



# STATE LAWS AND LEGAL ISSUES

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Hypnotists, Inc.

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## State Laws and Legal Issues Regarding the Practice of Hypnotherapy

### Stay Informed of the Law

As a member of the National Guild of Hypnotists you are entitled to the best information available on how to practice safely and lawfully.

We have created this document to assist you in your practice of hypnotism and revise it each year. You will find information here on what the laws are in specific states that may affect your right to practice hypnotism. You will also find information on how to keep records, deal with issues concerning client confidentiality, required reporting laws, insurance, and other helpful matters.

This document is intended to be read in conjunction with the Code of Ethics and Recommended Standards of the National Guild of Hypnotists. If you have not read that document, be sure to do so. It will explain the Code of Ethics of the Guild (which you must follow) and the Recommended Standards for Practice (which we urge you to follow). The Recommended Standards for Practice sets forth what the Guild feels should be the baseline for a good hypnosis practice. The information presented here is intended to offer you more detail on some of the issues presented in the Recommended Standards, as well as other information.

This document also provides you with the best information we have regarding state laws concerning hypnotism. These laws are constantly changing, so we urge you to keep in contact with the Guild for updates through your regional Chapter organization.

The information presented here is the work of the Rev. C. Scot Giles, D.Min, BCH, a member of the Advisory Board of the National Guild of Hypnotists. While every effort has been made to insure the accuracy of the information contained in this document, the information presented here is given as the opinion of the author, not of the National Guild of Hypnotists. Individuals should always check with their own legal counsel before acting on this, or any other advice.

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**TIPS ON RECORD-KEEPING**

Every hypnotist needs to keep some records on clients. While some argue that keeping records at all places you at risk (if they don't exist, they can't be produced in court to justify a legal action against you), this argument is mistaken. The keeping of basic professional records is regarded by the law as an obligation of practice. Your records are the only thing you will have to defend yourself if you are ever charged with hurting a client, placing another at risk or misrepresenting yourself.

Every hypnotist is free to keep his or her records in whatever format he or she feels is best. However, SOAP notes are an easy format to use to describe your client contacts and we recommend it. SOAP notes are common in most health care environments and having your records in this form will give them a professional appearance.

Using the acronym SOAP to describe the professional encounter with a client creates SOAP notes. When you write SOAP notes it is best to leave no blank lines and to make corrections only by drawing a line through the writing containing the error, so that it can still be read later. These provisions will allow you to show that your SOAP notes were not altered "after the fact," and this could protect you in a court of law if someone claims you have amended your records. Here is how to make SOAP notes:

**Date:** You give the DATE of the encounter with your client.

**S:** You report all SUBJECTIVE information here. Basically, this will be everything the client tells you.

**O:** You report all OBJECTIVE information here. Basically, you use this section to report what induction you did with the client, and any other care you rendered (for example, a book you asked the client to read).

**A:** You use this section to report the ASSESSMENT of the client's situation. A hypnotherapist would use this section to report the suggestions and posthypnotic suggestions given to the client as well as his or her thoughts about any deeper meaning to what the client has said.

**P:** You use this section to record your PLAN for the client's next session. You may revise this plan when you next see the client, but having the plan listed here both reminds you of your thinking and makes it clear that there is a professional process of reflection included as a part of your care of the client.



*The information in this document is intended to extend and amplify the information given in the Code of Ethics and Recommended Standards for Practice of the National Guild of Hypnotists. If you have not read that document, be sure to do so.*



If you wish to know the precise use of terms in the psychological or medical environment, the terms are defined (and given specific code numbers) in two standard reference works. These are the Diagnostic and Statistical Manual of the American Psychiatric Association (currently in the fourth edition and therefore often abbreviated as "DSM-IV") and the International Classifications of Diseases of the World Health Organization (currently in the ninth edition and therefore often abbreviated as "ICD-9." A tenth edition is expected soon). These volumes provide a coding system that allows all human problems to be classified, even sub-clinical difficulties like "caffeine-induced insomnia" or "nervousness." If you are a serious practitioner earning a living as a hypnotist or hypnotherapist, you probably will wish to own these volumes for reference. However, avoid using the terminology in your records.

### KNOW THE CODES

Both DSM-IV and ICD-9 contain codes used to describe routine human problems that are not the focus of a mental or medical disorder. These codes are called "V-Codes." As the conditions described are not medical or psychological disorders (and therefore not officially part of the licensed professions), a hypnotist may safely use them in record keeping. Such codes are useful when corresponding with the members of other professions. The common V-Codes hypnotherapist might employ are listed below.

