

## **To Refer or not to Refer: That is the Question**

**Warren Throckmorton Ph.D.**

In my work as a counselor, rarely do I feel the need to refer a client due to conflicts over values and beliefs. I generally take the view that I should avoid imposing my religious views on clients and therefore work within the religious or value framework of the client.

Some counselors, however, feel differently and believe they should express their religious loyalties via their work as a counselor. They prefer to work with clients who are ideologically similar to them and experience extreme dissonance and distress if they are called upon to assist someone follow a course which conflicts with their values. Should these counselors be allowed to refer to another counselor clients who present with views and opinions at odds with the original counselor?

While I do not often refer clients for such reasons, in principle I believe that counselors should have the right to make referrals when counselor-client value differences create significant dissonance in the counselor. Counselors who are distressed by these differences do not make effective counselors and may harm their clients unintentionally.

This paper examines the case of Julea Ward, a former student at Eastern Michigan University. Ms. Ward was a student in the masters program of EMU's counselor education department before she was dismissed from EMU, due to refusing to counsel a gay student who she believed wanted help with a gay relationship. Initially, in district court, Ward lost her bid to be reinstated into EMU's counseling program. Subsequently, an appeals court returned the case back to the district court for trial. Eventually, EMU settled out of court with Ward for \$75,000. She did not reenroll in the program and has since received a degree from Regent University.

## Case Background

While a student in the graduate-level counseling program at Eastern Michigan University, Julea Ward regularly expressed her allegiance to conservative Christianity. She believed that her faith prevented her from affirming clients' sexual relationships which were at odds with her religious beliefs. Relevant to her case, she felt she was unable to affirm homosexual relationships and that providing services to homosexuals about their relationships was an affirmation of them.

Eastern Michigan University affirms diversity and Ward's professors were aware of her stance. For nearly three years, however, Ward did well, earning a 3.91/4.0 grade point average. In her practicum, she was required to counsel clients in the University counseling center. On one occasion, Ward was asked to counsel a gay student. In response, Ward asked her supervisor to refer the client or to allow her to refer the client if relationship issues surfaced. In other words, she would provide counseling for a mental health concern but did not want to affirm by her services the relationship she believed was wrong.

The supervisor referred the client, but Ward's request led to concern from the faculty and eventually a disciplinary hearing. The hearing led to her expulsion from the program. Ward then sued the university and professors, basing her complaint on the First and Fourteenth Amendments.

Initially a District Court for the Eastern District of Michigan found in favor of the university.<sup>1</sup> Upon appeal, however, Ward prevailed with the case returned to district court for trial. The Sixth District Court of Appeals ruled as follows:

Curriculum choices are a form of school speech, giving schools considerable flexibility in designing courses and policies and in enforcing them so long as they amount to reasonable means of furthering legitimate educational ends. The key problem with the university's position is not the adoption of this anti-discrimination policy, the existence

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<sup>1</sup> Ward v. Wilbanks. No. 09-11237. United States District Court for the Eastern District of Michigan at Detroit.

of the practicum class or even the values-affirming message the school wants students to understand and practice. It is that the school does not have a no-referral policy for practicum students and adheres to an ethics code that permits values-based referrals in general. When the facts are construed in Ward's favor, as they must be at this stage of the case, a reasonable jury could conclude that Ward's professors ejected her from the counseling program because of hostility toward her speech and faith, not due to a policy against referrals. We reverse the trial court's grant of summary judgment in favor of the university.<sup>2</sup>

The court's description of the incident which led to dismissal provides the necessary facts to discuss the religious liberty issues raised by the case:

Ward counseled her first two clients in practicum without incident. When she reviewed the file of the third client, she noticed he sought counseling about a same-sex relationship. Ward called her faculty supervisor, Professor Yvonne Callaway, and asked (1) whether she should meet with the client and refer him only if it became necessary; only if the counseling session required Ward to affirm the client's same-sex relationship; or (2) whether the school should reassign the client from the outset. Callaway reassigned the client.

When Ward met with Callaway the next day for their weekly meeting, Callaway was not happy. In twenty years of teaching, she told Ward, no practicum student had made such a request. Callaway told Ward that her actions created an "ethical dilemma," prompting her to schedule an informal review with Ward. R. 82-3 at 215.<sup>3</sup> These meetings are not "disciplinary" but are designed "to assist the student in finding ways to improve his/her performance or to explore the option of the student voluntarily leaving the program." R. 14-7 at 15. Callaway, Ward and Ward's academic supervisor, Professor Suzanne Dugger, participated in the informal review. Callaway raised concerns about Ward's refusal to counsel the assigned client, and Ward reiterated her religious objection to affirming same-sex relationships. All three participants agreed that "the development of a remediation plan would not be possible." R. 80 at 2. Dugger and Callaway gave Ward two options: withdraw from the program or seek a formal review.

