

102-6-12. Unprofessional conduct.

(a) Any registration may be suspended, limited, or revoked or not issued or renewed upon a finding of unprofessional conduct.

(b) The following acts by an alcohol or other drug abuse counselor shall constitute unprofessional conduct:

- (1) Practicing in an incompetent manner;
- (2) offering to perform or performing services that are clearly unwarranted by education, training, or experience;
- (3) diagnosing or treating mental illness or mental disease;
- (4) reporting distorted, erroneous, or misleading alcohol or drug abuse counseling information;
- (5) taking credit for work not personally performed;
- (6) engaging in fraudulent or deceitful billing practices;
- (7) impersonating another person holding a license or registration issued by the board;
- (8) knowingly allowing another person to use one's registration;
- (9) acting as a sponsor of any client, patient, supervisee, or student of the alcohol or other drug abuse counselor who participates in a self-help group;
- (10) engaging in a dual relationship with, making sexual advances toward, engaging in sexual activities with, or exercising undue influence over any client or patient who participates in a self-help group, any client, patient, supervisee, or student of the alcohol, or other drug abuse counselor;
- (11) engaging in a dual relationship with, making sexual advances toward, engaging in sexual activities with, or exercising undue influence over any person who has been a client or patient within two years after termination of the alcohol or other drug abuse counselor relationship;
- (12) refusing to cooperate in a timely manner with any request for a response, information, or assistance from the board with respect to the investigation of any report of an alleged violation filed against the alcohol or other drug abuse counselor, any applicant, or any professional licensed or registered by the board. Each person taking longer than 30 days to provide the requested response, information, or assistance shall have the burden of demonstrating that the person has acted in a timely manner;
- (13) failing to notify the board within a reasonable time that the alcohol or other drug abuse counselor has reason to believe or has knowledge, not obtained in the context of confidentiality, that any person regulated by the board or applying for licensure or registration, including that alcohol or other drug abuse counselor, meets any of the following conditions:
 - (A) Has had any license, certificate, permit, registration, or other certificate granted by any jurisdiction limited, conditioned, qualified, restricted, suspended, revoked, not issued or renewed, or voluntarily surrendered;
 - (B) has been subject to any other disciplinary action by a licensing or certifying authority or professional association;
 - (C) has been demoted, terminated, or suspended from the person's employment for some form of misfeasance, malfeasance or nonfeasance;
 - (D) has been convicted of a felony, misdemeanor or serious traffic offense pursuant to K.S.A. 8-1501 et seq. and amendments thereto; or
 - (E) has practiced or taught the registrant's or licensee's profession in violation of the laws

or regulations regulating that professional;

(14) furthering the application for alcohol or other drug abuse counseling of another person known by the alcohol or other drug abuse counselor to be unqualified with respect to the applicant's experience, education, or other relevant qualifications;

(15) knowingly aiding or abetting anyone who is not a registered alcohol or other drug abuse counselor to represent that person as a registered alcohol or other drug abuse counselor;

(16) claiming or using any secret or special method of assessment or therapy technique that the alcohol or other drug abuse counselor refuses to divulge to the board;

(17) making unsubstantiated claims of professional superiority;

(18) guaranteeing that satisfaction will result from the performance of professional services;

(19) knowingly engaging in fraudulent or misleading advertising;

(20) failing to maintain a record for each client or patient that accurately reflects the client's or patient's contact with the alcohol or other drug abuse counselor. Each alcohol or other drug abuse counselor who is the owner or custodian of client or patient records shall retain these records for at least two years after the date of termination of the professional relationship, unless otherwise provided by law;

(21) failing to exercise adequate supervision over anyone with whom the alcohol or other drug abuse counselor has a supervisory relationship;

(22) continuing or ordering tests or assessment tools, procedures, or counseling not warranted by the needs or preferences of any client or patient;

(23) treating any client, patient, student, supervisee, or colleague in a cruel manner;

