

Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE

(1) Agency: Department of State, Bureau of Professional and Occupational Affairs, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

(2) Agency Number: 16A

Identification Number: 6911

IRRC Number: 2701

RECEIVED
IRRC
2000 JUL 14 A 10:21

(3) Short Title:
Code of Ethical Practice and Standards of Professional Conduct

(4) PA Code Cite:
49 Pa. Code §§47.71-47.80, 48.71-48.80, and 49.71-49.80.

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: David Green, Regulatory Unit Counsel, Department of State, 2601 North Third Street, Harrisburg, PA 17105; Phone Number: (717) 783-7200; Fax Number: (717) 787-0251; E-mail address: cymontgome@state.pa.us

Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State, 2601 North Third Street, Harrisburg, PA 17105; Phone Number: (717) 783-7200; Fax Number: (717) 787-0251; E-mail address: jmckeever@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The final rulemaking sets forth standards pertaining to the ethical responsibility of a licensee to clients/patients. These responsibilities include: competency, informed consent, confidentiality and privacy, the proper manner of terminating services, nondiscrimination, and payment for services. It also prohibits dual or multiple relationships affecting the licensee's judgment, sexual harassment, and impaired practice. The rulemaking further sets standards for ethical research and publication, recordkeeping, advertising and mandatory reporting.

(9) Include a schedule for review of the regulation including: (To be completed once a delivery date is determined.)

- A. The date by which the agency must have received public comments: **June 14, 2008**
- B. The date or dates on which public meetings or hearings were held: **February 10, 2009, March 10, 2009, February 9, 2010, March 10, 2009, April 6, 2010, May 11, 2010.**
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Anticipated Fall 2010**
- D. The expected effective date of the final-form regulation: **Upon publication as final-form rulemaking.**
- E. The date by which compliance with the final-form regulation will be required: **Upon publication as final-form rulemaking – Anticipated Fall of 2010.**
- F. The date by which required permits, licenses or other approvals must be obtained: **Not applicable.**

(10) Provide the schedule for continual review of the regulation.

The Board continually monitors the effectiveness of its regulations.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The regulations would implement section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P.S. §1906(2)) by providing for standards of professional practice and conduct for licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Section 6(2) of the act authorizes the Board to adopt rules and regulations establishing standards of professional practice and conduct for licensees.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

There is a compelling public interest in requiring licensees to comply with standards of professional practice and ethical conduct.

Absent these additions, the Board would find it difficult to discipline a licensee for violating section 11(a)(7) of the act (63 P.S. § 1911(a)(7)) for violating regulations pertaining to standards of professional practice and conduct. In addition, without these additions, licensees would not be on notice as to what standards of professional practice and ethical conduct they must adhere to.

All licensees will benefit from the regulations by providing notice of the standards of professional practice and conduct that they must adhere to. Also, consumers of social work, clinical social work, marriage and family therapy and professional counseling services would benefit from these regulations by being protected from licensees who practice unethically.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

There are no perceived people or groups of people who would be adversely affected by this regulation.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors would be required to comply with the regulations. There are currently 6,684 licensed social workers, 4,385 licensed clinical social workers, 433 licensed marriage and family therapists and 4,190 licensed professional counselors.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no costs or savings associated with complying with these regulations.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments resulting from these regulations.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs to state government in implementing these regulations.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 06-07	FY -2 07-08	FY -1 08-09	Current FY 09-10
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors	\$593,208	\$634,832	\$745,052	\$777,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There should be no adverse effects and costs associated with compliance with the regulation. See, paragraphs (11) and (13) for benefits.

Regulatory Analysis Form

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Prior to drafting this proposed regulation, the Board invited interested associations and colleges and universities to comment on a preliminary draft. The Board reviewed and considered all comments and suggestions received by interested parties during the regulatory development process. The proposed rulemaking was published on June 14, 2008, requesting public comment within thirty days. The Board received public comments from the Pennsylvania Counseling Association (PCA); the Pennsylvania Association for Marriage and Family Therapy (PAMFT); the North Atlantic Region of the American Counseling Association (ACA); the Pennsylvania Chapter of the National Association of Social Workers (NASW-PA); and the Pennsylvania Society for Clinical Social Work (PSCSW). In addition, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) in response to their review of the regulations under the Regulatory Review Act. All comments were considered in drafting the final-form rulemaking.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory schemes were considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no federal licensure standards.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The neighboring states of New York, New Jersey, Ohio, Maryland and Delaware have regulations pertaining to professional conduct and codes of ethics. Thus, this regulation is consistent with other states and will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation would not affect existing or proposed regulations of the Board or other agencies.

Regulatory Analysis Form

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

None.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has not identified any specific groups that need to be accommodated by special provisions.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

RECEIVED
IRRC

2010 JUL 14 A 10:21

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

Copy below is approved as
to form and legality.
Executive or Independent
Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Social Workers, Marriage and Family
Therapists and Professional Counselors
(AGENCY)

BY: 
Andrew C. Clark

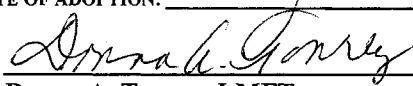
DOCUMENT/FISCAL NOTE NO. 16A-6911

JUL 12 2010

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: 
Donna A. Tonrey, LMFT

Deputy General Counsel,
Chief Counsel,
Independent Agency
(Strike inapplicable title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable
Copy not approved.
Objections attached.
- Check if applicable.
No Attorney General approval
or objection within 30 day
after submission.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS
49 PA. CODE, CHAPTERS 47, 48 AND 49

CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) hereby adds §§ 47.71 - 47.80, 48.71 - 48.80 and 49.71 - 49.80 (relating to code of ethical practice and professional conduct) to read as set forth in Annex A.

Effective Date

The amendments are effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

Statutory Authority

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P.S. §1906(2)).

Background and Purpose

Section 6(2) of the act authorizes the Board to adopt rules and regulations establishing standards of professional practice and conduct for licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors in this Commonwealth. The Board, through this rulemaking, is implementing section 6(2) of the act.

In developing this code of ethical practice and standards of professional conduct, the Board looked at codes of conduct established by professional associations and organizations as well as other state codes. In particular, the Board modeled these regulations after codes of conduct and professional practice adopted by the following associations and organizations: the National Association of Social Workers (NASW); the Pennsylvania Society for Clinical Social Work; the Association of State Social Work Boards; the Clinical Social Work Federation (CSWF); the Pennsylvania State Board of Psychology; the American Association for Marriage and Family Therapy (AAMFT); the American Counseling Association (ACA); the National Board for Certified Counselors (NBCC); the Professional Counseling Board (PCB); the Commission on Rehabilitation Counselor Certification (CRCC); and the American Psychological Association (APA). In addition, the Board looked at standards promulgated by other state licensing boards.

The Board adopts this final rulemaking containing a code of ethical practice and standards of professional conduct for each of the three professions within its jurisdiction. In drafting the final rulemaking, the Board sought the greatest possible consistency among the three chapters. The Board recognized that the national associations representing each of the professions had previously issued its own code of ethics. The Board also recognized that each group of licensed stakeholders would seek the highest level of consistency between the specific provisions of the Board's code of ethics and those of that profession's national association's code of ethics.

Summary of Comments and Responses to Proposed Rulemaking

Notice of the proposed rulemaking was published at 38 Pa. B. 3253 (June 14, 2008). The Board received comments from the following entities: the Pennsylvania Counseling Association (PCA); the Pennsylvania Association for Marriage and Family Therapy (PAMFT); the North Atlantic Region of the American Counseling Association (ACA); the Pennsylvania Chapter of the National Association of Social Workers (NASW-PA); and the Pennsylvania Society for Clinical Social Work (PSCSW). In addition, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) in response to their review of the regulations under the Regulatory Review Act. Responses to the comments have been grouped under general categories, as follows:

Need for the rulemaking.

In general, the HPLC questioned the need for the rulemaking. However, all of the public commentators expressed general support for the proposed rulemaking. PSCSW “welcome[d] the ethical standards of the regulations and [found] them to be clear and acceptable practice.” NASW-PA agreed “with the need to establish standards of professional practice and conduct” and appreciated the Board’s consideration of the codes of conduct established by the various professional associations. The PAMFT was “pleased to see the publication of” the proposed rulemaking and “urges the adoption of the proposed regulation” with minor changes. The PCA appreciated “the work that has gone into the development of this Code of Ethics for LPCs,” and offered comments they hoped would be useful to the Board. The ACA (North Atlantic Region) recognized “the work that went into putting together this proposed code” and noted that it would “serve Licensed Professional Counselors and the public well,” but likewise offered comments to strengthen the final-form rulemaking.

The HPLC opined that these regulations are “unnecessary especially considering that only the Psychology Board has similar regulations.” The Board notes that the State Board of Occupational Therapy has promulgated a code of ethics at 49 Pa. Code § 42.24 (relating to code of ethics); as has the State Board of Examiners in Speech-Language and Hearing at 49 Pa. Code § 45.102 (relating to code of ethics). The State Board of Veterinary Medicine also has similar rules of professional conduct at 49 Pa. Code § 31.21 (relating to rules of professional conduct for veterinarians). The State Board of Accountancy has promulgated regulations under the heading “Relations with clients and public” pertaining to independence, integrity and objectivity, competence, fees, confidential client information, records, advertising and solicitation – similar to a code of ethics. See 49 Pa. Code §§ 11.21 – 11.36. As IRRC pointed out, many boards have similar provisions, although not necessarily contained in a “code of ethics.” Many define unprofessional conduct to include ethics violations. The Board elected to follow the Psychology Board’s lead because psychology is a related profession, and many of the ethical principles are the similar. In addition, the Psychology Board’s code of ethics has been tested in court and has withstood judicial scrutiny.

The HPLC suggested that the Board consider adopting a National standard for ethics currently established by the National associations. Likewise, NASW-PA requested that the Board “adopt by reference the current codes of professional conduct for each profession under

the Board.” By promulgating its own code of ethics, the Board intended to provide more specific guidance than that of the National associations, as well as impose stricter standards than the National associations where it views appropriate. In addition, the National codes are all written in non-regulatory language, which was one of IRRC’s concerns about certain provisions in the proposed rulemaking. To address the HPLC’s and other commentators’ concerns, the Board has indicated its intention to adhere to each licensee group’s National codes of ethics and standards of practice in resolving ambiguities that may arise under the regulations, but that any conflict will be resolved in favor of these regulations.

Format of the rulemaking.

The Independent Regulatory Review Commission expressed concerns about the format of the proposed regulations in that the entire code of ethics for each profession is contained in one section containing a variety of topics. IRRC suggested that it would improve clarity and ease implementation to set forth some of the subject areas separately. The Board agreed and has restructured the final-form rulemaking by dividing it into ten sections to aid clarity. IRRC also pointed out the use of “non-regulatory” language at various places throughout the proposed rulemaking. The Board has revised the final-form rulemaking to clarify that its requirements are mandatory by replacing “should” with “shall” throughout.

Additionally, IRRC and PAMFT suggested that the only applicable national code of ethics that should be referenced in Chapter 48 is the American Association for Marriage and Family Therapy (AAMFT). All of the other organizations listed were professional counseling groups. The Board agrees and has amended the provision such that only the AAMFT Code of Ethics is referenced. IRRC, PCA and ACA (North Atlantic Region) further noted the conspicuous absence of the code of ethics of the American Counseling Association from Chapter 49. The Board has corrected this oversight.

The HPLC questioned the use of the term “licensee” throughout the proposed rulemaking, where the opening paragraph in each chapter specifies which licensees to which the regulation applies. In fact, the regulations apply to all licensees. Chapter 47 applies to licensed social workers and licensed clinical social workers; Chapter 48 applies to licensed marriage and family therapists; Chapter 49 applies to licensed professional counselors. These are all of the licensee classifications currently regulated by the Board. The Board has often used the shorthand phrase “licensee” throughout its regulations and does not feel the use of the term adversely affects the clarity of the rulemaking.

Responsibility to clients/patients.

IRRC noted that there are two sections in the regulations that relate to misrepresentation of professional qualifications and suggested that they be combined to avoid duplication in the final-form regulation. Instead, because the Board has separated the topics of “responsibility to clients/patients” and “advertising” in separate sections, the Board has elected to retain and amend the provisions. The first provision relates to communications with specific existing or prospective clients/patients, whose identity is known to the licensee. The advertising provision, now contained in §§ 47.80, 48.80 and 48.90 (relating to advertising) applies specifically to

general informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis. Both provisions were amended to clarify the Board's intent.

PCA inquired as to why the proposed code does not prohibit licensed professional counselors who hold doctorate degrees in non-counseling areas from representing themselves as having a doctorate. The regulations prohibit licensees from misrepresenting their professional qualifications. To clarify the Board's intent, the advertising provisions were amended to provide that licensees may not advertise or misrepresent their services and credentials in a manner that is false, misleading, deceptive or fraudulent.

IRRC and the HPLC also questioned the definition of the "appropriate standard of care." Commentators asked whether the Board should promulgate a regulation that requires a licensee to provide "effective" care. Obviously the goal of social work, marriage and family therapy and professional counseling services is to be effective. However, the Board has concerns about establishing a regulation, the violation of which could result in disciplinary action, relating to the effectiveness of care. The Board believes that the standard should be what the ordinary, reasonable licensee would do under the circumstances; and while, as one commentator noted, this definition may seem to be weak and open to interpretation, the courts have been dealing with the "reasonable person" standard for centuries. These regulations seek to establish minimum standards, the violation of which could result in disciplinary action against a licensee. Finally, the Board notes that the national codes of ethics will be used in resolving ambiguities that arise under these regulations.

IRRC expressed concerns about how the two public members of the Board will be able to ascertain what a "reasonable licensee" would do under similar circumstances. In addition, NASW-PA and PSCSW suggested that "standards of care" cases should be reviewed by a licensee's peers, and not by another profession. In general, when a "standard of care" case comes before the Board, it is the usual circumstance that the prosecution and defense have "experts" testify as to what standard of care should have been followed by the licensee under the circumstances. The Board believes the public members are capable of evaluating the testimony objectively, in spite of the fact that they are not licensees with comparable training. A professional board made up of a majority of licensees is the entity that ultimately decides these issues. Pursuant to section 5(a) of the act, 63 P.S. § 1905, the Board is made up thirteen members comprised ten licensees: five who are either licensed social workers or licensed clinical social workers; two or three licensed marriage and family therapists; and two or three licensed professional counselors, in addition to the two public members and the Commissioner of Professional and Occupational Affairs. The Board believes that due to the great degree of consistency among these regulations, a professional member that is, for example, a licensed professional counselor will be able to review a matter involving a licensed social worker, licensed clinical social worker, or marriage and family therapist with little difficulty. In addition, as noted previously, each profession's National code of ethics will be used to resolve ambiguities arising in matters under these regulations. Finally, NASW-PA raised concerns that attorneys and paralegals review complaints to determine whether a violation of the regulations has occurred. NASW-PA suggested that ethics-related complaints be reviewed by a committee of the same licensed professionals who are familiar with the code of ethical practice and professional

conduct. PSCSW supports the NASW-PA proposal and notes that enforcement and prosecution “should be ultimately done by peer review not by another profession.” PSCSW suggests that, in a case of “a therapeutic ethical [lapse] or disregard entirely, a jury of ones’ (sic) peers is more appropriate and responsible.” As noted above, the prosecution division has access to experts who review matters to determine whether a violation of a standard of practice has been violated, and who later testify in hearings before the Board. Neither the Board nor any of its professional members may preview a complaint or provide advice to the Commonwealth’s prosecutors as to what complaints deserve to be prosecuted. To do so would be an improper commingling of the prosecutorial and adjudicatory functions. See *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992).

