

The ethics of fee splitting

Question: Can you please explain Standard A.10.b., Unacceptable Business Practices, to me? It just seems as if the American Counseling Association doesn't want me to make any money.

Answer: First, please note that this response is framed from an *ethical* perspective and not a *legal* perspective. You will want to consult with an attorney to address any legal concerns.

The notion of fee splitting is not a new one for the American Counseling Association. To provide a historical backdrop, the act of fee splitting based on referrals was addressed in the 1995 *ACA Code of Ethics* under Standard D.3., Fees for Referral: "Counselors do not accept a referral fee from other professionals."

In the 2005 *ACA Code of Ethics*, the idea was removed. However, the ACA Ethics Department and practitioners on the Ethics Revision Task Force (ERTF) had examples of referrals being made based not on counselor competency and the best interest of the client, but rather out of financial interest for the company. Therefore, the ERTF wanted to address the issue from an ethical standpoint. The official ACA statement regarding fee splitting follows:

"The 2014 Ethics Revision Task Force (ERTF) intended to bring that idea back into the *Code of Ethics* and to clarify some other aspects of fee splitting that went beyond just referral. It can be considered an unacceptable business practice to charge a percentage of payment rate per client for the use of office space because it could be seen as a 'kickback.' In other words, the individual who is renting out the space may be more inclined to refer clients to the clinician who pays out at a higher percentage rate rather than referring based on caseload, competency and/or rotation. We understand that common practice, as a way to cut costs as a beginning practitioner, is that payment rates are based on caseload. However, it is ACA's recommendation to establish a set amount regardless of

the clinician's caseload and perhaps renegotiate as more income is achieved. The key element is to ensure that there is no ulterior motive for the basis of referrals to the clinician. Referrals should be based on considerations such as the needs of the client, competency and availability.

"We want to also make it clear that there were contract therapists on the ERTF who addressed the issue of percentages of fees being paid to the organization doing the contracting. We have also submitted that to the ACA legal department for clarification. The determination and understanding was that because the organization tends to handle billing, housing of the client records and other overhead costs, that would not be considered 'fee splitting' but rather a contractual obligation to the organization. The organization is the party responsible for the overall provision of services and care to the client, not the contract therapist. In other words, the percentage of fee going to cover the rent would be considered similar to a payment for services the counselor is procuring from the organization. Again, however, ACA would recommend a set amount being established rather than a percentage."

The main question to keep in mind is: What is in the best interest of the client? We should then do all that we can to eliminate the concern for harm to the client. Agencies need to clarify policies and procedures regarding case assignment. There cannot be any concern that a client is not being afforded or offered the proper level of care because the agency stands to benefit more financially from assigning the case to one particular counselor rather than another.

For example, in the state of Maryland, licensed graduate professional counselors (LGPC) are not considered fully licensed because they are still under supervision. Therefore, they may receive a lesser amount for work than a fully licensed clinical professional counselor (LCPC) would receive (for example, \$30 per hour

versus \$35 per hour). Let's say the agency charges the client a flat rate of \$100 per hour for the provided services. The agency may be inclined to assign cases to the LGPC over the LCPC to receive more profit (in this case, an extra \$5 per hour). The agency can charge the counselor an amount for the handling of overhead costs such as billing and office space. However, the assignment of cases must not be based on financial motivations. If they are, that would be considered an unacceptable business practice.

It is best practice to speak with an attorney regarding the legality of the arrangements a counselor may be about to engage in. From an ethics standpoint, clients should be referred or assigned to the counselor who is most appropriate for that client, not necessarily the counselor who will bring in more profit for the agency. Again, always put the best interest of your client first and foremost.



The questions addressed in this column are submitted by ACA members for educational purposes. Submit questions or comments to mwade@counseling.org with the subject line "Ethics Column." As a reminder, a benefit of ACA membership is personal ethical consultations through the ACA Ethics Department at 800.347.6647 ext. 314 or ethics@counseling.org. ♦

Michelle E. Wade is an ethics specialist with the ACA Ethics Department. She is also licensed as a professional counselor. She serves as co-editor of the Ethics Inquiries column with Erin Stolsmark.

Letters to the editor:
ct@counseling.org