

## **Florida Laws and Rules Overview 4CE**

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## I. Introduction

### Florida Department of Health

Florida Statutes, Chapter 20.43(1) sets forth the purpose of the Florida Department of Health (DOH), "...to protect and promote the health of all residents and visitors in the state..." To accomplish this, the DOH has the authority to, among other things, "...[r]egulate health practitioners for the preservation of the health, safety, and welfare of the public." (Fl. Stat. 20.43(1)(g). Last accessed March 20, 2019.) Further, Chapter 20.43(3)(g)(29) establishes the division of Medical Quality Assurance, which is responsible for several boards and professions, including the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (created under Chapter 491.) Thus, "[t]he Florida Department of Health is responsible for the regulation of health practitioners [in the state of Florida] for the preservation of the health, safety, and welfare of the public. The Licensing and Regulation section provides information relating to professional, facility, and permit licensing along with information on enforcement." For a full list of all professions and facilities regulated by the Florida Department of Health, please visit their website at: <http://www.floridahealth.gov/licensing-and-regulation/index.html>. (Last accessed March 17, 2019.)

### Chapter 456

Title XXXII of the Florida Statutes is a compilation of laws which governs the regulation of multiple professions and occupations in the state of Florida; it is the umbrella under which Chapter 456 is housed. Specifically, Florida Statutes, Chapter 456, governs the regulation of various health professions and occupations under the purview of the Florida Department of Health. One such classification of health professions and occupations over which Chapter 456 governs, is any health care practitioner licensed under Chapter 491, Florida Statutes. (Fl. Stat. 456. Last accessed March 17, 2019.)

### Chapter 491

Chapter 491 of the Florida Statutes is the set of laws which apply specifically to the fields of clinical, counseling, and psychotherapy services. The legislative intent of these laws is to "... secure the health, safety, and welfare of the public and also to encourage professional cooperation among all qualified professionals, [to do so,] the Legislature [finds that it] must assist the public in making informed choices of such services by establishing minimum qualifications for entering into and remaining in the respective professions." (Fl. Stat. 491.002. Last accessed March 17, 2019.) ***A full copy of Chapter 491 is included in your learning materials. Please read it in its entirety, as you will be tested on its contents.***

### Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

Chapter 491.004(1) mandates the creation of the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (the Board) within the Florida Department of Health to oversee the practice, education, and discipline of such professionals; and, to establish

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minimum qualifications for such professions to ensure safe practice within the state. The website for the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling provides:

The Florida Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counseling was legislatively established to ensure that every clinical social worker, marriage and family therapist, and mental health counselor practicing in this state meet minimum requirements for safe practice. The Florida Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counseling is responsible for licensing, monitoring, disciplining and educating clinical social workers, marriage and family therapists, and mental health counselors to assure competency and safety to practice in Florida. (<https://floridamentalhealthprofessions.gov/>. Last accessed March 17, 2019.)

Furthermore, Chapter 491.004(5) provides that "[t]he Board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter."

### **Administrative Procedure Act**

#### *What are Rules?*

Florida Statutes, Chapter 120 is known as the Administrative Procedure Act (APA), which sets forth the laws governing the rules and rule making authority and procedures for various agencies in Florida, including the Board. According to Chapter 120, Florida Statutes, Administrative Procedure Act (A.P.A.):

"Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.... (Fl. Stat. 120.52(16))

"Rule making authority" means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term "rule." (Fl. Stat. 120.52(17))

#### *What Laws and Rules Govern Rule making?*

An explanation of rule making procedures can be found on [www.flrules.org](http://www.flrules.org) (last accessed March 16, 2019):

Chapter 120, Florida Statutes, Administrative Procedure Act (A.P.A.), sets forth the rule making procedures that agencies must follow. The Department of State, through its legislatively delegated rule making authority, has adopted Chapter 1-1, Florida Administrative Code (F.A.C.), to interpret, implement and make specific the requirements of Chapter 120, Florida Statutes.

## *What Authority Does an Agency Need to Adopt a Rule ?*

As outlined on [www.flrules.org](http://www.flrules.org) (last accessed March 16, 2019):

A grant of rule making authority and a specific law to be implemented are required before an agency may draft a new rule, amend a current rule, or repeal an existing rule. Furthermore, an agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. ([Fl. Stat. 120.536](#))

## *What is Reference Material?*

As described on [www.flrules.org](http://www.flrules.org) (last accessed March 16, 2019):

When a rule makes reference to a form, document, or related item, it must be "incorporated by reference" into the rule. Reference materials may refer to specific ordinances, standards, specifications, maps, graphs, charts, reports or similar materials generally available to affected persons and published by either a governmental agency or a generally recognized professional organization. Any forms, including instructions, which solicit information or impose requirements not already required by statute or existing rule and which are used by an agency in its dealings with the public shall be incorporated by reference in the rule if it meets the definition of a "rule."

## *What is the Florida Administrative Code?*

Florida has compiled all the administrative rules for the state of Florida on its website, [www.flrules.org](http://www.flrules.org), "[t]he online Florida Administrative Code (FAC) is the official compilation of administrative rules for the state of Florida. The Department of State oversees the publishing of the FAC and updates it weekly." ([www.flrules.org](http://www.flrules.org). Last accessed March 17, 2019.)

## *What is the Florida Administrative Register?*

As explained on [www.flrules.org](http://www.flrules.org) (last accessed March 16, 2019):

Florida Administrative Register (FAR) is the title of a daily publication which gives the public current information about the status of rules moving through the rule making process including proposed rules; emergency rules; and notices of change, corrections and withdrawals. The Register also includes notices of agency public meetings, workshops and hearings, and miscellaneous actions required to be published by statute.

## *How do I Subscribe to the Florida Administrative Register?*

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Users of the e-rule making website may subscribe, free of charge, to receive e-mail notification of notices submitted by agencies. Here is the link to subscribe to FAR: <https://www.flrules.org/subscriber/signup.asp> (last accessed March 23, 2019).

Current and past issues of the FAR are available for viewing online here at: <https://www.flrules.org/Default.asp>. (Last accessed March 16, 2019.)

### **Rule 64B4**

Rule 64 of the FAC pertains to rules issued by the Florida Department of Health, and specifically, Rule 64B4 FAC pertains to those rules regulating professionals under the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. Anyone licensed by the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is required to follow, among other laws, Rule 64B4 FAC. This Rule includes definitions pertinent to the field of mental health, a description of the powers of the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, and a list of disciplinary actions for transgressions of the Rule, among other topics. Such rules may be updated from time-to-time and it is the responsibility of the licenseholder to stay abreast of the current laws and rules. ***A full copy of Rule 64B4 is included in your learning materials. Please read it in its entirety, as you will be tested on its contents.***

Therefore, it is incumbent upon anyone licensed under Chapter 491, Florida Statutes (i.e, a social worker, marriage and family therapist, or a mental health counselor) to become familiar with all of the laws and rules outlined in this course to which you are subject and bound.

## **II. Chapter 456 Florida Statutes (Health Professions and Occupations: General Provisions)**

### **Introduction –**

Licenses will demonstrate knowledge of Florida Statute Chapter 456, including the legislative intent of the statute, definitions, the licensure requirements of for Health Professions and Occupations, disciplinary actions and updates to the Florida Statutes. Participants will learn about issues, including but not limited to, regulations against unlicensed practice, criminal violations, health care fraud, substance abuse impairment, advertising, patient records, and recent changes to the law.

As mentioned previously, Chapter 456, Florida Statutes is codified under Title XXXII of the Florida Statutes which outlines laws pertaining to the regulation of all professions and occupations in the state of Florida. Chapter 456 contains general provisions limited to the regulation of all health-related professions and occupations. Chapter 456 governs many health-related professions and occupations besides clinical, counseling, and psychotherapy services (governed by Chapter 491), so a discussion about all of its provisions goes beyond the scope of this course. Please keep in mind, that the following material is limited to a discussion of those parts of Chapter 456 which are relevant only to those health professionals licensed under Chapter 491, Florida Statutes. Included in your learning materials is an index of the entire Chapter 456 (for your records) and excerpts of the relevant parts of the statute.

### **456.003 Legislative Intent**

The intent of the Legislature when drafting this law was to allow qualified professionals regulated by the Department of Health to be able to engage in their profession, so long as they did not endanger the health, safety, and welfare of the public. (Fl. Stat. 456.003(1))

### **456.004 Department of Health powers and duties**

The statute provides that the Department of Health (DOH) shall adopt rules setting forth a procedure for biennial license renewal, including a system to track compliance with continuing education requirements and appropriate fees. (Fl. Stat. 456.004(1))

The DOH must also adopt rules to implement the provisions of the chapter. (Fl Stat. 456.004(5))

### **456.013(7) Department; general licensing provisions**

The Board shall require, as a condition of the biennial license renewal process, the completion of a two hour CE course on the prevention of medical errors.

### **456.015 Limited licenses**

In an effort to help serve the indigent, underserved, or critical need populations, where doing so would not pose a threat to the health, safety, and welfare of the public, the Board may adopt rules to permit practice by retired professionals as limited licenses. (Fl. Stat. 456.015(1))

## **456.019 Restriction on requirement of citizenship**

It is not required that a person be a United States citizen in order to practice an occupation or profession regulated by the state. (Fl. Stat. 456.019)

## **456.031 Requirement for instruction on domestic violence**

The Boards requires that anyone licensed under Chapter 491 must "...complete a 2-hour continuing education course, approved by the Board, on domestic violence, as defined in s. 741.28, as part of every third biennial relicensure or recertification...." (Fl. Stat. 456.031(1) (a))

## **456.035 Address of Record**

Anyone with a license issued by the DOH is responsible for notifying the DOH in writing of their current mailing address and place of practice. Electronic notification is permitted, but it is the licenseholder's responsibility to confirm receipt by the DOH. (Fl. Stat. 456.035(1))

## **456.038 Renewal and cancellation notices**

This section provides that 90 days before the end of a licensure cycle, the DOH will send a license renewal notification or a notice of pending cancellation to the licenseholder's last known address. A licenseholder who remains on inactive status for more than two consecutive biennial licensure cycles who wishes to reactivate their license, may be required to demonstrate competency to resume active practice .

## **456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information**

Any licenseholder under Chapter 491 who has examined or treated a person must, if requested to do so by the person or the person's legal representative, turn over in a timely manner any records relating to the examination or treatment, except that the licenseholder may provide a report of examination and treatment in lieu of copies of psychotherapeutic records; and, the report or copies must not be conditioned upon payment of a fee for services rendered. (Fl. Stat; 456.057(6))

The report or records may not be furnished to anyone except the patient or patient's representative, unless authorized to so in writing. However, there are legal exceptions outlining when such records may be released without written authorization. (Please read the statute to see a full list of exceptions.) Most notably, no written authorization is needed when the information is being requested by "...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." (Fl. Stat. 456.057(7)(a))

In the event a disclosure is made to a third party, a record of such disclosures must be maintained. (Fl. Stat. 456.057(11))

If the licenseholder decides to terminate practice, retire, or relocate, and will no longer be available to patients, he/she must place an advertisement in the local newspaper or notify patients in writing of such, and offer patients the opportunity to obtain a copy of their medical record. (Fl. Stat. 456.057(12))

Further, the licenseholder must also notify the Board in writing if he/she decides to terminate practice, retire, or relocate, and will no longer be available to patients, and must identify who the new records owner is and where medical records can be found. (Fl. Stat. 456.057(13))

When preparing copies (hard or digital) of reports or records or under this section, the licenseholder may charge a fee, but it can be "...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." (Fl. Stat. 456.057(17))

#### **456.058 Disposition of records of deceased practitioners or practitioners relocating or terminating practice**

Board requires that the Rules provide that patient records must be retained for at least two years after the licenseholder's death, termination of practice, or relocation. In the event of the licenseholder's death, the Rules shall provide for the disposition of the such records by the licenseholder's estate.

#### **456.061 Practitioner disclosure of confidential information; immunity from civil or criminal liability**

This section specifies circumstances under which a licenseholder may not be held criminally or civilly liable for the disclosure of otherwise confidential information to a sexual partner or needle-sharing partner.

