

The Merrill Counseling Series

7TH EDITION

# ETHICAL, LEGAL, AND PROFESSIONAL ISSUES IN COUNSELING

THEODORE P. REMLEY, JR    BARBARA HERLIHY



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*S E V E N T H   E D I T I O N*

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# **ETHICAL, LEGAL, AND PROFESSIONAL ISSUES IN COUNSELING**

**Theodore P. Remley, Jr.**

*University of Holy Cross*

**Barbara Herlihy**

*University of New Orleans (Emerita)*



**Content Development:** Linda Bishop  
**Content Management:** Rebecca Fox-Gieg  
**Content Production:** Shruti Joshi  
**Product Management:** Drew Bennett  
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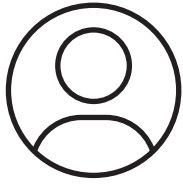
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# PREFACE

We are pleased that this text is now in its seventh edition and has been adopted for master's and doctoral courses in ethics in many counseling graduate programs throughout the United States and abroad. We set out to write a text on ethics, law, and professional issues in counseling that would provide basic information for graduate students in these areas and would offer sound practical advice for counseling practitioners. Faculty members and students who have used this text in their teaching and learning have told us that they find it to be comprehensive, rich with examples and case studies, and written in a style that makes complex material understandable.

We think you will find it useful to know something about us, the co-authors, and how we came to write this text. From 1997 to 2006, we were both professors in the counseling graduate program at the University of New Orleans. Ted Remley is an attorney with several years of legal experience and has been a school and community college counselor. Barbara Herlihy has worked as a school counselor and a licensed professional counselor in private practice and community agency settings. She currently is a retired counselor educator with special interests in counselor ethics and social justice.

Before we became colleagues at the University of New Orleans, we worked together over many years, co-authoring articles and presenting numerous workshops on law and ethics in counseling. It was through these workshops that the idea for this text was born. The counselors who attended our workshops had much in common despite practicing in a variety of settings and having diverse clientele. They shared a deep and abiding commitment to the welfare of their clients, a desire to stay current with the ethical standards of their profession, and a need to feel competent in dealing with the legal issues that arose in their work. At the same time, they sometimes felt overwhelmed by the complex and conflicting demands of the situations they encountered. They frequently had difficulty distinguishing between legal and ethical issues. As we worked together in our presentations to these counselors, we found that we very rarely disagreed with each other but that we did bring differing perspectives. Barbara's ethics orientation led her to focus on client welfare and to emphasize protecting the client. Ted's legal orientation helped us to consider another dimension—that of protecting the counselor. We believe both perspectives are important.

Because both of us regularly taught graduate courses in professional orientation and ethics, we found ourselves discussing the need for a text written specifically for counselors that would address ethical, legal, and professional issues. Thus, out of our backgrounds and shared interests was conceived a text that is unique in that it approaches each professional issue in counseling from both an ethical perspective and a legal viewpoint. We believe that you will find this integrated approach particularly helpful as you grapple with the complexities inherent in the work of the counselor.

We also believe that the best learning is active rather than passive and is personalized rather than abstract. We hope that you will actively discuss and even argue about the issues that we discuss throughout the text and that you will work to develop your own personal stance on these issues. Case studies of common situations and dilemmas that counseling practitioners encounter are presented in each chapter. We ask you to imagine that you are the counselor in each case study and to consider what you would think, how you would feel, and what you might do in each situation. In these case studies, as in real life, there is rarely a single correct resolution to the counselor's dilemma, so we hope that the situations will spark lively discussion among you and your classmates.

In this seventh edition, we discuss the impact of the COVID-19 pandemic on the counseling profession and acknowledge the dramatic shift from in-person to virtual counseling services. Unfortunately, there are no standard, agreed-upon terms that are used for technology applications in the counseling profession. However, the following words and phrases are frequently used to describe counseling that is delivered electronically by voice, video, or text: *telecounseling*, *telemental health*, *teletherapy*, *online counseling*, *remote counseling*, *e-counseling*, and *virtual counseling*. The American Counseling Association’s *Code of Ethics* (2023) uses the term *distance counseling* to describe counseling that does not take place while the counselor and the client are in the same physical space. The Council for Accreditation of Counseling and Related Educational Programs (CACREP) uses the term *digital delivery* to describe teaching, supervision, or counseling that is provided through electronic means. In this text, we have chosen to use the terms *virtual counseling*, *supervision*, and *teaching* and define them, respectively, as counseling, supervision, and teaching that take place using electronic means including video, voice, or text.

We hope that you will find this new edition to be interesting and informative.

