

Seventh Edition

The  
**Counselor**  
and the  
**LAW**

A Guide to Legal and  
Ethical Practice

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



AMERICAN COUNSELING  
ASSOCIATION

**WILEY**



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6101 Stevenson Avenue, Suite 600 | Alexandria, VA 22304 | [www.counseling.org](http://www.counseling.org)

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To our readers—

Whether you are reading this book voluntarily (e.g., a practicing counselor thirsty for new knowledge) or involuntarily (e.g., a graduate student taking the required ethics and legal issues course), may you incorporate some new ideas into your professional practices that will benefit both you and the many clients you will serve.





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## Preface

As we send this 7th edition to press, the world of the professional counselor continues to evolve. 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 2014 *ACA Code of Ethics* (American Counseling Association, 2014a) added an entire new section (Section H) specifically devoted to technology. The widespread use of technology by practicing counselors continues to create new opportunities and new challenges. In this edition of *The Counselor and the Law*, we have updated every chapter to reflect changes brought by the 2014 *ACA Code of Ethics*, recent court cases, and new legislation. We remain committed to identifying and thoughtfully addressing the timeless legal and ethical challenges associated with the practice of counseling, as well as peeking behind the curtain to anticipate future legal and ethical implications of such changes. To that end, we anticipate that by the time we are ready to begin work on the 8th edition, it is quite likely we will need to address new legal and ethical issues arising from the implementation of the Patient Protection and Affordable Care Act (2012) or other sweeping health care policies. Remaining current requires mindful awareness of the evolution of legal and ethical practices. We are honored to assist our readers in meeting this worthy professional standard.

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. Since the first publication there have been six updates. In 1985, attorneys Bruce Hopkins and Barbara S. Anderson collaborated to update the original manuscript; then in 1990, Hopkins and Anderson released the 3rd edition; and in 1996, Barbara Anderson (without Hopkins) completed the 4th edition. In 2007 we were asked to take over the authorship and charged with the responsibility of completing a major update of the book.

The 5th and 6th editions—published in 2008 and 2012, respectively—marked the first time that the authorship reflected a collaborative perspective of an attorney and a practicing counselor. We believe that our perspectives provided a unique understanding of the law as it relates to the day-to-day practice of counseling. As you read this book, you are likely to hear two distinct voices and perspectives. Nancy Wheeler will offer the lawyer’s perspective: She will tell you about the law and how it affects counseling practice. Burt Bertram’s voice will reflect an insider’s perspective: He will talk about the gray areas of practice that don’t 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 this, the 7th edition of *The Counselor and the Law*, we continue our commitment to connect 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 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 the past authors for providing a solid foundation upon which we have built our collaborative effort. We thank our colleagues in the ACA Ethics and Professional Standards Department for their helpful collaboration. Finally, we want to express our heartfelt appreciation to Carolyn Baker, associate publisher.

**—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; she has extensive experience with counselors and the broader field of mental health. For over 25 years, she has managed the American Counseling Association Sponsored Insurance Program’s Risk Management Helpline. On a daily basis, she helps practicing counselors think through and understand challenging legal and ethical issues. For more than 30 years, she has worked with psychiatrists, facilities, and physician associations. This background gives her a unique window of understanding about the multifaceted issues that often confront practicing counselors. She is also an affiliate faculty member of the Graduate Pastoral Counseling Program of Loyola University Maryland, which is accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP). Since the early 1990s, she and coauthor Bertram have jointly developed and copresented more than 150 seminars and workshops nationwide on legal and ethical issues. They have also produced several tapes, CDs, and podcasts on risk management strategies and legal and ethical issues.

**Burt Bertram, EdD**, is a Florida licensed mental health counselor and licensed marriage and family therapist. 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, Florida. He is also an adjunct faculty member in the CACREP-accredited Graduate Studies in Counseling Program at Rollins College in Winter Park, Florida, where he teaches ethics as well as practicum; internship; and family, couples, and group counseling. Since the early 1990s, he and coauthor Wheeler have together developed and copresented more than 150 seminars and workshops on legal and ethical issues across the country. They have also produced several tapes, CDs, and podcasts on risk management strategies and legal and ethical issues.



