

**Ethics and Laws for the
Helping Professional In Florida**
**(For Psychologists, Mental Health Counselors, Social
Workers, Marriage and Family Therapists)**
(9/10/2010)

George F. Indest III, J.D., M.P.A., LL.M.
Board Certified in Health Law

The Health Law Firm
1101 Douglas Avenue
Altamonte Springs, FL 32714
Telephone: (407) 331-6620
Telefax: (407) 331-3030

Website: www.TheHealthLawFirm.com

Ethics and Laws for the Helping Professional

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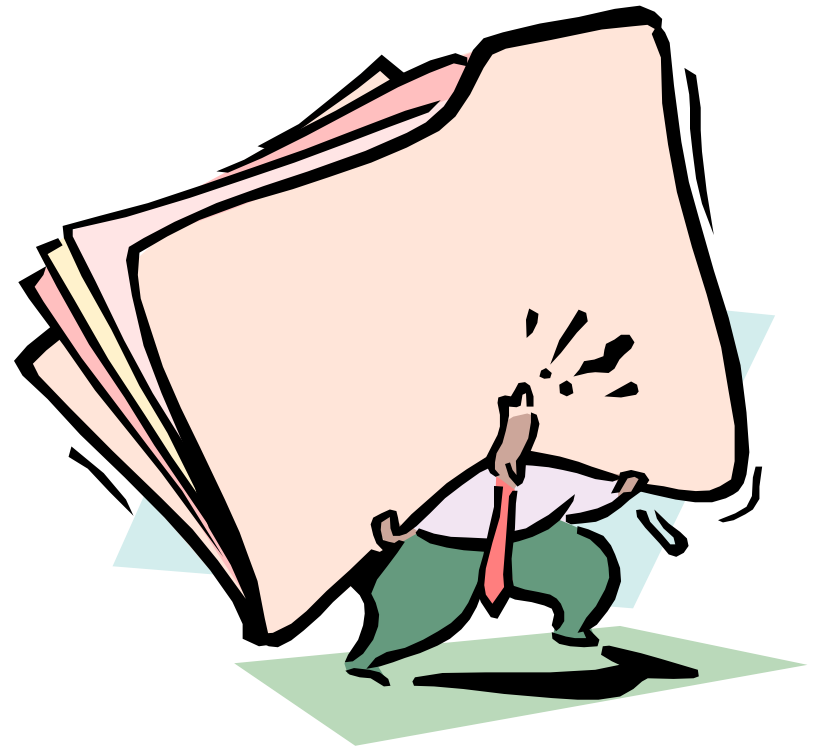
**Ethics and Laws for the
Helping Professional
(For Psychologists, Mental Health Counselors, Social
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**INTRODUCTION
AND
OVERVIEW**

QUESTIONS WILL BE TAKEN



Ethics and Laws for the Helping Professional OUTLINE



Ethics and Laws for the Helping Professional

PART I: OBJECTIVES

- 1. Identify and discuss the basis for the professional's ethical and legal duties to his or her clients/patients and to the public.**
- 2. Identify and discuss the ethical requirements and standards imposed by his or her profession.**

Ethics and Laws for the Helping Professional

PART I: OBJECTIVES

3. Legal requirements for his or her profession as imposed by Florida law and the rules of his or her professional board, including but not limited to Chapters 456, 490 and 491, Florida Statutes, and the rules contained in Chapters 64B4 and 64B19, Florida Administrative Code, as applicable).

Ethics and Laws for the Helping Professional

PART I: OBJECTIVES

- 4. Identify and discuss situations that may produce legal or professional liability for the professional.**
- 5. Identify and discuss situations that may result in disciplinary actions against his or her license and how to avoid them.**

RECENT DEVELOPMENTS IN LAWS AND RULES (NEW)

APPLIES TO ALL LICENSED HEALTH PROFESSIONALS

Florida Senate Bill 1986 was signed into law on 6/15/2009, effective on **July 1, 2009**.

Provides sweeping changes and additions to existing laws relating to discipline and licensure of health professionals with any type of Medicaid/Medicare/federal or state health program fraud, over-payment, etc. Also includes strict provisions on renewals of licenses relating to the same. Includes violations of controlled substances act (Chap. 893, F.S.), and fraudulent practices (Chap. 817, F.S.).