## NEW TO THIS EDITION

- *Discussion of the impact of the COVID-19 pandemic on the counseling profession.* We identify and explore how the pandemic has changed every major ethical, legal, and professional issue in counseling. At the beginning of each of the 16 chapters, we highlight how the urgent shift to virtual counseling, supervision, and teaching that was necessitated by the pandemic has been addressed by counselors, supervisors, and counselor educators.
- *Additional case studies with discussion.* More case studies that explore ethical, legal, and professional issues in counseling have been added, including situations related to virtual counseling, supervision, and teaching. At the conclusion of each case, we provide our best reasoning as counselor educators who specialize in ethics and law in counseling.
- *Updated and current information on the use of technology in counseling, supervision, and teaching.* We have included recent refereed journal articles in Chapter 10 that provide the best thinking related to the expanding use of technology in the counseling profession.
- *Expanded attention to multicultural, social justice, and advocacy issues* includes a discussion of the disproportionate toll of the COVID-19 pandemic on marginalized members of U.S. society.
- *Updates to progress in allowing counselors to become licensed in more than their home state.* In Chapters 2 and 13, we report that states are passing legislation that will allow counselors who are licensed in one state to more easily obtain a license in additional states.
- *Includes issues related to trauma-informed counseling.* We discuss the expanding literature about the role of trauma in clients’ lives. We also identify and discuss ethical, legal, and professional issues in trauma-focused counseling.
- Updated chapter references to the 2024 revised CACREP Standards.

## KEY CONTENT UPDATES BY CHAPTER

### Chapter 1: Introduction

- *New:* discussion of the impact of the COVID-19 pandemic on the counseling profession.
- *New:* update on planned revision of ACA Code of Ethics.

- *New*: exercise for exploring the ACA Code of Ethics.
- Updated review of ethical decision-making models focused on counseling specific populations or on particular ethical issues.
- Five case studies with expert analysis.

### **Chapter 2: Professional Identity of Counselors**

- *New*: discussion of the impact of the COVID-19 pandemic on the professional identity of counselors.
- Updated discussion of the increasing recognition in the counseling profession of the importance of advocating for clients who face societal and institutes barriers that restrict their access to resources or inhibit their growth and development.
- Updated description of the divisions of the American Counseling Association.
- *New*: introduction to the interstate counseling licensure compacts that are being developed.
- *New*: information about counselors now being recognized as providers of mental health services to Medicare recipients.
- An update on the growth of the counseling profession throughout the world.
- Four case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

### **Chapter 3: Multiculturalism, Social Justice, Advocacy, and Values**

- *New*: discussion of the impact of the COVID-19 pandemic on multiculturalism, social justice, advocacy, and values.
- Updated discussion of the Multicultural and Social Justice Competencies and the updated Advocacy Competencies
- *New*: discussion of the impact of the Black Lives Matter movement.
- Updated information on current challenges facing members of the LGBTGEQIAP+ community.
- Updated overview of intersectionality.
- A discussion about the controversy that has occurred when some conservative Christian counselors and counselors-in-training have refused to counsel LGBTGEQIAP+ clients based on their religious beliefs.
- Seven case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

### **Chapter 4: Client Welfare and Informed Consent**

- *New*: discussion of the impact of the COVID-19 pandemic on client welfare and informed consent.
- *New*: discussion of interruptions in services and termination of services in the context of increased virtual counseling practices.
- Updated overview of diversity considerations regarding client informed consent.
- Five case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

### **Chapter 5: Confidentiality and Privileged Communication**

- *New*: discussion of the impact of the COVID-19 pandemic on confidentiality and privileged communication.
- Updated exploration regarding confidentiality since virtual counseling services have increased.
- A summary of current perspectives on the many exceptions to client confidentiality.
- Four case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

**Chapter 6: Records and Subpoenas**

- *New*: discussion of the impact of the COVID-19 pandemic on records and subpoenas.
- *New*: discussion of recordkeeping in virtual counseling environments.
- Subpoenas issued for virtual court proceedings.
- Five case studies with expert analysis.
- *New*: two video vignettes with discussion questions.

**Chapter 7: Competence, Assessment, and Diagnosis**

- *New*: discussion of the impact of the COVID-19 pandemic on counselor competence, assessment, and diagnosis
- *New*: discussion of ethical concerns in counseling that have arisen with the growth of the use of artificial intelligence.
- A review of recent literature related to counselor burnout and impairment.
- An overview of the importance of diversity considerations in diagnosing mental disorders.
- Seven case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

**Chapter 8: Malpractice and Resolving Legal and Ethical Challenges**

- *New*: discussion of the impact of the COVID-19 pandemic on malpractice and resolving legal and ethical challenges.
- Updated information on areas in which counselors are accused of wrongdoing.
- Specific advice to assist counselors avoid malpractice claims.
- Updated overview of ethical and legal issues related to providing counseling services to clients who engage in non-suicidal self-injury.
- A discussion of the role of counselors in preventing cyberbullying.
- Updated information on counseling clients who are living with HIV.
- Five case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

**Chapter 9: Boundary Issues**

- *New*: discussion of the impact of the COVID-19 pandemic on boundary issues.
- *New*: an exploration of the special boundary issues associated with the increased use of virtual counseling, teaching, and supervision.
- The impact of an increasingly diverse society on boundary issues in counseling.
- Updated review of unavoidable boundary issues that arise in counseling.
- Emerging perspectives on self-disclosure of counselors.
- *New*: three video vignettes with discussion questions.

