



AMERICAN COUNSELING  
ASSOCIATION  
*counseling.org*

February 27, 2020

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

On behalf of the 52,000 members of the American Counseling Association (ACA), we ask that the policy of requiring professional counselors and other mental health providers to disclose their confidential communications with detained unaccompanied alien children (UAC) be halted immediately. The practice is both unethical and a violation of the codes of ethics of many professional behavioral health organizations.


Requiring mental health professionals, such as licensed professional counselors, to disclose confidential information, especially to perpetuate discriminatory practices against UAC, creates a gross ethical dilemma.

The United States Supreme Court, in an opinion drafted by Justice John Paul Stevens, recognized the “importance of allowing individuals to receive confidential counseling...If the privilege were rejected, confidential conversations between psychotherapists and their patients would surely be chilled.” Confidentiality is the bedrock of the counseling profession, upon which trust and transparency are dependent on for the success of the client and counselor.

The ACA *Code of Ethics* (“Code”) has been cited in the court of law for several years because it sets the standards for how the public is to be protected when working with a professional counselor. The Code sets forth the ethical obligations of ACA members and identifies ethical considerations relevant to professional counselors and counselors-in-training. The cornerstone of the Code – and all professional counseling relationships – is the premise of the confidentiality of conversation between a counselor and their client.

We find the current practice implemented by U.S. Immigration and Customs Enforcement (ICE) to be in opposition to the Office of Refugee Resettlement’s (ORR) goal of providing a safe environment for UAC. While ORR is to provide a high level of mental health care, it is beyond imaginable how ICE’s Memorandum of Agreement, which directs therapists to “develop additional information about their clients—all minor-detainees—during weekly counseling sessions where they may self-disclose previous gang or criminal activity to their assigned clinician” meets the ORR standard.

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The following outlines ACA's ethical concerns with the Memorandum of Agreement as it pertains to the White House, Office of Refugee Resettlement (ORR), and Department of Homeland Security (DHS):

### White House

Executive Order No. 13768, "Enhancing Public Safety in the Interior of the United States," in part states that:

"Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information..."

This is unconscionable and has been challenged on its constitutionality. The *ACA Code of Ethics* requires that counselors keep "personally identifiable information" confidential unless there is an articulated exception through the Code or law.

There is much to be said about trust during the development of a counselor-client relationship. Professional counselors facilitate the growth, and promote the welfare, of the client. Establishing trust and building rapport is imperative when developing an effective treatment plan for clients. Counselors cannot ethically promote the welfare and development of a trusting relationship with clients if they are not allowed to ensure that information remains private. Distrust between a counselor and client will ultimately unravel, set back, and/or reverse any success in treating a client.

This is well documented in the counselor's notes shared with ICE regarding asylum-seeker Kevin Euceda in a recent Washington Post article. The article shared in part that, after being transferred to a medium-high security detention center because of what he thought he had shared in confidentiality during his weekly counseling session: "Determined not to make any more disclosures as he waited for the appeals board to rule, Kevin went days without speaking with anyone."

### ORR

ORR has the responsibility of the custody and care of unaccompanied immigrant minors and, thereby, acts as the legal guardian for the purposes of providing informed consent. Currently, therapists inform UACs that the information shared during the weekly counseling sessions is confidential. Regrettably, this is not the case. ORR provides informed consent as the legal guardian and then releases generally held confidential information discussed in therapy via the Unaccompanied Alien Children (UAC) Portal that is then released to ICE, which also includes ICE attorneys. ORR is also responsible for communicating and ensuring that unaccompanied minors are aware of their following rights:

1. Their ability to exercise autonomy and decide to not participate in the therapeutic setting;
2. If the Privacy Act and confidentiality is not applicable to them, what information will be shared from therapy, for what purpose, and with whom prior to engaging in therapy and continuously thereafter; and,
3. Disclosing minimal information necessary to avoid causing harm to clients.

Under the ACA *Code of Ethics*, since minors (UACs) cannot provide informed consent, but can assent to participating in counseling, transparency to UACs and clinicians (most notably professional counselors) is an ethical requirement. For this reason, the aforementioned information regarding the UACs' rights must be clearly articulated in the Notice of Rights and privacy policies provided to unaccompanied minors, in a culturally-responsive manner.

## DHS

As the federal agency that oversees ICE and directs and manages all information collected from ORR's weekly counseling sessions in accordance with the Memorandum of Agreement regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters, this raises several ethical red flags. As it currently stands, the use of the information shared by the UAC in a therapeutic setting causes undue harm and ignores the minor client's welfare, which is not in the best interest of the child and misaligns with principles of the counseling profession.

Quite simply, requiring professional counselors and other behavioral health personnel to freely disclose confidential information perpetuates discriminatory practices against UACs.

ACA stands ready to assist with the needs of all mental health counselors who are working in the best interests of their clients, as well as aiding ICE to ethically safeguard the confidentiality of all UAC; providing ethical and appropriate mental health follow-up and counseling sessions; and ensuring that the professional standards of mental health counselors are upheld. Please contact Dr. Lynn Linde, ACA's Chief Knowledge and Learning Officer, to let us know how we can be of assistance. Dr. Linde can be contacted via e-mail at [LLinde@counseling.org](mailto:LLinde@counseling.org) or by calling 703-823-9800, ext. 324.

Sincerely,



Richard Yep, CAE, FASAE  
Chief Executive Officer  
American Counseling Association

Cc: Secretary Alex M. Azar, II, Secretary of Health and Human Services, U.S. Department Health and Human Services  
Mr. Matthew T. Albence, Deputy Director and Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement  
Mr. Jonathan H. Hayes, Director, Office of Refugee Resettlement