

Statistical Data on the Most Frequent Ethical Violations in Counseling

There are two principal sources of information on ethical violations in the counseling profession, professional associations and state boards of licensure. Nearly every state has counselor licensure laws that establish a professional identity for counselors while simultaneously setting up standards for ethical and legal limits of appropriate practice of which licensed professionals are expected to adhere. In addition, professional organizations that guide the counseling profession (The American Counseling Association, American Psychological Association, American School Counseling Association, and American Mental Health Counselors Association) publish sets of ethical guidelines, often called a code of ethics, to clarify best practice. Every counselor that legally enters the profession encounters one of these codes of ethics at some point during their training. Despite these efforts, there are a number of ethical and legal violations that occur each year that result varying types of disciplinary action. By discussing the most frequent breaches of such standards, counselors and counselor educators can clarify which situations are most problematic and how to best avoid such situations. The profession would be well served to explore the most frequent of these violations so they can clarify their codes, promote best practice, and guard against future violations.

Data from the Professional Organizations:

Of the four largest professional societies dealing with the counseling profession (ACA, APA, ASCA, AMHCA), only the American Psychological Association collects and publishes data on ethical violations. The American Counseling Association published a book titled *The ACA Ethical Standards Casebook*. This work does not cite specific statistical data, but it addresses ten ethical issues that the association considers paramount.

The ACA’s 10 Most Prominent Ethical Issues (not in order of frequency)

1. Client’s rights + informed consent
2. Ethical issues with multicultural counseling
3. Confidentiality
4. Competence
5. Working with multiple clients (couples and groups)
6. Counseling minors
7. Dual relationships
8. Working with suicidal clients
9. Counselor Training + supervision
10. Law & ethics

Since no concrete data is available, this list is as close as the ACA comes to identifying the most prominent violations.

The American School Counseling Association does not collect data on ethical violations, nor does it have an adjudication process. When contacted via email, Carolyn Stone, the chair of the ASCA ethics committee, reported that the two most common inquiries had to do with reporting students who threatened others and dealing with minors considering an abortion (Stone, personal communication, November 11, 2004).

As stated above, the American Psychological Association is the only organization that collects data on ethical violations. The APA keeps data on inquiries, filed complaints, formal cases, active cases, and adjudicated cases. Inquiries are a letter indicating the intention to file a complaint. A case becomes a filed complaint when the ethics office receives an official signed complaint form. A formal case is only opened if an office investigator determines that a complaint may involve a violation of the ethics code. Active cases are the total number of investigations still pending decisions. This includes new cases and unresolved cases from previous years. The typical investigation, from open to close, takes 17.44 months (APA, 1999).

Before examining the data on specific violations, I would like to clarify the scope of this issue. In 1999, the APA had 88,500 active members. There were 340 inquiries that resulted in 70 official complaints (APA, 1999). Less than a tenth of a percent of this organization had an official complaint filed against them, and even these are allegations, not official violations. Despite these small numbers, the results of the data collection offer us a telling insight into what violations are most prevalent. The table below lists the top 8 ethical complaints recorded:

Most Common Ethical Complaints Filed with the APA

Category of Ethical Violation	% of total
1. Sexual misconduct w/ adult clients	29%
2. Insurance/Fee problems	21%
3. Child custody evaluations	10%
4. "Other" professional misconduct	10%
5. Sexual misconduct w/ minors	7%
6. Nonsexual dual relationships	7%
7. Practicing outside of competency	5%
8. Inappropriate follow up/termination	5%

A punishment is handed down if the ethics committee's investigation determines that the member did violate the code of ethics. Typically, adjudication results in either a sanction or directive. Sanctions take three forms: A letter of reprimand, censure, or recommendation to the board of directors to expel the individual or allow them to resign from the APA. Directives can include cease & desist orders, corrective actions (no monetary payment to the APA or the victim is allowed), supervision, education & treatment requirements, or probation (APA, 1999). In 1999, 28 people lost their membership as a result of an ethical violation. As you can see, the American Psychological Association or any other professional society has the authority to revoke a member's license. The most severe action they can take is to expel the person from the organization. Also, it is important to note that cases are usually first processed by state licensing boards. Fifty seven percent of the cases that the APA ethics board reviewed had already had action taken against them by a state licensing board. Licensing boards

are the only governing bodies that can revoke licensure. However, the APA does keep data on members who lose their license. This data revealed that sexual misconduct was the underlying complaint in half of the cases that resulted in loss of licensure for former members.

