

# Ethical and legal level of counseling



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## **1. The concept of ethics and legal**

Ethics is generally defined as a philosophical discipline that is concerned with human conducted and moral decision making (Van Hoose, 1985). Ethics are normative in nature and focus on principles and standards that govern relationship between individuals, such as those between counselors and clients. Morality, however, involves judgment or evaluation of action. It is associated with such words as good, bad, right, wrong ought, and should (grant, 1992). Counselors have morals, and the theories counselors employ have embedded within them moral presuppositions about human nature that explicitly and implicitly question first “ What is a person and second, what should a person be or become?” (Christopher, 1996)

For improving the ethical and legal level of counseling, first, the counselor needs to understand what the word “ ethical” means. Before the first counseling session, the counselor should realize how important about making good professional decisions that are both ethics and legal while being helpful to his or her clients. According to the Webster’s New World Dictionary (1980), it means “ 1. having to do with ethics; or of conforming to moral standards, 2. conforming to professional standards of conduct”. Notice that these two definitions are distinctly different. This first is a personal phenomenon – that is, what is moral is decide most often by individuals. In contrast, the second encompasses behaviors that are considered ethical by some professional group. In the mental health profession, that group could be the American Counseling Association (ACA), or the American Psychological (APA), just to name a few.

## **2. The development of codes of ethics for counselors**

The first counseling code of ethics was developed by the American Counseling Association (ACA) (Then the American Personnel and Guidance Association, or APGA) based on the original American Psychological Association code of ethics (Allen, 1986). The initial ACA code was initiated by Donald Super and approved in 1961 (Callis & Pope, 1982). It has been revised periodically since that time. The ACA also produces A Practitioner's Guide to Ethical Decision Making, video conferences on resolving leading-edge ethical dilemmas (Salo & Hamilton, 1996), and an Ethical Standards Casebook (Herlihy & Corey, 1996).

The ACA's latest ethics code is entailed a Code of Ethics and Standards of Practice. This code is one of the major signs that counseling has developed into a mature discipline because professions are characterized, among other things, by a claim to specialized knowledge and a code of ethics.

In the CAC, ethics standards are arranged under topical sectional headings. They contain material similar to that found in many other ethical codes, yet they are unique to the profession of counseling.

## **3. Following the Guideline for Acting Ethically**

For improving the higher level of the ethics of counseling, the counselors should follow guideline for acting ethically. Swanson (1983) lists guidelines for assessing whether counselors act in ethically responsible ways. The first is personal and professional honest. Counselors need to operate openly with themselves and those with whom they work. Hidden agendas or unacknowledged feelings hinder relationship and place counselors on shaky ethical ground. One way to overcome personal and professional honest

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problems that may get in the way of acting ethically is to receive supervision (Kitchener, 1994).

The second guideline is acting in the best interest of clients. This ideal is easier to discuss than achieve. At times, a counselor may impose personal values on client and ignore what they really want (Gladding & Hool, 1974). At other times, a counselor may fail to recognize an emergency and too readily accept the idea that the client's best interest is served by doing nothing.

The third guideline is that counselors act without malice or personal gain. Some clients are difficult to like or deal with, and it is with these individuals that counselors must be especially careful. However, counselors must be careful to avoid relationships with likable clients either on a personal or professional basis. Errors in judgment are most likely to occur when the counselor's self-interest becomes a part of the relationship with a client (Germaine, 1993).

The final guideline is whether counselors can justify an action "as the best judgment of what should be done based upon the current state of the profession" (Swanson, 1983). To make such a decision, counselors must keep up with current trends by reading the professional literature; attending in-service workshops and conventions, and becoming actively involved in local, state, and national counseling activities.