#### **456.062 Advertisement by a health care practitioner of free or discounted services; required statement**

In any promotional material which advertises a free or discounted treatment, the following language must be provided in capital letters: "THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT." (Fl. Stat. 456.062)

#### **456.063 Sexual misconduct; disqualification for license, certificate, or registration.**

Sexual misconduct of any kind is prohibited in the practice of any health care profession. Sexual misconduct includes: any engagement or attempt to engage a patient, their immediate family

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member, guardian, or representative, or any inducement or attempt to induce such person in verbal or physical sexual activity. (Fl. Stat. 456.063(1))

A violation of this section may result in the Board refusing to admit a candidate to any examination and refusing the issuance of a license. (FL. Stat. 456.063(2))

Licenseholders are required to report any allegations of sexual misconduct to the DOH. (Fl. Stat. 456.063(3))

### **456.0635 Health care fraud; disqualification for license, certificate, or registration**

Health care fraud is prohibited and may result in the Board refusing admit a candidate to any examination and refusing the issuance of a license. (Fl. Stat. 456.0635(1), (2))

Licenseholders are required to report any allegations of health care fraud to the DOH. (Fl. Stat. 456.0635(4))

### **456.065 Unlicensed practice of a health care profession; intent; cease and desist notice; penalties; enforcement; citations; fees; allocation and disposition of moneys collected**

The Florida Legislature intends to protect Florida residents and visitors from from the potentially serious and dangerous consequences of receiving medical and health care services from unlicensed persons. The unlicensed practice of a health care profession in this state without a valid, active license to practice that profession is strictly prohibited.

This section also sets forth the penalties for unlicensed practice of a health care profession; and to cover enforcement costs, the DOH imposes upon initial licensure and each licensure renewal, a special fee of \$5 per licensee to fund efforts to combat unlicensed activity.

### **456.066 Prosecution of criminal violations.**

The DOH or the Board shall report any criminal violation of any statute regarding any profession regulated by the DOH to the prosecuting authority.

### **456.067 Penalty for giving false information.**

It shall be a felony of the third degree to knowingly give false information in the course of applying for or obtaining a license from the DOH or the Board. (Fl. Stat. 456.067)

### **456.068 Toll-free telephone number for reporting of complaints.**

The Agency for Health Care Administration website provides the following information:

The Complaint Administration Unit receives and processes complaints about the quality of care provided in Florida's health care facilities.

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If you wish to file a complaint against a licensed health care facility regulated by the Agency for Health Care Administration, please contact us at 1-888-419-3456 / 800-955-8771 Florida Relay Service (TDD number) or use our [Licensed Health Care Facility Complaint Form](#).

To file a complaint against an unlicensed health care facility, please contact us at 1-888-419-3456 / 800-955-8771 Florida Relay Service (TDD number) or submit an [Unlicensed Health Care Facility Complaint Form](http://ahca.myflorida.com/MCHQ/Field_Ops/CAU.shtml). ([http://ahca.myflorida.com/MCHQ/Field\\_Ops/CAU.shtml](http://ahca.myflorida.com/MCHQ/Field_Ops/CAU.shtml). Last accessed March 17, 2019.)

Furthermore, the DOH provides a link on its website to the Florida Health Care Complaint Portal where complaints against health care professionals regulated by DOH can be filed. (<http://www.floridahealth.gov/licensing-and-regulation/enforcement/index.html>. Last accessed March 17, 2019.). The direct link to the Florida Health Care Complaint Portal can be found here: <https://www.flhealthcomplaint.gov/>. (Last accessed March 17, 2019.)

### **456.072 Grounds for discipline; penalties; enforcement**

It is suggested that you carefully read this section of the statute in its entirety, so as to familiarize yourself with all the acts which constitute grounds for disciplinary action.

This section lists the acts which constitute grounds for disciplinary actions under subsection (2):

- (a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.
- (b) Intentionally violating any rule adopted by the board or the department, as appropriate.
- (c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.
- (d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted under s. 501.122(2) governing the registration of the devices.
- (e) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.
- (f) Having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a

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relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.

(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

(i) Except as provided in s. 465.016, failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board. However, a person who the licensee knows is unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.

(k) Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan is not considered a failure to perform a statutory or legal obligation. Fines collected shall be deposited into the Medical Quality Assurance Trust Fund.

(l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.

(m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

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- (n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.
- (o) 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.
- (p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of the responsibilities knows, or has reason to know, the person is not qualified by training, experience, and authorization when required to perform them.
- (q) Violating a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.
- (r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.
- (s) Failing to comply with the educational course requirements for domestic violence.
- (t) Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. This paragraph does not apply to a practitioner while the practitioner is providing services in a facility licensed under chapter 394, chapter 395, chapter 400, or chapter 429. Each board, or the department where there is no board, is authorized by rule to determine how its practitioners may comply with this disclosure requirement.
- (u) Failing to comply with the requirements of ss. 381.026 and 381.0261 to provide patients with information about their patient rights and how to file a patient complaint.
- (v) Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1).
- (w) 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.

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(x) Failing to report to the board, or the department if there is no board, in writing 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. Convictions, findings, adjudications, and pleas entered into prior to the enactment of this paragraph must be reported in writing to the board, or department if there is no board, on or before October 1, 1999.

(y) Using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents under s. 316.066, or using information published in a newspaper or other news publication or through a radio or television broadcast that has used information gained from such reports, for the purposes of commercial or any other solicitation whatsoever of the people involved in the accidents.

(z) Being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the State Surgeon General or the State Surgeon General's designee that probable cause exists to believe that the licensee is unable to practice because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with the order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee 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 of his or her profession with reasonable skill and safety to patients.

(aa) Testing positive for any drug, as defined in s. 112.0455, on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using the drug.

(bb) Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure

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that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition. For the purposes of this paragraph, performing or attempting to perform health care services includes the preparation of the patient.

(cc) Leaving a foreign body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or other diagnostic procedures. For the purposes of this paragraph, it shall be legally presumed that retention of a foreign body is not in the best interest of the patient and is not within the standard of care of the profession, regardless of the intent of the professional.

(dd) Violating any provision of this chapter, the applicable practice act, or any rules adopted pursuant thereto.

(ee) With respect to making a personal injury protection claim as required by s. 627.736, intentionally submitting a claim, statement, or bill that has been "upcoded" as defined in s. 627.732.

(ff) With respect to making a personal injury protection claim as required by s. 627.736, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.

(gg) Engaging in a pattern of practice when prescribing medicinal drugs or controlled substances which demonstrates a lack of reasonable skill or safety to patients, a violation of this chapter or ss. 893.055 and 893.0551, a violation of the applicable practice act, or a violation of any rules adopted under this chapter or the applicable practice act of the prescribing practitioner. Notwithstanding s. 456.073(13), the department may initiate an investigation and establish such a pattern from billing records, data, or any other information obtained by the department.

(hh) Being terminated from an impaired practitioner program that is overseen by a consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or participant contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

(ii) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.

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- (jj) Failing to remit the sum owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement.
- (kk) Being terminated from the state Medicaid program pursuant to s. 409.913, 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.
- (ll) 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 which relates to health care fraud.
- (mm) Failure to comply with controlled substance prescribing requirements of s. 456.44.
- (nn) Violating any of the provisions of s. 790.338.
- (oo) Willfully failing to comply with s. 627.64194 or s. 641.513 with such frequency as to indicate a general business practice.
- (pp) Providing information, including written documentation, indicating that a person has a disability or supporting a person's need for an emotional support animal under s. 760.27 without personal knowledge of the person's disability or disability-related need for the specific emotional support animal.
- (qq) Intentionally implanting a patient or causing a patient to be implanted with a human embryo without the recipient's consent to the use of that human embryo, or inseminating a patient or causing a patient to be inseminated with the human reproductive material, as defined in s. 784.086, of a donor without the recipient's consent to the use of human reproductive material from that donor.

If the Board or DOH finds that a licenseholder has committed any of the above-mentioned acts, it may impose penalties ranging from denying application for licensure or imposing restrictions on the license, fines not to exceed \$10,000 for each offense, issuance of a written reprimand, placing the license on probation, refunding any monies wrongfully procured, remedial education. Please refer to the full statute to see all possible disciplinary actions.

### **456.073 Disciplinary proceedings**

The DOH has jurisdiction over disciplinary proceedings for each board. This section describes the process of investigating any complaints and/or issuing notices of noncompliance. The

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determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The appropriate board shall determine and issue the final order in each disciplinary case. Any consent order or agreed-upon settlement shall be subject to the approval of the department. Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the State Surgeon General or his or her designee, as appropriate, who shall issue the final summary order. The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first.

### **456.076 Impaired practitioner programs**

This section discusses the implementation and management of programs to assist practitioners who may have a potentially impairing health condition that is the result of the misuse or abuse of alcohol, drugs, or both, or a mental or physical condition that could affect a practitioner's ability to practice with skill and safety.

### **456.41 Complementary or alternative health care treatments.**

This section of the statute recognizes a patient's right to make informed decisions about their health care and values their decision to seek not only the prevailing conventional treatments, but also to seek complementary or alternative treatments. The only stipulation the law makes is that the licenseholder who offers such complementary or alternative treatments must inform their patients of the nature of the treatment and explain the risks and benefits of such treatment. Furthermore, the licenseholder must disclose their particular credentials, education, and experience with the complementary or alternative treatment.

Medlink.com explains the difference between complementary and alternative health care treatments ([http://www.medlink.com/handout/complementary\\_and\\_alternative\\_medicine](http://www.medlink.com/handout/complementary_and_alternative_medicine). Last accessed March 18, 2019) :

Many Americans, nearly 40 percent, use health care approaches developed outside of mainstream Western, or conventional, medicine for specific conditions or overall well-being. When describing health approaches with non-mainstream roots, people often use the words “alternative” and “complementary” interchangeably, but the two terms refer to different concepts:

- “Complementary” generally refers to using a non-mainstream approach together with conventional medicine.
- “Alternative” refers to using a non-mainstream approach in place of conventional medicine.

True alternative medicine is not common. Most people use non-mainstream approaches along with conventional treatments. And the boundaries between complementary and conventional medicine overlap and change with time. For example, guided imagery and massage, both once considered complementary or alternative, are used regularly in some hospitals to help with pain management.

The National Alliance on Mental Illness (NAMI) points out that the National Center for Complementary and Integrative Health (NCCIH), which is the lead government agency that investigates unconventional treatments for mental illnesses (among other illnesses), recognizes the following complementary treatments: natural products, such as vitamins, supplements, and medical foods; mind body treatment, such as yoga, exercise, meditation, Tai chi; and equine therapy. (<https://www.nami.org/Learn-More/Treatment/Complementary-Health-Approaches>. Last accessed March 18, 2019.)

## III. Chapter 491 Florida Statutes: Clinical, Counseling, and Psychotherapy Services

### Introduction

Licenseses will demonstrate knowledge of Florida Statute Chapter 491, including the legislative intent of the statute, definitions, the licensure requirements of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, disciplinary actions and updates to the Florida Statutes. Participants will learn about his or her own professional responsibility regarding this statute and any recent changes to the law.

As mentioned previously, Chapter 491 of the Florida Statutes is the collection of laws which pertain specifically to the fields of clinical, counseling, and psychotherapy services. A brief summary of the Chapter is highlighted below, but it is not all inclusive. A full copy of this Chapter is included in your learning materials and it is recommended that you read it in its entirety.

### 491.002 Legislative Intent

It is the intent of the Legislature to "preserve the health, safety, and welfare of the public." Therefore, within the context of clinical, counseling, and psychotherapy services, the Legislature finds it necessary to provide privileged communication for those seeking such services. The Legislature also finds that the provision of such services must be made by individuals with the appropriate training who are qualified to do so. Therefore, the Legislature has established minimum qualifications for such professionals.

### 491.003 Definitions

This section provides several definitions for terms used in this Chapter.

### 491.004 Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

Chapter 491.004 provides that the within the DOH there shall be a Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. The statute specifies how many members must be on the Board, their qualifications, and how they shall be appointed.

### 491.0045 Intern Registration; requirements

Chapter 491.0045 outlines the requirement that anyone seeking licensure who has not yet completed their postgraduate or post-master's level requirements must register with the State as an intern in the profession for which he/she is seeking licensure, prior to beginning their practicum, internship, or field experience.

The intern must complete the application, pay an application fee not to exceed \$200, complete the educational requirements of 491.005, submit their supervision plan, identify a qualified supervisor.

The intern must remain under supervision while under registered intern status; registered intern status is only valid for 5 years.

Failure to comply with this section may result in denial of licensure.

#### **491.0046 Provisional license; requirements**

Provisional licenses must be obtained prior to beginning practice for anyone seeking licensure by examination (who have satisfied all clinical requirements of 491.005), or seeking licensure by endorsement pursuant to 491.006; and, who intends to provide counseling services in Florida while completing coursework and/or examination requirements. See 491.0046 for the full details.

#### **491.005; 491.006 Licensure by examination, certification by endorsement**

Professionals under this Chapter may obtain their license by completing all master's or doctorate level educational requirements, completing all post-master's/doctorate clinical experience requirements, and passing the appropriate State license exam; or, by endorsement when he/she has held an active license (in the same profession) in another state for 3 of the past 5 years immediately preceding licensure, met all educational requirements of this Chapter, passed a substantially equivalent licensing exam, and has demonstrated knowledge of the laws and rules of this State.

