
CHRISTOPHER MEYERS

# THE PROFESSIONAL ETHICS TOOLKIT

WILEY Blackwell

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*To my family, in gratitude for the inspiration and joy you provide every single day.*

# Contents

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# Introduction




*The Professional Ethics Toolkit*, First Edition. Christopher Meyers.

## Opening Thoughts

I was recently enjoying lunch with a couple of high-ranking police officers when the following exchange took place:

OFFICER ONE: What are you working on these days, Christopher?
ME: A book on professional ethics.
OFFICER TWO (*LAUGHING OUT LOUD*): Oh, as opposed to amateur ethics? I'm really good at those!
OFFICER ONE: Heck, I'm just trying to be better than a *novice* at ethics – haven't quite made it to amateur status.
OFFICER TWO: Is there someone I can pay to be an ethics professional?

Good chuckles ensued all around, but their clever play on words captured a key problem with the topic of this book – just what do we mean by *professional* ethics? Consider the following statements, all of which rely on a different meaning of the term:

- "Muhammad Ali became a professional boxer in, after fighting for six years as an amateur."
- "That painter sure did a professional job, don't you think?"
- "Prostitution is the world's oldest profession."
- "You can count on Jones gardening: we are the most professional in town."
- "Sam sure is a professional complainer."
- "Did you hear Gabriela passed her licensing exam and is now a professional engineer?"

You probably recognize each of the different senses and have probably used several yourself. Despite some clear overlap, the meanings attached to the different uses vary so much that no single ethics conversation could effectively apply to all – the specific ethical duties attached to professional boxing, for example, differ widely from those of engineering.

This book focuses on the last meaning, that is, on the *formalized* sense of professional. It does so for two reasons. First, the other meanings all derive from the last in that they appeal to some version of a higher standard, one worthy of additional pay or respect. Even the fifth usage gets at the idea that Sam is a *really good* complainer. That is, they are at least loosely tapping into the common understanding that to be a professional is to possess a normative commitment to higher quality.

Second, the very goal of this book is to make explicit that normativity, the moral foundation at the core of professionalism. In short (for now), the thesis of this book is that to be a true professional, unlike other economic activities, is to be dedicated to a client relationship grounded in *trust*: trust in the professional's competence and in her commitment to place the well-being of her client at the forefront of their encounters.

Think of it this way:

> You're in the market for a new car so you go to a local dealership, settle on a model, and, after some haggling, agree on a price. Thrilled with your shiny new toy, you happen to run into your buddy Omar a few days later who, lo and behold, has just bought the same model! In discussing the options you each purchased, Omar says, "I guess you didn't read the Consumer Reports review." You agree that you didn't and he goes on to explain that they concluded this model doesn't need such add-ons as rust coating, an extended warranted, or sealcoat paint – all items that you now realize you got suckered into buying by the very persuasive salesman. You also learn, to your great annoyance, that Omar also paid considerably less for his, even taking into account those add-ons.

Now compare that story to this one:

> A month later you go to visit your orthopedic surgeon to discuss the pain in your knee. She explains that it's almost certainly torn cartilage and orders an MRI to confirm. It comes back positive for a very small tear, one that's still attached to the original meniscus.

Upon discussing your options, she persuades you to undergo a procedure in which she will remove the torn piece and also shave the underside of your kneecap to remove any rough spots. That shaving will cause some real tenderness for at least a week, during which time you'll need to be on crutches – which her office is only too happy to sell you, along with special compression socks and bandage wraps.

You agree to proceed and all goes as planned. You are on day six of recovery, still on crutches, when you have dinner with your cousin and her new husband, an orthopedic surgeon. Naturally the conversation turns to your injury and you explain your procedure. The more you talk, the more surprised he looks, until he finally cuts in and says, "I truly hate to tell you this, but the standard of care for the type of tear you have is not to operate. Rather, the goal – so long as you can deal with the discomfort – is to leave everything intact, since removing cartilage often leads to later arthritis. Further, while such kneecap shaving can help in extreme cases – that is, when there is significant malformation – from everything you've described, your situation doesn't even come close."

What would be your respective reactions to these cases? If you are like most, in the first you'd be angry and annoyed – partly at the salesman, but even more at yourself for not doing your homework. You *know* that the salesman's goal is to make as much off the sale as possible, just as yours is to get it as cheaply as possible. You even thought you'd done a pretty good job in the haggling; realizing that you haven't, you kick yourself and vow to do better next time.

In the second, however, wouldn't you feel deeply *betrayed*? You thought you could *trust* the surgeon to know what she was doing and not to be trying to make extra money off you. After all, you were dependent on her to help you with something really important: your health and mobility. What was that license on her wall about if it was not a guarantee that she was a *professional*?

The surgery case is intentionally extreme, to pull out the key differences between strictly commercial or instrumental dealings and fiduciary ones. In the former the primary motive of both parties is self-interest; each is trying to gain something off the other. Done well,

both sides gain, but one knows to approach them with eyes open; *caveat emptor* – buyer beware – is the basic rule of the game.

In fiduciary relationships, by contrast, while self-interest is also present, the foundation of the relationship is a *partnership*, one intended to help you meet a vital need. In this type of encounter, you are dependent on the surgeon to be an expert and to treat you in a manner that places your well-being at the forefront. In return, you have committed yourself to treating her with respect, including being honest and forthright in your interactions and compensating her fairly for her work. When that trust is broken, you feel particularly betrayed – by her and by the system that granted her the authority, and the state *license*, to work as a physician.

