

1 GENERAL GOVERNMENT CABINET

2 Board of Licensed Professional Counselors

3 (Amendment)

4 201 KAR 36:005. Definitions for 201 KAR Chapter 36.

5 RELATES TO: KRS 335.500, 335.535(1)

6 STATUTORY AUTHORITY: KRS 335.515(3)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to
8 promulgate administrative regulations necessary to carry out and enforce the provisions of KRS
9 335.500 to 335.599. This administrative regulation establishes the definitions used in 201 KAR
10 Chapter 36.

11 Section 1. Definitions. (1) "Academic course offered by an accredited postsecondary
12 institution" means:

13 (a) A professional counseling course designated by a professional counseling title or content;

14 or

15 (b) An academic course relevant to the practice of professional counseling.

16 (2) "Approved" means recognized by the Kentucky Board of Licensed Professional
17 Counselors.

18 (3) "Chair"["~~Chairman~~"] means the chair[~~chairman~~] or vice-chair[~~vice-chairman~~] of the board.

19 (4) "Charge" means a specific allegation contained in a formal complaint, as established in 201
20 KAR 36:050, issued by the board alleging a violation of a specified provision of KRS 335.500 to
21 335.599 or the administrative regulations promulgated thereunder.

1 (5) "Client" means:

2 (a) An individual, family, or group for whom the licensee provides services within the
3 context of the licensee's practice of professional counseling;

4 (b) A corporate entity or other organization if the licensee provides a service of benefit
5 directly to the corporate entity or organization; or

6 (c) A legal guardian who is responsible for making decisions relative to the provision of
7 services for a minor or legally incompetent adult.

8 (6) "Complaint" means any written allegation of misconduct by a credentialed individual or
9 other person, which might constitute a violation of KRS 335.500 to 335.599 or the administrative
10 regulations promulgated thereunder.

11 (7) "Complaint screening committee" means a committee that:

12 (a) Consists of three (3) persons appointed by the chairman of the board and may include the
13 executive director or another staff member; and

14 (b) Reviews complaints and investigative reports, opens investigations, participates in
15 informal proceedings to resolve a complaint, or requests a court of competent jurisdiction to take
16 criminal or civil action.

17 (8) "Continuing education hour" means fifty (50) clock minutes of participating in continuing
18 educational experiences.

19 (9) "Distance counseling" means the practice of professional counseling as defined by KRS
20 335.500(5) between the professional counselor and the client~~[patient]~~:

21 (a) Provided using an electronic communication technology; or

22 (b) Two (2) way, interactive, simultaneous audio and video.

1 (10) "Document" means information in any form or format that is relevant to a review or
2 investigation conducted by the board and may include:

3 (a) Originals, copies, or drafts;

4 (b) Written documents;

5 (c) Papers;

6 (d) Books;

7 (e) Computer files;

8 (f) Photographs;

9 (g) Audio or video recordings;

10 (h) Correspondence;

11 (i) Electronic mail; or

12 (j) Drawings or blueprints; and

13 (k) Client treatment documentation.

14 (11) "Dual relationship" means a social, business, or personal relationship between a licensee
15 and a client that coexists with the professional-client relationship between the licensee and the
16 client.

17 (12) "Face-to-face" means supervision that is in person where the supervisor and supervisee
18 are physically present in the same room or through interactive, simultaneous video and audio
19 media.

20 (13) "Formal complaint" means a formal administrative pleading authorized by the board,
21 which sets forth charges against a licensed individual or other person and commences a formal
22 disciplinary proceeding pursuant to KRS Chapter 13B.

