The Duty to Record: Ethical, Legal, and Professional Considerations for Arizona Psychologists

Introduction

The American Psychological Association Practice Directorate has provided an excellent online presentation about electronic healthcare records (EHRs) and the basic terminology related to EHRs; the presentation dispels common myths about EHR systems and provides detail about their meaningful use in integrated health care settings.¹

The Division 31 and 42 EHR working group’s² primary goal was to create a series of State specific templates that would work well for psychologists as they transition into the use of EHRs, particularly in integrated health care settings where shared information is clinically essential and specific laws or regulations may dictate at least some of what is included in those records. To achieve this goal, we conducted a review of the laws related to record keeping, and the relevant and recent literature (particularly the last decade) regarding EHRs, including variations across states. Further, we consulted with key psychologists that have been using EHRs on a day to day basis, who have developed experience establishing policies and processes within their own institutions and practices. They have effectively used this developing technology to improve clinical care while protecting patient rights. They have found that the EHR enables collaborating professionals within the integrated health care settings to understand the behavioral risk factors that exist in each case and to be kept informed about the health behavior changes that occur with psychological service interventions (HRSA, 2012).³

In order to digest the laws accurately, we examined the annotated codes and regulations available on Westlaw and Lexis for the 50 states and the District of

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Columbia with reference to several relevant state-by-state surveys retrieved from Lexis and Westlaw. Our research answered the following questions for each jurisdiction: (a) Do record keeping duties created by statutes or administrative rules exist? (b) Have court rulings created a common-law duty or interpreted the statutes or administrative rules? (c) What are the contents of the record that are mandated by law? (d) Are there laws related to the maintenance and security of records? (e) What are the laws related to retention of records? (f) What are the consequences of violating specific duties?

Readers should view the narrative summary of their jurisdiction’s law as a starting point for interpreting how to meet the law within their own jurisdiction as they construct their electronic records. As laws can change, please check the law with your state associations to see if more current interpretations for meeting the record keeping duties. Many state professional associations have ethics committees that can be consulted as part of their benefits. In addition, your association can refer psychologists for individual consultation to lawyers specializing in legal practices focused on mental health practice. The professional liability carriers also provide free legal and professional consultation.

Arizona specific templates for the types and contents of the record are provided based upon a review of your jurisdiction’s law. The digest of your jurisdiction’s law should be read if you intend to use the templates.

**State Specific Template for contents of a record**

Arizona law calls for an intake and evaluation note, and progress notes. The contents of the two templates for these documents comply with the law digested below. We also believe that a termination note will likely reduce exposure to arguments about continued duty of care, and reduces the risk of responsibility in a duty to protect/warn jurisdiction.

Because the documents permit hovering over the underline fields with a cursor

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to select an option (click then select) or permit filling in the shaded text boxes, they cannot be inserted into this document. Please access each of the documents.

Our group also suggests that users of the templates consider how “behavior may be shaped by culture, the groups to which one belongs, and cultural stereotypes.” Whenever “Eurocentric therapeutic and interventions models” may impair the consideration of multicultural factors among the integrated health care team members, we urge that psychologists note the factors within the appropriate template fields. In light of the World Health Organization’s demonstrated commitment to the formulation of a diagnostic system that moves beyond biological causation and integrates the contributions of psychological, cultural, and social factors, and APA’s participation in the development of the *International Classification of Functioning, Disability and Health* (World Health Organization, 2010), our group recommends using ICD-10 whenever diagnoses are being made. The EHR templates permit drop down diagnoses using the ICD-10 functional diagnoses.

**State Specific Template for contents of a Record**

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Because the documents permit hovering over the underline fields with a cursor to select an option or permit filling in the shaded text boxes, they cannot be inserted into this document. Please access each of the documents on this website, separately.

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6 Please use the most recent version of WORD to access the full capabilities of the EHR templates.


