

**State of Florida Laws & Rules Course for the Florida Board of Clinical Social Work,
Marriage & Family Therapy and Mental Health Counseling
CE Learning Systems, LLC**

I. Introduction

This course is designed for 3 hours (as required by Rule 64B4-6.001) of self-study utilizing the provided reference materials. All information discussed in this course appears in the order it is provided in the various legal statutes of Florida laws and rules. This is done purposely so that the course participant can follow the text of this document parallel to the full text of the laws and rules, if desired. At some points, it may appear that a theme in the material is being repeated. However, this is not the case. When a specific subject appears multiple times in the course material, it does so because the actual laws and rules address that theme separately under various subject areas.

At the conclusion of self-study, the course participant must pass the provided exam consisting of 30 questions related to the provided reference materials. The examination is designed to test the participant upon the information presented in this course. A link to the complete rules and laws pertinent to this coursework is provided in the reference materials for this course.

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

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

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

II. State of Florida Rule Title 64B4-6

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

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

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

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

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

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

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

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

(3) Within six (6) months of initial licensure and every third renewal thereafter, a licensee must complete a 2

hour continuing education course on domestic violence.

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

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

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

Quick Review: Rule Title 64B4.6001 states that licensees practicing clinical social work, marriage and family therapy, and mental health counseling must complete a laws and rules continuing education course every third biennium following licensure. Said course must be 3 hours in duration and address Chapter 456, Chapter 491, and Rule Title 64B4-6.001. State of Florida Rule Title 64-B4-6.0046 addresses specific requirements of the curriculum required in the laws and rules course as detailed in the excerpt below.

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

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

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

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

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

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

III. Chapter 456 (Health Professions and Occupations: General Provisions) of Title XXXII (Regulation of Professions and Occupations)

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

1. Title XXXII is the overarching legislation that deals with regulation of professions and occupations in the State of Florida.
2. Chapter 64B4-6 sets forth the requirement for three (3) hours of laws and rules continuing education for practitioners of mental health counseling, clinical social work, and marriage and family therapy.
3. Chapter 456 of Title XXXII discusses general provisions of regulation for health professions and occupations only.

Understanding the Language of the Laws & Rules

Understanding the language of the regulatory laws and rules is critical. For the purpose of this course, the term “board” refers to any board or commission charged by the State of Florida for enforcing regulation and licensure of health profession and occupations. Why is this so important? Persons licensed to practice clinical social work, marriage and family therapy, or mental health counseling are considered licensees under a health profession or occupation. It is also important to note that the Department of Health is granted authority for the overall regulation of health professions and occupations. This is accomplished through the Division of Medical Quality Assurance with the Department of Health. Be sure to read through the other critical definitions used in Chapter 456 of the law. This is contained in the box below:

FROM THE LAW: 456.001 Definitions.—As used in this chapter, the term:

- (1) “Board” means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, except that, for ss. 456.003-456.018, 456.022, 456.023, 456.025-456.034, and 456.039-456.082, “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Medical Quality Assurance.
 - (3) “Department” means the Department of Health.
 - (4) “Health care practitioner” means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.
 - (5) “License” means any permit, registration, certificate, or license, including a provisional license, issued by the department.
 - (6) “Licensee” means any person or entity issued a permit, registration, certificate, or license, including a provisional license, by the department.
 - (7) “Profession” means any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.
- (Source: Chapter 456 Health Professions and Occupations: General Provisions, Title XXXII, State of Florida)

Legislative Intent of Title XXXII, Chapter 456

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

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

The intent is NOT to create unreasonable standards that prevent persons from entering the regulated health professions and occupations. Rather, the intent is solely as stated in the bullet points above. See the excerpt section below for specifics from the law.

FROM THE LAW: 456.003 Legislative intent; requirements.—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) It is further legislative intent that the use of the term “profession” with respect to those activities licensed and regulated by the department shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(4)(a) Neither the department nor any board may create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. Neither the department nor any board may take any action that tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(b) Neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention in the state or that places unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a profession or occupation to find employment.

(c) The Legislature shall evaluate proposals to increase the regulation of regulated professions or occupations to determine the effect of increased regulation on job creation or retention and employment opportunities.

(6) Unless expressly and specifically granted in statute, the duties conferred on the boards do not include the enlargement, modification, or contravention of the lawful scope of practice of the profession regulated by the boards. This subsection shall not prohibit the boards, or the department when there is no board, from taking disciplinary action or issuing a declaratory statement.

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

Department Powers and Duties

Chapter 456 specifically sets forth powers and duties of the Department of Health with regard to regulation of health professions and occupations. Some major powers and duties of the department are listed below.

- Adopt rules for the license renewal procedure.
- Appoint the executive director of each board.
- Set an examination fee.

Be sure to read the “FROM THE LAW” excerpt below for greater detail on the Department of Health’s powers and duties regarding regulation.

