

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

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, J.D., 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).

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.

Ohio 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

Ohio 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, such as Ohio, and recommend that psychologists use this template, too.⁵

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

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.

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.

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

Neither the Ohio Revised Code¹⁰ (statutes passed by the legislature) or the Ohio Administrative Code¹¹ (rules promulgated by Ohio’s State Board of Psychology) explicitly adopted the APA’s Ethical Principles of Psychologists and Code of

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

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 OHIO REV. CODE ANN. §§ 4732.01, *et seq.*

¹¹ OHIO ADMIN. CODE 4732-17-01 to 4732-17-03; *but see* OHIO ADMIN. CODE § 4732-17-01 (A)(4) (“Ethics codes and standards for providers promulgated by the “American Psychological Association,” the “Canadian Psychological Association,” and other relevant professional groups

Conduct. The Board has, however, adopted its own “rules of professional conduct” for Ohio psychologists, which set forth several obligations related to record keeping.¹²

Common Law

In *Campbell v. Ohio State Univ. Med. Ctr.*, the Court found that Ohio’s duty to protect statute shielded an inpatient facility from liability when one client attacked another without warning,¹³ overriding another statute giving the inpatient client the right to “reasonable protection from assault or battery by any other person.”¹⁴

Relevant annotations to OHIO REV. CODE ANN. § 4732.01 (Definitions – Psychology licensing statute):

- Court-appointed psychologist who served as such during the divorce proceeding to aid the trial court in allocating parental rights and responsibilities was entitled to absolute immunity in suit filed against him for psychological malpractice and negligence by former husband, regardless of whether psychologist's court imposed duty was to produce an evaluation or to testify; in being ordered to conduct a psychological examination and evaluation of the parties to the divorce, psychologist was acting as an arm of the court and only carrying out a duty imposed upon him by the court order.¹⁵

Relevant annotation and citing reference to OHIO ADMIN. CODE 4732-17-01 (re: code

shall be used as aids in resolving ambiguities that may arise in the interpretation of the rules of professional conduct, except that these rules of professional conduct shall prevail whenever any conflict exists between these rules and any professional association standard.”).

¹² *Id.* “The rules of professional conduct constitute the standards against which the required professional conduct of a psychologist is measured.”

¹³ *Campbell v. Ohio State Univ. Med. Ctr.*, 843 N.E.2d 1194, 1197 (Ohio 2006).

¹⁴ *Id.* at 1195, quoting OHIO REV. CODE ANN. § 2305.51(B) that establishes a duty to exercise reasonable care to protect by warning the intended victim against such danger if the patient presents a serious danger of violence. . See, [Michael v. Woodside Receiving Hosp. \(Ohio Ct.Cl. 1996\) 78 Ohio Misc.2d 25, 669 N.E.2d 581](#): Due to unpredictability and uncertainty as to patients' actions upon release from psychiatric facility, holding psychiatrist to malpractice standard of ordinary care is too stringent; thus, courts apply “professional judgment rule,” wherein psychiatrist is not liable for releasing patient who subsequently harms someone if, after carefully examining all relevant data, psychiatrist makes professional medical judgment that patient does not pose danger to others or to him or herself.

¹⁵ [McCleery v. Leach \(Ohio App. 11 Dist., Lake, 04-14-2003\) No. 2001-L-195, 2003-Ohio-1875, 2003 WL 1871005](#), Unreported.

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.

of conduct for psychologists):

- It is no excuse for practice beyond one's area of competence that the patient refused or resisted referral to an appropriate practitioner, since OAC 4732-17-01(B)(1) prohibits a psychologist from not being in a position to properly refer a patient or consult with other practitioners.¹⁶
- It is also significant that Dr. Byrd did not tell Client P, in response to her flirtations, that he could not date her because it was not ethically permissible. Instead, he told her that he could not date her because he was dating someone else. As for his calendar that indicates that he was booked up with appointments on Fridays in October 2001 and could not have met at a mall as she alleged, this documentary evidence produced by Dr. Byrd may be discounted by his admission, with respect to Client X, that he altered her son's records in an apparent attempt to remove any reference to him actually treating the son. . . . The court further finds that the findings of fact and conclusions of law with respect to Client P, and the revocation of Dr. Byrd's license based in part on these findings of fact and conclusions of law, were supported by reliable, probative and substantial evidence and were in accordance with the law.¹⁷

Relevant Annotations to: OHIO REV. CODE ANN. § 4732.19 (Privileged Communications)

- Adoptee's medical records and testimony of his treating mental health professionals were confidential materials subject to privilege, and were not discoverable by Department of Human Services (DHS) in wrongful adoption action brought by adoptee's parents; materials sought related to communications and transactions between adoptee and his treatment providers, and could not be divulged without adoptee's consent.¹⁸
- Psychiatric or psychological records of patient who filed defamation action against defendant, who filed police report accusing patient of sexual harassment and stalking, were protected by physician-patient or psychologist-client privilege; even if information contained in records was relevant to defense, records were not communications that related causally or historically to

