

A Review of the Florida Laws and Rules for Mental Health Professionals

Table of Contents

I.	Course Overview & Intent	2
	Introduction	2
	Changes to Rules and Laws	3
	Rule Title 64B4-6.001 & 6.0046	4
	Understanding the Language of the Laws & Rules	5
	Legislative Intent of Title XXXII, Chapter 456	5
	Renewal of Licenses and Reactivation of Licenses/Continuing Education Required	5
II.	Professional Relationship	6
	Psychotherapist-Client Relationship	6
	Client's/Patient's Right to be Informed	6
	Sexual Misconduct	7
III.	Confidentiality	8
	Understanding Confidentiality	8
	Client Records	9
IV.	Discipline of Professionals	16
	Grounds for Disciplinary Action	16
	Impaired Practitioners	16
	Discipline by the Board	16
	Disciplinary Proceedings.....	19
	Violations	20
	Supervision following Discipline	22
V.	Standards of Practice	23
	Displaying Licenses & Use of Titles	24
	Use of the Title of Social Work.....	25
VI.	Wrap Up	26

Review of Florida Laws and Rules for Mental Health Practitioners

CE Learning Systems, LLC

I. Course Overview & Intent

Introduction

This course is designed for 3 hours (as required by Rule 64B4-6.001) of self-study utilizing the provided reference materials. At the conclusion of self-study, the course participant must pass the provided exam consisting of 21 questions related to the provided reference materials. The examination is designed to test the participant upon the information presented in this course. A link to the complete rules and laws pertinent to this coursework is provided in the reference materials for this course.

A thorough working knowledge and comprehension of laws and rules governing licensed professional practice is vital for practitioners of human service related professions. Ethical standards of a profession are critical in setting forth expected behaviors and actions in various scenarios. Likewise, rules and laws governing practice in the State of Florida are critical to the practitioner to engage in lawful, appropriate practice and to protect the populace from unqualified practitioners. Licensed practitioners have not only ethical, but legal, responsibility to practice according to the statutes set forth by the rule making body of the State of Florida.

Persons engaged in the practice of clinical social work, marriage and family therapy, or mental health counseling in the State of Florida are subject to the laws and rules administered through the Florida Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counseling; hereafter referred to as “the Board” in this course. The Board is charged through legislation with ensuring safe practice among clinical social workers, marriage and family therapists, and mental health counselors. The Board sets forth minimum requirements that must be adhered to by persons practicing these professions. This is accomplished through licensing, monitoring, disciplinary actions, and education (<http://floridamentalhealthprofessions.gov/>).

Professionals practicing in these areas risk the loss of licensure and professional reputation by failing to adhere to the rules and laws set forth by the State of Florida. It is highly advantageous to license holders practicing clinical social work, marriage and family therapy, or mental health counseling to maintain current knowledge of pertinent laws and rules, as well as changes to the laws and rules as they are amended.

Changes to Rules and Laws

One important change is the impetus for this course. The State of Florida has introduced through legislation the requirement that licensees engaged in the practice of clinical social work, marriage and family therapy, and mental health counseling must complete three (3) hours of continuing education coursework on laws and rules as outlined in Chapter 64B4-6 (License Renewal, Continuing Education Credit). This requirement must be met by licensed practitioners of the stated disciplines/professions every third biennium following initial licensure. In essence, the rule states that during the licensure renewal period following the licensee's second renewal is the time period that a laws and rules course must be completed. This new requirement adds to the existing requirements already in place by Florida legislation as detailed below:

- Each renewal period following first renewal of licensure-thirty (30) hours of continuing education to include two (2) hours on the prevention of medical errors; three (3) hours on professional ethics/boundary issues.
- Within six (6) months of initial licensure and every third renewal following-two (2) hours on domestic violence.
- Finally, introduction of the newest change to Chapter 64B4-6 requires three (3) hours on laws and rules every third biennium after the initial licensure. This course addresses the requirement for those three (3) hours of continuing education on laws and rules.

This is a significant change for practitioners of these disciplines. This change not only sets forth new continuing education requirements, but directly impacts the renewal of licenses for clinical social work, mental health counseling, and marriage and family therapy. This is because the changes alter the content of continuing education courses that must be completed at various license renewal intervals. The State of Florida requires specific continuing education in the areas of medical error prevention, laws and rules, and domestic violence.

FROM THE LAW: 64B4-6.001 Renewal of Active License

(1) The Department of Health shall renew an active license upon receipt of the biennial license fee, as established by Rule 64B4-4.005, F.A.C. By remitting the correct fee to the Department, the licensee is affirming that all requirements for license renewal have been met. Each biennial renewal period shall begin on the date established by the Department.

(2) A licensee shall not be required to complete continuing education for the first renewal of licensure. For each subsequent renewal:

(a) A licensee must complete 30 hours of approved continuing education credit including: two hours on the prevention of medical errors; three hours relating to professional ethics and boundary issues during the two-year period ending on the last day of the biennial renewal period.

(b) A maximum of six (6) of the required thirty (30) hours of continuing education may be accrued for credit during one biennium by attending programs designed for the purpose of enhancing the licensee's administrative, office management, or other non-clinical skills.

(3) Within six (6) months of initial licensure and every third renewal thereafter, a licensee must complete a 2 hour continuing education course on domestic violence.

(4) Every third biennium after initial licensure, a licensee must complete 3 hour laws and rules continuing education units.

