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

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.

Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.

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.

North Carolina 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**

North Carolina 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 and recommend that psychologists use this template, too.

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...
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

The Department Of Professional And Financial Regulation, State Board of Examiners of Psychologists in North Carolina has incorporated by reference the standards of the American Psychological Association and Association of State and Provincial Psychology Boards.10

---

6 Please use the most recent version of WORD to access the full capabilities of the EHR templates.
8 Id. at p. 45.
Common Law

Annotations and relevant citing references to N.C. GEN. STAT. ANN. § 90-270.15 (re: Denial, suspension, or revocation of licenses and health services provider certification, and other disciplinary and remedial actions for violations of the Code of Conduct; relinquishing of license)

- Psychologist's loss of patient file containing diagnostic tests did not support conclusion that psychologist violated ethical principle requiring psychologist to make provisions for maintaining confidentiality in storage and disposal of records, where there was no evidence that anyone had access to information in files. The psychologist's treatment of child upon request of noncustodial parent without notifying custodial parent did not violate ethical principle requiring psychologist to be alert to personal, social, organizational, financial, or political situations and pressures that might lead to misuse of their influence, regardless of whether psychologist lied about which parent had custody. Psychologist did not violate ethical principle stating that psychologists should not misuse their influence on other people's lives by their recommendations, where psychologist, after former patient began seeing another therapist, presented therapist with letter outlining questions and approach he thought she should take with patient before reinstating visitation privileges with patient's children. Psychologist's recommendation that former patient seek help from another practitioner with different philosophy than therapist currently handling former client's case did not violate ethical principle requiring psychologists not to offer their own services directly to person receiving similar services from another professional, as psychologist did not offer his services in substitution. Evidence supported finding that psychologist violated ethical principle requiring psychologist to avoid any action that would violate or diminish legal and civil rights of clients or others who may be affected by their actions, where psychologist, upon request of noncustodial parent, examined child without notifying custodial parent of treatment. Psychologist violated ethical principle stating that psychologist responsible for decisions involving individuals or policies based on test results must have understanding of psychological or educational measurement, validation problems, and test results, where psychologist inappropriately concluded that child had dyslexia or dyslexic condition, and testified in court of tentative diagnosis that she had learning
disability, when test data did not prove or suggest such diagnosis. Evidence supported finding that psychologist violated ethical principle requiring psychologist to recognize that assessment results may become obsolete and to make every effort to avoid and prevent misuse of obsolete measures, where another psychologist testified that psychologist had relied on intelligence test which was obsolete due to subsequent revision.  

- Provision of Psychology Practice Act which incorporated private organization's code of ethics was not an unconstitutional delegation of legislative authority and did not violate due process rights of psychologist whose license was suspended for violating this and other provisions; Act made discretionary reference to organization's ethical code for purposes of determining improper behavior by a licensee and permitted Psychology Board to apply ethical standards of a well-recognized, independent authority, whose standards were developed to provide guidance on complex issues of morality and professional behavior among psychologists. Evidence that licensed psychologist entered into destructive personal relationship with his patient, while she was still undergoing therapy, and that he did not obtain professional consultation on his relationship, but merely “casually broached the subject” with a colleague, who advised that such a situation was “hazardous” supported Psychology Board's conclusion that psychologist violated ethical standards regarding their conduct as to personal problems. Evidence that licensed psychologist's actions in entering into romantic relationship with patient resulted in foreseeable harm to patient, and that his influence over patient caused her to end her therapy supported Psychology Board's conclusion that psychologist violated ethical standards admonishing psychologists to take reasonable steps to avoid harming their patients or clients and requiring them to guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence. Evidence that licensed psychologist allowed patient to end her therapy to pursue a personal relationship with him, and that such behavior ultimately caused patient to suffer severe depression, thereby endangering her welfare, supported Psychology Board's conclusion that psychologist violated statute prohibiting practicing psychology in such manner as to endanger the welfare of clients or patients. Evidence that licensed psychologist continued to treat patient in group therapy sessions while simultaneously exploring a social relationship with her supported Psychology Board's conclusion that

---


Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
psychologists violated ethical standard providing that psychologists should refrain from entering into personal relationship if it appears likely that relationship reasonably might impair their objectivity or otherwise interfere with their effectively performing functions of a psychologist. Psychology Board did not violate licensed psychologist's statutory or due process rights in disciplinary proceeding; Board, which was statutorily empowered to investigate as well as to adjudicate complaints against its licensees, employed a staff psychologist to investigate complaint and submit anonymous report to determine whether sufficient grounds existed to issue charges against psychologist, and hearing was not held on the matter until a year later, at which time psychologist presented evidence and cross-examined witnesses. 12