8 Id. at p. 45.


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**Statute or Rule**


**Common Law**

In *Hamman v. County of Maricopa* (1989), a duty-to-hospitalize case, the Arizona Supreme Court adopted *Tarasoff* and held that MHPs have a duty to “exercise reasonable care to protect” victims who are not clearly identified by the client, but are nonetheless foreseeable. While neither *Hamman* nor *Little* specifically addresses a duty to warn, their holdings are broad enough to encompass the duty and extend it to all reasonably foreseeable victims. Although the Arizona statute was passed after *Hamman*, in 1995, *Little v. All Phoenix South Community Mental Health Center Inc.* (another duty-to-hospitalize case) found that the statute did not replace the duty created in

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10 ARIZ. REV. STAT. ANN. § 32-2061; ARIZ. ADMIN. CODE § R4-26-106.

11 ARIZ. REV. STAT. ANN. § 12-2291(5)(a) (defining “healthcare provider” as any person licensed pursuant to Title 32 who maintains “medical records”). “Medical records” means all communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for purposes of patient diagnosis or treatment, including medical records that are prepared by a health care provider or by other providers.” ARIZ. REV. STAT. ANN. § 12-2291(6).


14 *Id.*
Hamman because the Arizona Constitution protects common-law damage actions.\textsuperscript{15} In addition, under \textit{Tamsen v. Weber} (1990), MHPs caring for involuntarily committed clients have a broad duty to protect the public.\textsuperscript{16}

Although case law that interprets the record keeping obligations, few affect Arizona psychologists in independent practice.\textsuperscript{17}

\textbf{Contents of the record are mandated by law}

The Arizona Revised Statutes define “adequate records” for psychologists as “records containing, at a minimum sufficient information to identify the client, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.”\textsuperscript{18} The Health Insurance Portability and Accountability Act (HIPAA)\textsuperscript{19} would apply to Arizona psychological records. In addition, Arizona adopted the APA Code of Ethics into its Administrative Code by reference and the following ethical standards regulate the content of records

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\item \textsuperscript{15} \textit{Little v. All Phoenix S. Cnty. Mental Health Ctr.}, 919 P.2d 1368, 1375 (Ariz. Ct. App. 1995), \textit{review denied}.
\item \textsuperscript{17} A number of cases that interpret or refer to the Arizona statutes governing recordkeeping obligations for health care providers in Arizona generally, and focus upon confidentiality issues: Physician-patient privilege does not prevent a health care provider from being required to disclose the name, address, and telephone number of a hospital patient, who, while sharing a room with a fellow patient, witnessed events that preceded the other patient's death; the physician-patient privilege protects a patient's identity when its revelation would inevitably expose information about the patient's medical history, condition, or treatment, and potentially reveal information the patient had divulged in confidence. The patient-as-witness, on the other hand, was no differently situated than any other eyewitness to events that later became the subject of litigation. \textit{Carondelet Health Network v. Miller}, 221 Ariz. 614, 558 Ariz. Adv. Rep. 11, 212 P.3d 952, 2009 Ariz. App. LEXIS 675 (Ct. App. 2009); Special education records are not protected in their entirety by the medical records privilege; however, certain information contained within special education records may be protected by the medical records privilege. As such, a father's attempt to preclude the disclosure of special education records in a medical malpractice case was unsuccessful based on a claim of privilege. \textit{Catrone v. Miles}, 215 Ariz. 446, 507 Ariz. Adv. Rep. 27, 160 P.3d 1204, 2007 Ariz. App. LEXIS 113 (Ct. App. 2007).
\item \textsuperscript{18} ARIZ. REV. STAT. ANN. § 32-2061(2); see also ARIZ. REV. STAT. ANN. § 32-2091(2) (same standard applied to licensed “behavior analysts”).
\end{itemize}
kept by Arizona psychologists:

3.10 Informed Consent

(a) When psychologists …provide assessment, therapy, counseling or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons… (See also Standards 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

(b) For persons who are legally incapable of giving informed consent, psychologists nevertheless (1) provide an appropriate explanation, (2) seek the individual's assent, (3) consider such persons' preferences and best interests, and (4) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare.