## Chapter 1

# The Counseling Profession

The practice of counseling and the profession of counseling have evolved into maturity. In this chapter we provide an introduction to some of the legal responsibilities and accountabilities that have come with the maturing of the profession. Most notably we focus on the influence of state counselor licensing laws that have dramatically affected the activities of both licensed and unlicensed professional counselors.

### Our Perspective

We understand that, for many practicing mental health professionals and most graduate students, the legal system is a foreign and sometimes frightening place. It is filled with adversarial relationships and governed by rules that are unfamiliar and unfriendly. We want to begin with a word of encouragement. No one knows how often counselors actually engage in unprofessional, unethical, or illegal practice-related behaviors. According to U.S. government data (U.S. Department of Labor, Bureau of Labor Statistics, 2014), nearly 1.5 million counselors (a number that includes licensed and unlicensed educational, vocational, school, rehabilitation, mental health, substance abuse, and marriage and family counselors) were working in America in 2012. Data compiled by the American Counseling Association (ACA; 2014b) indicate that there are 140,000 licensed counselors. The relative infrequency of licensing board discipline, lawsuits, criminal arrest, or censure by ethics committees compared

with the number of counselors suggests that formal accusations of questionable behaviors are rare. In our experience, even when there is an accusation against a mental health professional, the resolution often favors the professional.

We would be remiss, however, in not stating the obvious: Counselors and other mental health professionals sometimes do engage in behaviors that result in harm to the very people we are in practice to serve: our clients.

Counselors who are mindful and respectful of ethics and the law can develop practices that are creative, thoughtful, passionate, and always in the best interests of the client.

Many of these harmful behaviors come down to the counselor's failure to know, understand, or abide by the various state and federal laws that govern the practice of counseling. In this book, we are not recommending a rule-bound defensive practice wherein practitioners are fearful and innovation and creativity are stifled. On the contrary, the core message of this book is simple: We believe that counselors who are mindful and respectful of ethics and the law can develop practices that are creative, thoughtful, passionate, and always in the best interest of the client.

For nearly 30 years, we have worked with or followed legal cases in which the behavior of a counselor has resulted in harm to a client, and we have concluded that offending practitioners seem to fall into one of three broad categories:

- *Intentional disregard*: A small percentage of offending practitioners are intentionally opportunistic, abusive, exploitive, and self-serving in their dealings with their clients. These individuals are not interested in knowing, understanding, or abiding by the law. The best interest of the client is not their primary concern. Such harmful practitioners are not likely to read this book unless it is required in a graduate course or perhaps as part of a licensing board disciplinary process. We can only hope that all such practitioners either withdraw from the profession or have a life-altering transformational experience that induces them to abandon their abusive, self-serving values and behaviors.
- *Careless disregard*: There are offending practitioners who operate along a continuum ranging from innocently unaware to lazy or careless. In their hearts, these practitioners may want to

do what is best for their clients. However, because they have not taken the time to study and understand the law and our evolving ethics, their interactions with their clients might easily cross legal and ethical boundaries that would have sounded an alarm to a more knowledgeable and mindful practitioner. For these practitioners, the harm done to a client is unintentional but real. Reading this book can be an important step toward becoming actively mindful (no longer innocently unaware, lazy, or careless) of the implications to clients of the laws and the ethics that govern our profession.

- *Wrong place, wrong time:* Some offending practitioners know and understand legal and ethical mandates and are actively committed to abiding by them, yet they still become involved in situations in which a client is harmed (or alleges harm). As mental health professionals, we sometimes tell our clients that bad things can happen to good people. The same is true for good counselors. Sometimes bad things happen to good counselors—harmful things that simply could not have been foreseen or prevented. It is our hope that this book can help fortify the vast majority of practicing counselors so that if, in the unlikely event you are in the wrong place at the wrong time, you will have a depth of knowledge and understanding about the law that will empower you to get help for your client and for yourself before things spin out of control.

