

## New Concepts in the 2014 *ACA Code of Ethics*

David M. Kaplan, Perry C. Francis,  
Mary A. Hermann, Jeannette V. Baca, Gary E. Goodnough,  
Shannon Hodges, Shawn L. Spurgeon, and Michelle E. Wade

The 2014 revision of the *ACA Code of Ethics* (American Counseling Association [ACA], 2014) substantially raises the bar for the ethical practice of professional counselors. This article provides interviews with members of the ACA Ethics Revision Task Force that explore and clarify new imperatives in the areas of ethical decision making, professional values, managing and maintaining boundaries, technology (including social media), the nonimposition of counselor personal values, counselor education, legal issues, sliding scales, and fee splitting.

**Keywords:** ethics, *ACA Code of Ethics*, values, technology, decision making

The *ACA Code of Ethics* (American Counseling Association [ACA], 2014) provides ethical guidelines for the counseling profession, and professional counselors, licensing boards, and courts use the *Code* as a standard. For example, the federal judge in the seminal *Ward v. Wilbanks* (2011) legal case stated in his summary judgment that “the *ACA Code of Ethics* is the industry standard in the field of counseling” (Kaplan, 2014, p. 144).

In June 2011, the Ethics Revision Task Force was appointed and charged with completing the latest revisions to the *ACA Code of Ethics*. The counselor ethicists serving on the task force were Jeannette V. Baca, Janelle Disney, Perry C. Francis (chair), Gary E. Goodnough, Mary A. Hermann, Shannon Hodges, David M. Kaplan (staff liaison), Lynn Linde, Linda Shaw, Shawn L. Spurgeon, Michelle E. Wade, and Richard Watts. These 13 individuals spent 3 years soliciting proposed changes from ACA members and counseling organizations; researching global codes of ethics in the helping professions; reviewing relevant professional literature; and receiving feedback on draft additions, modifications, and deletions. The ACA Governing Council approved a finalized draft in March 2014.

In keeping with a tradition started with the 2005 edition of the *ACA Code of Ethics* (ACA, 2005), ACA professional staff

conducted a series of interviews with the Ethics Revision Task Force (for the previous set of interviews published in the *Journal of Counseling & Development*, see Kaplan et al., 2009). These interviews not only educate professional counselors about new imperatives but also provide explanations from those who revised the *Code* about why specific changes were made. The six interviews that follow provide an overview of the ethics revision process and then focus on critical new ethical imperatives in the areas of ethical decision making, professional values, managing and maintaining boundaries, technology (including social media), the nonimposition of counselor personal values, counselor education, legal issues, sliding scales, and fee splitting.

### Overview

**David M. Kaplan (DMK):** Tell us about the challenges of putting together a task force that revises an ethics code that serves an entire profession.

**Perry C. Francis (PCF):** When you're putting together a task force of this magnitude you have to have the right players at the table. That means getting people together who represent as broad a swath of counseling as possible. So we had task force members with backgrounds in private practice, rehabilitation counseling, school counseling, college counseling, and other

**David M. Kaplan**, Department of Professional Affairs, American Counseling Association; **Perry C. Francis**, Department of Leadership and Counseling, Eastern Michigan University; **Mary A. Hermann**, Department of Counseling and Special Education, Virginia Commonwealth University; **Jeannette V. Baca**, Counseling Department, New Mexico Highlands University; **Gary E. Goodnough**, Counselor Education and School Psychology Department, Plymouth State University; **Shannon Hodges**, Department of Professional Studies, Niagara University; **Shawn L. Spurgeon**, Department of Educational Psychology and Counseling, University of Tennessee, Knoxville; **Michelle E. Wade**, Department of Counselor Education, Bridgewater State University. Michelle E. Wade is now at Department of Counseling, Marymount University. Thanks go to Christina Cooke-Mayrant for her assistance. Correspondence concerning this article should be addressed to David M. Kaplan, Department of Professional Affairs, American Counseling Association, 6101 Stevenson Avenue, Suite 600, Alexandria, VA 22304 (e-mail: dkaplan@counseling.org).



areas. In June of 2011, ACA President Marcheta Evans reviewed over 60 applications for the Ethics Revision Task Force. President Evans did a marvelous job of choosing members who had a depth of knowledge and had practice, teaching, or research experience in the area of counseling ethics.

**DMK:** *How hard is it to put together the actual revision of the ACA Code of Ethics?*

**PCF:** It is a matter of taking the long view. You realize that this isn't something that you're going to sit down and do in a couple of weekends. This is something that is going to happen over a couple of years. Putting together a revision requires a comprehensive knowledge of not just the *Code of Ethics* but also its impact on all the different aspects of the counseling profession. It also has to last for a number of years.

**DMK:** *Is it reasonable to say that many thousands of person hours were put in by the Ethics Revision Task Force?*

**PCF:** It wasn't just the task force. It also involved people outside of the task force because we asked for feedback from the profession. So thousands of hours of work occurred not just by the task force but by many members of the profession who offered pages and pages of feedback.

**DMK:** *Can you say a little bit about how that feedback was collected and evaluated?*

**PCF:** We sent out a call to ACA members and feedback was received through the ACA web page. We also sent out announcements to the different professional associations that are related to the profession of counseling as well as state licensing boards. Every single correspondence was then reviewed by the entire task force.

