

1 GENERAL GOVERNMENT CABINET

2 Board of Licensed Professional Counselors

3 (Amendment)

4 201 KAR 36:040. Code of ethics.

5 RELATES TO: KRS 335.540(1)(g)

6 STATUTORY AUTHORITY: KRS 335.515(3), (7), (11)

7 NECESSITY AND FUNCTION: KRS 335.515(11) requires the board to promulgate a code  
8 of ethics for licensed professional counselors and licensed professional counselor associates. This  
9 administrative regulation establishes the required code of ethics.

10 Section 1. Responsibility to Clients.

11 (1) A professional counselor shall:

12 (a) Advance and protect the welfare of the counselor's client;

13 (b) Respect the rights of a person seeking the counselor's assistance; and

14 (c) Make efforts to ensure that the counselor's services are used appropriately.

15 (2) A professional counselor shall not:

16 (a) Discriminate against or refuse professional service to anyone on the basis of race,  
17 gender, religion, or national origin;

18 (b) Exploit the trust and dependency of a client;

19 (c)

20 1. Engage in a dual relationship with a client that might:

21 a. Impair professional judgment;

- 1           b. Incur a risk of exploitation of the client; or
- 2           c. Otherwise violate a provision of this administrative regulation.
- 3           2. If a dual relationship cannot be avoided, and does not impair professional judgment,
- 4           incur a risk of exploitation of the client, or otherwise violate a provision of this
- 5           administrative regulation, a professional counselor shall take appropriate professional
- 6           precautions to ensure that judgment is not impaired and exploitation of the client does not
- 7           occur, which shall include:
- 8           a. Written informed consent by the client of the client's understanding of the general
- 9           prohibitions against dual relationships:
- 10           b. Peer consultation by a licensed professional; and
- 11           c. Proper documentation of the precautions taken by the professional counselor.
- 12           (d) Engage in a sexual, romantic interaction, or an intimate relationship with a current client
- 13           or with a former client for five (5) years following the termination of counseling. This prohibition
- 14           shall apply to both in-person and electronic interactions or relationships;
- 15           (e) Use the counselor's professional relationship with a client to further his or her own
- 16           interests;
- 17           (f) Continue therapeutic relationships unless it is clear that the client is benefiting from the
- 18           relationship;
- 19           (g) Fail to assist a person in obtaining other therapeutic services if the professional
- 20           counselor is unable or unwilling to provide professional help for appropriate reasons that include
- 21           a threat or risk of harm to the professional counselor, a failure to pay for services previously
- 22           provided, or a severe injury or medical illness suffered by the professional counselor;

1 (h) Abandon or neglect a client in treatment without making arrangements for the  
2 continuation of treatment;

3 (i) Videotape, record, or permit third-party observation of counseling sessions without  
4 having first obtained written informed consent from the client;

5 (j) Engage in sexual or other harassment or exploitation of the counselor's client, student,  
6 trainee, supervisee, employee, colleague, research subject, or actual or potential witness or  
7 complainant in investigations and ethical proceedings; or

8 (k) Diagnose, treat, or advise on problems outside the recognized boundaries of the  
9 counselor's competence

10 Section 2. Professional Counselors' Obligations and Duties.

11 (1) A professional counselor shall safeguard and maintain documentation necessary for  
12 rendering professional services.

13 (2) Regardless of the medium, a professional counselor shall include sufficient and timely  
14 documentation to facilitate the delivery and continuity of services. The documentation shall  
15 accurately reflect client progress and services provided.

16 (3) If an amendment is made to a record or documentation, a professional counselor shall  
17 properly note the amendment in the client's record.

18 (4) A professional counselor and the client shall work jointly in devising a counseling plan that  
19 offers a reasonable promise of success and is consistent with the abilities, temperament,  
20 developmental level, and circumstances of the client.

21 (5) A professional counselor and the client shall regularly review and revise the client's  
22 counseling plan to assess the plan's continued viability and effectiveness, respecting the client's  
23 freedom of choice.

1 (6) A professional counselor shall review in writing and verbally with a client the rights and  
2 responsibilities of a professional counselor and a client.

3 (7) A professional counselor shall provide adequate information about the client's freedom of  
4 choice, the counseling process, and the professional counselor so a client may make an educated  
5 decision whether to enter into or remain in a counseling relationship.

6 (8) Informed consent shall be an ongoing part of the counseling process, and a professional  
7 counselor shall document discussions of informed consent throughout the counseling relationship.

8 (9) A professional counselor shall explicitly explain to a client the nature of all services  
9 provided. The information shall include the purposes, goals, techniques, procedures, limitations,  
10 potential risks, and benefits of services; the counselor's qualifications, credentials, relevant  
11 experience, and approach to counseling; continuation of services upon the incapacitation or death  
12 of the counselor; the role of technology; and other pertinent information.

13 (10) A professional counselor shall take steps to ensure that each client understands the  
14 implications of diagnosis and the intended use of tests and reports.

15 (11) A professional counselor shall inform a client about fees and billing arrangements,  
16 including procedures for nonpayment of fees.

17 (12) A professional counselor shall communicate information in ways that are both  
18 developmentally and culturally appropriate.

19 (13) A professional counselor shall use clear and understandable language when discussing  
20 issues related to informed consent.

21 (14) When counseling a minor, an incapacitated adult, or other person unable to give voluntary  
22 consent, a professional counselor shall seek the assent of the client to services and include the  
23 client in decision making as appropriate.

1 (15) A professional counselor shall recognize the need to balance the ethical rights of each  
2 client to make choices, the client's capacity to give consent or assent to receive services, and  
3 parental or familial legal rights and responsibilities to protect the client and make decisions on the  
4 client's behalf.

