

1 PROPOSED REGULATIONS

2 18VAC115-20

3 REGULATIONS GOVERNING THE PRACTICE OF LICENSED
4 PROFESSIONAL COUNSELORS

5 BOARD OF COUNSELING

6 18VAC115-20-130. Standards of practice.

7 A. The protection of the public health, safety, and welfare and the best interest of the
8 public shall be the primary guide in determining the appropriate professional conduct of
9 all persons whose activities are regulated by the board. Regardless of the delivery method,
10 whether in person, by phone or electronically, these standards shall apply to the practice of
11 counseling.

12 B. Persons licensed by the board shall:

13 1. Practice in a manner that is in the best interest of the public and does not endanger the
14 public health, safety, or welfare; ;

15 2. Practice only within the ~~competency areas for which they are qualified by training or~~
16 boundaries of their competence, based on their education, training, supervised experience
17 and appropriate professional experience and represent their education training and
18 experience accurately to clients; ;

19 ~~3. Be aware of the areas of competence of related professions and make full use of other~~
20 ~~professional, technical and administrative resources to secure for clients the most~~
21 ~~appropriate services.~~

22 4 ~~3. Strive to~~ Stay abreast of new developments counseling information, concepts,
23 applications and practices which are ~~important~~ necessary to providing appropriate,
24 effective professional services; ;

1 ~~§ 4. Be able to justify all services rendered to clients as necessary and appropriate for~~
2 ~~diagnostic or therapeutic purposes and attempt to terminate a private service or consulting~~
3 ~~relationship when it becomes clear that the consumer is not benefiting from the~~
4 ~~relationship. ;~~

5 5. Document the need for and steps taken to terminate a counseling relationship when it
6 becomes clear that the client is not benefiting from the relationship. Document the assistance
7 provided in making appropriate arrangements for the continuation of treatment for clients,
8 when necessary, following termination of a counseling relationship;

9 ~~6. Not engage in offering services to a client who is receiving services from another~~
10 ~~mental health professional without attempting to inform such other professionals in order~~
11 ~~to avoid confusion and conflict for the consumer.~~

12 6. Make appropriate arrangements for continuation of services, when necessary, during
13 interruptions such as vacations, unavailability, relocation, illness, and disability;

14 7. Disclose to clients all experimental methods of treatment and inform clients of the
15 risks and benefits of any such treatment. Ensure that the welfare of the clients is in no
16 way compromised in any experimentation or research involving those clients: ;

17 8. Neither accept nor give commissions, rebates, or other forms of remuneration for
18 referral of clients for professional services: ;

19 9. Inform clients of (i) ~~the purposes of an interview, testing or evaluation session and (ii)~~
20 ~~the ways in which information obtained in such sessions will be used before asking the~~
21 ~~client to reveal personal information or allowing such information to be divulged~~ the
22 purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services
23 to be performed, the limitations of confidentiality, and other pertinent information when
24 counseling is initiated, and throughout the counseling process as necessary. Provide clients
25 with accurate information regarding the implications of diagnosis, the intended use of tests
26 and reports, fees, and billing arrangements;

1 10. ~~Consider the validity, reliability and appropriateness of tests selected for use with~~
2 ~~clients~~ Select tests for use with clients that are valid, reliable and appropriate and
3 carefully interpret the performance of individuals not represented in standardized norms;

4 ~~11. Represent accurately their competence, education, training and experience.~~

5 11. Determine whether a client is receiving services from another mental health service
6 provider, and if so, refrain from providing services to the client without having an
7 informed consent discussion with the client and having been granted communication
8 privileges with the other professional;

9 12. Use only in connection with one's practice as a mental health professional those
10 educational and professional degrees or titles ~~credentials~~ that have been earned at a
11 college or university accredited by ~~a regional~~ an accrediting agency recognized by the
12 United States Department of Education, or credentials granted by a national certifying
13 agency, and that are counseling in nature. ~~Those credentials include the title "doctor" as~~
14 ~~well as academic and professional certification designations following one's name, such~~
15 ~~as M.Ed., Ph.D., N.C.C.; and~~

16 ~~13. Not engage in improper direct solicitation of clients and announce~~ Advertise
17 professional services fairly and accurately in a manner which ~~will aid the public in~~
18 ~~forming their own informed judgments, opinions and choices and which avoids fraud and~~
19 ~~misrepresentation through sensationalism, exaggeration or superficiality~~ is not false,
20 misleading or deceptive.