**DMK:** *What was the Ethics Revision Task Force trying to accomplish?*

**PCF:** The *ACA Code of Ethics* is a living document, the reflection of the combined wisdom of the profession and a reflection of its values and professional obligations to the people that we serve. As our society changes, so too does our practice of counseling. For the 2014 *Code of Ethics*, we had to take a look at how the world has evolved in a technology sense. People today communicate consistently and constantly via social media, e-mail, chat rooms, and blogs. And as society has learned to communicate electronically so too does the profession of counseling need to evolve to take into consideration the ethical implications of providing services or interacting with clients via computer technology, social media, or other means.

**DMK:** *So clearly technology, including social media, was a focus. We will be exploring this area in more depth in a future interview. But for now, can you give us an example in the area of social media?*

**PCF:** One of the prohibitions in the new code is the establishment of a personal virtual relationship with clients. In other words: Don't friend your clients. Friending crosses a boundary from client to personal relationship and is therefore not appropriate.

**DMK:** *What were some other key areas in the 2014 ACA Code of Ethics?*

**PCF:** I'll outline several of the highlights. One is that we were much more specific in stating the values of the counseling profession in the preamble: the enhancement of human development, diversity and multiculturalism, social justice, the integrity of the counselor–client relationship, and competency. Ethics codes across the world recognize that counselors enter our consultation room as a representative of the profession and so [these codes] tend to have a statement of professional values. We are catching up with our international peers.

Another focus was the imposition of counselor values. There has been some confusion in the field about whether referrals can be made because of the counselor's religious or other values. The task force wanted to make it clear that a professional counselor's role is not to impose personal values onto a client but to uphold the values of the profession that sees the worth and dignity of every human being. As such, the 2014 *Code of Ethics* clarifies that we make a referral on the basis of skill-based competency, not personal values.

There is also a change in dealing with contagious and life-threatening diseases. The 2005 *Code of Ethics* required counselors to confirm that a client had HIV or other contagious life-threatening disease before disclosing that status to a person at risk. It became clear that this requirement was impossible to fulfill if the client did not give their physician a release. So the 2014 *Code* removed the requirement to confirm a contagious and life-threatening diagnosis, replacing it with a reliance on relevant laws.

Another area we took a look at was the extension of confidentiality to include appointments. We wanted to ensure that whether a client has made an appointment is just as confidential as anything that they have talked about.

**DMK:** *The 2014 Code also expands on the need to use a decision-making model when facing an ethical dilemma. Tell us about that.*

**PCF:** The Ethics Revision Task Force wanted to reinforce the need for every counselor to be knowledgeable about an ethical decision-making model and to use it to evaluate the impact of potential ethical decisions. We struggled in the task force about whether to endorse a particular ethical decision-making modeling. We decided that there were so many good models out there that we didn't want to do that.

**DMK:** *What would you say to the ACA member who asks how they are supposed to remember well over 20 pages of ethics-related statements?*

**PCF:** I would say that there's going to be some great support services for the revised *Code of Ethics* provided by ACA in the form of apps, webinars, podcasts, articles, conference presentations, and online discussions. I would also say that it is a reflection of the complexity of how we provide counseling. In 1961, the first *ACA Code of Ethics* (American Personnel and Guidance Association, 1961) focused on the counselor. Today, our ethics code is focused more on the needs of the client. And that is very important to keep in mind. Do members need to memorize all 20 pages of the *Code*? No. If you practice in a caring, compassionate manner, continually updating and broadening your skills, then you will practice in an ethical fashion.

There's also nothing wrong with having a couple of copies of the *Code* in your office so that any time you have a question you can scan through it. You can also take advantage of the services of ACA ethics staff who will provide a consultation with you when you are facing a difficult ethical decision.

Finally—as stated previously—have a good ethical decision-making model. Walking step-by-step through a good decision-making model can help you to critically think through the implications of potential actions and assist you to provide the best possible services.

## Preamble Scramble

**DMK:** *Before we get to changes that were made to the preamble, let's address its purpose. Why does the ACA Code of Ethics need a preamble? Why not just go directly to the nuts and bolts and the dos and don'ts?*

**Mary A. Hermann (MAH):** The preamble sets the tone for the *Code of Ethics*. It gives information about what's contained in the *Code of Ethics*, and it explains the purpose of the *Code of Ethics*. It also provides core professional values as well as principles for ethical behavior and decision making.

**PCF:** The preamble is also a statement to the public: "This is who we are as a profession, and these are the things that we value. This is the foundation on which we base our ethics." When you take a look at the new statement of professional values, when you take a look at the new statement of principles that provide that foundation, you get a jumping-off point to understand the rest of the *Code*.

**DMK:** *In this revision, the focus has expanded beyond ACA members to include the counseling profession as a whole. Why was that done?*

**PCF:** The *ACA Code of Ethics* is often used in courts of law as the guidelines for the profession. We must also bear in mind that while ACA has over 55,000 members, there are many more counselors out there. Therefore, it is incumbent upon us to say that this is the *Code* for the profession and these are the expectations for all the specialties that we represent.

**DMK:** *With that in mind, tell us what is new in the preamble to the 2014 ACA Code of Ethics.*

**MAH:** For the first time, the *ACA Code of Ethics* provides the values of the profession of counseling as well as the fundamental principles of professional ethical behavior for our profession. The Ethics Revision Task Force focused on fundamental values and principles because we wanted to make sure that members abide by the spirit as well as to the letter of the ethical standards. We are trying to ensure that counselors understand that they can't just go to one statement within the *Code*, read half of it, and then base their ethical decision making on that. They need the bigger picture.

**PCF:** The preamble also reinforces the idea of using a decision-making model. The Ethics Revision Task Force wanted counselors to understand the necessity of thinking through an ethical decision.

