

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 22 PSYCHOLOGISTS AND PSYCHOLOGIST ASSOCIATES
PART 2 CODE OF CONDUCT

16.22.2.1 ISSUING AGENCY: Regulation and Licensing Department, New Mexico State Board of Psychologist Examiners.
[16.22.2.1 NMAC - Rp, 16.22.2.1 NMAC, 11/15/2006]

16.22.2.2 SCOPE: The psychologist shall be governed by this code of conduct while providing psychological services in any context or whenever he is functioning in a professional capacity as a psychologist. This code shall not supersede state, federal, or provincial statutes. This code shall apply to the conduct of all licensees and applicants, including the applicant's conduct during the period of education, supervision, training, and employment, which is required for licensure. This conduct includes, but is not limited to the list of disqualifying criminal convictions referenced in 16.22.2.20 NMAC. The term "psychologist," as used within this code, shall apply to both licensee and applicant.
[16.22.2.2 NMAC - Rp, 16.22.2.2 NMAC, 11/15/2006; A, 02/10/2022]

16.22.2.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Professional Psychologists Act, Section 61-9-6.
[16.22.2.3 NMAC - Rp, 16.22.2.3 NMAC, 11/15/2006]

16.22.2.4 DURATION: Permanent.
[16.22.2.4 NMAC - Rp, 16.22.2.4 NMAC, 11/15/2006]

16.22.2.5 EFFECTIVE DATE: November 15, 2006, unless a later date is cited at the end of a section.
[16.22.2.5 NMAC - Rp, 16.22.2.5 NMAC, 11/15/2006]

16.22.2.6 OBJECTIVE: This part establishes the standards against which the required professional conduct of a psychologist is measured. Each licensee and applicant will be governed by this part whenever providing psychological services. A violation of this part is sufficient reason for disciplinary action pursuant to the Act.
[16.22.2.6 NMAC - Rp, 16.22.2.6 NMAC, 11/15/2006]

16.22.2.7 DEFINITIONS: [RESERVED]
[Refer to 16.22.1.7 NMAC]

16.22.2.8 RULES OF COMPETENCE:

A. Limits on practice. The psychologist shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

B. Maintaining competency. The psychologist shall maintain current competency in the areas in which he practices, through continuing professional education, consultation, and/or other procedures, in conformance with current standards of scientific and professional knowledge.

C. Cultural competency. Psychologists with restricted and unrestricted licenses and psychologist associates shall complete eight hours of cultural competence coursework promulgated by the board during the first year of licensure; and also shall take four additional hours in cultural competence, as deemed satisfactory to the board, every two years as detailed in 16.22.9 NMAC.

D. Adding new services and techniques. The psychologist, when developing competency in a service or technique that is either new to the psychologist or new to the profession, shall engage in ongoing consultation with other psychologists or relevant professionals, and shall seek appropriate education and training in the new area. The psychologist shall inform clients or patients of the innovative nature and the known risks and benefits associated with the services, so that the client or patient can exercise freedom of choice concerning such services.

E. Referral. The psychologist shall make or recommend referral to professional, technical, or administrative, or public resources when such referral is clearly in the best interest of the clients or patient(s).

F. Bases for Assessments. Psychologists base the opinions contained in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings except when:

- (1) psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions;
- (2) despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions and appropriately limit the nature and extent of their conclusions or recommendations; or
- (3) psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

G. Maintenance and retention of records.

(1) The psychologist rendering professional services to a client or patient shall maintain professional records that include:

- (a) the presenting problem(s) or the reason the client(s) or patient(s) sought the psychologist's services;
- (b) diagnosis and clinical formulation;
- (c) the fee arrangement;
- (d) the date and substance of each billed contact or service;
- (e) any test results or other evaluative results obtained and any basic test data from which they were derived;
- (f) notation and results of formal consultations with other providers;
- (g) a copy of all test or other evaluative reports prepared as part of the professional relationship;
- (h) the date of termination of services.

