

Ethical and Legal Standards in Social Work: Consistency and Conflict

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ABSTRACT

Social workers frequently encounter circumstances involving ethical and legal issues. In many instances, relevant ethical and legal standards complement each other; however, in some circumstances, ethical and legal standards conflict. This article provides a comprehensive overview of the relationship between U.S. ethical and legal standards in social work. The author presents a conceptually based typology of 4 types of relationships between legal and ethical standards. Case examples are included. The author concludes with a decision-making framework designed to enhance social workers' constructive management of difficult decisions involving ethical and legal standards.

Ethical and legal choices are prominent in social work practice. Social workers in a wide range of practice settings—as diverse as family service agencies, community mental health centers, prisons, schools, medical and psychiatric hospitals, hospice programs, substance abuse treatment centers, the military, public welfare offices, and nursing homes—frequently encounter circumstances that entail ethical and legal issues. Social workers in family service agencies may need to decide whether to comply with a police detective's request for confidential information about a client who is a suspect in a murder case. Social workers in public welfare offices may need to decide whether to adhere to strict eligibility guidelines that mean that vulnerable clients would not receive much-needed benefits. Hospital-based social workers may need to help a family member decide whether to approve the termination of a patient's life-support technology. School social workers may need to decide whether to inform students' parents about their minor clients' sexual activity or drug use over the students' objections. Social workers in private practice may need to

decide whether to comply with strict managed-care regulations that limit their ability to provide services (Bernstein & Hartsell, 2000; Dean & Rhodes, 1992; Congress, 1998; Jayaratne, Croxton, & Mattison, 1997; Linzer, 1999; Loewenberg, Dolgoff, & Harrington, 2000; Reamer, 1998, 1999; Strom-Gottfried, 1998).

In many instances, ethical standards, expectations, and requirements in social work are consistent with prevailing U.S. legal standards, expectations, and requirements. For example, social workers in every state are required by law to report suspected abuse and neglect of children. Complying with state mandatory reporting laws is generally consistent with ethical standards in social work that permit practitioners to disclose confidential information "to prevent serious, foreseeable, and imminent harm to a client or other identifiable person" (National Association of Social Workers [NASW], 1999, standard 1.07[c]).

However, social workers sometimes encounter circumstances in which legal standards conflict with the profession's ethical standards or at least practitioners'

interpretation of the profession's ethical standards. Some of these conflicts involve acts of commission, when social workers deliberately decide to violate the law to fulfill what they believe is their ethical duty (for example, by reporting false information to government agencies or insurers to obtain critical services for vulnerable clients). Other conflicts arise out of acts of omission, when social workers fail to take steps to comply with the law in order to fulfill what they believe is their ethical duty (for example, by not reporting information about possible abuse or neglect to protective service officials, as required by law, in order to preserve a therapeutic relationship with a client). These are among the most challenging dilemmas encountered by practitioners.

This article summarizes the complex relationship between ethical and legal standards in social work in the United States. The discussion presents a conceptually based typology of ethical and legal choices, and potential conflicts, in the profession. The article concludes with guidelines for practice that are designed to enhance social workers' constructive management of these choices consistent with standards in the profession.

Legal Issues in Practice

Social workers have always faced legal and ethical choices in their work with individuals, families, groups, communities, and organizations (Dickson, 1995; Madden, 2003). In the legal realm, social workers must be cognizant of five distinct sets of requirements and guidelines: constitutional law, statutory law, regulatory law, court-made law and common law, and executive orders.

Constitutional Law

Various provisions in the U.S. Constitution and state constitutions are germane to social work. For example, social workers employed in adult and juvenile correctional facilities are expected to comply with constitutional provisions concerning inmates' protection from unreasonable searches. Social workers in schools must be aware of students' privacy and free speech rights. Social workers in health clinics must be aware that courts have held that women have a constitutional right to make a decision with their physicians to terminate a pregnancy during the first 12 weeks.

Statutory Law

Many federal laws, enacted by the U.S. Congress, and state laws, enacted by legislatures, affect social work practice. For example, a prominent federal law that affects school social workers spells out strict guidelines concerning confidential student records (Family Educational Rights and Privacy Act, 1974, as amended). State laws, for example, prescribe social workers' obligations when they suspect child or elder abuse and neglect. Legislative bodies in local cities, towns, and counties also enact laws, known as ordinances.