**DMK:** *As mentioned, the preamble now lists and describes six foundational principles for the ethical practice of professional counselors: autonomy (fostering the client's right to control their life), nonmaleficence (avoiding actions that cause harm), beneficence (working for the good of the client and society), justice (treating clients fairly), fidelity (being trustworthy), and veracity (dealing truthfully with clients). Where did these principles come from?*

**PCF:** Most of these principles go back several decades and actually come from the medical model where physicians were taking a look at the basic core principles that underscore appropriate decision making as well as patient rights. Through the intervening decades, we've seen a greater understanding of not just those beginning principles, but the addition of a few more. For example, veracity is new; veracity is truth telling. It encompasses being truthful in all of our interactions—not just with our clients, but with colleagues and other professional entities as well.

**DMK:** *Does that mean that counselors can't use paradoxical interventions?*

**PCF:** Paradox is a treatment modality in which we try to help our clients rethink things. As such, it is not being untruthful to our clients. Veracity focuses on such things as the need to make appropriate and accurate diagnoses and to bill clients and insurance companies accurately.

**DMK:** *Are all of the six principles equally weighted or are there any that take precedence?*

**MAH:** Nonmaleficence is something that often rises to the top since causing harm can have catastrophic effects.

**PCF:** Some counselors would suggest that autonomy is the top principle, but you can't look at the principles in an absolutely hierarchical fashion because each of them is applied in different ways to particular situations. For example, if a client is suicidal, autonomy would suggest that it's up to

them to determine the direction of one's life. But, as Mary pointed out, nonmaleficence has to take precedence because in that particular case we would cause extreme harm if a client was suicidal and we did not intervene. We can say that the different principles interact in such a way as one takes precedence over another based on the needs of the client and the context of the situation.

**DMK:** *Speaking of client needs, it looks like there is an increased focus on collaboration between the counselor and the clients. Why is that?*

**MAH:** We really wanted to make clear that collaboration with clients is a key piece of what counselors do when we are acting in an ethical manner.

**PCF:** The first Code that was created in the early 1960s focused very much on the counselor as expert. As we've grown as a profession, we figured out that we're not always the experts that we'd like to be. We work collaboratively with our clients to determine the best direction. Counselor–client collaboration is an ethical obligation for us now, and it's reflected in how we've revised and created the Code.

**DMK:** *Let's turn now to the professional values that are listed in the preamble for the first time: enhancing human development, embracing multiculturalism and diversity, promoting social justice, safeguarding the integrity of the counselor–client relationship, and practicing in a competent and ethical manner. Why were the professional values of the counseling profession highlighted?*

**PCF:** Counseling codes of ethics from outside the United States tend to be up-front about counseling values. We wanted to reflect this worldwide trend and, therefore, made the values of counseling more clear within the preamble.

**DMK:** *Is there anything about the preamble that you want ACA members and professional counselors to know about that we haven't covered so far?*

**MAH:** The task force thought it was important to make a distinction between ethics and law, so new language was added clarifying that a violation of the Code does not necessarily constitute legal liability or a violation of the law; legal liability is only determined by courts of law.

**DMK:** *One last question: Why should professional counselors read the preamble rather than just delving into specific ethical statements?*

**PCF:** It is increasingly important to understand what the bases of the statements are—those basic fundamental principles that help in deciding how the ethics are applied. Without reading the preamble, counselors can take a statement in the Code out of context because they did not understand how it came to be, how it is applied in a particular situation and how it can be applied more broadly in the profession itself.

**MAH:** The preamble gives us additional information about how we can use ethical decision making to meet specific needs that are not necessarily in the Code or conflict with other needs. So the preamble gives us a lot of guidance.

**DMK:** *Thank you both for providing a terrific understanding of the preamble to the 2014 ACA Code of Ethics.*

## Distance Counseling, Technology, and Social Media

**DMK:** *The 2014 edition of the ACA Code of Ethics is the first to have an entire section (Section H) devoted to electronic forms of communication. What was the motivation for adding the new section on distance counseling, technology, and social media?*

**Michelle E. Wade (MEW):** Technology is now involved in every aspect of our lives. We are living in a digital technology-based society, and the counseling profession is growing and embracing these technologies. As such, we needed a section in the Code that addressed the broad spectrum of technology-related ethical issues within counseling.

**Jeannette V. Baca (JVB):** As Michelle indicated, technology has grown exponentially since the 2005 version of the ACA ethics code. Although I think the 2005 version did a good job with where we were at that time, the new Code of Ethics reflects the complicated ethical issues that have arisen with new technologies, particularly in the area of privacy. The new distance counseling, technology, and social media section provides up-to-date guidance not only to professional counselors but also to state licensing boards.

**MEW:** The Ethics Revision Task Force felt there was a need to acknowledge that if you conduct distance counseling, use current technology applications, or engage in social media that you need to be knowledgeable about the technologies you utilize. Just because a technology exists does not mean you have to use it. The Code does not require practitioners to use Skype, tweet, text, or have a Facebook page. But if you are going to use electronic forms of communication—and most counselors in this day and age do—you need to be competent in those forms of communication. It's not just plugging in Skype and talking to your clients or starting a Facebook page. There are a lot of things to consider, such as being familiar with the privacy settings on Facebook and knowing how to encrypt your cell phone.

**DMK:** *The 2014 Code has a greatly expanded glossary that includes social media. How does the Code define social media?*

**MEW:** Social media is defined in the glossary as technology-based forms of communications, of ideas, beliefs, personal histories, etc., such as social networking sites and blogs.

**DMK:** *And what are some of the current applications that counselors are using?*

**MEW:** Facebook. LinkedIn. Twitter. Instagram. Vine has 6-second videos and has huge potential for self-expression for clients and thought-provoking creativity.

