

The Duty to Record: Ethical, Legal, and Professional Considerations for New York 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 Columbia with reference to several relevant state-by-state surveys retrieved from Lexis

¹ Electronic Health Records: A Primer (retrieved Nov. 29, 2012 at <http://www.apapracticecentral.org/update/2012/11-29/electronic-records.aspx>).

² Christina Luini, JD, M.L.I.S.; Dinelia Rosa, PhD; Mary Karapetian Alvord, PhD; Vanessa K. Jensen, PsyD; Jeffrey N. Younggren, PhD; G. Andrew H. Benjamin, JD, PhD, ABPP. The working group, came together to discharge the obligations of the CODAPAR grant that we wrote and received: <http://www.apadivisions.org/division-31/news-events/grant-funding.aspx>.

³ Preparing the Interprofessional Workforce to Address Health Behavior Change. (retrieved Nov. 11, 2012 at http://www.hrsa.gov/advisorycommittees/bhpradvisory/acicbl/Reports/acicbl_tenth_report_final.pdf).

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.

New York 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

New York law suggests the need 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, reduce the risk of responsibility in a duty to protect/warn jurisdiction, and recommend that psychologists use this template, too.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 into this document.⁶ Please access each of the documents on this website, separately.

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).

⁵ Benjamin, G. A. H., Kent, L., & Sirikantraporn, S. (2009). Duty to protect statutes. In J. L. Werth, E.R. Welfel, & G. A. H. Benjamin (Eds.), *The duty to protect: Ethical, legal, and professional responsibilities of mental health professionals* (pp. 9 – 28). Washington, DC: APA Press. doi:10.1037/11866-002.

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

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.”⁷ Whenever “Eurocentric therapeutic and interventions models”⁸ 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.⁹ The EHR templates permit drop down diagnoses using the ICD-10 functional diagnoses.

Statute or Rule

The Board of Regents regulates New York psychologists.¹⁰ New York psychologists are subject to the record keeping rules promulgated by the Board.

Common Law

The Courts of New York have established many standards related to psychological practice and record keeping. Although trial court opinions have no binding authority as appellate decisions do, trial court opinions suggest how other courts may act.

Relevant citing references to N.Y. COMP. CODES R. & REGS. tit. 8, § 29.1 (re: Unprofessional Conduct)

⁷ American Psychological Association. (2002). *Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists* (pp.17-24; p. 11). Washington, DC: Authors (<http://www.apa.org/pi/oema/resources/policy/multicultural-guideline.pdf> (last accessed August 1, 2012).

⁸ *Id.* at p. 45.

⁹ See ICD-10 at <http://apps.who.int/classifications/icd10/browse/2010/en> (last accessed August 1, 2012); The APA Policy and Planning Board recognized how psychology could move forward by turning to a diagnostic system that was based on the concept of functional impairments (APA Policy and Planning Board, (2005). APA 2020: A perfect vision for psychology: 2004 five-year report of the policy and planning board. *American Psychologist*, 60, 512-522, 518. (See, <http://www.apa.org/about/governance/bdcmte/five-year-report.pdf> ; and APA has helped fund the creation of the 10th edition in 2008. See, <http://www.apa.org/about/governance/council/08aug-crminutes.aspx> (last accessed August 1, 2012)).

