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Why Can't We Be Friends? Maintaining Confidentiality in the Age of Public Access

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Abstract

Ethical dilemmas encountered by students in a counselor education program are viewed through the lens of the Tarvydas Integrative Decision-Making Model of Ethical Behavior. The structure of the model acknowledges the contextual factors that influence the decision-making process as well as recognizes stakeholders' perspectives. Because of the complexity of the case scenario used in the 2012-2013 American Counseling Association (ACA) Graduate Student Ethics Competition at the Doctoral Level, the model offers an appropriate framework to evaluate the ethical dilemmas encountered by students and departmental faculty. The analysis considers the ACA Code of Ethics (2005) and relevant laws surrounding minors involved in sexual relationships. An action plan, which reflects the four stages of the model, is provided and institutional recommendations are offered.

The role of technology continues to expand in every domain of human existence. Technology is utilized for such processes as facilitating business endeavors, accessing scientific data, and connecting people around the globe. This technology, which includes email, social networking, and instant messaging, provides an avenue for the rapid dissemination of information. For many individuals, including counselors and counselor

educators, sharing personal information in a public forum is routine and can, at times, be impulsive and done with little regard for future consequences. This often cavalier use of technology has highlighted the need for continued dialogue about ethical decision-making. The situation intensifies when issues surrounding confidentiality are involved as is the case with counselors, counselor educators, and counselors-in-training. These professionals must adhere to the American Counseling Association Code of Ethics (2005), which operates as a structural framework to protect all stakeholders in counseling and supervision relationships. However, the Code only stipulates that counselors “be familiar with a credible model of decision making that can bear public scrutiny” (p. 3), but does not inherently address how individual cases should be considered.

Ethical decision-making models that provide paradigms for grappling with various ethical scenarios can facilitate in-depth consideration. Multiple credible models of ethical decision-making exist, so counselors and counselor educators can thus choose the one that seems most congruent with the ethical dilemma encountered (e.g., Cottone & Tarvydas, 2007; Foster & Black, 2007; Garcia, Cartwright, Winston, & Borzuchowska, 2003). This paper will address the case scenario through the framework of the Tarvydas Integrative Decision-Making Model of Ethical Behavior (Cottone & Tarvydas, 2007). The complex case scenario evaluated in the paper was provided by the ACA for the 2012-2013 Graduate Student Ethics Competition at the Doctoral Level. The primary rationale for selecting this particular model is that it “focuses on the actual production of ethical behavior within a specified context” (Tarvydas, 2012, p. 349). Moreover, the model integrates ethical codes, laws, and institutional policies as well as emphasizes fact-finding. The fact-finding component is helpful in complicated cases involving several stakeholders from diverse backgrounds. Further, the model is straightforward and the structural components could be easily incorporated into the coursework of a counselor education program.

The Case Scenario

Latisha is a 32-year-old African American doctoral student in a small, rural university. As part of her doctoral studies, she serves as a supervisor for Master's-level counseling students in internship. One of her supervisees, Emma, is working with adolescent girls during her internship and has been assigned four clients that she sees twice a week. Latisha is Facebook friends with several classmates and former supervisees, but has avoided friending current supervisees, explaining this policy in her professional disclosure statement. One weekend, she notices a Facebook exchange between a classmate and Emma whose page is public and visible. Latisha views Emma's Facebook page where she discovers that Emma has friended the mother of a client and that the two have discussed the client through various posts. Emma's client is a 15-year-old female, Jenn, who is the subject of a bitter custody dispute. Latisha is aware that Jenn has a 19-year-old African American boyfriend, and the two are sexually active which conflicts with the mother's fundamental Christian values. Latisha now realizes that the mother is a member of her own church. The next day, while attending church, Latisha is approached by the mother who states that she knows Latisha is Emma's internship supervisor and proceeds to lay out the details of her pending divorce and custody issues.

The parent mentions that she intends to subpoena Emma and her records as part of the divorce litigation and wants her to testify to Jenn's placement and wellbeing.