**DMK:** *It is interesting that the new technology section does not mention Facebook or any of the other applications mentioned above.*

**JVB:** We tried very hard to stay away from naming specific applications because the 2014 edition has to last at least 8 years.

**MEW:** Right. With the speed of change in technology, specific applications may be out-of-date by the time this interview is published. That is obviously tongue-in-cheek, but the point is that social media sites are forever changing. So the principles are what count, not the specific application.

**DMK:** *Does the new Section H address legal issues related to distance counseling, technology, and social media?*

**JVB:** Section H addresses licensure and legal issues from the beginning. Standard H.1.b. states that counselors are aware of pertinent legal rights and limitations governing the practice of counseling across state lines.

**MEW:** Standard H.1.b. also states that counselors who incorporate distance counseling, technology, and social media into their counseling have the responsibility to conform to the laws and regulations of both the counselor's practice location and the client's place of residence. So you have to go beyond the laws of your own state and know the rules and regulations of where your client lives. For example, there are currently 17 states that require you to hold a valid license within their jurisdiction in order to practice distance counseling with citizens of their state.

**DMK:** *This brings up the issue of whether a professional counselor who is conducting distance counseling across state lines needs to be licensed in the state that the client resides. What's the current thinking about whether you need to be licensed in the client's home state?*

**MEW:** The current thinking is that you do need to be licensed in your client's state because you are operating under that state licensing board.

**JVB:** And that is my understanding as well.

**DMK:** *It appears that the revised ACA Code of Ethics encourages counselors to have two separate web and Facebook pages: one focusing on the counselor's personal life and one focusing on their professional life.*

**JVB & MEW:** Yes.

**DMK:** *Why?*

**MEW:** It comes down to boundaries. You need to separate your personal life from your professional life.

**JVB:** For example, a school counselor should provide appropriate boundaries by not allowing student access to the counselor's personal Facebook page.

**MEW:** As a second example, if I had both a professional and a personal page on Facebook, I would want to use separate e-mail addresses for both. Otherwise, the addresses can become linked and there's a chance that clients would have access to information on my personal page that I want protected.

**DMK:** *What does the 2014 ACA Code of Ethics have to say about friending?*

**MEW:** A new section, Standard A.5.e., states that counselors cannot have a personal virtual relationship with their clients. This would include friending. As with the issues just discussed, it is a boundary issue. You wouldn't be friends with your clients face-to-face, so you should not be friends with your clients in a virtual setting either.

**DMK:** *Personal virtual relationship is a new term in the ethics code. What does it mean?*

**JVB:** It is defined in the glossary as engaging in a relationship via technology or social media that blurs the professional boundary.

**DMK:** *Switching gears, Standard H.2.a. talks about clients having the freedom to choose whether to use distance counseling, social media, or technology. Tell us more about that.*

**JVB:** This is the technology aspect of informed consent. Clients have the right to know what they are getting when communicating with a counselor via technology and they also have the right to consent to the use of technology.

**DMK:** *What are some other informed consent issues that come up in distance counseling, technology, and social media?*

**MEW:** One issue is anticipated response time. Clients need to understand that their counselor may not respond to a text or e-mail as quickly as their friends do. Clients also need to understand that there may not be privacy if they are using their iPad, laptop, or phone in a public setting such as Starbucks.

**DMK:** *The response time issue is really an interesting one. A worst case scenario would be a client who is suicidal and texts you at 10:00 p.m. expecting an immediate response because all of her friends respond immediately at that time of night. How would informed consent address this?*

**MEW:** Texting should now be part of the informed consent process. The counselor should state in their informed consent document how clients can contact them electronically. If the counselor is willing to text with clients, they should state the hours in which they will respond. So, for example, a counselor may have a statement that the client should not text in

an emergency because the counselor may not have immediate access to the message.

**DMK:** *Encryption is a focus of Standard H.2.d. Do counselors really need to use encryption when communicating with clients electronically?*

**MEW:** Yes, you really do have to encrypt. Otherwise, your communication can be intercepted. Encryption is a reasonable precaution for ensuring confidentiality. There are a number of apps out there that can help you encrypt, such as RedPhone (for telephone calls) and TextSecure (for texts). Both are available at <https://whispersystems.org/>. A review that lists 10 top security apps for smartphones—from virus protection to encrypting personal data—is available at <http://mobile-encryption-software-review.toptenreviews.com/>.

**DMK:** *Speaking of confidentiality, Standard H.3. now requires counselors who use distance counseling, technology, or social media to verify the client's identity. How do you do that?*

**MEW:** You can establish a code word or a code phrase that is used by the client at the very beginning. That way, you can know it is the client and not a friend, parent, or partner who just took their phone or logged onto their computer account and is trying to be nosey.

**JVB:** You also want to verify that the client is not a minor who needs parental permission.

**DMK:** *The new Standard H.6.d. talks about the importance of taking precautions to avoid disclosing confidential information through public social media. What are some ways that counselors may inadvertently disclose confidential information through public social media?*

**MEW:** I'll give you a great example that I ran across recently. A counselor had a really bad day and made a post on Facebook that said, "I just got through a really tough session with a 6-year-old girl . . ." and listed a number of things that could help identify the client. It was an innocent post venting about a hard day, but it was a violation of confidentiality.

**DMK:** *What about postings to counselor electronic mailing lists such as ACA Connect, CESNET-L, or COUNSGRADS? Would it be considered a violation of the ACA Code of Ethics to talk about a client on these or other social media sites?*

**MEW:** If there is any possible way to identify who the client is, then you have revealed too much and therefore it would be a violation of the ethics code.

