

Legal and Ethical Challenges in Online Counselor Education



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Donna S. Sheperis, Ann Ordway, Margaret Lamar

Counselor education has moved firmly into the online space with multiple accredited programs available to students and potential faculty. These programs can cross state lines, either by location of training, placement of faculty, or both. As such, there are legal and ethical considerations that are outside of those that are typically considered. This article addresses some of the more common legal and ethical considerations in counselor education, such as vicarious liability and cybersecurity, and how they differ in the online education environment. Licensure and other laws and obligations for educators are explored. Opportunities for gatekeeping are discussed through the lens of a case study. A second case study with guiding questions is provided to raise visibility of state differences in practice laws. Finally, helpful resources for navigating online counselor education from a legal and ethical perspective are offered.

Keywords: counselor education, online, legal, ethical, gatekeeping

There are many reasons to consider online education when becoming a counselor or choosing a career as a counselor educator. Convenience, accessibility, and opportunities to interface with colleagues across the country and around the world are common attractions of an online environment. As of the beginning of 2020, 79 online programs were accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP; 2020). As many opportunities as there are in this educational space, legal and ethical challenges also exist. Although these challenges may be unique to the online world, they are certainly navigable. This article tackles some of the experiences distinctive to faculty and students in counselor education who choose an online environment for training.

Considerations for Online Counselor Educators

Counselor education is a distinct professional identity geared toward the preparation of professional counselors across disciplines (e.g., clinical mental health counselor, professional school counselor, substance abuse counselor). Counselor educators who teach in CACREP-accredited programs are required to have terminal degrees in counselor education and supervision, as opposed to psychology or another helping profession, as well as active involvement and participation in the counseling profession (Calley & Hawley, 2008). These educators receive training in five core areas, including counseling, supervision, teaching, research and scholarship, and leadership and advocacy, making them uniquely qualified to prepare master's-level clinicians in counseling (CACREP, 2015).

Prior to the publication of the 2016 CACREP Standards, counselor educators may or may not have received training specific to online counselor education. And yet as of 2014, at least 67% of students in public universities took an online course (Allen et al., 2016). To attend to this emerging trend, CACREP recognized the need for all counselor educators to understand “effective approaches for online instruction” (CACREP, 2015, p. 35). Whether fully online or fully in person, most counselor education

Donna S. Sheperis, PhD, NCC, CCMHC, ACS, LPC, is an associate professor at Palo Alto University. Ann Ordway, JD, PhD, NCC, is a core faculty member at the University of Phoenix. Margaret Lamar, PhD, LPC, is an assistant professor at Palo Alto University. Correspondence may be addressed to Donna Sheperis, 5151 El Camino Real, Los Altos, CA 94022, dsheperis@paloalto.edu.

programs contain some online elements in their instructional pedagogy. Thus, the opportunities to teach and learn counseling in an online format are present regardless of whether the program is considered an online program.

For the purposes of this article, an *online counselor educator* is a person who provides some or all of their teaching via a distance education format (Stanford University Teaching Commons, n.d.). Most universities offer some form of training to assist the educator in moving to online education (Dimeo, 2017), but that training is not specific to the content of counselor education. With this in mind, some of the inherent opportunities and challenges in online teaching, specifically as they relate to legal and ethical concerns, including vicarious liability and supervision in online education settings, will be discussed.

Vicarious Liability as a Counselor Educator

The counselor education literature is replete with research related to *vicarious liability* in supervision (Mikkelsen et al., 2013; Pearson, 2000; Sheperis et al., 2016). Essentially, *vicarious liability* refers to a situation in which one person is held responsible for the actions or inactions of another person (Bell, 2013). In counseling, we see this term most commonly used in relation to a clinical supervisor having some responsibility for the care of the clients of a supervisee.

This definition of vicarious liability does not make concessions for the manner in which clinical oversight is provided. In other words, online or not, clinical supervisors continue to carry vicarious liability for the clinicians they supervise. By extension, counselor educators serving as practicum and internship supervisors would also be held responsible for the services provided by students under the terms of vicarious liability. According to one popular provider of malpractice insurance for counselors, CPH & Associates (2019), liability insurance covers the holder for incidences of negligence, misrepresentation, violation of good faith, and inaccurate advice. The key term to consider is *inaccurate advice*, as that is how supervision could be characterized in a lawsuit.

