

Professional codes: why, how, and with what impact?

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Professional Codes: Why, How, and with What Impact? Mark S. Frankel

ABSTRACT. A tension between the professions' pursuit of autonomy and the public's demand for accountability has led to the development of codes of ethics as both a foundation and guide for professional conduct in the face of morally ambiguous situations. The profession as an institution serves as a normative reference group for individual practitioners and through a code of ethics clarifies, for both its members and outsiders, the norms that ought to govern professional behavior. Three types of codes can be identified - aspirational, educational and regulatory. All codes serve multiple interests and, as a consequence, perform many functions, eight of which are discussed. The process of developing a code of ethics is assessed because of the role it plays in gaining consensus on professional values and ethical norms. After discussing some of the weaknesses in current approaches to professional self-regulation, several new private and public initiatives are proposed. Introduction Not too long ago, discussions of professional ethics were confined mainly within the professions themselves. This is no longer the case, however. In recent years, a blend of economic, social, legal, and political events has had a profound effect not only on the behavior and performance of professionals, but also on the public's expectations of them. The days of unquestioned trust and admiration on the part of clients or the general public are past. With increasing frequency, the professions are exploring ways to improve professional service and to regain public confidence. It is quite timely, then, for a reassessment of the professions' moral role in society and, specifically, of codes of ethics from the perspectives of why, how, and with what impact In this paper, I do not

discuss the " what," or content, of codes of ethics. The matter of content is important, to be sure. But given a choice, I prefer to focus on the more generic issues that apply to codes, whatever their content. The issues for discussion here can be approached without any reference to a particular profession or specialized knowledge. I will focus first on the " why" question by briefly reviewing what I refer to as the " society-profession nexus," followed by a relatively quick journey through the moral dimension of the professions and its importance for understanding the relationship among the profession as a group, the larger society, and individual professionals. I will then offer a more detailed functional analysis of codes of professional ethics. The " how" question is next with an examination of the code development process. The matter of " with what impact?" is explored from two perspectives: the current status of professional self-regulation and ways for improving the self-regulatory efforts of the professions, with special emphasis on codes of ethics.

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Historically, the professions and society have engaged in a negotiating process intended to define the terms of their relationship. At the heart of this

process is the tension between the professions' pursuit of autonomy and the public's demand for accountability. Journal of Business Ethics 8(2): 109–115, 1989. © 1989 Kluwer Academic Publishers. Printed in the Netherlands. no MarkS.

Frankel granted privilege, and that as such, its proper use becomes a moral duty."* It is this moral dimension which helps to shape and sustain the relationship between the profession as a group, its individual members, and those who receive professional services. Although ultimate responsibility for their actions rests with individual professionals, promoting ethical conduct does not, and should not, have to be solely the responsibility of the individual. Exclusive emphasis on the individual ignores the importance of social structures in shaping individual consciences and behavior. For the professions, "the collectivization of appropriate norms and their transmission to individual practitioners are the cornerstones" of the trust relationship between individual practitioners and clients. This is so because "we place our trust not only in individual professionals, but also in the professional group. We rely on the group to guarantee that its members fulfill their agency obligations. . . . And we trust professionals because the exercise of professional discretion at the individual level is governed by rules which are prescribed and enforced by the group." The professional group, as a more visible, more stable, and more enduring entity, has a collective moral responsibility that is non-distributive; that is, a responsibility borne by the profession as a whole independent of the ethical posture of its individual members. Society's granting of power and privilege to the professions is premised on their willingness and ability to contribute to social well-being and to conduct their affairs in a manner consistent with broader social

