

REPEAL – REPLACE.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 27 COUNSELORS AND THERAPISTS
PART 18 CODE OF ETHICS

16.27.18.1 ISSUING AGENCY: Regulation and Licensing Department Counseling and Therapy Practice Board

[16.27.18.1 NMAC-Rp, 16.27.18.1 NMAC, XX-XX-XX]

16.27.18.2 SCOPE: All professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, registered independent mental health counselors, registered mental health counselors, licensed mental health counselors, alcohol and drug abuse counselors, alcohol abuse counselors, drug abuse counselors, and substance abuse trainees.

[16.27.18.2 NMAC-Rp 16.27.18.2 NMAC, XX-XX-XX]

16.27.18.3 STATUTORY AUTHORITY: These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Section 61-9A-1 through 61-9A-30 NMSA 1978.

[16.27.18.3 NMAC-Rp 16.27.18.3 NMAC, XX-XX-XX]

16.27.18.4 DURATION: Permanent

[16.27.18.4 NMAC-Rp 16.27.18.4 NMAC, XX-XX-XX]

16.27.18.5 EFFECTIVE DATE: XX-XX-XX unless a later date is cited at the end of a section.

[16.27.18.5 NMAC-Rp 16.27.18.5 NMAC, XX-XX-XX]

16.27.18.6 OBJECTIVE: The objective of Part 18 is to outline the code of ethics all applicants and licensed professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, registered independent mental health counselors, registered mental health counselors, licensed mental health counselors, alcohol and drug abuse counselors, alcohol abuse counselors, drug abuse counselors, and substance abuse trainees shall adhere to as licensed professionals. Failure to adhere to the code of ethics may result in disciplinary action by the board.

[16.27.18.6 NMAC-Rp 16.27.18.6 NMAC, XX-XX-XX]

16.27.18.7 DEFINITIONS: [Reserved]

16.27.18.8 WHO MUST ADHERE TO THE CODE OF ETHICS: The counseling & therapy practice board code of ethics is intended for the professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered mental health counselor, registered independent mental health counselor, licensed mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor, and substance abuse associate trainee. Licensure and registration is binding to all individuals holding a license or registration to practice professional mental health counseling, professional clinical mental health counseling, marriage and family therapy, professional art therapy, registered and licensed mental health counseling, registered independent mental health counseling, alcohol and drug abuse counseling, alcohol abuse counseling, drug abuse counseling, and substance abuse associate in the state of New Mexico, and approved supervisors.

[16.27.18.8 NMAC-Rp 16.27.18.8 NMAC, XX-XX-XX]

16.27.18.9 SCOPE: This code of ethics regulates the ethical and professional conduct of:

- A. all licensed and registered individuals;
- B. all applicants for licensure or registration;
- C. registered and licensed mental health counselors, substance abuse trainees and supervisors during their education, practicum and post-graduate training; and
- D. expert witnesses: it applies to all licensed or registered individuals, in direct contact with clients, as well as during education, training, testifying as an expert witness and research endeavors.

[16.27.18.9 NMAC-Rp 16.27.18.9 NMAC, XX-XX-XX]

16.27.18.10 PURPOSE: The purpose of this code of ethics is to provide clear guidelines for the New Mexico counseling and therapy practice board to assess the professional conduct of licensed or registered individuals. Standardization eliminates confusion and misinterpretation of ethical behavior within the profession and by the public.

[16.27.18.10 NMAC-Rp 16.27.18.10 NMAC, XX-XX-XX]

16.27.18.11 VIOLATIONS:

A. A violation of a code of ethics is referred to as "unprofessional" or "unethical" conduct. It constitutes sufficient grounds for disciplinary action by the board.

B. Costs of disciplinary proceedings: Licensees, registrants or applicants shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if the licensee, registrant or applicant prevails at the hearing conducted pursuant to Section 61-1-3 of the Uniform Licensing Act ("ULA"), or after investigation, the board does not pursue a ULA action against the licensee, registrant or applicant.

[16.27.18.11 NMAC-Rp 16.27.18.11 NMAC, XX-XX-XX]

16.27.18.12 INTEGRITY: A licensed or registered individual is expected to behave according to the standards of professional integrity and competence as defined by rule or law. A licensed or registered individual must not condone, associate with, or participate in dishonest, fraudulent, or deceitful behavior and shall treat all clients, supervisees, students and research participants with respect and dignity at all times. A licensed or registered individual shall not misrepresent themselves, their training, or their services. It is the responsibility of licensees and registered mental health counselors to be completely informed about this code of ethics by which they are governed.