(c) When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

(d) Psychologists appropriately document written or oral consent, permission, and assent. (See also Standards 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

A HIPAA notice of privacy practices that delineates the psychologist’s scope of and limitations of confidentiality works in tandem with the disclosure document provided to the patient during the informed consent process specified by Standards 3.10, 9.03, and 10.01. Arizona mandatory reporting duties must be disclosed to meet this standard:

- Duty to report abuse or neglect of a child under age 18;

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20 APA CODE OF ETHICS, supra note 12.

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• Duty to report abuse, neglect or exploitation of vulnerable adult;\textsuperscript{23}
• Duty to report an explicit threat of imminent serious physical harm or death to a clearly identified or identifiable victim or victims, and the patient has the apparent intent and ability to carry out such threat.\textsuperscript{24}

The following standards set forth in the APA Code of Ethics create specific record keeping obligations for Arizona psychologists:

**4.04 Minimizing Intrusions on Privacy\textsuperscript{25}**
(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

Standard 4.04(a) suggests that psychologists focus the documentation in a manner that is very protective of their client’s privacy rights.

**6.06 Accuracy in Reports to Payors and Funding Sources\textsuperscript{26}**
In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges, or payments, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also Standards 4.01, Maintaining Confidentiality; 4.04, Minimizing Intrusions on Privacy; and 4.05, Disclosures.)

**9.01 Bases for Assessments\textsuperscript{27}**
(a) Psychologists base the opinions contained in their recommendations, reports and diagnostic or evaluative statements,…on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

(b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an

\textsuperscript{22} ARIZ. REV. STAT. ANN. § 13-3620(A).
\textsuperscript{23} ARIZ. REV. STAT. ANN. § 46-454(A)-(C).
\textsuperscript{24} ARIZ. REV. STAT. ANN. § 36-517.02.
\textsuperscript{25} APA CODE OF ETHICS, \textit{supra} note 12.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.)

(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

9.02 Use of Assessments

(a) Psychologists administer, adapt, score, interpret or use assessment techniques, interviews, tests or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques…

9.10 Explaining Assessment Results

Regardless of whether the scoring and interpretation are done by psychologists, by employees or assistants or by automated or other outside services, psychologists take reasonable steps to ensure that explanations of results are given to the individual or designated representative…

Standard 6.06 implies that information about the nature of the service provided…, the fees charged, the identity of the provider, findings, and diagnosis should be maintained in the record when necessary for billing purposes. In addition, the requirements of Arizona laws and the standards 9.01, 9.02, and 9.10 suggest that psychologists would use an intake and evaluation note, and progress notes templates.

Maintenance and security of records

Under APA Code of Ethics Standard 4.01 - Maintaining Confidentiality, Arizona “[p]sychologists have a primary obligation and take reasonable precautions to

28 Id.
29 Id.
30 Id.

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6. Record Keeping and Fees

6.01 Documentation of Professional …Maintenance of Records
Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard 4.01, Maintaining Confidentiality.)

6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional…
(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. (See also Standards 4.01, Maintaining Confidentiality, and 6.01, Documentation of Professional and Scientific Work and Maintenance of Records.)

(b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

31 ARIZ. REV. STAT. ANN. § 32-2085(B); see also ARIZ. REV. STAT. ANN. § 32-2091.13(2) (same standard applied to licensed “behavior analysts”).
32 APA CODE OF ETHICS, supra note 12.
33 Id.
(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists’ withdrawal from positions or practice. (See also Standards 3.12, Interruption of Psychological Services, and 10.09, Interruption of Therapy.)

