

262 CMR: BOARD OF ALLIED MENTAL HEALTH AND
HUMAN SERVICES PROFESSIONS

262 CMR 8.00: ETHICAL CODES AND STANDARDS OF CONDUCT

Section

8.01: Ethical Codes

8.02: Standards of Conduct Applicable to all Allied Mental Health Practitioners Licensed by the Board of Registration of Allied Mental Health and Human Services Professions

8.03: Standards of Conduct Applicable to Licensed Mental Health Counselors

8.04: Standards of Conduct Applicable to Licensed Applied Behavior Analysts and Licensed Assistant Applied Behavior Analysts

8.01: Ethical Codes

The Board of Allied Mental Health and Human Services Professions adopts as its official guides the ethical codes and standards of conduct listed in 262 CMR 8.01(1) through (6), except as such codes deviate in any way from the provisions of 262 CMR or M.G.L. c. 112, §§ 163 through 172:

(1) For Licensed Mental Health Counselors:

(a) *American Counseling Association Code of Ethics*; and

(b) *American Mental Health Counselors Association Code of Ethics*;

(2) For Licensed Marriage and Family Therapists: *Code of Ethics of the American Association for Marriage and Family Therapists*;

(3) For Licensed Rehabilitation Counselors:

(a) *Code of Professional Ethics for Rehabilitation Counselors of the Commission on Rehabilitation Counselor Certification*; and

(b) *Certification of Disability Management Specialists Commission Code of Professional Conduct*;

(4) For Licensed Educational Psychologists: *Principles for Professional Ethics of the National Association of School Psychologists*; and

(5) For Licensed Applied Behavior Analysts and Licensed Assistant Applied Behavior Analysts: *The Professional and Ethical Compliance Code for Behavior Analysts of the Behavior Analyst Certification Board*.

8.02: Standards of Conduct Applicable to all Allied Mental Health Practitioners Licensed by the Board of Allied Mental Health and Human Services Professions

(1) Treatment Records.

(a) A licensee shall create and maintain a treatment record for each client which meets the standards of usual and customary practice.

(b) The licensee must maintain a client's treatment record for a minimum period of seven years from the date of the client's last professional contact with the licensee and in a manner which permits the former client or a successor licensee access to the record within the terms of 262 CMR. In the event that the client is a minor, the licensee must maintain the client's record for at least one year after the client has reached the age of majority as defined in M.G.L. c. 4, § 7, but in no event shall the record be retained for less than seven years.

(c) Upon commencing services, licensees shall notify clients in writing that treatment records will be maintained and the manner in which clients or authorized representatives may inspect treatment records. Licensees shall adhere to the following practices:

1. upon written request and within a reasonable period of time, licensees shall provide the client or authorized representative of the client a copy of such client's treatment record, pursuant to M.G.L. c. 112, § 12CC;

