# The Ethical and Legal Rights of Psychologist-Clients in Treatment: Oregon Legislative Backdrop Creates a Need for a Culture Change of Self-Care

*By Lori Queen, PhD, Colleague Assistance Committee*

Psychologists, professionals whose primary goal is helping others with personal issues and distress, seem to be relatively poor at addressing those same issues in themselves (Barnett, 2007). This not only creates a difficult situation for the psychologist, but also for clients, whose care may then be at risk. The latter aspect of this situation has drawn the attention of Oregon legislators this year and resulted in two new laws. A law mandating reporting of misconduct of any health licensees and a law requiring the development of an impaired professional's program for health licensees are together creating a legislative backdrop in the medical professions which will make self-care not just a good idea, but a professional requirement to practice.

HB2059 requires any health licensee (e.g. psychologist, physician, dentist, massage therapist, etc.) to report "prohibited or unprofessional conduct" of another licensee to that licensee's board. This law extends the responsibility of ethical monitoring to all health professions. In short, if you witness a nurse engaging in unprofessional conduct, you are required to report that to the nursing board. This may generate some confusion, as we are not all aware of what is unethical for other health professionals. In general, unprofessional conduct is defined as "conduct unbecoming a licensee or detrimental to the best interests of the public, ... conduct contrary to recognized standards of ethics ... or conduct that endangers the health, safety or welfare of a patient or client." One critical exception is that the behavior is not to be reported if it falls under confidentiality or HIPAA regulations. So if that same nurse revealed in therapy that he or she had engaged in unethical behavior, that would be protected under confidentiality and would not be reportable. It should be noted here that that protection of therapeutic confidentiality was a direct result of OPA's lobbying with legislators and the governor's office.

HB 2345 directs the Department of Human Services to establish an impaired professionals program for all health licensees and specifies the duties of a monitoring entity to oversee and report on progress or compliance. This statute defines an impaired professional as a licensee who is "unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability or by reason of a mental health disorder. Impaired professionals identified by the licensing board would be referred for assessment and enrollment, if appropriate, into diversion agreements involving therapy and monitoring, with an exchange of information between all parties involved. Health professionals would be able to self-refer to the program and would be exempt from reporting the licensee's enrollment or completion to the licensee's board."

Exactly how this is going to look is yet to be determined. Officials at the state level and various licensing boards are currently investigating how this program will be implemented. OPA was active in providing feedback in the crafting of this bill and is currently working with OBPE to develop resources that may be used by psychologists as well as resources for other impaired health licensees.

The primary aim of bills 2059 and 2345 was to protect the public from impaired health professionals. At the outset of the legislative session in which these bills were introduced, each bill had a punitive tone that was less sympathetic to the professional. Through the legislative process these bills were reworked to protect the public by enabling positive access to treatment for professionals.

Increasing acknowledgement of personal needs and the support of psychologists who seek treatment as a means of providing better care for self and clients is also a priority of psychology on a national and local level. OPA recently put out a survey to OPA members, exploring obstacles to seeking treatment for themselves. The overwhelming number of responses expressed concurrence with reluctance to seek help. Those who agreed with this sentiment expressed concerns reflective of shame, embarrassment, and fear of loss of reputation or license. Initially, psychologists' mistrust of the concept of confidentiality in their own profession seemed a surprising response. Subsequently, an informal survey of Oregon psychologists was conducted regarding their proposed action if a psychologist client disclosed in treatment that they had engaged in sexual relations with a client. A significant minority responded, some quite vehemently, that they would report the client to OBPE. It appeared that psychologists' mistrust of the system may be at least in part well-founded. Many of these psychologists referenced state law or APA ethics as a reason for reporting.

