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## CHAPTER 8

# ETHICS IN VICTIM SERVICES<sup>1</sup>

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*The purpose of this chapter is to encourage the use of ethical standards to further the evolution of victim assistance as a professional discipline. The chapter includes four sections:*

***Introduction to ethics and ethical standards*** provides a brief history of ethics and the professional development of victim service professional standards through the National Victim Assistance Standards Consortium.

***Values and response to crime victims*** describes the distinction between personal and professional values and helps participants understand the impact of both on the victim service provider's response to crime victims.

***Ethical decisionmaking and ethical dilemmas*** describes the steps of an ethical decisionmaking model and considers them in relation to common ethical dilemmas.

**Educating yourself about legal and policy issues** provides guidelines to research and reflect upon ethics in the victim service provider's own jurisdiction, discipline, and place of employment.

### NVAA Module 8 Learning Objectives

- Describe ways that their own attitudes, beliefs, and values influence their response to victims of crime.
- Find appropriate ethical standards in the NVASC Standards for Victim Assistance Programs and Providers relative to common professional situations.
- Use a standard decisionmaking process when faced with an ethical dilemma.

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<sup>1</sup> This chapter is largely excerpted or paraphrased from writings authored by Melissa Hook with funding provided by the U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, under grant #95 MU-GX-K002. These materials were subsequently published in a text, *Ethics in Victim Services*, (Baltimore: Sidran Institute Press and Victims' Assistance Legal Organization, 2005) and are used here by the Office for Victims of Crime with acknowledgment to the text's publisher. For more information about the book, visit [www.sidran.org/store](http://www.sidran.org/store). Discounts are available for NVAA participants. Contact [orders@sidran.org](mailto:orders@sidran.org) for details.

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## Introduction to Ethics and Ethical Standards

This section provides an introduction to the concept of ethics and to the *Ethical Standards for Victim Assistance Providers* developed by the National Victim Assistance Standards Consortium (NVASC). NVASC is a multidisciplinary group of victim service experts formed for the express purpose of creating standards of competency and credentialing in the victim services discipline.

### The Evolution of Ethics

For thousands of years, philosophers, scientists, and teachers have contemplated matters such as the meaning of life, what behaviors are most valued, and the distinction between right and wrong behavior. Perhaps the tendency to pursue such matters is just part of being human or necessary for surviving peacefully. Aristotle in the neo-Greek era taught that leading a virtuous life was the path to happiness and life satisfaction.

As humankind evolved, societies developed their own systems of moral principles based on values. Values are ideals that society upholds as reflective of the way the world should be and how people should act toward one another. It is interesting to note that many of these moral principles are nearly universal regardless of culture or historical time period. For example, most societies expect members to refrain from murder, rape, theft, assault, slander, and fraud. The standards almost always reflect the virtues of honesty, compassion, and loyalty.

Moral principles are the foundation of ethics, which is the professional discipline dealing with standards of right and wrong that serve as a guide for human behavior. Ethics are usually stated in terms of obligations, benefits to society, fairness, or specific virtues. Developing a code of ethics has been an essential part of all professional disciplines since the ancient professions of medicine and law were established. The earliest known professional code, for instance, was developed in ancient Greece in the fourth century B.C. when Hippocrates initiated a movement calling for all physicians to exhibit a high level of professional and ethical behavior. As a guide for this behavior, the Hippocratic Oath was adopted by medical doctors throughout the ancient and medieval world and continues to serve as the inspiration for modern codes of ethics in the field of medicine.

Victim assistance began as a grassroots movement in the late 1960s but is now evolving as an established profession. As such, there exists the need for ethical principles to guide the practice of victim services. When a profession establishes a code of ethics, it serves several purposes. It safeguards the reputation of the profession, protects the public from exploitation, and furthers competent and responsible practice. The victim assistance ideals of *do no harm*, *care for others*, *eliminate injustice*, and *treat others as one wishes to be treated* are all rooted in centuries of ethical reasoning and inform most ethical codes in the helping professions.

