

102-3-12a. Unprofessional conduct. (a) Any license may be suspended, limited, conditioned, qualified, restricted, revoked, not issued, or not renewed upon a finding of unprofessional conduct.

(b) Any of the following acts by a licensed professional counselor, a licensed clinical professional counselor, or an applicant for a professional counselor license or a clinical professional counselor license shall constitute unprofessional conduct:

(1) Obtaining or attempting to obtain a license or registration for oneself or another by means of fraud, bribery, deceit, misrepresentation, or concealment of a material fact;

(2) except when the information has been obtained in the context of confidentiality, failing to notify the board, within a reasonable period of time, that any of the following circumstances apply to any person regulated by the board or applying for a license or registration, including oneself:

(A) Had a professional license, certificate, permit, registration, certification, or professional membership granted by any jurisdiction, professional association, or professional organization that has been limited, conditioned, qualified, restricted, suspended, revoked, refused, voluntarily surrendered, or allowed to expire in lieu of or during investigatory or disciplinary proceedings;

(B) has been subject to any other disciplinary action by any credentialing board, professional association, or professional organization;

(C) has been demoted, terminated, suspended, reassigned, or asked to resign from employment, or has resigned from employment, for some form of misfeasance, malfeasance, or nonfeasance;

(D) has been convicted of a crime; or

(E) has practiced the licensee's or registrant's profession in violation of the laws or regulations regulating the profession;

(3) knowingly allowing another person to use one's license or registration;

(4) impersonating another person holding a license or registration issued by this or any other board;

(5) having been convicted of a crime resulting from or relating to the licensee's professional practice of professional counseling or clinical professional counseling;

(6) furthering the licensure or registration application of another person who is known or reasonably believed to be unqualified with respect to character, education, or other relevant eligibility requirements;

(7) knowingly aiding or abetting any individual who is not credentialed by the board to represent that individual as a person who is credentialed by the board;

(8) failing to recognize, seek intervention, and otherwise appropriately respond when one's own personal problems, psychosocial distress, or mental health difficulties interfere with or negatively impact professional judgment,

professional performance and functioning, or the ability to act in the client's best interests;

(9) failing or refusing to cooperate in a timely manner with any request from the board for a response, information, or assistance with respect to the board's investigation of any report of an alleged violation filed against oneself or any other applicant or professional who is required to be licensed or registered by the board. Any person taking longer than 30 days to provide the requested response, information, or assistance shall have the burden of demonstrating that the person has acted in a timely manner;

(10) offering to perform or performing professional counseling, assessments, consultations, or referrals clearly inconsistent or incommensurate with one's training, education or experience or with accepted professional standards;

(11) treating any client, student, directee, or supervisee in a cruel manner;

(12) discriminating against any client, student, directee, or supervisee on the basis of color, race, gender, religion, national origin, or disability;

(13) failing to advise and explain to each client the respective rights, responsibilities, and duties involved in the professional counseling relationship;

(14) failing to provide each client with a description of what the client can expect in the way of services, consultation, reports, fees, billing, and therapeutic regimen or schedule, or failing to reasonably comply with the description;

(15) failing to provide each client with a description of the possible effects of the proposed treatment when the treatment is experimental or when there are clear and known risks to the client;

(16) failing to inform each client, student, directee, or supervisee of any financial interests that might accrue to the professional counselor or clinical professional counselor from a referral to any other service or from using any tests, books, or apparatus;

(17) failing to inform each client that the client is entitled to the same services from a public agency if the professional counselor or clinical professional counselor is employed by that public agency and also offers services privately;

(18) failing to inform each client, student, directee, or supervisee of the limits of client confidentiality, the purposes for which the information is obtained, and the manner in which the information may be used;

(19) revealing information, a confidence, or a secret of any client, or failing to protect the confidences, secrets, or information contained in a client's records, except when at least one of these conditions is met:

(A) Disclosure is required or permitted by law;

