

A Guide to Legal and Ethical Practice

The

COUNSELOR
and the
LAW

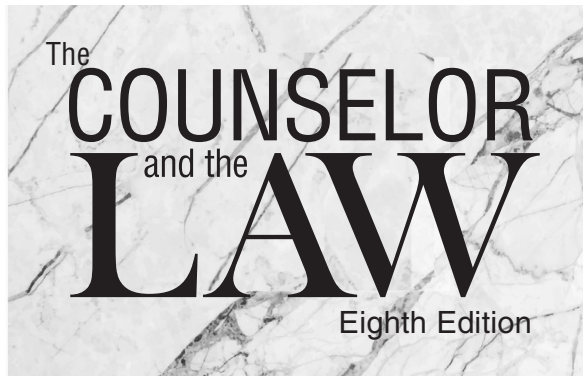
Eighth Edition

**Anne Marie “Nancy” Wheeler, JD
Burt Bertram, EdD**



**AMERICAN COUNSELING
ASSOCIATION**

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Dedication

To counselors everywhere,

No matter where on the arc of your career you stand—from graduate school to veteran practitioner, from private practice, agency, institution, or school employment to counselor educator or supervisor—all counselors share a common aspirational desire to serve the best interests of all clients. It is our fondest desire that this book will serve as a reliable guide to the work you do every day with every client.

and

To Gary and Leilani, our patient and loving spouses, who for more than a decade have supported our efforts as we have written the many drafts and iterations of this book and its previous editions. We could not have done it without you.

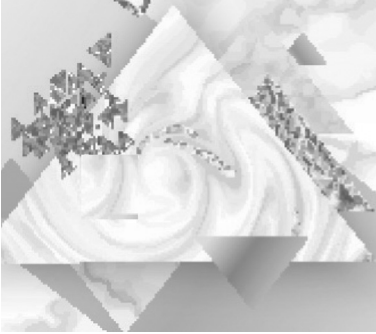


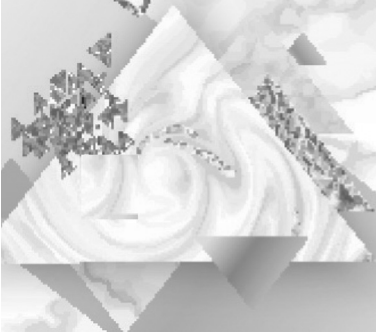
Table of Contents

Preface	ix
About the Authors	xi
Chapter 1	
Overview of Law, Ethics, and Professionalism	1
The American Legal Structure	1
Criminal, Civil, and Administrative Law	2
The Court System	3
Ethics Standards	5
A Legal and Ethical Decision-Making Model	9
Case Study: Applying the Decision-Making Model	14
Ethics and the Law	16
Professionalism	16
Summary	20
Chapter 2	
The Counseling Profession	21
Our Perspective	21
The Counselor	23
The Law	25
Licensing Standards for Counselors	27
Efforts Toward National Standards and Definitions	36
Summary	40

Chapter 3		
	The Counseling Relationship	41
	Who Is the Client?	42
	Duty and Standard of Care	43
	Informed Consent for Treatment	45
	Fees	51
	Terminating the Counseling Relationship	53
	Summary	60
Chapter 4		
	Civil Malpractice Liability, Licensure Board Complaints, and Criminal Actions	61
	Competence and Preparation	61
	Duty of Care and Potential Malpractice Liability	63
	Common Complaints Against Counselors	68
	Other Civil Actions	87
	Other Criminal Actions	100
	Summary	102
Chapter 5		
	Confidentiality, Privilege, and HIPAA Privacy	103
	Confidentiality	103
	Privileged Communication	104
	Privacy and HIPAA	107
	HITECH Changes to HIPAA	111
	Specific Concerns Regarding Subpoenas, Minors, and More	117
	Summary	132
Chapter 6		
	Duties to Report, Warn, and/or Protect	133
	Duty to Report	133
	Duty to Warn and/or Protect	136
	Practical Risk Management Guidelines	151
	Summary	152
Chapter 7		
	Records and Documentation	153
	Records: The Standard of Care	153
	The Purpose of Client Records	158
	Ownership of Records	165
	Alteration of Records	165
	Financial Records and Financial Relationship	166

