Remedial Ethics Programs for Physicians and Dentists

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Abstract

Both Bebeau's program for ethics remediation of dentists in Minnesota and ProBE, a nationwide ethics remediation program for physicians and other health professions, grew out of society's concern in the 1960s for responsibility and accountability of those in authority, including professionals. The ProBE program is described, and differences between it and Bebeau's program are highlighted. The ProBE program is a bit shorter in duration and focused on specific, individual ethical violations. It uses tensions—such as the contract between knowing what is right and doing what is wrong—to develop personal insights. A multidisciplinary team of several coaches is used in the ProBE model, and it does not depend on pre- and post-course gain scores. Bebeau's approach may be more readily adapted to predoctoral education, since it is more generic and theoretically based in the Rest model, whereas ProBE is grounded in the real and specific ethical violations of individual practitioners.

The basic premises of the 1960s rebellion of "Question Authority!" were found to be justified by Watergate at about the same time as Tuskegee's inappropriate use of prisoners as subjects in medical research. That movement soon solidified into a revolution of accountability that rippled over our mainstream cultural landscape. Just as the Watergate mentality established itself as a permanent feature of our political environment, Tuskegee found expression in health care marked by the emergence of formal research ethics, the establishment of the IRBs (Institutional Review Boards), the birth of the discipline of clinical bioethics, and a renewed interest in "professional ethics." This increased scrutiny of the behavior of the professions from external sources required a clarification of standards from within.

As a symptom of this trend, more "codes of ethics" have been devised and revised by professional societies in the last 20 years than in the previous 20 centuries. Likewise, there has never been as much systematic regulation of the professions. As a consequence, there has emerged what can only be described as a cottage industry of programs that address this combination of scrutiny and regulation with assessment, evaluation, remediation, rehabilitation, and renewal in the healthcare professions. This was the milieu within which the developmental psychologist, James Rest, developed his Four Component Model (FCM) of morality formulation to address moral peer accountability (Bebeau, 2008).

I collapse this account of an involved and complicated trend to suggest essential background for my commentary on Muriel Bebeau's articles. She and I share this common context in our respective efforts to remediate and renew a sense of professionalism for individuals who have been identified by their licensing boards for practice act violations that involve some transgression of professional ethics. Other major initiatives in this area have been catalogued by the Federation of State Medical Boards in their "Directory of Physician Assessment and Remedial Education Programs" (www.fsmb.org/pdf/RemEdProg.pdf). In addition, there is a professional consortium of assessment and remedial education agencies called the Coalition for Physician Enhancement which was organized more recently (www.physicianenhancement.org).

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It is important to make explicit this communality of shared intent. The founders of the ProBE Program and Muriel Bebeau are equal innovators in an initiative that has proven to be worthwhile and supported by the community of healthcare regulators. While there are significant differences in our approaches to the task, it is important not to lose sight of the broader parallel intent to which we have been responsive.

A brief account of the ProBE Program will serve to introduce a different approach to this mutual interest and provide a preliminary basis for examination and comparison of such matters as theoretical foundation and structure of the programs, translational issues, and future directions.

The ProBE Program

Since 1992, I have directed the ProBE Program which, like Bebeau's, was a response to our local board's request for a "course" that would provide remediation in professional ethics (d'Oronzio, 1996; 2002). ProBE is a heavily worked acronym that stands for Professional Problem-Based Ethics. From the very start, we distinguished ourselves from an ethics "course" in that we were immediately focused on a specific problem behavior, and also from a "medical ethics" or "death and dying" course in that we addressed the mores and ethos of the healthcare professions. In our initial response to the New Jersey Board of Medical Examiners, the ProBE Program accepted only New Jersey physicians (MD, DO, DPM). We expanded as a national resource in 1996 (currently 45 state boards have referred nearly 700 licensees) and since 2000 we accept referrals from all of the healthcare professions. This includes referrals from dental boards, of which we have had 50 participants (including two hygienists and one dental assistant) from six state boards in the last decade. Since 2007, the ProBE Program has been offered under the auspices of the nonprofit Center for Personalized Education for Physicians in Denver, Colorado. A more detailed description of the ProBE Program can be found at www.cpepdoc.org/probe.

Individuals are referred to the ProBE Program mainly from three sources: licensing boards (as part of a consent order); legal counsel (as preemptive or anticipatory of formal legal action); and other agencies outside of the formal governmental regulatory framework, such as hospitals, professional schools, or physician health programs. Once enrolled, the participants receive a 150-page syllabus of reading materials and assignments to be completed before, during and after the ProBE sessions. These sessions enroll up to 14 participants and take place over a weekend in an intensive workshop format consisting of seven modules. Each module provides a structure within which the specific problem (infractions) of each client is reexamined and deconstructed in anticipation of the preparation of a capstone assignment (the "final essay"). This final essay provides the opportunity for the participant to demonstrate understanding of the infraction in terms of professional ethics learned in ProBE. It is the final product of the participants' work in the ProBE Program in that it is the major basis for the faculty evaluation and assessment report which is submitted to the referring agency along with a copy of the essay. The program consists of 22 hours: 14 hours of actual contact in the workshop and an additional eight hours of preparation and follow-through that is required to complete the program. This is a modest estimation and the time from enrollment and preparation to completion and evaluation is normally seven weeks.