21 ~~14. Provide clients with accurate information of what to expect in the way of tests,~~
22 ~~reports, billing, therapeutic regime and schedules before rendering services.~~

23 C. In regard to patient records, persons licensed by the board shall:

24 1. Maintain written or electronic clinical records for each client to include treatment dates
25 and identifying information to substantiate diagnosis and treatment plan, client progress, and
26 termination;

1 ~~15~~ 2. Maintain client records securely, inform all employees of the requirements of
2 confidentiality and provide for the destruction of records which are no longer useful in a
3 manner that ensures client confidentiality;

4 ~~Client records shall be disclosed~~ 3. Disclose or release records to others only with
5 clients' expressed written consent or that of their legally authorized representative or as
6 mandated by law in accordance with § 32.1-127.1:03 of the Code of Virginia;

7 4. Ensure client confidentiality in the usage of client records and clinical materials ~~shall~~
8 ~~be ensured~~ by obtaining informed consent from clients or their legally authorized
9 representative before (i) videotaping, (ii) audio recording, (iii) permitting third party
10 observation, or (iv) using identifiable client records and clinical materials in teaching,
11 writing or public presentations- ; and

12 5. Maintain client records ~~shall be kept~~ for a minimum of five years or as otherwise
13 required by law from the date of termination of the counseling relationship with the
14 following exceptions:

15 a. At minimum, records of a minor child shall be maintained for five years after attaining the
16 age of majority (18) or ten years following termination, which ever comes later; or

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18 b. Records that are required by contractual obligation or federal law to be maintained for a
19 longer period of time.

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21 c. Records that have transferred to another mental health service provider or given to the
22 client or his legally authorized representative.

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24 D. In regard to dual relationships, persons licensed by the board shall:

25 ~~16. Not engage in dual relationships with clients, former clients, residents, supervisees,~~
26 ~~and supervisors that compromise the client's or resident's well-being, impair the~~
27 ~~counselor's or supervisor's objectivity and professional judgment or increase the risk of~~

1 client or resident exploitation. This includes, but is not limited to, such activities as
2 counseling close friends, former sexual partners, employees or relatives, and engaging in
3 business relationships with clients. Engaging in sexual intimacies with current clients or
4 residents is strictly prohibited. For at least five years after cessation or termination of
5 professional services, licensees shall not engage in sexual intimacies with a therapy client
6 or those included in collateral therapeutic services. Since sexual or romantic relationships
7 are potentially exploitative, licensees shall bear the burden of demonstrating that there
8 has been no exploitation. A patient's consent to, initiation of or participation in sexual
9 behavior or involvement with a practitioner does not change the nature of the conduct nor
10 lift the regulatory prohibition.

11 1. Avoid dual relationships with clients that could impair professional judgment or increase
12 the risk of harm to clients. (Examples of such relationships include, but are not limited to,
13 familial, social, financial, business, bartering, or close personal relationships with clients.)
14 Counselors shall take appropriate professional precautions when a dual relationship cannot
15 be avoided, such as informed consent, consultation, supervision, and documentation to
16 ensure that judgment is not impaired and no exploitation occurs;

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18 2. Not engage in any type of sexual intimacies with clients or those included in a collateral
19 relationship with the client and not counsel persons with whom they have had a sexual
20 relationship. Counselors shall not engage in sexual intimacies with former clients within a
21 minimum of five years after terminating the counseling relationship. Counselors who
22 engage in such relationship after five years following termination shall have the
23 responsibility to examine and document thoroughly that such relations do not have an
24 exploitive nature, based on factors such as duration of counseling, amount of time since
25 counseling, termination circumstances, client's personal history and mental status, adverse
26 impact on the client. A client's consent to, initiation of or participation in sexual behavior or
27 involvement with a counselor does not change the nature of the conduct nor lift the
28 regulatory prohibition;

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1 3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic
2 relationship with a supervisee. Counselors shall avoid any non-sexual dual relationship with
3 a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the
4 potential for interference with the supervisor's professional judgment; and

5 ~~17.~~ 4. Recognize conflicts of interest and inform all parties of the nature and directions of
6 loyalties and responsibilities involved.