262 CMR: BOARD OF ALLIED MENTAL HEALTH AND
HUMAN SERVICES PROFESSIONS

8.02: continued

2. licensees may decline to permit a client or the client's authorized representative to inspect or obtain a copy of his or her treatment record if the licensee, in the reasonable exercise of his or her professional judgment, believes that allowing that client or the client's authorized representative to inspect or copy his or her treatment record would adversely affect the physical or mental well-being of that client; and
 3. if a licensee declines to provide a copy of a client's treatment record to that client or the client's authorized representative pursuant to 262 CMR 8.02(1)(c)2., the licensee shall provide that client with a treatment summary in lieu of the full treatment record. If after receiving the treatment summary the client continues to request a copy of the full treatment record, the licensee shall provide a copy of the full treatment record to either an attorney designated by the client or a psychotherapist, as defined in M.G.L. c. 112, § 12CC designated by that client.
- (d) licensee may not require payment of any balance due for prior professional services rendered to the client as a pre-condition for making the treatment records available. A licensee may charge a reasonable fee for copying of treatment records and postage where applicable.
 - (e) Licensees shall protect confidentiality, in accordance with applicable regulations and laws, in the creation, maintenance, storage, transfer and disposal of client records and in the event of withdrawal from practice or death of the licensee.
 - (f) Licensees shall comply with all state and federal laws regarding the creation, maintenance, storage, transfer, and disposal of treatment records.
- (2) Client Relationships. In matters pertaining to boundaries or to dual, personal or sexual relationships, a licensee's relationship with a client shall be presumed to extend to a minimum of five years from the date of the rendering of the last professional service within the definitions of the licensees practice pursuant to M.G.L. c. 112, § 163. Licensees shall engage in relationships that maintain appropriate boundaries, avoid dual relationship, and uphold the following standards:
- (a) licensees shall not knowingly accept as clients, individuals or family members of individuals with whom the licensee has a familial, romantic, social, supervisory or professional relationship;
 - (b) licensees shall not engage in romantic or sexual relationships or behaviors with clients, family members of their clients, or partners of their clients;
 - (c) licensees shall refrain from entering into or promising a personal, professional, financial, or other relationship with any client, family members of their client, or partners of their client, provided however that 262 CMR 8.02(2) shall not prohibit a licensee from having a future professional relationship with an agency under which the client is served; and
 - (d) when working with multiple clients, licensees shall respect individual client rights and maintain objectivity. When a licensee agrees to provide services to two or more persons who have a relationship with each other the licensee shall disclose in writing upon commencing services the nature of the relationship the licensee will have with each person. Should conflicting roles arise, the licensee shall identify and document adjustments in roles and make referrals as necessary.
- (3) Confidential Communications.
- (a) Except as otherwise provided by law, all communications, including electronic communications, between any licensee and the client(s) to whom the licensee has rendered professional services shall be deemed to be treated as confidential information in perpetuity.
 - (b) For purposes of supervision or consultation regarding the licensee's work with a client, information which is acquired by a licensee pursuant to the professional practice, whether directly or indirectly, may be disclosed, to another appropriate licensee as part of a consultation which is designed to enhance the services provided to a client or clients.
 - (c) Licensees must, in their statements of confidentiality and informed consent to clients, inform clients that the licensee may seek supervision or consultation. In disclosing client information, licensees shall use their best efforts to safeguard the client's privacy by not disclosing the client's name or other identifying demographic information, or any other information by which the client might be identified by the consultant.

262 CMR: BOARD OF ALLIED MENTAL HEALTH AND
HUMAN SERVICES PROFESSIONS

8.02: continued

(4) Fees and Billing. All licensees shall bill accurately and truthfully, consistent with law, and shall not misrepresent their fees. Licensees shall not bill for services that were not provided.

(5) Compliance with Other Laws. All licensees shall comply with applicable state and federal law governing their respective practice as an Allied Mental Health and Human Services Professional, including M.G.L. c. 119, § 51A.

8.03: Standards of Conduct Applicable to Licensed Mental Health Counselors

(1) Licensed Mental Health Counselor treatment records shall include, but not be limited to, at a minimum:

- (a) a signed informed consent document;
- (b) an intake summary;
- (c) an assessment or diagnosis;
- (d) a treatment plan;
- (e) dates and progress notes for each treatment session;
- (f) communications with collateral entities;
- (g) communications with clients relating to treatment, including electronic communications;
- and
- (h) a termination summary.

(2) Licensed Mental Health Counselors must inform clients, in writing, of policies regarding confidentiality of information and the legal limits and exceptions to confidentiality. Licensed Mental Health Counselors shall not communicate either verbally or in writing with others about a client without the client's express written consent, including any legal proceedings, except when the limits of confidentiality may legally be invoked, such as, but not limited to, cases of potential harm to the client or significant or deadly harm to others by the client, and legal proceedings under M.G.L. c. 112, § 172(a). Licensed Mental Health Counselors shall ensure the accuracy of client information shared with other parties, including any third party payers.

(3) Informed Consent and Performance of Services without Consent.

(a) A Licensed Mental Health Counselor shall not perform nor attempt to perform any mental health services or function without the written and signed informed consent of the client or prospective client who is to receive that service or function.

(b) Where the client or prospective client who is to receive the mental health counseling service is not mentally competent to give legally valid consent for the performance or provision of that service or function, the Licensed Mental Health Counselor shall not perform nor attempt to perform that service or function without the prior written consent of an individual who is legally authorized to give consent on behalf of that client or prospective client, or of a guardian appointed by a court of competent jurisdiction to act on behalf of that client or prospective client.

(c) Where the client or prospective client who is to receive the mental health service or function is a minor, the LMHC shall make and document reasonable attempts to obtain informed consent from both parents when custody is held jointly, or from the minor's legal guardian(s) unless the minor:

- 1. is emancipated by court petition and decree;
- 2. is married, widowed or divorced;
- 3. is a parent of a child himself or herself;
- 4. is a member of any of the armed forces of the United States of America;
- 5. is living separate and apart from his or her parent(s) or legal guardian and is managing his or her own financial affairs;
- 6. reasonably believes that he or she is suffering from, or has come in contact with, a disease defined as dangerous to the public health pursuant to M.G.L. c. 111, § 6, and the service(s) or function(s) to be performed pertain to the diagnosis or treatment of that disease;

