

Chapter 4

Relations Between Social Workers

Introduction

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Introduction

As anyone who works knows, those who work together can cause problems for each other. Social work practitioners are not immune from this general truth, and ethical issues can arise because of the relations between colleagues or between them and their social work supervisors. As in any profession, social work practitioners work with others in their profession, and when they have differing judgments about practice, conflict may result. We shall consider this issue in Section 1 and then, in Section 2, other ethical problems that can arise between colleagues.

Social work practitioners may have professional relations with such professionals as physicians, lawyers, and teachers as well as with other social work practitioners. In Section 3 we shall consider the sorts of ethical issues that can arise in relations between social work practitioners and other professionals.

Our concern is to articulate the ideals that ought to regulate relations among social work practitioners and between them and other professionals.

1. Difficulties between colleagues

The method of tracking harms requires that we come to understand why the participants are doing what they are doing, and one of the best ways to achieve that end is to ask them. But though the method thus works best when those involved in a case talk with one another, communication can fail for a variety of different reasons. We shall here explore the ideal in §a and then, in §§b and c, ways in which that ideal can fail to be achieved. We are thus not using the method here, but exploring one of the conditions for its best use.

a. The Ideal

Differences in status, in gender, in experience, and in educational background, among others, can make a difference as to how one is perceived by others in the profession,

and such different perceptions can create ethical problems. Consider the following case:

4.1 Peers?

A male social worker seduced and molested one of his clients, an adolescent male, who then molested his younger sister. The boy is now with his father and step-mother, but his present social worker, Henry, is pushing to reunite him with his mother and sister.

The girl's social worker, Margaret, is uncomfortable with this. She thinks the child needs more therapy, and that will end if the family is reunited. But most importantly, she is not sure the girl will be protected if the boy returns to the family.

Yet she says she is unwilling to 'confront' the boy's therapist, as she puts it. 'He has a Ph.D., and I don't; he's established, and I'm new to this community.'

Margaret thinks her client is at risk of being molested again if the brother goes back into the family without more therapy.

The boy is Henry's client, not hers, and in judging that he needs more therapy, Margaret is also judging that Henry is mistaken in thinking he should be reunited with his family. Yet she says she is unwilling to 'confront' Henry. If we follow the first step of our method so we can understand why she is unwilling to confront Henry, we can attribute to her something like the following reasoning:

1. To protect my client, I need to tell Henry he is mistaken in his judgment.
2. But Henry is superior to me both in terms of his credentials and his experience in the community.
3. Therefore, I will not confront Henry.

This reasoning is faulty in a variety of ways, as we shall see. But one additional reason Margaret may have for being hesitant in 'confronting' Henry is that he has been providing therapy for the boy and so is presumably better positioned to make a judgment about the need for further therapy than Margaret. So Margaret not only has a natural and understandable reluctance to query a fellow professional about a professional judgment, especially when she thinks he is more experienced and better qualified than she, but she may have a reluctance to query him about a judgment he is better positioned to make than she.

Yet since she thinks the boy needs further therapy, she presumably thinks that failing to tell Henry means not protecting her client. Because she has an ethical duty to protect her client, she would seem to have an ethical duty to tell Henry because telling Henry appears to be the only way she can protect her client (see the Code of Ethics 2.01(c) and 2.05(a)). But she says she is unwilling to confront Henry. We thus have two issues:

- Why does she think that it is only by confronting Henry that she can tell him of her concerns?
- Even if she must confront him, is she not obligated to do that to protect her client?

She must think she has very good ethical reasons for not confronting him if she thinks not doing so puts her client at greater risk. She says it is because he is more experienced and educated than she and because he is established in the community and she is not. But nei-

ther are relevant reasons for not acting to protect her client.

We know that education and experience count. They put a person in a better position to know what to do in any particular situation, but someone's having education and experience does not guarantee that a correct decision has been made in any particular case. What matters is what is in the children's best interests. For all we, or Henry, or Margaret can know, she may be in a better position than Henry to make the proper determination because, perhaps, she knows something about the details of the case that he does not know. She will not be able to find out whether his judgment is well-reasoned until she talks with him, and if she fails to do so, she will never know why he is making the judgment he is making and thus will never herself be in a position to judge whether she or he is correct.

What matters in coming to a decision about what we ought to do are the reasons for the decision. The reasons must be relevant, and where there is an ethical issue, the reasons must themselves be ethical and weighty enough to determine the conclusion. In appealing to Henry's being established in the community and better educated than she, Margaret is not appealing to any reasons why Henry's client ought or ought not have more therapy. By not talking with him, Margaret guarantees that she will never know whether he had good reasons for his judgment.