(5) Continuing education hours earned by a licensee to satisfy any disciplinary action shall be in addition to those required for renewal for each biennium.

(Source: Chapter 64B4-6, License Renewal, Continuing Education Credit, State of Florida)

FROM THE LAW: 64B4-6.0046 Course Content Requirement of Continuing Education Courses for Renewal Laws and Rules Course.

(1) The renewal laws and rules course shall be three (3) hours in duration.

(2) The course shall provide information about and review changes to the laws and rules contained in Chapters 456 and 491, F.S., and Rule Title 64B4, F.A.C.

(3) The renewal laws and rules course must be presented by a Board approved continuing education provider or a Board approved laws and rules course provider

(Source: Chapter 64B4-6, License Renewal, Continuing Education Credit, State of Florida)

It is important to point out that Chapter 456 sets forth the general provisions related to the regulation and licensure of health professions and occupations. Chapter 491 more specifically sets forth the provisions of rules and law for the regulation and licensure of clinical, counseling, and psychotherapy services. As stated, this course is specifically written for professionals engaged in the practice of clinical social work, marriage and family therapy, and mental health counseling to fulfill the requirements of 3 hours of rules and laws continuing education every third biennium following licensure.

Title XXXII of Florida Law deals specifically with the regulation of professions and occupations. Contained in Title XXXII is Chapter 456, which specifies the general provisions for regulation of health professions and occupations. This legislation empowers the State of Florida Department of Health to regulate health professions and occupations as stated within the articles of Chapter 456. This is important information for persons practicing clinical social work, mental health counseling, and marriage and family therapy as these professions/disciplines fall within the scope of regulation by the State of Florida Department of Health.

Understanding the Language of the Laws & Rules

Understanding the language of the regulatory laws and rules is critical. For the purpose of this course, the term “board” refers to any board or commission charged by the State of Florida for enforcing regulation and licensure of health profession and occupations. Why is this so important? Persons licensed to practice clinical social work, marriage and family therapy, or mental health counseling are considered licensees under a health profession or occupation. It is also important to note that the Department of Health is granted authority for the overall regulation of health professions and occupations.

Legislative Intent of Title XXXII, Chapter 456

The legislative intent of Chapter 456 is that those wishing to practice in professions regulated by the Department of Health are entitled to do so if qualified. Further, the legislation seeks to ensure the health, safety, and welfare of the public. Chapter 456 sets forth that such professions are to be regulated when:

- unregulated practice may harm or endanger the health, safety, and welfare of the public;
- the potential for harm is recognizable and outweighs any anticompetitive impact resulting from such regulation;
- the public is not effectively protected through other means such as state statutes, local ordinances, or federal regulation;
- less restrictive means are not available.

Renewal of Licenses and Reactivation of Licenses/Continuing Education Required

License renewals are due on a biennial basis and must be completed along with submission of the current fees required at the time of submission. Each licensee must prove the completion of at least 25 hours of continuing education in the period following the last issuance of the license. For example, a licensee issued a new license must complete a number not to exceed 25 hours of continuing education within two years of the initial issuance. Certified master social workers are exempt from this requiring in the period following the first issuance of the certificate. Licensed practitioners must provide proof of completing the required number of hours to the board as required at the time of license renewal.

In addition, licensees must complete 3 hours of continuing education on rules and laws beginning with the third biennium following licensure.

A person holding a license placed on inactive status may reactivate the license by submitting an application to the department and paying the current activation fee. The person must also complete the continuing education requirements, any required background investigation, and pay the current biennial license renewal fee as of the time of reinstatement.

II. Professional Relationship

Psychotherapist-Client Relationship.

According to Florida law, the psychotherapist-client relationship is established between a psychotherapist and another person once a psychotherapist renders, or purports to render, clinical social work, marriage and family therapy or mental health services. Mental health services includes, but is not limited to, psychotherapy, counseling, assessment, or treatment to that person. A formal contractual relationship, the scheduling of professional appointments, or payment of a fee for services are not necessary conditions for the establishment of a psychotherapist-client relationship, although each of these may be evidence that such a relationship exists. (Source Rule 64B4-10.003).

Client's/Patient's Right to be Informed

Patients/clients have the right under Florida law to be informed of any treatment or intervention that may cause or has caused adverse incident resulting in serious harm to clients/patients. This places responsibility on the professional to make sure client/patients are fully informed about the possible outcomes and risks of any intervention. Further, practitioners should immediately notify client/patients when there has been an adverse event impacting the client/patient.

License practitioners of these disciplines must clearly inform patients/clients of the various potential outcomes associated with any form of treatment or intervention. This is not only a matter a law in Florida, but also an ethical responsibility for practitioners.

FROM THE LAW: 456.0575 Duty to notify patients.—

Every licensed health care practitioner shall inform each patient, or an individual identified pursuant to s. 765.401(1), in person about adverse incidents that result in serious harm to the patient. Notification of outcomes of care that result in harm to the patient under this section shall not constitute an acknowledgment of admission of liability, nor can such notifications be introduced as evidence.

(Source: Chapter 456 Health Professions and Occupations: General Provisions, Title XXXII, State of Florida)

Sexual Misconduct

Sexual misconduct is a pitfall to be avoided by professionals. Not only is this activity illegal, but it violates the ethical standards related to the care of clients of every profession discussed in Chapter 491.

