

ETHICS: Reaching Toward Excellence

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Abstract. Expert witness testimony and forensic rehabilitation is a growing industry in the area of vocational rehabilitation. Ultimately, it is up to the rehabilitation provider to determine if their behavior is ethical or not. Practitioners are encouraged to develop extrinsic and intrinsic moral behavior. This article broadly reviews ethics, morals and values as they relate to forensic vocational rehabilitation. The Minnesota Department of Labor and Industry monitors professional conduct of Qualified Rehabilitation Consultants (QRC's). Ethical canons cited include the International Association of Rehabilitation Professionals (IARP), the American Board of Vocational Experts (ABVE) and the Commission on Rehabilitation Counselor Certification (CRCC). The author of the article also evaluates ethics versus morals and offers review of studies in which there could be mitigation for minor ethical infractions. Self-examination and developing an action plan are the final steps in accepting responsibility for ethical violations.

“Often times the determination of what is deemed ethical is left to the individual rehabilitation practitioner” (Taylor & Lee, 1995, p. 3). In 2006, Curtis et al. published that, “[t]he vocational expert practitioner’s [principle] client is the referring source,” (p. 47). This was on the cusp of change; a work group met in 2007 to establish definitions regarding forensic evaluation. As noted by Barros-Bailey et al. (2009), there is no client in forensic rehabilitation evaluation. This was likely due to crossover of professionals between various organizations, such as ABVE, IARP and CRCC. Barros-Bailey et al. cites Blackwell et al., “The ultimate role of the expert is to communicate the truth of the matter” (2009, p. 32).

I decided to research morals and values as they relate to ethics and vocational rehabilitation because it is clear from review of ethics canons that organizations developed ethical and professional standards to encourage inherently good behavior. You will note that the organizations consistently decree the following ethical principles: respect the interest of the clients (beneficence), do no harm (nonmaleficence), respect freedom of choice (autonomy), act fairly (justice), be honest, loyal, and keep promises (fidelity).

Curtis et al. (2006) notes that Corey et al. (2003) added the principle ethic of veracity, which “. . . means being truthful . . . about the implications of a particular diagnosis, testing, confidentiality, or scope of practice of the practitioner” (p. 45). In addition to principle ethics, virtue ethics/ethics of care, “. . . relate

to the personal characteristics of the practitioner” (Curtis et al., 2006, p. 45). Virtue ethics are described as prudence, integrity, respectfulness, and benevolence. I have included the ethical standards for practitioners within the Minnesota Department of Labor and Industry, IARP, ABVE and CRCC. It is apparent the practitioners associated with the organizations are encouraged to develop extrinsic and intrinsic moral behavior. While we try to walk the walk and talk the talk based on our own values and morals, I offer suggestions and remedies when the expert slips in their principle or virtuous ethical behavior(s).

“Values act as standards or beliefs that guide actions and judgments across situations and time . . . [p]rofessional values . . . are values that do not necessarily involve interaction with others. Personal values are expressed by an individual’s behavior that generally brings about the value satisfaction” (Curtis et al., 2006, p. 43). A value is something that is held in high esteem and considered to be worthy, useful and important.¹ Morals pertain to, or are concerned with, the principles or rules of right conduct or the distinction between right and wrong; ethical.² Both ethics and morals relate to conduct, but morals refer to an individual’s own principles regarding right and wrong.

Ethics is the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles: a theory or system of moral values; the principle of conduct governing an individual or group;

Table 1
*Comparison Chart*⁶

	Ethics	Morals
What are they?	The rules of conduct in respect to a particular class of human actions or a particular group or culture.	Principles or habits with respect to right or wrong conduct. While morals also prescribe do's and don't's, morality is ultimately a personal compass of right and wrong.
Where do they come from?	Social System – External	Individual – Internal
Why we do it?	Because society says it's the right thing to do.	Because we believe in something being right or wrong.
Flexibility	Ethics are dependent on others for definition. They tend to be consistent within a certain context, but can vary between contexts.	Usually consistent, although can change if an individual's belief change.
The “Gray”	A person strictly following Ethical Principles may not have any Morals at all. Likewise, one could violate Ethical Principles within a given system of rules in order to maintain Moral integrity.	A Moral Person although perhaps bound by a higher covenant, may choose to follow a code of ethics as it would apply to a system. “Make it fit”
Origin	Greek word “ethos” meaning “character”	Latin word “mos” meaning “custom”
Acceptability	Ethics are governed by professional and legal guidelines within a particular time and place.	Morality transcends cultural norms.

a guiding philosophy; a consciousness of moral importance; a set of moral issues or aspects.³

The organizations rehabilitation professionals belong adhere to professional standards and codes of conduct. According to Curtis et al., “The attitudes and behaviors of rehabilitation practitioners almost always reflect on the profession to which he or she is a member” (2006, p. 45).