We are not in a position to judge whether she will harm her relationship with Henry if she talks with him any more than we are in a position to judge whether the boy needs more therapy. But whether or not any harm may come from her talking to Henry, Margaret does not have an ethical dilemma. An ethical dilemma only arises when we have two or more incompatible options, one of which we must choose, but both of which will cause harm (or produce good). Margaret cannot both do what she feels she ought to do for her client and not talk with Henry. So her options are incompatible. But though she has good ethical reasons for trying to help her client, she gives no ethical reasons not to talk with Henry.

Indeed, as a general rule, in situations where cases impinge upon one another so that what happens in one case can affect what happens in another, practitioners have an obligation to talk to one another (see the Code of Ethics 2.05(a)). In the first step of our method, we ask, 'Who are the participants in this case, and who else is affected?' Whether Margaret likes it or not, her case and Henry's are intertwined, a decision in one affecting the other, and she thus has an obligation to try to understand why Henry is making the decision he is making -- just as Henry has an obligation to talk with Margaret so he can understand her concerns.

One problem with the reasoning we attributed to Margaret is that it needs another premise. She must be thinking that

I can only tell Henry about my concerns by confronting him.

Henry may be the sort of person one cannot talk to without confronting, but that seems unlikely. He may be better positioned than she to know what to do in this case, but what is the harm in asking him for his reasons? If her primary concern is to ensure that her client is not put at risk of being molested again, she has good reason to talk with Henry and no good reason not to.

Indeed, she has an obligation to talk with Henry if that is the best way to protect her client. She would need an ethical reason for not talking with him, and an ethical reason weighty enough to justify putting her client at risk, but all she says is that she would have to confront Henry. That does not provide an ethical reason.

But she also has other reasons for explaining to Henry her concerns. Allowing him to proceed, despite her misgivings, may harm Henry's client. If Margaret is right that the boy

is not yet capable of handling the pressures of being back with his mother and sister, Henry causes him harm.

And Margaret may cause Henry harm as well. If someone is about to make a mistake -- like walking on a bridge that will collapse with the slightest impact -- you have an obligation to inform the person of the difficulty so that the person can reconsider what to do in the light of this new information. And if that mistake will harm you or your interests -- because the hillside you are on will collapse as well -- then that person has an obligation to talk with you though, until you inform the person of the problem, the person may not realize they have such an obligation. Perhaps Henry should take the initiative, but if he does not realize how what he is doing affects Margaret's client, her failure to talk with him means that he will not fulfil his obligation to talk with her. Margaret thus harms Henry by not allowing him to do his duty.

In addition, deferring to Henry's judgment without talking with him means he has no chance to hear her concerns and no chance to assess his judgment in the light of those concerns. No one is immune from error, and he may have made a mistake. By not talking with him, she fails to treat him as a reasonable person -- someone with the capacity for learning in light of new information (see the Code of Ethics 2.01(a)). She also encourages him to make the same kind of mistake the next time and so harm a new client. So Margaret has an obligation to talk with, and listen to, Henry.

Similarly, Henry has an obligation to talk with and listen to Margaret's reasons why the boy should not be placed in his family and, if he thinks Margaret mistaken, an obligation to explain to her why he thinks her mistaken. This is an especially pressing obligation when harm may result to the client of a colleague because of our actions. Professionals are obligated to explain their actions when those impinge upon the legitimate concerns of other professionals. This is not merely a matter of professional courtesy, though it is that, but a matter of ethical concern because of the harm done if the obligations of Margaret and Henry to their clients are not fulfilled.

Ideally a social work practitioner should not be hesitant in talking about a case of mutual interest with another social worker. How Margaret talks with Henry will do much to determine their working relationship, and if she begins by confronting him, she may irreparably harm that relationship. Ideally she ought to be able to talk with Henry, a colleague, about what is best for her client, as well as for his, without any concerns about differences in status, in educational background, or any other feature that is irrelevant to her doing her best by her client. She ought to be able to talk with him presuming that he has reasons for doing something she thinks unreasonable and presuming that, because he is competent, he will respond to the reasons she has for thinking he is making a mistake. Indeed, morality requires this for two different reasons.