Ward asked for a formal review, in which a committee composed of several faculty members and one student considers allegations of improper behavior or poor academic performance. The committee may impose a range of sanctions, from requiring a student to repeat a course to dismissing the student from the program. Before the hearing, Dugger told Ward that she had violated two provisions of the American Counseling Association's (ACA) code of ethics by: (1) "imposing values that are inconsistent with counseling goals" (Rule A.4.b); and (2) "engag[ing] in discrimination based on . . . sexual orientation" (Rule C. 5. R. 1-4 at 2). The counseling program's student handbook

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<sup>2</sup> Ward v. Polite et al. Nos. 10-2100/2145. U.S. Circuit Court of Appeals, Sixth Circuit, 3, retrieved from <http://www.ca6.uscourts.gov/opinions.pdf/12a0024p-06.pdf> (accessed December 15, 2013).

<sup>3</sup> Explanatory Note: R. 82-3 at 215 is a citation note citing the Ward v. Polite case at the federal district court level – United States District Court Eastern Michigan District, docket 82-3, page 215.

incorporates the ACA code of ethics and tells students, including practicum students, to follow it.

The formal review committee consisted of two faculty members from the counseling program (Professors Irene Ametrano and Perry Francis), one faculty member from the education leadership program (Professor Gary Marx) and one student representative (Paula Stanifer). The hearing began with an explanation of the faculty members' concerns, including Callaway's and Dugger's accounts of Ward's practicum experience, and their shared opinion that her conduct violated the code of ethics. Dugger recommended that Ward be dismissed from the counseling program. Ward responded that she did not discriminate against anyone. She had no problem counseling gay and lesbian clients, so long as the university did not require her to affirm their sexual orientation. Because her professors taught her that counselors dealing with such clients "cannot talk about anything other than affirming [their same-sex] relationships" (R. 1-5 at 18), a message Ward's religious beliefs prohibited her from delivering. Ward asked that she be allowed to refer gay and lesbian clients seeking relationship advice to another counselor.

Two days later, the university sent Ward a letter conveying the committee's unanimous opinion that she violated the code of ethics. Because Ward was "unwilling to change [her] behavior," the committee expelled her from the counseling program, effective that day (R. 1-7). Ward appealed the committee's decision to the Dean of the College of Education, Dr. Vernon Polite. He denied the appeal. Ward filed this § 1983 action against the members of the formal review committee and Professor Callaway, Professor Dugger and Dean Polite as well as the President and the members of the Board of Regents of the University. Her expulsion from the program, she claimed, violated her free-speech and free-exercise rights under the First and Fourteenth Amendments. At the outset, the district court dismissed Ward's official-capacity claims against the President and Board of Regents because they did not play a role in the expulsion.

At the close of discovery, the district court granted the defendants' motion for summary judgment and denied Ward's cross-motion. The court held that the university defendants permissibly enforced a neutral and generally applicable curricular requirement against Ward and did not target her because of her speech or religious beliefs.<sup>4</sup>

## **Constitutional Rights At Issue**

Ward asserted that her First Amendment rights to free speech and free exercise of religion had been violated and further asserted that the 14<sup>th</sup> Amendment extended her rights to the state of Michigan.<sup>5</sup>

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<sup>4</sup> Ward v. Polite, 3-6.

<sup>5</sup> As an aside, it is interesting to note the use of the 14<sup>th</sup> Amendment in this context. Some conservatives assert that the 14<sup>th</sup> Amendment does not make the states subject to the Bill of Rights. In this case, however, the Alliance Defense Fund saw the protection offered by the 14<sup>th</sup> Amendment as being helpful to Ward.

The Court of Appeals opined on the free speech rights of both EMU and Ward. Initially, the court argued that colleges and other educational institutions have freedom to control their own educational offerings. EMU had the right to encourage diversity and set rules and policies which further those ends. A college or high school curriculum is an exercise of the collective free speech rights of those who set the policies. The court noted that high schools have the right to limit student speech if such limitations serve specific educational purposes. At the same time, federal courts have prohibited viewpoint discrimination and disallowed institutions from compelling student speech which would violate that student's religious beliefs. For instance, schools may not expel students for refusing to pledge allegiance to the United States flag. Drawing from existing case law, the court of appeals wrote: "Public educators may limit 'student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.'"<sup>6</sup>

The court added:

The neutral enforcement of a legitimate school curriculum generally will satisfy this requirement; the selective enforcement of such a curriculum or the singling out of one student for discipline based on hostility to her speech will not.<sup>7</sup>

Based on the court's understanding of the facts and citing the Supreme Court precedent, the court opined:

Gauged by these requirements, Ward's free-speech claim deserves to go to a jury. Although the university submits it dismissed Ward from the program because her request for a referral violated the ACA code of ethics, a reasonable jury could find otherwise—that the code of ethics contains no such bar and that the university deployed it as a pretext for punishing Ward's religious views and speech.<sup>8</sup>

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<sup>6</sup> Ward v. Polite, 7-8.

<sup>7</sup> Ward v. Polite, 8.

