



# North Carolina Board of Licensed Professional Counselors

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## NCBLPC Professional Brief

**Content Area:** Professional Relationships - Professional Corporations, Direct Solicitation, Referral Fees, and Sanctions

### **Brief Overview/Description:**

A professional corporation is a business entity engaged in rendering professional services or “any type of personal professional service of the public” that requires a license. Professional counseling businesses are examples of such corporations. They are governed by Chapter 55 of the NC General Statutes just as other corporations and must file documents with the Secretary of State. Services of these corporations are provided by licensed officers, employees, or agents of the corporation. Corporations must renew their license yearly at a fee not to exceed \$25.00 (NC General Statutes - Chapter 55B).

Counseling is generally considered to be a voluntary service except in the case of certain court-mandated clients. Although the ACA Code of Ethics (2005) does not address direct solicitation, referral fees or sanctions, the Code does establish certain ethical restrictions which govern clinical business behavior. For example, when counselors are employed by agencies, they must refuse a private fee or remuneration from clients served by that agency. Where counseling agencies allow counselors to see clients privately, the Code mandates that clients be fully informed of the options open to them. For those counselors in private practice, counselors are urged to establish fee structures which are appropriate to the financial status of their clients and commensurate with comparable services offered locally. If counselors intend to use collection agencies or take legal action in the event of unpaid fees, counselors should first inform clients of this impending measure and offer clients the opportunity to make payments. Counselors may only barter for their services if the relationship does not place the counselor at an unfair advantage. Finally, counselors understand the challenges of accepting gifts from clients which includes awareness that in certain cultures, small gifts are a token of respect and showing gratitude, and as such, when deciding whether or not to accept a gift, counselors must consider the monetary value, the client’s motivation to give a gift and the counselor’s motivation to accept the gift (ACA Code, Section A-10).

ACA Code of Ethics mandates counselors to provide each client with a document which will allow clients to review and agree to expectations for payment of fees for services prior to entering into the counseling relationship. Further, this Informed Consent statement should spell out the following for prospective clients:

- The nature of all services provided
- The purpose, goals, techniques, procedures, limitations, potential risks and benefits of services
- Counselor qualifications, credentials, and relevant experience
- Continuation plans in the event of counselor incapacitation
- Implications of diagnosis, intended use of tests and reports, fees and billing arrangements
- Rights to confidentiality and explanation of the limitations of confidentiality (especially when treatment teams or supervisors are involved)
- Clear information about the use of confidential records
- Participation in their own treatment plan for counseling
- The client’s right to refuse any service or modality, and their right to be advised of the consequences of such refusal

The information contained herein is an overview of North Carolina laws, federal laws, and regulations. It is not intended to be a comprehensive list of all laws or regulations that govern the practice of counseling. The material is not to be taken as legal advice. Any interpretation of a statute or regulation expressed in the materials is created for educational purposes only. The NCBLPC does not issue advisory opinions, and the materials are not to be construed as such.

North Carolina State law allows health care providers to advertise using brochures, posted letters, information packages and other forms of information, but does not allow counselors to specifically solicit identified individuals or initiate direct personal contact with those in need of services except as indicated in N. C. Gen. Statute 90-401.1.

**Key Legal Factors:**

Health care providers should be guided by the following laws:

- Direct solicitation is prohibited for 90 days following injury or disease or infirmity (Gen. Statute. 90-401.1)
- Referral fees and payment for patient solicitations are prohibited (Gen. Statute 90-401)
- Violation of laws related to direct solicitation, referral fees and payment are grounds for suspension or revocation of license, refusal to renew license, or to take other disciplinary action authorized by law (N.C. Gen. Statute 90-402)

Counselors are guided by the following ACA Codes (Section C 3):

- C.3.a. Accurate Advertising - credentials are advertised in a manner which is not false, misleading deceptive or fraudulent.
- C.3.b. Testimonials - should not be solicited from current or former clients nor any persons who may be vulnerable to undue influence.
- C.3.c Statements by others - counselors take steps to ensure that statements about them or the counseling profession are accurate.
- C.3.d. Recruiting through employment - Counselors do not use their places of employment or institutional affiliation to recruit or gain clients, supervisees, or consultees for their private practices (therefore, self-referral is prohibited)
- C.3.e. Products and Training Advertisements - Counselors who develop products ensure that the advertising concerning these products (or events) are accurate and disclose adequate information for consumers to make informed choices.
- C.3.f. Promoting to those served - Counselors do not use counseling, teaching, training, or supervisory relationships to promote their products or training events in a manner that is deceptive or would exert undue influence on individuals who may be vulnerable. However, counselor educators may adopt textbooks they have authored for instructional purposes.

**Real Issues to Consider:**

As a result of changes in the mental health system in North Carolina, a number of mental health care entities have opened with primary officers that are non-health care professionals. They must still meet the requirements of the law and follow all guidelines specified; however, non-counselors may not be familiar with or obligated to adhere to the ACA Code of Ethics.

**Catch 22:**

While it is within the realm of counselors to govern their own professional behavior and means of attracting clients to their private practices, other providers (e.g., insurance companies, HMOs, PPOs, physicians, and community service websites) may describe or refer to a counselor or practice using information which is incorrect. At such time when counselors become aware that distorted or incorrect information is being posted or listed, it is incumbent upon the counselor to submit a request that the entity correct such information so as not to mislead the consumer. Common mistakes include referring to counselors using the title Dr. or psychologist, which may be generic but incorrect ways of referring to the counseling professional.

**Summary Statement:**

Perhaps the best way for a counselor to protect their license and professional reputation is to develop a business plan and a business mentality. Even when counselors are not intending to misrepresent their credentials, others may inadvertently do so. Counselors must cautiously protect their “good names” so that their professional reputations are not tarnished. Regardless of whether errors are perpetuated in written media, electronic media or word of mouth, all place the counselor’s good name in the hands of others. As counselors, we cannot knowingly allow any entity to spoil our good name.