¹⁰ N.Y. COMP. CODES R. & REGS. tit. 8, §§ 29.1, *et seq.*

- By authorizing psychologists ...to diagnose and to formulate assessment-based treatment plans independent of other disciplines, it must be presumed that the legislature, which has not provided otherwise, intended that they carry out these tasks in accordance with the accepted standard of care of their professions for doing so, which mandate that diagnosis, assessment and treatment planning be undertaken utilizing a comprehensive and holistic biopsychosocial approach. ...This Court finds that, as a matter of law, the failure of a psychologist ...to utilize a biopsychosocial approach in the performance of diagnosis, assessment and treatment planning would constitute practice that, *per se*, violates the professional standard of care. This Court further finds that, as a matter of law, psychologist ...as licensed health care providers, are required by their scope of practice and the standards of care of their professions to gather information and make observations related to the physical condition and symptoms, health history, medications (prescribed, over the counter, and complimentary and alternative treatments) utilized, substance use and abuse, and allergies of their patients as part of their initial assessments and to be alert throughout the course of treatment to mental or physical symptoms which may have physical causes or portend the existence of physical illness, new health history, medications (prescribed, over the counter, and complimentary and alternative treatments) utilized, and substance use and abuse, so that these may be explored, their impact on the patient's functioning assessed properly and treated, as necessary, through referral to or consultation with other health care professionals, as indicated. The failure to do so would constitute practice that, *per se*, violates the professional standard of care.¹¹

Relevant citing references to N.Y. COMP. CODES R. & REGS. tit. 8, § 29.2 (re: General provisions for health profession)

- Psychologist brought Article 78 proceeding to review determination of Commissioner of Education which, inter alia, suspended his license for three months. The Supreme Court, Appellate Division, Yesawich, J., held that: (1) finding that psychologist failed to maintain proper medical records was fully sustainable, and (2) psychologist's unprofessional conduct in failing to maintain proper medical records for patient was insufficient to constitute negligence "on more than one occasion."¹²
- Psychologists and other health care practitioners licensed by the State of New York are required to maintain a record which accurately reflects their evaluation and treatment of any person to whom they provide professional services.

¹¹ [People v. R.R., 12 Misc. 3d 161, 184-85, 807 N.Y.S.2d 516, 532-33 \(Sup. Ct. 2005\).](#)

¹² [Suslovich v. New York State Educ. Dept., 174 A.D.2d 802, 571 N.Y.S.2d 123 \(1991\).](#)

[Education Law 6509](#), [8 NYCRR 29.2\(a\)\(3\)](#). This requirement applies equally when a licensed health care professional provides an evaluation for forensic rather than for clinical assessment or treatment purposes. . . . Defendant waives psychologist-patient privilege if she places mental health at issue by raising question as to her mental state at time of crime and, thus, defense psychologist's notes from interviews and examinations of defendant are discoverable materials pursuant to prosecutor's demand for reciprocal discovery. McKinney's CPL §§ 240.30, 240.30, subd. 1(a).¹³

Annotations to Social Services Law § 413 (Persons and officials required to report cases of suspected child abuse or maltreatment):

- Child who had been sexually abused by her mother's boyfriend did not provide school district, elementary school principal, or school psychologist with facts which gave them “reasonable cause” to suspect that she was being abused, as required to trigger statute's mandatory reporting requirements; although mother of one of child's third-grade classmates had reported to principal that her daughter had overheard conversation at slumber party stating that child had told another third-grader on school playground during recess that child was having sex “with her father,” none of the school employees witnessed any acts of alleged abuse, saw any physical injury to child, or observed any behavioral issues from child which would have given any of them “reasonable cause” to suspect abuse or maltreatment at home, and when questioned by teachers, child appeared happy and denied that there were any issues at home, and so did not confirm the third-hand hearsay allegations of abuse.¹⁴

Annotations related to mental health records:

- Records relating to plaintiff's mental health and substance abuse treatment, which were privileged medical records, were not discoverable in plaintiff's personal injury action against company that maintained elevator in which accident allegedly occurred where plaintiff withdrew any claims for injuries relating to those conditions.¹⁵
- Psychologist could not be held liable to patient for breach of fiduciary duty arising out of his communication of allegedly privileged information without the patient's authorization, where the patient communicated a threat to the life of his son's schoolmate during a session at a state facility, the contemporaneous clinical records kept by the psychologist documented finding that patient

¹³ [People v. Fratt](#), 146 Misc. 2d 77, 548 N.Y.S.2d 978 (Sup. Ct. 1989).

¹⁴ [Diana G-D ex rel. Ann D. v. Bedford Cent. School Dist.](#), 2011, 33 Misc.3d 970, 932 N.Y.S.2d 316.