**Chapter 10: Technology in Counseling**

- *New*: discussion of the impact of the COVID-19 pandemic on technology in counseling.
- *New*: discussion of how the recent increase of use of virtual approaches to counseling, teaching, and supervision has changed the counseling profession.
- An overview of how clients now use social media.
- Emerging ideas about cyberbullying and sexting that are important to counselors.
- The advantages and limitations of virtual counseling.
- Updated summary of the guidelines that have been published for the use of technology in mental health counseling.
- Perspectives on the use of social media by counselors.
- Updated information on electronic recordkeeping guidelines.



- *New*: issues related to artificial intelligence and counseling.
- Three case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

### **Chapter 11: Counseling Children and Vulnerable Adults**

- *New*: discussion of the impact of the COVID-19 pandemic on counseling children and vulnerable adults.
- *New*: the impact on counseling of the overturning by the US Supreme Court of *Roe v. Wade*.
- Updated information on providing services to children who may be at risk of harm to self or others.
- Special issues related to counseling children in school environments.
- Current perspectives on counseling survivors of sex trafficking.
- Seven case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

### **Chapter 12: Counseling Families and Groups**

- *New*: discussion of the impact of the COVID-19 pandemic on counseling families and groups.
- Updated information on intimate partner violence.
- An exploration of value-laden issues in marriage and family counseling.
- Six case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

### **Chapter 13: Professional Relationships, Private Practice, & Health Care Plans**

- *New*: discussion of the impact of the COVID-19 pandemic on professional relationships, private practice, and health care plans.
- *New*: an exploration of how private counseling practices have changed since virtual counseling has become so widespread.
- Updated perspectives on transitioning from being an employed counselor to owning and operating a private counseling practice.
- *New*: developments in counselors being recognized as mental health care providers, including recognition by Medicare.
- Six case studies with expert analysis.
- *New*: two video vignettes with discussion questions.

### **Chapter 14: Issues in Counselor Education**

- *New*: discussion of the impact of the COVID-19 pandemic on issues in counselor education.
- *New*: issues related to online delivery of counselor preparation programs.
- Current perspectives related to gatekeeping in counselor education.
- Relationship boundaries between faculty and students in counselor education.
- Four case studies with expert analysis.
- *New*: two video vignettes with discussion questions.

### **Chapter 15: Supervision and Consultation**

- *New*: discussion of the impact of the COVID-19 pandemic on supervision and consultation.
- *New*: the increased use of virtual supervision.
- Four case studies with expert analysis.
- *New*: three video vignettes with discussion questions.

### Chapter 16: Professional Writing, Conducting Research, and Publishing

- *New*: discussion of the impact of the COVID-19 pandemic on professional writing, conducting research, and publishing.
- *New*: perspectives on student academic integrity since online education has become more prevalent.
- Recent emphasis on research quality in the counseling profession.
- Five case studies with expert analysis.
- *New*: two video vignettes with discussion questions.

## LEARNING MANAGEMENT SYSTEM (LMS)-COMPATIBLE ASSESSMENT BANK, AND OTHER INSTRUCTOR RESOURCES

- **Video Examples** Chapters provide real-life counselor and client interactions or counselor-to-counselor interactions. These Video Examples include digital case examples giving you experiences of counseling scenarios that you likely will encounter in a counseling practice. Accessible through your eTextbook, simply clicking on the video icon allows you to observe the counseling session presented. Thought-provoking questions are offered in the video captions to guide your thinking in applying the counseling advice provided in the chapter.

### LMS-Compatible Assessment Bank

With this new edition, all assessment types—quizzes and application exercises—are included in LMS-compatible assessment banks for the following learning management systems: Blackboard, Canvas, D2L, and Moodle. These packaged files give maximum flexibility to instructors when it comes to importing, assigning, and grading assessments. Assessment types include:

- **Chapter Quizzes** Each chapter includes Chapter Quizzes that are available for instructors to assign through their Learning Management System. Each quiz contains higher-order multiple choice questions that measure understanding of chapter content. Each multiple-choice question includes feedback for the correct answer and for each distractor to help guide students' learning.
- **Application Exercises** Each chapter provides opportunities for you to apply what you have learned in Application Exercises. These exercises are set up in a short-answer format and are based on the chapter's Video Examples or case-based scenarios and are intended to allow you to practice applying the principles and processes of counseling practices. A model response is provided to help assess and guide your learning.
- **Chapter Tests.** Suggested test items are provided for each chapter in multiple-choice format.

## INSTRUCTORS RESOURCES

### Instructor's Manual

The Instructor's Manual is provided as a Word document and includes resources to assist professors in planning their course.

### PowerPoint® Slides

PowerPoint® slides are provided for each chapter and highlight key concepts and summarize the content of the text to make it more meaningful for students.

## ACKNOWLEDGMENTS

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We are also grateful to Robert Casares for his additional, specific review of Chapter 10: Technology. His significant recommendations were instrumental in helping us update this chapter.

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## LEARNING OBJECTIVES

- 1.1 Explain how ethical, legal, and professional behaviors are different from each other.
- 1.2 Articulate the process involved in ethical decision making.
- 1.3 Describe how to recognize legal issues and how to obtain legal advice.