<sup>8</sup> Ward v. Polite, 10.

The court also took up the matter of referral based on conscience conflicts. Specifically, the court dismissed the assertion that values-based referrals discriminate against clients because of various protected characteristics.

Here too, what did Ward do wrong? Ward was willing to work with all clients and to respect the school's affirmation directives in doing so. That is why she asked to refer gay and lesbian clients (and some heterosexual clients) if the conversation required her to affirm their sexual practices. What more could the rule require? Surely, for example, the ban on discrimination against clients based on their religion (1) does not require a Muslim counselor to tell a Jewish client that his religious beliefs are correct if the conversation takes a turn in that direction; and (2) does not require an atheist counselor to tell a person of faith that there is a God if the client is wrestling with faith-based issues. Tolerance is a two-way street. Otherwise, the rule mandates orthodoxy, not anti-discrimination.<sup>9</sup>

The court cited my Expert Testimony to demonstrate that the code of ethics for counselors specifically allowed values-based referrals.<sup>10</sup>

As a specific application of this principle, one implicating secular and faith-based values, the code allows counselors to "choose to work or not work with terminally ill clients who wish to explore their end-of-life options" (R. 14-7 at 49). Consistent with these provisions, Ward's expert, Dr. E. Warren Throckmorton, the former chairman of the American Mental Health Counselors Association's ethics committee (and a former president of the organization), said that Ward's request to refer this client complied with the code.<sup>11</sup>

And again, the professions have made specific allowances for referrals. What was at issue was that EMU did not like the reason for Ward's referral.

The university does not argue that its actions can withstand strict scrutiny, and we agree. Whatever interest the university served by expelling Ward, it falls short of compelling. Allowing a referral would be in the best interest of Ward counseling someone she is better able to assist and the client (who would receive treatment from a counselor better suited to discuss his relationship issues). The multiple types of referrals tolerated by the counseling profession severely undermine the university's interest in expelling Ward for the referral she requested.<sup>12</sup>

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<sup>9</sup> Ward v. Polite, 11.

<sup>10</sup> My Expert Testimony is attached to this paper.

<sup>11</sup> Ward v. Polite, 12.

<sup>12</sup> Ward v. Polite, 19.

The court, however, was not prepared to give Ward the legal victory. The appeals court opined that EMU might find a sympathetic jury.

None of this means that Ward should win as a matter of law with respect to her free-speech and free-exercise claims. In view of the university's claim that a no-referral policy existed for the practicum class, supported by the testimony of several professors and administrators, and in view of the reality that the purported policy arises in the context of a university's curriculum and *its* counseling services, the district court properly rejected Ward's cross-motion for summary judgment. Construing the evidence in the university's favor, a jury might credit the university's claim that such a policy existed and conclude that practicum students were subject to a general ban on referrals, making it difficult for Ward to demonstrate that she was expelled on pretextual grounds as opposed to the ground that she refused to adhere to a general and reasonable curricular requirement. Just as the inferences favor Ward in the one setting, they favor the university defendants in the other. At this stage of the case and on this record, neither side deserves to win as a matter of law.<sup>13</sup>

The appeals court sent Ward's case back to the district court. Before the trial could take place, EMU and Ward settled out of court.

### **Application of Ward v. Polite to Religious Liberty Issues**

As the result of the case being settled without a trial, the facts of the case did not get a full hearing. The matter of religious liberty and a counselor's role, however, was helpfully addressed by the appeals court opinion. In future cases, the Ward appeals court opinion provides guidance on religious expression and sets up a legal framework for protection of religious liberty. The court determined that members of a profession cannot be barred for ideological reasons. The court determined that referral based on differences of beliefs and values does not in itself constitute discrimination. Furthermore, the court indicated that a referral for values-based reasons is not in itself the imposition of those values on a client. Finally, the court reasoned that singling out values-based referrals for prohibition is an infringement on the religious liberty of a client.

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<sup>13</sup> Ward v. Polite, 19.

On the other hand, the court upheld the right of public colleges to set curricular standards that might limit First Amendment rights. Those standards, however, have to be evenly applied to all and cannot discriminate against a student because the student's views are unpopular. By way of application, if EMU had set a written policy that no referrals would be allowed for any reason, then Ward's options would have been more limited with a different outcome to her case.

More broadly, professional speech can be limited in the service of the state interest in protecting the health and wellbeing of consumers. For instance, health care providers who prescribe harmful treatments cannot hide behind the First Amendment when damages to patient health result. Licensing boards can limit acceptable treatments in the service of patient protection. And so, professional free speech is not absolute. The Ward case, however, strengthens and supports the liberty of a counselor, and perhaps by extension other healthcare professionals, to exercise religious and free speech rights via client referral.



