

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10571 SENATE HEALTH EDUCATION & SOCIAL SERVICES

All members of the American Counseling Association (ACA) are required to adhere to the Standards of Practice and the Code of Ethics. The Standards of Practice represent minimal behavioral statements of the Code of Ethics. Members should refer to the applicable section of the Code of Ethics for further interpretation and amplification of the applicable Standard of Practice.

Section A: The Counseling Relationship

Standard of Practice One (SP-1) Nondiscrimination

Counselors respect diversity and must not discriminate against clients because of age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, marital status, or socioeconomic status. (See A.2.a.)

Standard of Practice Two (SP-2) Disclosure to Clients

Counselors must adequately inform clients, preferably in writing, regarding the counseling process and counseling relationship at or before the time it begins and throughout the relationship. (See A.3.a.)

Standard of Practice Three (SP-3) Dual Relationships

Counselors must make every effort to avoid dual relationships with clients that could impair their professional judgment or increase the risk of harm to clients. When a dual relationship cannot be avoided, counselors must take appropriate steps to ensure that judgment is not impaired and that no exploitation occurs. (See A.6.a. and A.6.b.)

Standard of Practice Four (SP-4) Sexual Intimacies with Clients

Counselors must not engage in any type of sexual intimacies with current clients and must not engage in sexual intimacies with former clients within a minimum of two years after terminating the counseling relationship. Counselors who engage in such relationship after two years following termination have the responsibility to thoroughly examine and document that such relations did not have an exploitative nature.

Standard of Practice Five (SP-5) Protecting Clients During Group Work

Counselors must take steps to protect clients from physical or psychological trauma resulting from interactions during group work. (See A.9.b.)

Standard of Practice Six (SP-6) Advance Understanding of Fees

Counselors must explain to clients, prior to their entering the counseling relationship, financial arrangements related to professional services. (See A.10. a-d. and A.11.c.)

Standard of Practice Seven (SP-7) Termination

Counselors must assist in making appropriate arrangements for the continuation of treatment of clients, when necessary, following termination of counseling relationships. (See A.11.a.)

Standard of Practice Eight (SP-8) Inability to Assist Clients

Counselors must avoid entering or immediately terminate a counseling relationship if it is determined that they are unable to be of professional assistance to a client. The counselor may assist in making an appropriate referral for the client. (See A.11.b.)

Section B: Confidentiality

Standard of Practice Nine (SP-9) Confidentiality Requirement

Counselors must keep information related to counseling services confidential unless disclosure is in the best interest of clients, is required for the welfare of others, or is required by law. When disclosure is required, only information that is essential is revealed and the client is informed of such disclosure. (See B.1. a-f.)

Standard of Practice Ten (SP-10) Confidentiality Requirements for Subordinates

Counselors must take measures to ensure that privacy and confidentiality of clients are maintained by subordinates. (See B.1.h.)

Standard of Practice Eleven (SP-11) Confidentiality in Group Work

Counselors must clearly communicate to group members that confidentiality cannot be guaranteed in group work. (See B.2.a.)

Standard of Practice Twelve (SP-12) Confidentiality in Family Counseling

Counselors must not disclose information about one family member in counseling to another family member without prior consent. (See B.2.b.)

Standard of Practice Thirteen (SP-13) Confidentiality of Records

Counselors must maintain appropriate confidentiality in creating, storing, accessing, transferring, and disposing of counseling records. (See B.4.b.)

Standard of Practice Fourteen (SP-14) Permission to Record or Observe

Counselors must obtain prior consent from clients in order to electronically record or observe sessions. (See B.4.c.)

Standard of Practice Fifteen (SP-15) Disclosure or Transfer of Records

Counselors must obtain client consent to disclose or transfer records to third parties unless exceptions listed in SP-9 exist. (See B.4.e.)

Standard of Practice Sixteen (SP-16) Data Disguise Required

Counselors must disguise the identity of the client when using data for training, research, or publication. (See B.5.a.)

Section C: Professional Responsibility

Standard of Practice Seventeen (SP-17) Boundaries of Competence

Counselors must practice only within the boundaries of their competence. (See C.2.a.)

Standard of Practice Eighteen (SP-18) Continuing Education

Counselors must engage in continuing education to maintain their professional competence. (See C.2.f.)

Standard of Practice Nineteen (SP-19) Impairment of Professionals

Counselors must refrain from offering professional services when their personal problems or conflicts may cause harm to a client or others. (See C.2.g.)

Standard of Practice Twenty (SP-20) Accurate Advertising

Counselors must accurately represent their credentials and services when advertising. (See C.3.a.)

Standard of Practice Twenty-one (SP-21) Recruiting Through Employment

Counselors must not use their place of employment or institutional affiliation to recruit clients for their private practices. (See C.3.d.)

Standard of Practice Twenty-two (SP-22) Credentials Claimed

Counselors must claim or imply only professional credentials possessed and must correct any known misrepresentations of their credentials by others. (See C.4.a.)

Standard of Practice Twenty-three (SP-23) Sexual Harassment

Counselors must not engage in sexual harassment. (See C.5.b.)

Standard of Practice Twenty-four (SP-24) Unjustified Gains

Counselors must not use their professional positions to seek or receive unjustified personal gains, sexual favors, unfair advantage, or unearned goods or services. (See C.5.e.)

Standard of Practice Twenty-five (SP-25) Clients Served by Others

With the consent of the client, counselors must inform other mental health professionals serving the same client that a counseling relationship between the counselor and client exists. (See C.6.c.)

Standard of Practice Twenty-six (SP-26) Negative Employment Conditions

Counselors must alert their employers to institutional policy or conditions that may be potentially disruptive or damaging to the counselor's professional responsibilities or that may limit their effectiveness or deny clients' rights. (See D.1.c.)

Standard of Practice Twenty-seven (SP-27) Personnel Selection and Assignment

Counselors must select competent staff and must assign responsibilities compatible with staff skills and experiences. (See D.1.h.)

Standard of Practice Twenty-eight (SP-28) Exploitive Relationships with Subordinates

Counselors must not engage in exploitive relationships with individuals over whom they have supervisory, evaluative, or instructional control or authority. (See D.1.k.)

**Section D:
Relationship With Other
Professionals**

Standard of Practice Twenty-nine (SP-29) Accepting Fees from Agency Clients

Counselors must not accept fees or other remuneration for consultation with persons entitled to such services through the counselor's employing agency or institution. (See D.3.a.)

Standard of Practice Thirty (SP-30) Referral Fees

Counselors must not accept referral fees. (See D.3.b.)

**Section E:
Evaluation, Assessment,
and Interpretation**

Standard of Practice Thirty-one (SP-31) Limits of Competence

Counselors must perform only testing and assessment services for which they are competent. Counselors must not allow the use of psychological assessment techniques by unqualified persons under their supervision. (See E.2.a.)

Standard of Practice Thirty-two (SP-32) Appropriate Use of Assessment Instruments

Counselors must use assessment instruments in the manner for which they were intended. (See E.2.b.)

Standard of Practice Thirty-three (SP-33) Assessment Explanations to Clients

Counselors must provide explanations to clients prior to assessment about the nature and purposes of assessment and the specific uses of results. (See E.3.a.)

Standard of Practice Thirty-four (SP-34) Recipients of Test Results

Counselors must ensure that accurate and appropriate interpretations accompany any release of testing and assessment information. (See E.3.b.)

Standard of Practice Thirty-five (SP-35) Obsolete Tests and Outdated Test Results

Counselors must not base their assessment or intervention decisions or recommendations on data or test results that are obsolete or outdated for the current purpose. (See E.11.)

**Section F:
Teaching, Training,
and Supervision**

Standard of Practice Thirty-six (SP-36) Sexual Relationships with Students or Supervisees

Counselors must not engage in sexual relationships with their students and supervisees. (See F.1.c.)

Standard of Practice Thirty-seven (SP-37) Credit for Contributions to Research

Counselors must give credit to students or supervisees for their contributions to research and scholarly projects. (See F.1.d.)

Standard of Practice Thirty-eight (SP-38) Supervision Preparation

Counselors who offer clinical supervision services must be trained and prepared in supervision methods and techniques. (See F.1.f.)

Standard of Practice Thirty-nine (SP-39) Evaluation Information

Counselors must clearly state to students and supervisees, in advance of training, the levels of competency expected, appraisal methods, and timing of evaluations. Counselors must provide students and supervisees with periodic performance appraisal and evaluation feedback throughout the training program. (See F.2.c.)

Standard of Practice Forty (SP-40) Peer Relationships in Training

Counselors must make every effort to ensure that the rights of peers are not violated when students and supervisees are assigned to lead counseling groups or provide clinical supervision. (See F.2.e.)

Standard of Practice Forty-one (SP-41) Limitations of Students and Supervisees

Counselors must assist students and supervisees in securing remedial assistance, when needed, and must dismiss from the training program students and supervisees who are unable to provide competent service due to academic or personal limitations. (See F.3.a.)

Standard of Practice Forty-two (SP-42) Self-Growth Experiences

Counselors who conduct experiences for students or supervisees that include self-growth or self disclosure must inform participants of counselors' ethical obligations to the profession and must not grade participants based on their nonacademic performance. (See F.3.b.)

Standard of Practice Forty-three (SP-43) Standards for Students and Supervisees

Students and supervisees preparing to become counselors must adhere to the Code of Ethics and the Standards of Practice of counselors. (See F.3.e.)

**Section G:
Research and Publication**

Standard of Practice Forty-four (SP-44) Precautions to Avoid Injury in Research

Counselors must avoid causing physical, social, or psychological harm or injury to subjects in research. (See G.1.c.)

Standard of Practice Forty-five (SP-45) Confidentiality of Research Information

Counselors must keep confidential information obtained about research participants. (See G.2.d.)

**Standard of Practice Forty-six (SP-46)
Information Affecting Research Outcome**
Counselors must report all variables and conditions known to the investigator that may have affected research data or outcomes. (See G.3.a.)

**Standard of Practice Forty-seven (SP-47)
Accurate Research Results**
Counselors must not distort or misrepresent research data nor fabricate or intentionally bias research results. (See G.3.b.)

**Standard of Practice Forty-eight (SP-48)
Publication Contributors**
Counselors must give appropriate credit to those who have contributed to research. (See G.4.a. and G.4.b.)

**Section H:
Resolving Ethical Issues**

**Standard of Practice Forty-nine (SP-49)
Ethical Behavior Expected**
Counselors must take appropriate action when they possess reasonable cause that raises doubts as to whether counselors or other mental health professionals are acting in an ethical manner. (See H.2.a.)

**Standard of Practice Fifty (SP-50)
Unwarranted Complaints**
Counselors must not initiate, participate in, or encourage the filing of ethics complaints that are unwarranted or intended to harm a mental health professional rather than to protect clients or the public. (See H.2.f.)

**Standard of Practice Fifty-one (SP-51)
Cooperation with Ethics Committees**
Counselors must cooperate with investigations, proceedings, and requirements of the ACA Ethics Committee or ethics committees of other duly constituted associations or boards having jurisdiction over those charged with a violation. (See H.3.)

R e f e r e n c e s



Policies and Procedures for Responding to Members' Requests for Interpretations of the Ethical Standards

Section A: Appropriate Requests

1. ACA members may request that the Committee issue formal interpretations of the ACA Code of Ethics for the purpose of guiding the member's own professional behavior.
2. Requests for interpretations will not be considered in the following situations:
 - a. The individual requesting the interpretation is not an ACA member, or
 - b. The request is intended to determine whether the behavior of another mental health professional is unethical. In the event an ACA member believes the behavior of another mental health professional is unethical, the ACA member should resolve the issue directly with the professional, if possible, and should file an ethical complaint if appropriate.

Section B: Procedures

1. Members must send written requests for interpretations to the Committee at ACA Headquarters.
2. Questions should be submitted in the following format: "Does (counselor behavior) violate Sections _____ or any other sections of the ACA Ethical Standards?" Questions should avoid unique details, be general in nature to the extent possible, and be brief.
3. The Committee staff liaison will revise the question, if necessary, and submit it to the Committee Co-Chair for approval.
4. The question will be sent to Committee members who will be asked to respond individually.

5. The Committee Co-Chair will develop a consensus interpretation on behalf of the Committee.

6. The consensus interpretation will be sent to members of the Committee for final approval.
7. The formal interpretation will be sent to the member who submitted the inquiry.
8. The question and the formal interpretation will be published in the ACA newsletter, but the identity of the member requesting the interpretation will not be disclosed.

Policies and Procedures for Processing Complaints of Ethical Violations

Section A: General

1. The American Counseling Association, hereafter referred to as the "Association" or "ACA," is dedicated to enhancing human development throughout the life span and promoting the counseling profession.
2. The Association, in furthering its objectives, administers the Code of Ethics and Standards of Practice developed and approved by the ACA Governing Council.
3. The purpose of this document is to facilitate the work of the ACA Ethics Committee ("Committee") by specifying the procedures for processing cases of alleged violations of the ACA Code of Ethics, codifying options for sanctioning members, and stating appeals procedures. This document is to be used as a supplement to the ACA Code of Ethics, not as a substitute. The intent of the Association is to monitor the professional conduct of its members to promote sound ethical practices. ACA does not, however, warrant the performance of any individual.

Section B: Ethics Committee Members

1. The ACA Ethics Committee, a standing committee of the Association, consists of six (6) appointed members including two (2) Co-Chairs whose terms overlap. Two members are appointed annually for three (3) year terms by the President-Elect; appointments are subject to confirmation by the ACA Governing Council. Any vacancy on the Committee will be filled by the President in the same manner, and the person appointed shall serve the unexpired term of the member whose place he or she took. Committee members may be reappointed to not more than one (1) additional consecutive term.
2. One (1) of the Committee Co-Chairs is appointed annually by the President-Elect from among the Committee members who have two (2) years of service remaining and serves as Co-Chair for two (2) years, subject to confirmation by the ACA Governing Council.

Section C: Role and Function

1. The Ethics Committee is responsible for
 - a. Educating the membership as to the Association's Code of Ethics;
 - b. Periodically reviewing and recommending changes in the Code of Ethics of the Association, as well as Policies and Procedures for Processing Complaints of Ethical Violations;
 - c. Receiving and processing complaints of alleged violations of the Code of Ethics of the Association; and
 - d. Receiving and processing requests for interpretations.
2. The Committee shall meet in person or by telephone conference a minimum of three (3) times per year for processing complaints.
3. In processing complaints about alleged ethical misconduct, the Committee will compile an objective, factual account of the dispute in question and make the best possible recommendation for the resolution of the case. The Committee, in taking any action, shall do so

only for cause, shall only take a reasonable degree of disciplinary action, shall utilize these procedures with objectivity and fairness, and in general shall act only to further the interests and objectives of the Association and its membership.

4. Of the six (6) voting members of the Committee, a vote of four (4) is necessary to conduct business. In the event a Co-Chair or any other member of the Committee has a personal interest in the case, he or she shall withdraw from reviewing the case.

5. In the event Committee members recuse themselves from a complaint and insufficient voting members are available to conduct business, the President shall appoint former ACA Committee members to decide the complaint.

Section D: Responsibilities of the Committee Members

1. The Committee members have an obligation to act in an unbiased manner, to work expeditiously, to safeguard the confidentiality of the Committee's activities, and to follow procedures established to protect the rights of all individuals involved.

Section E: Responsibilities of the Co-Chairs Administering the Complaint

1. In the event that one of the Co-Chairs administering the complaint has a conflict of interest in a particular case, the other Co-Chair shall administer the complaint. The Co-Chair administering the complaint shall not have a vote in the decision.

2. In addition to the above guidelines for members of the Committee, the Co-Chairs, with the assistance of the Headquarters staff liaison (and legal counsel where necessary), have the responsibilities of

a. Receiving, via ACA Headquarters, complaints that have been certified for membership status of the charged member;

b. Determining whether the alleged behavior(s), if true, would violate ACA's Code of Ethics and whether the Committee should review the complaint under these rules;

c. Notifying the complainant and the charged member of receipt of the case by certified mail return receipt requested;

d. Notifying the members of the Committee of the case;

e. Requesting additional information from complainants, charged members and others;

f. Presiding over the meetings of the Committee;

g. Preparing and sending, by certified mail, communications to the complainant and charged member on the recommendations and decisions of the Committee; and

h. Arranging for legal advice with assistance and financial approval of the ACA Executive Director.

Section F: Jurisdiction

1. The Committee will consider whether individuals have violated the ACA Code of Ethics if those individuals

a. Are current members of the American Counseling Association or

b. Were ACA members when the alleged violations occurred.

2. Ethics committees of divisions, branches, corporate affiliates, or other ACA entities must refer all ethical complaints involving ACA members to the Committee.

Section G: Eligibility to File Complaints

1. The Committee will receive complaints that ACA members have violated one or more sections of the ACA Code of Ethics from the following individuals:

a. Any individuals who have reason to believe that ACA members have violated the ACA Code of Ethics.

b. ACA members, or members of other helping professions, who have reason to believe that other ACA members have violated the ACA Code of Ethics.

c. The Co-Chair of the Committee on behalf of the ACA membership when the Co-Chair has reason to believe through information received by the Committee that ACA members have violated the ACA Code of Ethics.

d. Ethics committees of divisions, branches, corporate affiliates, or other ACA entities as provided for in Section F.2. above.

2. If possible, individuals should attempt to resolve complaints directly with charged members before filing ethical complaints.

Section H: Time Lines

1. The time lines in these standards are guidelines only and have been established to provide a reasonable time framework for processing complaints.

2. Complainants or charged members may request extensions of deadlines when appropriate. Extensions of deadlines will be granted by the Committee only when justified by unusual circumstance.

Section I: Nature of Communication

1. Only written communications regarding ethical complaints against members will be acceptable. If telephone inquiries are received regarding the filing of complaints, responding to complaints, or providing information regarding complaints, the individuals will be informed of the written communication requirement and asked to comply.

2. All correspondence related to an ethical complaint must be addressed to the Ethics Committee, ACA Headquarters, 5999 Stevenson Avenue, Alexandria, VA 22304 and must be marked "confidential." This process is necessary to protect the confidentiality of the complainant and the charged member.

