

COLORADO STATE GRIEVANCE BOARD

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COLORADO STATE GRIEVANCE BOARD

RULES 4 CCR 734-1

AUTHORITY

These rules are promulgated pursuant to CRS 12-43-203(3)(a).

PURPOSE AND SCOPE

These rules inform the public in general and those who are subject to the Board's jurisdiction in particular of the following: Board Operations; Public Participation at Board meetings; Confidentiality of Board Proceedings and Records of the Board; Procedures for Investigations and Disposition of Inquiries; Declaratory Orders; Mandatory Disclosure Statement; Information Required to be Reported to the Appropriate Board; Supervision of Mental Health Practitioners.

These rules affect every person in Colorado who practices psychotherapy, as defined in CRS 12-43-201(9), and who is subject to the Board's jurisdiction.

EFFECTIVE DATE

These rules are effective on March 2, 2006.

RULE 1

DEFINITIONS

In addition to the definitions set out in CRS 12-43-201, unless the context requires otherwise, as used in these Rules:

- (a) "Director" means the Board's Program Director and staff.
- (b) "Employment counseling" means professional activities that are provided on a short-term basis and that are intended to assist individuals with locating, applying for, interviewing, or otherwise successfully securing paid employment.
- (c) "Rehabilitation counseling" means professional activities that are intended to assist a person with a physical handicap, defect, or injury as defined in CRS 26-8-105(2)(a), (b), or (c) to learn or to relearn to perform routine daily functions including, but not limited to, eating, dressing, transportation, or employment.

- (d) Whenever exemption from Grievance Board jurisdiction is claimed based on an assertion of practice of religious ministry as stated in CRS 12-43-215(1), the Board shall consider factors, including but not limited to those listed below, which, taken together and placed within the context of the incident in question, would tend to reasonably indicate that the person seeking the exemption was engaged in the practice of religious ministry. In weighing these factors, the Board shall consider the factors and other information which indicate the person claiming exemption was not engaged in the practice of religious ministry at the time of the alleged violation of the statute before taking further action on the inquiry.

In determining whether the practice subject to the Colorado Mental Health Statute has occurred, the Board analyzes activities and the basic nature of the interaction among the persons involved. The analysis focuses on what occurred, on how it occurred, and on why it occurred.

FACTORS

1. Whether the client or guardian had received notice or reasonably understood that the therapy in question was a part of religious practice/ministry
2. Whether the client or guardian was seeking therapy from a religious entity to which the complainant belonged at any time.
3. Whether a written agreement or statement exists indicating the therapy in question was part of religious practice/ministry.
4. Whether the therapy sessions were conducted in a house of worship or on property belonging to or controlled by a religious entity.
5. Whether the person conducting the therapy normally represented him or herself as a religious official who is counseling as part of a religious ministry.
6. Whether therapy services were part of an on-going relationship, formed because the provider is spiritual counselor to the client.
7. Whether the provider of therapy holds a position of trust within a religious entity.
8. Whether the provider advertises therapy to the general public for a fee.
9. Whether the provider collects fees or expects/requires donations, offerings, tithes or other compensation for therapy.
10. Whether the therapy provided is based on any religious orientation or viewpoint
11. Whether the provider engaged in the practice of therapy is accountable or subject to any religious entity or person for misdeeds or acts of misconduct.
12. Whether the provider of therapy is a member of a religious entity holding tax-exempt status (e.g., Does the entity hold 501(C)(3) tax-exempt status?).
13. Whether the provider is trained in theology or any other field, area, or specialty related to the study of a religious or spiritual orientation.

14. Whether the provider has a declaration of religious mission or a statement identifying the religious views or beliefs of the entity or person.
15. Whether the provider of therapy services is recognized by consumers as a religious minister or spiritual healer.