**RECENT DEVELOPMENTS
IN LAWS AND RULES
(pages 4-6)**

NEW FOR PSYCHOLOGISTS

Rule 64B19-18.007, F.A.C.: Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes.

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR PSYCHOLOGISTS

During the April 2010 meeting, the Board of Psychology decided to continue referring to the 1994 version of the APA Guidelines for Child Custody Evaluations in Divorce Proceedings. A copy of the 1994 version of the guidelines, as well as a copy of the Specialty Guidelines for Forensic Psychologists, is available on the Board's website.

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR PSYCHOLOGISTS

Proposed Legislation on Delegation of Professional Responsibilities or Activities by Licensed Psychologists to Paraprofessionals

Proposed addition to Chapter 490, Florida Statutes, regarding "psychological assistants," definitions, supervision, etc.

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR PSYCHOLOGISTS

At the April 2008 Board of Psychology meeting, the Board agreed to publish and emphasize the following abstract from an article published in the American Psychological Association's (APA) journal, *Professional Psychology: Research and Practice*. The article indicates the Board's view on coaching clients to take psychological tests.

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR PSYCHOLOGISTS REPORTING REQUIREMENTS

Sect. 456.063(3), Fla. Stat.: "Licensed health care practitioners **shall report** allegations of sexual misconduct to the department, regardless of the practice setting in which the alleged sexual misconduct occurred."

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR CSWs, LMFTs & LMHCs

The Board has recently decided:

**Pro Bono services will no longer be
accepted for continuing education hours.**

**Every third renewal you must complete a
two hour continuing education course on
domestic violence.**

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

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RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR CSWs, LMFTs & LMHCs

Section 491.016, Florida Statutes

Section 491.016, Florida Statutes, was changed to prohibit anyone from using the title "social worker" unless he or she has a masters degree and meets other requirements after July 1, 2008. There is a "grandfather provision" which provides an exception for a person who, prior to July 1, 2008, used the title "social worker" in his or her employment.

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR ALL HEALTH PROFESSIONALS:

Student Loan Defaults

Section 456.074(4) was implemented which makes anyone defaulting on student loans subject to an emergency suspension of the license 45 days after notice is given by the Department if the provider cannot demonstrate that he or she has agreed upon terms for repayment with the lenders.

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR ALL HEALTH PROFESSIONALS:

Section 456.076, Florida Statutes: Treatment programs for impaired practitioners

Changes made to this Section of Florida statutes have now created as a separate grounds for disciplinary action the termination from a program for impaired practitioners after the health professionals has signed an agreement to participate or failure to comply with such an agreement.

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR PSYCHOLOGISTS & OTHER MENTAL HEALTH PROFESSIONALS

Limited Licenses and Provisional Licenses

New Rules have been adopted concerning the ability to apply for and receive limited licenses and provisional licenses, especially in Medically Underserved Areas (MUAs).

RECENT DEVELOPMENTS IN LAWS AND RULES (pages 4-6)

NEW FOR PSYCHOLOGISTS & OTHER MENTAL HEALTH PROFESSIONALS

Guidelines for Discipline

The Disciplinary Guidelines for both boards have been amended. It appears that these amendments may have, for the most part, increased the possible fines for certain offenses, especially the more serious ones.

Ethics and Laws for the Helping Professional

SOURCES OF THE DUTIES OF THE PROFESSION: CODES OF ETHICS AND STANDARDS

(page 7)

Ethics and Laws for the Helping Professional

HIPPOCRATIC OATH (approx. 400 BCE)

(page 7)

Ethics and Laws for the Helping Professional

NIGHTINGALE PLEDGE

(page 8)

**Ethics and Laws for the
Helping Professional**

**AMERICAN
PSYCHOLOGICAL
ASSOCIATION (APA) ETHICS
CODE
(page 9)**

**Ethics and Laws for the
Helping Professional**

**FLORIDA MENTAL HEALTH
COUNSELORS CODE OF
ETHICS**

(page 14)

