

102-1-10a. Unprofessional conduct.

Each of the following shall be considered unprofessional conduct:

(a) Practicing psychology in an incompetent manner, which shall include the following acts:

(1) Misrepresenting professional competency by offering to perform services that are inconsistent with the licensee's education, training, or experience;

(2) performing professional services that are inconsistent with the licensee's education, training, or experience; and

(3) without just cause, failing to provide psychological services that the licensee is required to provide under the terms of a contract;

(b) practicing with impaired judgment or objectivity, which shall include the following acts:

(1) Using alcohol or other substances to the extent that it impairs the psychologist's ability to competently engage in the practice of psychology; and

(2) failing to recognize, seek intervention, and make arrangements for the care of clients if one's own personal problems, emotional 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;

(c) engaging in harmful dual relationships, which shall include the following acts:

(1) Making sexual advances toward or engaging in physical intimacies or sexual activities with either of the following:

(A) Any person who is a client; or

(B) any person that the licensee knows who has a significant relationship with the client, supervisee, or student;

(2) failing to inform the client or patient of any financial interests that might accrue to the licensed psychologist for referral to any other service or for the sale, promotion, or use of any tests, books, electronic media, or apparatus; and

(3) exercising undue influence over any client;

(d) making sexual advances toward or engaging in physical intimacies or sexual activities with, or exercising undue influence over any person who, within the past 24 months, has been a client;

(e) failing to obtain informed consent, which shall include the following acts:

(1) Failing to obtain and document, in a timely manner, informed consent from the client or legally authorized representative for clinical psychological services before the provision of any of these services except in an emergency situation. This informed consent shall include a description of the possible effects of treatment or procedures when there are known risks to the client or patient;

(2) failing to provide clients or patients with a description of what the client or patient may expect in the way of tests, consultation, reports, fees, billing, and collection; and

(3) failing to inform clients or patients when a proposed treatment or procedure is experimental;

(f) ignoring client welfare, which shall include the following acts:

(1) Failing to provide copies of reports or records to a licensed healthcare provider authorized by the client following the licensee's receipt of a formal written request, unless the release of that information is restricted or exempted by law or by these regulations, or the disclosure of the information would be injurious to the welfare of the client;

(2) failing to inform the client or patient that the client or patient is entitled to the same services from a public agency if the licensed psychologist is employed by that public agency and also offers services privately;

(3) engaging in behavior that is abusive or demeaning to a client, student, or supervisee;

(4) soliciting or agreeing to provide services to prospective clients or patients who are already receiving mental health services elsewhere without openly discussing issues of disruption of continuity of care with the prospective client or patient, or with other legally authorized persons who represent the client or patient, and when appropriate, consulting with the other service provider about the likely effect of a change of providers on the client's general welfare;

(5) failing to take each of the following steps before termination for whatever reason, unless precluded by the patient's or client's relocation or noncompliance with the treatment regimen:

(A) Discuss the patient's or client's views and needs;

(B) provide appropriate pretermination counseling;

(C) suggest alternative service providers, as appropriate; and

(D) take other reasonable steps to facilitate the transfer of responsibility to another provider if the patient or client needs one immediately;

(6) failing to arrange for another psychologist or other appropriately trained mental health professional to be available to handle clinical emergencies if the psychologist anticipates being unavailable for a significant amount of time;

(7) failing to be available for the timely handling of clinical emergencies after having agreed to provide coverage for another psychologist;

(8) failing to terminate a professional relationship if it becomes reasonably clear that the patient or client no longer needs the service, is not benefiting from continued service, or is being harmed by continued service;

(9) failing to delegate to employees, supervisees, and research assistants only those responsibilities that these persons can reasonably be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided;

(10) failing to provide training and supervision to employees or supervisees and to take reasonable steps to see that these persons perform services responsibly, competently, and ethically; and

(11) continuing to use or order tests, procedures, or treatment, or to use treatment facilities or services not warranted by the client's or patient's condition;

(g) failing to protect confidentiality, which shall include the following acts:

(1) Failing to inform each client, supervisee, or student of the limits of client confidentiality, the purposes for which the information may be obtained, and the manner in which it may be used;

(2) revealing any information regarding a client or failing to protect information contained in a client's records, unless 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 and safety of an individual or the public;

(C) the psychologist is a party to a civil, criminal, or disciplinary investigation or action arising from the practice of psychology, in which case disclosure shall be limited to that action; or

(D) the patient has signed a written release that authorizes the psychologist to release information to a specific person or persons identified in the release; and

(3) failing to obtain written, informed consent from each client or the client's legal representative or representatives or from any other participant before performing either of the following actions:

(A) Electronically recording sessions with the client, or other participants, including audio and video recordings; or

(B) permitting third-party observation of the activities of the client or participant;

(h) misrepresenting the services offered or provided, which shall include the following acts:

(1) Failing to inform a client if services are provided or delivered under supervision;

(2) making claims of professional superiority that cannot be substantiated;

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

(4) knowingly engaging in fraudulent or misleading advertising; and

(5) taking credit for work not personally performed;

(i) engaging in improprieties with respect to fees and billing statements, which shall include the following acts:

(1) Exploiting clients or payers with respect to fees;

(2) misrepresenting one's fees;

(3) failing to inform a patient or client who fails to pay for services as agreed that collection procedures may be implemented, including the possibility that a collection agency may be used or legal measures may be taken; and

(4) filing claims for services that were not rendered;

(j) improperly using assessment procedures, which shall include the following acts:

(1) Basing assessment, intervention, or recommendations on test results and instruments that are inappropriate to the current purpose or to the patient characteristics;

(2) failing to identify situations in which particular assessment techniques or norms may not be applicable or failing to make adjustments in administration or interpretation because of relevant factors, including gender, age, race, and other pertinent factors;

(3) failing to indicate significant limitations to the accuracy of the assessment findings;

(4) failing to inform individuals or groups at the outset of an assessment that the psychologist is precluded by law or by organizational role from providing information about results and conclusions of the assessment;

(5) endorsing, filing, or submitting psychological assessments, recommendations, reports, or diagnostic statements on the basis of information and techniques that are insufficient to substantiate those findings;

(6) releasing raw test results or raw data either to persons who are not qualified by virtue of education, training, or supervision to use that information or in a manner that is inappropriate to the needs of the patient or client; and

(7) allowing, endorsing, or supporting persons who are not qualified by virtue of education, training, or supervision to administer or interpret psychological assessment techniques;

(k) violating applicable law, which shall include the following acts:

(1) Impersonating another person holding a license issued by this or any other board;

(2) claiming or using any method of treatment or diagnostic technique that the licensed psychologist refuses to divulge to the board;

(3) refusing to cooperate in a timely manner with the board's investigation of complaints lodged against an applicant or a psychologist licensed by the board. Any psychologist taking longer than 30 days to provide requested information shall have the burden of demonstrating that the psychologist has acted in a timely manner; and

(4) being convicted of a crime resulting from or relating to the licensee's professional practice of psychology;

(1) aiding an illegal practice, which shall include the following acts:

(1) Knowingly allowing another person to use one's license;

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

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

(4) making a materially false statement or failing to disclose a material fact in an application for licensure or renewal of licensure; and

(5) failing to notify the board, within a reasonable period of time, that any of the following conditions apply to the psychologist or that the psychologist has knowledge, not obtained in the context of confidentiality, that any of the following conditions apply to another professional regulated by the board:

(A) A licensee has had a license, certificate, permit, registration, or other certificate, registration, or license in psychology or in the field of behavioral sciences, granted by any state or jurisdiction, that has been limited, restricted, suspended, or revoked;

(B) a licensee has been subject to disciplinary action by a licensing or certifying authority or professional association;

(C) a licensee has been terminated or suspended from employment for some form of misfeasance, malfeasance, or nonfeasance;

(D) a licensee has been convicted of a felony; or

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

A psychologist taking longer than 30 days to notify the board shall have the burden of demonstrating that the psychologist acted within a reasonable period of time;

(m) failing to maintain and retain records as outlined in K.A.R. 102-1-20;

(n) improperly engaging in research with human subjects, which shall include the following acts:

(1) Failing to consider carefully the possible consequences for human beings participating in the research;

(2) failing to protect each participant from unwarranted physical and mental harm;

(3) failing to ascertain that the consent of the participant is voluntary and informed; and

(4) failing to preserve the privacy and protect the anonymity of the subjects within the terms of informed consent;

(o) engaging in improprieties with respect to forensic practice, which shall include the following acts:

(1) When conducting a forensic examination, failing to inform the examinee of the purpose of the examination and the difference between a forensic examination and a therapeutic relationship;

(2) in the course of giving expert testimony in a legal proceeding, performing a psychological assessment in a biased, nonobjective, or unfair manner or without adequate substantiation of the findings;

(3) failing to conduct forensic examinations in conformance with established scientific and professional standards; and

(4) if a prior professional relationship with a party to legal proceeding precludes objectivity, failing to report this prior relationship and to clarify in both written report and actual testimony the possible impact of this prior relationship on the resulting conclusions and recommendations; and

(p) engaging in improprieties with respect to supervision, which shall include the following acts:

(1) Failing to provide supervision in compliance with subsection (d) of K.A.R. 102-1-5a;

(2) failing to provide supervision to a person working towards licensure as a clinical psychotherapist in compliance with KAR 102-4-7a; and

(3) failing to provide regular, periodic, written supervisory feedback to the supervisee.

(Authorized by and implementing K.S.A. 2000 74-7507 and K.S.A. 74-5324; effective Jan. 4, 2002; amended Jan. 9, 2004.)