(2) The psychologist shall ensure that all data entries in the professional records are maintained for a period of not less than five years after the last date that service was rendered. The psychologist shall comply with other legal requirements for record retention, even if longer periods of retention are required for other purposes.

(3) The psychologist shall store and dispose of written, electronic, and other records in a manner that protects confidentiality.

(4) For each person professionally supervised, the psychologist shall maintain for a period of not less than five years after the last date of supervision a record of the supervisory session that shall include, among other information, the type, place, and general content of the session.

(5) Upon request by the client, patient, or legal representative of the client or patient, the psychologist shall release records under his control, except as otherwise provided in these rules and regulations or state law. Lack of payment for services does not constitute grounds for refusing to release client or patient records. [16.22.2.8 NMAC - Rp, 16.22.2.8 NMAC, 11/15/2006; A, 9/16/2010; A, 7/1/2018; A, 1/08/2023]

16.22.2.9 DUAL RELATIONSHIPS:

A. The psychologist shall not undertake or continue a professional relationship with a client or patient when the objectivity or competency of the psychologist is compromised because of the psychologist's present or previous familial, social, sexual, emotional, or legal relationship with the client or a relevant person associated with or related to the client.

B. The psychologist, in interacting with a current or former client or patient to whom the psychologist has at any time within the previous 12 months rendered counseling, psychotherapeutic, or other professional psychological services for treatment or amelioration of emotional distress or behavioral inadequacy, shall not:

- (1) engage in any verbal or physical behavior toward the client or patient which is sexually seductive, demeaning, or harassing; or
- (2) engage in sexual intercourse, or sexual contact or other sexual intimacies with the client or patient; or
- (3) enter into a business or financial (other than fees for professional services) or other potentially exploitative relationship with the client or patient.

C. The prohibitions set out in Paragraph (2) of Subsection B of 16.22.2.9 NMAC shall not be limited to the 12-month period but shall extend longer unless the psychologist can demonstrate that the client or patient is not vulnerable to exploitative influence by the psychologist. The psychologist who engages in such sexual or financial relationship after the 12 months following cessation or termination of treatment bears the burden of proving that there has been no exploitation, in light of all relevant factors, including:

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

suggesting or inviting the possibility of a post-termination sexual or other potentially exploitative relationship with the patient or client.

D. The psychologist shall not serve in varied capacities that confuse the role of the psychologist. Such confusion is most likely when the psychologist changes from one role to another and fails to make clear who is the client or patient. The psychologist is responsible for taking appropriate precautions to avoid harmful dual relationships and is responsible for informing all affected individuals, preferably in writing, when such a change is necessary. Examples of situations requiring extra caution include:

- (1) treating a person who is the family member of a current or former patient or client;
- (2) treating a family as a unit after treating a family member or, conversely, treating a family member after treating the family as a unit;
- (3) moving from a confidential role to a non-confidential one, such as from therapist or mediator to evaluator, arbitrator, or "wise-person"; and
- (4) moving from a position of authority into a confidential role, such as from court-appointed evaluator to the role of therapist.

E. If one family member is a minor, the psychologist shall ensure that the child understands how the role of the psychologist is changing (for example, moving from therapist for the child to therapist for the family) and shall explain the limits of confidentiality that result from this changed role.

F. When a psychologist agrees to provide services to several persons who have a relationship (such as husband and wife or parents and children), the psychologist shall clarify at the outset:

- (1) which of the individuals are patients or clients and
- (2) the relationship the psychologist will have with each person; this clarification includes the role of the psychologist and the possible uses of services provided or information obtained.

G. As soon as it becomes apparent that the psychologist may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife and then witness for one party in a divorce proceeding), the psychologist shall clarify and withdraw from or adjust roles, as appropriate. [16.22.2.9 NMAC - Rp, 16.22.2.9 NMAC, 11/15/2006; A, 3/21/2009; A, 7/1/2018]

16.22.2.10 PATIENT WELFARE:

A. Informed consent for therapy and evaluation.

(1) The psychologist shall appropriately document and obtain appropriate informed consent for therapy or related procedures or evaluation. Informed consent means that the person:

- (a) has the capacity to consent;
- (b) has been informed of significant information concerning the therapy or evaluation in language that is understandable; and
- (c) has freely and without undue influence expressed consent.