Utilization of Tarvydas Integrative Decision-Making Model of Ethical Behavior

The Tarvydas Integrative Decision-Making Model of Ethical Behavior is comprised of four stages: (a) interpreting the situation through awareness and fact finding; (b) formulating an ethical decision; (c) weighing competing nonmoral values and affirming course of action; and (d) planning and executing the selected course of action. The case scenario will be evaluated below through the lens of this model.

Stage I. Interpreting the Situation Through Awareness and Fact Finding

Component 1: Enhance sensitivity and awareness. Issues for consideration include Latisha's racial and religious identity and the intersection of these domains with her perspectives on the counseling and supervisory relationship. Additionally, the dynamic between Latisha and Emma needs to be explored as does the relationship between Emma and Jenn, and Emma and the client's mother.

Component 2: Determine the major stakeholders and their ethical claims to the situation. The major stakeholders in this scenario include Latisha, Emma, Jenn, Jenn's mother, the internship site, the counselor education program, and the counseling profession. Latisha and Emma have a responsibility to adhere to the ACA Code of Ethics. Jenn's mother has the responsibility to protect Jenn.

Component 3: Engage in the fact-finding process. It is incumbent on the Latisha and her university supervisor to thoroughly explore the details presented in the case scenario. Facts about confidentiality issues concerning Facebook, the relationship between Latisha and Jenn's mother, and the sexual relationship between Jenn and her boyfriend all warrant further investigation.

Stage II: Formulating an Ethical Decision

Component 1: Review the problem or dilemma. The first ethical dilemma in the case scenario is Emma's activity on Facebook with her client's mother. Her behavior definitely calls into question her understanding of confidentiality, her adherence to the Code of Ethics, and her perception of how the counseling process works. The second dilemma is Latisha's emerging dual role as Emma's doctoral supervisor and as an acquaintance of Jenn's mother. The third dilemma has both ethical and legal characteristics. This dilemma is Jenn's sexual relationship with her boyfriend.

Component 2: Determine what ethical codes, laws, ethical principles, and institutional policies and procedures exist that apply to the situation. Because the case scenario does not clearly identify the setting Emma where is working, it is difficult to determine specific institutional policies that may apply to this situation. However, there are guidelines that apply in every setting. Those guidelines are provided below.

Emma's conduct on Facebook. Counselors-in-training are mandated to understand and follow the American Counseling Association Code of Ethics, as well as state and local laws (ACA Code, 2005, F.8.a). According to the ACA Code, counselors do not befriend the relatives of their clients unless the interaction proves valuable to the client's progress (ACA Code, 2005, A.5.c). A Facebook relationship, especially one that

is open for the entire population of Facebook users to see, comment on, and gain sensitive information from, is unethical. Even Facebook's terminology in which users "friend" other users highlights the inappropriateness of the relationship and the confusion that no doubt stems from entering into a dual relationship on the site. The ACA Code also recommends that counselors take precautions to protect client confidentiality when using technology and proposes that all Web sites and email communications should be encrypted (ACA Code, 2005, A.12.g). A Facebook page that any user can see, as evidenced by Latisha being able to find and view it, definitely violates the Code and the client's confidentiality (ACA Code, 2005, B.1.c; ACA Code, 2005, B.5.a). Additionally, due to Jenn's status as a minor, Emma should have spoken with the mother at the beginning of the relationship about confidentiality and should have constructed boundaries specifying what is shared from a session, as well as the appropriate ways that the mother and Emma can communicate and collaborate for Jenn's care (ACA Code, 2005, B.5.b). Emma's actions have jeopardized Jenn's confidentiality and potentially damaged the counseling relationship, making it dangerous to move forward.

Latisha's dual roles. Latisha's primary focus must be providing competent care for Jenn (ACA Code, 2005, F.1.a). In doing so, Latisha must be conscientious in how she proceeds with Emma and Jenn's mother regarding confidentiality, subpoenas, and legal issues. As Emma's supervisor, Latisha was thoughtful in setting boundaries with her supervisees in her disclosure statement, although she now faces a difficult dilemma upon realizing that Jenn's mother attends the same church, especially since the mother approached Latisha and discussed the custody dispute. Since the mother mentioned that she may subpoena Emma, Latisha needs to prepare Emma to testify in accordance with the ACA Code regulations, including obtaining informed consent (from both the mother and daughter) and ensuring minimal disclosure of sensitive information (ACA Code, 2005, B.2.c; B.2.d.; B.5.c). Emma will have to report the proposed subpoena to her internship supervisor and will likely discuss the case, as well as her response, with the placement site's lawyer. She may also wish to contact the ACA Ethics and Professional Standards Department for a consultation on her options. The ACA Code also stipulates that Latisha not engage in relationships that damage the supervisory process, rendering it unethical for her to discuss Jenn's case with the mother (ACA Code, 2005, F.3.a). Latisha's knowledge of Jenn's sexual relationship with a 19-year-old man adds additional complexity, which is discussed in detail below.