IRRC noted that the State Board of Psychology’s standards provide for areas in which recognized standards do not yet exist. To address IRCC’s and HPLC’s specific concerns, the Board has added language conceding that, although in some areas recognized standards do not yet exist, protection of the client’s/patient’s welfare remains the paramount consideration.

IRRC and the HPLC expressed concern with the requirement to make “appropriate” referrals “in a timely manner” as being ambiguous and asked for a more specific rule for a minimum time period in the final-form rulemaking. The Board responded by amending the language to provide that licensees refer a client/patient to another professional and take steps to facilitate an orderly transfer of responsibility whenever the client’s/patient’s needs exceed the licensee’s competence level. The amendment further provides that the licensee shall notify the client/patient promptly of the need to refer and seek the referral and transfer of services in relation to the client’s/patient’s needs and preferences. The Board felt that it was impossible to establish a strict timetable for such referrals that would be applicable in all cases. Thus, to address the HPLC’s concerns, the disciplinable offense becomes not making a referral at all when a client’s/patient’s needs exceed the licensee’s competence level.

PCA suggested that the regulations should require licensed professional counselors to be competent in the use and interpretation of the instruments they use and no requirement to utilize current instruments. ACA (North Atlantic Region) also pointed out that the code failed to address assessment. The Board responded by amending the competency provisions in Chapter 49 to require licensees to use only those testing and assessment instruments relevant to the needs of the client/patient and for which the licensee has been trained. The Board has also added a provision requiring licensees to maintain knowledge of current scientific and professional information related to the services they render. The Board also notes that it will refer to the ACA code of ethics to resolve any ambiguities.

Informed consent.

The HPLC and IRRC questioned the informed consent provisions and IRRC asked if the Board would consider providing a written disclosure form for licensees to use in discussing services and other issues with the patient/client. In response, rather than promulgate a form which would have to be adapted to every situation, the Board has redrafted the section to include a list setting forth the type of information that must be provided to clients/patients in writing, to include billing and collection policies, as suggested by PSCSW. In response to the HPLC’s

concerns, the redrafted provision no longer requires a licensee to notify a client/patient of every service available, or all of the limits, rights, opportunities and obligations. The new provision requires the licensee to inform the client/patient of the purpose of the services being provided; risks and limits to the services being provided that are known to the licensee; reasonable alternatives to the services being provided; the costs, billing and overdue collections policies and their potential effect on the continuation of the professional relationship; the client's/patient's right to refuse or withdraw consent, and the timeframe covered by the consent; and other information the licensee reasonably expects would affect the client's/patient's decision to enter into or continue the professional relationship.

IRRC questioned whether a spouse, domestic partner or adult child would be able to provide informed consent on behalf of someone who is not competent due to age or mental condition. To address this concern, the Board clarified that either a parent, guardian, court-appointed representative or the holder of a client's/patient's power of attorney could provide consent to treatment.

PCA questioned the provision relating to a client/patient receiving services involuntarily. PCA suggested that this standard challenges the very essence of autonomy. ACA (North Atlantic Region) also noted that although some individuals might be mandated to treatment, they still have the option of refusing even if doing so has serious consequences that are considerably less appealing than counseling. In response the Board has clarified that the provision was intended to address clients/patients who are engaged in legally-mandated services. The Board has also clarified that the licensee must provide information about the nature and extent of the services and about the client's/patient's rights to the client/patient or to the client's/patient's legal representative, where applicable. PCA also opined that this provision also suggests that releases of information can be made without the involuntary client's written consent in violation of other laws. The Board notes that the provisions relating to confidentiality clearly provide that licensees have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and professional standards of practice. Therefore, specific laws requiring certain conditions be met before information can be released without written consent must continue to be followed.

Confidentiality and privacy.

IRRC and the HPLC asked the Board to cite to specific "other laws" that govern confidentiality and privacy. The Board is wary of omitting future statutory developments by setting forth a current listing of applicable privacy-related statutes and regulations. The Board notes that it gave consideration to certain specific statutes, including those pertaining to confidentiality of drug and alcohol use records, HIV-related status and records, and the Health Insurance Portability and Accountability Act (HIPAA). The Board has declined to attempt to identify and cite every possible Federal or State law or regulation that governs privacy and confidentiality of mental health information in this rulemaking. Instead, the Board has amended the provision to provide that confidential information may only be revealed with consent, unless the failure to do so would violate a court order or a specific Federal or State privacy statute or regulation. Thus, in any proceeding alleging that a licensee released confidential information

without consent, the licensee could defend by pointing to a court order or a specific statute or regulation requiring such disclosure.

IRRC also questioned the Board's use of the terms "legally authorized person" and "person legally authorized" to give consent. In the final-form rulemaking the Board amended the language to refer to the client's/patient's parent, guardian, court-appointed representative or holder of power of attorney.

PAMFT raised concerns regarding confidentiality in providing services to families, couples or groups. IRRC asked whether the Board should amend the regulation to ensure that each family member's confidentiality is protected. The Board believes the proposed rulemaking adequately protects the confidentiality of participants in family, group or couples counseling. A licensee has an affirmative duty not to disclose confidential information without consent. This general provision would extend to participants in group or family counseling situations. As noted by PAMFT, all family members who are included in sessions are considered part of the client group. Each of the regulated professions' national association's codes of ethics has its own provisions regarding confidentiality of each member of a family treatment group. The specific concerns raised by PAMFT are addressed within the consent provisions of these regulations when read in concert with the AAMFT code of ethics.

Termination.

PCA suggested that licensees should be allowed to terminate or discharge a patient/client for nonpayment of fees. IRRC noted that this issue does not appear to be addressed in the proposed rulemaking. In response, the Board added language providing that a licensee may terminate services for nonpayment if the financial contractual arrangements have been made clear to the client/patient, the client/patient does not pose an imminent danger to self or others, and the clinical and other consequences of the current nonpayment have been addressed and discussed with the client/patient. PCA also suggested that the provision should address termination of treatment due to lack of client progress. It is very difficult to set standards, the violation of which could result in disciplinary action, based on subjective measure such as effectiveness of treatment or lack of progress by the client/patient. The Board, instead, will rely on the National codes of ethics to resolve ambiguities.

In addition, IRRC suggested that the Board eliminate language requiring "appropriate" referral and "reasonable" notification regarding interruption or termination of services and, instead, establish a specific minimum time period for advance notice of termination to provide time for referrals and the search for a new provider. The Board elected to eliminate the offending language and rely on the National codes of ethics to resolve ambiguities.

Sexual harassment.

PCA and ACA (North Atlantic Region) noted that nothing in this code addresses limitations on sexual or romantic relationships with current or former clients. The Board notes that its existing regulations dealing with sexual misconduct at §§ 47.61 – 47.65, 48.21 – 48.25 and 49.21 – 49.25 adequately address those issues.

IRRC noted that the Board already addresses sexual misconduct in its regulations and suggests that sexual harassment should rely on the definition of sexual intimacies already included in the “definitions” section of each chapter in prohibiting this type of behavior. IRRC also suggested that the Board define the term “sexual harassment” in the final-form rulemaking. In the final-form rulemaking, the Board has moved sexual harassment to its own section and has amended the regulations to clarify that sexual misconduct applies to clients/patients while the prohibition on sexual harassment addresses employment or academic relationships in the professional work environment and draws its definition directly from the Pennsylvania Human Relations Commission’s guidelines on sexual harassment.

Discrimination.

IRRC noted that there are numerous State and Federal anti-discrimination laws and suggested that the Board reference these existing laws rather than designing a new anti-discrimination rule. In response, the Board has amended the provision on discrimination to provide that licensees shall comply with existing Federal and State anti-discrimination laws and may not practice, condone, facilitate or collaborate with any form of discrimination prohibited by those laws.

PCA suggested that gender identity should be added to the list of protected classes. As noted above, the Board elected to rely on existing anti-discrimination laws, which renders unnecessary a recitation of each protected group or prohibited behavior. PCA also suggested that the Board include an affirmative duty to be competent in working with diverse clients/patients. The Board feels that the general competency provisions are adequate. ACA (North Atlantic Region) suggested renaming this provision “nondiscrimination.” The Board has elected to retain the heading to be consistent with most codes of ethics.

Dual or multiple relationships affecting the licensee’s judgment.

IRRC agreed with the HPLC’s concerns about terms and phrases in this section being vague or ambiguous. IRRC suggested that the Board provide specific examples of situations that this provision seeks to address. The Board has had numerous cases brought before it that revolve around licensees whose other relationships (social, professional, business, financial, etc.) with clients/patients and their family members interfere with the therapeutic relationship. For example, a licensee begins providing marriage counseling to a husband and wife, eventually becoming a close personal friend of the wife, and rather than provide counseling to the couple, ends up seeing the wife in therapy sessions three or four times a week, going out to dinner and shopping with the wife, and checking in on the wife numerous times during the day. When their social relationship fails, the wife is distraught and feels that she had lost a friend, a mother figure and her therapist all at once. In this case, the licensee fails to maintain appropriate therapeutic boundaries and engages in improper dual or multiple relationships with a client/patient. There have been other cases of licensee’s loaning money to or accepting loans from clients/patients; investing in business ventures with clients/patients; and so on. The Board intends, by this rulemaking, to restrict these types of relationships with clients/patients which are engaged in to satisfy the licensee’s needs, rather than the client’s/patient’s needs. The Board believes that

practitioners in the field are familiar with the terms used in the rulemaking and understand the behaviors being regulated. Each of the National codes of ethics contains similar provisions prohibiting dual or multiple relationships that affect the licensee's professional judgment. To respond to the HPLC's concerns, the Board has revised the language regulating dual or multiple relationships to be more certain, and to clarify that the concern is with the effect on the client/patient, and not everyone with whom they deal.

Research and publication.

In the proposed regulations, a lengthy provision on the subject of research and publication was included as part of the responsibility of a licensee to clients/patients. IRRC and HPLC expressed concerns regarding the definition of certain terms, citation to pertinent applicable laws, implementation and enforcement. ACA and PCA also commented regarding the effect of deception upon informed consent for research. Upon consideration of these comments, the Board chose to rewrite the entire section, specifically and succinctly emphasizing its major categorical concerns (protection of human subjects, informed consent, confidentiality, and publication responsibilities) in the final-form rulemaking. In response to the HPLC's concerns, the language that remains has been amended to clarify that the "pertinent ethical principles" are those contained in this chapter and the National codes of ethics; that the informed consent form must use language that the licensee believes would be understandable to the general population of research participants; and that only those attendant discomforts and risks that are most likely to occur and which are known to the licensee must be described.

Payment for services.

The HPLC asked the Board to clarify what it meant by providing that records may not be withheld due to non-payment for past services "except as otherwise provided by law." In response, the Board eliminated that language to clarify that a licensee may not withhold a client's/patient's records due solely to non-payment for services.

Recordkeeping.

The HPLC noted that the proposal required licensees to keep records relating to termination, but did not specify as to what is being terminated. The Board amended the language to clarify that it is the termination of the professional relationship that must be recorded. The HPLC also noted that the Board sought to require that documentation protect privacy to the extent "possible and appropriate". The Board has clarified that documentation shall protect clients'/patients' privacy to the extent that it is consistent with applicable Federal and State laws and regulations. PCA raised the subject of security of records, leading the Board to adopt Federal and State legal standards for retention and storage. The Board also specified protections to persons other than the client/patient in considering whether certain records should be released.

Mandatory reporting.

Both NASW-PA and PSCSW suggested that the mandatory reporting requirement consider the client's/patient's right to confidentiality. The Board determined that the

confidentiality provisions sufficiently address that issue and would be inherently a part of a licensee's considerations. The Board, on its own initiative, amended the change of name or mailing information provision to remove the language "failure to do so may result in disciplinary action by the Board" as the violation of any regulation may result in disciplinary action by the Board, and is superfluous.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no fiscal impact and impose no additional paperwork requirements on the Board or its licensees.

The proposed amendments should not impose any legal, accounting or reporting requirements on the regulated community.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 4, 2008, the Board submitted a copy of this proposed rulemaking, published at 38 Pa. B. 3253 and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), and the chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC) for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), IRRC, the SCP/PLC and the HPLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing for the final-form rulemaking, the Board has considered all comments from the IRRC, the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act, (71 P.S. §745.5a(j.2)), on _____, _____, the final-form rulemaking was approved by the HPLC. On _____, _____, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form rulemaking.

Contact Person

Interested persons may obtain information regarding the final-form rulemaking by writing to Beth Sender Michlovitz, Board Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 or bmichlovit@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The amendments to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 38 Pa. B. 3253.
- (4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in this Preamble.

Order

The Board orders that:

- (a) The regulations of the Board at 49 Pa. Code Chapters 47, 48 and 49, are amended by adding §§47.71 – 47.49, 48.71 – 48.79 and 49.71 – 49.79 to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect on publication in the Pennsylvania Bulletin.

Dr. Donna A. Tonrey, LMFT, Chairperson

ANNEX A

PENNSYLVANIA ADMINISTRATIVE CODE

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS

LICENSURE OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND
PROFESSIONAL COUNSELORS

* * * * *

CODE OF ETHICAL PRACTICE AND

STANDARDS OF PROFESSIONAL CONDUCT

§ 47.71. Code CODES of ethical practice and professional conduct.

~~(a) — Application. — This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed social workers and licensed clinical social workers will be measured.~~

~~(1) — This code of ethical practice and professional conduct applies to the conduct of all social worker licensees.~~

~~(2) — A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed social worker or licensed clinical social worker to disciplinary action under section 11 of the act (63 P.S. § 1911).~~

~~(3) — The Board subscribes to the codes of ethics and practice standards promulgated by the National Association of Social Workers (NASW), the Pennsylvania Society for Clinical Social Work and the MODEL SOCIAL WORK PRACTICE ACT~~

OF THE Association of State Social Work Boards and the LICENSED SOCIAL WORKERS AND LICENSED CLINICAL SOCIAL WORKERS (LICENSEES) SHALL ADHERE TO THESE CODES AND STANDARDS, EXCEPT WHEN THEY CONFLICT WITH THIS CHAPTER. THE Board will use these codes and standards as aids in resolving ambiguities which may arise in the interpretation of this section CHAPTER, except that whenever any conflict exists between this section CHAPTER and the professional associations' codes and standards, this section CHAPTER shall prevail.

~~(b)~~ — Responsibility to clients/patients.

§ 47.72. RESPONSIBILITIES TO CLIENTS/PATIENTS.

~~(1)~~ (a) Competency.

~~(i)~~ (1) Licenses IN ALL COMMUNICATIONS WITH, OR REGARDING, SPECIFIC EXISTING OR PROSPECTIVE CLIENTS/PATIENTS, LICENSEES may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience, or area or areas of competence.

~~(ii)~~ (2) Licenses may practice only within the competency areas for which they are qualified by education, training or AND experience.