RULE 2

BOARD OPERATIONS (CRS 12-43-203)

- (a) Purpose. This Rule sets out the organization, administration, and general procedures and policies governing the operation of the Board.
- (b) Office. The office of the Board is located within the Department of Regulatory Agencies in Denver, Colorado.
- (c) Meetings.
 - (1) The Board shall hold regular meetings and additional meetings as necessary during each year ending on 30 June.
 - (2) The Chair may call additional meetings after consultation with the Board and shall call meetings if requested to do so by a majority of Board members.
 - (3) The Board may conduct meetings by telephone or electronic means as necessary.
 - (4) The Board will announce and conduct its meetings in accordance with the Colorado Open Meetings Law, CRS 24-6-401 et seq.
- (d) Quorum. A quorum of the Board necessary to conduct business is four members.
- (e) Rules of order. The Board shall conduct its meetings in an orderly fashion, with due regard for the rights of each Board member. The Board may refer to Robert's Rules of Order Revised when necessary.
- (f) Transaction of official business.
 - (1) The Board may transact official business only when in a legally constituted meeting with a quorum present.
 - (2) The Board is not bound in any way by any action on the part of any Board member and/or the Director except when the action is pursuant to a specific instruction or direction of the Board.
 - (3) Informal opinions given or statements made by a Board member and/or the Director are not official opinions or statements of the Board and do not bind the Board. Only those opinions, decisions, or policies documented in the written minutes of Board meetings, Board rules, or official publications of the Board are binding as action of the Board.
- (g) Minutes. The minutes of any Board meeting are official only when approved by the Board and signed by the Chair or Vice-Chair.

(h) Elections.

- (1) At the meeting held in July of each year, or as soon thereafter as possible, the Board shall elect, by a simple majority vote of those members present, a Chair and Vice-Chair.
- (2) A vacancy that occurs in the office of the Chair or Vice-Chair maybe filled at any regular meeting.

(i) Officers.

- (1) The Chair presides at all meetings that the Chair attends and performs all duties prescribed by law, Board rules, or Board policies. The Board hereby authorizes the Chair to make day-to-day minor decisions regarding Board activities in order to facilitate the responsiveness and effectiveness of the Board. At all times the Chair exercises authority subject to the general policies, rules, orders, decisions, findings, and determinations of the Board.
- (2) The Vice-Chair performs the duties of the Chair in case of the absence or disability of the Chair. If the office of the Chair becomes vacant, the Vice-Chair serves as Chair until a successor is elected.

(j) Committees. The Board or the Chair with the approval of the Board may establish committees or appoint consultants as deemed necessary to assist the Board in carrying out its responsibilities. As necessary or as requested, committee Chairs and consultants shall make reports to the Board. Committees and consultants shall provide all written reports or other materials to the administrator for distribution to the Board.

(k) Impartiality. Any Board member who cannot be impartial in the determination of, or who has an immediate personal, private, or financial interest, in a matter before the Board shall inform the Board of a conflict of interest and shall not participate in any Board deliberation or vote on the matter. No Board member who previously supervised, directed, or was a client of a psychotherapist who is the subject of a Board investigation or disciplinary proceeding shall participate in Board deliberations or votes with respect to that psychotherapist.

RULE 3

PUBLIC PARTICIPATION AT BOARD MEETINGS (CRS 12-43-203, 12-43-221)

(a) Public participation at Board meetings.

- (1) The Board may provide a person a reasonable opportunity to address the Board at an open meeting if the request is made in accordance with this Rule and, in the Board's sole discretion, the granting of the request will not result in delay or disruption of the Board's meeting.
- (2) The Board may provide a reasonable opportunity for a person to address the Board on an agenda item if a request to speak is given to the Chair or Director prior to Board consideration of the item.

- (3) The Board may provide a reasonable opportunity for a person to address the Board on a subject that is not an agenda item if the request to speak is given to the Chair or Director prior to the conclusion of the meeting.
- (4) In accordance with procedural due process of law, the Board shall not permit members of the public to address the Board on pending disciplinary proceedings or cases.
- (5) Except in unusual circumstances and in the Board's sole discretion, the Board will rely exclusively on written materials during its initial consideration of inquiries.
- (6) The Chair may impose reasonable limitations on the time allotted for comments made pursuant to this Rule.

