



SOUTH AUSTRALIAN PSYCHOLOGICAL BOARD

**CODE OF
PROFESSIONAL CONDUCT
&
PRACTICE**

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1. INTRODUCTION

This document is a Code of Professional Conduct and Practice. Whilst not legally binding the document is a guide for the profession of the principles which are used in decisions relating to complaints of misconduct under the *Psychological Practices Act, 1973*, (the "Act").

The Code has been prepared by the South Australian Psychological Board (the "Board") in conjunction with representative members of the profession.

The Board has a duty to ensure that psychologists maintain a high standard of practice. Psychologists should discharge their duties and responsibilities, at all times, in a manner which professionally, ethically and morally compromises no individual or organisation with whom they have professional contact.

The question of whether any particular course of conduct amounts to misconduct is a matter which is determined by the Board after considering the evidence in each individual case.

It must be emphasised that the categories of conduct amounting to misconduct referred to in this publication are examples only and should not be seen as being a finite definition of misconduct. The abuse of any of the privileges and opportunities afforded to the practice of the profession of psychology or any dereliction of professional duty or breach of professional ethics as well as other matters, may give rise to an allegation of misconduct.

With experience and feedback from the profession, it is expected that these guidelines will be amended from time to time; they are not exhaustive. Clarification or information relating to any matter may be sought from the Board or the Registrar.

The Board uses the following case law as a guide to the meaning of the term "misconduct" as appears in Section 26(3) of the Act.

"In the decision O'Connor v Palmer & Ors (1960) 1SLR at page 397 it was held by the Court that misconduct,

'means more than mere negligence, error of judgement or innocent mistake.'

In the decision Pillai v Messiter (No. 2) 1989 NSWLR 197; the Court of Appeal of New South Wales Supreme Court held that the statutory test of misconduct in a 'professional respect' was,

'not met by mere professional incompetence nor by deficiencies in the practice of the profession; more is required. Such misconduct included a deliberate departure from accepted standards or such serious

negligence as, although not deliberate, would portray indifference and an abuse of the privileges which accompany registration.'

The test for "misconduct" is much higher than that for "unprofessional or inappropriate conduct".

The Board believes that with the cooperation of the profession these guidelines will be effective without the need for detailed regulations regarding the conduct of practitioners in connection with the practice of psychology.

Note: *Throughout this booklet any reference to the word "practitioner" or "registered psychologist" is to be taken to include prescribed persons approved by the Board to engage in the practice of hypnosis under Section 39(1)(d) of the Act and any reference to the "practice of psychology" includes the practice of hypnosis.*

2. STANDARDS OF PROFESSIONAL CONDUCT

2.1 PERSONAL CONDUCT

Psychologists must maintain high standards of personal conduct in their capacity or identity as psychologists. The private conduct of psychologists is a personal matter except where such conduct compromises professional obligations.

2.1.1 Discrimination

Psychologists must not discriminate against clients on the basis of race, disability, age, gender, sexual preference, religion or political beliefs.

2.1.2 Fitness to Practice

Psychologists must not treat clients if their ability to do so is impaired by any mental or physical illness or by alcohol or drugs.

2.1.3 Integrity

Psychologists should act in accordance with professional standards of integrity and impartiality. Psychologists must not exploit their professional relationships in any way.

2.2 STATUTORY OBLIGATIONS

Psychologists have a responsibility to keep themselves informed of their statutory obligations, eg Psychological Practices Act and mandatory reporting under the Child Protection Act and Firearms Legislation.

2.3 COMPETENCE

Psychologists must maintain a level of professional knowledge and skill to ensure continued competency.

2.3.1 *Practice*

Psychologists who have not practised for a continuous period of five years or more should update their knowledge and skills before re-entering the work force.

2.3.2 *Boundaries*

Psychologists should acknowledge the boundaries of their competence and only provide services and use techniques for which they are qualified by training and expertise.