**DMK:** *What if the counselor says, "Well, I didn't use their name."*

**JVB:** Even if the counselor did not use the client's name in the posting. You have to err on the side of caution and not provide client details through electronic mailing lists or social media.

**DMK:** *Everything we've been focusing on so far has been between counselors and clients. Do any of the things we've been talking about also apply to counselor educators and their graduate students?*

**MEW:** Friending between counselor educators and their students is discouraged. It is the same boundary issues as with clients and counselors—separating your personal and professional life.

**DMK:** *In addition to the issue of avoiding friending a client or student, the Code discourages counselors from visiting a client's Facebook page unless invited to do so. What is the rationale for that?*

**MEW:** It is an extension of the right to privacy. It is now easy and very tempting to investigate your client's personal pages online. Since a client may feel that this is a violation of privacy and, therefore, has potential to do harm to the counseling relationship, the Ethics Revision Task Force wanted to specifically say that you cannot Google your client or visit their Facebook or other social media page without advanced permission.

**JVB:** As with face-to-face counseling, clients have the right to choose what they want to share with you electronically. And if we Google a client, they have not chosen to share that information with you.

**DMK:** *Thank you both for a great interview.*

## ■ New Responsibilities When Making Referrals

**DMK:** *There has been an evolution in the counseling profession from a focus on the needs of the counselor to the needs of the clients. Can you talk about how this change is reflected in the 2014 ACA Code of Ethics in terms of referrals?*

**PCF, Gary E. Goodnough (GEG), & Shannon Hodges (SH):** It used to be that if a counselor was uncomfortable with a client, an immediate referral would take place. We now know that this is not in the best interest of the client as it can lead to feelings of abandonment. So, the 2014 ACA Code of Ethics states in Standard A.11.b. that counselors refrain from referring both prospective and current clients on the basis of the counselor's personally held values, attitudes, beliefs, and behaviors. Counselors need to manage any discomfort with a particular client through consultation, supervision, and continued education and to view referral as an intervention of last resort. It's about protecting the clients we serve and putting their needs first.

**DMK:** *So the needs of the client are more important than the needs of the counselor. Is that a fair statement?*

**PCF:** Absolutely a fair statement! Since counseling is for the betterment of the client, counselors need to bracket—set aside—personal values that are not in line with the legitimate

counseling goals of the client. Bracketing is a skill that all counselors need to learn.

**DMK:** *Tell us more about bracketing.*

**PCF:** Bracketing revolves around the counselor's ability to take [his or] her own personal values and set them aside—suspend them—but not give them up or change them. In essence, it is being aware of yourself and the impact that you have on that client in front of you. As an example, a student made it clear that if a couple came to him in conflict, his goal would be to keep the couple together. He stated that if a couple did not want to work on staying together that he would refer them because that wasn't his goal; his goal was to protect the sanctity of marriage. This is an example of imposing the counselor's values and biases upon a client (the couple) whose goal may be to have a healthy and appropriate separation. I worked with the student to identify the personal beliefs he held that were causing the imposition of his goal upon the couple and helped him learn how to set aside or bracket those values during a session.

**DMK:** *Is there an additional bracketing example you would like to give?*

**GEG:** I am a middle school counselor and have a belief structure rooted in my deep convictions that homosexuality is not an acceptable or moral lifestyle. An eighth grader comes to me questioning his or her sexual identity. While I am entitled to have any personal beliefs I want, I cannot impose my values during counseling and insist that we only talk about issues related to heterosexuality. I need to bracket my feelings about homosexuality and provide this student the opportunity to talk about same-sex feelings in a nonjudgmental environment.

**DMK:** *So if you are not supposed to refer on the basis of personal values, on what basis are you supposed to refer?*

**PCF:** The referral of a prospective or ongoing client should be based on skill-based competence. If I'm truly not competent about a presenting problem, or I'm in some way impaired [because of] ongoing, serious personal issues, then I need to refer.

**DMK:** *What if a professional counselor ties the lack of competence to their personal values? In other words, what if a counselor says that he [or she] needs to refer because he [or she] is not competent to counsel someone from a particular religion or sexual orientation.*

**GEG:** The issue of competence cannot be used as an excuse to engage in discrimination. Standard C.5. of the *Code* makes it clear that counselors cannot discriminate on the basis of age, culture, disability, ethnicity, race, religion, spirituality, gender, gender identity, sexual orientation, marital or partner status, language preference, or socioeconomic status. As such, a counselor cannot make a referral based on personal

values related to the characteristics listed in Standard C.5. As mentioned previously, professional counselors are ethically responsible to put the needs of the client before their own needs. Clients never need to experience the discrimination and abandonment of a referral made on the basis of a counselor's personal beliefs.

**DMK:** *Can you give an example of distinguishing between a referral based on competence versus discrimination?*

**GEG:** The topic of gender reassignment surgery in the midst of a transgender developmental process is very specific and may require a counselor with expertise in counseling transgender clients. So, a referral from a counselor who has no experience with gender reassignment surgery can be acceptable based on competence. What would be unacceptable—and a violation of the *ACA Code of Ethics*—is referring a gender reassignment surgery client based on the counselor's disgust and rejection. The behaviors could look similar on the outside, but they are very different on the inside.

