The Duty to Record: Ethical, Legal, and Professional Considerations for California 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 polices 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.⁴ 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.

California 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**

California 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 believe that a termination note will likely reduce exposure to arguments about continued duty of care and reduce the risk of responsibility in a duty to protect/warn jurisdiction and recommend that psychologists use this template.⁵

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

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⁴ 50 State Surveys, Legislation & Regulations, Psychologists & Mental Health Facilities (Lexis March 2012); Lexis Nexis 50 State Comparative Legislation / Regulations, Medical Records (Lexis June 2011); 50 State Statutory Surveys: Healthcare Records and Recordkeeping (Thomson Reuters/ West October 2011).

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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.

**Statute or Rule**

California has a number of state laws governing record keeping by psychologists and by health care providers generally. In addition, California has adopted the standards of the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct (2003) (“APA Code of Ethics”).

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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.


10 CAL. BUS. & PROF. CODE § 2936 (“The board shall establish as its standards of ethical conduct relating to the practice of psychology, the "Ethical Principles and Code of Conduct" published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.”). Copies of the APA Code of Ethics are available from [here](http://www.apa.org/about/governance/council/08aug-erminutes.aspx)
Common Law

There are a number of cases that interpret or refer to California statutes governing recordkeeping obligations for California psychologists:

Relevant Annotations to California Business and Professions Code § 2936 (adopting the APA Code of Ethics).

- The provisions of the Psychology Licensing Law set forth in B & P C §§ 2900 et seq. are not unconstitutionally vague as to providing ascertainable standards for enactment of rules by the Psychology Examining Committee. Administrative agencies are better qualified to determine and set the standards of professional conduct in the specific area of their expertise.11

Relevant Annotations to California Health and Safety Code §§ 123100, et. seq. (related to patient access to health records).

- (Unpublished) Plaintiff on his claim against the United States under the Federal Tort Claims Act for failure to maintain and produce medical records and failure to answer questions regarding treatment at a Veterans Administration facility, has not shown that the law establishes individual tort liability for emotional distress damages related to failure to produce medical records or failure to answer patient questions.12
- A health care practitioner may not refuse inspection and copying or condition access to patient records. Furthermore, the health care provider may not avoid the mandate of court process by not preparing such a record when the raw data is available to do so. The health care provider must compile and provide the itemized statement in response to a proper discovery request. The burden is upon the health care provider to establish that the compilation would be unduly burdensome or oppressive. The provider had refused to comply with the insured's request and subsequent deposition subpoena for these documents.


unless the insured signed a lien for the provider's fees. The provider had no basis for refusing the insured or his attorney access to those records to which the insured had a statutory right. The Legislature has made clear its intent that every person should have a right of access to complete medical information (H & S C former §§ 1795, 1795.12, now §§ 123100, 123110; Ev C § 1158). The discovery statutes also authorize punishment for refusal to produce documents requested in a subpoena (CCP § 2020). 13

- In a juvenile proceeding, the prosecutors were properly recused because they continued to oppose disclosure of the victim's medical and psychiatric records, even after her father consented. The apparent attempt to represent the victim's privacy interest exceeded the exercise of balanced discretion. The prosecutors' constantly shifting grounds of opposition included a motion under H & S C § 123115.14

Relevant Annotations to California Civil Code §§ 56, et. seq. (regarding the California Confidentiality of Medical Information Act):

- Standards for disclosure of an employee's alcoholism to the employer were governed by the Confidentiality of Medical Information Act, CC §§ 56 et seq., which superseded the general privilege afforded under CC § 47(c). An employee had sought a leave from work due to a disabling stress-related condition. The psychiatrist's disclosure about the problems being related to alcoholism, without the consent of the employee, gave rise to a claim under the Confidentiality of Medical Information Act, CC §§ 56 et seq., and the Privacy Clause of Cal Const Art I § 1.15

- It is sound public policy to construe CC § 56.10(c)(14) in a way that will not impede voluntary reports of suspected misconduct or unfitness by police, reports whose importance is already recognized and immunized under CC § 47(b)(3). Subdivision 56.10(c)(14) serves as the residuary clause in § 56.10 and legitimizes a myriad of situations the Legislature may not have cared to spell out by establishing


the principle of permissive disclosure when specifically authorized by law.\textsuperscript{16}

- Plaintiffs, through their attorneys, received notice pursuant to CCP § 1985.3, that defendant's records of treatment of plaintiffs were being sought pursuant to a subpoena in the wrongful death action and of what they could do to protect against unwanted disclosure. Plaintiffs' failure to take any action whatsoever to claim the psychotherapist-patient privilege constituted a waiver of the privilege within the meaning of Ev C § 912(a). Such waiver left defendant in the position of being compelled under the provisions of CC § 56.10(b)(3), to disclose the medical records.\textsuperscript{17}