The Minnesota Department of Labor and Industry monitors the Qualified Rehabilitation Consultant's professional conduct. We refer to Statute 5220.1801. The QRC must provide prompt provision of service and assessment of progress, maintain objectivity, engage in a separate role and function from claims activity, maintain professional competence, and must not have impaired objectivity.⁴

The International Association of Rehabilitation Professionals published a code of ethics, adopted in 2007⁵, and are by far the most detailed with regard to the forensic code.

The term Forensic Rehabilitation Experts/Consultants is used to describe rehabilitation profes-

sionals who provide services in a forensic or litigation setting. Where applicable, statements differentiate between rules that apply for the Forensic Rehabilitation Expert versus rules for the Forensic Rehabilitation Consultant and the ethical responsibilities inherent in each role. Forensic Rehabilitation Experts/Consultants who are initially retained as primary service providers will adhere to the tenets of confidentiality and appropriate disclosure, as well as to other rules outlined in this Forensic Code.

B1) Confidentiality

a) Clients have the right to expect confidentiality and will be provided with an explanation of its limitations, including disclosure to others, at the onset of service delivery. Forensic Rehabilitation Experts will discuss these limitations, as well as pertinent benefits available to clients they serve, in order to facilitate open, honest communication and avoid unrealistic expectations.

B2) Objectivity

a) So that justice is served by accurate determination of the facts involved, Forensic Rehabilitation Experts/Consultants use their abilities in an objective, unbiased, nonpartisan, impartial, and fair manner in arriving at findings, conclusions, and/or opinions.

b) Forensic Rehabilitation Experts/Consultants are to use appropriate methods and techniques, carefully research and analyze the evidence in a case, and render opinions or conclusions that are demonstrably objective and reasonable.

c) When testifying, Forensic Rehabilitation Experts have an obligation to present their findings, conclusions, evidence, or opinions in a fair and objective manner.

B3) Competence

a) Forensic Rehabilitation Experts/Consultants have an obligation to provide services in a manner consistent with the highest quality standards of their profession. They are responsible for their own professional and ethical conduct and the conduct of those individuals under their direct supervision.

b) Forensic Rehabilitation Experts/Consultants will not claim to possess any depth or scope of expertise greater than that demonstrated by professional achievement, knowledge, skill, experience, education, training, or credential.

c) Forensic Rehabilitation Experts/Consultants recognize that their own personal values, moral beliefs, or personal and professional relationships with parties to a legal proceeding may interfere with their ability to practice competently. Under such circumstances, Forensic Rehabilitation Experts/Consultants are obligated to decline participation or to limit their assistance in a manner consistent with professional obligations.

d) Forensic Rehabilitation Experts/Consultants will refer clients to other colleagues if the intended assignment is beyond their competence.

e) Forensic Rehabilitation Experts/Consultants will not represent their membership status as bestowing any specialized expertise.

f) Forensic Rehabilitation Experts/Consultants will practice in specialty areas new to them only after appropriate education, training, and/or supervised experience has been obtained. While developing skills in new specialty areas, Forensic Rehabilitation Experts/Consultants will take steps to ensure the competence of their work and to protect clients from possible harm.

g) Because of their special status as persons qualified as experts to the Court, Forensic Rehabilitation Experts/Consultants have an obligation to maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence. They are obligated to use that knowledge, consistent with accepted clinical and scientific standards, in selected data collection methods and procedures for an evaluation, treatment, consultation, conclusion, finding, opinion and/or scholarly/empirical investigation.

h) Forensic Rehabilitation Experts/Consultants will take steps to maintain competence in the skills they use, will be open to exploring new and emerging techniques, seek consultation if deemed necessary, and develop and maintain competence for practice with the diverse and/or special populations with whom they work in order to provide the highest quality of services within their abilities.

