

Ethical Decision-making and Dual Relationships

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I recently attended an ethics workshop where the presenter, an attorney, said, "All dual relationships are unethical or at least run the risk of getting you into trouble with your licensing board." After shaking off my emotional reaction to hearing such a bold statement, I decided what I had just heard could not be further from the truth. In fact, professional practice throughout the country is fraught with various types of dual relationships many of which cannot be avoided and there are some situations where the avoidance of the dual relationship could even be thought of as unethical. For example, the solo practitioner who works out of a small town, is almost forced repeatedly into dual relationships by the very nature of his or her practice and to avoid so doing would remove psychological resources from the community altogether.

Thus, and contrary to what the attorney said in the workshop, it is not the mere existence of a dual relationship that makes it unethical. When a mental health professional is confronted with a choice as to whether one should enter into a dual relationship or not, many factors need to be carefully evaluated. Not only can these relationships run risk for the consumer of our services, but, as is well exemplified by the earlier comment, they may have great risk for the professional as well. I will not review the vast literature on this topic area as part of this paper since many authors, much more thorough than I, have already done so and these articles are easily available. What I will try to set out in this brief article is a decision making model that a professional can use to evaluate whether he or she should consider entering into a dual relationship with a patient. This model will not only focus on the welfare of the client but, in this world of professional risk, this model should be viewed as a risk management tool designed to also protect the welfare of the professional in this period of enhanced professional accountability.

When addressing dual relationships one must be aware that the evaluation of boundary violations in professional practice are often outcome driven determinations. Usually the determination of whether or not a professional committed a violation of professional practice is arrived at retrospectively when experts or ethics committees evaluate a case. Thus, and consistent with the risk management model of the APA Insurance Trust, when one chooses to enter into a dual relationship one is forced prospectively assess how these professionals might retrospectively view a specific case, potentially years after it occurred. So, when assessing whether or not to enter into a dual relationship, one is almost forced to predict future reactions to their conduct, something that is not at all easy to do. Hopefully, by answering the following questions in a step by step fashion a professional who is considering entering into a dual relationship will increase the likelihood that he or she will make the correct choice in the matter: a choice that is in the best interest of both the patient and the therapist.

Is the dual relationship necessary?

This is a very important question for the mental health professional to answer. Therapy by itself is complex and difficult to perform without the introduction of other factors. Thus, at the outset a professional must address whether he or she even needs to enter into a dual relationship. Simply put, unnecessary dual relationships can be fraught with unnecessary risk. As a rule, it is likely to be in the best interests of the professional, regardless of location, to avoid dual relationships if at all possible. However, if the dual relationship is necessary, then the professional is forced to answer the next question.

Is the dual relationship exploitive?

This is an easy one. Exploitation of patients is unethical and if the proposed dual relationship is exploitive of the patient, then it is unacceptable. If exploitation is not evident or if it can be avoided, then the professional is forced to move on and answer the next question.

Who does the dual relationship benefit?

Since it is unethical to exploit patients, just whom does the relationship benefit? This is a dilemma often faced by those who work in small communities. Treating your minister's wife in a small town would be a clear example of a dual relationship that benefited the client since, if you were the only therapist in this town, to avoid the dual relationship would prevent an individual in distress from getting service. However, not all dual relationships are as easy to assess as this small town dilemma. For example, what about purchasing a car from the local dealership in a small town when the owner of the dealership is your patient and when failure to do so would make people in the community wonder just why you did not buy the car locally? Benefit in this case is not as easy to assess. To purchase the car elsewhere would not only raise wonder in the community but also could impact your therapeutic alliance. The answer to this example only becomes more complex when trying to decide whether or not to negotiate the price of the vehicle with your patient? So, assessing just who benefits by the decision to enter into a dual relationship is not so easy to assess.

Is there a risk that the dual relationship could damage the patient?

This also is not an easy question to answer and it calls for a great amount of objectivity on the part of the professional. Consistent with the principles of biomedical ethics, interventions should not harm patients, or at least an attempt must be made to minimize the risk of harm. In that spirit, an additional relationship that is combined with therapy must be assessed for harm and its harmful effects must be controlled for and minimized. That is not to say that a professional entering into a dual relationship must completely prevent risk, but that each of us has a fiduciary obligation to be in touch with risk factors, to manage them and to minimize them.