Regulatory Law

Social workers need to be aware of a wide range of federal, state, and local regulations. Regulations are legally enforceable guidelines promulgated by government agencies. For example, the federal government's Department of Health and Human Services, Department of Housing and Urban Development, and Department of Justice have implemented many regulations that are relevant to social work, such as regulations concerning eligibility for disability benefits, eviction from federally subsidized housing, sharing of confidential information among federal agencies, and funding of services for people who are HIV positive or who have AIDS. Administrative agencies have the legal authority to enforce regulations once the sponsors have followed strict procedures to solicit public comment, conduct public hearings, and review the regulations for cost and consistency with other regulations and laws (the so-called Administrative Procedures Act). One of the best known federal regulations related to social work concerns the protection of confidential information related to drug and alcohol treatment (Confidentiality of Alcohol and Drug Abuse Patient Records, 1987).

Court-Made Law and Common Law

Many laws relevant to social work are made in the context of litigation and court rulings. For example, a judge may have to interpret the meaning of a constitutional provision, statute, or regulation, resolve conflicts between existing laws, or fill in gaps in existing law. The process of interpreting existing laws is known as *construction* (Madden, 2003). Also, a judge may need to rule on a novel fact pattern or issue that is not addressed by existing constitutional, statutory, or regulatory law. Such rulings by the court become *case law* or *precedent*. For example, a social worker's former client might sue the social worker for malpractice, alleging that the social worker used a nontraditional counseling technique that harmed the client. If there is no explicit state law or regulation concerning the social worker's use of the particular treatment technique, the judge may rule based on her or his interpretation of existing law.

Executive Orders

Chief executives of government, such as a governor or mayor, may issue orders that resemble regulations. The executive's authority to issue such an order would typically come from a state legislature or city council (or from Congress in the case of executive orders issued by the president). Chief government executives may issue orders that would affect social workers or their clients related to, for example, the use of public funds to provide emergency housing or freeze hiring during a fiscal crisis.

Opposing Views Regarding Obedience to Law

Social workers generally agree that they should obey laws. Laws are essential for an orderly society; selective compliance

with laws would lead to social chaos. The philosopher Wasserstrom (1975, p. 383) summarized this view: "Given what we know of the possibilities of human error and the actualities of human frailty, and given the tendency of democratic societies to make illegal only those actions which would, even in the absence of law, be unjustified, we can confidently conclude that the consequences will on the whole and in the long run be best if no one ever takes it upon himself to 'second guess' the laws and to conclude that in his case his disobedience is justified."

The contrary view is that blind obedience to the law is a form of naïve and short-sighted "rule worship" (Smart & Williams, 1973). From this perspective, thoughtful social workers must exercise discretion and judgment and, when necessary, violate unjust laws: a form of principled civil disobedience. After all, throughout history draconian and repressive laws have been used to justify unspeakable oppression and destruction. As the philosopher Rawls (1975, p. 352) argued, "We are not required to acquiesce in the crushing of fundamental liberties by democratic majorities which have shown themselves blind to the principles of justice upon which justification of the Constitution depends."

Ethical Issues in Practice

Along with decisions that have legal implications, social workers regularly encounter ethical choices. Ethical choices involve matters of right and wrong and duty and obligation. For social workers, ethical choices involve judgments about the profession's core values, the application of prevailing ethical standards, and the resolution of conflicts among competing duties and obligations (Congress, 1998; Linzer, 1999; Loewenberg et al., 2000; Reamer, 1999).

Although social workers generally agree about the nature of the profession's core values (e.g., the importance of service to people in need, social justice, dignity and worth of the person, importance of human relationships, integrity, and professional competence; NASW, 1999), they may disagree about the ways in which these values should be pursued or applied in practice, particularly when legal issues are involved. Some social workers may argue, for example, that the most effective way to pursue social justice and challenge injustice is to work within existing laws and to use the democratic process to change flawed laws or craft new laws designed to meet people's basic human needs. Other social

workers, however, may argue that compelling social justice issues justify civil disobedience and the occasional violation of existing unjust laws.