i) Forensic Rehabilitation Experts/Consultants avoid offering information from their evaluations that does not bear directly upon the legal purpose of their professional services. The submissions of written and/or oral reports will present data germane to the purposes of the referral.

j) When Forensic Rehabilitation Experts/Consultants rely upon data or information gathered by others, the origins of those data are clarified in any professional product. Forensic Rehabilitation Experts/Consultants bear a special responsibility to ensure that such data, if relied upon, are gathered in a manner standard for the profession. Forensic Rehabilitation Experts/Consultants will ensure that the resources used or accessed in supporting an opinion are credible and valid.

k) Reports will be thorough and include competent research.

l) Forensic Rehabilitation Experts/Consultants will not allow pursuit of financial gain or other personal benefit to interfere with the exercise of sound professional judgment and skills. They will not abuse their relationships with clients to promote personal or financial gain.

m) Forensic Rehabilitation Experts/Consultants understand and abide by the Code, demonstrate adherence to ethical standards, and ensure that standards are enforced.

n) Forensic Rehabilitation Experts/Consultants will not advocate, sanction, participate in, accomplish or otherwise carry out, or condone any act which is prohibited by the Code.

o) Forensic Rehabilitation Experts/Consultants may choose to consult with any other professionally competent persons about their cases. Care should be taken not to place the individual who is being consulted in a conflict of interest situation.

p) Forensic Rehabilitation Experts have an obligation to present to the Court the boundaries of their competence, the factual bases for their qualifications as an expert, and the relevance to the specific matters at issue.

q) Forensic Rehabilitation Experts are aware that hearsay exceptions and other rules governing expert testimony place a special ethical burden upon them. When hearsay or otherwise inadmissible evidence forms the basis of their opinion, evidence, or professional product, they seek to minimize sole reliance upon such evidence. Where circumstances reasonably permit, Forensic Rehabilitation Experts seek to obtain independent and personal verification of data relied upon as part of their professional services to the Court or to a party in a legal proceeding.

B4) Disclosure

a) Forensic Rehabilitation Experts/Consultants will not intentionally withhold or omit any findings or opinions discovered during a forensic evaluation that would cause the facts of a case to be misinterpreted or distorted.

b) A clinical interview is an important part of the decision-making process and bears particular importance for the Forensic Rehabilitation Expert. When direct contact with the client is made, Forensic Rehabilitation Experts will generate written documentation, either in the form of case notes or a report, as to their involvement and/or conclusions or opinions. This is not required for Forensic Rehabilitation Consultants where there is no contact with the client and where the Consultant's role is not discoverable. In those cases where a Forensic Rehabilitation Consultant changes roles to a Forensic Rehabilitation Expert, the responsibility stipulated in this Code predominates. Forensic Rehabilitation Experts/Consultants will define the limits of their reports, testimony, or opinions, especially when an examination of the client has not been conducted.

c) During initial consultation with the referral source, Forensic Rehabilitation Experts/Consultants have an obligation to inform the party of factors that might reasonably affect the decision to contract with the rehabilitation expert/consultant.

d) Forensic Rehabilitation Experts/Consultants shall be honest, thorough, and open in

their analyses and shall not provide the retaining or opposing attorney, referral source, client, the Court, or any other entity involved in the case with any information, through commission or omission, that they know to be false or misleading. They shall exert due diligence and at all times strive to use competent judgment to avoid the use of invalid or unreliable information in the formulation of their opinions.

e) Forensic Rehabilitation Experts/Consultants will not misrepresent their role or competence to clients and referral sources and will provide information about their credentials, if requested.

f) Forensic Rehabilitation Experts/Consultants will actively disclose the sources of information relied upon in formulating their opinions.

g) Forensic Rehabilitation Experts/Consultants will disclose the existence of, and their adherence to, ethical standards and principles to those retaining them and to other participants involved in the case.

B5) Consistency

a) Forensic Rehabilitation Experts/Consultants may be given a different assignment when retained in a forensic case by the plaintiff as opposed to the defense. For any given assignment, however, the basic assumptions, information sources, and methods should not change regardless of the party who retains the Forensic Rehabilitation Expert/Consultant to perform the assignment. There should be no change in methodology or process used to evaluate the case for purposes of favoring any party's claim. This tenet is not meant to preclude methodological changes as new knowledge becomes available.

