

What is a Profession?

In one sense of the word, a “professional” is simply anyone who makes his or her living in some occupation. In this sense, one could be a “professional” (as opposed to “amateur”) athlete. We’re interested in a different, though related, sense of the word. In that sense, a “professional” isn’t just anyone who possesses a marketable skill. Rather, she is someone who possesses an expertise or knowledge about how to do things that are vital to our (the public’s) well-being—such as navigating the legal system, providing effective medical treatment for life-threatening illnesses, or ensuring that the plans for constructing tall skyscrapers are sound from an engineering point of view. Because we, the lay public, lack the knowledge to perform these tasks on our own, we retain professionals to provide us with advice and assistance. The professional’s job is to provide advice and assistance to the client who retains the professional’s services, on matters that are within the professional’s area of expertise, for both that client’s benefit and the safety and welfare of the general public.

Some of the characteristic traits of a profession are:

1. It requires *extensive* training of an *intellectual* character.
2. Its services are vital to society’s well being.
3. Its practitioners usually have a high degree of autonomy in deciding how to carry out their job.
4. Practitioners must undergo a process of certification or licensing by the state in order to be eligible to carry out certain tasks or provide certain services. Licensing gives practitioners an *exclusive legal right* to provide those services.
5. Professionals are usually organized in “societies” (the AMA for physicians, the ABA for attorneys, the ASCE for civil engineers, the APA for clinical psychologists, etc.) that promulgate “ethics codes.”

Since some of these characteristics come in degrees, and since some occupations have more of them and others less, it makes sense to suppose that occupations can be arranged on a spectrum or continuum with the paradigms of professions (e.g. law, medicine) at one end, trades that clearly aren’t professions (e.g. car sales) at the other end, and occupations that are semi- or emerging professions (e.g. primary school teachers, nursing, realtors, etc.) somewhere in between.

Licensing

Licensing requirements can be selective, applying to some tasks but not related ones. For example, while there are plenty of accounting tasks that unlicensed accountants are allowed to perform, only a CPA may sign off on certain kinds of audits. A nurse can take your blood pressure, but only a licensed physician can prescribe your blood pressure medicine. Anyone can help design a bridge, but the bridge can be built only after the plans have been signed and sealed by a licensed civil engineer. Licensing requirements aren’t by themselves sufficient to turn an occupation into a profession: most states require that certain kinds of plumbing and electrical work be done only by licensed plumbers and electricians (who practice a trade, not a profession). But licensing requirements may well be necessary.

There are two competing views about the *value* of state licensing requirements. One is that the requirements serve the economic interests of those who have the license but are contrary to the public interest. A law that limits performance of certain tasks to license holders enables them to charge more for their services than they would be able to charge in a “free market.” According to this view professions that enforce licensing requirements are no better than medieval trade guilds: all they really do is stifle competition to the detriment of the consumer. The second, less cynical view says that the requirements are often in the public’s interest. For example, it’s in the best interests of sick people that only licensed physicians are allowed to treat them. That reduces the chances that they will select some quack whose services might be cheaper but who never graduated from an accredited medical school and isn’t competent to diagnose or treat their illness. The law here limits our choices, but it does so for our own good. Limiting a competent adult’s options for his or her own good is *paternalism*, and some object that all state paternalism is wrong. But if state licensing requirements for physicians and attorneys can be given a paternalistic justification, that puts them in the same category as seat-belt laws, which most of us judge acceptable.

Many licensing requirements can be defended not only on grounds of paternalism (to protect the client from self-inflicted harm) but also on grounds of public safety and welfare (to protect others). This is obvious in the case of civil engineering. The requirement that licensed civil engineers must approve the design of large buildings, tunnels, bridges, walkways, and so forth reduces the chances that these structures will collapse because of poor design, causing death and injury. But it holds for some other professions as well, including surveying. When a survey or plat is recorded, it becomes a public document that others may rely upon—to their detriment if the survey is inaccurate.

The “cynical” view about licensing requirements may have some merit, at least as regards some requirements. Many professions in the past have tried to enforce rules that forbid advertising and competitive bidding as “undignified” practices. It’s hard to see what benefit rules of that sort provide to the public. All such rules seem to do is make it more difficult for consumers to become well-informed about the range of fees that different professionals charge for their services. Courts in the U.S. have ruled that these rules are in violation of the Sherman Anti-Trust act, so professional societies (in the U.S.) have dropped them from their codes.