Difficult ethical choices in social work, or ethical dilemmas, emerge when social workers encounter competing values, duties, and obligations. Ethical dilemmas occur in every social work domain, including direct practice (the delivery of clinical or case management services to individ-

uals, families, couples, and small groups), community organizing, administration, policy, and research and evaluation.

Especially since the 1980s, social workers have recognized the importance of ethical decision making. The profession's literature now includes widely cited frameworks that practitioners can use to think through difficult ethical judgments (Congress, 1998; Linzer, 1999; Loewenberg et al., 2000; Reamer, 1993, 1999). Typically these frameworks entail the systematic application of social work values,

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ethical standards, and ethical theories. Prominent ethical theories are based on classic perspectives in moral philosophy about what is ethically right and wrong (Rachels, 1993). Briefly, ethical theories (formally known as normative ethics) are generally classified as either deontological theories or teleological theories. Deontological theories (from the Greek *deontos*, meaning "of the obligatory") are those that claim that certain actions are inherently right or wrong, or good or bad, without regard for their consequences. Thus, a deontologist—the exemplar is Immanuel Kant, the 18th-century German philosopher—would typically argue that social workers should always obey the law regardless of the consequences: The law is the law. For deontologists, rules, rights, and laws are inherently sacred and inviolable. The ends do not necessarily justify the means, particularly if they require violating an important rule, right, or law (Rachels, 1993).

In contrast, teleological theories (from the Greek *tele* or *telos*, meaning "brought to its end or purpose") take a different approach to ethical choices. According to this perspective—the most prominent adherents being the English philosophers Jeremy Bentham in the 18th century and John Stuart Mill in the 19th century—the rightness of any action is determined by the consequences. Thus, a social worker can justify violating an unreasonable or unjust law if doing so would produce more good than harm.

These classic perspectives on law and ethical choices have evolved over time and have become increasingly relevant in

social work practice (Reamer, 1993). They provide a useful framework for the analysis of ethical and legal conflicts encountered by social workers in diverse practice settings.

Ethical and Legal Issues: A Typology

Circumstances involving ethical and legal choices encountered by social workers form four conceptually distinct patterns based on two key dimensions. The first dimension involves circumstances in which social workers' actions are or are not consistent with legal standards, expectations, and requirements. Social workers may face circumstances in which their actions may comply with or violate existing law (acts of commission). Practitioners may also encounter circumstances in which their failure to act (acts of omission) is consistent with or violates existing law.

The second dimension involves circumstances in which social workers' choices are or are not consistent with prevailing ethical standards in the profession. As with decisions involving laws, social workers may face circumstances in which their actions may comply with or violate existing ethical standards in the profession (acts of commission). Practitioners may also encounter circumstances in which their failure to act (acts of omission) is consistent with or violates existing ethical standards.

The intersection of these two dichotomized variables produces four permutations or sets of circumstances involving social workers' legal and ethical choices and actions. In principle, social workers' decisions can be:

1. compatible with both legal standards and prevailing ethical standards in social work (legal and ethical compatibility);
2. compatible with neither legal standards nor prevailing ethical standards in social work (simultaneous legal and ethical incompatibility);
3. compatible with legal standards but not consistent with prevailing ethical standards in social work (legal compatibility, ethical incompatibility); and
4. consistent with prevailing ethical standards in social work but not with legal standards (ethical compatibility, legal incompatibility).

The following is an overview of issues facing social workers reflecting each of these four conceptual categories. Representative case illustrations are included.

Legal and Ethical Compatibility

Social workers frequently encounter circumstances in which ethical standards are consistent with legal expectations and requirements. That is, what the law requires or permits is compatible with prevailing ethical standards in social work. Such circumstances do not pose a moral dilemma.