This text is intended primarily for prospective counselors, so most readers are likely to be graduate students in counselor education programs. However, many counselors who are already practicing use this text as a resource to help them address legal and ethical issues. Whether you are a student or a practicing professional counselor, we hope you will develop a thoughtful understanding of ethical, legal, and professional issues in counseling as you digest and discuss the material.

Before you begin exploring these issues, it may be helpful to have an overview of how this text is organized. Section I contains this introductory chapter and two additional chapters that address professional identity and diversity. These are cross-cutting issues that permeate every ethical, legal, and professional issue that is discussed in Section II. Each chapter in Section II focuses on a specific issue such as confidentiality, competence, boundaries of the counseling relationship, and technology in counseling.

Since the previous edition of this text was created, the entire world experienced upheaval caused by the COVID-19 pandemic. The pandemic not only disrupted lives but also caused profound changes in the ways that counseling is taught and practiced. Virtual counseling, supervision, and education are now the norm, even in our post-pandemic environment. Thus, each chapter now contains a short, new section that describes the impact of the COVID-19 pandemic on the issue(s) addressed in that chapter.

## FOCUS QUESTIONS

1. Assuming that you are a moral and responsible person (as are most counselors), why do you think it is important for you to study ethical and legal principles and the decision-making process?
2. What are the differences among legal, ethical, and professional behaviors?
3. What resources can you use when you need help in resolving an ethical dilemma?
4. How should you get legal advice when a legal issue presents itself?



## The Impact of the COVID-19 Pandemic on the Counseling Profession

During the early months of 2020, as the severity of the COVID-19 pandemic became apparent, U.S. society went into lockdown. The widespread upheaval in people's lives included dealing with a life-threatening illness, the deaths of loved ones, loss of employment, widespread fear and anxiety, and profound disruptions of daily routines of living. The impact on the counseling profession was dramatic, as counseling and counselor education were forced to switch immediately to virtual means of delivery. Adaptations and transitions occurred at a remarkably fast pace so that counseling services could continue to be available, now in a virtual format, to most clients. Counselor education programs switched to online delivery as well, and students were able to continue with their studies and to graduate on time. These changes, born of necessity, turned out to have many advantages, and virtual counseling and virtual counselor education have continued into the post-pandemic era, taking their place alongside the resumption of face-to-face counseling and education. It will take time to fully understand the impact of all these changes, but at this point it is evident that no aspect of the counseling profession, including ethical practice and legal requirements, remains untouched by the pandemic. The ethical, legal, and professional issues raised by this transformation are discussed in more detail in ensuing chapters.

## PROFESSIONAL ORIENTATION

Ethical, legal, and professional issues, collectively, make up the *professional orientation* content area of your graduate studies. A fundamental part of your professional development as a counselor is to acquire a firm grounding in the area of professional orientation. This content area includes three main components:

- ***Developing a professional identity as a counselor.*** This includes understanding the history and development of counseling and related professions, knowing the professional roles and functions of counselors and how these roles and functions are similar to and different from those of other professions, learning about and becoming involved in professional organizations, gaining awareness of counselor preparation standards and credentialing, knowing how to advocate for your clients and your profession, and developing pride in your profession. Professional identity is discussed in detail in Chapter 2.
- ***Learning about ethics.*** This involves becoming familiar with ethical standards for counselors, understanding the ethical issues that counselors encounter, developing ethical reasoning and decision-making skills, and being able to use an ethical decision-making model to apply your knowledge and skills in your day-to-day professional activities.
- ***Learning about the law as it applies to counseling.*** This includes being able to distinguish among legal, ethical, and clinical issues; acquiring a basic knowledge of legal issues in counseling and the laws that affect the practice of counseling; and knowing what to do when you are faced with a legal problem.

The importance of professional orientation is evident in standards for preparation and credentialing of counselors. The Council for Accreditation of Counseling and Related Educational Programs (CACREP) sets standards for counselor preparation and accredits training programs that meet these standards. A primary purpose of the CACREP Standards (2024) is to ensure that students graduate with a strong professional identity. CACREP requires the curriculum for counselors-in-training

to include studies that provide an understanding of professional functioning. Further information about CACREP is provided in Chapter 2.

The National Board for Certified Counselors (NBCC), a voluntary organization that certifies counselors, also requires the counselors it certifies to complete coursework in the area of professional orientation to counseling (NBCC, 2024). If you plan to become licensed as a professional counselor, you should be aware that state counselor licensure boards mandate that licensees demonstrate knowledge of professional orientation issues, which include ethical and legal issues.

Beyond external requirements, it is essential that you develop a strong professional identity as a counselor during this time, when our profession is facing both new and ongoing challenges from other mental health professions. Counseling is a relatively young profession, and the general public may not be as aware of professional counselors' identity as they are aware of the identities of psychologists, social workers, and psychiatrists. You may be asked, "What kind of counselor are you?" or "Is being a counselor like being a psychologist?" or "How are counselors different from social workers?" These are legitimate questions, and you must be prepared to clearly explain who you are as a member of this professional group, what you believe, how you are similar to other mental health professionals, and, more importantly, how you are different from those professionals. You must also be prepared to practice in ways that are ethically and legally sound and that promote the welfare of your clients. Information throughout this text will provide you with an understanding of your chosen profession of counseling and will prepare you to practice in an ethical and legal manner.