The ACA Ethical Standards Casebook (Herlihy & Corey, 1996) contains examples in which counselors are presented with issues and case studies of questionable ethical situations and given both guidelines and questions to reflect on in deciding what an ethical response would be. Each situation

involves a standard of the ethical code. As helpful as the casebook may be, in many counseling situations the proper behavior is not obvious (Gladding, 2001). For example, the question of confidentiality in balancing the individual rights of a person with AIDS and society's right to be protected from the spread of the disease is one with which some counselors struggle. Likewise, there are multiple ethical dilemmas in counseling adult survivors about what to do in a given situation, it is crucial for counselors to consult and talk over situations with colleagues, in addition to using principles, guidelines, casebooks, and professional codes of ethics.

#### **4. Counselor Competence and Referral**

The ACA Code of Ethics (1995) clearly states that “ Counselors must practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience”. The APA Ethical Principles (1992) makes a similar statement and adds that: Psychologists provide services, teach, or conduct research in new area or involving new techniques only after first undertaking appropriate study, training, supervision, and consultation from person who are competent in those areas or techniques.

The ethical standards are quite clear regarding what a counselor should do if he is not competent to treat a certain client problem. His first and best choice is to make an appropriate referral. If there is no one to whom he can refer (which would be an exception rather than a common occurrence), then it is incumbent on he to educate himself through reading books and journal articles on the presenting problem and to seek supervision of his work with the client. The counselor has the responsibility for the welfare of the client;

therefore, it is his professional duty to obtain for that client the best services possible – be it from him or from a professional colleague. Clients are not subjects for your trial – and – error learning but deserve the best professional care possible.

One of counselors' responsibilities is to recognize his or her strengths and weaknesses and to offer services only in the areas of his or her strengths. Defining a counselor's areas of component usually involves critical and honest self-examination. Calling this subjective component an internal perspective, Robinson and Cross caution counselors to do everything possible to gain the skills and knowledge based to the profession. Counselors need to stretch their skills continually by reading and attending to new and developing trends, through attaining postgraduate education, and through attending seminars and workshops aimed at sharpening and increasing both knowledge and skill bases. All counselors must take full responsibility for adhering to professional codes of conduct that address the concepts of proper representation of professional qualifications, for providing only those services for which they have been trained, and for seeking assistance with personal issues that are barriers to providing effective service.

Regardless of the area of the area of service being discussed, counselors are the first-line judge of their professional competence. Although credentialing bodies, professional organizations, and state legislatures may set standards for practice, the counselor must be the most critical evaluator of his or her ability to provide services. This often becomes quite a challenge when one's living dependents on having clients who will pay for service. In fact, the ethical is not always the easy choice.

## **5. Improving Ethics Decisions Making in Counseling**

The making ethics decision is the crucial key for achieving a higher level of the ethics of counseling. Ethics decision making is often not easy yet is a part of being a counselor. It requires “ virtues such as character, integrity, and moral courage” as well as knowledge (Welfel, 1998). Some counselors operate from personal ethical standards without regard to the ethical guidelines developed by professional counseling associations. They usually function well until faced with a dilemma “ for which there is no apparent good or best solution” (Swanson, 1983). At such times, ethical issues arise and these counselors experience anxiety, doubt, hesitation, and confusion in determining their conduct. Unfortunately, when they act, their behavior may turn out to be unethical because it is not grounded in any ethical code.

The researchers found five types of ethical dilemmas most prevalent among the university counselors they surveys there: a. confidentiality, b. role conflict, c. counselor competence, d. conflicts with employer or institution, and e. degree of dangerousness. The situational dilemmas that involved danger were the least difficult to resolve and those that dealt with counselor competence and confidentiality were the most difficult. The surprising finding of this study, however, was that less than over-third of the respondents indicated that they relied on published professional codes of ethics in resolving dilemmas. Instead, most used “ common sense,” a strategy that at times may be professionally unethical and at best unwise.

It is in such types of situations that need to be aware of resources for ethical decision making, especially when questions arise over controversial behaviors such as setting or collecting fees or conducting dual relationships

(Gibson & Pope, 1993). Ethical reasoning, “ the process of determining which ethical principles are involved and then prioritizing them based on the professional requirements and beliefs,” is also crucial (Lanning, 1992).