~~(iii)~~ (3) Licenses shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar training LICENSEE would have done in a similar circumstance. IN AREAS IN WHICH RECOGNIZED STANDARDS DO NOT YET EXIST, LICENSEES SHALL TAKE WHATEVER PRECAUTIONS ARE NECESSARY TO PROTECT THE WELFARE OF THEIR CLIENTS/PATIENTS.

(4) LICENSEES SHALL MAINTAIN KNOWLEDGE OF CURRENT SCIENTIFIC AND PROFESSIONAL INFORMATION RELATED TO THE SERVICES THEY RENDER.

~~(iv)~~ (5) Licensees shall make appropriate referrals REFER A CLIENT/PATIENT TO ANOTHER PROFESSIONAL AND SHALL TAKE STEPS TO FACILITATE AN ORDERLY TRANSFER OF RESPONSIBILITY when the client's/patient's needs exceed the licensee's competence level. The referrals must be made in a timely manner. LICENSEES SHALL NOTIFY CLIENT/PATIENT PROMPTLY OF THE NEED TO REFER AND SEEK THE REFERRAL AND TRANSFER OF SERVICES IN RELATION TO THE CLIENT'S/PATIENT'S NEEDS AND PREFERENCES.

~~(2)~~ (b) Informed consent.

~~(i)~~ (1) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might :

- (i) THE PURPOSE OF THE SERVICES BEING PROVIDED.
- (ii) RISKS AND LIMITS RELATED TO THE SERVICES THAT ARE KNOWN TO THE LICENSEE.
- (iii) REASONABLE ALTERNATIVES TO THE SERVICES BEING PROVIDED.
- (iv) RELEVANT COSTS, BILLING AND OVERDUE COLLECTION POLICIES AND THEIR POTENTIAL EFFECT ON THE CONTINUATION OF THE PROFESSIONAL RELATIONSHIP.

(v) THE CLIENTS'/PATIENTS' RIGHT TO REFUSE OR WITHDRAW CONSENT, AND THE TIME FRAME COVERED BY THE CONSENT.

(vi) OTHER INFORMATION THE LICENSEES REASONABLY MIGHT EXPECT TO affect the clients'/patients' decisions to enter into or continue the PROFESSIONAL relationship.

(2) LICENSEES SHALL USE CLEAR AND UNDERSTANDABLE LANGUAGE WHEN PROVIDING THE INFORMATION IN PARAGRAPH (1) TO CLIENTS/PATIENTS.

~~(ii) (3) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.~~

~~(iii) (4) In instances when the client/patient is unable to read or understand the INFORMED consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian, or court-appointed~~

representative OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY.

(iv) (5) When a client/patient is receiving LEGALLY-MANDATED services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the CLIENT/PATIENT OR THE client's/patient's parent, guardian, or court-appointed representative OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY, AS APPLICABLE.

(v) (6) Licensees who provide services via electronic means shall inform the client/patient of the REASONABLY FORESEEABLE limitations and risks associated with such services.

(3) (c) Delegation. A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(4) (d) Confidentiality and privacy.

(i) (1) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or other person legally authorized to give consent on behalf of the client/patient THE CLIENT'S/PATIENT'S PARENT, GUARDIAN, COURT-APPOINTED REPRESENTATIVE OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY, has given informed consent, except in those circumstances in which failure to do so would violate other laws A COURT

ORDER OR SPECIFIC FEDERAL OR STATE PRIVACY STATUTES OR REGULATIONS, or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by such situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

~~(ii)~~ (2) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives PARENT, GUARDIAN, COURT-APPOINTED REPRESENTATIVE OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion should SHALL occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

~~(iii)~~ (3) When licensees provide services to families, couples or groups, licensees should SHALL seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor such agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

~~(iv)~~ (4) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail,

facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

~~(5)~~ (e) Termination OF SERVICES.

(1) Licensees shall MAY terminate services only after giving careful consideration to factors affecting the PROFESSIONAL relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(2) LICENSEES MAY TERMINATE SERVICES TO A CLIENT/PATIENT WHO HAS NOT PAID AN OVERDUE FEE BALANCE IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(i) THE FINANCIAL CONTRACTUAL ARRANGEMENTS HAVE BEEN MADE CLEAR TO THE CLIENT/PATIENT.

(ii) THE CLIENT/PATIENT DOES NOT POSE AN IMMINENT DANGER TO SELF OR OTHERS.

(iii) THE CLINICAL AND OTHER CONSEQUENCES OF THE CURRENT NONPAYMENT HAVE BEEN ADDRESSED AND DISCUSSED WITH THE CLIENT/PATIENT.

~~(6)~~ Sexual harassment.

~~(i) Licensees may not sexually harass clients/patients or family members of clients/patients.~~

~~(ii) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.~~

~~(iii) Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature.~~

~~(f) Discrimination.~~ Licensees SHALL COMPLY WITH EXISTING FEDERAL AND STATE ANTI-DISCRIMINATION LAWS AND may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national origin, color, gender, sexual orientation, age, socio-economic level, marital status, political belief, veteran status, or mental or physical impairment PROHIBITED BY THOSE LAWS.

~~(g) Conduct with clients/patients.~~

~~(i) (1) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.~~

~~(i) (2) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.~~

~~(e) Dual or multiple relationships affecting the licensee's judgment.~~

§ 47.73. DUAL OR MULTIPLE RELATIONSHIPS AFFECTING THE LICENSEE'S JUDGMENT.

(a) *DUAL OR MULTIPLE RELATIONSHIPS DEFINED.*

DUAL OR MULTIPLE RELATIONSHIPS OCCUR WHEN THE LICENSEE ENGAGES IN MULTIPLE OR ONGOING INTERACTIONS WITH CLIENTS/PATIENTS, THE CLIENTS'/PATIENTS' ROMANTIC PARTNERS OR IMMEDIATE FAMILY MEMBERS OF CLIENTS/PATIENTS IN MORE THAN ONE CONTEXT, WHETHER PROFESSIONAL, SOCIAL OR BUSINESS. DUAL OR MULTIPLE RELATIONSHIPS CAN OCCUR SIMULTANEOUSLY OR CONSECUTIVELY.

(b) *DUAL OR MULTIPLE RELATIONSHIPS PROHIBITED.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient, which could impair the licensee's professional judgment or increases the risk of client/patient exploitation. Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. The

(2) A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative.

(3) The A licensee should be particularly aware that SHALL CAREFULLY CONSIDER familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure ASSURE that impaired judgment or exploitation is not involved DOES NOT OCCUR WITHIN THE PROFESSIONAL RELATIONSHIP.

(2) (4) Licensees shall always be sensitive to CAREFULLY CONSIDER the potentially harmful effects of other contacts DUAL OR MULTIPLE RELATIONSHIPS on their practice and on those persons with whom they deal THEIR CLIENTS/PATIENTS. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other, SOCIAL OR BUSINESS relationships with another person if it appears or should appear REASONABLY likely

that the relationship might reasonably impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness as a licensed social worker or licensed clinical social worker or might harm or exploit the other party CLIENT/PATIENT.

(3) (5) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) (6) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) (c) CONFLICTS OF INTEREST.

When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates OR SHOULD REASONABLY ANTICIPATE a conflict of interest among the individuals receiving services, or who anticipates OR SHOULD REASONABLY ANTICIPATE having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

(d) — Impaired practice.

§ 47.74. SEXUAL HARASSMENT.

(a) LICENSEES MAY NOT SEXUALLY HARASS SUPERVISEES, STUDENTS, TRAINEES, EMPLOYEES, RESEARCH SUBJECTS OR COLLEAGUES.

(b) SEXUAL HARASSMENT INCLUDES UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS AND OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE WHEN ANY ONE OF THE FOLLOWING OCCURS:

(1) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF AN INDIVIDUAL'S EMPLOYMENT OR ACADEMIC ASSOCIATION WITH A LICENSEE.

(2) SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS USED AS THE BASIS FOR EMPLOYMENT-RELATED DECISIONS AFFECTING THE INDIVIDUAL OR ACADEMIC DECISIONS AFFECTING THE INDIVIDUAL.

(3) THE CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL'S WORK OR ACADEMIC PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE OR OFFENSIVE WORKING OR ACADEMIC ENVIRONMENT.

§ 47.75. IMPAIRED PRACTICE.

A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably

be expected to be, impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of the termination in writing and assist the client/patient in obtaining services from another professional.

~~(e) — *Research and publication.*~~

~~(1) — *Research responsibilities.*~~

~~(i) — *Use of human subjects.* Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.~~

~~(ii) — *Deviation from standard practice.* Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.~~

~~(iii) — *Precautions to avoid injury.* Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to the subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.~~

~~(iv) — *Principal researcher responsibility.* The ultimate responsibility for ethical research practice lies with the principal researcher. Others involved in the research activities share ethical obligations and full responsibility for their own actions.~~

~~(v) — *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.~~

~~(vi) — *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations~~

~~(2) — *Informed consent.*~~

~~(i) — *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research participants and that:~~

~~(A) — *Accurately explains the purpose and procedures to be followed.*~~

~~(B) — *Identifies any procedures that are experimental or relatively untried.*~~

~~(C) — *Describes the attendant discomforts and risks.*~~

~~(D) — *Describes the benefits or changes in individuals or organizations that might be reasonably expected.*~~

~~(E) — *Discloses appropriate alternative procedures that would be advantageous for the subject.*~~

~~(F) — *Offers to answer any inquiries concerning the procedures.*~~

~~(G) — *Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.*~~

~~(ii) — *Prohibition of deception.* The methodological requirements of research study may not include concealment, deception or minimal risk to participants.~~

~~(iii) *Voluntary participation.* Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure may not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.~~

~~(iv) *Confidentiality of information.* Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to such information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.~~

~~(v) *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.~~

~~(vi) *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.~~

~~(vii) *Explanations after data collections.* After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.~~

~~(viii) *Agreements to cooperate.* Licensees who agree to cooperate with another individual in research or publication shall cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.~~

~~(ix) *Informed consent for sponsors.* In the pursuit of research, licensees shall give sponsors, institutions and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Licensees must be aware of their obligation to future research workers and shall ensure that host institutions are given feedback information and proper acknowledgment.~~

~~(3) *Reporting results.*~~

~~(i) *Information affecting outcome.* When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.~~

~~(ii) *Accurate results.* Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and shall provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.~~

~~(iii) — *Obligation to report unfavorable results.* Licensees shall communicate to other licensees the results of any research judged to be of professional value.~~

~~(iv) — *Identity of subjects.* Licensees who supply data, aid in the research of another person, report research results or make original data available shall take due care to disguise the identity of respective subjects in the absence of specific authorization to do so from the subjects to do otherwise.~~

~~(v) — *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.~~

~~(4) — *Publication.*~~

~~(i) — *Recognition of others.* When conducting and reporting research, licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.~~

~~(ii) — *Contributors.* Licensees shall give credit through joint authorship, acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.~~

~~(iii) — *Student research.* For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.~~

~~(iv) — Duplicate submission. Licensees shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.~~

~~(v) — Professional review. Licensees who review material submitted for publication, research or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.~~

§ 47.76. RESEARCH AND PUBLICATION.

(a) *PROTECTION OF HUMAN SUBJECTS.*

(1) A LICENSEE SHALL PLAN, DESIGN, CONDUCT AND REPORT RESEARCH IN A MANNER CONSISTENT WITH THIS CHAPTER, THE CODES OF ETHICS SET FORTH IN § 47.71 (RELATING TO CODES OF ETHICAL PRACTICE AND PROFESSIONAL CONDUCT), FEDERAL AND STATE LAWS, HOST INSTITUTIONAL RULES AND SCIENTIFIC STANDARDS GOVERNING RESEARCH WITH HUMAN SUBJECTS.

(2) A LICENSEE SHALL OBTAIN INFORMED CONSENT FROM PARTICIPANTS BY USING LANGUAGE THAT THE LICENSEE BELIEVES WOULD BE UNDERSTANDABLE TO THE RESEARCH PARTICIPANTS AND THAT:

(i) ACCURATELY EXPLAINS THE PURPOSE AND PROCEDURES TO BE FOLLOWED.

- (ii) IDENTIFIES ANY PROCEDURES THAT ARE EXPERIMENTAL OR RELATIVELY UNTRIED.
 - (iii) DESCRIBES THE ATTENDANT DISCOMFORTS AND RISKS THAT ARE MOST LIKELY TO OCCUR, WHICH ARE KNOWN TO THE LICENSEE.
 - (iv) DESCRIBES THE BENEFITS OR CHANGES IN INDIVIDUALS OR ORGANIZATIONS THAT MIGHT BE REASONABLY EXPECTED.
 - (v) DISCLOSES APPROPRIATE ALTERNATIVE PROCEDURES THAT MAY BE ADVANTAGEOUS FOR THE SUBJECT.
 - (vi) OFFERS TO ANSWER ANY INQUIRIES CONCERNING THE PROCEDURES.
 - (vii) INSTRUCTS THAT SUBJECTS ARE FREE TO WITHDRAW THEIR CONSENT AND DISCONTINUE PARTICIPATION IN THE RESEARCH PROJECT AT ANY TIME.
- (3) WHEN A PARTICIPANT IS NOT CAPABLE OF GIVING INFORMED CONSENT, LICENSEES SHALL PROVIDE AN APPROPRIATE EXPLANATION, OBTAIN AGREEMENT FOR PARTICIPATION AND OBTAIN INFORMED CONSENT FROM A PARTICIPANT'S PARENT, GUARDIAN, COURT-APPOINTED REPRESENTATIVE OR THE HOLDER OF THE PARTICIPANT'S POWER OF ATTORNEY.
- (4) INFORMATION OBTAINED ABOUT RESEARCH PARTICIPANTS DURING THE COURSE OF THE RESEARCH IS CONFIDENTIAL. THE LICENSEE SHALL EXPLAIN TO THE PARTICIPANT WHETHER THE POSSIBILITY EXISTS THAT

OTHERS MAY OBTAIN ACCESS TO SUCH INFORMATION, AND SHALL ALSO EXPLAIN THE PLANS FOR PROTECTING THE PARTICIPANT'S CONFIDENTIALITY AS PART OF THE PROCEDURE FOR OBTAINING INFORMED CONSENT.

(b) *REPORTING AND PUBLICATION OF RESULTS.*

(1) LICENSEES MAY NOT ENGAGE IN FRAUDULENT RESEARCH, DISTORT DATA, MISREPRESENT DATA OR DELIBERATELY BIAS THEIR RESULTS.

(2) LICENSEES SHALL PLAN, CONDUCT, REPORT AND PUBLISH ACCURATELY AND IN A MANNER THAT MINIMIZES THE POSSIBILITY THAT RESULTS WILL BE MISLEADING.

(c) *OTHER ETHICAL OBLIGATIONS.* IN ADDITION TO THE PROVISIONS OF THIS SECTION, A LICENSEE'S ETHICAL OBLIGATIONS WITH REGARD TO RESEARCH AND PUBLICATION ARE GOVERNED BY THIS CHAPTER AND THOSE CODES OF ETHICS AND STANDARDS OF PRACTICE TO WHICH THE BOARD SUBSCRIBES IN § 47.71.

~~(f) — *Payment for services.*~~

§ 47.77. **PAYMENT FOR SERVICES.**

~~(1)~~ (a) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

~~(2)~~ (b) Licensees may not accept goods or services as payment for professional services.