We hope that seasoned practitioners, as well as counselors-in-training, will read this text and find it useful. Professional, ethical, and legal standards are constantly changing, and it is important to keep up to date. Also, as Corey et al. (2024) have pointed out, issues that students and beginning practitioners encounter resurface and take on new meanings at different stages of one's professional development.

In the remainder of this section, we clarify some important terms, distinguishing among *morals*, *values*, and *ethics* as these terms are used in this text. We also delineate the differences and areas of overlap among *ethical*, *legal*, and *professional* issues as they apply to the practice of counseling. Finally, we offer a model of professional practice that demonstrates how the multiple components of practice are related to and connected with each other.

## Morals, Values, and Ethics

The terms *morals*, *values*, and *ethics* are sometimes used interchangeably, and they do have overlapping meanings. For instance, all three terms involve judgments about what is good and bad, or right and wrong, and all pertain to the study of human conduct and relationships. Nonetheless, distinctions must be drawn when these terms are applied to the behaviors of professional counselors so that a shared understanding can be established.

The term *moral* is derived from the Latin word *mores*, which means customs or norms. Moral actions are determined within a broad cultural context or religious standard. Although some moral principles, such as "Do no harm to others," are shared by most civilized groups of people, how these moral principles are interpreted and acted on will vary from culture to culture and from individual to individual within a culture. Thus, conduct that you evaluate as moral might be judged as immoral by another person or by people in another society. It is important to remember that what you view as moral behavior is based on your values. In this text, when we refer to moral conduct, we ask you to think in terms of your *personal* belief system and how this belief system affects your interactions with others in all aspects of your life.

Although values are very similar to morals in that they serve as a guide to determining what is good or right behavior, we use the term *values* to apply broadly to both the personal and the professional functioning of counselors. Our *personal* values guide our choices and behaviors, and each of us holds some values more strongly than other values. Your value system is unique to you, and it has been influenced by your upbringing, the culture in which you live, and quite possibly your religious beliefs. What is important about your personal values as they relate to professional practice is that you have a high level of self-awareness of your values and that you learn to *bracket* (Kocet & Herlihy, 2014), or set aside, your personal values within the counseling relationship. One of the hardest lessons counselors must learn is to respect values that are different from their own and to avoid imposing their own personal values on their clients. It is particularly difficult to avoid imposing your values when an implicit bias (a bias of which you are not aware) is at work or when a client holds values that are very different from your own (Thacker & Blueford, 2018). For example, if you believe strongly that women have the right to choose whether to terminate a pregnancy, then it will be challenging for you to keep your values in check as you counsel a woman who expresses her support for a total ban on abortion. Similarly, it may be difficult for you to counsel clients who are seeking divorce if you believe strongly in the sanctity of marriage. A series of court cases have involved counselors with strong religious beliefs who declined to provide affirmative counseling to clients who desired to improve their same-sex romantic relationships. Partly because of the controversy generated by these court cases, the *Code of Ethics* of the American Counseling Association (2014) includes several standards that make it quite clear that counselors must not impose their own personal values on their clients.

Members of the counseling profession share certain *professional* values. These include enhancing human development across the life span, honoring diversity and embracing a multicultural approach, promoting social justice, safeguarding the integrity of the counselor–client relationship, and practicing competently and ethically (ACA, 2014, *Code of Ethics*, Preamble). These core values are articulated in the *Code of Ethics* to help acculturate students to the expectations of the counseling profession (Francis, 2015). If a counseling student’s personal values were so strong that he or she could not learn to counsel clients who held differing beliefs, or if a student could not embrace the professional values of the profession as articulated in the *Code of Ethics*, we would be concerned that the student is not well suited for the counseling profession.

## 1-1 The Case of Carole

Carole is a master’s-degree student in counseling who is enrolled in her practicum course and has begun to work under supervision with her first clients. Carole self-identifies as mixed-race Latine: Her father is White, and her mother emigrated from a country in Central America. Carole grew up hearing stories of the oppression and violence that her mother had experienced in her home country before coming to the United States, and she has been saddened and angered to see the prejudice that her mother continues to encounter as a member of the Latine community.

Now in her sixth week of practicum, Carole has received positive feedback about her work with clients. Today, however, she had a new client named Frank, who sought counseling for depression that he believes is caused by his inability to find a job. During the session, Frank spoke at length and with bitterness about immigrants from Mexico and Central American countries who “have taken all the jobs that rightfully belong to real Americans.” He also used a number of racial slurs as he was speaking. Carole found herself feeling angry at Frank, and she struggled to get through the session.

During her feedback session regarding her work with the client, Carole acknowledged that she had performed poorly in the counseling session and insisted that she would never be able to work with clients like Frank who are prejudiced against people who share her heritage. She asked to be reassigned to a different client.