RULE 4

CONFIDENTIALITY OF PROCEEDINGS AND RECORDS OF THE BOARD (CRS 12-43-218, 12-43-221, 12-43-224(4))

- (a) General. Inquiries, complaints, investigations, hearings, meetings, or any other proceedings of the Board relating to disciplinary proceedings shall not be open to public inspection until the Board meets for its initial consideration of the inquiry that gave rise to the proceedings. The initial consideration of the inquiry and all further proceedings shall be open and the records available for inspection unless subsection (b) of this Rule, an exception to the Public Records Act or an exception to the Open Meetings Act, applies.
- (b) Subpoenaed Information. Information subpoenaed by the Board shall remain confidential and not be open to public inspection until the Board has reviewed the information and made a determination whether the information should remain confidential. Information which is not determined to be confidential shall be open to public inspection unless an exception to subsection (a), an exception to the Public Records Act or the Open Meetings Act applies. This exception shall not apply to review of information by a respondent in a Board investigation.

RULE 5

PROCEDURES FOR INVESTIGATIONS AND DISPOSITION OF INQUIRES (CRS 12-43-221, 12-43-223, 12-43-224)

- (a) General. This Rule sets out the procedures for making and processing inquiries against psychotherapists where the inquiries are within the jurisdiction of the Board.
- (b) Initial inquiries.
 - (1) Generally, inquiries against psychotherapists must be submitted in writing and should state in as much detail as possible the facts upon which the inquiry is based. If the complainant or recipient of psychotherapy services would like to have her/his name withheld from the public, this request should be included in the inquiry.

- (2) At the discretion of the Board, an oral inquiry may be informally handled. The Board may request that oral inquiries be reduced to writing.
- (3) At the discretion of the Board, anonymous inquiries may be reviewed.
- (c) Voluntary surrender of listing. If an unlicensed psychotherapist is the subject of a board investigation or disciplinary proceeding, voluntarily surrenders her/his listing, absent unusual circumstances, the Board will not discontinue the investigation or disciplinary proceeding unless the unlicensed psychotherapist consents to entry of a permanent injunction limiting or prohibiting her/his practice of psychotherapy in Colorado.
- (d) Notice to unlicensed psychotherapist. If the allegations in an inquiry against a psychotherapist, if proved, would constitute grounds for action pursuant to CRS 12-43-222, 12-43-223, 12-43-224, 12-43-226, or 12-43-227, the Director shall:
 - (1) Inform the psychotherapist in writing that an inquiry has been made against her/him, enclose a copy of the inquiry, indicate the provisions of the Act that may have been violated, and request the psychotherapist's cooperation in ascertaining the facts and circumstances that led to the inquiry.
 - (2) Request the psychotherapist to provide a written statement setting out her/his response to the inquiry and whatever facts s/he may consider relevant for the Board to understand the circumstances. The psychotherapist shall have 20 days, or such time as the Board may determine in its discretion, to respond to the inquiry.
 - (3) At the discretion of the Director, the complainant may be given an opportunity to review and to comment upon the psychotherapist's response.
- (e) Requests for extension of time. The Director may grant a reasonable request for extension of time within which a psychotherapist may respond to the inquiry and/or within which a complainant may comment upon a psychotherapist's response.
- (f) Initial Board consideration of inquiries. When the unlicensed psychotherapist has responded and the complainant has commented (if the complainant is asked to comment) or at the expiration of the response time (if the psychotherapist or complainant submits no response), the Director shall forward the inquiry, any response, and other available information to the Board for its review. The Board shall not delay its initial consideration of an inquiry, because the unlicensed psychotherapist or complainant has not responded.

RULE 6

DECLARATORY ORDERS (CRS 24-4-105(11))

- (a) Any person may petition the Board for a declaratory order to terminate a controversy or to remove uncertainty as to the applicability to the petitioner of any statutory provision or of any Board rule or order.
- (b) A petition filed pursuant to this Rule shall set forth the following:
 - (1) The name and address of the petitioner and whether the petitioner is an unlicensed psychotherapist.