- The trial court did not err in sustaining defendants' demurrer to a medical malpractice plaintiff's complaint against a physician, in which plaintiff alleged that the physician's disclosure of plaintiff's medical information to an insurer during the course of the malpractice litigation violated the Confidentiality of Medical Information Act (CC §§ 56 et seq.). Under the act, a health care provider must hold confidential a patient's medical information unless the information falls within a statutory exception. The ex parte contact between the physician and the insurer was contemplated under the exception in CC § 56.10(c)(4), which allows a health care provider to disclose medical information without patient authorization to parties that insure or are responsible for defending professional liability. The physician was an associate of the malpractice defendant and was at risk of malpractice exposure, and the insurer insured both physicians. Thus, the physician was entitled to discuss plaintiff's medical condition with his insurer.\textsuperscript{18}

- In a patient's suit against her doctor for allegedly disclosing personal and confidential medical information about the patient to the patient's employer, the trial court properly granted the doctor a directed verdict as the information was nonspecific, CC § 56.16 permitted the doctor to discuss nonspecific information about the patient without her consent, and the patient's oral request that the doctor refrain from conveying any information to her employer did not comply with the statutory prerequisite to nondisclosure.\textsuperscript{19}


A trial court properly found that the health plan's practices of transmitting to its attorneys medical information concerning plan patients who were either making or contemplating making medical malpractice claims against the plan were not unlawful and were, in fact, authorized by California's Confidentiality of Medical Information Act, CC §§ 56 et seq. Once a patient signals an intention to bring a malpractice claim against a health care provider, the patient cannot reasonably expect to keep the details of the professional relationship with the health care provider a confidential. 20

Former Crim. Code § 56.11(c)(2), impliedly required a minor to authorize a release of medical information where the minor lawfully consented to the medical services. Nevertheless, the Child Abuse and Neglect Reporting Act (Pen C §§ 11164 et seq.) unquestionably calls for disclosure, pursuant to Pen C § 11166(a), where there is a reasonable suspicion child abuse has occurred. Thus, to the extent there may be a conflict between Pen C § 11166, and CC § 56.11(c)(2), Pen C § 11166, must prevail on the ground that it is the more specific statute, prescribing the disclosure of information only where there is a reasonable suspicion child abuse has occurred. 21

Contents of the record are mandated by law

California has adopted the APA Code of Ethics22 and the following ethical standards create specific record keeping obligations for California psychologists. In addition, some aspects of the Health Insurance Portability and Accountability Act (HIPPA)23 would apply to California psychological records when State law does not exist:

22 APA CODE OF ETHICS, supra note 10.

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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.)

Licensed psychologists are also subject to the provisions of the California Confidentiality of Medical Information Act (CCMIA) in which disclosures of patient

24 APA CODE OF ETHICS, supra note 10 § 3.10.
25 CAL. CIV. CODE § 56, et. seq. Under the CCMIA, a “provider of health care" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code . . . and any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. CAL. CIV. CODE §§ 56.05(j). Psychologists are licensed pursuant to Chapter 6.6. of Division 2 of the Business and Professions Code. See CAL. BUS. & PROF. CODE §§ 2900, et. seq. Under the CCMIA, “"Medical information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment. CAL. CIV. CODE: §§ 56.05(g). "Individually identifiable" means that the medical
information must occur and the patient should be informed in advance of the limitations of the record being protected:

**Authorization for disclosure; When disclosure compelled; When disclosure allowed; Prohibitions**

(a) No provider of health care…shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care …shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.
(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.
(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena *duces tecum*, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.
(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.
(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena *duces tecum* issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.
(6) By a search warrant lawfully issued to a governmental law enforcement agency.
(7) By the patient or the patient's representative pursuant to Chapter 1

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(commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner’s office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

A HIPPA 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 APA Standards 3.10, 9.03, and 10.01. California psychologists should provide specific disclosures about the mandatory reporting duties that apply:

- Duty to report abuse or neglect of a child under age 18;
- Duty to report the abuse, neglect or exploitation of elder or dependent person;
- Duty to warn and protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency when a client makes a serious threat of physical violence against a reasonably identifiable victim.

4.04 Minimizing Intrusions on Privacy

(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.


28 CAL. PENAL CODE § 11164-11174.3.

29 CAL. WELF. & INST. CODE § 15630(a) – (f).

30 CAL. CIV. CODE § 43.92.

31 APA CODE OF ETHICS, supra note 10 § 4.04.
Standard 4.04(a) suggests that psychologists focus the documentation in a manner that is very protective of their client’s privacy rights.

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

**6.06 Accuracy in Reports to Payors and Funding Sources**

In their reports to payors for services …psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided …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**

(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 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.

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32 APA CODE OF ETHICS, supra note 10 § 6.06.
33 APA CODE OF ETHICS, supra note 10 § 9.01.
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…

In addition, the California Health and Safety Code sets forth a variety of mandates regarding the content of records that may apply to licensed psychologists working in certain types of “health facilities” or “primary care clinics.”