First, justice requires that we treat like cases alike and unlike cases unlike. When we are trying to decide what to do in a particular case, this means we ought to make the same decisions for the same sorts of cases and different decisions for different sorts of cases. If we are to be just, we must consider only relevant reasons. It would be unjust to treat one person one way and another another way if the only difference between the two were their race, for instance. Just so, it would be unjust for Margaret to decide what to do in regard to her client by taking into consideration Henry's educational status and standing in the community. These features of Henry are not relevant to whether Henry's client ought or ought not to have more therapy. If decisions were determined by anything anyone happened to consider, we would have no assurance that like cases would be treated alike and unlike cases unlike. It might turn out that if Margaret does not talk with Henry, for the reason she gives, and the boy is placed back in the family, everything will turn out all right. But

that would be luck, and Margaret will not have done her duty to do what she can to help her client. Ethics requires her to take into account only what is relevant in deciding what to do.

Second, any social work practitioner has an obligation to find the best ethical solution for a case. In situations where the cases of two or more practitioners overlap so that a decision in one case can affect what happens in another, there is, as we saw, an obligation for the practitioners to talk to one another. But we ought always try to seek help in making a decision about a difficult case if we can do so without breaching confidentiality or causing any other serious ethical harm.

(a) It can help enormously to talk a case through with another professional, including a supervisor, who understands the sorts of issues involved. In discussing it with another professional, we are forced to articulate the case's important features to explain the problem we are having with it. That helps us get clear on the essentials of the case. We also gain the power of another mind who can help us get clear on why those in the case are doing what they are doing, what our goals ought to be, what our options are, and what the various harms are of alternative courses of action. It is always an advantage to brainstorm about various options. As possible ways of resolving the problem are floated, we can more readily come to understand better what features of the case are causing the main problems and why certain proposed solutions will not work and others might.

(b) One problem we have when we are part of a case is that because we are inside it, as it were, we may find it hard to back off to judge what is best to do. It is difficult to be a participant and judge simultaneously. Our self-interest as a participant can conflict with making an objective decision. Another professional provides another point of view, one that is likely to be more objective than ours.

(c) We can get advice about how to do what we have decided we ought to do. Margaret thinks of herself as having to confront Henry, but one piece of advice to her may be that she should not think of talking to him in that way. She apparently thinks she must accuse him of making the wrong decision. But she might just tell him of her concerns and ask him to explain to her more clearly why he thinks she should not have the concerns she does. She seems so enmeshed in the case that she does not realize how irrelevant it is to concern herself with Henry's educational status and length of service in the community. Getting her to see her way clear of those irrelevancies does not yet solve her problem, however, if she still thinks of herself as having to confront Henry. So she also needs to figure out how to talk with Henry, and talking to another professional can help provide her with the kind of distance from her problem that will allow her to see how to proceed.

Dialogue can always help, that is, in working through the method of tracking harms, and we have been engaging in dialogue about each of the cases we have considered so far. We have thus suggested ways of looking at them that may not have been clear to those practitioners whose cases they are, and we have suggested goals and alternative solutions that have often opened up the case so we have much more clarity about what we ought to do than when we first encountered the case.

b. Questions of competence

For instance, we have decided that Margaret ought to talk with Henry if for no other reason than that she thinks his judgment about his client adversely affects her client. To talk with him is not to question his general competence, but sometimes we may question the reasons a colleague gives often enough about a wide enough variety and large enough number of judgments that we do put in doubt their professional competence. Consider the

following case:

4.2 *Family therapy*

Jessica was a member of a family service agency which had brought in a person from outside to teach the agency personnel about structural family-centered therapy. Peer review was instituted, and the seven social workers would meet regularly, view video-tapes, and talk about their cases.

Jessica was having a very hard time learning to use the new form of therapy. It requires that the social workers align themselves with a particular family member, but only for strategic purposes. One is never to form permanent alignments. But Jessica would form relationships with particular family members, the woman or a female adolescent, and not be able to break them. But that is harmful to the clients. Rather than achieving independence, they end up with a different form of dependence, unable to achieve a new balance of relationships within their family because of their attachment to the social worker.

When this was pointed out to Jessica, she became extremely frustrated, threw up her hands and said, 'Well!' She cried another time, upset because, as she put it, 'I was doing everything right, and yet you tell me it's all wrong.'

The other social workers all agreed that she was not competent using this particular approach. 'She was operating off a psycho-dynamic individual model, which is very different from a structural or strategic model.' They all felt that she was harming her clients, but though they had the evidence of their own eyes and could talk about how she failed to respond to suggestions, they said they could not prove her incompetence to the supervisor. Besides, she had been with the agency for almost 20 years and so had seniority over the other six.

This case raises the issue of whether Jessica is competent using the structural model (see the Code of Ethics 1.04(a)). An incompetent social worker can badly harm the interests of a client, and so ethics requires that judgments of competence be made. Yet making such general judgments is a delicate task, and at least three questions need to be asked.