Professional Ethics Codes: Similarities and Differences

Let’s turn now to the fifth characteristic mentioned above: the members of professions organize themselves into “societies” that police their ranks, sanctioning members found guilty of violating “ethics codes.” While the ethics codes of professional societies differ from each other in some important respects, most of them share some important similarities. They nearly all demand that an ethical professional will:

- i) serve her client’s best interests.
- ii) protect the public.
- iii) preserve client confidentiality.
- iv) avoid “conflicts of interest,” and
- v) avoid certain malicious acts toward other members of one’s profession.

Though nearly all professions accept these rules, different professions interpret and apply them to their members in different ways. For example, a clinical psychologist who has “sexual intimacies” with a patient/client is guilty of violating rules i) and iv), and one who publicly reveals the identity of his clients has violated rule iii), as those rules apply to that profession. But similar behaviors by many other professionals would not violate those rules. The civil engineer who has “sexual intimacies” with a consenting client has not violated any NSPE rules, nor has the civil engineer who publicly reveals the identity of a client who has retained his services. For the civil engineer, the requirement to respect client confidentiality consists primarily in not revealing to others anything the engineer has learned of his client’s *business affairs*.

Let’s consider next how professional codes generally conceive of each of these requirements, and let’s consider some questions that can be raised about each of them.

“Serve the client’s interests”

Who decides what’s in the client’s best interests: the client or the professional? Within a certain range of cases, it’s the client who gets to decide and the professional is duty bound to defer to that choice. But if a client insists that a professional provide him with services that the professional in question deems in violation of the profession’s standard of “due care,” the professional may be required to refuse and possibly may have to terminate her relationship with said client. Suppose, for example, that a new fashion trend becomes popular among “hip” young adults: extracting all one’s teeth (including the healthy ones) from one’s mouth and wearing them in a chain around one’s neck. A dentist who granted a patient’s request to perform this procedure would be guilty of malpractice, of failing to serve his client’s interests in dental health. The patient may deny that keeping his healthy teeth is best for him in the long run, but the dentistry profession assumes otherwise, and the dentist is expected to uphold the standard of due care that his profession upholds no matter what the patient may wish. A physician can accommodate a cancer patient who prefers chemo to radiation therapy, even though the physician is convinced that the patient is better off undergoing the two together but fails to persuade his patient of this. But he would have to refuse a patient who asks for a drug with many known negative side effects and no proven efficacy in treating cancer. Of course, doctors may not force what they regard as the most effective treatment on an unwilling patient. Treatment must be preceded by “informed consent.” But the doctor, and more generally all professionals, are not a mere instrument of the client’s wishes. Physicians swear (as part of the Hippocratic oath) to “above all do no harm,” and that requires that they do no harm even if the patient authorizes it and/or has different views about what counts as “harm” from the medical profession’s. (Another illustration of this point comes from the legal profession: sometimes an attorney will file a death penalty appeal even when the client who’s sitting on death row requests that his attorney not delay his execution any further). We saw earlier that part of the justification for the *state* to impose licensing requirements on the practice of law, medicine, accounting, and engineering is paternalistic. But in addition to the state’s paternalism, the *professional herself* will sometimes practice paternalism by refusing to carry out a client’s wishes for that client’s own good.

“Preserve client confidentiality”

Nearly all of the codes admit that the duty to respect client confidentiality is limited, and the professional has the duty to violate it in certain extreme cases where public health and safety are at risk. The landmark case of *Tarasoff v. Regents of the University of California* (1976) forced professional societies to qualify the duty of client confidentiality in this way. In that case a psychologist was found liable for his failure to warn a client’s ex-girlfriend that the client had repeatedly expressed a wish to harm her in therapy sessions with the psychologist. The client murdered the ex-girlfriend, and the courts rejected that psychologist’s claim that his duty to respect client confidentiality prevented him from informing the ex-girlfriend that she was in danger.