It is our hope that this book will serve as a guide to practitioners who are committed to the development of counseling practices that are ethical, legal, and always in the best interest of the client.

The title of this book, *The Counselor and the Law: A Guide to Legal and Ethical Practice*, seems straightforward, but actually the definitions of *counselor* and *law* can be fraught with confusion. Before we move into the specifics, we define these essential terms so that we all know who and what we are talking about.

## The Counselor

It seems obvious: Counselors provide counseling. And although that's true, it's not that simple. The label *counselor* in our culture is so generic that it almost defies an objective definition in terms of identifying a specific professional endeavor. There are insurance counselors, camp counselors, funeral counselors, and numerous other roles that are created simply by placing a descriptive noun in

front of the word *counselor*. As used in this book, the term *counselor* denotes a practitioner, educated and trained at the graduate level, who is a member of the counseling profession.

## History and Highlights of the Profession

What is the profession of counseling? Counseling as a profession, separate and distinct from its sibling and first-cousin professions, is relatively new. The genealogy of counseling is well documented. Gladding (2013), Kottler (2011), Neukrug (2012), and others have ably documented the story of how counseling as a profession has struggled during the past six decades to emerge separate and distinct from psychiatry, psychology, social work, philosophy, education, and career guidance. Today the counseling field has developed all the characteristics necessary to qualify as a full and mature profession. More than 60 years ago, the American Personnel and Guidance Association (the original name of ACA) was established. During the past 60+ years, ACA has provided the leadership and the energy to create the profession of counseling. It has made notable accomplishments in the following areas:

- *ethics*—creating the *ACA Code of Ethics* (most recently revised in 2014), a process for obtaining opinions on ethical issues and a process for filing a complaint against a professional member alleging ethical misconduct;
- *interest divisions*—creating and supporting specialized interest areas (divisions) within ACA in which professional members can affiliate, learn, and share ideas with others of similar professional interest;
- *professional development*—convening an annual national professional development conference as well as a host of other regional and state professional development meetings, conferences, publications, and activities;
- *training standards*—sponsoring efforts that resulted in the establishment of the Council for Accreditation of Counseling and Related Educational Programs (CACREP), the organization that defines the standards for training of graduate-level counselors and monitors the implementation of these standards;
- *national certification*—initially sponsoring and advocating the National Board of Certified Counselors (NBCC), the organization that has established a nationally recognized certification credential that attests to a baseline of general counselor knowl-

edge as well as to specialty credentials in school counseling, mental health counseling, and addictions counseling; and

- *state licensing*—working together with other professional associations and groups to lead the state-by-state struggle to license professional counselors.

## Professional Counselors

The efforts and activities outlined in the preceding section form the basis of what we now know as the professional counselor. State licensing is required for independent private practice. Professional counselor positions in agencies, schools, government, and nonprofit organizations may or may not require state licensure. Some professional counselors, such as school counselors or addictions counselors, may require specialty certification. Most of the information in this book is relevant to all professional counselors (licensed, certified, and unlicensed), including mental health, school, child, couple and family, substance abuse, and rehabilitation counselors; to graduate students in master's- and doctoral-level counseling and related programs; and to the broader field of counseling-related professionals, including counseling psychologists, psychologists, social workers, pastoral counselors, career counselors, and psychiatrists. All of these professionals share a common activity: They all engage in the practice of counseling.

## Licensed Professional Counselors

In 1976, Virginia became the first state to license and regulate professional counselors. Thirty-four years later, in 2010, California became the last state to enact state licensing of professional counselors. Today all 50 states plus the District of Columbia and Puerto Rico have licensed the title or practice activities (or both) of professional counselors.