- (2) The statute, rule, or order to which the petition relates.
 - (3) A concise statement of all facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.
- (c) The Board will determine, in its discretion and without notice to petitioner, whether to rule upon a petition. In determining whether to rule upon a petition, the Board will consider the following matters, among others:
- (1) Whether a ruling on the petition will terminate a controversy or remove uncertainty as to the applicability to petitioner of any statutory provision or Board rule or order.
 - (2) Whether the petition involves any subject, question, or issue that is the subject of a formal or informal matter, proceeding, or investigation involving the petitioner and currently pending before the Board, any other agency, or a court.
 - (3) Whether the petition involves any subject, question, or issue that is the subject of a formal or informal matter, proceeding, or investigation currently pending before the Board, any other agency, or a court, but not involving the petitioner.
 - (4) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - (5) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado Rules of Civil Proceeding, that will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.
- (d) If the Board determines, in its discretion, that it will not rule upon the petition pursuant to this Rule, the Board shall promptly notify the petitioner of its action and state the reasons for such action.
- (e) If the Board determines, in its discretion, that it will rule on the petition, any ruling of the Board will apply only to the facts presented in the petition and any amendment to the petition. If the Board rules upon the petition without a hearing, it shall notify the petitioner of its decision within 120 days.

In ruling on the petition, at its discretion, the Board may take one or more of the following actions:

- (1) The Board may dispose of the petition on the basis of the matters set out in the petition.
- (2) The Board may request the petitioner to submit additional facts, in writing. In this event, the additional facts amend the petition.
- (3) The Board may order the petitioner to file a written brief, memorandum, or statement of position.
- (4) The Board may set the petition for hearing, upon due notice to petitioner, to obtain additional facts or information; to determine the truth of any facts set forth in the petition; or to hear oral argument on the petition. The notice to the petitioner setting the hearing shall state, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of the hearing,

to the extent necessary, the petitioner shall have the burden of proving all facts stated in the petition; all facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner; and any other facts the petitioner desires the Board to consider.

- (f) If the Board determines that the petition addresses a matter within the purview of any other agency, the Board shall refer the petition to the other agency for consideration. If the Board refers a petition to another agency, the Board shall promptly inform the petitioner of the referral. The referral ends the matter before the Board.
- (g) The parties to any proceeding pursuant to this Rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding. A petition to intervene shall set forth the matters required by subsection (b) of this Rule. Based on the information presented, and in its discretion, the board may grant leave to intervene. Any reference to "petitioner" in this Rule includes any person who has been granted leave to intervene by the Board.
- (h) Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute final agency action subject to judicial review pursuant to CRS 24-4-106.

RULE 7

MANDATORY DISCLOSURE STATEMENT (CRS 12-43-214, 12-43-222(1)(p))

- (a) As used in CRS 12-43-214 and this Rule,
 - (1) "Administered pursuant to court order" means contact between the unlicensed psychotherapist and the client for the purpose of psychotherapy where the contact is at the express written direction of a court of competent jurisdiction, for a particular purpose, in the context of a specific judicial proceeding or case, and with respect to an individual or individuals identified in the court's order by name or by readily-identifiable and limited classification (e.g., assessment, evaluation, or treatment of court-ordered cases). This term does not include client contact subsequent to the termination of the psychotherapy ordered by the court. (For example, a court-ordered assessment of an accused to determine her/his competence to stand trial is completed when the report and/or testimony is provided to the court. If the accused thereafter approached the unlicensed psychotherapist, the contact would come within the general scope of CRS 12-43-214(1).) Similarly, unless ordered by a court of competent jurisdiction, reassessments, reevaluations, "updates," and similar activities are not within this definition. There must be a specific court order.
 - (2) "Client" means the recipient of the psychotherapy or mental health services, except as noted here. If the client is a child who is consenting to psychotherapy under CRS 27-10-103(2), the mandatory disclosure is made to the child. However, if the client is a child whose parent or legal guardian is consenting to the psychotherapy, mandatory disclosure is given to the parent or legal guardian. If the recipient of psychotherapy services is an adult for whom a guardian or legal representative has been appointed by a court of competent jurisdiction (irrespective of an appeal of the order) because the adult is an "incapacitated person" within the meaning of CRS 15-14-101(1), the mandatory disclosure is made to the guardian or legal representative.

