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Code: Section:

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 13. Licensed Marriage and Family Therapists [4980 - 4989] (*Heading of Chapter 13 amended by Stats. 2014, Ch. 316, Sec. 14.*)

ARTICLE 2. Denial, Suspension, and Revocation [4982 - 4982.3] (*Article 2 added by Stats. 1986, Ch. 1365, Sec. 4.*)

4982. The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if the licensee or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

- (a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A conviction has the same meaning as defined in Section 7.5. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence. All actions pursuant to this subdivision shall be taken pursuant to Division 1.5 (commencing with Section 475).
- (b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.
- (c) Administering to himself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.
- (d) Gross negligence or incompetence in the performance of marriage and family therapy.
- (e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.
- (f) Misrepresentation as to the type or status of a license or registration held by the licensee or registrant or otherwise misrepresenting or permitting misrepresentation of the licensee's or registrant's education, professional qualifications, or professional affiliations to any person or entity.
- (g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use the licensee's or registrant's license or registration.
- (h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.
- (i) Intentionally or recklessly causing physical or emotional harm to any client.
- (j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.
- (k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a

sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee, registered associate, or applicant for licensure under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. This subdivision does not prevent collaboration among two or more licensees in a case or cases. However, a fee shall not be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered associate, trainee, or applicant for licensure by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform mental health services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee, registered associate, or applicant for licensure under one's supervision or control to perform, or permitting the trainee, registered associate, or applicant for licensure to hold themselves out as competent to perform, mental health services beyond the trainee's, registered associate's, or applicant for licensure's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(z) Failure to comply with Section 2290.5.

(aa) (1) Engaging in an act described in Section 261, 286, 287, or 289 of, or former Section 288a of, the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(ab) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

(Amended by Stats. 2021, Ch. 647, Sec. 30. (SB 801) Effective January 1, 2022.)

4982.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action, or within 10 years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, "discovers" means the later of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the board received a complaint or report describing the act or omission.

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.

(Amended by Stats. 2005, Ch. 658, Sec. 19. Effective January 1, 2006.)

4982.1. The board may refuse to issue any registration or license whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or registration pursuant to this section.

(Added by Stats. 1992, Ch. 384, Sec. 4. Effective January 1, 1993.)

4982.15. (a) The board may place a license or registration on probation under the following circumstances:

(1) In lieu of, or in addition to, any order of the board suspending or revoking the license or registration of any licensee or associate.

(2) Upon the issuance of a license to an individual who has been guilty of unprofessional conduct, but who had otherwise completed all education and training and experience required for licensure.

(3) As a condition upon the reissuance or reinstatement of any license that has been suspended or revoked by the board.

(b) The board may adopt regulations establishing a monitoring program to ensure compliance with any terms or conditions of probation imposed by the board pursuant to subdivision (a). The cost of probation or monitoring may be ordered to be paid by the licensee, registrant, or applicant.

(c) The board, in its discretion, may require any licensee or registrant who has been placed on probation, or whose license or registration has been suspended, to obtain additional professional training, and to pass an examination upon completion of that training, and to pay any necessary examination fee. The examination may be written, oral, or a practical or clinical examination.

(Amended by Stats. 2018, Ch. 743, Sec. 21. (AB 93) Effective January 1, 2019.)

4982.25. The board may deny an application, or may suspend or revoke a license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice marriage and family therapy, or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a marriage and family therapist, clinical social worker, professional clinical counselor, or educational psychologist shall also constitute grounds for

disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

(Amended by Stats. 2011, Ch. 350, Sec. 31. (SB 943) Effective January 1, 2012.)

4982.26. The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(Amended by Stats. 2005, Ch. 658, Sec. 20. Effective January 1, 2006.)

4982.3. The proceedings conducted under this article shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Repealed and added by Stats. 1986, Ch. 1365, Sec. 4.)