

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 03-079)

ORDER

An order of the Psychology Examining Board to renumber and amend Psy 5.01 (33); amend sections Psy 5.01 (14) (intro.), (14) (c) (intro.), (17), and (24); and to create Psy 1.02 (5m) and (9), 5.01 (33) (a) to (e), and (34); relating to the definition of prohibited dual relationships, the elaboration of the prohibition on exploitative relationships, the responsibility of license-holders to cooperate with board investigations, a requirement to maintain records, and violations of board orders.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), and 455.08, Stats.
Statutes interpreted: Chapter 455, Stats.

This rule-making re-defines dual relationships and prohibited dual relationships, modifies the existing language of a prohibition on exploitative relationships, clarifies the responsibility of license-holders to cooperate with board investigations, creates a requirement to maintain records, and establishes a violation of a board order as unprofessional conduct.

SECTION 1 creates definitions of "dual relationship" and "prohibited dual relationship".

SECTION 2 adds kissing to a list of quasi-sexual actions prohibited with clients, adds the words "romantic, harassing, or exploitative" to the definition of quasi-sexual actions, and explicitly places the burden of proving that a former client is not vulnerable by reason of emotional or cognitive disorder if a psychologist enters into sexual or quasi-sexual activity.

SECTION 3 simplifies and clarifies the prohibition on dual relationships, by implicit reference to the definitions created in section 1 above.

SECTION 4 clarifies a license-holder's responsibility to cooperate with a request for information from the board.

SECTIONS 5 and 6 make the record-keeping requirement more specific.

SECTION 7 expands the definition of unprofessional conduct to include violation of a psychology statute, a psychology rule or a board order.

TEXT OF RULE

SECTION 1. Psy 1.02 (5m) and (9) are created to read:

Psy 5.01 (5m) "Dual relationship" means a situation in which a psychologist provides professional services to a person with whom the psychologist has another relationship such as, but not limited to, relatives, close friends, employees or employers, students or other supervisees.

(9) "Prohibited dual relationship" means a dual relationship which may impair objectivity or effectiveness, or permit exploitation, or create an actual, apparent or potential conflict of interest.

SECTION 2. Psy 5.01 (14) (intro.) and (c) (intro.) are amended to read:

Psy 5.01 (14) (intro.) Engaging in sexual contact, sexual conduct, kissing, or any other behavior which could reasonably be construed as seductive, romantic, harassing, or exploitative, with any of the following:

(c) (intro.) A former client beyond 2 years of termination of professional services, unless the licensee can demonstrate that there has been no exploitation of the former client, and that the former client is not vulnerable by reason of emotional or cognitive disorder to exploitive influence by the psychologist, in light of all relevant factors, including:

SECTION 3. Psy 5.01 (17) is amended to read:

Psy 5.01 (17) Failure to avoid prohibited dual relationships. ~~or relationships that may impair one's objectivity or create a conflict of interest. Dual relationships include treating employes, supervisees, close friends or relatives.~~

SECTION 4. Psy 5.01 (24) is amended to read:

Psy 5.01 (24) ~~Refusal upon request to cooperate in a timely manner with the board's investigation of complaints lodged against the applicant or licensee of the board. Failure to respond honestly and in a timely manner to a request for information from the board. Persons taking longer than 30 days to provide requested information will have the burden of demonstrating that they have acted in a "timely manner."~~ Taking longer than 30 days to respond creates a rebuttable presumption that the response is not timely.

SECTION 5. Psy 5.01 (33) is renumbered 5.01 (33) (intro.) and amended to read:

Psy 5.01 (33) (intro.) Failure to maintain adequate records relating to services provided to a client in the course of a professional relationship. Each patient record entry shall be dated, shall identify the treating therapist, and shall be sufficiently legible to be understood and to allow interventions by other professionals. Unless records are subject to a different records retention

policy by an entity with an obligation to maintain treatment records, a licensee shall retain treatment records for at least 7 years. Such records shall contain all of the following:

SECTION 6. Psy 5.01 (33) (a) to (e) are created to read:

- (a) Pertinent patient history.
- (b) Pertinent objective findings related to examination and test results.
- (c) Assessment or diagnosis.
- (d) Plan of treatment for the patient.
- (e) A discharge summary upon termination of treatment.

SECTION 7. Section Psy 5.01 (34) is created to read:

Psy 5.01 (34) Violating any provision of ch. 455, Stats., or any rule or order of the board.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Mariellen Fischer, Ph.D., Chairperson
Wisconsin Psychology Examining Board

FISCAL ESTIMATE

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Wis. Stats.

PSY 5 CR03-079 (Sexual misconduct) Final Draft 3-11-04.DOC