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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 16. Licensed Professional Clinical Counselors [4999.10 - 4999.129] (Chapter 16 added by Stats. 2009, Ch. 619, Sec. 3.)

ARTICLE 5. Enforcement [4999.80 - 4999.91] (Article 5 added by Stats. 2009, Ch. 619, Sec. 3.)

4999.80. In order to carry out the provisions of this chapter, the board shall do all of the following:

- (a) Enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.
- (b) Investigate complaints concerning the conduct of any licensed professional clinical counselor.
- (c) Revoke, suspend, or fail to renew a license that it has authority to issue for just cause, as enumerated in rules and regulations of the board. The board may deny, suspend, or revoke any license granted under this chapter pursuant to Section 480, 481, 484, 490, 496, 498, or 499.

(Amended by Stats. 2021, Ch. 647, Sec. 68. (SB 801) Effective January 1, 2022.)

4999.82. It shall be unlawful for any person to engage in any of the following acts:

- (a) Engage in the practice of professional clinical counseling, as defined in Section 4999.20, without first having complied with the provisions of this chapter and without holding a valid license as required by this chapter.
- (b) Represent himself or herself by the title "licensed professional clinical counselor," "LPCC," "licensed clinical counselor," or "professional clinical counselor" without being duly licensed according to the provisions of this chapter.
- (c) Make any use of any title, words, letters, or abbreviations, that may reasonably be confused with a designation provided by this chapter to denote a standard of professional or occupational competence without being duly licensed.
- (d) Materially refuse to furnish the board information or records required or requested pursuant to this chapter.

(Added by Stats. 2009, Ch. 619, Sec. 3. (SB 788) Effective January 1, 2010.)

4999.84. It is the intent of the Legislature that any communication made by a person to a licensed professional clinical counselor in the course of professional services shall be deemed a privileged communication.

(Added by Stats. 2009, Ch. 619, Sec. 3. (SB 788) Effective January 1, 2010.)

4999.86. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

(Added by Stats. 2009, Ch. 619, Sec. 3. (SB 788) Effective January 1, 2010.)

4999.88. In addition to other proceedings provided in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are 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. 2009, Ch. 619, Sec. 3. (SB 788) Effective January 1, 2010.)

4999.90. The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any associate or licensed professional clinical counselor, if the applicant, 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 oneself any controlled substance or using any of the dangerous drugs specified in Section 4022, or 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 licensed professional clinical counseling services.
- (d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.
- (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 person, 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 licensed professional clinical counselor.
- (l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee, applicant, or registrant 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 which 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 clinical counseling services actually provided by the licensee. This subdivision does not prevent collaboration among two or more licensees in a case or cases. However, no fee shall 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 a registered associate, trainee, or applicant 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, associate, or applicant under one's supervision or control to perform, or permitting the trainee, associate, or applicant to hold themselves out as competent to perform, mental health services beyond the trainee's, associate's, or applicant'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) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z) (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.

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

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

(ac) Failing to comply with the procedures set forth in Section 2290.5 when delivering health care via telehealth.

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

(Amended by Stats. 2021, Ch. 647, Sec. 69. (SB 801) Effective January 1, 2022.)

4999.91. The board may deny any application, or may suspend or revoke any 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 this state or another state or territory of the United States, or by any other governmental agency, on a license, certificate, or registration to practice professional clinical counseling or any other healing art shall constitute grounds for disciplinary action for 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 clinical social work, professional clinical counseling, marriage and family therapy, or educational psychology shall also constitute grounds for disciplinary action for unprofessional conduct under this chapter.

(Added by Stats. 2011, Ch. 350, Sec. 40. (SB 943) Effective January 1, 2012.)