Section J: Filing Complaints

1. Only written complaints, signed by complainants, will be considered.

2. Individuals eligible to file complaints will send a letter outlining the nature of the complaint to the Committee at the ACA Headquarters. The complaint should include, if possible, (a) the name and address of the complainant, (b) the name and address of the charged member, (c) the names and addresses of any other persons who have knowledge of the facts involved, and (d) a brief description of the reason why the complaint is being filed.

3. The ACA staff liaison to the Committee will communicate in writing with complainants. Receipt of complaints and confirmation of membership status of charged members as defined in Section F.1 above will be acknowl-

edged to the complainant. Proposed formal complaints will be sent to complainants after receipt of complaints have been acknowledged.

4. If the complaint does not involve a member as defined in Section F1., above, the staff liaison shall inform the complainant.

5. The ACA staff liaison shall assign the complaint to a Co-Chair to determine whether the complaint, if true, would violate one or more sections of the Code of Ethics or if the complaint could be properly decided if accepted. If not, the complaint will be forwarded to the other Co-Chair for review, as if a new complaint. If both Co-Chairs determine that a complaint would not violate one or more sections of the Code of Ethics or if the complaint could not be properly decided if accepted, then the complaint will not be accepted and the complainant shall be notified.

6. If the Committee Co-Chair administering the complaint determines that there is insufficient information to make a fair determination of whether the behavior alleged in the complaint would be cause for action by the Committee, the ACA staff liaison may request further information from the complainant or others. They shall be given thirty (30) working days from receipt of the request to respond.

7. When complaints are accepted, complainants will be informed that copies of the formal complaints plus evidence and documents submitted in support of the complaint will be provided to the charged member and that the complainant must authorize release of such information to the charged member before the complaint process may proceed.

8. The ACA staff liaison, after receiving approval of the Committee Co-Chair administering a complaint, will formulate a formal complaint which will be presented to the complainant for his or her signature.

a. The correspondence from complainants will be received, and the staff liaison and Committee Co-Chair administering the complaint will identify all ACA Code of Ethics that might have been violated if the accusations are true.

b. The formal complaint will be sent to complainants with a copy of these Policies and Procedures, a copy of the ACA Code of Ethics, a verification affidavit form and an authorization and release of information form. Complainants will be asked to sign and return the completed complaint, verification affidavit and authorization and release of information forms. It will be explained to complainants that sections of the codes that might have been violated may be added or deleted by the complainant before signing the formal statement.

c. If complainants elect to add or delete sections of the Code of Ethics in the formal complaint, the unsigned formal complaint shall be returned to ACA Headquarters with changes noted, and a revised formal complaint will be sent to the complainants for their signature.

9. When the completed formal complaint, verification affidavit form and authorization and release of information form are presented to the complainant for signature, he or she will be asked to submit all evidence and documents he or she wishes to be considered by the Committee in reviewing the complaint. The complainant shall submit all evidence and documentation in support of the claim within thirty (30) days of filing the formal complaint. The Committee may accept, at its discretion, evidence or documentation submitted late if good cause is shown.

**Section K:
Notice to Charged Members**

1. Once signed formal complaints have been received, charged members will be sent a copy of the formal complaint by U.S. mail, certified, with return-receipt requested, a copy of these Policies and Procedures, a copy of the Code of Ethics, notification of their right to request a hearing, (including the time limit within which to request the hearing, and that the failure to request a hearing within the time limit constitutes a waiver of the hearing), ACA's policy of disclosing adverse actions to its members and/or informing state and national licensure boards of a member's suspension or expulsion, and copies of all evidence and documents submitted in support of the complaint.

2. Charged members will be asked to respond to the complaint against them by addressing each section of the ACA Code of Ethics they have been accused of having violated. They will be informed that if they wish to respond they must do so in writing within sixty (60) working days.

3. Charged members will be informed that they must submit all evidence and documents they wish to be considered by the Committee in reviewing the complaint within sixty (60) working days.

4. After charged members have received notification that a complaint has been brought against them, they will be given sixty (60) working days to notify the Committee Co-Chair (via ACA Headquarters) in writing, by certified mail, if they wish to request a formal face-to-face hearing before the Committee. Charged members may waive their right to a formal hearing before the Committee and shall sign a

waiver of the right to a hearing. (See Section O: Hearings).

5. If the Committee Co-Chair determines that there is insufficient information to make a fair determination of whether the behavior alleged in the complaint would be cause for action by the Committee, the ACA staff liaison to the Committee may request further information from the charged member or others. They shall be given thirty (30) working days from receipt of the request to respond.

6. All requests for additional information from others will be accompanied by a verification affidavit form which the information provider will be asked to complete and return.

7. The Committee may, in its discretion, delay or postpone its review of the case with good cause including if the Committee wishes to obtain additional information. The charged member may request in writing that the Committee delay or postpone its review of the case for good cause.

**Section L:
Disposition of Complaints**

1. After receiving the responses from charged members, Committee members will be provided copies of (a) the complaint, (b) supporting evidence and documents sent to charged members, (c) the response, and (d) supporting evidence and documents provided by charged members and others.

2. Decisions will be rendered based on the evidence and documents provided by the complainant and charged member or others.

3. The Committee Co-Chair administering a complaint will not participate in deliberations or decisions regarding that particular complaint.

4. At the next meeting of the Committee held no sooner than fifteen (15) working days after members received copies of documents related to a complaint, the Committee will discuss the complaint, response, and supporting documentation, if any, and determine the outcome of the complaint.

5. The Committee will determine whether each Code of Ethics the member has been accused of having violated was violated based on the information provided.

6. After deliberations, the Committee may decide to dismiss the complaint or to dismiss charges within the complaint.

7. In the event it is determined that any of the ACA Codes of Ethics have been violated, the Committee will impose for the entire complaint one or a combination of the possible sanctions allowed.

Section M: Withdrawal of Complaints

1. If the complainant and charged member both agree to discontinue the complaint process, the Committee may, at its discretion, complete the adjudication process if available evidence indicates that this is warranted. The Co-Chair of the Committee, on behalf of the ACA membership, shall act as complainant.

Section N: Possible Sanctions

1. Remedial requirements may be stipulated by the Committee.

2. Probation for a specified period of time subject to Committee review of compliance. Remedial requirements may be imposed to be completed within a specified period of time.

3. Suspension from ACA membership for a specified period of time subject to Committee review of compliance. Remedial requirements may be imposed to be completed within a specified period of time.

4. Permanent expulsion from ACA membership. This sanction requires a unanimous vote of those voting.

5. The penalty for failing to satisfactorily fulfill a remedial requirement imposed by the Committee as a result of a probation sanction will be automatic suspension until the requirement is met unless the Committee determines that the remedial requirement should be modified based on good cause shown prior to the end of the probationary period.

6. The penalty for failing to satisfactorily fulfill a remedial requirement imposed by the Committee as a result of a suspension sanction will be automatic permanent expulsion unless the Committee determines that the remedial requirement should be modified based on good cause shown prior to the end of the suspension period.

7. Other corrective action.

Section O: Hearings

1. At the discretion of the Committee, a hearing may be conducted when the results of the Committee's preliminary determination indicate that additional information is needed.

2. When charged members, within sixty (60) working days of notification of the complaint, request a formal face-to-face or telephone conference hearing before the Committee, a hearing shall be conducted. (See Section K.6.)

3. The charged member shall bear all their expenses associated with attendance at hearings requested by the charged member.

4. The Committee Co-Chair shall schedule a formal hearing on the case at the next scheduled Committee meeting and notify both the complainant and the charged member of their right to attend the hearing in person or by telephone conference call.

5. The hearing will be held before a panel made up of the Committee and, if the charged member chooses, a representative of the charged member's primary Division. This representative will be identified by the Division President and will have voting privileges.

Section P: Hearing Procedures

1. PURPOSE.

a. A hearing will be conducted to determine whether a breach of the Code of Ethics has occurred and, if so, to determine appropriate disciplinary action.

b. The Committee will be guided in its deliberations by principles of basic fairness and professionalism and will keep its deliberations as confidential as possible except as provided herein.

2. NOTICE.

a. The charged members shall be advised in writing by the Co-Chair administering the complaint of the time and place of the hearing, the list of any witnesses expected to testify at the hearing against the charged member (which list may not be complete), and the charges involved at least forty-five (45) working days before the hearing. A copy of the notification shall be sent to the complainant. Notice shall include a formal statement of the complaints lodged against the charged member and supporting evidence.

b. The charged member is under no duty to respond to the notice, but the Committee will not be obligated to delay or postpone its hearing unless the charged member so requests in writing with good cause received at least fifteen (15) working days in advance. In the absence of such 15-day advance notice and postponement by the Committee, if the charged member fails to appear at the hearing, the Committee shall decide the complaint on record. Failure of the charged member to appear at the hearing shall not be viewed by the Committee as sufficient grounds alone for taking disciplinary action.

3. CONDUCT OF THE HEARING.

a. Accommodations. The location of the hearing shall be determined at the discretion of the Committee. The Committee shall provide a private room to conduct the hearing, and no observers or recording devices other than a recording device used by the Committee shall be permitted.

b. Presiding Officer. The Co-Chair in charge of the case shall preside over the hearing and deliberations of the Committee. At the conclusion of the hearing and deliberations, the Co-Chair shall promptly notify the charged member and complainant of the Committee's decision in writing as provided in Section Q, Paragraphs 1 and 2, below.

c. Record. A record of the hearing shall be made and preserved, together with any documents presented in evidence, at ACA Headquarters for a period of three (3) years or until the complaint process is final, whichever is longer. The record shall consist of a summary of testimony received or a verbatim transcript at the discretion of the Committee.

d. Right to Counsel. The charged member shall be entitled to have legal counsel present to advise and represent him or her throughout the hearing. Legal counsel for ACA shall also be present at the hearing to advise the Committee and shall have the privilege of the floor.

e. Witnesses. Either party shall have the right to call witnesses to substantiate his or her version of the case.

f. The Committee shall have the right to call witnesses it believes may provide further insight into the matter. ACA shall, in its sole discretion, determine the number and identity of witnesses to be heard.

g. Witnesses shall not be present during the hearing except when testifying and shall be excused upon completion of their testimony and any cross-examination.

h. The Co-Chair administering the complaint shall allow questions of any witness by the

opposition or members of the Committee if such questions and testimony are relevant to the issues in the case.

i. The Co-Chair administering the complaint will determine what questions and testimony are relevant to the case. Should the hearing be disturbed by irrelevant testimony, the Co-Chair administering the complaint may call a brief recess to restore order.

j. All expenses associated with counsel on behalf of the parties shall be borne by the respective parties. All expenses associated with witnesses on behalf of the charged member shall be borne by the charged member when the charged member requests a hearing. If the Committee requests the hearing, all expenses associated with witnesses shall be borne by ACA.

4. PRESENTATION OF EVIDENCE.

a. The staff liaison or the Co-Chair administering the complaint shall be called upon first to present the charge(s) against the charged member and to briefly describe the supporting evidence. The person presenting the charges shall also be responsible for examining and cross-examining witnesses on behalf of the complainant and for otherwise presenting the matter during the hearing.

b. The complainant or the staff liaison or the Committee Co-Chair administering the complaint shall then present the case against the charged member. Witnesses who can substantiate the case may be called upon to testify and answer questions of the charged member and the Committee.

c. If the charged member is present at the hearing, he or she shall be called upon after the case has been presented against the charged member to present any evidence which refutes the charges against him or her. This includes witnesses as in Subsection (3) above. The charged member and the complainant may submit a written statement at the close of the hearing.

d. The charged member will not be found guilty simply for refusing to testify. Once the charged member chooses to testify, however, he or she may be cross-examined by the complainant and members of the Committee.

e. The Committee will endeavor to conclude the hearing within a period of approximately three (3) hours. The parties will be requested to be considerate of this time frame in planning their testimony. If it appears that additional time will be needed to develop the issues adequately, an extension of time may be granted.

f. Testimony that is merely cumulative or repetitive may, at the discretion of the Co-Chair administering the complaint, be excluded.

g. At any time during the presentation of evidence, the presiding members of the Committee may ask pertinent questions.

5. RELEVANCY OF EVIDENCE.

a. The Hearing Committee is not a court of law and is not required to observe formal rules of evidence. Evidence inadmissible in a court of law may be admissible in the hearing before the Committee if it is relevant to the case. That is, if the evidence offered tends to explain, clarify, or refute any of the important facts of the case, it should be generally be considered.

b. The Committee will not consider evidence or testimony for the purpose of supporting any charge that was not set forth in the notice of the hearing or that is not relevant to the issues of the case.

6. BURDEN OF PROOF.

a. The burden of proving a violation of the Code of Ethics is on the complainant and/or the Committee. It is not up to the charged member to prove his or her innocence of any wrongdoing.

b. Although the charge(s) need not be proved "beyond a reasonable doubt," the Committee will not find the charged member guilty in the absence of substantial, objective, and believable evidence to sustain the charge(s).

7. DELIBERATION OF THE COMMITTEE.

a. After the hearing is completed, the Committee shall meet in a closed session to review the evidence presented and reach a conclusion. ACA legal counsel may attend the closed session to advise the Committee if the Committee so desires.

b. The Committee shall be the sole trier of the facts and shall weigh the evidence presented and assess the credibility of the witnesses. The act of a majority of the members of the Committee present shall be the decision of the Committee. An unanimous vote of those voting is required for permanent expulsion from ACA membership.

c. Only members of the Committee who were present throughout the entire hearing shall be eligible to vote.

8. DECISION OF THE COMMITTEE.

a. The Committee will first resolve the issue of the guilt or innocence of the charged member on each charge. Applying the burden of proof in subsection (5) above, the Committee will vote by secret ballot unless the members of the Committee consent to an oral vote.

b. In the event a majority of the members of the Committee do not find the charged member guilty, the charges shall be dismissed. If the Committee finds the charged member has violated the Code of Ethics, it must then determine what sanctions, in accordance with Section N: Possible Sanctions, shall be imposed.

c. As provided in Section Q below, the Co-Chair administering the complaint shall notify the charged member and complainant of the Committee's decision and rights to appeal in writing.

Section Q: Notification of Results

1. Charged members shall be notified of Committee decisions regarding complaints against them. Within thirty (30) days after the hearing, charged members shall be notified of the Committee's decisions and their right to appeal. The Committee's decision shall be sent by U.S. mail, certified, with return-receipt requested.

2. After the deadline for filing an appeal, or in the event an appeal is filed, after a decision on appeals has been rendered, and if a violation has been found and charged members have been suspended or expelled, counselor licensure, certification, or registry boards, other mental health licensure, certification, or registry boards, voluntary national certification boards, and appropriate professional associations will also be notified of the results. In addition, ACA divisions, state branches, the ACA Insurance Trust, and other ACA-related entities will also be notified of the results.

3. After the deadline for filing an appeal, or in the event an appeal is filed, after a decision on appeals has been rendered, and if a violation has been found and charged members have been suspended or expelled, a notice of the Committee's action that includes the sections of the ACA Code of Ethics that were found to have been violated and the sanctions imposed will be published in the ACA newsletter.

Section R: Appeals

1. Decisions of the ACA Ethics Committee may be appealed by the member found to have been in violation based on one or both of the following grounds:

a. The Committee violated its policies and procedures for processing complaints of ethical violations; and/or

b. The decision of the Committee was arbitrary and capricious and was not supported by the materials provided by the complainant and charged member.

2. After members have received notification that they have been found in violation of one or more ACA Codes of Ethics, they will be given thirty (30) working days to notify the Committee in writing by certified mail that they are appealing the decision. If an appeal is not requested, the Committee shall issue its decision as the final decision as soon as the time during which an appeal may be filed expires.

3. An appeal may consist only of a letter stating one or both of the grounds of appeal listed in subsection 1 above and the reasons for the appeal. The filing of an appeal automatically stays the execution of a decision by the Committee until the appeal is completed.

4. The appealing member will be asked to identify the primary ACA division to which he or she belongs. The ACA President will appoint a three (3) person appeals panel consisting of two (2) former ACA Ethics Committee Chairs (neither of whom served on the Committee during the hearings on the matter) and the President of the identified division. The ACA attorney shall serve as legal advisor and have the privilege of the floor.

5. The three (3) member appeals panel will be given copies of the materials available to the Committee when it made its decision, a copy of the hearing record if a hearing was held, plus a copy of the letter filed by the appealing member.

6. The appeals panel will not consider evidence that was not presented to the Committee.

7. The appeals panel generally will render its decision regarding an appeal requiring a majority vote within sixty (60) working days of their receipt of the above materials.

8. The decision of the appeals panel is limited to

a. Upholding the decision of the Committee, or

b. Upholding the decision of the Committee on the finding of an ethical violation but reversing and remanding the Committee's decision on sanctions, or

c. Recommending reconsideration by the Committee of the decision providing guidance to the Committee in detail in writing for considering a new decision on remand.

9. The decision of the appeals panel need not be unanimous.

10. When a Committee decision is reversed and remanded, the complainant and charged member will be informed in writing, and additional information may be requested first from the complainant and then from the charged member. The Committee will then render another decision without a hearing.

11. Decisions of the appeals panel to uphold the Committee decision are final and binding and not subject to further hearings or appellate review.

Section S: Disposition of Complaints

1. In the event substantial new evidence is presented in a case in which an appeal was not filed, or in a case for which a final decision has been rendered, the case may be reopened by the Committee.

2. The Committee will consider substantial new evidence and if found to be substantiated and capable of exonerating a member who was expelled, the Committee will reopen the case and go through the entire complaint process again.

Section T: Records

1. The records of the Committee regarding complaints are confidential except as provided herein.

2. Original copies of complaint records will be maintained in locked files at ACA Headquarters or at an off-site location chosen by ACA.

3. Members of the Committee will keep copies of complaint records confidential and will destroy copies of records after a case has been closed or when they are no longer a member of the Committee.

Section U: Legal Actions Related to Complaints

1. Complainants and charged members are required to notify the Committee if they learn of any type of legal action (civil or criminal) being filed related to the complaint.

2. In the event any type of legal action is filed regarding an accepted complaint, all actions related to the complaint will be stayed until the legal action has been concluded. The Committee will consult with legal counsel con-

cerning whether the processing of the complaint will be stayed if the legal action does not involve the same complainant and the same facts complained of.

3. If actions on a complaint are stayed, the complainant and charged member will be notified.

4. When actions on a complaint are continued after a legal action has been concluded, the complainant and charged member will be notified.

