GATEKEEPING AND REMEDIATION IN COUNSELING (SUPERVISION ETHICS)

The Objectives for this course are:
1. To understand the purpose of gatekeeping in counselor education programs
2. To understand the purpose of gatekeeping in postgraduate/licensure placements
3. To understand how the ACES Code of Ethics governs remediation and gatekeeping
4. To understand how the Texas LPC and LMFT Codes of Ethics govern remediation and gatekeeping

Remedial is defined as intended to remediate or improve. Adjectives associated with the term are corrective, restore, and healing.

Today I am going to discuss remediation at several different levels. First, I will address the remediation that I witnessed in my counseling program when I was a student. Usually, if a student was remediated in a graduate school, it was done confidentially (as it should be) and the other students never learned about it except if the remediated student shared what had happened. There was one situation when we did learn of remediation because of the effect it had on a class. The basic practicum class at that time was large and met once a week in the afternoon. We not only discussed clinical cases, but the professor also discussed professional opportunities, continuing education, etc. We had a three hour break between this practicum class and the times we started to see/observe client sessions. People in the class used that break differently with some finding a place to study, others making a quick trip home or going out to get something to eat. Apparently one group of about five students went out drinking during this break and then came back under the influence to see clients. They were caught by the professor and were dismissed from the program. All the rest of us knew was that we had five less people in class, but eventually the story filtered down to us. As a student, I supported the decision by the professor.

Secondly, I will address remediation from a professor’s perspective in a graduate counseling program. Faculty members are expected to be
gatekeepers for the counseling profession. This is expected by our ethical and licensure laws. Most of the literature on remediation addresses issues in counselor education programs and discusses court cases where professors have followed through with remediation according to the ethical and legal standards, and other literature cites examples when professors have not adhered to gatekeeping principles with students. In many counselor education programs, professors meet regularly to discuss students who are experiencing personal, academic or professional issues. Depending on the issues presented, the faculty decides on an informal or formal plan of remediation. Some of the remediation that I have witnessed consisted of having a student take a course over, assign reading on certain topics, be told that counseling was necessary to address personal issues or even be asked to drop out of school for a semester to get their lives straightened out before returning to classes. The academic issues were always the easiest to deal with as there was usually concrete evidence to indicate a student was struggling with a course. Personal or emotional issues were more difficult, and faculty members were expected to carefully document incidents. One woman was overwhelmed with being a single Mom and was asked to take a semester off. She was angry about the remediation but did follow through and came back to the program and was ready to continue. She was thankful after completing the remediation, but she was unable to see what she needed in the midst of her crisis. Other students were inappropriate with each other or with professors, and these issues had to be documented consistently with feedback given to the student. Some students followed through with the advice, but there were those who were belligerent and refused to follow the suggestions from the faculty. These are the remediation issues that cause problems for counselor education programs. The faculty will decide to pursue the removal of the student and follow due process, but the student can challenge it with the administration of the university, and the student can win the challenge. I have seen instances where the administration will support the faculty throughout the entire process and the student gets dismissed, and I have also seen administrations back away from dismissing students for fear of a law suit to the university. If a student gets dismissed from a counselor education program and decides to sue the university, it can be a long and drawn out process even if the university followed every possible procedure. Of more concern is the stance when a counselor education program decides that they do not want to pursue gatekeeping because it can lead to such a legal suit. Dr. Walker and I have just returned from a conference where we attended several session and professors from several universities stated they did not have the time for gatekeeping and it
was the responsibility of the supervisors in the market place to do the
gatekeeping. These statements go against all the ethical and legal guidelines
from our profession. At another panel discussion I heard a professor state
that they did a great job of gatekeeping at their university and their
administration supported them all the way. What a great place to work!

Let’s briefly talk about those universities that shy away from
gatekeeping because they are concerned about being sued. There are several
citations in the literature where students graduated from counselor education
programs, went out to practice, did harm to a client and then the client sued
the university for not preparing the counselor properly and letting a student
graduate who they knew could possibly do harm to clients. The universities
in these cases have a hard time proving that they acted responsibly when this
happens. I once asked a system’s attorney at a university about an impaired
student and keeping him in the program. The lawyer responded that he
would rather defend a university against a dismissed student than have to
defend a university against a harmed client.