Electronic Records and Ransomware	166
Record Retention	168
Records Custodian	169
Summary	170
Chapter 8	
Digital Technology and Counseling	171
Distance Counseling	172
Social Media: Think Before You Tweet, Friend, or Kik	177
Electronic Communication: Texting, Messaging Apps, and Email	180
Other Technologies and the Proliferation of AI	183
Recommendations	187
Summary	190
Chapter 9	
Suicide and Threats of Harm to Self	191
The Prevalence of Suicide and Threats of Harm to Self	192
Suicide and Ethics	196
Legal Issues Associated With Suicide	197
Supervision in the Context of Suicide and Civil Commitment	204
Bullying and Cyberbullying	205
End-of-Life Issues	208
Summary	209
Chapter 10	
Professional Boundaries	211
Counselor–Client Interactions or Relationships	212
Licensing Board Complaints and Selected State Disciplinary Action	219
Risk of Malpractice Lawsuits	226
Mishandling of Transference	227
Risk of Criminal Prosecution	229
When Is a Dual Relationship Appropriate?	230
Summary	232
Chapter 11	
Managing Your Counseling Practice	233
Opening a Counseling Practice: Forms of Operation	234

Private and Nonprofit Business Procedures	239
Federal and State Taxes, Reporting, and Licensing	239
Professional Liability Insurance	239
Other Insurance Coverage	242
Employment Law Considerations	246
Training and Supervising Employees	251
Hiring Workers as Independent Contractors or as Employees	253
Fee Splitting and Fraud and Abuse Laws	255
Billing and Collection Practices	257
Third-Party Payments	258
The ADA	260
The Genetic Information Nondiscrimination Act of 2008 (GINA)	265
New Counseling Approaches, Techniques, and Professional Expressions	265
Closing a Counseling Practice	268
Summary	270
 Chapter 12	
Counselor Educators and Clinical Supervisors	271
Counselor Educators	271
Clinical Supervisors	278
Summary	286
 References	287
 Appendix A	
<i>ACA Code of Ethics</i>	303
 Appendix B	
Case Study for Analysis With Legal/Ethical Decision-Making Model	343
 Appendix C	
Top 10 Risk Management Strategies	353
 Appendix D	
How to Access Laws and Find an Attorney	357
 Index	361



Preface

As we send this eighth edition of *The Counselor and the Law: A Guide to Legal and Ethical Practice* to press, the legal, ethical, and professional issues that affect professional counselors evolve at breakneck speed. However, the imperative to serve our clients' best interests never changes even though the complexities of modern life continue to create new legal and ethical dilemmas. Underscoring this point, the *ACA Code of Ethics* (American Counseling Association [ACA], 2014) has added an entire new section (Section H) specifically devoted to technology. Even since 2014, the use of digital technology by practicing counselors and their increasingly tech-savvy clients has continued to create new opportunities and challenges. Although it has only been 4 years since the publication of the previous edition of *The Counselor and the Law*, we have found the need to update the book to reflect changes in our society, recent court cases, new legislation, and emerging trends in the interpretation of ethics codes, especially regarding technology.

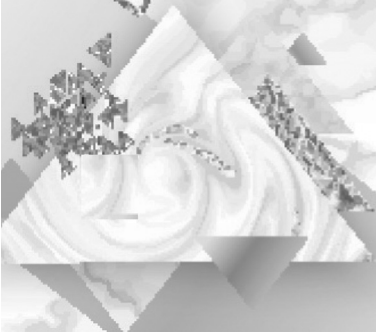
This book has an interesting collaborative heritage. Originally written by attorneys Thomas Burgum and Scott Anderson and published in 1975, *The Counselor and the Law* reflected the counseling profession before state licensure—and before the proliferation of state and federal laws that have shaped the conduct of the practice of counseling. In 1985, attorneys Bruce Hopkins and Barbara S. Anderson collaborated to update the original book; then in 1990, Hopkins and Anderson released the third edition; and in 1996, Barbara Anderson (without Hopkins) completed the fourth edition. In 2007, we were asked to take over the authorship and were charged with the responsibility of completing a major update of the book.

