

251 CMR: BOARD OF REGISTRATION OF PSYCHOLOGISTS

251 CMR 1.00: ETHICAL STANDARDS, PROFESSIONAL CONDUCT, AND DISCIPLINARY PROCEDURES

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1.01: Initiation

Any person, organization, or member of the Board may file a complaint or report or provide information to the Board which charges a licensee with misconduct. Misconduct may include any violation of the standards of ethics and practice listed in 251 CMR 1.10 and 1.11. The Board's complaint form requests the name, address, and telephone number of the party making the filing, and a description of the alleged act(s) which prompted the complaint and must be signed by the party or an authorized representative. The Board, in its discretion, may investigate anonymous complaints.

1.02: Complaint Committees

The Board may establish one or more committees, consisting of two or more members, to review every communication charging a licensee with conduct which violates M.G.L. c. 112, § 61; c. 112, § 128; and/or 251 CMR 1.00.

1.03: Inquiry and Investigation

After receipt and review of a communication, if the Board or a Complaint Committee determines that the communication is lacking in merit, it may file the communication in a general communications file. The Board shall conduct or cause to be conducted any reasonable inquiry or investigation it deems necessary to determine the truth and validity of the allegations set forth in a complaint.

1.04: Request for Response and Response

If the Board or a Complaint Committee determines that a complaint has merit, the Board or Committee may request that the licensee who is the subject of the complaint provide a response to the complaint. A licensee may respond to a request for response either personally or through an attorney. A response must address the substantive allegations set forth in the complaint or request for response and be provided in a timely manner, in accordance with the request of the Board or Complaint Committee.

1.05: Investigative Conference

To facilitate disposition, the Board or Complaint Committee may request any person to attend an investigative conference at any time prior to the commencement of a formal hearing, pursuant to M.G.L. c. 30A, to discuss the complaint and response.

1.06: Disposition of Complaints

At any point during the course of investigation or inquiry into a complaint, the Board or Complaint Committee may determine that there is not and will not be sufficient evidence to warrant further proceedings or that the complaint fails to allege misconduct for which a licensee may be sanctioned by the Board. In such event, the Board may dismiss or close its investigation of the complaint and otherwise communicate with the licensee and/or the complainant, as deemed appropriate by the Board.

1.07: Board Action Required

If a licensee fails to respond as requested by the Board or a Committee or, if after receiving a response or at any point in the course of investigation or inquiry into a complaint, the Board or Committee determines that there is reason to believe that the alleged acts occurred and constitute a violation for which a licensee may be sanctioned by the Board, the Committee may recommend to the Board or the Board may vote to issue an order to show cause or offer to resolve the complaint by consent agreement or otherwise informally resolve the matter.

1.08: Suspension or Refusal to Renew Prior to Hearing

The Board may suspend or refuse to renew a licensee's license pending a hearing on the question of revocation or refusal to renew if the health, safety, or welfare of the public necessitates such summary action. The Board must provide a hearing on the necessity for the summary action within seven days after the suspension or refusal to renew. If such hearing is not held within seven days, the license shall be deemed to have been reinstated.

1.09: Sanctions

(1) Sanctions. The Board may, after a hearing in accordance with the provisions of M.G.L. c. 30A, revoke, suspend or cancel the license, or reprimand, censure or otherwise discipline a psychologist licensed under M.G.L. c. 112, §§ 118 through 129A.

(2) Probationary Status. Probationary status may be imposed by the Board. If the Board places a licensee on probation, or if the Board and a licensee consent to the imposition of probationary status, such conditions for continued practice as the Board deems appropriate may be imposed to assure that the licensee is qualified to practice in accordance with accepted professional practice standards including any or all of the following:

- (a) Submission by the licensee to such examinations as the Board may require to determine the licensee's physical or mental condition or professional qualifications;
- (b) The licensee may be required to undergo such therapy and/or complete such courses of training or education as deemed necessary by the Board;
- (c) Supervision of the licensee's practice as necessary to determine and monitor the quality of the professional services rendered and correct deficiencies therein; and
- (d) The imposition of restrictions upon the licensee's practice to assure that practice is in accordance with the licensee's capabilities and area(s) of competency and training.