Ordering Information

For information on ordering
the *ACA Code of Ethics*
& *Standards of Practice* write to:

ACA Distribution Center
P.O. Box 791019
Baltimore, MD 21279-1019
or call 703-823-9800 x222
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CHAPTER 86
PSYCHOLOGISTS AND PSYCHOLOGICAL ASSOCIATES

Article

1. Board of Psychologist and Psychological Associate Examiners (§§ 08.86.010—08.86.040)
2. Administration of Board Affairs (§§ 08.86.070—08.86.100)
3. Licensing of Psychologists (§§ 08.86.130—08.86.150)
4. Licensing of Psychological Associates (§§ 08.86.160—08.86.164)
5. Prohibitions and Penalties (§§ 08.86.170—08.86.220)
6. General Provisions (§§ 08.86.230)

ARTICLE 1.
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL
ASSOCIATE EXAMINERS.

Section

10. Creation and membership of board
30. Board meetings
40. Assistants

Sec. 08.86.010. **Creation and membership of board.** There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, a licensed psychological associate, and one person who has no direct financial interest in the health care industry.

Sec. 08.86.030. **Board meetings.** The board shall hold at least three meetings annually. The board may hold special meetings at the call of the chairman or of a majority of the board members.

Sec. 08.86.040. **Assistants.** The board may employ assistants to prepare and grade examinations and to investigate alleged violations of this chapter.

ARTICLE 2.
ADMINISTRATION OF BOARD AFFAIRS.

Section

70. Duties of the board
75. Power to order examinations
80. Board regulations
90. Administrative duties of the department
100. Applicability of the Administrative Procedure Act

Sec. 08.86.070. **Duties of the board.** The board shall

- (1) establish objective examination requirements for persons who apply for a license to practice psychology in the state;
- (2) examine, or cause to be examined, eligible license applicants;
- (3) approve the issuance of licenses to qualified applicants;
- (4) adopt regulations establishing standards for the practice of psychology;
- (5) impose disciplinary sanctions as authorized by this chapter;
- (6) adopt regulations requiring proof of continued competency for license renewal;
- (7) prepare an annual report for submission to the department covering board activities, the number of applicants, the number of examinations conducted, the passing and failure rate of each examination, finances, and other information as requested by the department;
- (8) review, when requested by the department, the quality and availability of psychological services in the state;
- (9) compile information for submission to the department on the practice of psychology by psychologists and psychological associates in the state.

Sec. 08.86.075. **Power to order examinations.** The board may order a licensed psychologist or licensed psychological associate to submit to a reasonable physical or mental examination if the board has credible evidence sufficient to conclude that the psychologist's or psychological associate's physical or mental capacity to practice safely is at issue.

"psychotherapy," "psychotherapeutic," "psychotherapist," "psychoanalysis," or "psychoanalyst," or when holding out publicly to be trained, experienced, or qualified to render services in the field of psychology.

(b) This section does not apply to

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a psychological nature in the course of the person's employment, if the employer maintains appropriate supervision of psychological activities and professional conduct, and if the person is performing the psychological activities as part of the duties for which the person was employed, is performing the activities solely within the facilities of the organization in which the person is employed or under the supervision of the organization in which the person is employed, and does not render or offer to render psychological services to the public for compensation in addition to the salary the person receives from the organization;

(2) a student, intern, or resident in psychology pursuing a course of study approved by the board as qualifying training and experience for a psychologist, if that person's activities constitute a part of that person's supervised course of study and that person is designated by titles such as "psychology intern" or "psychology trainee";

(3) a qualified member of another profession, in doing work of a psychological nature consistent with that person's training and consistent with the code of ethics of that person's profession, if the person does not hold out to the public by a title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychometrics," "psychometrist," "psychotherapist," "psychoanalysis," "psychoanalyst" or represents to be trained, experienced, or qualified to render services in the field of psychology;

(4) [Repealed, 1973.]

(5) a physician engaged in the normal practice of medicine for which the physician is licensed under AS 08.64.

(c) Nothing in this chapter authorizes a person licensed as a psychologist to engage in the practice of medicine, as defined by the laws of the state.

(d) Nothing in this section prohibits a clinical social worker from holding out to the public by a title or description of services incorporating the words "psychotherapy," "psychotherapist," or "psychotherapeutic."

Sec. 08.86.190. Name under which person practices. (a) A licensed psychologist may practice psychology only under that person's own name.

(b) A licensed psychological associate may practice counseling or psychometry only under that person's own name.

Sec. 08.86.200. Confidentiality of communication. (a) A psychologist or psychological associate may not reveal to another person a communication made to the psychologist or psychological associate by a client about a matter concerning which the client has employed the psychologist or psychological associate in a professional capacity. This section does not apply to

(1) a case conference with other mental health professionals or with physicians and surgeons;

(2) a case in which the client in writing authorized the psychologist or psychological associate to reveal a communication;

(3) a case where an immediate threat of serious physical harm to an identifiable victim is communicated to a psychologist or psychological associate by a client;

(4) disclosures of confidential communications required under Rule 504, Alaska Rules of Evidence; or

(5) proceedings conducted by the board or the department where the disclosure of confidential communications is necessary to defend against charges that the psychologist or psychological associate has violated provisions of this chapter; information obtained by the board or department under this paragraph is confidential and is not a public record for purposes of AS 09.25.110 - 09.25.140.

(b) Notwithstanding (a) of this section, a psychologist or psychological associate shall report to the appropriate authority incidents of child abuse or neglect as required by AS 47.17.020, incidents of elder abuse as required by AS 47.24.010, and incidents of abuse of disabled persons disclosed to the psychologist or psychological associate by a client. In this subsection "disabled person" means a person who has a physical or mental disability or a physical or mental impairment, as defined in AS 18.80.300.

Sec. 08.86.204. Grounds for imposition of disciplinary sanctions. After a hearing, the board may impose a disciplinary sanction on a person licensed under this chapter when the board finds that the licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a felony or other crime that affects the licensee's ability to continue to practice competently and safely;

(5) intentionally or negligently engaged in or permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards regardless of whether actual injury to the patient occurred;

(6) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board;

(7) continued to practice after becoming unfit due to

- (A) professional incompetence;
- (B) failure to keep informed of current professional practices;
- (C) addiction or severe dependence on alcohol or other drugs which impairs the ability to practice safely;
- (D) physical or mental disability or a combination of physical and mental disabilities;

(8) engaged in sexual misconduct with a patient during the course of therapy, either within or outside the treatment setting, or within two years after therapy or counseling with the patient has terminated; in this paragraph, "sexual misconduct" includes sexual contact, as defined in regulations adopted under this chapter, or attempted sexual contact, regardless of the patient's or former patient's consent or lack of consent.

(b) The board may summarily suspend the license of a licensee who refuses to submit to a physical or mental examination under AS 08.86.075. A person whose license is suspended under this subsection is entitled to a hearing by the board within seven days after the effective date of the order. If, after a hearing, the board upholds the suspension, the licensee may appeal the suspension to a court of competent jurisdiction.

Sec. 08.86.210. Penalty. A person who violates this chapter is guilty of a class B misdemeanor.

Sec. 08.86.220. Limits or conditions on license; discipline. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

ARTICLE 6. GENERAL PROVISIONS.

Section

230. Definitions

Sec. 08.86.230. Definitions. In this chapter

- (1) "board" means the Board of Psychologist and Psychological Associate Examiners;
- (2) "department" means the Department of Community and Economic Development;
- (3) "private agency" means a clinic or private practice, or custodial, rehabilitative, or health care organization whose mental health services are under the direction of a licensed psychologist or psychiatrist;
- (4) "psychological associate" means a person licensed under this chapter who renders psychological services and complies with AS 08.86.164;
- (5) "psychologist" means a person who practices psychology;
- (6) "to practice psychology" means to render or offer to render for a fee to individuals, groups, organizations, or the public for the diagnosis, prevention, treatment, or amelioration of psychological problems and emotional and mental disorders of individuals or groups or for conducting research on human behavior, a psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, including
 - (A) the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships;
 - (B) the methods and procedures for interviewing, counseling, psychotherapy, biofeedback, behavior modification, and hypnosis;
 - (C) constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

- 200. Confidentiality
- 220. Effect of violation

12 AAC 60.180. COMPETENCE. (a) Neither a psychologist nor a psychologist-supervisor may function outside her or his particular field or fields of competence as established by her or his education, training, and experience.

(b) A psychological associate may not function outside the scope of practice as established by the licensee's education and training.

12 AAC 60.185. ETHICS AND STANDARDS. (a) The ethics to be adhered to by licensed psychologists and licensed psychological associates are the "Ethical Principles of Psychologists and Code of Conduct," (December 1992 revision), of the American Psychological Association, Inc. "Ethical Principles of Psychologists and Code of Conduct" is incorporated by reference in this section.

(b) The standards to be adhered to by licensed psychologists and licensed psychological associates rendering psychological services in the state are "General Guidelines for Providers of Psychological Services," (1987 edition), of the American Psychological Association. "General Guidelines for Providers of Psychological Services" is incorporated by reference in this section.

Editor's notes: A copy of the "Ethical Principles of Psychologists and Code of Conduct" or "General Guidelines for Providers of Psychological Services," incorporated by reference in 12 AAC 60.185, may be obtained from the American Psychological Association, Inc., 1200 Seventeenth Street Northwest, Washington, D.C. 20036.

12 AAC 60.190. MISREPRESENTATION. A psychologist may not misrepresent nor permit the misrepresentation of her or his professional qualifications, affiliations, or purposes, or those of the institutions, organizations, products, or services with which she or he is associated.

12 AAC 60.200. CONFIDENTIALITY. A psychologist and a psychological associate shall safeguard confidential information that has been obtained in the course of her or his teaching, practice, or investigation.

12 AAC 60.220. EFFECT OF VIOLATION. Violation of any of the provisions of 12 AAC 60.170—12 AAC 60.210 or AS 08.86.190—08.86.200 is unprofessional conduct and grounds for disciplinary proceedings.

ARTICLE 5. REINSTATEMENT OF PROFESSIONAL PRIVILEGES AFTER DISCIPLINE.

Section

- 230. Appearance required for reinstatement of professional privileges
- 240. Documentation of rehabilitation

12 AAC 60.230. APPEARANCE REQUIRED FOR REINSTATEMENT OF PROFESSIONAL PRIVILEGES. A person seeking reinstatement of professional privileges whose license has been revoked or suspended or whose authority to practice has been limited or conditioned shall appear in person before the board at a time and place designated by the board to determine the individual's present fitness.

12 AAC 60.240. DOCUMENTATION OF REHABILITATION. An applicant for reinstatement of professional privileges has the burden of satisfying the board that he or she is rehabilitated.

ARTICLE 6. CONTINUING EDUCATION.

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- 250. Purpose of continuing education
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ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT

History and effective date.

Effective date December 1, 1992.
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[Ethical Principles of Psychologists and Code of Conduct](#)

APA's Ethics Code is currently being revised.
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[Guidelines for Ethical Conduct in the Care and Use of Animals](#)

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INTRODUCTION

The American Psychological Association's (APA's) Ethical Principles of Psychologists and Code of Conduct (hereinafter referred to as the Ethics Code) consists of an Introduction, a Preamble, six General Principles (A - F), and specific Ethical Standards. The Introduction discusses the intent, organization, procedural considerations, and scope of application of the Ethics Code. The Preamble and General Principles are *aspirational* goals to guide psychologists toward the highest ideals of psychology. Although the Preamble and General Principles are not themselves enforceable rules, they should be considered by psychologists in arriving at an ethical course of action and may be considered by ethics bodies in interpreting the Ethical Standards. The Ethical Standards set forth *enforceable* rules for conduct as psychologists. Most of the Ethical Standards are written broadly, in order to apply to psychologists in varied roles, although the application of an Ethical Standard may vary depending on the context. The Ethical Standards are not exhaustive. The fact that a given conduct is not specifically addressed by the Ethics Code does not mean that it is necessarily either ethical or unethical.

Membership in the APA commits members to adhere to the APA Ethics Code and to the rules and procedures used to implement it. Psychologists and students, whether or not they are APA members, should be aware that the Ethics Code may be applied to them by state psychology boards, courts, or other public bodies.

This Ethics Code applies only to psychologists' work-related activities, that is, activities that are part of the psychologists' scientific and professional functions or that are psychological in nature. It includes the clinical or counseling practice of psychology, research, teaching, supervision of trainees, development of assessment instruments, conducting assessments, educational counseling, organizational consulting, social intervention, administration, and other activities as well. These work-related activities can be distinguished from the purely private conduct of a psychologist, which ordinarily is not within the purview of the Ethics Code.

The Ethics Code is intended to provide standards of professional conduct that can be applied by the APA and by other bodies that choose to adopt them. Whether or not a psychologist has violated the Ethics Code does not by itself determine whether he or she is legally liable in a court action, whether a contract is enforceable, or whether other legal consequences occur. These results are based on legal rather than ethical rules. However, compliance with or violation of the Ethics Code may be admissible as evidence in some legal proceedings, depending on the circumstances.

In the process of making decisions regarding their professional behavior, psychologists must consider this Ethics Code, in addition to applicable laws and psychology board regulations. If the Ethics Code establishes a higher standard of

conduct than is required by law, psychologists must meet the higher ethical standard. If the Ethics Code standard appears to conflict with the requirements of law, then psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict in a responsible manner. If neither law nor the Ethics Code resolves an issue, psychologists should consider other professional materials Footnote 1 and the dictates of their own conscience, as well as seek consultation with others within the field when this is practical.

The procedures for filing, investigating, and resolving complaints of unethical conduct are described in the current Rules and Procedures of the APA Ethics Committee. The actions that APA may take for violations of the Ethics Code include actions such as reprimand, censure, termination of APA membership, and referral of the matter to other bodies. Complainants who seek remedies such as monetary damages in alleging ethical violations by a psychologist must resort to private negotiation, administrative bodies, or the courts. Actions that violate the Ethics Code may lead to the imposition of sanctions on a psychologist by bodies other than APA, including state psychological associations, other professional groups, psychology boards, other state or federal agencies, and payors for health services. In addition to actions for violation of the Ethics Code, the APA Bylaws provide that APA may take action against a member after his or her conviction of a felony, expulsion or suspension from an affiliated state psychological association, or suspension or loss of licensure.

.....
PREAMBLE

Psychologists work to develop a valid and reliable body of scientific knowledge based on research. They may apply that knowledge to human behavior in a variety of contexts. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness. Their goal is to broaden knowledge of behavior and, where appropriate, to apply it pragmatically to improve the condition of both the individual and society. Psychologists respect the central importance of freedom of inquiry and expression in research, teaching, and publication. They also strive to help the public in developing informed judgments and choices concerning human behavior. This Ethics Code provides a common set of values upon which psychologists build their professional and scientific work.

This Code is intended to provide both the general principles and the decision rules to cover most situations encountered by psychologists. It has as its primary goal the welfare and protection of the individuals and groups with whom psychologists work. It is the individual responsibility of each psychologist to aspire to the highest possible standards of conduct. Psychologists respect and protect human and civil rights, and do not knowingly participate in or condone unfair discriminatory practices.

The development of a dynamic set of ethical standards for a psychologist's work-related conduct requires a personal commitment to a lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees, and colleagues, as appropriate; and to consult with others, as needed, concerning ethical problems. Each psychologist supplements, but does not violate, the Ethics Code's values and rules on the basis of guidance drawn from personal values, culture, and experience.

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GENERAL PRINCIPLES

PRINCIPLE A: COMPETENCE

Psychologists strive to maintain high standards of competence in their work. They recognize the boundaries of their particular competencies and the limitations of their expertise. They provide only those services and use only those techniques for which they are qualified by education, training, or experience. Psychologists are cognizant of the fact that the competencies required in serving, teaching, and/or studying groups of people vary with the distinctive characteristics of those groups. In those areas in which recognized professional standards do not yet exist, psychologists exercise careful judgment and take appropriate precautions to protect the welfare of those with whom they work. They maintain knowledge of relevant scientific and professional information related to the services they render, and they recognize the need for ongoing education. Psychologists make appropriate use of scientific, professional, technical, and administrative resources.

PRINCIPLE B: INTEGRITY

Psychologists seek to promote integrity in the science, teaching, and practice of psychology. In these activities psychologists are honest, fair, and respectful of others. In describing or reporting their qualifications, services, products, fees, research, or teaching, they do not make statements that are false, misleading, or deceptive. Psychologists strive to be aware of their own beliefs, systems, values, needs, and limitations and the effect of these on their work. To the extent feasible, they attempt to clarify for relevant parties the roles they are performing and to function appropriately in accordance with those roles. Psychologists avoid improper and potentially harmful dual relationships.

PRINCIPLE C: PROFESSIONAL AND SCIENTIFIC RESPONSIBILITY

Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior, and adapt their methods to the needs of different populations. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of their patients, clients, or other recipients of their services. Psychologists' moral standards and conduct are personal matters to the same degree as is true for any other person, except as psychologists' conduct may compromise their professional responsibilities or reduce the public's trust in psychology and psychologists. Psychologists are concerned about the ethical compliance of their colleagues' scientific and professional conduct. When appropriate, they consult with colleagues in order to prevent or avoid unethical conduct.

PRINCIPLE D: RESPECT FOR PEOPLE'S RIGHTS AND DIGNITY

Psychologists accord appropriate respect to the fundamental rights, dignity, and worth of all people. They respect the rights of individuals to privacy, confidentiality, self-determination, and autonomy, mindful that legal and other obligations may lead to inconsistency and conflict with the exercise of these rights. Psychologists are aware of cultural, individual, and role differences, including those due to age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, and socioeconomic status. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone unfair discriminatory practices.

PRINCIPLE E: CONCERN FOR OTHERS' WELFARE

Psychologists seek to contribute to the welfare of those with whom they interact professionally. In their professional actions, psychologists weigh the welfare and rights of their patients or clients, students, supervisees, human research participants, and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts and to perform their roles in a responsible fashion that avoids or minimizes harm. Psychologists are sensitive to real and ascribed differences in power between themselves and others, and they do not exploit or mislead other people during or after professional relationships.