Rule 64B4-10.002 defines Sexual Misconduct as the following:

- (1) It is sexual misconduct for a psychotherapist to engage, attempt to engage, or offer to engage a client in sexual behavior, or any behavior, whether verbal or physical, which is intended to be sexually arousing, including kissing; sexual intercourse, either genital or anal; cunnilingus; fellatio; or the touching by either the psychotherapist or the client of the other's breasts, genital areas, buttocks, or thighs, whether clothed or unclothed.
- (2) It is sexual misconduct for a psychotherapist to encourage the client to engage in sexual conduct with a third party unless:
 - (a) Such encouragement is consistent with the planned treatment of the client's specifically diagnosed mental, social, or sexual dysfunctions or disorders; and
 - (b) Treatment is provided in accordance with generally accepted professional standards for psychotherapy in this State.

Rule 64B4-10.004 defines Sexual Misconduct Not Involving Client Contact as the following:

- (1) It is sexual misconduct for a supervisor to engage a supervisee in sexual behavior as defined in Rule 64B4-10.002, F.A.C., during the period a supervisory relationship exists.
- (2) It is sexual misconduct for a psychotherapist to engage in sexual behavior as defined in Rule 64B4-10.002, F.A.C., with any immediate family member or guardian of a client during the period of time psychotherapeutic services are being provided to the client.
- (3) "Immediate family" shall be defined as spouse, child, parents, parents-in-laws, siblings, grandchild, grandparents, and other household members.

It is important to point out that persons licensed for clinical social work, mental health counseling, or marriage and family therapy are authorized to utilize the term "psychotherapist" when providing services. Section 491.0112 of Chapter 491 specifically states that psychotherapists committing sexual misconduct with a client will be charged with a third degree felony. Also, a psychotherapist engaging in sexual misconduct with a former client may be charged with the same if it is deemed the termination of the helping relationship was done to engage in a sexual relationship. A second offense of either of these would increase the severity of charges to a second degree felony.

III. Confidentiality and Privileged Communication

Understanding Confidentiality

Communication between a client/patient and a professional licensed for mental health counseling, clinical social worker, or marriage and family therapy is confidential in the State of Florida. However, the following situations allow for the waiver of the rule of confidentiality:

1. The licensed professional is a defendant in a civil, criminal, or disciplinary action related to a client/patient complaint. Confidentiality may be waived inasmuch as it relates to the specific allegation.
2. The patient/client may request waiver. In cases where multiple family members are receiving services, all family members must agree to this in writing.
3. The licensed professional may disclose confidential information in the event there is imminent risk of physical harm to the patient/client, other members of society inasmuch as the communication is released only to a potential victim, appropriate family member, law enforcement, or other appropriate authority. Licensed practitioners hold no liability when disclosing confidential information for this purpose in compliance with the specific criteria discussed.

The concept of confidentiality is one of the foundational principles of practice among social workers, marriage and family therapists, and mental health counselors. It is of vital importance that clients/patients believe in the practitioner's oath to maintain confidence of the practitioner-client/patient relationship. Practitioners must make every effort to maintain the privacy of information about clients/patients. Instances where practitioners must observe confidentiality include, but are not limited to:

- Referring clients to other practitioners and additional service providers
- Protecting information regarding treatment and progress
- Requests for releases of client/patient information
- Maintaining the security of client/patient records
- Safeguarding against electronic breaches in client/patient records

Confidentiality is a matter of extreme importance to clients/patients and practitioners. It is critical that client/patient information be safeguarded against breaches that could later harm the client/patients. For instance, a breach of records could cause a client's/patient's mental health diagnosis to be revealed. Were this to be revealed to an employer or other entity, the client/patient might be at risk of adverse consequences. Practitioners have a legal and ethical obligation to protect clients/patients from harm caused by breaches of confidentiality. Confidentiality standards apply to all interactions between the client/patient and practitioner. Examples include, but are not limited to:

- Face to face interactions

- Written records
- Electronic records and communications
- Telephone conversations
- Recorded sessions
- Diagnostic and evaluative data

Chapter 456 specifically issues an exception for practitioners needing to divulge confidential information related to a positive HIV diagnosis. Practitioners should maintain client/patient confidentiality except in certain circumstances. Practitioners regulated under Chapter 456 are protected from civil and criminal liability in the event disclosure is made to a sex partner or needle sharing partner provided the following circumstances exist.

1. An HIV positive patient discloses the name of sex partner or needle-sharing partner.
2. The patient has been encouraged to notify the partner and to abstain from activities that are probably to transmit the virus.
3. The practitioner notifies the patient of the practitioner's intent to notify the partner.
4. The practitioner is acting upon ethical professional guidelines or civil duty.
5. Notification is completed according to protocols established by the Florida Department of Health.

Additionally, practitioners are not civilly or criminally liable for the failure to disclose a positive HIV diagnosis to a patient's partner.

Client Records

Chapter 456 of Florida law requires that clinical social workers, marriage and family therapists, and mental health counselors maintain responsibility for all records relating to their clients. This is further detailed in Rule 64B4-9.001. Client records must remain confidential unless otherwise indicated by law or unless the client provides a signed release of information for the records to be disclosed in a directed manner.

Practitioners must maintain client records for a period no less than 7 years from the last date of contact with the client. The practitioner is responsible for protecting the records during this period of time such that no breaches of confidential information and records occur. This affords the client a measure of protection from adverse incidents.