The Arizona Administrative Code sets forth the following standard with respect to the maintenance and security of records by psychologists:

The psychologist shall ensure that scanned and electronic records are securely stored and electronic backup copies are maintained.34

Further, the Arizona Revised statutes require that health care professionals prepare a written protocol regarding the secure storage, transfer, and access to medical records in accordance with the following:

Medical records; protocol; unprofessional conduct; corrective action; exemptions35
A health professional must prepare a written protocol for the secure storage, transfer, and access of the medical records of the health professional's patients. At a minimum the protocol must specify:

1. If the health professional terminates or sells the health professional's practice and the patient's medical records will not remain in the same physical location, the procedure by which the health professional shall notify each patient in a timely manner before the health professional terminates or sells the health professional's practice in order to inform the patient regarding the future location of the patient's medical records and how the patient can access those records.

2. The procedure by which the health professional may dispose of unclaimed medical records after a specified period of time and after the health professional has made good faith efforts to contact the patient.

3. How the health professional shall timely respond to requests from patients for copies of their medical records or to access their medical records.36

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34 ARIZ. ADMIN. CODE § R4-26-106(F)
35 ARIZ. REV. STAT. ANN. § 32-3211.
36 Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
The protocol prescribed in subsection A of this section must comply with the relevant requirements of title 12, chapter 13, article 7.1 regarding medical records.\textsuperscript{37}

A health professional shall indicate compliance with the requirements of this section on the health professional's application for relicensure in a manner prescribed by the health professional's regulatory board.\textsuperscript{38}

A health professional who does not comply with this section commits an act of unprofessional conduct.\textsuperscript{39} In addition to taking disciplinary action against a health professional who does not comply with this section, the health professional's regulatory board may take corrective action regarding the proper storage, transfer and access of the medical records of the health professional's patients. For the purposes of this subsection, corrective action does not include taking possession or management of the medical records.\textsuperscript{40}

This section does not apply to a health professional who is employed by a health care institution as defined in section 36-401 that is responsible for the maintenance of the medical records.\textsuperscript{41}

\textbf{6.03 Withholding Records for Nonpayment}\textsuperscript{42}

Psychologists may not withhold records under their control that are requested and needed for a client's/patient's emergency treatment solely because payment has not been received.

In addition, the Arizona law sets forth the following standard with respect to “client records” of psychologists:\textsuperscript{43}

\begin{itemize}
  \item ARIZ. REV. STAT. ANN. § 32-3211(A).
  \item ARIZ. REV. STAT. ANN. § 32-3211(B).
  \item ARIZ. REV. STAT. ANN. § 32-3211(C).
  \item ARIZ. REV. STAT. ANN. § 32-3211(D).
  \item ARIZ. REV. STAT. ANN. § 32-3211(E).
  \item ARIZ. REV. STAT. ANN. § 32-3211(G).
  \item APA CODE OF ETHICS, supra note 12.
  \item A 'client record' means 'adequate records' as defined in A.R.S. § 32-2061(A)(2), “medical records” as defined in A.R.S. § 12-2291(5), and all records pertaining to assessment, evaluation, consultation, intervention, treatment, or the provision of psychological services in any form or by any medium.” ARIZ. ADMIN. CODE § R4-26-101(9).
\end{itemize}

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A psychologist shall not condition record release on a client's or third party's payment for services.44

Licensed psychologists are also subject to the medical records standards for all healthcare providers set forth in the Arizona Revised Statutes:45

Confidentiality of medical records and payment records46
Unless otherwise provided by law, all medical records and payment records, and the information contained in medical records and payment records, are privileged and confidential. A health care provider may only disclose that part or all of a patient's medical records and payment records as authorized by state or federal law or written authorization signed by the patient or the patient's health care decision maker. This article does not limit the effect of any other federal or state law governing the confidentiality of medical records and payment records.

Release of medical records and payment records to patients and health care decision makers; definition47
…on the written request of a patient or the patient's health care decision maker for access to or copies of the patient's medical records and payment records, the health care provider in possession of the record shall provide access to or copies of the records to the patient or the patient's health care decision maker.