(24) discriminating against any client, patient, student, supervisee, or colleague on the basis of color, race, gender, religion, national origin, ancestry, age, or disability;

(25) failing to advise and explain to any client or patient the joint rights, responsibilities, and duties involved in the alcohol or drug abuse counseling relationship;

(26) failing to provide any client or patient with a description of what the client or patient may expect in the way of tests, consultation, reports, fees, billing, or therapeutic regimen or schedule or failing to reasonably comply with the description;

(27) failing to provide any client or patient with a description of the possible effects of the proposed treatment when there are clear and established risks to the client or patient;

(28) failing to inform any client or patient of any financial interests that might accrue to the alcohol or other drug abuse counselor from referral to any other service or from the use of any tests, books, or apparatus;

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

(30) permitting any person to share in the fees for professional services, other than a partner, employee, an associate in a professional firm, or a consultant authorized to practice the same profession;

(31) failing to inform each client, patient, supervisee, or student of the limits of disclosure of information, the purposes for which information is obtained, and how the information may be used;

(32) failing to obtain written, informed consent from any client, patient, or the legal representative of the client or patient before performing any of the following:

- (A) Electronically recording sessions with any client or patient;
- (B) releasing information to a third party concerning any client or patient, except as permitted or required by law; or
- (C) permitting a third-party observation of patient or client activities;
- (33) revealing information, a confidence, or a secret of any person or failing to protect the confidences or information concerning other persons contained in a client's or patient's records, unless at least one of the following conditions is met:
 - (A) Disclosure is required or permitted by law;
 - (B) failure to disclose the information prevents a clear and present danger to the health or safety of an individual;
 - (C) the person, employee, or associate is a party to a civil, criminal, or disciplinary investigation or action arising from the alcohol or drug abuse counseling, in which case a waiver of the privilege accorded by paragraph (b)(33) is limited to that action;
 - (D) the patient or client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in that person's behalf; or
 - (E) a patient or client agrees to a waiver of the privilege accorded by paragraph (b)(33);
- (34) failing to exercise due diligence in protecting information, confidences, and secrets of any client, patient, supervisee, or student of the alcohol or other drug abuse counselor from disclosure by employees, associates, and others whose services are utilized by the alcohol or other drug abuse counselor;
- (35) if engaged in research, failing to perform the following:
 - (A) Consider the possible consequences for human beings participating in the research;
 - (B) protect each participant from unwarranted physical or mental harm;
 - (C) obtain the written, voluntary, and informed consent of the participant; and
 - (D) treat information obtained as confidential;
- (36) failing to terminate the alcohol or drug abuse counseling relationship when it is apparent that the relationship no longer serves the needs of the client or patient;
- (37) abandoning or neglecting any client or patient under or in need of care without making reasonable arrangements for the continuation of that care;
- (38) abandoning employment under circumstances that seriously impair the delivery of professional care to clients or patients, without providing reasonable notice to the employer;
- (39) providing counseling services while using alcoholic beverages or controlled substances or using drugs or alcohol, or both, to an extent that impairs the individual's ability to engage in the practice of alcohol or other drug abuse counseling, or interferes with the credibility of services provided by the alcohol or other drug abuse counselor;
- (40) violating 42 CFR Part 2, as in effect on October 1, 1991, concerning confidentiality of alcohol or drug abuse records maintained in connection with any federally assisted alcohol or drug abuse program;
- (41) acting with gross incompetence or gross negligence in the practice of the profession;
- (42) failing to inform the proper authorities pursuant to K.S.A. 38-2223 and amendments thereto when it is suspected or there is reason to believe that a client has been involved in harming or has harmed a child either by physical, mental, or emotional abuse or neglect or by sexual abuse;
- (43) failing to inform the proper authorities pursuant to K.S.A. 39-1402 and amendments

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

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

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

(C) is in need of protective services; or

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

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

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

(C) is in need of protective services.

(Authorized by and implementing K.S.A. 2007 Supp. 74-7507; effective July 17, 1995; amended Aug. 8, 2008.)