#### **491.0057 Dual Licensure or certification as a marriage and family therapist**

This section provides that a person may possess a dual license as a marriage and family therapist, provided certain conditions are met.

#### **491.0065 Requirement for instruction on HIV and AIDS**

The Board requires as a condition of initial licensure that applicants complete a Board approved HIV/AIDS course. The applicant may be allowed 6 months from the time of initial licensure to complete the course, upon a showing of good cause.

#### **491.007 Renewal of license, registration, or certificate**

The Board shall make a rule requiring that licenses shall be renewed every two years and the renewal fee shall not exceed \$250.

Licenseholders must demonstrate their compliance with continuing education requirements established by the Board. A certified master social worker is exempt from continuing education requirements for the first renewal of the certificate.

The Board shall make a rule regarding the biennial renewal of intern registration and set a fee not to exceed \$100.

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### **491.008 Inactive status; reactivation of licenses; fees**

This section explains how to maintain and renew an inactive license.

### **491.0085 Continuing education and laws and rules courses; approval of providers, programs, and courses; proof of completion**

The Board must approve providers, programs, and courses of continuing education and laws and rules.

Compliance with continuing education and laws and rules courses must be reported to the Board according to rules set for the by the Board. The Board shall also adopt rules to enforce such provisions.

### **491.009 Discipline**

Any of the following acts constitute grounds for disciplinary action or denial of licensure:

- (a) Any fraudulent misrepresentation to obtain or renew a license, registration, or certificate.
- (b) Having a license, registration, or certificate to practice a comparable profession denied, revoked, or suspended by another jurisdiction.
- (c) Being convicted or found guilty of, or entering a pleas 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.
- (d) False, deceptive, or misleading advertising or accepting a fee for the guarantee of beneficial results from treatment.
- (e) Advertising, practicing, or attempting to practice under a name other than one's own.
- (f) Maintaining a professional association with anyone who is violation of this Chapter or rule of the Board.
- (g) Knowingly helping someone hold themselves out to be a licensed, registered, or certified person under this Chapter, when they are not licensed, registered, or certified person under this Chapter.
- (h) Failing to meet any statutory obligations required under this Chapter.
- (i) Willfully making a false report or record; failing to file or report when required by law to do so; willfully obstructing the filing of a report of record; inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record.
- (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.

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- (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 certificate holder 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 certificate holder'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 certificate holder 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 certificate holder 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 certificate holder 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 certificate holder resides or does business. The licensee, registered intern, or certificate holder 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 certificate holder 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 certificate holder is not qualified by training or experience.
- (s) Delegating professional responsibilities to a person whom the licensee, registered intern, or certificate holder knows or has reason to know is not qualified by training or experience to perform such responsibilities.

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- (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 certificate holder 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.

### **491.0111 Sexual misconduct**

Any sexual misconduct (which shall be defined by rule) by any licenseholder during the practice of their profession is prohibited.

### **491.0112 Sexual misconduct by a psychotherapist; penalties**

It is a felony of the third degree (under Florida's criminal statutes) for any licenseholder to commit sexual misconduct with a client or former client after the professional relationship has been terminated; a subsequent offense shall be a second degree felony. If such sexual misconduct was achieved through therapeutic deception, it shall be a felony of the second degree. A client's consent is no defense. Applicable definitions are specified in this statute.

### **491.012 Violations; penalty; injunction**

This section outlines the appropriate use of professional titles. It is unlawful to use any title suggesting a person is "licensed," or otherwise possesses any of the statutorily defined professions (i.e., "social worker/marriage and/or family/mental health counselor, therapist, or consultant, psychotherapist, sex therapist, juvenile offender therapist," etc.) unless a person actually holds a valid, active license. (Please see the actual statute to see the complete language.) Likewise, it is unlawful to practice any such profession with the appropriate valid license. Any violation of this section commits a misdemeanor of the first degree.

### **491.014 Exemptions**

So long as a person does not hold themselves out to the public as possessing any credential under this Chapter, nothing in this Chapter shall be interpreted as precluding the practice of licensed physicians under Chapter 458, 459 or licensed psychologists under Chapter 490; or limiting the practice of nursing, school psychology, or psychology, or to prevent qualified members of other professions from doing work of a nature consistent with their training and licensure; or limiting the performance of activities of a rabbi, priest, minister, or member of the clergy of any religious denomination or sect, or using of the terms "Christian counselor" or "Christian clinical counselor."

There are other types of professions which are exempt from complying with the requirements of this Chapter. For a list, please refer to the statute.

## **491.0141 Practice of hypnosis**

A person holding a valid, active license under this Chapter may perform hypnosis as defined in Chapter 485. Nothing in this Chapter shall be construed to limit the practice of anyone qualified under Chapter 485.

## **491.0143 Practice of sex therapy**

Only a person licensed under this Chapter and who meets the requirements of being a sex therapist established by the rules of the Board, may hold themselves out to be a sex therapist.

## **491.0144 The practice of juvenile sexual offender therapy**

Only a person licensed under this Chapter and who meets the requirements of being a juvenile sexual offender therapist established by the rules of the Board (except as provided in Chapter 490.0145), may hold themselves out to be a juvenile sexual therapist.

## **491.0145 Certified master social worker**

Certified master social worker is a distinct title having specific requirements set forth by this Chapter and the rules of the Board. Please refer to the statute and rules to see the criteria.

## **491.0147 Confidentiality and privileged communications.**

Communication between anyone licensed under this Chapter and their patient/client is confidential. Waiver to this privileged confidentiality exist under the following circumstances:

- (1) (a) When the licenseholder 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.
  - (2) (b) When the patient/client waives their right to confidentiality in writing.
  - (3) (c) When a patient/client has communicated to the licenseholder a specific threat to cause serious bodily injury or death to an identified or readily available person, and the license holder 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. If a licenseholder makes a disclosure under this section, such disclosure may not be the basis of any legal action or criminal or civil liability against the licenseholder.
- (2) This privilege MUST be waived and the licenseholder is REQUIRED to disclose patient/client communications (to the extent necessary to communicate the threat) to a law enforcement agency when the patient/client communications involve a specific threat to cause serious bodily injury or death to an identified or readily available person, and the license holder makes a clinical judgment that the patient/client has the apparent intent and ability to imminently or immediately carry out such threat. The law enforcement agency which receives notice of such a threat pursuant to this section, must take appropriate action to prevent the risk of harm, including, but not limited to, notifying the intended victim of such

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threat or initiating a risk protection order. If a licenseholder makes a disclosure of confidential communications pursuant to this section, it may not be the basis of any legal action or criminal or civil liability against the licenseholder.

### **491.0148 Records.**

Anyone licensed under this Chapter who provides services is required to maintain records. The Board shall establish the minimum standards for record keeping.

### **491.0149 Display of license; use of professional title on promotional materials**

Anyone licensed under this Chapter (including registered interns, or provisional licenseholders) is required to conspicuously display a copy of their valid license issued by DOH at their place of practice.

This law specifies how a licenseholder's credential must be referenced on any promotional materials:

- For a licensed clinical social worker, the words “licensed clinical social worker” or the letters “LCSW” must be included. For a provisional clinical social worker, the words “provisional clinical social worker licensee” must be included.
- For a licensed marriage and family therapist, the words “licensed marriage and family therapist” or the letters “LMFT” must be included. For a provisional marriage and family therapist, the words “provisional marriage and family therapist licensee” must be included.
- For a licensed mental health counselor, the words “licensed mental health counselor” or the letters “LMHC” must be included. For a provisional mental health counselor, the words “provisional mental health counselor licensee” must be included.

### **491.015 Duties of the department as to certified master social workers**

With regard to the regulation of certified master social workers, DOH shall exercise all functions reserved to boards under Chapter 456, and shall adopt rules to implement and enforce such provisions.

### **491.016 Social work; use of title**

A social worker must obtain a license or certificate under this Chapter, in order to conduct clinical social work. Holding oneself out to the public as a social worker who does not possess the requisite credentials, shall be guilty of a misdemeanor of the first degree.

Anyone who used the title, "social worker" in their employment prior to July 1, 2008 is exempt from the section. Likewise, employees providing social work services under administrative supervision in long-term care facilities licensed by the Agency for Health Care Administration are also exempt from this section.

## IV. Rule 64B4 F.A.C. (Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling)

### Introduction

As mentioned previously, Chapter 491.004(1) mandates the creation of the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (the Board); and, Chapter 491.004(5) provides that "[t]he Board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter." Rule 64B4 (Rules, collectively) is the collection of those rules established by the Board. It is the responsibility of anyone licensed under Chapter 491 to know these Rules. A copy of the Rules is included with your learning materials. A brief overview of the Rules is provided below, but it is recommended that you read it in its entirety.

### 64B4-1 Organization

### 64B4-2 Definitions Applicable to CSW, MFT, and MHC

#### 64B4-2.001 "Experience" for Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling means:

- (1) Two years of "clinical experience, " as used in Chapter 491.005;
  - (a) Consisting of at least 1500 hours of face-to-face psychotherapy with clients as a registered intern; and
  - (b) Which is accrued in not less than 100 weeks.
- (2) Post-master's clinical experience earned in another state which meets the requirements of Chapter 491.

#### 64B4-2.002 "Supervision" for Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling means:

The relationship between an intern and a qualified supervisor in which the qualified supervisor 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.

- (1) Pursuant to Chapter 491.005, an intern shall be credited for supervision time if the intern:
  - (a) Received at least 100 hours of supervision in no less than 100 weeks; and,
  - (b) Provided at least 1500 hours of face-to-face psychotherapy with clients; and,
  - (c) Received at least 1 hour of supervision every two weeks.
- (2) Supervision is distinguishable from personal psychotherapy or didactic instruction. It must focus on the raw data from the intern's face-to-face psychotherapy with clients.

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- (3) The supervisor and intern may utilize face-to-face electronic methods 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.
  - (1) The supervisor and the intern shall have at least one in-person face-to-face meeting before utilizing any online or interactive methods for supervision.
- (4) Group supervision is permissible; however, for every hour an intern meets in a group, that intern must alternate with an hour of individual supervision. Group supervision must be conducted with all interns present in-person. Group supervision is defined as one qualified supervisor meeting with more than two, but no more than six interns. Individual supervision is defined as one qualified supervisor meeting with no more than two interns.
- (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:
  - (1) 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
  - (2) 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) 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 qualified supervisor, the registered intern, or both.
- (8) No later than 90 days prior to June 30, 2021, 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.
- (9)

### **64B4-2.0025 "Qualified Supervisor" means:**

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- (1) for clinical social work (as specified in Section 491.005(1)(c)), a person who is licensed clinical social worker or the equivalent who meets the qualifications specified in Rule 64B4-11.007.
- (2) for marriage and family therapy (as specified in Section 491.005(3)(c)), a person who is a licensed marriage and family therapist with at least five of experience or the equivalent who meets the qualifications specified in Rule 64B4-21.007.
- (3) or mental health counseling (as specified in Section 491.005(4)(c)), a person who is a licensed mental health counselor or the equivalent who meets the qualifications specified in Rule 64B4-31.007.

### **64B4-3 Licensure - CSW, MFT, and MHC Applicants**

#### **64B4-3.001 Application for Licensure**

Every applicant must submit an application and appropriate fees to the Board.

**64B4-30015** Every applicant for licensure shall verify the required supervised experience by filling out the form, "Verification of Experience," which must be signed by the applicant's supervisor.

#### **64B4-3.003 Examination for Licensure**

- (1) An applicant will be admitted to the examination once they have completed all requirements for the examination and been certified eligible by the Board.
- (2) The approved examinations for Florida are:
  - (a) Clinical social work: The Clinical Level objective multiple choice examination developed by the Association of Social Work Boards (ASWB)
  - (b) Mental health counselors: The National Clinical Mental Health Counseling Examination (NCMHCE) shall be a clinical simulation examination developed by the National Board for Certified Counselors (NBCC). Applicants for licensure by endorsement may use the National Counselor Examination for Licensure and Certification (NCE) if the exam was taken prior to the year 2000. (effective 7/10/19)
  - (c) Marriage and family therapists: An objective multiple choice examination developed by the Examination Advisory Committee of the Association of Marital and Family Therapy Regulatory Board (AMFTRB)

#### **64B4-3.0035 Laws and Rules for Licensure**

All applicants under this Rule shall demonstrate knowledge of the laws and rules for licensure in the following manner:

- (1) By completing an approved course consisting of a minimum of eight (8) hours which shall include the following subject areas:
  - (a) Chapter 456, part II, F.S., (Regulation of Professions and Occupations, General Provisions)
  - (b) Chapter 90.503, F.S., (Psychotherapist-Patient Privilege)
  - (c) Chapter 394, F.S., (Part I Florida Mental Health Act)

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- (d) Chapter 397, F.S., (Substance Abuse Services)
  - (e) Chapters 415 and 39, F.S., (Protection from Abuse, Neglect and Exploitation)
  - (f) Chapter 491, F.S., (Clinical, Counseling and Psychotherapy Services)
  - (g) Division 64B4, F.A.C., (Rules of the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling)
- (2) The laws and rules course must provide integration of the above subject areas into the competencies required for clinical practice and must include interactive discussion of clinical case examples applying the laws and rules that govern the appropriate clinical practice.
- (3) The applicant must pass the post-test of the laws and rules course by 80%.
- (5) For purposes of this rule, an hour is defined as not less than 50 minutes of uninterrupted instruction.
- (6) Laws and rules courses may be offered and conducted on-line but must comply with all aspects of this rule and must include real time (contemporaneous) interactive discussions.