7 ~~18 E. Report~~ Persons licensed by the board shall report to the board Department of Health
8 Professions any information of which he may become aware in his professional capacity
9 indicating that there is a reasonable probability that a person licensed or certified as a
10 mental health service provider, as defined in §54.1-2400.1 of the Code of Virginia, may
11 have engaged in unethical, fraudulent or unprofessional conduct as defined by the
12 pertinent licensing statutes and regulations known or suspected violations of the laws and
13 regulations governing the practice of licensed or certified mental health service providers
14 as defined in §54.1-2400.1 of the Code of Virginia.

15 **18VAC115-20-140. Grounds for revocation, suspension, probation, reprimand,**
16 **censure, or denial of renewal of license.**

17 A. Action by the board to revoke, suspend ~~or decline to renew~~ ,deny issuance or renewal
18 of a license, or take disciplinary action may be taken in ~~accord~~ accordance with the
19 following:

20 1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of
21 or aid to another in violating any provision of Chapter 35 (§54.1-3500 et seq.) of Title
22 54.1 of the Code of Virginia, any other statute applicable to the practice of professional
23 counseling, or any provision of this chapter; ;

24 2. ~~Procuring~~ Procurement of a license by fraud or misrepresentation; ;

25 3. Conducting one's practice in such a manner as to make it a danger to the health and
26 welfare of one's clients or to the public, or if one is unable to practice counseling with

1 reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs,
2 narcotics, chemicals, or other type of material or result of any mental or physical
3 condition-;

4 ~~4. Negligence in professional conduct or nonconformance with the Standards of Practice~~
5 ~~(18VAC115-20-130 B).~~ Intentional or negligent conduct that causes or is likely to cause
6 injury to a client or clients-;

7 5. Performance of functions outside the demonstrable areas of competency-; or

8 6. Violating or abetting another person in the violation of any provision of any statute
9 applicable to the practice of counseling, or any part or portion of this chapter.

10 B. Following the revocation or suspension of a license, the licensee may petition the
11 board for reinstatement upon good cause shown or as a result of substantial new evidence
12 having been obtained that would alter the determination reached.

13 **18 VAC115-20-150. Reinstatement following disciplinary action.**

14 A. Any person whose license has been ~~revoked~~, suspended or who has been denied
15 renewal reinstatement by the board order ~~under the provisions of 18 VAC 115-20-140,~~
16 having met the terms of the order, may, ~~two years subsequent to such board action,~~
17 submit a new application and fee for reinstatement of licensure.

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19 B. The board in its discretion may, after ~~a hearing~~ an administrative proceeding, grant
20 the reinstatement sought in subsection A of this section.

21 ~~C. The applicant for such reinstatement, if approved, shall be licensed upon payment of~~
22 ~~the appropriate fee applicable at the time of reinstatement.~~

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1 ~~24.~~ Be able to justify all services rendered to clients as necessary and appropriate for
2 diagnostic or therapeutic purposes ~~and make appropriate referrals when it becomes clear~~
3 ~~that the client is not benefiting from the relationship;~~

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5 ~~3.~~ Not abandon or neglect clients in treatment without making reasonable arrangements
6 for the continuation of such treatment;

7
8 ~~4.~~ When aware that the client is in a professional relationship with another mental health
9 professional, in order to avoid confusion and conflict for the client, request a written
10 release from the client to inform the other professional of the coexistent clinical
11 relationship;

