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Article 21

Examining Counselor Educators' Use of Impairment in Gatekeeping Terminology

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The *American Counseling Association (ACA) Code of Ethics* (2005) utilizes the term *impairment* to classify any physical, mental, or emotional problems that would impede a counselor or counselor-in-training from providing professional services when such impediment would likely harm a client or someone else. However, whether impairment is the correct term to use has been questioned (Elman & Forrest, 2007; Falender & Shafranske, 2007; Forrest, Elman, Gizara, & Vacha-Haase, 1999; Oliver, Bernstein, Anderson, Blashfield, & Roberts, 2004; Shen Miller, Forrest, & Elman, 2008). In particular, counselor educators may be exposing themselves and their institutions to potential legal risk by utilizing impairment in gatekeeping procedures (Falender & Shafranske, 2007). The term impairment is utilized under the Americans with Disabilities Act (ADA) of 1990 (1991) when defining an individual with a disability. Therefore, when a counselor educator uses the term impairment to describe a student's deficiency, this use may inadvertently open the door for ADA accommodations or the student may be able to argue that the counselor educator knew the student had a disability and the counselor educator should have made proper accommodations (Falender & Shafranske, 2007). The purpose of this article is to examine counselor educators' utilization of the term impairment in gatekeeping by describing the intent of gatekeeping and remediation, exploring the suitability of the use of impairment in gatekeeping terminology, and providing alternate language.

Gatekeeping and Remediation

One of the primary duties of counselor educators is to act as gatekeepers to the counseling profession to ensure that counselors-in-training have the proper education, skills, attitude, and self-awareness to competently provide counseling services to the public. The *ACA Code of Ethics* (2005) states that "[r]egardless of qualifications, supervisors do not endorse [counselors-in-training] whom they believe to be impaired in any way that would interfere with the performance of the duties associated with the endorsement" (p. 14). Further, the *ACA Code of Ethics* provides that counselor educators should engage in thorough and continuing evaluation and appraisal of counselors-in-

training. The primary mechanism counselor educators utilize to assess potential counseling students and counselors-in-training is *gatekeeping*. Specifically, gatekeeping is a device by which counselor educators determine the fitness of counselors-in-training to provide services to clients (Vacha-Haase, Davenport, & Kerewsky, 2004). Traditionally, gatekeeping is considered part of the admission process of counseling education programs (Kerl & Eichler, 2007). Typically, counselor educators intervene during the admission process and do not allow entry into counseling education programs to prospective students who demonstrate traits, qualities, or behaviors that would result in them not being able to meet professional competencies or who lack the prescribed academic requirements (Lumadue & Duffy, 1999).

Counselor educators also have a responsibility to provide prospective and current students with the criteria in which they will be evaluated. The *ACA Code of Ethics* (2005) states that prospective counseling students should be aware of what type and degree of skill and knowledge will be required of them to be successful in the program, specific training goals and objectives, what students' evaluations are based upon, and the policies and procedures for students' evaluations. Applicants to counseling education programs should be aware of what is expected of them as students in a counseling program and of any problems or concerns that educators believe are impediments to the students meeting these expectations. Once students are admitted to a counseling program, counselor educators must continue to be aware of counselors-in-training's impediments that may develop and respond accordingly. The *ACA Code of Ethics* provides that counselor educators should engage in thorough and continuing evaluation and appraisal of counselors-in-training and that if counselor educators become aware of a deficit in a student that may affect the student's ability to achieve the required professional competencies, then proper notice should be provided to the student. The gatekeeping process is not just a part of admissions but an ongoing process that continues for counselors-in-training. Therefore, if counselor educators determine that counselors-in-training are not meeting the requirements of the program then the counselor educators must:

1. Assist students in securing remedial assistance when needed,
2. Seek professional consultation and document their decision to dismiss or refer students for assistance, and
3. Ensure that students have recourse in a timely manner to address decisions to require them to seek assistance or to dismiss them and provide students with due process according to institutional policies and procedures. (ACA, 2005, p. 16)

Furthermore, the Council for Accreditation of Counseling and Related Educational Programs (CACREP; 2009) requires counselor educators to "conduct a systematic developmental assessment of each student's progress throughout the program, including consideration of the student's academic performance, professional development, and personal development" and "if evaluations indicate that a student is not appropriate for the program, faculty members help facilitate the student's transition out of the program and, if possible, into a more appropriate area of study" (p. 4). In most cases before a student who is having difficulties is dismissed from a counseling program, the student will be provided the opportunity to rectify these problems in a *remediation* process.