V61.90	Relational Problem Related to a Mental or Medical Condition
V61.20	Parent-Child Relational Problem
V61.10	Partner Relational Problem
V61.80	Sibling Relational Problem
V62.81	Relational Problem Not Otherwise Specified
V62.82	Bereavement
V62.30	Academic Problem
V62.20	Occupational Problem
V62.89	Religious or Spiritual Problem, or a Phase of Life Problem
V62.40	Acculturation Problem
V68.20	Request for Expert Advice

Both DSM-IV and ICD-9 contain codes that are used for subclinical problems such as smoking (305.10) or simple obesity (278.0). While hypnotists may work with these conditions, there is debate about using the formal codes for record-keeping. Technically, as these disorders are regarded as subclinical, the use of the codes by hypnotherapists is permissible. However, it may be wise to avoid any use of these codes in your records so that no one can ever put you on the defensive by challenging your right to work with conditions listed as disorders in the diagnostic and statistical manuals. A better solution is to use the V-Code for "expert advice" to indicate that the client sought expert training from you in using his or her own hypnotic abilities to cope with the problem indicated in parenthesis. Therefore, you might list smoking cessation hypnosis as "V68.20 (smoking)" and weight management hypnosis as "V68.20 (weight loss)."





## CAN YOU TAKE INSURANCE?

The quick answer to this question is that you probably cannot take insurance as payment for your hypnotism services. Nor should you want to.

Insurance companies exist to earn money for their stockholders. The only way they earn money is to sell policies and not pay claims. Therefore, they are always looking for a legal way to deny a claim against one of their policies.

If you are a member of certain licensed professional groups (for example, a physician or a licensed clinical psychologist), there are state laws which say that insurance companies must pay for your work. However, if you are a member of another profession, insurance companies probably will refuse to pay for your services. They can do this for any reason they wish. They can refuse because hypnotists do not have any sort of state license. Alternatively (as licensed counselors and marriage therapists have recently found) they can refuse even if you are licensed, if your state does not have a mandated provider law which says they have to pay. Many policies contain a specific exclusion for hypnotism in any case, and even if the insurance company does pay, they will typically only pay a part of what they consider "customary and usual charges." However, insurance companies are unregulated in determining what is "customary and usual" and can set that at any figure they wish. Some hypnotherapists have discovered that insurance companies consider \$25 per session to be "customary and usual" and they offer to pay 50% of that. This is why many successful therapists often refuse to work with insurance companies, even if they are mandated providers in their state.

The Guild feels you are better off if you set up your practice to work entirely outside the insurance system. There simply is no pot of gold at the end of the insurance rainbow. To do this, tell your clients that you do not bill insurance companies, and that your understanding is that most insurance companies do not reimburse for hypnotism. Then, collect your fee at the time of service by cash, check or credit card. Give your client a receipt showing the reason for the consultation, and if the client wishes to send it in to his or her insurance company, he or she may do so. However, to insure good will with clients it is always best to remember to caution the client not to expect the insurance policy to pay the claim.

If the client was referred to you by a licensed health care professional and you were told the diagnosis, then you can list that diagnosis on the receipt you provide, along with the name of the referring professional who made it. You can also use the Current Procedural Code for hypnotherapy as a description of the service rendered. The Code is CPT #90880.

However, if you are working independently with a client, use a V-Code (described elsewhere in this booklet) instead of a diagnosis, and simply describe the service you rendered as "hypnotism." Be careful you do not appear to be making a diagnosis. You are not allowed to do so.

As hypnotism is a different form of human service than psychology or medicine, unless you are licensed to practice medicine, psychology or some form of counseling, it is dangerous to use the terminology of those professions in your records. Therefore, avoid words like "depression," "anxiety," "compulsive," and "phobia." Similarly, avoid using the words "psychological," "medical," "clinical" or "counseling." As far as reasonably possible, use other descriptive language instead. As far as possible follow the Guild's Recommended Terminology for hypnotic practice.

**KEEP IT CONFIDENTIAL**

The most common difficulty helping professionals have is understanding the importance of confidentiality and the limitations on it.

Like many persons engaged in helping others, hypnotists typically assure clients that anything said in sessions will be regarded as confidential and will not be disclosed. However, there is a fundamental difference between the kind of confidentiality you can promise as a hypnotherapist and the sort promised by physicians, psychologists and certain other professionals. We can promise confidentiality to a client, but we cannot often promise legal privilege, which is a more powerful sort of confidentiality.

"Basic Confidentiality" means that you do not intend to disclose information shared with you by a client. At most, this promise of confidentiality exists as a civil contract. If you break the confidentiality you have promised, you might be civilly sued for breaking an implied contract with your client. However, you would not be in violation of any law. In addition, if you are placed under oath at a legal proceeding, a judge has the right to order you to break your promise of confidentiality if the judge sees fit.