PRINCIPLE F: SOCIAL RESPONSIBILITY

Psychologists are aware of their professional and scientific responsibilities to the community and the society in which they work and live. They apply and make public their knowledge of psychology in order to contribute to human welfare. Psychologists are concerned about and work to mitigate the causes of human suffering. When undertaking research, they strive to advance human welfare and the science of psychology. Psychologists try to avoid misuse of their work. Psychologists comply with the law and encourage the development of law and social policy that serve the interests of their patients and clients and the public. They are encouraged to contribute a portion of their professional time for little or no personal advantage.

ETHICAL STANDARDS**1. GENERAL STANDARDS**

These General Standards are potentially applicable to the professional and scientific activities of all psychologists.

1.01 Applicability of the Ethics Code.

The activity of a psychologist subject to the Ethics Code may be reviewed under these Ethical Standards only if the activity is part of his or her work-related functions or the activity is psychological in nature. Personal activities having no connection to or effect on psychological roles are not subject to the Ethics Code.

1.02 Relationship of Ethics and Law.

If psychologists' ethical responsibilities conflict with law, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict in a responsible manner.

1.03 Professional and Scientific Relationship.

Psychologists provide diagnostic, therapeutic, teaching, research, supervisory, consultative, or other psychological services only in the context of a defined professional or scientific relationship or role. (See also Standards 2.01, Evaluation, Diagnosis, and Interventions in Professional Context, and 7.02, Forensic Assessments.)

1.04 Boundaries of Competence.

(a) Psychologists provide services, teach, and conduct research only within the boundaries of their competence, based on their education, training, supervised experience, or appropriate professional experience.

(b) Psychologists provide services, teach, or conduct research in new areas or involving new techniques only after first undertaking appropriate study, training, supervision, and/or consultation from persons who are competent in those areas or techniques.

(c) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect patients, clients, students, research participants, and others from harm.

1.05 Maintaining Expertise.

Psychologists who engage in assessment, therapy, teaching, research, organizational consulting, or other professional activities maintain a reasonable level of awareness of current scientific and professional information in their fields of activity, and undertake ongoing efforts to maintain competence in the skills they use.

1.06 Basis for Scientific and Professional Judgments.

Psychologists rely on scientifically and professionally derived knowledge when making scientific or professional judgments or when engaging in scholarly or professional endeavors.

1.07 Describing the Nature and Results of Psychological Services.

(a) When psychologists provide assessment, evaluation, treatment, counseling, supervision, teaching, consultation, research, or other psychological services to an individual, a group, or an organization, they provide, using language that is reasonably understandable to the recipient of those services, appropriate information beforehand about the nature of such services and appropriate information later about results and conclusions. (See also Standard 2.09, Explaining Assessment Results.)

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

1.08 Human Differences.

Where differences of age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status significantly affect psychologists' work concerning particular individuals or groups, psychologists obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals.

1.09 Respecting Others.

In their work-related activities, psychologists respect the rights of others to hold values, attitudes, and opinions that differ from their own.

1.10 Nondiscrimination. In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, socio-economic status, or any basis proscribed by law.

1.11 Sexual Harassment.

(a) Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist's activities or roles as a psychologist, and that either: (1) is unwelcome, is offensive, or creates a hostile workplace environment, and the psychologist knows or is told this; or (2) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts.

(b) Psychologists accord sexual-harassment complainants and respondents dignity and respect. Psychologists do not participate in denying a person academic admittance or advancement, employment, tenure, or promotion, based solely upon their having made, or their being the subject of, sexual harassment charges. This does not preclude taking action based upon the outcome of such proceedings or consideration of other appropriate information.

1.12 Other Harassment.

Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

1.13 Personal Problems and Conflicts.

(a) Psychologists recognize that their personal problems and conflicts may interfere with their effectiveness. Accordingly, they refrain from undertaking an activity when they know or should know that their personal problems are likely to lead to harm to a patient, client, colleague, student, research participant, or other person to whom they may owe a professional or scientific obligation.

(b) In addition, psychologists have an obligation to be alert to signs of, and to obtain assistance for, their personal problems at an early stage, in order to prevent significantly impaired performance.

(c) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties.

1.14 Avoiding Harm.

Psychologists take reasonable steps to avoid harming their patients or clients, research participants, students, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

1.15 Misuse of Psychologists' Influence.

Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence.

1.16 Misuse of Psychologists' Work.

(a) Psychologists do not participate in activities in which it appears likely that their skills or data will be misused by others, unless corrective mechanisms are available. (See also Standard 7.04, Truthfulness and Candor.)

(b) If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

1.17 Multiple Relationships.

(a) In many communities and situations, it may not be feasible or reasonable for psychologists to avoid social or other nonprofessional contacts with persons such as patients, clients, students, supervisees, or research participants. Psychologists must always be sensitive to the potential harmful effects of other contacts on their work and on those persons with whom they deal. A psychologist refrains from entering into or promising another personal, scientific, professional, financial, or other relationship with such persons if it appears likely that such a relationship reasonably might impair the psychologist's objectivity or otherwise interfere with the psychologist's effectively performing his or her functions as a psychologist, or might harm or exploit the other party.

(b) Likewise, whenever feasible, a psychologist refrains from taking on professional or scientific obligations when pre-existing relationships would create a risk of such harm.

(c) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist attempts to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

1.18 Barter (With Patients or Clients).

Psychologists ordinarily refrain from accepting goods, services, or other nonmonetary remuneration from patients or clients in return for psychological services because such arrangements create inherent potential for conflicts, exploitation, and distortion of the professional relationship. A psychologist may participate in bartering only if (1) it is not clinically contraindicated, and (2) the relationship is not exploitative. (See also Standards 1.17, Multiple Relationships, and 1.25, Fees and Financial Arrangements.)

1.19 Exploitative Relationships.

(a) Psychologists do not exploit persons over whom they have supervisory, evaluative, or other authority such as students, supervisees, employees, research participants, and clients or patients. (See also Standards 4.05 - 4.07 regarding sexual involvement with clients or patients.)

(b) Psychologists do not engage in sexual relationships with students or supervisees in training over whom the psychologist has evaluative or direct authority, because such relationships are so likely to impair judgment or be exploitative.

1.20 Consultations and Referrals.

(a) Psychologists arrange for appropriate consultations and referrals based principally on the best interests of their patients or clients, with appropriate consent, and subject to other relevant considerations, including applicable law and contractual obligations. (See also Standards 5.01, Discussing the Limits of Confidentiality, and 5.06, Consultations.)

(b) When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their patients or clients effectively and appropriately.

(c) Psychologists' referral practices are consistent with law.

1.21 Third-Party Requests for Services.

(a) When a psychologist agrees to provide services to a person or entity at the request of a third party, the psychologist clarifies to the extent feasible, at the outset of the service, the nature of the relationship with each party. This clarification includes the role of the psychologist (such as therapist, organizational consultant, diagnostician, or expert witness), the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.

(b) If there is a foreseeable risk of the psychologist's being called upon to perform conflicting roles because of the involvement of a third party, the psychologist clarifies the nature and direction of his or her responsibilities, keeps all parties appropriately informed as matters develop, and resolves the situation in accordance with this Ethics Code.

1.22 Delegation to and Supervision of Subordinates.

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

(b) Psychologists provide proper training and supervision to their employees or supervisees and take reasonable steps to see that such persons perform services responsibly, competently, and ethically.

(c) If institutional policies, procedures, or practices prevent fulfillment of this obligation, psychologists attempt to modify their role or to correct the situation to the extent feasible.

1.23 Documentation of Professional and Scientific Work.

(a) Psychologists appropriately document their professional and scientific work in order to facilitate provision of services later by them or by other professionals, to ensure accountability, and to meet other requirements of institutions or the law.

(b) When psychologists have reason to believe that records of their professional services will be used in legal proceedings involving recipients of or participants in their work, they have a responsibility to create and maintain documentation in the kind of detail and quality that would be consistent with reasonable scrutiny in an adjudicative forum. (See also Standard 7.01, Professionalism, under Forensic Activities.)

1.24 Records and Data.

Psychologists create, maintain, disseminate, store, retain, and dispose of records and data relating to their research, practice, and other work in accordance with law and in a manner that permits compliance with the requirements of this Ethics Code. (See also Standard 5.04, Maintenance of Records.)

1.25 Fees and Financial Arrangements.

(a) As early as is feasible in a professional or scientific relationship, the psychologist and the patient, client, or other appropriate recipient of psychological services reach an agreement specifying the compensation and the billing arrangements.

(b) Psychologists do not exploit recipients of services or payors with respect to fees.

(c) Psychologists' fee practices are consistent with law.

(d) Psychologists do not misrepresent their fees.

(e) If limitations to services can be anticipated because of limitations in financing, this is discussed with the patient, client, or other appropriate recipient of services as early as is feasible. (See also Standard 4.08, Interruption of Services.)

(f) If the patient, client, or other recipient of services does not pay for services as agreed, and if the psychologist wishes to use collection agencies or legal measures to collect the fees, the psychologist first informs the person that such measures will be taken and provides that person an opportunity to make prompt payment. (See also Standard 5.11, Withholding Records for Nonpayment.)

1.26 Accuracy in Reports to Payors and Funding Sources.

In their reports to payors for services or sources of research funding, psychologists accurately state the nature of the research or service provided, the fees or charges, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also Standard 5.05, Disclosures.)

1.27 Referrals and Fees.

When a psychologist pays, receives payment from, or divides fees with another professional other than in an employer - employee relationship, the payment to each is based on the services (clinical, consultative, administrative, or other) provided and is not based on the referral itself.

2. EVALUATION, ASSESSMENT, OR INTERVENTION

2.01 Evaluation, Diagnosis, and Interventions in Professional Context.

(a) Psychologists perform evaluations, diagnostic services, or interventions only within the context of a defined professional relationship. (See also Standards 1.03, Professional and Scientific Relationship.)

(b) Psychologists' assessments, recommendations, reports, and psychological diagnostic or evaluative statements are based on information and techniques (including personal interviews of the individual when appropriate) sufficient to provide appropriate substantiation for their findings. (See also Standard 7.02, Forensic Assessments.)

2.02 Competence and Appropriate Use of Assessments and Interventions.

(a) Psychologists who develop, administer, score, interpret, or use psychological assessment techniques, interviews, tests, or instruments do so in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(b) Psychologists refrain from misuse of assessment techniques, interventions, results, and interpretations and take reasonable steps to prevent others from misusing the information these techniques provide. This includes refraining from releasing raw test results or raw data to persons, other than to patients or clients as appropriate, who are not qualified to use such information. (See also Standards 1.02, Relationship of Ethics and Law, and 1.04, Boundaries of Competence.)

2.03 Test Construction.

Psychologists who develop and conduct research with tests and other assessment techniques use scientific procedures and current professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

2.04 Use of Assessment in General and With Special Populations.

(a) Psychologists who perform interventions or administer, score, interpret, or use assessment techniques are familiar with the reliability, validation, and related standardization or outcome studies of, and proper applications and uses of, the techniques they use.

(b) Psychologists recognize limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals.

(c) Psychologists attempt to identify situations in which particular interventions or assessment techniques or norms may not be applicable or may require adjustment in administration or interpretation because of factors such as individuals' gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

2.05 Interpreting Assessment Results.

When interpreting assessment results, including automated interpretations, psychologists take into account the various test factors and characteristics of the person being assessed that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant reservations they have about the accuracy or limitations of their interpretations.

2.06 Unqualified Persons.

Psychologists do not promote the use of psychological assessment techniques by unqualified persons. (See also Standard 1.22, Delegation to and Supervision of Subordinates.)

2.07 Obsolete Tests and Outdated Test Results.

(a) Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(b) Similarly, psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

2.08 Test Scoring and Interpretation Services.

(a) Psychologists who offer assessment or scoring procedures to other professionals accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(b) Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations.

(c) Psychologists retain appropriate responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services.

2.09 Explaining Assessment Results.

Unless the nature of the relationship is clearly explained to the person being assessed in advance and precludes provision of an explanation of results (such as in some organizational consulting, pre-employment or security screenings, and forensic evaluations), psychologists ensure that an explanation of the results is provided using language that is reasonably understandable to the person assessed or to another legally authorized person on behalf of the client. Regardless of whether the scoring and interpretation are done by the psychologist, by assistants, or by automated or other outside services, psychologists take reasonable steps to ensure that appropriate explanations of results are given.

2.10 Maintaining Test Security.

Psychologists make reasonable efforts to maintain the integrity and security of tests and other assessment techniques consistent with law, contractual obligations, and in a manner that permits compliance with the requirements of this Ethics Code. (See also Standard 1.02, Relationship of Ethics and Law.)

3. ADVERTISING AND OTHER PUBLIC STATEMENTS

3.01 Definition of Public Statements.

Psychologists comply with this Ethics Code in public statements relating to their professional services, products, or publications or to the field of psychology. Public statements include but are not limited to paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curriculum vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials.

3.02 Statements by Others.

(a) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(b) In addition, psychologists make reasonable efforts to prevent others whom they do not control (such as employers, publishers, sponsors, organizational clients, and representatives of the print or broadcast media) from making deceptive statements concerning psychologists' practice or professional or scientific activities.

(c) If psychologists learn of deceptive statements about their work made by others, psychologists make reasonable efforts to correct such statements.

(d) Psychologists do not compensate employees of press, radio, television, or other communication media in return for publicity in a news item.

(e) A paid advertisement relating to the psychologist's activities must be identified as such, unless it is already apparent from the context.

3.03 Avoidance of False or Deceptive Statements.

(a) Psychologists do not make public statements that are false, deceptive, misleading, or fraudulent, either because of what they state, convey, or suggest or because of what they omit, concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated. As examples (and not in limitation) of this standard, psychologists do not make false or deceptive statements concerning (1) their training, experience, or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for, or results or degree of success of, their services; (7) their fees; or (8) their publications or research findings. (See also Standards 6.15, Deception in Research, and 6.18, Providing Participants With Information About the Study.)

(b) Psychologists claim as credentials for their psychological work, only degrees that (1) were earned from a regionally accredited educational institution or (2) were the basis for psychology licensure by the state in which they practice.

3.04 Media Presentations.

When psychologists provide advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, they take reasonable precautions to ensure that (1) the statements are based on appropriate psychological literature and practice, (2) the statements are otherwise consistent with this Ethics Code, and (3) the recipients of the information are not encouraged to infer that a relationship has been established with them personally.

3.05 Testimonials.

Psychologists do not solicit testimonials from current psychotherapy clients or patients or other persons who because of their particular circumstances are vulnerable to undue influence.

3.06 In-Person Solicitation.

Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential psychotherapy patients or clients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this does not preclude attempting to implement appropriate collateral contacts with significant others for the purpose of benefiting an already engaged therapy patient.

4. THERAPY

4.01 Structuring the Relationship.

(a) Psychologists discuss with clients or patients as early as is feasible in the therapeutic relationship appropriate issues, such as the nature and anticipated course of therapy, fees, and confidentiality. (See also Standards 1.25, Fees and Financial Arrangements, and 5.01, Discussing the Limits of Confidentiality.)

(b) When the psychologist's work with clients or patients will be supervised, the above discussion includes that fact, and the name of the supervisor, when the supervisor has legal responsibility for the case.

(c) When the therapist is a student intern, the client or patient is informed of that fact.

(d) Psychologists make reasonable efforts to answer patients' questions and to avoid apparent misunderstandings about therapy. Whenever possible, psychologists provide oral and/or written information, using language that is reasonably understandable to the patient or client.

4.02 Informed Consent to Therapy.

(a) Psychologists obtain appropriate informed consent to therapy or related procedures, using language that is reasonably understandable to participants. The content of informed consent will vary depending on many circumstances; however, informed consent generally implies that the person (1) has the capacity to consent, (2) has been informed of significant information concerning the procedure, (3) has freely and without undue influence expressed consent, and (4) consent has been appropriately documented.

(b) When persons are legally incapable of giving informed consent, psychologists obtain informed permission from a legally authorized person, if such substitute consent is permitted by law.

(c) In addition, psychologists (1) inform those persons who are legally incapable of giving informed consent about the proposed interventions in a manner commensurate with the persons' psychological capacities, (2) seek their assent to those interventions, and (3) consider such persons' preferences and best interests.

4.03 Couple and Family Relationships.

(a) When a psychologist agrees to provide services to several persons who have a relationship (such as husband and wife or parents and children), the psychologist attempts to clarify at the outset (1) which of the individuals are patients or clients and (2) the relationship the psychologist will have with each person. This clarification includes the role of the psychologist and the probable uses of the services provided or the information obtained. (See also Standard 5.01, Discussing the Limits of Confidentiality.)

(b) As soon as it becomes apparent that the psychologist may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the psychologist

attempts to clarify and adjust, or withdraw from, roles appropriately. (See also Standard 7.03, Clarification of Role, under Forensic Activities.)

4.04 Providing Mental Health Services to Those Served by Others.

In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential patient's or client's welfare. The psychologist discusses these issues with the patient or client, or another legally authorized person on behalf of the client, in order to minimize the risk of confusion and conflict, consults with the other service providers when appropriate, and proceeds with caution and sensitivity to the therapeutic issues.

4.05 Sexual Intimacies With Current Patients or Clients.

Psychologists do not engage in sexual intimacies with current patients or clients.

4.06 Therapy With Former Sexual Partners.

Psychologists do not accept as therapy patients or clients persons with whom they have engaged in sexual intimacies.

4.07 Sexual Intimacies With Former Therapy Patients.

(a) Psychologists do not engage in sexual intimacies with a former therapy patient or client for at least two years after cessation or termination of professional services.

(b) Because sexual intimacies with a former therapy patient or client are so frequently harmful to the patient or client, and because such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services, psychologists do not engage in sexual intimacies with former therapy patients and clients even after a two-year interval except in the most unusual circumstances. The psychologist who engages in such activity after the two years following cessation or termination of treatment bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated, (2) the nature and duration of the therapy, (3) the circumstances of termination, (4) the patient's or client's personal history, (5) the patient's or client's current mental status, (6) the likelihood of adverse impact on the patient or client and others, and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the patient or client. (See also Standard 1.17, Multiple Relationships.)

4.08 Interruption of Services.

(a) Psychologists make reasonable efforts to plan for facilitating care in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, or relocation or by the client's relocation or financial limitations. (See also Standard 5.09, Preserving Records and Data.)