5 (16) A professional counselor shall discuss the required limitations to confidentiality when  
6 working with each client who has been mandated for counseling services.

7 (17) A professional counselor shall explain what type of information and with whom that  
8 information is shared prior to the beginning of counseling. The client may choose to refuse  
9 services. In this case, a professional counselor shall, to the best of the counselor's ability, discuss  
10 with the client the potential consequences of refusing counseling services.

11 (18) When a professional counselor learns that a client is in a professional relationship with  
12 another mental health professional, the professional counselor shall request release from the client  
13 to inform the other mental health professional and strive to establish a positive and collaborative  
14 professional relationship.

15 (19) A professional counselor shall avoid harming a client, supervisee, trainee, or research  
16 participant and shall minimize or remedy unavoidable or unanticipated harm.

17 (20) A professional counselor shall be aware of and avoid imposing the professional  
18 counselor's values, attitudes, beliefs, or behaviors on a client.

19 (21) A professional counselor shall respect the diversity of each client, trainee, and research  
20 participant and seek training in areas in which the counselor is at risk of imposing the counselor's  
21 values onto a client, especially when the professional counselor's values are inconsistent with the  
22 client's goals or are discriminatory in nature.

1 (22) A professional counselor shall refrain from referring a prospective and current client based  
2 solely on the counselor's personally held values, attitudes, beliefs, and behaviors.

3 (23) A professional counselor shall seek training in areas in which a professional counselor is  
4 at risk of imposing his or her values onto a client, especially when the professional counselor's  
5 values are inconsistent with the client's goals or are discriminatory in nature.

6 (24) A professional counselor shall not engage in a counseling relationship with a person with  
7 whom the professional counselor has had a previous sexual or romantic relationship.

8 (25) A professional counselor shall not engage in a counseling relationship with a friend or a  
9 family member with whom the professional counselor has an inability to remain objective.

10 (26) A professional counselor shall consider the risks and benefits of accepting a client with  
11 whom the professional counselor has had a previous relationship. This potential client may include  
12 an individual with whom the counselor has had a casual, distant, or past relationship. Examples  
13 include mutual or past membership in a professional association, organization, or community.

14 (27) When a professional counselor accepts a client with whom the professional counselor has  
15 had a previous relationship, the professional counselor shall take the appropriate professional  
16 precautions such as informed consent, consultation, supervision, and documentation to ensure that  
17 judgment is not impaired and no exploitation occurs.

18 (28) A professional counselor shall consider the risks and benefits of extending current  
19 counseling relationships beyond conventional parameters. Examples of extending these  
20 boundaries of the counseling relationship include attending a client's wedding or commitment  
21 ceremony or graduation; purchasing a service or product provided by a client, accepting  
22 unrestricted bartering; and visiting a client's ill family member in the hospital.

1 (29) A professional counselor shall take appropriate professional precautions such as informed  
2 consent, consultation, supervision, and documentation to ensure that the client's or supervisee's  
3 judgment is not impaired and no harm occurs.

4 (30) When a professional counselor changes a role from the original or most recent contracted  
5 relationship, a professional counselor shall obtain informed consent from the client and explain  
6 the client's right to refuse services related to the change.

7 (31) A professional counselor shall fully inform a client of any anticipated consequences  
8 including financial, legal, personal, or therapeutic if the professional counselor role changes.  
9 Examples of role changes include changing from:

10 (a) Individual to relationship or family counseling, or vice versa;

11 (b) An evaluative role to a therapeutic role, or vice versa; or

12 (c) A counselor to a mediator role, or vice versa.

13 (32) A professional counselor shall not enter into non-professional relationships with a former  
14 client, the client's romantic partners, or the client's family members when the interaction is  
15 potentially harmful to the client. This applies to both in-person and electronic interactions or  
16 relationships.

17 (33) When a professional counselor agrees to provide counseling services to two (2) or more  
18 persons who have a relationship, the professional counselor shall clarify at the outset which person  
19 or persons are the client or clients and the nature of the relationships the professional counselor  
20 shall have with each involved person. If it becomes apparent that the professional counselor may  
21 be called upon to perform potentially conflicting roles, the professional counselor shall clarify,  
22 adjust, or withdraw from the conflicting roles.

1 (34) A professional counselor shall screen prospective group counseling or therapy  
2 participants.

3 (35) To the extent possible, a professional counselor shall select members whose needs and  
4 goals are compatible with the goals of the group, who will not impede the group process, and  
5 whose well-being will not be jeopardized by the group experience.

6 (36) In a group setting, a professional counselor shall take precautions to protect clients from  
7 physical, emotional, or psychological trauma.

8 (37) A professional counselor may barter only if the client requests and the bartering for  
9 services does not result in exploitation or harm to the client.

10 (38) A professional counselor shall consider the cultural implications of bartering for services  
11 and discuss relevant concerns with the client and document any agreed upon bartering agreements  
12 in a written contract.

13 (39) A professional counselor shall understand the challenges of accepting gifts from clients  
14 and recognize that in some cultures, small gifts are a token of respect and gratitude. When  
15 determining whether to accept a gift from a client, a professional counselor shall take into account  
16 the therapeutic relationship, the monetary value of the gift, the client's motivation for giving the  
17 gift, and the counselor's motivation for wanting to accept or decline the gift.

18 (40) If a professional counselor lacks the competence to be of professional assistance to a  
19 client, the professional counselor shall not enter or continue a counseling relationship.

20 (41) A professional counselor shall terminate a counseling relationship when it becomes  
21 reasonably apparent that the client no longer needs assistance, is not likely to benefit, or is being  
22 harmed by continued counseling.