In the event that a clinical social worker, marriage and family therapist, or mental health counselor terminates practice or relocates their practice, certain procedures must be followed. If the practitioner is no longer available to clients, the clients must be notified of the termination or relocation and the fact that the practitioner is no longer available to serve the client. The practitioner must publish notice in the newspaper of greatest general circulation in the county in which the licensee practices or practiced. This notice must contain the date of termination or relocation and a new address where client records are available to

the client or to a licensed mental health professional chosen by the client. The newspaper notice must run at least once a week for 4 consecutive weeks. The licensee must retain the records for 2 years after the termination or relocation of the practice.

If the termination of services was caused by the death of a licensee, records must be kept at least 2 years after the licensee's death. After a 22 month period from the date of the licensee's death, the executor, administrator, personal representative must publish once during each week for 4 consecutive weeks, in the newspaper of greatest general circulation in each county in which the licensee practiced, a notice indicating to the clients of the deceased licensee that the licensee's records will be disposed of or destroyed 4 weeks or later from the last day of the final week of publication of the notice.

The following sections contains detailed information regarding records to support the summary of information above.

FROM THE LAW: 456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information. —

(1) As used in this section, the term "records owner" means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner's employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner.

(2) As used in this section, the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

- (a) Certified nursing assistants regulated under part II of chapter 464.
- (b) Pharmacists and pharmacies licensed under chapter 465.
- (c) Dental hygienists licensed under s. 466.023.
- (d) Nursing home administrators licensed under part II of chapter 468.
- (e) Respiratory therapists regulated under part V of chapter 468.
- (f) Athletic trainers licensed under part XIII of chapter 468.
- (g) Electrologists licensed under chapter 478.
- (h) Clinical laboratory personnel licensed under part III of chapter 483.
- (i) Medical physicists licensed under part IV of chapter 483.
- (j) Opticians and optical establishments licensed or permitted under part I of chapter 484.

- (k) Persons or entities practicing under s. 627.736(7).
- (3) As used in this section, the term “records custodian” means any person or entity that:
- (a) Maintains documents that are authorized in subsection (2); or
 - (b) Obtains medical records from a records owner.
- (4) Any health care practitioner’s employer who is a records owner and any records custodian shall maintain records or documents as provided under the confidentiality and disclosure requirements of this section.
- (5) This section does not apply to facilities licensed under chapter 395.
- (6) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person’s legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient’s psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient’s legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient’s written request, complete copies of the patient’s psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.
- (7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient’s legal representative, or other health care practitioners and providers involved in the patient’s care or treatment, except upon written authorization from the patient. However, such records may be furnished without written authorization under the following circumstances:
1. To any person, firm, or corporation that has procured or furnished such care or treatment with the patient’s consent.
 2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.
 3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient’s legal representative by the party seeking such records.
 4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient’s legal representative.
 5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting

requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

(b) Absent a specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services, any use of that information for those purposes is prohibited.

(c) Information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, if allowed by written authorization from the patient, or if compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.

(d) Notwithstanding paragraphs (a)-(c), information disclosed by a patient to a health care practitioner or provider or records created by the practitioner or provider during the course of care or treatment of the patient may be disclosed:

1. In a medical negligence action or administrative proceeding if the health care practitioner or provider is or reasonably expects to be named as a defendant;
2. Pursuant to s. 766.106(6)(b)5.;
3. As provided for in the authorization for release of protected health information filed by the patient pursuant to s. 766.1065; or
4. To the health care practitioner's or provider's attorney during a consultation if the health care practitioner or provider reasonably expects to be deposed, to be called as a witness, or to receive formal or informal discovery requests in a medical negligence action, presuit investigation of medical negligence, or administrative proceeding.
 - a. If the medical liability insurer of a health care practitioner or provider described in this subparagraph represents a defendant or prospective defendant in a medical negligence action:
 - (I) The insurer for the health care practitioner or provider may not contact the health care practitioner or provider to recommend that the health care practitioner or provider seek legal counsel relating to a particular matter.
 - (II) The insurer may not select an attorney for the practitioner or the provider. However, the insurer may recommend attorneys who do not represent a defendant or prospective defendant in the matter if the practitioner or provider contacts an insurer relating to the practitioner's or provider's potential involvement in the matter.
 - (III) The attorney selected by the practitioner or the provider may not, directly or indirectly, disclose to the insurer any information relating to the representation of the practitioner or the provider other than the categories of work performed or the amount of time applicable to each category for billing or reimbursement purposes. The attorney selected by the practitioner or the provider may represent the insurer or other insureds of the insurer in an unrelated matter.
 - b. The limitations in this subparagraph do not apply if the attorney reasonably expects the practitioner or provider to be named as a defendant and the practitioner or provider agrees

with the attorney's assessment, if the practitioner or provider receives a presuit notice pursuant to chapter 766, or if the practitioner or provider is named as a defendant.