[16.27.18.12 NMAC-Rp 16.27.18.12 NMAC, XX-XX-XX]

16.27.18.13 INTERPRETATION: When construing the Code of ethics and standards for providers, the interpretation of the code shall be guided by rules promulgated by the American mental health counselors association (AMHCA), the American counseling association (ACA), the American association for marriage and family therapy (AAMFT), the American art therapy association (AATA), national association of alcoholism and drug abuse counselors (NAADAC) and other relevant professional groups to reconcile ambiguities which may arise in the interpretation of this code of ethics, except that this code of ethics shall supersede any conflict existing between this code and any professional association standard.

[16.27.18.13 NMAC-Rp 16.27.18.13 NMAC, XX-XX-XX]

16.27.18.14 CLIENT: Means

A. a recipient of counseling or therapy services.

B. a corporate entity or other organization can be a client when the professional contract is to provide services that primarily benefit the organization rather than individuals;

C. a legal guardians shall be the client for decision-making purposes for individuals receiving services who are under age of consent or legally incompetent adults except underage individuals and legally incompetent adults shall be the client when making decisions:

(1) directly affecting the physical or emotional safety of the individual, such a sexual or other exploitive dual relationships, and

(2) specifically reserved to the individual, and agreed to by the guardian prior to the rendering of services, such as confidential communication in a therapy relationship.

[16.27.18.14 NMAC-Rp 16.27.18.14 NMAC, XX-XX-XX]

16.27.18.15 CONFIDENTIAL INFORMATION: Means information revealed by a client(s) or otherwise obtained by a counselor or therapist, within the therapeutic context. The information shall not be disclosed by the counselor or therapist without the informed written consent of the client(s). Confidential information may be disclosed without written consent when the client is considered a harm to self or others, when there is evidence of physical or emotional abuse of minors or frail elderly or by court order, see 16.27.18.17 B NMAC. When the client is a corporation or organization, the confidential relationship is between the counselor or therapist and the corporation or organization and not between the counselor or therapist and the employee or individual. Information obtained from the employee by the counselor or therapist shall be available to the organization unless such information was obtained in a separate therapeutic context which is subject to confidentiality requirements.

[16.27.18.15 NMAC-Rp 16.27.18.15 NMAC, XX-XX-XX]

16.27.18.16 PROFESSIONAL COMPETENCE, CONDUCT & INTEGRITY:

A. Licensees or registrants shall not misrepresent his credentials, degrees, or competencies either through spoken word, written, or electronically transmitted material.

B. Licensees or registrants who has provided professional services to a client or former client within the previous 60 months shall not:

- (1) engage in sexual intercourse, contact or other physical intimacies with the client;
- (2) enter into a financial or other potentially exploitive relationship with the client; or
- (3) seek to obtain client access to counselor or therapist personal information in social

networking sites.

C. The prohibitions set out in Paragraphs (1), (2) and (3) of Subsection B of this section shall not be limited to the 60 month period but shall extend indefinitely if the client is proven to be clearly vulnerable, by reason of emotional or cognitive disorder, to exploitive influence by the counselor or therapist. The counselor or therapist who engages in such activity after the 60 month period following cessation or termination of treatment bears the burden of providing proof that there has been no exploitation, in light of all relevant factors, including:

- (1) the amount of time that has passed since therapy terminated;
- (2) the nature and duration of the therapy;
- (3) the circumstances of termination;
- (4) the patient's or client's personal history;
- (5) the patient's or client's mental status;
- (6) the likelihood of adverse impact on the patient or client and others; and
- (7) any statements or actions made by the counselor or therapist during the course of therapy suggesting or inviting the possibility of a post termination relationship with the patient or client.

D. Licensees or registrants shall not undertake or continue a professional relationship with a client when the counselor or therapist is impaired due to mental, emotional, physiological, or substance abuse conditions.

E. Licensees or registrants violate the code and are subject to loss of licensure or other disciplinary action if:

- (1) convicted of a felony or misdemeanor related to their qualifications or functions;
- (2) disciplined by other state licensing boards for acts which would be a violation under this code of ethics, statutes or regulations;
- (3) no longer competent to practice, or;
- (4) they fail to cooperate with an investigation or disciplinary action taken by the state.

F. Licensees or registrants shall only perform counseling or therapy services within the scope of practice for their license. Licensees or registrants shall only perform testing and assessment services for which they are authorized under the act.

G. Licensees or registrants shall not use advertising, which is misleading, deceptive or false. All and any announcements of services shall include state designation and license number.