~~(3)~~ (c) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

~~(4)~~ (d) Prior to entering into the therapeutic or supervisory relationship, a licensee should

SHALL clearly disclose and explain to clients/patients and supervisees the following:

~~(i)~~ (1) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

~~(ii)~~ (2) The use of collection agencies or legal measures for nonpayment.

~~(iii)~~ (3) The procedure for obtaining payment from the client/patient, to the extent allowed by law, if payment is denied by the third-party payor.

~~(5)~~ (e) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

~~(6)~~ (f) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When such action is taken, licensees may not disclose clinical information.

~~(7)~~ (g) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

~~(8)~~ (h) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services, except as otherwise provided by law.

~~(g) — Recordkeeping.~~

§ 47.78. RECORDKEEPING.

~~(1)~~ (a) For each client/patient, a licensee shall keep records of the dates of social work services, types of social work services, DETAILS OF THE SERVICES PROVIDED, termination OF THE PROFESSIONAL RELATIONSHIP, and billing information.

~~(2)~~ (b) Records kept by the licensee shall be retained for AT LEAST 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

~~(3)~~ (c) Licensees shall take reasonable steps to ensure that documentation in records is accurate, LEGIBLE and reflects the services provided.

~~(4)~~ (d) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to the client/patient in the future.

~~(5)~~ (e) Licensees' documentation ~~should~~ SHALL protect clients'/patients' privacy to the extent that it is ~~possible and appropriate~~ CONSISTENT WITH APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS and should include ~~only~~ information that is directly relevant to the delivery of services.

~~(6)~~ (f) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be ~~maintained~~ RETAINED AND STORED as required by ~~paragraph (2) unless a longer retention period is otherwise required by statute or relevant contracts~~ APPLICABLE FEDERAL AND STATE LAW AND REGULATIONS.

~~(7)~~ (g) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious ~~misunderstanding or~~ harm to the client/patient OR ANOTHER PERSON ~~should~~ SHALL provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees ~~should~~ MAY limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client/patient OR

ANOTHER PERSON. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in such records.

~~(8)~~ (h) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

~~(h) — Mandatory reporting.~~

§ 47.79. MANDATORY REPORTING.

~~(1)~~ (a) Licensees, supervisors and trainees have a responsibility to report any alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board. LICENSEES SHALL MAKE THESE REPORTS IN A MANNER THAT DOES NOT VIOLATE A CLIENT'S/PATIENT'S RIGHT TO CONFIDENTIALITY.

~~(2)~~ (b) Licensees shall comply with all mandatory reporting requirements set forth in this chapter, including §§ 47.51- 47.57 (relating to child abuse reporting requirements).

~~(i)~~ (c) *Notice of name and address change.* Licensees shall notify the Board within 30 days of any changes of name or mailing information to ensure that the Board has the licensee's current name and mailing address. ~~Failure to do so may result in disciplinary action by the Board.~~

~~(i) — Advertising.~~

§ 47.80. ADVERTISING.

~~(1)~~ (a) *DEFINITION OF ADVERTISING.*

~~Licensees shall engage in appropriate~~ ADVERTISING IS DEFINED AS THE ENGAGEMENT IN GENERAL informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

~~(2)~~ (b) *ENGAGEMENT IN ADVERTISING.*

(1) ~~Licensees shall accurately represent~~ MAY ENGAGE IN ADVERTISING THAT ACCURATELY REPRESENTS their competencies, education, training and experience relevant to their professional practice. LICENSEES MAY NOT ADVERTISE THEIR SERVICES AND CREDENTIALS IN A MANNER THAT IS FALSE, MISLEADING, DECEPTIVE OR FRAUDULENT.

~~(3)~~ (2) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

- (i) Office information, such as name, address, telephone number and credit card acceptability.
- (ii) Earned degrees and State or provincial licensures or certifications.
- (iii) Professional association member status.
- (iv) Description of practice.

~~(4)~~ (3) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and shall

MAY not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

~~(5)~~ (4) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

~~(6)~~ (5) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

~~(7)~~ (6) A licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

~~(8)~~ (7) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

~~(9)~~ (8) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY

THERAPISTS AND PROFESSIONAL COUNSELORS ---

LICENSURE OF MARRIAGE AND FAMILY THERAPISTS

* * * * *

CODE OF ETHICAL PRACTICE AND

STANDARDS OF PROFESSIONAL CONDUCT

§ 48.71. Code of ethical practice and professional conduct.

~~(a) Application. This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed marriage and family therapists will be measured.~~

~~(1) This code of ethical practice and professional conduct applies to the conduct of all licensees.~~

~~(2) A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed marriage and family therapist to disciplinary action under section 11 of the act (63 P.S. § 1911).~~

~~(3) The Board subscribes to the codes CODE of ethics and practice standards for licensees LICENSED MARRIAGE AND FAMILY THERAPISTS (LICENSEES) promulgated by the National Board for Certified Counselors, Inc., the Commission on Rehabilitation Counselor Certification, the Certification Board for Music Therapists, the American Dance Therapy Association and the American Association for Marriage and Family Therapy (AAMFT) and the Board will use these codes and standards as aids THE AAMFT CODE OF ETHICS in resolving ambiguities which may arise in the interpretation of this section CHAPTER, except that whenever any conflict exists~~

~~between this section~~ THIS CHAPTER ~~and the professional associations' codes and standards~~ AAMFT CODE OF ETHICS, ~~this section~~ CHAPTER shall prevail.

~~(b) — Responsibility to clients/patients.~~

§ 48.72. **RESPONSIBILITIES TO CLIENTS/PATIENTS.**

~~(1)~~ (a) Competency.

~~(i)~~ (1) Licenses IN ALL COMMUNICATIONS WITH, OR REGARDING, SPECIFIC EXISTING OR PROSPECTIVE CLIENTS/PATIENTS, LICENSEES may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience, or area or areas of competence.

~~(ii)~~ (2) Licenses may practice only within the competency areas for which they are qualified by education, training or AND experience.

~~(iii)~~ (3) Licenses shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar training LICENSEE would have done in a similar circumstance. IN AREAS IN WHICH RECOGNIZED STANDARDS DO NOT YET EXIST, LICENSEES SHALL TAKE WHATEVER PRECAUTIONS ARE NECESSARY TO PROTECT THE WELFARE OF THEIR CLIENTS/PATIENTS.

(4) LICENSEES SHALL MAINTAIN KNOWLEDGE OF CURRENT SCIENTIFIC AND PROFESSIONAL INFORMATION RELATED TO THE SERVICES THEY RENDER.

~~(iv)~~ (5) Licenses shall make appropriate referrals REFER A CLIENT/PATIENT TO ANOTHER PROFESSIONAL AND SHALL TAKE STEPS TO FACILITATE AN ORDERLY TRANSFER OF RESPONSIBILITY when the client's/patient's needs

exceed the licensee's competence level. The referrals must be made in a timely manner.

LICENSEES SHALL NOTIFY CLIENT/PATIENTS PROMPTLY OF THE NEED TO REFER AND SEEK THE REFERRAL AND TRANSFER OF SERVICES IN RELATION TO THE CLIENTS'/PATIENTS' NEEDS AND PREFERENCES.

~~(2)~~ (b) *Informed consent.*

~~(i)-(1) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might :~~

- (i) THE PURPOSE OF THE SERVICES BEING PROVIDED.
- (ii) RISKS AND LIMITS RELATED TO THE SERVICES THAT ARE KNOWN TO THE LICENSEE.
- (iii) REASONABLE ALTERNATIVES TO THE SERVICES BEING PROVIDED.
- (iv) RELEVANT COSTS, BILLING AND OVERDUE COLLECTION POLICIES AND THEIR POTENTIAL EFFECT ON THE CONTINUATION OF THE PROFESSIONAL RELATIONSHIP.
- (v) THE CLIENTS'/PATIENTS' RIGHT TO REFUSE OR WITHDRAW CONSENT, AND THE TIME FRAME COVERED BY THE CONSENT.
- (vi) OTHER INFORMATION THE LICENSEES REASONABLY MIGHT EXPECT TO affect the clients'/patients' decisions to enter into or continue the PROFESSIONAL relationship.

(2) LICENSEES SHALL USE CLEAR AND UNDERSTANDABLE LANGUAGE WHEN PROVIDING THE INFORMATION IN PARAGRAPH (1) TO CLIENTS/PATIENTS.

~~(ii) (3) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.~~

~~(iii) (4) In instances when the client/patient is unable to read or understand the INFORMED consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian, or court-appointed representative OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY.~~

~~(iv) (5) When a client/patient is receiving LEGALLY-MANDATED services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the CLIENT/PATIENT OR THE client's/patient's parent, guardian, or court-appointed representative OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY, AS APPLICABLE.~~

~~(v)~~ (6) Licensees who provide services via electronic means shall inform the client/patient of the REASONABLY FORESEEABLE limitations and risks associated with such services.

~~(3)~~ (c) Delegation. A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

~~(4)~~ (d) Confidentiality and privacy.

~~(i)~~ (1) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or other person legally authorized to give consent on behalf of the client/patient THE CLIENT'S/PATIENT'S PARENT, GUARDIAN, COURT-APPOINTED REPRESENTATIVE OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY, has given informed consent, except in those circumstances in which failure to do so would violate other laws A COURT ORDER OR SPECIFIC FEDERAL OR STATE PRIVACY STATUTES OR REGULATIONS or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by such situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

~~(ii)~~ (2) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives PARENT, GUARDIAN, COURT-APPOINTED

REPRESENTATIVE OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion ~~should~~ SHALL occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

~~(iii)~~ (3) When licensees provide services to families, couples or groups, licensees ~~should~~ SHALL seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor such agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

~~(iv)~~ (4) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

~~(5)~~ (e) Termination OF SERVICES.

(1) Licensees ~~shall~~ MAY terminate services only after giving careful consideration to factors affecting the PROFESSIONAL relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is

anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(2) LICENSEES MAY TERMINATE SERVICES TO A CLIENT/PATIENT WHO HAS NOT PAID AN OVERDUE FEE BALANCE IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(i) THE FINANCIAL CONTRACTUAL ARRANGEMENTS HAVE BEEN MADE CLEAR TO THE CLIENT/PATIENT.

(ii) THE CLIENT/PATIENT DOES NOT POSE AN IMMINENT DANGER TO SELF OR OTHERS.

(iii) THE CLINICAL AND OTHER CONSEQUENCES OF THE CURRENT NONPAYMENT HAVE BEEN ADDRESSED AND DISCUSSED WITH THE CLIENT/PATIENT.

~~(6) — Sexual harassment.~~

~~(i) — Therapist licensees may not sexually harass clients/patients or family members of clients/patients.~~

~~(ii) — Therapist licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.~~

~~(iii) — Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature.~~

~~(7) (f) Discrimination. Licensees SHALL COMPLY WITH EXISTING FEDERAL AND STATE ANTI-DISCRIMINATION LAWS AND may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national~~

~~origin, color, gender, sexual orientation, age, socio-economic level, marital status, political belief, veteran status, or mental or physical impairment~~ PROHIBITED BY THOSE LAWS.

~~(8)~~ (g) Conduct with clients/patients.

~~(i)~~ (1) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

~~(ii)~~ (2) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.

~~(c)~~ Dual or multiple relationships affecting the licensee's judgment.

§ 48.73. DUAL OR MULTIPLE RELATIONSHIPS AFFECTING THE LICENSEE'S JUDGMENT.

(a) *DUAL OR MULTIPLE RELATIONSHIPS DEFINED.*

DUAL OR MULTIPLE RELATIONSHIPS OCCUR WHEN THE LICENSEE ENGAGES IN MULTIPLE OR ONGOING INTERACTIONS WITH CLIENTS/PATIENTS, THE CLIENTS'/PATIENTS' ROMANTIC PARTNERS OR IMMEDIATE FAMILY MEMBERS OF CLIENTS/PATIENTS IN MORE THAN ONE CONTEXT, WHETHER PROFESSIONAL, SOCIAL OR BUSINESS. DUAL OR MULTIPLE RELATIONSHIPS CAN OCCUR SIMULTANEOUSLY OR CONSECUTIVELY.

(b) *DUAL OR MULTIPLE RELATIONSHIPS PROHIBITED.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient, which could impair the licensee's professional judgment or increases the risk of client/patient exploitation. ~~Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether~~

~~professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. The~~

(2) A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or where the relationship with the client/patient, supervisee or student is exploitative.

(3) ~~The A licensee should be particularly aware that~~ SHALL CAREFULLY CONSIDER familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure ASSURE that impaired judgment or exploitation is not involved DOES NOT OCCUR WITHIN THE PROFESSIONAL RELATIONSHIP.

~~(2)~~ (4) Licensees shall always be sensitive to CAREFULLY CONSIDER the potentially harmful effects of other contacts DUAL OR MULTIPLE RELATIONSHIPS on their practice and on those persons with whom they deal THEIR CLIENTS/PATIENTS. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other, SOCIAL OR BUSINESS relationships with another person if it appears or should appear REASONABLY likely that the relationship might reasonably impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness as a licensed marriage and family therapist or might harm or exploit the other party CLIENT/PATIENT.

~~(3)~~ (5) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation,

supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) (6) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) (c) CONFLICTS OF INTEREST.

When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates OR SHOULD REASONABLY ANTICIPATE a conflict of interest among the individuals receiving services or who anticipates OR SHOULD REASONABLY ANTICIPATE having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

(d) — Impaired practice.

§ 48.74. SEXUAL HARASSMENT.

(a) LICENSEES MAY NOT SEXUALLY HARASS SUPERVISEES, STUDENTS, TRAINEES, EMPLOYEES, RESEARCH SUBJECTS OR COLLEAGUES.

(b) SEXUAL HARASSMENT INCLUDES UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS AND OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE WHEN ONE OF THE FOLLOWING OCCURS:

(1) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF AN INDIVIDUAL'S EMPLOYMENT OR ACADEMIC ASSOCIATION WITH A LICENSEE.

(2) SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS USED AS THE BASIS FOR EMPLOYMENT-RELATED DECISIONS AFFECTING THE INDIVIDUAL OR ACADEMIC DECISIONS AFFECTING THE INDIVIDUAL.

(3) SUCH CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL'S WORK OR ACADEMIC PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE OR OFFENSIVE WORKING OR ACADEMIC ENVIRONMENT.

§ 48.75. IMPAIRED PRACTICE.

A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is or could reasonably be expected to be impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of

termination in writing and assist the client/patient in obtaining services from another professional.