## **Attachment**

### **Dr. Warren Throckmorton Expert Report**

I have been asked to provide an opinion regarding the ethics of referral when counselors experience conflicts of value or potential violations of religious belief while in the course of their professional duties. In addition to materials cited below, I rely on my prior experience and training, which include a BA in psychology (Cedarville University), MA in clinical psychology (Central Michigan University) and PhD in counselor education and community counseling (Ohio University). I served as president of the Ohio Mental Health Counselors Association and was named Counselor of the Year by that organization in 1991. In 1993, I sold my mental health counseling group practice to Southern Ohio Medical Center, one of the first group mental health practices to be sold to a hospital system. I was awarded the George E. Hill Distinguished Alumni Award by the Ohio University Counselor Education faculty in 1998. From 1996-1999, I served as president-elect, president and past-president of the American Mental Health Counselors Association. In 1997, I co-wrote the sunrise evaluation report in support of counselor licensing in Pennsylvania. I served as the Ethics Committee chair from 2001-2006 and was one of the authors of the 2000 revision of the AMHCA Ethics Code.

As I understand the facts of Ward vs. Eastern Michigan University, Julea Ward was a student seeking a master's degree in school counseling. She was enrolled in a Practicum class as a requirement of this program. A client assigned to her early in the Practicum was a person seeking advice regarding a homosexual relationship. Based on her experience in the EMU program, Ms. Ward believed that she would need to approve of and affirm the homosexual relationship while providing counseling services. She knew she was prohibited by the program from offering any alternatives to affirmation of homosexuality, and thus, did not do so. Using her counseling skills to promote a homosexual relationship would have been a violation of her religious beliefs. She then asked supervisor Dr. Yvonne Callaway which option would be best: reassign the client prior to a meeting or meet the client and then refer to another student counselor. Dr. Callaway then called the clinic secretary to reassign the client. Subsequently, Ms. Ward was called into a disciplinary hearing and accused of refusing to adhere to the ethics code of the American Counseling Association. After formal review and appeals, she was dismissed from the program.

Ms. Ward relies on her understanding of the ACA code of ethics and the material she was taught in her classes prior to the Practicum course to defend her action of referral as an ethical action. Defendants counter that Ms. Ward discriminated against the client because of the client's sexual orientation and that she imposed her values on the client. They rely on the ACA Codes of Ethics including, "Counselors...avoid imposing values that are inconsistent with counseling goals" (A.4.b.) and "Counselors do not condone or engage in discrimination based on age, culture...sexual orientation..." (C.5).

As I understand the facts of the case, I am prepared to testify that Ms. Ward's actions did not violate the ACA code of ethics. In my review of relevant professional counseling literature, it is my belief that she did not discriminate against the client on the basis of the client's sexual orientation nor did she impose her values and beliefs on the client.

## Referral as taught in the EMU textbooks

In this case, Ms. Ward was faced with a major clash of values which rendered her unable to be of help to this client and she responded in a way that she had been taught by professors in the EMU program.

For instance, in the text M. Corey and G. Corey, (2007) *Becoming a Helper* (p. 272), the authors state:

As a student, you may think that you have no worries about being sued for malpractice. Unfortunately student practitioners are vulnerable to such actions.

We hope it is becoming clear that you would be wise to know your limitations in working with clients, to accept them, and to act only within the scope of your competence.<sup>14</sup>

Accepting and working within limitations leads to a recommendation to refer.

Restrict your practice to client populations for which you are prepared by virtue of your education, training and experience. Refer clients who are clearly not within the scope of your competence and take steps to maintain your competence.<sup>15</sup>

Ms. Ward indicated that she was enrolled in a Counselor Development class which was taught by Dr. Sue Stickel, who is a member of EMU's counseling faculty. Dr. Stickel assigned the book *Interviewing and Change Strategies for Helpers: Fundamental Skills and Cognitive Behavioral Interventions* by Sherry Cormier and Paula Nurius as the primary text in the class. Cormier and Nurius on several occasions in the text recommend referral to another practitioner when counselors experience major value conflicts with clients.

Note the following examples:

In chapter two, Cormier and Nurius (2002) discuss various counselor variables that impact the provision of counseling. On page 22, the authors discuss values and note:

There may be times when a referral is necessary because of an unresolved and interfering value conflict with a client. For example, a practitioner who views rape as the most serious and sexist act a person can perform might have difficulty helping someone accused of rape. This practitioner might identify more with the rape victim than with the client. From an ethical viewpoint, if a practitioner is unable to promote and respect the welfare of the client, a referral may be necessary....

A first step is to acknowledge honestly what your struggle is with this issue rather than deny your blind spots, your ignorance or your feelings (frustration, anxiety, uncertainty, or anger). *Thus, if you are adamantly opposed to abortion, you acknowledge your*

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<sup>14</sup> Corey, M. & Corey, G. (2007). *Becoming a helper*. Belmont, CA: Thomson/Brooks Cole, 272.

<sup>15</sup> Corey & Corey, *Supra* note 13, at 273.