There were several situations at a university when the faculty
unanimously agreed to dismiss a student after following due process. The
administration refused to support the dismissal. As a faculty member who
had to make site visits for interns, I can remember several times when a
supervisor/director at a site had worked with the students that we had tried to
dismiss. They confronted me and asked how we could have possibly
sanctioned this student and let the student graduate. Of course, the student
had work issues which caused the site to question us and also the quality of
the program. My personal philosophy about these impaired students is that
they need to be handled when problems occur or otherwise we are going to
hear about them from other sources and be held accountable for not doing
our job. This can have a long-lasting effect on how counselor education
programs are viewed.

Next, this article will look at two cases when universities were sued
for dismissing graduate students from counselor education programs. The
first case is a federal lawsuit against Eastern Michigan University filed by a
national legal group. The suit alleges that the university dismissed the
student for her beliefs on homosexuality (Ann Arbor News, April 06, 2009).
Julia Ward (the student) followed her supervisor’s advice and referred the
client to another counselor did not have a conscience issue with
homosexuality. Ward was informed that she had to undergo remediation to
change her beliefs as they relate to counseling homosexual clients. She
refused the remediation, was given a formal review hearing, and was then
dismissed from the program. The University defended the dismissal by
stating that the University is a diverse campus and does not discriminate on the basis of gender, race, disability, religion, sexual orientation.

The Chronicle of Education (July 22, 2010) presents a second case from Augusta State University in which the claim is made that the university required a counseling student to accept homosexuality. Jennifer Keeton (the counseling student) argued in a lawsuit against the university that she was threatened with expulsion if she did not change her beliefs on homosexuality. She stated that she holds Christian ethical convictions on matters of human sexuality and gender identity. The group defending her, the Alliance Defense Fund, is the same legal team that defended the student in the first case. Her remediation consisted of attending workshops on serving diverse populations, read articles on counseling gay, lesbian, and bisexual and transgendered people, and write reports to an advisor summarizing what she has learned. She has also been ordered to increase her exposure to, and interaction with, gay populations, and suggests that she attend the local gay-pride parade. She has refused to comply.

Let’s look at the ACA Code of Ethics, the Association for Counselor Educators and Supervisors and what they say about the role of Counselor Educators.

F.9. Evaluation and Remediation of Students
Counselors clearly state to students, prior to and throughout the training program, the levels of competency expected, appraisal methods, and timing of evaluations for both didactic and clinical competencies. Counselor educators provide students with ongoing performance, appraisal and evaluation feedback throughout the training program.

F.9.b Limitations
Counselor educators, throughout ongoing evaluation and appraisal are aware of and address the inability of some students to achieve counseling competencies that might impede performance Counselor educators:
1. Assist students in securing remedial assistance when needed
2. Seek professional consultation and document their decision to dismiss or refer students for assistance and
3. Ensure that students have recourse in a timely manner to address decisions to require them to seek assistance or to dismiss them and provide students with due process

F.9.c Counseling for students
If students request counseling or if counseling services are required as part of a remediation process, counselor educators provide acceptable referrals.

DO YOU HAVE ANY EXAMPLES OF IMPAIRED STUDENTS AND REMEDIATION PROCEDURES IN COUNSELOR EDUCATION PROGRAMS? IF YOU HAD BEEN A FACULTY MEMBER IN YOUR COUNSELING PROGRAM, WOULD YOU HAVE TAKEN ANY ACTION AGAINST ANY PEERS AND WHAT WOULD THAT ACTION BE? WHAT WOULD YOUR FEARS BE OF TAKING ANY ACTION?

The ACES Code of Ethics for Counseling (aside from counselor education programs)
The Association for Counselor Educators and Supervisors has specific standards that are infused in the American Counseling Association’s code of ethic that apply to counseling in general.

The Introduction states:
Counselors aspire to foster meaningful and respectful relationships and to maintain boundaries with supervisees and students. Counselors have theoretical and pedagogical foundations for their work and aim to be fair, accurate, and honest in their assessments of counselors-in-training.

F.1. Counselor Supervision and Client Welfare

F.1.a A primary obligation of counseling supervisors is to monitor the services by other counselors or counselors-in-training. Counselor supervisors monitor client welfare and supervisee clinical performance and professional development. To fulfill these obligations supervisors meet regularly with supervisees to review case notes, samples of clinical work or live observations. Supervisees have a responsibility to understand and follow the ACA Code of Ethics.