H. Licensees or registrants individual shall inform the client of the innovative nature and the known risks associated with the services, so that the client can exercise freedom of choice concerning the services when developing competency in a service or technique that is either new to the counselor or therapist, or new to the profession, shall engage in ongoing consultation with other relevant professionals and shall seek appropriate education and training in the new area.

I. Licensees or registrants shall make every effort to offer the client or former client the names of at least three referral sources, or refer the client to an organization that can provide referrals, upon request by a client or former client (e.g. physician, attorney, therapist, financial planner, etc.).

J. Licensees or registrants shall not offer or accept kickbacks, rebates, bonuses or other remuneration of referrals; fee-for-service arrangements are not prohibited.

K. Bartering for professional services may be conducted only if:

- (1) the supervisee or client requests it;
- (2) the relationship is not exploitive; or
- (3) the professional relationship is not distorted; and
- (4) a clear written contract is agreed upon and signed by both parties.

[16.27.18.16 NMAC-Rp 16.27.18.16 NMAC, XX-XX-XX]

16.27.18.17 CONFIDENTIALITY AND DATA PRIVACY:

A. The counselor or therapist shall safeguard confidential information obtained in the course of practice, teaching, research or other professional services. This includes a counselor or therapist's employees and professional associates as defined by law. The counselor or therapist shall disclose confidential information to others only with the informed written consent of the client or as outlined in Subsection B of this section.

B. Licensees or registrants shall inform a client of limitations of confidentiality. These limitations include, but are not limited to:

(1) Limitations mandated by the law.

(2) Disclosure when necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another person(s).

(3) Court orders in civil, criminal, or disciplinary actions arising from the therapy.

(4) Written waiver. Disclosure is limited to the terms of the waiver. If there is more than one party involved in the therapy, the waiver must be signed by all members legally competent to execute such a waiver (e.g. couples, marital couples, family, or group). When release of information pertaining to a client under the age of consent is requested, it must be signed by a parent or legal guardian. The counselor or therapist, to the extent the client can understand, shall inform the minor client of the limit the law imposes on his right of confidentiality.

(6) Reporting abuse of children and vulnerable adults, the counselor or therapist shall be familiar with any relevant law..

(7) Restrictions mandated by employing agencies.

C. Licensees or registrants shall ensure that all reasonable security measures are taken to ensure records and written data are protected from access by unauthorized persons.

D. Licensees or registrants shall ensure that the content and disposition of all records is in compliance with relevant state laws.

E. Licensees or registrants shall treat client information as confidential after the professional relationship between the counselor or therapist and the client has ceased.

F. Licensees or registrants shall exercise reasonable care to ensure that confidential information is appropriately disguised to prevent client identification when used as a case study, basis of supervision, teaching, research or other published reports.

G. Licensees or registrants shall explain to the client the limitations and foreseeable uses of confidential information.

H. Record retention

(1) Licensees or registrants rendering professional services to a client or billed to a third party, shall maintain professional records that include:

(a) the presenting problem(s) or purpose or diagnosis;

(b) the fee arrangement;

(c) the date and substance of each billed service;

(d) any test results or other evaluative results obtained and any basis test data from which they were derived;

(e) notation and results of formal consultations with other providers; and

(f) a copy of all tests or other evaluative reports prepared as part of the professional relationship.

(2) Licensees, registrants or agencies that employ licensed or registered counselors or therapists shall assure that all client records are maintained and secured for a period of not less than six years after the last date that professional services was rendered.

(3) Licensees or registrants shall store and dispose of written or electronic data and other recorded information in such a manner as to ensure client confidentiality.

(4) Licensees or registrants shall not withhold records under their control that are requested for a client's treatment solely because payment has not been received or otherwise provided by law.

(5) Subsequent to the licensee or registrant moving from the area, closing the practice, or upon the death of the counselor or therapist, a licensee or registrant shall arrange for the storage, transfer, or disposal of client records that ensure confidentiality and safeguards the welfare of clients.

(6) In the event of the death of a licensee or registrant, the counselor or therapist's personal representative shall assure that the deceased's clinical records are maintained and secured for a period of not less than six years after the last date that professional services were rendered. The decedent's personal representative shall store and eventually dispose of written or electronic data and other recorded information in such a manner as to ensure confidentiality and safeguards the welfare of the clients.