(2) When persons are legally incapable of giving informed consent, the psychologist shall obtain informed consent from a legally authorized person, if such substitute consent is permitted by law.

(3) In addition, the psychologist shall:

- (a) inform those persons who are legally incapable of giving informed consent about the proposed interventions or evaluations in a manner commensurate with the persons' psychological capacities;

- (b) seek or obtain their assent to those interventions or evaluations; and
- (c) consider such person's preferences and best interests.

B. Limits of confidentiality in forensic, court-ordered, or child custody evaluations.

(1) The psychologist shall explain the limits of confidentiality to parties at the outset, before the evaluation begins, and the explanation should be documented. The psychologist shall also clarify how the information will be used and which parties or entities will have access to the evaluation. The procedures of the evaluation and their purpose should be described to the parties.

(2) In the case of child custody evaluations, the limits of confidentiality shall be explained at the initial meeting with each parent and the children.

C. Terminating the professional relationship.

(1) The psychologist shall not abandon his clients or patients.

(2) The psychologist shall terminate a professional relationship when it becomes clear that the patient no longer needs the service, is not benefiting from the service, is being harmed by continued service, or if the psychologist is acting outside of his or her area of competence.

(3) Prior to termination, for whatever reason, except where precluded by circumstances outside of the control of the psychologist including the patient's conduct, or changes in administrative or financial arrangements, if possible, the psychologist shall discuss the patient's views and needs, provide appropriate pre-termination counseling, suggest alternative service providers as appropriate, and take other reasonable steps to facilitate transfer of responsibility to another provider, if the patient needs one immediately.

D. Impaired psychologist. The psychologist shall not undertake or continue a professional relationship with a client when the psychologist is impaired due to mental, emotional, physiologic, pharmacologic, or substance abuse conditions.

E. Continuity of care. The psychologist shall make arrangements for another appropriate professional or professionals to deal with emergency needs of his clients, as appropriate, during periods of his foreseeable absences from professional availability. The psychologist shall also make advance arrangements for managing the transfer of care for his clients or the closure of his clients' cases upon his illness, incapacity or death.

F. Exploitative relationships.

(1) The psychologist shall not exploit persons over whom the psychologist has supervisory, evaluative, or other authority such as applicants, supervisees, employees, research participants, and clients or patients.

(2) The psychologist shall not engage in sexual relationships with applicants, supervisees in training over whom the psychologist has evaluative or direct authority.

G. Solicitation of business by patients. The psychologist shall not induce the patient to solicit business on behalf of the psychologist.

H. Referrals. The psychologist providing services to a client or patient shall make an appropriate referral of the client or patient to another professional when requested to do so by the client or patient, when such a referral is in the best interest of the client or patient or when the client or patient presents symptoms or behaviors that are outside the psychologist's area of practice.

I. Consultations. When consulting with colleagues, the psychologist:

(1) shall not share confidential information that could lead to the identification of a patient, client, research participant, or other person or organization without prior written consent; and

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

J. Avoiding harm. Psychologists take reasonable steps to avoid harming their patients, research participants, applicants and others with whom they work, and minimize harm where it is foreseeable and unavoidable.

[16.22.2.10 NMAC - Rp, 16.22.2.10 NMAC, 11/15/2006; A, 7/1/2018]

16.22.2.11 WELFARE OF SUPERVISEE AND RESEARCH SUBJECTS:

A. Welfare of supervisees. The psychologist shall not exploit a supervisee in any way sexually, financially, or otherwise.

B. Welfare of research subjects. The psychologist shall respect the dignity and protect the welfare of his research subjects, and shall comply with all relevant statutes and the board's regulations concerning treatment of research subjects.