B6) Informed Consent

a) Forensic Rehabilitation Experts/Consultants shall inform clients and the retaining party with whom they have direct contact of the purposes, goals, techniques, procedures, limitations, potential risks, and/or benefits of services to be performed and other pertinent information, as well as the limits of the relationship between the evaluator and the client.

b) Forensic Rehabilitation Experts/Consultants provide clear and unbiased reports.

c) Unless Court ordered, Forensic Rehabilitation Experts will obtain the informed consent of the client or party, or their attorney or representative, before proceeding with their evaluation. If the client appears unwilling to proceed after receiving a thorough notification

of the purposes, methods, and intended uses of the forensic evaluation, the evaluation should be postponed and the Forensic Rehabilitation Expert should take steps to place the client in contact with his/her attorney or representative for the purpose of legal advice on the issue of participation.

d) In situations where the client or party may not have the capacity to provide informed consent for services or the evaluation is pursuant to a Court Order, the Forensic Rehabilitation Expert provides reasonable notice to the client's attorney or representative of the nature of the anticipated forensic service before proceeding. If the client's attorney or representative objects to the evaluation, the Forensic Rehabilitation Expert notifies the Court that issued the Order and responds as directed.

B7) Loyalty to Community and the Law

a) Forensic Rehabilitation Experts/Consultants will be familiar with and observe the legal limitations of the services they offer.

b) Forensic Rehabilitation Experts/Consultants will obey the laws and statutes of the legal jurisdiction in which they practice unless there is conflict with the Code, in which case they should seek immediate consultation and advice. When conflicts arise between professional standards and ethics and the requirements of legal standards, a particular court, or a directive by an officer of the court or legal authorities, the Forensic Rehabilitation Expert/Consultant has an obligation to make those legal authorities aware of the source of the conflict and to take reasonable steps to resolve it. Such steps may include, but are not limited to:

- i. Obtaining the consultation of fellow rehabilitation experts;
- ii. Obtaining the advice of independent counsel; and
- iii. Conferring directly with the legal representative involved. In the absence of legal guidelines, the Code is binding.

B8) Loyalty to Colleagues (e.g., Professional Relationships)

a) Forensic Rehabilitation Experts/Consultants will not discuss in a disparaging way the competency of other professionals or agencies. Differences in opinions, findings, methods, or plan development should be made based on work product, not on the individual or agency.

b) When evaluating or commenting upon the professional work product or qualifications of another expert or party to a legal proceeding, Forensic Rehabilitation Experts/Consultants

represent their professional disagreements with reference to a fair and accurate evaluation of the data, theories, standards, and opinions of the other expert or party.

c) Forensic Rehabilitation Experts/Consultants shall at all times strive to practice within the boundaries of professional and disciplinary honesty and fairness. To this end, they must assume the responsibility of holding their colleagues in the profession accountable to the ethical principles promulgated herein.

d) It is appropriate for Forensic Rehabilitation Experts/Consultants to offer criticism of breaches of these ethical principles, as long as such criticisms are not offered in a disparaging way.

e) Forensic Rehabilitation Experts/Consultants shall act with integrity in relationships with colleagues, other organizations, agencies, institutions, referral sources, and other professions so as to facilitate the contribution of all specialists toward achieving optimum service delivery.

f) When referring clients to other professional colleagues or cooperating agencies, Forensic Rehabilitation Experts/Consultants shall supply all relevant information necessary to begin service delivery in a prompt manner.

B9) Business Practices

Forensic Rehabilitation Experts/Consultants will neither give nor receive commissions, rebates, contingency fees, or any other form of remuneration when accepting a case or referring clients for professional services. Payment for services will not be contingent upon a case outcome or award.

b) Forensic Rehabilitation Experts/Consultants will not enter into financial commitments that may compromise the quality of their services.

c) Forensic Rehabilitation Experts/Consultants will not enter into fee arrangements that could influence their opinions in a case and otherwise raise questions as to their credibility.

d) While all Forensic Rehabilitation Experts/Consultants have the discretionary right to accept retention in any case or proceed within their area(s) of expertise, they should decline involvement in any case when asked to take or support a predetermined position, or where there are ethical concerns about the nature of the requested assignment.

e) Forensic Rehabilitation Experts/Consultants should decline involvement in any case when they are asked to assume invalid repre-

sentations of fact or alter their methodology or process without foundation or compelling reason.

f) Should a fee dispute arise during the course of evaluating a case and prior to trial, the Forensic Rehabilitation Expert/Consultant shall have the ability to discontinue his/her involvement in the case as long as no harm comes to the client.

g) If necessary to withdraw from a case after having been retained, the Forensic Rehabilitation Expert/Consultant will make a reasonable effort to assist the client and/or referral source in locating another Forensic Rehabilitation Expert/Consultant to take over the assignment.