262 CMR: BOARD OF ALLIED MENTAL HEALTH AND
HUMAN SERVICES PROFESSIONS

8.03: continued

7. will be served by not notifying his or her parent(s) or legal guardian of the performance of the proposed service(s) or function(s), and the Licensed Mental Health Counselor reasonably believes and documents in the treatment record that the minor fully understands the nature of the proposed service(s) or function(s) and the risks and benefits of those service(s) or function(s); or
 8. would suffer a detrimental effect as a result of contact with one or more of the custodial parents. Such clinical opinion shall be documented in the treatment record.
- (d) Licensed Mental Health Counselors shall not knowingly withhold any information that would inhibit a client or prospective client from making an informed choice when selecting a provider of mental health services.
- (e) Written and signed Informed consent shall include but is not limited to:
1. the Licensed Mental Health Counselor's credentials;
 2. a statement regarding Confidentiality and its limits;
 3. information regarding the use of tests and inventories;
 4. information regarding accurate and appropriate billing procedures;
 5. an explanation of services provided and of the risks and benefits of counseling services, including an explanation of the risks and benefits of engaging in the use of distance counseling, technology, and/or social media within the counseling process; and
 6. a client bill of rights which includes but is not limited to information concerning informed consent, the licensee's grievance process, client respect, and the client's right to terminate treatment;
- (4) Supervision.
- (a) In providing supervision services to graduate students, post-graduate individuals seeking licensure, and other clinicians, Licensed Mental Health Counselors shall:
1. have an informed consent agreement with the supervisee, including an agreement for supervision that includes rights and responsibilities of both supervisor and supervisee;
 2. have a process for resolving differences;
 3. keep accurate and appropriate records of the supervision sessions;
 4. have a responsibility to know the current 262 CMR governing licensure as a Licensed Mental Health Counselor;
 5. regularly attend continuing education and participate in activities regarding topics and skills for both counseling and supervision;
 6. maintain appropriate boundaries with supervisees;
 7. make supervisees aware of professional and ethical standards and legal responsibilities of licensure; and
 8. address the role of multiculturalism and diversity in the supervisory relationship.
- (b) In addition, Licensed Mental Health Counselors providing supervision as an Approved Supervisor to graduate students or post-graduate individuals seeking licensure, shall:
1. understand and accept their responsibilities to monitor the welfare of clients treated by their supervisees;
 2. provide supervisees with ongoing performance appraisal and evaluation feedback, as well as formal evaluations; and
 3. refrain from endorsing supervisees who fail to meet professional standards of practice.
- (5) Termination, Absences and Referral.
- (a) Licensed Mental Health Counselors shall not abandon or neglect their clients in counseling.
- (b) Licensed Mental Health Counselors shall make appropriate arrangements for any necessary treatment of their client if the Licensed Mental Health Counselor is on vacation or is ill for an extended period of time.
- (c) Licensed Mental Health Counselors shall make arrangements for emergency backup to cover expected and unexpected absences;
- (d) Licensed Mental Health Counselors shall make reasonable efforts to assess treatment goals and outcomes with the client and terminate a relationship when it is reasonably clear that the treatment no longer serves the needs of the client;

262 CMR: BOARD OF ALLIED MENTAL HEALTH AND
HUMAN SERVICES PROFESSIONS

8.03: continued

- (e) Licensed Mental Health Counselors may terminate counseling when:
 - 1. he or she reasonably believes to be in jeopardy of harm by the client or by another person with whom the client has a relationship;
 - 2. the client does not pay the fees charged; or
 - 3. insurance denies such treatment and the Licensed Mental Health Counselor recommends other service providers.
- (f) When transferring or referring clients to other practitioners, Licensed Mental Health Counselors shall ensure and document that appropriate clinical and administrative processes are completed for an appropriate transition.

(6) Professional Responsibilities and Conduct.

- (a) Licensed Mental Health Counselors shall provide services within the scope of practice for the profession and within the bounds of their particular competencies and the limitations of their expertise. When practicing new specialty areas, Licensed Mental Health Counselors shall obtain proper education, training, or supervision.
- (b) Licensed Mental Health Counselors shall obtain consultation and supervision when needed as clinically indicated, including but not limited to when practicing outside of an area of expertise or when treating at-risk clients.
- (c) Licensed Mental Health Counselors shall not practice if they are impaired and unable to practice competently. Licensed Mental Health Counselors shall seek professional assistance to determine whether to limit, suspend or terminate their professional responsibilities until such time as it is determined that they may safely resume their work.

