

Readopt Mhp 501.01, effective 2-24-15 (Document #10790), cited and to read as follows:

CHAPTER Mhp 500 ETHICAL AND PROFESSIONAL STANDARDS, RESPONSIBILITIES OF LICENSEES

PART Mhp 501 ETHICAL AND PROFESSIONAL STANDARDS

Mhp 501.01 Obligation to Obey.

(a) All licensees shall be bound to the ethical standards set forth in this part. Disciplinary sanctions may be imposed for violation of any such standards.

Readopt with amendments Mhp 501.02, effective 2-24-15 (Document #10790), as amended effective 3-30-18 (Document #12505), to read as follows:

PART Mhp 502 RESPONSIBILITIES OF LICENSEES

Mhp 501.02 Code of Ethics.

(a) A licensee shall adhere to the code of ethics of the profession in which they are licensed, as adopted by the following entities:

(1) For “pastoral psychotherapists” the *NH Pastoral Psychotherapist Association code of ethics dated December 2019*; [~~American Association of Pastoral Counselors code of ethics dated 4/2010 as referenced in Appendix B;~~]

(2) For “clinical social workers” the National Association of Social Workers code of ethics, *effective January 1, 2018*, [~~of dated 2008~~] as referenced in Appendix B;

(3) For “mental health counselors” the American Mental Health Counselors Association code of ethics dated 2015 as referenced in Appendix B; and

(4) For “marriage and family therapists” the American Association for Marriage and Family Therapists code of ethics of dated [~~7/2012~~] *January 1, 2015* as referenced in Appendix B.

(b) A copy of all codes of ethics referenced in Mhp 501.02 can be obtained by contacting the board office and requesting a copy be sent via:

- (1) Email at no cost; or
- (2) US Mail at \$.10 per page copy fee.

(c) A licensee shall adhere to the following standards:

(1) A licensee shall provide honest and accurate information in reports; and

(2) A licensee shall maintain sexual boundaries by:

a. Refraining from any behavior a reasonable person would interpret as exploiting the practitioner-patient relationship in a sexual way; and

b. Avoiding any behavior by the mental health practitioner, which could be interpreted as sexual by a reasonable person, even when initiated by or consented to by the patient.

Readopt with amendments Mhp 502.01 – Mhp 503.01, effective 2-24-15 (Document #10790), to read as follows:

Mhp 502.01 Responsibilities of Licensees.

- (a) A licensee shall comply with all applicable rules adopted by the board.
- (b) A licensee shall submit only truthful and correct information, to the best of the licensee's knowledge and belief, in any application or other document filed with or statement made to the board.
- (c) A licensee shall cooperate with investigations and requests for information from the board.
- (d) A licensee shall inform the board of:
 - (1) A principal business address to which all official board communications should be directed; and
 - (2) All addresses where the licensee is practicing.
- (e) A licensee shall report to the board within 30 days any change or abandonment of a business address by completing the "Change of Address" form, dated June 10, 2014, as supplied by the board.
- (f) A licensee shall display in a conspicuous place at his or her principal business address a current license issued by the board.
- (g) A licensee shall know and have available in his or her office information regarding how patients may contact the board regarding complaints about their treatment or billing.
- (h) A licensee shall display at his or her principal business address a copy of the mental health bill of rights described in Mhp 502.02.
- (i) A licensee shall not advertise any service as free if the patient is charged for any aspect of the treatment provided on the office visit when the free service was provided, or otherwise engage in any false or misleading advertising.
- (j) A licensee shall not engage in any fraudulent or dishonest billing practices.
- (k) A licensee shall maintain complete and accurate clinical and business records pertaining to each patient seen for a minimum of 7 years following the last activity on the account and for minors for a period of 7 years past the age of majority.
- (l) A licensee shall maintain clinical records that include, at a minimum, legible date of service, type of service, outcome of service and signature of service provider.
- (m) Except as otherwise provided by law, a licensee shall within 30 days furnish complete and accurate copies of patient records, or in appropriate circumstances, original patient records upon request of the patient, or if the patient is under the age of 18, the request of their parent or guardian, unless prohibited by a court order.
- (n) A licensee shall inform the board within 30 days of any disciplinary action taken against the licensee by a state, regional or national agency or association.
- (o) A licensee shall have a written plan in place for management of clinical records in case of his or her death or incapacitation, ***retirement, or practice closure, which identifies an individual or entity who will oversee the professional will. Such individual shall be a licensee of the board.***

Mhp 502.02 Mental Health Bill of Rights.

