Florida Laws and Rules for Mental Health Professionals

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Faculty

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Faculty Disclosure

Contributing faculty, Dana Friedlander, Esq., PA, has disclosed no relevant financial relationship with any product manufacturer or service provider mentioned.

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The division planner and director have disclosed no relevant financial relationship with any product manufacturer or service provider mentioned.

Audience

This course is designed for all mental health professionals in Florida, including social workers, therapists, and counselors.

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Social workers completing this intermediate-to-advanced course receive 3 Clinical continuing education credits.

NetCE designates this continuing education activity for 1 NBCC clock hour.

Special Approval

This course fulfills the Florida requirement for 3 hours of education on Laws and Rules.

About the Sponsor

The purpose of NetCE is to provide challenging curricula to assist healthcare professionals to raise their levels of expertise while fulfilling their continuing education requirements, thereby improving the quality of healthcare.

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Course Objective

The purpose of this course is to provide basic knowledge of the laws and rules governing the practice of mental health in Florida in order to increase compliance and improve client care.

Learning Objectives

Upon completion of this course, you should be able to:

1. Discuss the importance of confidentiality and record keeping for mental health professionals.
2. Describe the legal and ethical boundaries established for supervision in the mental health professions.
3. Identify issues that may arise in the psychotherapist-client relationship.
4. Outline the standards of practice for mental health professionals in Florida.
5. Review disciplinary actions that may be taken against mental health professionals who violate state laws.

INTRODUCTION

The Florida Department of Health and the Florida Legislature have enacted laws and rules to safeguard the public by ensuring that minimum safety requirements are met by every mental health professional practicing in the state. This course presents portions of the Florida Administrative Code (FAC) Division 64B4 and Florida Statutes (FS) Chapter 491, both of which pertain specifically to mental health professions, in addition to sections covering Chapter 456 of the Florida Statutes, which includes general laws for all healthcare professions [1; 2; 3]. These include laws and rules governing standards of practice, licensure and certification, and violations and penalties.

Chapter 491 of the Florida Statutes established the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling as an authority to adopt rules, develop standards for education programs, and discipline licensees who violate regulations [3]. Professionals who fall below Florida's required minimum competency or who present a danger to clients, coworkers, or others will be prohibited from working in the state. The FAC is a collection of rules set forth by the state's regulatory agencies (e.g., the Department of Health), while the Florida Statutes are a collection of state laws. The Florida Department of Health rules comprise Department 64 of the Administrative Code, and Division 64B4 relates specifically to the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.

The laws and rules discussed in this course have been chosen because they are among the most pertinent and apply specifically to professionals renewing their license. In addition to the benefit to the public, periodically reviewing the laws and rules that govern the profession can help to safeguard against disciplinary action, litigation, and/or termination resulting from unauthorized, inappropriate, erroneous, unethical, or illegal behavior or practice. This course fulfils the requirement of the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling that board-licensed professionals complete continuing education coursework regarding state laws and rules governing mental health care every third biennium after initial licensure.

CONFIDENTIALITY AND RECORD KEEPING

Confidentiality, the duty to respect privacy, trust, and self-determination, is one of the most important ethical and legal requirements of mental healthcare professions [4; 5]. Confidentiality is a concern in each of the following cases:

- A client refers a friend or family member for treatment.
- Information regarding clinical treatment of a client is overheard.
- Patient records are stolen from a parked car.
- A family member requests information regarding a client's issues.
- A release of records is requested for one member of a couple being seen jointly, and the records contain information about the other member as well.

Violation of confidentiality is not tolerated under ordinary circumstances. However, in certain instances, such as if a client expresses intent to physically harm him- or herself, another individual, or society and that threat is perceived by the professional to be real and imminent, client communications may cease to be privileged. Under Florida law, confidential information can be shared with certain family members, potential victims, law enforcement, and other authorities in these instances.

Confidentiality applies not only to live conversations and their written documentation, but also to all other forms of data storage, including e-mail, audio/video recording, and assessment/test data. Permission to engage in each alternate form of documentation must be granted by the client. All of this documented information becomes part of the client's record, and this record is protected. The following Florida laws and rules pertain to confidentiality and client records [1; 2; 3].

