



Ethical Decision Making for the 21st Century Counselor

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Chapter 13

RESOLVING ETHICAL ISSUES

Shawn is a licensed professional counselor (LPC) with a thriving private practice. To supplement his client work, Shawn provides continuing education hours around the state for fellow LPCs. As a National Board of Certified Counselors (NBCC) approved provider, he conducts seminars and offers hours that are accepted by the state licensure board. Shawn shares an office space with Nelah, a fellow LPC whom he has known for years. This year, Nelah was not able to get all of her contact hours in time for her renewal. She asks Shawn for a certificate from one of his supervision workshops, saying they have talked about supervision so much that she has earned the contact hours. Plus, she says, she is willing to pay for the cost of a seminar.

CHAPTER OVERVIEW

This chapter introduces the reader to an overview of how ethical complaints are heard and adjudicated. Because individual counselors are licensed and credentialed differently, knowing who can hear and adjudicate cases is essential. Professional memberships, organizations, and licensure boards serve as entry points for making an initial complaint. This chapter walks through the typical process of filing a complaint and the sanctions that may occur. Within this chapter you also will find ways to prevent ethical misconduct through risk management and aspirational practice. Finally, tips for approaching a colleague you suspect of unethical behavior along with steps to take if you are the one who is accused are presented. Key American Counseling Association (ACA) ethical codes and the related Council for Accreditation of Counseling & Related Educational Programs (CACREP, 2009) standards also are denoted for your use.

LEARNING OBJECTIVES

After reading this chapter you will be able to do the following:

1. Distinguish between ethics and the law.
2. Examine the ways in which counselors are held to the ethical codes of licensure boards, professional members, and credentialing.
3. Analyze steps in the adjudication processes in professional organizations and licensure boards.
4. Describe what to do when counselors are accused of ethical misconduct and explain risk management strategies to avoid.
5. Summarize steps to take if you suspect someone of an ethical transgression.

CACREP STANDARDS

CACREP Core Standards

G.1.j. Ethical standards of professional organizations and credentialing bodies, and applications of ethical and legal considerations in professional counseling.

CACREP Clinical Mental Health Standards

A.2. Understands ethical and legal considerations specifically related to the practice of clinical mental health counseling.

INTRODUCTION

The majority of this text has been devoted to helping counselors and counselors in training (CITs) develop a discerning eye regarding ethical dilemmas. As many of the ethical decision-making models (EDMs) we studied in Chapters 2 through 4 attest, determining that an ethical dilemma exists is a starting point for resolving it. Until this point, we primarily have discussed how to follow an EDM and involve our clients in the process. However, some decisions require that we go beyond the client–counselor relationship and involve professional organizations and licensure boards. This chapter will address the resolution of ethical issues, including the involvement of licensure boards and professional organizations.

In addition, this chapter will address what to do when you are accused and what to do when you suspect another professional of an ethical transgression.

ETHICS VERSUS THE LAW

Many of the issues we have discussed throughout this text have related to ethical and legal issues. However, there are clear distinctions between ethics and law. Ethics arise out of values and morals and comprise a code adopted by individuals in their personal ethics and organizations. Laws are standards that we, as a society, have agreed to uphold. Laws come with inherent punishments. If someone breaks a law and is caught, that person is punished. Ethics are slightly different.

Codes of ethics adopted by organizations, such as ACA, can result in consequences if the organizations deem them to be needed. However, those consequences apply only to members of the organization. The process of adjudication of cases is outlined clearly by each organization and varies from organization to organization. However, many state boards and ACA have specific adjudication policies that we will discuss later in this chapter.

Do ethics and law always align? Not necessarily. A perfect example is part of the discussion in Chapter 9 on working with minor clients. As you know, our ethical codes ask us always to put client welfare first. Most of us who work with children and adolescents view that individual as our client. Because children have no legal right to enter into contracts, the law does not view a minor as the client. Instead, the adult parent or guardian is the legal client. This can create complications for the counselor trying to balance ethics and the law.

ETHICS IN CREDENTIALING BODIES

The licenses, credentials, and professional memberships held by the counselor can play a role in addressing ethical dilemmas. Each of these entities may hold a code of ethics to which we are responsible. We are required to understand the codes under which we fall, but individuals pursuing ethical complaints against us must understand them as well. This section addresses the various ways that counselors may be held to the ethical codes of licensure boards, professional memberships, and credentialing.

Licensure Boards

State licensure boards have the authority and responsibility to confer licenses to counselors who meet their minimum requirements. There are three general

components of licensure for professional counselors: educational requirements, competency exam, and supervised clinical experience (Buckley & Henning, 2015). The specifics of these components vary from state to state but have the three fundamental concepts in common. Every counselor licensed by a state board agrees to uphold the code of ethics set forth by the state licensure board. There are 52 ACA jurisdictions: the 50 states, Puerto Rico, and the District of Columbia. Of these 52 jurisdictions, 19 of them have adopted ACA Code of Ethics for their state licensure boards (ACA, 2014c).

Other states elect to adopt a version of ACA code or another code. However, the code they use is outlined clearly in state LPC law and available to practitioners and consumers in the state. Regardless of the origination of the code of ethics, when a counselor is licensed in a state, that counselor agrees to uphold the ethics for that state.