¹⁵ [Salazar v. 521-533 West 57th Street Condominium](#) (2 Dept. 2011) 84 A.D.3d 927, 923 N.Y.S.2d 182.

presented a serious and imminent danger, and supported disclosure to police and schoolmate's parents, and initial disclosure to patient's spouse was justified for purpose of identifying the threatened boy.¹⁶

- In parents' lawsuit claiming negligent supervision by Roman Catholic diocese, parish, congregation, church, school, and pastor, and sexual assault by assistant pastor, medical and psychological reports of pastor and assistant pastor were privileged.¹⁷
- Defendant charged with sexual abuse was not entitled to examine victim's special education psychological and social evaluations to determine whether they contained any exculpatory material, absent showing that it was reasonably likely that records would be relevant or material.¹⁸
- In divorce action, defendant husband waived his right to psychologist-client privilege by actively contesting custody and thereby putting his mental and emotional well-being into issue.¹⁹
- Wife waived whatever common law or evidentiary privilege she had against disclosure of her mental health records, which were in custody of state instrumentality, when she actively sought to maintain custody of her minor children in contested divorce proceedings.²⁰
- Psychologist-patient privilege protected husband-psychologist's appointment books and identities of his patients who paid cash from discovery in matrimonial action in connection with wife's attempt to determine husband's finances.²¹
- In child custody dispute within divorce action, father lacked absolute right, under Health Insurance Portability and Accountability Act (HIPAA), to access his children's psychiatric and therapy records from psychiatrist and treating clinical psychologist that were protected under patient/psychotherapist privilege, thus requiring father and his counsel to return records provided to father's counsel outside of any judicial process on mere proffer of HIPAA release signed by father, since children's best interests did not warrant waiver of

¹⁶ [Oringer v. Rotkin](#) (1 Dept. 1990) 162 A.D.2d 113, 556 N.Y.S.2d 67.

¹⁷ [Krystal G. v. Roman Catholic Diocese of Brooklyn](#), 2011, 34 Misc.3d 531, 933 N.Y.S.2d 515.

¹⁸ [People v. Manzanillo](#), 1989, 145 Misc.2d 504, 546 N.Y.S.2d 954.

¹⁹ [Baecher v. Baecher](#) (2 Dept. 1977) 58 A.D.2d 821, 396 N.Y.S.2d 447, appeal denied 43 N.Y.2d 645, 402 N.Y.S.2d 1026, 373 N.E.2d 995.

²⁰ [Ace v. State](#), 1990, 146 Misc.2d 954, 553 N.Y.S.2d 605, affirmed 207 A.D.2d 813, 616 N.Y.S.2d 640, affirmed 87 N.Y.2d 993, 642 N.Y.S.2d 855, 665 N.E.2d 656.

²¹ [Frederick R.C. v. Helene C.](#), 1992, 153 Misc.2d 660, 582 N.Y.S.2d 926.

privilege, but rather precluded either parent or their respective counsel from accessing children's psychiatric and therapy records.²²

- School district was not entitled to court-ordered subpoena directing production of certain psychiatric and psychological examination and evaluation records pertaining to infant student for use in fair hearing required by parent's appeal from district's conclusion that student had a handicapping condition where parents asserted that evaluation report of their child was absolutely privileged, since no legislation exception to privilege existed which would allow release of the information, and statutory enactment relative to release of information contained in clinical records does not provide for turning over of such information to school districts for any reason whatsoever.²³
- The psychologist-client privilege precludes discovery by the office of deputy attorney general for medicaid fraud control of psychologist's records of medicaid clients in the absence of a compelling state interest which overrides the interest in confidentiality.²⁴
- State's interest in investigating and preventing fraud in medicaid program outweighed interests of medicaid patients in keeping their records a private matter between themselves and their psychologist, so that deputy attorney general for medicaid fraud control was entitled to such records sought in subpoena *duces tecum*.²⁵
- Under New York law, handwritten notes prepared by psychologist in treatment of patient were subject to disclosure in patient's action against his disability insurer in action for breach of policy, in which insurer had asserted as defense that patient was not permanently mentally disabled; patient had waived privilege by putting his mental condition at issue in action, no showing was made that disclosure of psychologist's notes and records would be detrimental to patient, and importance of records would in any event warrant disclosure.²⁶
- Medical records reflecting consultations between a patient and his or her psychologist are privileged and thus exempt from disclosure as a matter of law, unless the patient, by having placed his or her medical condition in issue, waives the privilege.²⁷

