

**ALL MANDATORY DISCLOSURE FORMS MUST BE
REVISED DUE TO CHANGES IN COLORADO LAW**

Laurence James, J.D., Psy.D. [303-757-0302]
August 1, 2011

This year, the Colorado Legislature made several changes to the mental health licensing statute when they passed the sunset bill, Senate Bill 11-187. The statute was up for review and renewal. This included changes to section 12-43-214, which contains the requirements for the mandatory disclosure form. These requirements are in effect as of July 1, 2011. Attached is a copy of section 12-43-214, with the changes in bold and capital letters. The following are the primary changes, and recommendations for compliance.

I. Verbal Requirement

In subsection (1), the statute previously stated that practitioners "shall provide the following information in writing to each client" The subsection now states that practitioners "shall provide the following information verbally and in writing to each client" As such, it appears that all the information in the mandatory disclosure form must also be provided verbally. There is no specific requirement for documentation. However, the acknowledgment sentence before the client's signature should probably be amended. For example, instead of stating, "I have read the preceding information and understand my rights as a client/patient," that should be changed to:

I have read the preceding information, it has also been provided verbally, and I understand my rights as a client/patient.

II. An Explanation of the Levels of Licensing

The most difficult change is found in subsection (1)(b)(I). According to that subsection the mandatory disclosure form must include:

(b)(I) An explanation of the levels of regulation applicable to mental health professionals under this article and the differences between licensure, registration, and certification, including the educational, experience, and training requirements applicable to the particular level of regulation;

So it appears that practitioners are required to draft a treatise on the different kinds of licenses, certifications and registrations available. The Boards do not have a model disclosure form addressing the new requirements. In an attempt to address this as efficiently as possible, the following is a draft to insert into your disclosure form:

As to the regulatory requirements applicable to mental health professionals: a Licensed Clinical Social Worker, a Licensed Marriage and Family Therapist, and a Licensed Professional Counselor must hold a masters degree in their profession and have two years of post-masters supervision. A Licensed Psychologist must hold a doctorate degree in

psychology and have one year of post-doctoral supervision. A Licensed Social Worker must hold a masters degree in social work. A Psychologist Candidate, a Marriage and Family Therapist Candidate, and a Licensed Professional Counselor Candidate must hold the necessary licensing degree and be in the process of completing the required supervision for licensure. A Certified Addiction Counselor I (CAC I) must be a high school graduate, and complete required training hours and 1000 hours of supervised experience. A CAC II must complete additional required training hours and 2,000 hours of supervised experience. A CAC III must have a bachelors degree in behavioral health, and complete additional required training hours and 2,000 hours of supervised experience. A Licensed Addiction Counselor must have a clinical masters degree and meet the CAC III requirements. A Registered Psychotherapist is registered with the State Board of Registered Psychotherapists, is not licensed or certified, and no degree, training or experience is required.

III. Additional Information Regarding the Treating Practitioner.

In subsection (1)(b)(II), the statute previously stated that practitioners must provide the following information about themselves: "A listing of any degrees, credentials, certifications, and licenses;" The subsection now states that practitioners must provide:

(II) A listing of any degrees, credentials, registrations, and licenses held or obtained by the licensee, registrant, or certificate holder, including the education, experience, and training the licensee, registrant or certificate holder was required to satisfy in order to obtain the degree, credentials, certifications, registrations, or licenses;

IV. No More Grievance Board.

The changes in subsection (1)(c) make it clear that when informing the client as to who regulates the practitioner, the mandatory disclosure form should include the specific board that has regulatory authority over the practitioner:

(c) A statement indicating that the practice of licensed or registered persons in the field of psychotherapy is regulated by the Division, and an address and telephone number for the board that regulates the licensee, registrant, or certificate holder;

As an example:

The practice of licensed or registered persons in the field of psychotherapy is regulated by the Mental Health Section of the Division of Registrations. The Board of Psychologist Examiners can be reached at 1560 Broadway, Suite 1350, Denver, Colorado 80202, (303) 894-7800.

Do not insert the name "Grievance Board." The Grievance Board only has regulatory authority over unlicensed psychotherapists, and has been renamed as the State Board of Registered Psychotherapists.

V. Unlicensed Psychotherapists.

Under the revised statute, unlicensed psychotherapists who have registered on the database are now "Registered Psychotherapists". Subsection (1)(e) requires that a Registered Psychotherapist's mandatory disclosure form include the following:

(e) If the mental health professional is a registered psychotherapist, a statement indicating that a registered psychotherapist is a psychotherapist listed in the State's database and is authorized by law to practice psychotherapy in Colorado but is not licensed by the state and is not required to satisfy any standardized educational or testing requirements to obtain a registration from the state.

For all practitioners, when the name "unlicensed psychotherapist" is used in the mandatory disclosure form, it should be changed to "registered psychotherapist."

VI. Sexual Intimacy

Most current mandatory disclosure forms have a statement about reporting sex with the therapist that came from an original model. There are some minor changes in the new statute, but it is probably time to update that section in your form. That is, directly quoting the subsection should work best:

In a professional relationship, sexual intimacy is never appropriate and should be reported to the board that licenses, registers, or certifies the licensee, registrant or certificate holder.

VII. Change in Confidentiality.

Section 12-43-218 is the confidentiality section. The following subsection has been added:

(6) This section does not apply to covered entities, their business associates, or health oversight agencies, as each is defined in the federal "Health Insurance Portability and Accountability Act of 1996", as amended by the federal "Health Information Technology for Economic and Clinical Health Act", and the respective implementing regulations.

Thus, if your practice is covered by HIPAA, the state confidentiality section no longer applies. The confidentiality of your practice is governed by HIPAA. Though the mandatory disclosure section does not require that this new information to be included, it is probably best to do so. In the past model form it stated: "The information . . . is legally confidential . . . except as provided in section 12-43-218" It would be best to state: ". . . There are exceptions to this confidentiality, some of which are listed in section 12-43-218 and in the Notice of Privacy Rights you were provided"

I have drafted a model mandatory disclosure form for your use. See attached.