(a) The board shall provide each licensee with a client bill of rights to read as follows:

“This Mental Health Bill of Rights is provided by law to persons receiving mental health services in the State of New Hampshire. Its purpose is to protect the rights and enhance the well being of clients, by informing them of key aspects of the clinical relationship. As a client of a New Hampshire Mental Health Practitioner, you have, without asking, the right:

(1) To be treated in a professional, respectful, competent and ethical manner consistent with all applicable state laws and the following professional ethical standards:

- a. ~~for psychologists, the American Psychological Association;~~
- b for independent clinical social workers; the National Association of Social Workers;
- c. for pastoral psychotherapists; the *NH Association of Pastoral Psychotherapists* ~~American Association of Pastoral Counselors;~~
- d. for clinical mental health counselors; the American Mental Health Counselors Association; and
- e. for marriage and family therapists; the American Association for Marriage and Family Therapists.

(2) To receive full information about your treatment provider’s knowledge, skills, experience and credentials.

(3) To have the information you disclose to your mental health provider kept confidential within the limits of state and federal law. Communications between mental health providers and clients are typically confidential, unless the law requires their disclosure. Mental health providers will inform you of the legal exceptions to confidentiality, and should such an exception arise, will share only such information as required by law. Examples of such exceptions include but are not limited to:

- a. abuse of a child;
- b. abuse of an incapacitated adult;
- c. Health Information Portability and Accountability Act (HIPAA) regulation compliance;
- d. certain rights you may have waived when contracting for third party financial coverage;
- e. orders of the court; and
- f. significant threats to self, others or property.

(4) To a safe setting and to know that the services provided are effective and of a quality consistent with the standard of care within each profession and to know that sexual relations between a mental health provider and a client or former client are a violation of the law (RSA 330-A:36).

- (5) To obtain information, as allowed by law, pertaining to the mental health provider's assessment, assessment procedures and mental health diagnoses (RSA 330-A:2 VI).
 - (6) To participate meaningfully in the planning, implementation and termination or referral of your treatment.
 - (7) To document informed consent: to be informed of the risks and benefits of the proposed treatment, the risks and benefits of alternative treatments and the risks and benefits of no treatment. When obtaining informed consent for treatment for which safety and effectiveness have not been established, therapists will inform their clients of this and of the voluntary nature of their participation. In addition, clients have the right to be informed of their rights and responsibilities, and of the mental health provider's practice policies regarding confidentiality, office hours, fees, missed appointments, billing policies, electronic communications, managed care issues, record management, and other relevant matters except as otherwise provided by law.
 - (8) To obtain information regarding the provision(s) for emergency coverage.
 - (9) To receive a copy of your mental health record within 30 days upon written request (except as otherwise provided by law), by paying a nominal fee designed to defray the administrative costs of reproducing the record.
 - (10) To know that your mental health provider is licensed by the State of New Hampshire to provide mental health services.
 - a. You have the right to obtain information about mental health practice in New Hampshire. You may contact the Board of Mental Health Practice for a list names, addresses, phone numbers and websites of state and national professional associations listed in Mhp 502.02(a)(1)(a-e).
 - b. You have the right to discuss questions or concerns about the mental health services you receive with your provider.
 - c. You have the right to file a complaint with the Board of Mental Health Practice.”
- (b) A licensee shall post a copy of the above mental health bill of rights in a prominent location in the office of the mental health practitioner and provide a copy upon request.
- (c) A licensee shall provide a copy of the mental health bill of rights to the client and/or agency if the assessment, consultation or intervention is provided outside the office.
- (d) A licensee shall, when a client is under the age of 18, assure these rights are applied through, and to, the parent or guardian of their client, unless limited by a court order.

PART Mhp 503 ALLEGATIONS OF LICENSEE MISCONDUCT

Mhp 503.01 Definitions.