FROM THE LAW: 456.004 Department; powers and duties.—The department, for the professions under its jurisdiction, shall:

- (1) Adopt rules establishing a procedure for the biennial renewal of licenses; however, the department may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary. The rules shall specify the expiration dates of licenses and the process for tracking compliance with continuing education requirements, financial responsibility requirements, and any other conditions of renewal set forth in statute or rule. Fees for such renewal shall not exceed the fee caps for individual professions on an annualized basis as authorized by law.
- (2) Appoint the executive director of each board, subject to the approval of the board.
- (3) Submit an annual budget to the Legislature at a time and in the manner provided by law.
- (4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department.
- (5) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.
- (6) Establish by rules procedures by which the department shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.
- (7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.
- (10) Set an examination fee that includes all costs to develop, purchase, validate, administer, and defend the examination and is an amount certain to cover all administrative costs plus the actual per-applicant cost of the examination.

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

General Licensing Provisions

Chapter 456 sets forth licensure rules for activities, professions, and occupations regulated by the Department of Health in the Division of Medical Quality Assurance. Any person seeking licensure in a profession within a division of the department must apply to the department in writing to take the licensure examination.

The board may refuse to issue an initial license to applicants under investigation or prosecution in any jurisdiction that would constitute a violation of Chapter 456 or the professional practice administered by the department and boards. The board may issue a license depending upon the outcome of said investigation or prosecution. Further, a felony conviction related to the practice or

ability to practice any health care profession may require the applicant to prove his/her civil rights have been reinstated.

The board may require a personal appearance of the applicant. Certain medical professions may require competency through completing 40 hours of continuing education every two (2) years.

The board requires the completion of a 2-hour course in prevention of medical errors as part of the licensure and renewal process. This pertains to all professions designated through Chapter 456. The board is responsible for establishing rules related to continuing education requirements. This course fulfills the latest requirement that three (3) hours of a Laws and Rules Continuing Education course be completed by professionals licensed to practice clinical social work, marriage and family therapy, and mental health counseling.

FROM THE LAW: 456.013 Department; general licensing provisions.—

(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department. The application form must be available on the World Wide Web and the department may accept electronically submitted applications beginning July 1, 2001. The application shall require the social security number of the applicant, except as provided in paragraph (b). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

(2) Before the issuance of any license, the department shall charge an initial license fee as determined by the applicable board or, if there is no board, by rule of the department. Upon receipt of the appropriate license fee, the department shall issue a license to any person certified by the appropriate board, or its designee, as having met the licensure requirements imposed by law or rule. The license shall consist of a wallet-size identification card and a wall card measuring 6 1/2 inches by 5 inches. The licensee shall surrender to the department the wallet-size identification card and the wall card if the licensee's license is issued in error or is revoked.

(3)(a) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete, and the time period in which the licensure application must be granted or denied shall be tolled until 15 days after the receipt of the final results of the investigation or prosecution.

(b) If an applicant has been convicted of a felony related to the practice or ability to practice any health care profession, the board, or the department when there is no board, may require the applicant to prove that his or her civil rights have been restored.

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

Background Screening, Public Inspection, and Limited Licenses

Application for initial licensure received after January 1, 2013 must include fingerprints through an approved vendor approved by the Department of Law Enforcement and fees (paid by the applicant)

for the initial screening and retention of those fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement.

The board may issue limited licenses to retired professionals. Persons wishing to obtain a limited license must submit a fee, application, and affidavit attesting to the circumstances of retirement and past practices. Limited license recipients may only practice in the employment of public agencies/institutions or 501c(3) nonprofit agencies/institutions. Limited license recipients are subject to all the provisions of Chapter 456 that do not conflict with the rules related to limited licenses.

Examinations

The department is charged with providing or contracting for the development, preparation, administration, scoring and score reporting, and evaluation of all examinations through consultation of the appropriate board. The department certifies that the examinations are valid and reliable for measuring an applicant's practice ability for the profession. The board may develop or contract for the development of examinations; or the board may authorize the adoption of national examinations that have been certified reliable and valid.

Chapter 456 sets forth additional rules regarding the security and monitoring of examinations to include secure reporting of test scores to candidates. In addition, Chapter 456 sets forth specific provisions for the development of examinations through third party contracted vendors.

Section 456.018 sets forth the theft of an examination, either in part or totality, to be a third degree felony offense punishable by Florida law.

Candidates for licensure cannot be disqualified from practicing an occupation or profession solely as a result of NOT being a United States citizen. Provisions are set forth to allow immigrants to practice a licensed profession or occupation per Section 456.021.

Critical excerpts regarding examinations are provided in the "FROM THE LAW" section below.

FROM THE LAW: 456.017 Examinations.—

(1)(a) The department shall provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations, in consultation with the appropriate board. The department shall certify that examinations developed and approved by the department adequately and reliably measure an applicant's ability to practice the profession regulated by the department. After an examination developed or approved by the department has been administered, the board, or the department when there is no board, may reject any question which does not reliably measure the general areas of competency specified in the rules of the board. The department may contract for the preparation, administration, scoring, score reporting, and evaluation of examinations, when such services are available and approved by the board.

(c) The board, or the department when there is no board, shall approve by rule the use of one or more national examinations that the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules.