Counselor educators are required to provide *due process* regarding a student's deficit and the opportunity to remedy these deficits; specifically, failure to do so can result in the counselor educators and universities facing potential legal action (Olkin & Gaughen, 1991). The Fourteenth Amendment of the U.S. Constitution "requires that no one may be deprived of the right to a liberty or property interest without benefit of the protection afforded by due process" (Forrest et al., 1999, p. 655). In counselor education, due process is used to describe the rights of students to be provided with the criteria for completion of the program and professional dispositions that they will be required to achieve (Bernard & Goodyear, 2008). Additionally, due process entails counselors-in-training being notified regarding deficiencies in their academic performance or mental, physical, or emotional impairment by the faculty of the counseling program. When a counselor-in-training is not performing to the minimum requirements, the student should receive feedback from the educator early on so the student has time to remedy the situation (Bogo, Regehr, Power, & Regehr, 2007; Forrest et al., 1999; Kaslow et al., 2007; Kress & Protivnak, 2009; Lumadue & Duffey, 1999; Miller & Koerin, 2001; Russell, DuPree, Beggs, Peterson, & Anderson, 2007). Providing written notice regarding students' impediments is highly recommended in the literature (Gaubatz & Vera, 2002; Kerl & Eichler, 2007; Koerin & Miller, 1995).

Remediation plans should include specific deficit areas of the student, and these areas should be related to previously communicated criteria; expectations for improvement should be clearly stated; training methods for achieving expected improvements should be defined; and the role expectations of the educator and student should be clearly identified (Kaslow et al., 2007; Wilkerson, 2006). The training methods that the counselor educator recommends to assist the student in rectifying his/her deficits should be clearly stated. Specifically, the actions the educator will do to assist the trainee and the requirements of the trainee should be clearly outlined so that both parties understand what is expected from each other. In particular, assessment of students should be done in a transparent and open way so that students have a true understanding of the evaluation process (Foster & McAdams, 2009). Kress and Protivnak (2009) suggested that a professional development plan (PDP) should be completed that attends to problematic behavior in counselors-in-training. This PDP or contract serves to document and address four issues: (a) educator's expectations of the student, (b) certain behaviors that are required of the student, (c) duties that the educator and student will engage in to assist the student in succeeding in the class or program, and (d) consequences as a result of the student not successfully completing the expected requirements and/or engaging in the required behaviors. Zoimek-Daigle and Christensen (2010) found that counselor educators believe that effective remediation plans include intensified supervision by educators and increased personal development of the students. Additionally, the outcome of the remediation plan should be evaluated to determine the success of the plan.

The primary purpose of gatekeeping is to ensure that counselors-in-training are not impaired and are able to competently and ethically provide counseling services to the public. Basically, counselor educators are charged with protecting the public and the reputation of the counseling profession. However, the literature also suggests that counselor educators should engage in specific protocols in the gatekeeping process (Bernard & Goodyear, 2008; Bogo, et al., 2007; Forrest et al., 1999; Gaubatz & Vera, 2002; Kaslow et al., 2007; Kerl & Eichler, 2007; Koerin & Miller, 1995; Kress &

Protivnak, 2009; Lumadue & Duffey, 1999; Miller & Koerin, 2001; Russell et al., 2007). First, educators should be cognizant of their duty to protect students from unknown and unjust evaluation. Second, educators should provide clear and precise documentation to the counselor-in-training of what obstacles are standing in the way of the counselor-in-training succeeding in the program. Specifically, this documentation should be understandable and define measurable expectations of what the counselor-in-training needs to employ to remedy these impediments. Therefore, terminology utilized in gatekeeping should be mindful of students' welfare and understandable to both the educator and student.