- (a) “Administrative Prosecutions Unit” (APU) means the administrative prosecutions unit of the Attorney General's office.
- (b) “Board investigator” means a *person licensed by the board and appointed for* ~~board member who is responsible for~~ overseeing the activities of the professional conduct investigators.

(c) “Communication of alleged misconduct” means a written statement received by the board suggesting professional misconduct of a licensee under RSA 330-A:27 II or Mhp 500.

(d) “Complaint” means a communication of alleged misconduct containing information as the board shall determine, if true, could violate ethical codes, administrative rules, or the law.

(e) “Consent decree” means a final and binding order that is issued by agreement of all parties.

(f) “Corrective action” means settlement agreements between the board and a licensee whereby the licensee agrees to make certain changes in his or her practice, to undertake clinical supervision, and/or to take some recommended program in exchange for the board’s ultimate dismissal of the complaint.

(g) “Data” means all information relevant to an investigation, including but not limited to:

(1) Oral or written statements;

(2) Reports;

(3) Maps;

(4) Charts;

(5) Drawings;

(6) Photographs;

(7) Audio or video recordings;

(8) Computer programs; or

(9) Computer printouts[-]; *or*

(10) All electronic communications and information.

(h) “Disciplinary proceeding” means an adjudicative proceeding commenced by the board for the purpose of examining alleged misconduct by a licensee.

(i) “Hearing counsel” means an individual appointed by the board to present licensee misconduct allegations and denials of applications for licensure to the board.

(j) “Investigation” means a gathering of data by the board concerning matters within its jurisdiction.

(k) “Letter of concern” means a written letter from the board drawing the licensee’s attention to specific acts or omissions that could place the licensee at risk of future disciplinary action. A letter of concern is non-disciplinary and is sent to the licensee following a complaint and/or investigation.

(l) “Mediation” means an informal, confidential process facilitated by a qualified neutral party, and intended to resolve conflicts by agreement.

(m) “Order” means a document issued by the board:

(1) Establishing procedures to be followed in an adjudicative or non-adjudicative proceeding;

(2) Granting or denying a petition or motion;

(3) Requiring a person to do, or to abstain from doing something; or

(4) Determining a person’s rights to a license or other privilege established by RSA 330-A.

(n) “Petition” means any request to the board seeking an order or any other action for relief, but does not include a license application or a motion.

(o) “Presiding officer” means the board member or other individual to whom the board has delegated authority to preside over some or all aspects of an adjudicative or other proceeding.

(p) “Professional Conduct Investigator” (PCI) means a trained licensed mental health practitioner who, as an agent of the board, under the guidance of the board investigator discovers facts and makes reports to the board.

(q) “Report of Investigation” (ROI) means report of information, facts and data gathered for the board.

(r) “Settlement agreement” means a written order of the board acknowledging consent of the licensee to enter stipulated facts and imposing disciplinary actions consented to by the licensee to resolve certain allegations of licensee misconduct.

Readopt Mhp 503.02– Mhp 505.06, effective 2-24-15 (Document #10790), cited and to read as follows:

Mhp 503.02 Communications of Alleged Misconduct Regarding a Licensee.

(a) Communications of alleged misconduct shall be filed at the board's offices in Concord, New Hampshire.

(b) A communication of alleged misconduct shall be treated as a request for inquiry into the acts or omissions of a licensee.

(c) A communication of alleged misconduct shall contain the following:

(1) The name, address and phone number of the petitioner;

(2) The name and business address of the licensee against whom the alleged misconduct is directed;

(3) The specific facts and circumstances which are believed to constitute professional misconduct;

(4) The exact date or dates upon which the misconduct is alleged to have occurred;

(5) Whether the alleged misconduct arose or occurred in connection with pending litigation; and

(6) A signature and date as required by Mhp 205.02 (a).

(d) The board shall make available for public use, a form entitled “Communication of Alleged Misconduct.” The form shall require the information enumerated in Mhp 503.02 (c) above, but the use of the form shall not be required.

(e) The withdrawal of a communication of alleged misconduct shall not preclude the board from independently pursuing some or all of the allegations of misconduct alleged by the complainant.

Mhp 503.03 Action on Communications of Alleged Misconduct.

(a) The board shall decline to take action on any communication of misconduct alleged to have occurred more than 3 years before the date of filing the communication or complaint with the board provided the board determines that it is in the interest of justice to do so and sets forth its reasons.