B10) Detrimental/Exploitive Relationships

a) Forensic Rehabilitation Experts/Consultants will recognize potential conflicts of interest in dual/multiple relationships that are detrimental/exploitive, and seek to minimize their effects.

b) Forensic Rehabilitation Experts/Consultants will avoid providing professional services to parties in a legal proceeding with whom they have had personal or professional relationships that are inconsistent with the anticipated business and professional relationship.

c) When necessary to provide both evaluation and treatment services to a client involved in a legal proceeding, the Forensic Rehabilitation Expert will recognize the potential negative effects of these circumstances on the rights of the client, confidentiality, and the process of treatment and evaluation.

d) Forensic Rehabilitation Experts/Consultants will avoid establishing dual/multiple relationships with clients that could impair their professional judgment or increase the risk of exploitation.

e) Sexual conduct with clients is unethical and will not be tolerated during the course of an evaluation until the litigation has been concluded, unless otherwise restricted by other professional codes that may apply.

f) Forensic Rehabilitation Experts/Consultants will not be involved in surveillance set up, scheduling, and monitoring. Any knowledge of surveillance-related items must be divulged when rendering an expert opinion.

The American Board of Vocational Experts published a Code of Ethics and General Guidelines (2006). The following is the Ethical Canons and related rules: (ABVE, 2006, pp. 51–55).

1. Behave in legal, ethical and moral manner . . . maintaining the integrity of the Ethics Code.
2. Respect the integrity of individuals . . . primary obligation is to provide a fair and reasonable evaluation of the individuals being assessed . . . to determine their vocational capacity.
3. Relationships with colleagues, agencies. *Referral Sources*, and other professions will be conducted in the highest professional manner.
4. Adhere to professional standards in establishing fair and reasonable fees in promoting the services that are offered.
5. Respect the confidentiality of information obtained from *Referral Sources* about an individual being evaluated, understanding that in litigation matters, the information may be in effect be discoverable, and this will be made known to the individual being evaluated.
6. Be sensitive to individual differences of the persons being evaluated in reference to the selection, utilization and interpretation of assessment instruments.
7. Participate in efforts to expand the knowledge needed to more effectively determine the vocational capacities of injured persons.
8. Maintain . . . professional competencies at a level that is consistent with the services that are being offered.
9. Honor the integrity and respect the limitations placed upon the designation of *Fellow* or *Diplomate* of the American Board of Vocational Experts.

The Commission on Rehabilitation Counselor Certification (CRCC) publishes a detailed document of ethics behavior relating to forensic rehabilitation. The Rehabilitation Counselor must have forensic competency and conduct (2010, pp. 16–17).

a. OBJECTIVITY. Rehabilitation counselors are aware of the standards governing their roles in performing forensic activities. Rehabilitation counselors are aware of the occasionally competing demands placed upon them by these standards and the requirements of the legal system, and attempt to resolve these conflicts by making known their commitment to this Code and taking steps to resolve conflicts in a responsible manner.

b. QUALIFICATION TO PROVIDE EXPERT TESTIMONY. Rehabilitation counselors have an obligation to present to the court, regarding specific matters to which they testify, the boundaries of their competence, the factual bases (knowledge, skill, experience, training, and education) for their qualifications as an expert, and the relevance of those factual bases to

their qualifications as an expert on the specific matters at issue.

c. AVOID POTENTIALLY HARMFUL RELATIONSHIPS. Rehabilitation counselors who provide forensic evaluations avoid potentially harmful professional or personal relationships with individuals being evaluated, family members, romantic partners, and close friends of individuals they are evaluating. There may be circumstances however where not entering into professional or personal relationships is potentially more detrimental than providing services. When such is the case, rehabilitation counselors perform and document a risk assessment via use of an ethical decision-making model in order to arrive at an informed decision.