**(MODELED AFTER
AMHCA'S)**

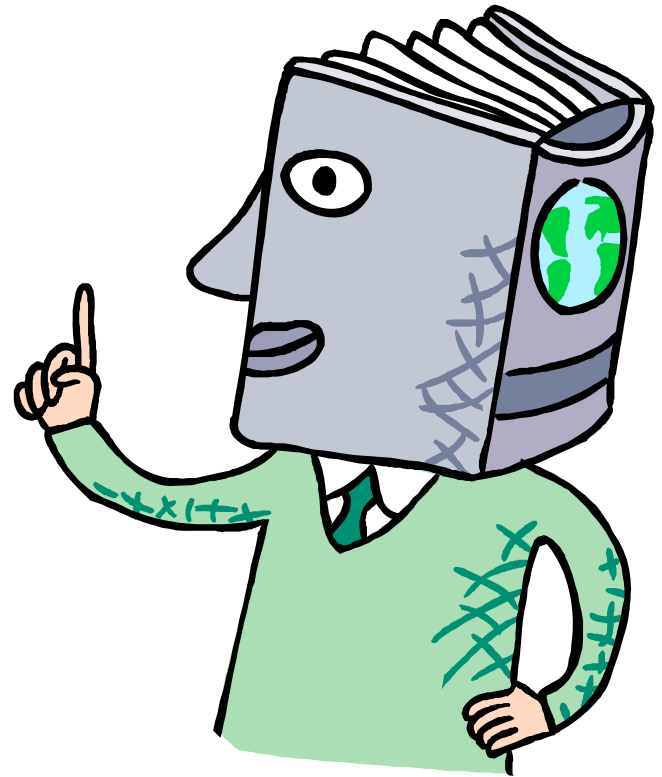
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Helping Professional**

**AMERICAN MENTAL
HEALTH COUNSELORS
ASSOC. (AHCA) CODE OF
ETHICS**

(pages 15-27)

(DISCUSS SECTIONS)

Competence



Remember – Appearances Matter

- Appearances matter when it comes to ethics in general, because trust is a valuable commodity.
- Remember that reputation is a form of capital: a professional needs it in order to operate, especially in a profession like mental health care.



FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 1. Must keep your address current with DOH.**
- 2. Must not offer or accept anything of value (kickbacks) in exchange for referral of clients/patients.**
- 3. Must maintain patient health records properly in accordance with the law.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 4. Must report to each patient, in person, about any adverse incident that results in serious harm to the patient.**
- 5. Must properly maintain or dispose of patient health records when terminating or relocating a practice.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

6. Not participate in any fraudulent advertising or advertising which fails to disclose all relevant information about the services offered, fees for such services, name and professional license of the health professional and other information required by law or by regulations.

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

7. Must not engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 8. Must refrain from any unlicensed practice or aiding and abetting unlicensed practice by anyone.**
- 9. Must refrain from knowingly giving false information in the course of applying for or obtaining a license from the department, or board.**
- 10. Must not default on any student loan guaranteed by a state or federal agency.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 11. Refrain from making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.**
- 12. Refrain from violating any rule adopted by the board or the department.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 13. Not be convicted or found guilty of, or enter a plea of guilty or nolo contendere to, regardless of adjudication, to a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

14. To refrain from having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against.

15. To refrain from liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

16. Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error.

17. Failing to report to the department any person who the licensee knows is in violation of this chapter.

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 18. Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan.**

- 19. Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 20. Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.**

- 21. Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 22. Practicing or offering to practice beyond the scope permitted by law.**
- 23. Failing to comply with the educational course requirements for domestic violence.**
- 24. Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 25. Engaging or attempting to engage in sexual misconduct as defined and prohibited.**

- 26. Failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

27. Being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

28. Testing positive for any drug on any confirmed pre-employment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using the drug.

