

Alabama Board of Examiners in Counseling (ABEC)

Ethical Practice and Client Welfare:

The Use of an Electronic or Digital Medium for Counseling

Preface

The ABEC is aware of contemporary counseling practices that utilize electronic or digital media as a primary or secondary method of providing client care. Questions ranging from the minimum technological competency necessary for conducting online counseling to risk assessment in an online medium to records and confidentiality to interstate jurisdiction have emerged for clients, counselors, and licensure boards. Perhaps the most common question is some version of “What must I do and how must I do it?”

For regulatory bodies such as the ABEC that are charged with the mission of public protection, one approach to this question would be a lengthy and complex list of ethical codes and accompanying rules. The current *Code of Ethics and Standards of Practice* noted in Chapter 255-X-11 of the ABEC Administrative Code could easily double in length should a list of rules and requirements exclusive to electronic or digital media as a primary or secondary method of providing client care be added. A more measured approach might be that taken by the American Counseling Association (ACA) in its recent 2014 ACA Code of Ethics (ACA, 2014). This newest revision features some scattered mention of electronic and digital media throughout Sections A through G, with a new section H entitled “Distance Counseling, Technology, and Social Media.”

An Ethics Revision Committee was formed among members of the ABEC in 2014 to examine the *Code of Ethics and Standards of Practice* for possible revisions. In its May 2015 report to the entire board, this committee recommended no revisions to the existing content of the ABEC *Code of Ethics and Standards of Practice* in Chapter 255-X-11 of the Administrative Code. The rationale presented by the committee was that, when considered regardless of modality, the current language of 255-X-11 was excellent for clarifying duties and considerations by licensees to promote client welfare. The recommendation from the committee was approved unanimously by the board.

As an alternative to revisions in the existing *Code of Ethics and Standards of Practice*, the Board determined that developing and distributing interpretations applicable to the use of electronic or digital media as a primary or secondary method of providing client care could be of assistance to licensees. This document is intended to offer interpretations and considerations for this practice methodology. Further, the ABEC has secured permission from ACA to attach Section H of the 2014 ACA Code of Ethics to this document as a reference for licensees. The Board has **not adopted** this Section of the 2014 ACA Code of Ethics for inclusion in Chapter 255.X-11 of the Administrative Code. Rather, this attachment is provided as a means of assisting licensees in their decisions for matters such as distance counseling, synchronous and asynchronous interactions in a digital medium, use of social media with clients, and digital presence of licensees in social media. The intention of the board is to affirm the applicability of existing regulations for emerging practice options.

Relevant Language from Legislation

§34-8A-20. All qualified applicants licensed; signatures.

The Alabama Board of Examiners in Counseling shall license to engage in private practice all persons who shall present satisfactory evidence of attainments and qualifications under provisions of this chapter and the rules and regulations of the board. Such licensure shall be signed by the Chairman of the Board of Examiners in Counseling under the board's adopted seal.

(note: this legislation has been interpreted to mean that licensure by the ABEC is exclusive to the practice of counseling in the State of Alabama)

Relevant Language from the ABEC Administrative Code

255-X-2-01 Practice of Counseling.

- (1) Unless specifically exempt by Code of Ala. 1975, §34-8A-3, no person shall engage in the private practice of counseling in the state of Alabama without a valid license issued through due process by the Alabama Board of Examiners in Counseling.

(note: this language specifies that only licensees of the ABEC can engage in the private practice counseling in Alabama unless they are specifically exempted by law. The interpretation of "state-specific licensure" is common in all states, meaning that licensure by the ABEC is not licensure to practice in another state, regardless of the medium or proximity of the licensee to the client.)