(a) Who is to decide? Just as Henry seemed better positioned than Margaret to make a judgment in Peers?, so Jessica's colleagues seem better positioned than any outsider to judge what she is doing. But because they are in the case, and most affected by what they think she is doing, they may not be the best judges. In addition, being good at something, like social work, does not in itself mean being good at making judgments about who else is good at it and who is not. The competence to make judgments of competence requires special knowledge and skills and attitudes -- an understanding of the various ways in which to practice in the profession; an ability to back off from your own preferred method of practice to assess another method of practice that may not mesh at all well with yours; a capacity to withhold judgment while you listen to all those involved, aiming for a full hearing of a case's ins and outs; and so on (see the Code of Ethics 1.04(b)). So we should not presume that because Jessica's colleagues are social work practitioners, and know a great deal of information about the case, they thereby are competent to make a judgment about Jessica's competence.

(b) This is especially so because another issue makes a difference to judgments of competence even when we have the best of evidence. By what standards are we to judge? People can disagree about what it is to be a competent social worker. This is particularly so in regard to therapy where different techniques have their advocates. The level of disagree-

ment may be so high that some who use one technique think those who use another flirt with incompetent practice.

Even when there is agreement about what model to use, we may have disagreement, within a model, about what is acceptable and what is not. Practitioners using the structural model may agree that alliances with certain members in a family should be terminated, but disagree with when to terminate them. Some may think that the sooner the better, before the alliances are firmed up and the risk of dependence becomes too great. Others may think that the later the better, after the alliances are firmed up and independence from the family is achieved, even at the risk of dependence upon the therapist.

The difficulties Jessica's colleagues face now becomes clearer. They must not only have evidence of incompetence, but also essential agreement about what would make a social worker competent. Because they are themselves presumably new at using the model, they must realize that others may think them lacking experience about its features and particularly about when to terminate alliances adopted for strategic purposes. Even those adept and seasoned at using the model may disagree in a particular case on this issue. In short, Jessica's colleagues must be prepared to be clear not only about what Jessica is doing wrong, but also about what she would have to do to be doing things right, and being clear about that may be harder than it might seem.

(c) Jessica's colleagues are well positioned to respond to the third question that must be answered whenever we make a judgment of competence. On what evidence are we to make a judgment? Evidence of incompetence can be difficult to achieve in many professions, social work included, for two different sorts of reasons.

First, we are rarely able to observe the field practice of our colleagues. One of the marks of being a professional is having autonomy -- the capacity, among other things, to make decisions about what is or is not in a client's best interests independent of the oversight of others. But our having autonomy means that most of our work is done with clients in such a way that others have few ways to judge whether we are competent or not.

Second, the sorts of decisions we make as professionals are complicated enough, and can go wrong in so many different ways we cannot be responsible for, that our competence or incompetence may be hard to discern. Too many other factors in a case may be responsible for failure.

In Family therapy, Jessica's colleagues have more than most colleagues would have on which to base a judgment. They have videotapes of her in therapy with clients, and they have the dialogues they all engaged in about all their cases. So they could see how Jessica interacted with her clients, and they know how she interacted with them when she talked about her cases and about theirs. So in answering the question, 'What's your evidence?', they had as much as anyone could reasonably expect anyone to have in such a case.

So what ought they to do? In regard to Peers? we argued that when social worker practitioners have a conflict about a case, they have an ethical obligation to talk with each other, each beginning by presuming the other competent and concerned to help their clients. Talking is required by the method of tracking harms because if your colleague is impinging on your case by what is being done, you must understand the reasons for the colleague's actions before proceeding (see the Code of Ethics 2.01(a) & (b)). You ought to presume that your job is to find out why your colleagues are doing something you think unreasonable. If, after talking with them, you think their reasons are not good ones, you are to try to convince them that what they are doing is not the right thing to do.

But a judgment that someone is incompetent is very different from a judgment that the person has made a mistake. When we think colleagues have made mistakes, we presume competence on their part in talking with them to understand the reasons for their ac-

tions. But when we judge them incompetent, we talk with them not to convince them to act differently, but to see how we may help them become competent. The Code of Ethics requires this:

Social workers who have direct knowledge of a social work colleague's incompetence should consult with that colleague when feasible and assist the colleague in taking remedial action (2.10(a)).

It was in talking with Jessica about what she was doing with her clients that her colleagues became convinced that she was incompetent using the structural model. She was unable, it seems, to see why others might think what she was doing was not right. So talking with her about remedial help does not seem a serious option. If she is unwilling or unable to understand why others might see that what she is doing is wrong, she would presumably be less willing to admit that she needs remedial help so she could do things right.