2. Neither the board nor the department may administer a state-developed written examination if a national examination has been certified by the department. The examination may be administered electronically if adequate security measures are used, as determined by rule of the department.

3. The board, or the department when there is no board, may administer a state-developed practical or clinical examination, as required by the applicable practice act, if all costs of development, purchase, validation, administration, review, and defense are paid by the examination candidate prior to the administration of the examination. If a national practical or clinical examination is available and certified by the department pursuant to this section, the board, or the department when there is no board, may administer the national examination.

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

Fees Related to Licensure and Examinations

The State of Florida Legislature set for these provisions with the intent that ALL costs of regulating health care professions and practitioners are borne solely by licensees and licensure applicants. Fees must be reasonable and should not prevent applicants from becoming licensed. Each board within the department determines the license fees for the professions it regulates. Provisions are set forth in Chapter 456 to allow collection of fees from licensees to insure the cost of regulation does not reach deficit operation. All fees, fines, and other income must be directed into a trust fund by the department to pay the costs of regulation. The legislation related to regulation is meant to ensure that the all associated costs of regulating health care professions and occupations is funded only through income from licensees and applicants in the form of examination fees and licensing fees. The abbreviated section from Chapter 456 provides specifics regarding fees and how they are established.

FROM THE LAW: 456.025 Fees; receipts; disposition.—

(1) It is the intent of the Legislature that all costs of regulating health care professions and practitioners shall be borne solely by licensees and licensure applicants. It is also the intent of the Legislature that fees should be reasonable and not serve as a barrier to licensure. Moreover, it is the intent of the Legislature that the department operates as efficiently as possible and regularly report to the Legislature additional methods to streamline operational costs. Therefore, the boards in consultation with the department, or the department if there is no board, shall, by rule, set renewal fees which:

- (c) Shall be reasonable, fair, and not serve as a barrier to licensure;
- (d) Shall be based on potential earnings from working under the scope of the license;
- (e) Shall be similar to fees imposed on similar licensure types;

(3) Each board within the jurisdiction of the department, or the department when there is no board, shall determine by rule the amount of license fees for the profession it regulates, based upon long-range estimates prepared by the department of the revenue required to implement laws relating to the regulation of professions by the department and the board.

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

Active and Inactive Licensing Status

Licensees may only practice a health profession or occupation with proof an active license. Disciplinary action may be taken against licensees practicing without a license, an inactive license, or a delinquent license. Failure to practice with the appropriate, active license is a serious offense Florida law. A large section of Chapter 456 deals primary with specific medical practitioners. Since this course is geared toward practitioners of clinical social work, marriage and family therapy, and mental health counseling, those sections will not be discussed in detail. Please reference the full text of Chapter 456 if you desire additional information regarding specific medical professions.

Client's/Patient's Right to be Informed

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

FROM THE LAW: 456.0575 Duty to notify patients.—

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

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

Confidentiality

The concept of confidentiality is one of the foundational principles of practice among social workers, marriage and family therapists, and mental health counselors. It is of vital importance that clients/patients believe in the practitioner's oath to maintain confidence of the practitioner-client/patient relationship. Chapter 456 specifically issues an exception for practitioners needing to divulge confidential information related to a positive HIV diagnosis. Practitioners should maintain client/patient confidentiality except in certain circumstances. Practitioners regulated under Chapter 456 are protected from civil and criminal liability in the event disclosure is made to a sex partner or needle sharing partner provided the following circumstances exist.

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

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

Practitioner Misconduct

Chapter 456 specifies two critical areas of professional misconduct as disqualifications for licensure. Those areas are sexual misconduct and health care fraud. Sexual misconduct is defined as the violation of the professional relationship in which the professional engages/attempt to engage the client/patient, immediate family members, patient/client's guardian, or other representatives in a verbal or physical sex act outside of the appropriate practice. The full text of Chapter 456 gives a detailed description of acts considered to be health care fraud.

Unlicensed Practice of a Health Care Profession

The Legislature of the State of Florida strictly prohibits, through law, the practice of health care professions without the appropriate license. As such, Chapter 456 sets forth specific penalties for the unlicensed practice of health care professions. Such actions and penalties include:

- Cease and desist orders
- Citations of at least \$500 and not more than \$5,000 per individual incident of unlicensed practice. This can become quite an imposing penalty as the Department of Health can cite practitioners for each meeting with each different client. For instance, two meetings with two different clients where a practitioner operates without a license could incur penalties up to \$20,000. Every day the practitioner continues operating after the service of a cease and desist order constitutes another violation. Citations may be administered through the administrative sanction or through civil penalties in circuit court.
- Criminal penalties may also be imposed. By Florida law, it is a third degree felony to practice a health care profession without a license. This also includes practicing with a suspended or revoked license. Criminal penalties include a \$1,000 fine and a minimum of one year of incarceration. These penalties are mandatory sentence in the State of Florida.
- Additionally, giving false information for the purpose of obtaining a license illegally or fraudulently is a third degree felony to be issued as a separate charge.

It is the responsibility of the Department of Health or appropriate professional board to provide notice of violations to the prosecuting authority for the district.

