Ethics and Laws for the Mental Health Professionals
Part 2
Record Keeping Requirements

Presented by:

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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.

(page 48)

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.

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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.
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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.**

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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.

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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.**

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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.**

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

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