The Counselor Educator as Supervisor and Gatekeeper

Slovenko (1980), in his seminal article on the topic of supervisor responsibility to the client, stated “litigation against supervisors may be called the ‘suit of the future’” (p. 468). Over the years, we have not seen that prophecy come to fruition in counselor education, but the caution remains that counselor educators who serve as supervisors must be mindful of their potential vicarious liability. With regard to the provision of online counselor education, the opportunities to supervise students who are seeing clients that are in different cities, states, or countries exist. Although this is an exciting development in terms of working with a variety of students, it is daunting to consider the legal implications.

Counselor educators may assume that only teaching didactic classes online and not supervising practicum and internship students will reduce their overall liability. But the reality is that all counselor educators have a responsibility to gatekeeping that extends to protecting potential future clients of the students we train. To that end, we must maintain an approach to our work that keeps the concept of vicarious liability in mind.

For example, in fully online programs, there is often a residency model. The residency is a period of time in which students gather for in-person training and observation, often of clinical skills (Holstun, 2018). Walden University, which trains counselors in a fully online format, describes residency as a time to “conceptualize and develop research that contributes to positive social change; establish networks of professionals who support and practice scholarly endeavors; [and] develop and refine practice skills essential to your profession” (2019, Mission and Vision section). That may occur at the university campus

or a neutral destination depending on the type of institution. These residencies are opportunities to be physically present with students, uncover any clinical or dispositional concerns, and allow for multiple faculty to relate to students. Although some of this is clearly possible in a fully online format, the majority of online programs opt for at least one in-person experience with the students they serve (Holstun, 2018).

While an online class may involve some interaction and evidence of interpersonal ability, a residency increases the opportunities for faculty to make a more accurate assessment of skills and dispositions. Thus, program administrators may be apprised of gatekeeping and supervisory issues observed in this setting.

Case Study

Malkha chose an online counselor education master's program because she lives in a remote area, over 75 miles from the nearest CACREP-accredited campus program. She works full-time at her holistic health practice where she practices Reiki, acupuncture, and holistic health coaching, including dietetics and nutrition. She is certified as a Reiki practitioner, licensed in her state as an acupuncturist, and has recently begun offering the coaching option for her clients who need additional care. Malkha has an emotional support animal that accompanies her to sessions, and she hopes to eventually be able to provide appropriate documentation to her clients that will allow them to have emotional support animals as well.

Malkha has several academic gifts. She writes well and generally does well on course assignments. She does have a pattern of asking for last-minute extensions as she often needs more time than is allotted to complete her assignments. Faculty have also noted that Malkha occasionally engages students in the discussion board in inflammatory ways. She uses her background and training to offer advice to fellow students in ways that are not always helpful nor appropriate to the context of an academic forum. She argues with those who do not utilize alternative, holistic approaches in their own theoretical orientations, calling them "shortsighted" and "old-fashioned." Students seem to like Malkha but have complained that she comes on too strong.

At her first residency, Malkha shares a room with two other students and her emotional support dog. Unfortunately, one of the roommates is allergic and alleges that Malkha did not disclose that the dog would be attending residency. There is conflict between the roommates about handling the payment for the room that spills over into their work as a group. Malkha also brings her animal to residency, which is allowed, but she continually talks to the dog throughout the faculty lecture and group work. While working on skills, for example, Malkha asks her dog what his opinion is, how she should proceed, and then appears to listen for a response.

A large part of the time at residency is spent in clinical skills training. Faculty spend a lot of time redirecting Malkha from giving advice and offering treatment solutions during the early phases of therapy. She continually moves away from the person-centered approach she states she is practicing and becomes more prescriptive as the practice times continue.

Faculty teaching Malkha at residency bring the concerns about her distracting interactions with her emotional support animal as well as her skills to the attention of the training director. Questions to consider underscore potentially unique dimensions of practice for online faculty and academic leadership with respect to programming, policies, and gatekeeping. For example:

1. Are there ethical or gatekeeping concerns that need to be addressed? If so, what are they?
2. How do those concerns fit with the American Counseling Association's *ACA Code of Ethics* (2014) and any gatekeeping procedures established by your program?
3. What are some potential next steps to take with Malkha and/or faculty?
4. What, if anything, could have prevented the problems that arose at residency?