*opposition and also your struggle when working with clients who are pro-choice, which may include referring them to other helping sources (emphasis mine).*<sup>16</sup>

Cormier and Nurius's discussion of abortion beliefs is relevant since that is also a topic raised by the EMU program as an example of violation of tenets of the counseling profession. However, this text uses that sensitive value conflict as an example of one which could trigger referral. Cormier and Nurius note that the potential referral may be generated when working with someone who is pro-choice.

Clearly, value conflicts may go in many different directions. Counselors who are pro-choice may refer adamantly pro-life clients. Counselors with loyalties to feminist theory may struggle working with evangelical or Muslim women. Houser, Wilczenski, Domokos-Cheng Ham describe a Jewish counselor who probably should have referred a non-Jewish client. The non-Jewish client wanted help adjusting to marriage into a Jewish family. The counselor did not approve of the marriage and took an active role in discouraging it. In this situation, one good option would have been to serve this client via referral.<sup>17</sup>

Also, in chapter two, Cormier and Nurius devote a couple of pages to working with gay, lesbian and bisexual clients. They note the American Psychological Association guidelines for working with GLB clients which has a set of standards titled "Attitudes Toward Homosexuality and Bisexuality." In that section, one relevant plank relates to referral:

2. Helpers are encouraged to recognize their attitudes and knowledge about lesbian, gay and bisexual issues that may be relevant to assessment and treatment and seek consultation or *make appropriate referrals when necessary* (emphasis mine).<sup>18</sup>

Then later in the chapter, under a section headed, "Client Welfare," Cormier & Nurius write:

Helpers are obligated to protect the welfare of their clients. In most instances, this means putting the client's needs first. It also means ensuring that you are intellectually and emotionally ready to give the best that you can to each client—or to see that the client has a referral option if seeing you is not in the client's best interests.<sup>19</sup>

Referral is again discussed on page 38 of the text. Cormier and Nurius state:

Referring a client to another practitioner may be necessary when, for one reason or another, you are not able to provide the service or care that the client requires or when the client wants another helper.<sup>20</sup>

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<sup>16</sup> Cormier, S. & Nurius, (2002). Interviewing and change strategies for helpers: Fundamental skills and cognitive behavioral interventions. Brooks/Cole, 22.

<sup>17</sup> Houser, R.A., Wilczenski, F.L., & Domokos-Cheng Ham, M. (2006). Culturally relevant ethical decision-making in counseling. Thousand Oaks, CA: Sage.

<sup>18</sup> Houser, Wilczenski & Domokos-Cheng, *Supra* note 16 at 23.

<sup>19</sup> *Supra* note: *Id.* at 34.

<sup>20</sup> *Supra* note: *Id.* at 38.

In that text, students are instructed to consider not treating certain clients when conflicts are likely.

#### Decision Point: To Treat or Not to Treat

At this point in the process, the primary issue for the practitioner is whether he or she can help this client. Most people agree that this is one of the biggest ethical and, to some extent, legal questions the practitioner faces during the helping process. As Beutler and Clarkin (1990) observe, ‘The therapist must be aware that there are instances in which a decision *not* to treat at all is the optimal decision.’ (p.24).

The helper and client will need to choose whether to continue with counseling and pursue the selected goals, to continue with counseling but reevaluate the client’s initial goals or to seek the services of another practitioner. The particular decision is always made on an individual basis and is based on two factors: *willingness* and *competence* to help the client pursue the selected goals.<sup>21</sup>

In this case, Ms. Ward followed the instruction of her textbook which stated, “There are instances in which a decision *not* to treat at all is the optimal decision.” The text goes on to state that willingness of the counselor to treat the client involves in part the values of the counselor. Competence involves skills and knowledge and familiarity with the problems the client presents. Clearly, Ms. Ward was unwilling to treat the client presented to her at EMU due to her values and clearly did not have the knowledge or competence to undertake such care. As the next section of Cormier and Nurius make clear, referral is an ethical and appropriate means of handling these situations.

#### Referral Issues and Steps

If you have a *major* reservation about pursuing selected goals, a referral might be more helpful to the client (Gorman & Leiblum, 1974, 43).

Referral may be appropriate in any of the following cases: *if the client wants to pursue a goal that is incompatible with your value system, if you are unable to be objective about the client’s concerns*, if you are unfamiliar with or unable to use a treatment requested by a client, if you would be exceeding your level of competence in working with the client, or if more than one person is involved and because of your emotions or biases you favor one person over another (emphasis mine).<sup>22</sup>

In this text which was used in the EMU program, the very circumstance at issue in this case is listed as a reason for making a referral. The reason the client wanted to be seen for counseling involved addressing issues in a same-sex relationship. Ward has a “*major* reservation” about working to support such relationships and taking this case would be incompatible with her value system, as specified in the Cormier & Nurius text.

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<sup>21</sup> *Id.* at 266.

<sup>22</sup> *Id.* at 266.