APA ethical standards defer to state law (1.02: Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority). According to attorney Paul Cooney, under Oregon state law a psychologist would not be allowed to reveal past crimes or ethical violations if the information was obtained during treatment covered by ORS 40.230 (Psychotherapist-Patient Privilege). If the psychologist-client indicated plans to perform an unethical act in the future, the treating psychologist may report this if there is clear and serious intent to "commit a crime involving physical injury, a threat to the physical safety of any person, sexual abuse or death" (ORS 40.252: Communications Revealing Intent to Commit Certain Crimes). It is of interest here to note that a recent

*Continued on page 27*

*Psychologist-Clients, continued from page 26*

study found that most psychologists in states surveyed were misinformed about their state laws and believed that they had a duty to warn when they did not. Despite this, most of these psychologists were confident that they understood the duty to protect in their state (Pabian, Welfel & Beebe, 2009).

All respondents to the survey referenced APA ethics, and many interpreted these ethics as supportive of reporting in this circumstance. According to Steve Behnke, APA Ethics Director, that would not be the case. Standard 4.05: Disclosures states, "Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as ... (3) protect the client/patient, psychologist, or others from harm." Again, Oregon law does not require or allow such disclosure. In the absence of a state legal mandate or permit, the only other option to report would fall under client consent.

In regards to other applicable APA ethical standards, Behnke reported that Standard 1.05: Reporting Ethical Violations allows for a psychologist to take further action by informing a licensing board of an ethical violation that has or is likely to "substantially harm" a person. However, this standard goes on to state that "this standard does not apply when an intervention would violate confidentiality rights."

Behnke added that another applicable standard is 2.06: Personal Problems and Conflicts, which requires a psychologist to "take appropriate measures, such as obtaining professional consultation or assistance" when he or she becomes aware of personal problems that may interfere with performing work-related duties adequately." Behnke suggested that psychologists' predisposition to report may have to do with their own issues regarding their discomfort with another psychologist's transgressions, which then allow them to separate their function from the basic therapeutic role. In short, one's identity as a psychologist seems to supercede the client, which then diminishes the client's rights in treatment. Behnke stated that ethics must come down in favor of clients' autonomy, even if that client is a psychologist.

APA and standard of practice is quite clear that having sex with a client is clearly and unequivocally harmful and unethical. But that's not the point. The point is that psychologists are just as prone to mistakes and missteps as anyone else. In his review, Barnett (2007) reported that several studies suggest that psychologists have histories and vulnerabilities that place them at a higher risk for distress and impairment than others. The belief that psychologists should somehow be above emotional or behavioral flaws simply because they are assigned to treat psychological issues may actually make them more vulnerable to such issues.

It is with great hope that the shift in legislative tone from punishment to treatment in this past session will be translated into a professional culture change in which we as psychologists can approach our own flaws, vulnerabilities, and missteps with compassion, support, and treatment. OPA worked hard to get the legislature to recognize the value in supporting treatment for professionals as a way of ultimately protecting the public. Now it's time for psychologists to do the same. Make therapy a safe place for your colleagues by understanding the deep purpose of confidentiality and by recognizing that in a treatment setting, your client's needs come first, regardless of their profession.

### *References:*

American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist,* 57, 1060-1073.

Barnett, J. E. (2007). In pursuit of wellness: The self-care imperative. Professional Psychology: *Research and Practice,* 38, 603-607.

Pabian, Y. L., Welfel, E., & Beebe, R. S. (2009). Psychologists' knowledge of their states' laws pertaining to Tarasoff-type situations. *Professional Psychology: Research and Practice,* 40, 8-14.

## Join OPA's Listserve Community

OPA, through APA's resources, provides members with an opportunity to interact with their colleagues discussing psychological issues via the OPA listserve. The listserve is an email-based program that allows members to send out messages to all other members on the listserve with one email message. Members then correspond on the listserve about that subject and others. It is a great way to stay connected to the psychological community and to access resources and expertise. Joining is easy if you follow the steps below. Once you have submitted your request, you will receive an email that tells you how to use the listserve and what the rules and policies are that govern it.

How to subscribe:

1. Log onto your email program.
2. Address an email to listserv@lists.apapractice.org and leave the subject line blank.
3. In the message section type in the following: subscribe OPAGENL
4. Hit the send button, and that is it! You will receive a confirmation via email with instructions, rules, and etiquette for using the listserve. Please allow some time to receive your confirmation after subscribing as the listserve administrator will need to verify your OPA membership before you can be added.

Questions? Contact the OPA office at info@opa.org.