In making ethical decisions, counselors should take actions “ based on careful, reflective thought” about responses they think are professionally right in particular situations (Tennyson & Strom, 1992). Several ethical principles relate to the active and ethical choices of counselors: Beneficence (doing well and preventing harm), Non malfeasance (not inflicting harm), Autonomy (respecting freedom of choice and self-determination), Justice (fairness), and Fidelity (faithfulness or honoring commandments) (Herlihy, 1996).

All these principles involve conscious decision making by counselors throughout the counseling process. Of these principles, some experts identify non malfeasance as the primary ethical responsibility in the field of counseling. Non malfeasance not only involves the “ removal of present harm” but the “ prevention of future harm and passive avoidance of harm”. It is the basis on which counselors respond to clients who may endanger themselves or others and why they respond to colleagues’ unethical behavior.

### **5.1 Educating Counselors in Ethical Decision Making**

Ethical can be improving in many ways, but one of the best is through course offering that are now required in most graduate counseling programs and available for continuing education credit. Such courses can bring about significant attitudinal changes in students and practicing professionals,



impairment, and multiculturalism (Coll, 1993). Because ethical attitudinal changes are related to ethical behavioral changes, courses in ethics on any level are extremely valuable.

Van Hoose (1979) conceptualizes the ethical behavior of counselors in terms of a five-stage developmental continuum of reasoning:

1. Punishment orientation. At this stage the counselor believes external social standards are the basis for judging behavior. If clients or counselors violate a societal rule, they should be punished.
2. Institutional orientation. Counselors who operate at this stage believe in and abide by the rules of the institutions for which they work. They do not question the rules and base their decisions on them.
3. Societal orientation. Counselors at this stage base decisions on societal standards. If a question arises about whether the needs of society or an individual should come first, the needs of society are always given priority.
4. Individual orientation. The individual's needs receive top priority at this stage. Counselors are aware of society needs and are concerned about the law, but they focus on what is best for the individual.
5. Principle (conscience) orientation. In this stage concern for the individual is primary. Ethical decisions are based on internalized ethical standards, not external considerations.

As Welfel and Lipsitz (1983) point out, the work of Van Hoose and Paradise is especially important because it “ is the first conceptual model in the literature that attempts to explain how counselors reason about ethical

issues”. It is heuristic (i. e., research able or open to research) and can form the basis for empirical studies of promotion of ethical behavior.

Several other models have been proposed for educating counselors in ethical decision making. Based on Gumaer and Scott (1985), for instance, offer a method for training group workers based on the ethical guidelines of the association for specialists in group work. This method uses case vignettes and Carkhuff’s three-goal, model of helping: self-expectation, self-understanding, and action. Kitchener (1986) proposes an integrated model of goals and components for an ethics education curriculum based on research on the psychological processes underlying moral behavior and current thinking in applied ethics. Her curriculum includes “ counselors to ethical issues, improving their abilities to make ethical judgments, encourage responsible ethical actions and tolerating the ambiguity of ethical decision making” (Kitchener, 1986). Her model and one proposed are process oriented and assume that counselors do not learn to make ethical decisions on their own. Pelsma and Borgers (1986) particularly emphasize the how as opposed to what of ethics – that is, how to reason ethically in a constantly changing field. Other practitioner guide for making ethical decisions are a seven-step decision making model based on a synthesis of the professional literature, a nine-step ethical decision-making models follow based on critical-evaluative judgments and seven other models created between 1984 and 1998 (Cottone & Claus, 2000). These ethical decision-making models follow explicit steps or stages and are often used for specific areas of counseling practice. However, through empirical comparisons and continued dialogue, the effectiveness of the models may be validated.