Legal considerations. Professional counselors must report information obtained during a counseling session "when legal requirements demand that confidential information must be revealed" (ACA Code, 2005, B.2.a. Danger and Legal Requirements, p. 7). Latisha is aware of a sexual relationship between Emma's 15-year-old client and a 19-year-old man. If Emma is also aware of this relationship, both she and Latisha must consider whether Emma has a legal obligation to break confidentiality and report the relationship to law enforcement. If Emma has not already researched this issue herself, Latisha would need to help Emma identify any legal obligations since "supervisors make supervisees aware of client rights including the protection of client privacy and confidentiality in the counseling relationship" (ACA Code, 2005, F.1.c. Informed Consent and Client Rights, p. 14).

According to a report prepared by Glosser, Gardiner, and Fishman (2004) for the U.S. Department of Health and Human Services, no states permit individuals to give

consent for sexual intercourse when they are under the age of 16. Some states do legalize voluntary sexual intercourse between any adolescents whose ages are less than four years apart, but no states would permit sexual relations between a 15-year-old and a 19-year-old since there is a four-year age difference (Glosser et al., 2004). The relationship between Jenn and her boyfriend is certainly illegal, but to determine whether confidentiality must be broken, Emma would need to review the sexual offense laws in the state where her client resides.

Most states designate individuals in specific professions as “mandated reporters,” so Emma would need to consider whether she lives in a state that includes professional counselors in this category (Glosser et al., 2004). If professional counselors are listed as mandated reporters, she would then determine whether statutory rape is a sexual offense that must be reported. According to Glosser et al. (2004), approximately one-third of states do not include statutory rape in their reporting requirements, and mandated reporters must break confidentiality only in cases where sexual offenses are perpetrated by a child’s caregiver. Glosser et al. reported that the remaining states identify specific circumstances or sexual acts that must be reported. If Jenn lives in North Dakota or Ohio, Emma would be legally obligated to report the relationship since state law identifies professional counselors as mandated reporters and specifies that any form of sexual contact between a minor and an adult must be reported. In Wyoming, both Emma and Latisha would be mandated reporters since any person who is aware of child abuse including statutory rape must report the offense to law enforcement. Other states would require that Latisha and Emma consider whether Jenn’s sexual activity with her boyfriend includes specific sex acts or circumstances that are included in the reporting requirements (Glosser et al., 2004). After reviewing state laws on sexual offenses, both Emma and Latisha would know whether one or both of them need to break client confidentiality by notifying law enforcement about Jenn’s relationship and divulging this information if questioned in court.

Component 3: Generate possible and probable courses of action. Courses of action in this scenario could include: (a) creating and implementing a remediation plan for one or both of the graduate students in the scenario; (b) dismissing Emma from the program; (c) suggesting personal counseling for Emma; and (d) creating a departmental policy that addresses social networking and electronic communication.

Component 4: Consider potential positive and negative consequences for each course of action. Some positive consequences for the above courses of action may be an improvement in Emma’s counseling skills, more awareness about confidentiality for Emma and for Jenn and her mother, improvement in Latisha’s supervisory skills, recognition of the potential damage of Latisha having a dual relationship, and protection of future clients from an unethical counselor. Some negative consequences could be that Emma may feel attacked or misunderstood, Jenn may feel betrayed by Emma and Latisha, Jenn may feel betrayed by Emma and her mother, and Emma and Latisha’s supervisory relationship may be jeopardized.