**DMK:** *How have recent legal cases such as Ward v. Wilbanks (2011) and Keeton v. Anderson-Wiley (2011) had an impact on the 2014 ethics code regarding referral issues?*

**PCF:** These cases brought to light counselors who were discriminating against entire classes of people in favor of their own values. In the *Ward v. Wilbanks* (2011) case, a counselor-in-training refused to provide counseling services and referred a client who presented with issues that went against her basic biblical beliefs. She was basically saying to this client, "You are not OK according to me." That type of referral is clearly inappropriate and a violation of the 2014 *ACA Code of Ethics*.

**DMK:** *You mentioned that referral should be seen as an option of last resort. Tell us more.*

**PCF:** Before I make a referral I have to ask myself, "What is it that I need to do in order to provide the most appropriate service to this client?" If I'm unwilling to do a little extra reading or research, then I really have to question whether or not I need to take a break from counseling and get some rest so that I have the energy to do that. Referring is the last thing I'm going to do; first, I am going to try education, consulting with colleagues, and supervision. Why? Because the client has likely built a therapeutic relationship with me. As such, a referral interrupts the treatment of the client and is therefore detrimental.

**DMK:** *If it isn't clear whether a referral is being considered on the basis of competence or personal values, what are some things that should be considered before proceeding?*

**PCF:** The first thing that I would do is consult with a colleague—someone who is a professional mental health provider. I'd sit down with them and figure out what is going on both in the relationship with the client and within them. If

there's a further concern, please call the ACA ethics helpline at 800-347-6647, ext. 314. The ACA professional staff will help you think through the issues and focus on the right reasons for making the referral.

**DMK:** *Was there anything else in the 2014 ACA Code of Ethics that you think we should address?*

**GEG:** One of the major changes in the 2014 ethics code relative to referral was the elimination of the section that addressed end-of-life care for terminally ill clients. That section in the 2005 Code allowed counselors to refer a terminally ill client who wished to explore their end-of-life options on the basis of the counselor's personal values. Deleting that section eliminated what would have been an exception to the rule that referral is based on competency. Bracketing counselor values with clients who are struggling with significant end-of-life issues is not qualitatively different than other value-related issues that counselors have to struggle with.

**DMK:** *Thanks for another great interview!*

## ■ Raising the Bar for Counselor Educators

**DMK:** *As in many other areas, Section F of the 2014 revision of the ACA Code of Ethics really raises the bar for counselor educators.*

**Shawn L. Spurgeon (SLS):** Absolutely! That was done intentionally.

**DMK:** *How does the 2014 Code impact those who teach graduate counseling students?*

**SLS:** It raises the bar in terms of the faculty's responsibility to students and responsibility for gatekeeping. In terms of gatekeeping, the Code now makes it clear that the primary obligation of counselor educators goes beyond their students to the welfare of future clients. As such, we have an ethical obligation to be vigilant that our students are meeting professional standards.

**DMK:** *Previous interviews have brought out that the ACA ethics code has evolved from a focus on the counselor to a focus on the client. For counselor educators, the related change would seem to be an evolution from a focus on the student to a focus on the clients that the student will be serving.*

**SLS:** That is an excellent corollary. That is what the Ethics Revision Task Force was shooting for.

**DMK:** *The 2014 ACA Code of Ethics is the first edition to define student in the glossary ("an individual engaged in formal graduate-level counselor education"). Why did the Ethics Revision Task Force provide this definition?*

**SLS:** There appears to be some confusion about the boundaries of faculty power and authority. There have been situations in the past where counselor educators were not clear whether their ethical obligations applied to students who

were not enrolled in their class or program. The definition of student provided in the 2014 edition makes it clear that the supervision, teaching, and research responsibilities delineated in the *ACA Code of Ethics* extend to all individuals over whom a counselor educator has authority and power.

**DMK:** *Can you give an example or two where a faculty member's ethical responsibilities go beyond students enrolled in their program or courses?*

**SLS:** Let's say a counselor educator is teaching a summer course that includes a counseling student from a different university. The Code's new definition of student makes it clear that the counselor educator has the same ethical responsibilities toward this student as for students enrolled in the instructor's program.

A second example revolves around the role of faculty adviser. If a fellow faculty member discusses an advisee's deficits with you, you have the same gatekeeping responsibilities as if the student was currently enrolled in your class. That may mean having a conversation with your advisee to see what you can do to help get them up to speed.

**DMK:** *Both of those examples reflect on the gatekeeping function. How does the revised code raise the bar in terms of a counselor educator's responsibility to students?*

**SLS:** In two ways. First, counselor educators now explicitly have the responsibility to network with communities and agencies to provide and evaluate field placement options. Some programs have made it [students'] responsibility to find their field placement but this should be the responsibility of faculty because counselor educators are in the best position to identify and evaluate the viability of a clinical placement.

**DMK:** *That relates to a new section, Standard F.7.i., which states that counselor educators have an ethical obligation to provide direct assistance with field placements.*

**SLS:** Exactly. The second new area of counselor educators' responsibility to students is the duty to provide information about employment opportunities to counselors-in-training during the course of their program.

**DMK:** *And that relates to the new Standard F.8.b., which says that counselor educators now have the ethical obligation to provide career assistance to students.*

**SLS:** Right.

**DMK:** *What would you say to a counselor educator who says, "That is not my job. I am here to teach them. I don't have to help them find a job"?*

**SLS:** I would say to that counselor educator that one of your important roles is to be an advocate for your student. Advocacy includes information sharing. Counselor educators have the obligation to prepare students for their professional

life and to make students aware of opportunities after they graduate. That is advocating for your students and an ethical responsibility.

