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Analyzing Complex Ethics Cases Using a Seven-Step Model

As discussed in [Chapter 3](#), complex ethics cases require special consideration by behavior analysts. When complex cases arise, a close and thorough analysis is needed so that clients are not harmed and the behavior analyst does not suffer in the process. The real life case here, submitted by a BCaBA, represents a situation that falls into the moderately complex category.

"I'm a BCaBA behavior therapist with 1 1/2 years experience. I work at a small private, for-profit school that provides educational services to children with developmental disabilities. This situation involves several of the children ages 5-7 yrs. old. I am assigned to do one-on-one therapy with children on the autism spectrum disorder (ASD). One day, an additional child was brought to me since one of the other therapists was out sick. I was not given a curriculum sheet or any instructions about the child. I was told, 'This is just for today, make it work,' which I did. But as a result, my primary student and I got nothing accomplished since it was all I could do to manage the second child. The next day I was told the same thing, 'Make it work, this is just temporary.' Again I got very little accomplished. This went on for the rest of the week. Essentially, I was just babysitting these two ASD kids. The parents of the primary child stopped me on Friday when they picked him up and reported that their child seemed restless and less verbal all week. They wanted to know if I knew of any problems. I lied and said that sometimes it goes like that, ups and downs, good weeks and bad weeks; they accepted my word and left. I felt horrible after this, went to the owner (who is a BCBA) and said I didn't feel comfortable with this situation. I probably shouldn't have asked, but I said, 'Are we still billing as though the children are getting one-to-one?' The owner said, 'That's a business matter, just stick to the

asked. The owner just stared at me and then walked away. I have the strong suspicion that the school is billing for one-on-one therapy for each child and that they have not told the parents or the insurance company of the new arrangement. What should I do? Go to the business manager? Tell the parents? Two very good BCBA's that I liked and trusted left this school six months earlier. One was the Clinical Director, and a very ethical person. I asked the owner why he left and was told, 'It's just a professional difference of opinion.'

It seems that cases similar to this are cropping up all across the country as agencies scramble with long waiting lists, too few qualified staff, and too much revenue at stake. Seemingly invisible decisions such as doubling up on clients but billing for one-on-one therapy reap great benefits and go unnoticed by nearly everyone except for the sensitive and ethical behavior analyst.

The Seven Steps

1. *Is the Incident Covered by the Ethics Code?*

Before you dive too deeply into the solution to a possible ethics problem, it is best to begin by making sure the problem is actually covered by the Code. This can be done by reviewing [Appendix A](#) in this text or going to BACB.com and clicking on “Ethics” on the top navigation bar. The *Professional and Ethical Compliance Code for Behavior Analysts* has a convenient two-page table of contents where you can skim the titles, looking for key words related to your dilemma. You can also scan the Subject Index at the back of this book.

For the case it would seem that several elements of the Code are relevant. Questionable Integrity (1.04) on the part of the owner is a good place to start, as well as several subsections of 2.0—Responsibility to Clients—(2.02, 2.04, 2.05, 2.09, 2.10, 2.11, 2.12, and 2.13). Having established that there are serious violations of the Code involved and that you have a basis for moving forward, the next step is to understand the people with whom you will be dealing. We call them **“The Players.”** They are also sometimes referred to as **“stakeholders.”**

Do you have the strength to take on the organization, the skill to deal with the other individuals involved, and the motivation to do the right thing?

2. The Players: A) The BCBA (or BCaBA or RBT); B) The Client; C) Supervisor; D) Agency Head; E) Other Organizations

Chief among the players is you, the person who will be organizing this effort to make a decision and take steps to correct a situation that has been deemed unethical based on information obtained in Step 1. It is appropriate to do a quick check to see if you are ready for this uncomfortable state of affairs. Do you have the strength to take on the organization, the skill to deal with the other individuals involved, and the motivation to do the right thing? If you have dealt successfully with several Level 1 through Level 3 (see [Chapter 3](#)) ethics cases, then you may be ready to handle the ethics case. If you aren't ready, as long as they are not involved in the current circumstance, you can seek the counsel of trusted colleagues or your supervisor.

The next "Player" is the client. Making decisions regarding clients requires careful thinking on the part of the behavior analyst. The "Client" is often a vulnerable individual who needs protection and would benefit the most from the correction of the situation (see Glossary for the broader definition of *client*). In this example, the most immediate client was the original ASD child. There was at least one more client in this case, and that was the second child. The second child was only receiving "babysitting" services rather than language and social skills training, which the school contracted to provide. A third client in this case was the family of the original child. The family believed the child was receiving one-on-one language and social skills training. In a broader sense, the insurance company, which was largely paying for this therapeutic treatment, could be considered a *client* as well. Finally, from the perspective of the owner, the private school that hired the BCaBA was also technically considered a client in this scenario. While most of the *clients* in the case (including the behavior analyst [BCaBA]), the child, the second child, the parents, and the insurance company) were aligned in their interests, the owner had different interests, such as keeping costs down and maintaining or increasing margins.