Component 5: Consult with supervisors and other knowledgeable professionals. The counselor education faculty members who supervise Latisha may need to consult with an expert on racial identity, particularly African-American identity, if it is discovered that the dilemma has a racial component and none of them is familiar with African-American culture. In addition, it may be helpful for the faculty members to

consult with faculty supervisors at other programs to receive feedback about how they have dealt with similar dilemmas, particularly with scenarios related to social networking. Further, the faculty members may need to dialogue with an ACA ethics representative who can inform them about ethical and legal responsibilities of counselor education programs in such situations. Lastly, Emma, Latisha, and the faculty supervisor may need to consult with an ACA legal representative regarding policies that address a court subpoena.

Component 6: Select the best ethical course of action. There are two main courses of action to deal with the complexity of this scenario. Latisha and Emma's counselor education program should consider (a) remediation for Emma and increased supervision support for Latisha and (b) creation of a program-wide social networking policy to prevent future confidentiality breaches. Additionally, Latisha and Emma will have to discuss what should happen if Emma is subpoenaed and consider whether to report Jenn's boyfriend to authorities, as discussed earlier in the paper.

Remediation and support. Emma's lack of clear boundaries highlights her need for remediation that includes training in confidentiality, social networking, and setting expectations. Emma first needs to "unfriend" Jenn's mother and delete any Facebook posts that contain confidential information about clients or her site. She should then be removed from her internship setting and should be tasked with writing a detailed reflection paper on ethics and confidentiality in which she draws from her own experience and cites regulations from the ACA Code of Ethics to assist her in understanding her actions and why they were unwarranted. Emma should receive training on social networking, online security, and technology in the counseling setting. Emma and Latisha can continue to meet to work through the challenges of the situation and discuss the role of ethics in counseling. Emma could repeat her internship experience during the next semester offering. The university supervisors and Latisha must interact with the agency or school where Emma is placed to help them understand the confidentiality breach and how both the counselor education program and agency or school can move forward. Latisha may require additional support and conversation from her university supervisor during this period to discuss her decision-making, as well as guidance for continuing to work with Emma in light of the many concerns.

Facebook policy. Counselor education faculty at Emma and Latisha's university may consider creating a social networking policy for students. As an example, the Policy and Guidelines for Social Networking/Electronic Device section from Gannon University's Clinical Mental Health Counseling Program Student Handbook (2012) mandates that students refrain from using social networks at their internship site and in their classes and that they do not mention or "friend" their internship site, clients, or supervisors in their communications. Furthermore, students are prohibited from the use of email and text messaging that includes confidential information and must report cyberbullying, harassment, and discrimination to the program director. This policy also includes a reminder that conversations, thoughts, and pictures posted on the Internet never "go away" and are easily available for public consumption. Using Gannon University model as a guide, perhaps Latisha's graduate program or department may consider the implementation of a similar social networking and electronic device policy. Such a policy could help all students consider their online behavior as they transition to their counseling and/or counselor education professions.

Stage III: Selecting an Action by Weighing Competing Nonmoral Values, Personal Blind Spots, or Prejudices

Component 1: Engage in reflective recognition and analysis of personal competing nonmoral values, personal blind spots, or prejudices. The primary consideration in the decision-making process is the protection of the client. In this scenario, Jenn's safety is paramount and is being jeopardized through a breach of confidentiality. Further, Jenn's safety is jeopardized through the sexual contact with an adult while she is a minor. All parties involved must recognize these facts through the prism of ethical and legal codes intended to protect the client. A review of values regarding social networking would be beneficial as well as a review of the laws pertaining to sexual contact between minors and adults would also be helpful. Further, it would likely benefit Latisha and Emma to consider how their religious and/or spiritual beliefs affect their perceptions of the dilemmas.

Component 2: Consider contextual influences on values selection at the collegial, team, institutional, and societal levels. Multiple factors may influence the values selection. These may include: Emma's and Latisha's relationship; Emma's and Latisha's performance in the program; Emma's and Jenn's counseling relationship; the culture within the counselor education department; the departmental and institutional perspective on social networking; religious influences within the community; and regional views on adolescent sexual behavior.

Component 3: Select the preferred course of action. After full consideration of the positive and negative consequences of each component, the preferred course of action to fully protect the client is the stepwise plan outlined in Stage II, Component 6.