(b) The board shall decline to take action on any communication of misconduct alleged to have arisen or occurred in connection with litigation, or postpone consideration of it until the litigation is concluded provided the board determines that it is in the interest of justice to do so and sets forth its reasons.

(c) The board shall dismiss a communication of alleged misconduct at any time upon a determination that it:

(1) Fails to state a cause of action; or

(2) Alleges conduct that could not be adequately addressed by the board for reasons such as excessive passage of time under the circumstances or lack of jurisdiction

(d) The board shall determine that a communication of alleged misconduct constitutes a complaint when, if true, the alleged misconduct could violate ethical codes, administrative rules or the law.

(e) The board shall investigate the complaints by taking any or all of the following actions:

(1) Conduct an informal investigation pursuant to Mhp 207.01;

(2) Commence a formal investigation pursuant to Mhp 207.02; or

(3) Commence a disciplinary proceeding pursuant to Mhp 504.

Mhp 503.04 Misconduct Investigations.

(a) The type, form and extent of an investigation shall be determined by the board as described in Mhp 207.

(b) Investigations, including those initiated because of a communication of alleged misconduct shall be conducted on an ex parte basis.

(c) If, in the course of an investigation, a professional conduct investigator receives data which leads him/her to believe that an additional violation of any statute administered by the board, or of any rule of the board has occurred, the investigator shall request additional instruction from the board as to whether to expand the scope of the investigation.

(d) At the conclusion of any investigation, the professional conduct investigator shall make a written report to the board. The report may contain information from which the board shall determine whether or not further action appears to be warranted.

(e) A report of investigation and all information gathered by the professional conduct investigator shall be confidential except that:

(1) The report of investigation shall be given to the board;

(2) Information gathered in an investigation shall become subject to public disclosure if it is introduced as evidence in a disciplinary hearing;

- (3) The board shall provide the report of investigation or that portion of information gathered during an investigation and relevant to criminal activity to law enforcement agencies when mandated by law or it appears that criminal laws might have been violated; and.
- (4) The board shall provide information gathered in misconduct investigations to:
 - a. Board investigators or prosecutors; and
 - b. Licensee, a summary of the facts contained in the report of investigation (ROI) in contemplation of good faith settlement proceedings.
- (f) The board shall request further investigation upon receiving new material information or upon a determination that some aspect of the initial allegation was not thoroughly explored.

Mhp 503.05 Professional Conduct Investigators.

- (a) In addition to those professional conduct investigators (PCI's) defined in Mhp 503.01 (p), the board shall appoint any trained individual or attorney as a professional conduct investigator to discover facts and make reports to the board when additional expertise or staffing is needed.
- (b) The board investigator shall:
 - (1) Oversee the professional conduct investigators who are appointed by the board;
 - (2) Assign cases to the professional conduct investigators;
 - (3) Oversee the professional conduct investigators' training; and
 - (4) Arrange professional conduct investigators' supervision as appropriate.
- (c) A professional conduct investigator shall not be appointed to conduct investigations for the board for more than 2 consecutive 3 year terms.
- (d) All professional conduct investigators shall serve at the pleasure of the board
- (e) All professional conduct investigators shall receive one hour of continuing education for each hour they meet with the board investigator for a maximum of 12 hours. Three of these hours shall include ethics.

Mhp 503.06 Action on Complaints. Upon conclusion of any investigation into a complaint, the board shall take one of the following actions:

- (a) Conclude that the complaint requires no further action. If a licensee wishes to file a response with the board following that determination, the board shall place that letter in the licensee's file;
- (b) Refer the matter for mediation contingent upon receipt of consent of the petitioner within (10) days of the date of the order;
- (c) Issue a confidential letter of concern, which shall not be considered a disciplinary action of the board. If a licensee wishes to file a response with the board to that letter of concern, the board will place that letter in the licensee's file. The board is not required to reply to or take action upon the licensee's response letter;

(d) Determine that a violation might have occurred and send the complaint to APU for resolution which could include:

- (1) Corrective action; or
 - (2) Settlement pursuant to Mhp 503.07; or
- (e) Initiate disciplinary proceedings in accordance with Mhp 504.

Mhp 503.07 Settlement Agreements.

