

PROPOSED LANGUAGE TO REVISE STANDARD 3.04 OF THE ETHICS CODE

The Council of Representatives of the American Psychological Association (APA) made the following request to the Ethics Committee in the implementing language to the *Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings* (the “2015 Resolution”) upon its adoption in August of 2015:

Council asks the Ethics Committee to consider pursuing an appropriate course of action in as expeditious a manner as possible to incorporate into the Ethics Code the prohibitions surrounding psychologist participation in national security interrogations, as set forth in this policy.

The Ethics Committee is seeking public comment concerning a proposed change to the Ethical Principles of Psychologists and Code of Conduct (the “Ethics Code”) to be responsive to the request from the Council of Representatives.

The task of incorporating the 2015 Resolution into the Ethics Code was a challenging one. As a result, two possible versions of a change to Standard 3.04 (Avoiding Harm) of the Ethics Code are being proposed. Please note that 3.04 (a) is the current (2010) Ethics Code Standard 3.04 and remains the same in both Versions A and B. The Ethics Committee is seeking public comment on both versions. Each version is listed below with a rationale and concerns.

Public comment will further shape this proposed revision to the Ethics Code.

Version A

3.04 Avoiding Harm

(a) Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist or otherwise engage in torture.

Rationale

The APA Ethics Code is an umbrella document, broadly written to be able to guide ethical behavior for all psychologists in the breadth of activities and settings in which psychologists are active. Many settings and professional activities involve difficult ethical challenges that risk doing harm. The purpose of the Ethics Code is to provide education on ethical expectations and to establish standards. Ethics adjudication occurs when there is behavior that violates those standards. Following a thorough review, the Ethics Committee has not found any other mental health professional association ethics codes with the same format as ours that include language regarding torture or interrogations other than the ethics code of the American Psychiatric Association, which has one sentence stating that psychiatrists shall not participate in torture. Most associations surveyed had related policy statements as does APA. Thus, the

language in version A is consistent with, but more specific and clear than the American Psychiatric Association language.

It is also important for the language to be consistent with the other Standards of the Ethics Code so that there is coherence and consistency within the Code across standards. The language should not be so specific that it is inconsistent with the overall framework of the Ethics Code. The 2015 Resolution is much more specific than any other language in, or area of, the current Ethics Code. For example, the Ethics Code, as an umbrella instrument designed to serve all psychologists, does not prohibit work in specific environments or with specific employers. Rather, the Code's focus is on the determination of ethical functioning within the scope of environments in which psychologists are employed. Nevertheless, behaviors that do not meet ethical standards, such as a standard forbidding involvement in torture, are adjudicated irrespective of a work environment. The language in Version A would allow this to occur, thus meeting the needs of the membership to address such unethical behavior.

In addition, it is important to consider unintended consequences, such as the impact of an amendment to the APA Ethics Code on state licensing boards that include the APA Ethics Code in their licensing law. States may not continue to use the APA Ethics Code as the basis for their licensing law if they do not feel that an amendment is consistent with their own constraints and needs.

The APA Ethics Code serves a different purpose, and is constructed of different language, than are policy statements. Thus, policy statements do not readily translate into the Ethics Code language. Not all APA policy needs to, nor should, be added to the Ethics Code.

Concerns

The addition to the Ethics Code of 3.04 (b) as proposed in Version A is important for adoption but does not provide psychologists with the specific guidance that is necessary to interpret the meaning and understanding of the role of psychologists working for military and intelligence entities, and contracted services related to national security interrogation. It is true that other health associations have not addressed this subject extensively in their Ethics Codes but no other profession has experienced the cross-cutting impact on leadership, staff, governance, membership, and the public that APA has faced. It is also true that with the exception of some standards such as those related to sexual misconduct the Ethics Code is elegantly written to convey interpretable meaning and does not sacrifice generalizability for a particular proficiency or specialty. This standard, therefore, is not being written for military psychologists only but for the profession and the public to understand the role of professional psychologists in national security.

All professions have multiple means by which the professional values of their membership are defined and conveyed (e.g., resolutions, policies, guidelines, by-laws, amendments). In psychology, these are meant to further define values and to provide decision making factors to psychologists in meeting the standard of practice against which we measure our behavior. It is true, however, that none of these documents or positions are enforceable unless cited in the APA Ethics Code or through jurisdictional legislation. Because of the association-wide impact and implication for action resulting from the recent independent review, the membership and the public need to have clarity on enforceability.

Version B

3.04 Avoiding Harm

(a) Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist or otherwise engage in torture or cruel, inhuman or degrading treatment or punishment.

(c) Psychologists do not conduct, supervise, or otherwise assist or be present at any national security interrogations for any military or intelligence entities, including private contractors working on their behalf. They do not advise on conditions of confinement insofar as these might facilitate such an interrogation. Psychologists may consult on policy and training pertaining to information-gathering methods that are humane and not related to any specific national security interrogation or detention conditions.

Rationale

3.04 (b) The specific delineation of the phrase “cruel, inhuman or degrading treatment or punishment” is important. The definition of the term “torture”, or any descriptive term, can be changed by any entity that has the authority to change that definition. During the early years of detainee interrogation under the George W. Bush administration, the term torture was narrowly defined thereby omitting conditions that standards of care would include as torturous (e.g., techniques ranging from sleep deprivation to waterboarding). Even though these early exclusions are now acknowledged as a means of torture, the definition can be changed by any entity that has the authority to change that definition.