(8)(a)1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act and also find that appropriate, reasonable attempts were made to obtain a patient release. Notwithstanding the foregoing, the department need not attempt to obtain a patient release when investigating an offense involving the inappropriate prescribing, overprescribing, or diversion of controlled substances and the offense involves a pain-management clinic. The department may obtain patient records without patient authorization or subpoena from any pain-management clinic required to be licensed if the department has probable cause to believe that a violation of any provision of s. 458.3265 or s. 459.0137 is occurring or has occurred and reasonably believes that obtaining such authorization is not feasible due to the volume of the dispensing and prescribing activity involving controlled substances and that obtaining patient authorization or the issuance of a subpoena would jeopardize the investigation.

2. The department may obtain patient records and insurance information pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has provided inadequate medical care based on termination of insurance and also find that appropriate, reasonable attempts were made to obtain a patient release.

3. The department may obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to a subpoena without written authorization from the patient if the department and probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has submitted a claim, statement, or bill using a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed, requested payment for services that were not performed by that health care practitioner, used information derived from a written report of an automobile accident generated pursuant to chapter 316 to solicit or obtain patients personally or through an agent regardless of whether the information is derived directly from the report or a summary of that report or from another person, solicited patients fraudulently, received a kickback as defined in s. 456.054, violated the patient brokering provisions of s. 817.505, or presented or caused to be presented a false or fraudulent insurance claim within the meaning of s. 817.234(1)(a), and also find that, within the meaning of s. 817.234(1)(a), patient authorization cannot be obtained because the patient

cannot be located or is deceased, incapacitated, or suspected of being a participant in the fraud or scheme, and if the subpoena is issued for specific and relevant records.

4. Notwithstanding subparagraphs 1.-3., when the department investigates a professional liability claim or undertakes action pursuant to s. 456.049 or s. 627.912, the department may obtain patient records pursuant to a subpoena without written authorization from the patient if the patient refuses to cooperate or if the department attempts to obtain a patient release and the failure to obtain the patient records would be detrimental to the investigation.

(b) Patient records, billing records, insurance information, provider contracts, and all attachments thereto obtained by the department pursuant to this subsection shall be used solely for the purpose of the department and the appropriate regulatory board in disciplinary proceedings. This section does not limit the assertion of the psychotherapist-patient privilege under s. 90.503 in regard to records of treatment for mental or nervous disorders by a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. However, the health care practitioner shall release records of treatment for medical conditions even if the health care practitioner has also treated the patient for mental or nervous disorders. If the department has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.

(9)(a) All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

(b) Notwithstanding paragraph (a), all patient records obtained by the department and any other documents maintained by the department which relate to a current or former Medicaid recipient shall be provided to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.

(10) All records owners shall develop and implement policies, standards, and procedures to protect the confidentiality and security of the medical record. Employees of records owners shall be trained in these policies, standards, and procedures.

(11) Records owners are responsible for maintaining a record of all disclosures of information contained in the medical record to a third party, including the purpose of the disclosure request. The record of disclosure may be maintained in the medical record. The third party to

whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient's legal representative.

(12) Notwithstanding the provisions of s. 456.058, records owners shall place an advertisement in the local newspaper or notify patients, in writing, when they are terminating practice, retiring, or relocating, and no longer available to patients, and offer patients the opportunity to obtain a copy of their medical record.

(13) Notwithstanding the provisions of s. 456.058, records owners shall notify the appropriate board office when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who the new records owner is and where medical records can be found.

(14) Whenever a records owner has turned records over to a new records owner, the new records owner shall be responsible for providing a copy of the complete medical record, upon written request, of the patient or the patient's legal representative.

(15) Licensees in violation of the provisions of this section shall be disciplined by the appropriate licensing authority.

(16) The Attorney General is authorized to enforce the provisions of this section for records owners not otherwise licensed by the state, through injunctive relief and fines not to exceed \$5,000 per violation.

(17) A health care practitioner or records owner furnishing copies of reports or records or making the reports or records available for digital scanning pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board, or the department when there is no board.

(18) Nothing in this section shall be construed to limit health care practitioner consultations, as necessary.

(19) A records owner shall release to a health care practitioner who, as an employee of the records owner, previously provided treatment to a patient, those records that the health care practitioner actually created or generated when the health care practitioner treated the patient. Records released pursuant to this subsection shall be released only upon written request of the health care practitioner and shall be limited to the notes, plans of care, and orders and summaries that were actually generated by the health care practitioner requesting the record.

(20) The board, or department when there is no board, may temporarily or permanently appoint a person or entity as a custodian of medical records in the event of the death of a practitioner, the mental or physical incapacitation of the practitioner, or the abandonment of medical records by a practitioner. The custodian appointed shall comply with all provisions of this section, including the release of patient records.

IV. Discipline of Professionals

Grounds for Disciplinary Action

The following actions are grounds for the issuance of disciplinary action by the Department of Health or other licensing board. However, this is not an exhaustive list and licensees should refer to the full text of Chapter 456.

- Fraudulent claims regarding the person's practice and licensure
- Intentional violation of Department of licensing board's rules
- Conviction of a crime related to the practice of a licensee's profession
- Failure to meet requirements for HIV/AIDS educational courses
- Revocation of a professional license
- Failure to meet and perform statutory and legal obligations of the licensee
- Violating a lawful order of the Department of Health or other licensing board

Impaired Practitioners

Provisions are set forth in Chapter 456 for impaired practitioner programs through the Department of Health or the governing board. Practitioner impairment presents a significant risk to public; and as such is dealt with seriously through the legislation in Chapter 456. Complaints regarding practitioners with impairments as the result of alcohol and/or drug use problems are subject to review by the probable cause panel of their specific licensing body. It is important to note that as long as no complaints other than the impairment exist, the licensee is not subject to disciplinary action providing some conditions are met:

- a. The licensee must acknowledge the impairment.
- b. The licensee voluntarily enrolls in an approved treatment program.
- c. The licensee discontinues practice until such time as the board authorizes a return to practice.
- d. The licensee authorizes the release of all pertinent treatment records to a consultant of the board for the purpose of monitoring remedy of the impairment.