## Standards in Victim Services

The professional evolution of victim services has given rise to a wide diversity of organized community- and systems-based organizations whose service to crime victims range the entire gamut of the justice experience. As this evolution has continued, there has been a call on many levels for greater accountability by victim assistance providers, with many victim assistance organizations and coalitions drafting codes of ethics for use by their memberships. This is a natural progression paralleled in other disciplines and is well-founded for a movement increasingly recognized by the juvenile and criminal justice systems, academia, and the public at large as a credible and much-needed service. To facilitate use of such ethical codes and to promote consistency and quality of standards, the National Victim Assistance Standards Consortium (NVASC) developed a set of model program, competency, and ethical standards for the field of victim assistance.

NVASC was created in 2000 by the Office for Victims of Crime at the U.S. Department of Justice with the express purpose of creating model standards of conduct for the field of victim assistance. To do this, NVASC researched existing standards in victim assistance and similar professions, polled the field of victim assistance, and utilized the expertise and experience of a representative and diverse core of victim assistance professionals. The result of this work is the *NVASC Standards for Victim Assistance Programs and Providers* published by The Center for Child and Family Studies, College of Social Work, at the University of South Carolina. The document can be accessed at: [www.sc.edu/ccfs/training/consortium.html](http://www.sc.edu/ccfs/training/consortium.html).

The book *Ethics in Victim Services* is based on the NVASC model of ethical standards. It is designed to help victim assistance professionals identify, analyze, and resolve the many ethical dilemmas they face in their work on a daily basis. A CD-Rom by the same name is a full training based on that text.

## NVASC Ethical Standards

The foundation for the NVASC code of ethics consists of underlying values such as client autonomy, privacy, and self-determination; objectivity and abstention from abuse; honesty and equity of service; compassion and respect for individuals; social responsibility; confidentiality; and working within one's range of competence. This set of guiding values represents the foundation from which the NVASC developed the following 19 standards of professional conduct to guide victim assistance providers in resolution of common ethical challenges.

## Section 1: Scope of Services

**Ethical Standard 1.1:** *The victim assistance provider understands his or her legal responsibilities, limitations, and the implications of his/her actions within the service delivery setting and performs duties in accord with laws, regulations, policies, and legislated rights of persons served.*

Many agencies do not provide this type of training and expect service providers to gain this knowledge on their own or on the job. A victim assistance provider who has an insufficient knowledge of the specifics of the legal authority under which he or she works may unintentionally follow unethical practices, violate the law, and/or cause harm to the victim. The final section of this chapter contains more information on educating oneself about legal and policy issues.

**Ethical Standard 1.2:** *The victim assistance provider accurately represents his or her professional title, qualifications, and/or credentials in relationships with persons served and in public advertising.*

The professional and educational credentials of victim assistance providers that pertain to their positions should be disclosed in order to avoid misconceptions about their role in the context of service to the victim or their responsibilities to the agency and their colleagues. Victim assistance providers should exercise discretion in terms of self-promotion or advertisement. For example, they should not represent themselves as counselors, therapists, or specialists in a specific type of advocacy if they have not received the training and accreditation that the discipline requires. They are discouraged from using victim testimonials or descriptions of the uniqueness of their services as a means of self-promotion.

**Ethical Standard 1.3:** *The victim assistance provider maintains a high standard of professional conduct.*

This means that providers must not only avoid improper behavior, but avoid even the *appearance* of impropriety. In maintaining a high degree of professional conduct, providers must not use their positions to obtain special favors, privileges, advantages, gifts, or access to services that are unrelated to agency interests or that serve them personally. Moreover, providers must distinguish between agency and personal points of view, and refrain from communicating a personal viewpoint as if it were agency opinion or policy.

**Ethical Standard 1.4:** *The victim assistance provider achieves and maintains a high level of professional competence.*

Achieving and maintaining professional competence serve the interests of the victim, the field of victim services, and the victim assistance provider. Victim assistance providers must keep informed of new and pertinent developments within the field, including research findings, newly enacted statutory guidelines, and policy changes. Being competent also means recognizing the need for supervision or consultation and providing appropriate referrals when task demands fall beyond the provider's defined role and

responsibilities. Providers must also be aware of the signs of severe stress and burnout and refrain from providing services if impaired. More information on self care is provided in Chapter 11, “Developing Resilience.”