(B) failure to disclose the information presents a clear and present danger to the health or safety of an individual or the public; or

(C) the professional counselor or clinical professional counselor is a party to a civil, criminal, or disciplinary investigation or action arising from the practice

of professional counseling or clinical professional counseling, in which case disclosure is limited to that action;

(20) failing to obtain written, informed consent from each client, or the client's legal representative or representatives, before performing any of these actions:

(A) Electronically recording sessions with that client;

(B) permitting a third-party observation of their activities; or

(C) releasing information concerning a client to a third person, except as required or permitted by law;

(21) failing to protect confidences of, secrets of, or information concerning other persons when providing a client with access to that client's records;

(22) failing to exercise due diligence in protecting the information regarding and the confidences and secrets of the client from disclosure by other persons in one's work or practice setting;

(23) engaging in professional activities, including billing practices and advertising, involving dishonesty, fraud, deceit, or misrepresentation;

(24) ~~using alcohol or illegally using a controlled substance~~ Being under the influence of any substance that impairs professional judgement while performing the duties or services of a professional counselor or clinical professional counselor;

(25) engaging in sexual behavior including sexual harassment, making sexual advances toward, ~~or~~ engaging in physical intimacies or engaging in

sexual activities with one's active client, active student, directee, or supervisee or anyone with whom they have power or authority;

(26) engaging in sexual behavior including sexual harassment, making sexual advances toward, engaging in physical intimacies or sexual activities with, or exercising undue influence over any person who, within the past ~~24~~ 60 months, has been one's client, client's romantic partners, or the client's family member, or anyone with whom they have power or authority;

(27) exercising undue influence over any client, student, directee, or supervisee, including promoting sales of services or goods, in a manner that will exploit the client, student, directee, or supervisee for the financial gain, personal gratification, or advantage of oneself or a third party;

(28) directly or indirectly offering or giving to a third party or soliciting, receiving, or agreeing to receive from a third party any fee or other consideration for the referral of the client or in connection with performing professional counselor or clinical professional counselor services;

(29) permitting any person to share in the fees for professional services, other than a partner, employee, associate in a professional firm, or consultant authorized to practice as a professional counselor or clinical professional counselor;

(30) soliciting or assuming professional responsibility for clients of another agency or colleague without attempting to coordinate continuity of client services with that agency or colleague;

(31) making claims of professional superiority that one cannot substantiate;

(32) guaranteeing that satisfaction or a cure will result from the performance of professional services;

(33) claiming or using any secret or special method of treatment or techniques that one refuses to disclose to the board;

(34) continuing or ordering tests, procedures, or treatments or using treatment facilities or services not warranted by the condition, best interests, or preferences of the client;

(35) failing to maintain a record for each client that conforms to the following minimal requirements:

(A) Contains adequate identification of the client;

(B) indicates the client's initial reason for seeking the services of the professional counselor or clinical professional counselor;

(C) contains pertinent and significant information concerning the client's condition;

(D) summarizes the interventions, treatments, tests, procedures, and services that were obtained, performed, ordered, or recommended and the findings and results of each;

(E) documents the client's progress during the course of intervention or treatment provided by the professional counselor;

(F) is legible;

(G) contains only those terms and abbreviations that are comprehensible to similar professional practitioners;

(H) indicates the date and nature of any professional service that was provided; and

(I) describes the manner and process by which the professional counseling or clinical professional counseling relationship terminated;

(36) taking credit for work not personally performed, whether by giving inaccurate or misleading information or failing to disclose accurate or material information;

~~(37) if engaged in research, failing to fulfill these requirements:~~ Failing to consider the possible consequences on participants, failing to take all reasonable precautions on behalf of participants' welfare, or causing emotional, physical, or social harm to participants throughout the research process, according to all current state and federal laws and statutes for conducting research

~~(A) Consider carefully the possible consequences for human beings participating in the research;~~

~~(B) protect each participant from unwarranted physical and mental harm;~~

~~(C) ascertain that the consent of each participant is voluntary and informed; and~~