Annotations to N.Y. EDUC. LAW § 6509 related to recordkeeping:

²² [Liberatore v. Liberatore, 2012, 2012 WL 5045177.](#)

²³ [Matter of Handicapped Child, 1983, 118 Misc.2d 137, 460 N.Y.S.2d 256.](#)

²⁴ [Doe v. Hynes, 1980, 104 Misc.2d 398, 428 N.Y.S.2d 810.](#)

²⁵ [Doe v. Hynes, 1980, 104 Misc.2d 398, 428 N.Y.S.2d 810.](#)

²⁶ [Magee v. Paul Revere Life Ins. Co., 1997, 172 F.R.D. 627.](#)

²⁷ [Brown v. Telerep, Inc. \(1 Dept. 1999\) 263 A.D.2d 378, 693 N.Y.S.2d 34.](#)

- Where there is a relationship between inadequate record-keeping and patient treatment, the failure to keep accurate records may constitute negligence.²⁸
- Violation of social service regulation requiring maintenance of patient records which fully disclose “extent of” care, services and supplies furnished Medicaid patients does not per se constitute willful violation of record-keeping regulation of education department so as to automatically constitute unprofessional conduct.²⁹
- Unprofessional conduct consisting of keeping of improper records warranted suspension of license to practice medicine for two years.³⁰
- Finding of unprofessional conduct could be based upon a petitioner's failure to provide subpoenaed patient records.³¹

Contents of the record are mandated by law

Under the rules promulgated by the Board “failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient” would constitute unprofessional conduct.³²

Confidentiality³³

The confidential relations and communications between a licensed psychologist and the patient preclude revealing “...personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law.”

Psychologist privilege³⁴

The confidential relations and communications between a psychologist registered under the provisions of article one hundred fifty-three of the education law and his client are placed on the same basis as those provided by

²⁸ *Corines v. State Bd. for Professional Medical Conduct* (3 Dept. 1999) 267 A.D.2d 796, 700 N.Y.S.2d 303, leave to appeal denied 95 N.Y.2d 756, 712 N.Y.S.2d 448, 734 N.E.2d 760.

²⁹ *Camperlengo v. Barell* (3 Dept. 1991) 164 A.D.2d 633, 564 N.Y.S.2d 564, appeal granted 77 N.Y.2d 810, 571 N.Y.S.2d 912, 575 N.E.2d 398, reversed on other grounds 78 N.Y.2d 674, 578 N.Y.S.2d 504, 585 N.E.2d 816.

³⁰ *Schwarz v. Board of Regents of University of State of N. Y.* (3 Dept. 1982) 89 A.D.2d 711, 453 N.Y.S.2d 836, appeal denied 57 N.Y.2d 604, 454 N.Y.S.2d 1029, 440 N.E.2d 800.

³¹ *Moreland v. Ambach* (3 Dept. 1985) 111 A.D.2d 533, 489 N.Y.S.2d 403, appeal denied 65 N.Y.2d 610, 494 N.Y.S.2d 1029, 484 N.E.2d 672.

³² N.Y. COMP. CODES R. & REGS. tit. 8, § 29.2(a)(3).

³³ N.Y. COMP. CODES R. & REGS. tit. 8, § 29.1(b)(8).

³⁴ N.Y. C.P.L.R. 4507 (McKinney).

law between attorney and client, and nothing in such article shall be construed to require any such privileged communications to be disclosed.