### **64B4-3.0051 Documentation of Substantially Equivalent Licensing Examination**

If an applicant is applying for licensure by endorsement, the applicant must demonstrate to the Board that the applicant has passed a substantially equivalent licensing examination in another state. This Rule specifies how to do so.

### **64B4-3.0075 Provisional Licensure**

This Rule sets for the requirements for provisional licensure.

- (1) An applicant for licensure by examination or endorsement who intends to practice in Florida while satisfying coursework or examination requirements for licensure must be provisionally licensed in the profession for which he or she is seeking licensure prior to beginning practice.

### **64B4-3.008 Supervision Required Until Licensure**

Any applicant, or anyone with a provisional license under this Rule must continue in "supervision" as defined by 64B4-2.002 and use the term "Registered Intern" along with the appropriate professional title, until he/she becomes licensed, regardless if the two year post-masters supervision requirement has been satisfied.

### **64B4-3.0085 Intern Registration**

Anyone who intends to practice in Florida to satisfy the post-master's experience must register as an intern with the Board. The intern must designate a qualified supervisor and submit a letter to the Board with a statement that the supervisor has agreed to supervise the intern.

## **64B4-4 Fee Schedule**

## 64B4-5 Discipline

### 64B4-5.001 Disciplinary Guidelines

This section sets forth the disciplinary guidelines for anyone licensed by or subject to Chapter 491 and has committed any acts identified in Chapter 456.072(1).

### 64B4-5.005 Minor Violations, Notice of Noncompliance

- (1) In accordance with 456.073(3), the DOH may issue a notice of noncompliance for an initial offense when it receives a complaint. If the licenseholder fails to take corrective action within fifteen days after the notice, regular disciplinary proceedings may result.
- (2) "Minor violations" as used in 456.073(3) is defined as any of the following:
  - (a) Failure to make available to a patient or client upon written request, reports, copies of test results, or documents in the possession or under the control of the licensee or certificate holder which have been prepared for and paid for by the patient or client.
  - (b) Failure to obtain an education course on human immunodeficiency virus and acquired immune deficiency syndrome within six (6) months of licensure as required by Section 491.0065, F.S.
  - (c) Practicing on an inactive license for three (3) months or less as prohibited by Section 456.036(1), F.S.
  - (d) Practicing on a delinquent license for three (3) months or less as prohibited by Section 456.036(1), F.S.
  - (e) Failure to conspicuously display the valid license as required by Section 491.0149(1)(a), F.S.
  - (f) Failure of a licensed clinical social worker to 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 as required by Section 491.0149(1)(b)1., F.S.
  - (g) Failure of a licensed marriage and family therapist to 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 as required by Section 491.0149(1)(b)2., F.S.
  - (h) Failure of a licensed mental health counselor to 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 as required by Section 491.0149(1)(b)3., F.S.
  - (i) Failure of a registered intern to use the words "registered intern" on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee as required by Section 491.0149(2)(b), F.S.
  - (j) Failure of a provisional licensee to use the words "provisional licensee" on all

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promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee as required by Section 491.0149(3)(b), F.S.

- (k) Failure to include the statement required by Section 456.062, F.S., in any advertisement for a free, discounted fee, or reduced fee service or treatment.
- (l) Practicing on a retired license for three (3) months or less as prohibited by Section 456.036(1), F.S.
- (m) Failure to identify through written notice or orally to a patient the type of licensure under which the practitioner is practicing as required by Section 456.072(1)(t), F.S.

### **64B4-5.007 Citations**

- (2) In lieu of the disciplinary procedures contained in Section 456.073, F.S., the Department is hereby authorized to dispose of any violation designated herein by issuing a citation to the subject within six months after the filing of the complaint which is the basis for the citation.
- (3) The Board hereby designates as offenses for citations and the appropriate penalties the following:
  - (a) Failure to make available to a patient or client upon written request, reports, copies of test results, or documents in the possession or under the control of the licensee, registered intern, provisional licensee, or certificate holder which have been prepared for and paid for by the patient or client – \$500.
  - (b) Failure of any subject to inform the Department within 30 days of any change of address of either a place of practice or current mailing address – \$500.

### **64B405.008 Terms of Probation**

Any licenseholder who has been determined to have violated the provisions of Chapter 491, may be put on probation as set forth in this section.

## ***64B4-6 License Renewal, Continuing Education Credit***

### **64B4-6.001 Renewal of Active License**

- (1) A license may be renewed by the DOH upon receipt of the biennial license renewal fee and upon completing requirements for renewal.
- (2) Continuing education is not required for the first renewal of licensure. The following is required for every subsequent renewal (i.e., every 2 years):
  - A total of 30 hours of approved continuing education credit
  - 2 hours (of the 30) on the prevention of medical errors (cannot take the same course in consecutive renewal periods)
  - 3 hours (of the 30) relating to professional ethics and boundary issues or telehealth (cannot take the same course in consecutive renewal periods)
- (3) Within six months of initial licensure and every third renewal thereafter (i.e., every 6

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- years), 2 hours on domestic violence
- (4) Every third renewal (i.e., every 6 years), 3 hours on laws and rules
  - (5) Every third renewal (i.e., every 6 years), qualified supervisors must complete 4 hours of supervisory training meeting the requirements of 64B4-6.0025(4)
  - (6) A maximum of 6 hours (of the 30) may be accrued for credit by attending programs designed for the purpose of enhancing the licensee's administrative, office management, or other non-clinical skills
  - (7) Continuing education hours completed by a licensee to satisfy any disciplinary action shall be in addition to those required for renewal.

### **64B4-6.002 Approved Courses for Continuing Education**

This section explains the requirements for courses in order to be approved for continuing education (CE). CE credit may be awarded for: approved graduate level courses provided by approved institutions; presenting or moderating approved CE activities; instructing graduate level courses; or by attending a Board meeting.

In addition to the above, section 64B4-6002(1)(d) provides that CE credit is approved for programs offered by providers approved by the Board under rule 64B4-6.004.

Further, 64B4-6.002(1)(e) provides that CE credit may be approved for programs offered and approved by the following:

1. National Board of Certified Counselors (NBCC),
2. American Association of Sex Educators Counselors and Therapists (AASECT),
3. American Society of Clinical Hypnosis (ASCH),
4. National Association of Social Work (NASW),
5. American Psychological Association (APA),
6. Clinical Social Work Federation (CSWF),
7. Association of Social Work Boards (ASWB),
8. American Board of Professional Psychology (ABPP),
9. American Psychiatric Association,
10. International Association of Marriage and Family Therapy Counselors (AMFC),
11. American Association of State Counseling Boards (AASCB),
12. American Counseling Association (ACA),
13. American Mental Health Counseling Association (AMHCA),
14. American Association for Marriage and Family Therapy (AAMFT); and, Association of Marital and Family Therapy Regulatory Boards (AMFTRB).

CE credit may be earned for distance learning activities, defined as home study, correspondence, computer interactive, tele-conferences, video cassette, and audio

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cassette courses; so long as they meet the requirements of the Rule and include a test with a passing score.

### **64B4-6.0025 Approved Continuing Education Course for Supervisory Training**

This section specifies requirements for continuing education requirements for qualified supervisors. Please refer to the Rule to see the details.

### **64B4-6.003 Documentation of Continuing Education Credits**

The licenseholder is required to keep copies of all documentation required by this Rule for a period of two years; and make such documentation available upon request by the Board.

### **64B4-6.004 Approval of Continuing Education Providers**

This section sets forth all the requirements in order to be an approved provider of CEs for the Board.

### **64B4-6.0045 Approval of Laws and Rules Course Providers**

This section sets forth the specific requirements for any provider offering laws and rules courses.

### **64B4-6.0046 Course Content Requirement of Continuing Education Courses for Renewal Laws and Rules Course**

This section sets forth the specific criteria for the three hour renewal laws and rules course.

A laws and rules course must be 3 hours, and include information about and review any changes to the laws and rules pertaining to Chapters 456 and 491 of the Florida Statutes and Rule 64B4.

### **64B4-6.005 Approval of Continuing Education Providers of Sex Therapy Training Programs**

The Board requires specific approval to be a provider of sex therapy CEs.

### **64B4-6.006 Approval of Continuing Education Providers of Hypnosis Training Programs**

The Board requires specific approval to be a provider of hypnosis CEs.

### **64B4-6.009 Approval of Continuing Education Courses on Prevention of Medical Errors**

All licensees must complete a two hour course on prevention of medical errors, which

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meets the criteria of section 456.013(7), F.S., as part of the total hours of continuing education required for biennial renewal.

***64B4-7 Standards of Practice Applicable to Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling***

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

Anyone licensed under Chapter 491 cannot practice hypnosis, unless they have completed 50 hours of training provided by a qualified teacher as defined in Rule 64B4-7.003; and, the training must meet the standards for approval of continuing education courses set forth in Rule 64B4-6.002.

An intern may not practice hypnosis unless practicing under the supervision of a qualified supervisor who has met the requirements to practice hypnosis.

**64B4-7.003 Qualified Teachers of Hypnosis**

This section set forth the requirements to be a qualified teacher of hypnosis.

**64B4-7.004 Use of the Title “Sex Therapist”**

Anyone holding themselves out to the public as a "sex therapist" must satisfy the requirements of this section.

**64B4-7.005 Qualified Supervisor of a Sex Therapist**

In addition to holding the requisite license and meeting the qualifications for being a qualified supervisor under 64B4-11.007, 64B4-21.007, or 64B4-31.007, anyone who wishes to be a qualified supervisor of a sex therapist must meet the requirements of being a sex therapist under 64B4-7.004; and have a minimum of 100 hours of clinical experience in the provision of sex therapy services.

**64B4-7.006 Requirements for Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes**

For a person licensed under Chapter 491 to be able to evaluate minors to address custody, residence, or visitation disputes, the licenseholder must: possess competence in performing psychological assessments on children and families; must possess the requisite education and training specified by this section; must be impartial, act in the children's best interests, avoid conflicts of interest, and cannot have been the treating psychotherapist, nor had a prior relationship with any of the parties to the evaluation; and must use multiple avenues of data gathering and involve all persons central to the children in question.

## **64B4-7.007 Requirement to Hold Oneself Out as Qualified to Practice Juvenile Sex Offender Therapy**

To provide this service, the Board requires specific training outlined in this section.

## **64B4-7.0081 Requirements to be a Qualified Practitioner for Completing Risk Assessments and Treatment of Sexual Offenders**

This is another specialty area of practice which requires the specific training outlined in this section.

## **64B4-8 HIV and AIDS Education**

### **64B4-8.002. Approved Courses**

Pursuant to Chapter 491.0065, the Board requires as a condition of initial licensure, the completion of a course on HIV/AIDS. The Board shall approve such a course which satisfies the one of the requirements of approved CE courses under 64B4-6.002(1); and which provides a minimum of three hours of HIV/AIDS education, including education on protocols and procedures applicable to HIV counseling, testing, reporting and partner notification. In addition, the Board shall also approve any courses approved by the Department of Health pursuant to Section 381.0038, F.S.

Pursuant to chapter 456.031, the Board shall require as a condition of every third biennial license renewal, the completion of a two hour CE on domestic violence, as defined in s. 741.28. The Board shall approve such a courses which meets one of the requirements of subsection 64B4-6.002(1), contains the course content set forth in Section 456.031(1)(a), F.S., and provides two hours of education regarding domestic violence.

## **64B4-9 Client Records**

### **64B4-9.001 Requirements for Client Records**

Pursuant to Chapter 456.057, anyone licensed under under Chapter 491 must maintain responsibility for all client records. The records shall remain confidential, except as provided by law or waiver. Records must be maintained for seven years after the date of the last contact with the client.