~~(e) — Research and publication.~~

~~(1) — Research responsibilities.~~

~~(i) — Use of human subjects. Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.~~

~~(ii) — Deviation from standard practice. Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.~~

~~(iii) — Precautions to avoid injury. Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to the subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.~~

~~(iv) — Principal researcher responsibility. The ultimate responsibility for ethical research practice lies with the principal researcher. All others involved in the research activities share ethical obligations and full responsibility for their own actions.~~

~~(v) — *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.~~

~~(vi) — *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations~~

~~(2) — *Informed consent.*~~

~~(i) — *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research participants and that:~~

~~(A) — *Accurately explains the purpose and procedures to be followed.*~~

~~(B) — *Identifies any procedures that are experimental or relatively untried.*~~

~~(C) — *Describes the attendant discomforts and risks.*~~

~~(D) — *Describes the benefits or changes in individuals or organizations that might be reasonably expected.*~~

~~(E) — *Discloses appropriate alternative procedures that would be advantageous for the subject.*~~

~~(F) — *Offers to answer any inquiries concerning the procedures.*~~

~~(G) — *Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.*~~

~~(ii) — *Prohibition of Deception.* The methodological requirements of research study may not include concealment, deception or minimal risk to participants.~~

~~(iii) *Voluntary participation.* Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure may not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.~~

~~(iv) *Confidentiality of information.* Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to such information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.~~

~~(v) *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.~~

~~(vi) *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.~~

~~(vii) — *Explanations after data collections.* — After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.~~

~~(viii) — *Agreements to cooperate.* — Licensees who agree to cooperate with another individual in research or publication shall cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.~~

~~(ix) — *Informed consent for sponsors.* — In the pursuit of research, licensees shall give sponsors, institutions and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Licensees must be aware of their obligation to future research workers and shall ensure that host institutions are given feedback information and proper acknowledgment.~~

~~(3) — *Reporting results.*~~

~~(i) — *Information affecting outcome.* — When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.~~

~~(ii) — *Accurate results.* — Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and shall provide thorough discussions of the limitations of their data~~

~~and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.~~

~~(iii) — *Obligation to report unfavorable results.* Licensees shall communicate to other licensees the results of any research judged to be of professional value.~~

~~(iv) — *Identity of subjects.* Licensees who supply data, aid in the research of another person, report research results or make original data available shall take due care to disguise the identity of respective subjects in the absence of specific authorization from the subjects to do otherwise.~~

~~(v) — *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.~~

~~(4) — *Publication.*~~

~~(i) — *Recognition of others.* When conducting and reporting research, licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.~~

~~(ii) — *Contributors.* Licensees shall give credit through joint authorship, acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.~~

~~(iii) *Student research.* For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.~~

~~(iv) *Duplicate submission.* Licensees shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.~~

~~(v) *Professional review.* Licensees who review material submitted for publication, research or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.~~

§ 48.76. RESEARCH AND PUBLICATION

(a) *PROTECTION OF HUMAN SUBJECTS.*

(1) A LICENSEE SHALL PLAN, DESIGN, CONDUCT AND REPORT RESEARCH IN A MANNER CONSISTENT WITH THIS CHAPTER, THE AAMFT CODE OF ETHICS, APPLICABLE FEDERAL AND STATE LAWS, HOST INSTITUTIONAL RULES AND SCIENTIFIC STANDARDS GOVERNING RESEARCH WITH HUMAN SUBJECTS.

(2) A LICENSEE SHALL OBTAIN INFORMED CONSENT FROM PARTICIPANTS BY USING LANGUAGE THAT THE LICENSEE BELIEVES WOULD BE UNDERSTANDABLE TO THE RESEARCH PARTICIPANTS AND THAT:

(i) ACCURATELY EXPLAINS THE PURPOSE AND PROCEDURES TO BE FOLLOWED.

(ii) IDENTIFIES ANY PROCEDURES THAT ARE EXPERIMENTAL OR RELATIVELY UNTRIED.

(iii) DESCRIBES THE ATTENDANT DISCOMFORTS AND RISKS THAT ARE MOST LIKELY TO OCCUR AND WHICH ARE KNOWN TO THE LICENSEE.

(iv) DESCRIBES THE BENEFITS OR CHANGES IN INDIVIDUALS OR ORGANIZATIONS THAT MIGHT BE REASONABLY EXPECTED.

(v) DISCLOSES APPROPRIATE ALTERNATIVE PROCEDURES THAT MAY BE ADVANTAGEOUS FOR THE SUBJECT.

(vi) OFFERS TO ANSWER ANY INQUIRIES CONCERNING THE PROCEDURES.

(vii) INSTRUCTS THAT SUBJECTS ARE FREE TO WITHDRAW THEIR CONSENT AND DISCONTINUE PARTICIPATION IN THE RESEARCH PROJECT AT ANY TIME.

(3) WHEN A PARTICIPANT IS NOT CAPABLE OF GIVING INFORMED CONSENT, LICENSEES SHALL PROVIDE AN APPROPRIATE EXPLANATION, OBTAIN AGREEMENT FOR PARTICIPATION AND OBTAIN INFORMED CONSENT FROM A PARTICIPANT'S PARENT, GUARDIAN, COURT-APPOINTED REPRESENTATIVE OR THE HOLDER OF THE PARTICIPANT'S POWER OF ATTORNEY.

(4) INFORMATION OBTAINED ABOUT RESEARCH PARTICIPANTS DURING THE COURSE OF THE RESEARCH IS CONFIDENTIAL. THE

LICENSEE SHALL EXPLAIN TO THE PARTICIPANT WHETHER THE POSSIBILITY EXISTS THAT OTHERS MAY OBTAIN ACCESS TO SUCH INFORMATION, AND SHALL ALSO EXPLAIN THE PLANS FOR PROTECTING THE PARTICIPANT'S CONFIDENTIALITY AS PART OF THE PROCEDURE FOR OBTAINING INFORMED CONSENT.

(b) *REPORTING AND PUBLICATION OF RESULTS.*

(1) LICENSEES MAY NOT ENGAGE IN FRAUDULENT RESEARCH, DISTORT DATA, MISREPRESENT DATA OR DELIBERATELY BIAS THEIR RESULTS.

(2) LICENSEES SHALL PLAN, CONDUCT, REPORT AND PUBLISH ACCURATELY AND IN A MANNER THAT MINIMIZES THE POSSIBILITY THAT RESULTS WILL BE MISLEADING.

(c) *OTHER ETHICAL OBLIGATIONS.* IN ADDITION TO THE PROVISIONS OF THIS SECTION, A LICENSEE'S ETHICAL OBLIGATIONS WITH REGARD TO RESEARCH AND PUBLICATION ARE GOVERNED BY THIS CHAPTER AND THE AAMFT CODE OF ETHICS.

~~(f)~~ *Payment for services.*

§ 48.77. **PAYMENT FOR SERVICES.**

~~(1)~~ (a) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

~~(2)~~ (b) Licensees may not accept goods or services as payment for professional services.

~~(3)~~ (c) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

~~(4)~~ (d) Prior to entering into the therapeutic or supervisory relationship, a licensee should SHALL clearly disclose and explain to clients/patients and supervisees the following:

~~(i)~~ (1) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

~~(ii)~~ (2) The use of collection agencies or legal measures for nonpayment.

~~(iii)~~ (3) The procedure for obtaining payment from the client/patient, to the extent allowed by law, if payment is denied by the third-party payor.

~~(5)~~ (e) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

~~(6)~~ (f) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When such action is taken, licensees may not disclose clinical information.

~~(7)~~ (g) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

~~(8)~~ (h) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services, except as otherwise provided by law.

~~(g) — Recordkeeping.~~

§ 48.78. RECORDKEEPING.

~~(1)~~ (a) For each client/patient, a licensee shall keep records of the dates of marriage and family therapy services, types of marriage and family therapy services, DETAILS OF THE SERVICES PROVIDED, termination OF THE PROFESSIONAL RELATIONSHIP and billing information.

~~(2)~~ (b) Records kept by the licensee shall be retained for AT LEAST 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

~~(3)~~ (c) Licensees shall take reasonable steps to ensure that documentation in records is accurate, LEGIBLE and reflects the services provided.

~~(4)~~ (d) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to the client/patient in the future.

~~(5)~~ (e) Licensees' documentation should SHALL protect clients'/patients' privacy to the extent that it is possible and appropriate CONSISTENT WITH APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS and should include only information that is directly relevant to the delivery of services.

~~(6)~~ (f) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be maintained RETAINED AND STORED as required by paragraph (2) unless a longer retention period is otherwise required by statute or relevant contracts APPLICABLE FEDERAL AND STATE LAW AND REGULATIONS.

~~(7)~~ (g) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious misunderstanding or harm to the client/patient OR ANOTHER

PERSON ~~should~~ SHALL provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees ~~should~~ SHALL limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client/patient OR ANOTHER PERSON. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in such records.

~~(8)~~ (h) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

~~(h) —Mandatory reporting.~~

§ 48.79. MANDATORY REPORTING.

~~(1)~~ (a) Licensees, supervisors and trainees have a responsibility to report any alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board. LICENSEES SHALL MAKE THESE REPORTS IN A MANNER THAT DOES NOT VIOLATE A CLIENT'S/PATIENT'S RIGHT TO CONFIDENTIALITY.

~~(2)~~ (b) Licensees shall comply with all mandatory reporting requirements set forth in this chapter, including §§ 48.51- 48.57 (relating to child abuse reporting requirements).

~~(ii)~~ (c) *Notice of name and address change.* Licensees shall notify the Board within 30 days of any changes of name or mailing information to ensure that the Board has the licensee's

current name and mailing address. Failure to do so may result in disciplinary action by the Board.

~~(f)~~ Advertising.

§ 48.80. ADVERTISING.

~~(1)~~ (a) *DEFINITION OF ADVERTISING.*

Licenses shall engage in appropriate ADVERTISING IS DEFINED AS THE ENGAGEMENT IN GENERAL informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

~~(2)~~ (b) *ENGAGEMENT IN ADVERTISING.*

(1) Licenses shall accurately represent MAY ENGAGE IN ADVERTISING THAT ACCURATELY REPRESENTS their competencies, education, training and experience relevant to their professional practice. LICENSEES MAY NOT ADVERTISE THEIR SERVICES AND CREDENTIALS IN A MANNER THAT IS FALSE, MISLEADING, DECEPTIVE OR FRAUDULENT.

~~(3)~~ (2) Licenses shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

(i) Office information, such as name, address, telephone number and credit card acceptability.

(ii) Earned degrees and state or provincial licensures or certifications.

(iii) Professional association member status.

(iv) Description of practice.

~~(4)~~ (3) Licenses may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

~~(5)~~ (4) Licenses may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

~~(6)~~ (5) In representing their educational qualifications, licenses shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

~~(7)~~ (6) The licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

~~(8)~~ (7) Licenses shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

~~(9)~~ (8) Licenses may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

**CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS ---
LICENSURE OF PROFESSIONAL COUNSELORS**

* * * * *

**CODE OF ETHICAL PRACTICE AND
STANDARDS OF PROFESSIONAL CONDUCT**

§ 49.71. Code of ethical practice and professional conduct.

(a) ~~This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed professional counselors will be measured.~~

~~(1) This code of ethical practice and professional conduct applies to the conduct of all licensees.~~

~~(2) A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed professional counselor to disciplinary action under section 11 of the act (63 P.S. § 1911).~~

(3) The Board subscribes to the codes CODE of ethics and practice standards for licensees promulgated by the AMERICAN COUNSELING ASSOCIATION (ACA). LICENSED PROFESSIONAL COUNSELORS (LICENSEES) SHALL ADHERE TO THE ACA CODE OF ETHICS, EXCEPT WHEN THE ACA CODE OF ETHICS CONFLICT WITH THIS CHAPTER. THE BOARD WILL USE THE ACA CODE OF ETHICS IN RESOLVING AMBIGUITIES THAT MAY ARISE IN THE INTERPRETATION OF THIS CHAPTER, EXCEPT THAT WHENEVER ANY CONFLICT EXISTS BETWEEN THIS CHAPTER AND THE ACA CODE OF ETHICS, THIS CHAPTER SHALL PREVAIL.

(b) THE BOARD ACKNOWLEDGES THE CODES OF ETHICS AND PRACTICE STANDARDS OF THE National Board for Certified Counselors, Inc., the Commission on Rehabilitation Counselor Certification, the Certification Board for Music Therapists, the Art

Therapists Certification Board, the American Dance Therapy Association, the National Association for Drama Therapy, The Academy of Certified Clinical Mental Health Counselors, The North American Association of Master's in Psychology, THE AMERICAN SCHOOL COUNSELING ASSOCIATION and The International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc. and the National Association of Alcoholism and Drug Abuse Counselors, and the Board will use MAY ELECT TO CONSIDER OR REFER TO these codes and standards as ADVISORY aids in resolving ambiguities which may arise in the interpretation of this section. , except that whenever any conflict exists between this section and the professional associations' codes and standards, this section shall prevail CHAPTER.

~~(b) Responsibility to clients/patients.~~

§ 49.72. RESPONSIBILITIES TO CLIENTS/PATIENTS.

~~(1)~~ (a) Competency.

~~(i)~~ (1) Licenseses IN ALL COMMUNICATIONS WITH, OR REGARDING, SPECIFIC EXISTING OR PROSPECTIVE CLIENTS/PATIENTS, LICENSEES may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience, or area or areas of competence.

~~(ii)~~ (2) Licenseses may practice only within the competency areas for which they are qualified by education, training or AND experience. LICENSEES MAY UTILIZE ONLY THOSE TESTING AND ASSESSMENT INSTRUMENTS RELEVANT TO THE NEEDS OF THE CLIENT/PATIENT AND FOR WHICH THE LICENSEES HAVE BEEN TRAINED.

~~(iii)~~ (3) Licenseses shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar

~~training~~ LICENSEE would have done in a similar circumstance. IN AREAS IN WHICH RECOGNIZED STANDARDS DO NOT YET EXIST, LICENSEES SHALL TAKE WHATEVER PRECAUTIONS ARE NECESSARY TO PROTECT THE WELFARE OF THEIR CLIENTS/PATIENTS.

(4) LICENSEES SHALL MAINTAIN KNOWLEDGE OF CURRENT SCIENTIFIC AND PROFESSIONAL INFORMATION RELATED TO THE SERVICES THEY RENDER.

~~(iv)~~ (5) Licensees shall make appropriate referrals REFER A CLIENT/PATIENT TO ANOTHER PROFESSIONAL AND SHALL TAKE STEPS TO FACILITATE AN ORDERLY TRANSFER OF RESPONSIBILITY when the client's/patient's needs exceed the licensee's competence level. The referrals must be made in a timely manner. LICENSEES SHALL NOTIFY THE CLIENT/PATIENT PROMPTLY OF THE NEED TO REFER AND SEEK THE REFERRAL AND TRANSFER OF SERVICES IN RELATION TO THE CLIENTS'/PATIENTS' NEEDS AND PREFERENCES.

~~(2)~~ (b) Informed consent.

~~(i)~~ (1) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might :

- (i) THE PURPOSE OF THE SERVICES BEING PROVIDED.
- (ii) RISKS AND LIMITS RELATED TO THE SERVICES THAT ARE KNOWN TO THE LICENSEE.
- (iii) REASONABLE ALTERNATIVES TO THE SERVICES BEING PROVIDED.

(iv) RELEVANT COSTS, BILLING AND OVERDUE COLLECTION POLICIES AND THEIR POTENTIAL EFFECT ON THE CONTINUATION OF THE PROFESSIONAL RELATIONSHIP.

(v) THE CLIENTS'/PATIENTS' RIGHT TO REFUSE OR WITHDRAW CONSENT, AND THE TIME FRAME COVERED BY THE CONSENT.

(vi) OTHER INFORMATION THE LICENSEES REASONABLY MIGHT EXPECT TO affect the clients'/patients' decisions to enter into or continue the PROFESSIONAL relationship.

(2) LICENSEES SHALL USE CLEAR AND UNDERSTANDABLE LANGUAGE WHEN PROVIDING THE INFORMATION IN PARAGRAPH (1) TO CLIENTS/PATIENTS.

