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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 13.5. Licensed Educational Psychologists [4989.10 - 4989.70]** ( *Chapter 13.5 added by Stats. 2006, Ch. 659, Sec. 20.* )

**ARTICLE 5. Enforcement [4989.54 - 4989.66]** ( *Article 5 added by Stats. 2006, Ch. 659, Sec. 20.* )

**4989.54.** The board may deny a license or may suspend or revoke the license of a licensee if the person has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) 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 under this chapter.

(3) A conviction has the same meaning as defined in Section 7.5.

(4) The board may order a license suspended or revoked, or may decline to issue a license 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 by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to themselves a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to themselves or to any other person or to the public or to the extent that the use impairs their ability to safely perform the functions authorized by the license. The board shall deny an application for a license or revoke the license 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 educational psychology.

(d) Failure to comply with the consent provisions in Section 2290.5.

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

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) 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 educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as an educational psychologist, a clinical social worker, professional clinical counselor, or marriage and family therapist.

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

(k) Gross negligence or incompetence in the practice of educational psychology.

(l) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of the licensee's education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, 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 licensed educational psychologist.

(o) Before 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.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing 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.

(r) Performing, holding oneself out as being able to perform, offering to perform, or permitting any unlicensed person under supervision to perform, any professional services beyond the scope of the license authorized by this chapter or beyond the person's field or fields of competence as established by the person's education, training, or experience. For purposes of this subdivision, "unlicensed person" includes, but is not limited to, an applicant for licensure, an associate, an intern, or a trainee under the Licensed Marriage and Family Therapist Act (Chapter 13 (commencing with Section 4980)), the Clinical Social Worker Practice Act (Chapter 14 (commencing with Section 4991)), or the Licensed Professional Clinical Counselor Act (Chapter 16 (commencing with Section 4999.10)).

(s) Reproducing or describing in public, or in any publication subject to general public distribution, 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. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize the person's private practice for further counseling without the approval of the employing agency or administration.

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

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

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

(y) (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.

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

(aa) Impersonation of another by any licensee or applicant for a license, or, in the case of a licensee, allowing any other person to use the person's license.

(ab) Permitting an unlicensed person under the licensee's supervision or control to perform, or permitting that person to hold themselves out as competent to perform, mental health services beyond the unlicensed person's level of education, training, or experience. For purposes of this subdivision, "unlicensed person" is defined in subdivision (r).

(ac) The violation of any statute or regulation governing the gaining and supervision of experience of an unlicensed person, including an unlicensed person identified in subdivision (ab), by a licensee that violates this chapter, the Licensed Marriage and Family Therapist Act (Chapter 13 (commencing with Section 4980)), the Clinical Social Worker Practice Act (Chapter 14 (commencing with Section 4991)), the Licensed Professional Clinical Counselor Act (Chapter 16 (commencing with Section 4999.10)), or any rules or regulations adopted by the board pursuant to those provisions. For purposes of this subdivision, "unlicensed person" is defined in subdivision (r).

(ad) The violation of any statute or regulation governing the gaining and supervision of experience of an unlicensed person required by the Licensed Marriage and Family Therapist Act (Chapter 13 (commencing with Section 4980)), the Clinical Social Worker Practice Act (Chapter 14 (commencing with Section 4991)), or the Licensed Professional Clinical Counselor Act (Chapter 16 (commencing with Section 4999.10)).

*(Amended by Stats. 2021, Ch. 647, Sec. 42. (SB 801) Effective January 1, 2022.)*

**4989.56.** The board shall revoke the license of a licensee, other than one who is also licensed as a physician and surgeon, who uses or offers to use drugs in the course of his or her practice as an educational psychologist.

*(Added by Stats. 2006, Ch. 659, Sec. 20. Effective January 1, 2007.)*

**4989.58.** The board shall revoke the license of a licensee upon a decision that contains a finding of fact that the licensee engaged in an act of sexual contact, as defined in Section 729, when that act is with a client, or with a former client and 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.

*(Added by Stats. 2006, Ch. 659, Sec. 20. Effective January 1, 2007.)*

**4989.60.** A person whose license has been suspended or revoked shall not, until the reinstatement of his or her license, engage in any activity to which the license relates or any other activity or conduct in violation of the order or judgment by which the license was suspended.

*(Added by Stats. 2006, Ch. 659, Sec. 20. Effective January 1, 2007.)*

**4989.62.** All proceedings by the board to suspend, revoke, or to take other disciplinary action against a licensee shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*(Added by Stats. 2006, Ch. 659, Sec. 20. Effective January 1, 2007.)*

**4989.64.** In addition to other proceedings provided for in this chapter, whenever a person has engaged, or is about to engage, in an act or practice that constitutes, or will constitute, an offense against this chapter, the superior court in and for the county where the act or practice takes place, or is about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, or the district attorney of the county. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

*(Added by Stats. 2006, Ch. 659, Sec. 20. Effective January 1, 2007.)*

**4989.66.** A person who violates any of the provisions of this chapter is guilty of a misdemeanor.

*(Added by Stats. 2006, Ch. 659, Sec. 20. Effective January 1, 2007.)*