"Legal Privilege" means that you practice a profession regulated by a law which explicitly says not only that you must keep client confidences, but also that you may not be required to disclose in a court information given to you by a client. If you break confidentiality that is privileged, not only can you be civilly sued, but you have also broken the law and can be punished by the court. Further, except under very narrow circumstances, a judge may not order you to break confidentiality that is legally privileged. The law clearly recognizes privilege regarding information disclosed by a client (or patient) for physicians, lawyers, clergy and psychologists. In some states, privilege also exists for social workers, professional counselors and marriage and family therapists. Registration laws for hypnosis practitioners may create some form of privilege as well. Therefore it is vital that you be familiar with the laws in your state.

In general, if requested by a lawyer or court to disclose any information about a client, you should consult your own lawyer and take the advice you are given.

Imagine that you have been called to testify at a court proceeding. Imagine that the material does not fall under any privileged information law in your state. You have been placed under oath and a lawyer asked you to disclose information a client revealed to you believing that it would be confidential.

The promise of confidentiality you made to your client has no legal standing. The judge can order you to testify. However, if you testify without a fight, your client can civilly sue you for breach of contract. What should you do?

*Answer: You should refuse to testify at first, explaining that you have given your promise that the information would not be disclosed. Then, if the judge orders you to testify, politely agree to do so, but request the judge's order in writing for your records prior to testimony. When the written order is received (or if the judge, on the record, refuses your request for a written order), you may testify. Your client might still bring a civil suit against you, but such a suit would be unlikely to succeed because you clearly attempted to honor your promise to your client. Also, be aware that it is possible to request the judge to hear your testimony "in camera," which means off the record in the judge's chambers so that the judge can make a decision whether or not your testimony is relevant to the trial. If the judge rules that your testimony is not relevant, the judge may excuse you from testifying at all.*

**RELEASE OF INFORMATION**

From time to time the hypnotist may need to discuss a client's care with hypnotism instructors or supervisors, or other professionals. Prior to disclosing confidential information for these purposes it is wise to obtain a signed "Release of Confidential Information" from the client to insure that the client consents to your plan to discuss the client's care with a third party.

There is no standard format for a "Release of Confidential Information." However, it is generally accepted that such releases should be fairly specific and time-limited. These are the formats we suggest:

The One-Way Release (Use this form if all you need to do is to transmit information to some other party. It is especially useful if the client wants you to send information to an insurance company, as it makes clear how much privacy the courts have ruled the client is giving up if the client attempts to use insurance to pay for your services.)

I hereby authorize [your name] to release to [the other professional's name, or the name of the insurance company] the following specific medical, psychological or educational information he or she may have pertaining to me: [List information to be disclosed.]

I state that I have examined the records to be released and approve of this release to the party indicated above. This authorization for the release of confidential information expires ninety (90) days from the date below. I understand that I may revoke this release at any time on written notice to the parties involved, and that information released prior to the receipt of such notice is not a breach of my right to confidentiality.

I understand that by authorizing the release of my records to a third party in this way I lose any right to confidentiality or privilege over my records. I understand that by authorizing the release of my records to a third party in this way I create a circumstance where [your name] might be required to enter testimony in a court of law regarding me. I understand that by authorizing the release of my records to a third party in this way I create a circumstance where [the other professional's name, or the name of the insurance company] may reveal the information contained in my records to whomever they wish. I understand that by authorizing the release of my records to a third party in this way I create a circumstance where the records released may be subpoenaed by interested parties to use as evidence in a court of law.

[print client's name, attach signature and date]

The Two-Way Release (Use this form if you wish to consult with another professional or to acknowledge a referral. The client gives up much less privacy with this release as the information is passing from one confidential relationship to another. Never use this release to authorize sending information to an insurance company).

I hereby authorize [your name] and [the other professional's name] to release to each other any and/or all hypnotic, medical, psychological or educational information they may have pertaining to me.

This authorization for the release of confidential information expires ninety [90] days from the date below. I understand that I may revoke this release at any time on written notice to the parties involved, and that information released prior to the receipt of such notice is not a breach of my right to confidentiality.

[print client's name, attach signature and date]



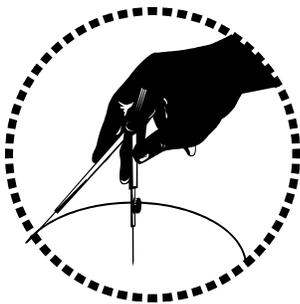
## BE CAREFUL ABOUT TITLES

The National Guild of Hypnotists considers the titles “Hypnotist” and “Hypnotherapist” to be synonyms. There is no difference in rank or training indicated when a member uses one title rather than the other. It is the explicit policy of the National Guild of Hypnotists to consider the traditional title of “Hypnotist” to be an old, proud and distinguished title and it is the title voluntarily used by many Guild officers.