The term “torture” could be defined quite differently by individuals of different perspectives, motives, and values. The addition of the phrase “cruel, inhuman or degrading treatment or punishment” further defines the unacceptability of actions that may fall short of torture yet nonetheless are harmful. Our APA Ethics Code, APA adopted guidelines, and standards of practice rely on our shared definition of reasonableness to make judgments and decisions about psychologists’ behaviors. The standard of care for what is “torture” or what is “cruel, inhuman, or degrading” is determined by the prevailing view of other psychologists, not other individuals involved in the activity in question. As used in the 2010 Ethics Code, the term *reasonable* means “the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time.” For example, some authority may consider sleep deprivation cruel but not torturous. Without the additional description of cruel, inhuman, and degrading, authorities may determine that an activity such as sleep deprivation is cruel but not torturous resulting in the acceptance of that activity. Most psychologists would agree that excessive sleep deprivation would be deemed cruel and inhuman. Psychologists, therefore, look to our own prevailing judgment rather than definitions determined by other entities if our determination is of a higher level of safety and welfare.

3.04 (c) The prohibition of psychologists from participation in national security interrogations directly on behalf of military or intelligence entities or through other parties working on their behalf corrects the conflict of interest inherent in representing a third party (e.g., intelligence entities) for whom “safeguarding

the welfare of others” (Ethics Code, 2010, Principle A) or avoiding harm (ES: 3.04) is not the paramount concern. Because the public views psychologists as benevolent and nonmaleficent, the very involvement in any way of psychologists in national security interrogations can create a deceptive and inaccurate impression to both the public and those being interrogated that the role of psychologists in interrogations is “safeguarding the welfare of others” (Ethics Code, 2010, Principle A) and might result in less oversight based on reliance of psychologists as defenders of the welfare of others. When the client is any entity other than the individuals being interrogated or their representatives, psychologists’ purpose of involvement and allegiance to the interrogated individuals is compromised.

Conditions of confinement can be manipulated in attempts to affect the outcome of interrogations. Manipulation of antecedent conditions prior to interrogation can itself be a means of torture or cruel, inhuman, or degrading treatment (e.g., semi-standing positions, temperature control, noise, light). The involvement of psychologists in manipulation of confinement conditions compromises psychologists’ obligation to avoid harm (ES: 3.06) and can, whether knowingly or not, facilitate engagement in torture or cruel, inhuman, or degrading treatment.

The enhanced statements in 3.04(b) and the addition of 3.04(c) adds the definitional specificity necessary for psychologists to make informed decisions and reduces the likelihood of intended or unintended misinterpretation.

Concerns

3.04 (b) Concerns related to this section are about the phrase “cruel, inhuman or degrading treatment or punishment.” As an umbrella document, broadly written to guide ethical behavior, the Ethics Code should not be influenced by politics, nor should it be tied to policies or definitions of the George W. Bush or any other administration. If torture can be interpreted or defined differently by different entities, so can “cruel, inhuman, or degrading treatment or punishment.” There are many times when psychologists make decisions or recommend interventions that could be considered cruel or degrading. These include certain behavioral programs, custody decisions, and recommendations made by prison psychologists to deny parole. It may also be the case when a psychologist in an institutional setting recommends putting a client/patient in restraints, seclusion, or a particular hold. For purposes of an Ethics Code, this language is problematic and would be troublesome for many psychologists in other settings. If psychologists look to their prevailing judgment regarding what is “cruel, inhuman, or degrading treatment or punishment,” then psychologists must look to their prevailing judgment regarding what is “torture.” Actions that fall short of torture, but are nonetheless harmful are addressed in the Ethics Code in Section 3.04(a).

3.04 (c) Several concerns arise in this section of Version B. First, there is a lack of clarity about what is meant by “be present.” It is not clear if this means present in the room where an interrogation is taking place, being present in the building, or working at a site where interrogations take place.

Second, the wording in section “c” does not distinguish between work that is done on US versus international sites, which was the concern raised in the 2015 Resolution. The Resolution was not intended to forbid work that is already subject to Constitutional oversight, as the problems arose where there were not those protections. This wording would now cover national security work that is done locally. Moreover, merely changing the language to forbid only foreign locations would be extremely peculiar in the context of the rest of the Code.

Third, there is also a lack of clarity regarding the sentence, “They do not advise on conditions of confinement insofar as these might facilitate such an interrogation.” It is not clear how confinement is related to interrogations. Also, conditions of confinement may be necessary for someone’s safety or for other reasons not related to interrogations. If conditions of confinement means having someone confined in a semi-standing position, or in a very hot or very cold room, or in a room that is noisy or a room that is always brightly lit, the meaning needs to be clear so that the Ethics Committee (and potentially licensing boards) will know how to interpret the behavior of members. Doing so, however, would make this section even more cumbersome and peculiar within the context of the rest of the Code. If torture is used as part of confinement, that is addressed by saying that psychologists do not participate in, facilitate, assist or otherwise engage in torture as in Version A.

Fourth, and of concern for the Ethics Code versus a Resolution, this section would differ from the other standards of the Ethics Code because it specifies specific employers and settings where psychologists work. The focus of the Ethics Code is on behavior that is deemed ethical or unethical, rather than work settings or employers. This language opens the possibility of other work environments (e.g., certain research labs), employers (e.g., prisons), or other professional activities (e.g., drug trials) being prohibited in the future. This is a dangerous precedent for the Code. The Code should continue its focus on professional behaviors, as is the case throughout the General Principle and the Guidelines.

Finally, this version could set a concerning precedent of incorporating other Council of Representatives motions directly into the Ethics Code, especially as Council membership and agendas change over time. The general purpose of an Ethics Code, the type of language used, the breadth and focus, and the clarity that are necessary for a Code of Ethics are very different from the way Council Resolutions are worded. While identifying ethical and unethical behavior (e.g., torture) is absolutely appropriate for inclusion in the Ethics Code, the specific language from the 2015 Resolution is not.