

21 NCAC 63 .0505 is readopted with changes as follows:

21 NCAC 63 .0505 RELATIONSHIPS WITH COLLEAGUES

Social workers shall act with integrity in their relationships with colleagues and other professionals. They shall know the areas of competence of other professionals and shall cooperate with them consider the practice areas and knowledge or expertise of other professionals to whom they make referrals and with whom they collaborate in serving clients.

- (1) ~~The social worker shall treat with respect and represent accurately. When expressing judgment on the views, qualifications and findings of colleagues, and when expressing judgment on these matters shall do so fairly and through appropriate channels.~~ social workers shall avoid negative criticisms. not misrepresent the colleague's license level, degree, or other professional qualification in any written or oral communication and shall avoid the use of demeaning or derogatory language.
- (2) ~~In~~ Social workers shall maintain knowledge of the professional and community resources available to the client population they serve and when referring clients, social workers shall refer to professionals who are recognized members of their own disciplines and are by their respective profession as competent to carry out and community resources that are able to provide the services required.
- (3) If a social worker's services are sought by an individual who is already receiving similar services from another professional, consideration for the client's welfare shall be paramount. the primary consideration before agreeing to provide services. It requires the social worker to proceed with great caution, carefully considering both To minimize confusion and conflict, social workers shall discuss with the prospective client the nature of the existing professional relationship relationship, the client's needs, and the therapeutic issues involved. involved, and the benefits and risks associated with entering into a relationship with a new service provider.
- (4) Social workers shall ~~accept their responsibility to~~ provide competent professional guidance to colleagues, employees, supervisees, and students. They shall foster working conditions that provide fairness, privacy and protection from physical or mental harm. They shall evaluate fairly Social workers supervising associate licensees shall evaluate without bias, the work performance of those under their supervision, and share evaluations with supervisees. Social Workers shall not harass and shall not engage in sexual relationships with supervisees, students, trainees, or other colleagues over whom they exercise professional authority. They shall not abuse the power inherent in their position. supervisory position for personal or financial gain.
- (5) ~~Social workers shall take appropriate measures to discourage, prevent, expose and correct unethical or incompetent behavior by colleagues, including reporting incompetent and unethical behavior to the appropriate licensing authority, but shall take equally appropriate steps to assist and defend colleagues unjustly charged with such conduct.~~ A social worker certified or licensed

under this Chapter who has knowledge of conduct that would constitute grounds for disciplinary action under this Chapter or the Chapter governing the practice of another licensed healthcare provider shall report the conduct to the appropriate licensing authority that oversees the healthcare provider believed to be engaged in misconduct. ~~They~~ Social workers shall provide information to assist colleagues defending themselves against allegations of unethical or incompetent practice.

History Note: Authority G.S. 90B-6; 90B-11;
Eff. March 1, 1994.
Amended Eff. February 1, 2017



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November 17, 2016

Micki Lilly
NCSWCLB
Sent via email to mswboard@asheboro.com

Re: 21 NCAC 63 .0505

Dear Ms. Lilly:

At its November 17, 2016 meeting, the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10 (2).

The Commission objected to the following provisions in this Rule based on ambiguity:

- Line 5 – social workers shall “know the areas of competence of other professionals”
- Item (1) – social workers shall “treat with respect and represent accurately the views, qualifications and findings of colleagues, and when expressing judgment on these matters shall do so fairly and through appropriate channels.”
- Item (2) – “In referring clients, social workers shall refer to professionals who are recognized by their respective profession as competent to carry out the services required.”
- Item (3) – “If a social worker's services are sought by an individual who is already receiving similar services from another professional, consideration for the client's welfare shall be paramount. It requires the social worker to proceed with great caution, carefully considering both the existing professional relationship and the therapeutic issues involved.”
- Item (4) – Social workers “shall evaluate fairly the performance of those under their supervision,” shall not “harass,” and “shall not abuse the power inherent in their position.”
- Item (5) – “unethical or incompetent behavior” and “take equally appropriate steps to assist and defend colleagues unjustly charged with such conduct.”