Standard 6.06 implies that information about the nature of the service provided…, 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 standards 9.01, 9.02, and 9.10 suggest that psychologists in California would use an intake and evaluation note, progress notes, and the termination note templates.

Maintenance and Security of Records

The California Confidentiality of Medical Information Act sets forth the

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34 APA CODE OF ETHICS, supra note 10 § 9.02.
35 APA CODE OF ETHICS, supra note 10 § 9.10.
36 This provision is not included in the informational pamphlet available from the Board’s website. State of California Dep’t of Consumer Affairs, Laws and Regulations Relating to the Practice of Psychology (2012), http://www.psychboard.ca.gov/lawsregs/2012lawsregs.pdf (last accessed Sept. 12, 2012): See, CAL. HEALTH & SAFETY CODE § 123147--Patient's principal spoken language to be included on health records. “As used in this chapter, "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types: . . . .” CAL. HEALTH & SAFETY CODE § 1250. “Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.” CAL. HEALTH & SAFETY CODE § 1204. “Only the following defined classes of primary care clinics shall be eligible for licensure: . . . ‘community clinic’ . . . ‘free clinic’ . . .
following standard regarding security and maintenance of records:

**Preservation of confidentiality of records; Patient’s right to access or receive copy of electronic medical records**

(a) Every provider of health care ... who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical information shall do so in a manner that preserves the confidentiality of the information contained therein. Any provider of health care ... who negligently creates, maintains, preserves, stores, abandons, destroys, or disposes of medical information shall be subject to the remedies and penalties provided under subdivisions (b) and (c) of Section 56.36.

(b) (1) An electronic health record system or electronic medical record system shall do the following:

   (A) Protect and preserve the integrity of electronic medical information.

   (B) Automatically record and preserve any change or deletion of any electronically stored medical information. The record of any change or deletion shall include the identity of the person who accessed and changed the medical information, the date and time the medical information was accessed, and the change that was made to the medical information.

   (2) A patient’s right to access or receive a copy of his or her electronic medical records upon request shall be consistent with applicable state and federal laws governing patient access to, and the use and disclosures of, medical information...

**Requirements for Providers of Health Services Utilizing Electronic Recordkeeping Systems Only**

(a) Providers of health services ... that utilize electronic recordkeeping systems only, shall comply with the additional requirements of this section. These additional requirements do not apply to patient records if hard copy versions of the patient records are retained.

(b) Any use of electronic recordkeeping to store patient records shall ensure the safety and integrity of those records at least to the extent of hard copy records. All providers set forth in subdivision (a) shall ensure the safety and integrity of

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37 [CAL. CIV. CODE § 56.101.](#)

38 [CAL. HEALTH & SAFETY CODE § 123149.](#)
all electronic media used to store patient records by employing an offsite backup storage system, an image mechanism that is able to copy signature documents, and a mechanism to ensure that once a record is input, it is unalterable.

(c) Original hard copies of patient records may be destroyed once the record has been electronically stored.

…(g) Any health care provider subject to this section, choosing to utilize an electronic recordkeeping system, shall develop and implement policies and procedures to include safeguards for confidentiality and unauthorized access to electronically stored patient health records, authentication by electronic signature keys, and systems maintenance.

(h) Nothing contained in this chapter shall affect the existing regulatory requirements for the access, use, disclosure, confidentiality, retention of record contents, and maintenance of health information in patient records by health care providers.

(i) This chapter does not prohibit any provider of health care services from maintaining or retaining patient records electronically.

Under APA Code of Ethics Standard 4.01 - Maintaining Confidentiality,39 “[p]sychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship. (See also Standard 2.05, Delegation of Work to Others.) This standard supports the record keeping standards:

6. Record Keeping and Fees40

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

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39 APA CODE OF ETHICS, supra note 10 § 4.01.
40 APA CODE OF ETHICS, supra note 10 § 6.
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*.)

California law also permits sharing health care information under several conditions:41

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient…

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, information so disclosed shall not be further disclosed by the recipient in a way that would violate this part.

(4) The information may be disclosed to organized committees and agents of

41 *CAL. CIV. CODE § 56.10.*

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professional societies or of medical staffs of licensed hospitals, licensed health
care service plans, professional standards review organizations, independent
medical review organizations and their selected reviewers, utilization and quality
control peer review organizations as established by Congress in Public Law 97-
248 in 1982, contractors, or persons or organizations insuring, responsible
for, or defending professional liability that a provider may incur, if the
committees, agents, health care service plans, organizations, reviewers,
contractors, or persons are engaged in reviewing the competence or
qualifications of health care professionals or in reviewing health care services
with respect to medical necessity, level of care, quality of care, or justification
of charges.

(5) The information in the possession of a provider of health care or health
care service plan may be reviewed by a private or public body responsible for
licensing or accredited the provider of health care or health care service plan.
However, no patient-identifying medical information may be removed from the
premises except as expressly permitted or required elsewhere by law, nor shall
that information be further disclosed by the recipient in a way that would
violate this part.