~~(D) preserve the privacy and protect the anonymity of each subject of the research within the terms of informed consent;~~

(38) making or filing a report that one knows to be false, distorted, erroneous, incomplete, or misleading;

(39) failing to notify the client promptly when termination or interruption of service to the client is anticipated;

(40) failing to seek continuation of service, or abandoning or neglecting a client under or in need of professional care, without making reasonable arrangements for that care;

(41) abandoning employment under circumstances that seriously impair the delivery of professional care to clients and without providing reasonable notice to the employer;

(42) failing to terminate the professional counseling or clinical professional counseling services when it is apparent that the relationship no longer serves the client's needs or best interests;

(43) if the professional counselor or clinical professional counselor is the owner or custodian of client records, failing to retain these records for at least five years after the date of termination of the professional relationship, unless otherwise provided by law;

(44) supervising or directing in a negligent manner anyone for whom one has supervisory or directory responsibility;

(45) failing to inform a client if professional counseling services are provided or delivered under supervision or direction;

(46) engaging in a dual relationship with a client, student, or supervisee;

(47) failing to inform the proper authorities as provided in K.S.A. 38-2223, and amendments thereto, that one knows or has reason to believe that a client has been involved in harming or has harmed a child, whether by physical, mental, or emotional abuse or neglect or by sexual abuse;

(48) failing to inform the proper authorities as required by K.S.A. 39-1402, and amendments thereto, that one knows or has reason to believe that any of the following circumstances apply to a resident, as defined by K.S.A. 39-1401(a) and amendments thereto:

(A) Has been or is being abused, neglected, or exploited;

(B) is in a condition that is the result of abuse, neglect, or exploitation; or

(C) is in need of protective services;

(49) failing to inform the proper authorities as required by K.S.A. 39-1431, and amendments thereto, that one knows or has reason to believe that any of the following circumstances apply to an adult, as defined in K.S.A. 39-1430 and amendments thereto:

(A) Is being or has been abused, neglected, or exploited;

(B) is in a condition that is the result of abuse, neglect, or exploitation; or

(C) is in need of protective services;

(50) intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing the filing of a report or record required by state or federal law, or inducing another person to take any of those actions;

(51) offering to perform or performing any service, procedure, or therapy that, by the accepted standards of professional counseling or clinical professional counseling practice in the community, would constitute experimentation on human subjects without first obtaining the full, informed, and voluntary written consent of the client or the client's legal representative or representatives;

(52) practicing professional counseling or clinical professional counseling in an incompetent manner;

(53) practicing professional counseling or clinical professional counseling after one's license expires;

(54) using without a license, or continuing to use after the expiration of a license, any title or abbreviation prescribed by law for use solely by persons currently holding that type or class of license;

~~(55) diagnosing or treating any client who a professional counselor practicing under direction or a clinical professional counselor has reason to believe is suffering from a mental illness or disease, as opposed to a mental disorder.~~ Practicing inappropriate boundaries with clients with regards to use of social media including but not limited to, using a personal profile to connect or communicate with clients on any social media platform, or accessing a client's social media pages without previous consent; or

(56) Disclosing confidential information through public social media;

(57) If engaged in distance-counseling, failing to fulfill these requirements:

(A) Informing the client of risks and benefits of distance counseling,

(B) Disclosing the possibility of technology failure and providing alternative methods of service,

(C) Detailing emergency procedures to follow when the counselor is unavailable, and

(D) Taking appropriate steps to encrypt or ensure the security of confidential client information or any activity which protects confidential client information from risk of privacy breach; and

~~(56)~~ (58) violating any provision of this act or any regulation adopted under it. (Authorized by K.S.A. 2007 Supp. 65-5809 and 74-7507; implementing K.S.A. 2007 Supp. 65-5809; effective Dec. 19, 1997; amended July 19, 2002; amended Jan. 9, 2004; amended Aug. 8, 2008; amended P-_____.)