(3) Supervision of Practice. If the Board orders, or the Board and a licensee consent to the imposition of, supervision of the licensee's continued practice as a psychologist, the following conditions may apply to such supervision:

- (a) A written plan outlining the focus of the supervision must be submitted to the Board. Such plan and supervision should address the areas of practice at issue and should be consistent with the principles contained in the *Ethical Principles of Psychologists and Code of Conduct*.
- (b) Information (curriculum vitae and professional qualifications) regarding the proposed supervisor must be submitted to the Board for review and approval. Supervisors must be current licensees in good standing with the Board. Supervisors may not be related by blood or marriage to the licensee; have a past or present personal or professional relationship with the licensee; or have any other relationship or affiliation (past or present) with the licensee. A statement from the proposed supervisor attesting to the above must be provided to the Board.

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- (c) Supervision which commences prior to the receipt of the Board's written or oral approval of the proposed supervisor will not be credited.
- (d) If the supervisory period is six months or longer, the approved supervisor must submit written reports to the Board on a quarterly basis describing the supervision provided and focusing on those aspects of the supervisory sessions related to the practice areas and ethical principles at issue. If the supervisory period is less than six months, bimonthly reports must be provided to the Board by the approved supervisor.
- (e) At the commencement and completion of the supervisory period, the licensee and approved supervisor may be required to appear before the Board to review and discuss the supervision. All required reports must have been submitted to the Board prior to an appearance before the Board following the completion of the supervision.
- (f) After the Board has received and reviewed all required reports and met with the licensee and the approved supervisor, the Board will determine the appropriateness of allowing the licensee to practice without supervision or to continue practicing under supervision.

(4) Resignation.

- (a) A licensee who is named in a complaint or who is the subject of an investigation by the Board or who is the defendant in a disciplinary action may, subject to acceptance by the Board, submit his/her resignation by delivering to the Board a written statement that he/she desires to resign, his/her resignation is tendered voluntarily, he/she realizes that resignation is an act which deprives a person of all privileges of registration and is not subject to reconsideration or judicial review, and that the licensee is not currently licensed to practice in any other state or jurisdiction, will make no attempt to gain licensure elsewhere, or will resign any other licenses contemporaneous with his/her resignation in the Commonwealth.
- (b) If a complaint, investigation or order to show cause arises solely out of a disciplinary action in another jurisdiction, within the meaning of 251 CMR 1.10(6)(g), the licensee may submit his/her resignation to the Board, pursuant to 251 CMR 1.09(4), but need not make any representation regarding licensure status in other jurisdictions, nor is prohibited from seeking licensure elsewhere, and need not resign any other licenses contemporaneously with the resignation.

1.10: Ethical Standards and Professional Conduct

- (1) The Board adopts as its standard of conduct the *Ethical Principles of Psychologists and Code of Conduct* of the American Psychological Association, except as that code of ethics in any way deviates from the provisions of 251 CMR 1.00 or M.G.L. c. 112, §§ 118 through 129A.
- (2) The Board adopts as official guides, to the extent that they are not inconsistent with the *Ethical Principles of Psychologists and Code of Conduct* referenced in 251 CMR 1.10(1), the following:
 - (a) The *Casebook on Ethical Standards of Psychologists* published by the American Psychological Association;
 - (b) *Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations* published in 1990 by the American Psychological Association; and
 - (c) *AIDS Guidelines*, a 1988 publication of the Inter-Agency Task Force on AIDS Issues, convened by the Office of Consumer Affairs and including members from 18 boards of registration.
- (3) Fees. Predetermined fees may be advertised for routine services such as:
 - (a) Diagnostic testing and/or interviewing;
 - (b) Therapeutic, supportive, or remedial interviews or sessions;
 - (c) Consultation;
 - (d) Research; and
 - (e) Specialized teaching in a field or subject related to psychology.

All fees will be stated in terms of hourly amounts unless it is a reasonable or common practice to do otherwise, e.g., a fee for a diagnostic evaluation including the administration of a battery of tests; a per diem consulting fee.