(6) The information may be disclosed to the county coroner in the course of
an investigation by the coroner's office when requested for all purposes not
included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical
investigators, including investigators conducting epidemiologic studies, health
care research organizations, and accredited public or private nonprofit
educational or health care institutions for bona fide research purposes.
However, no information so disclosed shall be further disclosed by the
recipient in a way that would disclose the identity of a patient or violate this
part.

(8) A provider of health care or health care service plan that has created
medical information as a result of employment-related health care services to
an employee conducted at the specific prior written request and expense of the
employer may disclose to the employee's employer that part of the information
that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or
challenge to which the employer and the employee are parties and in
which the patient has placed in issue his or her medical history, mental
or physical condition, or treatment, provided that information may only
be used or disclosed in connection with that proceeding.
(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or a health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information shall not otherwise be disclosed by a health care service plan except in accordance with this part.

(11) This part does not prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all of the requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition, care, and treatment provided may be disclosed to a probate court investigator in the course of an investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existing guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the
purpose of aiding the transplant. For the purpose of this paragraph, "tissue bank" and "tissue" have the same meanings as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems, or to disclosures made pursuant to subdivisions (b) and (c) of Section 11167 of the Penal Code by a person making a report pursuant to Sections 11165.9 and 11166 of the Penal Code, provided that those disclosures concern a report made by that person.

(15) Basic information, including the patient’s name, city of residence, age, sex, and general condition, may be disclosed to a state-recognized or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in a way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

…(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat…
Disclosure of minor's medical information or minor's mental health condition for purpose of coordinating health care services and medical treatment:

(a) A provider of health care may disclose medical information to a county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor.

(b) For purposes of this section, health care services and medical treatment includes one or more providers of health care providing, coordinating, or managing health care and related services, including, but not limited to, a provider of health care coordinating health care with a third party, consultation between providers of health care and medical treatment relating to a minor, or a provider of health care referring a minor for health care services to another provider of health care.

(c) For purposes of this section, a county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor shall be considered a third party who may receive any of the following:
   (1) Medical information described in Sections 56.05 and 56.10.
   (2) Protected health information described in Section 160.103 of Title 45 of the Code of Federal Regulations.

(d) Medical information disclosed to a county social worker, probation officer, or any other person who is legally authorized to have custody or care of a minor shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating health care services and medical treatment of the minor and the disclosure is authorized by law. Medical information disclosed pursuant to this section may not be admitted into evidence in any criminal or delinquency proceeding against the minor. Nothing in this subdivision shall prohibit identical evidence from being admissible in a criminal proceeding if that evidence is derived solely from lawful means other than this section and is permitted by law.

(e) (1) Notwithstanding Section 56.104, if a provider of health care determines that the disclosure of medical information concerning the

42 CAL. CIV. CODE § 56.103.
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(f) The disclosure of information pursuant to this section is not intended to limit the disclosure of information when that disclosure is otherwise required by law.

(g) For purposes of this section, "minor" means a minor taken into temporary custody or as to who a petition has been filed with the court, or who has been adjudged to be a dependent child or ward of the juvenile court pursuant to Section 300 or 601 of the Welfare and Institutions Code.

(h)  (1) Except as described in paragraph (1) of subdivision (e), nothing in this section shall be construed to limit or otherwise affect existing privacy protections provided for in state or federal law.
    (2) Nothing in this section shall be construed to expand the authority of a social worker, probation officer, or custodial caregiver beyond the authority provided under existing law to a parent or a patient representative regarding access to medical information.

Release of information on outpatient psychotherapy treatment

(a) Notwithstanding subdivision (c) of Section 56.10, except as provided in subdivision (e), no provider of health care, health care service plan, or contractor may release medical information to persons or entities who have requested that information and who are authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient's participation in outpatient psychotherapy treatment.

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43 CAL. CIV. CODE § 56.104.
treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

1. The specific information relating to a patient's participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.
2. The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.
3. A statement that the information will not be used for any purpose other than its intended use.
4. A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this section to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, "psychotherapist" means a person who is both a "psychotherapist" as defined in Section 1010 of the Evidence Code and a "provider of health care" as defined in subdivision (i) of Section 56.05…

Disclosure to family member, partner, or friend; Disclosure for notification purposes; Disaster relief efforts

(a) A provider of health care, health care service plan, or contractor may, in...
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accordance with subdivision (c) or (d), disclose to a family member, other relative, domestic partner, or a close personal friend of the patient, or any other person identified by the patient, the medical information directly relevant to that person's involvement with the patient's care or payment related to the patient's health care.

(b) A provider of health care, health care service plan, or contractor may use or disclose medical information to notify, or assist in the notification of, including identifying or locating, a family member, a personal representative of the patient, a domestic partner, or another person responsible for the care of the patient of the patient's location, general condition, or death. Any use or disclosure of medical information for those notification purposes shall be in accordance with the provisions of subdivision (c), (d), or (e), as applicable.