Theoretical Grounding and Conceptual Framework

The conceptual framework of the ProBE Program is pragmatic, eclectic, and explicitly focused on the offensive behavior that occasioned licensing board sanction. It is the dynamic of a ProBE Program workshop, focused as it is on the personal, specific infractions of the participants, that tends to determine applicable moral theory. Several recurrent inherent tensions of moral judgment drive this dynamic. The first is the classic cognitive dissonance of knowing "the good" but acting "the bad." This is developed in the first two assignments in which, on Friday evening, our participants present advice each might give to an aspiring student for writing a personal admissions statement that spells out the virtues of the "good doctor." This is followed, on Saturday morning, by a recitation of the details of their individual infractions. The contrast between knowing the idealized virtues and behaving in ways judged to be unprofessional creates a dramatic, dynamic tension. These "live" cases permeate the whole weekend by providing recurrent illustrations for the application of concepts of morality and professional ethics.

Similar exercises, readings, and assignments are aimed at developing other moral judgment tensions: the recognition of the difference between a boundary crossing and boundary violation in the spectrum of clinician-patient interaction; the identification of the failures of internal personal and professional self-regulation that generates legitimate mechanisms of external social accounta-

bility and state-based regulatory action; and, the reconciliation of multiple alternative ethical demands (e.g., business ethics, personal loyalty, social injustice) with the need for a prioritized singularity of an integrated professional ethic.

The systematic and confidential process of working these tensions through the several modules in a seminar of peers engenders a multidirectional nexus of direct and honest communication. This is often refreshingly novel to an isolated clientele whose contacts in the circumstance of discipline have been dominated by blame, shame, and adversarial interactions with boards and lawyers. For most participants in these groups, this dynamic is productive of insight and new understandings that each are able to articulate in the final essay, which together with their participation is evaluated by the two faculty members and assessed for the referring agency. This final assessment takes the form of a detailed letter describing the participant's performance in the workshop, an analysis of the essay, and a summary assessment of high pass, low pass, and fail. We think of our work as remediation and, in a sense, rehabilitation and thus see our judgment as that of an independent third party. In contrast with Bebeau's practice, between the referral, including provision of the consent order or other documentation of the problem, and the receipt of the assessment, there is no interaction between the referring agency and the ProBE Program. This arrangement depends on mutual trust and confidence, which we are proud to have earned from the healthcare licensing community.

It has often been said that how one frames a problem is predictive of how one solves it. This is most accurate when dealing with value-laden problems in ethics and social interactions and the central issue is of suitability. Bebeau's approach reflects her distinguished background in measurement and assessment instruments for educational psychology that she brings to the venture. The background and training of the (currently) six faculty of the ProBE Program, although commonly focused on bioethics, is multidisciplinary, drawing from the fields of medicine, psychiatry, philosophy, health law, public health, health policy, and social theory.

These differences help define significant divergence in the theoretical framing of our respective approaches. Bebeau's approach is predominantly quantitative, using no less than five instruments to provide a "diagnostic assessment" based, roughly, on Rest's FCM approach and its extrapolations. She uses test scores to identify deficiencies in judgment, and perhaps "character," and retakes are encouraged before a course design is submitted, approved by the board, and implemented.

The great potential value of this approach is that it allows for an objective pretest and posttest evaluation. The measurements that demonstrate that the educational intervention "works" depend upon the testing strategies. The great danger here is that an educational intervention so constructed will "teach to the test." This seems an especially relevant caution as there is significant and extensive three-way communication with the referring board both before the course is developed and before the client is finally evaluated. Can a client actually fail in this scheme of reiterative assessments? There is no mention of such an outcome: is this the result of good luck,

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the high moral character of the 40 clients, the ability of the structure to finally elicit the "right" responses, or its inability to weed out even the most densely challenged unprofessional? Interestingly, the ProBE fail rate of 6% is about the same as Bebeau's recidivist rate (discipline after passing the course), while the ProBE Program known recidivist rate is approximately 3/700 or .004%.

To administer before- and after-tests for ProBE Program participants would be an interesting experiment, and perhaps a helpful tool of analysis. Indeed, one of our faculty members, Catherine V. Caldicott, MD, at Syracuse Medical University, has worked with Muriel Bebeau to develop a medical version of the DERJT, called the Medical Ethical Reasoning and Judgment Test (MERJT). For ProBE purposes, this would be most effectively administered parallel to the program to see if the ProBE Program affected our clients' ethical reasoning, judgment, and sensitivities. It would not, however, fulfill our remediative intent to gear the program itself to the pretest to posttest success. There is no assurance and scant evidence that remediation occurs as a result of the testing sequence alone, particularly if it is reiterative. The quality of the interventional education process, independent of the testing, is the key.