A client who, for the purpose of obtaining insurance benefits, authorizes the disclosure of any such privileged communication to any person shall not be deemed to have waived the privilege created by this section. For purposes of this section:

1. “person” shall mean any individual, insurer or agent thereof, peer review committee, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever; and
2. “insurance benefits” shall include payments under a self-insured plan.

Clinical records; confidentiality³⁵

In light of *People v. R.R.* psychologists’ record content should include:³⁶ “...a biopsychosocial approach in the performance of diagnosis, assessment and treatment planning ...[that contains] information ...related to the physical condition and symptoms, health history, medications (prescribed, over the counter, and complimentary [*sic*] and alternative treatments) utilized, substance use and abuse, and allergies of their patients as part of their initial assessments and to be alert throughout the course of treatment to mental or physical symptoms which may have physical causes or portend the existence of physical illness, new health history, medications (prescribed, over the counter, and complimentary [*sic*] and alternative treatments) utilized, and substance use and abuse, so that these may be explored, their impact on the patient's functioning assessed properly and treated, as necessary, through referral to or consultation with other health care professionals, as indicated.”

³⁵ *Psychologists in public practice see*, N.Y. MENTAL HYG. LAW § 33.13 (McKinney): “(a) A clinical record for each patient or client shall be maintained at each facility licensed or operated by the office of mental health or the office for people with developmental disabilities, hereinafter referred to as the offices...shall also include any provider of services for individuals with mental illness or developmental disabilities which is operated by, under contract with, receives funding from, or is otherwise approved to render services by, a director of community services pursuant to article forty-one of this chapter or one or both of the offices.” *See*, N.Y. MENTAL HYG. LAW § 33.16 (McKinney) for laws related to access to clinical records of facilities.

³⁶ [*People v. R.R.*, 12 Misc. 3d 161, 184-85, 807 N.Y.S.2d 516, 532-33 \(Sup. Ct. 2005\).](#)

The Health Insurance Portability and Accountability Act (HIPAA)³⁷ would apply to New York psychological records. A HIPAA notice of privacy practices³⁸ that delineates the psychologist's scope of and limitations of confidentiality works in tandem with the disclosure document provided to the patient before beginning to provide any psychological services. Several mandatory disclosures could occur and should be identified to the patient as part of the informed consent process:

- Mandatory duty to report child abuse or neglect;³⁹
- Mandatory duty to report that a “person is likely to engage in conduct that would result in serious harm to self or others.”⁴⁰

Maintenance and Security of Records

The Board's rules are quite general regarding records but call for not engaging in the following:⁴¹

...willful or grossly negligent failure to comply with substantial provisions of Federal, State or local laws...

Under the New York rules, psychologists cannot fail “to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client.”⁴² HIPAA also enables the patient to inspect and obtain Protected Health Information (PHI) records, including Psychotherapy Notes, created by the psychologist, as long as those records are maintained.⁴³ In addition, patients have a right to amend any part of the record;⁴⁴ Under this section, a denial of the proposed amendment can occur if the record was not created by the psychologist (unless the patient provides a reasonable basis to believe that the originator of PHI is no longer

³⁷HIPAA, U.S. Government Printing Office Electronic Code Of Federal Regulations website at: [Subpart C--SECURITY STANDARDS FOR THE PROTECTION OF ELECTRONIC PROTECTED HEALTH INFORMATION](#) ; [Subpart E--PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION](#) (last accessed Aug. 1, 2012).

³⁸ 45 CFR 164.502 (a)(1)(ii) & 45 CFR 164.506 (c); HIPAA, U.S. Government Printing Office Electronic Code Of Federal Regulations website at: [Subpart E--PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION](#) (last accessed Aug. 1, 2012).

³⁹ N.Y. SOC. SERV. LAW § 413.

⁴⁰ N.Y. MENTAL HYG. LAW § 9.46.