- (3) "Emergency" means those situations in which, on presentation, the client's condition requires immediate intervention and/or stabilization. Emergency situations include any actions taken pursuant to CRS Title 19, Article 3, Parts 3 and 4 (the Colorado Children's Code).
- (4) "Forensic evaluation" means a structured, organized gathering of objective information that leads to an independent, professional opinion in reference to a matter that is directly at issue in the court system. Examples are (a) diagnosis, assessment, and/or evaluations done as part of the criminal justice system, at any stage of the criminal justice process; (b) diagnosing and/or making recommendations regarding the following: mental status, children's best interests, test validity litigation, testamentary capacity, and incapacities related to tort liability; and (c) work done while preparing to be an expert witness in civil, criminal, and/or administrative law cases. The unlicensed psychotherapist conducting the evaluation is retained by the patient or the patient's family, counsel for a party, or counsel for two or more parties or is appointed by the court. Forensic evaluations are not performed by persons providing treatment to the subject of the forensic evaluation except in unusual circumstances.
- (5) "Guardian" means a person who has accepted a testamentary appointment, has accepted an appointment by written instrument, or has been appointed by a court of competent jurisdiction (whichever is applicable) and is responsible for a minor and unemancipated person or for an incapacitated person.
- (6) "Incapable of understanding" means that, at the initial client contact, the client is either an "incapacitated person" within the meaning of CRS 15-14-101(1) or physically unable to perceive and to comprehend the nature and significance of the mandatory disclosure statement. (For example, the mandatory disclosure statement is not required if, at the initial client contact, the client is drunk; is in a coma; is unconscious; is in delirium tremens; or is in delirium as a result of withdrawal from the use of any habit-forming drug, as defined by CRS 12-22-102(13), or any controlled substance, as defined in CRS 12-22-303(7).)
- (7) "Initial client contact" means the first contact between the unlicensed psychotherapist and the client. This term does not include client contact that both occurs by telephone and is preliminary to beginning the psychotherapist-client relationship (e.g., contact to determine office hours, methods used, availability). In those instances in which the client is incapable of understanding, disclosure shall be given at the first opportunity such impairment is removed.
- (8) "Physical custody" means the client is incarcerated in a correctional facility or is committed by court order to and resides in a facility operated by the Department of Corrections or the Department of Institutions. Physical custody does not include parole, probation, or release to the custody of any third party.
- (b) General. Every unlicensed psychotherapist (practicing outside the school setting) is required to provide to her/his client the information specified in CRS 12-43-214(1) during the initial client contact except as provided in CRS 12-43-214(4).
- (c) Institutions.
- (1) An institution must provide an institutional mandatory disclosure statement to the client during the initial client contact if psychotherapy occurs in a residential, institutional, or other setting where psychotherapy may be provided by multiple providers. The institutional form must provide the information listed in CRS 12-

43-214(1)(c) and (d). If an institutional mandatory disclosure statement is not provided to the client the unlicensed psychotherapist shall provide the required information listed in CRS 12-43-214(1).

- (2) Where the primary therapist either is not readily ascertainable or is not subject to the jurisdiction of the Board, the institutional disclosure shall be sufficient.
- (3) The institutional and primary therapist's disclosures may be combined provided all required elements are included.

RULE 8

INFORMATION REQUIRED TO BE REPORTED TO THE BOARD (CRS 12-43-224(8), 12-43-224(9))