values. It has long been recognized that the expertise and privileged position of professionals confer authority and power that could readily be used to advance their own interests at the expense of those they serve. As Edmund Burke observed two centuries ago, "Men are qualified for civil liberty in exact proportion to their disposition to put moral chains upon their own appetites." Autonomy has never been a one-way street and is never granted absolutely and irrevocably. Professions as moral communities Members of a profession are bound together by common aspirations, values, and training, and in varying degrees the professions "develop social and moral ties among their members who enter into a community of [common] purpose." A profession may, therefore, be viewed as a "moral community," whose members "are distinguished as individuals and as a group by widely shared goals, beliefs about the value of those goals, . . . about the appropriate means for achieving them, and about the kinds of relations which in general should prevail among themselves, and in many cases between themselves and others." ^ The profession "becomes a major normative reference group whose norms, values, and definitions of appropriate [professional] conduct serve as guides by which the individual practitioner organizes and performs his own work." While the profession "does not produce the next generation biologically, it does so socially,"* and over time the behavior of individual members can be (and is) explained by references to it Because the professions affect the interests and well-being of individuals who depend on professional services and also exert influence on key social institutions that pursue the common good, society has every right to evaluate professional performance in the light of a moral as well as a technical dimension. Indeed,

a profession's presumptive preference for autonomy serves to reinforce this moral dimension, for " professional autonomy correctly understood is not a right of the profession, but is a societally Codes of professional ethics A profession's code of ethics is perhaps its most visible and explicit enunciation of its professional norms. A code embodies the collective conscience of a profession and is testimony to the group's recognition of its moral dimension. Along a continuum, three types of codes of ethics can be identified. An aspirational code is a statement of ideals to which practitioners should strive. Instead of focusing on notions of right and wrong, the emphasis is on the fullest realization of human achievement. Another type is an educational code, one which seeks to buttress understanding of its provisions with extensive commentary and interpretation. A conscious effort is made to demonstrate how the code can be helpful in dealing with ethical problems associated with professional practices. A Professional Codes third type is a regulatory code, which includes a set of detailed rules to govern professional conduct and to serve as a basis for adjudicating grievances. Such rules are presumed to be enforceable through a system of monitoring and the application of a range of sanctions. Although conceptually distinct, in reality any single code of professional ethics may combine features of these three types. A decision about which type of code is appropriate for any single profession at a particular point in time will necessarily reflect a mixture of both pragmatic and normative considerations. 111 Taken collectively, these eight functions reveal a great deal about the relationship between a profession and its members, its clients and the larger society. Enabling document. Without some moral anchor (e. g., a code of ethics), professionals

may experience anxiety or confusion when they encounter novel situations in their practice. As a distillation of collective experience and reflection, a code can offer guidance to individual professionals by simplifying the moral universe and by providing a framework for organizing and evaluating alternative courses of action. It shifts "decisions toward consequences that are cumulatively best, but unlikely to be achieved by individual well-intentioned agents acting on their OWIL" A code may be compared to a compass, in that it provides the direction but does not presume to locate the ultimate destination. But in principle it enables the professional to make more informed choices. Source of public evaluation. As a visible pronouncement Code functions Every profession faces the difficult task of trying to maintain a balance between fulfilling its functions for its members and for the larger community. This difficulty is reflected in codes of ethics, which are intended to appeal to many interests such as, for example, the general public, the media, clients, the profession's members, other professions, and government. These interests will on occasion overlap, while at other times they will diverge. It is not surprising, therefore, that a code of professional ethics which, after all, defines a profession's relationship to these various interests, reflects this reality. Historically, codes of professional ethics have performed a variety of functions, and their effectiveness must be judged accordingly. Not all the planks of a professional association's code of ethics are meant to be taken in the same spirit. Some are merely costumes the profession puts on to impress outsiders. Some are preachments to be honored, but not necessarily obeyed. Some are guides, but permissive ones. Some are tactical moves in controversies with outside groups. Some are