A Short Note on Violations

Definitions and categories of professional ethics violations are extremely variable. For example, a great many consent orders of ProBE participants are negotiated in lieu of, as well as adjunctive to, malpractice action. We ignore the legal liability element and address the underlying professional ethics aspect. This definitional difference makes comparisons across programs difficult. In general, however, the types of violations for which dentists have been referred to Bebeau's course are somewhat different from those seen by the ProBE Program and vastly different when all the health-care professions are taken into account. In her typology of infractions, allowing auxiliaries to perform duties exceeding the state Dental Practice Act, insurance fraud, poor record-keeping, and complaints about competency account for 45% of the cases. For the ProBE Program dental infractions, insurance fraud and poor record-keeping are also most prevalent, but boundary violations and controlled substance diversion violations are next for ProBE, accounting for about 15% each. These latter two do not make the top 70% in Minnesota.

At risk of making too much of this difference, it is worth noting that on the spectrum of infractions, ProBE seems to see more radical or complicated departures from the norms of professional ethics. This may contribute to differences in the two frameworks in that these violations are less cognitive and more interrelational. Confronting these lapses of judgment is aided by ProBE's open discussion within a peer contact setting in ways that have made 12-step programs successful. The group setting, the presence and facilitation of at least two faculty members, the freedom granted by our confidentiality agreement, and our laser-beam focus on specific infractions may be traced back to the types of violations we have confronted.

Translational Potential: The Next Generation

There are two "next generation" issues for these two innovations: translation to a student population, in effect offering a preventive solution to unprofessional behavior, and extending and continuing these valuable remediative offerings into the future.

A frequent complaint of ProBE participants on Sunday afternoon is, "Why wasn't this part of my training?" In fact, there has never been a session of ProBE that has not concluded with a general and sometimes loud and animated agreement that this program ought to be offered in medical school and residency training. The response of the faculty has been between dubious and unenthusiastic. All of us bring topics in professional ethics into our classes, conferences, and consultations, but offering of a ProBE-style program or "course" would not be effective. We understand from teaching and practicing clinical bioethics that it is best received where there are real issues or dilemmas to be addressed. It is most "teachable," for example, to a fully trained, fully accountable attending physician caught in the vital cross-hairs of an unfamiliar conflict of values in which a well-reasoned decision must be made–carefully, competently, and, too often, quickly. ProBE is like that. It addresses a specific problem within a range of problems that are not in the imagination, much less the experience of the medical school student.

Bebeau's course, on the other hand, seems eminently well-suited for any level of education. It frames the issues in broad terms and is driven by testing instruments that depend on a variety of moral responses to these issues. There

will always be variety and thus teachable variances in the diagnostics. Hypothetical cases are organized within the approach defined by the instruments measuring Rest's FCM with significant effect. Indeed, case analysis is at the heart of at least three, and possibly all five of the instruments used. In addition, the FCM is extremely accessible as an intellectual construct and is broadly applicable to common life situations that tap into the student universe and are applicable to the professional life to which they aspire. In short, unlike the ProBE Program, one does not need to have been identified as having breached a professional ethic to be taught and to learn from Bebeau's model.

I suspect, however, that the main problem of translating her model to the student audience is, like using it for a professional clientele such as is seen by the ProBE Program, a practical one. It would require an allocation of course time and student attention in a curriculum that is notoriously crowded, perhaps making it prohibitive.

As to the second translational issue, replication of both of these innovations is both desirable and difficult. For the ProBE Program, this has taken the form of gradually putting a new faculty in place through a systematic training using a mentor/apprenticeship model over three years (2008–2010) and the assumption of management by the Center for Personalized Education for Physicians of Denver, Colorado. The Minnesota course would require a similar transitional training, but because of its relatively standardized educational testing format, this would seem to be a less involved process. The difficult aspect of this would be the transference of Muriel Bebeau's cumulative wisdom and experience in delivering the educational content. A "mentor cum apprentice" process, while desirable, may be more difficult to accomplish in that she has, until now, taught alone in that important aspect of her work.

Conclusion

The shared intent of these two initiatives is best captured by the cumulative, if qualitative, research and reflection presented by Bebeau in her final sections on "Educational Significance" and her "Conclusions," which, in general, match very closely the overall experience of ProBE. We both see that it is important for licensing boards and the professions to address ethics violations with effective programs, rather than making ambiguous and unproductive gestures of punishment without remediation. The programs are different, but the ultimate message is that participants benefit from these programs and we both report that they can make a significant impact on the professionals and a new understanding of the practice of accountability. ■

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References

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