1 (42) A professional counselor may terminate counseling when in jeopardy of harm by the client  
2 or by another person with whom the client has a relationship, or when a client does not pay fees  
3 as agreed upon.

4 (43) A professional counselor shall provide pretermination counseling and recommend other  
5 service providers, when necessary, unless counseling was terminated in accordance with  
6 subsection (42) of this section.

7 Section 3. Evaluation, Assessment, and Interpretation.

8 (1) A professional counselor shall not misuse assessment results or interpretations, and a  
9 professional counselor shall take steps to prevent others from misusing the information provided.

10 (2) A professional counselor shall respect a client's right to know the results, the interpretations  
11 made, and the basis for the professional counselor's conclusions and recommendations.

12 (3) A professional counselor shall use only those testing and assessment services for which the  
13 professional counselor has been trained and is competent. A professional counselor using  
14 technology-assisted test interpretations shall be trained in the construct being measured and the  
15 specific instrument being used prior to using its technology-based application. A professional  
16 counselor shall take measures to ensure the proper use of assessment techniques by persons under  
17 the counselor's supervision.

18 (4) A professional counselor shall be responsible for the application, scoring, interpretation,  
19 and use of assessment instruments relevant to the needs of the client, whether the counselor scores  
20 and interprets the assessments himself or herself or uses technology or other services.

21 (5) A professional counselor shall be responsible for decisions involving individuals or policies  
22 that are based on assessment results and have a thorough understanding of psychometrics.

1 (6) Prior to an assessment, a professional counselor shall explain the nature and purposes of  
2 the assessment and the specific use of results by potential recipients. The explanation shall be  
3 given in terms and language that the client or other legally authorized person acting on behalf of  
4 the client would understand.

5 (7) A professional counselor shall consider the client's welfare, explicit understandings, and  
6 prior agreements in determining who receives the assessment results.

7 (8) A professional counselor shall include accurate interpretations with any release of  
8 individual or group assessment results.

9 (9) A professional counselor shall release assessment data in which the client is identified only  
10 with the consent of the client or the client's legal representative. Data shall be released only to  
11 persons recognized by the professional counselor as qualified to interpret the data.

12 (10) A professional counselor shall take special care to provide proper diagnosis of mental  
13 disorders. Assessment techniques, including personal interviews, used to determine client care  
14 which includes locus of treatment, type of treatment, recommended follow-up, shall be tailored to  
15 the client and appropriately used.

16 (11) A professional counselor may refrain from making a diagnosis if the professional  
17 counselor believes that the diagnosis would cause harm to the client or others. A professional  
18 counselor shall carefully consider both the positive and negative implications of a diagnosis.

19 (12) If a client is referred to a third party for assessment, the professional counselor shall  
20 provide specific referral questions and sufficient objective data about the client to ensure that  
21 appropriate assessment instruments are utilized.

22 (13) When assessments are not administered under standard conditions, as may be necessary  
23 to accommodate clients with disabilities, or when unusual behavior or irregularities occur during

1 the administration, those conditions shall be noted in the counselor's interpretation, and the results  
2 may be designated as invalid or of questionable validity.

3 (14) A professional counselor shall provide an appropriate environment for the administration  
4 of assessments. The appropriate environment shall include privacy, comfort, and freedom from  
5 distraction.

6 (15) A professional counselor shall ensure that technologically administered assessments  
7 function properly and provide a client with accurate results.

8 (16) Unless the assessment instrument is designed, intended, and validated for self-  
9 administration or scoring, a professional counselor shall not permit unsupervised use.

10 (17) A professional counselor shall select and use with caution assessment techniques based  
11 on populations other than that of the client. A professional counselor shall recognize the effects of  
12 age, color, culture, disability, ethnic group, gender, race, language preference, religion, spirituality,  
13 sexual orientation, and socioeconomic status on test administration and interpretation, and place  
14 test results in proper perspective with other relevant factors, such as the purpose of the test as it  
15 relates to the specific mental impairment, disability, or age group.

16 (18) A professional counselor shall accurately describe the purpose, norms, validity, reliability,  
17 and applications of the procedures and any special qualifications applicable to the use of those  
18 procedures.

19 (19) A professional counselor shall maintain the integrity and security of tests and assessments  
20 consistent with legal and contractual obligations. A professional counselor shall not appropriate,  
21 reproduce, or modify published assessments or parts thereof without acknowledgment and  
22 permission from the publisher.

1 (20) A professional counselor shall use established scientific procedures, relevant standards,  
2 and current professional knowledge for assessment design in the development, publication, and  
3 utilization of assessment techniques.

4 (21) When providing forensic evaluations, the primary obligation of a professional counselor  
5 shall be to remain unbiased and produce objective findings that may be substantiated based on  
6 information and techniques appropriate to the evaluation, which may include examination of the  
7 individual or review of records.

8 (22) A professional counselor shall form his or her professional opinions based on the  
9 counselor's professional knowledge and expertise that may be supported by the data gathered in  
10 evaluations.

11 (23) A professional counselor shall define the limits of the counselor's reports or testimony,  
12 especially when an examination of the individual has not been conducted.

13 (24)

14 (a) A professional counselor shall inform an individual who is the subject of a forensic  
15 evaluation, in writing, that the relationship:

- 16 1. Is for the purposes of an evaluation;
- 17 2. Is not therapeutic in nature; and
- 18 3. Identifies the entities or individuals who will receive the evaluation report.

19 (b) A professional counselor who performs forensic evaluations shall obtain written consent  
20 from an individual being evaluated or from the individual's legal representative unless a court  
21 orders evaluations to be conducted without the written consent of the individual being evaluated  
22 or the individual's parent or guardian.