Apart from rather extreme cases of this sort, professional codes require that the professional protect client confidentiality. Usually the claim that the public would be *better off* if confidentiality is violated will not be enough to justify the violation. The violation has to be necessary to prevent imminent, very probable, and tangible (rather than merely speculative) *harm* to public. Other examples of harm that would justify breaking confidentiality are: an attorney hearing his client confess that he intends to rob such-and-such bank at noon tomorrow, and a civil engineer learning that there are several serious safety code violations in the construction of a high rise building.

One possible rationale for the “preserve client confidentiality” rule is that it protects the client’s right to privacy. A difficulty with that justification is that it fails to explain why it’s only professionals who have this ethical obligation, not nonprofessionals. After all, the duty to respect others’ rights is one that everyone, not just professionals, has. We’ll return to this point shortly. A better rationale for the rule is that it’s needed for the professional adequately to serve the client’s interests. If professionals could violate confidentiality with impunity, and everyone knew that they could, then many would be disinclined to disclose details of their previous medical history, their current legal situation, or their business affairs to the doctor, lawyer, or accountant whom they’ve retained. Professionals who are deprived such information will find it more difficult to serve and protect their clients’ interests.

“Protect the Public”

The NSPE code of ethics for professional engineers says that the engineer’s first duty is to “hold paramount” the health, safety, and welfare of the general public. The collapse of walkways in the Hyatt-Regency Hotel of Kansas City in 1971 causing the deaths of over 100 people was a tragedy that never would have occurred had the chief engineer on the project taken this duty more seriously. When the construction company encountered some difficulties in building the walkways as originally designed, it changed the original design in a way that had the effect of doubling the load on certain bolts and beams. Those bolts and beams failed, causing the collapse. The chief engineer stamped the revised plans “approved” without examining them and spotting the change.

Engineering and surveying codes specifically forbid the practice of “signing off” on plans, designs, and surveys that the professional has not personally inspected. They also forbid allowing subordinates to carry out tasks without proper supervision. Both of the requirements exist in order to protect public health, safety, and welfare. The engineer

in this case would have been guilty of a serious ethical lapse, even if the walkway had never collapsed and no one died, for at least two reasons. First, he swore that he did something that he in fact did not do; thus, he lied. Second, allowing changes in the design of a large structure to be made by unlicensed nonprofessionals puts people's lives at risk, even if the changes they make are luckily not life threatening.

In a case litigated in Alaska, an unlicensed engineer, Charles Landers, was found guilty of "forging his [licensed] partner's signature and using his professional seal on at least 40 documents." His sentence was fairly harsh (20 days in jail, 160 hours of community service, \$4,000 in fines, and 1 year probation) in spite of the fact that a later review of the documents fraudulently approved by Landers turned up no violations of safety standards. (See C. Harris Jr, M. Pritchard, and M. Rabins, *Engineering Ethics*, 3rd ed., p. 347 for more details about the case). Landers' harsh punishment can be justified on at least two grounds: i) if behavior that risks harm to the public is wrong, it remains wrong even if it doesn't actually cause harm in that particular case, and ii) punishing Landers' "harmless" frauds deters others from committing similar frauds at least some of which probably would cause actual harm to the public.

"Avoid conflicts of interest"

This rule, too, may be viewed as a necessary means to ensure that the professional abides by other professional duties, namely, to serve his clients interests faithfully and protect public health and safety. A "conflict of interest" can be defined as a situation that tends to corrupt one's professional judgment by creating incentives for the professional to act in ways that are not in the client's best interests or for the public good. It's hard to imagine a more flagrant example than the following: until just recently, physicians who work for the FDA and are responsible for deciding which drugs are safe for public use were allowed to work as "consultants" for the very pharmaceutical companies trying to win FDA approval for new drugs. The FDA has announced that it will no longer permit this practice. The AMA's tolerance of the practice is evidence that it has not been terribly vigilant in cracking down on conflicts of interest among physicians. It lends some credence to the cynical view about licensing requirements and professionalism discussed earlier.

Sometimes the professional may sincerely believe that she can avoid compromising her objectivity merely by an act of will. An engineer whose job is to order the best part for a certain design may feel that she can accept the gift of an expensive lunch from a parts supplier without letting it affect her decision about which company she will order the part from. But while such a belief may well be sincere, its sincerity is not proof of its truth. If the gifts that companies give to politicians and professionals did not create at least an unconscious wish to "pay back" the company for its "generosity," the companies in question probably wouldn't be so "generous."