2.3.3 *Misrepresentation*

Psychologists must not misrepresent professional qualifications, education, experience or affiliations.

2.3.4 *Referral*

Psychologists should refer, for more appropriate service, those clients whose needs or requests are outside their professional competence.

2.3.5 *Keeping Records*

For professional and legal reasons psychologists must keep and maintain adequate client records which clearly reflect the course of client management. Records must be accurate, legible, and comprehensive so that a reviewer of these records can establish the essential relationship between the client and the practitioner in terms of past, present and future care.

The taking and recoding of informed consent is also an increasingly important aspect of record keeping.

2.3.6 Reports

Psychologists should provide clear and accurate reports and should be mindful of a report's purpose and intended recipient.

2.4 PROFESSIONAL RESPONSIBILITIES TO CLIENTS

Psychologists must be constantly mindful of their responsibilities for the protection of a client's welfare, rights and for the rigorous maintenance of the trust implicit in the therapist/client relationship.

2.4.1 Confidentiality

Psychologists and their staff must respect and maintain the confidentiality rights of clients.

- (a) Psychologists should ensure appropriate client confidentiality in creating, storing, transferring and disposing of all records under their control.
- (b) Psychologists must not divulge confidential information about a client unless:
 - (i) the client or guardian specifically authorises in writing the release of that information; or
 - (ii) the release of that information is to protect the client or others from harm; or
 - (iii) the release of that information is required by law.

2.4.2 Personal or Sexual Relationships

Psychologists must not enter into a personal or sexual relationship with a client. Sexual contact with former clients is potentially harmful and generally considered unprofessional.

Psychologists should be aware of the power differential between them and the client - consent is not a valid defence.

Psychologists must **never** -

- have sexual intercourse with a client;
- initiate any form of sexual conduct in the client's presence;

- make any inappropriate physical contact with a client;
- make sexual proposals to a client;
- tell a client of their own sexual problems, desires, practices, preferences or fantasies;
- show disrespect of a client's sexual orientation;
- make sexually suggestive comments or innuendos to a client.

2.4.3 Fees

Psychologists must recognise the importance of establishing a clear understanding of fees to be charged at a client's first appointment.

Arrangements for payments should be settled at the beginning of a professional relationship.

The practitioner's account must specify services actually rendered.

2.4.4 Consent

- (a) Psychologists should inform their clients at the commencement of a service of the reasonably foreseeable purpose, course and outcome of that service (including risks and complications).
- (b) Psychologists should seek consent from their clients or guardians prior to any proposed course of treatment.

2.4.5 Professional Indemnity Insurance

In the interests of the public (and the psychologist) registered psychologists in private practice are strongly advised to carry an appropriate level of professional indemnity insurance to cover civil liability damage or compensation claims.

3. ADVERTISING

- (a) An advertisement must not in any way:
 - (i) be false, misleading or deceptive;
 - (ii) create an unjustified expectation of beneficial treatment;
 - (iii) promote the unnecessary or inappropriate use of the services of the registered psychologist; or
 - (iv) claim that the registered psychologist has unique prominence in the practice of psychology.

- (b) An advertisement must not be likely to bring the profession into disrepute. An advertisement may be considered to bring the profession into disrepute if it:
- (i) is disparaging of any other profession or professional; or
 - (ii) contains material of a rude, offensive or undignified nature.

Practitioners who are in any doubt as to whether their advertising proposal is likely to contravene the guidelines are invited to submit their advertising proposal and literature to the Board for consideration.

4. COMPLAINTS AGAINST REGISTERED PSYCHOLOGISTS OR APPROVED HYPNOTHERAPISTS

Complaints by individuals against a registered psychologist (or approved hypnotherapist) should be in writing and contain sufficient details of the allegations made.

Usually the Board investigates a complaint and if an inquiry is warranted the Board conducts it. However, the Act provides that an application by an individual in the prescribed form (Form C) constitutes a request to the Board for an inquiry. Applications to the Board for an inquiry can be made direct to the Board using the prescribed form (Form C, refer Addendum A).