Relevant Entries from the ABEC *Code of Ethics and Standards of Practice*

The board considers every entry in the *Code of Ethics and the Standards of Practice* from Chapter 255-X-11 of the Administrative Code to be relevant concerning counseling practices that utilize electronic or digital media as a primary or secondary method of providing client care. Special emphasis is noted in Section A.12 under "TECHNOLOGY APPLICATIONS" but the entries for this Section **do not represent the only considerations for electronic or digital media methods of client care.**

Selected Examples of Entries from the ABEC *Code of Ethics and Standards of Practice*

The following are selected examples from Chapter 255-X-11 of the Administrative Code. The rationale for the Ethics Committee's recommendation to the ABEC concerning the applicability of the existing *Code of Ethics and Standards of Practice* is grounded in a view that, regardless of the modality, the obligations for licensees to act within the framework of ethical care represent minimal expectations to promote client welfare. If any medium or arrangement for the provision of counseling services by licensees does not lend itself to the full application of these ethical expectations, the licensee should find alternative methodologies for compliance. In its unanimous approval of the Ethics Committee's recommendation, the ABEC affirmed the existing expectation that it is the role of the licensee to *identify and create* the means for compliance rather than the role of the Board to *specify and prescribe* the means for compliance.

Licensees should examine these examples while considering means of compliance in an electronic or digital medium for client care.

A.3. CLIENT RIGHTS

a. Informed Consent and Disclosure to Clients. When counseling is initiated, and throughout the counseling process as necessary, licensed professional counselors inform clients of the purposes, goals, techniques, procedures, limitations, potential risks and benefits of services to be performed, and other pertinent information. Such disclosures to clients are mandatory and must be provided in both verbal and written form to insure clients are fully informed and consent to the terms of the counseling relationship. Licensed professional counselors take steps to ensure that clients understand the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements including collection procedures to be employed in circumstances of nonpayment of fees. Clients have the right to expect confidentiality and to be provided with an explanation of its limitations, including supervision, consultations, and/or treatment team professionals; to obtain clear information about their case records, including their retention and destruction; to participate in the ongoing counseling plans; and to refuse any recommended services and be advised of the consequences of such refusal. Informed consent is an ongoing collaborative process throughout the counseling relationship.

(note: these expectations are uniformly applicable for informed consent and disclosure to clients regardless of the medium or format of counseling. Per the applicable *Standards of Practice*, licensees must assure that these elements of informed consent and disclosure to clients are provided to all clients)

A.11. TERMINATION, REFERRAL, AND INTERRUPTION OF SERVICES

b. Inability to Assist Clients. If licensed professional counselors determine an inability to be of professional assistance to clients, they avoid entering or continuing the counseling relationship and immediately terminate with appropriate referral a counseling relationship once this inability is determined. Licensed professional counselors are knowledgeable about referral resources and suggest appropriate alternatives. If clients decline the suggested referral, licensed professional counselors should discontinue the relationship.

c. Appropriate Termination. Licensed professional counselors terminate a counseling relationship, securing client agreement when possible, when it is reasonably clear that the client is no longer benefiting, when services are no longer required, when counseling no longer serves the client's needs or interests, when clients do not pay fees charged, or when agency or institution limits do not allow provision of further counseling services. Clients are considered to be abandoned by a licensed professional counselor if their termination is without notice and referral when termination is based solely on nonpayment of fees for counseling services.

(note: these expectations are uniformly applicable for a licensee's inability to assist clients and their performance of appropriate termination of clients regardless of the medium or format of counseling. Per the applicable *Standards of Practice*, licensees must assure that these elements

of addressing a licensee's inability to assist clients as well as their performance of appropriate termination of clients must be enacted with all clients)

B.1 PRIVACY

a. Respect for Privacy. Licensed professional counselors respect their clients' right to privacy and avoid illegal and unwarranted disclosures of confidential information. Licensed professional counselors respect the cultural differences of their clients regarding disclosures of information but are not required to depart from legal requirements in doing so.