really seriously intended.' of a profession's self-proclaimed role and values, a code can function as a basis for the public's expectations and evaluation of professional performance, thus serving as a mechanism for holding the profession and individual professionals accountable. Professional socialization. Professional power and prestige derive not only from the specialized knowledge possessed by professionals, but also from the sense of group solidarity and common purpose that is expressed and reinforced in codes of professional ethics. The codes help to foster pride in the profession and strengthen professional identity and allegiance. Enhance profession's reputation and public trust. In large Much of the criticism of codes can be traced, I believe, to an inadequate understanding of these multiple functions. What follows is a cataloguing of the various functions that may be performed by codes of professional ethics. The list is drawn from my personal observations as well as from independent documentation. Thus, it has empirical origins and may be subjected to investigation and analysis by others. measure, a profession's status and autonomy are linked to the public's perceptions about its motives and the quality of its performance. By adopting a code of ethics, a profession hopes to gain the public's trust and enhance its status. To the extent that a code confers benefits on clients, it will help persuade the public that professionals are deserving of its confidence and respect, and of increased social and economic rewards. But a code may also function as a tool for management. Frankel by making it an affirmative duty for professionals to report errant colleagues, thereby creating a monitoring system in which each professional assumes a responsibility for upholding the group's integrity. Support system. A code

may also constitute a legitimate source of support for professionals against unwarranted erosion of their power or improper demands on their skills by outsiders. An appeal to its code of ethics may strengthen the profession's collective hand and that of its individual members in resisting, for example, vexatious claims by clients, unreasonable demands from employers, or unduly intrusive incursions into professional affairs by ambitious bureaucrats. Politicizing public impressions if ethics is considered a matter of strategy rather than morality. The moralistic rhetoric of codes may disarm critics, thereby contributing to strategies calculated to win allies, thwart adversaries and allay public fears about professional intentions. From this perspective, the strategic value of codes lies in their capacity to function as a political device " designed to privatize conflict or to restrict the scope or to limit the use of public authority . . . , " " thereby insulating the profession from threats to its autonomy. But such politicization of ethics need not inevitably be inconsistent with genuine public service. Politically useful ethics may still be of value in meeting the needs of clients. Knowing when it is or is not, however, is crucial to understanding this function. Adjudication. Finally, codes may serve as a basis for preserving entrenched professional biases. The biases may adjudicating disputes among members of the profession or between members and outsiders. They be both normative and tangible. Professions are profession itself may act to adjudicate disputes, or expected to advance the values that define their legislators, administrators and judges may accord social role. Indeed, society expects this sort of codes considerable significance in assessing professional commitment in return for the professional's power and social practice and adjudicating claims by or

against privilege. For the medical profession, the dominant professionals involving outsiders. value is improved health care; for engineering, it is safe and efficient technology. These dominant values Any assessment of the value of codes of profesare reflected in every profession's code of ethics. sional ethics must be prepared to recognize that no Problems occur, however, when they are given single function can fully account for the existence exaggerated importance by the profession when they and impact of a code. Such an assessment will be confict with other social values. In such instances, eminently more persuasive than one divorced from there is a professional tendency to use appeals to the the reality of multiple interests served by a code. code as a mask for preserving the profession's perspective on the world, perhaps at the expense of a Code developnt more accurate picture of reality. Any profession has a clear, tangible stake in It would be unfortunate if the emphasis on a code of protecting its members' professional monopoly, and ethics as a product obscured the value of the process a code of professional ethics can help to secure such by which a code is developed and subsequently protection. It may do so, for example, by creating revised. This process is a time of critical self-examibarriers to entry into the profession, by prescribing nation by both individual members and the profesrestrained criticism of colleagues, or by invoking sion as a whole. The profession must institutionalize prescriptions for confidentiality or confict of interest a process whereby its moral commitments are reguthat keep outsiders from encroaching on professional larly discussed and assessed in the light of changing turf. A code may be used to censor " deviant" ideas conditions both inside and outside the profession. from within