[16.22.2.11 NMAC - Rp, 16.22.2.11 NMAC, 11/15/2006]

16.22.2.12 PROTECTING CONFIDENTIALITY:

A. Safeguarding confidential information. The psychologist shall safeguard confidential information obtained in the course of practice, teaching, research, or other professional services. The psychologist

shall disclose confidential information to others only with the written informed consent of the patient or client in accordance with the Public Health Act, Section 24-1-20 NMSA 1978, except as provided in these regulations.

B. Discussing the limits of confidentiality.

(1) The psychologist shall discuss with persons and organizations with whom the psychologist establishes a professional or scientific relationship (including, to the extent feasible, minors and their legal representatives):

(a) the relevant limitations on confidentiality, including limitations where applicable in group, marital, and family therapy or in organizational consulting; and

(b) the foreseeable uses of the information generated through his services.

(2) Unless it is not feasible or is contraindicated, the psychologist shall discuss confidentiality at the outset of the relationship and thereafter as new circumstances warrant.

C. Disclosure without informed written consent. Except as otherwise permitted under the provisions of the MHDDC, Section 43-1-19 NMSA, 1978, and the CMHDDA, Sections 32A-6-1 thru 32A-6-22 NMSA 1978 and as amended, a psychologist may disclose confidential information without the informed written consent of the patient/client when the psychologist judges that disclosure is necessary to protect against a substantial and imminent risk of serious harm being inflicted by the patient on the patient or another person. In such case, the psychologist shall limit disclosure of the otherwise confidential information to only those persons and only that content necessary to address the imminent risk of harm. When the client is an organization, disclosure shall be made only after the psychologist has made a reasonable and unsuccessful attempt to have the problems corrected within the organization.

D. Services involving more than one interested party. In a situation in which more than one party has an appropriate interest in the professional services rendered by the psychologist to a patient(s) and client(s), the psychologist shall, to the extent possible, clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services. The relevant limitations on confidentiality shall be clarified, including limitations where applicable in group, marital, or family therapy or in organizational consulting. Such clarification is specifically indicated, among other circumstances, when the patient or client is an organization. The psychologist shall also communicate the foreseeable uses of the information generated through his services.

E. Legally dependent patients. At the beginning of a professional relationship, to the extent that the patient or client can understand, the psychologist shall inform a patient or client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality with respect to the patient or client's communications with the psychologist.

F. Limited access to client records. The psychologist shall limit access to patient or client records to preserve the patient or client's confidentiality and shall make effort to ensure that all persons working under the psychologist's authority comply with the requirements for confidentiality of patient or client material.

G. Release of confidential information. The psychologist may release confidential information upon court order, or to conform to state or federal law, rules or regulations. The psychologist shall consult with others and take appropriate action if a court order appears to violate confidentiality rights under state or federal law, rules or regulations.

H. Reporting of abuse of children and vulnerable adults. The psychologist shall be familiar with the Child Abuse and Neglect Act (CANa), Sections 32A-4-1 thru 32A-4-34 NMSA 1978, Resident Abuse and Neglect Act (RANA), Sections 30-47-1 thru 30-47-10 NMSA 1978, and any other relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with the mandatory requirements of such laws.

I. Discussion of client information among professionals. When rendering professional services as part of a team or when interacting with other appropriate professionals concerning the welfare of the client, the psychologist may share confidential information about the client provided the psychologist ensures that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.

J. Disguising confidential information. When a case report or other confidential information is used as the basis of teaching, research, or other published reports, the psychologist shall exercise reasonable care to ensure that the case report or information is appropriately disguised to prevent client identification.

K. Observation and electronic recording. The psychologist shall ensure that diagnostic interviews or therapeutic sessions with a patient are observed or electronically recorded only with the informed written consent of the patient or his legal guardian, if any. The patient may withdraw consent at any time verbally or in writing unless otherwise required by law.

L. Confidentiality after termination of a professional relationship. The psychologist shall continue to treat information regarding a patient as confidential after the professional relationship between the psychologist and the patient has ceased.