(c) (1) Except as provided in paragraph (2), if the patient is present for, or otherwise available prior to, a use or disclosure permitted by subdivision (a) or (b) and has the capacity to make health care decisions, the provider of health care, health care service plan, or contractor may use or disclose the medical information if it does any of the following:

(A) Obtains the patient's agreement.
(B) Provides the patient with the opportunity to object to the disclosure, and the patient does not express an objection.
(C) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.

(2) A provider of health care who is a psychotherapist, as defined in Section 1010 of the Evidence Code, may use or disclose medical information pursuant to this subdivision only if the psychotherapist complies with subparagraph (A) or (B) of paragraph (1).

(d) If the patient is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the patient's incapacity or an emergency circumstance, the provider of health care, health care service plan, or contractor may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the patient and, if so, disclose only the medical information that is directly relevant to the person's involvement with the patient's health care…
(e) A provider of health care, health care service plan, or contractor may use or disclose medical information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with those entities the uses or disclosures permitted by subdivision (b). The requirements in subdivisions (c) and (d) apply to those uses and disclosures to the extent that the provider of health care, health care service plan, or contractor, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances…

The California Health and Safety Code provisions related to Patient Access to Health Records for “health care providers” create additional standards for licensed psychologists that have been upheld by the California inspection and copying or conditioning access to patient records.45

**Legislative findings and declarations**46

The Legislature finds and declares that every person having ultimate responsibility for decisions respecting his or her own health care also possesses a concomitant right of access to complete information respecting his or her condition and care provided. Similarly, persons having responsibility for decisions respecting the health care of others should, in general, have access to information on the patient's condition and care. It is, therefore, the intent of the Legislature in enacting this chapter to establish procedures for providing access to health care records or summaries of those records by patients and by those persons having responsibility for decisions respecting the health care of others.

**Inspection of records; Copying of records; Violations; Construction of section**47

(a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be entitled to inspect patient

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45 “As used in this chapter: (a) "Health care provider" means any of the following: . . .

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code. CAL. HEALTH & SAFETY CODE § 123149(a)(14); Person v. Farmers Ins. Group of Companies (1997, Cal App 2d Dist), supra note 13.

46 CAL. HEALTH & SAFETY CODE § 123100.

47 CAL. HEALTH & SAFETY CODE § 123110.
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records upon presenting to the health care provider a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the written request. The inspection shall be conducted by the patient or patient's representative requesting the inspection, who may be accompanied by one other person of his or her choosing.

(b) Additionally, any patient or patient's representative shall be entitled to copies of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request to the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that shall not exceed twenty-five cents ($0.25) per page or fifty cents ($0.50) per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available. The health care provider shall ensure that the copies are transmitted within 15 days after receiving the written request.

…(d) 1) Notwithstanding any provision of this section, and except as provided in Sections 123115 and 123120, any patient or former patient or the patient's representative shall be entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records are needed to support an appeal regarding eligibility for a public benefit program. These programs shall be the Medi-Cal program, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits. For purposes of this subdivision, "relevant portion of the patient's records" means those records regarding services rendered to the patient during the time period beginning with the date of the patient's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the patient's application is pending.

2) Although a patient shall not be limited to a single request, the patient or patient's representative shall be entitled to no more than one copy of any relevant portion of his or her record free of charge.

3) This subdivision shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's appeal,
pending the outcome of that appeal. For purposes of this subdivision, "private
attorney" means any attorney not employed by a nonprofit legal services entity.

(e) If the patient's appeal regarding eligibility for a public benefit program
specified in subdivision (d) is successful, the hospital or other health care
provider may bill the patient, at the rates specified in subdivisions (b) and (c),
for the copies of the medical records previously provided free of charge.

(f) If a patient or his or her representative requests a record pursuant to
subdivision (d), the health care provider shall ensure that the copies are
transmitted within 30 days after receiving the written request.

(g) This section shall not be construed to preclude a health care provider from
requiring reasonable verification of identity prior to permitting inspection or
copying of patient records, provided this requirement is not used oppressively
or discriminatorily to frustrate or delay compliance with this section...

(h) This chapter shall not be construed to render a health care provider liable
for the quality of his or her records or the copies provided in excess of existing
law and regulations with respect to the quality of medical records. A health care
provider shall not be liable to the patient or any other person for any
consequences that result from disclosure of patient records as required by this
chapter...

**Patient's addendum to records**

(a) Any adult patient who inspects his or her patient records pursuant to
Section 123110 shall have the right to provide to the health care provider a
written addendum with respect to any item or statement in his or her records
that the patient believes to be incomplete or incorrect. The addendum shall be
limited to 250 words per alleged incomplete or incorrect item in the patient's
record and shall clearly indicate in writing that the patient wishes the addendum
to be made a part of his or her record.