## The Law

The purpose of this book is to empower professional counselors (licensed and unlicensed) to understand and thereby respond in a thoughtful and ethical manner to the laws that affect the day-in and day-out practice of counseling. To do this, two things are necessary. First, we want to be clear about what we mean by law; second, we want to provide some detail regarding how state laws and statutes have influenced the legal definition of the practice of professional counseling, regardless of the practice setting.

The word *law*, like the word *counselor*, is also confusing, especially to nonlawyers (and who could be less lawyerlike than many counselors?). For the purposes of this book, we define *law* as a set of rules, enacted by a legislative body, that governs a particular activity within society. Laws are everywhere, governing nearly everything. Laws, also called *statutes*, derive from elected officials who are members of federal or state (lawmaking) bodies. Municipal (city, town, and county) councils and commissions also promulgate ordinances.

As professional counselors and as citizens or residents of the United States, we are all affected by laws that address every aspect of our lives, from whom we can marry, to how we drive our cars, to the proper treatment of children, to the taxes we pay. It's probably safe to say that no one really knows all the laws that affect our every waking moment. However, for counselors, some laws are critical to our functioning. The following list identifies some of those that directly affect the practice of counseling:

- federal laws that have a direct bearing on counselors and the practice of counseling, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, the Americans With Disabilities Act of 1990 (ADA), and the Family Educational Rights and Privacy Act of 1974 (FERPA, or the Buckley Amendment);
- state laws and statutes, such as counselor licensure laws, the rules developed by state licensing boards to implement the law and regulate the day-to-day practice activities of licensed and nonlicensed professional counselors, and state abuse reporting laws (child and vulnerable adult); and
- local laws, including municipal laws that affect when and where counseling can occur, such as zoning and occupational licensing laws.

In addition, there is a body of law that derives from the common law that began in England and has developed over hundreds of years. Common law emphasizes precedent set by cases in which judges make decisions. Common law is distinct from statutory law, which is created by a legislature, not a judge (see Chapter 3 for a complete discussion). The *Tarasoff* case (*Tarasoff v. Regents of the University of California*, 1976, discussed in Chapter 6) is an example of how common law changed clinical counseling and mental health practices

across the country to permit or require the therapist to breach confidentiality when a client poses a serious risk of harm to a third party.

## **Licensing Standards for Counselors**

In many ways, for all the laudable efforts by academics and members of the various professional associations to define and legitimize the practice of counseling, nothing has moved the profession of counseling along faster than the emergence of state licensure of professional counselors. To be fair, it's extremely doubtful that any state would have passed licensing statutes were it not for the relentless efforts of leaders within the professional associations. Yet, only legislative bodies can create laws, and many leaders in the field of counseling would argue that we needed licensing laws to finish the task of defining ourselves and differentiating the work we do from similar services provided by other counseling-related professions.

The practice of counseling has been defined and redefined for decades. However, as the licensing of professional counselors has spread across the country, the struggle to define the practice of counseling has moved from an academic discussion to a legislative and statutory reality. State legislatures have enacted "practice act" counselor licensing statutes that include specific definitions of the practice of counseling. State statutory definitions have become the driving force determining, from a legal perspective, what professional counseling is and what professional counselors can do (scope of practice) as defined by the law.

As important as state licensing of counseling has been to the legitimizing of professional counseling, it came with a heavy price. There was never a national model of licensing. Like most state statutes, counselor licensing was a product of vigorous negotiation among many perspectives and interest groups within each state. Therefore, every state created a unique professional counselor licensing law, resulting in significant variability across the country. The state-by-state differences are particularly relevant in four important areas: (a) license title; (b) definition of counseling, including the scope of practice (activities professional counselors are permitted to undertake); (c) required graduate education requirements; and (d) postdegree supervision prior to independent licensure. Over time, the differences between two of these categories (graduate education requirements and postdegree supervision) seem to be coalescing toward some consensus. Licensure title and definition/scope of practice remain diverse. The discussion below provides an overview of some of these differences.