M. Confidentiality of electronic transmission. The psychologist shall ensure that confidential information is not transmitted in any way that compromises confidentiality.

[16.22.2.12 NMAC - Rp, 16.22.2.12 NMAC, 11/15/2006]

16.22.2.13 DISCLOSURE AND MISREPRESENTATION OF SERVICES:

A. Definition of public statements. Public statements include but are not limited to paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curriculum vitae, interviews or comments for use in media, statements in legal proceedings, lectures, and public oral presentations.

B. Display of license. The psychologist shall display his current New Mexico license to practice psychology, on the premises of his primary professional office.

C. Misrepresentation of qualifications. The psychologist shall not misrepresent directly or by implication his professional qualifications such as type of licensure, education, experience, and areas of competence.

D. Misrepresentation of affiliations. The psychologist shall neither misrepresent nor permit the misrepresentation of his professional qualifications, affiliations, or purposes, or those of the institutions, organizations, products, and/or services with which he is associated.

E. False or misleading information regarding professional services. The psychologist shall not include false or misleading information in public statements concerning professional services offered.

(1) When announcing or advertising professional services and/or describing his professional qualifications, the psychologist may list the following:

- (a)** degrees obtained (Ph.D. or Psy.D.) and the area in which the degree is obtained (clinical, counseling, or school);
- (b)** the institutions from which the degrees were obtained;
- (c)** date, type, and level of certification or licensure;
- (d)** diploma status; membership status in professional organizations;
- (e)** address; telephone number; office hours;
- (f)** a brief listing of the type of psychological services offered;
- (g)** an appropriate presentation of fee information;
- (h)** foreign languages spoken; and
- (i)** policy with regard to third-party payments.

(2) Additional relevant or important consumer information may be included if not prohibited by other sections of the code. The psychologist must disclose and list whether his New Mexico license is regular, provisional, temporary, emergency or inactive, and include its expiration date.

(3) When announcing or advertising the availability of psychological products, publications, or services, the psychologist shall not display any affiliation with an organization in a manner that falsely implies the sponsorship or certification of that organization. In particular, the psychologist shall not offer professional organization or fellowship status in a way that implies specialized professional competence or qualifications. Public statements shall not contain:

- (a)** any statement likely to mislead or deceive because it makes only a partial disclosure of relevant facts;
- (b)** a statement of a patient's laudatory statements about the psychologist or his services or products;
- (c)** a statement intended or likely to create false or unjustified expectations of favorable results;
- (d)** a statement implying unusual, unique, or one-of-a-kind abilities;
- (e)** a statement intended or likely to appeal to a prospective patient's fears, anxieties; or emotions concerning the possible consequences of the prospective client's failure to obtain the offered services;
- (f)** a statement concerning the comparative desirability of offered service;
- (g)** a statement of direct solicitation of individual clients.

F. Promotion of psychological services and products. Psychologists associated with the development or promotion of psychological devices, books, or other products offered for sale must ensure that announcements and advertisements are presented in an accurate and truthful manner.

(1) The psychologist shall offer his/ her services, products, and publications in an accurate and truthful manner, avoiding statements or claims likely to deceive or mislead such as misrepresentation through sensationalism, exaggeration, or superficiality. The psychologist shall be guided by the primary obligation to aid the public in forming their own informed judgments, opinions, and choices.

(2) The psychologist shall make efforts to ensure that statements in catalogues, workshops, and seminar outlines are not false, misleading, or inaccurate. Announcements, brochures, or advertisements describing workshops, seminars, or other programs shall accurately represent the intended audience, eligibility requirements, educational objectives, and nature of the material to be covered, as well as the education, training, and experience of the persons presenting the programs. The psychologist shall make clear the nature of the services, costs, and other obligations to be accepted by research participants whenever fees or clinical or other professional services are offered as inducement.