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

- 29. Violating any provision of this chapter, the applicable practice act, or any rules adopted pursuant thereto.**

- 30. Intentionally submitting a claim, statement, or bill for payment of services that were not rendered.**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

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

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

32. Must be duty to legibly print or type a prescription so that the prescription may be understood by the pharmacist filling the prescription. The prescription must contain:

- a. the name of the prescribing practitioner;**
- b. the name and strength of the drug transcribed;**
- c. the quantity of the drug prescribed, both in textual and numerical formats;**

FLORIDA LAWS:

Chap. 456, Fla. Stat. (pages 28-31)

Applies to All Health Professionals

32. The prescription must contain:

d. the directions for use of the drug;

e. must be dated with the month written in textual format; &

f. must be signed by the transcribing practitioner on the date when issued.

Ethics and Laws for the Helping Professional

**Chapter 490, Florida Statutes:
Additional Requirements for
Psychologists:**

See Page 32

**(Note: These also apply to other
mental health therapists)**

**Additional Requirements for
Psychologists:
(Page 32)**

**Chapter 490, Florida Statutes:
Contains Additional Requirements for
Psychologists:**

**(Note: These also apply to other
mental health therapists)**

Additional Requirements for Psychologists: (Page 32)

1. To refrain from 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. Sect. 490.009, Fla. Stat.
2. To refrain from advertising, practicing, or attempting to practice under a name other than one's own. Sect. 490.009, Fla. Stat.

Additional Requirements for Psychologists: (Page 32)

3. To refrain from maintaining a professional association with any person the licensee knows, or has reason to believe, is in violation of this chapter or of a rule of the Department or the Board. Sect. 490.009, Fla. Stat.

Additional Requirements for Psychologists: (Page 32)

4. To refrain from knowingly aiding, assisting, procuring, or advising any nonlicensed person to hold himself or herself out as licensed under this chapter. Sect. 490.009, Fla. Stat.
5. To refrain from soliciting patients or clients personally, or through an agent, through use of fraud, intimidation, undue influence, or overreaching or vexatious conduct. Sect. 490.009, Fla. Stat.

Additional Requirements for Psychologists: (Page 32)

6. Must make available to a patient or client, upon written request, copies of test results, reports, or documents in possession or under control of the licensee which have been prepared for and paid for by the patient or client. Sect. 490.009, Fla. Stat.

Additional Requirements for Psychologists: (Page 32)

7. Must not perform any treatment or prescribe 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. Sect. 490.009, Fla. Stat.

Additional Requirements for Psychologists: (Page 32)

8. Must not fail to meet the minimum standards of performance in professional activities. Sect. 490.009, Fla. Stat.

9. Must not fail to maintain in confidence a communication made by a patient or client in the context of such services. Sect. 490.009, Fla. Stat.

Additional Requirements for Psychologists: (Page 32)

10. Must refrain from making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients. Sect. 490.009, Fla. Stat.

Ethics and Laws for the Helping Professional

**Chapter 491, Florida Statutes:
Additional Requirements for
Counselors, Etc.**

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Ethics and Laws for the Helping Professional

**Little Known Facts About Florida
DOH Investigations
(Page 34)**

Ethics and Laws for the Helping Professional

**The 30 Biggest Mistakes We See When
Called Upon to Defend a Mental
Health Professional in a DOH
Investigation.**

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Ethics and Laws for the Helping Professional

IMPAIRED PROVIDER PROGRAMS:

The Intervention Project for Nurses (IPN)

**The Professionals Resources Network
(PRN)**

(Page 39)

ANY QUESTIONS???



Ethics and Laws for the Helping Professional

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PART II: RECORD KEEPING REQUIREMENTS

George F. Indest III, J.D., M.P.A., LL.M.

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Ethics and Laws for the Helping Professional

PART II: OBJECTIVES

- 1. Identify and discuss the requirements for record-keeping imposed by law and ethical standards of his or her profession.**
- 2. Identify and discuss the legal requirements for confidentiality of patient/client information imposed by law and ethical standards of his or her profession.**

Ethics and Laws for the Helping Professional

PART II: OBJECTIVES

- 3. Identify and discuss how to respond in situations in which he or she receives subpoenas or requests for documents and information on the patient/client.**
- 4. Identify and discuss the major types of record-keeping errors that are made and how to avoid them.**

