



The Misguided PT – Can Ethics Remediation Set Them Straight?

This article is based on a presentation by Catherine V. Caldicott, MD, FACP, Program Director, The Professional/Problem-Based (ProBE) Program, CPEP (Center for Personalized Education for Physicians), and Nancy R. Kirsch, PT, DPT, PhD, FAPTA, Rutgers, The State University of New Jersey, at the 2016 FSBPT Annual Meeting.

Boards are often perplexed regarding how to manage a licensee with professional behavior issues, including a lack of understanding of acceptable ethical behaviors. This session briefly reviewed options for modifying ethical behavior and discussed the current research on the effectiveness of those options. A clear description of the ProBE program for ethics remediation was provided with insight as to how and why it is effective in addressing the issues that Boards often find challenging to remediate.

Risk factors for ethical lapses include personal issues, financial difficulties, career transitions, entry-level international education and visa concerns, power gradient pressure, lack of experience, professional isolation, personal well-being, and a lack of resources.

Ethics remediation is defined as remedying the conflicts between professional values and/or society's expectations, and something else — to help someone look at their actions from a different way.

That something else could be a lapse in judgment, losing sight of professional obligations (things one should have known or should have done but just are not doing it), or knowing the right thing to do but lacking the will or capacity to do it.

Remediation is undertaken to right a wrong. Those who stray are ethically impaired. They have exercised poor judgment, perhaps choosing the wrong action when all considered actions have some merit, for example. Or they have become vulnerable through personal problems or burnout, such as not having a vacation for a year. They may be distracted by things that may be in their control but may not think are in their control at this time, such as money, power, or love.

Boards work with licensees who have spent a lot of time and investment of money and energy into their professional education. They know what they're supposed to do but lose track along the way. These are people worth saving not only because of their own investment in time and energy but also because of what they mean to our profession. They still have value to society and are well-meaning. Those people merit rehabilitation to reset

their moral compass.

It's not a quick fix because it takes a lot of recognition and a lot of self-reflection.

Reflection is a critical component of professionalism in healthcare. It's not something that has been taught in the past in entry-level physical therapy (PT) education, though that is changing. But there is substantial research that shows corrective action can change behaviors.

Research also shows remediation is best when it's individual, supportive, and transferable. They need to be able to transfer the behaviors they learn to the actions and situations that will occur in the future.

Behaviors amenable to ethics remediation include boundary issues, financial improprieties, misrepresentations, and lapses in fiduciary responsibilities.

Many think of boundary issues as some type of sexually perverse action, but many boundary issues exist simply because PTs have been given the license to touch. It's up close and personal. Boundary issues include dual relationships, such as becoming friends with a patient; sexual misconduct; inadequate supervision; and accessing privileged information of non-patients. Financial improprieties include billing that does not match the clinical record documentation or for services not provided, unnecessary testing or treatment, and self-referrals. Misrepresentation includes falsifications, misrepresentation of credentials, cheating on exams, practicing outside the PTs scope and training, or practicing with a lapsed license. Lapses in fiduciary responsibilities include inadequate record-keeping or informed consent, patient abandonment, clinical negligence, impairment, breach of confidentiality, or criminal or civil complaints.

A number of programs are available for boards to consider when referring a licensee to remediation and should be chosen on the individual needs of the licensee.

In all cases, however, teaching ethical decision-making should be done in-person where real-life issues are discussed during a guided group discussion in a safe, confidential, and respectful environment.

Multiple learning modalities should be used because individuals learn in different ways. It should be healthcare oriented, focusing on the primacy of patient welfare and the social contract, and grounded in professional obligations and ideals found in the code of ethics. It should be done in an inter-disciplinary environment because PTs work in an interdisciplinary environment and the different disciplines have much to learn from each other. The curriculum identifies the person's particular ethical lapse; provides multiple tools for ethical reasoning; applies insights, theories, and reasoning to the infraction; and recommitments the person to professional ideals and future safeguards.

The goal is to return to practice a person who is safe, effective, caring, and wants to be the best PT practitioner they can be.

The objectives are to develop a capacity to think in ethical terms about the infraction and to understand why a board should care about the infraction. A remediation program should

also have meaningful assessments, a vetting process for enrollees, accessible personnel, well-trained and well-educated faculty, and a programmatic assessment.

One of the many remediation programs available is the Professional/Problem-Based (ProBE) Program at the Center for Personalized Education for Physicians (CPEP).

The ProBE Program was the first of its kind. Since 1993, nearly 1,800 healthcare professionals from more than 20 different clinical disciplines have been remediated. It is an intensive, non-adversarial, educational intervention targeted to each participant's specific infraction. It uses syllabus readings with interactive discussions, written exercises and a final essay, requires a full disclosure from the participant for the reason for referral, and uses video prompts for discussion, role play exercises, and case analyses.