Certified Members of the National Guild of Hypnotists may use either the Certified Hypnotist or Certified Hypnotherapist title in many states. In both cases, the alphabetic abbreviation “CH” may be used after your name if you wish to show your certification as a professional credential.

However, some states do restrict the use of the “Hypnotherapist” title to persons who are also licensed to practice health care. In those states you must use the Certified Hypnotist title and call the services you render “hypnotism” rather than “hypnotherapy” unless you possess a state health care license. It is the recommendation of the Guild that members should use the title “Certified Hypnotist” and represent their services as “nontherapeutic hypnotism” in all states that are listed as “On Caution” in the list on the last page of this booklet. You should also follow this recommendation in many of the regulated states. Be sure you periodically check with the Guild or your Chapter Officers to learn about any changes in the law. It is your responsibility to be aware of the law in your state.

Unless working with a referral from a licensed health care professional, many members find it easier to hold their services out to the public as “nontherapeutic hypnotism” even if there is no strict legal requirement to do so. This avoids legal entanglements with overly zealous governmental agencies, and following the Recommended Terminology of the National Guild of Hypnotists allows them to do everything they need to do under the “nontherapeutic” banner.



Remember, the approved Titles of Practice for National Guild of Hypnotists members are those listed below. If you use any other title while holding yourself out to the public you are placing yourself outside of the Recommended Standards of the National Guild of Hypnotists. In states considered to be “On Caution” the use of the Hypnotist title is recommended rather than the Hypnotherapist title.

- **Certified Hypnotist (or Hypnotherapist), abbreviated as “CH”**
- **Certified Instructor, abbreviated as “CI”**
- **Board Certified Hypnotist (or Hypnotherapist), abbreviated as “BCH”**
- **Fellow of the National Guild of Hypnotists, abbreviated “FNGH”**
- **Diplomate of the National Guild of Hypnotists, abbreviated “DNGH”**

The Guild also awards specialty certifications in specific areas of hypnotic work such as forensic hypnotism, complementary medical hypnotism and pediatric hypnotism. However, having received a specialty certification does not confer a new title of practice. For example, a Certified Hypnotherapist who has received the specialty certification in Complementary Medical Hypnotism would continue to refer to him or herself as a Certified Hypnotherapist. However, he or she could state “Certified in Medical Hypnotism” on his or her resume, stationery or business card.



**The National Guild of  
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## STATE LAWS

Current Information as of July 2002

**In order to benefit from this section, you must be practicing in accordance with the Code of Ethics and Recommended Standards of the National Guild of Hypnotists. Failure to follow Guild Standards may result in a violation of state law, even in a state listed as Safe Practice.**

### **Safe Practice States**

You may freely practice in accordance with the Recommended Standards of the Guild in the following states:

**Alabama, Arkansas, Arizona, Delaware, District of Columbia, Georgia, Idaho, Iowa, Kentucky\*, Louisiana, Maine, Massachusetts, Michigan, Nebraska, New York\*, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Vermont, Virginia, Wisconsin, and Wyoming**

### **States on Caution**

We are aware of one or more laws currently on the books that could be interpreted to prohibit a Guild hypnotist who is not otherwise qualified to practice some other profession, from practicing hypnotism. In many cases this prohibition on hypnotism is indirect—the law was not created to ban hypnotism and our concern is only about how some of the language could be interpreted. It is our opinion that you may practice in these states within Recommended Standards provided you identify yourself as a “Hypnotist,” call the service you render “nontherapeutic hypnotism,” and add to your Client Bill of Rights the following paragraph:

*“The services I render are held out to the public as nontherapeutic hypnotism, defined as the use of hypnosis to inculcate positive thinking and the capacity for self-hypnosis. I do not represent my services as any form of health care or psychotherapy, and despite research to the contrary, by law I may make no health benefit claims for my services.”*

**Alaska, Connecticut\*, Hawaii\*, Maryland, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Texas, and West Virginia.**

### **Regulated States**

There is an explicit law in these states that regulates the practice of hypnotism. In order to practice lawfully in these states you must comply with the law. Contact the Guild office or your Chapter organization for specific details on how to comply. In all cases you must follow the Recommended Standards. In most cases there is more that you have to do.

**California, Colorado, Florida\*, Illinois, Indiana\*, Kansas (stage hypnosis only), Minnesota, New Jersey, New Hampshire\*, New Mexico, Nevada (forensic hypnosis only), Utah, and Washington.**

\* indicates Guild political activity in a state in 2002