(b) The health care provider shall attach the addendum to the patient's records
and shall include that addendum whenever the health care provider makes a
disclosure of the allegedly incomplete or incorrect portion of the patient's

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48 CAL. HEALTH & SAFETY CODE § 123111.

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records to any third party.

(c) The receipt of information in a patient's addendum which contains defamatory or otherwise unlawful language, and the inclusion of this information in the patient's records, in accordance with subdivision (b), shall not, in and of itself, subject the health care provider to liability in any civil, criminal, administrative, or other proceeding.

(d) Subdivision (f) of Section 123110 and Section 123120 shall be applicable with respect to any violation of this section by a health care provider.

Representatives of minors; Risks of adverse consequences to patient in inspecting records

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(a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records in either of the following circumstances:

1. With respect to which the minor has a right of inspection under Section 123110.

2. Where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being. The decision of the health care provider as to whether or not a minor's records are available for inspection or copying under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith.

(b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:

1. The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.

49 CAL. HEALTH & SAFETY CODE § 123115.
(2)(A) The health care provider shall permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor, designated by request of the patient.

…(D) A licensed …psychologist, …to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

(3) The health care provider shall inform the patient of the provider's refusal to permit him or her to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor designated by written authorization of the patient.

(4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2).

**Action to enforce right to inspect or copy**

Any patient or representative aggrieved by a violation of Section 123110 may, in addition to any other remedy provided by law, bring an action against the health care provider to enforce the obligations prescribed by Section 123110. Any judgment rendered in the action may, in the discretion of the court, include an award of costs and reasonable attorney fees to the prevailing party.

**Exception for alcohol, drug abuse and communicable disease carrier records**

(a) This chapter shall not require a health care provider to permit inspection or provide copies of alcohol and drug abuse records where, or in a manner, prohibited by Section 408 of the federal Drug Abuse Office and Treatment Act of 1972 (Public Law 92-255) or Section 333 of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Public Law 91-616), or by regulations adopted pursuant to these federal laws. Alcohol and drug abuse records subject to these federal laws shall also be subject to this chapter, to the extent that these federal laws do not

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50 CAL. HEALTH & SAFETY CODE § 123120.
51 CAL. HEALTH & SAFETY CODE § 123125.

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(b) This chapter shall not require a health care provider to permit inspection or provide copies of records or portions of records where or in a manner prohibited by existing law respecting the confidentiality of information regarding communicable disease carriers.

**Preparation of summary of record; Conference with patient**

(a) A health care provider may prepare a summary of the record, according to the requirements of this section, for inspection and copying by a patient. If the health care provider chooses to prepare a summary of the record rather than allowing access to the entire record, he or she shall make the summary of the record available to the patient within 10 working days from the date of the patient's request. However, if more time is needed because the record is of extraordinary length or because the patient was discharged from a licensed health facility within the last 10 days, the health care provider shall notify the patient of this fact and the date that the summary will be completed, but in no case shall more than 30 days elapse between the request by the patient and the delivery of the summary. In preparing the summary of the record the health care provider shall not be obligated to include information that is not contained in the original record.

(b) A health care provider may confer with the patient in an attempt to clarify the patient's purpose and goal in obtaining his or her record. If as a consequence the patient requests information about only certain injuries, illnesses, or episodes, this subdivision shall not require the provider to prepare the summary required by this subdivision for other than the injuries, illnesses, or episodes so requested by the patient. The summary shall contain for each injury, illness, or episode any information included in the record relative to the following:

1. Chief complaint or complaints including pertinent history.
2. Findings from consultations and referrals to other health care providers.
3. Diagnosis, where determined.
4. Treatment plan and regimen including medications prescribed.

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52 CAL. HEALTH & SAFETY CODE § 123130.
(6) Prognosis including significant continuing problems or conditions.
(7) Pertinent reports of diagnostic procedures and tests and all discharge summaries.
(8) Objective findings from the most recent physical examination, such as blood pressure, weight, and actual values from routine laboratory tests.

(c) This section shall not be construed to require any medical records to be written or maintained in any manner not otherwise required by law…

…(f) The health care provider may charge no more than a reasonable fee based on actual time and cost for the preparation of the summary. The cost shall be based on a computation of the actual time spent preparing the summary for availability to the patient or the patient's representative. It is the intent of the Legislature that summaries of the records be made available at the lowest possible cost to the patient.

Form and contents of authorization

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Any person or entity that wishes to obtain medical information … shall obtain a valid authorization for the release of this information.

An authorization for the release of medical information by a provider of health care…shall be valid if it:
(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.
(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.
(c) Is signed and dated by one of the following:
   (1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care…
   (2) The legal representative of the patient, if the patient is a minor or an incompetent…
   (3) The spouse of the patient or the person financially responsible for...
the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.

(4) The beneficiary or personal representative of a deceased patient.

(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.

(f) States the name or functions of the persons or entities authorized to receive the medical information.

(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

**Furnishing copy of authorization**

Upon demand by the patient or the person who signed an authorization, a provider of health care... shall furnish a true copy thereof.

