

CHAPTER 64B19, FLORIDA ADMINISTRATIVE CODE
BOARD OF PSYCHOLOGY
(Sections 64B19-16 – 64B19-19)
2017

64B19-16.003 Sexual Misconduct in the Practice of Psychology.

(1) In accordance with the intent of Chapter 490, Florida Statutes, to preserve the health, safety and welfare of the public, sexual misconduct as defined herein is prohibited. The Board finds that the effects of the psychologist-client relationship are powerful and subtle and that clients are influenced consciously and subconsciously by the unequal distribution of power inherent in such relationships. The Board also finds that sexual intimacies with a former client are frequently harmful to the client, and that such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services. Furthermore, the Board finds that the effects of the psychologist-client relationship endure after psychological services cease to be rendered. Therefore, the client shall be presumed incapable of giving valid, informed, free consent to sexual activity involving the psychologist and the assertion of consent by the client shall not constitute a defense against charges of sexual misconduct.

(2) It shall constitute sexual misconduct for a psychologist, who is involved in a psychologist-client relationship, to engage, attempt to engage, or offer to engage the client in sexual intercourse or other sexual behavior. Sexual behavior includes, but is not limited to, kissing, or the touching by either the psychologist or the client of the other's breasts or genitals.

(3) It shall constitute sexual misconduct for a psychologist, who is involved in a psychologist-client relationship, to engage the client in verbal or physical behavior which is sexually arousing or demeaning to the client unless:

(a) Such behavior is for the purpose of treatment of psycho-sexual disorders or dysfunctions; and

(b) Such behavior complies with generally accepted professional standards for psychological treatment of the client's specific psycho-sexual disorders or dysfunctions.

(4) It shall constitute sexual misconduct for a psychologist who is involved in a psychologist-client relationship to use the influence inherent in that relationship to induce the client to engage in sexual conduct with a third party unless:

(a) Such inducement is consistent with the planned psychological treatment of the client's specific psychological, social, or sexual dysfunctions or disorders; and

(b) Treatment is provided in accordance with generally accepted professional standards for psychological treatment.

(5) A psychologist-client relationship exists whenever a psychologist has rendered, or purports to have rendered, psychological services including, but not limited to, psychotherapy, counseling, assessment or treatment to a person. A formal contractual relationship, the scheduling of professional appointments, or payment of a fee for services are not necessary conditions for the existence of a psychologist-client relationship, though each of these may be evidence that such a relationship exists.

(a) The determination of when a person is a client for purposes of this rule is made on a case by case basis with consideration given to the nature, extent, and context of the professional relationship between the psychologist and the person. The fact that a person is not actively receiving treatment or professional services from a psychologist is not determinative of this issue. A person is presumed to remain a client until the psychologist-client relationship is terminated.

(b) The mere passage of time since the client's last visit to the psychologist is not solely determinative of whether or not the psychologist-client relationship has been terminated. Some of the factors considered by the Board in determining whether the psychologist-client relationship has terminated include, but are not limited to, the following:

1. Formal termination procedures;

2. Transfer of the client's case to another psychologist;

3. The length of time that has passed since the client's last visit to the psychologist;

4. The nature and duration of the professional relationship;

5. The extent to which the client has confided personal or private information to the psychologist;

6. The nature of the client's personal history;

7. The degree of emotional dependence that the client has on the psychologist;

8. The circumstances of termination of the professional relationship;

9. The client's current mental status;

10. The likelihood of adverse impact on the client and others; and

11. Any statements or actions by the psychologist during the provision of psychological services suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

(c) Sexual conduct between a psychologist and a former client after termination of the psychologist-client relationship

will constitute a violation of the Psychological Services Act if the sexual contact is a result of the exploitation of trust, knowledge, influence or emotions, derived from the professional relationship.

(d) A client's consent to, initiation of, or participation in sexual behavior or involvement with a psychologist does not change the nature of the conduct nor lift the statutory prohibition.

(e) Upon a finding that a psychologist has committed unprofessional conduct by engaging in sexual misconduct, the Board will impose such discipline as the Board deems necessary to protect the public. The sanctions available to the Board are set forth in Rule 64B19-17.002, F.A.C., and include restriction or limitation of the psychologist's practice, revocation or suspension of the psychologist's license.