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A psychologist must specify with each potential patient or client which of the advertised services will be performed for that patient or client, and by whom. A psychologist must perform fully all advertised services at the amounts which they are advertised and must otherwise comply with all representations contained in any advertisement. A psychologist must maintain in a place of prominent display in his or her office the fee schedule appearing in his or her most recent advertisement. If because of unforeseen circumstances a psychologist cannot reasonably charge the advertised amount, the psychologist must so inform all parties directly involved and obtain their written consent prior to performing services at higher than the advertised amount.

(4) Patient Records.

(a) A psychologist shall maintain a record for each patient or client which meets the standards of usual and customary practice and which is adequate to enable the psychologist to provide proper diagnosis and treatment. A psychologist must maintain a patient or client's record for a minimum period of five years from the date of the last patient or client's encounter and in a manner which permits the former patient or client's or a successor psychologist access to it within the terms of 251 CMR 1.00. In the event that the patient or client is a minor, the psychologist must maintain the patient or client's record for at least one year after the patient or client has reached the age of majority as defined in M.G.L. c. 4, § 7, but in no event shall the record be retained for less than five years.

(b) Except as otherwise provided by law, a psychologist shall permit inspection of records maintained for a patient or client by such patient or client or the authorized representative of the patient or client, and upon request, shall make a copy of such patient or client's record available to such patient or client or representative. If, in the reasonable exercise of professional judgment a psychologist believes that providing the entire record would adversely affect the patient's well-being, the psychologist shall provide a summary of the record to the patient. A psychologist must make the entire record available to the patient's attorney or other psychotherapist designated by the patient, if requested by the patient (M.G.L. c.112, § 12CC).

(c) A psychologist may charge a reasonable fee for the expense of providing the material described in 251 CMR 1.10(4)(b); however, a psychologist may not require prior payment of the charges for such psychological services as a condition for making records available.

(5) In matters pertaining to boundaries and dual and/or sexual relationships, a psychologist's relationship with a patient or client shall be presumed to extend a minimum of two years from the date of the rendering of the last professional service within the definition of the "practice of psychology" appearing in M.G.L. c. 112, § 118.

(6) In addition to acts prohibited by the *Ethical Principles of Psychologists and code of Conduct* referenced in 251 CMR 1.10(1); the ethical standards referenced in 251 CMR 1.10(2); the provisions of 251 CMR 1.10(3) through (5); and the prohibited acts listed in M.G.L. c. 112, §§ 61 and 128; the following acts are deemed to be grounds for disciplinary action, pursuant to M.G.L. c. 112, § 128:

(a) Use of a false name or impersonating another practitioner.

(b) Use of status as a licensed psychologist for purposes other than the practice of psychology.

(c) Jeopardizing the physical or emotional security of a patient or client by engaging in inappropriate diagnostic or treatment procedures, or by unauthorized disclosure or communication of confidential information. This shall not be interpreted to mean that case history material cannot be used for teaching or research purposes or in textbooks or other literature, provided that proper precautions are taken to conceal the identity of the individual or individuals involved.

(d) Giving or accepting commissions, rebates, or any form of remuneration of a fee-splitting nature for professional referrals. This does not include or refer to ordinary fees charged directly for services rendered or for time spent in assisting the client or patient to obtain or become knowledgeable about appropriate professional services, schooling, training, or other specialized assistance.

(e) Failure, without cause, to cooperate with any request by the Board to appear before it and/or provide it with information.

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(f) Sexual misconduct with a patient or client. It shall be a ground for disciplinary action by the Board, pursuant to M.G.L. c. 112, §§ 61 and 128, and the *Ethical Principles of Psychologists and Code of Conduct* referenced in 251 CMR 1.10(1), that a licensee has engaged in sexual misconduct with a patient or client. In the conduct of any investigation or administrative proceeding by the Board, pursuant to M.G.L. c. 30A, where sexual misconduct by a licensee is alleged, the following procedural rules shall govern the conduct of such investigation or proceeding:

1. Consent Defense Not Available. It shall not be a defense that the patient or client consented to such conduct.
2. Sexual Activity Not Admissible. Evidence of the sexual activity of a patient or client, other than sexual activity with the licensee, is not subject to subpoena or other form of discovery, and is not admissible.
3. Confidentiality of Proceedings. Reasonable steps shall be taken to keep confidential the identity of the patient or client, including, but not limited to, closing the hearing to the public during the testimony of the patient or client.