FS 491.0147 Confidentiality and Privileged Communications

Any communication between any person licensed or certified under this chapter and her or his patient or client shall be confidential.

1. This privilege may be waived under the following conditions:
    a. When the person licensed or certified under this chapter is a party defendant to a civil, criminal, or disciplinary action arising from a complaint filed by the patient or client, in which case the waiver shall be limited to that action.
    b. When the patient or client agrees to the waiver, in writing, or, when more than one person in a family is receiving therapy, when each family member agrees to the waiver, in writing.
    c. When a patient or client has communicated to the person licensed or certified under this chapter a specific threat to cause serious bodily injury or death to an identified or readily available person, and the person licensed or certified under this chapter makes a clinical judgment that the patient or client has the apparent intent and ability to imminently or immediately carry out such threat, and the person licensed or certified under this chapter communicates the information to the potential victim. A disclosure of confidential communications by a person licensed or certified under this chapter when communicating a threat pursuant to this subsection may not be the basis of any legal action or criminal or civil liability against such person.
2. This privilege must be waived, and the person licensed or certified under this chapter shall disclose patient or client communications to the extent necessary to communicate the threat to a law enforcement agency, if a patient or client has communicated to such person a specific threat to cause serious bodily injury or death to an identified or readily available person, and the person licensed or certified under this chapter makes a clinical judgment that the patient or client has the apparent intent and ability to imminently or immediately carry out such threat. A law enforcement agency that receives notification of a specific threat under this subsection must take appropriate action to prevent the risk of harm, including, but not limited to, notifying the intended victim of such threat or initiating a risk protection order. A disclosure of confidential communications by a person licensed or certified under this chapter when communicating a threat pursuant to this subsection may not be the basis of any legal action or criminal or civil liability against such person.

CLIENT RECORDS

FS 491.0148 Records

Each psychotherapist who provides services as defined in this chapter shall maintain records. The board may adopt rules defining the minimum requirements for records and reports, including content, length of time records shall be maintained, and transfer of either the records or a report of such records to a subsequent treating practitioner or other individual with written consent of the client or clients.

FAC 64B4-9.001 Requirements for Client Records

1. A licensed clinical social worker, marriage and family therapist, or mental health counselor, including any registered intern or provisional licensee, shall maintain responsibility for all records relating to his clients as provided in Section 456.057 of the Florida Statutes. All such records shall remain confidential except as provided by law or as allowed pursuant to a written and signed authorization by the client specifically requesting or authorizing release or disclosure of records in his office or possession.
2. A full record of services shall be maintained for 7 years after the date of the last contact with the client or user.
3. When a clinical social worker, marriage and family therapist, or mental health counselor terminates practice or relocates and is no longer available to clients or users, the clients or users shall be notified of such termination or relocation and unavailability by the licensee's causing to be published in the newspaper of greatest general circulation in the county in which the licensee practices or practiced, a notice which shall contain the date of termination or relocation and an address at which the licensee's client or user records are available to the client, user, or to a licensed mental health professional designated by the client or user. The notice shall appear at least once a week for 4 consecutive weeks. The records shall be retained for 2 years after the termination or relocation of the practice.
4. If the termination was due to the death of a licensee, records shall be maintained at least two years after the licensee's death. At the conclusion of a 22-month period from the date of the licensee's death, the executor, administrator, personal representative, or survivor shall cause to be published 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 or users 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.

FS 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 healthcare 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 healthcare practitioner to whom records are transferred by a previous records owner; or any healthcare 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 healthcare practitioner designates the employer as the records owner.
2. As used in this section, the terms "records owner," "healthcare practitioner," and "healthcare 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
   b) Pharmacists and pharmacies
   c) Dental hygienists
   d) Nursing home administrators
   e) Respiratory therapists
   f) Athletic trainers
   g) Electrologists
   h) Clinical laboratory personnel
   i) Medical physicists
   j) Opticians and optical establishments
   k) Insurance organizations

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 healthcare 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 (i.e., hospitals and other licensed facilities).
6. Any healthcare 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 healthcare 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 healthcare 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 and the professional organization that certifies poison control centers in accordance with federal law.