Allison D. was a clinical social worker in a family service agency. One of her clients, Mark G., was on probation

after having been convicted of assaulting his wife. The court required Mark to receive domestic violence counseling as a condition of his probation. During one counseling session Mark went into a rage about his wife; he claimed that his wife was having an affair and that he was going to teach her a lesson "she'll never forget." Allison tried to talk to Mark about his anger, but he stormed out of Allison's office. On the basis of Mark's history of impulse-control problems and his explicit and threatening comments, Allison believed there was a good chance that Mark would carry out his threat. After consulting with her supervisor, Allison notified Mark's probation officer and the police about Mark's threatening comments. Allison's disclosure of confidential information was authorized by state statute and relevant case law, which permit mental health professionals to disclose confidential information without client consent when there is evidence that the client poses a serious threat to a third party. The disclosure was also consistent with the NASW code of ethics (NASW, 1999), which permits social workers to release confidential information "to prevent serious, foreseeable, and imminent harm to a client or other identifiable person" (standard 1.07[c]).

Barry F. was a social worker at a high school. Barry provided counseling to a 15-year-old student, Jack C., who was having difficulty coping with his parents' recent divorce. Jack told Barry that he was afraid he had developed a "cocaine problem." Jack said he had tried cocaine at a weekend party about 6 months earlier, continued using the drug, and worries that now he might be addicted. Jack asked Barry to provide him with substance abuse counseling and insisted that Barry not inform Jack's parents about his drug problem or request for help. According to Jack, his parents would be distraught and he was afraid that his father would abuse him physically. Barry talked with Jack about his fears and about steps the two of them might take to involve Jack's parents in his counseling. Barry consulted his supervisor and learned that state law prohibits disclosure of confidential information to parents about a minor's request for substance abuse counseling unless the minor consents to the disclosure. The state law was designed to encourage minors to seek assistance for drug-related problems. Barry's decision to not disclose confidential information to Jack's parents without Jack's permission was consistent with state law and with ethical standards in social work concerning informed consent (NASW, 1999, standard 1.03[a]) and confidentiality (standard 1.07[b]).

Simultaneous Legal and Ethical Incompatibility

In other instances, social workers encounter circumstances in which laws prohibit actions that would also violate ethical standards in the profession. Here too social workers do

not face moral dilemmas about the relationship between legal and ethical standards; available options violate both legal and ethical standards.

Robert T. was a clinical social worker in private practice. He provided counseling services to a 32-year-old woman, Caryn L., who was struggling with depression after the death of her mother. Over time Robert and Caryn discovered that they were attracted to each other. Robert was aware that both state law and the NASW code of ethics (1999, standard 1.09[a]) prohibit social workers' sexual involvement with current clients. Robert and Caryn concluded that it would be best for Caryn to begin seeing a new therapist. Robert also explained to Caryn that state law prohibits mental health professionals from becoming sexually involved with former clients within 2 years after termination of the professional-client relationship and that the NASW code of ethics (standard 1.09[c]) prohibits sexual contact with former clients in perpetuity.

Alma K. was a fee-for-service social worker at a family service agency. Many of her clients received mental health services under the state's medical assistance program for low-income individuals. Alma was frustrated by the low reimbursement rate under the state's medical assistance program; the reimbursement rate had not increased in nearly 5 years. One of Alma's colleagues told her that "one way to beat the system" is to inflate the number of counseling sessions provided to clients when submitting quarterly invoices. This form of fraud violated state regulatory law governing the medical assistance program and violated ethical standards in social work that prohibit "dishonesty, fraud, or deception" (NASW, 1999, standard 4.04).

Legal Compatibility–Ethical Incompatibility

In contrast to these circumstances, social workers encounter significant moral challenges when complying with certain laws or legal provisions seems unethical. In these instances, compliance with legal requirements and expectations might violate ethical standards in the profession.

Alicia V. was a social worker in a maternal and child health program affiliated with a large women's hospital. Alicia worked in a program that provides supportive services to teenage mothers of newborns and infants. One of Alicia's clients was a 17-year-old mother who was parenting a 3-month-old infant. During a home visit, Alicia noticed that the child had lost some weight. She asked the infant's mother, who was in treatment for substance abuse, about the baby's feeding schedule and learned that the mother had relapsed and was not feeding her baby consistently. The mother told Alicia that she had been having a "rough time" with her recovery but was "back on track." The mother pleaded

with Alicia not to call the state child welfare department to report Alicia's concerns about possible neglect, as required by law. In fact, Alicia was impressed with the mother's earnest concern about her baby's welfare and her commitment to treatment; Alicia believed that contacting the state child welfare agency would lead the mother to feel betrayed and would undermine Alicia's therapeutic relationship with her client. Alicia had to decide whether her ethical duty was to give precedence to preserving and enhancing her therapeutic relationship with her client, even if that meant not complying with the state's mandatory reporting law.