Discipline of Professionals

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

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

Disciplinary Proceedings

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

Complaints will be investigated if they meet the criteria of being filed in writing, legally sufficient to warrant investigation, and signed by the party filing the complaint. Primarily, these criteria must be met in order for the Department to begin an investigation into an allegation of practitioner

misconduct. However, the Department of Health may also investigate anonymously filed complaints if the alleged misconduct meets the criterion of legal sufficiency and the alleged violation of rules and law is of a significant nature.

Quick Review:

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

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

Impaired Practitioners

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

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

Closing Out Chapter 456

The remainder of Chapter 456 relates primarily to administrative proceedings and functions of the Department of Health and licensing boards and their scope of authority. As this course is primarily designed for clinical social workers, marriage and family therapists, mental health counselors, the focus of this course will turn to Chapter 491 which specifically addresses these professionals. Practitioners may refer to the full text of Chapter 456 (provided as a resource link with this course) for detailed information not contained in the preceding discussions.

IV. Chapter 491 (Clinical, Counseling, and Psychotherapy Services) of Title XXXII (Regulation of Professions and Occupations)

Chapter 491 of Title XXXII is extremely important for practitioners of clinical social work, marriage and family therapy, and mental health counseling. This chapter deals specifically with the regulation of clinical, counseling, and psychotherapy services; and, as such, provides the framework for compliance with the requirement that the stated licensed professionals complete three (3) hours of rules and laws continuing education every third biennium.

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

Recall that the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is the governing body for licensure and regulation in the State of Florida for professionals engaged in mental health counseling, clinical social worker, and marriage and family therapy. The Board is composed of nine (9) members as appointed by the Governor of Florida. These members are then confirmed by the Senate. The law sets forth that six (6) of these members must be practitioners licensed under Chapter 491 and these must be comprised of two practitioners from each of these three categories: clinical social workers, marriage and family therapists, and mental health counselors. The remaining three appointed members are to be Florida residents not practicing and not affiliated with any of the professions.

See the excerpt section from the law below for detailed definitions expressed in this Chapter. These will be important for understanding the intent of Chapter 491. Understanding the various levels of licensure can be confusing. It is critical that practitioners examine the levels of licensure required for their particular area of practice. The definitions below set forth both the requirements for who can be licensed and the definitions of associated practice methods.

FROM THE LAW: 491.003 Definitions.—

As used in this chapter:

- (1) "Board" means the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.
- (2) "Clinical social worker" means a person licensed under this chapter to practice clinical social work.
- (3) "Clinical social work experience" is defined as a period during which the applicant provides clinical social work services, including assessment, diagnosis, treatment, and evaluation of clients; provided that at least 50 percent of the hours worked consist of providing psychotherapy and counseling services directly to clients.
- (4) "Department" means the Department of Health.
- (5) "Marriage and family therapist" means a person licensed under this chapter to practice marriage and family therapy.
- (6) "Mental health counselor" means a person licensed under this chapter to practice mental health counseling.
- (7) The "practice of clinical social work" is defined as the use of scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering. The purpose of such services is the prevention and treatment of undesired behavior and enhancement of mental health. The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of clinical social work

includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy. The practice of clinical social work also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, or substance abuse. The practice of clinical social work may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.

(shall not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or procedure as “psychological,” except to relate specifically to the definition of practice authorized in this subsection.

(d) The definition of “marriage and family therapy” contained in this subsection includes all services offered directly to the general public or through organizations, whether public or private, and applies whether payment is requested or received for services rendered.

(9) The “practice of mental health counseling” is defined as the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal relationships, sexual dysfunction, alcoholism, and substance abuse. The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy. The practice of mental health counseling also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse. The practice of mental health counseling may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.

(a) Mental health counseling may be rendered to individuals, including individuals affected by the termination of marriage, and to couples, families, groups, organizations, and communities.

(b) The use of specific methods, techniques, or modalities within the practice of mental health counseling is restricted to mental health counselors appropriately trained in the use of such methods, techniques, or modalities.

(c) The terms “diagnose” and “treat,” as used in this chapter, when considered in isolation or in conjunction with any provision of the rules of the board, shall not be construed to permit the performance of any act which mental health counselors are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in chapter 465, authorizing clinical laboratory procedures pursuant to chapter 483, or radiological procedures, or use of electroconvulsive therapy. In addition, this definition shall not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or procedure as “psychological,” except to relate specifically to the definition of practice authorized in this subsection.

(d) The definition of “mental health counseling” contained in this subsection includes all services offered directly to the general public or through organizations, whether public or private, and applies whether payment is requested or received for services rendered.

(10) “Provisional clinical social worker licensee” means a person provisionally licensed under this chapter to provide clinical social work services under supervision.

(11) “Provisional marriage and family therapist licensee” means a person provisionally licensed under this chapter to provide marriage and family therapy services under supervision.

