

GENERAL RULES GOVERNING PROFESSIONAL COUNSELORS CHAPTER 0450-01 (Rule 0450-01-.21 April, 2020 (Revised))

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-51-101, et seq., and Public Chapter 373 of the Public Acts of 1999. Administrative History: Original rule filed February 10, 2000; effective April 25, 2000.

0450-01-.21 ADVERTISING.

(1) Policy Statement. The lack of sophistication on the part of many of the public concerning professional counseling services, the importance of the interests affected by the choice of a professional counselor and the foreseeable consequences of unrestricted advertising by professional counselors which is recognized to pose special possibilities for deception, require that special care be taken by professional counselors to avoid misleading the public. The professional counselor must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by professional counselors is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.

(2) Definitions

(a) Advertise - See Rule 0450-01-.01(2).

(b) Certificate Holder - Any person holding a certificate to practice as a Certified Professional Counselor. Where applicable this shall include partnerships and/or corporations.

(c) Licensee - Any person holding a license to practice as a Licensed Professional Counselor. Where applicable this shall include partnerships and/or corporations.

(d) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.

(3) Advertising Content. The following acts or omissions in the context of advertisement by any licensee or certificate holder shall constitute unethical conduct, and subject the licensee or certificate holder to disciplinary action pursuant to T.C.A. § 63-22-110:

(a) Claims that the services performed, personnel employed, or materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee or certificate holder is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.

(b) The misleading use of an unearned degree.

(c) Promotion of professional services which the licensee or certificate holder knows or should know are beyond the licensee's or certificate holder's ability to perform.

(d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.

(e) Any appeals to an individual's anxiety in an excessive or unfair manner.

(f) The use of any personal testimonial attesting to a quality or competency of a service or treatment offered by a licensee or certificate holder that is not reasonably verifiable.

(g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee or certificate holder can achieve.

(h) The communication of personal identifiable facts, data, or information about a client without first obtaining client consent.

(i) Any misrepresentation of a material fact.

(j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.

(k) Misrepresentation of credentials, training, experience, or ability.

(l) Failure to include the corporation, partnership or individual name, address, and telephone number of licensees and certificate holders in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees and certificate holders practicing at a particular location shall:

1. Upon request provide a list of all licensees and certificate holders practicing at that location; and

2. Maintain and conspicuously display a directory listing all licensees and certificate holders practicing at that location.

(m) Failure to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.

(n) After thirty (30) days of the licensee's or certificate holder's departure, the use of the name of any licensee or certificate holder formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.

(o) Stating or implying that a certain licensee or certificate holder provides all services when any such services are performed by another licensee.

(p) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.

(q) Making false, deceptive, misleading or fraudulent statements regarding fees.

(4) Advertising Records and Responsibility

(a) Each licensee or certificate holder who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any

advertisement. This provision shall also include any licensed or certified professional employees acting as an agent of such firm or entity.

(b) Any and all advertisements are presumed to have been approved by the licensee or certificate holder named therein.

(c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee or certificate holder for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.

(d) At the time any type of advertisement is placed, the licensee or certificate holder must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.

(5) Advertising Conduct

(a) Licensees or certificate holders who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(b) If licensees or certificate holders learn of deceptive statements about their work made by others, licensees or certificate holders must make reasonable efforts to correct such statements.

(c) Licensees or certificate holders shall not compensate employees of press, radio, television or other communication media in return for publicity in a news item.

(d) A paid advertisement relating to the licensee's or certificate holders' activities must be identified as such, unless it is already apparent from the context.

(6) Severability. It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-22-102, 63-22-110, 63-22-117, and 63-22-150. Administrative History: Original rule filed April 18, 2007; effective July 1, 2007.