

Chapter 1

Ethics in Social Work: Tracking Harms

Introduction

1. Difficult ethical cases

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You are standing in line one day at a local restaurant and a colleague from work joins you and starts chatting away about a case she had that morning -- how the woman has AIDS, how she does not want anyone to know, how hard it will be to keep that quiet because she has children who are going to be affected by her condition, and so on. You ought to be upset at her telling you these things. After all, by telling you, your colleague has just broken the confidence her client placed in her not to tell anyone. For all your colleague can know, you may have seen this woman going into her office, and you may know her. In addition, your colleague's relating all this in a public place means that others now know about this case.

The Code of Ethics of the National Association of Social Workers specifies as a standard of professional conduct that 'social workers should protect the confidentiality of all information obtained in the course of professional services, except for compelling professional reasons' (1.07(a)), and it goes on to say that 'social workers should not disclose confidential information in any setting unless privacy can be assured' (1.07(i)). It specifically lists restaurants as public places in which disclosures should not occur.

So your colleague ought not to be talking to you about this case -- certainly not in that place. No law prohibits her telling you this or her telling you this in a restaurant. Although she might be sued by her client because she broke confidentiality, the issue here is not one of the legality or illegality of what she is doing. It is just ethically wrong for her to do what she is doing.

We can all make the distinction between what is ethically wrong and what is illegal. If a friend tells you something, asks you to keep it in confidence, and you agree, then if you tell someone else, you break that confidence. You have broken a promise and so have done what is ethically wrong. But no law prohibits our telling others what friends have told us in confidence, and it is not likely a friend could win any legal suit for your actions. We can distinguish, that is, ethical norms from legal norms. How we do that, and what the basis of ethical norms may be, are not issues we need consider. It is enough for us to know that we know that it is ethically wrong for the colleague to say anything about her client.

It is equally wrong, ethically, for you to chat about your cases at parties. It is wrong for you to write up a case for the local newspaper, using the case to make a point about the need for more funding, for instance, unless you have the informed consent of the client. It is wrong for you to talk over the case with your spouse, even when seeking advice. You can only talk about the case if you have compelling professional reasons -- as when there is child abuse, for instance, or when the client give you permission.

We can understand why. First, the social worker may cause the client harm. Others may come to know what the client told her in confidence, and that may cause the client to be fired, to lose trust in the social worker or social workers in general, and so on -- all harms to the client that come about through no fault of hers. These are extrinsic harms, the harmful effects of the act in question.

Second, the client told your colleague understanding that what was being told was to be held in confidence. So your colleague causes a special kind of harm in revealing what was told. She wrongs her client. This is an intrinsic harm, a harm produced by the act itself, independently of whatever effects the act may have. In taking on a client, you effectively promise not to say anything about what you are told, and in saying something you break your promise. The client has an ethical right that you not reveal what the client has told you in confidence.

The client is harmed intrinsically even if she is not harmed extrinsically. Even if no bad effects result, even if only good comes from your colleague's telling, she has still wronged her client. It is ethically wrong to reveal a confidence you are supposed to keep.

Your colleague is making at least two ethical mistakes -- telling you without a compelling professional reason and telling you where others can overhear -- and the judgment that she is wrong is an easy one. Unfortunately, many of the ethical issues social workers face are hard, and not all can be settled by appealing to the Code of Ethics. There are cases that raise difficult ethical issues, and our concern is how we ought to handle these sorts of cases.

1. Difficult ethical cases

Consider the following case, drawn, as are all cases in this book, from real-life problems social workers have faced:

1.1 The death of a baby

Sue had just bathed their five-week old son, Jack, and put him in the middle of the double bed when one of their other three children called. She left Jack with her husband, Hal, who was playing with him when she left.

When she returned she found Jack lying beneath Hal, who was sound asleep, and all she can remember is that Jack was blue and she had to pry him out from under her husband, who did not awaken.

She called 911, and what followed were three days of intensive care at the local hospital and then at the intensive care unit of the nearest major hospital. It took the medics 10 minutes to get a heartbeat back when they first arrived after Sue called, and Jack had sporadic brain waves for awhile, but he was declared brain dead on the third day.

The physician ordered a drug test on the baby and a body scan to see if there were bruises or broken bones. Nothing unusual showed. So the physician wanted to call the death a 'SIDS,' a sudden-infant death syndrome of the sort that can occur to a child while sleeping in a crib.