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13 5. Document the need for and steps taken to terminate a counseling relationship when it
14 becomes clear that the client is not benefiting from the relationship. Document the
15 assistance provided in making appropriate arrangements for the continuation of treatment
16 for clients, when necessary, following termination of a counseling relationship;

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18 6. Make appropriate arrangements for continuation of services, when necessary, during
19 interruptions such as vacations, unavailability, relocation, illness, and disability;

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21 ~~57.~~ Disclose to clients all experimental methods of treatment, and inform client of the
22 risks and benefits of any such treatment, and ensure Ensure that the welfare of the client
23 is not compromised in any experiment experimentation or research involving those
24 clients;

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26 ~~68.~~ Neither accept nor give commissions, rebates or other forms of remuneration for
27 referral of clients for professional services;

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29 ~~7.~~ Inform clients of the fees and billing arrangements, goals, techniques, procedures,
30 limitations, potential risks and benefits of services to be performed;

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~~8. Inform clients of the limits of confidentiality at the onset of the therapeutic relationship;~~

~~9. Not solicit clients, advertise or represent services to the public in a manner that is false, misleading, deceptive or fraudulent;~~

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed, the limitations of confidentiality, and other pertinent information when counseling is initiated, and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner which is not false, misleading or deceptive.

1 C. In regard to patient records, persons licensed by the board shall:

2
3 1. Maintain written or electronic clinical records for each client to include treatment
4 dates and identifying information to substantiate diagnosis and treatment plan, client
5 progress, and termination;

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7 ~~102. (i)~~ Maintain client records securely, and inform all employees of the requirements of
8 confidentiality requirements; and provide for the destruction of records which are no
9 longer useful in a manner that ensures client confidentiality;

10
11 ~~(ii) 3. disclose~~ Disclose or release client records to others only with client's expressed
12 written consent or that of their legally authorized representative as mandated by law in
13 accordance with § 32.1-127.1:03 of the Code of Virginia; and

14
15 ~~(iii) 4.~~ Ensure client confidentiality in the usage of client records and clinical materials by
16 obtaining informed consent from clients or their legally authorized representative before
17 (a) videotaping, (b) audio recording, (c) permitting third party observation, or (d) using
18 identifiable client records and clinical materials in teaching, writing, or public
19 presentations; ; and

20
21 ~~5. Client~~ Maintain client records shall be kept for a minimum of five years or as
22 otherwise required by law from the date of termination of the ~~clinical~~ counseling
23 relationship; with the following exceptions:

24
25 a. At minimum, records of a minor child shall be maintained for five years after attaining
26 the age of majority (18) or ten years following termination, which ever comes later;

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28 b. Records that are required by contractual obligation or federal law to be maintained for
29 a longer period of time; or

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1 c. Records that have transferred to another mental health service provider or given to the
2 client or his legally authorized representative.

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4 D. In regard to dual relationships, persons licensed by the board shall:

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6 ~~411. Avoid dual relationships with clients, former clients, residents, and supervisors and~~
7 ~~supervisees that could compromise the well-being or increase the risk of exploitation of~~
8 ~~clients or residents, or impair the resident's or supervisor's objectivity and professional~~
9 ~~judgment. This includes, but is not limited to, such activities as providing therapy to~~
10 ~~close friends, former sexual partners, employees or relatives, and engaging in business~~
11 ~~relationships with clients. Engaging in sexual intimacies with clients, former clients or~~
12 ~~current residents is strictly prohibited; and that could impair professional judgment or~~
13 increase the risk of harm to clients. (Examples of such relationships include, but are not
14 limited to, familial, social, financial, business, bartering, or close personal relationships
15 with clients.) Counselors shall take appropriate professional precautions when a dual
16 relationship cannot be avoided, such as informed consent, consultation, supervision, and
17 documentation to ensure that judgment is not impaired and no exploitation occurs;