G. Misrepresentation of services or products. The psychologist shall not associate with or permit his name to be used in connection with any services or products in such a way as to misrepresent:

- (1) the services or products;
- (2) the degree of his responsibility for the services or products; or
- (3) the nature of his association with the services or products.

H. In-person solicitation. The psychologist shall not engage, directly or through agents, uninvited, in-person solicitation of business from actual or potential psychotherapy patients, or other persons who, because of their particular circumstances, are vulnerable to undue influence.

[16.22.2.13 NMAC - Rp, 16.22.2.13 NMAC, 11/15/2006]

16.22.2.14 FEES AND STATEMENTS:

A. Disclosure of charges for services. The psychologist shall provide complete and accurate information about the charge of professional services to the client or patient, a prospective client or patient, or third-party payor.

B. Accuracy in reports to payors and funding sources. In reports to payors for services or sources of research funding, the psychologist shall accurately state the nature of the research or services provided, the fees or charges, and, where applicable, the identity of the provider, the findings, and the diagnosis.

C. Referrals and fees. When a psychologist pays, receives payment from, or divides fees with another professional other than in an employer-employee relationship, the payment to each shall be based on the services (clinical, consultative, administrative, or other) provided and shall not be based on the referral itself. Referral fees are prohibited.

D. Fees and financial arrangements. As early as is feasible in a professional or scientific relationship, the psychologist and the patient, or client, should reach an agreement specifying the compensation and the billing arrangements.

- (1) The psychologist shall not misrepresent his fees.
- (2) If limitations to services can be anticipated because of the client or patient's finances, the psychologist should discuss such anticipated limitations with the patient or client.
- (3) If the patient or client does not pay for services as agreed, and if the psychologist wishes to use collection agencies or legal measures to collect the fees, the psychologist shall first inform the patient or client that such measures will be taken and provide an opportunity for the patient or client to make prompt payment.
- (4) Prior to conducting a custody evaluation, the psychologist shall clarify to the parties involved the charges, or estimation of costs, and the manner in which fees will be collected. A specific written fee agreement shall be signed by all parties.

[16.22.2.14 NMAC - Rp, 16.22.2.14 NMAC, 11/15/2006; A, 7/1/2018]

16.22.2.15 ASSESSMENT PROCEDURES:

A. Confidential information. The psychologist shall treat the results of a psychological assessment as confidential information subject to the same rules and regulations as other patient information.

B. Use of assessment in general and with special populations. Psychologists who administer, score, interpret, or use assessment techniques shall be familiar with reliability, validity, standardization, comparative, and outcome studies of the techniques they use and with the proper application and use of those techniques.

- (1) The psychologist shall recognize limits of the confidence with which diagnoses, judgments, or predictions can be made about individuals.

(2) The psychologist shall identify situations in which particular assessment techniques or norms may not be applicable or may require adjustment in administration or interpretation because of factors such as an individual's gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

C. Communication of results. The psychologist shall communicate results of the assessment to the client or patient, parents, legal guardians, or other agents of the client or patient in as clear and understandable a manner as reasonably possible and with respect for the client or patient.

D. Reservations concerning results. The psychologist shall include in the assessment report the results of any limitations of the assessment procedures as may apply to the reliability or validity of the assessment techniques or the interpretation of results.

(1) Issues of individual differences, such as language, ethnicity, culture, socioeconomic, religion, disability, and lifestyle differences, should be carefully considered and addressed whenever relevant.

(2) Any limitations of results derived from the factors in Paragraph (1) of Subsection D of 16.22.2.15 NMAC should be clearly stated in the psychological report. The psychological report of an individual on whom psychological tests are not normed or adequately normed should clearly indicate the limitations of the assessment and the need for caution in interpreting test results.

E. Information for professional users.

(1) The psychologist offering an assessment procedure or automated interpretation service to non-psychologist professionals shall accompany this offering with information that fully describes:

(a) the development of the assessment procedure or service;

(b) evidence of validity and reliability; and

(c) characteristics of the normative population.