Professional Membership and Credentialing

As we discussed, licensure often is required for counselors to practice in their state. However, counselors also voluntarily seek out national credentials and membership in professional organizations in addition to licensure status. Understanding these voluntary activities in addition to state licensure sets the stage for understanding how to approach ethical issue resolution.

Ideally, counselors are introduced to professional membership in our graduate degree programs. A professional organization “is a group of people in a learned occupation who are entrusted with maintaining control or oversight of the legitimate practice of the occupation” (Harvey, 2014, para. 6). The counseling profession is full of such organizations, and many of them have their own codes of ethics.

American Counseling Association. We have spent a great deal of time discussing ACA and its ethical code. ACA is the flagship professional membership for counselors. With membership, counselors join an organization of more than 53,000 peers who participate in ongoing professional development, stay abreast of current trends, lobby for legislative advances, and network with peers (ACA, 2014b). Members also receive discounts on liability and other insurances, continuing education opportunities, and professional directory or advertising services.

ACA is the umbrella organization under which many other divisions in counseling fall. To date, there are 20 divisions of ACA tailored to specific areas of interest and practice. Professional divisions include organizations such as the Association for Assessment and Research in Counseling, Association for Counselor Education and Supervision, and the American School Counselor Association. Some of these divisions contain their own codes of ethics in addition to ACA code.

ACA (2014a) Code of Ethics serves as the gold standard of ethics for our profession. Members of ACA and its divisions are held to ACA code as well as their related division codes. As a result, members may be held to many ethical standards. ACA has an ethics committee that is charged with adjudicating ethical cases. This will be discussed in greater detail in the section titled “Adjudication Processes.” At this point, it is important to recognize that ACA members must be mindful of their division ethical codes along with ACA Code of Ethics.

American School Counselors Association. ASCA is both a division of ACA and an independent professional organization for school counselors. What this means is that members of ASCA do not necessarily have to be members of ACA. There are approximately 30,000 members of ASCA, making this one of the larger professional organizations for counselors of any type. ASCA is a powerful resource of school counselors providing continuing education, legislative activities, and support for members. In addition, ASCA has its own code of ethics that specifically governs the role of the school counselor and protects stakeholders (ASCA, 2014a).

American Mental Health Counselors Association. AMHCA is a voluntary professional membership for clinical mental health counselors. AMHCA has about 7,000 members who join to work with other clinical mental health counselors on public policy legislation, networking, and clinical practice issues (AMHCA, 2013). AMHCA has its own code of ethics, and counselors who belong to AMHCA agree to adhere to its standards.

Just as joining a professional organization is a voluntary process, so is credentialing. While licensure is legislated, defined, and monitored at the state level, various credentialing bodies may offer their own certifications to counselors. These credentialing bodies often have their own ethical codes to which counselors must be responsive. Let’s begin with one of the most common credentialing bodies, NBCC.

The National Board of Certified Counselors. NBCC is an independent non-profit credentialing body offering voluntary national certification to counselors (NBCC, 2014). It was founded by ACA as a way of bringing national credentialing to the profession while states were determining state licensure laws. The primary credential offered by NBCC is the National Certified Counselor (NCC), which is held by more than 55,000 counselors. These counselors voluntarily take the National Counseling Exam and apply for credentialing through NBCC. Other credentials offered by NBCC include the Master Addictions Counselor (MAC), Certified Clinical Mental Health Counselor (CCMHC), and National Certified School Counselor (NCSC). Separate from licensure, these certifications show the public that the counselor has met a high level of national standards through training, examination, and clinical practice.

NBCC has its own code of ethics that governs all who are credentialed as an NCC, MAC, CCMHC, or NCSC. This code was updated in 2012 and is available on the NBCC Web site: <http://www.nbcc.org/InteractiveCodeOfEthics/>. Similar to ACA code, the NBCC code is more concise and governs the work of all credentialed under its banner. In addition, NBCC has an adjudication process that manages ethical complaints against those holding NCC, MAC, CCMHC, or NCSC credential. This process will be explored further in the adjudication section of this chapter.

Association for Play Therapy. A specialty organization that credentials counselors is the Association for Play Therapy (APT). APT is an organization of mental health professionals promoting the use of play therapy with a variety of populations (APT, n.d.). In addition to advancing the use of play therapy, APT offers two credentials: the Registered Play Therapist (RPT) and the Registered Play Therapist-Supervisor (APT-S). To become an RPT, counselors already must hold a state license as a professional counselor. In addition, RPT candidates must have specific course work and clinical experience in play therapy (APT, 2014). Rather than a formal code of ethics, RPTs are asked to follow play therapy best practices, which closely parallel the codes of ethics we have studied thus far and provide the basis for ethical decision making as a play therapist (APT, 2012).

National Association of Forensic Counselors. Another credentialing body is the National Association for Forensic Counselors (NAFC). NAFC offers a number of credentials for counselors including the Forensic Counselor, Criminal Justice Specialist, and Sex Offender Treatment Specialist. NAFC was the first to credential forensic counselors and criminal justice specialists (NAFC, 2009). NAFC has a code of ethics that governs those it credentials. However, there does not seem to be an adjudication process for NAFC, which will become relevant as we discuss handling ethical complaints. Not all credentialing bodies have a code of ethics or adjudication process. As a result, adjudicating ethical complaints can become complicated both for the practicing counselor and the general public for whom these codes are developed to protect.