(note: these expectations are uniformly applicable for a licensee's protection of client confidentiality regardless of the medium or format of counseling. Per the applicable *Standards of Practice*, licensees must assure that these elements of protecting client confidentiality must be enacted with all clients)

B.4 RECORDS

a. Requirement for Records. Licensed professional counselors maintain records necessary for rendering professional services to their clients as required by laws, regulations, or agency or institution procedures.

(note: these expectations are uniformly applicable for a licensee's duty to maintain records of client care regardless of the medium for that counseling. Per the applicable *Standards of Practice*, licensees must assure that the elements record maintenance are enacted with all clients)

Clarifying Board Interpretations:

As stated previously, the board considers **every entry in the Code of Ethics and the Standards of Practice from Chapter 255-X-11 of the Administrative Code to be relevant** concerning counseling practices that utilize electronic or digital media as a primary or secondary method of providing client care. Special emphasis is noted in Section A.12 under "TECHNOLOGY APPLICATIONS" but the entries in this Section **do not represent the only considerations for electronic or digital media methods of client care.**

Although the ABEC has not adopted Section H of the 2014 ACA Code of Ethics (ACA, 2014), the accompanying attachment featuring this language is provided as a resource to assist licensees with compliance in relation to electronic or digital media in client care. The various considerations noted in the attachment may prove useful for those who consider electronic or digital media as a primary or secondary method of providing client care. The use of Section H of the 2014 ACA Code of Ethics was authorized by the Executive Director of the American Counseling Association.

The Board offers two final thoughts on this matter: (a) licensees who are in doubt about their competence or understanding of the professional concerns associated with this matter should seek additional education and training, including supervision and consultation, and (b) licensees who are in doubt about their understanding of legal concerns associated with this matter should seek advice of legal counsel.

Attachment 1

2014 ACA Code of Ethics – Section H

(permission for use granted by the American Counseling Association)

(the entire ACA Code of Ethics is available at www.counseling.org/ethics)

Section H

Distance Counseling, Technology, and Social Media

Introduction

Counselors understand that the profession of counseling may no longer be limited to in-person, face-to-face interactions. Counselors actively attempt to understand the evolving nature of the profession with regard to distance counseling, technology, and social media and how such resources may be used to better serve their clients. Counselors strive to become knowledgeable about these resources. Counselors understand the reasonable steps to correct such errors in a correction erratum or through other appropriate publication means.

H.1. Knowledge and Legal Considerations

H.1.a. Knowledge and Competency

Counselors who engage in the use of distance counseling, technology, and/or social media develop knowledge and skills regarding related technical, ethical, and legal considerations (e.g., special certifications, additional course work).

H.1.b. Laws and Statutes

Counselors who engage in the use of distance counseling, technology, and social media within their counseling practice understand that they may be subject to laws and regulations of both the counselor's practicing location and the client's place of residence. Counselors ensure that their clients are aware of pertinent legal rights and limitations governing the practice of counseling across state lines or international boundaries.

H.2. Informed Consent and Security

H.2.a. Informed Consent and Disclosure

Clients have the freedom to choose whether to use distance counseling, social media, and/or technology within the counseling process. In addition to the usual and customary protocol of informed consent between counselor and client for face-to-face counseling, the following issues, unique to the use of distance counseling, technology, and/or social media, are addressed in the informed consent process:

- distance counseling credentials, physical location of practice, and contact information;
- risks and benefits of engaging in the use of distance counseling, technology, and/or social media;
- possibility of technology failure and alternate methods of service delivery;
- anticipated response time;
- emergency procedures to follow when the counselor is not available;
- time zone differences;
- cultural and/or language differences that may affect delivery of services;
- possible denial of insurance benefits; and
- social media policy.

H.2.b. Confidentiality Maintained by the Counselor

Counselors acknowledge the limitations of maintaining the confidentiality of electronic records and transmissions. They inform clients that individuals might have authorized or unauthorized access to such records or transmissions (e.g., colleagues, supervisors, employees, information technologists).