Discipline by the Board

Professional discipline for persons licensed in clinical social work, mental health counseling, and marriage and family therapy is a serious matter. As such, the full text list of this section of the law is included below. The issues discussed constitute grounds for a license being denied, revoked, and other disciplinary action by the board.

FROM THE LAW: 491.009 Discipline.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

- (a) Attempting to obtain, obtaining, or renewing a license, registration, or certificate under this chapter by bribery or fraudulent misrepresentation or through an error of the board or the department.
- (b) Having a license, registration, or certificate to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.
- (c) Being convicted or found guilty of, regardless of adjudication, or having entered a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.
- (d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.
- (e) Advertising, practicing, or attempting to practice under a name other than one's own.
- (f) Maintaining a professional association with any person who the applicant, licensee, registered intern, or certificateholder knows, or has reason to believe, is in violation of this chapter or of a rule of the department or the board.
- (g) Knowingly aiding, assisting, procuring, or advising any nonlicensed, nonregistered, or noncertified person to hold himself or herself out as licensed, registered, or certified under this chapter.
- (h) Failing to perform any statutory or legal obligation placed upon a person licensed, registered, or certified under this chapter.
- (i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record. Such report or record includes only a report or record which requires the signature of a person licensed, registered, or certified under this chapter.
- (j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of mental health care services or to a provider of health care services or goods; referring a patient or client to oneself for services on a

fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to s. 491.0111.

(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified under this chapter.

(m) Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct.

(n) Failing to make available to a patient or client, upon written request, copies of tests, reports, or documents in the possession or under the control of the licensee, registered intern, or certificateholder which have been prepared for and paid for by the patient or client.

(o) Failing to respond within 30 days to a written communication from the department or the board concerning any investigation by the department or the board, or failing to make available any relevant records with respect to any investigation about the licensee's, registered intern's, or certificateholder's conduct or background.

(p) Being unable to practice the profession for which he or she is licensed, registered, or certified under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General's designee, or the board that probable cause exists to believe that the licensee, registered intern, or certificateholder is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee, registered intern, or certificateholder to submit to a mental or physical examination by psychologists, physicians, or other licensees under this chapter, designated by the department or board. If the licensee, registered intern, or certificateholder refuses to comply with such order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee, registered intern, or certificateholder resides or does business. The licensee, registered intern, or certificateholder against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee, registered intern, or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed, registered, or certified with reasonable skill and safety to patients.

- (q) Performing any treatment or prescribing any therapy which, by the prevailing standards of the mental health professions in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.
 - (r) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee, registered intern, or certificateholder is not qualified by training or experience.
 - (s) Delegating professional responsibilities to a person whom the licensee, registered intern, or certificateholder knows or has reason to know is not qualified by training or experience to perform such responsibilities.
 - (t) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.
 - (u) Failure of the licensee, registered intern, or certificateholder to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 491.0147.
 - (v) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.
 - (w) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.
- (Source: Chapter 491 Clinical, Counseling, and Psychotherapy Services, Title XXXII, State of Florida)

Disciplinary Proceedings

Practitioners are subject to disciplinary proceedings as established in Chapter 456. These proceedings are legislatively authorized and must take place through the appropriate board under the jurisdiction of the Department of Health.

Complaints will be investigated if they meet the criteria of being filed in writing, legally sufficient to warrant investigation, and signed by the party filing the complaint. Primarily, these criteria must be met in order for the Department to begin an investigation into an allegation of practitioner misconduct. However, the Department of Health may also investigate anonymously filed complaints if the alleged misconduct meets the criterion of legal sufficiency and the alleged violation of rules and law is of a significant nature.

Complaints are considered to be legally sufficient when the complaint contains facts indicating a violation of Chapter 456, violations of professional practices regulated through the Department of Health, or violations of rules adopted by the Department of Health or regulatory boards under its jurisdiction.

Generally, the department has 6 months to present preliminary findings of cause related to each received complaint investigated. Notices of noncompliance for first time offenses related to minor violations may be the only corrective action taken. However, in most cases, each board will present its finding to a probable cause panel when there is evidence of more significant violations. The full text of Chapter 456 sets forth time frames related to establishment of probable cause and the functions of probable cause panels. Practitioners accused of violations have a right to a formal hearing before an administrative law judge if the practitioner is disputing the facts gathered by the department or board. This must be done through a petition for a hearing.

Violations

Violations by professionals licensed to practice under the rules and laws of Chapter 491 are subject to a number of rules that must be observed. The list of potential pitfalls for practitioners is lengthy and professionals should be diligent about understanding the scope and breadth of appropriate practice as a licensed clinical social worker, marriage and family therapist, or mental health counselor. The following text box details an excerpt from the law that shows authorized titles for licensed professionals. In addition, other violations related to licensure are detailed below.