ADJUDICATION PROCESSES

Because ethics are not laws, they are not heard in courts. Rather, they are adjudicated by the boards or organizations that govern the person accused. To adjudicate means to make a formal judgment or decision about a dispute or dilemma (Adjudicate, 2014). Licensure boards, professional organizations, and credentialing bodies have the option to develop adjudication processes for members. All state licensure boards have an adjudication process. However, not all professional

organizations and certification bodies have a means of handling ethical complaints, even when they have an identified code of ethics.

For example, AMHCA has its own code of ethics that can be easily located on the www.amhca.org Web site. This code addresses many elements of clinical mental health practice and provides more guidance to those clinicians in its code of ethics than ACA code. However, AMHCA clearly states in Section IV of its code that the organization does not hear or rule on ethical matters (AMHCA, 2010). Members are encouraged to follow ethical decision-making practices to address ethical dilemmas, but no recourse is available via the organization.

What, then, is the proper way to have an ethical case heard? Section I of ACA (2014a) Code of Ethics covers aspects of resolving ethical issues. At their core, codes of ethics are written to guide our behavior as counselors and to protect the public. In addition, ACA code asks that counselors “hold other counselors to the same standards and are willing to take appropriate action to ensure that standards are upheld” (ACA, 2014a, p. 19). To do so, we are encouraged to communicate directly with other counselors about potential transgressions.

Ethical Code 13.1

I.2.a. Informal Resolution.

When counselors have reason to believe that another counselor is violating or has violated an ethical standard and substantial harm has not occurred, they attempt to first resolve the issue informally with the other counselor if feasible, provided such action does not violate confidentiality rights that may be involved.

Source: 2014 American Counseling Association Code of Ethics. Reprinted with permission from American Counseling Association.

Informal Resolution

Virtually all codes of ethics consider an informal resolution between counselors to be the first action step in resolving ethical dilemmas. Remember the case presented at the beginning of the chapter? Shawn was asked by Nelah to fake her attendance at a workshop, so she could have the appropriate number of continuing education units for her license. It is likely that after thoughtful consideration and consultation, Shawn would be able to speak candidly with Nelah about why her request would violate his professional ethics. To maintain harmonious relations, he also may suggest some online opportunities for her to access continuing education with her schedule. While it may be an inconvenience for Nelah, Shawn will have responded ethically via informal resolution.

Formal Adjudication

If informal resolution is unsuccessful or not possible, formal adjudication may be necessary. ACA (2014a) Code of Ethics outlines how to handle formal resolution for all types of counselors. It provides guidance for the next steps by asking counselors and others to consider the various licensure boards, professional organizations, and memberships through its discussion of the concept of jurisdiction.

Ethical Code 13.2

I.2.b. Reporting Ethical Violations.

If an apparent violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution or is not resolved properly, counselors take further action depending on the situation. Such action may include referral to state or national committees on professional ethics, voluntary national certification bodies, state licensing boards, or appropriate institutional authorities. The confidentiality rights of clients should be considered in all actions. This standard does not apply when counselors have been retained to review the work of another counselor whose professional conduct is in question (e.g., consultation, expert testimony).

Source: 2014 American Counseling Association Code of Ethics. Reprinted with permission from American Counseling Association.

Jurisdiction as it relates to ethical adjudication simply means that the board in question has the authority to interpret the codes and determine recourse. For example, ACA has jurisdiction only over ACA members. That jurisdiction is enacted through ACA Ethics Committee.

ACA Ethics Committee

ACA Ethics Committee is a board of nine ACA members appointed by ACA president-elect for three-year terms (ACA, 2005). The committee has a number of duties, including educating the membership and public at large about ethical considerations in counseling. The committee meets, at minimum, three times per year explicitly to process ethical complaints. It follows a clear process to ensure the rights of both the client and the accused counselor are protected.

First, the counselor must be a member of ACA. If the counselor is not a member, then the committee has no jurisdiction. Many clinicians elect not to join a

professional organization, leaving the committee no ability to help the complainant. If the counselor is an ACA member, a complainant can file the alleged violation with ACA. Because the complainant is typically a client, that person is given a number of protections and assistance by ACA. The complainant can work directly with ACA ethics manager to complete the necessary paperwork to file a complaint. The ethics manager will assist the complainant in connecting the narrative of his or her complaint to existing ACA ethical codes. The complaint is then passed to the cochair of the ethics committee. That person is responsible for determining what codes are in question and if the points in the complainant's narrative are true. This step is not a determination of fact; rather, it is a way of connecting the narrative to the codes. If the narrative cannot be matched to a code, then the issue is not an ethical one (ACA, 2005).

The complainant is informed that the committee will share the documentation of the complaint with the accused. In other words, there are no anonymous complaints heard by ACA. The accused ACA member has every right to the documentation submitted and to develop an appropriate defense. Most liability and malpractice insurance policies cover attorney consultation and representation for the practicing counselor. At the hearing, held in person or via conference call, both the complainant and the accused may present their sides. As in court cases, each side has the right to legal counsel and to call witnesses. However, because this is not a court of law, judicial rules of evidence do not apply. What this means is that documents and witnesses that may not be admissible in court are admissible in ACA ethics hearings. Like a court of law, the ethics committee must meet minimum criteria for the burden of proof to rule against the accused. It is not the responsibility of the accused to prove him or herself right; rather, it is the complainant's responsibility to prove that the accused was in the wrong. After the evidence is heard, the ethics committee meets to discuss, deliberate, and determine judgment.