**Ethical Standard 1.5:** *The victim assistance provider who provides a service for a fee informs a person served about the fee at the initial session or meeting.*

Full and accurate information concerning when payment is expected, whether insurance may cover any expenses, how payment is handled, and the policy regarding missed or canceled appointments must be clearly communicated before services are delivered. Bartering—that is, the trading of goods or services for victim assistance services—is not appropriate except in situations wherein the victim’s culture provides for such customs, when it would be offensive to the victim to refuse such an arrangement, when the bartering creates no potential conflict of interest, and with the full knowledge of the provider’s supervisor.

## **Section 2: Coordinating within the Community**

**Ethical Standard 2.1:** **The victim assistance provider conducts relationships with colleagues and other professionals in such a way as to promote mutual respect, public confidence, and improvement of service.**

Since the field of victim services is one of public service, it is important for providers to contribute, whenever possible, to public confidence and betterment of victim services. When engaged in professional communication or public speaking, providers should clarify that they are speaking on their own behalf, as a representative of their agency, or on behalf of all victim assistance providers.

**Ethical Standard 2.2:** **The victim assistance provider shares knowledge and encourages proficiency in victim assistance among colleagues and other professionals.**

Knowledge sharing in the field of victim assistance should be carried out in the spirit of continuing improvement of the quality of victim services. Victim assistance providers must be ready, willing, and eager to share their knowledge and skills with other practitioners both in and out of the workplace, including both paid and volunteer workers. In the case of volunteer workers, victim assistance providers should do everything within their power to ensure that volunteers have access to the information, training, and resources they need to do their jobs properly and effectively. Particularly in the field of victim assistance, service to victims involves a team approach and the willingness to share with and listen to colleagues from various cultures, disciplines, and philosophies.

**Ethical Standard 2.3:** **The victim assistance provider serves the public interest by contributing to the improvement of systems that impact victims of crime.**

Providers are expected to take part in professional or community activities that support the goals of their own program or of victim services more generally, including the improvement of justice system(s), victim services, and/or access to such services.

### **Section 3: Direct Services**

#### **Ethical Standard 3.1: The victim assistance provider respects and attempts to protect the victim's civil rights.**

In addition to basic civil rights, many state statutes and guidelines provide for the protection of other rights, including rights around confidentiality (discussed further in Ethical Standard 3.5) and the right to nondiscrimination (Ethical Standard 3.9).

#### **Ethical Standard 3.2: The victim assistance provider recognizes the interests of the person served as a primary responsibility.**

The provider should advocate for what the victim desires (see Ethical Standard 3.4) and for what is in his or her best interests within the limits of ethical standards, program policy, and state and federal laws. It is never appropriate for a provider to offer a service only if a victim agrees to a particular course of action. A provider may deeply disagree with a victim's proposed course of action, but the only ethical response is to provide as much information as possible so that the victim can make a fully informed choice. If a conflict develops between the provider and the victim over these choices, the provider should explain the situation, make a referral for an alternative provider, and/or seek outside assistance to resolve the issue.

#### **Ethical Standard 3.3: The victim assistance provider refrains from behaviors that communicate victim blame, suspicion regarding victim accounts of the crime, condemnation for past behavior, or other judgmental, anti-victim sentiment.**

To maintain professional trust with the victim and effectively advocate on his or her behalf, a victim assistance provider must be vigilant to avoid doing or saying anything that might communicate suspicion, blame, doubt, or condemnation of the victim's actions, nonactions, feelings, beliefs, and so on, about the crime.

#### **Ethical Standard 3.4: The victim assistance provider respects the victim's right to self-determination.**

Victims have the most informed perspective regarding their personal history, victimization, and risk, and therefore they have ultimate authority over their interests. If the provider's perceptions of what is best for a victim are at odds with that victim's point of view, information can be presented to enhance the victim's perspective, but ultimately, the provider should encourage victims to make their own decisions. If there is a conflict between what the victim wants and the applicable state, federal, or agency authority, then the provider must take steps to resolve that conflict, including disclosure of the conflict to the victim and possible referral to an outside professional.