While these questions are fundamental to counselor educators, they point to the importance of established policies and procedures for face-to-face residencies, effective communication of policies and expectations to online students, and preparedness to apply ethical decision-making models in navigating the ethical and legal challenges that may arise in online counselor education.

Considerations for Online Counselor Education Students

For the purposes of this article, an *online counseling student* is a person who receives some or all of their training via a distance education format. With this in mind, some of the inherent opportunities and challenges in this format, specifically as they relate to legal and ethical concerns, will be considered. A more comprehensive analysis of the experience of the online counseling student is addressed in another article in this special section (Sheperis et al., 2020).

Opportunities and Challenges

Opportunities for students in online programs include flexibility to accommodate life, work, and school. Online students may not be able to attend a graduate program in another format because of geographical, employment, or family considerations. Online students also have the opportunity to learn from faculty and fellow students from around the United States and the world.

Yet as appealing as this can sound, being an online student is challenging. Students are faced with the need to self-regulate, and, depending on the amount of instructor interaction, this may include deciding when to enter the class, turn in assignments, and engage with their peers (Wong et al., 2019). There can be a sense of isolation and loss of social community in virtual learning that is not present in a physical classroom (Phirangee & Malec, 2017). When looking at successful online students, it is recommended that they possess time-management skills, are self-regulated learners, and are self-motivated to complete tasks when compared to their traditional face-to-face classroom counterparts (Vineyard, 2019).

Legal and Ethical Considerations

As an online student, the ethical considerations are very similar to those experienced by on-campus students. There are gatekeeping considerations, concerns about fitness to practice, and general academic expectations regardless of the mechanism of education (CACREP, 2015). However, there are additional legal considerations that online students should be apprised of.

Each state, province, and territory has its own licensure law for professional counselors (Sheperis et al., 2016). Campus-based faculty become familiar with the state in which they offer education and may not be as familiar with licensure laws outside of that state. It will be incumbent upon the online students to familiarize themselves with state regulations so that they can ensure that their training will meet the standards for the educational component of licensure. For many states, graduation from a CACREP-accredited program is an acceptable standard of training. However, there can be exceptions even for CACREP-accredited programs. For example, the state of Georgia requires practicum and internship supervisors to have three years of postlicensure experience (State of Georgia, 2019), which is more than the CACREP standard.

In addition, not all online programs are able to provide training in every state. Applicants to online counselor education programs need to be well-educated consumers. In addition, enrollment services staff, program leaders, and counselor educators involved in admissions decisions need to be apprised of various state requirements. For example, the state of North Carolina requires that online programs, including those in private, out-of-state institutions, be approved by the University of North Carolina Board of Governors before they can engage in postsecondary degree activity in North Carolina (University of North Carolina System, 2017).

Considerations for Cybersecurity in Counselor Education

With the rate of technology innovation, counselor education programs may find it challenging to keep up with how specific technology aligns with laws or ethics. When it comes to online counselor education and technology, student privacy and client confidentiality are of utmost importance and are often tricky to navigate with new technological development. In this section, we examine the two primary regulations and how to maintain compliance when using technology.

The Family Educational Rights and Privacy Act (FERPA)

FERPA (1974) is a regulation that protects the privacy of a student's educational record. All programs, regardless of their delivery format, need to be aware of how FERPA impacts them and the technology they utilize. For instance, programs using online providers to help track internship hours, supervisor evaluations, and other paperwork need to be in line with FERPA best practices. The Department of Education, through their Privacy Technical Assistance Center (PTAC), provides resources for programs, including what to look for in a terms-of-service document (PTAC, 2016) and best practices (PTAC, 2014). Online programs using videoconferencing software need to be aware of the limitations on the use of videos created in a classroom or supervision setting.

Under FERPA, a photo or video of a student is considered an educational record when it is directly related to the student and is maintained by the program (Student Privacy Policy Office, n.d., para. 1). A video of a class is considered to be directly related to the student if they are visible doing a class presentation or even asking questions. The use of videoconferencing software is new enough to leave some ambiguity in the regulations surrounding recording of classes or supervision sessions. We will address supervision sessions in the section on the Health Insurance Portability and Accountability Act of 1996, which follows. Relative to teaching, there are a number of university recommendations suggesting that faculty record only themselves in class and do not include images of students in the recording. If a faculty member wants to release a recording of a class that directly relates to a student, they must gain signed consent from the student to do so. In practical terms, the faculty should gain consent from all members of the class if they appear in the recording of the class.