1 (25) A professional counselor shall not evaluate a current or former client, a client's romantic  
2 partners, or a client's family members forensically.

3 Section 4. Confidentiality.

4 (1) A professional counselor shall respect and guard the confidences of each individual client.

5 (2) A professional counselor shall protect the confidential information of each prospective,  
6 current, and former client.

7 (3) A professional counselor shall disclose information only with the appropriate consent or  
8 with sound legal or ethical justifications under subsection (4) of this section.

9 (4) A professional counselor shall not disclose a client confidence except:

10 (a) Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise mandated, or permitted  
11 by law;

12 (b) To prevent a clear and immediate danger to a person;

13 (c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at  
14 which the professional counselor is a defendant; or

15 (d) In accordance with the terms of a written waiver. If more than one (1) person in a family  
16 receives counseling, a professional counselor shall not disclose information from a particular  
17 family member unless the counselor has obtained a waiver from that individual family member. If  
18 the family member is a minor, a custodial parent or legal guardian may provide a waiver.

19 (5) A professional counselor may use client or clinical materials in teaching, writing, and  
20 public presentations if:

21 (a) A written waiver has been obtained in accordance with subsection (4)(d) of this section;  
22 or

23 (b) Steps have been taken to protect client identity and confidentiality.

1 (6) A professional counselor shall ensure that client records and documentation kept in any  
2 medium are:

3 (a) Secure so that only authorized persons have access; and

4 (b) Disposed of so confidentiality is maintained.

5 (7)

6 (a) A professional counselor shall keep information confidential except if disclosure is  
7 required to protect a client or identified others from serious and foreseeable harm or if legal  
8 requirements demand that confidential information be revealed.

9 (b) A professional counselor may consult with other professionals when in doubt as to the  
10 validity of an exception.

11 (8) A professional counselor who provides services to a terminally-ill individual who is  
12 considering hastening the individual's death may maintain confidentiality, depending on  
13 applicable laws and the specific circumstances of the situation and after seeking consultation or  
14 supervision from professional and legal parties.

15 (9)

16 (a) A professional counselor shall adhere to relevant state laws concerning disclosure about  
17 disease status.

18 (b) When a client discloses that the client has a disease commonly known to be both  
19 communicable and life threatening, a professional counselor shall be justified in disclosing  
20 information to identifiable third parties, if the parties are known to be at serious and foreseeable  
21 risk of contracting the disease.

1 (c) Prior to making a disclosure, a professional counselor shall assess the intent of the client  
2 to inform the third party about the client's disease or to engage in any behaviors that may be  
3 harmful to an identifiable third party.

4 (10) A professional counselor shall make every effort to ensure that privacy and confidentiality  
5 of a client is maintained by subordinates, including employees, supervisees, students, clerical  
6 assistants, and volunteers.

7 (11) When services provided to a client involve participation by an interdisciplinary or  
8 treatment team, a professional counselor shall inform the client of the team's existence and  
9 composition, information being shared, and the purposes of sharing the information.

10 (12) A professional counselor shall ensure the confidentiality of all information transmitted  
11 through the use of any medium.

12 (13) A professional counselor shall protect the confidentiality of a deceased client, consistent  
13 with legal requirements and the documented preferences of the client.

14 (14) In group work, a professional counselor shall clearly explain the importance and  
15 parameters of confidentiality for the specific group.

16 (15) In couples and family counseling, a professional counselor shall clearly define who is  
17 considered the client, and discuss expectations and limitations of confidentiality. A professional  
18 counselor shall obtain an agreement and document in writing the agreement among all involved  
19 parties regarding the confidentiality of information. In the absence of an agreement to the contrary,  
20 the couple or family shall be considered to be the client.

21 (16) When counseling a minor client or an adult client who lacks the capacity to give voluntary  
22 informed consent, a professional counselor shall protect the confidentiality of information received

1 in the counseling relationship as specified by federal and state laws, written policies, and  
2 applicable ethical standards.

3 (17) A professional counselor shall inform parents and legal guardians about the role of the  
4 professional counselor and the confidential nature of the counseling relationship, consistent with  
5 current legal and custodial arrangements. A professional counselor shall work to establish, as  
6 appropriate, collaborative relationships with parents or guardians to best serve the client.

7 (18) When counseling a minor client or an adult client who lacks the capacity to give voluntary  
8 consent to release confidential information, a professional counselor shall obtain written  
9 permission from a third party to disclose information. In these instances, a professional counselor  
10 shall inform the client consistent with his or her level of understanding and take measures to  
11 safeguard client confidentiality.

12 (19) A professional counselor shall obtain written permission from a client prior to allowing  
13 any person to observe counseling sessions, review session transcripts, or view recordings of  
14 sessions with supervisors, faculty, peers, or others within the training environment.

15 (20)

16 (a) A professional counselor shall provide reasonable access to records and copies of records  
17 when requested by a competent client.

18 (b) A competent client shall include an adult who is able to sign for services, and except for  
19 in cases of an emergency, is without the need of a guardian to sign for him or her.

20 (c) The board may provide reasonable access to records and copies of records to a guardian  
21 if a guardian is signing and acting on behalf of an incompetent client.

1 (d) An incompetent client means a client with chronic issues mentally, such as mental  
2 retardation, or acute issues, due to mental illness or drug use. An incompetent client includes a  
3 client who is not alert and oriented as to a person, place, time, or situation.