Guided Practice Exercise 13.1

Ethical Adjudication in Your State

Visit your state licensure board Web site, and learn how ethical cases are adjudicated. Are the hearings open or public? Are the cases and outcomes made available on the Web site? If so, look through the case summaries and types of sanctions offered to get a sense of the ethical transgressions that occur or have occurred in your state.

When a complaint is found to have merit, ACA Ethics Committee has several responses at its discretion. Sanctions within the committee's purview include remediation, probation, suspension, and expulsion (ACA, 2005). Remediation includes activities to increase the accused's awareness of ethical transgressions and ethical decision making, such as attendance at mandatory ethics workshops. Probation may occur along with remediation in that the counselor is on probation until he or she complies with the remediation activities. Suspension may be imposed while awaiting compliance, and in this case, ACA membership is not active during the time of remediation. Finally, the accused, if found to be at fault, may be expelled from ACA permanently with no opportunity for return. Expulsion occurs when more atrocious ethical transgressions have transpired for which remediation is not deemed possible and is rarely used, according to ACA Chief Professional Officer David Kaplan (as cited in Boodman, 2005).

Guided Practice Exercise 13.2

When a Colleague Is Accused

A new client tells you that she recently discontinued working with Sal, a counselor in your local area. She further discloses that she became uncomfortable when Sal asked her to go for coffee after a session to "get to know her better." What are your next steps?

Another question to consider is why is expulsion so uncommon? If an organization, such as ACA, permanently expels a member, it has no ability to govern or sanction the ex-member's work as a counselor in the future. It is only in these most extreme cases that counselors are expelled from membership. While expulsion creates a challenge for professionals and is a blemish on their professional record, the real consequences of ethical case adjudication come via the state licensure boards.

State Licensure Boards

As has been discussed, the state licensure board governs the practice of professional counseling. Counselors can belong to professional organizations without being licensed. They can hold certifications from national credentialing bodies such as NBCC. But professional counselors cannot practice independently without a state license.

Because the state license is the ticket to independent practice, it is a desirable part of professional counselor functioning. Without it, a counselor may work in

some select agency settings or in another field, but he or she may not see clients and bill them for services independently. As such, maintaining the standards of the state board is essential to the licensed counselor.

Although state licensure laws differ, there are similarities when it comes to adjudicating ethical complaints. These complaints typically are handled via a process that is very similar to ACA process previously described. Complainants must first determine if the counselor is licensed in the state. Then a complaint may be filed with the state board. State boards meet monthly or several times per year and hear cases that are found to have merit.

CASE STUDY 13.1

A complaint is made against a counselor indicating that he conducted an assessment unethically with Sharla, the client making the accusation. In her complaint, Sharla states that the counselor evaluated her for work with the local police academy then reported those results to the police academy before sharing them with her. She felt this was a breach of her personal confidentiality and filed a complaint. When contacted by the board, the counselor in question produces a contract indicating that the work was commissioned by the police academy, and the terms of the agreement were that the results would be communicated to the police academy directly, before they were shared with the client. The complaint is dismissed as lacking in merit.

1. Was the board correct in dismissing the case?
2. If you were the counselor charged, how might this case impact how you practice with clients?

As an example, let's take a look at how the state of Oregon handled ethical complaints. The state of Oregon Board of Licensed Professional Counselors and Therapists' Web site, <http://www.oregon.gov/obl/pct>, contains both a practitioner section and a consumer section. The consumer section includes a copy of the code of ethics, expectations of counselors, information about filing an ethical complaint, and the confidential complaint form. After a complaint is received and jurisdiction is established, the board acknowledges the complaint and solicits additional information as needed. The board then contacts the licensee and requests a response in 21 days. Upon receipt of the response, the board interviews the parties involved and gathers any needed information to make a determination. Within 120 days, the board takes action on the complaint (Oregon.gov, n.d.b.).

In Oregon, this case has several possible outcomes. First, if no merit is found to the complaint, the complaint can be dismissed. If the board has concerns

about the allegations, but does not find that there is sufficient evidence to rule against the licensee, it can dismiss the complaint but issue a letter of concern. Another option is to propose disciplinary action similar to ACA remediation. In Oregon, any discipline imposed by the board is provided to the counselor and posted on the board's Web site. The outcome also is reported to a national data bank of disciplinary actions against health care and mental health providers known as the Healthcare Integrity & Protection Data Bank (Oregon.gov, n.d.a.). Examples of disciplines offered by the Oregon board range from monthly mandatory supervision, a child abuse reporting course, and license revocation in the case of counselors who were involved sexually with their clients (Oregon.gov, 2014).

While this chapter has illustrated Oregon, most states follow a similar pattern. As we saw in the case of professional organizations, revocation of license is a rare outcome with disciplinary actions. This is because when the board removes licensure from the counselor, that person can no longer be governed by the board. Having a counselor maintain licensure status with conditions allows the board to monitor the counselor's activities, require regular reporting, and keep the professional accountable to the licensure board.

You may recall that unlicensed counselors can work in a variety of settings but cannot operate independently. Consider the following case example:

Case Example

Peter is a master's level LPC in private practice conducting child custody evaluations in an urban area. He has a thriving practice alongside a clinical psychologist. Many of his clients and their families call him "doctor," and he does not discourage this. The nature of his work requires that Peter conduct a variety of assessments for the court system. He finds that employing counseling interns and clerical staff is a great way to complete these assessments. He then signs these reports as if he had done the assessment and goes to court to provide the results. Peter views this as the best use of his time as administering most of the assessments is pretty much clerical anyway.