(b) When entering into employment or contractual relationships, psychologists provide for orderly and appropriate resolution of responsibility for patient or client care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the patient or client.

4.09 Terminating the Professional Relationship.

(a) Psychologists do not abandon patients or clients. (See also Standard 1.25e, under Fees and Financial Arrangements.)

(b) Psychologists terminate a professional relationship when it becomes reasonably clear that the patient or client no longer needs the service, is not benefiting, or is being harmed by continued service.

(c) Prior to termination for whatever reason, except where precluded by the patient's or client's conduct, the psychologist discusses the patient's or client's views and needs, provides appropriate pretermination counseling, suggests alternative service providers as appropriate, and takes other reasonable steps to facilitate transfer of responsibility to another provider if the patient or client needs one immediately.

5. PRIVACY AND CONFIDENTIALITY

These Standards are potentially applicable to the professional and scientific activities of all psychologists.

5.01 Discussing the Limits of Confidentiality.

(a) Psychologists discuss with persons and organizations with whom they establish a scientific or professional relationship (including, to the extent feasible, minors and their legal representatives) (1) the relevant limitations on confidentiality, including limitations where applicable in group, marital, and family therapy or in organizational consulting, and (2) the foreseeable uses of the information generated through their services.

(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(c) Permission for electronic recording of interviews is secured from clients and patients.

5.02 Maintaining Confidentiality.

Psychologists have a primary obligation and take reasonable precautions to respect the confidentiality rights of those with whom they work or consult, recognizing that confidentiality may be established by law, institutional rules, or professional or scientific relationships. (See also Standard 6.26, Professional Reviewers.)

5.03 Minimizing Intrusions on Privacy.

(a) In order to minimize intrusions on privacy, psychologists include in written and oral reports, consultations, and the like, only information germane to the purpose for which the communication is made.

(b) Psychologists discuss confidential information obtained in clinical or consulting relationships, or evaluative data concerning patients, individual or organizational clients, students, research participants, supervisees, and employees, only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

5.04 Maintenance of Records.

Psychologists maintain appropriate confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. Psychologists maintain and dispose of records in accordance with law and in a manner that permits compliance with the requirements of this Ethics Code.

5.05 Disclosures.

(a) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose, such as (1) to provide needed professional services to the patient or the individual or organizational client, (2) to obtain appropriate professional consultations, (3) to protect the patient or client or others from harm, or (4) to obtain payment for services, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose.

(b) Psychologists also may disclose confidential information with the appropriate consent of the patient or the individual or organizational client (or

of another legally authorized person on behalf of the patient or client), unless prohibited by law.

5.06 Consultations.

When consulting with colleagues, (1) psychologists do not share confidential information that reasonably could lead to the identification of a patient, client, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided, and (2) they share information only to the extent necessary to achieve the purposes of the consultation. (See also Standard 5.02, Maintaining Confidentiality.)

5.07 Confidential Information in Databases.

(a) If confidential information concerning recipients of psychological services is to be entered into databases or systems of records available to persons whose access has not been consented to by the recipient, then psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

(b) If a research protocol approved by an institutional review board or similar body requires the inclusion of personal identifiers, such identifiers are deleted before the information is made accessible to persons other than those of whom the subject was advised.

(c) If such deletion is not feasible, then before psychologists transfer such data to others or review such data collected by others, they take reasonable steps to determine that appropriate consent of personally identifiable individuals has been obtained.

5.08 Use of Confidential Information for Didactic or Other Purposes.

(a) Psychologists do not disclose in their writings, lectures, or other public media, confidential, personally identifiable information concerning their patients, individual or organizational clients, students, research participants, or other recipients of their services that they obtained during the course of their work, unless the person or organization has consented in writing or unless there is other ethical or legal authorization for doing so.

(b) Ordinarily, in such scientific and professional presentations, psychologists disguise confidential information concerning such persons or organizations so that they are not individually identifiable to others and so that discussions do not cause harm to subjects who might identify themselves.

5.09 Preserving Records and Data.

A psychologist makes plans in advance so that confidentiality of records and data is protected in the event of the psychologist's death, incapacity, or withdrawal from the position or practice.

5.10 Ownership of Records and Data.

Recognizing that ownership of records and data is governed by legal principles, psychologists take reasonable and lawful steps so that records and data remain available to the extent needed to serve the best interests of patients, individual or organizational clients, research participants, or appropriate others.

5.11 Withholding Records for Nonpayment.

Psychologists may not withhold records under their control that are requested and imminently needed for a patient's or client's treatment solely because payment has not been received, except as otherwise provided by law.

6. TEACHING, TRAINING SUPERVISION, RESEARCH, AND PUBLISHING

6.01 Design of Education and Training Programs.

Psychologists who are responsible for education and training programs seek

to ensure that the programs are competently designed, provide the proper experiences, and meet the requirements for licensure, certification, or other goals for which claims are made by the program.

6.02 Descriptions of Education and Training Programs.

(a) Psychologists responsible for education and training programs seek to ensure that there is a current and accurate description of the program content, training goals and objectives, and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

(b) Psychologists seek to ensure that statements concerning their course outlines are accurate and not misleading, particularly regarding the subject matter to be covered, bases for evaluating progress, and the nature of course experiences. (See also Standard 3.03, Avoidance of False or Deceptive Statements.)

(c) To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures, or advertisements describing workshops, seminars, or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters, and the fees involved.

6.03 Accuracy and Objectivity in Teaching.

(a) When engaged in teaching or training, psychologists present psychological information accurately and with a reasonable degree of objectivity.

(b) When engaged in teaching or training, psychologists recognize the power they hold over students or supervisees and therefore make reasonable efforts to avoid engaging in conduct that is personally demeaning to students or supervisees. (See also Standards 1.09, Respecting Others, and 1.12, Other Harassment.)

6.04 Limitation on Teaching.

Psychologists do not teach the use of techniques or procedures that require specialized training, licensure, or expertise, including but not limited to hypnosis, biofeedback, and projective techniques, to individuals who lack the prerequisite training, legal scope of practice, or expertise.

6.05 Assessing Student and Supervisee Performance.

(a) In academic and supervisory relationships, psychologists establish an appropriate process for providing feedback to students and supervisees.

(b) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

6.06 Planning Research.

(a) Psychologists design, conduct, and report research in accordance with recognized standards of scientific competence and ethical research.

(b) Psychologists plan their research so as to minimize the possibility that results will be misleading.

(c) In planning research, psychologists consider its ethical acceptability under the Ethics Code. If an ethical issue is unclear, psychologists seek to resolve the issue through consultation with institutional review boards, animal care and use committees, peer consultations, or other proper mechanisms.

(d) Psychologists take reasonable steps to implement appropriate protections for the rights and welfare of human participants, other persons affected by the research, and the welfare of animal subjects.

6.07 Responsibility.

(a) Psychologists conduct research competently and with due concern for the dignity and welfare of the participants.

(b) Psychologists are responsible for the ethical conduct of research conducted by them or by others under their supervision or control.

(c) Researchers and assistants are permitted to perform only those tasks for which they are appropriately trained and prepared.

(d) As part of the process of development and implementation of research projects, psychologists consult those with expertise concerning any special population under investigation or most likely to be affected.

6.08 Compliance With Law and Standards.

Psychologists plan and conduct research in a manner consistent with federal and state law and regulations, as well as professional standards governing the conduct of research, and particularly those standards governing research with human participants and animal subjects.

6.09 Institutional Approval.

Psychologists obtain from host institutions or organizations appropriate approval prior to conducting research, and they provide accurate information about their research proposals. They conduct the research in accordance with the approved research protocol.

6.10 Research Responsibilities.

Prior to conducting research (except research involving only anonymous surveys, naturalistic observations, or similar research), psychologists enter into an agreement with participants that clarifies the nature of the research and the responsibilities of each party.

6.11 Informed Consent to Research.

(a) Psychologists use language that is reasonably understandable to research participants in obtaining their appropriate informed consent (except as provided in Standard 6.12, Dispensing with Informed Consent). Such informed consent is appropriately documented.

(b) Using language that is reasonably understandable to participants, psychologists inform participants of the nature of the research; they inform participants that they are free to participate or to decline to participate or to withdraw from the research; they explain the foreseeable consequences of declining or withdrawing; they inform participants of significant factors that may be expected to influence their willingness to participate (such as risks, discomfort, adverse effects, or limitations on confidentiality, except as provided in Standard 6.15, Deception in Research); and they explain other aspects about which the prospective participants inquire.

(c) When psychologists conduct research with individuals such as students or subordinates, psychologists take special care to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

(d) When research participation is a course requirement or opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

(e) For persons who are legally incapable of giving informed consent, psychologists nevertheless (1) provide an appropriate explanation, (2) obtain the participant's assent, and (3) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted by law.

6.12 Dispensing With Informed Consent.

Before determining that planned research (such as research involving only

anonymous questionnaires, naturalistic observations, or certain kinds of archival research) does not require the informed consent of research participants, psychologists consider applicable regulations and institutional review board requirements, and they consult with colleagues as appropriate.

6.13 Informed Consent in Research Filming or Recording.

Psychologists obtain informed consent from research participants prior to filming or recording them in any form, unless the research involves simply naturalistic observations in public places and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm.

6.14 Offering Inducements for Research Participants.

(a) In offering professional services as an inducement to obtain research participants, psychologists make clear the nature of the services, as well as the risks, obligations, and limitations. (See also Standard 1.18, Barter [With Patients or Clients].)

(b) Psychologists do not offer excessive or inappropriate financial or other inducements to obtain research participants, particularly when it might tend to coerce participation.

6.15 Deception in Research.

(a) Psychologists do not conduct a study involving deception unless they have determined that the use of deceptive techniques is justified by the study's prospective scientific, educational, or applied value and that equally effective alternative procedures that do not use deception are not feasible.

(b) Psychologists never deceive research participants about significant aspects that would affect their willingness to participate, such as physical risks, discomfort, or unpleasant emotional experiences.

(c) Any other deception that is an integral feature of the design and conduct of an experiment must be explained to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the research. (See also Standard 6.18, Providing Participants With Information About the Study.)

6.16 Sharing and Utilizing Data.

Psychologists inform research participants of their anticipated sharing or further use of personally identifiable research data and of the possibility of unanticipated future uses.

6.17 Minimizing Invasiveness.

In conducting research, psychologists interfere with the participants or milieu from which data are collected only in a manner that is warranted by an appropriate research design and that is consistent with psychologists' roles as scientific investigators.

6.18 Providing Participants With Information About the Study.

(a) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and psychologists attempt to correct any misconceptions that participants may have.

(b) If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

6.19 Honoring Commitments.

Psychologists take reasonable measures to honor all commitments they have made to research participants.

6.20 Care and Use of Animals in Research.

- (a) Psychologists who conduct research involving animals treat them humanely.
- (b) Psychologists acquire, care for, use, and dispose of animals in compliance with current federal, state, and local laws and regulations, and with professional standards.
- (c) Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health, and humane treatment.
- (d) Psychologists ensure that all individuals using animals under their supervision have received instruction in research methods and in the care, maintenance, and handling of the species being used, to the extent appropriate to their role.
- (e) Responsibilities and activities of individuals assisting in a research project are consistent with their respective competencies. (f) Psychologists make reasonable efforts to minimize the discomfort, infection, illness, and pain of animal subjects.
- (g) A procedure subjecting animals to pain, stress, or privation is used only when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational, or applied value.
- (h) Surgical procedures are performed under appropriate anesthesia; techniques to avoid infection and minimize pain are followed during and after surgery.
- (i) When it is appropriate that the animal's life be terminated, it is done rapidly, with an effort to minimize pain, and in accordance with accepted procedures.

6.21 Reporting of Results.

- (a) Psychologists do not fabricate data or falsify results in their publications.
- (b) If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum, or other appropriate publication means.

6.22 Plagiarism.

Psychologists do not present substantial portions or elements of another's work or data as their own, even if the other work or data source is cited occasionally.

6.23 Publication Credit.

- (a) Psychologists take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have contributed.
- (b) Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as Department Chair, does not justify authorship credit. Minor contributions to the research or to the writing for publications are appropriately acknowledged, such as in footnotes or in an introductory statement.
- (c) A student is usually listed as principal author on any multiple-authored article that is substantially based on the student's dissertation or thesis.

6.24 Duplicate Publication of Data.

Psychologists do not publish, as original data, data that have been previously published. This does not preclude republishing data when they are

accompanied by proper acknowledgment.

6.25 Sharing Data.

After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release.

6.26 Professional Reviewers. Psychologists who review material submitted for publication, grant, or other research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

7. FORENSIC ACTIVITIES

7.01 Professionalism.

Psychologists who perform forensic functions, such as assessments, interviews, consultations, reports, or expert testimony, must comply with all other provisions of this Ethics Code to the extent that they apply to such activities. In addition, psychologists base their forensic work on appropriate knowledge of and competence in the areas underlying such work, including specialized knowledge concerning special populations. (See also Standards 1.06, Basis for Scientific and Professional Judgments; 1.08, Human Differences; 1.15, Misuse of Psychologists' Influence; and 1.23, Documentation of Professional and Scientific Work.)

7.02 Forensic Assessments.

(a) Psychologists' forensic assessments, recommendations, and reports are based on information and techniques (including personal interviews of the individual, when appropriate) sufficient to provide appropriate substantiation for their findings. (See also Standards 1.03, Professional and Scientific Relationship; 1.23, Documentation of Professional and Scientific Work; 2.01, Evaluation, Diagnosis, and Interventions in Professional Context; and 2.05, Interpreting Assessment Results.)

(b) Except as noted in (c), below, psychologists provide written or oral forensic reports or testimony of the psychological characteristics of an individual only after they have conducted an examination of the individual adequate to support their statements or conclusions.

(c) When, despite reasonable efforts, such an examination is not feasible, psychologists clarify the impact of their limited information on the reliability and validity of their reports and testimony, and they appropriately limit the nature and extent of their conclusions or recommendations.

7.03 Clarification of Role.

In most circumstances, psychologists avoid performing multiple and potentially conflicting roles in forensic matters. When psychologists may be called on to serve in more than one role in a legal proceeding - for example, as consultant or expert for one party or for the court and as a fact witness - they clarify role expectations and the extent of confidentiality in advance to the extent feasible, and thereafter as changes occur, in order to avoid compromising their professional judgment and objectivity and in order to avoid misleading others regarding their role.

7.04 Truthfulness and Candor. (a) In forensic testimony and reports, psychologists testify truthfully, honestly, and candidly and, consistent with applicable legal procedures, describe fairly the bases for their testimony and conclusions. (b) Whenever necessary to avoid misleading, psychologists acknowledge the limits of their data or conclusions.

7.05 Prior Relationships.

A prior professional relationship with a party does not preclude psychologists from testifying as fact witnesses or from testifying to their services to the extent permitted by applicable law. Psychologists appropriately take into account ways in which the prior relationship might affect their professional objectivity or opinions and disclose the potential conflict to the relevant parties.

7.06 Compliance With Law and Rules.

In performing forensic roles, psychologists are reasonably familiar with the rules governing their roles. Psychologists are aware of the occasionally competing demands placed upon them by these principles and the requirements of the court system, and attempt to resolve these conflicts by making known their commitment to this Ethics Code and taking steps to resolve the conflict in a responsible manner. (See also Standard 1.02, Relationship of Ethics and Law.)

8. RESOLVING ETHICAL ISSUES

8.01 Familiarity With Ethics Code.

Psychologists have an obligation to be familiar with this Ethics Code, other applicable ethics codes, and their application to psychologists' work. Lack of awareness or misunderstanding of an ethical standard is not itself a defense to a charge of unethical conduct.

8.02 Confronting Ethical Issues.

When a psychologist is uncertain whether a particular situation or course of action would violate this Ethics Code, the psychologist ordinarily consults with other psychologists knowledgeable about ethical issues, with state or national psychology ethics committees, or with other appropriate authorities in order to choose a proper response.

8.03 Conflicts Between Ethics and Organizational Demands.

If the demands of an organization with which psychologists are affiliated conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, seek to resolve the conflict in a way that permits the fullest adherence to the Ethics Code.

8.04 Informal Resolution of Ethical Violations.

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual. If an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved.

8.05 Reporting Ethical Violations.

If an apparent ethical violation is not appropriate for informal resolution under Standard 8.04 or is not resolved properly in that fashion, psychologists take further action appropriate to the situation, unless such action conflicts with confidentiality rights in ways that cannot be resolved. Such action might include referral to state or national committees on professional ethics or to state licensing boards.

8.06 Cooperating With Ethics Committees.

Psychologists cooperate in ethics investigations, proceedings, and resulting requirements of the APA or any affiliated state psychological association to which they belong. In doing so, they make reasonable efforts to resolve any issues as to confidentiality. Failure to cooperate is itself an ethics violation.

8.07 Improper Complaints.

Psychologists do not file or encourage the filing of ethics complaints that are

frivolous and are intended to harm the respondent rather than to protect the public.

History and Effective Date

This version of the APA Ethics Code was adopted by the American Psychological Association's Council of Representatives during its meeting, August 13 and 16, 1992, and is effective beginning December 1, 1992. Inquiries concerning the substance or interpretation of the APA Ethics Code should be addressed to the Director, Office of Ethics, American Psychological Association, 750 First Street, NE, Washington, DC 20002-4242.

This Code will be used to adjudicate complaints brought concerning alleged conduct occurring after the effective date. Complaints regarding conduct occurring prior to the effective date will be adjudicated on the basis of the version of the Code that was in effect at the time the conduct occurred, except that no provisions repealed in June 1989, will be enforced even if an earlier version contains the provision. The Ethics Code will undergo continuing review and study for future revisions; comments on the Code may be sent to the above address.

The APA has previously published its Ethical Standards as follows: American Psychological Association. (1953). Ethical standards of psychologists. Washington, DC: Author.

American Psychological Association. (1958). Standards of ethical behavior for psychologists. *American Psychologist*, 13, 268-271.

American Psychological Association. (1963). Ethical standards of psychologists. *American Psychologist*, 18, 56-60.

American Psychological Association. (1968). Ethical standards of psychologists. *American Psychologist*, 23, 357-361.