## License Title

State statutes establish licensure titles for professional counselors. Currently six titles are used to designate independent practice:

- Licensed Professional Counselor (LPC),
- Licensed Mental Health Counselor (LMHC),
- Licensed Clinical Professional Counselor (LCPC),
- Licensed Professional Clinical Counselor of Mental Health (LPCC),
- Licensed Clinical Mental Health Counselor (LCMHC), and
- Licensed Mental Health Practitioner (LMHP).

The most frequently used license title is LPC, which is used in more than half of the states; LMHC and LCPC are each used by seven states (ACA, 2014b). To make matters even more complicated, states have established licensure tiers to reflect the degree of independence allowed by the practitioner.

- Nine states and the District of Columbia have one tier of licensure.
- Thirty-four states and Puerto Rico have two tiers of licensure.
- Six states have three tiers of licensure.
- One state, Maine, has four tiers of licensure. (ACA, 2014b)

Differences in license title combined with title differences in one-, two-, three-, and four-tiered licensing has created further confusion. The same license title in one state can mean something else in another state. This situation leads to misunderstanding among the public and is counterproductive to the establishment of a clear identity for licensed counselors, particularly for the title that designates independent practice. For example, Illinois has a two-tiered license structure. Licensed Clinical Professional Counselor (LCPC) is the title designation for independent practice, whereas the Licensed Professional Counselor (LPC) title in Illinois requires practitioners to be supervised. Consider the five states that surround Illinois: Iowa, Missouri, Kentucky, Indiana, and Wisconsin. Licensed Professional Counselor is the title for independent practice in two of the surrounding states, Missouri and Wisconsin. In Indiana and Iowa, the title Licensed Mental Health Counselor (LMHC) designates independent practice. In the fifth state, Kentucky, Licensed Professional Clinical Counselor (LPCC) is required for independent practice.

## Definition of Counseling and Scope of Practice

The definition of professional counseling and the scope of practice descriptions are essential elements associated with every licensure law. Many state counselor licensing laws embed the scope of practice within the definition of counseling, whereas other states include a separate scope of practice definition or have enumerated specific practice limitations in other sections of the licensing statute. Presented below are five examples of the definition of counseling and the scope of practice from five states (Virginia, Florida, Oregon, California, and New York). Virginia, Florida, and Oregon are examples in which the scope of practice is embedded within the definition of counseling. Conversely, California has embedded the definition of counseling within the scope of practice, and New York has placed the definition of counseling in one section and the scope of practice in another. Carefully review each definition of counseling and scope of practice description. Note the similarities among the five examples as well as the differences. What is legal in one state but not acceptable in another? How do these examples compare with the definition of counseling and scope of practice in the state in which you practice or intend to practice?

### Virginia—LPC

In 1976, Virginia became the first state to enact a law governing the licensure and activities of professional counselors. The scope of practice is embedded in the definition of counseling:

“Counseling” means the application of principles, standards, and methods of the counseling profession in (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating treatment plans using treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health.

“Practice of counseling” means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, standards, and methods of the counseling profession, which shall include appraisal, counseling, and referral activities. (Va. Code Ann. § 54.1–3500, 2013)

### Florida—LMHC

Florida passed its first counselor licensure law in 1981. The Florida Board of Clinical Social Work, Mental Health Counseling, and Mar-

riage & Family Therapy licenses and regulates clinical social workers, mental health counselors, and marriage and family therapists. The statute includes a detailed definition of the practice of mental health counseling that incorporates a description of the scope of practice.

The “practice of mental health counseling” is defined as the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal relationships, sexual dysfunction, alcoholism, and substance abuse. The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy. The practice of mental health counseling also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse. The practice of mental health counseling may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions. (Fla. Stat. § 491.003(9), 2013)

## Oregon—LPC

Enacted in 1989, the Oregon Board of Licensed Professional Counselors and Therapists is responsible for the licensing and regulation of professional counseling. The definition of counseling includes a description of the scope of services LPCs in Oregon may provide. Note the specific language that authorizes assessment, diagnosis, or treatment.

