Dealing with State Licensing Board Complaints Involving Clinical vs Forensic Situations: Ethical Issues and Practical Steps

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Presentation Outline:

1) Ethical Complaints Filed with Licensing Boards
2) Key Ethical Rules to Remind Self
3) Ethical Issues in General
4) How Licensing Boards Deal with Ethical Complaints in General
5) Complaint Against Geffner as a Case History
6) Precedents Set by Geffner v CA Board of Psychology Appellate Case
7) Lessons Learned, Tips and Reasons for Presentation

Questions:

What Types of Situations Yield the Most Licensing Boards Complaints?

What Are the Main Ethical Issues or Poor Practices that Are Most Likely To Result In A Board Complaint?

Main Types of Cases

- Forensic, Especially Child Custody
- Clinical Cases
  - Sexual Behavior With A Client
  - Lack of Informed Consent
  - Breach of Confidentiality
  - Failure to Warn
  - Failure to Report Child Abuse
  - Billing
  - Multiple Relationships
- Assessment
  - Misuse of Tests
  - Incorrect Interpretation

Ethical Issues

11 Other Key Issues

1. Misuse of Psychologist's Work – Do No Harm
2. Competence and Practicing Out of Areas of Expertise
3. Basis for Judgments
4. Conflict of Interest
5. Documentation of Work and Record Keeping
6. Fees and Financial Arrangements
7. Bases for Assessment
8. Release of Test Data
9. Interpreting Test Results–Context and Accuracy/ Culture
10. Explaining Test Results
11. Diagnoses and Treatment Plans

Adherence To Ethical Standards and Guidelines

- American Psychological Association (APA)
  - Ethical Principles of Psychologists Code
  - Guidelines for Child Custody Evaluations in Family Law Proceedings
  - Guidelines for Psychological Evaluations in Child Protection Matters
  - Specialty Guidelines for Forensic Psychology
- National Association of Social Workers (NASW)
- American Association of Marriage & Family Therapists (AAMFT)
- National Board For Certified Counselors (NBCC)
- Association of Family and Conciliation Courts (AFCC)
- American Professional Society on the Abuse of Children (APSAC)

Standards/Principles vs Guidelines

Role Confusion

APA Ethics Code 3.05 outlines the importance of avoiding multiple relationships.

- "Psychologists strive to avoid conflicts of interest and multiple relationships in conducting evaluations (APA).
- Do not take on conflicting multiple relationships
- Either a forensic evaluator or a therapist or a consultant, but not combination

Disclose any multiple relationships to parties and do not accept case, or withdraw if necessary

Controversies over expert and fact witnesses

Informed Consent

Psychologists must follow the APA Ethics Code guidelines 3.10 on Informed Consent

- **"Psychologists strive to obtain appropriately informed consent" (APA)**
- **Failing to obtain proper informed consent**
- **Clarifying your past experience and competencies**
- **Clarifying your role in this case**
- **Agreeing on fee and evaluation procedures; itemized bills – Retainers, withholding of reports, contingencies**

Limits of Confidentiality (4.02) (mandated reporting, etc.)

Boundaries of Competence

- The APA Ethics Code states that under standard 2.01 psychologists must "*provide services, teach, and conduct research with populations an areas only within their boundaries of competence, based on their education, training, supervised experience, consultation, study, or professional experience*."
- Providing services outside their areas of competence:
  - Conducting specialized assessments.
  - No knowledge of the judicial or administrative rules governing roles of a child custody evaluator.
  - Working on/testifying in Child Abuse or Domestic Violence situations without specific expertise & training
  - Understanding Abuse vs Victimization Dynamics

Assessment

- Release Of Raw Data (9.04, 9.11) – HIPPA Complications
- Explaining Assessment Results: Constraints In Forensic Settings (9.10)
- Release Of Reports/Evaluations – To Whom?
- When To Not Release Reports – How To Deal With Danger
- Mandated Reports – In Therapy With A Court Case Client?
- Performance-Based/Projective Testing In A Court Case
- Using Specialty Norms Vs Standardized Ones

Specialized Competence in Child Abuse/Family Violence

- **Psychologists involved in child custody evaluations should have "An evolving & up-to-date understanding of child & family development, child & family psychopathology, the impact of relationship dissolution on children, and the specialized child custody literature is critical to sustaining competent practice in this area" (APA).**
- **Allegations of child abuse, neglect, family violence, or other issues may occur that are not necessarily within the scope of a particular evaluator's expertise.**
- **Seek additional consultation, supervision, and/or specialized knowledge, training, or experience in child abuse, neglect, & family violence for these issues.**
- **Be familiar with the laws of your state in regard to addressing child abuse, neglect, and family violence.**

Ethical Recommendations Summary

- **Ethical, Ethical, Ethical – Court Orders Don't Supersede Your Code of Ethics**
- **Clearly Articulate What You Can and Can't Do**
- **Specialized Training & Continuing Education**
- **Regularly Review the Literature**
- **Be Able to Articulate the Protocol You Are Using and Explain How it is Research/Theory-Informed**

Recommendations Summary Cont'd)

- Working in isolation increases risk into ethical dilemmas
- Consult with colleagues who know & trust and even others for objectivity
- Check in with attorneys or forensic professionals if a difficult decision
- Risk management training helpful
- Have others proof reports and interpretations

Licensing Board Complaints

How Many of You Know Somone Who Had a Board Complaint Filed against Them?