**DMK:** *Does that mean that counselor educators have the ethical obligation to find their students a job?*

**SLS:** Absolutely not! But at the same time, the Ethics Revision Task Force wanted to make it clear that training goes beyond graduation—there is the obligation to assist students with the skills, information, and support necessary to find an entry-level counseling position.

**DMK:** *There are two new and interesting imperatives in Standard F.7.b. The first states that counselor educators have the obligation to provide current information and knowledge. That has never been in the Code before. Tell us why the Ethics Revision Task Force included this statement.*

**SLS:** This goes back to the responsibility for our students' future clients. Counselor educators have a duty to teach current theories, techniques, and approaches that are effective for the populations our students will be counseling. Instructors have the responsibility to provide current evidence-based treatment and approaches. It is our ethical obligation to include current outcome research in our courses.

**DMK:** *Please pardon us for the outdated stereotype, but this now means that a faculty member who uses the same yellowed notes for 10 years is acting unethically?*

**SLS:** Yes, under the 2014 *Code of Ethics* that would be an ethical violation.

**DMK:** *The second new imperative in Standard F.7.b. states that counselor educators offer instruction only within their areas of competency.*

**SLS:** This was a tricky issue for the Ethics Revision Task Force because competence can be a difficult term to define. So we didn't want to be either too narrow or too broad. Having said that, there are things that counselor educators need to do in order to demonstrate competence in a given instructional area. This includes acquiring experience with the counseling, supervision, and research techniques that we are presenting in class. For example, let's say I want to do a lecture on emotionally focused couples therapy (EFT). I clearly have the ethical responsibility to research and become familiar with the current literature on EFT. But I also need to have taken the responsibility to use EFT myself (perhaps under supervision) or at the very least consulted with someone who uses EFT in order to learn about applied aspects not covered in articles or books. Not having done the things I mentioned might constitute a lack of competence to effectively teach EFT. Let me personalize a second example around eye-movement desensitization and reprocessing (EMDR). I have a basic knowledge and can talk about the tenets of EMDR—but have

never used it with a client. And I've never consulted with a counselor who has. So I wouldn't conduct an EMDR session in my class because I'm not competent in this technique.

**DMK:** *What impact does this have on counselor education programs that assign courses hierarchically where the full professors get to choose the courses they want first, the associate professors go next, the assistant professors get what is left, and the course that nobody wants to teach is assigned to the newest faculty member?*

**SLS:** That is a very good question, and the Ethics Revision Task Force actually talked quite a bit about this issue. [The *Code*] highlights that there is now a responsibility for both counselor educators and counselor education programs to be aware that this hierarchy may lead to new faculty teaching courses outside of their area[s] of expertise. Ultimately, it is the responsibility of the counselor educator to make sure that they are competent to teach a particular subject. At the same time, we hope that—given this shift in the *Code*—counselor education programs will be more vigilant and mindful when assigning courses.

**DMK:** *What would you, as a member of the task force that revised the ACA Code of Ethics, say to the faculty member who states, "You are infringing on academic freedom. You can't tell me what courses I can teach or how to teach them?"*

**SLS:** I would say that academic freedom has its limits. What goes hand in hand with academic freedom is academic responsibility. If we return to the primary obligation of counselor educators—to protect the welfare of the client with whom our students will interact—the new issues that the revised code is asking counselor educators to address are reasonable.

## Legally Speaking

**DMK:** *Thanks for joining us, Mary. Would you mind giving us a little background about yourself, your area of expertise, and why you are assisting us with this portion of the interviews?*

**MAH:** I served on the ACA Ethics Revisions Task Force for the new revision of the *Code*, and one of my areas of expertise is legal and ethical issues in counseling. Prior to being a counselor educator, I was an attorney, so that gave me some unique insight into what we were doing with the *Code of Ethics*.

**DMK:** *Great! So, tell us—does the ACA Code of Ethics have any legal weight?*

**MAH:** It's not a legal document per se so it doesn't have a force of law, but it is used in court proceedings to illustrate a counselor's professional responsibility.

**DMK:** *Are there any particular court cases you would like to refer to?*

**MAH:** I've seen cases about gatekeeping where the *Code of Ethics* was included; also, the issue of whether or not it is

ethical to refer on the basis of the counselor's personal values—specifically, the *Ward v. Wilbanks* (2011) case.

**DMK:** *As a follow-up to that, the revised ethics code features a new statement in the Purpose section which reminds everyone reading it that “a breach of the standards and principles provided herein does not necessarily constitute legal liability or a violation of the law; such action is established in legal and judicial proceedings.” Why was this added?*

**MAH:** The task force felt strongly that we needed to clarify the difference between law and ethics. The *Code of Ethics* is intended to give guidance to the profession. A breach of the *Code* has certain consequences while a violation of law has other consequences. If a professional counselor does something unethical, we might remove them from ACA membership, but if that counselor breaks a law, they can actually go to jail or pay a significant fine. So there's really a difference between law and ethics, and that is why we always encourage members to have a good understanding of local, federal, and state laws.

**DMK:** *For the first time, the 2014 ACA Code of Ethics—in Standard A.10.b.—prohibits fee splitting. Many counselors are not aware of fee splitting; can you talk about what it is, why it's prohibited, and how to avoid it?*

**MAH:** Fee splitting is paying or accepting fees for client referrals, and is typically illegal.

**DMK:** *Private practitioners often pay rent to the owner of a group practice based on a percentage of what they take in from their clients. Is that considered fee splitting?*

**MAH:** It typically is. It is not necessarily as intuitive a problem as the direct payment of a referral fee, but paying rent as a percentage of client fees encourage[s] the renting counselor to refer to you because they stand to make money off of the referral. A referral should only be made because the counselor can provide the best service.