(a) Upon receiving the consent of the licensee to a specific written proposal, the board shall consider whether to approve a settlement agreement or a consent decree which resolves some or all of the issues raised in the investigation of a misconduct complaint.

(b) Motions to approve settlement agreements shall be entertained until a notice of hearing is issued. Thereafter, resolution by agreement, if one is approved, shall be accomplished by means of a consent decree.

PART Mhp 504 DISCIPLINARY PROCEEDINGS

Mhp 504.01 Applicability. This part shall govern all disciplinary proceedings conducted by the board.

Mhp 504.02 Commencement of Disciplinary Proceedings.

(a) The board shall commence a disciplinary proceeding by issuing a notice of hearing to the parties at least 15 days before the first scheduled hearing date or first prehearing conference.

(b) The notice commencing a disciplinary proceeding shall:

- (1) Specify the time, place and nature of any hearing;
- (2) Summarize the subject matter of the proceeding and identify the issues to be resolved;
- (3) Specify the legislative authority for the proposed action and identify any applicable board regulations;
- (4) Specify the date by which, and the address where, appearances or motions by parties or representatives shall be filed;
- (5) Specify the date, time, and location of an initial prehearing conference or date for a public hearing;
- (6) Identify the presiding officer for the proceeding if other than the chairperson of the board;
- (7) Identify any special procedures to be followed;
- (8) Identify any confidentially requirements applicable to the preceding;
- (9) Specify that each party has the right to have an attorney represent him or her at the party's own expense; and

(10) Contain such other information or attachments as are warranted by the circumstances of the case, including, but not limited to:

- a. Orders consolidating or severing issues to be heard;
- b. Orders directing the production or exchange of documents; and
- c. Notification that a stenographic recording of the hearing shall be taken and preserved.

(c) A petitioner shall be a party to a disciplinary proceeding instituted by the board only if the board issues an order conferring the petitioner with party status. If the petitioner is not granted party status and some or all of the allegations in a communication of alleged misconduct become the subject of a disciplinary hearing, the notice of hearing shall inform the petitioner of his or her right to intervene in the proceeding, or shall include findings that the petitioner has forfeited this right by failing to cooperate with the previous board orders or investigatory requests.

Mhp 504.03 Docketing, Service of Notice, Public Notice.

(a) The board shall assign each disciplinary proceeding a docket number, and serve the hearing notice upon all parties to the proceeding and the board's legal counsel in the civil bureau, department of justice. The hearing notice shall be served upon the respondent, and the petitioner, if any, by means of certified mail.

(b) Service of all subsequent orders, decisions and notices issued by the board, including any amendments to the hearing notice, shall be served upon the parties, including any interveners, by regular mail.

(c) Orders, notices, and decisions of the board, and motions, memoranda, exhibits, and other documents and data submitted to the board in a docketed case shall be kept in a docket file and made available for public inspection in the board's office except to the extent that confidentiality has been provided for by law.

(d) If an attorney has filed an appearance for any party, service by regular mail upon that attorney shall satisfy any notice required under Mhp 504.03 (a) and (b.)

Mhp 504.04 Intervention.

(a) Motions to intervene shall state with particularity:

- (1) The petitioner's interest in the subject matter of the hearing;
- (2) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and
- (3) Any other reasons why the petitioner should be permitted to intervene.

(b) Motions to intervene shall be granted if the petitioner has a substantial interest in the proceeding, the petitioner requested intervention in accordance with these rules, and if granting intervention will not prejudice a party or unduly delay the board's proceedings.

(c) Once granted leave to intervene, an intervener shall take the proceeding as he or she finds it and no portion of the proceeding shall be repeated because of the fact of intervention.

Mhp 504.05 Right to Counsel. Parties and witnesses in disciplinary proceedings shall have the right to representation. Any representative of a party or witness shall first file a letter announcing the fact of representation at the earliest date practical. Requests for appointment of counsel shall not be entertained and the board shall have no responsibility for the legal expenses of any licensee, petitioner, intervenor or witness.

Mhp 504.06 Ex Parte Communications. Once a disciplinary proceeding has been commenced, no party shall communicate with a member of the board or the participating panel concerning the merits of the case except upon notice to all parties and in accordance with the rules of this chapter. Nor shall any party cause another person to make such communications or otherwise engage in conduct prohibited by RSA 541-A:36.