d. CONFLICT OF INTEREST. Rehabilitation counselors recognize that their own personal values, moral beliefs, or personal and professional relationships with parties to a legal proceeding may interfere with their ability to practice competently. Under such circumstances, rehabilitation counselors are obligated to decline participation or to limit their assistance in a manner consistent with professional obligations.

e. VALIDITY OF RESOURCES CONSULTED. Rehabilitation counselors ensure that the resources used or accessed in supporting opinions are credible and valid.

f. FOUNDATION OF KNOWLEDGE. Because of their special status as persons qualified as experts to the court, rehabilitation counselors have an obligation to maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence. They are obligated also to use that knowledge, consistent with accepted clinical and scientific standards, in selected data collection methods and procedures for evaluation, treatment, consultation, or scholarly/empirical investigations.

g. DUTY TO CONFIRM INFORMATION. Where circumstances reasonably permit, rehabilitation counselors seek to obtain independent and personal verification of data relied upon as part of their professional services to the court or to parties to the legal proceedings.

h. CRITIQUE OF OPPOSING WORK PRODUCT. When evaluating or commenting upon the professional work products or qualifications of other experts or parties to legal proceedings, rehabilitation counselors represent their professional disagreements with reference to a fair and accurate evaluation of the data, theories, standards, and opinions of other experts or parties.

What MN DOLI, IARP, ABOVE and CRCC have in common with regard to ethics and professional integrity involve good behavior, respect toward others, professionalism, understanding limits, being truthful, and understanding the impact of the evaluation on an individual. "The practice of expert witness testimony is not restricted to members of any specific organization" (Barros-Bailey et al., 2009, p. 32).

The forensic expert should bear in mind that, "... professional ethics is not about avoiding discipline or learning rules but rather about acting in ways that are consistent with the fundamental values of the profession" (Welfel, 2005, p. 122). Welfel (2005) also indicates, "[t]he standard for responsible practice is competence, not excellence. The ethical obligation is to strive for excellence; no profession requires its constant presence. Ultimately . . . the [consultant] aims for a proportionate response to minor missteps, becoming aware of the infraction without exaggerating its importance, and understanding the misbehavior in the broader context of a career of generally responsible practice," (p. 124). The following is a list of ethical issues that can arise in forensic rehabilitation counseling. The dilemma is the words or actions could be considered a reflection of the forensic expert. The issues include making disparaging remarks about other experts and maintaining professional judgment, assessment overuse, inappropriate use of evaluation systems, inconsistencies between data represented in the test manual and interpretation of data, and not promoting choice.

Gutheil et al. (2000) conducted a pilot study regarding disclosure about opposing experts. Forensic psychiatrists and psychologists were surveyed about information they would disclose to their referral sources (attorneys) about the opposing experts. "... it is extremely common for one side's expert to offer the retaining attorney consultative assistance by pointing out weaknesses in the other expert's opinion, mistaken assumptions, flawed clinical reasoning, and unsupported conclusions," (Gutheil et al., 2000, p. 449). The following questions were relevant to the participants' expert function (p. 451).

- The other expert does cases only for one side (plaintiff/prosecution/defense)
- The other expert's lecture last year on this very subject reveals a bias
- The other expert's recent article on subject matter related to this case reveals a bias.

Participants in the study indicated the following questions/comments were inappropriate:

- The other expert is a survivor of childhood sexual abuse and probably cannot be objective about this recovered memory case
- The other expert has been through a messy divorce and custody battle and is thus questionably objective about this custody case
- The other expert is known to me personally to be an alcoholic.

The authors suggested that, "... an impression formed about an opposing expert . . . if conveyed as if it were a known fact, represents a failure of the ethics of objectivity" (Gutheil et al., 2000, p. 453). Even in social set-

tings, vocational experts should be aware their how their comments about other professionals could be interpreted, and might be a reflection on professional character.