4 (21) A professional counselor shall limit the access of a client to a client's records, or portions  
5 of a client's records, only when there is compelling evidence that the access would cause harm to  
6 the client. The determination of harm made by the professional counselor includes situations of  
7 when the client is not competent, or if although a competent client considering all of the  
8 circumstances it would still be adverse to the client's welfare to release all or a portion of his or  
9 her records.

10 (22) A professional counselor shall document the request of a client and the rationale for  
11 withholding some or all of the records in the files of the client.

12 (23) In situations involving multiple clients, a professional counselor shall provide an  
13 individual client with only those parts of records that relate directly to that client and do not include  
14 confidential information related to any other client.

15 (24) When a client requests access to the client's records, a professional counselor shall provide  
16 assistance and consultation in interpreting counseling records.

17 (25) Unless exceptions to confidentiality exist, a professional counselor shall obtain written  
18 permission from each client to disclose or transfer records to legitimate third parties.

19 (26) A professional counselor shall store records following termination of services to ensure  
20 reasonable future access, maintain records in accordance with federal and state laws and statutes  
21 such as licensure laws and policies governing records, and dispose of client records and other  
22 sensitive materials in a manner that protects client confidentiality for a period of not less than seven  
23 (7) years after the last date that services were rendered.

1 (27) Information shared in a consulting relationship shall be discussed for professional  
2 purposes only. Written and oral reports by the counselor shall present only data germane to the  
3 purposes of the consultation, and every effort shall be made to protect client identity and to avoid  
4 undue invasion of privacy.

5 (28) When consulting with colleagues, a professional counselor shall not disclose confidential  
6 information that reasonably may lead to the identification of a client or other person or organization  
7 with whom the professional counselor has a confidential relationship unless the professional  
8 counselor has obtained the prior consent of the person or organization or the disclosure is  
9 unavoidable. A professional counselor shall disclose information only to the extent necessary to  
10 achieve the purposes of the consultation.

11 Section 5. Professional Competence and Integrity.

12 (1) A professional counselor shall maintain standards of professional competence and integrity  
13 and shall be subject to disciplinary action in accordance with KRS 335.540:

14 (a)

15 1. Upon conviction of a felony, or a misdemeanor related to the counselor's practice as a  
16 professional counselor; and

17 2. Conviction shall include adjudication based on:

18 a. A plea of no contest or an Alford Plea; or

19 b. The suspension or deferral of a sentence;

20 (b) If the counselor's license or certificate is subject to disciplinary action by another state's  
21 regulatory agency that the board determines violates applicable Kentucky state law or  
22 administrative regulation;

1 (c) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other  
2 substances that could reasonably be expected to negatively impact the practice of professional  
3 counseling; or

4 (d) If the counselor has failed to cooperate with the board by not:

5 1. Furnishing in writing a complete explanation to a complaint filed with the board;

6 2. Appearing before the board at the time and place designated; or

7 3. Properly responding to subpoenas issued by the board.

8 (2) A professional counselor shall practice only within the boundaries of their competence,  
9 based on the counselor's education, training, supervised experience, state and national professional  
10 credentials, and professional experience.

11 (3) While developing skills in new specialty areas, a professional counselor shall take steps to  
12 ensure the competence of the counselor's work and protect others from possible harm.

13 (4) A professional counselor shall monitor oneself for signs of impairment from his or her own  
14 physical, mental, or emotional problems and refrain from offering or providing professional  
15 services when impaired. A professional counselor shall seek assistance for problems that reach the  
16 level of professional impairment, and, if necessary, the professional counselor shall limit, suspend,  
17 or terminate his or her professional responsibilities until it is determined that he or she may safely  
18 resume professional counseling.

19 (5) When advertising or otherwise representing services to the public, a professional counselor  
20 shall identify the professional counselor's credentials in an accurate manner that is not false,  
21 misleading, deceptive, or fraudulent.

22 (6) A professional counselor shall accurately represent the professional counselor's  
23 qualifications.

1 (7) A professional counselor shall clearly distinguish between paid and volunteer work  
2 experience and accurately describe the professional counselor's continuing education and  
3 specialized training.

4 (8) A professional counselor shall correct any known misrepresentations of his or her  
5 qualifications by another.

6 (9) A professional counselor shall truthfully represent the qualifications of a professional  
7 colleague.

8 (10) A professional counselor shall only claim licenses or certifications that are current and in  
9 good standing.

10 (11) A professional counselor shall clearly differentiate between earned and honorary degrees.

11 (12) A professional counselor shall clearly state the professional counselor's highest earned  
12 degree in counseling or a closely related field.

13 (13) A professional counselor shall not imply doctoral-level competence when possessing a  
14 master's degree in counseling or a related field by referring to oneself as a doctor in a counseling  
15 context when the counselor's doctorate is not in counseling or a related field.

16 (14) A professional counselor shall not use all but dissertation (ABD) or other similar terms to  
17 imply competency.

18 (15) A professional counselor shall not condone or engage in discrimination against  
19 prospective or current clients, students, employees, supervisees, or research participants based on  
20 age, culture, disability, ethnicity, race, religion, spirituality, gender, gender identity, sexual  
21 orientation, marital or partnership status, language preference, socioeconomic status, immigration  
22 status, or any basis proscribed by law.

1 (16) A professional counselor shall not engage in or condone sexual harassment. Sexual  
2 harassment may consist of a single intense or severe act, or multiple persistent or pervasive acts.

3 (17) A professional counselor shall accurately and objectively report the professional  
4 counselor's professional activities and judgments to appropriate third parties, including courts,  
5 health insurance companies, those who are the recipients of evaluation reports, and others.