- (a) General. Unlicensed psychotherapists are required to report violations of CRS 12-43-222 to the appropriate Board once they have direct knowledge that a licensee, certified addiction counselor, or unlicensed psychotherapist has violated a provision of CRS 12-43-222. Unlicensed psychotherapists are not required to report when reporting would violate client/therapist confidentiality (refer to CRS 12-43-218).
- (b) Terms.
 - (1) Direct knowledge means:
 - (A) Having seen, heard, or participated in the alleged violation.
 - (B) Having been informed by the client/victim and obtained informed consent to release information as to the event or the client's name.
 - (C) Having been informed of a violation by the violator.
 - (D) Having been informed by a guardian of a minor or adult and obtained informed consent from the guardian to release information.
 - (E) Having been informed by a professional organization, agency, or any other entity, that an alleged violation occurred.
 - (2) "Has violated" means a reasonable belief that a licensee, certified addiction counselor, or unlicensed psychotherapist has engaged in a prohibited activity under CRS 12-43-222.
- (c) Procedures.
 - (1) Once direct knowledge is established, the unlicensed psychotherapist must report the alleged violation as soon as possible or, absent unusual circumstances, no later than 60 days.
 - (2) When direct knowledge of a violation of CRS 12-43-222 is obtained from her/his client, the unlicensed psychotherapist shall:
 - (A) Inform the client a violation may have occurred.

- (B) Encourage the client to report the violation.
 - (C) Provide the client the packet entitled "Your Options as a Psychotherapy Client."
 - (D) Obtain the client's informed consent before reporting the alleged violation of CRS 12-43-222.
- (3) The report shall be in writing and shall include the specifics of the violation, to the degree known, and any and all relevant information and supporting documentation.

RULE 9

SUPERVISION OF MENTAL HEALTH PRACTITIONERS (CRS 12-43-221(2), 12-43-222(1)(n))

- (a) General. Supervision provides a source of knowledge, expertise, and more advanced skills to the person being supervised. The nature of this relationship depends on the respective skills of the two professionals involved, the client population and/or the specific client being served. It is usually ongoing, required, and is hierarchical in nature.
- (b) Terms.
- (1) Clinical supervision occurs when there is close, ongoing review and direction of a supervisee's clinical practice.
 - (2) Consultation describes a voluntary relationship between professionals of relative equal expertise or status wherein the consultant offers her/his best advice or information on an individual case or problem for use by the consultee as s/he deems appropriate in her/his professional judgment.
 - (3) Administrative supervisor is the person who bears responsibility for the non-clinical functioning of an employee, such as performance appraisals, personnel decisions, etc. The administrative supervisor may be held accountable for misconduct by an unlicensed psychotherapist when s/he knew or should have known of a violation of generally accepted standards of practice or any prohibited activity and when s/he had responsibility for corrective administrative action and failed to act.
 - (4) Modes of Supervision. Includes but not be limited to individual, group, telephone, electronic mail, audio-visual, process recording, direct observation, telecommunication (teleconferencing, fax, videotapes), and hospital rounds. The appropriate modality of supervision shall be determined by the training, education, and experience of the supervisee, and the treatment setting (i.e. urban/rural, or the availability of resources and at all times based on community standards and client needs). The level of supervision provided, including whether every case is directly supervised and whether the supervisor meets with the client, is determined by the education, training, and experience of the supervisee, the specific needs of the clients being served, and the professional judgment of the supervisor. Nothing in this rule should be assumed to abridge the rights of the client to a reasonable standard of care.

(5) Conflictual Dual Relationship.

(A) Conflictual dual relationship between a supervisor/supervisee includes but is not limited to:

- (1) blood relatives;
- (2) spousal relationships or significant others, either current or former;
- (3) current or former therapist and/or client;
- (4) any other relationship which might compromise supervisor/supervisee, supervisor/client, or therapist/client relationship.

(B) The board may grant an exception to the above upon showing that:

- (1) The supervisee and the client was fully informed of the dual relationship and the possibilities for conflicts of interest;
- (2) The client's access to quality care has not been compromised;
- (3) The supervisor and unlicensed psychotherapist have not benefited from the relationship over and above a reasonable fee for service (i.e., that the power in the relationship has not been used to influence the relationship for personal gain);
- (4) The client and supervisory relationships have not been compromised and the best interests of the client are served by the relationship.

(c) Supervision Shall Include But is Not Limited To The Following:

- (1) Monitoring the supervisee's activities to assure s/he is providing services that meets minimal standards.
- (2) Verifying that it is the practice of any supervisee to provide the mandatory disclosure form as required pursuant to CRS 12-43-214.
- (3) If appropriate, verifying that clients are informed as to any changes in the supervisory relationship.
- (4) An adequate termination of supervision.
- (5) Keeping records that document supervision that meet the generally accepted standards of practice.
- (6) Assisting the supervisee in becoming aware of and adhering to all legal, ethical, and professional responsibilities.
- (7) Assuring that no conflictual dual relationships exist between the supervisor and supervisee, and supervisor and client.