A health care provider may deny a request for access to or copies of medical records or payment records if a health professional determines that either:

1. Access by the patient is reasonably likely to endanger the life or physical safety of the patient or another person.
2. The records make reference to a person other than a health professional and access by the patient or the patient's health care decision maker is reasonably likely to cause substantial harm to that other person.
3. Access by the patient's health care decision maker is reasonably likely to cause substantial harm to the patient or another person.

44 ARIZ. ADMIN. CODE § R4-26-106(A).
45 See Arizona Revised Statutes, Title 12 (Courts and Civil Proceedings), Chapter 13 (Evidence), Article 7.1 (Medical Records).
46 ARIZ. REV. STAT. ANN. § 12-2292.
47 ARIZ. REV. STAT. ANN. § 12-2293.

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4. Access by the patient or the patient's health care decision maker would reveal information obtained under a promise of confidentiality with someone other than a health professional and access would be reasonably likely to reveal the source of the information.\footnote{ARIZ. REV. STAT. ANN. § 12-2293(B).}

A health care provider may deny a request for access to or copies of medical records or payment records if the health care provider determines that either:

1. The information was created or obtained in the course of clinical research and the patient or the patient's health care decision maker agreed to the denial of access when consenting to participate in the research and was informed that the right of access will be reinstated on completion of the research.

2. A health care provider is a correctional institution or is acting under the direction of a correctional institution and access by a patient who is an inmate in the correctional institution would jeopardize the health, safety, security, custody or rehabilitation of the patient or other inmates or the safety of any officer, employee or other person at the correctional institution or of a person who is responsible for transporting the inmate.

If the health care provider denies a request for access to or copies of the medical records or payment records, the health care provider must note this determination in the patient's records and provide to the patient or the patient's health care decision maker a written explanation of the reason for the denial of access. The health care provider must release the medical records or payment records information for which there is not a basis to deny access...

**Release of medical records and payment records to third parties**\footnote{ARIZ. REV. STAT. ANN. § 12-2294.}

A health care provider shall disclose medical records or payment records, or the information contained in medical records or payment records, without the patient's written authorization as otherwise required by law or when ordered by a court or tribunal of competent jurisdiction.

…A health care provider may disclose medical records or payment records, or the information contained in medical records or payment records, pursuant to
written authorization signed by the patient or the patient's health care decision maker.

A health care provider may disclose medical records or payment records or the information contained in medical records or payment records … without the written authorization of the patient or the patient's health care decision maker as otherwise authorized by state or federal law, including the Health Insurance Portability and Accountability Act privacy standards (45 Code of Federal Regulations part 160 and part 164, subpart E), or as follows:

1. To health care providers who are currently providing health care to the patient for the purpose of diagnosis or treatment of the patient.

2. To health care providers who have previously provided treatment to the patient, to the extent that the records pertain to the provided treatment.

3. To ambulance attendants as defined in section 36-2201 for the purpose of providing care to or transferring the patient whose records are requested.

4. To a private agency that accredits health care providers and with whom the health care provider has an agreement requiring the agency to protect the confidentiality of patient information.

5. To a health profession regulatory board as defined in section 32-3201.

6. To health care providers for the purpose of conducting utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

7. To a person or entity that provides services to the patient's health care providers or clinical laboratories and with whom the health care provider or clinical laboratory has an agreement requiring the person or entity to protect the confidentiality of patient information and as required by the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 164, subpart E.

8. To the legal representative of a health care provider in possession of the medical records or payment records for the purpose of securing legal advice.

9. To the patient's third party payor or the payor's contractor.

10. To the industrial commission of Arizona or parties to an industrial commission claim pursuant to title 23, chapter 6.

