

CHAPTER 491, FLORIDA STATUTES
CLINICAL, COUNSELING, and PSYCHOTHERAPY SERVICES
(Sections 491.006 – 491.012)
2017

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she:

(a) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(b)1. Holds an active valid license to practice and has actively practiced the profession for which licensure is applied in another state for 3 of the last 5 years immediately preceding licensure.

2. Meets the education requirements of this chapter for the profession for which licensure is applied.

3. Has passed a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure.

4. Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter. The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.

(2) The department shall not issue a license or certificate by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 491.009 shall apply.

History.—ss. 15, 19, ch. 87-252; ss. 7, 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 21, ch. 95-145; s. 12, ch. 95-279; s. 509, ch. 97-103; s. 169, ch. 99-397; s. 32, ch. 2000-242.

491.0065 Requirement for instruction on HIV and AIDS.—The board shall require, as a condition of granting a license under this chapter, that an applicant making initial application for licensure complete an education course acceptable to the board on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon submission of an affidavit showing good cause, be allowed 6 months to complete this requirement. History.—s. 13, ch. 95-279.

491.007 Renewal of license, registration, or certificate.—

(1) The board or department shall prescribe by rule a method for the biennial renewal of licenses or certificates at a fee set by rule, not to exceed \$250.

(2) Each applicant for renewal shall present satisfactory evidence that, in the period since the license or certificate was issued, the applicant has completed continuing education requirements set by rule of the board or department. Not more than 25 classroom hours of continuing education per year shall be required. A certified master social worker is exempt from the continuing education requirements for the first renewal of the certificate.

(3) The board or department shall prescribe by rule a method for the biennial renewal of an intern registration at a fee set by rule, not to exceed \$100.

History.—ss. 15, 19, ch. 87-252; ss. 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 288, ch. 94-119; s. 15, ch. 97-198; s. 207, ch. 97-264; s. 9, ch. 98-130.

491.008 Inactive status; reactivation of licenses; fees.—

(1) Inactive status is the licensure status that results when a licensee has applied to be placed on inactive status and has paid a \$50 fee to the department.

(a) An inactive license may be renewed biennially for \$50 per biennium.

(b) An inactive license may be reactivated by submitting an application to the department, completing the continuing education requirements, complying with any background investigation required, complying with other requirements prescribed by the board, and paying a \$50 reactivation fee plus the current biennial renewal fee at the time of reactivation.

(2) The board may adopt rules relating to inactive licenses and the reactivation of licenses.

History.—ss. 15, 19, ch. 87-252; ss. 8, 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 289, ch. 94-119.

491.0085 Continuing education and laws and rules courses; approval of providers, programs, and courses; proof of completion.—

(1) Continuing education providers, programs, and courses and laws and rules courses and their providers and programs shall be approved by the department or the board.

(2) The department or the board has the authority to set a fee not to exceed \$200 for each applicant who applies for or renews provider status. Such fees shall be deposited into the Medical Quality Assurance Trust Fund.

(3) Proof of completion of the required number of hours of continuing education and completion of the laws and rules course shall be submitted to the department or the board in the manner and time specified by rule and on forms provided by the department or the board.

(4) The department or the board shall adopt rules and guidelines to administer and enforce the provisions of this section.

History.—ss. 15, 19, ch. 87-252; ss. 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 14, ch. 95-279; s. 170, ch. 99-397.

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.

(2) The department, or, in the case of ¹psychologists, the board, may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

History.—ss. 15, 19, ch. 87-252; ss. 9, 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 229, ch. 96-410; s. 1136, ch. 97-103; s. 16, ch. 97-198; s. 208, ch. 97-264; s. 154, ch. 98-166; s. 214, ch. 2000-160; s. 53, ch. 2001-277; s. 28, ch. 2005-240; s. 103, ch. 2008-6.

¹Note.—Psychologists are regulated by the Board of Psychology under chapter 490. Section 490.015 provides for regulation of school psychologists by the department.

491.0111 Sexual misconduct.—Sexual misconduct by any person licensed or certified under this chapter, in the practice of her or his profession, is prohibited. Sexual misconduct shall be defined by rule. History.—ss. 15, 19, ch. 87-252; ss. 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 510, ch. 97-103.

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(1) Any psychotherapist who commits sexual misconduct with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; however, a second or subsequent offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any psychotherapist who violates subsection (1) by means of therapeutic deception commits a felony of the second degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The giving of consent by the client to any such act shall not be a defense to these offenses.

(4) For the purposes of this section:

(a) The term "psychotherapist" means any person licensed pursuant to chapter 458, chapter 459, part I of chapter 464, chapter 490, or chapter 491, or any other person who provides or purports to provide treatment, diagnosis, assessment, evaluation, or counseling of mental or emotional illness, symptom, or condition.

(b) "Therapeutic deception" means a representation to the client that sexual contact by the psychotherapist is consistent with or part of the treatment of the client.

(c) "Sexual misconduct" means 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.

(d) "Client" means a person to whom the services of a psychotherapist are provided.

History.—s. 1, ch. 90-70; s. 13, ch. 91-201; s. 4, ch. 91-429; s. 137, ch. 2000-318.

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 Families 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. History.—ss. 15, 19, ch. 87-252; s. 30, ch. 88-392; ss. 11, 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 118, ch. 92-149; s. 511, ch. 97-103; s. 17, ch. 97-198; s. 209, ch. 97-264; s. 4, ch. 98-158; s. 127, ch. 2001-277511, ch. 97-103; s. 17, ch. 97-198; s. 209, ch. 97-264; s. 4, ch. 98-158; s. 127, ch. 2001-277; s. 274, ch. 2014-19.