23 (14) [~~"Good moral character" means a licensee or applicant who has not been:~~

1 ~~(a) Convicted, in a court of competent jurisdiction, of any crime involving a substantial~~
2 ~~misrepresentation of any material fact, including any of the following:~~

3 ~~1. Bribery or corrupt influences under KRS Chapter 521;~~

4 ~~2. Forgery or related offenses under KRS Chapter 516;~~

5 ~~3. Business or commercial frauds under KRS Chapter 517;~~

6 ~~4. Perjury or related offenses under KRS Chapter 523;~~

7 ~~5. Abuse of a public office under KRS Chapter 522; or~~

8 ~~6. Miscellaneous crimes affecting businesses, occupations, and professions that have a~~
9 ~~direct financial or adverse impact on business;~~

10 ~~(b) Convicted, in a court of competent jurisdiction, of criminal homicide under KRS Chapter~~
11 ~~507 or 507A;~~

12 ~~(c) Convicted, in a court of competent jurisdiction, of any felony or misdemeanor involving~~
13 ~~the following:~~

14 ~~1. Sexual offenses under KRS Chapter 510;~~

15 ~~2. Pornography under KRS Chapter 531;~~

16 ~~3. Theft and related offenses under KRS Chapter 514;~~

17 ~~4. Prostitution offenses under KRS Chapter 529; or~~

18 ~~5. Family offenses under KRS Chapter 530;~~

19 ~~(d) Convicted, in a court of competent jurisdiction, of any felony involving the following:~~

20 ~~1. Assault or related offenses under KRS Chapter 508;~~

21 ~~2. Kidnapping or related offenses under KRS Chapter 509;~~

22 ~~3. Burglary or related offenses under KRS Chapter 511;~~

23 ~~4. Criminal damage to property under KRS Chapter 512; or~~

1 5. Arson and related offenses under KRS Chapter 513;

2 (e) Found to have a behavioral or substance abuse problem, which may endanger or impair
3 the health, personal safety, or welfare of a client;

4 (f) Found to be a delinquent taxpayer as defined by KRS 131.1817(1)(b);

5 (g) Convicted, in a court of competent jurisdiction, of three (3) or more offenses of driving
6 under the influence or driving while impaired;

7 (h) Convicted, in a court of competent jurisdiction, of any drug-related felony under KRS
8 Chapter 218A;

9 (i) Convicted, in a court of competent jurisdiction, of any criminal offense similar to the
10 convictions identified in paragraphs (a) to (h) of this subsection that constitutes a violation of law
11 of the state where the conviction occurred; or

12 (j) Subject to a fine, disciplinary supervision, probation, revocation, or suspension of a
13 registration, certification, or license issued by the issuing body.]

14 [(15)] "Individual supervision" means supervision of one (1) or two (2) supervisees with the
15 supervisor.

16 (15)[(16)] "Informal proceedings" means the proceedings instituted at any stage of the
17 disciplinary process with the intent of reaching a dispensation of any matter without further
18 recourse to formal disciplinary procedures under KRS Chapter 13B.

19 (16)[(17)] "Investigator" means an individual designated by the board to assist the board in the
20 investigation of a complaint [or an investigator employed by the Attorney General or the board].

21 (17)[(18)] "Professional counselor" means a licensed professional clinical counselor as defined
22 by KRS 335.500(3) or licensed professional counselor associate as defined by KRS 335.500(4).

23 (18)[(19)] "Program" means an organized learning experience:

1 (a) Planned and evaluated to meet learning~~[behavioral]~~ objectives; and

2 (b) Presented in one (1) session or a series.

3 ~~(19)~~~~(20)~~ "Relevant" means having content applicable to the practice of professional
4 counseling.

5 ~~(20)~~~~(21)~~ "Respondent" means any person, individual, corporation, business trust, estate, trust
6 partnership, limited liability company, association, organization, joint venture, government or any
7 subdivision, agency or instrumentality thereof, or any other legal or commercial entity who is
8 subject to a charge or formal complaint.