When a person licensed under Chapter 491 terminates practice or relocates and is no longer available to clients, the licenseholder must inform their clients of such by publishing in the newspaper of greatest general circulation in the county in which the licensee practices or practiced, a notice which provides the date of termination or relocation and an address at which the the clients' records are available to the clients.

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The notice must appear at least once a week for 4 consecutive weeks. The records shall be maintained for 2 years after termination or relocation.

If the termination or practice was the licenseholder's death, records must be maintained for 2 years after 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.

### **64B4-9.002 Definitions**

- (1) A psychotherapy report is a summary of information derived from the psychotherapy records which addresses a specific request as authorized by the client.
- (2) A psychotherapy record shall contain basic information about the client including name, address and telephone number, dates of therapy sessions, treatment plan and results achieved, diagnosis if applicable, and financial transactions between therapist and client including fees assessed and collected. A record shall also include notes or documentation of the client's consent to all aspects of treatment, copies of all client authorizations for release of information, any legal forms pertaining to the client, and documentation of any contact the therapist has with other professionals regarding the client.
- (3) Regardless of who pays for the services of the psychotherapist, a client is that individual who, by virtue of private consultation with the psychotherapist, has reason to expect that the individual's communication with the psychotherapist during that private consultation will remain confidential.

## ***64B4-10 Sexual Misconduct in the Practice of Marriage and Family Therapy, Clinical Social Work, and Mental Health Counseling***

### **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, 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.

### **64B4-10.003 Psychotherapist-Client Relationship**

This section explains under which circumstances a psychotherapist-client relationship is established.

Sexual misconduct as defined in 64B4-10.002 with a client is prohibited.

There may be circumstances under which it is permissible for a psychotherapist to have a sexual relationship with an ex-client. It is presumed that the psychotherapist-client relationship continues for a period of 2 years post termination; however, the mere passage of time is not determinative that the psychotherapist-client relationship has ended, and this section identifies other factors which must be taken into account.

In no event, shall a psychotherapist engage in a sexual relationship with an ex-client if doing so 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. A client's consent does not lift this prohibition.

### **64B4-10.004 Sexual Misconduct Not Involving Client Contact**

It is considered sexual misconduct to engage a supervisee in sexual behavior as defined in 64B4-10.002, during the period the supervisory relationship exists.

It is considered sexual misconduct to engage in sexual behavior as defined in 64B4-10.002, with any immediate family member or guardian of a client during the period in which the psychotherapeutic services are being provided to the client.

"Immediate family" is defined as a spouse, child, parents, parents-in-laws, siblings, grandchildren, grandparents, and other household members.

## ***64B4-11 Definitions Applicable to Social Work***

### **64B4-11-007 Definition of "Licensed Clinical Social Worker, or the Equivalent, Who Is a Qualified Supervisor"**

64B4-2.0025 indicates that a "qualified supervisor" for clinical social work means a "licensed clinical social worker, or the equivalent," who meets the requirements of 64B4-11.007. This section defines what it means to be a "licensed clinical social worker, or the equivalent," who is a qualified supervisor.

### **64B4-11.008 Definition of "a Clinical Social Work Graduate Program with**

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## **Comparable Standards”**

Chapter 491(2)(b) sets forth that part of the requirements for licensure by exam for clinical social work is the completion of clinical curriculum work which, if not achieved through a master's or doctoral program, may be achieved by returning to a graduate program accredited by the Council on Social Work Education or the Canadian Association of Schools of Social Work, or to "a clinical social work graduate program with comparable standards." This section defines what it means to be "a clinical social work graduate program with comparable standards."

### ***64B4-21 Definitions Applicable to Marriage and Family Therapy***

#### **64B4-21.007 Definition of "Licensed Marriage and Family Therapist with a Least Five Years Experience of the Equivalent, Who is a Qualified Supervisor"**

This section defines what it means to be a "licensed marriage and family therapist, with at least 5 years of experience, or the equivalent, who is a qualified supervisor," as used in Chapter 491.005(3)(c).

### ***64B4-22 Licensure by Examination - Marriage and Family Therapy***

#### **64B4-22.110 Course Content**

This section sets forth the course content curricula requirements, necessary for licensure and which is referenced in 491.005(3).

### ***64B4-31 Definitions Applicable to Mental Health Counseling***

#### **64B4-31.007 Definition of a "Licensed Mental Health Counselor or the Equivalent, Who is a Qualified Supervisor"**

For purposes of 491.005(4)(c), this section defines what it means to be a "licensed mental health counselor or the equivalent who is a qualified supervisor."

#### **64B4-31.008 Definition of "Research"**

This section defines the term "research, as used in 491.005(4)(b)1.b.

#### **64B4-31.010 Course Content**

This section sets forth the course content curricula requirements, necessary for licensure and which is referenced in 491.005(4).

## VIII.Chapter 90 Florida Statutes (Evidence Code)

### Introduction

Licenseses will demonstrate knowledge of Florida Statute Chapter 90, which is the evidence code for the State of Florida. Participants will learn definitions, psychotherapist-patient privilege and updates to the Florida Statutes. Participants will learn about what a privileged communication is, how that communication is treated in court, and the differences between confidential and privileged communications.

Chapter 90 of the Florida Statutes is called the Florida Evidence Code. According to [FindLaw.com](http://FindLaw.com), laws of evidence determine "...the burden of proof, admissibility, relevance, weight and sufficiency of what should be admitted into the record of a legal proceeding." (<https://hirealawyer.findlaw.com/choosing-the-right-lawyer/evidence-law.html>. Last accessed March 22, 2019.) It goes beyond the scope of this course to get into great detail about laws of evidence, but there is one important area of evidence with which licenseholder's under Chapter 491 need to be familiar, that is the concept of privilege and how it relates to confidentiality. A copy of the pertinent parts of the Florida Evidence Code is included in your learning materials.

### Florida's Psychotherapist-Patient Privilege in Family Court

Bruce G. Borkosky and Mark S. Thomas in their article, Florida's Psychotherapist-Patient Privilege in Family Court do an excellent job of explaining the implications of privilege and confidentiality for therapists in Florida. A copy of the article is provided below (Borkosky, B. G. & Thomas, M. S. (2013). Florida's Psychotherapist-Patient Privilege in Family Court. *Florida Bar Journal*, Volume 87, No. 5), p. 35. Retrieved from <https://www.floridabar.org/the-florida-bar-journal/floridas-psychotherapist-patient-privilege-in-family-court/>. Last accessed March 22, 2019.):

Divorce litigation is widespread in Florida and often involves mental health professionals (MHPs). Many MHP licensing and ethics complaints can result because the litigation can be both complex and emotionally charged. One area of particular challenge is when MHPs are faced with a request for records or a subpoena. Problems may occur if the MHP discloses private information without consent, refuses to disclose information when it is required, or obtains consent from the wrong "patient." It is common practice for child custody evaluators to automatically request therapy records, but all involved may not fully understand the potentially negative consequences of records release. Compounding these issues, patients may have various motivations for seeking treatment and judges may not be entirely familiar with the potential ramifications of the release of privileged and confidential records in part because privilege laws vary considerably from state to state and are highly dependent on case law. Professionals armed with accurate information about this area of the law can assist the courts, while protecting the rights of litigant- and child-patients.

## **Differences Between Confidentiality and Privilege**

Disclosures of mental health records to the legal system are easily confused with disclosures to other parties because they have overlapping, but distinct, rules for disclosure. HIPAA does not apply to matters of privilege. Privilege requests are, instead, governed by F.S. §90.503, regulating professions, and case law. A full definition of privilege is beyond the scope of this article, but the general rule of law is "everyone testifies," whether via submittal of records or in-person testimony. Some persons are permitted not to testify -- a privilege -- because legislatures have decided that some relationships are important to protect. Privilege is, thus, a partial derogation of the law. Privileges, however, are not absolute. Legislatures have enacted exceptions to privilege, and some circumstances void the privilege -- a waiver. If either an exception or a waiver applies, it means that testimony is required.

## **Determining Whether Privilege Applies**

The courts should follow strict construction of the statute when determining whether the elements of a privilege claim are met. There is a presumption of no privilege unless all of the following conditions are met:

- 1) Was the professional a psychotherapist?
- 2) Was the client a patient?
- 3) Is the information requested privileged?
- 4) Does the person asserting privilege have standing to do so?

## **Exceptions**

Once privilege is established, the next analysis is to determine whether any exceptions to privilege apply. The Florida statutes have four exceptions: 1) communications involving the known or alleged perpetrator of known or suspected child abuse; 2) Baker Act proceedings; 3) subsequent to court-ordered evaluations; and 4) when the patient relies on his or her condition as an element of the patient's claim or defense.

F.S. §39.204 provides that, in cases of child abuse, the psychotherapist-patient privilege should not operate as a shield to hide evidence of abuse. This is consistent with the statutory requirement to breach confidentiality -- termed "abrogation" -- by mandated reporting of child abuse. The abrogation statute specifies that reporting of child abuse trumps both confidentiality and privilege. Abrogation applies to all types of proceedings, not merely charges of child abuse. However, this exception to privilege is limited only to that information relevant to the abuse itself.

## **Determining Whether Privilege, Once Applied, Is Waived**

With privilege comes a prima facie case for protection. The party requesting records must then prove that privilege is waived; state laws vary widely in this area. Florida uses a balancing test to determine whether privilege should be pierced. The court must balance the privacy rights of the patient with other considerations, including societal interests, the government's police powers, the best interests of the child, the court's need for information, etc.

Generally, the prior mental health of the parents is rarely relevant or material to a child custody case. The primary legal issue in custody cases is the child's best interest, so even the parent's present circumstances may be only tangentially relevant. Seeking custody does not make a parent's mental condition an element of his or her defense.<sup>28</sup> Allegations of a parent's mental or emotional instability are insufficient to place the parent's mental health at issue, as are when a parent denies such allegations. Instead, the piercing of privilege in family court requires a calamitous event -- one that has a direct bearing on current parental fitness -- and when probative evidence cannot be obtained via other means.

Research literature suggests consideration of the weight and independence of the evidence, treatment type, recency of treatment, seriousness of the psychological disorder, relevancy of communications made in the course of treatment, availability of the evidence elsewhere, and whether court-ordered evaluations are an adequate substitute for disclosure.

### **Examples When Privilege Is Not Waived –**

Case law provides a few examples when courts have found no waiver. Privilege remains when there is another person in the room -- as in couples or family counseling. Mere allegations made by a parent's attorney do not pierce because courts "reject the use of unsworn assertions made by attorneys as evidence." Prior substance abuse problems and treatment are insufficient. There is no waiver for prior unfounded allegations of child abuse and when there is no ongoing issue of abuse. The filing of a disability claim or releasing records to a disability insurance company does not waive privilege. Finally, sending a client to a therapist as part of trial preparation protects work product/attorney-client privilege.

### **Examples When Privilege Is Waived –**

Failure to timely assert privilege will waive privilege, as will a litigant eliciting privileged information from his or her own therapist. Privilege can be voided when a spouse relies on a mental condition for a claim or defense, such as by alleging that he or she was too emotionally distraught to enter into a settlement agreement. There is no privilege when there is no expectation of privacy, such as court-ordered counseling. Privilege is waived if the information sought relates directly to the well-being of the child or to the parent's ability to adequately care for the child, and the child may be in danger. Voluntary admission to an inpatient facility can waive privilege as when a calamitous event has occurred, such as an attempted suicide. A court is not required to wait until a calamitous event becomes a tragedy in order to find a privilege waiver. The "totality of circumstances" can operate as a waiver to

privilege. A mental health professional can be required to testify to the danger posed by a patient, which necessarily waives privilege.

### **The "Mature Minor" Privilege**

A child's right to assert privilege depends on widely varying state laws. The Florida Constitution may create a greater child privacy right than the U.S. Constitution. However, the statutes are silent on this issue and the only guidance is provided by case law.

Beginning in 2001, the Fourth District Court of Appeal decided a number of cases that created a "mature minor" privilege. In *Atty. Ad Litem for D.K. v. Parents of D.K.*, 780 So. 2d 301 (Fla. 4th DCA 2001), the court upheld a minor's independent privacy right over the state's, her parents', and the evaluator's interests. The court opined that :

"The parents both assert that they can waive this claim for their child. In the instant case, it is questionable whether either or both parents are acting solely on their daughter's behalf in attempting to waive the privilege and obtain the records of confidential communications, when each has his or her own interests at stake in this lawsuit."

The court likewise extended a teen's privacy right over the interests of the Department of Children and Families (DCF) and the Guardian ad Litem (GAL) Program, requiring a due process hearing, an in camera review, and release of only minimum necessary records. Further, parents may not have standing to assert or waive the "mature minor's" privilege. The GAL program's policy presumes that teens 14 years and older have sufficiently mature capacity to consent, but unilaterally decides whether children under 14 have capacity.