(2) The psychologist shall explicitly state the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly. The psychologist shall ensure that advertisements for the assessment procedure or interpretive service are factual and accurately descriptive.

F. Assessing quality of parenting in child custody evaluations. There may be situations in which one parent is unavailable for direct evaluation due to geographic distance, severe pathology, or refusal to participate. While the psychologist can assess the quality of parenting of the available parent, no comparison can be made in terms of which parent is better; nor can conclusions be derived about the fitness or level of psychological functioning of the unavailable parent.

G. Collateral contacts in child custody evaluations. The identification, extent, and purpose of collateral contacts made in the course of an evaluation shall be clearly explained early, even within the referral process. Collateral contacts include people who represent a major presence in the children and parents' environment.

H. Test settings. Clients or patients should take standardized tests in a setting that will preserve the integrity of the tests and the information. When possible, all assessment procedures and techniques should be administered in a clinical setting.

I. Single-test assessments. A single-test assessment should not be the sole basis for major opinions or decisions.

J. Outdated tests. The psychologist shall not base assessments, decisions, or recommendations on outdated tests or test data as defined in Paragraph (49) of Subsection A of 16.22.1.7 NMAC.
[16.22.2.15 NMAC - Rp, 16.22.2.15 NMAC, 11/15/2006; A, 7/1/2018]

16.22.2.16 TEST SECURITY:

A. Limits of reproduction and description of test materials. The psychologist shall not reproduce or describe in public or in publications subject to general distribution any psychological tests or other assessment devices, the value of which depends in whole or in part on the naiveté of the subject, in ways that might invalidate the techniques. The psychologist shall limit access to such tests or devices to persons with professional interests who will safeguard their use.

B. Safeguarding test materials. The psychologist shall safeguard testing materials in accordance with the necessity to maintain test security. The psychologist should take reasonable measures to protect test manuals, testing stimuli, and raw test data from disclosure to those who are not qualified to properly appraise those materials. Appropriate measures to safeguard test materials include educating non-psychologists about the professional duties of psychologists and the importance of safeguarding the tests, and asking that the materials be released only to qualified persons.

[16.22.2.16 NMAC - Rp, 16.22.2.16 NMAC, 11/15/2006; A, 7/1/2018]

16.22.2.17 VIOLATIONS OF LAW:

A. The psychologist shall not use fraud, misrepresentation, or deception in applying for or obtaining a psychologist license.

B. The psychologist shall not use fraud in:

- (1) assisting another to obtain a psychologist license;
- (2) billing clients or third-party payors;
- (3) providing psychological service;
- (4) reporting the results of psychological evaluations or services; or
- (5) conducting any other activity related to the practice of psychology.

[16.22.2.17 NMAC - Rp, 16.22.2.17 NMAC, 11/15/2006]

16.22.2.18 AIDING ILLEGAL PRACTICE:

A. Aiding unauthorized practice. The psychologist shall not aid or abet another person in misrepresenting his professional credentials or illegally engaging in the practice of psychology.

B. Delegating professional responsibility. The psychologist shall not delegate responsibilities:

(1) to persons who are not appropriately licensed, credentialed, or otherwise qualified to provide assessment, diagnosis, or treatment; or

(2) to persons who are not psychology predoctoral or postdoctoral trainees.

C. Providing supervision. The psychologist shall exercise appropriate supervision over supervisees, as set forth in the board regulations.

[16.22.2.18 NMAC - Rp, 16.22.2.18 NMAC, 11/15/2006]

16.22.2.19 RESOLVING ETHICAL ISSUES:

A. Improper complaints. The psychologist shall not file or encourage the filing of ethics complaints to the board that are frivolous.

B. Familiarity with this code. The psychologist has an obligation to be familiar with the code, other applicable ethics codes, and their application to psychologists' work. Lack of awareness or misunderstanding of the code is not a defense to a charge of unethical conduct.

