



Addressing Ethical Challenges faced by Physical Therapists

By Elizabeth Grace, Nancy Kirsch and Janice Kuperstein

The delegate assembly directed FSBPT to investigate ways in which member boards could help licensees manage ethical challenges. Working with an established program - the ProBE Program - was identified as a way in which individuals with ethical decision making difficulties could receive remediation.

The ProBE Program

The ProBE (Professional/Problem-Based Ethics) Program was developed 18 years ago in response to a request by the New Jersey Board of Medical Examiners and has been administered through CPEP ([Center for Personalized Education for Physicians](#)) since 2007. CPEP offers six ethical remediation programs a year, alternating locations between Denver, Colorado where they are based, and New Jersey, where the founding faculty members are based. Some of the participants include physical therapists, physicians and other healthcare providers.

Details of the ProBE course

When participants go to ProBE, they are asked to leave their egos and titles at home - everyone begins on the same footing. It is a 14-hour course over three days conducted by two or perhaps three faculty. At all times, one is teaching and at least one is observing and making notes about interactions among the 14 to 16 participants. A syllabus is sent to participants about two weeks before the program; they have homework and they are expected to come prepared with written assignments.

The first written assignment is to write a letter of recommendation for a hypothetical student entering the participant's profession; these letters are the basis of the Friday evening session. Characteristics of being a good healthcare provider are discussed. Participants usually mention things such as altruism, integrity and truthfulness. It is an important starting point because it allows participants to relax and become comfortable talking with each other. It also allows them to go their hotel room thinking about why they selected their healthcare field of choice, what attributes they brought to their field and where they lost their way and strayed from the values they mentioned in their letter of recommendation. By the end of that first session, the group has covered most of the points contained in any healthcare professional code of ethics.

When the participants return on Saturday morning, they share each individual's ethical interactions and

what exactly it was that they did or are alleged to have done and how their licensing board responded to their interaction. It is in this session where the interactive nature of the seminar is critical. If they are listening to a story and it doesn't make sense, participants will usually ask what the speaker is not telling them. Saturday afternoon focuses on the provider-patient relationship model and boundaries. Participants also discuss the concept of professionalism, including the obligations and responsibilities of being a professional and professional accountability.

On Sunday morning, the discussion focuses on contemporary mechanisms for accountability within healthcare and means of managing or executing accountability. The group also looks at moral theories such as virtue-based theory and consequence-based ethics with an objective of sending each participant home with a toolbox of strategies to use the next time that they are faced with an ethical challenge. It is very important that the faculty have background documents from each referring licensing board to be able to ask leading questions when the participant is omitting a critical part of his or her story or not owning up to aspects of the ethical issue. Also, the faculty selects certain participants to present cases, and intentionally matches individuals with readings that will be pertinent for their particular interactions.

The final essay

After the seminar, participants have two weeks to write a final essay, as they digest what they have learned. As a referring organization, the licensing board will receive an evaluation and assessment letter based on a number of items including whether the participant was prepared and contributed to class in a positive way as well as his or her performance on the essay. The faculty is looking for an indication that participants understood what they read and that they can think critically and ethically about what they did. About 75% pass and only about 5% fail. The others achieve a grade of conditional pass.

Determining appropriateness for ProBE

Before someone is referred to ProBE, it is important to determine whether he or she is an appropriate candidate for ethics remediation. Some individuals, such as sexual predators, may have conditions that impair their ability to benefit from ethics remediation. Other individuals may not be in a situation to be helped immediately; for example, a person who has untreated bipolar disorder may not benefit from remediation until contributing factors are under control.

Categories of infractions

Infractions or violations are categorized into four categories: boundary violations, misrepresentation, financial violations, and "other."

- **Boundary violations** are situations in which the role of the therapist is blurred with another role: business relationships, family members as patients, and patients as romantic interests, for example. Issues pertaining to supervisory responsibilities may also result in a boundary violation because the therapist could be delegating responsibility to support personnel without the appropriate credentials to provide the services requested.
- **Misrepresentation** is exactly that - people who have misrepresented themselves by actions such as failing to disclose past criminal records or past sanctions with other boards. This category also includes

misrepresentation of credentials, such as claiming you possess a license when you do not. Cheating or other examination irregularities would also be included in this category.

- **Financial irregularities** include inappropriate billing or up-coding situations.
- “**Other**” includes miscellaneous other infractions, and includes individuals who have committed civil or criminal violations such as DUI, disorderly conduct or domestic violence. It also includes treatment-related offenses such as substandard care.