- (12) “Provisional mental health counselor licensee” means a person provisionally licensed under this chapter to provide mental health counseling services under supervision.
- (13) “Psychotherapist” means a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to this chapter.
- (14) “Registered clinical social worker intern” means a person registered under this chapter who is completing the postgraduate clinical social work experience requirement specified in s. 491.005(1)(c).
- (15) “Registered marriage and family therapist intern” means a person registered under this chapter who is completing the post-master’s clinical experience requirement specified in s. 491.005(3)(c).
- (16) “Registered mental health counselor intern” means a person registered under this chapter who is completing the post-master’s clinical experience requirement specified in s. 491.005(4)(c).
- (17) “Social worker” means a person who has a bachelor’s, master’s, or doctoral degree in social work.
- (Source: Chapter 491 Clinical, Counseling, and Psychotherapy Services, Title XXXII, State of Florida)

Intern Registration & Provisional Licensure

Persons who intend to enter practice in Florida toward the requirements for postgraduate or post-master’s experience in clinical social work, mental health counseling, or marriage and family therapy must register as an intern. This registration must occur with the Board prior to beginning the postgraduate practice hours. It is critical this registration occurs prior to beginning the experiential hours or the intern will not receive credit toward licensure for those hours.

In order to register as an intern in any of these practice areas, the individual must:

1. complete the required application and submit the fee set by the Board;
2. complete the education required for that particular discipline;
3. provide the Board with an approved supervision plan for meeting all requirements of licensure that did not occur during graduate work.

The Board may also issue provisional licenses to individuals. Provisional licenses may be issued to persons who have completed the clinical experience requirements, but are in the process of completing coursework or examination requirements. Provisional licenses are only valid for 24 months and are not renewable. To obtain a provisional license, applicants must:

1. Complete the required application and submit the fee set by the Board;
2. Have completed and been granted a graduate degree in social work, marriage and family therapy, closely related field, or in a graduate degree program allied to mental health counseling;
3. Have met certain coursework requirements set forth in Section 491.005(1)(b)2.b. Please reference the full text of the Chapter 491 for the specifics of coursework requirements.

Licensure by Examination

Licensure through examination is the standard approach to being licensed by the Board for the practice of clinical social work, marriage and family therapy, and mental health counseling in Florida.

Individuals seeking licensure for **clinical social work** may be issued a license after the following conditions have been met:

1. An application for licensure has been made along with payment of fees.

2. Has earned a doctoral degree in social work from a graduate school of social work accredited by one of the accrediting bodies as recognized by the U. S. Department of Education; or has earned a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education (CSWE) or the Canadian Association of Schools of Social Work. The Board may approve social work programs from outside of the United States or Canada if they are determined to be equivalent to programs accredited by CSWE. The applicant for licensure bears the responsibility for providing documentation to prove equivalency to the Board.
3. The applicant's graduate degree program must have contained a major emphasis on direct clinical patient/client health care services. Examples of such coursework include clinical social work, psychopathology, psychotherapy, group therapy. In addition, the program must have included a supervised field placement providing direct clinical services to clients/patients. Further, 24 semester hours (32 quarter hours) in human behavior and practices methods for clinically oriented services with at least one course in psychopathology and a maximum of one research course.
4. Has completed a minimum of 2 years of clinical social work experience AFTER completion of the graduate degree in social work; and completed this practice experience under the supervision of a licensed clinical social worker or other supervisor approved by the Board.
5. Passed an examination provided for determining ability to practice and knowledge of theory and practice. In this case, the Clinical Social Work examination provided through the Association of Social Work Boards is the qualifying examination.
6. Other provisions are made in Chapter 491 for individuals whose graduate program did not provide the required emphasis. See the excerpt from the law provided below which specifically addresses scenarios such as this.

FROM THE LAW: 491.005 Licensure by examination.—

(2) CLINICAL SOCIAL WORK.—

(a) Notwithstanding the provisions of paragraph (1)(b), coursework which was taken at a baccalaureate level shall not be considered toward completion of education requirements for licensure unless an official of the graduate program certifies in writing on the graduate school's stationery that a specific course, which students enrolled in the same graduate program were ordinarily required to complete at the graduate level, was waived or exempted based on completion of a similar course at the baccalaureate level. If this condition is met, the board shall apply the baccalaureate course named toward the education requirements.

(b) An applicant from a master's or doctoral program in social work which did not emphasize direct patient or client services may complete the clinical curriculum content requirement 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, in order to complete the education requirements for examination. However, a maximum of 6 semester or 9 quarter hours of the clinical curriculum content requirement may be completed by credit awarded for independent study coursework as defined by board rule.

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

Individuals seeking licensure for **marriage and family therapy** may be issued a license after the following conditions have been met:

1. An application for licensure has been made along with payment of fees.
2. Has completed a minimum of a master's degree emphasizing marriage and family therapy or another closely aligned field of study. The master's degree must be from a

graduate program with full accreditation from a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or the Association of Universities and Colleges of Canada. Programs not accredited by one of these may be approved per board rules upon review by the board. The master's degree program must have 36 semester or 48 quarter hours of graduate-level courses. Included in these hours, the applicant must have had 3 semester or 4 quarter hours in each of the following: dynamics of marriage and family systems, marriage therapy and counseling theory and techniques, family therapy and counseling theory and techniques, individual human development life cycle theories, personality theory or general counseling theory and techniques, psychopathology, human sexuality theory and counseling techniques, psychosocial theory, and substance abuse theory and counseling techniques. These are the only course areas that may be applied to the requirement. For example, courses in research or assessment may not be counted as credit toward this requirement.