F.4.d., Termination of the Supervisory Relationship
Supervisors or supervisees have the right to terminate the supervisory relationship with adequate notice. Reasons for withdrawal are provided to the other party. When cultural, clinical, or professional issues are crucial to the viability of the supervisory relationship, both parties make efforts to resolve differences. When termination is warranted, supervisors make appropriate referrals to possible alternate supervisors.
F.5. Counseling Supervision Evaluation, Remediation, and Endorsement
Supervisors document and provide supervisees with ongoing performance appraisal and evaluation feedback and schedule periodic formal evaluative sessions throughout the supervisory relationship.

F.5.b Limitations
Through ongoing evaluations and appraisals, supervisors are aware of the limitations of supervisees that might impede performance. Supervisors assist supervisees securing remedial assistance when needed. They recommend dismissal from training programs, applied counseling settings, or state or voluntary credentialing processes when those supervisees are unable to provide competent counseling services. Supervisors seek consultation and document their decisions to dismiss or refer supervisees for assistance. They ensure that supervisees are aware of options available to them to address such decisions.

F.5.c. Counseling for Supervisees
If supervisees request counseling, supervisors provide them with acceptable referrals. Counselors do not provide counseling services to supervisees. Supervisors address interpersonal competencies in terms of the impact of these issues on clients, the supervisory relationship, and professional functioning.

F.5.d. Endorsement
Supervisors endorse supervisees for certification, licensure, employment, or completion of an academic training program only when they believe supervisees are qualified for the endorsement. Regardless of qualifications, supervisors do not endorse supervisees whom they believe to be impaired in any way that would interfere with the performance of the duties associated with the endorsement.

Next, let’s look at the licensure laws in Texas for the LPC and the LMFT for remediation issues. LPC Section 681.93 (e,4) say If a supervisor determines that the LPC Intern may not have the counseling skills or competence to practice professional counseling under a regular license, the supervisor shall develop and implement a written plan of remediation of the
LPC Intern . LMFT 801.143 (f,4) says if a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under a regular license, the supervisor shall develop and implement a written plan for remediation of the LMFT Associate.

In the past we have documented remediation issues in regular supervision notes, but at Achieve Balance, we have devised a specific remediation form that clearly describes what the problem is, the remediation that is to be done, and whether or not it was completed. There is a place for both the supervisor and the supervisee to sign and date. The document also allows for a section if the remediation was not completed and if additional remediation is to be assigned or if the supervision is to be terminated. This contract is separate from the regular supervision notes, and it conveys to the supervisee the importance of resolving the issue. It is also a good tracking document for how the supervision is proceeding.

If you look on the websites for the LPC and the LMFT, you will find a link to enforcement issues and often counselors will have remediation after their names. There are several ways to remediate counselors who already have their license, and some of the listings on these websites cite telling the counselor that they need to be under additional hours of supervision. Others might be asked to take workshops on billing, etc. The Boards can be creative with these remediation assignments, and they depend upon the type of problem that occurred and the best possible solution to the problem.

The Boards states different kinds of actions may be taken depending on the severity of offense, the history of previous violations, efforts made to correct the violation, the harm to the victim(s), the likelihood of a repeat violation, and other matters related to each particular situation. Several examples of remedial type actions by the Board involved billing practices, general ethical violations, supervisors not having a current license when supervising interns. The consequences for these actions might be remediation, probation, suspension of the license for a specified period of time.

**LITTLE ON REMEDIATION DURING LICENSURE HOURS**

As stated before, most of the literature review focuses on counselor education programs and how they handle remediation. There are also some citations on licensure in different states and remediation requirements. There
is hardly anything referenced on remediation issues for counselors under supervision or counselors independently in practice. This is definitely an area that needs research.

REMEDIATION ISSUES post graduation

I will introduce this section by providing an example of a situation that I observed while I was working on my doctorate. I was employed at a family service agency and the executive director announced to us that we were going to have an audit by the outside agency responsible for overseeing what we did. The secretary pulled five files of each of the therapists working in the agency. There were two clinicians who had not done case notes in any of their files for two years. The executive director responded to this with a remediation program. He decided that those two clinicians were not allowed to see any clients until they caught up with their case notes. The clinicians were to stay in their offices and do the notes. When this was assigned, the rest of us just shook our heads and asked how anyone can possibly create case notes for two years. Shortly after this incident, I left this agency and was concerned about the association with it. The executive director was removed from his post within a few months and most people assumed it was because of his intent to cover up this issue and the ridiculous assignment of the case notes. I am not exactly sure what the correct remediation could have been for those two clinicians, but falsifying records was not the right approach.