FERPA regulations require that institutions use "reasonable methods" to safeguard student information (PTAC, 2015). The law does not include specific requirements for firewalls, security monitoring, or response methods, but leaves that to universities to determine. It is also recommended that programs have a plan in place should a security breach occur.

Although counselor educators may use the term *confidentiality* when referring to a student's experience, dispositional issues, or educational record, it is important to note that a student does not have the same rights of confidentiality as a counseling client. In fact, FERPA allows faculty and programs to share student educational records (including disciplinary records) with other faculty

and other institutions where a student may be transferring. If a counseling student is dismissed for causing harm to clients, it is within the bounds of FERPA for program faculty to share that information with faculty where the student is applying for admission.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

It is important for online counselor educators to be fully informed on HIPAA regulations as they relate to technology. These regulations provide protections for confidential and protected health information and are commonly referenced in the modern health care lexicon. With relation to training, online counselor education students and faculty frequently use various forms of software or other communication technology to communicate about client issues in practicum or internship classes and supervision sessions. It is not within the scope of this article to cover every aspect of technology and client personal health information (PHI) as defined by HIPAA. This section will focus specifically on the utilization of videoconferencing software (e.g., FaceTime, Skype, Zoom) to hold class and supervision sessions, which are often the primary ways distance faculty, supervisors, and students meet.

First, a key principle to understand in any discussion of HIPAA is that the user (e.g., faculty, supervisor, student counselor) is responsible to maintain compliance with HIPAA regulations. Videoconference software companies that counselor educators and supervisors choose to use could be considered business associates. Business associates are contractors who handle PHI of clients and have agreed to uphold HIPAA regulations.

There is no clear guidance on the need for business associate agreements for videoconferencing software. Some researchers have said that it is necessary for videoconferencing providers to have business agreements (Rousmaniere et al., 2016). Others have suggested that videoconferencing software falls under the HIPAA conduit exception (Caldwell, 2019). The conduit exception allows service providers to transmit or transport PHI without entering into a business agreement (Office for Civil Rights, 2016). To be eligible as a conduit, software providers must not store the data and may only transmit it (Taylor, 2015). Generally, videoconferencing software companies do not store any transmissions on their servers (Caldwell, 2019). FaceTime, Skype, and Zoom, for example, provide end-to-end encryption to create a peer-to-peer connection. It is not possible for them to decrypt the data as it goes from the device of the supervisor to the student. Therefore, given that no data from a supervision session or class is being recorded, the argument has been made that a business associate agreement is not necessary to use these platforms (Caldwell, 2019; Taylor, 2015). Recordings of supervision sessions or classes should not be saved to cloud services unless there is a business agreement in place, as now the company will be potentially storing PHI. As a reminder, it is still up to the faculty and student to be HIPAA-compliant when they use technological tools. Talking about a client over Facetime while in a coffee shop is still not considered HIPAA-compliant.

Technology moves swiftly. For example, Amazon has recently equipped their Alexa devices to handle PHI and has begun signing business agreements with select health care providers (Jiang, 2019). But there is little in terms of policy, law, or ethics to address anecdotal reports that the Amazon Alexa device is recording conversations in homes and therefore likely in offices where it is used. For the online educator and student, that could mean that a piece of technology intended to make home life easier creates a HIPAA or FERPA violation if portions of classes or client sessions are recorded. We anticipate this technology, and thus the policies, laws, and ethics that govern its use, will continue to develop. At this point, it is recommended that these devices not be in homes or offices where counselor education or supervision occurs.

Counselor Education Across State Lines

In general, teaching students who all live in the same state or who live in a variety of states is fairly similar. Counseling theory in Michigan is going to be the same as counseling theory in Alabama, and educational practices will be similar. However, there are some considerations unique to the online educator. As described, many of those relate to practicum, internship, and licensure. Because faculty will often be the first line of inquiry for students, online faculty need to be aware that codes of ethics and laws related to client care vary from state to state. Although the content of theory classes may stay the same across states, conversations about what to do when a client reveals something in session that may require duty to warn or other action may change from state to state. Being prepared to navigate those conversations is essential to success as an online faculty member. It would benefit the online counselor educator to become familiar with the main state licensure board challenges confronted by the department. For example, specific curricular requirements and variations in state laws that impact abuse reporting are common considerations. While faculty members cannot be experts on all state, province, and territory law, it is helpful to have a solid understanding of the primary issues impacting students.