A health care provider may disclose a deceased patient's medical records or payment records or the information contained in medical records or
payment records to the patient's health care decision maker at the time of the patient's death. A health care provider also may disclose a deceased patient's medical records or payment records or the information contained in medical records or payment records to the personal representative or administrator of the estate of a deceased patient, or if a personal representative or administrator has not been appointed, to the following persons in the following order of priority, unless the deceased patient during the deceased patient's lifetime or a person in a higher order of priority has notified the health care provider in writing that the deceased patient opposed the release of the medical records or payment records:

1. The deceased patient's spouse, unless the patient and the patient's spouse were legally separated at the time of the patient's death.
2. The acting trustee of a trust created by the deceased patient either alone or with the deceased patient's spouse if the trust was a revocable inter vivos trust during the deceased patient's lifetime and the deceased patient was a beneficiary of the trust during the deceased patient's lifetime.
3. An adult child of the deceased patient.
4. A parent of the deceased patient.
5. An adult brother or sister of the deceased patient.
6. A guardian or conservator of the deceased patient at the time of the patient's death.

A person who receives medical records or payment records pursuant to this section shall not disclose those records without the written authorization of the patient or the patient's health care decision maker, unless otherwise authorized by law.

If a health care provider releases a patient's medical records or payment records to a contractor for the purpose of duplicating or disclosing the records on behalf of the health care provider, the contractor shall not disclose any part or all of a patient's medical records or payment records in its custody except as provided in this article. After duplicating or disclosing a patient's medical records or payment records on behalf of a health care provider, a contractor must return the records to the health care provider who released the medical records or payment records to the contractor.
Release of medical records or payment records to third parties pursuant to subpoena

A subpoena seeking medical records or payment records shall be served on the health care provider and any party to the proceedings at least ten days before the production date on the subpoena.

...A subpoena that seeks medical records or payments records must meet one of the following requirements:

1. The subpoena is accompanied by a written authorization signed by the patient or the patient's health care decision maker.
2. The subpoena is accompanied by a court or tribunal order that requires the release of the records to the party seeking the records or that meets the requirements for a qualified protective order under the health insurance portability and accountability act privacy standards (42 Code of Federal Regulations section 164.512(e)).
3. The subpoena is a grand jury subpoena issued in a criminal investigation.
4. The subpoena is issued by a health profession regulatory board as defined in section 32-3201.
5. The health care provider is required by another law to release the records to the party seeking the records.

...If a subpoena does not meet one of [these] requirements..., a health care provider shall not produce the medical records or payment records to the party seeking the records, but may either file the records under seal pursuant to subsection D of this section, object to production under subsection E of this section or file a motion to quash or modify the subpoena under rule 45 of the Arizona rules of civil procedure.

...It is sufficient compliance with a subpoena issued in a court or tribunal proceeding if a health care provider delivers the medical records or payment records under seal as follows:

1. The health care provider may deliver by certified mail or in person a copy of all the records described in the subpoena by the production date to the clerk of the court or tribunal or if there is no clerk then to the court or tribunal, together with the affidavit described in paragraph 4 of this subsection.

50 ARIZ. REV. STAT. ANN. § 12-2294.01.
2. The health care provider shall separately enclose and seal a copy of the records in an inner envelope or wrapper, with the title and number of the action, name of the health care provider and date of the subpoena clearly inscribed on the copy of the records. The health care provider shall enclose the sealed envelope or wrapper in an outer envelope or wrapper that is sealed and directed to the clerk of the court or tribunal or if there is no clerk then to the court or tribunal.

3. The copy of the records shall remain sealed and shall be opened only on order of the court or tribunal conducting the proceeding.

4. The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:
   (a) That the affiant is the duly authorized custodian of the records and has authority to certify the records.
   (b) That the copy is a true complete copy of the records described in the subpoena.
   (c) If applicable, that the health care provider is subject to the confidentiality requirements in 42 United States Code sections 290dd-3 and 290ee-3 and applicable regulations and that those confidentiality requirements may apply to the requested records. The affidavit shall request that the court make a determination, if required under applicable federal law and regulations, as to the confidentiality of the records submitted.
   (d) If applicable, that the health care provider has none of the records described or only part of the records described in the subpoena.