These cases may not necessarily assist the court in determining whether a particular minor is due an independent privilege right. There is no singular answer, but case law and the literature consider several factors. An oft-cited, non-Florida case, *In re Berg*, 886 A.2d 980 (N.H. 2005), advised consideration of the child's age, intelligence, and maturity; the child's intensity of preference; and the existence of undesirable or improper influences. The literature suggests consideration of the child's needs, desire, cognitive capacity, and perception of fairness, as well as parental concerns, the particular presenting problem, state statutes, the effect on the therapy, and respect for the minor's constitutional rights.

### **Alternatives to Waiving Privilege**

Courts have several tools available to avoid wholesale waiver of a patient's privilege, including court-ordered evaluations, in camera record review, partial or limited release, and protective orders. An independent psychological evaluation may be ordered, but the parent's mental condition must be in controversy and good cause must be shown. Should the court find that privilege is waived, it should review the records in camera and release only probative records, but the use of records should be limited. Courts may enter protective orders to impose sanctions should one of the parties make the mental health information public.

However, there are potential limitations with the use of these alternatives. Evaluations may not address the pertinent information. Treatment records, generated prior to litigation, may be more probative; parents in evaluations may have an incentive to present themselves in the most positive light; and the evaluator may access the privileged records regardless. The presiding judge may conduct the in camera review, making it difficult for the judge to remove the undisclosed or irrelevant information from consideration. Even an impartial judge may be limited in that the records are, by necessity, reviewed without context or explanation, possibly prejudicing the client. Even if only a portion of the records are released, any disclosure has the potential of contaminating current or future therapeutic relationships for that patient, and causing that patient embarrassment if the records are made public by the opposing party.

## **Recommendations**

### **For Therapists Faced with a Request for Records –**

Mental health professionals may, when dealing with requests for information:

- 1) Discuss with patients, "the relevant limits of confidentiality and the foreseeable uses of the information...."
- 2) If there is a conflict between ethics and law, "clarify the nature of the conflict, make known your commitment to the Ethics Code and take reasonable steps to resolve the conflict...."
- 3) Notify the court that the information requested is confidential and may be privileged and seek guidance from court (e.g., alternatives to waiver).
- 4) Provide "only information germane to the purpose for which the communication is made" and do not opine on the issue before the court, such as child custody arrangements.

### **For Child Custody/Family Evaluators –**

Child custody/family evaluators may consider not seeking a copy of therapy records or interviewing the therapist or, the evaluation may have been ordered in lieu of piercing privilege. Once the evaluator obtains the therapist's records, both parents can obtain a copy of the records. Even with a protective order, there is no guarantee that the information can remain private. The contents can be inadvertently disclosed during the testimony of any party. Seeking the privileged information may place the evaluator in an untenable position -- either the evaluator refuses to acknowledge that one basis for the opinion was the therapy records; or the evaluator acknowledges reliance on the therapy records and breach privilege; or the evaluator acknowledges reliance on the therapy records, but keeps the basis for the opinion "secret." (Borkosky, B. G. & Thomas, M. S. (2013). Florida's Psychotherapist-

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Patient Privilege in Family Court. *Florida Bar Journal*, Volume 87, No. 5), p. 35. Retrieved from <https://www.floridabar.org/the-florida-bar-journal/floridas-psychotherapist-patient-privilege-in-family-court/>. Last accessed March 22, 2019.)

## IX. Chapter 39 and 415 Florida Statutes (Mandatory Reporting)

### Introduction

Licensees will demonstrate knowledge as it relates to mandatory reporting pursuant to Florida Chapters 39 and 415.

### Reporting Child Abuse and Abuse of Vulnerable Adults

There are two laws in Florida relating to professionally mandatory reporting requirements, with which licensees under Chapter 491 should be familiar: Chapter 39, Proceedings Relating to Children, and Chapter 415, the Adult Protective Services Act.

### Mandatory Reporters v. Professionally Mandatory Reporters

The obligation to report can be classified into two types of reporters:

#### 1) Mandatory reporters

- Under Chapter 39.201(1), any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, any other person responsible for the child's welfare, or any other adult is a mandatory reporter.
- Under Chapter 415.1034(1), entitled "Mandatory Reporting," any person who knows or has suspicion that a vulnerable adult has been abused, neglected, or exploited *shall* immediately report such suspicion to the Florida Abuse Hotline.

#### 2) Professionally mandatory reporters: This pertains to *professionals* who are obligated to report known abuse, and therefore must also identify themselves when reporting.

- Though anyone who has knowledge or suspicion of child abuse, abandonment, or neglect is considered a mandatory reporter, several professions are specifically identified as mandatory reporters, including those professionals licensed under Chapter 491. What this means is that the professionally mandatory reporters must also disclose their name when filing an abuse report, whereas, lay people do not. (Chapter 39.201(1)(d)). The reporter's name shall remain confidential. (39.202)
- Under Chapter 415.1034(1)(a), several professions are again specifically identified as mandatory reporters, including those professionals licensed under Chapter 491. Chapter 415.107 indicates that although the reporter's name is entered into the record of the report, it shall remain confidential.

### Chapter 39 Proceedings Relating to Children

Chapter 39 of the Florida Statutes is the set of laws which defines child abuse, abandonment, and neglect; provides for how to report child abuse, abandonment, and neglect; outlines the

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procedures for taking children into protective custody; sets for the rules for dependency and termination of parental rights proceedings. It goes beyond the scope of this course to get into great detail about this Chapter, but certain aspects of the Chapter have been highlighted below.

### **Abuse**

Section 39.01(2) defines abuse as "...any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired...Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child."

### **Abandonment**

Section 39.01(1) defines abandonment as "...a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both...Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child...The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment."

### **Neglect**

Section 39.01(50) provides that neglect "...occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired."

### **Reporting Abuse, Abandonment, or Neglect**

On the Department of Children and Families' website, there are instructions on how to report abuse. The website can be found at: <http://www.dcf.state.fl.us/service-programs/abuse-hotline/report/index.shtml> (Last accessed February 16, 2020.)

#### **The Florida Abuse Hotline will accept a report on a child when:**

1. There is reasonable cause to suspect that a child (an unmarried person who is born, under the age of 18 and who has not been emancipated by order of the court);
2. who can be located in Florida, or is temporarily out of the state but expected to return in the immediate future;
3. has been harmed or is believed to be threatened with harm as defined by statute;
4. from a person responsible for the care of the child.

**Pursuant to Fl. Stat. 39.201(1)(a), EVERYONE is a  
MANDATORY REPORTER of child abuse, abandonment, or neglect**

**To Report Abuse:**

**Phone: (800) 962-2873 (ABUSE)**

**TDD: (800) 955-8771**

**Fax: (800) 914-0004**

**Web: <https://reportabuse.dcf.state.fl.us/Child/ChildForm.aspx>**

**URL: <http://reportabuse.dcf.state.fl.us>**

**Immunity/Abrogation of privileged communication**

Chapter 39.203 provides that anyone making a report in good faith "...shall be immune from any civil or criminal liability which might otherwise result by reason of such action."

Furthermore, "[n]o resident or employee of a facility serving children may be subjected to reprisal or discharge because of his or her actions in reporting abuse, abandonment, or neglect pursuant to the requirements of this section.

39.204 states that the "[p]rivileged quality of communication between...any professional person and his or her patient or client...shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect...."

**Failure to Report**

39.205 states that it is a felony of the third degree for "[a] person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so...."

**EXCEPTION** – "Unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist, a person who is 18 years of age or older and lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree..." (Fl. Stat. 39.205(2))

**False Report**

Chapter 39.01(27) defines a false report as "...a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

- (a) Harassing, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;

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(c) Acquiring custody of a child; or

(d) Personal benefit for the reporting person in any other private dispute involving a child.

The term "false report" does not include a report of abuse, neglect, abandonment, of a child made in good faith to the central abuse hotline."

### **Penalties for making a false report**

"A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in s. [775.082](#) or s. [775.083](#). Anyone making a report who is acting in good faith is immune from any liability under this subsection." (Fl. Stat. 39.205(9))

"In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed \$10,000 for each violation, upon a person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report." (Fl. Stat. 39.206(1))

## **Chapter 415 Adult Protective Services Act**

Chapter 415 of the Florida Statutes contains laws enacted to protect those adults who may be vulnerable, due to age or disability, from abuse, neglect, and exploitation. It defines what it means to be a vulnerable adult and what constitutes abuse, neglect, and exploitation. Like Chapter 39, Chapter 415 has mandatory reporting requirements and outlines the procedures to make such reports. Again, a full discussion of this Chapter goes beyond the scope of this course, but some pertinent parts are highlighted below.

### **Vulnerable Adult**

Section 415.102(29) defines a vulnerable adult as "...a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging."

### **Abuse**

Section 415.102(1) defines abuse as "...any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions."

### **Neglect**

Section 415.102(16) defines neglect as "...the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for

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the well-being of a vulnerable adult. The term “neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.”

### Exploitation

Section 415.102(8)(a) defines exploitation as "...a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult."

Section 415.102(8)(b) considers the following acts to be exploitative (though this is not an exhaustive list):

1. "Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance."

### Reporting Abuse, Neglect, or Exploitation

On the Department of Children and Families' website, there are instructions on how to report abuse. The website can be found at: <http://www.dcf.state.fl.us/service-programs/abuse-hotline/report/index.shtml> (Last accessed March 23, 2019.)

#### **The Florida Abuse Hotline will accept a report on a child when:**

1. Any **vulnerable adult** who is a resident of Florida or currently located in Florida
2. who is believed to have been **abused or neglected** by a caregiver in Florida, or
3. suffering from the ill effects of **neglect by self** and is need of service, or

4. **exploited** by any person who stands in a position of trust or confidence, or any person who knows or should know that a vulnerable adult lacks capacity to consent and who obtains or uses, or endeavors to obtain or use, their funds, assets or property.

**Pursuant to Fl. Stat. 415.1034(1),  
ANY PERSON who knows or has suspicion  
that a vulnerable adult has been abused, neglected, or exploited is a  
MANDATORY REPORTER**

**To Report Abuse:**

**Phone: (800) 962-2873 (ABUSE)**

**TDD: (800) 955-8771**

**Fax: (800) 914-0004**

**Web: <https://reportabuse.dcf.state.fl.us/Adult/AdultForm.aspx>**

**URL: <http://reportabuse.dcf.state.fl.us>**

**Immunity**

Pursuant to 415.1036(1), "Any person who participates in making a report under s. 415.1034 or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed."

## **V. Board Meetings, Disciplinary Actions and Case Scenarios**

### **Introduction–**

Licensees will demonstrate a basic knowledge of the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling meetings, disciplinary actions, and current case discussions. Participants will learn about professional responsibilities, and recent board decisions regarding violations of the laws and rules of the State of Florida.

### **The Dynamics of Board Meetings**

#### ***Public Notice***

Board meetings are open to the public. Notice of meetings is published in the Florida Administrative Weekly. A draft agenda is available through the board website at least one week in advance of the meeting. On rare occasions, the board may enter executive (non-public) session to discuss a limited number of issues, which are confidential.

#### ***Organization***

The business of the board revolves around committee reports, staff and counsel reports, review of licensure and examination applications, discipline for violations of the practice act, and board rules or other laws. The main persons and roles visible during a board meeting are chair, vice chair, board members, board counsel, prosecuting attorneys, respondents, PRN and the executive director.

#### ***Chair/Vice Chair***

The Chair is responsible for the organization and running of the meeting. The agenda is prepared by staff, but the Chair may alter or reorganize the sequence of issues. The Chair seeks to keep the board on task and often summarizes discussion. The Chair is a full member of the board and is required to vote on all issues. The Chair may make motions and second motions of others. The Chair seeks clarification from counsel, board members, staff, or others if requested. The Vice-Chair performs these duties in the absence of the Chair.

#### ***Board Members***

Members are required to vote on all issues, unless recused because of a possible conflict of interest. A board member who sits on the probable cause panel may have already heard some evidence in disciplinary cases, and therefore, that member is automatically recused from voting on the case when it appears before the full board. Board members review hundreds (sometimes thousands) of pages of records prior to a typical board meeting. The documents include applications for licensure, administrative complaints against an individual, investigative reports, orders, stipulations, and other records. Orders are legal documents filed by the board to take action against an applicant or licensee. A stipulation is a tentative agreement between the prosecuting attorney and the respondent; the board must approve a stipulation before it can take effect. Board members determine severity of discipline (reprimand, fine, suspension and/or

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probation, revocation) using established guidelines (see rules for these guidelines); costs of investigation are always included.