- What do you think of Carole's request to be reassigned so that she will not have to continue working with Frank?
- If you were Carole's supervisor, what would you tell her?

**Discussion:** Although Carole's emotional reaction to the client's prejudice toward people who share her heritage is understandable, she must learn to bracket, or set aside, her personal values during her counseling sessions. Her supervisor will work with her to help her process her reaction and learn to effectively counsel clients who "push her personal buttons." Actually, Carole is fortunate to have encountered a client like Frank while she is in her practicum and can receive the assistance she needs to become competent to work with such clients. Her supervisor will make it clear that referring Frank to a different counselor is not the solution to her difficulties and that Carole is expected to develop the competence to work with clients who evoke uncomfortable personal reactions.

*Ethics* is a discipline within philosophy that is concerned with human conduct and moral decision making. Certainly, you have developed your own individual ethical stance that guides you in the ways you treat others, expect them to treat you, and make decisions about what behaviors are good or right for you. In this text, however, we think of ethics as it relates to the profession of counseling; that is, ethics refers to conduct judged as good or right for counselors as a professional group. When your fellow professionals have come to sufficient consensus about right behaviors, these behaviors have been codified and have become the ethical standards to which you are expected to adhere in your professional life (ACA, 2014). Therefore, think about ethics as referring to your *professional* behavior and interactions. Keep in mind that ethics must prevail over your personal values when value conflicts arise within a counseling relationship. Because the counseling relationship exists to benefit the client, you must avoid imposing your own values on your clients.

## Legal, Ethical, and Professional Behavior

*Law* is different from morality or ethics even though law, like morality, is created by a society, and like ethics, it is codified. Laws are the agreed-upon rules of a society that set forth the basic principles for living together as a group. Laws can be general or specific regarding both what is required and what is allowed of individuals who form a governmental entity. Criminal laws hold individuals accountable for violating principles of coexistence and are enforced by the government. Civil laws allow members of society to enforce rules of living with each other.

Our view is that there are few conflicts between law and ethics in professional counseling. Keep in mind, though, that there are important differences. Laws are created by elected officials, enforced by police, and interpreted by judges. Ethics are created by members of the counseling profession and are interpreted and enforced by ethics committees and licensure and certification boards. Laws dictate the *minimum* standards of behavior that society will tolerate, whereas ethics pertains to a wider range of professional functioning. Some ethical standards prescribe the minimum that other counselors will tolerate from fellow professionals (for example, sexual or romantic relationships with clients are prohibited), and some ethical standards describe ideal practices to which counselors should aspire (for example, counselors should aspire to foster meaningful and respectful professional relationships).

Rowley and MacDonald (2001) discussed the differences between law and ethics using concepts of culture and cross-culture. They argued that “law and ethics are based on different understandings of how the world operates” (p. 422). These authors advise you to learn the different culture of law, seek to understand how law operates, and develop collaborative partnerships with attorneys. We agree with the perspective that the cultures of counseling and law are different and that seeking legal advice is often an important step in the practice of counseling.

Where does the notion of *professionalism* fit into the picture? Many factors—including the relative newness of the counseling profession, compared to other mental health professions; the interpersonal nature and complexity of the counseling process; and the wide variety of types of counselors and their work settings—make it essential for counselors to conduct themselves in a professional manner. However, it is not easy to define what it means to be *professional*, and we discuss this in more detail in Chapter 2. Legal standards are the minimum that society will tolerate from a professional. Ethical standards occupy a middle ground, describing both the minimal behaviors expected of counselors and the ideal standards to which counselors should aspire. Although professionalism is related to ethics, it is possible to be unprofessional without being unethical. For instance, a counselor might frequently run a bit late for counseling sessions, which might be considered unprofessional but would not be unethical. By contrast, if a counselor were to enter into a sexually intimate relationship with a client, this behavior would be unethical, illegal, *and* unprofessional and would violate the professional values that counselors strive to uphold.

Professionalism is closely related to the concept in a profession of *best practice*, and perhaps the concepts of law, ethics, and best practice in the field of counseling are on a continuum. Best practice is the very best action a counselor could be expected to do. Best practice guidelines are intended to provide counselors with goals to which they can aspire, and they are motivational, as distinguished from ethical standards, some of which are aspirational while others are enforceable.

Although counselors vary to an extent in their beliefs about what constitutes best practice, you will want to strive to practice in the best possible manner and to provide the most competent services to your clients throughout your career. Meeting minimum legal standards or minimum ethical standards is not enough for the truly professional counselor. Rather, professionalism demands that you be the best counselor for your clients that you are capable of being.

## 1-2 The Case of Samya

Samya, who works in a community agency, will be seeing a 16-year-old minor for his first counseling session. Samya knows that legally and ethically, she must have one of his parents sign an agreement permitting her to disclose information regarding his sessions to his parent's health insurance company so that the parent will be reimbursed partially for the cost of her counseling services. Samya also is aware that, according to the *ACA Code of Ethics* (2014), she may include his parents in the counseling process, as appropriate (§A.2.d.; §B.5.b). However, she realizes how important confidentiality is to adolescents, and she wants to provide services to this minor in a way that would meet best practice standards.