(d) Supervisor Qualifications.

- (1) The supervisor shall have sufficient knowledge of legal, ethical, and professional standards relevant to the clients being served.
 - (2) The supervisor shall have clinical experience and competence adequate to perform and direct the services provided by the supervisee.
- (e) Exceptions.
- (1) An administrative supervisor may engage in a conflictual dual relationship so long as s/he conforms to the specific personnel policies and procedures of the agency and is not engaged in clinical supervision involving the conflicted relationship.
 - (2) Any supervisor or unlicensed psychotherapist claiming an exception to the above due to practice in a rural location or accredited training institution of formal learning, or special needs to the clinical population being served shall have the following burden:
 - (A) S/he shall show by a preponderance of the evidence:
 - (1) The client was fully informed of the dual relationship and the possibilities for conflicts of interest;
 - (2) The client's access to quality care has not been compromised;
 - (3) The supervisor and unlicensed psychotherapist have not benefited from the relationship over and above a reasonable fee for service (i.e., that the power in the therapeutic relationship has not been used to influence the therapeutic relationship for personal gain);
 - (4) The therapeutic and supervisory relationships have not been compromised and the best interests of the client are served by the relationship.

RULE 10

REPORTING CHANGE OF ADDRESS, SOCIAL SECURITY NUMBER, TELEPHONE NUMBER, OR NAME (CRS 12-43-203, 12-43-205)

Change of address, social security number, telephone number, or name. Unlicensed psychotherapists shall inform the Division of any name or address change within 30 days of such change. Staff shall not change unlicensed psychotherapist's information without written notification from the unlicensed psychotherapist. Notification via mail, fax, e-mail, and the online system is acceptable. Verbal notification is not acceptable.

Any of the following documentation is required to change an unlicensed psychotherapist's name or social security number: marriage license, divorce decree, or court order. A driver's license or social security card with a second form of identification may be acceptable at the discretion of the Director of Support Services.

RULE 11

REPLACEMENT OF WALLET CARD (CRS 12-43-205, 12-43-207)

Upon database listing and at renewal, the Division will issue only one wallet card to an unlicensed psychotherapist. The Division may issue a duplicate wallet card if the unlicensed psychotherapist submits a written request along with the required fee.

Justification for issuance of a duplicate wallet card may include if the original was lost, stolen, damaged, never received, printed with the incorrect information, or the address or name has changed.

A duplicate wallet card may also be issued for those unlicensed psychotherapists that require multiple wallet cards.

RULE 12

RENEWAL OF DATABASE LISTING (12-43-204(3))

- (a) Failure to Receive Renewal Notice. Failure to receive notice for renewal of database listing from the Board does not excuse an unlicensed psychotherapist from the requirement for renewal under the Act and this Rule.
- (b) Grace period. Unlicensed psychotherapists shall have a sixty-day grace period after the expiration of his or her database listing to renew such listing without the imposition of a disciplinary sanction for practicing with an expired listing. During this grace period a delinquency fee will be charged for late renewals. An unlicensed psychotherapist who does not renew his or her listing within the sixty-day grace period shall be treated as having an expired database listing and shall be ineligible to practice until such listing is reinstated.

RULE 13

AUTHORITY TO INVESTIGATE (CRS 12-43-203)

An application for initial database listing, for renewal of database, or for reinstatement of database listing is an express grant to the board of full authority to make any investigation or personal contact necessary to verify the authenticity of the matters and information stated in the application. If the board so requests, the applicant must supply verification, documentation and/or complete information on any disciplinary action taken against the applicant in any jurisdiction.

RULE 14

REINSTATEMENT OF DATABASE LISTING (CRS 12-43-204)

- (a) General. A database listing that has expired is subject to the following reinstatement provisions.