6. To the Department of Children and Families, its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

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 healthcare practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other healthcare 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 healthcare 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 healthcare practitioner or provider is or reasonably expects to be named as a defendant;
2. As part of informal discovery in actions related to medical negligence, 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 healthcare practitioner's or provider's attorney during a consultation if the healthcare 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 healthcare practitioner or provider described in this subparagraph represents a defendant or prospective defendant in a medical negligence action:
      (I) The insurer for the healthcare practitioner or provider may not contact the healthcare practitioner or provider to recommend that the healthcare 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 healthcare 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 healthcare 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 healthcare 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 healthcare 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 healthcare practitioner, used information derived from a written report of an automobile accident 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, violated patient brokering provisions, or presented or caused to be presented a false or fraudulent insurance claim, and also find that 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, 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 in regard to records of treatment for mental or nervous disorders by a medical practitioner 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 healthcare practitioner shall release records of treatment for medical conditions even if the healthcare 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 that identify the patient by name are confidential and exempt 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 that 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 healthcare 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 healthcare practitioner consultations, as necessary.
19. A records owner shall release to a healthcare practitioner who, as an employee of the records owner, previously provided treatment to a patient, those records that the healthcare practitioner actually created or generated when the healthcare practitioner treated the patient. Records released pursuant to this subsection shall be released only upon written request of the healthcare practitioner and shall be limited to the notes, plans of care, and orders and summaries that were actually generated by the healthcare practitioner requesting the record.
20. The board with department approval, or the 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. Such custodian shall comply with this section. The department may contract with a third party to provide these services under the confidentiality and disclosure requirements of this section.

SUPERVISION

Supervisor/supervisee relationships are an important learning tool for individuals new to their profession and, for individuals who are supervisors, a key part of their ethical duty to clients, colleagues, practice settings, their profession, and society as a whole. In addition to monitoring the welfare of clients and monitoring and evaluating supervisee performance, one of the integral supervisory roles is assuring that supervisees adhere to all applicable state and federal laws [5]. Additionally, supervisors must assure that their own behavior and actions fall within the confines of the laws and rules of Florida and the United States. The following two rules from FAC Chapter 64B4-2 pertain to supervision in the mental health professions [1].

FAC 64B4-2.002 Definition of "Supervision" for Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

Supervision is the relationship between the qualified supervisor and intern that promotes the development of responsibility, skills, knowledge, attitudes, and adherence to ethical, legal, and regulatory standards in the practice of clinical social work, marriage and family therapy, and mental health counseling. Supervision is contact between an intern and a supervisor during which the intern apprises the supervisor of the diagnosis and treatment of each client, client cases are discussed, the supervisor provides the intern with oversight and guidance in diagnosing, treating, and dealing with clients, and the supervisor evaluates the intern's performance.

1. An intern shall be credited for the time of supervision required if the intern:
    a) Received at least 100 hours of supervision in no less than 100 weeks; and
    b) Provided at least 1,500 hours of face-to-face psychotherapy with clients; and
    c) Received at least 1 hour of supervision every two weeks.
2. The supervision shall focus on the raw data from the intern's face-to-face psychotherapy with clients. The intern shall make the raw data directly available to the supervisor through such means as written clinical materials, direct observation, and video and audio recordings. Supervision is a process that is distinguishable from personal psychotherapy or didactic instruction.
3. The supervisor and intern may utilize face-to-face electronic methods (not telephone only communication) to conduct the supervisory sessions; however, the supervisor and intern must have in-person face-to-face contact for at least 50% of all of the interactions required in paragraph (1) above. Prior to utilizing any online or interactive methods for supervision, the supervisor and the intern shall have at least one in-person face-to-face meeting. The supervisor and the intern are responsible for maintaining the confidentiality of the clients during both in-person and online or interactive supervisory sessions.
4. If an intern obtains group supervision, each hour of group supervision must alternate with an hour of individual supervision. Group supervision must be conducted with all participants present in-person. For the purpose of this section, individual supervision is defined as one qualified supervisor supervising no more than two (2) interns and group supervision is defined as one qualified supervisor supervising more than 2 but a maximum of 6 interns in the group.
5. A qualified supervisor shall supervise no more than 25 registered interns simultaneously.
6. "Face-to-face psychotherapy" for clinical social workers, marriage and family therapists, and mental health counselors registered pursuant to Section 491.0045, F.S., includes face-to-face by electronic methods so long as the registered intern establishes and adheres to the following:

a) The registered intern has a written telehealth protocol and safety plan in place with their current qualified supervisor which includes the provision that the qualified supervisor must be readily available during the electronic therapy session; and

b) The registered intern and their qualified supervisor have determined, through their professional judgements, that providing face-to-face psychotherapy by electronic methods is not detrimental to the patient is necessary to protect the health, safety, or welfare of the patient, the registered intern, or both, and does not violate any existing statutes or regulations.