The BCaBA did not refer to a supervisor in the case submitted, so we assume that this person was either absent (e.g., the owner did the supervising) or unresponsive. In most cases, behavior analysts will take cases such as this directly to their supervisors. Supervisors in behavioral settings should have the welfare of clients in mind and should be an ally in solving the ethical problem.

The agency head, who was the owner in this case, was a *player* in the sense that the behavior analyst had to deal with her in order to solve the ethics problem. In this case, it sounded as though the owner had not planned for emergencies or unforeseen circumstances such as a therapist being out due to illness. Further, the owner was not prepared to be upstanding on the billing with either the parents or the insurance company. She was a cunning adversary whose behavior might be difficult to change. Unfortunately, there are behavior analysis business owners in other companies who engage in the same practices.

The final player in this scenario was the insurance company. The insurance company was an outside agency that was unknowingly taking a hit with regard to billing. In cases such as this one, insurance companies should be interested in rectifying the situation, although such reports may be seen as “small potatoes” to them. Nonetheless, it would be unethical not to inform the insurance company of the breach of contract that exists with the families and the private school.

A “contingency plan” is a thoughtful and strategic analysis of what to do in the event that your first action was unsuccessful.

3. Contingency Plans for Ethics: Plan A, Plan B, Plan C

The concept behind this step is the possibility that your first attempt to deal with an ethics dilemma in your job may not prove successful. In this case, for example, the BCaBA spoke first directly with the owner and did not really have a plan in mind. She probably thought the owner would say, “Oh, my, has it been that long? I need to get right on that, thank you for bringing this to my attention. I’m going to talk to the parents right now.” Of course, that didn’t happen, and for that very reason, in complex situations such as this, we recommend having a contingency plan in place from the beginning. The contingency plan is a thoughtful and strategic analysis of what to do in the event that your first action was unsuccessful. In the case above, when Plan A (talking to the owner) failed, the BCaBA did not have a backup strategy.

A possible Plan B would have been to explain the situation directly to the parents, who had already expressed concern about their child’s treatment. An option such as this is always risky to the behavior analyst since it goes directly against what she was directed to do, which was essentially babysit two clients and keep quiet. If the BCaBA talked to the parents, she could have been fired immediately for this act of defiance. This is not uncommon when dealing with ethics; doing the right thing can have negative consequences for the ethics-minded person. It is possible if the BCaBA had told the parents what was happening, they would have expressed support for the behavior analyst and advocated for her with the owner. However, this is a big unknown. Sometimes parents have a special relationship with the owner and are unwilling to stand up for the right thing. In some situations, there are other contingencies, such as both parents have jobs and don’t want an interruption in services because they would then have no child care in place. In other instances, the parents’ desire to do whatever it takes to support their child takes precedence. Whatever parents decide, when an ethical problem is called to their attention, they have to make some ethical decisions themselves. For example, they have to weigh

being seen as troublesome parents versus leaving the school and enrolling their child somewhere else.

Obviously, for every ethics dilemma, the contingency plans will be different. The contingency plans should reflect the unique circumstances of the case. There should be a method to proceed from the least-to-most intrusive interventions. Another factor that needs to be taken into account is the problem-solving repertoire of the behavior analyst and the “clout” that the person has to make things happen in the organization.

In order for us to have a robust, responsible, and respectable profession, we must be aware of the conduct of other behavior analysts and be prepared to stand up for our clients' right to effective treatment.

4. The Skills & Clout

Most behavior analysts entered this profession because of a strong desire to help people. For the most part, they were unaware that taking on responsibility for monitoring and maintaining ethical standards was a part of the package. But it is clear from the Code this expectation is real (see [Chapter 12](#) for details). In order for us to have a robust, responsible, and respectable profession, we must be aware of the conduct of other behavior analysts and be prepared to stand up for our clients' right to effective treatment (2.09), and all other rights as well (Code elements 1.0–4.0).

The skills referred to in this step are described in *25 Essential Skills & Strategies for the Professional Behavior Analyst* (Bailey & Burch, 2010). The skills that are most relevant for this step include:

- Assertiveness
- Interpersonal communications
- Leadership
- Persuasion/influence
- Critical thinking
- Negotiation & lobbying
- “Think function”
- Using shaping effectively
- Handling difficult people
- Performance management

- Understanding and using power

Other skills that are not included but are very important in dealing with ethics cases are a basic understanding of (1) the law and (2) how business and government agencies function.

The “clout” factor ... refers to the influence of position, power, and authority to make things happen.