American Psychological Association. (1977, March). Ethical standards of psychologists. *APA Monitor*, 22-23.

American Psychological Association. (1979). Ethical standards of psychologists. Washington, DC: Author.

American Psychological Association. (1981). Ethical principles of psychologists. *American Psychologist*, 36, 633-638.

American Psychological Association. (1990). Ethical principles of psychologists (Amended June 2, 1989). *American Psychologist*, 45, 390-395.

Request copies of the APA's Ethical Principles of Psychologists and Code of Conduct from the APA Order Department, 750 First Street, NE, Washington, DC 20002-4242, or phone (202) 336-5510.

[Return to beginning.](#)

Footnote 1:

Professional materials that are most helpful in this regard are guidelines and standards that have been adopted or endorsed by professional psychological organizations. Such guidelines and standards, whether adopted by the American Psychological Association (APA) or its Divisions, are not enforceable as such by this Ethics Code, but are of educative value to psychologists, courts, and professional bodies. Such materials include, but are not limited to, the APA's General Guidelines for Providers of Psychological Services (1987), Specialty Guidelines for the Delivery of Services by Clinical Psychologists, Counseling Psychologists, Industrial/Organizational Psychologists, and School Psychologists (1981), Guidelines for Computer Based Tests and Interpretations (1987), Standards for Educational and Psychological Testing (1985), Ethical Principles in the Conduct of Research With Human Participants (1982), Guidelines for Ethical Conduct in the Care and Use of Animals (1986), Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations (1990), and Publication Manual of the American Psychological Association (3rd ed., 1983). Materials not adopted by APA as a whole include the APA Division 41 (Forensic Psychology)/American Psychology-Law Society's Specialty Guidelines for Forensic Psychologists (1991).

[Return to document.](#)

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**Mercy Dennis, M.A., L.M.F.T.
725 Christensen Drive, Suite 2
Anchorage, Alaska 99501**

April 22, 2001

TO: Representative Peggy Wilson
FROM: Mercy Dennis, M.A., L.M.F.T.
RE: House Bill 245

As a licensed Marital and Family Therapist I ask for your support in getting passed through the legislature House Bill 245.

As an original member of the Alaska Board of Marital and Family Therapy and it's chairperson for two terms I was very involved in studying the issues that are addressed by this bill. For several years I worked closely with a task force including marital and family therapists, social workers and psychologists to review the Alaska Statutes of each of our professions as well as statutes from other states. This task force was cooperatively established by the Boards regulating marital and family therapists, social workers and psychologists. Also, representatives from each of the professional associations were invited to join the task force. Our goals were to update our statutes to bring parity to the mental health professions in Alaska, to keep current with professional issues on a national level and, most importantly, to add additional protection for Alaskan consumers. After much review we composed a needs list for each of the licensed professions. Both social workers and psychologists have addressed their needed statute changes in the recent past. Recently the legislature established statutes to regulate Professional Counselors that also address many of these issues.

It is important for Marital and Family Therapists in Alaska to accomplish the goals set forth by the joint task force. Again, I ask for your help with this.

907-278-5522 phone / 907-258-6613 fax
mercy@nohoy.alaska.net

BACKUP



The Alaska Association for Marriage and Family Therapy

January 23, 2002

Representative Peggy Wilson
State Capital Rm 409
Juneau, AK. 99801

Re: House Bill 245

Dear Ms. Wilson,

The Alaska Association for Marriage and Family Therapy appreciates your sponsorship of House Bill 245. Our organization supports this bill and was primarily responsible for initiating it. Much of the bill is housekeeping but there are parts, which are substantial changes. The addition of sexual misconduct brings MFT standards up to other mental health care professionals in the state as well as our own National Association's standards. It requires that two years must pass before a LMFT can have a sexual relationship with a former client. Sexual misconduct is one of the most problematic issues facing mental health care providers because of the nature of the relationships that are formed in the therapeutic process. Strict boundaries are absolutely necessary because of that relationship. The disclosure statement is a new provision, which is intended to inform and protect the client as a consumer of mental health services. It is a national trend in marriage and family therapy to educate the client with regards to the professional's training and specialization. In addition, it is a commonly accepted ethical procedure to make consumers aware of fees.

Again, thanks for sponsoring this bill.

Sincerely,

Larry Holman, LMFT, Division President, AkAMFT

Tony Knowles, Governor

Alaska

**Department of Community
and Economic Development**

Division of Occupational Licensing

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: license@dced.state.ak.us • Website: www.dced.state.ak.us/occl/

April 16, 2001

The Honorable Peggy Wilson
State Capitol
Room 409
Juneau, AK 99801-1182


Dear Representative Wilson:

At the March 12, 2001 meeting, the Alaska Board of Marital and Family Therapy discussed the statute changes with Caren Robinson, Lobbyist for the Alaska Marriage and Family Therapy Association.

The board resolved that they support the bill "An Act relating to Marital and Family Therapy" and the statute changes being proposed.

If you have any questions, please contact me at my office 463-4844 in Juneau. I would be glad to discuss any questions that you may have.

Sincerely,



Sandra Saminego, Chairperson
Board of Marital and Family Therapy

SS/dgl/8927wf
041601a

cc: Caren Robinson

REPRESENTATIVE
BILL WILLIAMS
Co-Chair
(907) 465-3424
Fax: (907) 465-3793

INTERIM ADDRESS
50 Front Street, Suite 203
Ketchikan, Alaska 99901
(907) 247-4627
Fax (907) 225-7157

Alaska State Legislature

House Finance Committee



State Capitol, Juneau, Alaska 99801-1182

REPRESENTATIVE
ELDON MULDER
Co-Chair
(907) 465-2847
Fax: (907) 465-3518

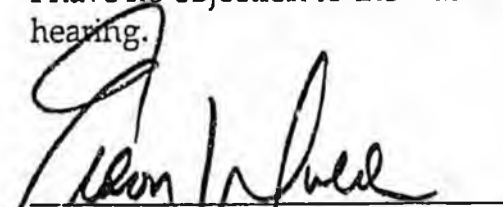
INTERIM ADDRESS
716 W. 4th Avenue
Anchorage, Alaska 99501
(907) 269-0265
Fax: (907) 269-0264

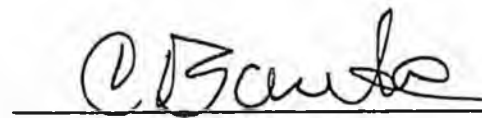
House Finance Committee Waiver Request

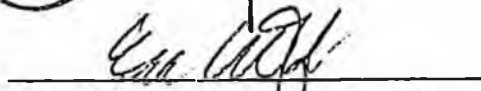
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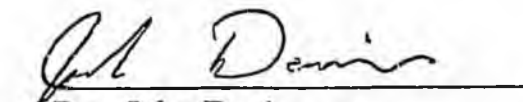
Short Title: MARITAL & FAMILY THERAPISTS

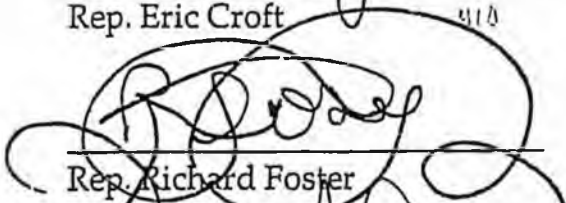
I have no objection to the waiver of this bill from a House Finance Committee hearing.

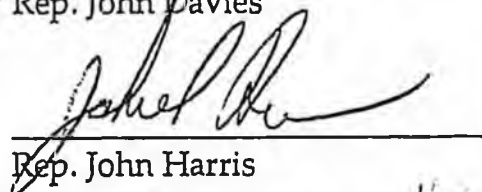

Rep. Eldon Mulder

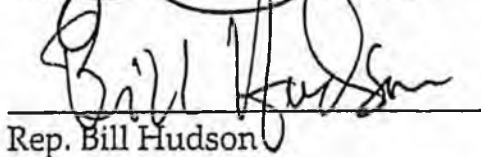

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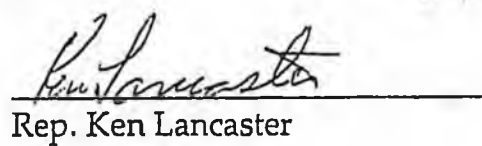

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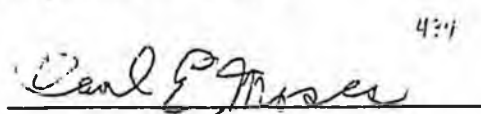

Rep. John Davies

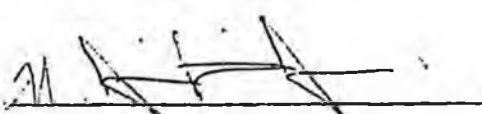

Rep. Richard Foster


Rep. John Harris


Rep. Bill Hudson


Rep. Ken Lancaster


Rep. Carl Moses


Rep. Jim Whitaker

Fiscal Notes: DCED (0.0)
Previous Committee: L&C RPT CS(L&C) 4DP 2NR

Alaska

Department of Community and Economic Development

Division of Occupational Licensing

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: license@dced.state.ak.us • Website: www.dced.state.ak.us/occ/

April 24, 2001

The Honorable Peggy Wilson
State Capitol
Juneau, AK 99801

Dear Representative Wilson,

Thank you for introducing House Bill 245.

House Bill 245 revises the statutes governing the practice of marital and family therapy. The Board of Marital and Family Therapy supports these changes to strengthen the public protection provided by licensure.

The provisions of the bill or similar statutory language are found in several other professional licensing statutes.

Section 1 adds the Board of Marital and Family Therapy to the list of boards that may request the department to contract for treatment of professionals with substance abuse problems.

Sections 2 and 6 allow the board to order a licensed marital and family therapist to have a physical or mental examination if the therapist's capacity to practice safely is at issue. The board may suspend the license of a therapist who refuses to be examined. Similar language is found in the dental statute in AS 08.36.070(b)(1) and AS 08.36.320; in the psychology statute in AS 08.86.204(b) and AS 08.86.075; and in the medical statute in AS 08.64.338.

Section 3 allows applicants for marital and family therapy licenses to counsel individuals as well as couples and families in order to obtain the required direct clinical contact experience.


Section 4 allows licensed therapists to disclose client information when there is a threat of imminent serious physical harm to an identified victim by the client. Confidential client information may also be disclosed to a licensing board in connection with a formal complaint against another licensed professional. Similar statutes are found in the professional counselor licensing law, AS 08.29.200, the social worker law, AS 08.95.900(5)(6), and the psychologist law, AS 08.86.200(3)(5).

Section 5 explicitly prohibits sexual contact with a client within two years after therapy. Language on sexual misconduct is found in the medical statutes, AS 08.64.326, the psychology statutes, AS 08.86.204(8), and the social worker statutes, AS 08.95.050(11).

Section 7 requires a licensed marital and family therapist to give clients a disclosure statement containing information about the therapist's fees, education and services. This section also prohibits licensed therapists from performing acts for which they lack appropriate education and experience. Similar language is found in the professional counselor statutes, AS 08.29.220-230.

Please contact me if you would like further information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine Reardon".

Catherine Reardon
director

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3887 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 17, 2001

SUBJECT: Sectional Analysis (HB 245)
TO: Representative Peggy Wilson
Attn: Rory
FROM: Terri Lauterbach
Legislative Counsel

TML

You have asked for a sectional summary of HB 245. You have not expressed any questions about the legal effects of this bill. so this memo is very brief. Please let me know if you have specific questions.

Section 1. Adds the Board of Marital and Family Therapists (hereafter "board") to the list of boards that may request the division of occupational licensing to contract for substance abuse treatment for licensed therapists (hereafter "licensees").

Section 2. Authorizes the board to require physical and mental exams of licensees.

Section 3. Changes a licensing requirement relating to post-degree clinical contact.

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TML:jhb
01-051.jhb

SECTIONAL ANALYSIS

**Mercy Dennis, M.A., L.M.F.T.
725 Christensen Drive, Suite 2
Anchorage, Alaska 99501**

April 22, 2001

TO: Representative Peggy Wilson
FROM: Mercy Dennis, M.A., L.M.F.T.
RE: House Bill 245

As a licensed Marital and Family Therapist I ask for your support in getting passed through the legislature House Bill 245.

As an original member of the Alaska Board of Marital and Family Therapy and it's chairperson for two terms I was very involved in studying the issues that are addressed by this bill. For several years I worked closely with a task force including marital and family therapists, social workers and psychologists to review the Alaska Statutes of each of our professions as well as statutes from other states. This task force was cooperatively established by the Boards regulating marital and family therapists, social workers and psychologists. Also, representatives from each of the professional associations were invited to join the task force. Our goals were to update our statutes to bring parity to the mental health professions in Alaska, to keep current with professional issues on a national level and, most importantly, to add additional protection for Alaskan consumers. After much review we composed a needs list for each of the licensed professions. Both social workers and psychologists have addressed their needed statute changes in the recent past. Recently the legislature established statutes to regulate Professional Counselors that also address many of these issues.

It is important for Marital and Family Therapists in Alaska to accomplish the goals set forth by the joint task force. Again, I ask for your help with this.

907-278-5522 phone / 907-258-6613 fax
mercy@dobox.alaska.net

BACKUP



The Alaska Association for Marriage and Family Therapy

January 23, 2002

Representative Peggy Wilson
State Capital Rm 409
Juneau, AK. 99801

Re: House Bill 245

Dear Ms. Wilson,

The Alaska Association for Marriage and Family Therapy appreciates your sponsorship of House Bill 245. Our organization supports this bill and was primarily responsible for initiating it. Much of the bill is housekeeping but there are parts, which are substantial changes. The addition of sexual misconduct brings MFT standards up to other mental health care professionals in the state as well as our own National Association's standards. It requires that two years must pass before a LMFT can have a sexual relationship with a former client. Sexual misconduct is one of the most problematic issues facing mental health care providers because of the nature of the relationships that are formed in the therapeutic process. Strict boundaries are absolutely necessary because of that relationship. The disclosure statement is a new provision, which is intended to inform and protect the client as a consumer of mental health services. It is a national trend in marriage and family therapy to educate the client with regards to the professional's training and specialization. In addition, it is a commonly accepted ethical procedure to make consumers aware of fees.

Again, thanks for sponsoring this bill.

Sincerely,

Larry Holman, LMFT, Division President, AkAMFT

Tony Knowles, Governor

Alaska

**Department of Community
and Economic Development**

Division of Occupational Licensing

P.O. Box 110806, Juneau, AK 99811-0806

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Email: license@dced.state.ak.us • Website: www.dced.state.ak.us/occl

April 16, 2001

The Honorable Peggy Wilson
State Capitol
Room 409
Juneau, AK 99801-1182

Dear Representative Wilson:

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The board resolved that they support the bill "An Act relating to Marital and Family Therapy" and the statute changes being proposed.

If you have any questions, please contact me at my office 463-4844 in Juneau. I would be glad to discuss any questions that you may have.

Sincerely,



Sandra Saminego, Chairperson
Board of Marital and Family Therapy

SS/dgl/8927wf
041601a

cc: Caren Robinson

REPRESENTATIVE
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Co-Chair
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Fax: (907) 465-3793

INTERIM ADDRESS
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Ketchikan, Alaska 99901
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Fax (907) 225-7157

Alaska State Legislature

House Finance Committee



State Capitol, Juneau, Alaska 99801-1182

REPRESENTATIVE
ELDON MULDER
Co-Chair
(907) 465-2647
Fax: (907) 465-3518

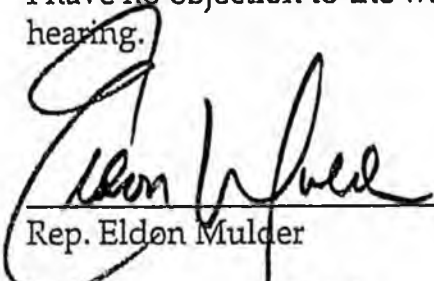
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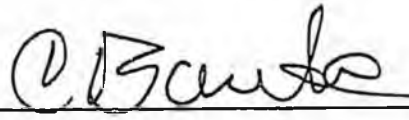
House Finance Committee Waiver Request

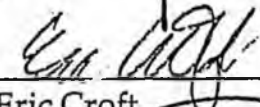
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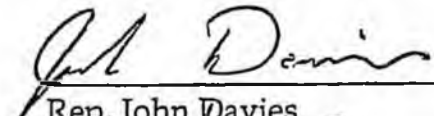
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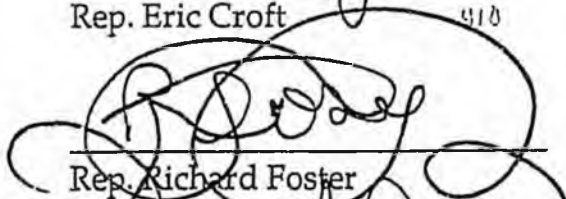
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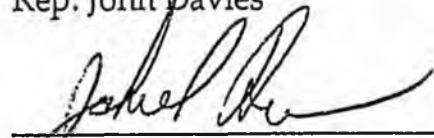

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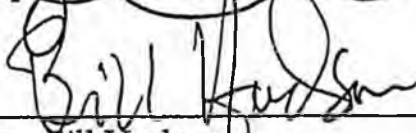

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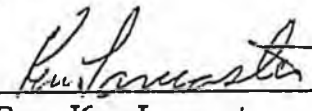

Rep. Eric Croft 410

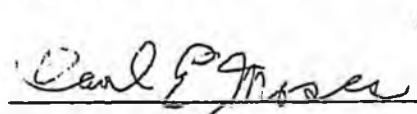

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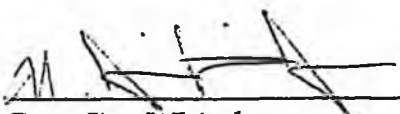

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Fiscal Notes: DCED (0.0)
Previous Committee: L&C RPT CS(L&C) 4DP 2NR



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April 24, 2001

The Honorable Peggy Wilson
State Capitol
Juneau, AK 99801

Dear Representative Wilson,

Thank you for introducing House Bill 245.

House Bill 245 revises the statutes governing the practice of marital and family therapy. The Board of Marital and Family Therapy supports these changes to strengthen the public protection provided by licensure.

The provisions of the bill or similar statutory language are found in several other professional licensing statutes.