- American Psychological Association's Ethical Principles of Psychologists and Code of Conduct (Ethics Code) must be strictly construed. Psychologist who entered into sexual relationships with two of his former clients within months of termination of therapy, and who dated two other former clients, did not thereby violate ethical principle that requires psychologists to avoid dual relationships, and which prohibits sexual intimacies with “clients”; psychologist engaged in relationships only with former clients, after counseling relationship had ended.13

- Patient's mother sued psychologist claiming medical malpractice, negligent and intentional infliction of emotional distress, and slander based upon psychologist's statement to patient that mother was mentally ill with borderline personality. The Superior Court, New Hanover County, James E. Ragan, III, J., dismissed complaint. Mother appealed. The Court of Appeals, Greene, J., held that: (1) mother could not maintain medical malpractice action against psychologist with whom she did not have physician-patient relationship… Licensing requirements for psychologists and ethical standards are not relevant to standard of care required of psychologists in medical malpractice actions.14

- Psychologist brought action against state Board of Examiners of Practicing Psychologists and voluntary professional association to enjoin them from requiring her disclosure of information concerning client. The Superior Court, Mecklenburg County, C. Walter Allen, J., granted Board's motion for summary

judgment against psychologist and psychologist's motion for summary judgment against association, and association appealed. The Court of Appeals, John, J., held that: (1) contractual nature of psychologist's membership in voluntary professional association did not require her to produce confidential client information to association without client's consent, and (2) any waiver by client of psychologist-patient privilege did not affect psychologist's general professional obligation to maintain client confidentiality outside courtroom.15

Annotations to N.C. GEN. STAT. ANN. § 7B-301 (re: Duty to report abuse, neglect, dependency, or death due to maltreatment)

- Psychologist violated statute, and thus violated ethical principle stating that psychologist must adhere to relevant governmental laws and institutional regulations, where psychologist did not report allegations of sexual abuse, despite psychologist's allegation that he did not report abuse as required because he thought matter was already in judicial system and that parents and attorneys knew of alleged sexual abuse of child.16
- Maternal grandparents seeking custody of grandchildren and alleging unfitness of mother were not restricted to making allegations of potential harm to grandchildren only through allegations to Department of Social Services (DSS); legislature did not intend to provide access to courts only through protracted process of social service investigation while closing courthouse door to those who could be most concerned, members of child's extended family.17
- When the statutory steps are followed, the responsibility to report suspected child abuse is conjoined with immunity from civil or criminal liability; equally important, this responsibility, when met by complying with those requisites, is conjoined with the statutory presumption that such reports are made in good faith.18
- Evidence supported trial court's finding that wife's statements to the Department of Social Services that her husband molested her sons were made with actual malice, thereby negating any defense of privilege; audiotapes offered by wife contained no evidence from which a reasonable person could conclude that sexual misconduct had occurred, both sons testified that husband had not molested them in any way and that they had informed wife, when she inquired,19

18 Dobson v. Harris, 2000, 352 N.C. 77, 530 S.E.2d 829.
that husband had not molested them in any way, and trial court found as fact
that husband had not molested either son and that wife knew her statements
were false when she made them.19

- If plaintiff claiming slander per se based on report of felony child abuse cannot
meet his burden of showing that defendant made report with actual malice, the
statutory qualified privilege afforded to those who in good faith report
suspected child abuse operates as an absolute privilege and bars any recovery
for the communication, even if the communication is false. The statutes that
impose a duty upon everyone to report suspected child abuse together provide
immunity not merely conditional upon proof of good faith, but a “good faith”
immunity, one which endows the reporter with the mandatory presumption
that he or she acted in good faith; thus, in a defamation action arising from
such a report, the defendant is relieved of the burden of going forward with
evidence of her good faith, and the plaintiff has the burden to go forward with
evidence of the defendant’s bad faith or malice.20

**Contents of the record are mandated by law**

North Carolina has incorporated by reference the standards of the American
Psychological Association and Association of State and Provincial Psychology Boards
and the following standards regulate the content of psychological records kept by
North Carolina psychologists.21 In addition, the Health Insurance Portability and
Accountability Act (HIPAA)22 would apply to North Carolina psychological records.