Suitability of Impairment

The language counselor educators utilize when addressing gatekeeping and remediation issues should be understandable for all parties involved. Therefore, it is increasingly important that the key term utilized to define deficiencies in a counselor-in-training be free from ambiguity. The *ACA Code of Ethics* (2005) in Section C.2.g. Impairment states:

Counselors-in-training refrain from offering or providing counseling services when their physical, mental, or emotional problems are likely to harm a client or others. They are alert to the signs of impairment, seek assistance for problems, and notify their program supervisors when they are aware that they are unable to effectively provide services. In addition, they seek appropriate professional services for themselves to remediate the problems that are interfering with their ability to provide services to others. (p. 15)

Utilization of the term impairment has been commonplace in medicine, nursing, social work, and psychology to define people who do not meet the minimum standards of a profession (Forrest et al., 1999). Specifically, it has been the word used by mental health professionals since the early 1980s to describe students and supervisees who have a deficiency, even though the exact meaning of impairment has not been established (Falender, Collins, & Shafranske, 2009). Bernard and Goodyear (2008) defined impairment as “not only a reversal of previously adequate functioning, but incompetence or the inability to attain minimal performance standards” (p. 39). However, there is no clear definition of what impairment entails. In fact, although the *ACA Code of Ethics* utilizes the terms of impairment and impaired, the exact definition of these terms is not provided. Falender et al. (2009) suggest that “[t]he lack of definition suggests that the use of the term [impairment] in a supervisory setting is potentially problematic because it may not be obvious to the supervisee (or to others) what the term is meant to signify” (p. 241). Specifically, the lack of clear definition may lead to confusion for counselors-in-training as to what is meant by being impaired and difficulty for counselor educators in determining if a student's mental, emotional, or behavioral problems represent impairment.

Adequate Representation of Construct

Based upon the vagueness of the term impairment, it seems prudent to determine what constitutes a counselor-in-training not meeting minimum standards of professional competence. In particular, it is important to determine if impairment when utilized in

gatekeeping adequately represents the entire construct related to this issue. The literature suggests that impairment that results in counselor educators having a concern with the behavior or conduct of a student are defined in three categories: (a) inadequate academic (Kerl & Eichler, 2007) or clinical skill levels (Bogo et al., 2007; Vacha-Haase et al., 2004); (b) personality and/or psychological unsuitability (Busseri, Tyler, & King, 2005; Gaubatz & Vera, 2002; Koerin & Miller, 1995; Russell & Peterson, 2003); and (c) inappropriate moral character (Li, Trusty, Nichter, Serres, & Lin, 2007; Mearns & Allen, 1991; Rosenberg, Getzelman, Arcinue, & Oren, 2005).

Inadequate academic or clinical skills. Whether students are meeting academic requirements can be determined by educators through evaluating the students' course work and the assignment of grades. Counselor educators can, for the most part, easily establish substandard academic performance. For most students, completing the course work of a counseling program is not a difficulty; problems arise when students begin their clinical courses (Kerl & Eichler, 2007). Educators then find themselves addressing impediments related to students lacking in clinical competencies. Researchers have found that inadequate performance regarding clinical skills has been directly related to problems associated with the trainee taking instruction from the educator, including student defensiveness (Bogo et al., 2007; Olkin & Gaughen, 1991; Vacha-Haase et al., 2004). Problematic clinical skills include students who overestimated their own abilities, who were reluctant to take risks, and who did not put the needs of the clients first (Bogo et al., 2007). For instance, the chairpersons of 55 mental health master's programs (e.g., psychology, counselor education, and marriage and family counseling) were surveyed, and it was found that for students identified as having problems, the majority (77%) were related to inadequate clinical skills (Olkin & Gaughen, 1991). Additionally, it was found that 58% of the students had difficulty with supervision (e.g., closed to receiving feedback, refusing to take suggestions and directions, and unable to engage in self-examination). Busseri et al. (2005) found that the most common reason for students being dismissed from American Psychological Association (APA) clinical psychology programs related to inadequate clinical skills.