Mhp 504.07 Prehearing Conferences.

(a) At any time following the commencement of a disciplinary proceeding, the presiding officer, upon motion, or upon his or her own initiative, may request the parties attend one or more prehearing conferences pursuant to Mhp 208.07 when such a conference would aid in the disposition of a proceeding.

(b) The board shall cause prehearing conferences to be recorded unless all parties wish to discuss possible settlement off the record. Matters agreed upon by all parties at a prehearing conference shall be reflected in an appropriate order.

(c) Contested issues identified upon by the presiding officer at the time of the prehearing conference shall be reserved until the time of the disciplinary hearing.

Mhp 504.08 Discovery and Disclosure.

(a) The board shall provide for the disclosure of any investigative report or other unprivileged information in the possession of the board, which is reasonably related to the subject matter of the proceeding.

(b) Parties shall attempt to agree among themselves concerning the mutual exchange of relevant information. If these efforts prove unsuccessful, a party wishing to initiate discovery against another party, shall, by motion, seek leave to do so and shall identify the exact type of discovery requested.

(c) Discovery shall be ordered when the parties cannot adequately address specific relevant factual issues at the time fixed for the presentation of evidence, and addressing these issues at a subsequent time would place the requesting party at a material disadvantage.

(d) At least 14 days before the hearing the parties and any intervenor shall provide to the other parties and intervenors:

- (1) A list of all witnesses to be called at the hearing together with a brief summary of their testimony;
- (2) A list of all documents and exhibits to be offered as evidence at the hearing; and
- (3) A copy of each document or exhibit.

Mhp 504.09 Subpoenas.

(a) In disciplinary proceedings, a party requesting the board to authorize a subpoena shall attach a copy of the proposed subpoena to its motion. The requesting party shall be responsible for the service of the subpoena and payment of any applicable witness fee and mileage expenses.

(b) Subject to the limitations of RSA 330-A:28. V and RSA 330-A:32, motions to quash or modify a subpoena shall be entertained from the person to whom the subpoena is directed, if filed within 7 days after service of the subpoena, or one day before the date specified in the subpoena for compliance therewith, whichever is later. The person to whom the subpoena is directed shall comply with the subpoena or any modification thereof, within the balance of time prescribed in the subpoena or within 3 days from the date of the board's order, whichever is later, unless the board expressly provides additional time to comply.

(c) The board shall grant a motion for a subpoena or quash a subpoena providing there is a preponderance of the evidence to support the motion.

(d) Should a person fail to comply with a subpoena issued pursuant to this section, the board shall take one or more of the following actions:

- (1) Impose sanctions specific to any pending disciplinary proceedings or investigation, including, but not limited to, entry of a default judgment as to some or all of the pending issues which is adverse to the noncompliant party;
 - (2) Institute a separate investigation against any non-compliant individual who is subject to the board's jurisdiction;
 - (3) Continue with the disciplinary proceedings and defer all, or part, of the subpoena enforcement issues; or
 - (4) Determine there was just cause for the failure to comply with the subpoena.
- (e) For purposes of (d) above, just cause shall include:
- (1) Illness;
 - (2) Accident;
 - (3) Death of a family member; and
 - (4) Other circumstances beyond the control of the party.

Mhp 504.10 Evidence – Disciplinary Proceedings.

(a) The evidentiary privileges recognized by the law of New Hampshire, but not the N.H. Rules of Evidence, shall apply to disciplinary proceedings under this chapter.

(b) All data which will reasonably assist the board arrive at the truth shall be admissible.

(c) Oral testimony shall be allowed unless the board, upon a finding that written evidence would be more efficient and would not result in material prejudice, orders that some or all of the evidence be submitted in written form.

(d) If the board officially notices a fact, it shall so state, and permit any party, upon timely request, the opportunity to show the contrary.

(e) Witnesses appearing before the board shall testify under oath or affirmation.

Mhp 504.11 Records of Disciplinary Proceedings. The board shall cause an electronic or stenographic record to be made of hearings and prehearing conferences.

Mhp 504.12 Proposed Findings of Fact and Conclusions of Law.