**Disclosure by recipient**

A recipient of medical information pursuant to an authorization ...may not further disclose that medical information except in accordance with a new

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54 CAL. CIV. CODE § 56.12.
55 CAL. CIV. CODE § 56.13.
authorization that meets the requirements of Section 56.11, or as specifically required or permitted by other provisions of this chapter or by law.

**Communication of limits of authorization**[^56]
A provider of health care ...that discloses medical information pursuant to the authorizations required by this chapter shall communicate to the person or entity to which it discloses the medical information any limitations in the authorization regarding the use of the medical information. No provider of health care, health care service plan, or contractor that has attempted in good faith to comply with this provision shall be liable for any unauthorized use of the medical information by the person or entity to which the provider, plan, or contractor disclosed the medical information.

**Cancellation and modification of authorization**[^57]
Nothing in this part shall be construed to prevent a person who could sign the authorization ...from cancelling or modifying an authorization. However, the cancellation or modification shall be effective only after the provider of health care actually receives written notice of the cancellation or modification.

**Waiver of provisions**[^58]
(a) No provider of health care ... may require a patient, as a condition of receiving health care services, to sign an authorization, release, consent, or waiver that would permit the disclosure of medical information that otherwise may not be disclosed...

(b) Any waiver by a patient ...shall be deemed contrary to public policy and shall be unenforceable.

APA standards help to clarify additional record keeping practices that California psychologists should follow:

**6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional...**[^59]

[^56]: CAL. CIV. CODE § 56.14.
[^57]: CAL. CIV. CODE § 56.15.
[^58]: CAL. CIV. CODE § 56.37.
[^59]: APA CODE OF ETHICS, supra note 10 § 6.02.
(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.

(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.)

Additionally, APA Code of Ethics Standard 6.02(b) requires the use coding or other techniques to avoid the inclusion of personal identifiers when confidential patient information is entered into databases or systems of records that are available to persons whose access has not been consented to by the patient.60 HIPPA permits sharing protected health information (PHI) with other health care professionals who are engaged in the evaluation and treatment of the same patient.61 HIPPA establishes privacy protections for all transmissions of PHI records, and requires specific patient authorizations (with a right of revocation) to transfer PHI records to third parties.62 Concrete security standards are established for all electronic healthcare information (45 CFR 160).

6.03 Withholding Records for Nonpayment63 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.

60 Id.
62 45 CFR 164.508.
63 APA CODE OF ETHICS, supra note 10 § 6.01.
Specific California law is more protective of patient’s right and would extend this APA Code:

**Inspection of records; Copying of records; Violations; Construction of section**\(^{64}\)

…(j) This section shall be construed as prohibiting a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services shall be subject to the sanctions[by the Board]…

Release and transfer of PHI records cannot be conditioned on payment or other conditions (such as enrollment in the health plan that employs the psychologist).\(^{65}\)

**Retention of records**
The California Code mandates that licensed psychologists retain records as follows:

**Retention of health service records**\(^{66}\)
A licensed psychologist shall retain a patient's health service records for a minimum of seven years from the patient's discharge date. If the patient is a minor, the patient's health service records shall be retained for a minimum of seven years from the date the patient reaches 18 years of age.

In addition, general Health and Safety Code provisions governing patient access to health records set forth the following standard:

**Preservation of Records After Licensee Ceases Operation; Action for Abandonment of Records**\(^{67}\)
(a) Providers of health services …have an obligation, if the licensee ceases operation, to preserve records for a minimum of seven years following

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\(^{64}\) CAL. HEALTH & SAFETY CODE, supra, note 36.

\(^{65}\) 45 CFR 164.508 (b)(4).

\(^{66}\) CAL. BUS & PROF CODE § 2919.

\(^{67}\) CAL. HEALTH & SAFETY CODE § 123145.

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discharge of the patient, except that the records of unemancipated minors shall be kept at least one year after the minor has reached the age of 18 years, and in any case, not less than seven years.

(b) The department or any person injured as a result of the licensee's abandonment of health records may bring an action in a proper court for the amount of damage suffered as a result thereof. In the event that the licensee is a corporation or partnership that is dissolved, the person injured may take action against that corporation's or partnership's principle officers of record at the time of dissolution.

(c) Abandoned means violating subdivision (a) and leaving patients treated by the licensee without access to medical information to which they are entitled pursuant to Section 123110.

Violations of the specific duty

Under the California Business and Professions Code, actions constituting “unprofessional conduct” that provide grounds for suspension, revocation, or refusal to license include:

- Willful, unauthorized communication of information received in professional confidence.\(^{68}\)

- Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.\(^{69}\)

- Being grossly negligent in the practice of his or her profession.\(^{70}\)

- Violating any of the provisions of this chapter or regulations duly adopted thereunder.\(^{71}\)

- Repeated acts of negligence.\(^{72}\)

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\(^{68}\) CAL. BUS. & PROF. CODE § 2960(h).