3. In addition, the applicant must have completed at least one course of 3 semester hours or 4 quarter hours in legal, professional, and ethical standards related to the practice of marriage and family therapy. The board may approve an equivalent course. Also, 3 semester hours or 4 quarter hours must be completed in behavioral research related to clinical practice. All of these courses must be graduate-level courses.
4. Has completed a supervised clinical practicum of in a marriage and family therapy setting consisting of 180 direct hours providing marriage and family therapy services to clients.
5. Has completed a minimum of 2 years of post-master's clinical experience with at least 50% of clients receiving marriage and family therapy services. This clinical experience must have been completed under the supervision of a qualified, licensed, and approved marriage and family therapist.
6. Has passed an examination provided by the board to test competency in theory and practice of marriage and family therapy.

Individuals seeking licensure for **mental health counseling** may be issued a license after the following conditions have been met:

1. An application for licensure has been made along with payment of fees.
2. Earned at least a master's degree from a mental health counseling program which is accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP). The master's degree program must have consisted of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction with at least one course in human sexuality and one course in substance abuse. If the applicant's degree was not earned from a CACREP accredited program, detailed requirements of the curriculum and practicum are set forth in Chapter 491. Applicants with degrees from these programs should review the detailed requirements contained in the full text of Chapter 491.
3. Has completed a minimum of 2 years of clinical experience in mental health counseling while supervised by a licensed mental health counselor or other equivalent supervisor approved by the board. All of this clinical experience must be completed post-master's.
4. Passed an examination provided for the purpose of the establishing competency in theory and practice of mental health counseling as administered by the board through the Department of Health.

5. Demonstrated knowledge and competency of the laws and rules regulating practice in clinical social work, mental health counseling, and marriage and family therapy.

FROM THE LAW: 491.0057 Dual licensure as a marriage and family therapist.—

The department shall license as a marriage and family therapist any person who demonstrates to the board that he or she:

- (1) Holds a valid, active license as a psychologist under chapter 490 or as a clinical social worker or mental health counselor under this chapter, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health.
 - (2) Has held a valid, active license for at least 3 years.
 - (3) Has passed the examination provided by the department for marriage and family therapy.
- (Source: Chapter 491 Clinical, Counseling, and Psychotherapy Services, Title XXXII, State of Florida)

Licensure/Certification by Endorsement

Professionals with existing licensure from states other than Florida may be licensed to practice mental health counseling, clinical social work, or marriage and family therapy in the State of Florida if:

1. The appropriate application and fee are submitted.
2. The person meets requirements of demonstrating knowledge of laws and rules governing these areas of practice.
3. Possesses an active and valid license to practice the profession from another state and has practiced for at least 3 of the 5 years immediately preceding application for licensure in Florida.
4. Meets the education requirements for the given area of practice set forth in previous discussions in this course as detailed in the full text of Chapter 491.
5. Passed an equivalent licensing exam in another state or passed the licensure exam in Florida.
6. The person is not under investigation for any action that would constitute a violation of laws and rules of practice in Florida.

Renewal of Licenses and Reactivation of Licenses/Continuing Education Required

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

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

Discipline

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

FROM THE LAW: 491.009 Discipline.—

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

- (a) Attempting to obtain, obtaining, or renewing a license, registration, or certificate under this chapter by bribery or fraudulent misrepresentation or through an error of the board or the department.
- (b) Having a license, registration, or certificate to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.
- (c) Being convicted or found guilty of, regardless of adjudication, or having entered a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.
- (d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.
- (e) Advertising, practicing, or attempting to practice under a name other than one's own.
- (f) Maintaining a professional association with any person who the applicant, licensee, registered intern, or certificateholder knows, or has reason to believe, is in violation of this chapter or of a rule of the department or the board.
- (g) Knowingly aiding, assisting, procuring, or advising any nonlicensed, nonregistered, or noncertified person to hold himself or herself out as licensed, registered, or certified under this chapter.
- (h) Failing to perform any statutory or legal obligation placed upon a person licensed, registered, or certified under this chapter.
- (i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record. Such report or record includes only a report or record which requires the signature of a person licensed, registered, or certified under this chapter.
- (j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of mental health care services or to a provider of health care services or goods; referring a patient or client to oneself for services on a fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.
- (k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to s. 491.0111.
- (l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified under this chapter.
- (m) Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct.