64B19-18.005 Consent for Treatment of Minors.

For the purpose of discipline, the Board will not consider it a violation for a psychologist to treat a minor in an emergency situation, such as crisis intervention, without the consent of an adult so long as the psychologist abides by state law governing the emergency treatment of minors. Nor will the Board consider it a violation for a psychologist to treat a minor upon the psychologist's receipt of written permission from any adult who claims to have authority to consent to treatment. This rule, however, may not be used to circumvent other disciplinary action against the psychologist in the substantive provision of treatment to the minor.

64B19-19.002 Definitions.

A "client", or "patient" is that individual who, by virtue of private consultation with the psychologist, has reason to expect that the individual's communication with the psychologist during that private consultation will remain confidential, regardless of who pays for the services of the psychologist.

64B19-19.0025 Standards for Records.

To serve and protect users of psychological services, psychologists' records must meet minimum requirements for chronicling and documenting the services performed by the psychologist, documenting informed consent and recording financial transactions.

(1) Records for chronicling and documenting psychologists' services must include the following: basic identification data such as name, address, telephone number, age and sex; presenting symptoms or requests for services; dates of service and types of services provided. Additionally, as applicable, these records must include: test data (previous and current); history including relevant medical data and medication, especially current; what transpired during the service sessions; significant actions by the psychologist, service user, and service payer; psychologist's indications suggesting possible sensitive matters like threats; progress notes; copies of correspondence related to assessment or services provided; and notes concerning relevant psychologist's conversation with persons significant to the service user.

(2) Written informed consent must be obtained concerning all aspects of services including assessment and therapy.

(3) A provisionally licensed psychologist must include on the informed consent form the fact that the provisional licensee is working under the supervision of a licensed psychologist as required by Section 490.0051, F.S. The informed consent form must identify the supervising psychologist.

(4) Records shall also contain data relating to financial transactions between the psychologist and service user, including fees assessed and collected.

(5) Entries in the records must be made within ten (10) days following each consultation or rendition of service. Entries that are made after the date of service should indicate the date the entries are made, as well as the date of service.

64B19-19.003 Maintenance and Retention of Records.

(1) Licensed psychologists shall maintain psychological records for each service user and shall record information concerning consultations and/or services rendered by the psychologist to the service user within a reasonable time following that consultation or the rendition of that service.

(2) Except as provided in subsection (4), of this rule, the licensed psychologist shall maintain full and total responsibility for and control of all psychological records relating to users of the licensee's psychological services and of the users of the psychological services rendered by any person under the supervision of the licensed psychologist.

(3) Except as provided in subsection (4), of this rule, complete psychological records shall be retained by the licensed psychologist for a minimum of 3 years after:

(a) The completion of planned services, or

(b) The date of last contact with the user, whichever event occurs later in time. Thereafter, either the complete psychological records or a summary of those psychological records shall be retained for an additional 4 years.

(4) A licensed psychologist is not required to retain psychological records if the psychologist's patients were assigned to the psychologist by a business entity which agrees to maintain and retain the confidentiality of the psychological

records consistent with Rules 64B19-19.005 and 64B19-19.006, F.A.C., and subsections (2) and (3), of this rule.

64B19-19.004 Disposition of Records Upon Termination or Relocation of Psychological Practice.

(1) When a licensed psychologist terminates practice or relocates practice and is no longer available to service users in the practice area, the licensed psychologist shall provide notice of such termination or relocation of practice. The licensed psychologist shall cause such notice to be published in the newspaper of greatest circulation in the county from which the licensed psychologist is relocating or, in the case of termination of practice, in each county where the licensed psychologist has practiced. Such notice shall be published weekly for four (4) consecutive weeks. The notice shall contain the date of termination or relocation of practice and an address at which the psychological records of the service users may be obtained by them, their legal representatives, or licensed mental health professionals designated by service users in writing, to receive the service user's records.