The fifth, sixth, and seventh editions—published in 2008, 2012, and 2015, respectively—as well as this new eighth edition, reflect the collaborative perspective of an attorney and a practicing counselor. We—Burt and Nancy—met at an ACA conference more than 30 years ago. We have collaborated on numerous written projects, seminars, and webinars over these 3 decades and believe that our blended perspective provides a unique understanding of the law as it relates to the day-to-day practice of counseling. As you read this book, you may discern two distinct voices and perspectives. Nancy Wheeler offers the lawyer’s perspective: She will tell you about the law and how it affects counseling practice based on many years of advising counselors and other mental health professionals. Burt Bertram’s voice reflects an insider’s perspective: He will talk about the gray areas of clinical practice that are a combination of art and science. Both of us will offer perspectives that demonstrate that law and ethics do not always fit neatly in a black-and-white world. Together, we offer advice and suggestions designed to help practicing counselors and students understand and navigate the complexities of real-world practice.

In the eighth edition of *The Counselor and the Law*, we continue our commitment to connecting the realities of the practice of counseling with state and federal laws and with the *ACA Code of Ethics*. It is our hope that this book will serve to provide real answers to practicing counselors who are challenged daily to act in the best interests of their clients and, at the same time, to be mindful of the legal and ethical duties and responsibilities that govern the profession of counseling. We also hope that this book will be a window of understanding for students as they attempt to imagine and prepare for professional practice. Of course, we did not—nor could we—address every situation. Laws vary from state to state, and the specifics of any particular situation can influence how state or federal laws or the *ACA Code of Ethics* will apply. In addition, this book is not intended as a substitute for the considered opinion and advice of your personal lawyer concerning the particular circumstances of a case in the context of local laws and customs.

We are grateful to all of the past authors for providing the solid foundation on which we have built our collaborative effort. We thank the ethics specialists at ACA for their helpful collaboration. Finally, we want to express our heartfelt appreciation to Carolyn Baker, associate publisher, who has been a joy to work with over the past dozen years.

—Anne Marie “Nancy” Wheeler and Burt Bertram



About the Authors

Anne Marie “Nancy” Wheeler, JD, is an attorney licensed in Maryland and the District of Columbia who has extensive experience with counselors and the broader field of mental health. For more than 30 years, she managed the Risk Management Helpline sponsored by the American Counseling Association (ACA) and its sponsored professional liability insurance program. For more than 30 years, Nancy also worked with psychiatrists, facilities, and physician associations. This background provided her a unique window of understanding of the multifaceted issues that often confront practicing counselors. She has also served as an affiliate faculty member of the Graduate Pastoral Counseling Program of Loyola University Maryland and in the Department of Counselor Education at Stetson University in Florida.

Burt Bertram, EdD, is a Florida-based Licensed Mental Health Counselor (LMHC) and Licensed Marriage and Family Therapist (LMFT). He has been in private practice in the Orlando area for more than 35 years. He practices from an interpersonal perspective: His professional counseling is primarily focused on the resolution of sensitive and complex relationship issues in every aspect of life—personal, workplace, and community. In addition to his private practice, Dr. Bertram provides personal development, coaching, and counseling to practicing physicians associated with the Florida Hospital System in Orlando. He is also an adjunct faculty member

in the Graduate Studies in Counseling Program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) at Rollins College in Winter Park, Florida, where he has taught ethics as well as practicum; internship; and family, couples, and group counseling.



Besides writing and contributing to numerous publications as individuals, Nancy and Burt have jointly developed and copresented more than 150 seminars and workshops nationwide on risk management and legal and ethical issues. They have also produced several tapes, CDs, podcasts, and webinars.