7. Notwithstanding subsections (3) and (4) above a qualified supervisor may utilize face-to-face electronic methods, including telephone only communication, to conduct all supervisory sessions for internship hours if the qualified supervisor determines, through their professional judgment, that such methods are not detrimental to the registered intern's patients and are necessary to protect the health, safety, or welfare of the qualfied supervisor, the registered intern, or both. Any clinical hours obtained via face-to-face psychotherapy by electronic means shall be considered clinical hours for the purpose of meeting internship requirements.

8. No later than 90 days prior to June 30, 2026, the Board shall review and amend, modify, or repeal subsections (6) and (7) above if it determines that same creates barriers to entry for private business competition, is duplicative, outdated, obsolete, overly burdensome, imposes excessive costs, or otherwise negatively impacts the quality of psychotherapy received by Florida citizens.

FAC 64B4-2.003 Conflict of Interest in Supervision

Supervision provided by the applicant's therapist, parents, spouse, former spouses, siblings, children, employees, or anyone sharing the same household, or any romantic, domestic, or familial relationship shall not be acceptable toward fulfillment of licensure requirements. For the purposes of this section, a supervisor shall not be considered an employee of the applicant if the only compensation received by the supervisor consists of payment for actual supervisory hours.

THE PROFESSIONAL RELATIONSHIP

A professional relationship exists when services are provided to clients or patients. In health professions, this relationship is founded on several ethical principles, including autonomy (i.e., self-determination), beneficence (i.e., doing good), competence (i.e., possessing the knowledge and ability to perform services), confidentiality, nonmaleficence (i.e., doing no harm), and veracity (i.e., truthfulness). Judgment must not be impaired by inappropriate relationships; this includes rendering services to family members, close acquaintances, or individuals with prior romantic or sexual involvement [5]. The professional relationship must begin and remain non-exploitive (i.e., not taking advantage of an individual for personal gain). Professional ethical codes address these issues in detail, and the state of Florida has specific laws and rules regarding professional relationships. Most, including those discussed in this course, focus specifically on inappropriate sexual involvement with clients, patients, and supervisees [1; 3].

FAC 64B4-10.003 Psychotherapist-Client Relationship

A psychotherapist-client relationship is established between a psychotherapist and a person once a psychotherapist renders, or purports to render, clinical social work, marriage and family therapy, or mental health services including, but not limited to, psychotherapy, counseling, assessment, or treatment to that person. A formal contractual relationship, the scheduling of professional appointments, and 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.

1. Sexual misconduct with a client is prohibited.
2. For purposes of determining the existence of sexual misconduct, the psychotherapist-client relationship, once established, is deemed to continue for a minimum of 2 years after termination of psychotherapy or the date of the last professional contact with the client. However, beyond that 2-year time period, the mere passage of time since the client's last visit with the psychotherapist is not the sole determinative of whether or not the psychotherapist-client relationship has been terminated. Some of the factors considered by the board in determining whether the psychotherapist-client relationship has terminated include, but are not limited to, the following:
    a) Formal termination procedures;
    b) Transfer of the client's case to another psychotherapist;
    c) The length of the professional relationship;
    d) The extent to which the client has confided personal or private information to the psychotherapist;
    e) The nature of the client's problem; and
    f) The degree of emotional dependence that the client has on the psychotherapist.
3. The psychotherapist shall not engage in or request sexual contact with a former client at any time if engaging with that client would be exploitative, abusive, or detrimental to that client's welfare or if the sexual contact is a result of the exploitation of trust, knowledge, influence, or emotions derived from the professional relationship.
4. A client's consent to, initiation of, or participation in sexual behavior or involvement with a psychotherapist does not change the nature of the conduct nor lift the prohibition.

FS 491.0111 Sexual Misconduct

Sexual misconduct by any person licensed or certified under this chapter, in the practice of her or his profession, is prohibited. Sexual misconduct shall be defined by rule.