**Ethical Standard 3.5: The victim assistance provider preserves the confidentiality of information provided by the person served or acquired from other sources before, during, and after the course of the professional relationship.**

A violation of confidentiality can be extremely harmful to the victim; it can also potentially leave the victim assistance provider and/or his or her agency open to legal liability. Since confidentiality is a complex area of ethical consideration, due care should be taken by all providers to be fully informed and continually current regarding any and all legal, statutory, policy, and agency authority. Information about confidentiality should be provided to the victim at the first meeting, or at least at the first available opportunity if exigencies of the first meeting do not allow it. In disclosing information regarding confidentiality or in communicating to a victim the fact that certain confidential information may need to be disclosed, the provider should be prepared to address the victim's reaction to this disclosure. While a provider or agency cannot provide specific confidential information for statistical purposes, it is appropriate to provide it without identifying its source. Exceptions to confidentiality are discussed later in this chapter.

**Ethical Standard 3.6: The victim assistance provider avoids conflicts of interest and discloses any possible conflict to the program or person served, as well as to prospective programs or persons served.**

Conflicts of interest can arise as the result of past professional relationships, either within the current position or through some past employment. Previous relationships, be they familial, professional, personal, or business, with individuals who come to a victim assistance provider for services create potential conflicts of interest. Providers who have survived a crime and, as a result, have entered the field of victim services may at times be tempted to refer to their own victimization during the counseling relationship with another victim. The transfer of focus from the client victim's experience to the provider's experience can be considered another kind of conflict of interest. Victim assistance providers must be rigorous in their efforts to discern potential conflicts of interest and step down from any job where the conflict will lessen the quality of service they deliver.

**Ethical Standard 3.7: The victim assistance provider terminates a professional relationship with a victim when the victim is not likely to benefit from continued services.**

The provider should prepare the victim for the eventuality of termination of services, particularly if the victim is unusually vulnerable and/or derives a great deal of support from their relationship. If referral to another professional is indicated, the provider should obtain as much information as possible and provide this to the victim in a timely manner. Providers are strongly discouraged from terminating a relationship with a victim in order to pursue a business or personal relationship with the victim.

**Ethical Standard 3.8: The victim assistance provider does not engage in personal relationships with persons served which exploit professional trust or which could impair the victim assistance provider's objectivity and professional judgment.**

Dual relationships are sometimes difficult to avoid, particularly in small communities. The application of the standard to avoid dual relationships is therefore explored in the context of the potential to cause harm. Whenever there is the potential for loss of objectivity, conflict of interest, or the exploitation of a victim seeking help, the mixing of personal and professional roles is not appropriate. When a provider cannot avoid a personal or business relationship with a client, the provider should seek counsel and supervision from colleagues regarding his or her objectivity regarding the case and best interests of the client. Under any circumstance, sexual relationships with victims are the most serious violations of this ethical standard. Further, a provider should not behave in a way that verbally or physically indicates sexual interest toward current or former clients. It is the provider's responsibility to act appropriately with clients and maintain appropriate boundaries regardless of the client's attempts to initiate a personal or business relationship.

**Ethical Standard 3.9: The victim assistance provider does not discriminate against a victim or another staff member on the basis of race/ethnicity, language, sex/gender, age, sexual orientation, (dis)ability, social class, economic status, education, marital status, religious affiliation, residency, or HIV status.**

If there is any doubt about a provider's ability to offer judgment-free and objective assistance, the provider should seek consultation and/or supervision. More information about personal values and responses to victims is provided later in this chapter.

**Ethical Standard 3.10: The victim assistance provider furnishes opportunities for colleague victim assistance providers to seek appropriate services when traumatized by a criminal event or client interaction.**

It is common for victim assistance providers to “process” traumatic events or other difficulties experienced in the course of their everyday jobs. Because of limited resources, it may be difficult—if not impossible—for providers to pursue outside intervention or support. However, if possible, providers who are in need of formal support in the wake of trauma should try to seek assistance from allied professions or providers in other jurisdictions, so as to minimize the possibility of potential professional conflicts of interest.