In addition to the models already mentioned the ACA Ethics Committee offers a variety of educational experience. For example, members of the committee offer learning institutes at national and regional ACA conferences. In addition, they publish articles in the ACA newsletter. Finally, to promote counseling practices, the committee through ACA publishes a type counselor's guide entitled: What you should know about the ethical practice of professional counselors, which is on the ACA website as well as printed (Williams & Freeman, 2002).

## **6. Focus on Clients' Rights**

When clients enter a counseling relationship, they have a right to assume that you are competent. In addition, they have certain rights, known as client rights, as well as responsibilities. These rights have their foundation in the Bill of Rights, particularly the first and fourth amendment of the constitution of the United States, which are freedom of religion, speech, and the press and right of petition and freedom from unreasonable searches and seizures, respectively. The concept of confidentiality, privileged communication, and informed consent are based on the fourth amendment, which guarantees privacy. Privacy has been defined as “ the freedom of individuals to choose for themselves the time and the circumstances under which and the extent to which their beliefs, behaviors, and opinions are to be shared or withheld from others” (Corey et al., 1988).

### **6.1 Improving Confidentiality and Privileged Communications**

The concept of privacy is the foundation for the client's legal right to privileged communication and counselor's responsibility to hold counseling communications confidentiality is a professional concept. It is so important

that both the APA (1992) Ethical principles and the ACA (1995) Code of Ethics each devote an entire section to confidentiality. However, a client's communications are not confidential in a court of law unless the mental health professional is legally certified or licensed in the state in which he or she practices. Most states grant the clients of state-certified or licensed mental health professionals (such as psychologists, professional counselors, and marriage and family therapists) the right of privileged communications. This means that clients, not counselors, have control over who has access to what they have said in therapy and protects them from having their communications disclosed in a court of law.

In order for communication to be privileged, counselors should follow four conditions. First, the communication must originate in confidence that it will not be disclosed. Second, confidentiality must be essential to the full and satisfactory maintenance of the relationship. Third, in the opinion of the greater community, the relationship must be one that should be sedulously fostered. Finally, injury to the relationship by disclosure of the communication must be greater than the benefit gained by the correct disposal of litigation regarding the information. If as a counselor can claim these four conditions, then his clients' communications are not only confidential, but they are also privileged and, therefore, are protected from being disclosed in a court of law. One must remember, however, that there is always a balance between a clients's right to privacy and society's need to know.

Despite the importance given to confidentiality and privileged communication, pope, and Keith-Spiegel (1987) reported that 62 percent of <https://assignbuster.com/ethical-and-legal-level-of-counseling/>

psychologists in a national survey indicated that they had unintentionally violated a client's confidentiality and 21 percent had intentionally violated a client's confidentiality. These alarming statistics suggest that mental health professionals are at risk for violating this core ethical principle. Therefore, all mental health professionals need to be aware of the professional standards regarding confidentiality, the professional is guilty of breaching the confidentiality. Secretaries are considered extensions of the certified or licensed mental health professionals to which they are accountable.

## **6. 2 Improving Informed Consent**

The ACA (1995) Code of Ethics is very specific with respect to what should be disclosed to clients in order for them to give informed consent: When counseling is initiated, and throughout the counseling process as necessary, counselors inform clients of the purposes, goals, techniques, procedures, limitations, potential risks and benefits of services to be performed, and other pertinent information. Counselors take steps to ensure that clients understand the implications of diagnosis, the intended use of tests and reports, fee, and billing arrangements. Clients have the right to expect confidentiality and be provided with an explanation of its limitations, including supervision and treatment team professionals; to obtain clear information about the case records; to participate in the ongoing counseling plans; and to refuse any recommended services and be advised on the consequences of such refusal.

If a counselor is asked by a client to disclose to a third party information revealed in therapy, have the client sign an informed consent form before making any disclosure. The counselor may be surprised to learn that

counselor are not even permitted to respond to inquiries about whether they are seeing a person in therapy – even the client’s name and status in counseling are confidential, unless the client has granted permission for this information to be released.