### ***Board Counsel***

An Assistant Attorney General serves as legal counsel to the board. Counsel responds to requests from the Chair to clarify requirements in Florida laws and rules, which may affect board decisions. Counsel prepares draft documents for board review, including proposed rules. Counsel informs board members of possible legal issues or implications of various courses of action being contemplated.

### ***Prosecuting Attorney***

This attorney from Medical Quality Assurance Enforcement Division reviews all disciplinary cases and prepares materials for board review. Administrative complaints outline the alleged violations of the Practice Act, rules of the board and other laws. Investigative reports provide information from witnesses, records, and others about the situation described in the administrative complaint. After review by a Probable Cause Panel, the attorneys inform the respondent of their rights. The respondent may choose several different options in responding to the administrative complaint. If the respondent selects an informal hearing before the board, the prosecuting attorney reads a summary of the administrative complaint and provides legal notification of procedures followed by notifying the respondent. Sometimes an agreement (stipulation) is achieved between the parties: the board must approve this before it becomes final. If a respondent disputes the facts in a case, a hearing with an administrative law judge will be held and the findings of the law judge will be sent to the board for final action.

### ***Respondents***

Some respondents are applicants for licensure or examination. These persons may have discipline in another state, deficiencies in education or other credentials. The board reviews these cases to determine if the applicant can be approved for licensure or examination. Other respondents are licensees who have had a complaint filed against them for violation of the practice act, rules of the board, or other applicable laws/rules. While some respondents may be required to appear before the board, in most cases this is an option for the respondent. An attorney may represent a respondent and the respondent may have witnesses appear on their behalf. All respondents and witnesses are sworn under oath.

### ***Professionals Resource Network***

Representatives from this organization are often present at board meetings to provide reports on individuals enrolled in the program. In addition, the board may order a respondent or applicant to be evaluated by PRN to prove safety to practice. Most services provided by this organization revolve around drug and alcohol abuse, but may include mental health or behavioral problems and psychological testing.

### ***Executive Director***

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This person is responsible for the over-all functioning of the board office. The office staff prepares the agenda in concert with counsel and prosecuting attorneys, organize and schedule the meetings and publish notices, provide public copies of documents and maintain records of the proceedings. The staff also processes applications for licensure or examination, maintain disciplinary files, review applications for continuing education providers, conduct continuing education audits, monitor statistics for annual reports and prepare various reports as requested. Other board administrative or support staff may be present during a meeting. (Florida Board of CSW, MFT, and MHC Information Packet)

### **DISCIPLINARY ACTIONS BEFORE THE BOARD OF CSW, MFT, AND MHC**

Below are excerpts from disciplinary actions that have been before the Florida Board of CSW, MFT, and MHC. The full records can be accessed on Florida Department of Health's website at: <https://apps.mqa.doh.state.fl.us/MQASearchServices/EnforcementActionsPractitioner>. (Last accessed March 23, 2019.)

The professional that is facing discipline is the “Respondent,” who is subject to a “Complaint” filed by the Department of Health.

#### **Department of Health v. J.L. Fenton, LMHC, Case No. 2015-25594**

##### *Administrative Complaint*

The DOH conducted an investigation after receiving a complaint alleging that Respondent violated 456.072(1)(k),(v),(z),(dd) F.S.; 491.0112 F.S.; and 491.009(1)(h),(k),(p),(r),(w) F.S. in that Respondent engaged in sexual misconduct and impairment with Patient. The complaint indicates that the Patient entered a residential recovery center and was assigned Respondent as a therapist. Respondent provided Patient with her personal cell phone number and encouraged contact. During one such contact, Respondent expressed she had sexual intentions towards Patient, after which Respondent and Patient engaged in a sexual relationship, while Respondent remained Patient's therapist for another two weeks. Respondent eventually convinced Patient to move out the recovery facility and into her own apartment. Respondent purchased a glass pipe to smoke marijuana and the second night staying with Respondent, Patient was back to using opiates. Patient alleged that Respondent smoked marijuana with him and continued a relationship for seven weeks, and then coached him to deny his relationship with her when asked by the recovery center.

##### *Final Order*

On November 8, 2018, the Board issued a Final Order Accepting Voluntary Relinquishment of License.

On or about August 3, 2018, the Respondent filed a motion for Voluntary Relinquishment of License with the understanding that acceptance by the Board of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes. Respondent agrees to never reapply for licensure as a mental health counselor in the State of Florida. Respondent agrees to voluntarily cease practicing mental health counseling immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from the practice of mental health counseling until such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written final order in this matter.

In order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby waives the statutory privilege of confidentiality of Section 456.073(20), Florida Statutes, regarding the complaint, the investigative report Of the Department of Health, and all other Information obtained pursuant to the Department's investigation in the above-styled action. By signing this waiver, Respondent understands that the record and complaint become public record and remain public record and that information is immediately accessible by the public. Respondent understands that this waiver of confidentiality is a permanent, non-revocable waiver. Further, Respondent waives a determination of probable cause, by the Probable cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes. Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

## **Department of Health v. L.W. Eichler, LCSW, Case No. 2017-23690**

### *Administrative Complaint*

The DOH conducted an investigation after receiving a compliant alleging Respondent violated 456.072(1)(k),(z),(dd),(hh) F.S. and 491.009(1)(p),(t),(w) F.S. in that Respondent failed to comply with the Professionals Resource Network's (PRN) program recommendations. On or about 4/28/17, Respondent was Baker Acted for following a client home from a session in a hypomanic state; Respondent was later confined under the Marchment Act for treatment where she remained for 44 days until being transferred to the Dual Diagnosis Unit on 7/7/17. However, on 6/12/17, Respondent contacted PRN and self-referred from a Dual Diagnosis Unit. On 6/20/17, Respondent successfully completed treatment with the Florida Recovery Center (FRC), but was determined by FRC to be not safe to practice with reasonable skill and safety and recommended PRN monitoring. On 7/27/17, based on FRC's recommendation, Respondent was evaluated by PRN and determined that she did not possess reasonable skill and safety to return to practice. PRN recommended that Respondent be under a mental health monitoring contract,

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undergo neurocognitive testing, and psychological examination. On 09/02/2017, Respondent was provided a five (5) year PRN Concurrent Illness Diagnostic Monitoring Contract for Rule-Out Sedative Use Disorder and Psychiatric. On 11/14/17, the PRN Compliance Manager reviewed the contract with Respondent. Respondent notified PRN that she planned to retire her Florida license and wanted a second opinion evaluation. Respondent was provided two additional evaluator options and a deadline of 11/30/17 to schedule a second opinion evaluation. Rather than undergo another evaluation or enter into her PRN contract, Respondent indicated that she planned to retire her license and did not intend on returning to practice. Respondent's file was closed on 12/28/17 and on 1/17/18, Respondent signed a Voluntary Relinquishment of License Form.

### *Final Order*

On May 24, 2018, the Board issued its Final Order accepting Respondent's Voluntary Relinquishment.

Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this cause. Respondent understands that acceptance by the Board of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes.

In order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby waives the statutory privilege of confidentiality of Section 456.073(10), Florida Statutes, and waives a determination of probable cause, by the Probable Cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in the above-styled action. By signing this waiver, Respondent understands that the record and complaint become public record and remain public record and that information is immediately accessible to the public. Section 456.073(10) Florida Statutes.

Respondent agrees to never reapply for licensure under Chapter 491, Florida Statutes.

Respondent agrees to voluntarily cease practicing as a licensed clinical social worker in the State of Florida immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from practicing as a licensed clinical social worker until such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written final order in this matter.

Upon the Board's acceptance of this. Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment.

Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

## **Department of Health v. K.L. Daly, IMH, Case No. 2016-08141**

### *Administrative Complaint*

The DOH conducted an investigation after receiving a complaint alleging that Respondent violated 456.072(1)(a),(k),(l),(m),(dd) F.S. and 491.009(1)(h),(i),(l),(r),(w) F.S. in that the Medicaid Fraud Control Unit (MCFU) and the Office of the Attorney General notified that the Respondent was being sentenced for Medicaid Fraud and MFCU wanted to make a voluntary relinquishment of Respondent's license as part of his sentence. Respondent was accused of billing for Medicaid services not provided and fraudulently used a licensed mental health provider's information without the provider's knowledge or consent to become accepted as a Medicaid provider.

### *Final Order*

On February 22, 2018, the Board issued its Final Order accepting Respondent's Voluntary Relinquishment.

Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this cause. Respondent understands that acceptance by the Board of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(IXf), Florida Statutes.

Respondent agrees to never reapply for licensure as a Registered Mental Health Counselor Intern in the State of Florida.

Respondent agrees to voluntarily cease practicing as a Registered Mental Health Counselor Intern immediately upon executing this Voluntary Relinquishment Respondent further agrees to refrain from the practice of Mental Health Counseling until such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written final order in this matter.

In Order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby waives the statutory privilege of confidentiality of Section 456.073(10), Florida Statutes, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in the above-styled action; and, waives a determination of probable cause, by the Probable Cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes.

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Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment

Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

### **Department of Health v. N.L. Bacquie, LMHC, Case Nos. 2012-14173; 2012-12207;2012-12374**

#### *Administrative Complaint*

The DOH filed Administrative Complaints against Respondent alleging Respondent submitted several invoices to her employer for counseling services she did not provide

Section 491.009(1)(l), Florida Statutes (2011-2012), states that making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified under this chapter constitutes grounds for disciplinary action by the Board.

Respondent violated Section 491.009(1)(I), Florida Statutes, by submitting invoices for services she did not provide.

#### *Final Order*

On August 26, 2018, the Board issued its Final Order adopting the Settlement Agreement entered into by the parties.

Pursuant to Section 456.072(4), Florida Statutes (2018), the Department is authorized to collect costs for investigation and prosecution. The evidence presented to the Board was that the costs associated with these matters are seven thousand three hundred forty-seven dollars and four cents (\$7,347.04).

Petitioner and Respondent entered the following Settlement Agreement:

Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 491, Florida Statutes, as alleged in the Administrative Complaint.

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The Board shall reprimand the license of Respondent.

The Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling shall impose an administrative fine of one thousand and seven hundred and seventy-five dollars (\$1,750.00) against the license of Respondent, to be paid by Respondent to the Department of Health...within two years from the date of filing of the Final Order accepting this Agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN TWO YEARS AND FORTY FIVE (45) DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any administrative costs incurred in the investigation and prosecution of this case...The agreed upon amount of Department costs to be paid in this case includes but shall not exceed seven thousand three hundred and forty-seven dollars and four cents (\$7,347.04). Respondent will pay costs to the Department... within two years from the date of filing of the Final Order in this cause.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN TWO YEARS AND FORTY FIVE (45) DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

Within one year of the date of the filing of a Final Order in this cause, Respondent shall take five (5) hours of Continuing Education (CE) in Ethics and five (5) hours of Continuing Education in Laws and Rules...These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing education course(s) shall consist of a formal, live lecture format.

It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 491, Florida Statutes.

Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

## **Department of Health v. D.R. Engle, LMFT, Case No. 2018-02336**

### *Order of Emergency Suspension of License*

The Florida Surgeon General Ordered the emergency suspension of Respondent's license .

### *Findings of Fact*

In or about December of 2016, through December of 2017, Respondent provided weekly therapy services to Patient V.M., a 16-to-17-year-old female with a history of being abused and neglected by her mother and was under the care of her grandparents. Patient V.M. attended approximately 50 sessions with Respondent.

During the time Respondent provided Patient V.M. with therapy services, he often purchased gifts for Patient V.M., including birthday gifts, Valentine's Day gifts, and Christmas gifts.

In December 2017, Respondent sent text messages to Patient, V.M. requesting pictures of Patient, V.M..

Patient, V.M. disclosed that in previous therapy sessions, Respondent committing acts of sexual misconduct.

Respondent invited Patient, V.M. to his home to visit and live.

On or about February 27, 2018, Respondent was interviewed by an investigator from the Tallahassee Police Department (TPD) regarding an investigation into his behavior with Patient V.M..

During Respondent's recorded interview, he admitted to discussing sexual "leanings" with Patient V.M., giving her gifts, having physical contact with her in the form of a hug, texting with her, and asking her for a selfie. Further, he indicated that he did not believe it was inappropriate for him to invite patients to his home under certain circumstances and admitted to the TPD officer that he told Patient V.M. that if she wants to go to school at Florida State University she could live with him, rent free.

### *Findings of Law*

Section 491.009(1)(k), Florida Statutes (2016-2018), subjects a licensed marriage and family therapist to discipline, including suspension, for committing any act upon a patient or client

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which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to Section 491.0111, Florida Statutes (2016-2018).

Section 491.0111, Florida Statutes (2016-2018), provides that sexual misconduct shall be defined by board rule.

Rule 64B4-10.002(1), Florida Administrative Code, provides that 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.