In some "conflict of interest" cases the professional is judged guilty whether or not he discloses the conflict. In other cases the professional is required not to avoid the conflict but simply to disclose it. If our engineer orders parts from a company owned by a close relative, that creates at least the *appearance* of a conflict of interest. But ordering parts from a different company is not the solution if no other company makes the part or the engineer is convinced that the part supplied by the relative's company is superior. In

a case of this sort the ethically proper action is for the engineer to order that part but then disclose to his employer or client his personal ties to the supplier company.

“Duties to Fellow Professionals and to the Profession”

Sometimes the client of one professional will retain a second professional to provide a “second opinion.” In such cases most codes require the second professional to inform the first one that this has been done. The codes typically require that a professional refrain from denigrating the competence or integrity of a fellow professional in an effort to steal their clients. A professional should not take credit for the work done by others, and if he uses the methods, ideas, or data of others, he must give them the credit that is their due. Many codes do not forbid advertising but limit it to a “modest and discreet” form: only in business and professional publications, no mention of what fees one charges for various services, etc. The most aggressive forms of commercial advertising are usually forbidden as detrimental to the “dignity” of the profession.

Professional Ethics Codes, Role Morality, and Ordinary Morality

By imposing the duties i)-v) on professionals, the codes seem to require that they meet “higher” ethical standards than nonprofessionals are expected to meet. Let’s examine this idea more closely. Let’s define “ordinary morality” as the set of moral requirements that one has to satisfy just by virtue of being a human being, no matter what particular social roles one occupies. “Role morality,” by contrast, is the set of moral requirements that one has to satisfy because one occupies a certain social role. People who don’t occupy that role may not have to satisfy those requirements. There are other social roles besides being a professional, and thus, other role moralities besides those found in professional ethics codes. But our concern here is only with professionals. i)-v) are part of the role morality of professionals, not part of “ordinary morality.” They are not rules that nonprofessionals have a duty to honor.

Consider as an example the requirement of client confidentiality that attorneys have. Suppose that Larry is a lawyer, Joe is just an ordinary, private citizen, and Carry, after retaining Larry as her lawyer, meets Larry and Joe in a coffeehouse. After socializing with the two of them for a while, she reveals to both details about some crime that she recently committed. Because of the requirement of client confidentiality, Larry may not report Carry’s confession to the police. If he does, he violates the professional ethics code of attorneys and can be disbarred. But since Joe is just an ordinary citizen, not Carry’s attorney, the duty to respect client confidentiality does not apply to him and he may report what he heard to the police. (Being “hearsay,” it may not be enough to secure Carry’s conviction, but it might well trigger a police investigation that uncovers other evidence sufficient to convict her). The duty to respect client confidentiality is part of the role morality of professionals, not part of the ordinary morality that applies to both professionals and nonprofessionals.

Here’s another example. Suppose that Jerry has a tight budget and a large family to support, and he needs to buy a car. Slick car commercials for a sexy European sports car make him eager to buy it, even though it’s rather expensive, unreliable, small, and expensive to maintain. After talking to him for a while, Jack, a car salesman, begins to

suspect that Jerry would be happier in the long run with a domestic family van. Nevertheless, Jack is under no ethical obligation to try to persuade Jerry to buy the van rather than the sports car. He may sell Jerry the more expensive car that earns him the higher commission. (This may not be a wise or prudent business practice, because unsatisfied customers are likely to resent Jack and refuse to do business with him in the future. But being short-sighted doesn't make the practice unethical). Now consider a different case: Jerry is sick, goes to his doctor, shows a preference for a more expensive treatment over a less expensive one, and the doctor knows that both are equally effective. In that case the doctor is obligated to inform Jerry that his interests are best served by the less expensive treatment, even if it means that the doctor receives a lower fee. The reason for this difference in the cases is that putting the client's interests first is part of the role morality of professionals, not part of ordinary morality, and doctors are professionals while car salesmen aren't.