## Referral as traditional and current counseling practice

Historically, counselors have been advised to refer for various reasons.<sup>23</sup> Foundational to the rationale for referral is the welfare of clients.<sup>24</sup> The first ethics code of the American Personnel and Guidance Association (forerunner to the American Counseling Association) included a plank regarding referral.

The member shall decline to initiate or shall terminate a counseling relationship when he cannot be of professional assistance to the counselee or client either because of lack of competence or personal limitation. In such instances, the member shall refer his counselee or client to an appropriate specialist. In the event the counselee or his client declines the suggested referral, the member is not obligated to continue the counseling relationship.<sup>25</sup>

Value conflicts have long been discussed in counseling and have been viewed as inevitable aspects of the profession. Value conflicts may be great enough that progress cannot be made. According to Baruth and Robinson, “If there appears to be a conflict of values that would impede counseling, then a referral to another counselor should be made.”<sup>26</sup>

The current ACA code of ethics allows referral and states.

### **A.11.b. Inability to Assist Clients**

If counselors determine an inability to be of professional assistance to clients, they avoid entering or continuing counseling relationships. Counselors are knowledgeable about culturally and clinically appropriate referral resources and suggest these alternatives. If clients decline the suggested referrals, counselors should discontinue the relationship.<sup>27</sup>

Furthermore, the ACA code adds a specific instance where counselor values and beliefs might trigger a referral.

### **A.9.b. Counselor Competence, Choice, and Referral**

Recognizing the personal, moral, and competence issues related to end-of-life decisions, counselors may choose to work or not work with terminally ill clients who wish to explore their end-of-life options. Counselors provide appropriate referral information to ensure that clients receive the necessary help.<sup>28</sup>

In contrast to the plain language of the ethics code, EMU faculty state that “[i]t is one of the hallmarks of the counseling profession that counselors must receive clients as they are, and work

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<sup>23</sup> Ohlsen, M. (1955). *Guidance: An introduction*. New York: Harcourt, Brace, 276-77.

<sup>24</sup> From the American Counseling Association Code of Ethics: A.1.a. Primary Responsibility: “The primary responsibility of counselors is to respect the dignity and to promote the welfare of clients.”

<sup>25</sup> American Personnel and Guidance Association. (1961). Ethical standards. *Personnel and guidance journal*, 40, 207. Cited in Sherzer, B. & Stone, S.C. (1968). *Fundamentals of counseling*. Boston: Houghton-Mifflin, 434.

<sup>26</sup> Baruth, L.G., & Robinson, E.H. (1987). *An introduction to the counseling profession*. New York: Allyn & Bacon, 322.

<sup>27</sup> From the ACA Code of Ethics, A.11.b.

<sup>28</sup> *Id.* at A.9.b.

within the value system of the client, whatever it may be.”<sup>29</sup> First, while counselors are enjoined not to impose their values on clients, the ACA Code of Ethics nowhere states that a hallmark of the profession is for a counselor to work within any value system held by any potential client. Rather, according to the ACA Code of Ethics, A.1.a., “the primary responsibility of counselors is to respect the dignity and to promote the welfare of clients.” One way that a counselor can discharge that duty is to refer. As noted above and in Cormier and Nurius, “The therapist must be aware that there are instances in which a decision *not* to treat at all is the optimal decision.”<sup>30</sup>

Second, ACA code sections A.9.b and A.11.b provide a recognition that respecting the client’s worldview and value system cannot mean that a counselor must see all possible clients. The ACA Code of Ethics states in section A.11.b. that counselors may determine that they are unable to be of assistance and “avoid entering or continuing counseling relationships.”

Present day experts in counseling recognize that referral for value-based conflicts are necessary. For instance, Gerald Corey states this principle in various editions of his widely used introduction to counseling text.

I am not suggesting that you have to give up all your values, for you do need to be true to yourself. Neither am I suggesting that you should be able to work with all clients or with all problems. If you are unable or unwilling to be objective in areas where there are value conflicts between you and a client, a referral is often the ethical alternative.<sup>31</sup>

You also need to consider the reality that you will probably not be able to work effectively with every client. Some clients will work better with counselors who have another type of personal and therapeutic style than yours. Thus, I recommend sensitivity in assessing what your client needs, along with good judgment about the appropriateness of a match between you and a potential client.<sup>32</sup>

We cannot realistically expect to succeed with every client. It takes honesty to admit that we cannot work successfully with every client. It is important to learn *when* and *how* to make a referral for our clients when our limitations prevent us from helping them.<sup>33</sup>

Dr. Corey has recently addressed directly the issue of whether to refer clients when counselors cannot effectively work with clients due to conflicts of values. In a 2008 address to the Canadian Counselling Association, Corey provided his view:

### **Value Conflicts: To Refer or Not to Refer**

Some counselors believe they can work with any client or problem. They may be convinced that being professional means being able to assist everyone. Others are so unsure of their abilities that they are quick to refer anyone who makes them feel

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<sup>29</sup> Declaration of Yvonne Callaway, p. 3; and see also declaration of Suzanne Dugger, p. 5.