Personality and/or psychological unsuitability. Many mental health professionals enter the field due to specific, often traumatic, events that have occurred in their personal lives (Gaubatz & Vera, 2002; Kerl & Eichler, 2007). Some students may have preexisting conditions that would put them at risk of not being able to obtain or maintain the required professional competencies (Remley & Herlihy, 2001). If counselors-in-training have not addressed their personal issues, then they may have difficulty in competently performing their counseling duties (Gaubatz & Vera, 2002). Researchers have identified several impairments related to mental health and personality problems in trainees (Biaggio, Gasparkova-Krasnec, & Bauer, 1983; Bogo et al., 2007; Boxley, Drew, & Rangle, 1986; Busseri et al., 2005; Gaubatz & Vera, 2002; Koerin & Miller, 1995; Olkin & Gaughen, 1991; Procidano, Busch-Rosnagel, Reznikoff, & Kurt, 1995; Russell & Peterson, 2003; Vacha-Haase et al., 2004). In one study, the last 10 years of an APA program's records were reviewed, and it was found that common problems associated with student's poor performance were personality disorders, depressive symptoms, adjustment disorder, anxiety symptoms, and alcohol use (Huprich & Rudd, 2004). The psychology profession has been the prominent contributor to research identifying impairment related to personality and/or psychological unsuitability of

graduate students (Biaggio et al., 1983; Busseri et al., 2005; Procidano et al., 1995; Vacha-Haase et al., 2004). Specifically, a survey of 264 APA-accredited programs found the most common impairment was having a personality disorder (Boxley et al., 1986). Olkin and Gaughen (1991) found that a majority of impairments with psychology master's students were related to substance use, emotional problems, personality disorder, inflexibility, and immaturity.

Inappropriate moral character. The majority of the studies defined inappropriate moral character as related to ethical violations, unethical behavior, unprofessional demeanor, and poor judgment; in particular, dismissal of clinical students based upon these criteria was reported in a number of studies (Biaggio et al., 1983; Bogo et al., 2007; Busseri et al., 2005; Koerin & Miller, 1995; Procidano et al., 1995; Russell & Peterson, 2003). Ethical violations are related to students not adhering to their professional ethical codes. Unethical behavior is determined by the students failing to adhere to the requirements set by the program, department, and/or university. Fly, van Bark, Weinman, Kitchener, and Lang (1997) examined ethical violations of psychology graduate students and found that breach of confidentiality, inappropriate boundaries, and dishonesty were identified as reasons for disciplinary actions. An interview of 35 CACREP academic division leaders found that lying, manipulating clients, being disrespectful towards authority, and displaying abusive behavior towards family members or friends were indicators of impairment in students (Li et al., 2007).

Potential Legal Implications

Falender et al. (2009) propose “[e]ven if the problems associated with lack of standard definition and inherent ambiguity of the terms *impaired* or *impairment* in a supervisory setting could be resolved, use of these terms would remain problematic in light of the ADA and especially in light of the [ADA Amendment Act]” (p. 241). Specifically, Falender et al. completed a detailed discussion of this issue by bringing to light the fact that the ADA Amendments Act of 2008 (2009) suggests that any person or agency that inappropriately uses the word impairment may face legal consequences. In particular, since the enactment of this amendment, “labeling the supervisee as impaired could be considered direct evidence (or at least create a presumption) that the supervisor regarded the supervisee as physically or mentally impaired, the continued use of this term as part of a performance management regime creates enhanced legal exposure under the ADA” (Falender et al., 2009, p. 242).

Recent court decisions have been able to distinguish between impairments related to competencies and impairments related to disabilities. Watkinson and Chalmers (2008) conducted a case study in which a Canadian master's in social work student who committed an ethical violation and who had a diagnosis of a mental disability sought to gain protection under the Canadian version of ADA. In this case, the student was dismissed from the program and the ensuing legal actions were favorable to the university. However, counselor educators stated that the process was taxing for them. Specifically, these educators had to balance several factors: the legal responsibility to accommodate the student's mental disability, ensure that the student was meeting professional competencies, and, most important, to ensure that the public was protected. Another recent court decision found in favor of Loyola University Maryland (Loyola) regarding their dismissal of a doctoral candidate from their psychology program (Herzog