GUIDELINES FOR COMPLAINTS

(a) Investigations

Section 25 of the Act states:

- (1) *The Registrar may of his own motion and shall at the direction of the Board make any investigation that he or the Board considers necessary or expedient for the purpose of determining any application, or other matter before the Board.*
- (2) *The Registrar shall report in writing to the Board upon every such investigation.*

Once a written complaint has been received it will be considered by the Board and, if there is any substance at all to the allegations, the Board will direct the Registrar to investigate the complaint. Alternatively, the Registrar is empowered to investigate on his own account..

If the Board considers a complaint is vexatious or has no merit, no further action will be taken.

Upon a Board decision to investigate, a copy of the written complaint will be sent to the registered psychologist (or approved hypnotherapist) seeking a response.

Any response is considered by the Complaints Committee of the Board to determine whether the matter should be taken further. The members of the committee are precluded from sitting on an eventual inquiry.

Should the Board be satisfied that a complaint was laid as a result of misunderstanding, it may request the parties to attend before the Board, the Registrar or a committee of the Board in order to clarify the matter.

If the Complaints Committee recommends further investigation, an investigator may be appointed. An investigator obtains detailed statements from all relevant witnesses including the complainant.

It can be expected that from investigation to inquiry stage 3-9 months may elapse.

Once the matter has been investigated the Complaints Committee may seek legal advice from the Crown Solicitor's Office as to whether an inquiry should be held.

If at any stage the Board determines that an inquiry is not necessary, the complainant will be advised of that fact.

(b) *Inquiries / Appeals*

Usually the Board holds an inquiry of its own motion (excluding the Complaints Committee). Inquiries are held in private and the names of the complainant, clients or witnesses are suppressed in any order or finding of the Board.

The procedure prior to the holding of an inquiry is as follows:

- A Notice of Inquiry is forwarded to the registered psychologist not less than seven (7) days before the date of the inquiry. The notice contains particulars of the complaint.
- A directions hearing is normally the first part of the inquiry.
- A registered psychologist may be represented by a legal practitioner at the inquiry.
- Should a registered psychologist not attend the inquiry the Board may hold the inquiry in his or her absence.
- The procedure at an inquiry is determined by the Board.

A lawyer from the Crown Solicitor's Office will be appointed to represent the Registrar at the inquiry. The complainant's role is that of witness.

The Act provides in Section 26(3) -

"There shall be proper cause for disciplinary action if a registered psychologist

(a) has improperly obtained registration:

(b) has been guilty of gross professional negligence or malpractice or misconduct

or

(c) has been convicted of an indictable offence."

If after conducting the inquiry the Board is satisfied that it should take disciplinary action Section 26(2) of the Act provides that the Board may do one or more of the following:

- *reprimand the person in relation to whom the inquiry was held; and*
- *cancel the registration of that person or, for a period not exceeding twelve months, suspend his/her registration.*

A person whose registration has been suspended or cancelled must, within seven (7) days, post or deliver his/her current certificate of registration to the Board or satisfy the Board that the certificate has been lost or destroyed.

Appeals

A registered psychologist (or approved hypnotherapist) has a right of appeal to the Supreme Court from any order of the Board following a disciplinary inquiry.

An appeal must be instituted within one (1) month of the Board making the order. A person is entitled to seek written reasons from the Board and time within which to institute an appeal commences from the date the person receives the written reasons.

Publication

Complaints to the Board are summarised in its Annual Report.

The Board in its discretion and in the public interest may publish any relevant information in its Annual Report, the Government Gazette or other advertising medium.

All Psychologists' Boards in Australia and New Zealand will be informed of the suspension or cancellation of any registered psychologist's/approved hypnotherapist's registration.

Costs

The Board is empowered to require any party to pay costs. If a costs order is not paid within the time fixed, the Board may suspend the registration of that person until the costs are paid.