<sup>30</sup> Cormier & Nurius, *Supra* note 13, at 266.

<sup>31</sup> Corey, G. (2001). *Theory and practice of counseling and psychotherapy*, 6<sup>th</sup> ed. Belmont, CA: Brooks/Cole/Thomson Learning, 25.

<sup>32</sup> Corey, *Supra* note 30 at 463.

<sup>33</sup> *Id.* at 30.

uncomfortable. Somewhere between these extremes are the cases in which your values and those of your client clash to such an extent that you question your ability to be helpful.

The challenge for therapists is to recognize when their values clash with a client's values to the extent that they are not able to function effectively. Merely having a conflict of values does not necessarily require a referral; it is possible to work through such conflicts successfully. In fact, it is best to think of a referral as the last resort.

Before making a referral, explore your part of the difficulty through consultation. What barriers within you would prevent you from working with a client who has a different value system? Merely disagreeing with a client or not particularly liking what a client is proposing to do is not ethical grounds for a referral. When you recognize instances of such value conflicts, ask yourself this question: 'Why is it necessary that there be congruence between my value system and that of my client?' It is good to keep in mind that helping our clients and considering their welfare is what is paramount.

If you have sought consultation and exhausted all other possibilities and still feel that you are at an impasse, you may need to consider a referral. When a referral is decided upon, *how* it is done is critical. Make it clear to the client that it is *your* problem and not the client's. It can be very burdensome to clients to be saddled with your disclosure of not being able to get beyond value differences.<sup>34</sup>

In relation to this case, it is important to examine what Dr. Corey is saying here. First, value conflicts may indeed lead to a referral to another practitioner. As Dr. Corey notes, some counselors think they should be able to counsel all clients. This is not advisable. At times, value clashes will lead to a consideration of referral.

Second, Dr. Corey believes that a disagreement with a client is not sufficient to warrant a referral. Rather, he states that the "challenge for therapists is to recognize when their values clash with a client's values to the extent that they are not able to function effectively." This is a key point. In this case, Ms. Ward identified early a kind of value conflict which would lead to her inability to function effectively with a client. She recognized it, made the program aware of that clash and the religious basis for it. As described by Dr. Corey, Ms. Ward had reflected upon her inability to provide services to people who were seeking to enhance non-marital sexual relationships. She decided that such services would cause her to violate her religious beliefs.

It is significant to note that Ms. Ward pursued the course of action which would result in the least burdensome (to use Dr. Corey's word) outcome. She desired to prevent harm to clients by avoiding the initiation of the counseling relationship, thus preventing a disclosure which might have caused some discomfort to the client.

Thus, it is clear from Dr. Corey's discussion of referral that counselors may refer clients if the value clash is such that the counselor believes they are unable to function effectively as a result.

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<sup>34</sup> Corey, G. (2008, May 14). The Counselor as a Person and as a Professional: Keynote Address for the Canadian Counselling Association, [www.ccacc.ca/documents/CoreyKey.doc](http://www.ccacc.ca/documents/CoreyKey.doc) (accessed August 22, 2009).

This is the historic perspective in counseling and reinforced by the ACA code of ethics. Respect for diversity does not mean such referrals should not be made when they best serve clients. Ms. Ward clearly believed that counseling in that situation violated her religious beliefs and prevented her from functioning effectively as a counselor. In such situations, expert professional wisdom is that referral is an ethical option.

### **Referral in other professions**

Psychologists have also recognized the need for referral when value conflicts arise. In examining the psychology code of ethics, Yarhouse and VanOrman note the ethicality of referral.

Clients may also benefit from psychologists who have established a referral network that includes religiously committed colleagues. Some clients may prefer to see a more religious therapist or to be in therapy that addresses religious themes, and some may prefer to see someone who understands or shares their religious affiliation. Those who are more religious may actually hold stronger negative expectations of nonreligious therapists and, in some studies, clients appear to rank religious commitment in therapists as more important than clinical skills (e.g., McMinn, 1991).

Related to this is the concern that psychologists refer clients when doing so is in the best interest of their clients. Value conflicts between therapists and clients are inevitable; the challenge to clinicians is to recognize when their values and those of their clients conflict to such an extent that they are ethically obligated to assess their ability to function professionally. Psychologists may consider referring clients when they are experiencing significant discomfort with their clients' religious values. Referral options would include other clinicians who are from the client's faith tradition or who are not in conflict with the values or beliefs of that particular faith.<sup>35</sup>

Respect for provider conscience is widely appreciated in the medical professions. For instance, a study published in the *New England Journal of Medicine* examined the question of whether it is permissible for physicians to refer patients for procedures which violate the conscience of the physician. The authors reported:

A total of 1144 of 1820 physicians (63%) responded to our survey. On the basis of our results, we estimate that most physicians believe that it is ethically permissible for doctors to explain their moral objections to patients (63%). Most also believe that physicians are obligated to present all options (86%) and to refer the patient to another clinician who does not object to the requested procedure (71%).<sup>36</sup>

Pharmacists recognize the right of practitioners to refuse to fill medications which violate conscience. For instance, some pharmacists believe it violates their religious beliefs to fill

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<sup>35</sup> Yarhouse, M.A., & VanOrman, B.T. (1999). When psychologists work with religious clients: Applications of the general principles of ethical conduct. *Professional Psychology: Research and Practice*, 30, 557-562.