The social worker involved, Deborah, thought that wrong. 'There is an explanation. We just don't know what it is. There are some missing pieces here.' Sue said that Hal had had two beers, and Hal admitted he had been drinking. But Jack was a big baby -- 11 pounds at birth and 13 pounds at five weeks. It seemed odd that Hal

would not have sensed Jack's struggles as he tried to get air. But she did not think Hal had intentionally suffocated his son. He showed great remorse and guilt, he had stayed at the hospital the three days it took Jack to die, and the family seems a good family. They cared for their other children, and there were none of the usual causes of family disruption. He had a job, they had insurance, and so on.

Deborah felt she had a dilemma. If the death were reported as suspicious, Hal would be investigated, the family might lose their other children, and they had clearly suffered a great deal already. But if the death were reported as a SIDS, a death that had an explanation would not be explained. 'The doctor would be stretching the definition of SIDS.' More important, she felt she might be countenancing a situation in which the other children might be harmed. Unfortunately, a death certificate must be filed within 48 hours after death, and so Deborah had little time to make a decision about what to do.

If Hal had beaten his son to death, Deborah would have no trouble making a judgment about what to do. But Hal is remorseful, and he was at the hospital while Jack was under medical treatment. He did not act like a man who had intentionally killed his son, and the family has no history of anything that might make one suspect a problem, even though they have three other children. So Deborah is unsure about calling in the police, as though Hal were guilty.

Yet Hal did not awaken. We think a normal person under normal circumstances would have, and so Deborah wonders. 'Maybe he was drunk.' But not being sure what happened causes her, and us, to be unsure what sort of ethical judgment to make about Hal's responsibility.

This is a difficult case. In fact, it raises all three of the problems that can, even individually, make a case difficult:

- It raises an ethical dilemma.
- It is factually problematic.
- It is conceptually problematic.

Let us consider these three sorts of problems in turn.

Because Deborah is not sure whether Hal is responsible for his son's death, she faces the ethical dilemma whether to call the police or let the matter go. These options can both cause harm. If she does not call the police, she may be failing in her legal and ethical obligation to inform authorities about suspected abuse and her failure may lead to Hal's harming the other children, but if she does call the police, she will cause the family harm. One sort of problem we can face, in other words, is that, like Deborah,

(a) We may have an ethical dilemma.

Ethical dilemmas arise when the options concern what we ought to do. Deborah's dilemma is ethical because she has a legal and an ethical obligation to report the circumstances of the death, but risks harm to the family if she does.

Some ethical dilemmas are easy. This one may look easy because of Deborah's legal obligation, but she has no real evidence to justify her suspicion. She sees no signs of abuse, but wonders how the father could have caused his baby's death without knowing it. She

lacks the information she needs to be sure of what she ought to do. We shall need to examine further the harms that come from taking either course of action to determine what kind of decision she has to make. It may turn out that her ethical dilemma is difficult. It would be that if she had two options so evenly balanced in terms of the harms either causes that neither is obviously worse than the other. We may then be at a loss to know what to do.

In any event, whatever we do, we will do something ethically dissatisfying. If I promise to do two different things at the same time that I cannot do at the same time, I must break one promise to keep the other. Because I ought to keep the promises I make, I will thus fail to do something that, but for the ethical conflict, I ought to do, and that is ethically dissatisfying. It is better, if we can, to arrange matters so that we do not face ethical dilemmas.

The problem of resolving ethical dilemmas requires making a judgment between alternatives, and that problem is often compounded when we often have no clear way to determine the correct choice. Such problems permeate social work, as they do any profession. Consider the following case:

1.2 Dancing a legal dance

Martha and Kathy are 12 and 14 years old and had been placed away from their home by the Juvenile Court because they claimed that their father sexually and physically abused them. Their father, Henry, then moved away from their original home, and hating where they were, the girls were placed back in their original home.

All the members of the family were individually seeing Mary Todd, a social worker in private counseling under contract with Children's Protective Services, and after asking Mary not to tell anyone, Martha told her that her father was sexually abusing her again. Mary had to put the information in her report, and the issue was taken to court where both Kathy and Martha were called to testify. The judge refused to see them in chambers, and faced with having to tell her story in front of her parents and especially her father, whom she fears, Martha retracted it.