Stage IV: Planning and Executing the Selected Course of Action

Component 1: Figure out a reasonable sequence of specific actions to be taken. The first course of action is for Latisha to meet with Emma as soon as possible to discuss the dilemmas. Immediately following this meeting, Emma needs to "unfriend" Jenn's mother and work closely with Latisha to notify the appropriate child protection agency in her locale about the sexual relationship between Jenn and her boyfriend. The next step would be the implementation of Emma's remediation plan and Latisha's reflective process about dual relationships.

Component 2: Anticipate and work out personal and contextual barriers to effective execution of the plan of action, and effective countermeasures for them. Barriers to the effective execution of the plan may include: negative reactions from the agency or school placement site; Jenn's possible surprise reaction to the confidentiality breach and the reporting of her sexual relationship with her boyfriend; Emma's possible negative reaction towards Latisha for her role in the scenario; and the possibility of Jenn's mother removing Jenn from counseling. These barriers can be minimized by transparent communication with Jenn and her mother regarding confidentiality and mandated reporting. Moreover, Latisha's communication with Emma needs to reflect a constructive and developmental perspective on Emma's growth as a counselor.

Component 3: Carry out, document, and evaluate the course of action as planned. The action plan should be implemented in a manner that is respectful of all involved. The tone needs to reflect the sober reality that a breach of confidentiality occurred and the breach is unacceptable for an emerging counseling professional. Latisha

and Emma need to clearly document their actions as does the faculty supervisor. The action plan needs to be evaluated for its effectiveness and ongoing dialogue should occur regarding the actual outcomes versus the intended outcomes.

Conclusion

The case discussed in this paper illustrated that professional counselors and counseling supervisors often encounter situations that involve several stakeholders and include multiple ethical dilemmas. Furthermore, it demonstrated that new technologies can create dilemmas that are not addressed in the existing ethical codes or university policies. In these situations, the Tarvydas Integrative Decision-Making Model of Ethical Behavior (2007) can enable counselors and supervisors to analyze the dilemmas, make ethical decisions, and implement appropriate actions. The Tarvydas model is especially useful since it not only encourages counselors to review ethical codes, laws, and institutional policies, but includes additional steps that are useful in complex cases such as this one. The model invites counselors to engage in fact-finding, explore contextual influences, and consider stakeholders' values or prejudices before selecting a course of action (Cottone & Tarvydas, 2007). While using the Tarvydas model would have helped to identify suitable actions in this case, having ethical guidelines or university policies related to social networking would have provided additional support. Addressing social networking in the next ACA Code of Ethics and in counselor education department policies would help counselors and supervisors to resolve similar dilemmas in the future.

References

- American Counseling Association. (2005). *ACA Code of Ethics*. Alexandria, VA: Author.
- Cottone, R. R., & Tarvydas, V. M. (2007). *Ethical and professional issues in counseling* (3rd ed.). Upper Saddle River, NJ: Merrill Prentice Hall.
- Foster, D., & Black, T. G. (2007). An integral approach to counseling ethics. *Counseling and Values*, 51, 221-234. doi:10.1002/j.2161-007X.2007.tb0080.x
- Gannon University (2012). *Policy and guidelines for social networking/electronic devices* (Clinical Mental Health Counseling Program 2012-2013 Student Handbook) [Pamphlet]. Erie, PA. Retrieved from Gannon University Clinical Mental Health Program website: www.gannon.edu/WorkArea/DownloadAsset.aspx?id=2434
- Garcia, J. C., Cartwright, B., Winston, S. M., & Borzuchowska, B. (2003). A transcultural integrative model for ethical decision making in counseling. *Journal of Counseling and Development*, 81, 268-277. doi:10.1002/j.1556-6678.2003.tb00253.x
- Glosser, A., Gardiner, K., & Fishman, M. (2004). Statutory rape: A guide to state laws and reporting requirements. Retrieved from <http://aspe.hhs.gov/hsp/08/sr/statelaws/index.shtml>
- Tarvydas, V. M. (2012). Ethics and ethics decision making. In D. R. Maki & V. M. Tarvydas (Eds.), *The professional practice of rehabilitation counseling* (pp. 339-370). New York, NY: Springer Publishing Company, LLC.

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