8.04: Standards of Conduct Applicable to Licensed Applied Behavior Analysts and Licensed Assistant Applied Behavior Analysts

- (1) Licensed applied behavior analysts and licensed assistant applied behavior analysts may engage only in evidence-based practice. For purposes of 262 CMR 8.04, Evidence-based Practice shall mean the integration of best peer-reviewed research evidence with clinical expertise and patient characteristics.
- (2) Licensed applied behavior analysts and licensed assistant applied behavior analysts may provide behavioral diagnostic, therapeutic, teaching, research, supervisory, consultative, or other behavior analytic service delivery only in the context of a defined remunerated professional role. Provided, however, that 262 CMR 8.04 shall not prohibit the provision of *pro-bono* services when performed in the context of a defined professional role.
- (3) Licensed applied behavior analysts and licensed assistant applied behavior analysts shall not abandon clients but may terminate a professional relationship when it becomes reasonably clear that the client no longer needs the service, is not benefiting, or is being harmed by continued service. Licensed applied behavior analysts and assistant applied behavior analysts may terminate a professional relationship with a client where a conflict arises which the licensee cannot resolve or where the client or responsible payer(s) fails to pay for services or determines services are no longer eligible for coverage.
- (4) Prior to termination for whatever reason, except where precluded by the client's conduct or where the client or responsible payer(s) fails to pay for services or determines services are no longer eligible for coverage, licensed applied behavior analysts and licensed assistant applied behavior analysts shall provide clients with 30 days written notice of the termination, discuss the client's views and needs, provide appropriate pre-termination services, suggest alternative service providers as appropriate, or take other reasonable steps to facilitate transfer of responsibility to another provider if the client needs one immediately. Licensed applied behavior analysts and licensed assistant applied behavior analysts shall document all steps taken during termination.

262 CMR: BOARD OF ALLIED MENTAL HEALTH AND
HUMAN SERVICES PROFESSIONS

8.04: continued

(5) Supervision Requirements.

- (a) Licensed assistant applied behavior analysts shall:
1. when engaged in the practice of applied behavior analysis, receive a minimum of one hour per month of individual face-to-face supervision in the treatment setting from a licensed applied behavior analyst, or a physician or psychologist approved by the Board in accordance with M.G.L. c. 112, § 163;
 2. prior to providing treatment, obtain approval from a licensed applied behavior analyst, or a physician or psychologist approved by the Board in accordance with M.G.L. c. 112, § 163, for all treatment plans; and
 3. on a form acceptable to the Board, maintain documentation of their supervision.
- (b) When acting as a supervisor of licensed assistant applied behavior analysts, licensed applied behavior analysts shall:
1. provide the licensed assistant applied behavior analyst with the type, frequency, and duration of supervision that is consistent with the needs of the client and that is consistent with acceptable clinical standards and any state or federal law and includes a minimum of one hour per month of individual face-to-face supervision in the treatment setting;
 2. approve treatment plans used by the assistant applied behavior analyst;
 3. be professionally responsible for the clinical oversight of all clients receiving services from the licensed assistant applied behavior analyst; and
 4. On a form acceptable to the Board, maintain documentation of supervision.
- (c) When acting as a supervisor of any non-licensed paraprofessionals, licensed applied behavior analysts shall:
1. if the employer of the paraprofessional, conduct a criminal offender record information check prior to hiring;
 2. be professionally responsible for the clinical oversight of all clients receiving services from the paraprofessionals;
 3. provide the paraprofessional with the type, frequency, and duration of supervision that is consistent with the needs of the client and that is consistent with acceptable clinical standards and any state or federal law; and
 4. on a form acceptable to the Board, maintain documentation of supervision.
- (d) For purposes of 262 CMR 8.04(5), documentation of supervision shall include but is not limited to:
1. the date of each supervisory meeting;
 2. the duration of each supervisory meeting;
 3. the format of each supervisory meeting;
 4. an evaluation of supervisee performance by the supervisor;
 5. the total experience hours obtained during the supervision;
 6. the total individual and small-group supervision hours obtained during the supervision; and
 7. the signature for supervisor and supervisee.

(6) Where the demands of a public agency or school district with which a licensed applied behavior analyst or licensed assistant applied behavior analyst is contracted conflict with 262 CMR 8.04(1) or (5)(a)1., (b)1., (c)2. or 3. the licensed applied behavior analyst or licensed assistant applied behavior analyst shall seek to resolve the workplace conflict in a way that permits adherence to 262 CMR 8.00 and shall document such efforts.

REGULATORY AUTHORITY

262 CMR 8.00: M.G.L. c. 112, §§ 163 through 172 and c. 13, §§ 88 through 90.