One exception is when the client is paying for the services through an insurance company. This automatically grants the insurance company limited access to information regarding the client. The client needs to be made aware of the parameters of the information that will be shared with the insurance company prior to beginning therapy. Again, it is evident how important it is to have potential clients sign an informed consent form before they become clients.

### **6.3 Improving Clients’ Welfare**

All the preceding discussion rests on the permission rests on the premise that the counselor’s primary obligation is to protect the welfare of the client. The preamble to the APA (1992) Ethical Principles specifically states that it has “ as its primary goal the welfare and protection of the individuals and groups with whom psychologists work.” A similar statement is made by ACA (1995) Code of Ethics: “ the primary responsibility of counselors is to respect the dignity and to promote the welfare and of clients”. Dual relationships, counselors’ personal needs have already been discussed; attention now needs to be given to the third concern.

An additional set of guidelines comes into play when a counselor is doing work or working with a couple or family. In a group setting, special issues include qualifications of the group leader, informed consent when more than

the group leader will be participating in therapy, the limits to confidentiality and to privileged communication when third parties are present in therapy, and understanding how individuals will be protected and their growth nurtured in a group situation. Unlike individual counseling, clients who want to be involved into a group experience need to be screened before being accepted into a group. This screening not only ensures that the client is appropriate for the group but also protects other group members from a potentially dysfunctional group member.

It is evident that client welfare, whether in individual therapy or in group work, rests squarely on the shoulders of the counselor. The counselor must be cognizant of the various aspects of the counseling relationship that can jeopardize the client's welfare and take the steps necessary to alleviate the situation. Robinson Kurpius and Gross offer several suggestions for safeguarding the welfare of each client:

1. Check to be sure that you are working in harmony with any other mental health professional also seeing your client.
2. Develop clear, written descriptions code of what clients may expect with respect to therapeutic regime, testing and reports, recordkeeping, billing, scheduling, and emergencies.
3. Share your professional code of ethics with your clients, and prior to beginning therapy discuss the parameters of a therapeutic relationship.
4. Know your own limitations, and do not hesitate to use appropriate referral sources.

5. Be sure that the approaches and techniques used are appropriate for the client and that you have the necessary expertise for their use.
6. Consider all other possibilities before establishing a counseling relationship that could be considered a dual relationship.
7. Evaluate the client's ability to pay and when the payment of the usual fee would create a hardship. Either accept a reduced fee or assist the client in finding needed services at an affordable cost.
8. Objectively evaluate client progress and the therapeutic relationship to determine if it is consistently in the best interests of the client.
9. Improving the Ethics of Counseling in Some Specific Situations

Counselors should check thoroughly the general politics and principles of an institution before accepting employment because employment in a specific setting implies that serves in institutions that misuse their services and do not act in the best interests of their clients, they must act either to change the institution through educational or persuasive means or find other employment.

The potential for major ethical crises between a counselor and his or her employer exists in many school setting. School counselors are often used as tools by school administrators. When the possibility of conflict exists between a counselor's loyalty to the employer and the client, the counselor should always attempt to find a resolution that protects the rights of the client; the ethical responsibility is to the client first and the school lore other setting second (Huey, 1986). One way school counselors can assure themselves of an ethically sound program is to realize that they may encounter multiple dilemmas in providing services to students, parents, and



teachers. Therefore, before interacting with these different groups, school counselors should become families with the ethical standards of the American school counseling association, which outlines counselors' responsibilities to the groups with whom they work (Henderson, 2003).

One of the most common situations of counseling is about the family and marriage. The reason is that counselors are treating a number of individuals together as a system, and it is unlikely that all members of the system have the same goals. To overcome potential problems, Thomas (1994) has developed a dynamic, process-oriented framework for counselors to use when working with families. This model discusses six values that affect counselors, clients, and the counseling process: (a) responsibility, (b) integrity, (c) commitment, (d) freedom of choice, (e) empowerment, and (f) right grieves. Then, when a counselor faces the counseling of family or marriage, he or she should try to follow this framework.