A complaint is made against Peter with his state LPC board indicating that he encourages his clients to call him "doctor." The state LPC board issues a cease and desist letter to Peter asking him to fully inform his clients of his credentials.

Over the years, Peter built a larger and larger business with the court system. He came to the decision that mothers are better able to parent children after divorce than fathers. As a result, his assessments tend to skew in favor of mothers. At times, he even submits reports as if he had conducted a home visit with both parents when he did not. A complaint eventually is filed with the LPC board about Peter's practices.

The complainant lost his children due to Peter's erroneous assessment and created a Web site to gather other fathers to join him in challenging Peter's competency. The board suspends Peter's license and requires a remediation plan. Several additional complaints and lawsuits follow. Eventually, the board is forced to revoke Peter's license due to his ongoing ethical transgressions.

When he can no longer practice independently, Peter moves to another state. He does not secure licensure there because states require copies of previous licenses as well as verification from that state that the license is in good standing or was not renewed voluntarily. He works for some time in that state but later returns to his home state. He now works for the state department of mental health managing their group home systems. In other words, the very state that revoked his license now employs him in a counseling role.

The case example is rooted in a series of similar cases familiar to your text authors. What are your emotional reactions to this case? We find that many students and counselors initially are appalled. Many focus on the fact that he can continue to work with vulnerable populations without a license. Remember that these emotions, the gut check, if you will, are elements of many EDMs. Let's consider some of the challenges inherent in this case. For example, is it illegal or unethical to call yourself *doctor*? Take a moment to look at your ACA Code of Ethics, and determine your response. It would seem reasonable that C.3. would apply, but that is only about advertising. What about accurately representing yourself with your existing clients? Many ethical boards would see this as a violation.

Now return to Chapter 1, and visit the ethical decision-making traps discussed. Recall that these traps are simply ways that we take a first step on the slippery slope to poor ethical choices. We may start with good intentions but let the behavior slide, if you will, into unethical territory. The first time a client calls you "doctor," would you redirect? When you consider allowing an administrative assistant to conduct the assessment, you have begun the journey down that slippery slope. It is only when you allow it to occur, and even more so when you sign your name to it, that you have crossed the line.

- What ACA ethical codes did Peter violate? Is it illegal to call yourself *doctor*?
- What ethical decision-making traps from Chapter 1 may have contributed to Peter's poor choices?
- What remediation plans would you want to see Peter engage in early on to avoid losing his license?
- What are your thoughts on unlicensed counselors working in state systems?

CASE STUDY 13.2

*Richard A. Cohen holds a master's degree in counseling psychology and is a former ACA member. His primary area of practice was conversion therapy. As someone who states that he used to be gay but is now heterosexual, he works with others who want to convert from being gay. Mr. Cohen authored a book titled *Coming Out Straight*, which describes his experiences in his own sexual identity development. His practice is exclusively with gay men who wish to become heterosexual.*

Mr. Cohen is not licensed in any state and operates as a coach rather than a counselor. He has a charitable organization that helps fund his endeavors. Mr. Cohen shared with a Washington Post reporter that touch is a central component of his therapy practice. He believes that close, intimate mentorship with a heterosexual male is conducive to change.

Mr. Cohen was brought up on numerous ethical charges in an ACA complaint brought forward by a former client. The complaint contained concerns about Mr. Cohen's approach to therapy, and the former client felt forced to be a part of workshops and lectures for Mr. Cohen. According to the adjudicated complaint, Cohen was found in violation of multiple codes of ethics including those related to imposing values, fostering autonomy, and exploiting client trust (Boodman, 2005).

1. What are your initial reactions as you read this case?
2. Do you agree with Mr. Cohen's approach to counseling? Why or why not?
3. Would you refer a client to Mr. Cohen? Why or why not?

Adjudication by the Numbers

As you read through the steps to adjudication and the various outcomes, the process should seem relatively straightforward. While it is straightforward, it is important to know that a full case adjudication is less common than you may think. One of the best ways to illustrate this is with the annual report data provided by the ACA Ethics Committee.

Each year, ACA receives a number of ethical inquiries. Those numbers have increased dramatically in recent years. Inquiries include calls, e-mails, letters, and faxes to ACA office to ask questions about ethics. In 2004, there were 758 such inquiries (Anderson & Freeman, 2006). By 2012 and 2013 there were more than 6,000 inquires (ACA, 2012; ACA, 2013). This is an almost 700 percent increase in less than 10 years! Imagine if all of these inquiries turned into actual cases to be adjudicated. It would take a lot more than the current ethics committee infrastructure to manage such a deluge of cases.

Why such an increase? It is likely that ACA Ethics Committee has done a good job of educating practitioners and the public as to its role. In addition, counseling students have become more aware, and many of the questions are coming from that population of beginning professionals (personal communication, E. Martz, 2011). Finally, the culture of our country is increasingly litigious, and the practice of protecting oneself is more common than in the past. Now let's take a look at what happens to all these cases.