- 7(a) “Professional counseling” means the assessment, diagnosis or treatment of mental, emotional or behavioral disorders involving the application of mental health counseling or other psychotherapeutic principles and methods in the delivery of services to individuals, couples, children, families, groups or organizations.
- (b) “Professional counseling” may include, but is not limited to:
  - (A) Application of intervention methods based on cognitive, affective, behavioral, systemic or human development principles;

- (B) Provision of counseling services to address personal growth or wellness;
- (C) Definition of goals and the planning of action reflecting interests, abilities, aptitudes or needs as they relate to problems, disabilities or concerns in personal, social, educational, rehabilitation or career adjustments;
- (D) Research activities, including reporting, designing or conducting research in counseling with human subjects;
- (E) Referral activities, including the referral to other specialists when indicated to provide ethical treatment;
- (F) Consulting activities that apply counseling procedures and interpersonal skills to provide assistance in solving problems relating to an individual, group or organization; and
- (G) Record keeping activities, including documentation of counseling treatment, therapeutic services or clinical supervision. (Or. Rev. Stat. § 675.715(7), 2013)

## California—LPCC

In 2009, California was the last state to enact a statute licensing and regulating professional counselors. The California Board of Behavioral Sciences regulates professional clinical counselors, marriage and family therapists, educational psychologists, and clinical social workers. The California statute combines the definition of counseling and the scope of practice description under the heading Scope of Practice.

- (a) (1) “Professional clinical counseling” means the application of counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems, and the use, application, and integration of the coursework and training required by Sections 4999.32 and 4999.33. “Professional clinical counseling” includes conducting assessments for the purpose of establishing counseling goals and objectives to empower individuals to deal adequately with life situations, reduce stress, experience growth, change behavior, and make well-informed, rational decisions.
- (2) “Professional clinical counseling” is focused exclusively on the application of counseling interventions and psychotherapeutic techniques for the purposes of improving mental health, and is not intended to capture other, nonclinical forms of counseling for the purposes of licensure. For purposes of this paragraph, “nonclinical” means nonmental health.
- (3) “Professional clinical counseling” does not include the assessment or treatment of couples or families unless the professional clinical counselor has completed all of the following training and education: [The statute delineates graduate coursework, supervised experience and continuing education requirements necessary for a professional clinical counselor to provide services to couples and families.] (Cal. Bus. & Prof. Code § 4999.20, 2014)

## New York—LMHC

New York's first counselor licensure law was enacted in 2002. The regulatory body is the State Board for Mental Health Practitioners, which licenses and regulates Creative Arts Therapists, Marriage & Family Therapists, Mental Health Counselors, and Psychoanalysts. The New York statute is an example of a scope of practice limitation imposed separately from the definition of counseling. In New York, LMHCs are required to obtain a medical evaluation by a physician when a patient/client presents with a serious mental illness.

### *Definition of Mental Health Counseling*

The practice of the profession of mental health counseling is defined as follows:

- a. the evaluation, assessment, amelioration, treatment, modification, or adjustment to a disability, problem, or disorder of behavior, character, development, emotion, personality or relationships by the use of verbal or behavioral methods with individuals, couples, families or groups in private practice, group, or organized settings; and
- b. the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate mental health counseling services. (N.Y. Educ. Law §8402, 2013)

### *Boundaries of Professional Competency*

It shall be deemed practicing outside the boundaries of his or her professional competence for a person licensed pursuant to this article, in the case of treatment of any serious mental illness, to provide any mental health service for such illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness. Such medical evaluation and consultation shall be to determine and advise whether any medical care is indicated for such illness. For purposes of this section, "serious mental illness" means schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-deficit hyperactivity disorder and autism ... (N.Y. Educ. Law §8407, 2013)

## Graduate Education

Over the past 10–15 years, there has been a growing consensus regarding the required coursework and overall number of graduate semester hours necessary for the awarding of a master's degree in clinical mental health counseling. By raising accreditation standards for all clinical counseling programs from a 48- to 60-semester hour

requirement, CACREP has influenced counselor education programs across the nation. An increasing number of graduate counselor education programs are moving to adopt these national standards.