Online programs are often part of institutional efforts to recruit international students (Lee & Bligh, 2019). In addition to differences in state regulations, program faculty then must have an awareness of international counseling practice. Many countries have no formal licensing of counselors, so a comparison of licensure laws cannot be done. The lack of laws related to the practice of many forms of counseling outside of the United States makes it impossible to declare any uniform statements about such practice. Students who are outside of the United States and the faculty who train them need to be especially vigilant in investigating standards and laws that impact training and practice.

Ethics Across State Lines

Just as there is no universal licensure law across states, there is no universal adoption of a code of ethics across states. The code of ethics provided by ACA is the most commonly used single code in the United States; however, only 19 of the 52 jurisdictions with licensure laws have adopted the *ACA Code of Ethics* into their rules and regulations (ACA, 2015). As you can imagine, it can be challenging for educators and students to navigate all of the complexities of the various codes. Students are guided to consult state laws to better understand the code of ethics under which they will fall.

Although codes of ethics are generally more alike than conflictual, there are a number of differences. The *ACA Code of Ethics* (2014) empowers counselors to warn identified others when there is a threat of serious and foreseeable harm. That code is historically rooted in the famous Tarasoff ruling in which the clinician provided information to the police, but not to the identified person that the client was threatening (Sheperis et al., 2016). However, the Texas code of ethics requires counselors to report only to authorities and not to warn the identified third party (Texas State Board of Examiners of Professional Counselors, 2011). Another example is that counselors are ethically allowed to barter under the *ACA Code of Ethics*. However, Texas code prohibits bartering (Texas State Board of Examiners of Professional Counselors, 2009). Thus, students and educators need to be able to assess those differences as they proceed with training across states.

Laws Across State Lines

Just as ethical codes vary from state to state, laws also vary. Few laws that govern the practice of counseling are enacted at the federal level. Instead, each state is empowered to determine what is best for their population in terms of developing laws that govern scope of practice for counselors.

Licensure laws are the first areas that counseling students and counselor educators should familiarize themselves with. In addition to licensure law differences, there are other challenges that may exist.

One area of difference occurs within mandated reporting laws. Each state specifically sets out the definitions of abuse and neglect while also outlining who is considered a mandated reporter. In Mississippi, any person who knows about or has reason to suspect abuse or neglect of a child by a parent, legal custodian, caregiver, or other person(s) responsible for the child's care is required by law to make a report (Mississippi Department of Child Protection Services, 2019). In other states, such as Pennsylvania, only mandated reporters have this requirement (State of Pennsylvania, n.d.). Mandated reporters typically include professionals expected to encounter children such as school personnel, medical professionals, and counselors. Counselors will always be required to report, but some states give that designation to any and every person, which can make a difference in working with clients who may have reason to suspect abuse.

Another distinction is found in laws related to warning identified third parties about an intent to harm. In the ethics classes of counselor training programs, we highlight the *Tarasoff v. the Regents of the University of California* (1974) case and subsequent rulings as the way to handle duty to warn any identified third parties. After multiple court and state supreme court rulings in California, where the Tarasoff case occurred, many states have elected to follow this case law and allow or even require counselors to report the intent to harm to the identified potential victim as well as the authorities (Sheperis et al., 2016). However, some state laws are silent on this matter. In Georgia, there is only a small mention in the code for psychologists and nothing to guide counselors (State of Georgia, 2020). Texas has a law related to Tarasoff, but it goes counter to the laws in the vast majority of states. The Texas Health and Safety Code (2005) states that counselors are not allowed to notify the identified victim:

A professional may disclose confidential information only to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient. (p. 4,182)

In practice, this means that two students from different states in the same ethics course could respond to a case involving a threat to harm an identified party in vastly different ways and still be correct.

Gatekeeping Across State Lines

The gatekeeping aspect of counseling pertains both to the obligation of counselor educators to ensure the competency of students entering the profession and the responsibility of practicing professionals to confront and address the unethical practice of colleagues when it comes to their attention. The gatekeeping responsibility has become so much more complex because of the evolution of distance counseling and distance counselor education. Distance practices raise questions about how well a professional in one location can monitor the behavior of another located in an entirely different place. The implications, which require familiarity with federal laws such as HIPAA and FERPA, state statutes and regulations for local licensing, and other local laws pertaining to the plethora of issues a counselor may encounter in therapy with clients, are nothing short of overwhelming. The responsibility is vast when considering the overabundance of variations of rules and consequences for not following them.