In fiscal year 2011 to 2012, there were 6,231 inquiries and only four formal complaints (ACA, 2013). Of those four complaints, only two were accepted for adjudication as the others were filed against nonmembers, or the complaint could not be matched with relevant ethical codes required to meet the standard for hearing the case. This extremely small percentage of cases moving from inquiry to adjudication is due to a number of factors. Many of the inquiries may be found not to be ethical dilemmas at all. Additionally, the queries may have to do with non-ACA members. Finally, the complainant may decide the process of filing the complaint is not worthwhile or that the idea of the complaint being made public is personally difficult. As you can see, the numbers that reach adjudication are very manageable at the national level and are likely mirrored at the state licensure board level.

WHAT COUNSELORS SHOULD DO WHEN THEY ARE ACCUSED OF ETHICAL MISCONDUCT

Perhaps the biggest fear that counselors carry is the fear that a client will accuse them of ethical misconduct via an ethics complaint or lawsuit. As a result, counselors are advised to carry independent malpractice policies even if working for an agency or practice that carries a group policy. Large professional organizations, such as ACA and AMHCA, offer malpractice insurance to students as part of their membership to cover the work they do as interns. Once graduated, beginning counselors must shop for and purchase their own coverage to meet their personal needs.

Having such a policy is a benefit in the event that a counselor is accused of ethical misconduct. As you have seen from the statistics, formal complaints against counselors are rare, but they do occur. Being the target of such a complaint can be an overwhelming professional experience. Because ethical cases that go to the state board or are heard in a court of law are made public, these events can also be career shattering. Having an understanding of ethics, the use of an EDM, and a good malpractice insurance policy are preventative actions all counselors should take.

According to Walk-In Counseling Center, a nonprofit mental health consultation organization providing resources for counseling professionals, a counselor may hear that there is an ethical concern in a number of ways (Walk-In Counseling

Center, n.d.). The counselor may receive a grievance directly from the client in the form of a conversation, letter, or other means. This informal complaint may be handled quickly and directly, especially if the client is asking for session fees to be returned. The counselor should consult, of course, but may want to refund the money to avoid costly litigation of a formal complaint.

The counselor may receive first notification that there is a problem when a formal complaint is filed with an agency, institution, or school where the counselor is employed. Or, a counselor may receive a call from the state licensure board or attorney general's office if the complaint is filed at the state level. Finally, the counselor may receive a subpoena or subpoena *duces tecum*. A subpoena is a court order requiring that the counselor appear before the court in a case while a subpoena *duces tecum* is an order filed through the court by an attorney requesting the production of records or evidence, such as case files (Subpoena, 2013).

Many counselors likely handle informal complaints made directly to them by clients on a regular basis, but what happens after a formal case is filed? The first step a counselor should take is to cease and desist all communication with the client. When the client opens the complaint, he or she loses all right to confidentiality as the counselor is free to develop a defense. Contacting the insurance company and beginning to go over the case with the provided attorney are the next steps.

When You Are Contacted

In general, there are some rules of thumb to follow when you are contacted by a professional board regarding a potential ethical transgression (Zur, 2014). First, treat all contacts seriously. These are not matters to be trivialized or ignored. As tempting as it may be to decide that the claim lacks any validity, it still must be addressed professionally and quickly—but not too quickly. Always consult legal counsel before replying, even to your own state licensure board. It is important to maintain control of all client files and contacts until you are authorized to release them by your attorney. Perhaps most important is that those careful files you kept must not be altered in any way after contact about the issue.

All communication, written or in person, should occur with your attorney's involvement. Even if the client, client's attorney, or a board representative appears on your doorstep, do not engage without your own counsel present. We discussed informal resolution with the client earlier in this section, but once a formal complaint has been filed, there should be no further discussion with the client. In fact, your discussions should be kept to a minimum and include only your attorney, supervisor, and partner. It will be tempting to talk openly about the case, but this is ill advised in case it works against you in court or in a hearing. Finally, it is recommended widely that filing a countersuit is not in your best interests.

Remember that the client is still the vulnerable party in the eyes of the law and in codes of ethics, and you want to avoid the appearance of a power play (Zur, 2014).

Above all, we want to impress upon you as practicing counselors that lawsuits and ethical charges are relatively rare. When they do occur, they can be life altering. It is imperative to practice self-care along the way to ensure that you are still functioning well for existing clients and that you are able to live a reasonably content life in spite of this challenge. As you know, the codes of ethics exist to help you govern your own behavior.

Risk Management

A counselor is five times more likely to have a state board charge filed against him or her than to be a party in a lawsuit; however, being prepared is critical (Zur, 2014). An essential component of risk management is to have adequate liability insurance coverage. As previously mentioned, students may acquire such insurance as a function of several professional memberships, such as ACA, AMHCA, and ASCA. ASCA even offers some insurance coverage to U.S.-based school counselor professional members (ASCA, 2014b). ACA has a partnership with Healthcare Providers Service Organization (HPSO) to provide liability insurance to members at a reduced rate (ACA, 2014b). Other private malpractice providers exist to serve counselors as well. Counselors need to consider how much coverage to purchase annually. Some providers suggest that counselors have a policy that offers them \$1 million for each claim and up to \$5 million maximum coverage (HPSO, 2014). These types of policies are intended to supplement employer policies and protect the individual rather than the agency.