~~(ii) (3) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.~~

~~(iii) (4) In instances when the client/patient is unable to read or understand the INFORMED consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not~~

competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian, or court-appointed representative OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY.

(iv) (5) When a client/patient is receiving LEGALLY-MANDATED services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the CLIENT/PATIENT, OR THE client's/patient's parent, guardian, or court-appointed representative OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY, AS APPLICABLE.

(v) (6) Licensees who provide services via electronic means shall inform the client/patient of the REASONABLY FORESEEABLE limitations and risks associated with such services.

(3) (c) Delegation. A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(4) (d) Confidentiality and privacy.

(i) (1) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or other person legally authorized to give consent on behalf of the client/patient THE CLIENT'S/PATIENT'S PARENT, GUARDIAN, COURT-APPOINTED REPRESENTATIVE OR THE HOLDER OF THE

CLIENT'S/PATIENT'S POWER OF ATTORNEY, has given informed consent, except in those circumstances in which failure to do so would violate other laws A COURT ORDER OR SPECIFIC FEDERAL OR STATE PRIVACY STATUTES OR REGULATIONS, or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by such situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(ii) (2) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives PARENT, GUARDIAN, COURT-APPOINTED REPRESENTATIVE OR THE HOLDER OF THE CLIENT'S/PATIENT'S POWER OF ATTORNEY, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion should SHALL occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(iii) (3) When licensees provide services to families, couples or groups, licensees should SHALL seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor such agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

~~(iv)~~ (4) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

~~(5)~~ (e) Termination OF SERVICES.

(1) Licensees shall MAY terminate services only after giving careful consideration to factors affecting the PROFESSIONAL relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(2) LICENSEES MAY TERMINATE SERVICES TO A CLIENT/PATIENT WHO HAS NOT PAID AN OVERDUE FEE BALANCE IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(i) THE FINANCIAL CONTRACTUAL ARRANGEMENTS HAVE BEEN MADE CLEAR TO THE CLIENT/PATIENT.

(ii) THE CLIENT/PATIENT DOES NOT POSE AN IMMINENT DANGER TO SELF OR OTHERS.

(iii) THE CLINICAL AND OTHER CONSEQUENCES OF THE CURRENT NONPAYMENT HAVE BEEN ADDRESSED AND DISCUSSED WITH THE CLIENT/PATIENT.

~~(6)~~ Sexual harassment.

~~(i)~~ Licensees may not sexually harass clients/patients or family members of clients/patients.

~~(ii) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.~~

~~(iii) Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature.~~

~~(7) (f) *Discrimination.* Licensees SHALL COMPLY WITH EXISTING FEDERAL AND STATE ANTI-DISCRIMINATION LAWS AND may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national origin, color, gender, sexual orientation, age, socio-economic level, marital status, political belief, veteran status, or mental or physical impairment~~ PROHIBITED BY THOSE LAWS.

~~(8) (g) *Conduct with clients/PATIENTS.*~~

~~(i) (1) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.~~

~~(ii) (2) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.~~

~~(e) *Dual or multiple relationships affecting the licensee's judgment.*~~

§ 49.73. DUAL OR MULTIPLE RELATIONSHIPS AFFECTING THE LICENSEE'S JUDGMENT.

(a) *DUAL OR MULTIPLE RELATIONSHIPS DEFINED.*

DUAL OR MULTIPLE RELATIONSHIPS OCCUR WHEN THE LICENSEE ENGAGES IN MULTIPLE OR ONGOING INTERACTIONS WITH CLIENTS/PATIENTS, THEIR ROMANTIC PARTNERS OR IMMEDIATE FAMILY MEMBERS OF CLIENTS/PATIENTS IN MORE THAN ONE CONTEXT, WHETHER PROFESSIONAL,

SOCIAL OR BUSINESS. DUAL OR MULTIPLE RELATIONSHIPS CAN OCCUR
SIMULTANEOUSLY OR CONSECUTIVELY.

(b) *DUAL OR MULTIPLE RELATIONSHIPS PROHIBITED.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient which could impair the licensee's professional judgment or increases the risk of client/patient exploitation. Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether professional, social or business. The

(2) A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative.

(3) The A licensee should be particularly aware that SHALL CAREFULLY CONSIDER familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure ASSURE that impaired judgment or exploitation is not involved DOES NOT OCCUR WITHIN THE PROFESSIONAL RELATIONSHIP.

~~(2)~~ (4) Licensees shall always be sensitive to CAREFULLY CONSIDER the potentially harmful effects of other contacts DUAL OR MULTIPLE RELATIONSHIPS on their practice and on those persons with whom they deal THEIR CLIENTS/PATIENTS. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other, SOCIAL OR BUSINESS

relationships with another person if it appears ~~or should appear~~ REASONABLY likely that the relationship might reasonably impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness as a licensed professional counselor or might harm or exploit the ~~other party~~ CLIENT/PATIENT.

(3) (5) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) (6) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) (c) CONFLICTS OF INTEREST.

When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates OR SHOULD REASONABLY ANTICIPATE a conflict of interest among the individuals receiving services or who anticipates OR SHOULD REASONABLY ANTICIPATE having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

~~(d) — Impaired practice.~~

§ 47.74. **SEXUAL HARASSMENT.**

(a) LICENSEES MAY NOT SEXUALLY HARASS SUPERVISEES, STUDENTS, TRAINEES, EMPLOYEES, RESEARCH SUBJECTS OR COLLEAGUES.

(b) SEXUAL HARASSMENT INCLUDES UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS AND OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE WHEN ANY ONE OF THE FOLLOWING OCCURS:

(1) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF AN INDIVIDUAL'S EMPLOYMENT OR ACADEMIC ASSOCIATION WITH A LICENSEE.

(2) SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS USED AS THE BASIS FOR EMPLOYMENT-RELATED DECISIONS AFFECTING THE INDIVIDUAL OR ACADEMIC DECISIONS AFFECTING THE INDIVIDUAL.

(3) THE CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL'S WORK OR ACADEMIC PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE OR OFFENSIVE WORKING OR ACADEMIC ENVIRONMENT.

§ 49.75. **IMPAIRED PRACTICE.**

A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of termination in writing and assist the client/patient in obtaining services from another professional.

~~(e) — *Research and publication.*~~

~~(1) — *Research responsibilities.*~~

~~(i) — *Use of human subjects.* Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.~~

~~(ii) — *Deviation from standard practice.* Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.~~

~~(iii) — *Precautions to avoid injury.* Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the~~

~~experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to the subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.~~

~~(iv) — *Principal researcher responsibility.* The ultimate responsibility for ethical research practice lies with the principal researcher. All others involved in the research activities share ethical obligations and full responsibility for their own actions.~~

~~(v) — *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.~~

~~(vi) — *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations and seek consultation when a reasonable researcher would consider it appropriate.~~

~~(2) — *Informed consent.*~~

~~(i) — *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research and that:~~

~~(A) — Accurately explains the purpose and procedures to be followed.~~

~~(B) — Identifies any procedures that are experimental or relatively untried.~~

~~(C) — Describes the attendant discomforts and risks.~~

~~(D) — Describes the benefits or changes in individuals or organizations that might be reasonably expected.~~

~~(E) — Discloses appropriate alternative procedures that would be advantageous for the subject.~~

~~(F) — Offers to answer any inquiries concerning the procedures.~~

~~(G) — Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.~~

~~(ii) — *Prohibition of deception.* — The methodological requirements of research study may not include concealment, deception or minimal risk to participants.~~

~~(iii) — *Voluntary participation.* — Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure must not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.~~

~~(iv) — *Confidentiality of information.* — Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to such information, ethical research practice requires that the possibility, together with the plans for~~

~~protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.~~

~~(v) — *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.~~

~~(vi) — *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.~~

~~(vii) — *Explanations after data collections.* After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.~~

~~(viii) — *Agreements to cooperate.* Licensees who agree to cooperate with another individual in research or publication shall cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.~~

~~(ix) — *Informed consent for sponsors.* In the pursuit of research, licensees shall give sponsors, institutions and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Licensees must be aware of their obligation to future research workers and shall ensure that host institutions are given feedback information and proper acknowledgment.~~

~~(3) — *Reporting results.*~~

~~(i) — *Information affecting outcome.* When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.~~

~~(ii) — *Accurate results.* Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and shall provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.~~

~~(iii) — *Obligation to report unfavorable results.* Licensees shall communicate to other licensees the results of any research judged to be of professional value.~~

~~(iv) — *Identity of subjects.* Licensees who supply data, aid in the research of another person, report research results or make original data available shall take due care to disguise the identity of respective subjects in the absence of specific authorization from the subjects to do otherwise.~~

~~(v) — *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.~~

~~(4) — *Publication.*~~

~~(i) *Recognition of others.* When conducting and reporting research,~~

~~licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.~~

~~(ii) *Contributors.* Licensees shall give credit through joint authorship,~~

~~acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.~~

~~(iii) *Student research.* For an article that is substantially based on a~~

~~student's dissertation or thesis, the student shall be listed as the principal author.~~

~~(iv) *Duplicate submission.* Licensees shall submit manuscripts for~~

~~consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.~~

~~(v) *Professional review.* Licensees who review material submitted for publication, research~~

~~or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.~~

§49.76. RESEARCH AND PUBLICATION

(a) *PROTECTION OF HUMAN SUBJECTS.*

(1) A LICENSEE SHALL PLAN, DESIGN, CONDUCT AND REPORT RESEARCH IN A MANNER CONSISTENT WITH THIS CHAPTER, THE CODES

OF ETHICS SET FORTH IN § 49.71 (RELATING TO CODE OF ETHICAL PRACTICE AND PROFESSIONAL CONDUCT), APPLICABLE FEDERAL AND STATE LAWS, HOST INSTITUTIONAL RULES AND SCIENTIFIC STANDARDS GOVERNING RESEARCH WITH HUMAN SUBJECTS.

(2) A LICENSEE SHALL OBTAIN INFORMED CONSENT FROM PARTICIPANTS BY USING LANGUAGE THAT THE LICENSEE BELIEVES WOULD BE UNDERSTANDABLE TO THE RESEARCH PARTICIPANTS AND THAT:

(i) ACCURATELY EXPLAINS THE PURPOSE AND PROCEDURES TO BE FOLLOWED.

(ii) IDENTIFIES ANY PROCEDURES THAT ARE EXPERIMENTAL OR RELATIVELY UNTRIED.

(iii) DESCRIBES THE ATTENDANT DISCOMFORTS AND RISKS THAT ARE MOST LIKELY TO OCCUR AND WHICH ARE KNOWN TO THE LICENSEE.

(iv) DESCRIBES THE BENEFITS OR CHANGES IN INDIVIDUALS OR ORGANIZATIONS THAT MIGHT BE REASONABLY EXPECTED.

(v) DISCLOSES APPROPRIATE ALTERNATIVE PROCEDURES THAT MAY BE ADVANTAGEOUS FOR THE SUBJECT.

(vi) OFFERS TO ANSWER ANY INQUIRIES CONCERNING THE PROCEDURES.

(vii) INSTRUCTS THAT SUBJECTS ARE FREE TO WITHDRAW THEIR CONSENT AND DISCONTINUE PARTICIPATION IN THE RESEARCH PROJECT AT ANY TIME.

(3) WHEN A PARTICIPANT IS NOT CAPABLE OF GIVING INFORMED CONSENT, LICENSEES SHALL PROVIDE AN APPROPRIATE EXPLANATION, OBTAIN AGREEMENT FOR PARTICIPATION AND OBTAIN INFORMED CONSENT FROM A PARTICIPANT'S PARENT, GUARDIAN, COURT-APPOINTED REPRESENTATIVE OR THE HOLDER OF THE PARTICIPANT'S POWER OF ATTORNEY.

(4) INFORMATION OBTAINED ABOUT RESEARCH PARTICIPANTS DURING THE COURSE OF THE RESEARCH IS CONFIDENTIAL. THE LICENSEE SHALL EXPLAIN TO THE PARTICIPANT WHETHER THE POSSIBILITY EXISTS THAT OTHERS MAY OBTAIN ACCESS TO SUCH INFORMATION, AND SHALL ALSO EXPLAIN THE PLANS FOR PROTECTING THE PARTICIPANT'S CONFIDENTIALITY AS PART OF THE PROCEDURE FOR OBTAINING INFORMED CONSENT.

(b) *REPORTING AND PUBLICATION OF RESULTS.*

(1) LICENSEES MAY NOT ENGAGE IN FRAUDULENT RESEARCH, DISTORT DATA, MISREPRESENT DATA OR DELIBERATELY BIAS THEIR RESULTS.

(2) LICENSEES SHALL PLAN, CONDUCT, REPORT AND PUBLISH ACCURATELY AND IN A MANNER THAT MINIMIZES THE POSSIBILITY THAT RESULTS WILL BE MISLEADING.

(c) *OTHER ETHICAL OBLIGATIONS.* IN ADDITION TO THE PROVISIONS OF THIS SECTION, A LICENSEE'S ETHICAL OBLIGATIONS WITH REGARD TO RESEARCH AND PUBLICATION ARE GOVERNED BY THIS CHAPTER AND THOSE CODES OF ETHICS AND STANDARDS OF PRACTICE TO WHICH THE BOARD SUBSCRIBES IN § 49.71.

~~(f)~~ — *Payment for services.*

§ 49.77. PAYMENT FOR SERVICES.

~~(1)~~ (a) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

~~(2)~~ (b) Licensees may not accept goods or services as payment for professional services.

~~(3)~~ (c) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

~~(4)~~ (d) Prior to entering into the therapeutic or supervisory relationship, a licensee should SHALL clearly disclose and explain to clients/patients and supervisees the following:

~~(i)~~ (1) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

~~(ii)~~ (2) The use of collection agencies or legal measures for nonpayment.

~~(iii)~~ (3) The procedure for obtaining payment from the client/patient, to the extent allowed by law, if payment is denied by the third-party payor.

~~(5)~~ (e) Once services have begun, licensees shall provide reasonable notice of any changes in fees or other charges.

~~(6)~~ (f) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When such action is taken, licensees shall not disclose clinical information.

~~(7)~~ (g) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

~~(8)~~ (h) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services, except as otherwise provided by law.

~~(g)~~ *Recordkeeping.*

§ 49.78. RECORDKEEPING.

~~(1)~~ (a) For each client/patient, a licensee shall keep records of the dates of professional counseling services, types of professional counseling services, DETAILS OF THE SERVICES PROVIDED, termination OF THE PROFESSIONAL RELATIONSHIP, and billing information.

~~(2)~~ (b) Records kept by the licensee shall be retained for AT LEAST 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

~~(3)~~ (c) Licensees shall take reasonable steps to ensure that documentation in records is accurate, LEGIBLE and reflects the services provided.

~~(4)~~ (d) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to the client/patient in the future.

~~(5)~~ (e) Licensees' documentation should SHALL protect clients'/patients' privacy to the extent that it is possible and appropriate CONSISTENT WITH APPLICABLE FEDERAL AND

STATE LAWS AND REGULATIONS and should include only information that is directly relevant to the delivery of services.

~~(6)~~ (f) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be maintained RETAINED AND STORED as required by paragraph (2) unless a longer retention period is otherwise required by statute or relevant contracts APPLICABLE FEDERAL AND STATE LAW AND REGULATIONS.

~~(7)~~ (g) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious misunderstanding or harm to the client/patient OR ANOTHER PERSON should SHALL provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees should MAY limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client/patient OR ANOTHER PERSON. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in such records.