### Postdegree/Prelicensure Supervised Experience

Supervised postdegree/prelicensure experience requirements are completely controlled by state statutes and regulations promulgated by the counseling licensing board. Accreditation entities or professional associations do not seem to have much influence on the postdegree/prelicensure experience requirements. Table 1 provides an overview sample of eight states concerning requirements for postdegree/prelicensure supervised experience. Among the eight states, there is a range of 2–4 years of required post-master’s experience, 1,200–3,600 hours of which must be direct client contact. (Some master’s practicum/internship experience may count). All the examples have supervision requirements; however, the range and specificity of the requirement varies state by state. In most states, 100–120 hours is the typical requirement. The differences occur around the modality of the supervision. In Michigan, supervision must occur in the physical presence of the supervisor (the supervisor has to be in the room), whereas in Colorado, 70 hours of the required 100 hours must be face to face. In comparison, Texas permits live Internet webcam supervision between the supervisor and supervisee. In recent years, states have moved to create standards for clinical supervisors. Most states now have an approved course of training for licensed counselors who want to provide prelicensure supervision. All states require license applicants to pass a recognized exam, whereas some states within our sample (e.g., Colorado, Maryland, and Texas) require applicants to pass a separate state jurisprudence exam.

License title, definition of counseling/scope of practice, education requirements, and prelicensure supervised experience capture only some of the important differences among the counseling licensing laws. Other areas to remain mindful of include confidentiality and privileged communication responsibilities, record keeping, duties to report unprofessional conduct to the licensing board, and prescriptive (*must* or *shall*) versus permissive (*may* or *can*) words that define the extent of the counselor’s *legal duty* to take certain action. An example of prescriptive versus permissive language relates to the *ethical duty* to take action to warn or protect a potential victim when a client has made a credible threat. In most states the language in the law is prescriptive (the counselor shall or must take action);

**Table 1**  
Sampling of Required Postdegree/Prelicensure Supervised Experience

State and Statute <sup>a</sup>	Post-Master's		Requirement		Exam
	Supervised Experience <sup>b</sup>	Supervision	Supervisor		
Arizona (LPC) Ariz. Rev. Stat. § 32-3301 (2013); Ariz. Admin. Code §§ R4-6-501 to 505 (2004)	<ul style="list-style-type: none"> <li>• 2 years/3,200 hours of full-time work; 1,600 hours of which is direct client contact</li> </ul>	100 hours—must receive minimum of 10 hours of direct observation or review of audio/videotape	As defined by rule, 12 hours of board approved training plus 6 hours of training for each license renewal	NCE, NCMHCE, or CRCE	
Colorado (LPC) Mental Health Practice Act (2011)	<ul style="list-style-type: none"> <li>• 2 years experience</li> <li>• 2,000 hours of direct client contact</li> </ul>	100 hours—70 hours must be face-to-face individual supervision Audio and video electronic supervision permitted—requires initial 2-hour face-to-face meeting between supervisor and supervisee followed by direct face-to-face meeting every 6 months thereafter	Licensed as a professional counselor, marriage and family therapist, clinical social worker, psychologist, medical doctor, or doctor of osteopathy who completed a residency in psychiatry, all licensed in jurisdiction at time of supervision OR person who at time of supervision possesses the same education, experience, and training as that necessary to adequately supervise an LPC	NCE and Colorado Jurisprudence Exam	
Georgia (LPC) Professional Counselors, Social Workers, and Marriage and Family Therapists Licensing Law (2010)	<ul style="list-style-type: none"> <li>• 4 years experience (1 year can count from practicum/internship)</li> <li>• 2,400 hours of direct client contact</li> </ul>	120 hours supervision	LPC and 3 years of experience Expansion of required credentials in process	NCE	
Maryland (LCPC) Maryland Professional Counselors and Therapists Act (2014)	<ul style="list-style-type: none"> <li>• 2 years/2,000 hours post-master's</li> <li>• 1,500 hours face-to-face</li> </ul>	100 hours face-to-face supervision	Board approved completion of board approved training	NCE and Maryland Professional Counselors and Therapists Law Exam (Continued)	