Hopefully, this is a policy you will never use! In the event that you do have a concern, the policy typically will offer disciplinary defense coverage. In other words, your insurance policy will assist you with legal counsel in the event of a lawsuit or board hearing. In addition, these policies often include personal injury protection. This is not to cover you for physical assaults, necessarily; rather, personal injury protection covers claims related to slander, libel, and privacy violations. Given that so many ethical challenges are related to privacy considerations and HIPAA, having coverage for these pitfalls is helpful for risk management purposes (HPSO, 2014).

Having insurance is one component of risk management. Using the various EDMs discussed throughout the text is another. In addition, counselors must stay informed regarding changes to ethical codes and current trends in ethics cases. This is best accomplished through continuing education opportunities, belonging to professional organizations, and networking with others in the field. Finally, one of the most important components of preemptive risk management is good documentation and record-keeping practices (Zur, 2014).

Record keeping and documentation are elements of professional practice that counselors may complain about the most. Who loves paperwork? Not counselors, by and large. We are people oriented, not paper oriented, and prefer to spend our time in the active service of others. However, it is essential to keep accurate and timely case notes. As mentioned earlier in the text, part of a good ethical decision-making process is to document consultation and decision-making practices as well. We should follow the motto, “If it isn’t written, it didn’t happen,” and be diligent in recording our work with clients and any potential pitfalls (and resolutions) that occur along the way.

Practice Aspirationally and Relationally

Recall from our discussion in Chapter 1 that aspirational ethics mean that counselors serve the client beyond the letter of the law. Practicing aspirationally means keeping our client’s welfare in the forefront at all times. It is an elevated level of practice that protects the client, follows relevant codes and laws, and as such, serves to protect us as well. This text has made a point of focusing on the relation aspect as well. Whenever possible, involve your client and relevant stakeholders in ethical decisions. When you do so and the client has buy-in to the decision, there is less risk of a lawsuit or case being brought before a board.

Next we will examine your role when someone else’s behavior is in question.

WHAT TO DO WHEN YOU SUSPECT SOMEONE ELSE OF AN ETHICAL TRANSGRESSION

Throughout this text you have applied the codes of ethics to case studies of fictional counselors. We hope that we have made it clear that codes of ethics exist to allow us to monitor our own behavior. However, there may be times that you are faced with knowledge of an ethical transgression that requires your attention and, perhaps, intervention. Let’s take a closer look at what to do when someone else may be crossing ethical lines.

Your own ethics training and EDM should alert you to signs of an ethical dilemma. During conversations with colleagues, these dilemmas will become apparent. Remember that you have an ethical decision-making process to follow, and while it may be tempting to point an accusatory finger, your EDM requires you to take a step-by-step approach. First, make sure the dilemma you have identified truly is an ethical dilemma and violates a distinct ethical principle or law. If you cannot connect the perceived transgression to a particular ethical code, then no ethical dilemma exists.

Guided Practice Exercise 13.3

When You Are Accused

You are having a wonderful day at the office when a process server arrives. It seems that a former client, who has a history of litigation against service providers of all types, is suing you for malpractice. Her suit alleges that you promised her that she would be relieved of her depression after six sessions, but she is still depressed. You know that you did not make that promise and have a clause in your informed consent indicating all possible outcomes of counseling. What steps should you take next?

Assuming there is an ethical transgression occurring, however, how should you handle it? You initially will want to consider the evidence, or lack thereof. Very few ethical transgressions happen in public with witnesses and corroborating evidence (Koocher & Keith-Spiegel, 2012). One exception is when you learn of a non-licensed counselor advertising as though he or she is a licensed counselor. In these cases, state boards will issue a cease and desist letter based on the public advertising.

Ethical transgressions are more likely to occur in private between the client and counselor and be reported after the fact. You may learn about it via conversation with the counselor, or perhaps you begin to see a new client who tells you about a former counselor. In these instances, you should consider the information provided and check your own motives for taking on this dilemma. Are you acting as an advocate for your profession? Have you always been suspicious of that counselor and now have a way to get him or her? Do you enjoy the conflict that comes with being the righter of wrongs? It is likely that you have time to consult before acting on the matter, and these motives should be discussed in your consultation. Remember the importance of consultation in all ethical decisions—consulting about confronting a colleague's ethical transgression is no different.

Koocher and Keith-Spiegel (2012) warn counselors against taking covert action to address the behavior in a less direct and professional way. They state that counselors can be tempted to avoid the confrontation by simply sharing their knowledge with others in the field to prevent further harm to clients. If other counselors know of the problem, perhaps they will not refer clients to the practitioner. You can see how this may diminish the frequency of future cases but not address the real problem. A second covert action these authors describe is the counselor who sends an anonymous note to the suspected offender letting him or her know that you are on to them. The counselor attempting to right the wrong may even go so far as to send a copy of the relevant ethical code to send the message that the accused must stop. As you can see, both of these options lack the transparency that our profession

expects in collegial interactions and do not take into account that the presumed offender may have been incorrectly judged. To address the ethical concern in such a manner violates the spirit of aspirational ethics and is simply not professional.