6 (18) When a professional counselor provides advice or comment by means of public lectures,  
7 demonstrations, radio or television programs, recordings, technology-based applications, printed  
8 articles, mailed material, or other media, the professional counselor shall take precautions to ensure  
9 that:

10 (a) The statements are based on appropriate professional counseling literature and practice;  
11 and

12 (b) The recipients of the information are not encouraged to infer that a professional  
13 counseling relationship has been established.

14 (19) When providing services, a professional counselor shall only use techniques, procedures,  
15 or modalities that are grounded in theory or have an empirical or scientific foundation.

16 (20) When a professional counselor uses a developing or innovative technique, procedure, or  
17 modality, the professional counselor shall explain the potential risks, benefits, and ethical  
18 considerations of using the technique, procedure, or modality.

19 (21) A professional counselor shall minimize any potential risks or harm when using these  
20 techniques, procedures, or modalities.

21 (22) A professional counselor shall not provide a professional counseling service if under the  
22 influence of alcohol, another mind-altering or mood-altering drug, or physical or psychological  
23 illness that impairs delivery of the services.

1 (23) A professional counselor shall not possess or distribute the board's examination material  
2 without authorization by the board.

3 (24) A professional counselor shall not interfere with a board investigation of a professional  
4 counselor through a willful means including:

5 (a) Misrepresentation of a fact;

6 (b) Undue influence of a witness;

7 (c) A threat toward a person; or

8 (d) Harassing communication toward a person.

9 (25) A professional counselor shall not verbally abuse, harass, physically threaten, or assault a  
10 client, supervisee, employee, board member, or agent of the board.

11 (26) A professional counselor shall submit a written report to the board, within fifteen (15)  
12 days of any of the following events:

13 (a) A conviction of any crime, including an adjudication based on a plea of no contest or  
14 Alford Plea, except for minor traffic offenses;

15 (b) The entry of an order of protection following notice and an opportunity to be heard  
16 pursuant to KRS Chapter 403 or KRS Chapter 456;

17 (c) Any substantiated act of child abuse and neglect pursuant to KRS Chapter 620, or adult  
18 abuse, neglect, and exploitation pursuant to KRS Chapter 209; or

19 (d) The entry of a pretrial diversion agreement in any court in this state, or another state,  
20 where either a criminal charge or sentencing is deferred pending completion of the diversion  
21 agreement.

22 (27)[(26)] A professional counselor shall not lack good moral character.

23 Section 6. Distance Counseling, Technology, and Social Media.

1 (1) A professional counselor who engages in the use of distance counseling, technology, or  
2 social media shall develop knowledge and skills regarding related technical, ethical, and legal  
3 considerations.

4 (2) Each client shall have the freedom to choose whether to use distance counseling, social  
5 media, or technology within the counseling process.

6 (3) In addition to the information documented in an informed consent for face-to-face  
7 counseling as required under Sections 1(2)(c)2.a. and 2(8) of this administrative regulation, the  
8 following issues unique to the use of distance counseling, technology, or social media shall be  
9 discussed, and verification of the discussion shall be documented in the informed consent form:

- 10 (a) Distance counseling credentials, physical location of practice, and contact information;
- 11 (b) Risks and benefits of engaging in the use of distance counseling, technology, or social  
12 media;
- 13 (c) Possibility of technology failure and alternate methods of service delivery;
- 14 (d) Anticipated response time;
- 15 (e) Emergency procedures to follow when the counselor is not available;
- 16 (f) Time zone differences;
- 17 (g) Cultural or language differences that may affect delivery of services;
- 18 (h) Possible denial of insurance benefits; and
- 19 (i) Social media policy.

20 (4) A professional counselor shall inform a client, in writing, of any breach of the  
21 confidentiality of electronic records and transmissions within seventy-two (72) hours of  
22 knowledge of the breach.

1 (5) A professional counselor shall inform a client about the inherent limits of confidentiality  
2 when using technology.

3 (6) A professional counselor shall inform a client of authorized or unauthorized access to  
4 information disclosed using this medium in the counseling process.

5 (7) A professional counselor shall use current encryption standards within the counselor's Web  
6 sites or technology-based communications that meet applicable legal requirements for information  
7 that is required to be kept confidential. A professional counselor shall take precautions to ensure  
8 the confidentiality of information transmitted through any electronic means when the information  
9 is required to be kept confidential.

10 (8) A professional counselor who engages in the use of distance counseling, technology, or  
11 social media to interact with a client shall take steps to verify the client's identity at the beginning  
12 and throughout the therapeutic process. Verification shall include using code words, numbers,  
13 graphics, or other nondescript identifiers.

14 (9) A professional counselor shall inform a client of the benefits and limitations of using  
15 technology applications in the provision of counseling services. The technologies may include  
16 computer hardware or software, telephones and applications, social media and Internet-based  
17 applications and other audio or video communication, or data storage devices or media.

18 (10) A professional counselor shall discuss and establish professional boundaries with each  
19 client regarding the appropriate use or application of technology and the limitations of its use  
20 within the counseling relationship, which include the lack of confidentiality and times when not  
21 appropriate to use.

22 (11) When providing technology-assisted services, a professional counselor shall make efforts  
23 to determine that each client is intellectually, emotionally, physically, linguistically, and

1 functionally capable of using the application and that the application is appropriate for the needs  
2 of the client. A professional counselor shall verify that each client understands the purpose and  
3 operation of technology applications and follow up with each client to correct possible  
4 misconceptions, discover appropriate use, and assess subsequent steps.

5 (12) When distance counseling services are found as ineffective by the counselor or client, a  
6 professional counselor shall consider delivering services in the same physical space. If a  
7 professional counselor is unable to provide services in the same physical space (e.g., lives in  
8 another state), the professional counselor shall assist the client in identifying appropriate services.

