



Ethical Controversies in Forensic Psychiatry Recovered

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Abstract

Conflicts between the various ethical principles not only practical, but also conceptual, are commonplace in forensic psychiatry as many professional responsibilities and activities of forensic psychiatry are unique to the field, where duties to patients often conflict with duties to third parties for instance the community. The ethical issues in forensic psychiatry are multifaceted and more controversial than in general psychiatry. Forensic psychiatry, more than other disciplines, has been besieged as an area most in need to provide protection of patient's rights. The discussion on these ethical issues has to keep pace with the growth of science, socioeconomic conditions and changing democratic processes. We point that justice should be vital in forensic psychiatry, and that there is a want for a more specific code of ethics to cover specialized areas of medicine like forensic psychiatry and the paths that need to be considered for the purpose should include the combination of ideal standards with enforceable set of rules after collecting and analysing as many practically encountered ethical problems as possible in the course of practice, and by regularly updating the code.

Key Words: Ethics, Dilemma, controversy, forensic psychiatry

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Introduction

Forensic psychiatrists serve to link the divide between medical issues and legal operations. Forensic practice deals with the coexistence of medical, legal, and ethical issues within a sociopolitical and legal framework [1]. The areas of forensic practice include evaluation of competency, insanity, child custody, and testament recapacity [2]. In addition, forensic psychiatrists are also concerned with risk assessment, preventive measures, crisis intervention, and outpatient's treatment [3]. The conflicts between clinicians' duties to the courts and their duties to their patients represent a longstanding ethical dilemma for psychiatry and psychology. Can forensic psychiatrists be held to the same ethical principles as other aspects of medicine? Should all doctors hold the same ethical principles?

Because of its twin role in medicine and in law, the practice of forensic psychiatry is loaded with ethical dilemmas globally. Also because of its multiple associations, forensic psychiatry is a prime example of such specialties which has many ethical controversies; it works within a set of values that might be viewed as differing, even contradictory, with other aspects of psychiatry. Forensic psychiatry encompasses widespread action and at times the forensic psychiatrists are compelled to make decisions that may conflict with the traditional medical ethical considerations.

To grab controversial concepts in law and medicine, one should initially view them historically and philosophically and then relate them to the present day legal and medical framework. A philosophical view may not settle a debate about controversies in the field of forensic psychiatry, but it usually helps to clarify what underlying concepts are in dispute and what are the strengths and weaknesses of the arguments being used by either profession [4, 5].

Overview

One common paradigm of ethical practice in medicine is based on particular principles of medical ethics. The principles reflect historical traditions and social conventions in clinical medicine. These principles include patient autonomy (respecting the decision-making capacity of an autonomous person), beneficence (providing benefits to patients), nonmaleficence (avoiding harm to patients), and justice (fairly distributing costs, benefits, and risks to others) [6]. When conflicts arise in a given clinical situation because of the

simultaneous application of these principles, physicians attempt to balance the principles, or apply other principles or authority, to resolve the conflict. Another approach to the analysis of ethical dilemmas in medical practice uses the "four principles plus scope" approach, which includes the above mentioned four principles along with concern for their scope of application [7].

Even superficial reflection about the application of the principles of patient autonomy, beneficence, nonmaleficence, and justice, reveals that different principles apply depending on the physician's role in the situation. Clearly, physicians, including treating psychiatrists, are obligated to act in the best medical interests of their current patients (i.e., beneficence and nonmaleficence). Physician performing clinical research, however, are not charged with acting in the best medical interests of their research subjects. Here, the Institutional Review Board (IRB) has a great role to protect the rights and welfare of individuals who volunteer to participate in the research mission of the Institute/ University. The IRB exist as a safeguard to promote the ethical and responsible treatment of human subjects in research, by conducting scientific and ethical review of research studies while providing education and guidance for the research community but the ultimate responsibility of all human subjects in research is on the individual researcher who has been given the privilege to conduct research with humans. Individuals who are invited to participate in trials should consider the track record of the institutions and funders concerned and refuse to participate unless they receive written assurance that the full study results will be made publicly available and freely accessible [8]. Otherwise, placebo-controlled, double-blind research studies, which carry some risk to subjects and not necessarily any individual benefit to them, could not be conducted. Rather, clinical researchers are obligated to work toward the best interests of future patients by collecting valid data and obtaining informed consent for research participation. Similarly, forensic psychiatrists do not act primarily with beneficence when they conduct pretrial evaluations of litigants in criminal or civil justice proceedings. These evaluations do not serve the litigant-evaluated's best medical interests. Furthermore, in many cases, the results of the evaluation may be harmful to the (nonmedical) financial or legal interests of the evaluatee. For example, the evaluator's conclusions may not support the evaluatee's claim or defense in the litigation (e.g., nonresponsibility for criminal behavior due to mental illness, or emotional injuries resulting from accidental physical trauma. [9] As a result of the forensic evaluation (at least in part), the criminal defendant may be incarcerated and the civil plaintiff may be

denied monetary relief. Such forensic evaluations, however, may be seen as advancing the interests of justice, a larger goal that is distinguished from the interests of the particular litigant [7]. The forensic psychiatrist assists in the resolution of the legal issue or dispute and, it is hoped, increases the likelihood of a valid result of the litigation by providing critical data about the person or situation.