<sup>36</sup> Curlin, F.A., Lawrence, R.E., Chin, M.H., & Lantos, J.D. (2007) *New England Journal of Medicine*, 2007; 356, 593-600.



medications which could cause an abortion. Laws in several states explicitly give pharmacists the right to refuse to fill such prescriptions and the American Pharmacist's Association support a pharmacist's right to refuse to fill a prescription and refer to another pharmacist. The APhA's position is as follows:

APhA recognizes the individual pharmacist's right to exercise conscientious refusal and supports the establishment of systems to ensure patient's access to legally prescribed therapy without compromising the pharmacist's right of conscientious refusal. When this policy is implemented correctly, and proactively, it is seamless to the patient, and the patient is not aware that the pharmacist is stepping away from the situation. In sum, APhA supports the ability of the pharmacist to step away, not in the way, and supports the establishment of an alternative system for delivery of patient care.<sup>37</sup>

## Summary

Thus, the criteria spelled out by codes of ethics, counseling experts, authoritative texts in the field of counseling and similar practice in other professions were met in the instance where Ms. Ward requested that the EMU clinic client be given to another counselor who did not have a value conflict.

Historically, counselors have respected client welfare by referring clients when a counselor ascertains an inability to provide appropriate and objective care to a client for any reason. This is a reasonable ethical stance in order to prevent client harm. Numerous such ethical conflicts can be envisioned and it seems hard to imagine rational mental health practice without the ability to refer. Counselors are urged to avoid initiating counseling relationships when they foresee that they will not be able to function effectively. Ms. Ward discharged her duty to a client she had not met by requesting a transfer. She could not have imposed values on a client she did not meet. Even if she had met the client, a disclosure of values is not an unethical imposition of those values.

According to the current ACA code of ethics, Ward should avoid entering a counseling relationship, "[i]f counselors determine an inability to be of professional assistance to clients...."<sup>38</sup>

According to the current code of ethics of the American Mental Health Counselors Association, Ward should refer when "... there is a conflict between the client's goals, identity and/or values and those of the mental health counselor...."<sup>39</sup>

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<sup>37</sup> APhA 2008 Issue Briefs. Pharmacist Web site, <http://www.pharmacist.com/AM/Template.cfm?Section=Home2&CONTENTID=15756&TEMPLATE=/CM/ContentDisplay.cfm>.

<sup>38</sup> American Counseling Association. (2005). Code of ethics of the ACA. Alexandria, VA: Author.

<sup>39</sup> American Mental Health Counselors Association. (2000). Code of ethics of AMHCA. Alexandria, VA: Author.

It can be argued that Ward should operate under the AMHCA code of ethics since at the time, she was working in the role of a mental health counselor and not a school counselor. She was not seeing students or parents of students nor was she working in a school. The ACA code of ethics is relevant and the AMHCA code is relevant. One might even wonder why EMU placed Ward in a mental health setting at this stage of her training to be a school counselor.

Gerald Corey indicates that referral is appropriate when the value clash renders the counselor unable to “function effectively.” This was true for Ms. Ward.

The texts used by the EMU program indicate that referral is appropriate when there is a major reservation and incompatibility between the values and goals of the counselor and client.

Other health and mental health professions recognize the conscience of the practitioner. When conscience would be violated by performance of a procedure or pursuit of goals of a client, the practitioner may follow conscience and refer.

Ms. Ward did not prevent the client involved from obtaining services of comparable quality and acted to prevent harm from the client. She did not avoid providing services due to any of the characteristics named in the ACA code of ethics (e.g., sexual orientation). She stated clearly that she is willing to provide services to GLB clients. However, she is bound by conscience to refrain from participating in counseling goals which violate her religious views. Thus, there was no discrimination in her actions.

I am prepared to testify that the witness of other professions, the codes of ethics of major counseling organizations and expert opinion in the profession, including the teaching of her own program is that referral is an appropriate, non-discriminatory response when faced with a major value conflict which renders the counselor unable to be effective with a client.

#### **CERTIFICATION**

I hereby certify that I prepared the foregoing Expert Report based on my review of the data and documents listed. This Report contains an accurate statement of my opinions.

Dated this 24th day of August, 2009.

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Dr. Warren Throckmorton PhD

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One might also question why Ms. Ward was not offered accommodation in the training program based on her religious views in keeping with ACA code of ethics section F.11.b. “Counselor educators provide appropriate accommodations that enhance and support diverse student well-being and academic performance.”