Clinical supervisors and remediation

In the profession, we do not often hear about remediation issues unless we are working with others or are in a consultation group. These remediation issues are usually confidential following due process of the confidentiality of the supervision sessions.

At issue for me is whether or not an issue can be remediated. Supervisors are sensitive at all different levels and what one supervisor might consider an issue for remediation another might not consider something to be formally addressed. A good guide for this to follow the guidelines of our professional associations and licensure groups and consult, consult, consult.

Questions to ask yourself when confronted with an issue:

ASK YOURSELF CAN THE ISSUE BE REMEDIATED
AM I WILLING TO DO THE REMEDIATION
DO I THINK THE SUPERVISEE WILL PARTICIPATE

I recently have experienced two examples in supervision when confidentiality was breached by supervisees I responded differently to each due to their work situations and the possible repercussions of what they did. The first example involved the disclosure of a list of all underage clients at a shelter in an email that was sent to a couple being seen in a private practice setting. This particular intern was experiencing multiple problems at the site, and when the site administrators were informed of the breach, they immediately wanted her licensure numbers and the phone numbers of the licensure boards to report the problem. The supervisee and I both went on the offensive and each sent a letter reporting the incident to the Boards. I did not want the Boards getting a complaint about this incident without the two of us being proactive. The supervisee and I developed a remediation plan that included additional supervision and additional review of the licensure codes. This supervisee also took action to balance her schedule and pull back on extra activities that had her on burnout.

The second incident involved a supervisee contacting a school counselor without a release of information from the client. We processed this information in group supervision, she informed the client and also the agency where she was working. Her supervisor on site was supportive and recognized it as a learning experience as an intern. The client understood why the supervisee called. This was not reported to the Boards, but a remediation contract was drawn up.

After being in the counseling profession for so many years, I cannot think of too many issues that cannot be remediated. Obviously, harm to any client due to a sexual relationship or refusing to report any type of abuse might fall into those categories that cannot be remediated. If a supervisee does not understand the reasons or steps for remediating, that is different from a supervisee who is directed to report and defies that direction.

WHAT REMEDIATION ISSUES IN COUNSELING WOULD YOU BE WILLING TO WORK WITH? HAVE YOU THOUGHT ABOUT THE STEPS INVOLVED AND HOW THEY WOULD BE CARRIED OUT?

TERMINATION ISSUES (WORKSHOP PARTICIPANTS)

The next question we ask is when we would bypass remediation and move to termination. We asked participants in our last supervision workshop what issues would lead to termination of the supervision relationship. All agreed that a sexual relationship would definitely lead to termination, also
others said any violation of the ethical codes and one responded if a supervisee lied to them. I can certainly agree with the sexual relationship with a client, but I believe the other issues can possibly be remediated. If a supervisee lied to me, I would wonder what is going on with the supervisee. Is it an attempt to conceal an insecurity and not be seen as incompetent or if the lie was to deceive. Those are two very different premises. If someone is feeling insecure, I will respond and help to empower them. Lying strictly for deception is a different issue. If ethical issues have been violated, let’s examine the issues and whether or not the supervisee understands what they did.

I have terminated two people in my career as a supervisor. One individual refused to report child abuse and then lied to me about it. The second person missed several supervision sessions with no call. She was sent an email and a letter and told that the next no show would result in termination. She went on vacation and did not call to inform me that she would not be in supervision. She was then terminated. I consider those two supervisees as liabilities, and I am not willing to risk my license on them.

WHAT ISSUES WOULD LEAD YOU DIRECTLY TO TERMINATION BYPASSING REMEDIATION?

RESOURCES USED IN THIS COURSE
The American Counseling Association’s Code of Ethics (2005)
The Texas LPC Code of Ethics
The Texas LMFT Code of Ethics
Ann Arbor News, April 07, 2009
The Chronicle of Higher Education, July 22, 2010