(a) Parties may submit proposed findings of fact or conclusions of law each of which shall be set forth in separately numbered paragraphs.

(b) The presiding officer may direct any party to submit proposed findings of fact or conclusions of law if the presiding officer believes they would be helpful in deciding the case.

(c) Individual rulings upon such proposed findings or conclusions shall be included as part of any proposed or final decision or order issued.

Mhp 504.13 Burden of Proof.- Disciplinary Proceedings. A finding of licensee misconduct shall be based upon a preponderance of the evidence.

PART Mhp 505 DISPOSITION OF DISCIPLINARY PROCEEDINGS

Mhp 505.01 Disciplinary Sanctions.

(a) When the board receives information indicating that a licensee has engaged in or is likely to engage in professional misconduct which poses an immediate danger to life or health, the board shall issue an order pursuant to RSA 330-A:30, which sets forth the alleged misconduct and immediately suspends the license for up to 90 days pending completion of a disciplinary proceeding on the specified issues.

(b) Other than immediate license suspension authorized by RSA 330-A:30, the board shall take further action only:

- (1) After prior notice and an opportunity to be heard has been granted to the licensee pursuant to Mhp 504; or
- (2) Pursuant to an agreed upon settlement or consent decree.

Mhp 505.02 Standards for the Selection of Sanctions. Sanctions by the board shall be determined as follows:

(a) The board shall select appropriate sanction(s) from the list in Mhp 503.06, choosing the sanction or combination of sanctions most likely to:

- (1) Protect public health and safety;
- (2) Prevent future misconduct by the licensee;
- (3) Take into account any acknowledgement of fault by the licensee and any cooperation by the licensee with the board's investigation of misconduct;
- (4) Correct any attitudinal, educational or other deficiencies which led to the licensee's misconduct;
- (5) Encourage the responsible practice of mental health; and

- (6) Demonstrate to the licensee and the public the board's intention to insure that its licensees practice in accordance with applicable law and the public welfare.
- (b) In determining which sanction or combination of sanctions to impose, the board shall:
- (1) First determine the nature of the act or omission constituting the misconduct done by the licensee;
 - (2) Next determine whether the misconduct has one or more of the characteristics listed in (c) below; and
 - (3) Finally, apply the standards in Mhp 505.02 (a).
- (c) The characteristics shall be:
- (1) The misconduct actually caused physical or mental harm to the client or another person;
 - (2) The misconduct had the potential to cause physical or mental harm to the client or another person;
 - (3) The misconduct repeated earlier misconduct done by the licensee, as determined by:
 - a. An earlier hearing;
 - b. An earlier settlement agreement predicated on the same misconduct by the licensee; or
 - c. An admission by the licensee;
 - (4) The misconduct was not the first misconduct by the licensee, as determined by:
 - a. An earlier hearing;
 - b. An earlier settlement agreement predicated on the same misconduct by the licensee; or
 - c. An admission by the licensee; and
 - (5) The misconduct was intentional rather than the result of negligence or inadvertence.

Mhp 505.03 Board Actions Taken After Disciplinary Action.

(a) When the board receives notice that a licensee has been subjected to suspension or revocation of a license or registration, similar to one issued under this chapter, in another jurisdiction and not reinstated the board shall issue an order directing the licensee to demonstrate why reciprocal action should not be imposed in New Hampshire.

(b) Copies of board orders imposing disciplinary sanctions and copies of all settlement agreements or consent decrees shall be sent to the certifying/licensing body of each state in which the licensee is certified/licensed and to such other entities, organizations, associations, or boards as are required to be notified under the applicable state or federal law or to anyone who requests a copy.

Mhp 505.04 Imposition of Fines.

(a) Fines, penalties and monetary sanctions shall be assessed by the board upon a finding of licensee misconduct in accordance with the considerations of Mhp 505.02 and Mhp 505.05.

(b) Fines, if imposed, shall not exceed the following amounts:

(1) When no violation of the same type has occurred within the 5 years preceding the board's notice to the respondent, the fine assessed shall not exceed \$500 per offense;

(2) When a single disciplinary infraction of the same type has occurred within the 5 years preceding the board's notice to the licensee, the fine assessed shall not exceed \$1000 per offense; and.