18 2. Not engage in any type of sexual intimacies with clients or those included in a
19 collateral relationship with the client and not counsel persons with whom they have had a
20 sexual relationship. Marriage and family therapists shall not engage in sexual intimacies
21 with former clients within a minimum of five years after terminating the counseling
22 relationship. Marriage and family therapists who engage in such relationship after five
23 years following termination shall have the responsibility to examine and document
24 thoroughly that such relations do not have an exploitive nature, based on factors such as
25 duration of counseling, amount of time since counseling, termination circumstances,
26 client's personal history and mental status, adverse impact on the client. A client's
27 consent to, initiation of or participation in sexual behavior or involvement with a
28 marriage and family therapist does not change the nature of the conduct nor lift the
29 regulatory prohibition;

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31 3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic

1 relationship with a supervisee. Marriage and family therapists shall avoid any non-sexual
2 dual relationship with a supervisee in which there is a risk of exploitation or potential
3 harm to the supervisee or the potential for interference with the supervisor's professional
4 judgment; and

5
6 4. Recognize conflicts of interest and inform all parties of the nature and directions of
7 loyalties and responsibilities involved.

8
9 ~~12E. Report~~ Persons licensed by the board shall report to the board known or suspected
10 ~~violations of the laws and regulations governing the practices of mental health~~
11 ~~professionals~~ Department of Health Profession any information of which he may become
12 aware in his professional capacity indicating that there is a reasonable probability that a
13 person licensed or certified as a mental health service provider, as defined in §54.1-
14 2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or
15 unprofessional conduct as defined by the pertinent licensing statutes and regulations.

16
17 **18 VAC 115-50-120. Disciplinary action.**

18 A. ~~In accordance with §54.1-2400 of the Code of Virginia, Action by the board may,~~
19 ~~after a hearing, to revoke, suspend, or decline to issue or renew~~ deny issuance or renewal
20 of a license, or impose a fine take other disciplinary action may be taken in accordance
21 with the following:

22
23 1. Conviction of a felony, or of a misdemeanor involving moral turpitude or violation of
24 or aid to another in violating any provision of Chapter 35 (§54.1-3500 et seq.) of Title
25 54.1 of the Code of Virginia, any other statute applicable to the practice of marriage and
26 family therapy, or any provision of this chapter;

27
28 2. Procurement of a license, ~~certificate or registration~~ by fraud or misrepresentation;

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30 3. Conducting one's practice in such a manner as to make it a danger to the health and

1 welfare of one's clients or the general public or if one is unable to practice marriage and
2 family therapy with reasonable skill and safety to clients by reason of illness, abusive use
3 of alcohol drugs, narcotics, chemicals, or other type of material or result of any mental or
4 physical condition;

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6 ~~4. Practicing marriage and family therapy without reasonable skill and safety to clients~~
7 ~~by virtue of physical or emotional illness, abusive use of alcohol, drugs, narcotics,~~
8 ~~chemicals or any other hazardous substance or material;~~

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10 4. Intentional or negligent conduct that causes or is likely to cause injury to a client or
11 clients;

12 ~~5. Providing or offering services~~ Performance of functions outside the demonstrable
13 areas of competency; or

14
15 6. Violating or abetting another person in the violation of any provision of any statute
16 applicable to the practice of marriage and family therapy, or any part or portion of this
17 chapter.

18
19 B. Following the revocation or suspension of a license, the licensee may petition the
20 board for reinstatement upon good cause shown or as a result of substantial new evidence
21 having been obtained that would alter the determination reached.

22
23 **18 VAC 115-50-130. Reinstatement following disciplinary action.**

24
25 A. Any person whose license has been ~~revoked~~, suspended or who has been denied
26 renewal reinstatement by the board order under the provisions of ~~18 VAC 115-20-140,~~
27 having met the terms of the order, ~~may, two years subsequent to such board action,~~
28 submit a new application and fee for reinstatement of licensure.

29

1 B. The board in its discretion may, after a ~~hearing~~ an administrative proceeding, grant
2 the reinstatement sought in subsection A of this section.