Record Keeping Requirements for the Health Professional

SECTION 456.057, FLORIDA STATUTES: PATIENT RECORD REQUIREMENTS

456.057 Ownership and control of patient records; report or copies of records to be furnished.

Record Keeping Requirements for the Health Professional

**(1) . . . "records owner" means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person;
any health care practitioner to whom records are transferred by a previous records owner;
or any health care practitioner's employer, including, but not limited to, group practices. . . . provided the employment contract or agreement between the employer and . . . practitioner designates the employer as the records owner. (page 48)**

Record Keeping Requirements for the Health Professional

(4) . . . Any health care practitioner's employer who is a records owner and any records custodian shall maintain records or documents as provided under the confidentiality and disclosure requirements of this section.

(page 48)

Record Keeping Requirements for the Health Professional

(6) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information.

Record Keeping Requirements for the Health Professional

(6) . . . However, when a patient's psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient's legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records.

Upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist.

The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered. (page 49)

Record Keeping Requirements for the Health Professional

(7)(a) Except as otherwise provided in this section, . . . such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient.

However, such records may be furnished without written authorization under the following circumstances: (page 49)

Record Keeping Requirements for the Health Professional

- 1. To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent.**
- 2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.**

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Record Keeping Requirements for the Health Professional

- 3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.**

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Record Keeping Requirements for the Health Professional

(8) Except in a medical negligence action or administrative proceeding when a health care practitioner or provider is or reasonably expects to be named as a defendant, information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, or if permitted by written authorization from the patient or compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.

(page 49)

Record Keeping Requirements for the Health Professional

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

Record Keeping Requirements for the Health Professional

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

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Record Keeping Requirements for the Health Professional

(12) Records owners are responsible for maintaining a record of all disclosures of information contained in the medical record to a third party, including the purpose of the disclosure request. The record of disclosure may be maintained in the medical record. The third party to whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient's legal representative.

**SEE SAMPLE HIPAA RECORD
OF DISCLOSURE FORM FOR
HEALTH RECORD ON PAGE
123 OF OUTLINE.**

Record Keeping Requirements for the Health Professional

- (15) Whenever a records owner has turned records over to a new records owner, the new records owner shall be responsible for providing a copy of the complete medical record, upon written request, of the patient or the patient's legal representative.**
- (16) Licensees in violation of the provisions of this section shall be disciplined by the appropriate licensing authority.**

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FOR THE RECORD: A VIDEO
CASE STUDY

DO'S AND DON'T'S
OF HEALTH RECORD
DOCUMENTATION
(Pages 56-57)

Record Keeping Requirements for the Health Professional

TOP TEN RISK MANAGEMENT PROBLEMS WITH HEALTH RECORDS:

- 1. There ain't any.**
- 2. Inappropriate wording in medical record entries.**
- 3. Alterations to, additions to or deletions from, after there is some notice of a claim, complaint or suit.**

(page 53)

Record Keeping Requirements for the Health Professional

TOP TEN RISK MANAGEMENT PROBLEMS WITH HEALTH RECORDS:

- 4. No medical record entry made for a significant event or change in patient's condition.**
- 5. References to outside confidential documents (e.g., incident reports, correspondence with insurers or attorneys).**
- 6. Incorrect charting: incorrect entry made, incorrect record, generic charting.**

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Record Keeping Requirements for the Health Professional

TOP TEN RISK MANAGEMENT PROBLEMS WITH HEALTH RECORDS:

- 7. Inclusion of “super-confidential information” in medical records released without specific authority to do so.**
- 8. Informed consent forms and authorizations for release of information with the blanks not filled in, , not completed, not signed, not dated, etc.**

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Record Keeping Requirements for the Health Professional

TOP TEN RISK MANAGEMENT PROBLEMS WITH HEALTH RECORDS:

- 9. Medical records released to improper parties (e.g., spouse, child, parent, Better Business Bureau, T.V. station (Action Reporter)).**
- 10. Inconsistent entries made in different parts of the record.**

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“SUPER-CONFIDENTIAL”
HEALTH RECORDS AND
INFORMATON (Page 54)

ANY QUESTIONS???



Ethics and Laws for the Helping Professional

THE END

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