Had a Problem with The Board?

How Boards Operate in General and Deal With Complaints

BRIEF CASE

Board Complaints

What is first things to do when receive a letter from your Board about a complaint filed against you?

Contact Malpractice Insurance Carrier;

Find Out About Coverage;

Find Out About Legal Consultation.

Other things to do?

Talk To Their Attorney Or Hire Your Own;

Send Records To Your Attorney;

Obtain Any Necessary Releases

Find Out If Inquiry Or Investigation;

Have They Filed An Accusation;

Draft Response.

How Boards Work In General

- Who are the Licensing Board members and Staff?
- Roles of Board, Enforcement Committee, Investigators, Experts, Attorney, and Later Deputy Attorney General
- Steps in The Complaint Process – Inquiry vs Non-disciplinary Action vs Accusation
- Disciplinary vs Non-Disciplinary Actions; Fines
- How a Complaint is Moved to Accusation after Investigation, Interviews by Investigator and Board's Experts
- Settlements vs Administrative Hearing; Conditions
- Appeals – Writ and Stay in Superior Court; Appellate Courts; Specialized Attorneys

Reactions to Being Disciplined?

Intimidated

Shock

Trauma & PTSD

Embarrassment

Shame

Fears

Isolation

Financial Issues

Effects of Probation Conditions

Other Boards Involved

National Practitioner Data Bank

Board Accusation Against Dr. Geffner

—

1 Case but 3 Boards in 2 States Activated with Findings

Why I Am Doing This Presentation

1. To Give Hope When Things are not Just
2. Important to Fight Back Against Injustice
3. If It Happens, Let Others Know – Support, and Help Might be Available
4. All Colleagues Might Not Be Against You
5. Don’t Give Up Even When It Looks Bleak
6. Things Can Change Even if Odds are Against You
7. Stages Do Occur – Shock, Disbelief, Shame, Embarrassment, Anger
8. Reconcile with Worst Possible Outcome
9. Keep Sense of Humor and Deal with What You Can Control – Problem Solve

Brief Background

2016 Emergency Evaluation of 12 ½ year-old twin boys over July 4th holiday weekend; Mother overheard them talking about killing dad or themselves if had to see him again in court ordered forced visitation scheduled for after the holiday. Their therapist not reachable - vacation.

Mom not able to reach anyone after 2 days of trying.

Found out Fri afternoon of Holiday Weekend a colleague could do it in collaboration with me; accepted case at 5pm for mom to bring boys on Sat morning for emergency psychological evaluation risk assessment.

Colleague obtained informed consent (mom) & assent (boys).

Brief Background - Results

She conducted interviews & risk assessment.

Results of testing and interviews – both boys severely traumatized, crying, strong emotional reactions, were suicidal and serious risk of such if had to see dad, had plans (running away or jumping off building), but killing dad not realistic (hiring hit man – they knew not realistic). They didn't want to die.

Analyzed results on Sunday, wrote report on Sunday/Monday (July 4-5) and sent to mom that evening (5th) with results and recommendations.

What would you say in a report and what would you do in this situation?

What We Recommended

1) Temporarily stop visitation until a more thorough risk assessment could be done by the local team.
2) Boys need more intense trauma treatment by someone trained in severely traumatized teens.
3) Dad needs to be given a copy of the report within 24 hours or we would need to warn him (of the actual trauma & high risk suicidal ideation).
4) Mom's atty notified us in the afternoon that all parties given the report. We were done (we thought).
5) Dad's atty wrote to say no permission to have seen the boys, and to see them or treat them.
6) 1 week later Mom's atty requested clarification of the recommendations and any concerns if team not willing to follow through – I wrote letter clarifying.

Later

1) Found out 3 months later a GAL appointed by court to investigate boys, and team dismissed.
2) GAL did not like our evaluation but agreed with our findings that boys were traumatized and would "vote with their feet" if had to see father.
3) Dad filed a complaint 1 year after our evaluation with CA Psychology Board that we conducted a custody eval without his permission, and many other allegations.
4) We found out 6 months later when Board sent a letter notifying us, requesting records & response.

What Would You Do?

1) Called Malpractice Insurance to find out steps, talked to colleague and atty for insurance. I hired my own atty (he in their network for fees).
2) Gave him all records & we drafted a response 12/17.
3) Board contacted us 6 months later to say they wanted more infor and we responded. Months later we told they were moving forward and they hired an expert and wanted to interview us; delayed months and then COVID in 2019.
4) Interviewed separately by expert and board investigator via conf phone in early 2020.
5) Expert lectured my colleague, & was telling her the laws, not asking questions. My atty kept correcting her about laws. We explained; thought case over.