the profession, thereby ensuring that The widespread participation of members in such an entrenched biases prevail over potential innovation. effort helps to reinvigorate and bring into sharp Deterrent to unethical behavior. In addition to promoting focus the underlying values and moral commitments of their profession. It is a time of testing one's ethical conduct, a code may function as a deterrent professional ethics against those of his/her colleagues to unethical behavior in at least two ways. First, by and for testing the profession's ethics against the the code to a threat of sanctions and, second. Professional Codes 113 experience of its members and the values of society. This process of self-criticism, codification, and consciousness-raising reinforces or redefines the profession's collective responsibility and is an important learning and maturing experience for both individual members and the profession. Yet this process is not without potential pitfalls. One of the consequences of professional power and privilege is that professional ethics has tended to become a professionalization of ethics, in that the profession's commitment to a set of values reflects its interpretation of the world. But professionalization threatens to narrow the scope of moral evaluation because it diminishes the appeal of non-professional experience for ethical reflection and, as a result, the profession's view of its role and responsibility risks being divorced from broader social values. As long as the process remains insulated from public evaluation, it is at least questionable, if not unlikely, that it can produce a code that will be optimally understanding of and sensitive to the perspective of those whom the profession is pledged to serve. To counter this tendency, ways must be found to involve outsiders in this process so that proper

congruence between professional and community values can be achieved. A second pitfall concerns the relationship between the profession and its members. If the basic conception of the profession's values, roles, and functions as articulated by the profession is inconsistent with the reality experienced by its members, the basis of respect for the profession's ethics will erode, the profession's leadership will risk becoming isolated from the rank and file, and efforts to articulate and enforce specific provisions will be severely impaired. Hence, a code of ethics should be empirically grounded, and procedures for its interpretation should be sensitive both to the different contexts in which members work and to the effects of such differences on the application of the profession's norms. But this recommended approach carries with it yet another danger. Intraprofessional differences regarding the structure, content, and priorities of the code are likely to emerge. Powerful interests within a profession may attempt to influence events in order to serve their own ends. While there may be legitimate reasons, for incorporating provisions into the code which favor one set of professional interests over others, those responsible for the drafting process should be alert for the possibility of abuse and, where necessary, devise safeguards for the most vulnerable segments of the profession. Professional self-regulation

Self-regulation is consistent with both the tradition of limited government and the moral dimension of the professions. It is not without its shortcomings, however. Almost every code of professional ethics includes a provision imposing a responsibility on members of the profession to report violations. Yet, professionals have a poor track record in this regard. This reluctance stems from several sources. Shielding members from outside

knowledge of their deviance also shields the profession from embarrassment, with its potential for precipitating a decline in public trust. Open criticism of colleagues could be perceived as undermining a profession's claims of keeping its house in order and may invite increased external control. In some instances, protecting members from criticism is a test of the leadership's ability to maintain internal control. Consequently, overlooking fault becomes a means for maintaining harmony within the profession. And for those who may in principle be inclined to report violators, the threat of being ostracized by one's colleagues or the fear of legal retaliation, such as a defamation suit, is sufficient to dampen one's enthusiasm for taking such action. There is yet another side to this matter of the reluctant informer. One of the most important functions of a profession is to offer support to individual practitioners in performing their roles. Professionals who experience reprisals for having adhered to the principles found in their codes of ethics should be able to turn to their professional group for assistance. Such support on the part of the profession can strengthen member loyalty to the group and, as a consequence, is likely to increase compliance with its rules. "If the individual knows that when he needs it he will be protected somewhat by the group, he enjoys his personal relations with its members more, feels more securely identified with them, protects himself less from them, and is willing for the sake of the group to cooperate even when it will not raise his individual standing. . . ." But the 114 Mark S. Frankel professions have exerted limited leadership and demonstrated little imagination in developing support activities on behalf of their members.' At present, self-regulation suffers because of too few

rewards and too many risks associated with reporting errant colleagues. This less than remarkable record of achievement for professional self-regulation has led to the institution of other means of social control – licensing, peer review, malpractice, new mandatory reporting laws, and so on. But undue reliance on external regulation runs counter to the exercise of professional discretion, which lies at the core of providing individualized service to clients. What is needed is an improved complementary effort at self-regulation that becomes a matter of enlightened self-interest for professionals while at the same time advancing the public interest. Proposed new initiatives