⁴¹ N.Y. R COMP. CODES R. & REGS. tit. 8, § 29.1(b)(1).

⁴² N.Y. R. COMP. CODES R. & REGS. tit. 8, § 29.1(b)(7).

⁴³ 45 CFR 164.524.

⁴⁴ 45 CFR 164.526 (a).

available to act on the requested amendment) or if the record is accurate and complete (other subsections are not discussed as they are unlikely to arise for psychologists).

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).⁴⁵ Finally, patients may obtain an accounting as to who has accessed the PHI and the details about each disclosure.⁴⁶

HIPAA 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.⁴⁷ Concrete security standards are established for all electronic healthcare information (45 CFR 160).

Retention of Records

“...Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of 21 years.”⁴⁸

Violations of the specific duty

Definitions of professional misconduct⁴⁹

Each of the following is professional misconduct, and any licensee found guilty of such misconduct under the procedures prescribed in section sixty-five hundred ten shall be subject to the penalties prescribed in section sixty-five hundred eleven:

- (1) Obtaining the license fraudulently,

- (2) Practicing the profession fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion or negligence or incompetence on more than one occasion,

⁴⁵ 45 CFR 164.508 (b)(4).

⁴⁶ 45 CFR 164.528.

⁴⁷ 45 CFR 164.508.

⁴⁸ N.Y. COMP. CODES R. & REGS. tit. 8, § 29.2(a)(3).

⁴⁹ N.Y. EDUC. LAW § 6509 (McKinney): *Note:* Psychologists are licensed under Title VIII, Article 153. The general provisions of Article 130 apply to all professions regulated under Title VIII. *See*, N.Y. EDUC. LAW § 6500 (McKinney).

- ...(5)(a) Being convicted of committing an act constituting a crime under:
- (i) New York State law or,
 - (ii) Federal law or,
 - (iii) The law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law;
- (b) Having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state;
- (c) Having been found by the commissioner of health to be in violation of article thirty-three of the public health law...

(6) Refusing to provide professional service to a person because of such person's race, creed, color, or national origin,

(7) Permitting, aiding or abetting an unlicensed person to perform activities requiring a license,

(8) Practicing the profession while the license is suspended, or wilfully failing to register or notify the department of any change of name or mailing address, or, if a professional service corporation wilfully failing to comply with sections fifteen hundred three and fifteen hundred fourteen of the business corporation law or, if a university faculty practice corporation wilfully failing to comply with paragraphs (b), (c) and (d) of section fifteen hundred three and section fifteen hundred fourteen of the business corporation law,

(9) Committing unprofessional conduct, as defined by the board of regents in its rules or by the commissioner in regulations approved by the board of regents...

The Board will view the psychologist as acting with unprofessional conduct for:⁵⁰

...failing to respond within 30 days to written communications from the Education Department or the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's

⁵⁰ N.Y. COMP. CODES R. & REGS. tit. 8, § 29.2(b)(13).

unprofessional conduct. The period of 30 days shall commence on the date when such communication was delivered personally to the licensee. If the communication is sent from either department by registered or certified mail, with return receipt requested, to the address appearing in the last registration, the period of 30 days shall commence on the date of delivery to the licensee, as indicated by the return receipt...

Proceedings in cases of professional misconduct⁵¹

- a. Violations. Violations involving professional misconduct of a minor or technical nature may be resolved by expedited procedures as provided in paragraph b or c of this subdivision. For purposes of this subdivision, violations of a minor or technical nature shall include, but shall not be limited to, isolated instances of violations concerning professional advertising or record keeping, and other isolated violations which do not directly affect or impair the public health, welfare or safety ... The initial instance of any violation of a minor or technical nature may be resolved by the issuance of an administrative warning pursuant to paragraph b of this subdivision. Subsequent instances of similar violations of a minor or technical nature within a period of three years may be resolved by the procedure set forth in paragraph c of this subdivision...

⁵¹ N.Y. EDUC. LAW § 6510 (McKinney).