Members of any healthcare discipline can attend ProBE. Currently, greater than 60% are non-physicians and include professionals, students, and advanced trainees. Seminars have about 14 participants usually representing five or more disciplines. Two faculty members are assigned to each seminar, which spans three days, or 13.25 contact hours. Two PTs serve on the faculty. Participants must be conducive to the development of self-awareness and open to learning or relearning healthcare professional ethical norms. Participants need to look at the event or series of events and discover what they were thinking or not thinking and how they took their misstep.

The first PT attended the program in 2001. There have been 93 PT referrals to date from 14 states and Ontario. Twenty-nine have been referred from the FSBPT for violating the NPTE signed copyright agreement. PTs have represented greater than 8% of all attendees in the past five years.

Once a licensee or student is ordered to attend ProBE, the participant enrolls online. The program director reviews all enrollment materials prior to confirmation, usually within 24 hours. Rarely, some are found to be unsuitable to the program and are referred to a different intervention and evaluation.

People not amenable to remediation in the form ProBE provides are those with serial infractions who are ungovernable, or they have some kind of serial sexual boundary issue or aberrant sexual behavior. Those people do much better with a psychiatric-based intervention.

Once approved, the enrollee receives the syllabus and pre-session assignments.

Boundary infractions account for 37% of enrollees, misrepresentation infractions account for 30%, financial infractions represent 18%, and lapses in fiduciary obligations accounts for 13%.

From the board, ProBE needs to know what happened and when; how the infraction was discovered; what penalties, sanctions, interventions, or other responses were taken; and the specific concerns of the board. These are submitted by consent agreement, stipulation, non-disciplinary or corrective action agreement, letter of admonition, professional development plan, or just simply a letter to ProBE. It's important to find out what happened from the referring agency's perspective to compare it to the participant's perspective.

Participants are given four pre-session assignments. They must describe an ideal healthcare professional in the form of a letter of recommendation for, or advice to, a prospective PT student. They also must write why they were referred and sanctioned. Included in that assignment must be how the infraction was discovered and how the board perceived it. They also must read the PT code of ethics and bring a copy with them to the seminar. They also are required to read the syllabus prior to the seminar, which is about 130 pages.

Participants must submit their final essay two weeks after the three-day seminar concludes. Two weeks after that, ProBE releases its Evaluation and Assessment (E&A) Report to the board.

The ProBE curriculum contains seven modules:

- Discussions of the ideal healthcare professional
- Stories of the participants' infractions and sanctions
- Models of the clinician-patient relationship, including the power dynamic between clinician and patient, and how factors affecting them affect how they deal with their patient
- Boundary issues, including the slippery slope concept and the more common graded risk model — am I acting in my patient's best interest or in self-interest
- Intra-professional accountability
- External mechanisms of accountability
- Conceptual resources for applying professional ethics, in which participants are taught a number of ethical theories so they can understand the ethics behind their infraction

The final essay has five components. First, participants must state the specific allegation or infraction. They also must explain the role of the licensing board. A number of participants enter the program angry at the board, believing its role is to protect the clinician. It takes about a day for them to realize the board is there to serve the interests of the patient, as they should be too. The meat and potatoes is the ethical analyses of why the board should care about the behavior or infraction, including the specific ethical theories that apply to the participant's case, the boundaries framework if applicable, and the power dynamics between a professional and the patient. They also must describe how their response to being held accountable has evolved and identify any safeguards to prevent future occurrences.

Some reflections from the essays were shared:

One participant wrote, "First and foremost, [boards] are there to protect the public ... [and] respond both retributively and in an educational and rehabilitative manner."

Another wrote, "There was a lack of trust.... The [Board] ... could look at this action as leading to other poorly judged actions."

"I deeply regret ... that it ended what was a very productive therapeutic relationship.... This explanation is not exculpatory. I did what I did."

“I cannot allow my self-interest or fear of being perceived as not always being available to impair better judgment.”

The E&A is sent to the board four weeks after the seminar date. It is accompanied by the participant’s final essay and includes comments on both seminar participation and the final essay.

ProBE issues three grade levels. About 83% of participants receive an unconditional pass, about 11% receive a conditional pass, and about 6% fail.

An unconditional pass is granted when a participant demonstrates why the participant should be held to account, is capable of looking at the situation from the patient’s and board’s point of view, and can explain where their thinking was flawed. Furthermore, they must be able to apply ethical frameworks, probe into why it happened, and offer future safeguards. In short, they must demonstrate they have developed the capacity to think ethically about their behavior.

A participant receives a conditional pass when the participant demonstrates partial comprehension and a lack of attention to all aspects of the infraction. In these cases, the E&A would include suggestions for additional interventions that might make the remediation more successful.