3

4 ~~C. The applicant for such reinstatement, if approved, shall be licensed upon payment of~~
5 ~~the appropriate fee applicable at the time of reinstatement.~~

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8

1 ~~43.~~ Stay abreast of new ~~developments~~ substance abuse treatment information, concepts,
2 application and practices which are ~~important~~ necessary to providing appropriate,
3 effective professional services- ;

4 ~~5. Terminate a service or consulting relationship when it is apparent that the client is not~~
5 ~~benefiting from the relationship.~~

6 ~~64. Provide to clients only those services which are related to~~ Be able to justify all
7 services rendered to clients as necessary and appropriate for diagnostic or therapeutic
8 goals purposes;

9 5. Document the need for and steps taken to terminate a counseling relationship when it
10 becomes clear that the client is not benefiting from the relationship. Document the
11 assistance provided in making appropriate arrangements for the continuation of treatment
12 for clients, when necessary, following termination of a counseling relationship;

13
14 6. Make appropriate arrangements for continuation of services, when necessary, during
15 interruptions such as vacations, unavailability, relocation, illness, and disability;

16 ~~7. Not offer services to a client who is receiving services from other mental health~~
17 ~~professionals without attempting to inform such other professionals of the planned~~
18 ~~provision of services.~~

19 ~~87. Inform~~ Disclose to clients all experimental methods of treatment and inform clients
20 fully of the risks and benefits of services and any such treatment, and obtain informed

1 ~~consent to all such services and treatment~~ Ensure that the welfare of the clients is in no
2 way compromised in any experimentation or research involving those clients.;

3 ~~9. Ensure that the welfare of clients is not compromised by experimentation or research~~
4 ~~involving those clients and conform practice involving research or experimental~~
5 ~~treatment to the requirements of Chapter 5.1 (§~~32.1-162.16~~ et seq.) of Title 32.1 of the~~
6 ~~Code of Virginia.~~

7 ~~108.~~ Neither accept nor give commissions, rebates, or other forms of remuneration for
8 referral of clients for professional services.;

9 ~~119.~~ Inform clients of (i) ~~the purposes of an interview, testing or evaluation session and~~
10 ~~(ii) the ways in which information obtained in such sessions will be used before asking~~
11 ~~the client to reveal personal information~~ the purposes, goals, techniques, procedures,
12 limitations, potential risks, and benefits of services to be performed, the limitations of
13 confidentiality, and other pertinent information when counseling is initiated, and
14 throughout the counseling process as necessary. Provide clients with accurate
15 information regarding the implications of diagnosis, the intended use of tests and reports,
16 fees, and billing arrangements.;

17 ~~1210.~~ ~~Consider the validity, reliability and appropriateness of assessments tests selected~~
18 ~~for use with clients~~ Select tests for use with clients that are valid, reliable and appropriate
19 and carefully interpret the performance of individuals from groups not represented in
20 standardized norms.;

1 11. Determine whether a client is receiving services from another mental health service
2 provider, and if so, refrain from providing services to the client without having an
3 informed consent discussion with the client and having been granted communication
4 privileges with the other professional;

5 ~~13. Represent accurately their competence, education, training and experience.~~

6 ~~14~~12. In connection with practice as a substance abuse treatment practitioner, represent to
7 the public Use only in connection with one' practice as a mental health professional those
8 educational and professional eredentials as are related to such practice degrees or titles
9 that have been earned at a college or university accredited by an accrediting agency
10 recognized by the United States Department of Education, or credentials granted by a
11 national certifying agency, and that are counseling in nature.; and

12 ~~15. Not use the title "Doctor" or the abbreviation "Dr." in writing or in advertising in~~
13 ~~connection with practice without including simultaneously a clarifying title, initials,~~
14 ~~abbreviation or designation or language that identifies the basis for use of the title, such~~
15 ~~as M.D., Ph.D., D.Min.~~

16 ~~16~~3. Announce Advertise professional services fairly and accurately in a manner which
17 will aid the public in forming their own informed judgments, opinions and choices and
18 which avoids fraud and misrepresentation is not false, misleading or deceptive.