~~(8)~~ (h) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

~~(h) Mandatory reporting.~~

§ 49.79. MANDATORY REPORTING.

~~(1)~~ (a) Licensees, supervisors and trainees have a responsibility to report any alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board. LICENSEES SHALL MAKE THESE REPORTS IN A MANNER THAT DOES NOT VIOLATE A CLIENT'S/PATIENT'S RIGHT TO CONFIDENTIALITY.

~~(2)~~ (b) Licensees shall comply with all mandatory reporting requirements set forth in this chapter, including §§ 49.51- 49.57 (relating to child abuse reporting requirements).

~~(i)~~ (c) Notice of name and address change. A licensee shall notify the Board within 30 days of any changes of name or mailing information to ensure that the Board has the licensee's current name and mailing address. Failure to do so may result in disciplinary action by the Board.

~~(i)~~ Advertising.

§ 49.80. ADVERTISING.

~~(1)~~ (a) DEFINITION OF ADVERTISING.

Licensees shall engage in appropriate ADVERTISING IS DEFINED AS THE ENGAGEMENT IN GENERAL informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

~~(2)~~ (b) ENGAGEMENT IN ADVERTISING.

(1) Licensees shall accurately represent MAY ENGAGE IN ADVERTISING THAT ACCURATELY REPRESENTS their competencies, education, training and experience relevant to their professional practice. LICENSEES MAY NOT

ADVERTISE THEIR SERVICES AND CREDENTIALS IN A MANNER THAT IS FALSE, MISLEADING, DECEPTIVE OR FRAUDULENT.

~~(3)~~ (2) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

- (i) Office information, such as name, address, telephone number and credit card acceptability.
- (ii) Earned degrees and state or provincial licensures or certifications.
- (iii) Professional association member status.
- (iv) Description of practice.

~~(4)~~ (3) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

~~(5)~~ (4) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

~~(6)~~ (5) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions

recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

~~(7)~~ (6) The licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

~~(8)~~ (7) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

~~(9)~~ (8) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

LIST OF PUBLIC COMMENTATORS

16A-6911 – CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT

Sally J. Tice, PhD., LMFT
Joan Sherman, LMFT
Pennsylvania Association for Marriage and Family Therapy
550 Pinetown Road Suite 301A
Ft. Washington, PA 19034

Connie R. Matthews, PhD, NCC, LPC, Chair
American Counseling Assoc. North Atlantic Region
1612 Elizabeth Road
State College, PA 16801

Jenna Mehnert, MSW, Executive Director
NASW, Pennsylvania Chapter
2001 North Front Street, Suite 321
Harrisburg, PA 17102

Virginia C. McIntosh, LCSW, MCD
Legislative Chair and Past President
Pennsylvania Society for Clinical Social Work
112 Carol Lane
Richboro, PA 18954

Paul L. West, Ed.D., LPC, NCC, President
Pennsylvania Counseling Association
Pwest1604@comcast.net

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47, 48 AND 49]

Code of Ethical Practice and Standards of Professional Conduct

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to add §§ 47.71, 48.71 and 49.71 (relating to code of ethical practice and standards of professional conduct) to read as set forth in Annex A. The regulations would establish a code of ethical practice and standards of professional conduct for social workers, clinical social workers, marriage and family therapists and professional counselors.

Effective Date

The regulations will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The regulations are authorized under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)).

Background and Purpose

Section 6(2) of the act authorizes the Board to adopt rules and regulations establishing standards of professional practice and conduct for licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors in this Commonwealth. The Board, through this rulemaking, is implementing section 6(2) of the act.

In developing this code of ethical conduct and standards of professional practice, the Board looked at codes of conduct established by professional associations and organizations as well as other state codes. In particular, the Board modeled these regulations after codes of conduct and professional practice adopted by the following associations and organizations: the National Association of Social Workers; the Clinical Social Work Federation; the Pennsylvania State Board of Psychology; the American Association for Marriage and Family Therapy; the National Board for Certified Counselors; the Professional Counseling Board; the Commission on Rehabilitation Counselor Certification; and the American Psychological Association. In addition, the Board looked at standards promulgated by other state licensing boards.

Description

Sections 47.71, 48.71 and 49.71 explain that this code of ethical practice and professional conduct constitutes the standards by which the licensee shall be measured and that violations of these standards is sufficient reason for the Board to take disciplinary action against a licensee.

The proposed regulations set forth standards pertaining to the responsibility of a licensee to clients/patients. These responsibilities include: competency; informed con-

sent; proper delegation; confidentiality and privacy; manner of terminating services; prohibition of sexual harassment and discrimination; and proper conduct between a licensee and the client/patient.

The proposed regulations also address multiple relationships affecting the licensee's judgment. In particular, §§ 47.71(c), 48.71(c) and 49.71(c) explain that a licensee should avoid multiple relationships and conflicts of interest with any client/patient which could impair professional judgment or increase the risk of client/patient exploitation.

Sections 47.71(d), 48.71(d) and 49.71(d) prohibit a licensee from undertaking or continuing professional relationships with a client, supervisee or student when objectivity or competency of the licensee is or could reasonably be expected to be impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions.

Sections 47.71(e), 48.71(e) and 49.71(e) address standards of conduct relating to research and publication. This includes research responsibility, informed consent, reporting results and publication.

Sections 47.71(f), 48.71(f) and 49.71(f) provide guidance to licensees related to payment for services. Sections 47.71(g), 48.71(g) and 49.71(g) pertain to recordkeeping. These provisions require that licensees keep records of the dates of services, types of services, termination and billing information. They also require that records be maintained by the licensee for 5 years except for records held or owned by government agencies or educational institutions.

Sections 47.71(h), 48.71(h) and 49.71(h) pertain to mandatory reporting and require that all licensees, supervisors and trainees have a responsibility to report any alleged violations of these rules to the Board. Sections 47.71(i), 48.71(i) and 49.71(i) require licensees to notify the Board of any changes of name or address. Sections 47.71(j), 48.71(j) and 49.71(j) require licensees to engage in appropriate advertising and to accurately represent their competencies, education, training and experience relevant to their professional practice.

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact and impose no additional paperwork requirements on the Board or its licensees.

The proposed regulations should not impose any legal, accounting or reporting requirements on the regulated community.

Compliance

The Board solicited predraft input regarding these proposed regulations from licensees, professional associations and educational programs. The Board received seven comments to the draft. The Board considered these comments in developing the proposed rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 4, 2008, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to publication of the final rulemaking, by the Board, the General Assembly, and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed amendments to Sandra Matter, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-6911, Standards of Professional Conduct, when submitting comments.

RONALD HAYS,
Chairperson

Fiscal Note: 16A-6911. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT

§ 47.71. Code of ethical practice and professional conduct.

(a) *Application.* This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed social workers and licensed clinical social workers will be measured.

(1) This code of ethical practice and professional conduct applies to the conduct of all licensees.

(2) A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed social worker or licensed clinical social worker to disciplinary action under section 11 of the act (63 P. S. § 1911).

(3) The Board subscribes to the codes of ethics and practice standards promulgated by the National Association of Social Workers, the Pennsylvania Society for Clinical Social Work and the Association of State Social Work Boards and the Board will use these codes and standards as aids in resolving ambiguities which may arise in the interpretation of this section, except that whenever any conflict exists between this section and the professional associations' codes and standards, this section shall prevail.

(b) *Responsibility to clients/patients.*

(1) *Competency.*

(i) Licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or area or areas of competence.

(ii) Licensees may practice only within the competency areas for which they are qualified by education, training or experience.

(iii) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar training would have done in a similar circumstance.

(iv) Licensees shall make appropriate referrals when the client's/patient's needs exceed the licensee's competence level. The referrals must be made in a timely manner.

(2) *Informed consent.*

(i) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might affect the clients'/patients' decisions to enter into or continue the relationship.

(ii) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.

(iii) In instances when the client/patient is unable to read or understand the consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian or court-appointed representative.

(iv) When a client/patient is receiving services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client's/patient's parent, guardian or court-appointed representative.

(v) Licensees who provide services by the electronic means shall inform the client/patient of the limitations and risks associated with the services.

(3) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(4) *Confidentiality and privacy.*

(i) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or other person legally authorized to give consent on behalf of the client/patient, has given informed consent, except in those

circumstances in which failure to do so would violate other laws or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(ii) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(iii) When licensees provide services to families, couples or groups, licensees should seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(iv) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(5) *Termination.* Licensees shall terminate services only after giving careful consideration to factors affecting the relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(6) *Sexual harassment.*

(i) Licensees may not sexually harass clients/patients or family members of clients/patients.

(ii) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(iii) Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature.

(7) *Discrimination.* Licensees may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national origin, color, gender, sexual orientation, age, socioeconomic level, marital status, political belief, veteran status, or mental or physical impairment.

(8) *Conduct with clients/patients.*

(i) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(ii) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.

(c) *Dual or multiple relationships affecting the licensee's judgment.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient which could impair the licensee's professional judgment or increase the risk of client/patient exploitation. Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. The licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative. The licensee should be particularly aware that familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure that impaired judgment or exploitation is not involved.

(2) Licensees shall always be sensitive to the potentially harmful effects of other contacts on their practice and on those persons with whom they deal. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other relationships with another person if it appears or should appear likely that the relationship might reasonably impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness as a licensed social worker or licensed clinical social worker or might harm or exploit the other party.

(3) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates a conflict of interest among the individuals receiving services or who anticipates having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

(d) *Impaired practice.* A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify

the client/patient of the termination in writing and assist the client/patient in obtaining services from another professional.

(e) *Research and publication.*

(1) *Research responsibilities.*

(i) *Use of human subjects.* Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.

(ii) *Deviation from standard practice.* Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.

(iii) *Precautions to avoid injury.* Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to the subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.

(iv) *Principal researcher responsibility.* The ultimate responsibility for ethical research practice lies with the principal researcher. Others involved in the research activities share ethical obligations and full responsibility for their own actions.

(v) *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.

(vi) *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations and seek consultation when a reasonable researcher would consider it appropriate.

(2) *Informed consent.*

(i) *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research participants and that:

(A) Accurately explains the purpose and procedures to be followed.

(B) Identifies any procedures that are experimental or relatively untried.

(C) Describes the attendant discomforts and risks.

(D) Describes the benefits or changes in individuals or organizations that might be reasonably expected.

(E) Discloses appropriate alternative procedures that would be advantageous for the subject.

(F) Offers to answer any inquiries concerning the procedures.

(G) Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.

(ii) *Prohibition of deception.* The methodological requirements of research study may not include concealment, deception or minimal risk to participants.

(iii) *Voluntary participation.* Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure

may not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.

(iv) *Confidentiality of information.* Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to the information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.

(v) *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.

(vi) *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.

(vii) *Explanations after data collections.* After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.

(viii) *Agreements to cooperate.* Licensees who agree to cooperate with another individual in research or publication shall cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.

(ix) *Informed consent for sponsors.* In the pursuit of research, licensees shall give sponsors, institutions and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Licensees shall be aware of their obligation to future research workers and ensure that host institutions are given feedback information and proper acknowledgment.

(3) *Reporting results.*

(i) *Information affecting outcome.* When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.

(ii) *Accurate results.* Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and shall provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

(iii) *Obligation to report unfavorable results.* Licensees shall communicate to other licensees the results of any research judged to be of professional value.

(iv) *Identity of subjects.* Licensees who supply data, aid in the research of another person, report research results or make original data available shall take due care to

disguise the identity of respective subjects in the absence of specific authorization from the subjects to do otherwise.

(v) *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.

(4) *Publication.*

(i) *Recognition of others.* When conducting and reporting research, licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

(ii) *Contributors.* Licensees shall give credit through joint authorship, acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.

(iii) *Student research.* For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.

(iv) *Duplicate submission.* Licensees shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.

(v) *Professional review.* Licensees who review material submitted for publication, research or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.

(f) *Payment for services.*

(1) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

(2) Licensees may not accept goods or services as payment for professional services.

(3) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

(4) Prior to entering into the therapeutic or supervisory relationship, a licensee should clearly disclose and explain to clients/patients and supervisees the following:

(i) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

(ii) The use of collection agencies or legal measures for nonpayment.

(iii) The procedure for obtaining payment from the client/patient, to the extent allowed by law, if payment is denied by the third-party payor.

(5) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

(6) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When that action is taken, licensees may not disclose clinical information.

(7) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

(8) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services, except as otherwise provided by law.

(g) *Recordkeeping.*

(1) For each client/patient, a licensee shall keep records of the dates of social work services, types of social work services, termination and billing information.

(2) Records kept by the licensee shall be retained for 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

(3) Licensees shall take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

(4) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to the client/patient in the future.

(5) Licensees' documentation should protect clients'/patients' privacy to the extent that it is possible and appropriate and should include only information that is directly relevant to the delivery of services.

(6) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be maintained as required by paragraph (2) unless a longer retention period is otherwise required by statute or relevant contracts.

(7) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious misunderstanding or harm to the client/patient should provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees should limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that the access would cause serious harm to the client/patient. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients'/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in the records.

(8) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

(h) *Mandatory reporting.*

(1) Licensees, supervisors and trainees have a responsibility to report any alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board.

(2) Licensees shall comply with mandatory reporting requirements in this chapter, including §§ 47.51—47.57 (relating to child abuse reporting requirements).

(i) *Notice of name and address change.* Licensees shall notify the Board within 30 days of any changes of name or mailing information to ensure that the Board has the licensees' current name and mailing address. Failure to do so may result in disciplinary action by the Board.

(j) *Advertising.*

(1) Licensees shall engage in appropriate informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

(2) Licensees shall accurately represent their competencies, education, training and experience relevant to their professional practice.

(3) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

(i) Office information, such as name, address, telephone number and credit card acceptability.

(ii) Earned degrees and State or provincial licensures or certifications.

(iii) Professional association member status.

(iv) Description of practice.

(4) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and shall not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(5) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(6) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(7) A licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(8) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(9) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS

CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT

§ 48.71. Code of ethical practice and professional conduct.

(a) *Application.* This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed marriage and family therapists will be measured.

(1) This code of ethical practice and professional conduct applies to the conduct of all licensees.

(2) A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed marriage and family therapist to disciplinary action under section 11 of the act (63 P. S. § 1911).

(3) The Board subscribes to the codes of ethics and practice standards for licensees promulgated by the National Board for Certified Counselors, Inc., the Commission on Rehabilitation Counselor Certification, the Certification Board for Music Therapists, the American Dance Therapy Association and the American Association for Marriage and Family Therapy and the Board will use these codes and standards as aids in resolving ambiguities which may arise in the interpretation of this section, except that whenever any conflict exists between this section and the professional associations' codes and standards, this section shall prevail.

(b) *Responsibility to clients/patients.*

(1) *Competency.*

(i) Licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or area or areas of competence.

(ii) Licensees may practice only within the competency areas for which they are qualified by education, training or experience.

(iii) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar training would have done in a similar circumstance.

(iv) Licensees shall make appropriate referrals when the client's/patient's needs exceed the licensee's competence level. The referrals must be made in a timely manner.

(2) *Informed consent.*

(i) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might affect the clients/patients of services decisions to enter into or continue the relationship.

(ii) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.