In basing a theory of ethics for forensic psychiatry on the pursuit of justice rather than on therapeutic principles, Appelbaum [7] noted that forensic psychiatrists must still be governed by general moral principles in society. According to Appelbaum "psychiatrists operate outside the medical framework when they enter the forensic realm, and the ethical principles by which their behaviour is justified are simply not the same" [10]. Actions breaching confidentiality to protect the public may be partly justified on the grounds that they are also in the best interest of the patient. When serving the interests of justice, forensic psychiatrists must adhere to the general moral rule of telling the truth (both in the subjective case of honesty and in the objective case of stating the limitations of the accuracy of one's opinions and testimony).

Another applicable general moral rule is respect for persons, which requires that the forensic evaluator inform the evaluatee of the absence of a physician–patient and treatment relationship between them and of the limits of the confidentiality of the data obtained from the evaluatee. Appelbaum indicated that trying to introduce the principles of medical ethics for treatment into a theory of ethics for forensic psychiatry is perilous [11].

Forensic psychiatrists must have knowledge of general psychiatry, courtroom activity, and legal procedure to offer an expert opinion with a scientific basis [2]. Forensic experts should be well versed about current technology and various psychological tests used for evaluations. Other ethical concern such as stigmata associated with psychiatric disorders and protection of patient's rights have gained major media attention [1]. One example is involvement of a forensic psychiatrist in evaluation of competency in cases of offenders on death row. They must have a limited kind of relationship with their client and should not evaluate their current patients [2]. Practically each of us must have encountered colleagues who act in a questionable way but perceive themselves as behaving ethically, and at times even consider their behaviors exemplary [12].

Various factors such as emotions, personal vulnerabilities, personality, social structure and even the context of situations can influence the ethical decisions that we make. Tjeltveit and Gottlieb stresses the insufficiency of cognitive strategies to determine how decisions are made [13].

Rogerson, Gottlieb, Handelsman, et al. illustrate many of the nonrational factors that affect our decisions like personal and interpersonal influences, intuition, choice, behavior, own biases due to a tendency to overvalue introspective information in themselves but not in others etc [14].

A forensic psychiatrist is first of all a clinician with theoretical and practical knowledge of general psychiatry and forensic psychiatry, and experience in making rational decisions from a clearly stated scientific base. In law, forensic psychiatrists must know the legal definitions, the legal policies and procedures, the legal precedents relating to the question or case at hand [15]. This twofold understanding in psychiatry and law defines the subspecialty of forensic psychiatry and forms the ethical basics for forensic psychiatrists. This double knowledge should be shadowed initially from the beginning in the way the forensic psychiatrist first agrees to get involved in an evaluation, the way the forensic psychiatrist approaches the patient to be evaluated, and in the treatment that has to be provided. At this stage, the most important issue for the forensic psychiatrist is to make sure that the person subject of the evaluation is not misled into believing that, because the psychiatrist is a medical doctor, the relationship to be unfolded is one of physician-patient, in which the doctor is expected to do the best for the patient and always to act to maximize the patient's benefit, while reassuring the patient that privacy and confidentiality are protected. In forensic psychiatry the relationship is one of evaluation, where the foundation of neutrality demanded from the evaluator, and the fact that the evaluator is in no position to reassure the person on matters of confidentiality or privacy [16], could mean that negative findings will endanger the interests and cause harm to the person being evaluated, regardless of this person's health and the evaluator being a physician. Because of this, forensic psychiatrists may even be implicated in the criminalization of mentally ill persons [17]. A Forensic Psychiatrist wants to contribute to human welfare but despite their best intentions, like psychologists, they may find themselves in situations where they unwittingly slip into unethical behaviors [18].

To some commentators, the social control role of forensic psychiatrists sets them apart from the ethics of medicine and of psychiatry [10,19]. These commentators waver on whether in their legal work forensic psychiatrists are operating as physicians - a point of view that has led to much controversy. Psychiatric practice is based on therapeutic approach, where as law deals with authorizing discipline. Forensic psychiatrists routinely have to tackle complex ethical dilemmas as they are the link between medicine and law [20]. From beginning to appearance in court, the forensic psychiatrist derives the ability to act from the fact of being once and foremost a physician, hence having to uphold the ethics of medicine, but the end point effects of forensic evaluations are usually at the hand of other parties. This imposes on forensic psychiatrists an ethical obligation to scrutinize their motives and the motivations and possible final actions of those who hire them for evaluations, including ways on how data are obtained, how the evaluator arrives at opinions, how legal materials such as reports, memos, and expert evidence are prepared, and most importantly, what would be the final use of their findings [20].