(2) The executor, administrator, personal representative or survivor of a deceased licensed psychologist shall ensure the retention of psychological records in existence upon the death of the psychologist for a period of at least two (2) years and two (2) months from the date of the licensed psychologist's death. Within 1 month of the licensed psychologist's death, the executor, administrator, personal representative or survivor of the deceased licensed psychologist shall cause notice to be published in the newspaper of greatest general circulation in each county where the licensed psychologist practiced. Such notice shall be published weekly for four (4) consecutive weeks and shall advise of the licensed psychologist's death. Such notice shall also state the address from which service users, their legal representative, or licensed mental health professionals designated by the service user in writing, may obtain the service user's psychological records. A copy of such notice shall be mailed to the administrative office of the Board of Psychology. At the conclusion of 24 months from the date of the licensed psychologist's death, the executor, administrator, personal representative or survivor shall cause a notice to be published in the newspaper of greatest circulation in each county where the deceased psychologist practiced. Such notice shall advise that the psychological records still in the possession or under the control of the executor, administrator, personal representative or survivor will be destroyed on a date specified which may not be any sooner than 1 month from the last day of the last week of the publication of the notice. Such notice shall also be published once a week for four (4) consecutive weeks. Thereafter, on the date specified in the notice, the executor, administrator, personal representative or survivor shall destroy unclaimed psychological records.

64B19-19.005 Releasing Psychological Records.

(1) Any licensed psychologist who agrees to provide copies of psychological records to a service user, a service user's designee, or a service user's legal representative, shall be accorded a reasonable time, not to exceed thirty (30) days, to make final entries and copy the psychological records, and may condition release of the copies upon payment by the requesting party of the reasonable costs of reproducing the records.

(2) Any licensed psychologist who opts to issue a report rather than provide copies of psychological records to a service user, a service user's designee, or a service user's legal representative, shall issue the report within thirty (30) days of the request, and may charge a reasonable fee for the preparation of the report and may condition the issuance of the report upon payment of the reasonable fee.

(3) The psychologist's notes pertaining to psychological services rendered may be considered raw data as provided by subsection 64B19-18.004(3), F.A.C., at the discretion of the psychologist and therefore can be released only (1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or (2) when the release of the material is otherwise required by law.

64B19-19.006 Confidentiality.

(1) One of the primary obligations of psychologists is to respect the confidentiality of information entrusted to them by service users. Psychologists may disclose that information only with the written consent of the service user. The only exceptions to this general rule occur in those situations when nondisclosure on the part of the psychologist would violate the law. If there are limits to the maintenance of confidentiality, however, the licensed psychologist shall inform the service user of those limitations. For instance, licensed psychologists in hospital, subacute or nursing home settings should inform service users when the service user's clinical records will contain psychological information which may be available to others without the service user's written consent. Similar limitations on confidentiality may present themselves in educational, industrial, military or third-party payment situations, and in each of the circumstances mentioned herein or in each similar circumstance, the licensed psychologist must obtain a written statement from the service user which acknowledges the psychologist's advice in those regards. This rule is particularly applicable to supervisory situations wherein the supervised individual will be sharing confidential information with the supervising psychologist. In that situation, it is incumbent upon the licensed psychologist to secure the written acknowledgement of the service user regarding that breach of confidentiality.

(2) In cases where an evaluation is performed upon a person by a psychologist for use by a third party, the

psychologist must explain to the person being evaluated the limits of confidentiality in that specific situation, document that such information was explained and understood by the person being evaluated, and obtain written informed consent to all aspects of the testing and evaluative procedures.

(3) This rule recognizes that minors and legally incapacitated individuals cannot give informed consent under the law. Psychologists, nonetheless, owe a duty of confidentiality to minor and legally incapacitated service users consistent with the duty imposed by subsection (1). This does not mean that the psychologist may not impart the psychologist's own evaluation, assessment, analysis, diagnosis, or recommendations regarding the minor or legally incapacitated individual to the service user's guardian or to any court of law.

(4) The licensed psychologist shall maintain the confidentiality of all psychological records in the licensed psychologist's possession or under the licensed psychologist's control except as otherwise provided by law or pursuant to written and signed authorization of a service user specifically requesting or authorizing release or disclosure of the service user's psychological records.

(5) The licensed psychologist shall also ensure that no person working for the psychologist, whether as an employee, an independent contractor, or a volunteer violates the confidentiality of the service user.