Bottom Line

1) They filed an accusation June of 2020 (can email me).
2) They offered to settle - put us on probation for 5 years, charge us each $20,000 in expenses and fines, and lots of onerous conditions. We refused.
3) We got an expert to review all the records who trains the Board experts.
4) We went to an admin Hearing (like a trial) 8/21with an Admin. Judge - a 2 ½ day trial.
5) 3 months later got the decision – sustained all of the Board's accusations and penalties, revoked license but deferred for 5 yrs probation, $42,000 fees, draconian conditions, effective 12/21 (can email me)
6) Probation began 12/24/21

12 Steps Taken

1) Filed a writ in Superior Court to overturn decision & requested a stay 1/22 (new specialized attys).
2) Stay denied 1/22; Full briefs filed for Trial 2 - 4/22.
3) TX Psych Board filed complaint for my lack of notice; CA BBS was notified but late – 3/22 (CA notified states of violation & National Practitioner Data Bank).
4) Hearing 6/22; Judge sustained 4 of 5 ethical issues, threw out 1 (Collaboration OK); I went public.
5) I went inactive 5/22 due to conditions; this deferred probation & the conditions.
6) Filed Appeal in Appellate Court 8/22 (new specialized appellate attys); no case like this in 25 yrs.
7) Briefs filed 5-7/23, including Amicus Brief with petition (over 100 people & 25 agencies/orgs)

12 Steps Taken (Cont'd)

8) Forced to retire BBS MFT license (held for 46 years and no discipline) with Ethics Violation – 7/23
9) Oral Arguments for Appellate Court 12/23 (Tentative Decision to overrule 3 of 4 issues but sustain 1 – my atty argued to overrule all.
10) Appellate Court over-ruled courts and Board on all issues in unanimous decision, published it, and ordered Superior Court to order Board to reinstate license & purge disciplinary actions- 2/24 (handout)
11) Filed petition for Superior Court to implement Decision and award atty fees 6/24 - - waiting!!
12) TX Board finally agreed to non-disciplinary remediation plan with $2000 fee- 8/24; CA Psych Board reinstated license and purged all discipline 11/24; will fight BBS & for my colleague – go public.

16 Lessons Learned (& My 6 Errors)

1) State Licensing Boards often have unlimited power with little oversight, and with immunity so power can be abused
2) Need to get best atty immediately; get one in their network because lower fees; have maximum Board Complaint insurance
3) Keep good records and look to see what could have been done differently; hire good expert to review & if agree no violation, have them write a report (Mistake 1 on my part); prepare for interview by their expert if they going to interview you (as if testifying)
4) Do not just accept Board's accusation & settlement plan if do not agree; check resources to fight
5) Board is a rubber stamp – never read my documents and only enforcement committee did

16 Lessons Learned (cont'd)

6) Ethical violation requiring discipline means extreme departure from accepted standards of practice, not just an error, mistake, or simple violation
7) Investigate Board Expert(s) and work with atty to review all records again and discovery – help them understand – admit any mistakes to atty if present (I used wrong word in report - "warn" [Mistake 2]) and did not make clear I did not personally interview child – we collaborated (not violations)
8) Make sure your opinions/ideas seriously discussed with atty (Mistake 3 – adolescent consent at 12)
9) Get everything into the records for any appeal (Mistake 4 – see above); check out judge (Mistake 5)
10) Decide with family about resources/funds to fight

16 Lessons Learned (cont'd)

11) Do not assume Enforcement Committee is always right;
12) If disciplined, notify any other boards within 30 days (Mistake 6); reply to National Practitioner Data bank with mitigating factors
13) Understand the minimum penalties and disciplinary actions Board can take for even minor violations
14) Do not feel ashamed, embarrassed, or isolate yourself – let others know and get support, especially if unjust (I went public & did not hide it)
15) The conditions can be draconian with high fees
16) Speak out if what is happening is not right – don't give up but realize it can be a long process (mine has taken 7 1/2 years and still going)!

10 Ethical Precedents Set By Geffner v CA Psychology Board

1) Collaboration with a colleague as a mentor is not only acceptable, but a good idea (not required to do the interview yourself if both licensed)
2) Do not need permission from a parent who does not have possession of a child at the time in an emergency
3) Do not need permission to do a risk assessment in an emergency from potential perpetrator of abuse
4) "Emergency" does not mean immediate danger, but imminent or impending danger
5) Mandated child abuse reporting requires reasonable suspicion, not intuition, & emotional abuse may report

10 Ethical Precedents Cont'd)

6) Tarasoff Duty to Warn/Protect, etc. requires a serious risk of imminent danger/harm to a known person
7) Suicidal ideation or threats are an emergency, especially for children/adolescents
8) A psychological risk evaluation to assess danger in a custody situation or in the midst of a family court dispute is not automatically a custody evaluation
9) Recommendations about temporary cessation of contact with a parent who poses a risk to children/adolescents due to serious trauma is not a custody recommendation per se – there is a difference between clinical vs custody/forensic recommendations in ethical practice
10) In an emergency, one is not required to personally contact other parent who not present or a therapist

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