In an effort to make professional self-regulation more effective, several new private and public initiatives are recommended. Much of what is proposed for the private sector must originate within professional associations. As organized, self-governing social units authorized to represent the profession, these associations serve as the custodians of professional traditions and help to keep a profession's moral commitments relevant. They mediate between practitioner and profession and between practitioners and the social environment in which they work. As such, they function as an important source of identity for individual practitioners, a means of maintaining a conception of oneself as a member of a particular tradition rather than simply as a technician. Mere adoption of a code of professional ethics does not guarantee its usefulness to practitioners or to others. The code must be viewed as only one part of a larger system intended to promote ethical conduct and to provide a supportive environment for professionals. One important strategy is to develop ways of keeping the code visible and relevant in the eyes of practitioners. Moral authority does not inhere in a

paper document, but rather in the weight of reason that accompanies arguments for or against certain actions. Although codes can be of value in raising levels of consciousness, their ethical pronouncements are like blunt instruments; they must be sharpened by interpretation if they are to function as meaningful guides to ethical conduct. The professions must, therefore, institutionalize means for offering such interpretation and ensure that they are accessible to all interested parties. This might be accomplished, for example, by publicizing decisions rendered by ethics committees in cases of code violations, or by developing case materials for educational purposes and widespread discussion throughout the profession. The professions can enhance public respect for their performance by acknowledging the possibility of professional error and by adopting procedures for assuring members and the public that complaints will be thoroughly and fairly investigated. At a minimum, this requires that the complaint process be publicly known and comprehensible and that both practitioners and the public have ready access to it. It also requires that practitioners be encouraged to report colleagues who violate professional norms. Establishing a telephone hotline for reporting grievances will make it easier to report violations. And a disciplinary program that is aimed at rehabilitation, and not just punishment, may also increase the likelihood that professionals will be willing to turn in colleagues. If the professions take their codes of ethics seriously and if they expect individual professionals to abide by their professions, then they have an obligation to defend those whose dutiful discharge of their professional responsibilities places them at risk. Professionals who, for example, are subjected to unreasonable demands by

employers that are inconsistent with the tenets of their code should be able to appeal to the profession for both moral and practical support. Several support activities might be considered, such as awards to those who exhibit exemplary ethical behavior. Or legal assistance, in the form of a defense fund or a professional association amicus brief, to those who become involved in litigation. Ultimately, the most effective strategy might be to contribute to a more ethically hospitable work environment for professionals. All of the above proposals must encourage and provide for greater lay participation. After all, it is individual clients and the general public who bear most of the consequences of professional activity. Professional Codes and this gives them a legitimate claim to involvement in the profession's development and application of codes of ethics. Moreover, the proposals must apply to all professionals, whether or not they are members of the representative associations. It would be a strain on the associations' credibility for them to promote their professions' moral dimension for the good of society, but then limit their activities and resources only to those who can demonstrate membership in their ranks. The associations' ethics activities must be accessible to all who follow a profession's traditions regardless of their organizational affiliations. While the welfare of professionals and their clients often coincide, there are also occasions where they diverge. In such instances, more formal social mechanisms are needed. Legislatures and courts should accord increased recognition to the notion that adherence to one's code of professional ethics is an obligation on the part of professionals consistent with public policy objectives and, as such, merits increased social deference. Statutes protecting professionals who

report in good faith colleagues who act unethically ought to be a standard part of states' and provinces' oversight powers of the professions. In considering these recommended actions, we must keep in mind that regulation – professional or public – incurs costs in the form of time, energy and resources committed to monitoring behavior, disseminating information, registering disapproval, and providing support. Consequently, any system of self-regulation should not be undertaken by the professions without careful appraisal of what can reasonably be achieved at a particular point in time.

My final recommendation, then, is that public resources be made available to support experimental programs and demonstration projects designed to improve the self-regulatory capabilities of the professions. 115 Notes '

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