v. Loyola, 2009). After completing his first semester, Herzog was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and received extra time on two comprehensive exams. This student requested no other accommodations and received good grades; however, some professors had concerns regarding his behavior toward faculty members and other students. Herzog was accused of engaging in problematic behavior during his doctoral internship at Montana State University (MSU; Herzog v. Loyola, 2009). MSU contacted Loyola and because of his prior questionable behaviors, Loyola dismissed Herzog from the program. Herzog then sued Loyola claiming that he was dismissed from the program due to his ADHD disability, and he was being discriminated against by Loyola under ADA. The court ruled in favor of Loyola and found Herzog was not dismissed from the program due to his ADHD, but due to his inappropriate behaviors not related to his ADHD condition. Specifically, the decision read, "It is well within Loyola's discretion to dismiss a student who has problems with authority, difficulty understanding the impact of his conduct on others and who has conceded to breaching ethical standards promulgated by the school" (Herzog v. Loyola, 2009, p. 7). The court found that Herzog had not proven that the behaviors that resulted in his dismissal were related to his ADHD; therefore, he had no protection under ADA. While recent case law has held that a student can have a disability impairment that is covered under ADA and still have impaired behavior that does not meet the minimum professional standards, the fact that these two constructs are being commingled in the courts add to the uncertainty of using impairment in gatekeeping terminology.

Alternate Gatekeeping Terminology

Elman and Forrest (2007) completed a detailed literature review regarding gatekeeping terminology and stated that use of impairment was wrought with vagueness and ambiguity and should be avoided. These researchers recommended that any term used to describe a student's deficiency should address three constructs: (a) problematic performance, (b) professional standards, and (c) competence. They suggest that educators utilize the terms of "*problematic professional competence, problems with professional competence, and professional competence problems*" instead of impairment (p. 505). As previously stated, the literature offers that impairment can manifest in many different ways. Specifically, the reasons for students being dismissed from mental health graduate programs are defined by three groupings: (a) inadequate academic (Rosenberg et al., 2005) or clinical skill levels (Busseri et al., 2005; Olkin & Gaughen, 1991), (b) personality and/or psychological unsuitability (Bogo et al., 2007; Huprich & Rudd, 2004; Oliver et al., 2004), and (c) inappropriate ethical/moral character (Koerin & Miller, 1995; Mearns & Allen, 1991; Russell & Peterson, 2003). Therefore, terminology and definitions related to addressing impairments in counselors-in-training should address these three areas.

The author of this article proposes that the term of *problems of professional competency* (PPC) be utilized in gatekeeping terminology in contrast to the term impairment. Specifically, PPC are defined as behaviors that could interfere with the professional competence of a counselor-in-training, including (a) a lack of ability or opposition to acquire and integrate professional standards into one's professional counseling behavior; (b) a lack of ability to attain professional skills and reach a

satisfactory level of competency; (c) a lack of ability to manage one's interpersonal stress, psychological dysfunction, or emotional responses that may impact professional performance; or (d) engagement in unethical behavior (Elman & Forrest, 2007; Falender et al., 2009; Lamb et al., 1987). PPC and the above definition encompass the literature related to this issue and provide educators with clearer criteria in which to evaluate counselors-in-training.

Conclusion

It is important for counselor educators to be aware of any potential concerns related to terms utilized in gatekeeping and remediation. Specifically, it is essential to continue to examine this issue to ensure that gatekeeping terminology is clear to all parties involved and relevant to current literature. This discussion seems especially relevant given the recent announcement made that the *ACA Code of Ethics* (2005) will be reviewed and revised by the year 2014. In particular, this may be an appropriate time for the counseling profession to entertain the use of alternative language when describing behaviors that are hindering the professional competence of a counselor-in-training. Specifically, utilizing the term problems of professional competency and discontinuing the use of impairment will assist in clarifying terminology in the gatekeeping process for all parties involved (i.e., counselors-in-training, educators, supervisors, institutions). Further, the field of professional counseling will be promoted by removing the ambiguity associated with the word impairment from its ethical standards.

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