19 C. In regard to patient records, persons licensed by the board shall:

1 1. Maintain written or electronic clinical records for each client to include treatment dates
2 and identifying information to substantiate diagnosis and treatment plan, client progress,
3 and termination;

4 ~~172.~~ Maintain client records securely, inform all employees of the requirements of
5 confidentiality and provide for the ~~disposal~~ destruction of records which are no longer
6 useful in a manner ~~consistent with professional requirements~~ that ensures client
7 confidentiality; ;

8 ~~183.~~ Disclose or release ~~client~~ records to others ~~in accordance with state and federal~~
9 ~~statutes and regulations including, but not limited to, §§~~32.1-127.1:03 (Patient Health
10 Records Privacy Act), ~~2.2-3704~~ (Virginia Freedom of Information Act) and 54.1-2400.1
11 (Mental Health Service Providers; Duty to Protect Third Parties; Immunity) of the Code
12 of Virginia; ~~42 USC §290dd-2~~ (Confidentiality of Drug and Alcohol Treatment Records);
13 ~~and 42 CFR Part 2~~ (Alcohol and Drug Abuse Patient Records and Regulations) only with
14 client's expressed written consent or that of his legally authorized representative in
15 accordance with §32.1-127.1:03 of the Code of Virginia;

16 ~~194.~~ Maintain client records for a minimum of five years or as otherwise required by law
17 from the date of termination of the substance abuse treatment relationship, ~~or as~~
18 ~~otherwise required by employer, hospital or insurance carrier.~~ with the following
19 exceptions:

20 a. At minimum, records of a minor child shall be maintained for five years after attaining the
21 age of majority (18) or ten years following termination, which ever comes later;

1 b. Records that are required by contractual obligation or federal law to be maintained for a
2 longer period of time;

3 or

4 c. Records that have transferred to another mental health service provider or given to the
5 client; and

6 ~~205. Obtain informed consent from clients~~ Ensure confidentiality in the usage of client
7 records and clinical materials by obtaining informed consent from clients or their legally
8 authorized representative before (~~i~~ a) videotaping, (~~ii~~ b) audio recording, (~~iii~~ c) permitting
9 third party observation, or (~~iv~~ d) using identifiable client records and clinical materials in
10 teaching, writing or public presentations.

11 D. In regard to dual relationships, persons licensed by the board shall:

12 ~~21. Not engage in dual relationships with clients, former clients, residents, supervisees,~~
13 ~~and supervisors that compromise the client's or resident's well being, impair the~~
14 ~~practitioner's or supervisor's objectivity and professional judgment or increase the risk of~~
15 ~~client or resident exploitation. This includes, but is not limited to, such activities as~~
16 ~~treating close friends, former sexual partners, employees or relatives, and engaging in~~
17 ~~business relationships with clients.~~

18 ~~Engaging in sexual intimacies with current clients or residents is strictly prohibited. For~~
19 ~~at least five years after cessation or termination of professional services, licensees shall~~
20 ~~not engage in sexual intimacies with a therapy client or those included in collateral~~
21 ~~therapeutic services. Since sexual or romantic relationships are potentially exploitative,~~

1 ~~licensees shall bear the burden of demonstrating that there has been no exploitation. A~~
2 ~~patient's consent to, initiation of or participation in sexual behavior or involvement with a~~
3 ~~practitioner does not change the nature of the conduct nor lift the regulatory prohibition.~~

4 1. Avoid dual relationships with clients that could impair professional judgment or increase
5 the risk of harm to clients. (Examples of such relationships include, but are not limited to,
6 familial, social, financial, business, bartering, or close personal relationships with clients.)
7 Counselors shall take appropriate professional precautions when a dual relationship cannot
8 be avoided, such as informed consent, consultation, supervision, and documentation to
9 ensure that judgment is not impaired and no exploitation occurs;