\(^{69}\) CAL. BUS. & PROF. CODE § 2960(i).

\(^{70}\) CAL. BUS. & PROF. CODE § 2960(j).

\(^{71}\) CAL. BUS. & PROF. CODE § 2960(k).

\(^{72}\) CAL. BUS. & PROF. CODE § 2960(r).
Inspection of records; Copying of records; Violations; Construction of section

…(i) Any health care provider … who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.

In addition, the California Code of Regulations identifies the following as “unprofessional conduct”: 74

Failure to provide to the Board, as directed, lawfully requested certified copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the certified documents with this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

Penalties for failure to provide medical records; Failure to comply with court order; Multiple acts 75

(a) (1) A licensee who fails or refuses to comply with a request for the medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the medical records of a patient that is accompanied by that patient's written authorization for release

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73 CAL. HEALTH & SAFETY CODE, supra, note 36.
74 CAL. CODE REGS. tit. 16 § 1397.2 (b).
75 CAL. BUS. & PROF. CODE § 2969. “Board” refers to the Board of Psychology. CAL. BUS. & PROF. CODE § 2969(b).

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of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid...

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). The amount of the penalty shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date...

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid...

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall
be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Health Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license…

**Damages**

In addition to any other remedies available at law, a patient whose medical information has been used or disclosed in violation of Section 56.10 or 56.104 or 56.20 or subdivision (a) of Section 56.26 and who has sustained economic loss or personal injury therefrom may recover compensatory damages, punitive damages not to exceed three thousand dollars ($3,000), attorneys’ fees not to exceed one thousand dollars ($1,000), and the costs of litigation.

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**Violation as misdemeanor; Damages; Administrative fines and civil penalties**

(a) Any violation of the provisions of this part that results in economic loss or personal injury to a patient is punishable as a misdemeanor.

(b) In addition to any other remedies available at law, any individual may bring an action against any person or entity who has negligently released confidential information or records concerning him or her in violation of this part, for either or both of the following:

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76 CAL. CIV. CODE § 56.35.

77 CAL. CIV. CODE § 56.36.

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(1) Nominal damages of one thousand dollars ($1,000). In order to recover under this paragraph, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the patient.

(c) (1) In addition, any person or entity that negligently discloses medical information in violation of the provisions of this part shall also be liable, irrespective of the amount of damages suffered by the patient as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation.

(2)(A) Any person or entity, other than a licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable on a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation, or on a second violation for an administrative fine or civil penalty not to exceed ten thousand dollars ($10,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation.

Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(3)(A) Any person or entity, other than a licensed health care professional, who knowingly or willfully obtains or uses medical information in violation of this part for the purpose of financial gain shall be liable for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part.
part for financial gain shall be liable on a first violation, for an administrative fine or civil penalty not to exceed five thousand dollars ($5,000) per violation, or on a second violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(4) Nothing in this subdivision shall be construed as authorizing an administrative fine or civil penalty under both paragraphs (2) and (3) for the same violation.

(5) Any person or entity who is not permitted to receive medical information pursuant to this part and who knowingly and willfully obtains, discloses, or uses medical information without written authorization from the patient shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation.

(d) In assessing the amount of an administrative fine or civil penalty pursuant to subdivision (c), the Office of Health Information Integrity, licensing agency, or certifying board or court shall consider any one or more of the relevant circumstances presented by any of the parties to the case including, but not limited to, the following:

(1) Whether the defendant has made a reasonable, good faith attempt to comply with this part.
(2) The nature and seriousness of the misconduct.
(3) The harm to the patient, enrollee, or subscriber.
(4) The number of violations.
(5) The persistence of the misconduct.
(6) The length of time over which the misconduct occurred.
(7) The willfulness of the defendant's misconduct.
(8) The defendant's assets, liabilities, and net worth.

(e) (1) The civil penalty pursuant to subdivision (c) shall be assessed and
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recovered in a civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:

(A) The Attorney General.
(B) Any district attorney.
(C) Any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance.
(D) Any city attorney of a city.
(E) Any city attorney of a city and county having a population in excess of 750,000, with the consent of the district attorney.
(F) A city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county.
(G) The Director of the Office of Health Information Integrity may recommend that any person described in subparagraphs (A) to (F), inclusive, bring a civil action under this section.

(2) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in paragraph (3), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

(3) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered.

(4) Nothing in this section shall be construed as authorizing both an administrative fine and civil penalty for the same violation.

(5) Imposition of a fine or penalty provided for in this section shall not preclude imposition of any other sanctions or remedies authorized by law.

(6) Administrative fines or penalties issued pursuant to Section 1280.15 of the Health and Safety Code shall offset any other administrative fine or civil penalty imposed under this section for the same violation.

(f) For purposes of this section, "knowing" and "willful" shall have the same meanings as in Section 7 of the Penal Code.
(g) No person who discloses protected medical information in accordance with the provisions of this part shall be subject to the penalty provisions of this part…