Whatever her colleagues's solution, it ought to be necessitated by what must be their primary concern -- the well-being of the agency's clients. The obvious next step would be to go to the supervisor and explain what they thought was happening, but they say they do not think they could prove her incompetence. We have provided some reasons for their thinking that, even with the best sort of evidence anyone can get.

So what are they to do? Their options seem to be limited. They must do something to try to protect the clients from harm, and they cannot do anything without talking with the supervisor. This is the sort of situation where brainstorming possible alternatives and assessing their consequences would help, but initially, at least, there appear to be two options.

First, they can try to convince the supervisor that Jessica is incompetent or, as the Code of Ethics says, they can 'take action through [other] appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations' (2.10(b)).

Second, if they think that sort of move ineffective and likely to cause harm to the agency and perhaps to them, they can point out to their supervisor that they are unable to work with Jessica. They may truly say that Jessica and they are unable to work through cases to the satisfaction of all concerned. The consequence is that the sessions are not working well, they are dissatisfied, Jessica is dissatisfied, and the clients are being harmed if for no other reason than that the social workers cannot reach consensus about how to treat them. They might then suggest that because the set of them can reach agreement about how to proceed, and because Jessica is the one who does not agree, it might be best for all concerned if Jessica were re-assigned to do something else.

Jessica's colleagues should be prepared for one effect of their judgment. It is not an easy thing to have your colleagues judge you incompetent, and Jessica's colleagues ought to be prepared for what is a quite normal set of reactions to the judgment they are making about Jessica -- anger, indignation, counter-charges.

It is because anyone can be presumed to take such criticism amiss that those making the judgment should carefully consider how they should talk with the person about the problem. The last step in the method of tracking harms requires that you

(5) Determine how to do what you have determined ought to be done and do it in a way that will itself produce more good than harm.

We do not know what transpired in their meetings together, but, given Jessica's reaction,

we can surmise that she did not perceive the criticisms as helpful suggestions about how she might improve. But given the natural defensive reactions to having one's competence questioned, we have an ethical obligation not to raise the issue without a full understanding that questions about one's competence put one's entire professional life at risk. Indeed, having judged that she is incompetent in this area, Jessica's colleagues must wonder whether she is competent in other areas in which they have not been able to witness her practice, and they cannot assume that the inference will be lost on her.

That her colleagues will make this judgment about her general competence is all the more likely given the breakdown of communication. The case might have been different had Jessica been able to say, 'The reason I'm not breaking off the alliances I am forming with the female members of the families I'm working with is that I think it is better to risk their dependence on me than to risk abandoning them too soon in the therapy. Could we talk about how we tell when the appropriate time to leave them is?' She might ask a colleague, 'How do you know when to let go?' With that beginning, dialogue is possible. It was her apparent inability to communicate anything except her frustration at being criticized that seemed to cause the impasse she had with her colleagues and cause them to consider other options, such as going to the supervisor. Her frustration may have been justified by the ways in which her colleagues criticized her, but we do not know that.

We can obviously fail to meet a complex ideal in a variety of ways, to a lesser or greater degree. Some listen very well; some do not. Some speak very well; some do not. We can all think of ways in which we could improve how we communicate in our relationships. But Jessica's problem is not that she needs to learn to communicate better. What has gone wrong is not that communication has failed to reach the ideal, but that it has broken down completely between her and her colleagues. We have the opposite of what we ought to be striving to achieve among social work colleagues.

c. Failures to communicate

The following two cases raise a different but connected set of issues. We are often in situations in which we seem to be communicating, but nothing happens that ought to happen. We may tell someone of a bad performance and explain that this or that must be done if the performance is to be improved. The person appears to understand what needs to be done, but, in the end, does not change. Consider this case:

4.3 Relapsing

Cynthia had been having problems with her work, but before her supervisor, Corliss, was able to talk with her about them, a client of hers who knew she was a recovering alcoholic reported that she had seen Cynthia drinking in a bar. A colleague also told Corliss that he thought Cynthia had begun drinking again. He had gone in to talk with her and saw that she was leaving little empty whisky bottles in her wastebasket. Corliss then discovered that Cynthia had had periodic problems for some time before she had transferred to Corliss's department. 'There is a history here,' Corliss thought.

Corliss talked to Cynthia and explained that if her colleagues could see the empty bottles, her clients could too. Corliss and she agreed that she would have a month of residential treatment.

She did that, but though she was O.K. for awhile after she came back, she relapsed. Corliss discovered that Cynthia had not followed through on her appoint-

ments, and, in addition, she was not doing her job well. So Corliss fired her.