Section 1 adds the Board of Marital and Family Therapy to the list of boards that may request the department to contract for treatment of professionals with substance abuse problems.

Sections 2 and 6 allow the board to order a licensed marital and family therapist to have a physical or mental examination if the therapist's capacity to practice safely is at issue. The board may suspend the license of a therapist who refuses to be examined. Similar language is found in the dental statute in AS 08.36.070(b)(1) and AS 08.36.320; in the psychology statute in AS 08.86.204(b) and AS 08.86.075; and in the medical statute in AS 08.64.338.

Section 3 allows applicants for marital and family therapy licenses to counsel individuals as well as couples and families in order to obtain the required direct clinical contact experience.

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Section 5 explicitly prohibits sexual contact with a client within two years after therapy. Language on sexual misconduct is found in the medical statutes, AS 08.64.326, the psychology statutes, AS 08.86.204(8), and the social worker statutes, AS 08.95.050(11).

Section 7 requires a licensed marital and family therapist to give clients a disclosure statement containing information about the therapist's fees, education and services. This section also prohibits licensed therapists from performing acts for which they lack appropriate education and experience. Similar language is found in the professional counselor statutes, AS 08.29.220-230.

Please contact me if you would like further information.

Sincerely,

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Catherine Reardon
director

Tony Knowles, Governor

Alaska

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SS/dgl/8927wf
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cc: Caren Robinson

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 17, 2001

SUBJECT: Sectional Analysis (HB 245)

TO: Representative Peggy Wilson
Attn: Rory

FROM: Terri Lauterbach
Legislative Counsel

T. Lauterbach

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Alaska State Legislature

House Finance Committee



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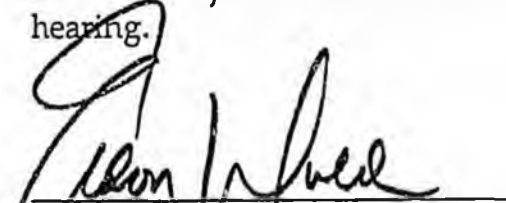
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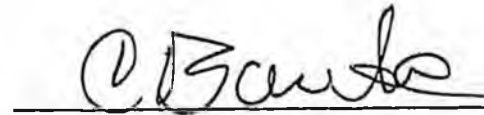
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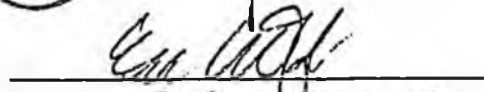
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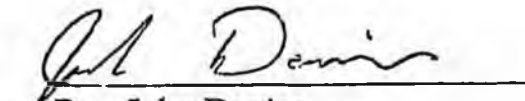
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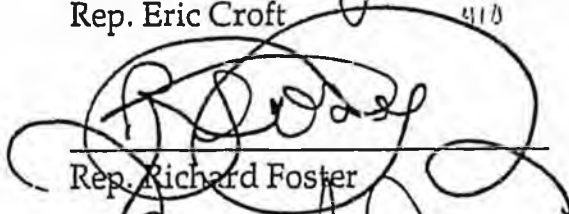
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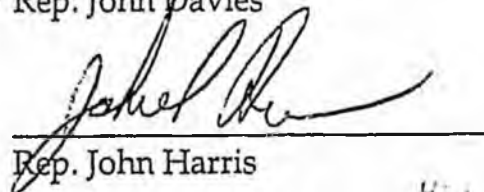

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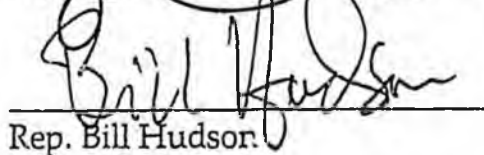

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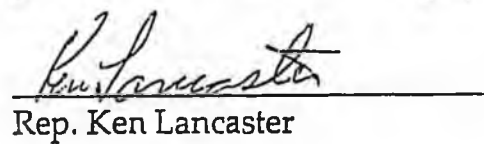

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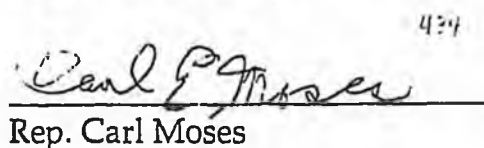

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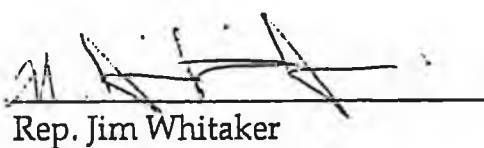

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Fiscal Notes: DCED (0.0)
Previous Committee: L&C RPT CS(L&C) 4DP 2NR

Alaska

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Catherine Reardon
director



The Alaska Association for Marriage and Family Therapy

January 23, 2002

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State Capital Rm 409
Juneau, AK. 99801

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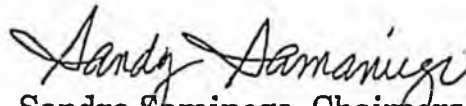
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April 17, 2001

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TO: Representative Peggy Wilson
Attn: Rory

FROM: Terri Lauterbach
Legislative Counsel

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Alaska State Legislature House Finance Committee



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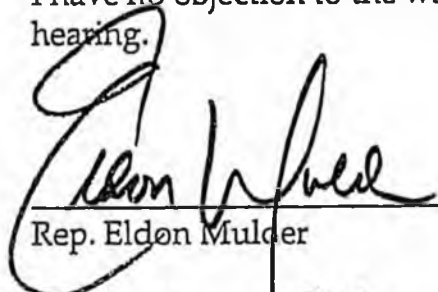
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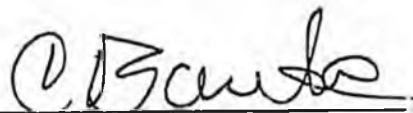
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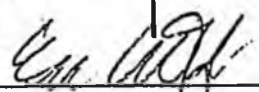
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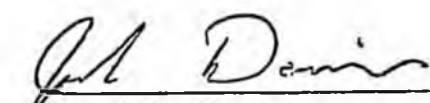
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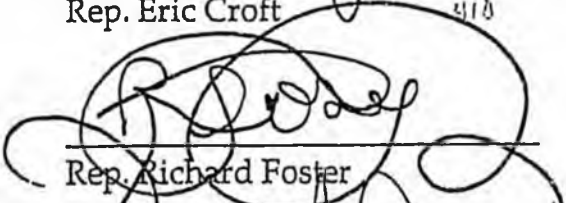
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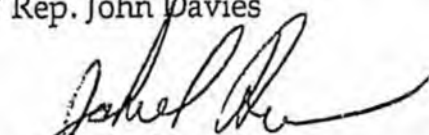

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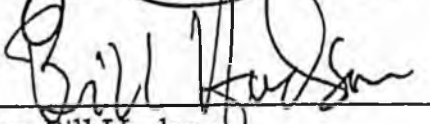

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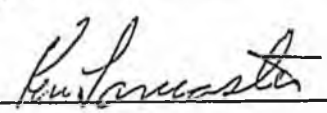

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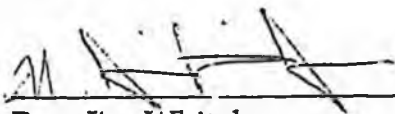

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Thank you for introducing House Bill 245.

House Bill 245 revises the statutes governing the practice of marital and family therapy. The Board of Marital and Family Therapy supports these changes to strengthen the public protection provided by licensure.

The provisions of the bill or similar statutory language are found in several other professional licensing statutes.

Section 1 adds the Board of Marital and Family Therapy to the list of boards that may request the department to contract for treatment of professionals with substance abuse problems.

Sections 2 and 6 allow the board to order a licensed marital and family therapist to have a physical or mental examination if the therapist's capacity to practice safely is at issue. The board may suspend the license of a therapist who refuses to be examined. Similar language is found in the dental statute in AS 08.36.070(b)(1) and AS 08.36.320; in the psychology statute in AS 08.86.204(b) and AS 08.86.075; and in the medical statute in AS 08.64.338.

Section 3 allows applicants for marital and family therapy licenses to counsel individuals as well as couples and families in order to obtain the required direct clinical contact experience.

Section 4 allows licensed therapists to disclose client information when there is a threat of imminent serious physical harm to an identified victim by the client. Confidential client information may also be disclosed to a licensing board in connection with a formal complaint against another licensed professional. Similar statutes are found in the professional counselor licensing law, AS 08.29.200, the social worker law, AS 08.95.900(5)(6), and the psychologist law, AS 08.86.200(3)(5).

Section 5 explicitly prohibits sexual contact with a client within two years after therapy. Language on sexual misconduct is found in the medical statutes, AS 08.64.326, the psychology statutes, AS 08.86.204(8), and the social worker statutes, AS 08.95.050(11).

Section 7 requires a licensed marital and family therapist to give clients a disclosure statement containing information about the therapist's fees, education and services. This section also prohibits licensed therapists from performing acts for which they lack appropriate education and experience. Similar language is found in the professional counselor statutes, AS 08.29.220-230.

Please contact me if you would like further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Catherine Reardon', written over a horizontal line.

Catherine Reardon
director

Sponsor Statement for House Bill 245

“An Act relating to marital and family therapists.”

HOUSE BILL 245 was submitted by request of the Alaska Association for Marriage and Family Therapy. The law that established the Board of Marital and Family Therapy has been in place for ten years and the Association believes it is time to pursue the placement of updated language within the statute.

The goal of HB 245 is to bring the Alaska Statutes for Marriage and Family Therapy in line with the laws regarding other professions in the state and Marriage and Family Therapy statutes nationally. A task force comprised of representatives from the State Boards of Psychology, Social Work, and Marriage and Family Therapy met and identified the following areas needing change:

HB 245 ~

- *adds* the Board of Marital and Family Therapy to the list of boards that may request the Division of Occupational Licensing to contract for substance abuse treatment under licensed therapists,
- *gives* the Board of Marital and Family Therapy authority to order a licensed marital and family therapist to submit to a reasonable physical or mental examination if the board has credible evidence sufficient to conclude that the therapist's physical or mental capacity to practice safely is at issue,
- *allows* for individual client contact to be used as hours toward licensing,
- *requires* the therapist to communicate to a potential victim or law enforcement officer if serious harm to an identified victim has been made by a client,
- *imposes* disciplinary sanctions with regard to therapist sexual misconduct.

HOUSE BILL 245 not only brings parity to the mental health professions in the state, it also adds additional consumer protection for Alaskans seeking professional counsel.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 245(L&C)
(H) Publish Date: 1/25/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title An act relating to marital and family therapists BRU Occupational Licensing (117)
Component Occupational Licensing
Sponsor Representative Wilson
Requester House Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-------------------------------|------------|------------|------------|------------|------------|------------|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

HB 245 strengthens and updates the regulations of marital and family therapists. These changes will not require additional expenditure of state funds.

Prepared by: Catherine Reardon, Director
Division: Occupational Licensing
Approved by: Deborah B. Sedwick, Commissioner
Agency: Department of Community & Economic Development

Phone 907-465-2536
Date/Time 1/22/02 11:34 AM
Date 1/22/2002

HB

276

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 276(L&C)
 (H) Publish Date: 2/22/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to temporary permits and licenses BRU: Occupational Licensing (117)
 by endorsement issued by the Board of Nursing Component Occupational Licensing
 Sponsor Representative Wilson
 Requester House Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-------------------------------|------------|------------|------------|------------|------------|------------|

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

New funds are not required to implement the changes of this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 2/15/02 2:46 PM
 Approved by: Deborah B. Sedwick, Commissioner Date 2/15/2002
 Agency Department of Community & Economic Development

Sponsor Statement for HB 276
Regulation of Nursing

An Act relating to nursing, nurses, and nurse aides.

HB 276 is essentially a "clean up bill" which brings nursing statutes up to date with current nursing practice in three areas: (1) gives licensed nurses the authority to delegate nursing duties to other personnel and gives the Board of Nursing authority to promulgate regulations outlining safe delegation practices to ensure safety of the consumer; (2) the bill increases the length of time available for a temporary nursing license from 4 to 6 months to allow for the extra time it may take to get back results of criminal justice background checks required in new regulation; (3) changes the wording placement regarding licensure by endorsement that brings the wording in the statute into compliance with what is already being done in the Division.

Delegation by licensed nurses of specific nursing tasks to unlicensed assistive personnel (UAPs) such as aides and technicians has always been a part of nursing practice. The health care delivery system that includes public health, Indian Health, hospitals, clinics and community nursing facilities will continue to use UAPs. These changes allow specific statutory authority for nurses to delegate essential care to the delivery of safe and effective health care to the citizens of Alaska. I urge you to support HB 276.

12/21/01

HB

348



Representative Eric Croft

Subject: Sectional Summary of House Bill 348, related to Violations of Domestic Violence Orders (Work Order No. 22-LSO615L)

This bill addresses violations of domestic violence protection orders, and the standard for conviction of such violations.

Section 1. Amends AS 11.56.740(a) by changing the requisite mental state required for conviction.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4356
FAX: (907) 465-3627
OFFICE ADDRESS: 450 WHITTIER ST.

February 22, 2002

The Honorable Eric Croft
Alaska State House of Representatives
State Capitol, Room 400
Juneau, AK 99801

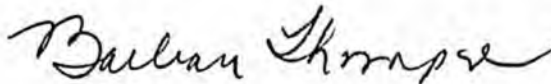
Dear Representative Croft:

As the state council charged with providing leadership in meeting the needs of victims of domestic violence and sexual assault, the Council on Domestic Violence and Sexual Assault strongly supports House Bill 348, "an Act relating to domestic violence protective orders." This bill closes loopholes in the prosecution of protective orders, thus allowing these orders to more fully serve their true purpose—to keep victims safe from their perpetrators.

Domestic violence is a serious problem in our state. Last year alone, more than 7,000 women and children sought immediate safety in shelters throughout Alaska. House Bill 348 could increase the safety of victims of domestic violence by allowing for proper enforcement of protective orders.

The Council supports your efforts and appreciates your concern for the protection and safety of Alaskans.

Sincerely,



Barbara Thompson
Chair

Alaska Public Defender Agency

900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501
(907) 334-4400

February 22, 2002

Representative Eric Croft
State Capital
Juneau, AK 99801

Re: HB 348 "An Act relating to violations of domestic violence protective orders."

Dear Representative Croft:

The Public Defender Agency supports this draft of HB 348. This legislation would amend the class A misdemeanor crime of violating a protective order to clarify the culpable mental state required for the defendant's degree of awareness that his or her conduct would violate the protective order. The statute, as written currently, is ambiguous as to that necessary culpable mental state. The Court of Appeals interpreted the statute in Strane v. State, 16 P.3d 745 (Alaska App. 2001) to require the culpable mental state of "knowingly" to apply both to the conduct and with respect to the circumstance that their conduct violated the protective order. This bill would amend the statute to require that the defendant act "with reckless disregard" that the act violates or would violate the protective order.

The Public Defender Agency supports your effort to clarify the culpable mental state required in the statute.

Sincerely,

Linda K. Wilson
Deputy Public Defender

16 P.3d 745 STRANE V. STATE (Ct. App. 2001) 2001 Alas. App. Lexis 16

PATRICK STRANE, Appellant,

vs.

STATE OF ALASKA, Appellee.

Court of Appeals No. A-7014, No. 1711
 COURT OF APPEALS OF ALASKA
 16 P.3d 745, 2001 Alas. App. LEXIS 16
 January 12, 2001, Decided

Appeal from the District Court, Third Judicial District, Anchorage, John R. Lohff, Judge. Trial Court No. 3AN-98-887 Cr.

COUNSEL

Quinlan Steiner, Jill E. Farrell, and Michael Dieni, Assistant Public Defenders, and Barbara K. Brink, Public Defender, Anchorage, for Appellant.

Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

JUDGES

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

AUTHOR: MANNHEIMER

OPINION

MANNHEIMER, Judge.

The Alaska Legislature has authorized the courts of this state to issue special protective orders in domestic violence cases. These protective orders can contain one or more of the types of restraining provisions listed in AS 18.66.100(c)(1)-(7).¹ Under AS 11.56.740(a), if a person is subject to a domestic violence protective order that contains one or more of these seven restraining provisions, it is a crime for that person to "knowingly" commit or attempt to commit an act that violates these provisions.

In this appeal, we are asked to construe this criminal statute and determine what culpable mental state, if any, the State must prove with respect to the defendant's degree of awareness that their conduct violated (or might violate) the protective order. We conclude that the statute requires proof of a culpable mental state, but the statute is irresolvably ambiguous as to whether that culpable mental state is "recklessly" or "knowingly". Construing this ambiguity against the government, we conclude that the State must prove that the defendant acted "knowingly" as that term is defined in AS 11.81.900(a)(2).

The positions of the parties to this appeal

The statute at issue, AS 11.56.740(a), declares:

A person commits the crime of violating a protective order if the person is subject to a protective order containing a provision listed in AS 18.66.100(c)(1)-(7) and knowingly commits or attempts to commit an act in violation of that provision.

The question, ultimately, is to determine what the legislature intended when it defined this

crime in terms of "knowingly" committing or attempting to commit an act that violates the listed restraining provisions.²

① Strane and the State approach this statute from radically different perspectives. Strane argues that the legislature used the word "knowingly" to convey the notion that the crime is committed only if the defendant understood the provision(s) of the protective order and was aware that, by their conduct, they were violating the protective order. The State argues the polar opposite. The State contends that, just as ignorance of the law does not excuse a person's violation of a criminal statute, so too ignorance or misunderstanding of the provisions of a protective order does not excuse a person's violation of that order. The State argues that a person who violates the provisions of a protective order is guilty of a crime under AS 11.56.740(a) even if they acted with no culpable mental state -- i.e., acted with absolutely no awareness that their conduct might violate the provisions of the order.

The culpable mental state that would govern in the absence of a statute

② The rule at common law -- that is, the rule that would prevail in the absence of a statute -- lies in between the positions staked out by Strane and the State. Violation of a domestic violence protective order is but one specific, codified instance of the more general crime of contempt of court. In previous cases dealing with contempt of court, this court has held (1) that the applicable culpable mental state is "recklessness" (i.e., the government must prove that the defendant recklessly disregarded the possibility that their conduct violated an order of the court), and (2) that a person charged with contempt can defend by asserting that they made a reasonable mistake concerning the terms or the effect of the court order.