## **Section 4: Administration and Evaluation**

**Ethical Standard 4.1: The victim assistance provider reports to appropriate authorities the conduct of any colleague or other professional (including oneself) that constitutes mistreatment of a person served or that brings the profession into dishonor.**

A victim assistance provider must report clear violations of ethical standards to the appropriate authorities. This would include governing boards, funding entities, administrators, and supervisors. The victim assistance provider should never knowingly

participate in actions that violate ethical standards. Furthermore, providers are encouraged to self-report violations that require a written report be filed.

Since the classical Greek era, ethicists have contemplated codes of human behavior that manifest their values and belief systems. As societies expanded and grew more complex, ethical theories increased in scope from rules of behavior for individuals to rules that addressed societal well-being. Professional ethics have grown out of a need to set performance standards within specific disciplines. The field of victim assistance has now matured to the point where a code of ethics has become useful to establish standards of excellence in the delivery of services to crime victims.

## Values and Response to Crime Victims

This section is intended to raise awareness of personal attitudes, biases, and beliefs and how these may affect the victim service provider's responses to victims.

### Personal and Professional Values

Providing quality services to the victims of crime depends on many factors, but begins with the personality, moral orientation, and subjective beliefs and opinions of the victim service provider. Victim services are about relationships between providers and crime victims. Therefore, the personal values of the provider and the ethical codes that support these values will directly influence his or her interactions in the relationship.

Before beginning, consider the following terms and their definitions:

- *Values* are the ideals or beliefs to which an individual or group aspires.
- *Morals* relate to making decisions between right and wrong.
- *Ethics* is the articulation of standards of behavior that reflect those values or morals.

Victim assistance providers should remember that, when ethical challenges arise, they may have little time to distinguish between right and wrong before they are required to act. Inaction is often the fallback position when stressful events happen too quickly to think through the appropriate response. Socrates' advice to "know thyself" is a reminder of the importance of undertaking a serious moral inventory. Few know the strength of their moral fiber or the depth of their character until it is tested. Victim assistance providers sometimes have only a minute to decide what is right or wrong.

Knowing oneself ethically requires self-awareness. It is important that providers understand their own definition of a morally good person. They must understand how their personal values may influence their response to challenging situations, how their

religious beliefs may influence their judgments, and how their attitudes toward the rights of individuals may come into conflict with the broader principles of justice.

As important as it is to understand their own moral orientation, providers must also understand how willing they are to act on their values and to uphold their personal ethics if they are challenged. Being aware of the need for action, determining the right course of action, and having the emotional and intellectual commitment to follow through are all important factors when assessing personal values.

Professional values grow from the same basic desire as personal values (to do no harm, help others, and make the world a better place), but they are different in focus and content. Any conflict between a provider's personal and professional values could affect the ethical decisionmaking process and compromise the capacity to serve effectively in a particular circumstance. Therefore, personal values must be recognized and dealt with appropriately. A provider's character and commitment, motivation, and personal viewpoint are all authentic components of their ethical decisionmaking process. Searching for ethical self-knowledge is necessary if they are to understand their innate reactions when value conflicts appear.

When providing services to victims of crime, it is providers' professional values (i.e., ethical code) that must be the key determinants in the ethical decisionmaking process. Their competency, integrity, responsibility, respect for the victim's right to self-determination, concern for others' welfare, and social responsibility are the professional values they will rely on to help them deliver ethically responsible services. If a situation requires them to choose one objective over another, it is these values that will inform their choices.

### **Competing Priorities and Conflicts of Interest**

Some of the ethical questions that victim assistance providers may face in the service of crime victims will revolve around personal issues. Competing priorities are part of modern life, and it is not unusual that the pursuit of personal interests has the potential to conflict with professional responsibilities. That is why it is important that providers develop the tools they need to recognize and resolve situations where their personal interests might cause ethical conflicts in their work. This can be done by identifying their personal ethical standards, coming to terms with the values they support, and becoming aware of their significance in the ongoing service to crime victims. For example, when providers have personal interests in their relationships with clients, colleagues, or outside agencies and organizations, the objective exercise of their duties and responsibilities may be affected. Not only will providers' personal perceptions be challenged, but there may be viable reasons for acting in ways that could be contrary to a victim's interests.