(3) When more than one disciplinary infraction of the same type has occurred within the 5 years preceding the board's notice to the licensee, the fine assessed shall not exceed \$2000 per offense.

(c) When in the case of a continuing violation, a separate fine up to \$200 shall be assessed for each day the violation continues not to exceed \$2000.

Mhp 505.05 Monetary Sanctions: Expenses Relating to Discipline Enforcement.

(a) Expenses incurred by the board in the conduct of a hearing and enforcement of discipline shall be assessed, in whole or in part, against a licensee who is disciplined following the hearing provided the board sets forth its reasons based upon the following criteria:

(1) The severity of the conduct resulting in the discipline imposed;

(2) The extent to which the evidence was in dispute;

(3) The nature and extent of the investigation and hearing;

(4) Whether the licensee was given the opportunity to enter into a reasonable settlement agreement before the hearing;

(5) The contribution that repayment of expenses makes toward rehabilitation;

(6) Whether the payment of all or a portion of a monetary fine was suspended;

(7) The likelihood that assessment of expenses will deter the licensee or others from engaging in similar conduct; and

(b) Following any assessment, the board shall send a written statement of the nature and amount of each such expense to the disciplined licensee, together with a formal demand for payment.

Mhp 505.06 Voluntary Surrender When Misconduct Allegations are Pending.

(a) A licensee who wishes to surrender his/her license as part of a settlement of pending misconduct allegations shall make a written settlement offer to the board before the close of the record in a disciplinary hearing.

(b) Any settlement agreement reached under (a), above, shall include the following concessions:

(1) That the license surrender has occurred in settlement of pending disciplinary charges; and

- (2) That the pending disciplinary allegations shall be issues to be resolved in any future application the licensee may submit in New Hampshire without regard to any time-related defenses, which may otherwise be applicable.
- (c) A licensee who reapplies for licensure in New Hampshire after a voluntary surrender shall meet all of the requirements then in effect for new applicants.
- (d) The fact of voluntary surrender and the terms of any settlement agreement or consent decree pertaining thereto shall be distributed to relevant certifying/licensing authorities and professional societies in the same manner as a final decision containing a specific finding of professional misconduct.
- (e) The board shall investigate the surrender or non-renewal of a license based upon the licensee's professional conduct while the license was still in effect. Such investigations and proceedings shall be handled in the same manner as other disciplinary investigations and proceedings.

Appendix A

Rule	Statute
Mhp 501.01-502.01	RSA 330-A:10, VII-X, XVIII
Mhp 501.02(a)(3)	RSA 330-A:10, IX
Mhp 502.02	RSA 330-A:10, XI, XVIII; RSA 330-A:15
Mhp 503.01 – 503.07	RSA 330-A:28
Mhp 504.01 – 504.13	RSA 330-A:29 and RSA 541-A:16, I(b)
Mhp 505.01 – 505.03	RSA 330-A:29 and RSA 541-A:35
Mhp 505.04 – 505.06	RSA 330-A:27 and RSA 541-A:35

Appendix B: Incorporation by Reference Information

RULE	TITLE	OBTAIN AT
Mhp 501.02 (a)(1)	Code of Ethics for pastoral psychotherapists	American Association of Pastoral Counselors 9504 A Lee Highway Fairfax, VA 22031-2303 (703)385-6967 Free online at: http://www.aapc.org/policies/code-of-ethics/?
Mhp 501.02 (a)(2)	Code of Ethics for clinical social workers	National Association of Social Workers 750 First Street, NE Suite 700 Washington DC 20002-4241 (202)321-6834 Free online at: http://www.socialworkers.org/nasw/ethics/default.asp
Mhp 501.02 (a)(3)	American Mental Health Counselors Association Code of Ethics, effective 2015	American Mental Health Counselors Association 801 N. Fairfax Street, Suite 304 Alexandria, VA 22314 (703)548-6002 Free online at: http://www.amhca.site-ym.com/store/viewproduct.aspx?ID=4128609
Mhp 501.02 (a)(4)	Code of Ethics for marriage and family therapists	American Association for Marriage and Family Therapy 112 South Alfred Street Alexandria, VA 22314-4061 (703)838-9808 Free online at: http://www.aamft.org/imis15/content/legal_Ethics/Code_of_Ethics.aspx