Cynthia committed suicide, leaving a note blaming the colleague who had told Corliss that he thought she had begun drinking again. Corliss had told her that though she was fired, she could return if she 'went into treatment and was sober for six months.' So 'she knew,' Corliss added. 'She had that option.'

One potential source of difficulties in any professional organization is that though each member is a professional, some have power over others. Because each member of the organization is a professional and so presumed competent to make proper professional judgments, difficulties can arise if other professionals, in positions of power, overrule the members' professional judgments. In addition, those professionals with power over others are wearing several different hats, as the standard metaphor has it, and their wearing several hats can be a source of ethical problems.

So, though Corliss arranged for Cynthia to have treatment, she did not do that just because she is a social worker. She also did it because she was concerned about her and because, without the treatment, Cynthia could not be an effective employee. So Corliss was acting both as a concerned colleague and as a supervisor. She did not cease being Cynthia's supervisor in dealing with her, even as she tried to help her, as though she were a client. It was thus not a 'suggestion' that Cynthia get treatment for a month, but an order, with the threat of being fired if she did not go into treatment and remain 'sober for six months.' The ethical situation was thus different from what it would have been had Cynthia just been Corliss's client. If she were to keep her job, Cynthia had no choice but to do what Corliss recommended she do.

Corliss could not have taken off her supervisor hat even if she wanted to, and in that way the metaphor of wearing several hats is misleading since it implies one can wear first one and then another. So even if Corliss had not directly threatened Cynthia with the loss of her job, Cynthia would know that the same person who was telling her what she needed to do to become well enough to keep her job was the person who could fire her if did not do it.

Where those who hold supervisory positions are social workers as well as supervisors, their relationship with their employees is complex. They are, as social workers, peers of their employees. Yet as supervisors they can no longer relate to them just as peers. They must relate to them both as peers and as supervisors.

But though it changes the relationship between social work practitioners when one is the supervisor of another, it should not change the ideals that we articulated regarding Peers? (see Code of Ethics 2.09(a)). We ought to presume that social workers have the same ends in mind and that the best way for them to achieve those ends when there is disagreement is for them to talk the problems through to determine the ethically best thing to do. A crucial difference one of them being a supervisor adds is that the supervisor can fire the employee. So when Corliss and Cynthia talk things through, Cynthia may find she may have to do what she does not want to do. As the case makes clear, the outcome was that Cynthia was fired and that she subsequently committed suicide. In asking whether Corliss did the right thing in firing her, we need to consider both results.

What preceded the firing was a pattern of problems. Her repeated failures were interfering with her effectiveness as a social worker and harming her clients. Corliss did not fire Cynthia because she relapsed, but because she had formerly had problems which had not been resolved and because she was not doing what she was supposed to do in order to resolve those problems. First, there is the pattern of repeated drinking. She drank before, and she is drinking again. Second, there is the pattern of failure to solve that problem. Cynthia did not solve it before, and she is not now doing all she can to solve it because she

is not following through on the appointments she was supposed to have made and kept when she came out of her treatment.

We have here the same sort of justification that was needed in Family therapy. It would not be enough for Jessica to have one or two problems using the new form of family intervention. What was necessary to justify her colleagues judging her incompetent was a pattern of failure with the new form of intervention, a pattern that continued even after talking about her problems with her. Similarly, what is necessary to justify terminating Cynthia is a pattern of behavior that repeats itself despite treatment.

Such patterns are not always necessary to justify action. We can readily imagine single acts, such as an assault, which would justify termination, and it is not just any pattern of behavior that would justify termination, but one destructive of people's capacity to do their work properly without harming clients. Having been given several chances to change, and having been given another chance when she was told she could come back if she went to therapy and remained sober for six months, Cynthia has no good reason to complain of bad treatment in being fired.

Similarly, she has no good reason to blame Corliss or anyone else at the agency for her being fired, and so neither Corliss nor the other social workers ought to feel any guilt about her committing suicide. A failure to understand on the part of someone, despite numerous attempts at trying to communicate in a variety of different ways, is not the fault of the person trying to communicate. If what we do is the right thing to do, then we are not generally responsible for how someone responds to that.

Unfortunately, even when communication is successful and, we want to say, the person must surely understand, other factors may intervene to prevent the person from acting on the communication. We then have a new ethical problem. This can be especially troublesome when there are patterns of behavior that would justify firing someone. Consider this case:

4.4 Bending over backwards

Betsey had known of Jonathan for a long time and had met him as a colleague. He had been very successful working with clients and was well regarded in the community. She needed someone for a supervisory position and hired him after going through 'the regular routine of references.' Though Jonathan's director at his former agency complained and said he hated to see Jonathan go, he said he would prefer that he remain in the community.

