Avoiding Ethical and Legal Issues in Practice Settings

There are some clear ethical lines that everyone knows should not be crossed—lying, cheating, stealing—but what happens when the line becomes a bit blurry? I used to encourage students and colleagues to use the “gut” test to determine whether or not something was ethical. Unfortunately, at present it seems those “guts” are either not functioning properly or people are ignoring them.

Bending the rules for a good outcome is often cited as a defense for not adhering to a particular policy, regulation, law, or rule, but most legal experts agree that bending the rules—even with the best of intentions—is risky business. As Jonathan Cooperman, JD, MS, PT, past president of the Ohio Physical Therapy Association, put it, “Bending the rules is a slippery slope, and once you start bending a rule, then you start bending it a little harder and a little harder and a little harder.” After a while, no one remembers the proper procedure. Nonadherence to approved policies could result in ethical violations as well as regulatory and legal liability to the practitioner and/or the institution. Even if a patient is not harmed, bending the rules can put you and your institution in jeopardy.

Dietetics practitioners encounter many ethical and legal gray areas in professional practice every day. These issues may include patient-related decisions, appropriate business practices, or relationships with professionals, customers, and employees. In today’s litigious world, with expanding and changing practices in both institutional and private practice setting, many professionals are experiencing an increase in ethical conflicts and greater exposure to legal action than ever before. And, unfortunately, sometimes making the wrong decision can have long-lasting and significant negative consequences for our lives and careers.

Fortunately, the Academy of Nutrition and Dietetics has developed tools to help dietetics practitioners recognize and avoid legal and ethical pitfalls in our various work environments. The Academy and Commission on Dietetic Registration Code of Ethics for the Profession of Dietetics is recognized and respected by our members as well as many other health care professionals. This article addresses three areas of practice that may present ethical and legal dilemmas for many practitioners. These include 1) practicing beyond a person’s qualifications, capabilities, education, or experience; 2) billing and proper use of health care resources; and 3) advertising services.

Practicing Beyond One’s Qualifications, Capabilities, Education, or Experience

Similar to most other credentialed professions, dietetics practitioners must pass a basic knowledge examination administered by an independent organization, specifically the Commission on Dietetic Registration’s Registration Examinations for Dietitians and Dietetic Technicians. The successful completion of these tests acknowledges that an individual has demonstrated minimal competence for entry-level practice. It does not mean that every person passing the examination should immediately begin practicing in a specialist practice area with which he or she does not have adequate familiarity. The Academy has developed an interactive decision analysis tree to help determine whether practitioners are qualified in a particular area. There are knowledge and competency differences between an entry-level and an advanced practice dietetics practitioner. There are many dietetics practitioners who have completed additional training and have been granted authorization or privilege by their institution or state licensure body to perform tasks such as insulin regulation, diet ordering, and placement of nasal gastric tubes. If a patient or client asks the practitioner about his or her experiences with a certain disease, diet, or treatment plan, the practitioner should respond honestly.

According to Principle 14 of the Code of Ethics, the dietetics practitioner assumes a lifelong responsibility and accountability for personal competence in practice. If you do not have the knowledge, desire, or capacity to acquire the information on a nutritional matter, you should not accept or counsel a client on that issue. Your private practice can choose which patients you accept as long as you do not discriminate solely by denying legally protected classes of persons. As described in Principle 1 of our Code of Ethics, dietetics practitioners have a responsibility to recognize the limits of their qualifications and to conduct their business with honesty, integrity, and fairness.

Another important consideration for dietetics practitioners is to recognize that their scope of practice goes beyond simply completing the required paperwork. For example, an organization/institution may have a policy that says all clients with a particular diagnosis must be seen and assessed by a registered dietitian nutritionist within a certain number of hours. Merely seeing and charting an assessment is not the end of our responsibility. We have a duty to follow up on those recommendations to ensure that they were implemented and that the patient does not suffer harm. This supports Principle 2 of the Code of Ethics, which states that the dietetics practitioner supports and promotes high standards of professional practice.

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BILLING AND PROPER USE OF HEALTH CARE RESOURCES

A relatively new legal and ethical issue facing dietetics practitioners is improper billing of procedures. Some dietetics practitioners have incorrectly charged insurance and other third-party payers for their services. Even honest billing mistakes can have legal implications, but more alarming is that some dietetics practitioners overcharge because they believe that they are not being reimbursed at adequate funding levels. Charging for services not performed or time not spent with the client is unethical behavior. In the May 2012 issue of ACP Hospitalist, Virginia Hood, MBBS, MPH, MACP, former president of the American College of Physicians and past chair of its Ethics, Professionalism, and Human Rights Committee, said, "The major ethical issue is how do you balance doing good, and not doing harm, with involving patients in shared decision making and making sure resources are justly distributed to everyone?" Di- etetics practitioners need to provide pa- tients with what is jointly determined as necessary. Similar to physicians, dietetics practitioners have a responsibility to practice effective and efficient health care and to use health care resources responsibly. The American College of Physicians Ethics manual elaborates on their very significant obligation to pro- vide parsimonious care that uses the most efficient means to effectively di- agnose and treat a patient and respects the need to use resources wisely.5