- (b) Application requirements. To be considered for database listing reinstatement, an applicant must submit a completed reinstatement application form and the reinstatement fee.
- (c) Required statements.
 - (1) Each applicant for reinstatement shall certify the following:
 - (A) Applicant knows of no injunction or disciplinary action completed or pending against her/his listing to practice psychotherapy;
 - (B) Applicant knows of no malpractice judgment against her/him, knows of no settlement of a malpractice action or claim against her/him, and knows of no malpractice action or claim pending against her/him where the malpractice alleged relates to her/his practice of psychotherapy.
 - (C) Applicant knows of no inquiry/complaint pending, investigation being conducted by, or disciplinary proceeding pending before the licensing, grievance, or disciplinary board of any jurisdiction in which s/he is licensed, certified, or registered to practice psychotherapy where the complaint, investigation, or proceeding concerns her/his practice of psychotherapy.
 - (2) The Board may not reinstate a listing to an applicant for reinstatement if disciplinary action is pending or if there is an unresolved complaint.
- (d) Criteria. The Board has established the following criteria for determining whether an applicant for reinstatement has demonstrated her/his continued professional competence as required by CRS 12-43-204(3). An applicant must meet all applicable criteria to establish her/his continued professional competence.
 - (1) Database listing expired more than two years. An applicant whose database listing has been expired more than two years shall pass a Board developed jurisprudence examination to demonstrate her/his continued professional competence.

RULE 15

RECORDS REQUIRED TO BE KEPT AND RECORD RETENTION (CRS 12-43-203(3), 12-43-222(1)(u))

- (a) General. Except as provided in subsection (g) of this rule every unlicensed psychotherapist engaged in the practice of psychotherapy as defined in CRS 12-43-701(3) shall create and shall maintain records on each psychotherapy client. The unlicensed psychotherapist shall retain a record on each psychotherapy client for a period of seven (7) years commencing on the date of termination of psychotherapy services. For the first three (3) years of this period, a full record as defined in subsection (b) of this rule shall be retained. For the remaining four (4) years either a full record or a summary record as defined in subsection (c) of this rule shall be retained.
- (b) Full Record. A full record shall minimally contain the following information:

- (1) Identifying data to include name, address, telephone number, gender, date of birth, and if applicable the name of the parent or guardian. If the client is an organization, the name of the organization, telephone number, and name of the principal authorizing the unlicensed psychotherapist's services or treatment;
 - (2) Mandatory disclosure statement(s)
 - (3) Dates of service;
 - (4) Types of service;
 - (5) Fees;
 - (6) If any of the following have been written: assessment, plan for intervention, consultation, summary reports, and/or testing reports and supporting data; and,
 - (7) Any release of information.
- (c) Summary Record. A summary record shall minimally contain the following information:
- (1) Identifying data to minimally include, the client(s) name, address, telephone number, gender, date of birth, and if applicable, the name of the parent or guardian.
 - (2) Mandatory disclosure statement(s).
 - (3) A summary of the treatment, including the status of the client at the close of treatment and the dates of first and last contacts.
- (d) Record Storage. Every unlicensed psychotherapist shall keep and store client records in a secure place and in a manner that assures that only authorized persons have access to the records and protects the confidentiality of the records.
- (e) Transfer of Records. If the unlicensed psychotherapist is not available to handle her/his own records, the unlicensed psychotherapist and/or his estate shall designate an appropriate person to handle the disposition of records. A plan for the disposition of records shall be in place for all unlicensed psychotherapists for the following conditions:
- (1) Disability, illness or death of the unlicensed psychotherapist.
 - (2) Termination of the unlicensed psychotherapist's practice.
 - (3) Sale or transfer of the unlicensed psychotherapist's practice.
- (f) Record Disposal. Every unlicensed psychotherapist shall dispose of client records in a manner or by a process that destroys or obliterates all client identifying data.
- (g) Exemptions.
- (1) An unlicensed psychotherapist who provides services to clients in an agency, organization, or institutional setting, and the agency, organization, or the institution maintains equivalent client records in accordance with this rule, is not required to create or maintain a separate set of records.