

Sixth 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

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Sixth Edition

The Counselor AND THE Law

A Guide to
Legal and Ethical Practice

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Dedication

We dedicate this book to every student who has raised thoughtful questions and every practitioner who presented us with real world situations that made us say: “Hmm . . . very interesting.”

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Preface

Legal and ethical issues do not remain static. As our culture changes, laws are added or altered to fit the times; ethical imperatives and interpretations also morph to address circumstances that had not previously been considered. As we send this edition to press in the fall of 2011, the world of the counselor is both the same and different than it was when we completed work on the 5th edition. Of the many changes, nothing carries more potential for altering both legal and ethical practice than the impact of technology and social media. To address the burgeoning use of technology in health care, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) has “grown new teeth” with the development of new standards and new consequences (Health Information Technology for Economic and Clinical Health Act, or HITECH) when protected health information is breached. At the same time, the ubiquity of social media has burst into our cultural consciousness, bringing with it fundamental challenges to our understanding and experience of privacy. In this edition of *The Counselor and the Law*, we maintain our commitment to addressing the timeless legal and ethical challenges associated with the practice of counseling, and we seek to peek behind the curtain to anticipate the legal and ethical implications that these and other changes are bringing.

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 four updates. In 1985, attorneys Bruce Hopkins and Barbara S. Anderson collaborated to update the original manuscript; then in 1990, Hopkins and Anderson released the third edition; and in 1996, Barbara Anderson (without Hopkins) completed the fourth edition. In 2007 we were asked to take over the authorship and charged with the responsibility of completing a major update of the book.

The fifth edition, published in 2008, was 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 book we seek 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. Additionally, 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. Finally, we want to express our heartfelt appreciation to Carolyn Baker, ACA Director of Publications. We surely stretched her patience this time, yet she remained on our team—urging us on, nourishing us with the depth of her professional guidance and wise counsel.

—Anne Marie “Nancy” Wheeler
Silver Spring, MD

• • •

—Burt Bertram
Orlando, FL

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 the past 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 almost 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 CACREP-accredited Graduate Pastoral Counseling Program of Loyola University Maryland. 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. Burt 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.