The staff really liked Jonathan, but after a half year or so, things began to go wrong. Jonathan did not handle his routine business well, failing to answer phone calls or respond to letters. He was writing letters for the agency even though those had to be approved by Betsey. And he was confused a great deal of the time, testifying in court, for instance, about a case but mixing up the details with some other case.

After documenting the difficulties, Betsey told him that 'things are not going right' and would have to be corrected. The following Monday Jonathan's wife called and said he had been readmitted to an alcohol unit. Betsey had not known he had problems with alcohol. He was off for six weeks, came back, did well for awhile, but then began to have problems again. It turned out that he needed a heart by-pass operation.

Betsey was getting a lot of pressure to fire him from some of the staff and from the Board (see the Code of Ethics 2.09(a) & (b)). The agency was short-staffed

anyway, and Jonathan's comings and goings over such a period of time, combined with the state of his papers and memos because of his confused state of mind, were creating extra work for everyone. In fact, the agency was audited seven times because of the problems Jonathan created and was beginning to get a bad reputation. But some of the staff were adamant that he be kept, and, as Betsey said, 'I didn't feel I could fire someone who was going in for heart surgery.'

But when he came back, he was no better. Betsey made him 'a line worker' even though he was being paid as a supervisor, but he could not handle that either. Betsey suggested he resign with disability, coming in to work on a contract basis whenever he felt able, but he refused, and after trying to get him to quit, she finally had to fire him. Jonathan was black, and he claimed racism on Betsey's part.

When she later talked to the director of the agency he had worked at before, the director said that they had tried to warn her, but also that he didn't want Jonathan in his agency. Betsey thought that she had gotten anything but a warning from the director and that he had given her good recommendations in order to get rid of Jonathan.

This case raises a variety of issues, including whether it is appropriate to provide misleading or false recommendations. We are concerned here only with the features of Jonathan's condition that led Betsey to fire him and with the difficulties she had in communicating and getting the kinds of changes needed from him. Her argument for firing him is not complicated, but it is instructive about how best to proceed in such cases.

First, it was not enough, she thought, for there to be a single incident or even several where Jonathan did not do what he was supposed to do or got confused enough to cause problems for the agency. Though she did not articulate this, she must have thought she needed a pattern of problems in order to proceed and that she needed to be able to prove that there was a pattern by citing time and place and problem. The presumption must be that it is only with a pattern that we have evidence of some underlying difficulty, something that will continue to cause problems if action is not taken. As with Jessica in Family Therapy, it is not enough for there to be a single mistake; what is needed is a pattern of mistakes that suggests an underlying incompetence.

Second, she documented the problems he was having. First you find a pattern, and then you write it down. The presumption is, appropriately, that only with documentation of such a pattern of behavior can a clear case be made, one that does not rely on contestable memories.

Third, Betsey raised the issue with Jonathan so that he could know what she thought the problem was with his behavior. She told him both what he was doing and that what he was doing was unacceptable.

Fourth, she tried to ensure that he got treatment for the underlying difficulties without being penalized. He was given leave to get treatment for alcoholism and then leave to have by-pass surgery. Betsey acted on the assumption that the pattern of behavior that needed correcting was caused by alcoholism or by the physical problem, or both. If Jonathan needed by-pass surgery, his heart may not have been pumping enough oxygen to his brain, and that might account for his being confused.

The ethical reason for ensuring that he got treatment is that it would be wrong to penalize someone for something that is not their fault or for something that may be their fault, but may be correctable within a reasonable period of time. Having heart problems was not Jonathan's fault, and though some may hold him accountable for being an alcoholic, giving him a chance to change means, at a minimum, that he has no right to complain if he does

not change and the problems attributable to his being an alcoholic continue.

Fifth, when the problem continued, Betsey lowered the expectations of what was required of him, but without penalizing him, giving him a line position while paying him as though he were a supervisor.

Sixth, when that did not help, and the problems continued, she gave him the option of retiring, with disability, working on contract whenever he wanted to and was able. Only when he refused, and the problems persisted, did she fire him.

What Betsey did very nicely captures the steps we all ought to try to follow in such situations if we can. It represents, in fact, the ideal -- the best that we could be expected to do for our colleagues in one of the worst of situations between colleagues. So it is worth laying out in a more orderly fashion. Communication can fail in many ways, and when the stakes of successful communication are high -- as they are when someone's career is on the line -- we ought to be as sure as we can be that we have communicated as best we can.