Lawsuits, Inconsistent Laws, and Varying Codes of Ethics

As mentioned, the practice of counseling is not federally regulated for the most part. Each state or

territory has a degree of autonomy over the regulation of professional licensure, and therefore there is a significant disparity from jurisdiction to jurisdiction. Federal laws impose uniformity and create a reliability regarding the rules and regulations for any area governed by the federal government. For example, in 2015 the U.S. Supreme Court ruled that same-sex marriage would be a legal right across the United States. The impact of the ruling was that the 14 states that had bans on same-sex marriage could no longer prevent same-sex couples from legally marrying in their individual jurisdiction. However, the application of federal laws are sometimes locally compromised, such as when a specific religious denomination refuses to perform marriage ceremonies for same-sex couples by asserting freedom of religion and the separation of church and state. The religious argument is not that the same-sex couple cannot marry in that state, but rather that the couple simply cannot marry in a religious ceremony in that church. This example sets the stage for recent legislation that impacts counselor education.

The state of Tennessee implemented legislation in 2014 that allowed counselors to refuse to provide services to someone on the basis of “strongly held personal beliefs,” thus allowing professional counselors to impose their own values as a lens for whether or not they would work with particular clients. The mere existence of this legislation led to ACA moving the annual conference in 2017 from Nashville, Tennessee, where it was scheduled to be held, to San Francisco, California. The *ACA Code of Ethics* (2014) calls for counselors to refrain from imposing their values on clients. As of 2015, the *ACA Code of Ethics* is used by 19 states, ironically with Tennessee being among them. In other words, the licensing statute in Tennessee incorporates the language of the *ACA Code of Ethics*, while there is a separate law indicating that a counselor cannot suffer loss of license when that code is violated through the refusal of services to someone because of what the counselor personally believes. It is noteworthy that, while the LGBT population was the likely intended target of the new law, the language would allow for a further and widespread regression to blatantly discriminatory practices under the justification that the practice is rooted in what the individual *believes*.

Case Study

Carolyn is a student pursuing her doctoral degree in professional counseling. She is 35 years old and her best option for pursuing her education was through a distance-based program. Accordingly, though she lives in a rural community outside Nashville, Tennessee, she is enrolled in a graduate program at Towaco University based in Chula Vista, California. Throughout her enrollment, she has attended three residencies in California, and she is presently in the field experience segment of her education. Carolyn is employed full-time as a counselor at a Christian counseling center. She has her master’s degree and she is licensed. She arranges her practicum hours at a local inpatient addictions recovery center around the requirements of her full-time job so that she is usually working at her practicum site on nights and weekends.

As a student at Towaco, she was asked to sign a statement as a condition of enrollment committing to follow the *ACA Code of Ethics*. She has always abided by the provisions of the code in the context of her role as a student. However, at her primary place of employment, Carolyn and her coworkers do not treat individuals who are part of the LGBT community.

This week, Carolyn has been assigned a new client at the addictions center. Dominic is a 28-year-old gay male who has been married to James for 8 years. They have a 4-year-old son. The relationship is solid. Dominic was admitted to treatment because he became addicted to pain medication following a serious car accident. James is very supportive, visits Dominic as frequently as is allowed, and attends family therapy sessions. Carolyn is assigned to work with Dominic both individually and as a facilitator of the family group. As a conservative Christian, Carolyn is uncomfortable working

with a gay couple. She has never had to do so at her full-time job. In Tennessee, there is a law that allows a licensed professional counselor to refuse to provide services to anyone based upon “strongly held personal beliefs.” Carolyn tells her supervisor that she declines to work with Dominic and his husband and requests that the client be reassigned. The site supervisor suspends Carolyn and contacts her university supervisor in California.