**Table 1 (Continued)**  
 Sampling of Required Postdegree/Prelicensure Supervised Experience

State and Statute <sup>a</sup>	Requirement		
	Post-Master's Supervised Experience <sup>b</sup>	Supervision	Supervisor
Michigan (LPC) Mich. Pub. Acts 421 (1988)	<ul style="list-style-type: none"> <li>• 2 years experience</li> <li>• 3,000 hours of direct client contact</li> </ul>	100 hours of supervision in the immediate physical presence of the supervisor	LPC with approved training in supervision
Pennsylvania (LPC) 49 Pa. Code §§ 49.11– 49.18 (2002)	<ul style="list-style-type: none"> <li>• 3 years experience</li> <li>• 3,600 hours—direct client contact</li> <li>• 3,000 hours experience</li> </ul>	Two hours of supervision for every 40 client contact hours	LPC and 5 years experience (1,800 hours) Remainder can be provided by non-LPC
Texas (LPC) Licensed Professional Counselor Act (1999)	<ul style="list-style-type: none"> <li>• 1,500 hours direct client contact</li> </ul>	4 hours per month of face-to-face or live Internet webcam/no more than 50% can be group supervision	Board approved LPC (24 months experience) NCE and Texas Jurisprudence Exam
Washington (LMHC) Wash. Rev. Code § 18.225 (2005)	<ul style="list-style-type: none"> <li>• 3 years/3,000 hours experience</li> <li>• 1,200 hours of direct client contact</li> </ul>	100 hours (minimum)	Board approved supervisor NCE or NCMHCE

*Note.* NCE = National Counselor Exam; NCMHCE = National Clinical Mental Health Counseling Examination; CRCE = Certified Rehabilitation Counselor Examination; ATCB = Art Therapy Credentialing Board; CBMT = Certified Board for Music Therapists; PEPK = Practice Examination of Psychological Knowledge; AAODA = Advanced Alcohol and Other Drug Abuse Counselor (examination); EMAC = Examination for Master Addictions Counselors; LPC = Licensed Professional Counselor; LCPC = Licensed Clinical Professional Counselor; LMHC = Licensed Mental Health Counselor.

<sup>a</sup>Independent practice license. <sup>b</sup>Overall experience and direct client contact.

in Texas the language is permissive (the counselor may take action). The Texas counselor licensing law code of ethics states:

(n) A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client. (22 Tex. Admin. Code § 681.41(o), 2013)

For a more complete discussion of a counselor's ethical and legal duty to take action when a client threatens harm to another person, see Chapter 6.

National consensus, supported by law, regarding the activities associated with professional counseling remains elusive. Therefore, when we talk about the counselor and the law, it is critical for you to keep in mind that definitions vary state by state. We make general statements and give examples, but we always caution you to consult the most recent counselor licensing law and supporting rules in your state.

## **Efforts Toward National Standards and Definitions**

Currently there are no legally recognized or accepted national licensing standards for counselors and counseling. There are, however, national practitioner certifications, national accreditation standards for graduate programs in counselor education, and momentum toward the creation of a process that will facilitate licensure portability (the ability, once licensed by one state, to have that license recognized in another state).

### **Nationally Recognized Accreditation**

The process of establishing national standards for the accreditation of counselor education programs has been greatly enhanced by CACREP. The mission of CACREP is to promote the professional competence of counseling and related practitioners through (a) the development of preparation standards, (b) the encouragement of excellence in program development, and (c) the accreditation of professional preparation programs (CACREP, 2014b). Currently there are 607 accredited graduate counselor education programs (master's or doctoral level) at 262 institutions encompassing seven different programs of study (C. Bobby, personal communication,