and its duty to evaluatees. It acknowledges that forensic psychiatry can be harmful and clarifies that harm can be attenuated but not eliminated. Sadoff provides, as his title promises, practical wisdom to minimize maleficence to all involved in an inherently adversarial legal system.

A general introductory section on forensic psychiatric ethics briefly details theory. In passing, for example, Sadoff underscores Dr Paul Appelbaum's deontological position that the forensic psychiatrist primarily serves as a truth-teller. Yet his heavy emphasis on Appelbaum's second moral rule—respecting evaluatees through minimizing harm to them—represents a slightly more consequentialistic approach. While not neglecting theoretical underpinnings, Sadoff focuses his efforts on imparting pragmatic instruction for ethical dilemmas, especially in the sections that follow.

The next portion touches upon minimizing harm within the 3 domains of forensic practice: evaluation, report writing, and testimony. Numerous practical issues that arise in these areas are illustrated via case vignettes, mostly from the author's own distinguished forensic psychiatric career spanning nearly half a century. No book could exhaustively address or anticipate every ethical challenge, but the general principles conveyed through each case inspire thoughtful, ethically informed decision making in unforeseen dilemmas. The first chapter in this second section discusses, among other topics, the delicate balance among skepticism, thoroughness, and sensitivity during the evaluation process. With special attention to psychiatric report diction, content, and

recommendations, the next chapter focuses on carefully crafting these documents in the least harmful way.

In the last chapter of this section, Sadoff unfolds his approach to providing expert testimony. However, such a task is difficult, as the written word cannot convey the nuances of the back-and-forth courtroom exchanges that occur during the actual process of testimony. Sadoff is mindful of these limitations and thus provides only a few sentences of courtroom testimony. His humility and general avoidance of verbatim is a useful reminder that reading a courtroom transcript no more conveys the ethical tone of testimony than reading the libretto of an opera. Thus, evaluating courtroom testimony along ethical dimensions invites all too easily an over-identification of personal style and interests with what is ethical. Finally, it is essential to be mindful that an unintentional failure, such as the failure to formulate a falsifiable opinion, although methodologically wrong and subject to *Daubert/Kumho* challenges, is not to be identified as unethical conduct in and of itself.

The final and most imperative section, nearly half of the entire text, is devoted to minimizing harm to vulnerable groups. One chapter emphasizes, among many other things, sensitivity to the needs of juvenile offenders, as well as to children and adolescents in abusive/neglectful situations and domestic relations conflicts. Another subsection focuses on bias, culture, and transference/countertransference when evaluating immigrants. A chapter on prisoners tackles correctional psychiatrists' decisions about segregation and isolation, as well as the long-debated ethicality of restoring competency to individuals facing execution. Other vulnerable populations, including the elderly, those with intellectual and mental disabilities, and victims and predators of sexual violence, are also addressed. Among these groups, physicians themselves are not overlooked. A risk management chapter authored by an attorney teaches evaluators how to avoid harming themselves in forensic processes. This chapter is particularly timely, as courts are increasingly recognizing evaluators' legal duties to examinees.

All too often, experts' divergent conclusions in the same case are mistakenly taken as proof positive of their lack of ethics. Sadoff's pragmatic yet principled perspective avoids such simplistic reductions. It carefully navigates between the extremes of absolutism and relativism by recognizing that practical reasoning is quite different from pure reason. Such reasoning must acknowledge that where legitimate disagreement exists regarding facts, interpretations, or the truth of an opinion, one ought to consider the consequences of accepting or rejecting alternative hypotheses. Dr William James, the late physician, psychologist, and philosopher who contributed fundamentally to the development of pragmatism, would well be proud of Dr Sadoff's approach.

Sadoff's book is a vital contribution to the psychiatric literature, as it fills a need unaddressed by more theoretically oriented works such as Candilis and colleagues' *Forensic Ethics and the Expert Witness*.¹ Anyone interested in mental health or medical ethics will find this text worthwhile, especially as it contains an introduction for lay readers explaining basic forensic roles and functions. The book is most valuable, however, to forensic mental health practitioners, who will benefit from its practical instruction aimed at minimizing harm.

In addition to its immediate practical utility, a more enduring value of *Ethical Issues in Forensic Psychiatry* is that it explicitly acknowledges its practical, narrow scope. Hopefully, a subsequent volume will contextualize Sadoff's applied ethics within the broader scope of normative ethics and metaethics. Such a work could distinguish among ethical obligations, appeals, and frivolities; failures to meet minimal, conventional, and best ethical standards; and ontological, epistemological, and axiological failures. It will need to explore prescriptive statements in light of Hume's classic "is-ought problem." What is needed next is a work that, while avoiding relativism and providing bright lines that people can easily see even amid the fog of conflict, nonetheless brings a necessary humility

to the assumed correctness of ethical analysis. In other words, it should keep with Wittgenstein's "family resemblances" reminder that ethical behavior is better identified as a context-dependent spectrum than a rigid category.² A future work could also recognize the danger of misusing ethics to express self-righteousness/self-aggrandizement or to defend against awareness of envy via expression of an ideology that marginalizes or devalues one's competitors based on style.³ This is crucial, as, historically, professional groups have occasionally created and administered ethical standards to throttle competition and hurt the public, as when the German Medical Society collaborated with the Nazi party in pre-Shoah 1930s Germany.⁴

REFERENCES

1. Candilis PJ, Weinstock R, Martinez R. *Forensic Ethics and the Expert Witness*. New York, NY: Springer; 2007.
2. Bursztajn HJ, Feinbloom RI, Hamm RM, et al. *Medical Choices, Medical Chances: How Patients, Families, and Physicians Can Cope With Uncertainty*. New York, NY: Delacorte; 1981.
3. Bursztajn HJ. "Ethicogenesis": response to the articles "Consultation-liaison psychiatry and the teaching of ethics," by J. R. McCartney, and "Consultation-liaison psychiatry and clinical ethics," by J. R. Hayes. *Gen Hosp Psychiatry*. 1986;8(6):422-424.
4. Haque OS, De Freitas J, Viani I, et al. Why did so many German doctors join the Nazi Party early? *Int J Law Psychiatry*. In press.

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