The “clout” factor in Step 4 refers to the influence of position, power, and authority to make things happen. In this case, the BCaBA probably had little *clout* because of her short tenure with the school and her status as an assistant behavior analyst. If she were connected somehow (e.g., one of her parents or a relative worked at the Department of Insurance Regulation or for a major insurance carrier), she would have some *borrowed clout* that could make a difference for an ethics case like this one.

Plan A Skills & Clout. Recall that the “plan” was to persuade the owner to inform parents about the situation, tell the truth about the status of their child’s educational plan, beg for their understanding, and remedy the situation quickly. The BCaBA in this case operated on the spur of the moment and was not prepared to be persuasive. Some recommended skills for her Plan A include assertiveness, good interpersonal communications, leadership, persuasion/influence, and handling difficult people. Showing leadership, presenting a strong case, and being prepared for push back from the owner might have made a difference.

Plan B Skills & Clout. Plan B is to consider going directly to the parents. This would also involve good interpersonal communications skills, showing leadership, and assertiveness. In addition, in a case such as the sample case, the behavior analyst should consider “think function” when addressing the parents, i.e., understanding where they are coming from in terms of the treatment of their child. Despite the breakdown in services, the parents may not have other options, may not want to offend the owner, or may come on too strong when approaching the owner.

Plan C Skills & Clout. If the parents are not interested in dealing with the owner when told the child is not receiving services and there may have been inappropriate billing, the behavior analyst will have to decide if pushing the matter further is a good course of action. One option is for the behavior analyst to simply resign from the job and move on. Currently, there are many jobs for behavior analysts, and there is surely one that is more pro-ethics in its dealing with clients and their families (see [Chapters 19](#) and [20](#) for what to look for when selecting a job).

Another option is to report the fraud by the owner to the insurance company or the state insurance commissioner. This ups the ante quite a bit, and it will take some digging to understand how to do this, who to talk to, and what types of documentation are required. To proceed with this option, the behavior analyst may need to brush up on the law and do some research on insurance fraud.

5. The Risk: A) To the Client, B) To Others, C) To the Behavior Analyst

The risk to the client, which includes the ASD child and his family, under Plan B is that the school may terminate them as “troublemakers.” Depending on where they live, it might be difficult to find another placement. Or, if they do find one, the location might be inconvenient.

In the sample case (which was a real case submitted by a BCaBA), the behavior analyst was not fired for bringing up the issue to the owner. However, if she pushed Plan B, she could have found herself without a job for being insubordinate. This behavior analyst was actually a risk to the owner and the school since she could have spread the word that the owner was engaging in unethical conduct.

6. The Implementation

Plan A (which was talk to the owner) in this case basically failed. The next step would be for the behavior analyst to think carefully about Plan B (which is going directly to the parents). In your own job, if you find yourself in a situation where you have to decide if you should contact the parents of a client, there are some things to think about. Think about the time and place to meet with the parents and how to best present your case. It might not be best, for obvious reasons, to meet the parents in the lobby where they pick up their child each afternoon. You would not want to risk a dramatic scene if the owner saw you. Further, if the parents were in a rush at that time of day, you would not be able to deliver your message effectively. If you decide that contacting the child’s parents is the way you need to proceed, ask the parents if there is a good time to meet for a few minutes. The parents will likely want to know what this is about, and the best advice is to simply say something like, “I have something to discuss that is fairly important to me.” The idea is to not tip your hand until you get to the meeting. Meeting away from the school in a quiet place is the best idea. Without being emotional, start with a statement of concern about the child and the lack of progress. Then describe clearly what transpired and the owner’s response and simply wait to see how the parents respond. After that, just be supportive. Ask the parents to leave your name out of this if they decide to take action.

In any contentious arena, there is always the possibility that someone will decide to take legal action. If you are the target and you find yourself being sued, you should be prepared with detailed notes on what you did and when you did it.

7. The Evaluation

As with any task that one only does occasionally, it is a good idea to keep track of what was done and how the incident turned out. This is especially important in the case of our efforts to monitor and maintain the ethical standards of our field. In any contentious arena, there is always the possibility that someone will decide to take legal action. If you are the target and you find yourself being sued, you should be prepared with detailed notes on what you did and when you did it. Having contemporaneous records of meetings, phone calls, memos, and email will show an attorney, judge, or jury that you were operating in good faith to protect others from harm and are prepared to defend your actions.

~~Keeping detailed notes on each ethics case you confront~~ will also help you determine what to do the next time an issue comes up. It is neither safe nor smart to count on your memory for reporting what happened a year ago when you were asked to falsify a record or when you, as a mandated reporter, had to report a childcare worker for abuse or neglect.

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Summary

As a behavior analyst, you can expect to encounter somewhat complex ethical issues a few times per year. Having a systematic process to follow guarantees that you operate systematically and effectively on behalf of your client, yourself, and the profession. Following these seven steps will result in a deeper understanding of the factors that go into the human behavior of unethical conduct and will ensure that you always protect yourself and your clients from harm.