(c) Applications for Inquiry by Individuals using Form C

If, after following the procedures in part (a) above, the Board decides not to inquire into the complaint, it is then open to a complainant to use Form C (addendum A) to apply for an Inquiry.

The Board will consider whether to hold the Inquiry and may seek further information from the complainant.

Such Inquiry, if held, will be conducted by the complainant who may be legally represented (at his/her own expense) . If Form C is used and an individual conducts an Inquiry on his/her behalf, the Board has the power to award costs against that individual if the allegations are not proved.

(d) Removal from the Register

Pursuant to Section 24 of the Act, the Registrar shall remove from the Register the name of any registered psychologist who has died, become of unsound mind or whose registration has expired or has been cancelled or suspended by the Board.

5. USE OF QUALIFICATIONS, TITLES AND MEMBERSHIPS**(a) Qualifications**

Section 20 of the Act requires that the Registrar keep a Register in which the names and qualifications of all registered psychologists are entered. The Board takes “qualifications” to mean those degrees, diplomas, certificates, fellowships or memberships, which are gained by examination from an examining body it recognises.

Unless the qualifications of a registered psychologist meet the above criteria they will not be entered in the Register.

The method of recording qualifications, psychological or a related discipline is determined by the Board.

(b) Titles

Section 35 of the Act specifically limits the use of titles, words, letters, additions or descriptions to those in the Register. This is taken to mean that the use of titles, qualifications or words implying qualifications other than those qualifications that are in the Register are not permitted.

The title or description that may be used in an advertisement is “Psychologist” or “Registered Psychologist”. Titles or descriptions implying specialist status are not permitted under the present Act. A description of area of practice is permitted (eg “**Clinical Psychologist**” is not permitted whereas “**Psychologist practising in the area of clinical psychology**” is permitted given that the Psychologist has had satisfactory training and expertise).

(c) Memberships

Where a practitioner’s membership of a particular organisation appears in an abbreviated form it is possible for members of the public to misconstrue it as an additional qualification.

Thus memberships gained by examination from a recognised examining body and entered in the Register may be used in advertisements and on stationery. **Other memberships must be shown in full (eg Member of the Australian Psychological Society – not MAPS).**

6. COMPLAINTS AGAINST UNREGISTERED PERSONS

If a complaint is received about a person who is not registered, the matter shall be considered by the Board at first instance. If the complaint is frivolous or vexatious or it is ascertained that no breach of the Act has occurred, the Board will take no further action.

If the matter has substance it may be referred to the Crown Solicitor for further investigation and, if necessary, prosecution.

Examples of offences by unregistered persons may be found in Sections 32, 33, 37 & 39 of the Act (which includes psychologists who fail to renew their registration and continue to practise).

7. OFFENCES AGAINST THE PSYCHOLOGICAL PRACTICES ACT

Sections 34 & 35 of the Act and Regulations 10 & 11 relate to offences by registered psychologists.

All offences against the Act are summary offences i.e. tried by a magistrate.

Proceedings for a summary offence may be commenced within two (2) years after the day on which the offence is alleged to have been committed.

Complaints involving a summary offence may be referred by the Board to the Crown Solicitor for further investigation. If a complaint relates to a matter outside the jurisdiction of the Act, then the Board refers it to the appropriate authority.

PSYCHOLOGICAL PRACTICES ACT 1973

APPLICATION FOR INQUIRY

To: South Australian Psychological Board
16 Norma Street
MILE END SA 5031

Telephone: 8443 9669
Facsimile: 8443 9550
E-mail: regauth@senet.com.au
Web Site: www.regauth.com/sapb

I, (full name)

of (address)

..... Postcode

Occupation

apply for an Inquiry into the conduct of (full name and address)

.....

.....

..... Postcode

a registered psychologist.

The conduct of the registered psychologist about which I complain is (give particulars):

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If space is insufficient please attach additional documentation.

Dated this day of 19

Signed