The information provided by the professional organizations is informative, but limited in a number of ways. First, most of the associations do not collect or publish data on ethical violations. Secondly, even the organizations that do collect and publish information (the APA) have a number of distinct limitations that diminish the usefulness of the data. For example, adjudication is handled at the state level within the APA; yet only 14 of the 51 state associations have a full adjudication program capable of conducting an investigation, and only 22 have any kind of adjudication program (APA, 1999). Lastly, the sanctions that these organizations hand down never have implications beyond the scope of the organization. The above limitations make it clear that it is more appropriate to get data from the state licensing boards.

Data from the State Licensing Boards:

A survey of state licensing boards was undertaken in 1992 by Neukrug, Healy & Herlihy. These researchers sent a questionnaire to every state with a licensing board seeking information on the frequency of the most common ethical complaints. Their totals were based on the number of complaints filed since licensing had been established in each state. The following table shows their results:

Most Common Ethical Complaints to State Licensing Boards

1. Practicing without a license	27%
2. Sexual relationship with a client	20%
10. "Other" – poor standard of care, violation of ethics code, inadequate supervision	15%
3. Inappropriate fee assessment	12%
4. Dual relationships	7%
5. Failure to inform clients of the goals, techniques, rules and limitations of counseling	7%
6. Breach of confidentiality	5%
7. Failure to report abuse	4%
8. Failure to report clear and imminent danger	2%
9. Failure to properly form and facilitate groups	2%

Nationally, 66 % of all complaints were determined to not be serious enough for formal investigation (Neukrug, Healy & Herlihy, 1992). Below you can see the disciplinary actions that were taken on the complaints that did receive a formal investigation.

Disciplinary Action Taken

1. License revoked or suspended	34%
2. "Other" action (letter sent, probation)	27%

3. Complaints formally investigated but dismissed	26%
4. Reprimanded	11%
5. Assessed a fine	1%

The procedure that Tennessee’s state board uses for investigating complaints is similar to that of the APA’s ethics committee. The process begins when an official complaint form and a medical records release form are filed with the Department of Health’s Office of Investigations (Filing Complaints). From there a designated board consultant (a practitioner from the given field, an LPC in this case) and an attorney review the complaint and decide whether a violation occurred. The practitioner may be contacted, and both public and confidential files may be examined during the review process. Finally, the consultant and attorney determine whether a formal investigation into the complaint is warranted.

If a formal investigation determines that there was a violation of ethical or legal guidelines, disciplinary action will be taken. However, it is important to note that this that “the [disciplinary] action focuses on prevention of further problems...a board has the power to control a practitioner’s ability to practice in the future in the state of Tennessee, but cannot impute criminal penalties” (Filing Complaints). Also, in the state of Tennessee, fee, billing and insurance disputes are not within the authority of the Board of Professional Counselors, Marital and Family Therapists unless it involves fraud by the practitioner. Complaints of this nature should be directed to the department of consumer affairs.

The state of Tennessee’s Department of Health Related Boards Office of Investigations collects data on the number of official complaints filed each year. However, they do not publish this data. A copy of the Health Related Boards investigative report for 2003 shows that only eight complaints against licensed professional counselors were open for investigation during the entire year. Additionally, only half of the complaints being investigated (4) were newly filed that year. There were 11 total complaints received against licensed professional counselors in 2003. The complaints being investigated included malpractice/negligence, unlicensed practice (2), and medical records request issues (Investigative Report 2003).

The Tennessee Department of Health does publish a monthly listing of disciplinary actions taken by their professional health related boards online at www2.state.tn.us/health/Boards/disciplinary.htm. Remember that disciplinary actions are only taken against complaints that have been through the review and investigative procedures. These records show that from January of 2003 until September of 2004 no disciplinary actions were taken against licensed professional counselors. There are actions taken against professionals in similar fields that can prove to be helpful. Alcohol and drug counselors, psychological examiners, and social workers all were disciplined for violations that are applicable to counseling settings. A sampling of violations include conduct not authorized by scope of practice, practicing without a license, making false statements or representations, being guilty of a crime, engaging in a relationship with a former client, and sexual abuse while working in a licensed or certified facility (Monthly

Disciplinary Actions). The actual disciplinary actions all fall within the range of options that was discussed earlier.