5. The copy of the records is admissible in evidence as provided under rule 902(11), Arizona rules of evidence. The affidavit is admissible as evidence of the matters stated in the affidavit and the matters stated are presumed true. If more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established by this paragraph is a presumption affecting the burden of producing evidence.

...If a subpoena does not meet one of the requirements of subsection B of this section or if grounds for objection exist under rule 45 of the Arizona rules of civil procedure, a health care provider may file with the court or tribunal an objection to the inspection or copying of any or all of the records as follows:

1. On filing an objection, the health care provider shall send a copy of the objection to the patient at the patient's last known address, to the patient's attorney if known and to the party seeking the records, unless after reasonable
inquiry the health care provider cannot determine the last known address of the patient.

2. On filing the objection, the health care provider has no further obligation to assert a state or federal privilege pertaining to the records or to appear or respond to a motion to compel production of records, and may produce the records if ordered by a court or tribunal. If an objection is filed, the patient or the patient’s attorney is responsible for asserting or waiving any state or federal privilege that pertains to the records.

3. If an objection is filed, the party seeking production may request an order compelling production of the records. If the court or tribunal issues an order compelling production, a copy of the order shall be provided to the health care provider. On receipt of the order, the health care provider shall produce the records.

4. If applicable, an objection shall state that the health care provider is subject to the confidentiality requirements in 42 United States Code sections 290dd-3 and 290ee-3, shall state that the records may be subject to those confidentiality requirements and shall request that the court make a determination, if required under applicable federal law and regulations, on whether the submitted records are subject to discovery.

…If a party seeking medical records or payment records wishes to examine the original records maintained by a health care provider, the health care provider may permit the party to examine the original records if the subpoena meets one of the requirements of subsection B of this section. The party seeking the records also may petition a court or tribunal for an order directing the health care provider to allow the party to examine the original records or to file the original records under seal with the court or tribunal under subsection D of this section.

**Charges**

Except as otherwise provided by law, a health care provider or contractor may charge a person who requests copies of medical records or payment records a reasonable fee for the production of the records. Except as necessary for continuity of care, a health care provider or contractor may require the payment of any fees in advance.

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51. **ARIZ. REV. STAT. ANN. § 12-2295.**

Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
A health care provider or contractor shall not charge for the pertinent information contained in medical records provided to:

1. Another health care provider for the purpose of providing continuing care to the patient to whom the medical record pertains.
2. The patient to whom the medical record pertains for the demonstrated purpose of obtaining health care.
3. The health care decision maker of the patient to whom the medical record pertains for the demonstrated purpose of obtaining health care for the patient.
4. The Arizona medical board, the board of osteopathic examiners in medicine and surgery or an officer of the department of health services or the local health department requesting records pursuant to section 36-662.

Retention of records
The Arizona Administrative Code sets forth the following standards with respect to the retention of records by psychologists:

A psychologist shall retain all client records under the psychologist's control, including records of a client who died, for a minimum of six years from the date of the last client activity, except copies of audio or video tapes created primarily for training or supervisory purposes. If a client is a minor, the psychologist shall retain all client records for a minimum of three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.52

A psychologist who has been notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to that investigation or case until the psychologist has received written notification that the investigation is completed or that the case is closed.53

A psychologist may retain legible copies of scanned or electronic records rather than the original hard copies of the records.54

52 ARIZ. ADMIN. CODE § R4-26-106(C).
53 ARIZ. ADMIN. CODE § R4-26-106(D).
54 ARIZ. ADMIN. CODE § R4-26-106(F).
In addition, licensed psychologists are subject to the standards for retention of medical records by all healthcare providers set forth in the Arizona Revised Statutes:

A. Unless otherwise required by statute or by federal law, a health care provider shall retain the original or copies of a patient’s medical records as follows:
   1. If the patient is an adult, for at least six years after the last date the adult patient received medical or health care services from that provider.
   2. If the patient is a child, either for at least three years after the child’s eighteenth birthday or for at least six years after the last date the child received medical or health care services from that provider, whichever date occurs later.
   3. Source data may be maintained separately from the medical record and must be retained for six years from the date of collection of the source data.