(iii) In instances when the client/patient is unable to read or understand the consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall

obtain consent from the client's/patient's parent, guardian or court appointed representative.

(iv) When a client/patient is receiving services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client's/patient's parent, guardian or court appointed representative.

(v) Licensees who provide services of electronic means shall inform the clients/patients of the limitations and risks associated with the services.

(3) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(4) *Confidentiality and privacy.*

(i) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient or other person legally authorized to give consent on behalf of the client/patient, has given informed consent, except in those circumstances in which failure to do so would violate other laws or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(ii) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(iii) When licensees provide services to families, couples or groups, licensees should seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(iv) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(5) *Termination.* Licensees shall terminate services only after giving careful consideration to factors affecting the relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(6) *Sexual harassment.*

(i) Licensees may not sexually harass clients/patients or family members of clients/patients.

(ii) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(iii) Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature.

(7) *Discrimination.* Licensees may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national origin, color, gender, sexual orientation, age, socioeconomic level, marital status, political belief, veteran status, or mental or physical impairment.

(8) *Conduct with clients/patients.*

(i) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(ii) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.

(c) *Dual or multiple relationships affecting the licensee's judgment.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient which could impair the licensee's professional judgment or increases the risk of client/patient exploitation. Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. The licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative. The licensee should be particularly aware that familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure that impaired judgment or exploitation is not involved.

(2) Licensees shall always be sensitive to the potentially harmful effects of other contacts on their practice and on those persons with whom they deal. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other relationships with another person if it appears or should appear likely that such a relationship might reasonably impair the professional's objectivity or otherwise interfere with the licensee's effectiveness as a licensed marriage and family therapist or might harm or exploit the other party.

(3) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

(d) *Impaired practice.* A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is or could reasonably be expected to be impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of termination in writing and assist the client/patient in obtaining services from another professional.

(e) *Research and publication.*

(1) *Research responsibilities.*

(i) *Use of human subjects.* Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.

(ii) *Deviation from standard practice.* Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.

(iii) *Precautions to avoid injury.* Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to their subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.

(iv) *Principal researcher responsibility.* The ultimate responsibility for ethical research practice lies with the principal researcher. Others involved in the research activities share ethical obligations and full responsibility for their own actions.

(v) *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.

(vi) *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations and seek consultation when a reasonable researcher would consider it appropriate.

(2) *Informed consent.*

(i) *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research participants and that:

(A) Accurately explains the purpose and procedures to be followed.

(B) Identifies any procedures that are experimental or relatively untried.

(C) Describes the attendant discomforts and risks.

(D) Describes the benefits or changes in individuals or organizations that might be reasonably expected.

(E) Discloses appropriate alternative procedures that would be advantageous for the subject.

(F) Offers to answer any inquiries concerning the procedures.

(G) Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.

(ii) *Prohibition of deception.* The methodological requirements of research study may not include concealment, deception or minimal risk to participants.

(iii) *Voluntary participation.* Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure may not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.

(iv) *Confidentiality of information.* Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to the information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.

(v) *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.

(vi) *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.

(vii) *Explanations after data collections.* After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.

(viii) *Agreements to cooperate.* Licensees who agree to cooperate with another individual in research or publication shall cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.

(ix) *Informed consent for sponsors.* In the pursuit of research, licensees shall give sponsors, institutions and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Licensees shall be aware of their

obligation to future research workers and ensure that host institutions are given feedback information and proper acknowledgment.

(3) *Reporting results.*

(i) *Information affecting outcome.* When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.

(ii) *Accurate results.* Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

(iii) *Obligation to report unfavorable results.* Licensees shall communicate to other licensees the results of any research judged to be of professional value.

(iv) *Identity of subjects.* Licensees who supply data, aid in the research of another person, report research results or make original data available shall take due care to disguise the identity of respective subjects in the absence of specific authorization from the subjects to do otherwise.

(v) *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.

(4) *Publication.*

(i) *Recognition of others.* When conducting and reporting research, licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

(ii) *Contributors.* Licensees shall give credit through joint authorship, acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.

(iii) *Student research.* For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.

(iv) *Duplicate submission.* Licensees shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.

(v) *Professional review.* Licensees who review material submitted for publication, research or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.

(f) *Payment for services.*

(1) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

(2) Licensees may not accept goods or services as payment for professional services.

(3) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

(4) Prior to entering into the therapeutic or supervisory relationship, a licensee should clearly disclose and explain to clients/patients and supervisees the following:

(i) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

(ii) The use of collection agencies or legal measures for nonpayment.

(iii) The procedure for obtaining payment from the client, to the extent allowed by law, if payment is denied by the third-party payor.

(5) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

(6) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When that action is taken, licensees may not disclose clinical information.

(7) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

(8) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services, except as otherwise provided by law.

(g) *Recordkeeping.*

(1) For each client/patient, a licensee shall keep records of the dates of marriage and family therapy services, types of marriage and family therapy services, termination and billing information.

(2) Records kept by the licensee shall be retained for 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

(3) Licensees shall take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

(4) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.

(5) Licensees' documentation should protect clients'/patients' privacy to the extent that it is possible and appropriate and should include only information that is directly relevant to the delivery of services.

(6) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be maintained as required by paragraph (2) unless a longer retention period is otherwise required by statute or relevant contracts.

(7) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious misunderstanding or harm to the client/patient should provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees should limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when

there is compelling evidence the access would cause serious harm to the client/patient. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in the records.

(8) In the event of a licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

(h) *Mandatory reporting.*

(1) Licensees, supervisors and trainees have a responsibility to report any alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board.

(2) Licensees shall comply with mandatory reporting requirements set forth in this chapter, including §§ 48.51—48.57 (relating to child abuse reporting requirements).

(i) *Notice of name and address change.* A licensee shall notify the Board within 30 days of any changes of name or mailing information to ensure that the Board has the licensee's current name and mailing address. Failure to do so may result in disciplinary action by the Board.

(j) *Advertising.*

(1) Licensees shall engage in appropriate informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

(2) Licensees shall accurately represent their competencies, education, training and experience relevant to their professional practice.

(3) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

(i) Office information, such as name, address, telephone number and credit card acceptability.

(ii) Earned degrees and state or provincial licensures or certifications.

(iii) Professional association member status.

(iv) Description of practice.

(4) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(5) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(6) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources

recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(7) The licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(8) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(9) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

**CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—
LICENSURE OF PROFESSIONAL COUNSELORS
CODE OF ETHICAL PRACTICE AND STANDARDS
OF PROFESSIONAL CONDUCT**

§ 49.71. Code of ethical practice and professional conduct.

(a) *Application.* This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed professional counselors will be measured.

(1) This code of ethical practice and professional conduct applies to the conduct of all licensees.

(2) A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed professional counselor to disciplinary action under section 11 of the act (63 P.S. § 1911).

(3) The Board subscribes to the codes of ethics and practice standards for licensees promulgated by the National Board for Certified Counselors, Inc., the Commission on Rehabilitation Counselor Certification, the Certification Board for Music Therapists, the Art Therapists Certification Board, the American Dance Therapy Association, the National Association for Drama Therapy, the Academy of Certified Clinical Mental Health Counselors, the North American Association of Master's in Psychology, the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse Inc. and the National Association of Alcoholism and Drug Abuse Counselors. The Board will use these codes and standards as aids in resolving ambiguities which may arise in the interpretation of this section. Whenever any conflict exists between this section and the professional associations' codes and standards, this section shall prevail.

(b) *Responsibility to clients/patients.*

(1) *Competency.*

(i) Licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or areas of competence.

(ii) Licensees may practice only within the competency areas for which they are qualified by education, training or experience.

(iii) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar training would have done in a similar circumstance.

(iv) Licensees shall make appropriate referrals when the client's/patient's needs exceed the licensee's competence level. The referrals must be made in a timely manner.

(2) *Informed consent.*

(i) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might effect the clients'/patients' decisions to enter into or continue the relationship.

(ii) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.

(iii) In instances when the client/patient is unable to read or understand the consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian or court-appointed representative.

(iv) When a client/patient is receiving services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client's/patient's parent, guardian or court appointed representative.

(v) Licensees who provide services by means of electronic means shall inform the clients/patients of the limitations and risks associated with such services.

(3) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(4) *Confidentiality and privacy.*

(i) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient or other person legally authorized to give consent on behalf of the client/patient, has given informed consent, except in those circumstances in which failure to do so would violate other laws or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(ii) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives, the nature of confidentiality and the limitation of clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(iii) When licensees provide services to families, couples or groups, licensees should seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(iv) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(5) *Termination.* Licensees shall terminate services only after giving careful consideration to factors affecting the relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(6) *Sexual harassment.*

(i) Licensees may not sexually harass clients/patients or family members of clients/patients.

(ii) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(iii) Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature.

(7) *Discrimination.* Licensees may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national origin, color, gender, sexual orientation, age, socioeconomic level, marital status, political belief, veteran status, or mental or physical impairment.

(8) *Conduct with clients.*

(i) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(ii) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.

(c) *Dual or multiple relationships affecting the licensee's judgment.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient which could impair the licensee's professional judgment or increase the risk of client/patient exploitation. Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. The licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative. The licensee should be particularly aware

that familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure that impaired judgment or exploitation is not involved.

(2) Licensees shall always be sensitive to the potentially harmful effects of other contacts on their practice and on those persons with whom they deal. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other relationships with other persons if it appears or should appear likely that the relationship might reasonably impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness as a licensed professional counselor or might harm or exploit the other party.

(3) When a dual or multiple relationship cannot be avoided, licensees shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates a conflict of interest among the individuals receiving services or who anticipates having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients, shall clarify the roles with the parties involved and take appropriate action to minimize any conflict of interest.

(d) *Impaired practice.* A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of the termination in writing and shall assist the client/patient in obtaining services from another professional.

(e) *Research and publication.*

(1) *Research responsibilities.*

(i) *Use of human subjects.* Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules, and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.

(ii) *Deviation from standard practice.* Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.

(iii) *Precautions to avoid injury.* Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to their subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.

(iv) *Principal researcher responsibility.* The ultimate responsibility for ethical research practice lies with the principal researcher. Others involved in the research activities share ethical obligations and full responsibility for their own actions.

(v) *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.

(vi) *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations and seek consultation when a reasonable researcher would consider it appropriate.

(2) *Informed consent.*

(i) *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research participants and that:

(A) Accurately explains the purpose and procedures to be followed.

(B) Identifies any procedures that are experimental or relatively untried.

(C) Describes the attendant discomforts and risks.

(D) Describes the benefits or changes in individuals or organizations that might be reasonably expected.

(E) Discloses appropriate alternative procedures that would be advantageous for the subject.

(F) Offers to answer any inquiries concerning the procedures.

(G) Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.

(ii) *Prohibition of deception.* The methodological requirements of research study may not include concealment, deception or minimal risk to participants.

(iii) *Voluntary participation.* Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure may not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.

(iv) *Confidentiality of information.* Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to the information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.

(v) *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.

(vi) *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.

(vii) *Explanations after data collections.* After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.

(viii) *Agreements to cooperate.* Licensees who agree to cooperate with another individual in research or publication shall cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.

(ix) *Informed consent for sponsors.* In the pursuit of research, licensees shall give sponsors, institutions and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Licensees shall be aware of their obligation to future research workers and ensure that host institutions are given feedback information and proper acknowledgment.

(3) *Reporting results.*

(i) *Information affecting outcome.* When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.

(ii) *Accurate results.* Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

(iii) *Obligation to report unfavorable results.* Licensees shall communicate to other licensees the results of any research judged to be of professional value.

(iv) *Identity of subjects.* Licensees who supply data, aid in the research of another person, report research results or make original data available shall take due care to disguise the identity of respective subjects in the absence of specific authorization from the subjects to do otherwise.

(v) *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.

(4) *Publication.*

(i) *Recognition of others.* When conducting and reporting research, licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

(ii) *Contributors.* Licensees shall give credit through joint authorship, acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.

(iii) *Student research.* For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.

(iv) *Duplicate submission.* Licensees shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.

(v) *Professional review.* Licensees who review material submitted for publication, research or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.

(f) *Payment for services.*

(1) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

(2) Licensees may not accept goods or services as payment for professional services.

(3) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

(4) Prior to entering into the therapeutic or supervisory relationship, a licensee should clearly disclose and explain to clients/patients and supervisees the following:

(i) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

(ii) The use of collection agencies or legal measures for nonpayment.

(iii) The procedure for obtaining payment from the client, to the extent allowed by law, if payment is denied by the third-party payor.

(5) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

(6) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When that action is taken, licensees may not disclose clinical information.

(7) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

(8) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services, except as otherwise provided by law.

(g) *Recordkeeping.*

(1) For each client/patient, a licensee shall keep records of the dates of professional counseling services, types of professional counseling services, termination and billing information.

(2) Records kept by the licensee shall be retained for 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

(3) Licensees shall take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

(4) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.

(5) Licensees' documentation should protect clients'/patients' privacy to the extent that it is possible and appropriate and should include only information that is directly relevant to the delivery of services.

(6) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be maintained as required by paragraph (2) unless a longer retention period is otherwise required by statute or relevant contracts.

(7) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious misunderstanding or harm to the client/patient should provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees should limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that the access would cause serious harm to the client/patient. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients'/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in the records.

(8) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

(h) *Mandatory reporting.*

(1) Licensees, supervisors and trainees have a responsibility to report any alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board.

(2) Licensees shall comply with mandatory reporting requirements in this chapter, including §§ 49.51—49.57 (relating to child abuse reporting requirements).

(i) *Notice of name and address change.* A licensee shall notify the Board within 30 days of any changes of name or mailing information to ensure that the Board has the licensee's current name and mailing address. Failure to do so may result in disciplinary action by the Board.

(j) *Advertising.*

(1) Licensees shall engage in appropriate informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

(2) Licensees shall accurately represent their competencies, education, training and experience relevant to their professional practice.

(3) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

(i) Office information, such as name, address, telephone number and credit card acceptability.

(ii) Earned degrees and state or provincial licensures or certifications.

(iii) Professional association member status.

(iv) Description of practice.

(4) Licensees may not use names that could mislead the public concerning the identity, responsibility, source and status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(5) Licensees may not use any professional identification, such as a business card, office sign, letterhead, Internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(6) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(7) The licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(8) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(9) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

[Pa.B. Doc. No. 08-1102. Filed for public inspection June 13, 2008, 9:00 a.m.]



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS
AND PROFESSIONAL COUNSELORS

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-1389

July 14, 2010

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Social Workers, Marriage and Family
Therapists and Professional Counselors
16A-6911: Code of Ethical Practice and Standards of Professional Conduct

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors pertaining to the code of ethical practice and standards of professional conduct.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Donna L. Tonrey".

Donna Tonrey, LMFT, Chairperson
State Board of Social Workers, Marriage and Family
Therapists and Professional Counselors

DT/DMG:klh

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
David M. Green, Counsel
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-6911

SUBJECT: CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT

AGENCY: DEPARTMENT OF STATE
STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS
AND PROFESSIONAL COUNSELORS

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
IRRC
2010 JUL 14 A 10: 21

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
7/14/10	<i>K. Miller</i>	MAJORITY CHAIRMAN <i>Michael P. McKehean</i>
7/14/10	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <i>Robert M. Tomlinson</i>
7/14/10	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)