Guidelines for Avoiding the Most Common Ethical Violations:

The rules of the Tennessee Board of Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists state:

“All licensees and certificate holders shall comply with the current code of ethics adopted by the American Counseling Association, except to the extent that it conflicts with the laws of the state of Tennessee or the rules of the Board. If the code of ethics conflicts with state law or rules, the state law or rules govern the matter. Violation of the code of ethics or state law or rules may subject a licensee or certificate holder to disciplinary action”.

The state’s office of investigations can investigate a complaint that shows a professional violated the ACA’s code of ethics, state law, or the rules of the board. Therefore, the most efficient way for a counselor to avoid an ethical violation is to familiarize themselves with these documents. The rules of the board may be particularly beneficial because they address a number of frequent violations including scope of practice, qualifications and procedures for licensure, supervision, mandatory release of client records, and consumer right-to-know requirements.

The most prominent violation in all of the lists with statistical data was a sexual relationship with a client. Both the APA and ACA code of ethics require a minimum of 2 years between the termination of the counseling relationship and the beginning of a sexual relationship. However, some professionals offer much stronger advice. One member of the APA’s ethic’s committee stated, “sexual relationships with current clients are never permissible...psychologists [and counselors] need to be mindful of the harm that can come from sexual involvement with a client no matter when it occurs” (Smith, 2003).

Many violations like sexual relationships and practicing without a license are relatively clear-cut in terms of best practice. However, many other areas of ethical practice are not so transparent. Most professional associations publish guidelines or tips for avoiding ethical quandaries. I found the APA and ASCA tips to be most informative. The ASCA’s tips and my synopsis of the APA guidelines that are especially applicable are reproduced below:

Ethical Tips for School Counselors

1. Act in the best interests of the student clients at all times. Act in good faith and in the absence of malice.
2. Inform student clients of possible limitations on the counseling relationship prior to the beginning of the relationship.
3. Increase awareness of personal values, attitudes and beliefs; refer when personal characteristics hinder effectiveness.
4. Actively attempt to understand the diverse cultural backgrounds of the clients with whom you work, including your own cultural/ethnic/racial identity and its impact on your values and beliefs about the counseling process.

5. Function within the boundaries of personal competence. Be aware of personal skill levels and limitations.
6. Be able to fully explain why you do what you do. A theoretical rationale should undergird counseling strategies and interventions.
7. Encourage family involvement, where possible, when working with minors in sensitive areas that might be controversial.
8. Follow written job descriptions. Be sure what you are doing is defined as an appropriate function in your work setting.
9. Read and adhere to the ethical standards of your profession. Keep copies of the ASCA Ethical Standards for School Counselors on hand, review them periodically and act accordingly.
10. Consult with other professionals (colleagues, supervisors, counselor educators, professional association ethics committee, etc.) Have a readily accessible support network of professionals.
11. Join appropriate professional associations. Read association publications and participate in professional development opportunities.
12. Stay up-to-date with laws and current court rulings, particularly those pertaining to counseling with minors.
13. Consult with a knowledgeable attorney, when necessary. In questionable cases, seek legal advice prior to initiating action.

APA's Tips to Avoid Ethical Pitfalls

1. Understand what constitutes a multiple relationship
 - a. Whose needs are being served?
 - b. Client being exploited?
2. Protect Confidentiality
 - a. Discuss limits
 - b. Ensure safe storage of records
 - c. Know federal and state law → is there a law requiring disclosure?
 - d. Obey mandatory reporting laws
3. Obtain informed consent at the start of treatment
4. Identify your client and role
 - a. Understand who you were hired to help and what is expected of you
5. Document properly
 - a. Guidelines at www.apa.org/practice/recordkeeping.html
6. Practice only where you have expertise
7. Know the difference between abandonment and termination
 - a. Treatment can be discontinued when clients:
 - i. Are not benefiting from treatment
 - ii. May be harmed by treatment
 - iii. No longer need therapy
 - iv. Threaten the counselor
 - b. Pre-termination counseling → involve the client in the process
8. Stick to the evidence when giving an expert opinion or conducting an assessment
 - a. Identify what you know and do not know

9. Be accurate in billing
 - a. Keep records
 - b. Discuss billing up front

Conclusion:

Statistical data on ethical violations has the potential to be one of the most powerful preventative tools. Presently, the data available is limited. A national effort to collect and analyze accurate figures on ethical violations from both state licensing boards and professional associations would be quite beneficial. As it stands, the best way for a counselor to pursue best practice is to continually strive for honest self appraisal, to keep the client's needs as their top priority, and to familiarize themselves with their professional associations code of ethics, the states rules guiding their practice, and relevant state law.

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