The suggestion that the car salesman—more generally, the “businessman”—does not have a moral duty to “put his customers' interests first” will strike some as obviously right and others as obviously wrong, so some explanation and defense of it may be in order. The businessman's dealings with others are governed by moral norms, but the professional's norms are not among them. Why? Those dealings are governed by the moral rule that exchange must be free within markets that are competitive. That means no force, no fraud, and no colluding with other producers to fix prices. In a free market economic system, government does not seek to protect consumers by setting limits on how much producers may charge for their products, because it recognizes that in the long run such regulations are to the detriment of consumers. During famines or after natural disasters, businessmen who sell necessities should exercise self-restraint and abstain from “price gouging”—whether or not government steps in and forbids it. But that doesn't mean that during normal times businessmen should not seek to maximize their sales and commissions. The car salesman's reasonable presumption or expectation is that his customers are competent and motivated to look out for their own interests when it comes to choosing which type of car best suits them. The reason why paternalistic concern for the client's best interests is required of the professional is that a similar expectation of competence is not justified there. In the medical case, for example, patients are seldom competent to second-guess a doctor's advice about which treatment or drug is most effective in treating their condition.

Most of the rules in professional codes of ethics are, like i)-v), rules of role morality for the profession in question. But some of the rules that the codes mention are part of ordinary morality. For example, the NSPE code for engineers and the NCEES code for surveyors emphasize the professional's duty to avoid *deception* or *dishonesty* (e.g. misrepresenting one's competence or experience to complete a particular type of work). The duty to avoid deception seems to be part of ordinary morality. Even the used car salesman has a duty to avoid lying to his customers. Many professional codes also make a point of forbidding race and sex discrimination in the workplace, something that all of us are morally (and legally) obligated to avoid. Why do the codes draw on ordinary morality as well as role morality? Because past experience tells us that not all instances of unethical behavior by engineers and surveyors are failures to live up to the higher standards that go with being a professional. A significant percentage of them are failures to live up to some of the lower ethical standards that apply to all human beings.

There are several “philosophical” questions that arise about professional ethics codes, role morality, and ordinary morality. How do we determine which rules belong to ordinary morality and which don’t? (The intractability of debates about the morality of abortion, euthanasia, homosexuality, the death penalty exasperates many people and leads some to conclude that “right and wrong are all a matter of opinion”). Is it possible for a society’s conception of ordinary morality to be mistaken in certain respects? Is the correct account of the professional ethics code for, say, civil engineers whatever the society for that profession, the ASCE, says it is? Notice that if one takes that view, then one has to say that when societies modify their codes, the modifications are merely changes, not improvements. For to call a change an “improvement” suggests that it has gotten closer to being fully correct or adequate. Harris, Pritchard, and Rabins, in the engineering ethics text mentioned earlier, note that early American professional ethics codes made the engineer’s duty to his client “his first professional duty” and hardly mentioned any duty to the public at all. Now the codes of all engineering societies require that the engineer “hold paramount the public’s health, safety, and welfare.” Since the textbook’s authors describe this change as an “improvement,” they’re assuming that the earlier codes were deficient, and thus, that the societies that promulgated those codes made some mistakes.

Some of the thorniest questions about professional ethics concern the relationship between role morality and ordinary morality. Our discussion above suggests that the two are *compatible* with each other, and what the professional’s role morality does is simply *add* to the moral demands that ordinary morality imposes on all of us another, more demanding set of requirements. But is that always true? In some cases it looks like professional ethics makes demands that *conflict* with and *override* the demands of ordinary morality. Of course the demands of ordinary morality include duties of justice, such as the duty not to violate others’ rights to life, liberty, and property, and it’s hard to see how duties of that sort could ever be overridden by any rule of professional ethics. But there are many other demands of ordinary morality, such as the duty to be loyal to friends and family. Suppose I’ve learned that one of my best friend’s business competitor plans to do something perfectly legal which will harm my friend’s business prospects. If I inform my friend, he can take preemptive measures that protect him but harm the competitor’s business interests. Ordinary morality says I should inform my friend; loyalty to friends (and kin) is a moral virtue. But if I’m a professional, and I learned of the competitor’s plan in the course of a professional-client relationship with that competitor, then to inform my friend of the plan would violate client confidentiality and the duty to be a faithful servant of my client’s legitimate, legal interests. If it would be wrong for me to do that, then this is a case in which professional ethics *trumps* ordinary morality.