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The Commission objected to the above language as it is unclear as to what is expected of the social worker in carrying out these provisions.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May". The signature is fluid and cursive, with the first name "Amber" and last name "May" clearly distinguishable.

Amber May
Commission Counsel

CC: Anna Choi, sent via email to anna@ncl-law.com

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC Social Work Certification and Licensure Board

RULE CITATION: **21 NCAC 63 .0505**

RECOMMENDED ACTION:

- X Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to adopt the rule in accordance with the APA
- Extend the period of review
- Return the rule to the agency for failure to comply with the Administrative Procedure Act

COMMENT:

Staff is recommending objection this Rule as being unclear and ambiguous. Staff is also recommending objection to the newly adopted language in Item (5) as being beyond the Board's statutory authority.

Line 5 of this Rule requires the social worker to "know the areas of competence of other professions" without providing additional information. It is unclear whether the social worker is expected to know about all other professions or just those professions that may be beneficial in regard to his or her work as a social worker.

Item (1) of this Rule requires the social worker to "treat with respect and represent accurately the views, qualifications, and findings of colleagues and when expressing judgement on these matters... do so fairly and through appropriate channels." No additional information is provided. As written, it is unclear how the social worker is to "fairly" express judgment and also what "appropriate channels" may be.

Item (2) of this Rule requires the social worker to refer clients to "professionals who are recognized by their respective profession as competent to carry out the services required." No additional information is provided. It is unclear how the social worker will know whether someone is "competent" and how they are to make that determination.

Item (3) of this Rule is unclear and ambiguous as written as it does not indicate what is actually required of the social worker.

Item (4) of this Rule requires that social workers “fairly” evaluate the performance of supervisees. It is unclear how the social worker is to “fairly” evaluate. Further, this rule requires that “social workers shall not harass... supervisees, students, trainees, or other colleagues... [and] shall not abuse the power inherent in their position.” No additional information is provided. It is unclear what is meant by “harass” and also how one is to “not abuse the power.”

Further, it is staff’s opinion that the newly adopted provisions outlined in Item (4) go beyond the statutory authority of the Board. 90B-6(h) allows the Board to promulgate Rules “to carry out the purpose of this Chapter, including but not limited to the power to adopt ethical and disciplinary standards.” 90B-2 indicates that the purposes of this “Chapter is to protect the public...” Staff does not believe that the new requirements that social workers “not engage in sexual relationships with supervisees, students, trainees, or other colleagues over whom they exercise professional authority” is necessary to protect the public; therefore, it is staff’s opinion that this requirement goes beyond the Board’s statutory authority.

Item (5) of this Rule requires “equally appropriate steps to assist and defend colleagues unjustly charged with [unethical or incompetent] conduct.” No additional information is provided. As written it is unclear what constitutes an “unjust charge.” Further, it is unclear as to what exactly is expected of the social worker in these cases as “equally appropriate steps” is ambiguous.

§ 90B-2. Purpose.

Since the profession of social work significantly affects the lives of the people of this State, **it is the purpose of this Chapter to protect the public** by setting standards for qualification, training, and experience for those who seek to represent themselves to the public as certified social workers or licensed clinical social workers and by promoting high standards of professional performance for those engaged in the practice of social work. (1983, c. 495, s. 1; 1999-313, s. 1.)

§ 90B-6. Functions and duties of the Board.