Vocational experts use assessment as a tool for plan development, or as reference for an expert opinion. Ethical issues occur in assessment. Taylor and Lee quote Early (1987) regarding test overuse and limited financial resources, “[i]nadequate funding may result in . . . inappropriate uses of commercial evaluation systems by untrained evaluators” (2005, p. 5). Also, perhaps the evaluator is required to use a particular assessment even after identifying a better battery for the evaluatee (Taylor and Lee, 2005). Other ethical issues include not taking into account the need for test modification when the evaluatee needs additional time. “. . . issues as client motivation, predicted successful outcome, and client needs may affect the evaluator’s decision-making process” (Taylor and Lee, 1995, p. 5). And, “[t]he evaluator is faced with the dilemma between using existing facility assessment instruments and the knowledge that better techniques may provide a more comprehensive evaluation” (Taylor and Lee, 1995, p. 5). Therefore, it behooves the forensic vocational expert to be competent with the tools of the industry and not misrepresent facts, be familiar with assessment tools and what they are designed to measure, and to be clear to the evaluatee that the results might affect their eligibility for a particular program they might be interested in pursuing.

While promoting choice is inherent in Rehabilitation Counseling, forensic evaluators have an obligation to be aware of their own values. Curtis (2002) quotes Herr and Niles (1989). “. . . persons are . . . expected to value work, to plan, to be purposeful, to be productive, to be serious about life’s meaning, to be useful, and to be committed to growth and learning rather than to passively accept being unemployed or on welfare.”⁷ A forensic consultant must be aware their own values differ from the evaluatee and it is important to not be tempted to label individuals disparagingly if they do not meet our definition of motivated. It is up to the consultant to be objective, to review all data available, and to be fair and reasonable. Forensic consultants, “. . . must identify what is valued in terms of consumer goals and outcomes . . . [forensic consultants] must assess if values guide [recommendations].”⁸

Vocational practitioners are faced with making responsible choices and recommendations. We can be front and center without being on the witness stand. As noted, a consultant cannot be perfect, but can strive for excellence by reading and understanding the current code(s) of ethics. What happens when there is an ethical dilemma? Bourgeois et al. suggest ethical decision-making models by Tarvydas, Cottone and Clause (2003). They outline the following steps:

- Interpret the situation through awareness and fact finding
- Formulate an ethical decision
- Select an action by weighing competing, non-moral values, personal blind spots or prejudices
- Plan and execute the selected courses

Another model cited by Bourgeois et al. was developed by Swartz, Martin, & Blackwell (1996), and involves seven steps:

1. Identify the problem or dilemma
2. Identify the potential issues involved
3. Review relevant ethical guidelines
4. Obtain consultation
5. Consider the possible courses of action
6. Enumerate the consequences of various decisions
7. Decide what appears to be the best course of action

Bourgeois et al. suggest self-assessment: “(a) seeking external peer consultation if working alone; (b) seeking internal peer consultation if working as part of a forensic practice; (c) team consultation; (d) formal clinical supervision . . . (e) formulating yearly ‘Work Plans’; (f) conducting annual ‘Self Evaluation’; (g) mentoring by another forensic professional; (h) seeking outside consultation/program review; (i) seeking feedback from ‘Evaluatees’; (j) seeking feedback from attorneys; (k) submitting questions to CRCC or other credentialing bodies; (l) reviewing archives of ethical dilemmas and how resolved; (m) attending conferences, workshops, and/or webinars; (n) completing self-study courses; and (o) enrollment in formal graduate courses, etc.” (2011, pp. 54–55).

Welfel (2005) suggested that professionals consider the fact that we are not perfect, and suggests a four-element model when the professional realizes they violated an ethics code. She presents a principle-based model and indicates that, “[t]he only individuals with the ability to address . . . misconduct . . . are the [consultants] themselves . . . no professional career is free of ethical missteps . . . and professional ethics is not about avoiding discipline or learning rules, but rather about acting in ways that are fundamental ethical values of the profession” (p. 122). Briefly, Welfel suggests the following steps:

1. Element 1: Recognition of Error
2. Element 2: Experience of Regret and Remorse
3. Element 3: Evaluation of Possibilities of Restitution
4. Element 4: Rehabilitation to Prevent Recurrence

Welfel (2005) indicates that, “[o]nce the [consultant] has accepted responsibility for the violation and addressed the damage to the extent possible, the final

step in recovery involves self-examination and action to reduce the possibility that this problem with recur" (p. 128). She suggests consultation with another professional, licensing boards and ethics committee, and educate themselves about acceptable and unacceptable behavior. She indicates that perhaps ethical committees are under-utilized.