Given Carolyn’s enrollment in an online counselor education program located in another state, this raises a number of questions when considering next steps. For example:

1. Which law or guideline is the primary guide for Carolyn’s conduct as a practicum student at the addictions center?
2. What relevance is there to the fact that Carolyn is already a licensed professional counselor in Tennessee but only a student at the university in California?
3. What if any implications will there be if Carolyn similarly refuses to see a client who is gay at her full-time job?
4. Is Carolyn bound by the *ACA Code of Ethics* if she is not a member of the American Counseling Association?

These questions illustrate some of the complex terrain to be navigated by online counselor educators.

Other Legal Considerations

Ward v. Wilbanks (2010), though not the first case of its kind and certainly not the last, garnered significant attention in the profession through the focus on a student-driven lawsuit against a counseling program at Eastern Michigan University and the individual faculty members. The plaintiff, Julea Ward, was enrolled in a practicum course and providing counseling services under supervision at the in-house clinic at Eastern Michigan University. She was assigned a client who presented with depression and issues related to a same-sex relationship. Ms. Ward sought to refer the client, citing a conflict with her personal religious beliefs, and she was expelled from the program, which she cited as a violation of her rights. A lower court recognized the importance of the right of educational programs to self-regulate. However, a higher court found in favor of Ms. Ward, and the *Ward v. Wilbanks* case became critical in the further evolution of the *ACA Code of Ethics* (2014), through which clarification came in terms of referrals that are rooted in competency and referrals that are rooted in the imposition of values and judgment.

Thus, in the prior case study, Carolyn could be allowed to refer in an educational program and in her state, but may not be allowed to refer under the same circumstances outside of her state. Because most states follow the *ACA Code of Ethics*, anyone functioning as a counselor could be held to those standards regardless of ACA membership status (Sheperis et al., 2016).

Discussion

The aforementioned examples serve to underscore the complications that arise just by virtue of the differences among the laws and regulations on like issues from state to state. With students being trained in the same program but living in different states and being trained by faculty who are also living in different states, opportunities for legal and ethical challenges abound. As counselor educators, we are trained to develop competent, ethical clinicians to serve clients, yet modern-day training, especially across state lines, requires the educator be informed of legal, ethical, and other challenges impacting the profession and students they serve.

Currently, counselor educators teaching through distance learning platforms cannot teach solely based upon licensing requirements in one state. In fact, the educator might be located in one state, while the student is in another, and the university is in yet another. The counselor educator, who might live and be licensed in Texas, is bound to follow the regulations in that state—but those regulations might not be relevant to (and might even be blatantly in conflict with) the regulations that apply to the student who resides in Tennessee. Moreover, the same professor can have 10 students in one class from 10 different states. The university, in California, will be bound by both federal and state regulations pertaining to higher education, including FERPA, but also by any relevant laws that might pertain to the different subject matters taught through that university. For example, in Alaska, if someone assists another in the act of suicide, that person can be charged with manslaughter. However, in California if that person is a medical doctor and assists another in ending their own life, the assistance could be considered a medical treatment under the *End of Life Options Act* (State of California, 2015).

Legal differences such as these call into question what can be taught about the professional handling of certain issues. Significant variations in law exist around confidentiality and mandatory reporting, counseling with minors and parental consent, and the nuances of licensing. Thus, it is incumbent upon counselor educators to be alert in their practice and prepared for the complex considerations that coexist with the accessibility of online counselor education.

Implications

Navigating the online space in a legal and ethical manner means staying up to date on current trends, resources, and laws. There are some resources counselor educators will find helpful in knowing licensure laws such as *Licensure Requirements for Professional Counselors, A State by State Report* (ACA, 2016). Also available from ACA is *Licensure & Certification: State Professional Counselor Licensure Boards* (2020), which links to all state requirements and is updated regularly. Other resources are more helpful for general legal concepts such as *The Counselor and the Law*, by Wheeler and Bertram (2019), currently in its 8th edition. For more state-specific considerations, counselor educators will want to look for resources like Caldwell's *Basics of California Law for LMFTs, LPCCs, and LCSWs* (2019).

Conclusion

The myriad of legal and ethical complications inherent in online counselor education is navigable. For all of the complications of online learning, the benefits can outweigh the disadvantages. The opportunity to learn across state and national borders, interface with colleagues across the country and around the world, and develop one's identity and practice as a professional counselor or counselor educator within this space is replete with rewards for all parties. Realistically, education is moving more and more to this format, and for counselor education, it is simply a matter of being cognizant of the legal and ethical dilemmas in order to meet them head-on.

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