Kathy continued to insist that her sister was being abused, but the judge, given Martha's denial that her father was abusing her, declared that Martha was not sexually abused, and when Mary Todd was called upon to testify about what Martha had told her and what she knew, he cut her off when she began reporting on the sexual abuse, saying that he had already declared that the child was not sexually abused and that only evidence of new sexual abuse would be admitted.

Henry is so obsessed with seeing the children that he has been coming over whenever he pleases. He has been there at least four times and caught three times, and though the judge finally put him into jail for a month, he is still coming over whenever he wishes.

Martha has told Mary that she thinks Mary has betrayed her, and she has become extremely defiant. Whenever they meet for their counseling sessions, she stands with her hands on her hips, cusses her out, and flips out whenever sexual abuse is mentioned. She cannot trust her father; her mother cannot protect her; and now she cannot trust her social worker. Mary thinks she has almost totally disintegrated. She cusses out everyone, hits and batters her mother, lies, and goes to the houses of friends and stays for days at a time. Her sister seems to be doing acceptably. She is sticking to her story and is not being abused. 'He won't mess with me 'cause he knows I'll tell.'

No one is willing to consider criminal prosecution against the father because everyone except Kathy lies. The mother is a person with mental illness and will lie, for example, about the bruises on her arms caused by Martha. She will also lie about her husband. She was abused by her father and picked up and cared for by Henry when she was 18. So she feels obligated to him.

Mary's coworkers keep asking her about the father, 'Can you get him to confess?' But a caseworker at Children's Protective Services has suggested the case be dropped. 'You're spending a great deal of time and getting nowhere. We've got other people to serve.'

Mary does not know what to do. The judge is 'dancing a legal dance,' and she is forced to wait until the child is sexually abused again, but then has no guarantee the child will testify. 'It is so unfair.'

Mary has a dilemma whether to report the abuse or not. If she reports it, she risks the loss of Martha's confidence, and if she does not, she breaks the law. Either way, Mary will have done what is right only by doing what normally would be considered wrong. For Mary will either break the confidence or the law.

This looks to be an easy dilemma to resolve. After all, there is always an ethical obligation to obey the law, and the law to report suspected child abuse is there to protect children and is not to be denied except for very compelling reasons. Unlike the case with Deborah, where it was unclear whether there was abuse or not, both the children -- Martha and Kathy -- said that Martha was being abused. Martha took it back in open court, but Kathy insisted Martha was still being abused. So we have in this case far more compelling evidence of abuse than Deborah had.

But the case is unclear in other ways. For example, Mary presumably knows what happened before Martha told her of the incest, but we do not. We do not know whether Martha blurted out the details before Mary had a chance to warn her that she would have to inform the authorities, whether Mary intentionally misled Martha in order, perhaps, to encourage her to be open, whether Mary just did not think about telling Martha that she would have to write up a report, whether she did tell her, but Martha did not pay attention, or what. It can make an ethical difference. If Mary led Martha to believe that the information would be kept confidential, she would have acted irresponsibly. So the case is problematic for us because we lack some ethically relevant factual information.

Such information may be about what a person did, as in this case, or about what caused a person to do something, or about what the consequences of various courses of action may be. In any event, we may find ourselves having to make an ethical judgment without information that we know or think is ethically relevant, and there is thus another kind of problem that can arise:

(b) The situation may be factually problematic.

In *The death of a baby*, Deborah does not know why Hal did not awaken when he was on his son. With enough time and effort, she might be able to find out, but she must tell the physician quickly if she is to say anything because the physician will fill out a death certificate at any time within 48 hours of the baby's death. She has a suspicion that is relevant to what the physician puts down as the cause of death, and so she has an obligation to inform the physician so that the physician does not make a mistake. So she must resolve her ethical dilemma without the information she needs in order to know she is doing the right thing. She thus faces an ethical dilemma in a factually problematic case.

There is a third kind of ethical problem we can have. Look again at *Dancing a legal dance*. According to the Code, Mary ought to have explained to all the members of the family the 'limitations of [their] right to confidentiality' (1.07 (e)). We do not know from the case whether she did this, and we do not know how she did it if she did. We do not know, for instance, whether she made a general statement to the entire family or to each member individually or whether she explicitly told Martha and her sister that if they were to report abuse to her, she would be legally obligated to tell.