(i) Gather evidence of the supposed pattern of misconduct and document it. That will show what the basis of the concerns are. It is wrong to discipline anyone without clear and documented evidence of a sustained pattern of misconduct in regard to the ordinary course of one's professional activities. Of course, as we have said, about some matters no pattern is needed. One assault is enough to justify disciplinary action.

(ii) When you have such a written statement, you should talk with the person accused of the problem. It is wrong to discipline someone without the person's knowing what they are accused of doing. So that person needs to be informed. This is part of what one owes to colleagues because they are colleagues. It is a matter of professional courtesy, but it is also required so that you can be sure you understand what the source of the problems is. You not only need to inform the person of what you think, but need to be informed by the colleague. What looks wrong given what you know may turn out to have an innocent explanation. It would also be imprudent, in this age of lawsuits, to discipline anyone without a written statement of a pattern of misconduct.

The situation we examined in Chapter 1 where the woman killed her lover with a butcher knife while he was being held by the police is an object lesson in how something can appear one way and be another. She looked stupid to do such a thing in front of what are presumed the best witnesses a court could ask for, and yet she may have done it because she thought it was the smartest thing she could do.

In any event, we ought to inform those about whom we have evidence of misconduct because, for one thing, he or she may simply not be aware of the problem, odd as that may sound. Busy people often become overloaded and simply do not realize, for instance, how many phone calls they have failed to return. Or there may be another simple explanation, the person accused being overextended because they are covering for someone else. Without talking to the person, we cannot be sure we know what we seem to have solid evidence for.

(iii) Where the person is willing, we should try to help by changing the underlying conditions that are producing the problem. In some cases it may be a simple matter of providing additional support -- additional secretarial help, for instance. In others it may require more substantial intervention. This was the case for Jonathan, who was first given leave to get treatment for his alcoholism and then to have by-pass surgery.

In some situations, giving someone a chance to change is not always wise or ethically right. If Jonathan were engaged in a pattern of sexual harassment against other employees, Betsey's giving him a chance to change would subject those employees to the continued risk of harassment. She would have to ask whether taking the chance that Jonathan would change was worth the risk of further harm to other employees -- and the lawsuits

that subjecting them to such a risk would itself risk.

(iv) Where it is possible, provide an alternative for the employee that solves the original problem. Betsey did this by making Jonathan 'a line worker' -- a position he had successfully held before. Unfortunately, in this case, that did not solve the problem. Jonathan was as unable to handle the obligations of this position as he had been unable to handle those of being supervisor, and the agency's clients were at risk of harm.

But we can understand Betsey's motivations. On the one hand, she was trying to retain someone who had been as asset to the agency, and she was trying to retain him in the position in which he had worked well. On the other hand, she was trying to provide some alternative for Jonathan short of firing him, something that would allow him to continue. Her underlying aim was presumably to cause as little harm as she could either to the agency's clients or to Jonathan, given that she could not let him continue to work in his supervisory position.

(v) If a person must be fired, try to provide another option if possible. Betsey did that when she suggested that Jonathan retire with disability, coming into consult when he could. Her concern was presumably to minimize the harm -- both to Jonathan and to the agency.

If we go through the steps in this process, we find that two ethical concerns animate them. On the one hand, we need to minimize the harm to those concerned -- to Jonathan, to the agency's clients, and to the agency and its staff, some of whom found Jonathan's comings and goings on leave disruptive. We may question whether Betsey acted to minimize those harms as much as she could, whether, for instance, her continuing efforts to help Jonathan may have harmed the agency's clients while he muddled through, but there is no doubt that she ought to act to minimize the harms. On the other hand, we need to provide as much respect to those involved as we can. Betsey did this for Jonathan. She gave him choices where that was possible, for instance, as in the last step where she gave him the option of resigning.

We might question whether Betsey found just the right combination of these two ethical concerns -- whether she weighed the potential harm to Jonathan more heavily than she should have since one consequence of the delay in firing him was that the agency was audited seven times. But our concern here is not with the details of how Betsey handled the case, but with the principles she utilized and the procedure she adopted.

Betsey needed to be concerned about firing Jonathan because he claimed racism, he was ill, and the staff was split over whether he should stay or leave. So one way to assess whether what she did was right is to ask whether, at the end, the clients, Jonathan or any of the staff had any right to complain of how he was treated. Was he informed of what was expected of him and of what he was doing that was wrong? Was the evidence of what he was doing wrong correct? Was a good-faith effort made to help him change what needed changing? Was an alternative provided so he could stay on without causing difficulties for the agency and its clients? Was he provided a graceful way out of the situation? We can work through the case asking each of these questions and determine how well it matches up to the ideal procedure for handling such situations.