(7) Licensees or registrants shall provide clients with that client's ~~clinical records or~~ summary of their clinical record upon receipt of a written request.
[16.27.18.17 NMAC-Rp 16.27.18.17 NMAC, XX-XX-XX]

16.27.18.18 RESPONSIBILITY TO CLIENTS: Licensees or registrants shall:

A. inform clients before or at the time of the initial counseling session with the licensee of the following:

- (1) professional education, training and experience of the licensee;
- (2) fees and arrangements for payment;
- (3) counseling purposes, goals, and techniques;
- (4) any restrictions placed on the license by the board;
- (5) the limits on confidentiality;
- (6) any intent of the licensee to use another individual to provide counseling services to the client;

(7) supervision of the licensee by another licensed health care professional, including the name and qualifications of the supervisor; and

(8) a licensee or registrant shall inform the client of any changes to the items above prior to initiating the change;

B. shall not discriminate against or refuse professional services to anyone on the basis of race, color, gender, religion, national origin, ancestry, disability, socioeconomic status, sexual orientation, or any basis proscribed by law;

C. shall not impose on the client any stereotypes of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual orientation, or diagnosis which would interfere with the objective provision of counseling or therapy services;

D. shall not enter into a sexual or other dual relationship with a client, as specified in Subsection D of 16.27.18.16 NMAC of this code of ethics;

E. shall continue therapeutic relationships only so long as it is reasonably clear that a therapeutic context exists;

F. shall give a truthful, understandable, and appropriate account of the nature of the client's condition to the client or to those responsible for the care of the client;

G. shall not mislead or withhold information about the cost of his professional services;

H. shall keep the client fully informed as to the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided;

I. shall make an appropriate referral of the client to another professional when requested to do so by the client or in the best interest of the client;

J. shall not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment; counselors or therapists shall assist persons in obtaining other therapeutic services if the counselor or therapist is unable or unwilling, for appropriate reasons, to provide professional help;

K. shall not induce clients to solicit business on behalf of the counselor or therapist;

L. when consulting with colleagues:

(1) refrain from sharing confidential information that reasonably could lead to the identification of a patient, client, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided; and

(2) share information only to the extent necessary to achieve the purposes of the consultation;

M. shall obtain written informed consent from clients before videotaping, audio recording, or permitting third party observation;

N. shall disclose to clients the area of education when using the designation of "doctor" in their title.

O. shall not knowingly offer or provide counseling or therapy to an individual concurrently receiving counseling from another mental health services provider except with that provider's knowledge; if a licensee or registrant learns of such concurrent therapy, the licensee or registrant shall take immediate and reasonable action to resolve the situation;

P. shall not enter into a professional counseling or therapeutic relationship with immediate family members, personal friends, or business associates;

Q. shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement. The agreement shall include that:

- (1) the actual provider of services be reflected on billing documents;
- (2) upon written request of a client, or a client's legal guardian, a licensee or registrant shall provide, in plain language, a written explanation of the charges for counseling services previously made on a bill or statement for the client; this requirement applies even if the charges are to be paid by a third party;
- (3) the licensee or registrant may not overcharge a client;
- (4) the licensee or registrant may not submit to a client or third payer a bill for counseling or therapy that the licensee or registrant knows were not provided or knows were improper, unreasonable, or medically or clinically unnecessary;

R. refrain from giving to or receiving from clients:

- (1) gifts of substantial value; or
 - (2) gifts that impair the integrity or efficacy of the counseling or therapeutic relationship; and
- S. be permitted to treat minors or adults involved in custody or visitation actions but may not concurrently perform forensic evaluations of custody, residence, or visitation of the minor; the licensee or registrant who treats the minor may provide the court or mental health professional performing the evaluation with information about the minor from the licensee or registrant's perspective as a treating licensed or registered professional, so long as the licensee or registrant does not violate confidentiality.

[16.27.18.18 NMAC-Rp 16.27.18.18 NMAC, XX-XX-XX]

16.27.18.19 RESPONSIBILITY TO SUPERVISEES: Licensees or registrants shall:

A. be cognizant of their influence upon students and supervisees and shall avoid exploiting the trust and dependency of such persons; therefore, licensees or registrants shall try to avoid conditions and dual relationships that may impair professional objectivity or increase the risk of exploitation; when the risk of impairment or exploitation exists due to conditions or dual roles, individuals shall take appropriate precautions (TO DO WHAT?);

B. refrain from providing therapy to current students or supervisees.

C. refrain from engaging in sexual intimacy with students or supervisees during the evaluation or training relationship between the licensee or registrant and student/supervisee.

D. prohibit students or supervisees from performing or holding themselves out as competent to perform professional services beyond their training, level of experience, and competence.

E. shall take reasonable precautions to ensure that services provided by trainees are professional.

F. shall not disclose supervisee confidences except by written authorization or waiver, or when mandated or permitted by law; in educational or training settings where there are multiple supervisors, disclosures are permitted only to other professional colleagues or administrators.