FAC 64B4-10.002 Definition of Sexual Misconduct

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, that 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 Florida.

FAC 64B4-10.004 Sexual Misconduct Not Involving Client Contact

1. It is sexual misconduct for a supervisor to engage a supervisee in sexual behavior as defined in Rule 64B4-10.002 FAC, 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 FAC, 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-law, siblings, grandchild, grandparents, and other household members.

STANDARDS OF PRACTICE

A licensed professional offering general (and specific) mental health services must possess the ability, knowledge, and skill to perform them in a manner that is beneficial to clients or patients. This follows the ethical principle of competence. Examples of services that require additional training and qualification include hypnosis, sex therapy, and juvenile sexual offender therapy.

Licensed professionals are required by law to display their credentials at each location where they practice and are required to use their appropriate professional title (e.g., "LMFT" for licensed marriage and family therapist) on all promotional materials (e.g., cards, brochures, stationery, advertisements, signs) naming the licensee [3]. It should be remembered that promotional materials must never include a guarantee that beneficial results from any treatment will be guaranteed [1]. The following sections are drawn from FAC Chapter 64B4-7 and FS Chapter 491 [1; 3].

FAC 64B4-7.002 Qualifications Necessary for Clinical Social Workers, Marriage and Family Therapists, and Mental Health Counselors to Practice Hypnosis

1. Before practicing hypnosis for any therapeutic purpose, a clinical social worker, marriage and family therapist, or mental health counselor shall have successfully completed 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 the FAC and, in addition, must have been taught by qualified teachers.
2. An intern may not practice hypnosis unless practicing under the supervision of a qualified supervisor who has met the requirements to practice hypnosis.

FS 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.

DISCIPLINE

As discussed, it is the intent of these laws and rules to safeguard the public, other professionals, and the professions under the authority of the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. The rules in FAC Chapter 64B4-5 describe specific offenses that can result in disciplinary action by the board, including fines, probation, and suspension/revocation of licensure [1]. However, in the following section, the fine and punishment schedules for each offence have been omitted. The complete section, including dollar amounts of fines, probationary periods, license suspension times, and offences that can result in license revocation, may be viewed online at https://www.flrules.org/gateway/RuleNo.asp?id=64B4-5.001 [1]. These penalties are in addition to the results of any legal or civil proceedings that may be brought by the state or by clients or other affected parties.

FAC 64B4-5.001 Disciplinary Guidelines

The board has identified actions that warrant disciplinary action, with varying levels of severity depending on the perceived or actual harm resulting from the action and the number of times the licensee has violated the law. These actions include [1]:

- Attempting to obtain, obtaining, or renewing a license by bribery or fraudulent misrepresentation or through an error of the Board or the Department.
- Having a license or certificate to practice a comparable profession or any regulated profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.
- Being convicted or found guilty, regardless of adjudication, or having entered a plea of *nolo contendere* to a crime in any jurisdiction that directly relates to the practice of the licensee's profession or the licensee's ability to practice that profession.
- 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.
- Advertising, practicing, or attempting to practice under a name other than one's own.
- Maintaining a professional association with any person whom the applicant or licensee knows, or has reason to believe, is in violation of Chapter 491, FS, or of a rule of the Department or this Board.
- Knowingly aiding, assisting, procuring, or advising a non-licensed person to hold oneself out as licensed.
- Failing to perform any statutory or legal obligation placed upon a licensed person.
- 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.
- Paying or receiving a kickback, rebate, bonus, or other remuneration for receiving a patient or client or referring a patient or client to another provider of mental healthcare services or to a provider of healthcare 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.
- Committing any act upon a patient or client that would constitute sexual battery or which would constitute sexual misconduct.
- Making misleading, deceptive, untrue, or fraudulent misrepresentations in the practice of any profession licensed or employing a trick or scheme in or related to the practice of a profession.
- Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of over-reaching or vexatious conduct.
- 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 which have been prepared for and paid for by the patient or client.
- 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 the investigation about the licensee's conduct or background.