### 3.10 Informed Consent23

(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

---

20 Dobson v. Harris, 1999, 134 N.C.App. 573, 521 S.E.2d 710, review allowed 351 N.C. 186, 541
S.E.2d 729, motion to dismiss denied 351 N.C. 353, 541 S.E.2d 728, review denied 351 N.C. 353,
541 S.E.2d 728, reversed 352 N.C. 77, 530 S.E.2d 829.
21 21 N.C. ADMIN. CODE § 54 .1608.
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).
23 21 N.C. ADMIN. CODE § 54 .1608.
persons… (See also Standards 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

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

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

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

A HIPAA notice of privacy practices\(^24\) that delineates the psychologist’s scope of and limitations of confidentiality works in tandem with the disclosure document provided to the patient during the informed consent process specified by Standards 3.10, 9.03, and 10.01. In addition, the North Carolina law would require disclosure about the following exceptions to protecting patient confidentiality:

- Duty to report the abuse, neglect, dependency, or death due to maltreatment of a child;\(^25\)
- Duty to report the abuse, neglect, or exploitation of a disabled adult.\(^26\)

Communications between psychologist and client or patient\(^27\)

No person, duly authorized as a licensed psychologist or licensed psychological associate, nor any of his or her employees or associates, shall be required to


\(^{25}\) N.C. GEN. STAT. § 7B-301.

\(^{26}\) N.C. GEN. STAT. § 108A–102(a) – (b).

\(^{27}\) N.C. GEN. STAT. ANN. § 8-53.3.
disclose any information which he or she may have acquired in the practice of psychology and which information was necessary to enable him or her to practice psychology. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her opinion disclosure is necessary to a proper administration of justice...

Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes.

The rules promulgated by the State Board of Examiners of Psychologists set forth the following requirements for the content of records maintained by licensed psychologists:28

A. The name of the client and other identifying information;
B. The presenting problem(s) or purpose or diagnosis;
C. The fee arrangement;
D. The date and substance of each billed or service-count contractor service;
E. Any test results or other evaluative results obtained and any basic test data from which they were derived;
F. Notation and results of formal consults with other providers;
G. A copy of all test or other evaluative reports prepared as part of the professional relationship; and
H. Any releases executed by the client.

28 21 N.C. ADMIN. CODE § 54 .1608.
Other APA Ethical Standards and HIPAA regulations that apply to North Carolina records include the following:

**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. Standard 4.04(a) suggests that psychologists focus the documentation in a manner that is very protective of their client’s privacy rights. HIPAA permits sharing protected health information (PHI) with other health care professionals who are engaged in the evaluation and treatment of the same patient.\(^{30}\)

**6.06 Accuracy in Reports to Payors and Funding Sources**\(^{31}\)

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**\(^{32}\)

(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

\(^{29}\) 21 N.C. ADMIN. CODE § 54 .1608.


\(^{31}\) 21 N.C. ADMIN. CODE § 54 .1608.

\(^{32}\) Id.
their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.)

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

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

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

In light of North Carolina law and APA Standards 6.06, 9.01, 9.02, and 9.10 psychologists in North Carolina would use an intake and evaluation note, progress notes, and termination templates.

Maintenance and Security of Records
Under APA Code of Ethics Standard 4.01 - Maintaining Confidentiality, “[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

33 Id.
34 Id.
36 Id.
This standard supports the record keeping standards:

6. Record Keeping and Fees

6.01 Documentation of Professional ...Maintenance of Records

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

HIPAA enables the patient to inspect and obtain PHI records created by the psychologist as long as those records are maintained. In addition, patients have a right to amend any part of the record; 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 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). Finally, patients may obtain an accounting as to who has accessed the PHI and the details about each disclosure.

6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional...

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

(b) If confidential information concerning recipients of psychological services

---

37 Id.
38 45 CFR 164.524.
39 45 CFR 164.526 (a).
40 45 CFR 164.528.
41 21 N.C. ADMIN. CODE § 54 .1608.

Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
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.42

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

6.03 Withholding Records for Nonpayment44
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.

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

North Carolina has created law that affects the release of records, and the use of electronic records:46

Copy Fees

---

42 Id.
43 45 CFR 164.508.
44 21 N.C. ADMIN. CODE § 54 .1608.
45 45 CFR 164.508 (b)(4).

Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
A health care provider may charge a reasonable fee to cover the costs incurred in searching, handling, copying, and mailing medical records to the patient or the patient’s designated representative. The maximum fee for each request shall be seventy-five cents (75¢) per page for the first 25 pages, fifty cents (50¢) per page for pages 26 through 100, and twenty-five cents (25¢) for each page in excess of 100 pages, provided that the health care provider may impose a minimum fee of up to ten dollars ($10.00), inclusive of copying costs. If requested by the patient or the patient’s designated representative, nothing herein shall limit a reasonable professional fee charged by a physician for the review and preparation of a narrative summary of the patient's medical record. This section shall only apply with respect to liability claims for personal injury, and claims for social security disability, except that charges for medical records and reports related to claims under Article 1 of Chapter 97 of the General Statutes shall be governed by the fees established by the North Carolina Industrial Commission pursuant to G.S. 97-26.1. This section shall not apply to Department of Health and Human Services Disability Determination Services requests for copies of medical records made on behalf of an applicant for Social Security or Supplemental Security Income disability.