Competing priorities between personal interests and professional responsibilities become conflicts of interest when a personal or private interest conflicts with the provider's official duty or interferes with the provider's objective professional judgment. Some

examples of personal activities that create professional conflicts of interest in the field of victim assistance include dual relationships, inappropriate use of confidential information, and accepting unofficial perks. Whenever possible, it is best to avoid any situation where there is even a potential conflict of interest. Conflicts of interest can limit the providers' ability to act in the best interest of the persons served and/or interfere with their independent judgment. Trust is the core issue. Conflicts of interest involve the abuse, either actual or potential, of the trust people have placed in providers as professionals. When a provider is faced with unavoidable ethical concerns, open communication with colleagues on these matters will be invaluable. It is important that providers share their concerns with trusted colleagues and test their professional objectivity in questionable situations.

### **Multicultural Competency**

Sometimes, providers' own cultural biases and/or limited understanding of other ethnicities and cultures can result in ethical conflicts that have important and far-reaching consequences for the delivery of services to crime victims. This area of potential ethical conflict should be taken into account as providers assess their personal values and moral orientation relative to their work.

While personal values and professional values often stem from the same beliefs, they are different in content and should not be confused. Questions over competing priorities will likely appear on a regular basis. To make choices effectively, it is critical that providers be clear about both their own values and the professional values and roles inherent to carrying out professional responsibilities.

### **Ethical Decisionmaking and Common Dilemmas**

This section describes how to use a standard process to make ethical decisions and to explore common ethical dilemmas that victim assistance providers face.

#### **A Decisionmaking Model for Resolving Dilemmas**

The practical application of professional ethical standards is not clear-cut when circumstances involve multiple interests and perspectives. Adherence to standards must be prioritized based on the needs of the person served, agency policy, and state law. When a question arises as to what is the most ethical course of professional conduct in a particular situation, an ethical "dilemma" may exist. A dilemma suggests that the answer is not obvious; there may be more than one "right" answer for the situation, depending on the various interests of the parties involved. These issues may be so complex that arriving at a clear and ethical course of action becomes a difficult process—and may be further complicated by common pitfalls in the resolution process.

Ethical decisions should be made in a systematic and logical way that recognizes that there are multiple points of view in most dilemmas. Many ethical decisionmaking models can be useful for analyzing and resolving ethical dilemmas in victim services. Here is a six-step model:

1. Assess facts. Review all relevant documents and legislation; and verify sources of all information.
2. Identify the ethical standards and the corresponding practical considerations that are in conflict.
3. Brainstorm at least three (preferably more than five) courses of action and the consequences of each.
4. Consult peers or supervisor.
5. Choose the best option and act.
6. Evaluate—How can this situation be avoided in the future?

This model affords providers opportunity to analyze a given dilemma, identify the practical considerations, review the relevant standards, and reflect on actions and outcomes.

Next, we examine common ethical issues faced by victim assistance providers, including boundary issues and multiple relationships, confidentiality, legal advocacy versus legal advice, and professional competence.

### **Boundary Issues and Multiple Relationships**

If providers offer friendship (or love) to clients outside the purview of their duties, or if they exchange goods and services with a victim, then professional boundaries have been violated and a dual relationship has been created. In a counseling or advocacy relationship, the provider has professional influence over the victim. When a second or dual relationship is established, the provider's influence and the victim's subordination are generally replicated. The victim remains vulnerable to the provider's position of power, creating an unfair dynamic in the second relationship. This blurring of the boundaries between the primary and secondary relationships permits intentional or unintentional abuse of power.

Victim assistance providers who enter into dual relationships with victims often rationalize their behavior by asserting that the circumstances are unique or that they cannot serve the client without making efforts that exceed normal boundaries. However, regardless of these well-meaning intentions, crossing the boundaries of ethical practice creates a potentially exploitive situation for the victim and impairs the good judgment of the provider. Any time providers venture outside the boundaries established in the

professional code of ethics, they do a disservice to the victim, who may ultimately experience distrust and anger.