Mary would have been ethically irresponsible never to tell Martha that she would have to pass on any information Martha gave her about abuse. But would it be enough for Mary to tell Martha once, when they first began? Or from time to time? Or whenever she thinks something is to be given in confidence? Or whenever they meet? And is it enough just to tell her, or ought she ask her, at least once, to repeat what she was told to be sure she understood? Or put it in her own words? Does it matter that Martha is a young child? What does Mary need to do, in other words, to be ethically responsible in such a situation? We may be clear that she needs to tell Martha, but unclear about how and how often. One kind of general problem we may thus face is conceptual unclarity -- what would count as being responsible:

(c) The situation may be conceptually problematic.

We can see how these three different kinds of ethical problems arise in the two cases we have so far looked at. In *Dancing a legal dance*, Mary was told by a caseworker at Childrens' Protective Services that she should consider dropping the case. She may not have any choice if the caseworker is speaking for the agency and insists, but if the choice is hers, she faces a more difficult ethical dilemma than the one she faces in deciding whether to tell the authorities about the suspected child abuse. For she faces using resources in what appears a fruitless enterprise when she could be helping others. Mary is failing to help no matter what she does. She either fails to help her current clients or fails to help others.

If she knew she could solve the problem in another day or so, or if she knew she really could help another family and not cause further harm to Martha or her family, she would have no ethical dilemma. But she cannot know these things and so must decide in ignorance. The situation is factually problematic. Such a dilemma is typical.

Deborah also has a dilemma, one made more complicated because the situation is factually problematic (in that she does not know what Hal actually did in the bedroom). But it is also conceptually problematic.

We hold someone responsible if they put themselves in a position where they can cause harm -- like a drunk getting in a car to drive. So we would feel ethically uncomfortable if we found that Hal, while fully awake, had told his wife that he would take care of their child and then drank himself into a stupor and fell asleep on the child. But we do not hold someone responsible for something he or she cannot control. So it is ethically wrong to hold Hal responsible if he had had a seizure that caused him to fall asleep. These two sorts of cases are clear, but because Deborah is not sure what happened that evening, she cannot be sure she has such a clear case. The lack of information makes the case factually problematic.

She thus must consider what would make Hal responsible for his son's death, and that is to consider something that is conceptually problematic. We should think that Hal should have taken due care to be sure that he did not put his child at risk. But is it taking due care never to put oneself in a position where one can cause an accident? Or is that too high a standard? Much depends upon the details -- on how strong a drink one has if alcohol

is at issue, on one's level of tolerance, and so on. Because Deborah does not know exactly what happened, she faces too many possibilities to come to any determinate conclusion. Though hesitant to call the police, she is also hesitant to let the matter go.

Such hesitation is the usual reaction to such ignorance, and it is appropriate. For such circumstances ought to make us cautious about the ethical judgment we make. Ignorance creates appropriate uncertainty. Once we get away from a clear case where harm is intentionally caused to one person by another person who knows exactly what he or she is doing, an ethical judgment can be a difficult matter, requiring a great deal of detail about the situation. For the ways in which we can fail to be ethical are numerous, and, in addition, some ethical failings are a matter of degree.

It is also an ethical wrong to make the wrong ethical judgment -- to judge that someone has caused ethical harm when he or she has not or to judge without good evidence that someone has done wrong -- and so we have to take special care. If Deborah judges wrongly in this case, Hal and his family, who have already suffered an enormous loss, will suffer even more.

Whatever Deborah does, she needs to give reasons. Because whatever we do may cause harm to others, we must take special care to justify what we do, and justifying something ethically requires giving reasons for it, reasons that will provide an understanding why one choice was made rather than another.

So Deborah and Mary both need to appeal to reasons and to reasons of a special kind, for the reasons need to be ethical reasons that will justify one ethical choice over another. If Mary chooses to drop the case, that ought to be an ethical choice, for that decision may involve harm to Martha and her family. But what, we must ask, is an ethical reason?

To answer that question we shall need to lay out our method for determining ethically what we ought to do when we have an ethical dilemma or the situation is factually or conceptually problematic and appealing to the Code of Ethics does not provide enough help. The method involves, as we shall see, tracking the harms likely to occur regarding our various options in a case.