Electronic medical records
(a) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this State or any unit of State or local government may create and maintain medical records in an electronic format. The health care provider, facility, or governmental unit shall not be required to maintain a separate paper copy of the electronic medical record. A health care provider, facility, or governmental unit shall maintain electronic medical records in a legible and retrievable form, including adequate data backup.

(b) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this State or any unit of State or local government may permit authorized individuals to authenticate orders and other medical record entries by written signature, or by electronic or digital signature in lieu of a signature in ink. Medical record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, “authentication” means identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.
(c) The legal rights and responsibilities of patients, health care providers, facilities, and governmental units shall apply to records created or maintained in electronic form to the same extent as those rights and responsibilities apply to medical records embodied in paper or other media. This subsection applies with respect to the security, confidentiality, accuracy, integrity, access to, and disclosure of medical records.

Retention of records

North Carolina psychologists must “retain securely and confidentially the complete case record for at least seven years from the date of the last provision of psychological services; or, except when prevented from doing so by circumstances beyond the psychologist's control, has failed to retain securely and confidentially the complete case record for three years from the date of the attainment of majority age by the patient or client or for at least seven years from the date of the last provision of psychological services, whichever is longer; or, except when prevented from doing so by circumstances beyond the psychologist's control, has failed to retain securely and confidentially the complete case record indefinitely if there are pending legal or ethical matters or if there is any other compelling circumstance.”

Violations of the specific duties

Denial, suspension, or revocation of the license and other disciplinary and remedial actions for violations of the Code of Conduct can occur for engaging in illegal, immoral, dishonorable, unprofessional, or unethical conduct regarding the following acts that may involve record keeping:

1. Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge;

2. Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice, or a misdemeanor charge reflecting the inability to practice psychology with due regard to the health and safety of clients or patients;

3. Has practiced any fraud, deceit, or misrepresentation upon the public, the

47 N.C. GEN. STAT. § 90-270.15(18).
48 N.C. GEN. STAT. § 90-270.15.
Board, or any individual in connection with the practice of psychology, the offer of psychological services, the filing of Medicare, Medicaid, or other claims to any third party payor, or in any manner otherwise relevant to fitness for the practice of psychology;

...(6) Has had a license or certification for the practice of psychology in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject him or her to discipline under this Article;

...(10) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection, or in the then-current code of ethics of the American Psychological Association, except as the provisions of such code of ethics may be inconsistent and in conflict with the provisions of this Article, in which case, the provisions of this Article control;

(11) Has practiced psychology in such a manner as to endanger the welfare of clients or patients;

...(14) Has failed to use, administer, score, or interpret psychological assessment techniques, including interviewing and observation, in a competent manner, or has provided findings or recommendations which do not accurately reflect the assessment data, or exceed what can reasonably be inferred, predicted, or determined from test, interview, or observational data;

(15) Has failed to provide competent diagnosis, counseling, treatment, consultation, or supervision, in keeping with standards of usual and customary practice in this State;

(16) In the absence of established standards, has failed to take all reasonable steps to ensure the competence of services;

(17) Has failed to maintain a clear and accurate case record which documents the following for each patient or client:

a. Presenting problems, diagnosis, or purpose of the evaluation, counseling, treatment, or other services provided;

b. Fees, dates of services, and itemized charges;
c. Summary content of each session of evaluation, counseling, treatment, or other services, except that summary content need not include specific information that may cause significant harm to any person if the information were released;
d. Test results or other findings, including basic test data; and
e. Copies of all reports prepared;

(18) …the psychologist …has failed to retain securely and confidentially the complete case record for at least seven years from the date of the last provision of psychological services; or, except when prevented from doing so by circumstances beyond the psychologist’s control, has failed to retain securely and confidentially the complete case record for three years from the date of the attainment of majority age by the patient or client or for at least seven years from the date of the last provision of psychological services, whichever is longer; or, except when prevented from doing so by circumstances beyond the psychologist’s control, has failed to retain securely and confidentially the complete case record indefinitely if there are pending legal or ethical matters or if there is any other compelling circumstance;

(19) Has failed to cooperate with other psychologists or other professionals to the potential or actual detriment of clients, patients, or other recipients of service, or has behaved in ways which substantially impede or impair other psychologists’ or other professionals’ abilities to perform professional duties;

…(22) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional psychological associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction; or has failed to cooperate with institutional review boards or professional standards review organizations, when those organizations or entities have jurisdiction; or

(23) Has refused to appear before the Board after having been ordered to do so in writing by the Chair.

(b) Upon proof that an applicant or licensee under this Article has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial, suspension, or revocation, issue a formal reprimand or formally censure the applicant or licensee, may place the applicant or licensee upon probation with

Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.