10

11 2. Not engage in any type of sexual intimacies with clients or those included in a collateral
12 relationship with the client and not counsel persons with whom they have had a sexual
13 relationship. Licensed substance abuse treatment practitioners shall not engage in sexual
14 intimacies with former clients within a minimum of five years after terminating the
15 counseling relationship. Licensed substance abuse treatment practitioners who engage in
16 such relationship after five years following termination shall have the responsibility to
17 examine and document thoroughly that such relations do not have an exploitive nature,
18 based on factors such as duration of counseling, amount of time since counseling,
19 termination circumstances, client's personal history and mental status, adverse impact on the
20 client. A client's consent to, initiation of or participation in sexual behavior or involvement
21 with a licensed substance abuse treatment practitioner does not change the nature of the
22 conduct nor lift the regulatory prohibition;

23

1 3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic
2 relationship with a supervisee. Licensed substance abuse treatment practitioners shall avoid
3 any non-sexual dual relationship with a supervisee in which there is a risk of exploitation or
4 potential harm to the supervisee or the potential for interference with the supervisor's
5 professional judgment; and

6 ~~22. Recognize conflicts of interest and inform all parties of obligations, responsibilities~~
7 ~~and loyalties to third parties.~~

8 4. Recognize conflicts of interest and inform all parties of the nature and directions of
9 loyalties and responsibilities involved.

10 ~~23E. Report~~ Persons licensed by the board shall report to the board known or suspected
11 ~~violations of the laws and regulations governing the practice of licensed or certified~~
12 ~~health care practitioners~~ Department of Health Professions any information of which he
13 may become aware in his professional capacity indicating that there is a reasonable
14 probability that a person licensed or certified as a mental health service provider, as
15 defined in §54.1-2400.1 of the Code of Virginia, may have engaged in unethical,
16 fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and
17 regulations.

18 **18 VAC 115-60-140. Grounds for revocation, suspension, probation, reprimand,**
19 **censure, or denial of renewal of license.**

20

1 A. Action by the board to revoke, suspend ~~or decline to renew~~ , deny issuance or renewal of
2 a license, or take other disciplinary action may be taken in accord with the following:

3

4 1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or
5 aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 (~~§~~
6 ~~54.1-3500 et seq.~~) of the Code of Virginia, any other statute applicable to the practice of
7 substance abuse treatment, or any provision of this chapter;

8

9 2. ~~Procuring~~ Procurement of a license by fraud or misrepresentation;

10

11 3. Conducting one's practice in such a manner as to make it a danger to the health and
12 welfare of one's clients or to the public, or if one is unable to practice substance abuse
13 treatment with reasonable skill and safety to clients by reason of illness, abusive use of
14 alcohol, drugs, narcotics, chemicals, or other type of material or result of any mental or
15 physical condition;

16

17 4. ~~Negligence in professional conduct or nonconformance with the Standards of Practice~~
18 (~~18 VAC 115-60-130~~) Intentional or negligent conduct that causes or is likely to cause
19 injury to a client;

20

21 5. Performance of functions outside the demonstrable areas of competency; or

22

1 6. Violating or abetting another person in the violation of any provision of any statute
2 applicable to the practice of licensed substance abuse therapy, or any part or portion of this
3 chapter.

4
5 B. ~~Petition for rehearing.~~ Following the revocation or suspension of a license, the licensee
6 may petition the board for ~~rehearing~~ reinstatement upon good cause shown or as a result of
7 substantial new evidence having been obtained that would alter the determination reached.

8
9 **18 VAC 115-60-150. Reinstatement following disciplinary action.**

10
11 A. Any person whose license has been ~~revoked~~, suspended or who has been denied renewal
12 reinstatement by the board order, having met the terms of the order, under the provisions of
13 ~~18 VAC 115-60-140~~ may, ~~two years subsequent to such board action,~~ -submit a new
14 application and fee to the board for reinstatement of licensure.

15
16 B. The board in its discretion may, after a ~~hearing~~ an administrative proceeding, grant the
17 reinstatement sought in subsection A of this section.

18
19 ~~C. The applicant for such reinstatement, if approved, shall be licensed upon payment of the~~
20 ~~appropriate fee applicable at the time of reinstatement.~~

21

22