Rule 64B4-10.003(4), Florida Administrative Code, provides that 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.

Respondent violated Section 491.009(1)(k), Florida Statutes (2016- 2018), Section 491.0111, Florida Statutes (2016-2018), and Rule 64E34- 10.002(1), Florida Administrative Code, by engaging, attempting to engage, or offering to engage, Patient V.M. in sexual misconduct.

Section 491.009(1)(r), Florida Statutes (2016-2018) subjects a licensed marriage and family therapist to discipline, including suspension, for 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.

Respondent violated Section 491.009(1)(r), Florida Statutes (2016- 2018), by failing to meet the minimum standards of performance in professional activities when measured " against generally prevailing peer performance by: encouraging and engaging in an inappropriate relationship with Patient, V.M., exploiting his position of trust and therapeutic relationship by making inappropriate requests of Patient, V.M., etc.

Section 120.60(6), Florida Statutes (2018), authorizes the State Surgeon General to suspend a marriage and family therapist's license upon a finding that the marriage and family therapist presents an immediate, serious danger to the public health, safety, or welfare.

Respondent's continued ability to provide therapy services constitutes an immediate, serious danger to the health, safety, or welfare of the public and this summary procedure is fair under the circumstances to adequately protect the public.

### *Final Order*

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The license of Respondent is hereby immediately suspended.

A proceeding seeking formal discipline of the license of Respondent to practice as a licensed marriage and family therapist in the state of Florida will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes (2018).

**Department of Health v. P.J. Garcia, LMHC, Case No. 2017-08995**

*Administrative Complaint*

The DOH filed an Administrative Complaint against Respondent alleging that Respondent engaged in sexual misconduct with Patient, A.C., a thirteen-year-old girl, Patient, E.M., an eighteen-year-old woman, Patient K.S., a twenty-seven-year-old woman.

Section 491.009(1)(k), Florida Statutes (2015-2016), subjects a mental health counselor to discipline for committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to Section 491.0111, Florida Statutes (2017).

Section 491.0111, Florida Statutes (2017), states that sexual misconduct is prohibited and that it shall be defined by rule.

Rule 6464-10.002(1), Florida Administrative Code (F.A1C.), states that sexual misconduct includes engaging, attempting to engage or offering 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.

Based on the foregoing, Respondent violated Section 491.009(1)(k), Florida Statutes (2015-2016), by committing sexual misconduct, as defined in Rule 64B4-10.002(1), F.A.C.

Section 456.072(1)(v), Florida Statutes (2017), : subjects a mental health counselor to discipline for engaging or attempting to engage in sexual misconduct as defined and prohibited in Section 456.063(1), Florida Statutes (2016).

Section 456.063(1), Florida Statutes (2016), defines Sexual misconduct as, "a violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or to induce or attempt to induce such a person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. "

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Based on the foregoing, Respondent violated Section 456.072(1)(v), Florida Statutes (2016) when he committed sexual misconduct as defined in Section 456.063(1), Florida Statutes (2016);

### *Final Order*

On February 22, 2018, the Board found that the facts which were uncontested by the Respondent, were sufficient to support the allegations in the Complaint and warrant disciplinary action. The Board concluded that the Respondent violated Section 491.009(1)(k), Florida Statutes, by committing sexual misconduct and Section 2 456.072(1)(v), Florida Statutes, by committing sexual misconduct. The Board ordered the Respondent's license to practice as a mental health counselor shall be permanently revoked. The Board also ordered the Respondent to pay an administrative fine in the amount of one thousand (\$1,000.00) dollars; and imposed the costs associated with the investigation and prosecution of this case in the amount of two thousand three hundred thirty-three dollars and thirty-seven cents (\$2,333.37) to be paid within thirty (30) days from the filing date of this Final Order

## **Department of Health v. K.L. Friedman, LMHC, Case No. 2014-08875**

### *Administrative Complaint*

The DOH filed an Administrative Complaint against Respondent alleging Respondent requested that Patient help her financially in order for Respondent to purchase equipment for her office. Respondent confirmed that she borrowed \$85,000 from Patient.

Section 491.009(1)(r), Florida Statutes (2013), provides that 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 certificate holder is not qualified by training or experience constitutes grounds for disciplinary action.

Respondent failed to meet minimum standards in the performance of professional activities when measured against generally prevailing peer performance in one or more of the following ways: a) By soliciting her client, to help her financially; and/or b) By borrowing funds from Patient

Based on the foregoing, Respondent violated Section 491.009(1)(r), Florida Statutes (2013), due to failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance.

### *Final Order*

On November 2, 2017, the Board submitted its Final Order after having considered the Administrative Law Judge's Recommended Order, the Respondent's Exceptions to the Recommended Order, and Petitioner's Responded to Exceptions to the Recommended Order. The Board ordered Respondent's license to practice mental health counseling in the State of

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Florida is hereby permanently revoked and accepted the penalty recommended by the Administrative Law Judge.

The Administrative Law Judge (ALJ) recommended the Board enter a Final Order finding the Respondent in violation of section 491.009(1)(r), Florida Statutes, as charged in the Administrative Complaint; revoking her license to practice as a mental health counselor; and assessing reasonable costs related to investigation and prosecution of the case. With regard to penalties, the ALJ recommended following the disciplinary guidelines pursuant to Florida Administrative Code Rule 64B4- 5.001(1)(s), which provides, in part, that the penalty for a first offense of failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, in violation of section 491.009(1)(r) shall normally range from a minimum of \$250 fine and reprimand to a \$5,000 fine and/or probation, one year suspension then probation, or permanent revocation. Furthermore, the ALJ opined that the mitigating and aggravating circumstances in this case did not warrant deviation from the wide range of penalties already permitted within the guidelines. Lastly, Section 456.072(4) provided that in addition to any other discipline imposed for a violation of a practice act, the Board shall assess costs related to the investigation and prosecution of the case.

The Board imposed the costs associated with the investigation and prosecution of this case in the amount of forty-five thousand three hundred eighty-nine dollars and twenty-nine cents (\$45,389.29) to be paid within one hundred and eighty (180) days from the filing date of this Final Order.

### **Department of Health v. M.A. Foraker, LMHC, Case No. 2017-10991**

#### *Administrative Complaint*

The DOH filed an Administrative Complaint against Respondent alleging Respondent submitted billings to CIGNA insurance for therapy sessions with patient A.M. for the dates of January 18, 2016; February 15, 2016; March 7, 2016; March 21, 2016; April 12, 2016; April 19, 2016; May 3, 2016; May 17, 2016; and May 24, 2016; but, Respondent did not meet with or provide any therapeutic services to patient A.M. on any of the dates set out in paragraph 5 above.

Section 491.009(1)(w), Florida Statutes (2016), provides that violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto constitutes grounds for disciplinary action.

Section 456.072(1)(a), Florida Statutes (2016), provides that making misleading, deceptive, or fraudulent representations in or related to 1364 I the practice of the licensee's profession constitutes grounds for disciplinary action.

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Based on the foregoing, Respondent violated Section 491.009(1)(w), Florida Statutes (2016), through a violation of Section 456.072(1)(a), Florida Statutes (2016), by submitting nine billings to CIGNA Insurance for therapy sessions with patient A.M. that did not take place.

Section 456.072(1)(l), Florida Statutes (2016), provides that making or filing a false report which the licensee knows to be false, intentionally failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so constitutes grounds for disciplinary action. Such reports or records shall include only those that are signed in the capacity of a licensee.

Based on the foregoing, Respondent violated Section 491.009(1)(w), Florida Statutes (2016), through a violation of Section 456.072(1)(1), Florida Statutes (2016), by submitting nine billings to CIGNA Insurance for therapy sessions with patient A.M. that did not take place.

Section 491.009(1)(r), Florida Statutes (2016), provides that failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance constitutes grounds for disciplinary action.

Based on the foregoing, Respondent violated Section 491.009(w), Florida Statutes (2016), through a violation of Section 491.009(1)(r), Florida Statutes (2015), by submitting nine billings to CIGNA Insurance for therapy sessions with patient A.M. that did not take place.

### *Final Order*

On August 16, 2018, the Board submitted its Final Order. The Respondent did contest the factual allegations in the Complaint. The Board found that the Respondent violated: Section 491.009(1)(w), Florida Statutes, violating a provision of Chapter 456, Florida Statutes, by violating Section 456.072(1)(a), Florida Statutes, by making misleading, deceptive or fraudulent representations in the practice; Section 491.009(1)(w), Florida Statutes, by violating Section 456.072(1)(1), Florida Statutes, by making or filing a false report; and Section 491.009(1)(r), Florida Statutes, failing to meet minimum standards of performance.

The Board is empowered by Section 491.009(2) and/or 456.072(2), Florida Statutes, to impose a penalty against Respondent. The Board reprimanded the Respondent and ordered the remittance of an administrative fine in the amount of one thousand (\$1,000.00) dollars and Within one (1) year of the date of the filing of this Final Order, Respondent shall submit proof of successful completion of five (5) hours of continuing education in the area of ethics and professional boundaries related to the practice of mental health counseling in the State of Florida and five (5) hours of continuing education in the area of laws and rules governing the practice of mental health counseling in the State of Florida.. These hours shall be in addition to the hours required for renewal of licensure. The Board also imposed the costs associated with the investigation and prosecution of this case in the amount of one thousand one hundred eighty-eight dollars and thirty-six cents (\$1,188.36) to be paid within one (1) year of the filing date of this Final Order.

## **Department of Health v. S.L. Fleming, LMHC, Case No. 2017-03469**

### *Administrative Complaint*

The DOH filed an Administrative Complaint against Respondent alleging that she previously pled guilty to one count of making a false statement in billing to the Medicaid program of the State of New Jersey. Respondent did not report this to the Board in writing within 30 days of entering the plea.

Section 491.009(1)(w), Florida Statutes (2015), provides that violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto constitutes grounds for disciplinary action.

Section 456.072(1)(11), Florida Statutes (2015), provides that being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, in any jurisdiction which relates to health care fraud, constitutes grounds for disciplinary action.

Based on the foregoing, Respondent violated Section 491.009(1)(w), Florida Statutes (2015), through a violation of Section 456.072(1)(11), Florida Statutes (2015), by being pleading guilty to a crime related to health care fraud when she pled' guilty to one count of making a false statement in billing to the Medicaid program of the state of New Jersey.

Section 491.009(1)(c), Florida Statutes (2015), provides that being convicted or found guilty of, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of his or her profession, constitutes grounds for disciplinary action.

Based on the foregoing, Respondent violated Section 491.009(w), Florida Statutes (2015), through a violation of Section 491.009(1)(c), Florida Statutes (2015), by being pleading guilty to a crime related to health care fraud. when she pled guilty to one count of making a false statement in billing to the Medicaid program of the state of New Jersey.

Section. 456.072(1)(x), Florida Statutes (2015), provides that failing to report to the Board, or the Department when there is no Board, in Writing within 30 days after the licensee has been convicted or found guilty, regardless of adjudication, a crime in any jurisdiction, constitutes grounds for disciplinary action.

Based on the foregoing, Respondent violated Section 491.009(w), Florida Statutes (2015), through a violation of Section 456.072(1)(x), Florida Statutes (2015), when she failed to report her plea of guilty to the Board in writing within 30 days of entering the plea.

### *Final Order*

On February 22, 2018, the Board submitted its Final Order. The Respondent did not contest the facts alleged in the complaint. The Board found that Respondent violated: Section 491.009(1)

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(w), Florida Statutes, violating any provision of Chapter 456, Florida Statutes, by violating Section 456.072(1)(11), Florida Statutes, by being convicted of a crime related to health care fraud; Section 491.009(1)(w), Florida Statutes, by violating Section 491.009(1)(c), Florida Statutes, by pleading guilty to a crime related to the practice or the ability to practice mental health counseling; and Section 456.072(1)(x), Florida Statutes, by failing to report guilty plea within 30 days.

The Board is empowered by Section 491.009(2) and/or 456.072(2), Florida Statutes, to impose a penalty against Respondent and ordered Respondent's license to practice as a mental health counselor shall be permanently revoked.

The Board reviewed Petitioner's Motion to Assess Costs, grants the Motion, and imposes the costs associated with the investigation and prosecution of this case in the amount of one hundred eighty-three dollars and nine cents (\$183.09) to be paid within thirty (30) days of the filing date of this Final Order. Based on Respondent's testimony regarding financial hardship, the Board voted to not impose a fine in this case.

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## **Contributors**

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Shayna a member of the Florida Bar and a Florida Licensed Mental Health Counselor. She is a former Florida Dependency attorney and currently operates her own mental health counseling practice. Shayna has authored educational materials and trainings in her own practice and has served as a contributor for educational trainings and workshops for other organizations in her community.