

Actions that Constitute Unprofessional Conduct

This information is provided in compliance with Vermont State law for your benefit and protection. As a client you are entitled to professional and ethical conduct and treatment at all times. Please read the following pages. It includes information about professional conduct statutes, guidelines, and your entitlements as a client.

The Office of Professional Regulation provides Vermont licensees, certifications, and registrations for over 37,000 practitioners and businesses. Thirty-nine professions and occupations are supported and managed by this office, including Marriage and Family Therapists.

Each profession or occupation is governed by laws defining professional conduct. Consumers who have inquiries or wish to obtain a form to register a complaint may do so by calling (802) 828-1505, or by writing to the Director of the Office, Secretary of State's Office, National Life Bldg., North, Floor 2, Montpelier, VT 05620-3402.

Upon receipt of a complaint, an administrative review determines if the issues raised are covered by the applicable professional conduct statute. If so, a committee is assigned to investigate, collect information, and recommend action or closure to the appropriate governing body.

All complaint investigations are confidential. Should the investigation conclude with a decision for disciplinary action against a professional's license and ability to practice, the name of the license holder will then be made public.

Complaint investigations focus on licensure and fitness of the licensee to practice. Disciplinary action, when warranted, ranges from warning to revocation of license, based on the circumstances. You should not expect a return of fees paid or additional unpaid services as part of the results of this process. If you seek restitution of this nature, consider consulting with the Consumer Protection Division of the Office of the Attorney General, retaining an attorney, or filing a case in Small Claims Court.

Vermont Secretary of State
Office of Professional Regulations
Board of Allied Mental Health Practitioners
The Vermont Statutes
Title 3: Executive
Chapter 5: SECRETARY OF STATE
§ 129a. Unprofessional conduct

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items, or any combination of items, whether or not the conduct at issue was committed within or outside the state, shall constitute unprofessional conduct:

- (1) Fraudulent or deceptive procurement or use of a license.
- (2) Advertising that is intended or has a tendency to deceive.

- (3) Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession.
- (4) Failing to comply with an order of the board or violating any term or condition of a license restricted by the board.
- (5) Practicing the profession when medically or psychologically unfit to do so.
- (6) Delegating professional responsibilities to a person whom the licensed professional knows, or has reason to know, is not qualified by training, experience, education or licensing credentials to perform them.
- (7) Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records.
- (8) Failing to make available promptly to a person using professional health care services, that person's representative, succeeding health care professionals or institutions, upon written request and direction of the person using professional health care services, copies of that person's records in the possession or under the control of the licensed practitioner.
- (9) Failing to retain client records for a period of seven years, unless laws specific to the profession allow for a shorter retention period. When other laws or agency rules require retention for a longer period of time, the longer retention period shall apply.
- (10) Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.
- (11) Failing to report to the office a conviction of any felony or any offense related to the practice of the profession in a Vermont district court, a Vermont superior court, a federal court, or a court outside Vermont within 30 days.
- (12) Exercising undue influence on or taking improper advantage of a person using professional services, or promoting the sale of services or goods in a manner which exploits a person for the financial gain of the practitioner or a third party.
- (13) Performing treatments or providing services which the licensee is not qualified to perform or which are beyond the scope of the licensee's education, training, capabilities, experience, or scope of practice.
- (14) Failing to report to the office within 30 days a change of name or address.
- (15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.

(b) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes:

- (1) performance of unsafe or unacceptable patient or client care; or
- (2) failure to conform to the essential standards of acceptable and prevailing practice.

(c) The burden of proof in a disciplinary action shall be on the state to show by a preponderance of the evidence that the person has engaged in unprofessional conduct.

(d) After hearing, and upon a finding of unprofessional conduct, a board or an administrative law officer may take disciplinary action against a licensee or applicant, including imposing an administrative penalty not to exceed \$1,000.00 for each unprofessional conduct violation. Any money received under this subsection shall be deposited in the professional regulatory fee fund established in section 124 of this title for the purpose of providing education and training for

board members and advisor appointees. The director shall detail in the annual report receipts and expenses from money received under this subsection.

(e) In the case where a standard of unprofessional conduct as set forth in this section conflicts with a standard set forth in a specific board's statute or rule, the standard that is most protective of the public shall govern. (Added 1997, No. 40, § 5; amended 2001, No. 151 (Adj. Sess.), § 2, eff. June 27, 2002; 2003, No. 60, § 2; 2005, No. 27, § 5; 2005, No. 148 (Adj. Sess.), § 4; 2009, No. 35, § 2.)

Title 26: Professions and Occupations
Chapter 76: MARRIAGE AND FAMILY THERAPISTS
§ 4042. Unprofessional conduct

(a) Unprofessional conduct means the following conduct and the conduct set forth in section 129a of Title 3:

- (1) Failing to use a complete title in professional activity.
- (2) Conduct which evidences moral unfitness to practice marriage and family therapy.
- (3) Engaging in any sexual conduct with a client, or with the immediate family member of a client, with whom the licensed marriage and family therapist has had a professional relationship within the previous two years.
- (4) Harassing, intimidating or abusing a client.
- (5) Entering into an additional relationship with a client, supervisee, research participant or student that might impair the marriage and family therapist's objectivity or otherwise interfere with the marriage and family therapist's professional obligations.
- (6) Practicing outside or beyond a marriage and family therapist's area of training, experience and competence without appropriate supervision.

(b) After hearing and upon a finding of unprofessional conduct, or upon approval of a negotiated agreement, the board may take disciplinary action against the licensed marriage and family therapist or applicant. That action may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:

- (1) A requirement that the person submit to appropriate treatment.
- (2) A restriction that a licensed marriage and family therapist practice only under the supervision of a named individual or an individual with specified credentials.
- (3) A requirement that a licensed marriage and family therapist participate in continuing education as directed by the board in order to overcome specified deficiencies.
- (4) A requirement that the licensed marriage and family therapist's scope of practice be restricted to a specified extent.
- (5) The board may reinstate a revoked license on terms and conditions that the board deems to be proper. (Added 1993, No. 222 (Adj. Sess.), § 13; amended 1997, No. 40, § 65; 1997, No. 145 (Adj. Sess.), § 59; 1999, No. 52, §§ 34, 35.)

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