The use of computers and technology in counseling is another area of potential ethical difficulty. The possibilities exist for a breach of client information when computers are used to transmit information among professional counselors. Other ethically sensitive areas include client or counselor misuse and even the validity of data offered over computer links. In addition, the problem of cyber counseling or web counseling – that is, counseling over the internet in which the counselor may be hundreds of miles away – is fraught with ethical dilemmas. Thus, the national board of certified counselors has issued ethical guidelines regarding such conduct.

Other counseling settings or situations with significant potential for ethical dilemmas include counseling the elderly, multicultural counseling, working in managed care, diagnosis of clients, and counseling research (Jencius & Rotter, 1998). In all of these areas, counselors face new situations, some of which are not addressed by the ethical standards of the ACA. For instance, in working with older adults, counselors must make ethical decisions regarding the unique needs of the aging who have cognitive impairments, a terminal illness, or who have been victims of abuse. In order to do so, counselors may apply principle ethics to these situations that are based on a set of obligations that focus on finding socially and historically appropriate answers to the question: “ What shall I do?” In other word, “ Is this action ethical?” They may also employ virtue ethics, which focus on the “ character traits of the counselor and nonobligatory ideals to which professional aspire”. Rather than solving a specific ethical question, virtue ethics are focused on the questions: “ Am I doing what is best for my client?” Counselors are wise to integrate both forms of ethics reasoning into their deliberations if they wish to make the best decisions possible.

In making ethical decisions where there are no guidelines, it is also critical for counselor to stay abreast of current issues, trends, and even legislation related to the situation they face. In the process, counselors must take care not to stereotype or otherwise be insensitive to clients with whom they are working. For instance, a primary emphasis of research ethics is, appropriately, on the protection of human subjects in research. In the area of research in particular, there are four main ethical issues that must be resolved: “ a. informed consent, b. coercion and deception, c. Confidentiality

and privacy, and d. reporting the results. (Robinson & Gross, 1986) All of these areas involve people whose lives are in the care of the researcher. Anticipation of problems and implementation of policies that produce humane and fair results are essential.

### **8. Improving the Legal Aspects of Counseling**

Counselors must follow specific legal guidelines in working with certain populations. But counselors may often have considerable trouble in situations in which the law is not clear or a conflict exists between the law and professional counseling ethics. Nevertheless, it is important that providers of mental health services be fully informed about what they can or cannot do legally. Such situations often involve the sharing of information among clients, counselors, and the court system.

Sharing may be broken down into confidentiality, privacy, and privileged communication. Confidentiality is the ethical duty to fulfill a contract or promise that the information revealed during therapy will be protected from unauthorized disclosure. Confidentiality become a legal as well as an ethical concern if it is broken, whether intentionality or not. It is annually one of the most inquired about ethical and legal concerns received by the ACA Ethics Committee including “ dilemmas regarding right to privacy, clients’ right to privacy, and counselors avoiding illegal and unwarranted disclosures of confidential information” (Williams & Freeman, 2002).

Privacy is an evolving legal concept that recognizes individuals’ rights to choose the time, circumstances, and extent to which they wish to share or withhold personal information. Clients who think they have been coerced into

revealing information they would not normally disclose may seek legal recourse against a counselor.

Privileged communication, a narrower concept, regulates privacy protection and confidentiality by protecting clients from having their confidential communications disclosed in court without their permission. It is defined as a client's legal right, guaranteed by statute, that confidences originating in a therapeutic relationship will be safeguarded (Arthur & Swanson, 1993). Most states recognize and protect privileged communication in counselor-client relationships.

As opposed to individuals, the legal concept of privileged communication generally does not apply in group and family counseling (Anderson, 1996). However, counselors should consider certain ethical concerns in protecting the confidentiality of group and family members.

One major difficulty with any law governing client and counselor communication is that laws vary from state to state. It is essential that counselors know and communicate to their cli