9 ~~(21)~~~~(22)~~ "Scope of practice for professional counseling" means:

10 (a) The independent practice of counseling encompassing the provision of professional
11 counseling services to individuals, groups, families, couples, and organizations through the
12 application of accepted and established mental health counseling principles, methods, procedures,
13 or ethics;

14 (b) Counseling to promote mental health wellness, which includes the achievement of social,
15 career, and emotional development across the lifespan, as well as preventing and treating mental
16 disorders and providing crisis intervention;

17 (c) Counseling that includes psychotherapy, diagnosis, evaluation; administration of
18 assessments, tests and appraisals; referral; or the establishment of counseling plans for the
19 treatment of individuals, couples, groups, and families with emotional, mental, addiction, and
20 physical disorders;

21 (d) Counseling that encompasses consultation and program evaluation, program
22 administration within and to schools and organizations, and training and supervision of interns,

1 trainees, and pre-licensed professional counselors through accepted and established principles,
2 methods, procedures, and ethics of counselor supervision; or

3 (e) The functions or practices that are within the professional counselor's training or
4 education.

5 (22) "Student" means an individual taking coursework in a counselor education program
6 governed by a team of credentialed instructors who will maintain a student and professor
7 relationship during student's enrollment period.

8 (23) "Supervisee" means a licensed professional counselor associate who works with clients
9 under supervision.

10 (24) "Supervision" means the educational process of utilizing a partnership between a
11 supervisor and a supervisee aimed at enhancing the professional development of the supervisee in
12 providing professional counseling services to meet the requirements of KRS 335.525(1)(e).

13 (25) "Supervisor" means a licensed professional clinical counselor supervisor~~[member of a~~
14 ~~mental health or behavioral services profession listed in 201 KAR 36:065]~~ who controls, oversees,
15 guides, and takes responsibility for the professional clinical counseling practice of a supervisee.

16 (26) "Supervisor of record" means the person listed on the supervisory agreement and approved
17 by the board in accordance with 201 KAR 36:060, Section 2.

18 (27) "Testing and assessment services" means an educational, mental health, clinical, and
19 career assessment to gather information regarding the client for a variety of purposes, including
20 client decision making, treatment planning, and forensic proceedings. Assessment may include
21 both qualitative and quantitative methodologies.

201 KAR 36:005

APPROVED BY AGENCY:

Dr. Hannah Coyt
Chair, Board of Licensed Professional Counselors

Date: _____

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 PM EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference:

Topic: LPC Regulation Public Hearing
Time: Nov 28, 2023 01:00 PM Eastern Time

Join from PC, Mac, Linux, iOS or Android:
<https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnl1K0ZDd3M5dz09>
Password: 186265

Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 387980

Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023.

Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

Contact Person: Sara Boswell Janes
Title: Staff Attorney III
Agency: Department of Professional Licensing, Office of Legal Services
Address: 500 Mero Street, 2 NC WK#2
Phone Number: (502) 782-2709 (office)
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Email: Sara.Janes@ky.gov
Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 36:005

Contact Person: Sara Boswell Janes
Phone Number: (502) 782-2709 (office)
Email: sara.janes@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 36

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 36.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the terms used in 201 KAR Chapter 36

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 36.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will make terms gender neutral, clarify terminology, add items to the definition of “document”, strike the definition of “good moral character”, add the definition of “student” and clarify the definition of “supervisor”.

(b) The necessity of the amendment to this administrative regulation is to clarify the definitions and allow for the common usage of “good moral character” when determining the fitness of an applicant for licensure, renewal or reinstatement and unrestricted usage of the term as opposed to the current restriction of applying the term to criminal behavior only.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make needed clarification to the definitions for regulations and allow the board to use the term “good moral character” as it was intended for purposes of determining an applicant’s eligibility for the profession.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 active and 39 inactive licensed professional clinical counselors (LPCCs) and 1325 active and 17 inactive licensed professional clinical counselor associates (LPCAs) who will be impacted by the renewal, late renewal, and reinstatement fees. This regulation will affect the 4017 active and 56 inactive licensees in some capacity, and will also affect new applicants for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not): This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

Regulation No. 201 KAR 36:005

Contact Person: Sara Boswell Janes
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Email: sara.janes@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with the amendment.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? Nothing.

(d) How much will it cost the regulated entities for subsequent years? Nothing.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): None

Expenditures (+/-):
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)].

This administrative regulation will not have a major economic impact.