If providers engage in dual relationships or have an inclination to do so, they should seek assistance in identifying their motivations and request intensive supervision of their interactions with victims. If necessary, they may need to leave their job until the ability to maintain appropriate boundaries has been reestablished.

## Confidentiality

Confidentiality is the foundation from which trust in the provider-victim relationship is developed and nurtured. Serving victims often requires that providers become involved in private and personal areas of people's lives. Respecting the privacy of the victims served and keeping all aspects of the relationship confidential to the fullest extent possible is an ethic that applies to every client served. Many providers are required to sign confidentiality agreements with their agencies. They are also required to maintain the confidentiality of agency records and are held accountable for adherence to the agency policy on confidentiality.

However, confidentiality is not a *guaranteed right* in the field of victim services. Unlike other legal rights of confidentiality, such as the attorney-client privilege or the psychotherapist-patient privilege, there is not a commonly established right of confidentiality between victim service providers and their clients. Some states have extended—most by way of the psychotherapist-patient privilege—the right of confidentiality to domestic violence and sexual assault victim service providers.

Even where the rule of confidentiality is established by state statute, there are situations in which confidentiality can, and even should, be broken. It is the provider's duty to inform a victim of these exceptions at the beginning of the relationship (except in extraordinary crisis situations). Exceptions to the right of confidentiality are discussed in detail in the NVASC's *Ethical Code for Victim Assistance Providers*, and include the following circumstances:

- Emergency health issues (including death), i.e., information pertaining to the health of an individual in need of immediate medical intervention.
- Conditions relating to minor victims, i.e., reports of imminent danger to the minor.
- Sharing of information among agency colleagues that extends the confidentiality clause to those privy to the information.
- Informed consent—a written release signed by the victim that permits providers to disclose written or oral communications to any individual or entity.
- When subpoenaed to testify in court in some states.

- When a confidential communication has raised a threat of imminent harm to either the client or a third party.
- Child and elder abuse; in some states, providers will be mandated to report child and elder abuse to child or adult protective services.
- Duty to warn—the legal obligation to inform people of danger; states differ regarding duty to warn and confidentiality privileges.

Regarding the latter, precedent for the “duty to warn” exception was set by the U.S. Supreme Court in 1976 in the landmark case of *Tarasoff v. Regents of the University of California*. In this case, a therapist at the university health center failed to warn a female student that her ex-boyfriend had made threats against her life during his counseling sessions. The ex-boyfriend later stabbed the female student to death. The decision cited four conditions that were necessary for the duty to warn exception to be acted upon in a counseling relationship:

- There should be evidence that the client presents a threat of violence to another.
- The violent act must be foreseeable.
- The violent act must be impending.
- The counselor must be able to identify a potential victim.

It is imperative that providers be as educated as possible about the controlling legal authority in their states with respect to confidentiality and its exceptions as these apply to providers.

### **Legal Advocacy Versus Legal Advice**

Legal advocacy to crime victims is also complicated by unauthorized practice of law (UPL) statutes. All states have laws that limit the practice of law to licensed attorneys, but the courts differ widely on how they enforce the law. Generally, the courts look at UPL in terms of harm caused by the practice of law by an unlicensed person.

Many victims of domestic violence pursue cases in court for custody and restraining orders without the services of a lawyer, and legal advocates often find themselves walking a fine line between assisting victims in the legal process and UPL. The advocate can give information and support and can make referrals to appropriate resources. For example, a victim assistance provider can give a tour of the courtroom and explain what typically happens in court, but he or she should avoid giving any advice to crime victims.

Phrases to remember and to keep clear of giving legal advice include:

- I can’t tell you what to do, but some of your options are...

- I can't predict what will happen in your case, but the usual process is...
- I know that none of these choices are what you want, but which option will move you closer to what you need?
- I can never guarantee what the judge/police/social services will do, but what usually happens is...
- It's been my experience that women in similar circumstances to yours have done...but you'll need to decide what will work best for you.

