

This is an amendment to 16.27.18 NMAC, Sections 16 & 17 effective July 30, 2024

**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 licensed number]~~ license number(s), and expiration date(s). Inactive and retired licensees or registrants shall not advertise using their license.

**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, 11/30/2021; A, 7/30/2024]

**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]~~ Licensees or registrants shall maintain on file a written plan in place that arranges for the storage, transfer, or disposal of client records that ensure confidentiality and safeguards the welfare of clients in the event of licensee or registrant incapacitation or death.

(6) In the event of the incapacitation or death of a licensee or registrant, the counselor or therapist's personal representative shall adhere to the written plan on file to 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 [~~s~~] 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 summary of their clinical record upon receipt of a written request.

[16.27.18.17 NMAC- Rp 16.27.18.17 NMAC, 11/30/2021; A, 7/30/2024]