David M. was a social worker in an employee assistance program (EAP) that had a contract with a large manufacturing firm to provide counseling services to the company's employees. According to the contract, the EAP counselors were required to notify the company if they had evidence that employees were using illegal drugs. David learned from one of his clients, who had sought counseling for marital problems, that the client had been charged with possession of a small amount of marijuana after having been stopped by police for a broken taillight. David had to decide whether the contract provisions were too strict and whether it would be unethical for him to jeopardize his client's job by complying with the legal contract and reporting his client's marijuana possession.

Benita R. was a social worker at a large county hospital. For nearly 7 months, there was an intense dispute between the county board of commissioners and the union representing nursing and social work staffers at the hospital over wages and working conditions. In violation of an executive order issued by the county commissioner that prohibited hospital employees from going out on strike, the union declared a strike and set up a picket line. Benita wondered whether complying with the law and honoring the executive order would be inconsistent with ethical standards concerning social workers' right to participate in compelling labor-related job actions and to address injustices (see NASW, 1999, standards 3.10[a,b], 6.04[a,b]).

Ethical Compatibility–Legal Incompatibility

The conceptual flipside of these dilemmas involves situations in which social workers' ethical duty may require deliberate violation of the law (by omission or commission). The following scenarios are typical.

Maria D. was a social worker in the state mental health department. She administered a program that arranged residential treatment for minors with severe mental illness. During a fiscal crisis, the state's governor issued an executive order prohibiting referral of the agency's clients to costly out-of-state residential treatment

programs unless the clients posed a serious threat to themselves or others and their needs could not be met in a local program. Maria was concerned that complying with the executive order would prevent her from fulfilling her ethical duty to address one particular client's unique and challenging psychiatric needs. Maria wondered whether she should exaggerate key clinical facts in her client's files to facilitate his referral to an out-of-state residential treatment program that could address his serious clinical needs, thereby fulfilling her ethical duty to meet clients' needs (see NASW, 1999, standard 1.01).

Melanie A. was a social worker in a geriatric psychiatry program. The program provides publicly funded outpatient mental health services to the elderly. One of Melanie's clients filed a malpractice lawsuit against her physician. The client alleged that the physician misdiagnosed her neurological disorder and that the client became clinically depressed as a result. Melanie was subpoenaed by the physician's defense attorney and was asked to produce any personal notes she had about her client in addition to her formal case record. Melanie had personal notes she had recorded about some very sensitive issues in her client's life. At the time she recorded the personal notes Melanie did not realize that they could be subpoenaed. The client's attorney attempted unsuccessfully to persuade a judge to quash the subpoena. To protect her client from adverse consequences, Melanie considered lying about the fact that she destroyed incriminating details contained in the personal notes.

Kate C. was a social worker in a neighborhood health clinic. One of her clients was a recent immigrant to the United States from Thailand. The client spoke and understood little English. According to state and federal laws, Kate was required to obtain the client's consent before releasing information about her health status to professionals in other human service agencies from which the client was scheduled to receive services later that day. Kate was unable to locate an interpreter and considered disclosing information to the other service providers without the client's consent. In Kate's opinion, her ethical duty to meet the client's needs might be more compelling than the informed consent requirements.

Discussion

Social workers sometimes encounter conflicts between ethical duties and legal standards. In some instances, social workers believe that actions that the law permits or requires would violate ethical standards in social work or that actions that would violate the law are necessary to comply with ethical standards in the profession.

These circumstances constitute ethical dilemmas in that they entail conflicts among professional values, duties, and obligations. Compliance with legal expectations and requirements might lead to violation of ethical standards in social work, and compliance with ethical standards might lead to violation of the law.