Participants fail when they demonstrate defensiveness, an inability to take another perspective, an unwillingness or inability to examine their flawed thinking, a lack of seriousness or preparation, lack of attention to the requirement of the essay assignment, and inadequate evidence of a capacity to think ethically about their behavior.

When a board writes an order for a licensee to attend ProBE, it’s important for the board to define what a successful completion of the program means. The board may consider an unconditional passing grade as part of that definition. The board also should consider ordering a repetition of the program if the grade falls short.

ProBE addresses the four dimensions of professional performance based on James Rest’s Four Component Model of Moral Behavior. For the past 30 or 40 years, it has been generally accepted among the moral psychology community that knowledge is insufficient, that are four imperative components that all together will allow somebody to actually do the right thing in a given situation. They are:

- *Sensitivity* to identifying the ethical issue or issues in the situation
- Employing multiple ethical theories when exercising *reasoning and judgment*
- Being *motivated* to prioritize professional values above all other competing considerations
- *Implementing* a recommitment to professional ideals and future plans and safeguards

No intervention can guarantee a healthcare professional will never again go astray. But ProBE can point to several markers of its effectiveness. One is a palpable change in attitude after participants reach their “Aha” moment. Two is the fact that only 10 recidivists have been referred back to ProBE out of about 1,800 participants over 23 years. ProBE’s

reputation is solid based on a tripling of referrals since 2010.

ProBE Plus is a 12-month follow-up ethics monitoring program for those who passed ProBE. It can be, and it's recommended that it should be, ordered at the same time as ProBE.

Under ProBE Plus, participants are assigned a faculty mentor. They are given a curriculum of readings, discussions, literature search, and multiple writing assignments. The aim of the program is to demonstrate the participant can put into practice what was learned in ProBE and to produce a more fully developed and researched essay on why they were referred to the program. The referring agency receives a six-month interim and final pass/fail report.

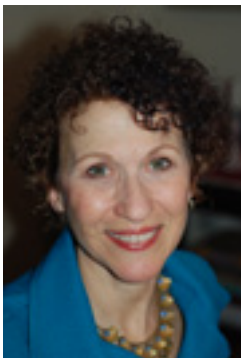
The vast majority of attendees who repeat the program do extremely well the second time. They are re-exposed to the material, re-engaged with the experience of voicing their infraction in their own words, and publicly take ownership of their infraction. They recognize they are not alone and integrate the perspectives of a new faculty and another group of participants. They also revisit the essay's expectations of ethical analysis, articulation of professional obligations violated, and insights that will form the foundation for more responsible practice going forward.

Repeating is not recommended for exceedingly concrete thinkers and those with behaviors, comments, or writings suggestive of cognitive, behavioral, or organic issues. ProBE advisors can help boards make those decisions.

Confidentiality is explicitly discussed and readdressed during the seminar. Participants are expected to affirm they will apply the same standards of confidentiality to ProBE as they do in a clinical session. It is reaffirmed in written ground rules for participation. Faculty members handle any confidentiality breaches privately with the offending participant during the seminar.

Evaluation of the ProBE program is ongoing. In a post-session survey, participants provide feedback on the faculty, content, and mode of presentation. That feedback can lead to revisions to the syllabus and updated articles and videos. Every couple of years, boards also receive a referring entity survey. Faculty also provides feedback, suggestions, and ideas post-ProBE. Twice a year, the company conducts virtual faculty meetings via Skype.

It's all about providing second chances.



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Nancy R. Kirsch, PT, DPT, PhD, FAPTA received her PT degree from Temple University, her Masters in Health Education from Montclair University, Certificate in Health Administration from Seton Hall University, her PhD concentration in ethics from Rutgers University (formerly UMDNJ), and a Doctor of Physical Therapy from MGH Institute of Health Professions. She practiced in a variety of settings including in-patient rehabilitation, acute care, long term care and home care. She owned a private practice for twenty years and currently practices in a school based setting. In addition, she is the Director of the Doctor of Physical Therapy Program at Rutgers, The State University of New Jersey. Nancy has been a member of the New Jersey Board of Physical Therapy Examiners since 1990 and was chairperson of the board for 12 years. She served as an evaluator for FCCPT. Nancy has been involved with the Federation of State Boards of Physical Therapy in the following capacities: she served two terms on the Finance committee and also served on several task forces, in addition to the Board of Directors. Nancy has been active in the American Physical Therapy Association since she was a student. She served the New Jersey Chapter as Secretary and President, and as a delegate and chief delegate to the House of Delegates. She served the national association as a member of the ethics document revision task force. She also served a five year term on the APTA Ethics and Judicial Committee and the APTA Reference Committee. She received the Lucy Blair Service Award and was elected a Catherine Worthingham Fellow from National APTA and received an Outstanding Service Award and the President's Award from the FSBPT.