

NEW JERSEY REGISTER
VOLUME 34, NUMBER 14

MONDAY, JULY 15, 2002
RULE ADOPTION

LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

STATE BOARD OF MARRIAGE AND FAMILY THERAPY EXAMINERS
PROFESSIONAL COUNSELORS EXAMINERS COMMITTEE
PROFESSIONAL CONUSELORS AND ASSOCIATE COUNSELORS
SEXUAL MISCONDUCT

Adopted New Rule: N.J.A.C. 13:34-19.3

Proposed: December 3, 2001 at 33 N.J.R. 4060(a).

Adopted: March 14, 2002 by the New Jersey State Board of Marriage and Family Therapy Examiners, Florence Schatten, President.

Filed: June 21, 2002 as R.2002 d.236, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:8B-13.

Effective Date: July 15, 2002.

Expiration Date: October 22, 2003.

Summary of Public Comment and Agency Response:

No comments were received.

Summary of Agency Initiated Changes Upon Adoption:

The Board received a comment regarding the proposed sexual misconduct rule for rehabilitation counselors, N.J.A.C. 13:34-28.3, which questioned whether the 24-month prohibition applies to a former direct supervisee. The Board responded, in its notice of adoption published elsewhere in this issue of the New Jersey Register, that the 24-month prohibition was never intended to apply to direct supervisees or research subjects and made technical changes to subsections (b) and (i) to clarify the rule. Since the issue raised in the rehabilitation counselor proposal is the same as in this proposal applicable to professional and associate counselors, the Board has made the same technical changes in the rule by inserting the word "current" in subsection (b) and (i).

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the adopted new rule.

Full text of the adoption follows:

<< **NJ ADC 13:34-19.3** >>

13:34-19.3 Sexual misconduct

(a) As used in this section, the following terms have the following meanings unless the context indicates otherwise:

"Client" means any person who is the recipient of a professional counseling service rendered by a licensee.

"Client" for purposes of this section also means a person who is the subject of professional assessment even if the purpose of that assessment is unrelated to treatment. "Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification.

"Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the client's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or client's body into or near the genital, anal, or other opening of the other person's body.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee's activities or role as a provider of professional counseling services, and that is either unwelcome, offensive to a reasonable person, or creates a hostile work place environment, and the licensee knows, should know, or is told this, or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act, or multiple acts, and may include, but is not limited to, conduct of a licensee with a client, co-worker, employee, student, supervisee or research subject, whether or not such individual is in a subordinate position to the licensee.

(b) A licensee shall not engage in sexual contact with a current client, a former client to whom professional counseling services were rendered within the immediately preceding 24 months, a current student, a <<+current+>> direct supervisee, or a <<+current+>> research subject.

(c) In circumstances where the client is, or should be recognized by the licensee as, clearly vulnerable by reason of emotional or cognitive disorder to exploitive influence by the licensee, the prohibition on sexual contact shall extend indefinitely.

(d) A licensee shall not engage in sexual harassment in a professional setting (including, but not limited to, an office, hospital or health care facility) or outside of the professional setting.

(e) A licensee shall not accept as a client a current or former sexual partner.

(f) A licensee shall not conduct or engage in therapy groups, activities which promote, allow, or involve physical contact of a sexual nature between the licensee and group members or between group members themselves.

(g) A licensee shall not engage in any discussion of an intimate sexual nature with a client unless that discussion is directly related to legitimate client needs and furthers the client's professional counseling treatment. At no time shall any such discussions include disclosure by the licensee to the client of his or her own intimate sexual relations or relationships.

(h) A licensee shall not engage in any other activity in a professional counseling relationship which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or is for the sexual arousal, sexual gratification, or sexual abuse of the licensee or client.

(i) A licensee shall not seek or solicit sexual contact with a current client, a former client to whom counseling services were rendered within the immediately preceding 24 months, a current student, a

<<+current+>> direct supervisee, or a <<+current+>> research subject and shall not seek, solicit, accept, or participate in sexual contact with any person in exchange for professional services.

(j) Violation of any of the prohibitions or directives set forth in (b) through (i) above shall be deemed to constitute gross or repeated malpractice pursuant to N.J.S.A. 45:1-21(c) and (d) respectively, or professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(k) It shall not be a defense to any action under this section that:

1. The client, former client, student, supervisee, or research subject solicited or consented to sexual contact with the licensee; or
2. The licensee was in love with or had affection for the client, former client, student, supervisee or research subject.



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