When advocates find themselves saying, “you should,” “what will work is,” or “if I were you,” it is time to stop and figure out a way to rephrase these thoughts in a way that puts the choice/responsibility back on the client.

## Professional Competence

Victim assistance providers must keep informed of all new and pertinent developments within the field, including research findings, newly enacted statutory guidelines, policy changes, etc. Achieving and maintaining professional competence serve the interests of the victim, the field of victim services, and the victim assistance provider.

Being competent also means providers must recognize when the need for supervision or other types of consultation arise. In serving the best needs of the victim, providers must stay within the clearly defined range of their roles and responsibilities. If the victims' needs go beyond these particular skills, providers must make an outside referral. To do this, providers must be familiar with community resources including the provider's allied professional contacts in that area.

When a victim no longer benefits from the services the victim assistance provider has to offer, or the services are no longer relevant to his/her needs, the professional relationship should be terminated. The provider should prepare the victim for this eventuality, particularly if the victim is unusually vulnerable and/or derives a great deal of support from their relationship. If referral to another professional is indicated, the provider should obtain as much information as possible and provide this to the victim in a timely manner. On the other hand, providers are strongly discouraged from terminating a relationship with a victim in order to pursue a business or personal relationship with the victim.

Ethical standards provide general guidelines for addressing ethical dilemmas such as dual relationships, confidentiality limitations, unauthorized practice of law, and maintaining professional competence. When ethical codes come into conflict in a provider's service to a client or among intra-agency service providers or allied professionals, there may be many ways to resolve the dilemma. Providers who develop the ability to analyze ethical dilemmas from all perspectives, who can determine the victim assistance ethical codes that apply in a particular dilemma, and who review all options with an open mind will navigate the resolution process more effectively.

## Educating Yourself About Legal and Policy Issues

This section identifies resources to learn about legal and policy issues that impact ethical practice in the victim service provider's own program or jurisdiction.

As the victim assistance discipline evolves and performance standards become institutionalized, civil liability concerns assume greater importance. Little established statutory or case law is directly applicable to victim assistance providers in terms of legal liability. Issues being addressed on the state and federal level are beginning to lay the groundwork for greater protection from liability and for confidential privilege, but the issues are still largely unlitigated and applied differently in different states. Therefore, providers and their agencies should be as educated as possible about state and federal statutes relevant to their liability in the course of their professional duties. Most agencies and organizations are aware of the applicable statutes; if not, victim advocates may need to address the issue with supervisors and research applicable laws and regulations. Beyond statutory issues, providers should also be aware of organization policies that may influence professional ethics.

Statutes and policies to be aware of include those regarding:

- Confidential privilege.
- Exceptions to confidentiality.
- Duty to warn.
- Protection from civil liability.
- Good Samaritan laws.
- Mandated reporting laws.
- Unauthorized practice of law (UPL): legal advocacy versus legal advice.

To find out more about state and federal laws and policy on these topics,

- ♦ Consult your program's policies and procedures manual.
- ♦ Consult the local law school.
- ♦ Contact the attorney general's office.
- ♦ Research statutes online.

- ♦ Check with state advocacy groups or national advocacy organizations such as the Victims' Assistance Legal Organization, National Organization for Victim Assistance, or National Center for Victims of Crime.

Because new state laws are passed and court decisions are filed that impact the field, practitioners are strongly encouraged to remain up to date on their state laws and recent court decisions as part of their ethical competency. Often, victim assistance coalitions or advocacy networks publish legislative updates that can be helpful in this respect.

Finally, providers in different types of victim assistance programs are subject to a wide variety of policy and legal authorities governing their conduct that result in different ethical priorities. These differences should be communicated between collaborating organizations to ensure delivery of quality and ethically responsible services to crime victims. When providers conflict over differences in ethical priorities among victim service agencies and organizations that are required to collaborate, cross-training on professional ethics may be helpful.

Because professional ethical practice is subject to varying state and federal statutes as well as program policies, it is imperative that victim assistance providers take initiative to educate themselves about applicable guidelines in their own program and locale. There exist numerous resources for doing so at the programmatic, regional, and national level, and providers must utilize such resources to maintain current knowledge in an evolving ethical context.

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