FROM THE LAW: 491.012 Violations; penalty; injunction.—

- (1) It is unlawful and a violation of this chapter for any person to:
- (a) Use the following titles or any combination thereof, unless she or he holds a valid, active license as a clinical social worker issued pursuant to this chapter:
 1. “Licensed clinical social worker.”
 2. “Clinical social worker.”
 3. “Licensed social worker.”
 4. “Psychiatric social worker.”
 5. “Psychosocial worker.”
 - (b) Use the following titles or any combination thereof, unless she or he holds a valid, active license as a marriage and family therapist issued pursuant to this chapter:
 1. “Licensed marriage and family therapist.”
 2. “Marriage and family therapist.”
 3. “Marriage counselor.”
 4. “Marriage consultant.”
 5. “Family therapist.”
 6. “Family counselor.”
 7. “Family consultant.”
 - (c) Use the following titles or any combination thereof, unless she or he holds a valid, active license as a mental health counselor issued pursuant to this chapter:
 1. “Licensed mental health counselor.”

2. "Mental health counselor."
 3. "Mental health therapist."
 4. "Mental health consultant."
- (d) Use the terms psychotherapist, sex therapist, or juvenile sexual offender therapist unless such person is licensed pursuant to this chapter or chapter 490, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training, and licensure.
- (e) Present as her or his own the clinical social work, marriage and family therapy, or mental health counseling license of another.
- (f) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license.
- (g) Use or attempt to use a license issued pursuant to this chapter which has been revoked or is under suspension.
- (h) Knowingly conceal information relative to violations of this chapter.
- (i) Practice clinical social work in this state for compensation, unless the person holds a valid, active license to practice clinical social work issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
- (j) Practice marriage and family therapy in this state for compensation, unless the person holds a valid, active license to practice marriage and family therapy issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
- (k) Practice mental health counseling in this state for compensation, unless the person holds a valid, active license to practice mental health counseling issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
- (l) Use the following titles or any combination thereof, unless he or she holds a valid registration as an intern issued pursuant to this chapter:
1. "Registered clinical social worker intern."
 2. "Registered marriage and family therapist intern."
 3. "Registered mental health counselor intern."
- (m) Use the following titles or any combination thereof, unless he or she holds a valid provisional license issued pursuant to this chapter:
1. "Provisional clinical social worker licensee."
 2. "Provisional marriage and family therapist licensee."
 3. "Provisional mental health counselor licensee."
- (n) Effective October 1, 2000, practice juvenile sexual offender therapy in this state, as the practice is defined in s. 491.0144, for compensation, unless the person holds an active license issued under this chapter and meets the requirements to practice juvenile

sexual offender therapy. An unlicensed person may be employed by a program operated by or under contract with the Department of Juvenile Justice or the Department of Children and Family Services if the program employs a professional who is licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 who manages or supervises the treatment services.

(2) It is unlawful and a violation of this chapter for any person to describe her or his services using the following terms or any derivative thereof, unless such person holds a valid, active license under this chapter or chapter 490, or is certified under s. 464.012 as an advanced registered nurse practitioner who

has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training, and licensure:

- (a) "Psychotherapy."
- (b) "Sex therapy."
- (c) "Sex counseling."
- (d) "Clinical social work."
- (e) "Psychiatric social work."
- (f) "Marriage and family therapy."
- (g) "Marriage and family counseling."
- (h) "Marriage counseling."
- (i) "Family counseling."
- (j) "Mental health counseling."

(3) Any person who violates any provision of subsection (1) or subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) The department may institute appropriate judicial proceedings to enjoin violation of this section.

(Source: Chapter 491 Clinical, Counseling, and Psychotherapy Services, Title XXXII, State of Florida)

Supervision following Discipline

Licensees who receive disciplinary action as a final order of the Board are not allowed to serve as a qualified supervisor until the licensee has complied with all disciplinary obligations set forth by the Board. In the event that a complaint is filed against a qualified supervisor, the qualified supervisor must notify, in writing, all of his/her supervisee's within 15 days. Within 1 day of a final order against a qualified supervisor, the qualified supervisor must provide written notice of the final disciplinary order and terminate all supervisory relationships.

V. Standards of Practice

Qualified professionals may make application to be certified as a *certified master social worker*. The following qualifications and procedures must be met:

1. Complete the appropriate application, provided by the board, and pay a nonrefundable fee set by the board.
2. Submit proof of completion of a doctoral degree in social work or a master's degree in social work with a concentration in in clinical practice or administration. Doctoral degrees must have been awarded through a graduate social work program approved by the U. S. Department of Education. Master's degrees must have been awarded through a CSWE or Canadian Association of Schools of Social Work accredited program. Other graduate social work programs may be acceptable if so deemed by the board.
3. Applicant has completed at least 3 years of experience including clinical services and administrative activities. Two years of that experience must have been completed post-master's while supervised by a person meeting the requirements of a certified master social worker or licensed as a clinical social worker. Doctoral internships are acceptable for credit toward this criterion.
4. Pass an examination required by the department for certification as a certified master social worker.