- (a) The Board shall administer and enforce the provisions of this Chapter.
- (b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and secretary-treasurer, and adopt rules to govern its proceedings. A majority of the membership shall constitute a quorum for all Board meetings.
- (c) The Board shall examine and pass on the qualifications of all applicants for certificates and licenses under this Chapter, and shall issue a certificate or license to each successful applicant therefor.
- (d) The Board may adopt a seal which may be affixed to all certificates and licenses issued by the Board.
- (e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter from the fees which it collects, but in no event shall expenditures exceed the revenues of the Board during any fiscal year. No State appropriations shall be subject to the administration of the Board.
- (f) Repealed by Session Laws 1999-313, s. 1, effective July 1, 1999.
- (g) The Board shall have the power to establish or approve study or training courses and to establish reasonable standards for certification, licensure, and renewal of certification and licensure, including the power to adopt or use examination materials and accreditation standards of the Council on Social Work Education or other recognized accrediting agency and the power to establish reasonable standards for continuing social work education; provided that for certificate and license renewal no examination shall be required; provided further, that the Board shall not have the power to withhold approval of study or training courses offered by a college or university having a social work program approved by the Council on Social Work Education.
- (h) **Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to adopt rules to carry out the purposes of this Chapter, including but not limited to the power to adopt ethical and disciplinary standards.**
- (i) The Board may order that any records concerning the practice of social work and relevant to a complaint received by the Board or an inquiry or investigation conducted by or on behalf of the Board shall be produced by the custodian of the records to the Board or for inspection and copying by representatives of or counsel to the Board. A social worker licensed by the Board or an agency employing a social worker licensed by the Board shall maintain records for a minimum of three years from the date the social worker terminates services to the client and the client services record is closed. A social worker certified or licensed by the Board shall cooperate fully and in a timely manner with the Board and its designated representatives in an inquiry or investigation of the records conducted by or on behalf of the Board.
- (j) The Board shall have the power to employ or retain professional personnel, including legal counsel, subject to G.S. 114-2.3, or clerical or other special personnel deemed necessary to carry out the provisions of this Chapter. (1983, c. 495, s. 1; 1987, c. 827, s. 1; 1995, c. 344, s. 1; 1999-313, s. 1; 2005-129, s. 1; 2007-379, s. 2.)

§ 90B-11. Disciplinary procedures.

(a) The Board may, in accordance with the provisions of Chapter 150B of the General Statutes, deny, suspend, or revoke an application, certificate, or license on any of the following grounds:

- (1) Conviction of a misdemeanor or the entering of a plea of guilty or nolo contendere to a misdemeanor under this Chapter.
- (2) Conviction of a felony or the entering of a plea of guilty or nolo contendere to a felony under the laws of the United States or of any state of the United States.
- (3) Gross unprofessional conduct, dishonest practice or incompetence in the practice of social work.
- (4) Procuring or attempting to procure a certificate or license by fraud, deceit, or misrepresentation.
- (5) Any fraudulent or dishonest conduct in social work.
- (6) Inability of the person to perform the functions for which he or she is certified or licensed, or substantial impairment of abilities by reason of physical or mental disability.
- (7) Violations of any of the provisions of this Chapter or of rules of the Board.

21 NCAC 63 .0505 is readopted as published in 31:01 NCR 38:

21 NCAC 63 .0505 RELATIONSHIPS WITH COLLEAGUES

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- (1) The social worker shall treat with respect and represent accurately the views, qualifications and findings of colleagues, and when expressing judgment on these matters shall do so fairly and through appropriate channels.
- (2) In referring clients, social workers shall refer to professionals who are recognized ~~members of their own disciplines and are~~ by their respective profession as competent to carry out the services required.
- (3) If a social worker's services are sought by an individual who is already receiving similar services from another professional, consideration for the client's welfare shall be paramount. It requires the social worker to proceed with great caution, carefully considering both the existing professional relationship and the therapeutic issues involved.
- (4) Social workers shall accept their responsibility to provide competent professional guidance to colleagues, employees, supervisees, and students. They shall foster working conditions that provide fairness, privacy and protection from physical or mental harm. They shall evaluate fairly the performance of those under their supervision, and share evaluations with supervisees. Social Workers shall not harass and shall not engage in sexual relationships with supervisees, students, trainees, or other colleagues over whom they exercise professional authority. They shall not abuse the power inherent in their position.
- (5) Social workers shall take appropriate measures to discourage, prevent, expose and correct unethical or incompetent behavior by colleagues, including reporting incompetent and unethical behavior to the appropriate licensing authority, but shall take equally appropriate steps to assist and defend colleagues unjustly charged with such conduct.

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