A major controversy stemming from the double roles that forensic psychiatrists and other psychiatrists, such as those in the military, are called to fulfill relates to the use of psychiatric judicial hospitals in the Soviet Union and, more recently, in China, and psychiatrists' participation in interrogations of prisoners and detainees that could lead to allegations of torture, especially in the present climate of concern with terrorist activities [21]. This includes turning over to interrogators confidential psychiatric material that could be used to pinpoint weaknesses and vulnerabilities of the prisoner [22], providing consultations on interrogation techniques or actively participating in deception techniques to gather intelligence [23]. In Nazi Germany, when 200,000 people with mental disorders were among those killed, psychiatrists played prominent roles in both the sterilization and euthanasia programmes [24].

Participation on anything that could lead to torture will be a major trespass on the ethics of medicine. The Perspective article on doctors and torture by Lifton illustrates serious and ongoing failures within the Army and the Army Medical Department [25]. This also should be a clear reminder to forensic psychiatrists that medical ethical rules cannot be trespassed, no matter what the demands of the master [26].

Guidelines for the Ethical Practice

There are numerous ethical issues to be addressed in forensic psychiatry. Two significant groups of forensic mental health professionals have published separate and distinct guidelines for the ethical practice of forensic mental health. The American Academy of Psychiatry and the Law (AAPL) initially adopted its ethics guidelines in 1987 and has periodically revised them [27]. Opinions of the AAPL Ethics Committee on particular cases have also been published, analogous to the published opinions of the American Psychiatric Association (APA) Ethics Committee. The Specialty Guidelines for Forensic Psychologists [28] was adopted by Division 41 of the American Psychological Association, the American Psychology-Law Society, and the American Academy of Forensic Psychology.

The AAPL ethics guidelines focus on confidentiality in forensic evaluations, informed consent to forensic evaluations, honesty and striving for objectivity in conducting forensic evaluations, and the qualifications of forensic examiners. Perhaps the most significant AAPL guideline is that forensic examiners should be honest and strive for objectivity in their assessments. The commentary for this guideline notes that given our adversarial system of legal justice, being retained by one side in a civil or criminal matter exposes forensic psychiatrists to the potential for unintended bias and the danger of distortion of their opinions [27]. Indeed, even the most ethical, experienced, and conscientious forensic examiner is subject to such “unintended bias” through the process of forensic identification with the retaining side or party. For this reason, the AAPL guidelines prohibit contingency fee arrangements with forensic psychiatric evaluators, because such arrangements are likely to introduce bias into the evaluation process and impair objectivity.

The Specialty Guidelines for Forensic Psychologists is a more detailed and longer document than that published by the AAPL. These specialty guidelines amplify but do not contradict the code of ethics for psychologists published by the American Psychological Association [29]. The Specialty Guidelines for Forensic Psychologists offers an “inspirational model of desirable professional practice by psychologists” [28] The guidelines are useful for those psychologists who either regularly or only occasionally provide forensic psychological services.

The future is bright; the development of numerous medications and other approaches for management of mental illness has enhanced the scope of current forensic psychiatry [30]. Ethical standards of behavior for forensic work will continue to evolve, as they do in therapeutic work with patients.

Conclusion

Despite the complex ethical demands of this unique practice area, it has received little attention within mainstream bioethics, however there is a growing imperative to find a theory of ethics for the specialty [31]. We discussed the ethical controversies that the enlarged scope of action of forensic psychiatrists have created in the understanding of their social functions, from definitional problems to wavering about whose ethics they should abide by and on to the latest concerns about the use of clinical knowledge for purposes that should be completely out of their ethical boundaries. This brief overview of some ethics issues in forensic psychiatry has only introduced some of the complex matters raised by forensic consultation and evaluation. More conceptual aspects, such as how mental illness might excuse; or related legal issues, such as the ethical dilemmas that arise in relation to psychiatrists giving expert evidence and the like needs further discussion. There is definitely a need for a more specific and modern code of ethics to encompass various aspects of forensic psychiatry in cases of ethical controversies, and in all controversial cases justice should get precedence above anything else. The paths that need to be considered should include the combination of ideal standards with enforceable set of rules after collecting and analysing as many practically encountered ethical problems as possible in the course of practice, by the experts. Also, there should be regular revision which is essential for coping with new challenges that may arise with advancing time. The ethical guidelines thus formed and regularly updated will definitely be of immense help. Finally, Forensic Psychiatrists must become at ease with resolving ethical controversies themselves by an informed, reasoned, and ethically sensitive process of personal reflection and consultation with experts.

Conflict of interest

The authors declare no conflicts of interest.

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