Alaska law recognizes that not all violations of a court order are contemptuous. Indirect contempt (i.e., contempt of court not committed in the judge's presence) requires proof that the defendant acted "willfully" when the defendant violated the court's order. In this context, willfulness means that the defendant was aware of, and knowingly violated, the terms of the order:

For an act of contempt to be willful, the defendant must have been aware of the requirements of the court order, and the defendant must knowingly violate the court's order. [Although some earlier cases seem] to suggest that "willfully" might require proof of a specific intent to violate a court order[, other] case law clarifies that [what is] required is an intentional act which the defendant knows violates the court order, not an act motivated by the intent to violate a court order.

O'Brannon v. State, 812 P.2d 222, 228 (Alaska App. 1991).

Even when a defendant has knowingly violated the terms of a court order, the defendant may still defend by showing that there was some lawful excuse for failing to comply with the order. As the Alaska Supreme Court declared in **Johansen v. State**³ :

[When we speak of disobedience] of a lawful order of the court[,] [this] connotes more than the mere failure to comply with [the] order. The word "disobey" has the connotation of wilfully failing to comply, without some lawful or reasonable excuse for not complying. If such an excuse ... is established, there can be no contempt of the authority of the court.

Johansen, 491 P.2d at 767 (footnote omitted).

Thus, Alaska case law on this subject is at odds with the State's position in this appeal -- the State's argument that any violation of a restraining order is contemptuous, even though the defendant acted with no culpable mental state.

On the other hand, decisions from other jurisdictions indicate that contempt can be proved even when the defendant does not subjectively "know" or understand the precise terms of the court order. Instead, the requisite "willful" failure to comply can be established by proof that the defendant recklessly disregarded the possibility that their conduct violated the requirements of a court order. This rule is illustrated most starkly in cases where defendants purposely refused to read or listen to a court order, so that they remained ignorant of the exact terms of the order. In such cases, courts have upheld contempt convictions even though the defendants could truthfully assert that they were not subjectively aware of the precise requirements of the court order.⁴

In *Russell v. State*,⁵ this court adopted and implemented this interpretation of the law. The defendant in *Russell* was convicted of AS 9.50.010(10), a statute that codifies another aspect of contempt: disobedience of a properly served subpoena. *Russell* was subpoenaed to attend a criminal trial scheduled to commence in January 1988. When the trial was postponed until March, the trial judge ordered that all existing subpoenas would remain in effect.⁶ Although *Russell* was informed that the trial had been postponed, she failed to appear in March. She claimed that she mistakenly believed that her subpoena was no longer valid once the trial was rescheduled.⁷

One might plausibly argue that *Russell's* defense amounted to a claim of "mistake of law" -- a mistake concerning the legal effect of the subpoena. However, this court characterized *Russell's* defense as "a mistake of fact".⁸ This characterization makes a crucial difference. Alaska law generally does not recognize mistake of law as a defense to a criminal charge.⁹ But under AS 11.81.620(b), a mistake of fact will constitute a defense if the mistake is reasonable and if it either negates the culpable mental state required for commission of the offense or supports a defense of justification. Accordingly, this court declared that *Russell's* guilt hinged on two issues: (1) did the government prove that *Russell* acted with at least reckless disregard of the subpoena's directive to appear?, and (2) if *Russell* was truly mistaken concerning the continuing effect of the subpoena, was this mistake reasonable?

The judge [who adjudicated the contempt charge] found that, at best, *Russell* acted recklessly in assuming that her subpoena was no longer valid because the trial had been postponed. On this basis, the judge concluded that *Russell's* subjective belief that the subpoena was no longer valid did not absolve her of responsibility for contempt.

[The judge's] ruling is not error. Under AS 11.81.620(b), a mistake of fact can be a defense to a crime only when it is a reasonable mistake. There is ample evidence in the record to justify [the] finding that, if *Russell* actually did believe [that] she was no longer bound to appear, her mistake was not reasonable. Accordingly, [the evidence supports] *Russell's* conviction for contempt of court.

Russell, 793 P.2d at 1087.

This court's decision in *Russell* stands as a rejection of the State's position in the present appeal: the contention that a defendant's violation of a restraining order can never be excused because of the defendant's ignorance of the terms of the restraining order or the defendant's

misunderstanding concerning the meaning of those terms. Under *Russell*, questions as to what conduct is required or prohibited by a court order are treated as questions of fact. When the government charges a defendant with violating a court order, the fact that the court order requires or prohibits certain conduct is the circumstance that makes the defendant's conduct a contempt.

In deciding what culpable mental state the government must prove with respect to this circumstance, *Russell* adopted the approach codified in AS 11.81.610(b)(2): when a person's conduct constitutes a crime only under a particular factual circumstance, the government normally must prove that the defendant acted "recklessly" with respect to that circumstance. In addition, *Russell* recognized that a defendant charged with violating a court order could claim the defense of reasonable mistake codified in AS 11.81.620(b). Because the court order is a factual circumstance that determines the legality of the defendant's conduct, the law will excuse the defendant's conduct if (1) the defendant made a reasonable mistake concerning the terms of the court order, and if (2) under this reasonable but mistaken interpretation of the court order, the defendant's conduct did not violate the order.

As explained above, the approach adopted in *Russell* flows from the explanations of the law of contempt contained in *O'Brannon* and *Johansen*. We therefore reaffirm that the approach taken in *Russell* is a correct interpretation of the common law of contempt -- the law that governs adjudications of contempt in the absence of a statute. Under Alaska common law, contempt requires proof that the defendant recklessly disregarded the possibility that their conduct violated a court order, and defendants are allowed to plead reasonable mistake of fact as a defense. We reject the contrary arguments that the State presents in this appeal.

Interpreting the statute at issue, AS 11.56.740(a)

The foregoing discussion of the common law does not resolve Strane's case. Strane is charged with violating a statute, AS 11.56.740(a), and not the common-law crime of contempt. The statute declares that a person commits the crime of violating a protective order if the person "knowingly" commits an act (or attempts to commit an act) that violates the protective order.

As explained above, when a statute declares that conduct is criminal only under certain circumstances, AS 11.81.610(b)(2) provides that the government must normally prove that the defendant acted "recklessly" with respect to those circumstances -- unless the statute prescribes a different culpable mental state. Here, the statute in question could be read to require proof that the defendant acted "knowingly" with respect to the inculcating circumstance (i.e., the circumstance that the defendant's conduct violated a domestic violence protective order).

The problem is that the legislature's use of the word "knowingly" is ambiguous. As explained in the legislative commentary to AS 11.81.900(a)(1)-(4),¹⁰ the culpable mental state of "knowingly" can apply to conduct (in fact, it is the sole culpable mental state that applies to conduct), and it can also apply to circumstances. Thus, there are two potential ways of interpreting AS 11.81.740(a).

One interpretation is that the word "knowingly" applies to the defendant's conduct. Under this first interpretation, the statute would mirror the elements of contempt under common law. The State would have to prove that Strane knowingly engaged in conduct, that his conduct violated the terms of the protective order, and that Strane recklessly disregarded the possibility that his conduct violated the protective order. That is, the State would have to prove that Strane was aware of and consciously disregarded a substantial and unjustifiable risk that his conduct violated the court order.¹¹ Strane could assert a defense of mistake of fact (mistake concerning

the requirements of the court order), but this mistake would have to be reasonable.

On the other hand, the legislature might have intended the word "knowingly" to apply to the fact that the defendant's conduct (or attempted conduct) violated the terms of the protective order. Under this second interpretation, the State would again have to prove that Strane knowingly engaged in conduct (since "knowingly" is the only culpable mental state that applies to conduct), and that Strane's conduct violated the terms of the protective order. But instead of merely proving that Strane acted "recklessly" with respect to the circumstance that his conduct violated the court order, the State would have to prove that Strane "knowingly" disregarded the fact that his conduct violated the protective order. That is, the State would have to prove that Strane knew that his conduct violated the court order or, in the alternative, (1) that Strane was aware of a substantial probability that his conduct violated the court order and (2) that he did not actually believe that his conduct was permitted by the court order.¹²

In practical terms, these differing interpretations of the statute lead to two major differences in the way the criminal charge would be prosecuted and defended.

The first difference concerns the defendant's level of subjective awareness that their conduct might violate the terms of the protective order. If the culpable mental state is "recklessly", the State would have to prove only that the defendant consciously disregarded a **substantial and unjustifiable risk** that their conduct violated the protective order. But if the culpable mental state is "knowingly", the State would have to prove that the defendant **knew** that their conduct violated the protective order or, at least, that the defendant was aware of a **substantial probability** that their conduct violated the order.

The second difference concerns the issue of whether a defendant should be found guilty if they honestly but **unreasonably** believed that their conduct was permitted by the protective order. If the culpable mental state is "recklessly", then the rule announced in **Russell** would apply: a defendant could assert a defense of "mistake of fact" under AS 11.81.620(b), but the defendant's mistake would have to be reasonable. If the defendant's mistake about the requirements of the protective order was unreasonable, it would be no defense. But if the culpable mental state is "knowingly", then any honest mistake, even an unreasonable mistake, would appear to be a good defense to the charge.

This follows from the definition of "knowingly" contained in AS 11.81.900(a)(2). Applying this definition to the crime of violating a protective order, the State would have to prove either (1) that the defendant **knew** that their conduct violated the protective order or (2) that the defendant **was aware of a substantial probability** that their conduct violated the order **unless the defendant actually believed that their conduct was permitted by the order**. Under either theory of prosecution, if the defendant honestly believed that their conduct was permitted by the protective order, this honest mistake -- even if unreasonable -- would constitute a defense to the charge.

(We note, however, that, according to the legislative commentary to AS 11.81.900(a)(2), a defendant's mistake will not be deemed honest or in good faith if the defendant is guilty of willful blindness -- that is, if the defendant "deliberately avoids acquiring [the pertinent] knowledge by closing his eyes".¹³)

Which interpretation of the statute did the legislature intend? The legislative history of AS 11.55.140(a) is scanty. It is clear that this statute was intended to supersede AS 11.61.120(a)(6), an earlier provision dealing with violations of protective orders that was part of the statute on

"harassment". Under this former statute, it was a crime to violate a protective order if the defendant acted "with intent to harass or annoy another person".

According to the minutes of a hearing held on February 7, 1991, by the House Committee on Health, Education, and Social Services, AS 11.56.740(a) was drafted by Representative (now Lieutenant Governor) Fran Ulmer, and the goal of the statutory change was to improve legal protection for victims of domestic violence by eliminating the requirement that the State prove an intent to harass or annoy:

Representative Fran Ulmer told the committee that [House Bill 44] came as a result of conversations she has had ... with individuals in the law enforcement community as well as people who work in domestic violence shelters around the state ... who pointed out some shortcomings pertaining to the protection of victims of domestic violence.

[The bill] includes . . . a change in the harassment statute to clarify that if a person knowingly violates a provision of a domestic violence restraining order, the crime of harassment is committed. Under current law, arrests and prosecutions are not being made because it is difficult to prove that the defendant acted with "intent" to harass.

But these committee minutes are just as ambiguous as the resulting statute itself on the question facing this court: does the culpable mental state of "knowingly" apply just to the defendant's conduct, or does it also apply to the defendant's degree of awareness that their conduct violated the protective order?

When we turn to the principles of statutory construction, we find that two common principles of construction point to opposing conclusions in this case.

The first principle is that "statutes imposing criminal liability should be construed narrowly. When the scope of a criminal statute is unclear, courts should normally construe the statute against the government -- that is, construe it so as to limit the scope of criminal liability."¹⁴ Here, the question is which culpable mental state -- "recklessly" or "knowingly" -- applies to the defendant's degree of awareness that their conduct violated the terms of the protective order. If we follow the principle that ambiguous criminal statutes should be construed to limit criminal liability, we should construe AS 11.56.740(a) to require proof that the defendant acted "knowingly" with respect to this circumstance.

But the second principle is that "statutes in derogation of the common law should be construed strictly."¹⁵ That is, when courts are presented with a question as to the proper construction of a statute that potentially modifies the common law, "the normal rule of interpretation is that such statutes are construed so as to preserve the pre-existing common law unless the legislature has clearly indicated its purpose to change that law."¹⁶ Here, as explained above, the common law would require proof that Strane acted "recklessly" with respect to the circumstance that his conduct violated the protective order. If we follow the principle that statutes should not be construed to alter the common law unless the legislature has clearly indicated their intention to do so, we should construe AS 11.56.740(a) to require proof that Strane acted "recklessly" with respect to the circumstance that his conduct violated the protective order.

But this second principle arguably should not apply to Strane's case. As explained above, the legislature first codified this crime (violation of a protective order) as part of the harassment statute. At that time, the crime required proof of intent to harass or annoy -- an unmistakable

departure from the common law. Now, under AS 11.56.740(a), the definition of the crime is closer to common-law contempt. But the statute's ancestry indicates that the legislature may still be purposefully departing from the common-law definition of the crime.

Finally, we note that both potential interpretations of the statute are reasonable. That is, policy arguments could be made in favor of each of the competing culpable mental states -- "knowingly" or "recklessly".

In these circumstances, we conclude that the principle of lenity should hold sway. The wording of the statute and its legislative history are irresolvably ambiguous on the issue before us. We can not tell which culpable mental state the legislature intended. In such a case, the law directs us to decide in favor of individual liberty and against the government.

We therefore hold that the applicable culpable mental state is "knowingly". To prove Strane guilty of violating a protective order under AS 11.56.740(a), the State must prove that Strane acted "knowingly" with respect to the circumstance that his conduct violated the protective order. That is, the State must prove that Strane knew that his conduct violated the order or, alternatively, that Strane was aware of a substantial probability that his conduct violated the order, unless Strane actually believed that his conduct did not violate the order.

Despite the wording of the last sentence, we do not intend to express any opinion on the question of who bears the burden of production or proof on the issue of Strane's potential actual belief that his conduct did not violate the court order. With respect to any inculpatory circumstance, AS 11.81.900(a)(2) declares that a defendant's awareness of a "substantial probability" of the existence of that circumstance is enough to establish guilt " unless the [defendant] actually believes [that the circumstance] does not exist". (Emphasis added.) As we have explained, this statutory definition allows a defense for honest but unreasonable mistakes of fact -- a broader defense than the reasonable mistake of fact defense codified in AS 11.81.620(b). But based on the wording of AS 11.81.900(a)(2), it is conceivable that an honest, unreasonable mistake is an "exception" to criminal liability -- meaning that the defendant would bear the burden of proof on this issue, or at least the burden of coming forward with evidence.¹⁷

Conclusion

The district court ruled that even if Strane had a good-faith belief that his conduct did not violate the terms of the protective order, this belief was irrelevant to his guilt or innocence under AS 11.56.740(a). We have concluded that this ruling was error. Even at common law, a reasonable mistake concerning the requirements of a court order is a potential defense to a charge of contempt. And, because we have construed AS 11.56.740(a) to require proof that a defendant acted "knowingly" with regard to the circumstance that their conduct violated the protective order, Strane can potentially defend on the basis of a good-faith mistake concerning the terms of the protective order, even if that mistake was objectively unreasonable.

Strane was convicted at a bench trial. Normally when a defendant is tried without a jury and we later conclude that the trial judge applied the wrong law in finding the defendant guilty, we would vacate the defendant's conviction and direct the trial judge to re-assess the defendant's guilt or innocence under the proper law. But here, Strane agreed to a bench trial only after the district court ruled that he could not defend the charge by asserting a good-faith mistake. Under these circumstances, we conclude that Strane should be given a choice: either to consent to a second bench trial, or to rescind his waiver of jury trial and be tried by jury.

Strane's conviction for violating a protective order is REVERSED, and this case is remanded to the district court for further proceedings on the complaint.

DISPOSITION

Strane's conviction for violating a protective order REVERSED, and this case remanded to the district court for further proceedings on the complaint.

OPINION FOOTNOTES

1 These seven provisions of AS 18.66.100(c) authorize a court to:

(1) prohibit the respondent from threatening to commit or committing domestic violence, stalking, or harassment;

(2) prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner;

(3) remove and exclude the respondent from the residence of the petitioner, regardless of [the] ownership of the residence;

(4) direct the respondent to stay away from the residence, school, or place of employment of the petitioner or any specified place frequented by the petitioner or any designated household member;

(5) prohibit the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner;

(6) prohibit the respondent from using or possessing a deadly weapon if the court finds the respondent was in the actual possession of or used a weapon during the commission of domestic violence; [and]

(7) direct the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of the domestic violence[.]

2 "The guiding principle of statutory construction is to ascertain and implement the intent of the legislature." *Sakeagak v. State*, 952 P.2d 278, 284 (Alaska App. 1998) (citing *Millman v. State*, 841 P.2d 190, 194 (Alaska App. 1992)).

3 491 P.2d 759 (Alaska 1971).

4 See *Vermont Women's Health Center v. Operation Rescue*, 159 Vt. 141, 617 A.2d 411, 415-16 (Vt. 1992); *People v. Poe*, 236 Cal. App. 2d Supp. 928, 47 Cal. Rptr. 670, 677-78 (Cal. App. 1965); *United States v. Southern Wholesale Grocers' Ass'n*, 207 F. 434, 444 (N.D. Ala. 1913).

5 793 P.2d 1085 (Alaska App. 1990).

6 See *id.* at 1087.

7 See *id.*

8 See *id.*

9 AS 11.81.620(a) declares: "Knowledge, recklessness, or criminal negligence as to whether conduct constitutes an offense, or knowledge, recklessness, or criminal negligence as to the existence, meaning, or application of the provision of law defining an offense, is not an element of an offense unless the provision of law clearly so provides."

10 See 1978 Senate Journal, Supp. No. 47 (June 12th), pp. 139-142.

11 See AS 11.81.900(a)(3), the definition of "recklessly".

12 See AS 11.81.900(a)(2), the definition of "knowingly".

13 See 1978 Senate Journal, Supp. No. 47 (June 12th), pp. 140-41.

14 *State v. ABC Towing*, 954 P.2d 575, 579 (Alaska App. 1998).

15 *Id.*

16 *Id.*

17 See *Trout v. State*, 866 P.2d 1323, 1324-25 (Alaska App. 1994).