Is there a risk that the dual relationship could disrupt the therapeutic relationship?

This question is one that not only requires consideration before entering into the dual relationship but also is one that must be asked throughout the treatment process. In the spirit of minimizing risk, the therapist who chooses to enter into a dual relationship with a client, or one who is even forced into the dual relationship, must manage the relationship in such a way that the therapeutic component is not damaged by the secondary relationship. In this spirit, the therapist has an obligation to discuss this factor in detail with the patient prior to entering into the dual relationship and must also keep this topic and related issues at the forefront of treatment to avoid any damage to the therapeutic alliance.

Am I being objective in my evaluation of this matter?

This is a very difficult question to answer since it is arguable that no one is really objective. The answer to this question requires consultation with others, and not only those in the mental health field but also in related fields, like law. Personal needs are not things with which we are always in touch and given the inherent high level of risk that is associated with this type of conduct, one must not only answer the above questions by oneself, but should go through them with another individual to assure that the answers are as objective as they could be.

Once a therapist has addressed the above questions, he or she is now forced to move into what could be termed "risk management mode." Since the decision to enter into a dual relationship has risk not only for the client, but also for the therapist, the therapist who chooses to enter into a dual relationship must engage in a risk management strategy that provides protection if charges of unprofessional conduct surface as a result of the choice to enter into the relationship. In that spirit, the mental health professional that has addressed the previous questions and has obtained a positive outcome, must now address the following.

Have I adequately documented the decision making process in the treatment records?

Since the spirit of the law is, "If it is not written down, it did not happen," inadequate documentation can negate the existence and value of the whole decision making process. That is, if, while addressing all of the above questions, the mental health professional failed to document the process, then the protection afforded by having done so, becomes lost. Good record keeping can become a significant defense to allegations of professional misconduct and negligence on the part of a psychologist who chooses to engage in a dual relationship. If the record reflects a carefully thought out decision making process that led to the choice to engage in a dual relationship, it can lend great strength to the psychologist's defense in these types of matters.

The records in these types of cases should reflect the process by which the choice was made to engage in the dual relationship and should, hopefully, lead the reader to the same conclusions. It should reflect all consultations made about the issue and logically explain to the reader why the mental health professional chose to engage in the secondary

relationship. If the record fails to do this, it may leave the psychologist in a rather self-serving position of possibly being the only witness who supports the choice that is in question - a rather self-serving and unenviable position in which to be. A good record, when a choice is called into question, lives almost like a second witness to what actually occurred and if this witness supports the psychologist's choice, then it lends great strength to the argument that the choice was the right one.

Did the client give informed consent regarding the risks to engaging in the dual relationship?

While the patient or client is never in charge of choosing what a therapist does, when confronted by risky clinical situations, a professional is well advised to make sure that the client understands the issues at hand. That is, has the psychologist addressed all of the possible dilemmas and risks with the client and does the client understand them? If the answer to these questions is yes, then the next question closely follows. Does the documentation reflect that the patient has been informed and consents to the relationship? This documentation could take the form of a signed document reflecting the agreement or could consist of a note in the patient's chart. While a note is weaker evidence of informed consent, it still becomes strong evidence that something did, in fact, occur. It is important to point out, however, that patients can never give informed consent to something that poses severe risk to them and is a violation of an existing standard of care. A good example of this would be a consent to engage in a sexual relationship with a patient. Even if one chose to try to use informed consent as a defense in these types of cases the correctness of the choice, if you will, would be negated by the previous questions raised in this discussion.

Having addressed all of the issues addressed in this paper and having come up with positive answers to all of the questions it raises still does not remove the psychologist from risk. There is still risk in choosing to engage in dual relationships with clients since they clearly can complicate therapy. However, everything a professional chooses to do has some degree of risk in it and the goal of the professional is to make the right choices for a patient and with a patient while always trying to minimize that risk.

The decision to enter into a dual relationship with a client is not one that should be made casually or easily. Great risk exists in this area and, consequently, the professional who is confronted with this decision must take great care to protect all parties from risk. The previous questions and suggestions outline a risk management/decision-making model that should go a long way toward accomplishing this goal. It is only fair to say, however, that the psychologist who chooses to only answer some of the questions raised in this paper may still find him or herself making a good choice but, considering the risks to both parties, caution and care logically outweigh brevity and efficiency.