The role ethics plays in the profession of vocational counseling or forensic consulting cannot be minimized. Welfel (2005) cites May (1984) regarding virtue ethics, "... the focus is not so much on how professionals behave as it is on who they ought to be," and Cohen & Cohen (1999), "... [ethics] centers on the qualities that professionals should develop and the habits of character they need to reach the profession's goals" (p. 122). It is hard not to think of my own practice when I review the various codes of ethics, pitfalls of our profession, and promises I make myself that I will be attentive to every aspect of my career. My own self-assessment consists of the following points, (a) Am I following the rules, (b) Am I following through on promises I have made, (c) Am I providing a timely service, (d) Am I avoiding making legal, claims, or medical recommendations, (e) Am I professional and on-time, (f) Am I participating in activities that promote character development, (g) Am I current on ethical guidelines and (h) Am I doing my best, and (i) Have I identified two to three mentors whom I rely for continued growth and development. While the list seems endless, research suggests that Rehabilitation professionals are self-aware of ethical behavior and continue to monitor behavior in order to provide the best service possible to all parties involved in a case.

References

- American Board of Vocational Experts' Code of Ethics General Guidelines. (2006). *Journal of Forensic Vocational Analysis, Volume 9*, 51–55.
- Barros-Bailey, M., Carlisle, J., Graham, M., Neulicht, A. T., Taylor, R., & Wallace, A. (2009). Who is the client in forensics? *Journal of Forensic Vocational Analysis, 12*(1), 31–34.
- Bourgeois, J., Decoteau, J. P., & King, C. (2011). Filling in the gaps: Seeking an ethical framework for supervision and consultation of the forensic rehabilitation practitioner. *The Rehabilitation Professional, 19*(2), 49–56.
- Curtis, R. S. (2014). *Values and valuing in rehabilitation*. Retrieved from <http://www.csun.edu/~hfdss003/atacp/supplements/fph6.html>
- Curtis, R. S., Martin, E. D., Graham, C. M., & Sinsabaugh, L. L. (2006). The vocational expert and ethics. *Journal of Vocational Analysis, Volume 9*, 43–48.
- Dictionary Reference. (2014). Retrieved from <http://dictionary.reference.com/browse/morals>
- Diffen.com. (2014). Retrieved from http://www.diffen.com/difference/Ethics_vs_Morals
- Gutheil, T. G., Commons, M. L., Miller, P. M., & LaLlave, J. (2000). "Telling tales out of court": A pilot study of experts' disclosures about opposing experts. *The Journal of Forensic Vocational Analysis, 28*(4), 449–453.
- IARP Code of Ethics, Standards of Practice and Competencies. (2014). Glenview, IL: Association of Rehabilitation Professionals.
- Merriam Webster Dictionary. (2014). Retrieved from <http://www.merriam-webster.com/dictionary/ethic>
- Minnesota Department of Labor and Industry. (2014). Retrieved from <https://www.revisor.mn.gov/rules/?id=5220.1801>
- Patterson, J. B., Patrick, A., & Parker, R. M. (2000). Choice: Ethical and legal rehabilitation challenges. *Rehabilitation Counseling Bulletin, 43*(4). Retrieved from http://www.worksupport.com/documents/proed_choice.pdf
- Taylor, D. W., & Lee, D. (1995). Ethical considerations and vocational evaluation practice. *Vocational Evaluation and Work Adjustment Bulletin, Spring*, 3–7.
- Welfel, E. R. (2005). Accepting fallibility: A model for personal responsibility for nonegregious ethics infractions. *Counseling and Values, 49*, 120–131.

Endnotes

- ¹ Retrieved from <http://dictionary.reference.com/browse/value?s=t>
- ² Retrieved from <http://dictionary.reference.com/browse/morals>
- ³ Retrieved from http://www.diffen.com/difference/Ethics_vs_Morals
- ⁴ Retrieved from <https://www.revisor.mn.gov/rules/?id=5220.1801>
- ⁵ Retrieved from <http://www.rehabpro.org/publications/standards-ethics/12.2007.pdf/view>
- ⁶ Retrieved from <http://www.merriam-webster.com/dictionary/ethic>
- ⁷ Retrieved from <http://www.csun.edu/~hfdss003/atacp/supplements/fph6.html>
- ⁸ Retrieved from <http://www.csun.edu/~hfdss003/atacp/supplements/fph6.html>