There are no formulaic or simple solutions to these ethical dilemmas. As with all ethical dilemmas, social workers should engage in a series of steps, based on the best available knowledge about ethical issues in the profession, to make the most responsible decisions possible. In recent years, several social work authors have proposed conceptual frameworks and protocols to help social workers make these difficult judgments (Congress, 1998; Linzer, 1999; Loewenberg et al., 2000; Reamer, 1999). Although there are some modest differences among them, as a group these frameworks and protocols include a series of steps that social workers can take to facilitate and enhance the quality of their ethical decisions. Typical steps include the following:

1. Identify the conflicts between the ethical and legal expectations and requirements, including the social work values and duties that conflict. For example, in the case of Alicia V., the social worker encountered a conflict between the mandatory reporting law concerning child abuse and neglect and her ethical duty to her client. Alicia believed that compliance with the state law would jeopardize her client's well-being and undermine her client's noteworthy progress and therapeutic relationship.
2. Identify the individuals, groups, and organizations that are likely to be affected by the ultimate ethical decision. Alicia's decision would certainly have an impact on her client. If Alicia complies with the mandatory reporting law, the child welfare agency might remove the child from the mother's custody, which may or may not be in the child's best interest. Further, Alicia's client might feel betrayed and could terminate treatment. If Alicia fails to comply with the law, the baby may be at risk and Alicia would expose herself to the risk of prosecution for violating the law, an ethics complaint (for example, by a relative of the baby who thinks the social worker failed to perform her ethical duty by complying with the law), and litigation (for example, if the baby were to be severely injured or died as a result of the mother's neglect).
3. Tentatively identify all possible courses of action and the participants involved in each, along with possible benefits and risks for each. Alicia would need to think through the potential benefits and risks associated with complying with the state law or violating the state law with respect to her clients (mother and child), herself, her agency, and the broader society.
4. Thoroughly examine the reasons in favor of and opposed to each possible course of action, considering

relevant (a) ethical theories (for example, deontological and teleological perspectives), principles, and guidelines from literature on professional ethics; (b) codes of ethics (especially the NASW code of ethics); (c) constitutional provisions, statutes, regulations, court decisions, and executive orders; and (d) personal values (including religious, cultural, and ethnic values). This step in the process involves hard conceptual work; Alicia would need to critically examine each of her options through multiple lenses. Based on ethical theory, is it justifiable to violate a law in order to bring about a "greater good" (the classic utilitarian argument), or is it inherently wrong to violate a law regardless of the consequences (the classic deontological perspective)? Which ethical standards in the NASW code of ethics (and other relevant codes) are most germane (e.g., standards concerning social workers' commitment to clients, dishonesty, advocacy for needed changes in social policy)? What laws and regulations pertain?

5. Consult with colleagues and appropriate experts (such as professional colleagues, supervisors, agency administrators, attorneys, ethics scholars and consultants, agency-based ethics committees). It would be vitally important for Alicia to meet with trusted supervisors and colleagues. Such consultation may help Alicia examine every important facet of her options and consider all pertinent ethical and legal issues. Consultation would minimize the possibility that Alicia would fail to consider important issues. Consultation can sometimes identify clinical and other intervention strategies that can help resolve the conflict between ethical and legal standards (for example, by helping clients or professional colleagues make difficult decisions or take steps that remove the conflict).
6. Make the decision and document the decision-making process. Careful documentation is key. For example, there is the possibility that someone may raise questions about Alicia's compliance with the state's mandatory reporting law. Child welfare officials, agency administrators, family members, and Alicia's client might be critical of her ultimate decision. Documentation of the decision-making steps, including all forms of consultation, would help Alicia demonstrate that she made her decision carefully and prudently.
7. Monitor and evaluate the decision. Responsible professionals recognize that their decisions can have serious consequences and long-term ramifications. They should take diligent steps to monitor and evaluate the impact of their decisions to meet the needs of their clients and comply with ethical standards in the profession (NASW code of ethics, 1999, standard 5.02[a]). At times, social workers may conclude that they need to engage in assertive advocacy to change unjust laws, regulations, and policies (NASW code of ethics standards 3.09[d] and 6.04[a–d]).

One of the challenging, and inherent, features of true ethical dilemmas is that reasonable, thoughtful, and principled practitioners may disagree about the most appropriate course of action. Some decisions about compliance with laws and ethical standards are straightforward and uncomplicated, whereas others are difficult and controversial. In the final analysis, social workers are obligated to make decisions that, in their judgment, are morally defensible and consistent with the ethical standards of the profession.

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