



Ethics Remediation

This article is based on a presentation given by Nancy Kirsch at the 2008 Federation Annual Meeting.

People break rules for four reasons - human error, stuff happens, negligence and recklessness. The worst offender is somebody who intentionally violates a rule or social/ethical standards within the licensing act.

Ethics remediation is a complex subject and developing an effective and fair program to deal with ethics violations may seem – and probably is - difficult. All sorts of issues arise.

- Sometimes licensing boards only recognize the legal component, but not the ethical component in an infraction.
- How do you assess licensees on their ability to make an ethical decision?
- If you have a repeat of an unethical behavior, can you revoke a license for an extended period of time or indefinitely?
- And if you do, is there a way to change the behavior, or are these individuals with repeated infractions not redeemable?
- Many licensing boards have a list of tasks that the offender has to do, and our licensees, especially repeat offenders, are very good at doing those tasks. But are we truly changing their behavior or just teaching them how to deal with the system?
- Can we create a learning environment to move these people to a higher standard of behavior?
- Are there individuals who cannot be allowed to continue in the profession?
- Do we punish somebody for human error, especially on the first offense? Should we deal with that person the same as with somebody that does something intentionally? Maybe not, but at the same time, we need to be consistent in our disciplinary actions.



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Do we know the scope of the problem?

No, we're not sure about the scope of ethics violations in the physical therapy profession. This area hasn't been studied extensively. And since we are not truly evaluating the ethics level of our licensees, we have no data indicating that we should be requiring a course that prevents unethical behavior.

But sadly, others are finding that ethical decision-making skills *decline* through practice in the healthcare professions that have been studied. When medical students are first tested, they score at one level and when tested later, in their postgraduate years, they score much lower.

We know all the reasons: the societal and institutional pressures that may change peoples' ethical decision-making skills; or they begin modeling their behavior after what they are seeing in clinical rounds. It can be very confusing to students or new graduates, who have difficulty determining who their role model should be.

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How do jurisdictions ensure that their licensees make an appropriate ethical decision?

Recently, FSBPT sent out a questionnaire asking boards about ethical issues. Of the 38% of jurisdictions responding to the questionnaire, 17 boards said that they had an ethics exam of some kind, although they didn't explain it in detail. Some jurisdictions used ethics courses for continuing education. Seven jurisdictions require an approved remediation course. Some

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Nancy Kirsch (continued)

jurisdictions said that new licensees' ethics issues were addressed with a jurisprudence exam, if they had one. But there was no information on how they addressed ethics or if their test was valid and reliable. The majority of jurisdictions said they felt that ethics was covered on their initial licensure exam, but if they are referring to the NPTE, assessing ethical decision making skills is not the primary purpose of the NPTE. We really don't have a comprehensive understanding of what licensing boards are doing or what's effective.

Development of ethical decision-making skills

Ethical decision making is an evolutionary skill. It develops from the very first little things that we do as a child and it is very much related to level of education and life experiences. Some people are not able to differentiate between kinds of behaviors. They come before investigative interviews and may answer the questions correctly, perhaps because their attorney gave them all the right information. But you know they don't get it, and they are the ones that are potentially the repeat offenders. We need to give people the skills to be able to recognize an ethical situation and the skills to deal ethically with that situation. But we are not exactly sure of the best way to teach those skills.

What's available?

Those involved in behavioral development, whether in the clinic, the classroom or in our homes with our children, know that positively reinforcing and creating opportunities for appropriate behavior is much more effective than punishment behavior. Ethical behavior is what you do when nobody is looking – and that is the goal of ethics remediation.

That's a great range of variation in programs and methods of dealing with ethics violations. But there are few remediation programs specifically for physical therapists. There are many more for physicians and nurses.

Ethical education is delivered in a couple of different ways. A person can take a test or online course, but there isn't any additional delving into the issues. Some online courses have been developed by vendors. For example, there is a new learning module system from APTA which includes the topic of professionalism. These modules generally use online self-testing. In addition, there are APTA components (private practice, education, health policy and administration) that are offering incentives in the area of leadership. Some special interest groups in these areas will be adopting the APTA courses and involving them in their coursework. Some states are developing courses as well. The caution is that testing or online courses may be effective continuing education, but may not deal effectively with those who have committed ethical infractions.

There are several tests for ethical decision making, but they are

not widely used. There is the Defining Issues Test (DIT) and the next edition, DIT2. The Assessment of Professional Behavior (APB) is another test. These tests have been used, replicated and identified as being appropriate for physical therapy. They don't entirely meet the needs of physical therapy licensing boards, but they are the best we have. The dilemma is that we don't want offenders to take an entry-level course, but rather a post-professional course for the people who are practicing.

Face-to-face education is also available. There is definitely a positive correlation between in-person, discussion-based education and a test course on ethical decision making. A discussion-based course which includes how to deal with ethical dilemmas improves decision making, although not necessarily because the person became more ethical. The person just learned some strategies on how to approach a problem. However, the offender may still not see that they actually have a problem. How do you get to that person and how do you educate them most effectively?

Even more intense is individual counseling. Oregon has an individual who is both a physical therapist and psychologist and can do one-on-one counseling with licensees found to have committed an unethical behavior; and North Carolina has a faculty member for counseling.

What is required of board members?

The first challenge is recognizing a breach of ethical conduct.

Once identified, board members need to understand and analyze the dilemma. Does this person truly have some ethical judgment issues, and what's the best way to remediate them? Certainly we don't want to just look at punishment, because it's been found that punishment does absolutely nothing towards remedying the issues.

Boards need statutes, regulations or rules that define ethical and unethical behaviors so they have the legal standing to deal with violations. Problems arise when laws are not very specific; we may realize that it is unethical behavior, but we cannot identify anything in our statutes or rules that address that behavior.

Finally, Boards need to develop a list of different types of resources to address ethics. Boards may need to consider ongoing ethical training as well as remediation for violations. Ethics education isn't something that you take once, because new challenges are always out there.

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