As we shall see in subsequent chapters, any number of factors have arisen over the last few decades that challenge this somewhat idealized model of professional ethics. Still, even if it has become clear that clients in professional/client relationships should also do their homework – if for no other reason than that it is unlikely the professional will sufficiently know what is most important to you, what your most vital needs are – it is still the case that, as a general rule, you can in fact trust professionals more than you can trust someone who is merely in it for the commercial transaction.

## Being and Acting Professional

Importantly, however, *being* a professional is not the same as *acting professionally*. Not all those who meet the formal criteria (see Chapter 1) always act with expertise and in their clients' best interest. And, of course, many of those whose work does not entail any of those criteria do their work with great integrity and treat their customers fairly and with dignity and respect. On the former point, as I write this there is a disturbing essay (Anonymous, 2015), with accompanying editorial (Laine et al., 2015), in the *Annals of Internal Medicine* that describes abhorrent medical behavior, clearly beyond the pale of any ethical human encounter, let alone a professional one.

That it *was* professionals (the story describes sordid actions committed by two senior-level physicians), that is, people to whom are entrusted that which is most important to individuals – in this case, the patients' bodies – makes it all the worse. But it also made headlines precisely because they were committed by professionals and were thus by far the exception to the rule.

This book will show why such behavior *is* the exception. In Part I, I describe how a professional norm rooted in deep ethical standards emerged, largely as a way of distinguishing professionals from pretenders, a move that also came with the great economic benefit of a monopoly on practice. I also recommend a model of ethics reasoning for addressing tough ethical problems, one based upon some of the classic approaches to ethics theory. Part II, the bulk of the book, explores some key concepts (e.g., role-engendered duties, conflict of interest, and competency) and their connection to core problems in professional ethics. In the Epilogue I discuss how the idealized model of professionalism has undergone major transformation as part of a society-wide movement that "democratized" key institutions. Some of these changes have been for the good – enhancing, in particular, client autonomy and informational power; some have caused serious ethical damage, for example, the commodification of the professional–client relationship.

## Definition and Listing

Before engaging all those topics, however, we need a working definition of "profession" in order to capture a meaning that incorporates the core standards that distinguish formal professions from other occupations or jobs. Hence: *To be a professional is to be an expert, skilled at the provision of vital services, while also holding a normative commitment to their clients' well-being.*

Chapter 1 provides a brief history of the emergence of that definition, with emphasis on the development of formal professions. I show how these activities both naturally emerged in response to increasing complex social systems and were artificially designed for the mutual

benefit of professional and client. The argument in this chapter also makes it clear that the professional/non-professional distinction is too stark. We're really talking about a continuum in which some occupations clearly fit the criteria, some are in the process of formally professionalizing, and some meet the criteria more or less marginally (or not at all). Again, though, being a professional does not guarantee that one will treat their clients with dignity and respect (or vice versa); the characterization is partly historical, partly sociological, and partly an exhortation – a reminder to those who fit the criteria that they are engaged in a *calling*, dedicated to a vital social service, with corresponding social and economic rewards and associated duties.

One last point about terminology: the words "ethics" and "morality" are also subject to multiple uses and meanings. For example, many folks think of "morality" as something very personal, connected to family and religion, while "ethics" is more objective, connected to social structures or organizational settings. In philosophy we generally use the term "ethics" to mean the application of moral theory, both of which are potentially objective. I follow that meaning here, to the point that there are places where the terms are used near synonymously.

## Cases

Here are three cases to think and talk about as you read the next couple of chapters.[1] Consider, in particular, what makes them cases about *professional* ethics and not just ethics problems generally, and see if you can reach some consensus on how they should be resolved.

### Health-care professionals and the conscience clause

California, like nearly all states, has explicit legislation that grants health-care professionals the right to exempt themselves from the provision of services that violate their conscience. California also

provides a positive right to health care for all wards of the state (e.g., state and county prisoners), including the right to all legal reproductive services. It tasks counties with providing the medical care necessary to fulfill that right. This obviously has the potential to create a catch-22. On the one hand, counties are legally obliged to provide, for example, abortion services, but it is possible that all qualified physicians will exercise their right to conscience-based exemption (Meyers and Woods, 1996).

You are the new head of the California licensing board and have been presented with a petition to amend the existing conscience clause to make it harder to obtain an exemption. (Current law merely requires the professional to state that he or she has an "ethical, moral, or religious objection" to participating in the provision of those services.) You are seriously considering it, but are deeply torn. You recognize that being a physician in California is a privilege, one that comes with tremendous social benefit and correspondingly strict role-based duties. But you also find it troubling to demand that someone participate in a medical practice that he or she finds morally objectionable.

How should you resolve this conflict?

## Defending the indefensible

You are a licensed attorney who handles almost exclusively criminal defense cases. You are approached by the family of a man who has been charged with a particularly brutal rape and murder. You strongly consider declining – right now you just don't have the emotional energy to manage this high-profile and very public case – but the family convinces you that the charges are a racially motivated travesty of justice (the suspect is African American, the victim a young white). You meet with the defendant and immediately establish an affectionate rapport. The more you talk and the more you investigate the case, the more persuaded you are that he is in fact being rail-roaded and you are very confident that you will be able to convince a jury.

You go to meet with him the day of opening arguments, however, and it is like he's a different man: angry, spiteful, he uses foul language