(g) Having been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in M.G.L. c. 112, §§ 61 and 128 or 251 CMR 1.10(6).

(7) In determining what sanctions are appropriate regarding a disciplinary matter, the Board will regard lack of adequate professional training and experience for the particular conduct in question as *prima facie* evidence that the unprofessional conduct was engaged in willfully, knowingly, or with gross negligence, and that the conduct in question warrants revocation of the psychologist's license. An application for licensure states the area or areas of the applicant's competence. Applicants who assert competence in a new area or areas shall furnish the Board with information sufficient to support the assertion of competence in a new area. The training shall be in accordance with the *Policy on Training for Psychologists Wishing to Change Their Specialty* published by the American Psychological Association.

(8) Notwithstanding the grounds for discipline specified in 251 CMR 1.10, no licensee shall be subject to discipline for providing or assisting in providing reproductive health care services or gender-affirming health care services, as defined at M.G.L. c. 12, § 11I½, or for any conviction, judgment, discipline, or other sanction arising from such health care services, so long as the services provided would have been lawful in Massachusetts and are consistent with standards for good professional practice in Massachusetts.

1.11: Confidential Communications

Except as otherwise provided by law, all communications between a licensed psychologist and the individuals with whom the psychologist engages in the practice of psychology shall be deemed to be and treated as confidential in perpetuity.

(1) Notwithstanding the provisions of M.G.L. c. 112, § 129A(b), information which is acquired by a psychologist pursuant to the professional practice of psychology, whether directly or indirectly, may be disclosed, without client consent, written or otherwise, to another appropriate professional as part of a professional consultation which is designed to enhance the services provided to a client or clients. In disclosing such information, psychologists shall use their best efforts to safeguard the client's privacy by not disclosing the client's name or other identifying demographic information, or any other information by which the client might be identified by the consultant, unless such information is, in the psychologist's judgment, necessary for the consultation to be successful.

(2) (a) The reference to "initiation of the professional relationship" in M.G.L. c. 112, § 129A shall mean that the client must be informed of the limits on confidentiality by the end of the first professional session, unless there are documented substantial clinical reasons for withholding such information and the decision to withhold such information is reviewed and redocumented on a regular basis. If the client has come to the psychologist specifically for psychological evaluation, court ordered evaluation, or psychological testing, the client shall be informed about all confidentiality limitations before said evaluation or testing begins.

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(b) In the event that, before the psychologist has an opportunity to inform the client concerning the limits on confidentiality, a client begins to discuss matters which the psychologist knows, or in the exercise of his/her professional judgment should know, are likely to result in the psychologist's having to reveal confidential information without the client's consent, then the psychologist shall immediately inform the patient of the limits on confidentiality.

(c) Where the client is an unemancipated minor, the psychologist shall have, in addition to the duties described in 251 CMR 1.11, the duty to inform the client's legal guardian in the event that the psychologist has determined pursuant to M.G.L. c. 112, § 129A(c)(1), (c)(2) or (c)(3), that a nonconsensual disclosure of information is warranted.

(3) The reference to "clear and present danger" in M.G.L. c. 112, § 129A(c)(1) shall mean that the client presents a clear and present danger to him/herself when:

(a) the psychologist, in the exercise of his/her professional judgment, believes that the client presents a substantial risk of physical impairment or injury to him/herself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; or

(b) the psychologist, in the exercise of his/her professional judgment, believes that the client presents a very substantial risk of physical impairment or injury to him/herself as manifested by evidence that such person's judgment is so affected that he or she is unable to protect him/herself in the community and that reasonable provision for his/her protection is not available in the community.

(4) The reference to "reasonable basis to believe that there is a clear and present danger of physical violence against a clearly identified or reasonably identifiable victim" in M.G.L. c. 112, § 129A(c)(3) shall mean when the psychologist believes, in the exercise of his/her professional judgment, that the patient's words or behavior strongly suggest that there is a reasonable possibility that the client will attempt to kill or inflict serious bodily injury on a reasonably identified victim or victims whom the client's words or behavior or history have clearly identified as a likely target of such behavior.

REGULATORY AUTHORITY

251 CMR 1.00: M.G.L. c. 13, § 79; c. 112, § 128.