When a true dilemma seems to be at hand, and you determine that an informal resolution is the best option, make an appointment rather than engaging in an ambush. It may be tempting to catch them in the hallway or to pull them aside at a staff luncheon, but a professional dilemma requires professional behavior on your part. Ask for some time with the colleague without being threatening or menacing. Set a tone for the meeting that is not critical but open to your having misunderstood the information. For example, you may wish to start with simple facts that contain no judgment so that your peer can agree or disagree with your understanding of events. If there is still an ethical dilemma present, outline your concerns allowing your colleague to offer any explanations along the way. Be sure to let the counselor in question know your role: Are you acting on behalf of a client or as a fellow counselor? Do you have personal knowledge of the behavior (as in the case between Shawn and Nelah at the start of the chapter), or are you acting on hearsay? Be clear, nonjudgmental, nonthreatening, and nondefensive. Remember that this is your colleague in the profession. If you are unable to come to a resolution, you may need to take this further. However, in the moment, you are there to share your concern and listen to your colleague (Koocher & Keith-Spiegel, 2012). If an informal intervention is unsuccessful, you may need to move forward with the steps to address the transgression with the ACA or your state licensure board.

CASE STUDY 13.3

Juli is a counselor working in a private practice with Laura, a fellow counselor. Both Juli and Laura see clients of all ages, but Laura specializes in child and adolescent care. When Juli sees a client under the age of 18 who reveals the use of alcohol or drugs, she reports that use to the parent or guardian. She informs both parent and child of this policy in her informed consent. This reporting is legal and occurs when the parent meets with Juli about the child's progress. Laura does not agree with this policy and has told Juli how she handles these disclosures. Laura wonders if she should report Juli to the state ethics board or the ACA. When she calls the ACA ethics manager, she learns that Juli's behavior is legal and does not explicitly violate a code of ethics that could be pursued. While Juli may lose the trust and therapeutic relationship with the child as a result of the report to the guardian, she is up front about how she views this illegal behavior and follows the policy consistently with her clients.

1. What are your personal reactions to Juli's process?
2. Do you identify more with Juli or Laura in how they handle these disclosures?
3. If Laura came to you for advice, what would you tell her?

CONCLUSION

Learning the ins and outs of ethical codes is essential to becoming a professional counselor. As we have seen in this chapter, understanding how those codes are used to adjudicate cases in professional organizations and legal cases is also a critical component of professional practice. When a colleague is suspected of unethical behavior, an informal resolution is the preferred approach. However, there are times when a formal action must occur. Knowing the professional memberships and licenses of the accused counselor will direct the process as those are the only organizations that can hear or adjudicate a complaint. When counselors are accused, there are a number of steps they must follow under the guidance of legal counsel. Although lawsuits and ethical adjudications are relatively rare, it is important to protect your practice using risk management and aspirational approaches.

KEYSTONES

- Ethics arise out of values and morals and comprise a code adopted by individuals in their personal ethics and organizations, while laws are standards that we as a society have agreed to uphold.
- State licensure boards have the authority and responsibility to confer licenses on those counselors who meet their minimum requirements. Every counselor licensed by a state board must uphold the code of ethics provided by that board.
- A professional organization “is a group of people in a learned occupation who are entrusted with maintaining control or oversight of the legitimate practice of the occupation” (Harvey, 2014, para. 6). The counseling profession has many professional organizations, each with its own code of ethics.
- Virtually all codes of ethics consider an informal resolution between counselors to be the first action step in resolving ethical dilemmas. If informal resolution is unsuccessful or not possible, formal adjudication may be necessary.
- Jurisdiction as it relates to ethical adjudication simply means that the board in question has the authority to interpret the codes and determine recourse.
- Sanctions within ACA Ethics Committee’s purview include remediation, probation, suspension, and expulsion. Remediation includes activities to increase the accused’s awareness of ethical transgressions and ethical decision making, such as attendance at mandatory ethics workshops. Probation may occur along with remediation in that the counselor is on probation until there is compliance with the remediation activities. Suspension may be imposed while waiting compliance, and in this case, the membership is not active during the time of remediation.
- Adjudication of ethical complaints by the state board is similar to the process used by ACA. Complainants must determine if the counselor is licensed in the state, then they can file with the state board. State boards meet monthly or several times per year and hear cases that have merit.

- Counselors should practice risk management. One way of doing so is to purchase liability insurance. Large professional organizations, such as ACA and AMHCA, offer malpractice insurance to students as part of their membership to cover the work they do as interns. We also should practice aspirationally and relationally and, whenever possible, involve the client and relevant stakeholders in ethical decisions.
- When suspecting someone else of an ethical transgression, remember that you have an ethical decision-making process to follow, and while it may be tempting to point an accusatory finger, your EDM requires you to take a step-by-step approach.

SUGGESTED BEST PRACTICES

- Remember that ethical codes are written to guide your behavior, not to police the behavior of your peers.
- Consider what codes you would be willing to break and why. Consider what laws you would be willing to break and why. If the answer is none, what will you do when ethics and law collide?
- Know all of the ethical codes under which you fall.
- Know the educational requirements, competency exam, and supervised clinical hours requirements for your state.
- Join professional organizations, and participate in their activities, such as conferences and interest groups.
- Select voluntary credentials that help showcase your expertise to clients and the public.
- Understand the basics of the adjudication process so that you can better understand how to approach ethical decisions.
- Pay close attention to the steps to informal resolution. You may be called upon to talk with a colleague about unethical behavior.
- Have a liability policy, and know how to use it.
- Have an attorney with whom you can consult in the event of an ethical dilemma.
- Get involved with your state licensure board if possible.
- Visit your state licensure board Web site, and read cases that have been adjudicated to remain apprised of the trends in your state.

ADDITIONAL RESOURCES

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