Examples of infractions

Example One:

This person who attended ProBE is a full-time physical therapist, owns a practice that has multiple locations and employed physical therapist assistants and physical therapy technicians in all locations. All billings went to the main office. The charges included 44 counts, including failure to be responsible for the physical therapy record of patients, failure to create and maintain accurate records, billing for physical therapy that was not provided, directing PT and PTA staff to overbill for a particular modality and treating patients with a non-FDA approved treatment.

This individual admitted to failing to be responsible for the physical therapy record of a patient (keep in mind that on the initial charge, there were multiple patients). A somewhat separate but very important charge involved boundary issues in verbal communication with a patient.

The settlement included five years of probation with regular monitoring visits, a \$3,000 fine and substantial payment for the cost of the investigation. The individual was required to attend a board-approved course in patient care boundary issues of at least three hours along with a course about billing and documentation. Initially the licensing board did not require ProBE, but the licensee took an ethics course without seeking prior approval and the course was ultimately not approved. Subsequently, ProBE was strongly recommended.

Example Two:

This licensee was not quite 50 and had been divorced for a few years. The PT was a private practitioner involved in home care as part of the private practice. The PT considered themselves a manual therapist although they did not have a specialty certification and they were a rather poor self-assessor of their competence. The therapist became involved with a patient that initially started treatment for both a shoulder and a hip problem. The patient was treated over the course of 14 months. During that time, the patient dabbled in Feldenkrais, and began working with some of their Feldenkrais clients in the PT facility. The therapist began to rent some space to the patient. In addition, the PT started working with some of the Feldenkrais clients while they happened to be in the facility. The therapist was not fully evaluating the patients, but was providing some manual techniques while they were there. The therapist and patient moved in together and that evolved into a relationship of a more sexual nature. The therapist submitted bills for the PT treatment but never submitted any authorizations, so everything that did finally get submitted was denied and the patient had a rather substantial bill.

The final order included the following. The PT's license was suspended for two years with the first three months being an active suspension. The remainder was a stayed suspension as long as the parameters of the order were fulfilled. One of the parameters of the order included successful completion of the ProBE course. In addition, the therapist was to have a chaperone whenever they were treating a patient. The therapist also was required to see a psychologist for a minimum of a year and to refrain from practicing in home care during the entire suspension.

The licensing board wanted a consultant to work with the therapist to assist them with their professional decision making. The therapist's documentation was very poor, and billing procedures were without checks or balances. The therapist could not say a patient was at the facility, let alone what was actually done with them.

Participant essays

Here are some excerpts from participant essays. These excerpts are not related to the scenarios described above

This participant received an **unconditional pass**:

Prior to this course, I felt if I ignored the problem it would simply disappear. I had no understanding that ignoring the facts or not owning up to them actually compounded the situation exponentially. While living this lifestyle and reaping the rewards of the political and business connection, I completely deserted my core values and beliefs. I failed to distinguish the difference between right and wrong by living this lifestyle, and totally having a disregard for society led me to ruin, I lost everything. Most of all, I lost my own self-respect and my self-worth.

The following participant received a **conditional pass** - a pass with reservation. He did the readings and assignments, and understood the material from an intellectual standpoint, but couldn't apply it to his own case.

During the PROBE course, it became clear to me how we are held to a higher standard. We have to be aware that the public expects from us this potentially unreachable ideal. However, one of the quotes that was memorable from the course was "Ideals are like stars; they are good to guide the ship even though you will never reach them." I felt that the PROBE course curriculum gave me insight into how the public views us and reinforced the appropriate provider patient relationship.

And this person **failed**:

My field is experiencing a tremendous pace of development recently. Often mistakes which seemingly occur on a pure individual skill level are often derived from being embedded in a poor organization. What I did learn, however, and this has been confirmed by discussions with many colleagues is that in practicing there

is virtually no legal stability anymore. Today you are perfectly professional and tomorrow you may be without the ability to support your family.

Options for failures and conditional passes

Those who fail can re-enroll in ProBE and participate again with different faculty members who can bring a different perspective to the course.

ProBE PLUS is a new follow-up program, and although it would not be recommended for a participant who fails the ProBE Program, it may be the appropriate place for someone with either a conditional pass or for someone who passes but for whom the referring organization desires longer-term follow-up. It involves one-on-one conversations with an assigned faculty member, additional readings, additional writing exercises such as keeping a practice journal and providing some more thoughts about their particular violation. It is currently a six-month program.

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