G. shall be required to sign for supervision and client contact hours provided to their supervisees on the appropriate Attachment B form prior to the termination of the supervisory relationship. If, in the supervisor's professional opinion, believes the supervisee is not yet ready for independent licensure, or has other concerns about the supervisee's professionalism, they may include an explanatory letter with the Attachment B form.

[16.27.18.19 NMAC-Rp 16.27.18.19 NMAC, XX-XX-XX]

16.27.18.20 RESPONSIBILITY TO COLLEAGUES: Licensees or registrants should:

A. treat colleagues with respect and should accurately represent the qualifications, views, and obligations of colleagues;

B. avoid unwarranted negative criticism of colleagues in communications with clients or with other professionals;

C. cooperate with colleagues and with colleagues of other professions when their cooperation serves the wellbeing of clients;

D. respect confidential information shared by colleagues in the course of their professional relationships and transactions; licensees or registrants should ensure that their colleagues understand licensees or registrants' obligations to respect confidentiality and any exceptions related to it;

E. participate in and contribute to decisions that affect the wellbeing of clients by drawing on the perspectives, values, and experiences of the individual's profession with members of an interdisciplinary team; professional and ethical obligations of the interdisciplinary team as a whole and of its individual members should be clearly established;

F. attempt to resolve disagreements through appropriate channels for whom a team decision raises ethical concerns for the licensee or registrant; if the disagreement cannot be resolved, pursue other avenues to address licensee or registrant's concerns consistent with client wellbeing;

G. should not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance the licensed or registered individual's own interests; and

H. should not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion with colleagues.

[16.27.18.20 NMAC- Rp 16.27.18.20 NMAC, XX-XX-XX]

16.27.18.21 RESPONSIBILITY TO THE PROFESSION: Licensees or registrants shall:

A. refraining from aiding or abetting another person in misrepresenting his/her professional credentials or illegally engaging in the practice of counseling or therapy;

B. refrain from delegating professional responsibilities to a person not appropriately qualified to provide such services;

C. exercise appropriate supervision over supervisees, as set forth in the Parts and regulations of the board;

D. inform the board in writing when the licensee or registrant has substantial reason to believe that there has been a violation of the statutes or parts of the rule which presents eminent danger to the licensee, registrant or client; or if this information is obtained in a professional relationship with a client, obtain prior written permission from the client before reporting it; counselors or therapists shall not file or encourage the filing of ethical complaints that are frivolous or are intended to harm the licensee rather than protect the public;

E. be familiar with this code of ethics, and its application to counselors or therapists' work. Lack of awareness or misunderstanding of the conduct standards is not a defense to a charge of unethical conduct;

F. consult with the board's ethics committee when uncertain whether a particular situation or course of action would violate this code of ethics; and

G. cooperate in ethics investigations, proceedings, and resulting requirements of this code. Release of confidential information in an investigation by the board does not constitute a violation of confidentiality. Failure to cooperate in an investigation is an ethics violation.

[16.27.18.21 NMAC- Rp 16.27.18.21 NMAC, XX-XX-XX]

16.27.18.22 INVESTIGATIONS: If a licensee or registrant voluntarily surrenders their license or registration in anticipation of or during the course of an investigation, the complaint committee will proceed with its investigation and take any appropriate action. Any publication of action taken by the committee and the counseling and therapy practice board will include the fact that the licensee or registrant voluntarily surrendered their license or registration during the investigation.

[16.27.18.20 NMAC- Rp 16.27.18.20 NMAC, XX-XX-XX]

16.27.18.23 ELECTRONIC THERAPY:

A. Any licensee or registrant offering services online, or by any other electronic virtual means, shall adhere to the entire code of ethics as it appears in this Part. In addition, the licensee or registrant providing services shall inform the client, in the process of securing informed consent for services that:

(1) professional services are considered to be rendered in the state of New Mexico;

(2) complaints about professional services and should be directed to the New Mexico counseling and therapy practice board; and

(3) encryption and other technologies shall be used to insure confidentiality of the therapy session.

B. Licensees or registrants who provide professional services via electronic media (such as computer, telephone, radio, and television) should inform clients of the limitations and risks associated with such services.

C. Electronic and telephonic supervision, counseling and psychotherapy services provided under supervision are considered contact hours and subject to face-to-face supervision requirements.

[16.27.18.23 NMAC- Rp 16.27.18.23 NMAC, XX-XX-XX]

HISTORY OF 16.27.18 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

Rule 14, Code of Ethics, 3-20-95

HISTORY OF REPEALED MATERIAL:
16 NMAC 27.14, Code of Ethics - Repealed 6-15-01