- What are some of the things Samya might do in this situation to go beyond what is minimally required by law or the *ACA Code of Ethics* (2014)?
- How will Samya know if what she finally decides to do is best practice?

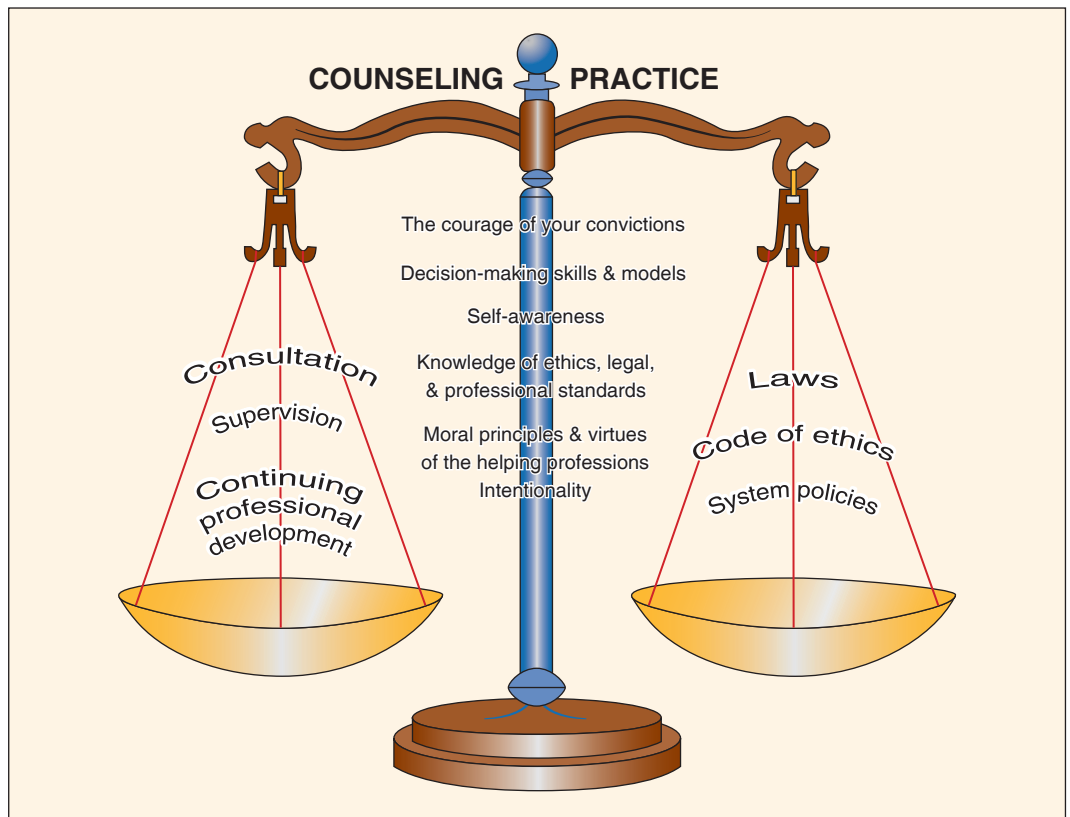
**Discussion:** You will have the information you need to answer these questions after you have read material on ethical decision making, informed consent, confidentiality, and counseling

minor clients, all presented later in the text. For now, a brief answer is that Samya would be well advised to hold a conversation with both the client and his parent(s) present, in which she discusses confidentiality and its limits (including the information she would share with the insurance company). Including the client in the decision-making process is good practice, and Samya can ask the client to sign the agreement to signify his assent, in addition to having the parents sign to give legal consent. Best practice for Samya will mean keeping a careful balance, one that honors both her minor client's right to privacy and his parents' rights to information about their son, and working to establish and maintain a cooperative relationship with all parties.

## A Model for Professional Practice

One source of very real frustration for prospective and beginning counselors is that there are so few absolute, right answers to ethical, legal, or best practice questions. Throughout your career, you will encounter dilemmas for which there are no *cookbook* solutions or universally agreed-upon answers. We visualize professional practice as entailing a rather precarious balance that requires constant vigilance. We also see counseling practice as being built from within the self but balanced by outside forces, as shown in Figure 1-1.

**FIGURE 1-1** Professional practice—built from within but balanced from outside the self



In this model of professional practice, the internal building blocks climb up the post that holds the arms of the scale. The most fundamental element, at the base, is *intentionality*. Being an effective practitioner must start with good intentions, or wanting to do the right thing. The overwhelming majority of counselors have the best intentions: They want to be helpful to those they serve.