Clinical social workers, marriage and family therapists and mental health counselors may practice hypnosis under the following conditions:

1. Before practicing hypnosis for any therapeutic purpose, a clinical social worker, marriage and family therapist, or mental health counselor must successfully complete at least 50 hours of instruction in concepts of and misconceptions of hypnosis induction techniques, contraindications to hypnosis, and the relationships of personality dynamics, psychopathology and ethical issues to hypnosis. Such instruction must have met the standards for approval of continuing education courses set forth in Rule 64B4-6.002, F.A.C., and in addition must have been taught by qualified teachers as defined in Rule 64B4-7.003, F.A.C.
2. An intern may not practice hypnosis unless practicing under the supervision of a qualified supervisor who has met the requirements to practice hypnosis.

In order to be a qualified practitioner for completing risk assessments and treatment of sexual offenders, the following conditions must be met:

1. Licensees employed or contracted as Behavioral Specialists for the Florida Department of Corrections (DOC) and credentialed to conduct screenings and counseling for sexual disorders; or approved by the United States Probation Office to complete risk assessments and treat sexual offenders; or who were a clinical member of the Association

for the Treatment of Sexual Abusers (ATSA) or the Florida Association for the Treatment of Sexual Abusers (FATSA), on or before June 30, 2010, shall be deemed to be qualified practitioners.

2. In order to be a qualified practitioner for completing risk assessments and/or providing treatment for sexual offenders, one must hold an active license as a clinical social worker, marriage and family therapist, or mental health counselor under Chapter 491, F.S.

3. A qualified practitioner under this rule shall possess 60 hours of post degree graduate coursework or post degree continuing education in all of the following core areas with a minimum of three (3) hours per area:

- (a) Etiology of sexual deviance;
- (b) Evaluation/risk assessment and treatment of adult and adolescent sexual offenders that have established scientific bases;
- (c) Evaluation/risk assessment and treatment of specialized populations of sexual offenders;
- (d) Physiological measures of sexual arousal;
- (e) Sexual offender and current DSM diagnosis;
- (f) Safety planning/Family Safety planning;
- (g) Report writing;
- (h) Legal and ethical issues in the evaluation and treatment of sexual offenders;
- (i) Co-morbidity and substance abuse issues; and
- (j) Relapse prevention.

3. Have documented 2,000 hours of post degree experience in the evaluation and treatment of sexual offenders.

4. A qualified practitioner under this rule must complete 20 hours of board approved

5. biennial continuing education in the assessment, evaluation and treatment of sexual offenders; relapse prevention; experience and training in working with victims; and related legal and ethical issues.

Displaying Licenses & Use of Titles

Chapter 491 provides very specific instructions that professionals licensed as clinical social workers, mental health counselors, or marriage and family therapists are required to post their valid license in an area that is readily viewed by the public. In addition, specific wording is to be included on promotional materials and other printed materials as specified below. This is to ensure that professionals are holding themselves out correctly to the public and to identify those persons that may be practicing without licensure.

FROM THE LAW: 491.0149 Display of license; use of professional title on promotional materials.—

(1)(a) A person licensed under this chapter as a clinical social worker, marriage and family therapist, or mental health counselor, or certified as a master social worker shall conspicuously display the valid license issued by the department or a true copy thereof at each location at which the licensee practices his or her profession.

(b)1. A licensed clinical social worker shall include the words “licensed clinical social worker” or the letters “LCSW” on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee.

2. A licensed marriage and family therapist shall include the words “licensed marriage and family therapist” or the letters “LMFT” on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee.

3. A licensed mental health counselor shall include the words “licensed mental health counselor” or the letters “LMHC” on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee.

(2)(a) A person registered under this chapter as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern shall conspicuously display the valid registration issued by the department or a true copy thereof at each location at which the registered intern is completing the experience requirements.

(b) A registered clinical social worker intern shall include the words “registered clinical social worker intern,” a registered marriage and family therapist intern shall include the words “registered marriage and family therapist intern,” and a registered mental health counselor intern shall include the words “registered mental health counselor intern” on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the registered intern.

(3)(a) A person provisionally licensed under this chapter as a provisional clinical social worker licensee, provisional marriage and family therapist licensee, or provisional mental health counselor licensee shall conspicuously display the valid provisional license issued by the department or a true copy thereof at each location at which the provisional licensee is providing services.

(b) A provisional clinical social worker licensee shall include the words “provisional clinical social worker licensee,” a provisional marriage and family therapist licensee shall include the words “provisional marriage and family therapist licensee,” and a provisional mental health counselor licensee shall include the words “provisional mental health counselor licensee” on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the provisional licensee.

(Source: Chapter 491 Clinical, Counseling, and Psychotherapy Services, Title XXXII, State of Florida)

Use of the Title of Social Work

Social workers are strictly prohibited from practicing clinical social work without the appropriate licensure discussed in Chapter 491. Promoting one’s self as a social worker constitutes a first degree misdemeanor unless the practitioner possesses a bachelor’s or

master's degree from a CSWE accredited school or other university/college determined by CSWE's Foreign Equivalency Determination Service to be the equivalent of a CSWE accredited program in social work. Exceptions to this rule exist and should be reviewed in the full text of Chapter 491.

VI. Wrap Up

Practitioners licensed as marriage and family therapists, clinical social workers, or mental health counselors completing this course and associated materials examination have completed the requirement of 3 hours of continuing education related to Chapters 456 and 491 of Florida Law Title XXXII. This requirement is to be completed every third biennium following initial licensure.

Prior to attempting the accompanying examination, be sure to review the laws and rules discussed in this text. The practice exam score will stand as your proof of knowledge and competency of Florida rules and laws related to your profession.