**DMK:** *What would the Ethics Revision Task Force recommend as an alternative to paying a percentage of gross fees?*

**MAH:** We would suggest that a counselor pay a set amount per week or month for the use of an office—that eliminates all of the ambiguity.

**DMK:** *If counselors do pay a percentage of what they take in as rent, would it pay for them to see a lawyer to make sure that it doesn't conflict with state or federal laws on fee splitting?*

**MAH:** Absolutely!

**DMK:** *There seems to be an increased focus in the revised Code on reminding counselors to familiarize themselves with all the applicable local, state, and federal laws. Why was it necessary to really emphasize this for the 2014 version?*

**MAH:** I think there's still some confusion about the difference between ethics and law, so we wanted to make it clear that following a code of ethics doesn't necessarily mean you're following the law. They are two separate things, and laws are going to vary from state to state.

**DMK:** *The Code now expects counselors to use a carefully considered ethical decision-making process for ethical dilemmas. It talks about that on the third page of the Code and also in Standard I.1.b., but it doesn't recommend a specific model. From a legal perspective, why might that be?*

**MAH:** The task force didn't feel the need to provide a specific model because there are many great models out there, and we wanted to give counselors the opportunity to use models that they were comfortable with. We also consulted the ACA lawyer, and he noted that, from a legal perspective, putting a specific model in the *Code* might result in someone being held accountable in legal proceedings for not using that model even if they were using another, equally valid model.

**DMK:** *Let's talk about technology. Standard H.1.b. states that counselors who do distance counseling understand they may be subject to laws and regulations in the client's place of residence. One of the questions that this brings up is whether or not it is legal to counsel a client if you're not licensed in their home state.*

**MAH:** The law varies by state, which is why it gets very complicated when you are doing distance counseling. Counselors need to be aware of the laws of the client's home state because, from a legal perspective, you are practicing in the state in which someone has a legal interest in receiving services. As such, it is very important that you uphold all of the laws of the state that the client lives in.

**DMK:** *Do you have any specific recommendation as to how counselors can make sure that they're in compliance with the law when their client lives in a different state?*

**MAH:** One of the things that comes to mind is to contact the counselor licensure board of that state and check their regulations. A list of all licensure boards is available from ACA at <https://www.counseling.org/knowledge-center/licensure-requirements>.

**DMK:** *Let's look at Standard B.2.c., which is the portion on confidentiality regarding contagious, life-threatening diseases. The mandate that counselors confirm diagnosis prior to disclosure was removed in the 2014 version. What was the reason for that change?*

**MAH:** We decided . . . that it would be very difficult in some circumstances to confirm a diagnosis, and we didn't want to place a burden on counselors that they might not be able to meet.

**DMK:** *Let's talk a little bit about sliding scales. For many years, counselors have used sliding scales, but the ACA Code*

had never indicated whether this practice is ethical. With the 2014 revision, the Code now supports the use of a sliding scale if a counselor wishes to utilize it. Are there any legal aspects counselors need to consider?

**MAH:** It should also be noted that the revised Code adds in Standard A.10.c. that the counselor may adjust fees if the counselor's usual charge creates an undue hardship for the client. First, we need to make sure that a sliding scale or fee adjustment does not violate any state law. Another challenge comes when insurance companies are involved because they are expecting counselors to charge their customary fee. So professional counselors need to make sure that a sliding scale or fee adjustment does not violate the contract signed with the client's insurance company.

## Conclusion

Thirteen counseling ethicists spent 3 years as members of the ACA Ethics Revision Task Force revising the ethics code for the counseling profession. They spent hundreds of hours reviewing the literature—including ethics codes from around the world—and evaluating feedback from counseling organizations and ACA members. The resulting 2014 *ACA Code of Ethics* raises the bar for ethical practice in the counseling profession. It is the first edition of the ACA ethics code that requires professional counselors to identify and use a specific decision-making model. It is also the first edition that specifically states the core values of the counseling profession. The revised Code makes it clear that counselors must not allow their personal values to affect their work and that referral cannot be made on

the basis of the counselor's religious beliefs. Counselor educators are now ethically required to assist students to secure field placements and provide postgraduate career assistance. The 2014 edition of the *ACA Code of Ethics* is the first to address the use of social media in counseling. It does not ban any specific application but does prohibit the friending of a client. The Code also now explicitly prohibits professional counselors from participating in fee splitting, a common method of rent payment. These and other important changes were discussed in this article by the members of the task force that promulgated the 2014 *ACA Code of Ethics*.

## References

- American Counseling Association. (2005). *ACA code of ethics*. Alexandria, VA: Author.
- American Counseling Association. (2014). *ACA code of ethics*. Alexandria, VA: Author.
- American Personnel and Guidance Association. (1961). *Ethical standards*. Washington, DC: Author.
- Kaplan, D. M. (2014). Ethical implications of a critical legal case for the counseling profession: *Ward v. Wilbanks*. *Journal of Counseling & Development, 92*, 142–146. doi:10.1002/j.1556-6676.2014.00140.x
- Kaplan, D. M., Kocet, M. M., Cottone, R. R., Glossoff, H. L., Miranti, J. G., Moll, E. C., . . . Tarvydas, V. M. (2009). New mandates and imperatives in the revised *ACA Code of Ethics*. *Journal of Counseling & Development, 87*, 241–256. doi:10.1002/j.1556-6678.2009.tb00573.x
- Keeton v. Anderson-Wiley, No. 10-13925 (11th Cir., 2011).
- Ward v. Wilbanks, No. 10-2100 (6th Cir., 2011).