H.2.c. Acknowledgment of Limitations

Counselors inform clients about the inherent limits of confidentiality when using technology. Counselors urge clients to be aware of authorized and/or unauthorized access to information disclosed using this medium in the counseling process.

H.2.d. Security

Counselors use current encryption standards within their websites and/or technology-based communications that meet applicable legal requirements. Counselors take reasonable precautions to ensure the confidentiality of information transmitted through any electronic means.

H.3. Client Verification

Counselors who engage in the use of distance counseling, technology, and/or social media to interact with clients take steps to verify the client's identity at the beginning and throughout the therapeutic process. Verification can include, but is not limited to, using code words, numbers, graphics, or other nondescript identifiers.

H.4. Distance Counseling Relationship

H.4.a. Benefits and Limitations

Counselors inform clients of the benefits and limitations of using technology applications in the provision of counseling services. Such technologies include, but are not limited to, computer hardware and/or software, telephones and applications, social media and Internet-based applications and other audio and/or video communication, or data storage devices or media.

H.4.b. Professional Boundaries in Distance Counseling

Counselors understand the necessity of maintaining a professional relationship with their clients. Counselors discuss and establish professional boundaries with clients regarding the appropriate use and/or application of technology and the limitations of its use within the counseling relationship (e.g., lack of confidentiality, times when not appropriate to use).

H.4.c. Technology-Assisted Services

When providing technology-assisted services, counselors make reasonable efforts to determine that clients are intellectually, emotionally, physically, linguistically, and functionally capable of using the application and that the application is appropriate for the needs of the client. Counselors verify that clients understand the purpose and operation of technology applications and follow up with clients to correct possible misconceptions, discover appropriate use, and assess subsequent steps.

H.4.d. Effectiveness of Services

When distance counseling services are deemed ineffective by the counselor or client, counselors consider delivering services face-to-face. If the counselor is not able to provide face-to-face services (e.g., lives in another state), the counselor assists the client in identifying appropriate services.

H.4.e. Access

Counselors provide information to clients regarding reasonable access to pertinent applications when providing technology-assisted services.

H.4.f. Communication Differences in Electronic Media

Counselors consider the differences between face-to-face and electronic communication (nonverbal and verbal cues) and how these may affect the counseling process. Counselors educate clients on how to prevent and address potential misunderstandings arising from the lack of visual cues and voice intonations when communicating electronically.

H.5. Records and Web Maintenance

H.5.a. Records

Counselors maintain electronic records in accordance with relevant laws and statutes. Counselors inform clients on how records are maintained electronically. This includes, but is not limited to, the type of encryption and security assigned to the records, and if/for how long archival storage of transaction records is maintained.

H.5.b. Client Rights

Counselors who offer distance counseling services and/or maintain a professional website provide electronic links to relevant licensure and professional certification boards to protect consumer and client rights and address ethical concerns.

H.5.c. Electronic Links

Counselors regularly ensure that electronic links are working and are professionally appropriate.

H.5.d. Multicultural and Disability Considerations

Counselors who maintain websites provide accessibility to persons with disabilities. They provide translation capabilities for clients who have a different primary language, when feasible. Counselors acknowledge the imperfect nature of such translations and accessibilities.

H.6. Social Media

H.6.a. Virtual Professional Presence

In cases where counselors wish to maintain a professional and personal presence for social media use, separate professional and personal web pages and profiles are created to clearly distinguish between the two kinds of virtual presence.

H.6.b. Social Media as Part of Informed Consent

Counselors clearly explain to their clients, as part of the informed consent procedure, the benefits, limitations, and boundaries of the use of social media.

H.6.c. Client Virtual Presence

Counselors respect the privacy of their clients' presence on social media unless given consent to view such information.

H.6.d. Use of Public Social Media

Counselors take precautions to avoid disclosing confidential information

Reference

American Counseling Association. (2014). *2014 ACA Code of Ethics*. Alexandria, VA: Author.