B. When a health care provider retires or sells the provider's practice the provider shall take reasonable measures to ensure that the provider's records are retained pursuant to this section.

C. A person who is licensed pursuant to title 32 as an employee of a health care provider is not responsible for storing or retaining medical records but shall compile and record the records in the customary manner.55

Violations of the specific duty

The Arizona law provides qualified immunity to health care providers who act in “good faith” in attempting to comply with the laws governing the production of medical records:

A health care provider, …that acts in good faith under this article is not liable for damages in any civil action for the disclosure of medical records, payment records or clinical laboratory results or information contained in medical records, payment records or clinical laboratory results that is made pursuant to this article or as otherwise provided by law. The health care provider,…is

55 ARIZ. REV. STAT. ANN. § 12-2297.
presumed to have acted in good faith. The presumption may be rebutted by clear and convincing evidence.\textsuperscript{56}

Under the Arizona Revised Statutes the following actions by psychologists constitute “unprofessional conduct”:

Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client.\textsuperscript{57}

Failing to make client records in the psychologist's possession promptly available to another psychologist licensed pursuant to this chapter on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1 [Re: Medical Records].\textsuperscript{58}

Failing to make available to a client or to the client's designated representative, after a written request, a copy of the client's record, including raw test data, psychometric testing materials and other information as provided by law.\textsuperscript{59}

Violating an ethical standard adopted by the board.\textsuperscript{60}

\textsuperscript{56} ARIZ. REV. STAT. ANN. § 32-2061(2); see also ARIZ. REV. STAT. ANN. § 32-2091(2) (same standard applied to licensed “behavior analysts”).

\textsuperscript{57} ARIZ. REV. STAT. ANN. § 32-2061(13)(h) (emphasis added); see also ARIZ. REV. STAT. ANN. § 32-2091(12)(h) (same standard applied to “Behavior Analysts”); Psychologists are viewed as “health professionals” and various laws related to maintenance and security as discussed below also apply. It psychologists do not comply with those laws they also would commit acts of unprofessional conduct (ARIZ. REV. STAT. ANN. § 32-3211(D)).

\textsuperscript{58} ARIZ. REV. STAT. ANN. § 32-2061(13)(s); see also ARIZ. REV. STAT. ANN. § 32-2091(12)(s) (same standard applied to licensed “behavior analysts”).

\textsuperscript{59} ARIZ. REV. STAT. ANN. § 32-2061(13)(cc); ARIZ. REV. STAT. ANN. § 32-2091(12)(cc) (same standard applied to licensed “behavior analysts”); ARIZ. ADMIN. CODE § R4-26-106 B narrows the Statute: “A psychologist shall release, with a client's written consent, the client's raw test data or psychometric testing materials to another licensed psychologist. Without a client's consent, a psychologist shall release a client’s raw test data or psychometric testing materials only to the extent required by federal or Arizona law or court order compelling production.”

\textsuperscript{60} ARIZ. REV. STAT. ANN. § 32-2061(13)(dd); ARIZ. REV. STAT. ANN. § 32-2091(12)(dd) (same standard applied to licensed “behavior analysts”).

Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
Arizona has adopted the APA Code of Ethics into its Administrative Code by reference\textsuperscript{61} and the standards discussed, including HIPAA infractions, can all lead to disciplinary actions being prosecuted.

\textsuperscript{61} \textbf{ARIZ. ADMIN. CODE} § R4-26-301.