- (n) Failing to make available to a patient or client, upon written request, copies of tests, reports, or documents in the possession or under the control of the licensee, registered intern, or certificateholder which have been prepared for and paid for by the patient or client.
- (o) Failing to respond within 30 days to a written communication from the department or the board concerning any investigation by the department or the board, or failing to make available any relevant records with respect to any investigation about the licensee's, registered intern's, or certificateholder's conduct or background.
- (p) Being unable to practice the profession for which he or she is licensed, registered, or certified under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General's designee, or the board that probable cause exists to believe that the licensee, registered intern, or certificateholder is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee, registered intern, or certificateholder to submit to a mental or physical examination by psychologists, physicians, or other licensees under this chapter, designated by the department or board. If the licensee, registered intern, or certificateholder refuses to comply with such order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee, registered intern, or certificateholder resides or does business. The licensee, registered intern, or certificateholder against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee, registered intern, or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed, registered, or certified with reasonable skill and safety to patients.
- (q) Performing any treatment or prescribing any therapy which, by the prevailing standards of the mental health professions in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.
- (r) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee, registered intern, or certificateholder is not qualified by training or experience.
- (s) Delegating professional responsibilities to a person whom the licensee, registered intern, or certificateholder knows or has reason to know is not qualified by training or experience to perform such responsibilities.
- (t) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.
- (u) Failure of the licensee, registered intern, or certificateholder to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 491.0147.
- (v) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.
- (w) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.
- (Source: Chapter 491 Clinical, Counseling, and Psychotherapy Services, Title XXXII, State of Florida)

Sexual Misconduct

Obviously, sexual misconduct is a pitfall to be avoided by professionals. Not only is this activity illegal, but it violates the ethical standards related to the care of clients of every profession discussed in Chapter 491. The board defines sexual misconduct as “the oral, anal, or vaginal penetration of another by, or contact with, the sexual organ of another or the anal or vaginal penetration of another by any object (Section 491.0112, Chapter 491). It is important to point out that persons licensed for clinical social work, mental health counseling, or marriage and family therapy are authorized to utilize the term “psychotherapist” when providing services. Section 491.0112 of Chapter 491 specifically states that psychotherapists committing sexual misconduct with a client will be charged with a third degree felony. Also, a psychotherapist engaging in sexual misconduct with a former client may be charged with the same if it is deemed the termination of the helping relationship was done to engage in a sexual relationship. A second offense of either of these would increase the severity of charges to a second degree felony.

Violations

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

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

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

2. "Mental health counselor."
 3. "Mental health therapist."
 4. "Mental health consultant."
- (d) Use the terms psychotherapist, sex therapist, or juvenile sexual offender therapist unless such person is licensed pursuant to this chapter or chapter 490, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training, and licensure.
- (e) Present as her or his own the clinical social work, marriage and family therapy, or mental health counseling license of another.
- (f) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license.
- (g) Use or attempt to use a license issued pursuant to this chapter which has been revoked or is under suspension.
- (h) Knowingly conceal information relative to violations of this chapter.
- (i) Practice clinical social work in this state for compensation, unless the person holds a valid, active license to practice clinical social work issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
- (j) Practice marriage and family therapy in this state for compensation, unless the person holds a valid, active license to practice marriage and family therapy issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
- (k) Practice mental health counseling in this state for compensation, unless the person holds a valid, active license to practice mental health counseling issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
- (l) Use the following titles or any combination thereof, unless he or she holds a valid registration as an intern issued pursuant to this chapter:
1. "Registered clinical social worker intern."
 2. "Registered marriage and family therapist intern."
 3. "Registered mental health counselor intern."
- (m) Use the following titles or any combination thereof, unless he or she holds a valid provisional license issued pursuant to this chapter:
1. "Provisional clinical social worker licensee."
 2. "Provisional marriage and family therapist licensee."
 3. "Provisional mental health counselor licensee."
- (n) Effective October 1, 2000, practice juvenile sexual offender therapy in this state, as the practice is defined in s. 491.0144, for compensation, unless the person holds an active license issued under this chapter and meets the requirements to practice juvenile sexual offender therapy. An unlicensed person may be employed by a program operated by or under contract with the Department of Juvenile Justice or the Department of Children and Family Services if the program employs a professional who is licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 who manages or supervises the treatment services.
- (2) It is unlawful and a violation of this chapter for any person to describe her or his services using the following terms or any derivative thereof, unless such person holds a valid, active license under this chapter or chapter 490, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training, and licensure:

- (a) "Psychotherapy."
 - (b) "Sex therapy."
 - (c) "Sex counseling."
 - (d) "Clinical social work."
 - (e) "Psychiatric social work."
 - (f) "Marriage and family therapy."
 - (g) "Marriage and family counseling."
 - (h) "Marriage counseling."
 - (i) "Family counseling."
 - (j) "Mental health counseling."
- (3) Any person who violates any provision of subsection (1) or subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
- (4) The department may institute appropriate judicial proceedings to enjoin violation of this section.
- (Source: Chapter 491 Clinical, Counseling, and Psychotherapy Services, Title XXXII, State of Florida)

Exemptions

Certain practices and professionals qualify for exemptions from the regulations contained in Chapter 491. These deal with such circumstances as religious or clergy members, as well as certain government employees.