9 (13) A professional counselor shall provide information to each client regarding reasonable  
10 access to pertinent applications when providing technology-assisted services.

11 (14) A professional counselor shall consider the differences between face-to-face and  
12 electronic communication (nonverbal and verbal cues) and how these may affect the counseling  
13 process. A professional counselor shall educate a client on how to prevent and address potential  
14 misunderstandings arising from the lack of visual cues and voice intonations when communicating  
15 electronically.

16 (15) A professional counselor shall inform a client on how records are maintained  
17 electronically. This includes the type of encryption and security assigned to the records, and for  
18 how long archival storage of transaction records is maintained.

19 (16) A professional counselor who offers distance counseling services or maintains a  
20 professional Web site that provides electronic links to relevant licensure and professional  
21 certification boards to protect consumer and client rights and address ethical concerns shall ensure  
22 that distance counseling services or electronic links are working and are professionally appropriate.

1 (17) A professional counselor shall clearly explain to a client, as part of the informed consent  
2 procedure, the benefits, limitations, and boundaries of the use of social media.

3 (18) A professional counselor shall avoid disclosing confidential information through public  
4 social media.

5 Section 7. Responsibility to Supervisor's Student or Supervisee.

6 (1) A professional clinical counselor supervisor, including a counselor who is acting as a  
7 faculty supervisor in the school setting as authorized by KRS 335.505(4), shall monitor the  
8 services provided by a supervisee.

9 (2) A professional counselor shall:

10 (a) Be aware of the counselor's influential position with respect to a student or supervisee;

11 (b) Avoid exploiting the trust and dependency of a student or supervisee;

12 (c) Try to avoid a social, business, personal, or other dual relationship that could:

13 1. Impair professional judgment; and

14 2. Increase the risk of exploitation;

15 (d) Take precautions to ensure that judgment is not impaired and to prevent exploitation if  
16 a dual relationship cannot be avoided;

17 (e) Not provide counseling to a:

18 1. Student;

19 2. Employee; or

20 3. Supervisee;

21 (f) Not engage in sexual intimacy or contact with a:

22 1. Student; or

23 2. Supervisee;

1 (g) Not permit a student or supervisee to perform or represent himself or herself as  
2 competent to perform a professional service beyond his or her level of:

- 3 1. Training;
- 4 2. Experience; or
- 5 3. Competence; and

6 (h) Not disclose the confidence of a student or supervisee unless:

- 7 1. Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise permitted or mandated  
8 by law;
- 9 2. It is necessary to prevent a clear and immediate danger to a person;
- 10 3. During the course of a civil, criminal, or disciplinary action arising from the supervision,  
11 at which the professional counselor is a defendant;
- 12 4. In an educational or training setting, of which there are multiple supervisors or  
13 professional colleagues who share responsibility for the training of the student or supervisee; or
- 14 5. In accordance with the terms of a written informed consent agreement.

15 (3) A professional clinical counselor supervisor shall monitor client welfare and supervisee  
16 performance and professional development. To fulfill these obligations, a professional clinical  
17 counselor supervisor shall meet regularly with each supervisee to review the supervisee's work and  
18 help the supervisee become prepared to serve a range of diverse clients as required by 201 KAR  
19 36:060.

20 (4) A professional clinical counselor supervisor shall work to ensure that a supervisee  
21 communicates the supervisee's qualifications to render services to a client.

22 (5) A professional clinical counselor supervisor shall make each supervisee aware of client  
23 rights, including the protection of client privacy and confidentiality in the counseling relationship.

1 A supervisee shall provide the supervisee's clients with professional disclosure information and  
2 inform them of how the supervision process influences the limits of confidentiality. A supervisee  
3 shall make clients aware of who will have access to records of the counseling relationship and how  
4 these records will be stored, transmitted, or otherwise reviewed.

5 (6) A professional clinical counselor supervisor shall not engage in a sexual or romantic  
6 interaction or relationship with a current supervisee. This prohibition shall apply to both in-person  
7 and electronic interactions or relationships.

8 (7) A professional clinical counselor supervisor shall not engage in supervisory relationships  
9 with individuals with whom the counselor has an inability to remain objective.

10 (8) A professional clinical counselor supervisor shall establish and communicate to a  
11 supervisee procedures for contacting the supervisor or, in the supervisor's absence, alternative on  
12 call supervisors to assist in handling crises.

13 (9) A professional clinical counselor supervisor shall make the counselor's supervisees aware  
14 of professional and ethical standards and legal responsibilities.

15 (10)

16 (a) A professional clinical counselor supervisor or a supervisee shall have the right to  
17 terminate the supervisory relationship with adequate notice to the other party.

18 (b) The board shall consider adequate notice as a period of two (2) weeks unless there is an  
19 exigent circumstance, an emergency situation, or a competency issue such as in situations of  
20 substance abuse, a lack of competency, a violation of the code of ethics, or an exploitation of a  
21 client. In these kinds of situations then no notice is required.

22 (c) When termination is warranted, supervisors shall make appropriate referrals to possible  
23 alternative supervisors.

1 (11) Before providing counseling services, a supervisee shall disclose the supervisee's status  
2 as a supervisee and explain how this status affects the limits of confidentiality. Supervisors shall  
3 ensure that a client is aware of the services rendered and the qualifications of the supervisee  
4 rendering those services.

5 (12) Students and supervisees shall obtain client permission before they use any information  
6 concerning the counseling relationship in the training process.

7 (13) A professional clinical counselor supervisor shall document and provide each supervisee  
8 with ongoing feedback regarding the supervisee's performance and schedule periodic formal  
9 evaluative sessions throughout the supervisory relationship.

