

64B19-16.003 Sexual Misconduct in the Practice of Psychology.

(1) In accordance with the intent of Chapter 490, Florida Statutes, to preserve the health, safety and welfare of the public, sexual misconduct as defined herein is prohibited. The Board finds that the effects of the psychologist-client relationship are powerful and subtle and that clients are influenced consciously and subconsciously by the unequal distribution of power inherent in such relationships. The Board also finds that sexual intimacies with a former client are frequently harmful to the client, and that such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services. Furthermore, the Board finds that the effects of the psychologist-client relationship endure after psychological services cease to be rendered. Therefore, the client shall be presumed incapable of giving valid, informed, free consent to sexual activity involving the psychologist and the assertion of consent by the client shall not constitute a defense against charges of sexual misconduct.

(2) It shall constitute sexual misconduct for a psychologist, who is involved in a psychologist-client relationship, to engage, attempt to engage, or offer to engage the client in sexual intercourse or other sexual behavior. Sexual behavior includes, but is not limited to, kissing, or the touching by either the psychologist or the client of the other's breasts or genitals.

(3) It shall constitute sexual misconduct for a psychologist, who is involved in a psychologist-client relationship, to engage the client in verbal or physical behavior which is sexually arousing or demeaning to the client unless:

(a) Such behavior is for the purpose of treatment of psycho-sexual disorders or dysfunctions; and

(b) Such behavior complies with generally accepted professional standards for psychological treatment of the client's specific psycho-sexual disorders or dysfunctions.

(4) It shall constitute sexual misconduct for a psychologist who is involved in a psychologist-client relationship to use the influence inherent in that relationship to induce the client to engage in sexual conduct with a third party unless:

(a) Such inducement is consistent with the planned psychological treatment of the client's specific psychological, social, or sexual dysfunctions or disorders; and

(b) Treatment is provided in accordance with generally accepted professional standards for psychological treatment.

(5) A psychologist-client relationship exists whenever a psychologist has rendered, or purports to have rendered, psychological services including, but not limited to, psychotherapy, counseling, assessment or treatment to a person. A formal contractual relationship, the scheduling of professional appointments, or payment of a fee for services are not necessary conditions for the existence of a psychologist-client relationship, though each of these may be evidence that such a relationship exists.

(a) The determination of when a person is a client for purposes of this rule is made on a case by case basis with consideration given to the nature, extent, and context of the professional relationship between the psychologist and the person. The fact that a person is not actively receiving treatment or professional services from a psychologist is not determinative of this issue. A person is presumed to remain a client until the psychologist-client relationship is terminated.

(b) The mere passage of time since the client's last visit to the psychologist is not solely determinative of whether or not the psychologist-client relationship has been terminated. Some of the factors considered by the Board in determining whether the psychologist-client relationship has terminated include, but are not limited to, the following:

1. Formal termination procedures;

2. Transfer of the client's case to another psychologist;

3. The length of time that has passed since the client's last visit to the psychologist;

4. The nature and duration of the professional relationship;

5. The extent to which the client has confided personal or private information to the psychologist;

6. The nature of the client's personal history;

7. The degree of emotional dependence that the client has on the psychologist;

8. The circumstances of termination of the professional relationship;

9. The client's current mental status;

10. The likelihood of adverse impact on the client and others; and

11. Any statements or actions by the psychologist during the provision of psychological services suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

(c) Sexual conduct between a psychologist and a former client after termination of the psychologist-client relationship will constitute a violation of the Psychological Services Act if the sexual contact is a result of the exploitation of trust, knowledge, influence or emotions, derived from the professional relationship.

(d) A client's consent to, initiation of, or participation in sexual behavior or involvement with a psychologist does not change

the nature of the conduct nor lift the statutory prohibition.

(e) Upon a finding that a psychologist has committed unprofessional conduct by engaging in sexual misconduct, the Board will impose such discipline as the Board deems necessary to protect the public. The sanctions available to the Board are set forth in Rule 64B19-17.002, F.A.C., and include restriction or limitation of the psychologist's practice, revocation or suspension of the psychologist's license.

Rulemaking Authority 490.0111 FS. Law Implemented 490.009(1)(k), 490.0111 FS. History—New 6-23-82, Formerly 21U-15.04, Amended 12-21-86, Formerly 21U-15.004, 61F13-15.004, 59AA-16.003, Amended 5-14-01.