The second building block contains *principles and virtues*. Principles and virtues represent two philosophies that provide the underpinnings of ethical reasoning. Moral principles are a set of shared beliefs or agreed-upon assumptions that guide the ethical thinking of helping professionals (including physicians, nurses, and other medical specialists; teachers; and mental health professionals). Basic moral principles include respect for autonomy (honoring freedom of choice), nonmaleficence (doing no harm), beneficence (being helpful), justice (being fair), fidelity (being faithful), and veracity (being honest). Virtue ethics focuses on the traits of character or dispositions that promote the human good. We discuss these in more detail later in this chapter.

The third element is *knowledge* of ethical, legal, and professional standards. You will find that a wealth of resources is available to you as you work to gain, maintain, and expand your knowledge base. Texts such as this one, casebooks, professional journals, codes of ethics, workshops and seminars, professional conferences, some internet sites, and your supervisors and colleagues are all excellent resources that can help to increase your knowledge.

The fourth element is *self-awareness*. As discussed earlier in this chapter, counselors must maintain a high level of self-awareness so that they do not inadvertently impose their own values, beliefs, and needs onto their clients. Knowledge of ethical, legal, and professional standards is not sufficient: Best practice is achieved through constant self-reflection and personal dedication, rather than through mandatory requirements of external organizations (Francis, 2015).

Even after you have developed a solid knowledge base and the habit of self-reflection, you must have *skills* for applying your knowledge and reasoning through the questions and dilemmas that will arise in your practice. You are also expected to have a *model* that will serve as a road map to guide your ethical decision making and bring some consistency to your decision-making process.

The final internal element is *the courage of your convictions*. This element can challenge even the most conscientious counselors who have the best intentions. As a counselor, you will face ethical quandaries. It can take courage to do what you believe is right, especially when there is a high cost to yourself, when your personal needs are involved, when you know that others may not agree with or approve of your actions, or when (as is the case in ethical dilemmas) there is no single, clear, right answer to the problem.

The following are some examples of ethical quandaries that take courage and that involve the behavior of other counseling professionals: What if you know that one of your professors has published, under her or his own name only, an article based largely on a paper you wrote? What if your supervisor at your internship site is engaging in a behavior that you strongly believe is unethical? What if you know that one of your fellow interns, who is also your friend, is engaging in inappropriate relationships with clients? In such instances, it can be easier to turn away from the problem than to confront the individual involved and run the risk of retaliatory action by the professor, a poor evaluation from your supervisor, or the loss of a friend. Chapter 8 discusses important points you must consider if you suspect that another professional is behaving in an unethical manner and actions you might take.

It can be easier to recognize ethically questionable behavior on the part of others than to acknowledge that you may also have some vulnerabilities. Consider the extent to which you might be at risk of taking these potential ethical mis-steps that involve your own behavior: What if you know that you are supposed to maintain personal boundaries between you and your clients, but just once you agree to allow a client to buy you a cup of coffee and have a social conversation after a session has ended? What if you know that you are supposed to render diagnoses of mental and emotional disorders for your clients based on criteria in the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition–TR (American Psychiatric Association, 2022), yet you generally render the same diagnosis of *adjustment disorder* for most clients because you think this diagnosis is the least stigmatizing? What if you report to a counselor certification board that you attended a continuing education workshop you paid for, even though you did not actually attend it? In these situations, it might be tempting to make some minor compromises to your usual ethical behavior, especially when you feel that no harm will come to a client or to anyone else as a result.

Nonetheless, if you do nothing when you know the behavior of other professionals is unethical, or if you compromise your own ethical behavior, you may be setting foot on an ethical slippery slope. The *slippery slope phenomenon* is a term used by moral philosophers to describe what happens when one begins to compromise one's principles: It becomes easier and easier to slide down the slope, diminishing one's sense of moral selfhood along the way.

The diagram of the model also includes external forces that can support counselors in their efforts to maintain sound, professional practice. External sources of guidance and support include consulting with colleagues, seeking supervision, and increasing your knowledge and skills through continuing education activities. Your code of ethics is certainly a major source of guidance. Some laws support counselors in fulfilling ethical obligations; for example, privileged communication statutes can help you to uphold your clients' confidentiality when called to testify in court or produce records of counseling sessions. The system (school, agency, institution, or organization) in which you are employed may also have policies on which you can rely when confronted with a challenge or a request to compromise your ethics.

## PROFESSIONAL ETHICS

Concern about ethics acknowledges the awesome responsibilities inherent in the practice of counseling. A counselor's work can make a difference in whether an abused child's life situation is recognized and addressed, whether a battered spouse finds the self-affirming courage to move to a safe environment, or whether a clinically depressed client who has suffered multiple losses of loved ones as a result of the COVID-19 pandemic finds the hope needed to move forward in life. Other clients come with less dramatic, more mundane problems, yet counseling can play a vital role in their struggle to lead more meaningful and effective lives (Pope & Vasquez, 2021). Ethical counselors take these responsibilities seriously.

### Foundations of Ethics

For many centuries, philosophers have debated what characterizes a moral and ethical person and how to behave in a moral and ethical manner, and these issues have been addressed within the helping professions since ancient times. The Hippocratic Oath was written about 2,500 years ago in ancient Greece, and in fact, Greek philosophers such as Plato and Aristotle created most of the ethical principles that helping professionals use today.