Some dietetics practitioners have created problems with third-party payers by charging for more expensive assessment services than were ren- dered. It is important to develop and use standardized billing procedures. You should be able to provide written doc- uments that explain your billing policies and procedures to each of your clients. Minimally, these documents should indicate what is included in the office visit, what the fees are for visits, what and when payment is due, and your policy on missed and canceled pay- ments.6 Dietetics practitioners, like physicians, may be bound by contract to provide care to beneficiaries of health plans in which they participate.7 Therefore, it is important to read and understand the contracts you sign with third-party payers. Often policies are developed and rewritten after problems with nonpayment and/or noncompli- ance issues. Your billing document may be changed but it needs to be adminis- tered and used fairly with all clients.

A comprehensive chart was devel- oped by Mary Hodorowicz, MBA, RD, CDE, CDC, and Jane White, PhD, RD, FADA, and published in the Journal in March of 2012 to show the basic elements of sound business and ethical billing practices for dietetics practi- tioners.8 The accompanying article also emphasized that lack of knowledge about the statutes and regulations regarding third-party payers will not be an excuse for errors. Consequences of improper billing could result in loss of professional credentials, licenses, and even prison sentences.

More clinicians need to be involved with conducting basic outcomes studies to determine whether they are truly providing cost-effective services. Prin- ciple 16 of our Code of Ethics emphasizes that the dietetics practitioner certifies that services have been rendered only if he or she has personally provided or supervised the provision of those ser- vices.2 If you inadvertently make a billing error, do not try to hide it, but rather report it and take corrective ac- tion to ensure that it does not happen again.

ADVERTISING SERVICES

Some professional organizations have very strict guidelines for advertising their services. For example, lawyers were once prohibited from any type of advertising. At present, state law often controls the type of advertising that is allowed by licensed professionals. The Internet has also expanded marketing opportunities, particularly for those in private practice. According to the American Speech-Language-Hearing Association, the relaxation of their advertising restrictions has increased the number of advertising-related ethics complaints received by their na- tional board.9 Several ethics complaints have also been submitted to the Acad- emy of Nutrition and Dietetics regarding false advertising claims by credentialed and noncredentialed practitioners. The American College of Physicians Ethics manual states, "Advertising by physi- cians or health care institutions is unethical when it contains statements that are unsubstantiated, false, deceptive, or misleading, including statements that

mislead by omitting necessary in- formation."7 Registered dietitian nutritionists (RDNs) who choose to advertise their services must be honest in all of their claims and should specifically list their areas of preferred or limited prac- tice if they are working only in a spec- ialty area. For example, if an RDN specializes and only works in sports nutrition, he or she should clearly state that in all advertising and billing mate- rials. In addition, he or she should ensure all third-party payers are also aware of this limited specialty and clearly indicate this restricted area of practice in their patient literature. The analogy is similar to that of a physician who specializes in only one type of medicine. For example, a cardiologist would not be expected to perform colonoscopies. An RDN specializing in eating disorder counseling may not be knowledgeable about complicated renal issues and the diets of these patients. The dietetics practitioner should not claim or guarantee results if he or she is unable to document those results. Principle 6 of the Code of Ethics states, "...the dietetics practitioner does not engage in false or misleading practices or communications."2

As our profession expands and shifts from treating diseases to preventing them, dietetics practitioners must keep abreast of changes in practice. Private practice RDNs could benefit from using an outside organization to conduct periodic risk assessments to identify any risky behaviors that might have been inadvertently adopted.1 As mem- bers of an evidence-based profession, we must keep our practices sound, both nutritionally and ethically. Some of the ways to improve our general ethical practices are to take courses in moral and ethical reasoning and deci- sion making, review health care laws and regulations, serve on institutional ethics committees,9 and review the many ethics educational resources that have been created to assist practi- tioners in understanding the practical application of the Code of Ethics.10 These include:

- Ethics committee
- Ethics education toolkit
- Resources available for required continuing professional educa- tion in ethics
- Ethics opinions
- Ethics in Action columns
Dietetics practitioners experience ethical and legal challenges daily, and sometimes the two may not be in total agreement. If conflicts emerge between ethical and legal obligations, practitioners are advised to seek legal counsel for clarification about any potential legal consequences of their decisions.

References