10 Section 8. Financial Arrangements. A professional counselor shall:

11 (1) Not charge an excessive fee for service;

12 (2) Disclose the counselor's fees to a client and supervisee at the beginning of service;

13 (3) Make financial arrangements with a patient, third-party payor, or supervisee that:

14 (a) Are reasonably understandable; and

15 (b) Conform to accepted professional practices;

16 (4) Not offer or accept payment for a referral; and

17 (5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services  
18 rendered.

19 Section 9. Advertising.

20 (1) A professional counselor shall:

21 (a) Accurately represent education, training, and experience relevant to the practice of  
22 professional counseling; and

1 (b) Not use professional identification that includes a statement or claim that is false,  
2 fraudulent, misleading, or deceptive, including the following:

- 3 1. A business card;
- 4 2. An office sign;
- 5 3. Letterhead; or
- 6 4. Telephone or association directory listing.

7 (2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:

- 8 (a) Contains a material misrepresentation of fact;
- 9 (b) Is intended to or likely to create an unjustified expectation; or
- 10 (c) Deletes a material fact or information.

#### 11 Section 10. Referral and Termination.

12 (1) A professional counselor shall not abandon or neglect a client in professional counseling.

13 (2) A professional counselor shall make a timely and appropriate referral of a client if:

- 14 (a) The professional counselor is unable to provide the work or service; or
- 15 (b) The client's need exceeds the competency of the professional counselor.

16 (3) A professional counselor shall terminate a professional counseling service if a client:

- 17 (a) Has attained his or her stated goal or objective; or
- 18 (b) Fails to benefit from the counseling service.

19 (4) A professional counselor shall communicate the referral or the termination of counseling  
20 service to a client.

21 (5) A professional counselor shall not terminate counseling service or refer a client for the  
22 purpose of entering into a personal relationship with the client, including:

- 23 (a) A sexual or an intimate relationship;

1 (b) A financial or business relationship; or

2 (c) Other activity that might serve a personal interest of the professional counselor.

3 (6) A professional counselor shall assist in making appropriate arrangements for the  
4 continuation of treatment, when necessary, during interruptions such as vacations, illness, and  
5 following termination.

6 (7) When a professional counselor transfers or refers a client to other practitioners, a  
7 professional counselor shall ensure that appropriate clinical and administrative processes are  
8 completed and open communication is maintained with both the client and the practitioner.

9 Section 12. Recognized Standards of Ethics. A professional counselor shall not engage in  
10 conduct or practice that is contrary to recognized standards of ethics in the counseling profession.  
11 The board subscribes to the code of ethics and practice standards for counselors promulgated by  
12 the American Counseling Association.

201 KAR 36:040

APPROVED BY AGENCY:

\_\_\_\_\_  
Dr. Hanna Coyt  
Chair, Board of Licensed Professional Counselors

Date: \_\_\_\_\_

## **PUBLIC HEARING AND PUBLIC COMMENT PERIOD**

A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 PM EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference:

Topic: LPC Regulation Public Hearing  
Time: Nov 28, 2023 01:00 PM Eastern Time

Join from PC, Mac, Linux, iOS or Android:  
<https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnl1K0ZDd3M5dz09>  
Password: 186265

Or Telephone:  
Dial:  
USA 713 353 0212  
USA 8888227517 (US Toll Free)  
Conference code: 387980

Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023.

Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: [https://ppc.ky.gov/reg\\_comment.aspx](https://ppc.ky.gov/reg_comment.aspx). Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

Contact Person: Sara Boswell Janes  
Title: Staff Attorney III  
Agency: Department of Professional Licensing, Office of Legal Services  
Address: 500 Mero Street, 2 NC WK#2  
Phone Number: (502) 782-2709 (office)  
Fax: (502) 564-4818  
Email: [Sara.Janes@ky.gov](mailto:Sara.Janes@ky.gov)  
Link to public comment portal: [https://ppc.ky.gov/reg\\_comment.aspx](https://ppc.ky.gov/reg_comment.aspx)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 36:040

Contact Person: Sara Boswell Janes  
Phone Number: (502) 782-2709 (office)  
Email: sara.janes@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the code of ethics for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a general code of ethics to govern the behavior of credential holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the expected ethical behavior of a credential holder and protect the public seeking related services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment includes a reporting requirement for licensees who are convicted of crimes, excluding minor traffic offenses, have a domestic violence order entered against them or have substantiated allegations of child abuse and neglect or elder abuse; and recognizes the ACA code of ethics which is the expected standard set forth in educational requirement regulation and is taught to all counselors.

(b) The necessity of the amendment to this administrative regulation: The board has been faced with several complaints where the code of ethics was not clear on whether a violation occurred; and, whether certain activities are reportable. The amendment expands and cures these issues.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will allow the Board to better protect the general public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 active and 39 inactive licensed professional clinical counselors (LPCCs) and 1325 active and 17 inactive licensed professional

clinical counselor associates (LPCAs) who will be impacted by any change to the code of ethics. This regulation will affect the 4017 active and 56 inactive licensees in some capacity, and will also affect new applicants for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require any action to be taken to be in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will have a better understanding of their ethical obligations and duties.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees

(9) TIERING: Is tiering applied? (Explain why or why not): This regulation does not distinguish between similarly situated individuals on the basis of any factor.

## FISCAL NOTE

Regulation No. 201 KAR 36:040

Contact Person: Sara Boswell Janes  
Phone Number: (502) 782-2709 (office)  
Email: sara.janes@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), (7), (11).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): None

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)].

This administrative regulation will not have a major economic impact.