FROM THE LAW: 491.014 Exemptions.—

- (1) No provision of this chapter shall be construed to limit the practice of physicians licensed pursuant to chapter 458 or chapter 459, or psychologists licensed pursuant to chapter 490, so long as they do not unlawfully hold themselves out to the public as possessing a license, provisional license, registration, or certificate issued pursuant to this chapter or use a professional title protected by this chapter.
- (2) No provision of this chapter shall be construed to limit 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, so long as they do not hold themselves out to the public as possessing a license, provisional license, registration, or certificate issued pursuant to this chapter or use a title protected by this chapter.
- (3) No provision of this chapter shall be construed to limit the performance of activities of a rabbi, priest, minister, or member of the clergy of any religious denomination or sect, or use of the terms "Christian counselor" or "Christian clinical counselor" when the activities are within the scope of the performance of his or her regular or specialized ministerial duties and no compensation is received by him or her, or when such activities are performed, with or without compensation, by a person for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect, and when the person rendering service remains accountable to the established authority thereof.
- (4) No person shall be required to be licensed, provisionally licensed, registered, or certified under this chapter who:
 - (a) Is a salaried employee of a government agency; a developmental disability facility or program; a mental health, alcohol, or drug abuse facility operating under chapter 393, chapter 394, or chapter 397; the statewide child care resource and referral network operating under s. [1002.92](#); a child-placing or child-caring agency licensed pursuant to chapter 409; a domestic violence center certified pursuant to

chapter 39; an accredited academic institution; or a research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a clinical social worker, mental health counselor, or marriage and family therapist.

(b) Is a salaried employee of a private, nonprofit organization providing counseling services to children, youth, and families, if such services are provided for no charge, if such employee is performing duties for which he or she was trained and hired, so long as the employee is not held out to the public as a clinical social worker, mental health counselor, or marriage and family therapist.

(c) Is a student providing services regulated under this chapter who is pursuing a course of study which leads to a degree in a profession regulated by this chapter, is providing services in a training setting, provided such services and associated activities constitute part of a supervised course of study, and is designated by the title "student intern."

(d) Is not a resident of this state but offers services in this state, provided:

1. Such services are performed for no more than 15 days in any calendar year; and
2. Such nonresident is licensed or certified to practice the services provided by a state or territory of the United States or by a foreign country or province.

(5) No provision of this chapter shall be construed to limit the practice of any individual who solely engages in behavior analysis so long as he or she does not hold himself or herself out to the public as possessing a license issued pursuant to this chapter or use a title protected by this chapter.

(6) Nothing in subsections (2)-(4) shall exempt any person from the provisions of s. [491.012\(1\)\(a\)-\(c\)](#), (l), and (m).

(7) Except as stipulated by the board, the exemptions contained in this section do not apply to any person licensed under this chapter whose license has been suspended or revoked by the board or another jurisdiction.

(8) Nothing in this section shall be construed to exempt a person from meeting the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the person is not qualified by training or experience.

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

Specific Practice Methods

The practices of hypnosis, sex therapy, and juvenile sexual offender therapy are specifically discussed as regulated practice methods within Chapter 491. Review the text box following for information regarding utilization of these practice methods.

FROM THE LAW: SPECIFIC PRACTICE METHODS

491.0141 Practice of hypnosis.—

A person licensed under this chapter who is qualified as determined by the board may practice hypnosis as defined in s. 485.003(1). The provisions of this chapter may not be interpreted to limit or affect the right of any person qualified pursuant to chapter 485 to practice hypnosis pursuant to that chapter or to practice hypnosis for nontherapeutic purposes, so long as such person does not hold herself or himself out to the public as possessing a license issued pursuant to this chapter or use a title protected by this chapter.

491.0143 Practice of sex therapy.—

Only a person licensed by this chapter who meets the qualifications set by the board may hold herself or himself out as a sex therapist. The board shall define these qualifications by rule. In establishing these qualifications, the board may refer to the sexual disorder and sexual dysfunction sections of the most

current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association or other relevant publications.

491.0144 The practice of juvenile sexual offender therapy.—

Only a person licensed by this chapter who meets the qualifications set by the board may hold himself or herself out as a juvenile sexual offender therapist, except as provided in s. 490.0145. These qualifications shall be determined by the board. The board shall require training and coursework in the specific areas of juvenile sexual offender behaviors, treatments, and related issues. In establishing these qualifications, the board may refer to the sexual disorder and dysfunction sections of the most current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, Association for the Treatment of Sexual Abusers Practitioner's Handbook, or other relevant publications.

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

Certified Master Social Worker

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

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

Confidentiality and Privilege Communication

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

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

FROM THE LAW: 491.0148 Records.—

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

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

Displaying Licenses & Use of Titles

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

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

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

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

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

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

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

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

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

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

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

Use of the Title of Social Work

Social workers are strictly prohibited from practicing clinical social work without the appropriate licensure discussed in Chapter 491. Promoting one's self as a social worker constitutes a first degree misdemeanor unless the practitioner possesses a bachelor's or master's degree from a CSWE accredited school or other university/college determined by CSWE's Foreign Equivalency Determination Service to be the equivalent of a CSWE accredited program in social work. Exceptions to this rule exist and should be reviewed in the full text of Chapter 491.

V. Wrap Up

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

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