C. Confronting ethical issues. When a psychologist is uncertain whether a particular situation or course of action would violate this code, the psychologist shall consult with other psychologists knowledgeable about ethical issues, with state or national psychology ethics committees, or with other appropriate authorities in order to choose a proper course of action. Such consultation is not a defense to a charge of unethical conduct.

D. Mandatory reporting. If a psychologist has reason to believe that another psychologist is engaged in a prohibited dual relationship with a client or patient, exhibits habitual or excessive use of drugs and alcohol that adversely affect professional practice or commits fraud or gross incompetence, the psychologist must report the suspected violation to the board. The psychologist shall not violate patient confidentiality in order to make a report to the board regarding another psychologist's behavior. The psychologist may disclose such information without the patient's consent in urgent situations as described in Subsection C of 16.22.2.12 NMAC.

E. Cooperating with complaint and ethics committees. The psychologist shall cooperate in investigations, proceedings, and requirements of this code, the ethical principles of psychologists and code of conduct of the American psychologist association, or any affiliated state psychological association to which he belongs. In doing so, the psychologist shall make reasonable efforts to resolve any issues of confidentiality. Failure to cooperate is a separate violation of the code.

[16.22.2.19 NMAC - Rp, 16.22.2.19 NMAC, 11/15/2006; A, 1/08/2023]

16.22.2.20 DISQUALIFYING FELONY CRIMINAL CONVICTIONS:

A. Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or a licensee from retaining a license issued by the board.

- (1) homicide, voluntary manslaughter, involuntary manslaughter, vehicular homicide;
- (2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances, possession of controlled substances;
- (3) human trafficking, kidnapping, false imprisonment, assault or battery;

- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses, failure to register or report as a sex offender;
- (5) crimes involving abuse, neglect; or exploitation of an incapacitated adult, abuse or neglect of a care facility resident;
- (6) crimes involving child abuse or neglect, child endangerment, child solicitation; sexual exploitation of children, delivering of drug paraphernalia to minors, selling or giving alcohol to minors, contributing to the delinquency of a minor;
- (7) crimes involving robbery, larceny, extortion, burglary, unlawful or dangerous use of explosives, arson, making a bomb scare, tampering with evidence or receiving stolen property.
- (8) financial crimes involving fraud, forgery, embezzlement, or credit card fraud. Fraud involving governmental or private insurance;
- (9) aggravated driving while under the influence of intoxicating liquor or drugs, 2nd or subsequent DWI offense;
- (10) crimes involving perjury, fraudulent misrepresentation, deceit or collusion.
- (a) This includes a felony conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere.
- (b) The term “felony conviction” shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon, or an appeal of the conviction has been sought.
- B.** The board shall not consider the fact of a felony criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A. of this rule.
- C.** The board shall not deny, suspend or revoke a license on the sole basis of a felony criminal conviction unless the conviction in question is on of the disqualifying criminal convictions listed in subsection A of this rule.
- D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual’s conduct to the extent that such conduct violated the Professional Psychologist Act or the rules of the board, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying felony criminal convictions listed in subsection A of this rule.
- E.** In connection with an application for licensure for licensure renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal record of any of the following;
- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a felony conviction for any crime other than the disqualifying criminal convictions listed in subsection a of this rule
- F.** If the board defers a decision regarding a specific applicant based on a disqualifying felony criminal conviction, that applicant is entitled to notice of the board’s decision and an opportunity for a hearing.
- [16.22.2.20 NMAC – N, 02/10/2022]

HISTORY OF 16.22.2 NMAC:

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

SBPE 3, Code of Conduct, filed 11/15/1979.

SBPE 3, Code of Conduct, filed 10/29/1982.

NMSBPE Rule 3, Code of Conduct, filed 4/22/1985.

NMBPE Rule 1, Code of Conduct, filed 12/28/1989.

Rule No. 1, Code of Conduct, filed 4/24/1995.

History of Repealed Material:

16 NMAC 22.2, Code of Conduct - Repealed, 4/16/2000.

16.22.2 NMAC, Code of Conduct - Repealed 11/15/2006