- Being unable to practice the profession for which one is licensed with reasonable skill and 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.
- Violating provisions of Florida Statutes Chapter 491 (governing clinical, counseling, and psychotherapy services) or 456 (general provisions governing health professions and occupations)
- Performing any treatment or prescribing any therapy that 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.
- 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 is not qualified by training or experience.
- Delegating professional responsibilities to a person whom the licensee knows or has reason to know is not qualified by training or experience to perform such responsibilities.
- 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.
- Failure of a licensee to maintain in confidence any communication made by a patient or client in the context of services, except by written permission or in the face of clear and immediate probability of bodily harm to the patient or client or to others.
- Making public statements that are derived from test data, client contacts, or behavioral research and that identify or damage research subjects or clients.
- Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department or the agency against another licensee.
- Except when explicitly permitted, failing to report to the department any person whom the licensee knows is in violation Florida Statutes or the rules of the department or the board.
- Exercising influence on the client for the purpose of financial gain of the licensee or a third party.
- Improperly interfering with an investigation or inspection authorized by statute or with any disciplinary proceeding.
- Intentionally violating any rule adopted by the board or the department, as appropriate.
- Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.
- Violating a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.
- Failing to comply with the requirements for profiling and credentialing, including, but not limited to, failing to provide initial information, failing to timely provide updated information, or making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application.
- Using information about people involved in motor vehicle accidents derived from accident reports made by law enforcement officers for the solicitation of the people involved in the accidents.

- Failing to report to the board within 30 days after the licensee has been convicted or found guilty of, or entered a plea of *nolo contendere* to, regardless of adjudication, a crime in any jurisdiction.
- Testing positive for any drug on any confirmed preemployment or employer-ordered drug screening.
- Failing to inform the department of any change of address of either the place of practice or current mailing address of any applicant or licensee.
- Being terminated from a treatment program for impaired practitioners for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.
- Being convicted of, or entering a plea of guilty or *nolo contendere* to, any misdemeanor or felony, regardless of adjudication, relating to the Medicaid program.
- Failing to remit the sum owed to the state for any overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement.
- Being terminated from the state Medicaid program, any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored.
- Being convicted of, or entering a plea of guilty or *nolo contendere* to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction that relates to healthcare fraud.
- Willfully failing to comply with coverage requirements for services provided by nonparticipating providers, payment collection limitations, or requirements for providing emergency services and care with such frequency as to indicate a general business practice.
- Providing information, including written documentation, indicating that a person has a disability or supporting a person's need for an emotional support animal without personal knowledge of the person's disability or disability-related need.
- Being convicted or found guilty of, entering a plea of guilty or *nolo contendere*, regardless of adjudication, or committing or attempting, soliciting, or conspiring to commit an act that would constitute a violation of the offenses listed in Florida Statute Section 456.074(5) or a similar offense in another jurisdiction.
- Failure to comply with the parental consent requirements when caring for minor children.

In instances when a registrant or applicant is found guilty of any offenses involving fraud or making a false or fraudulent representation, the board shall impose a fine of $10,000.00 per count or offense. Based upon consideration of aggravating and mitigating factors present in an individual case, the board may deviate from the penalties recommended above. The following may be considered aggravating or mitigating factors:

- The danger to the public
- The length of time since the date of the violation(s)
- Prior discipline imposed upon the licensee
- The length of time the licensee has practiced
- The actual damage, physical or otherwise, to the patient

- The deterrent effect of the penalty imposed
- The effect of the penalty upon the licensee's livelihood
- Any efforts for rehabilitation
- The actual knowledge of the licensee pertaining to the violation
- Attempts by the licensee to correct or stop violations or failure of the licensee to correct or stop violations
- Related violations against the licensee in another state, including findings of guilt or innocence, penalties imposed, and penalties served

CONCLUSION

It is the responsibility of the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to enforce the laws and rules regulating the practice of licensees as the law is currently stated—not how individuals may wish the law to be. However, as mental health professionals are affected by these rules and regulations, they have the responsibility to keep informed of regulatory changes and provide public comment regarding regulations. Board meetings are held quarterly and are open to the public; a schedule is available at https://floridasmentalhealthprofessions.gov/meeting-information [6]. The full board meetings include disciplinary cases, petitions, application reviews, correspondence items, rule discussion, and other necessary board action. For more information, please contact the board at 850-488-0595 or https://floridasmentalhealthprofessions.gov.

Works Cited

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