¹⁶ [*In re Barnes* \(Franklin 1986\) 31 Ohio App.3d 201, 510 N.E.2d 392, 31 O.B.R. 470.](#)

¹⁷ [*Mark Byrd, PsyD, Plaintiff, v. Ohio State Board Of Psychology, Defendant*, 2005 WL 5368742](#)

¹⁸ *Sirca v. Medina Cty. Dept. of Human Serv.* (Ohio App. 9 Dist., 08-08-2001) 145 Ohio App.3d 182, 762 N.E.2d 407.

physical or mental injuries that were relevant to issues in lawsuit, which did not include a claim for emotional distress or mental anguish and merely alleged that statements made by defendant damaged patient's personal and professional reputation. Relevancy alone of information in psychiatric or psychological records does not waive the physician-patient or psychologist-client privilege.¹⁹

Relevant annotations to OHIO REV. CODE ANN. § 2151.421 (re: report of injury and neglect)

- Any privilege that attached to victim's communication with her psychologist was automatically waived, where victim was under 18 years of age, psychologist had reason to believe that victim had been sexually abused.²⁰
- Under statute setting forth specific duty to report knowledge or suspicions of child abuse, duty to report such knowledge or suspicion was owed to individual minor; thus, psychologist who allegedly failed to report his suspicions that minor had been molested owed no duty to others who allegedly were subsequently molested by same perpetrator.²¹
- High school psychologist, who had a statutory duty to report to county Department of Family and Children's Services her suspicion that high school student's father abused student, had statutory immunity from action by student's father in connection with report and subsequent investigation by the Department, although Department determined that father did not abuse student. Information contained in report which high school psychologist filed with county Department of Family and Children's Services, which apparently indicated that high school student's father abused student and resulted in Department's investigation of father, was confidential and privileged, and thus father was not entitled to discovery of report.²²

Relevant annotations to OHIO REV. CODE § 2921.22 (re: duty to report felony)

¹⁹ *McCoy v. Maxwell* (Ohio App. 11 Dist., 10-02-2000) 139 Ohio App.3d 356, 743 N.E.2d 974, appeal not allowed 91 Ohio St.3d 1448, 742 N.E.2d 146. Note that the statute says, "Court decisions construing the scope of the physician-patient privilege, pursuant to section [2317.02](#) of the Revised Code, are applicable to this privilege between the licensed psychologists ...the client." Many other physician-patient privilege cases exist and warrant consideration if privilege becomes an issue.

²⁰ *State v. Stewart* (Ohio App. 9 Dist., 06-05-1996) 111 Ohio App.3d 525, 676 N.E.2d 912.

²¹ *Hite v. Brown* (Ohio App. 8 Dist., 03-09-1995) 100 Ohio App.3d 606, 654 N.E.2d 452, appeal denied 73 Ohio St.3d 1414, 651 N.E.2d 1311.

²² *Liedtke v. Carrington* (Ohio App. 8 Dist., 08-14-2001) 145 Ohio App.3d 396, 763 N.E.2d 213.

- Information which psychologist learned when she evaluated police officer at behest of his municipal employer, and subsequently disclosed to that employer, was not confidential and thus not exempt from discovery under psychologist-patient privilege in civil suit against officer.²³
- Under RC 2921.22(F)(1), a licensed psychologist or an unlicensed supervisee thereof is not required to report a felony when such information is privileged under RC 4732.19 due to the psychologist-client relationship, but if he voluntarily discloses privileged information regarding a felony to law enforcement authorities under RC 2921.22(G), he is not subject to any liability or recrimination for breach of privilege or confidence.²⁴

Relevant annotation to OHIO REV. CODE ANN. § 2305.51 (Liability of mental health professionals for violent behavior of mental health clients or patients)

- Mental health organization that had provided foster care services and treatment to juvenile who shot two people during gas station robbery was entitled to immunity from any liability for his actions, given absence of evidence that its mental health professionals had any reason to believe that juvenile intended to shoot those individuals.²⁵

Annotations to OHIO REV. CODE § 3701.74(C) (re: Definitions; examining or obtaining medical records; time; civil actions)

- Patient did not consent to medical clinic's disclosure of her medical records to her employer, and thus, clinic was liable to patient for unauthorized disclosure, despite the fact that patient signed a consent form stating that, for purposes of processing payment, her medical information would be sent to her employer because the clinic disclosed information that was unrelated to the purpose of processing payment. The Medical clinic was liable to patient for its unauthorized disclosure of patient's medical records to patient's employer, despite clinic's contention that the employer owed the same duty of confidentiality to patient under the Health Insurance Portability and Accountability Act (HIPAA) as the clinic did; the employer was not a health

²³ [*Phelps v. Coy* \(S.D.Ohio, 03-22-2000\) 194 F.R.D. 606.](#)

²⁴ Opinion Attorney General 88-027.

²⁵ [*Cogswell v. Brook* \(Ohio App. 11 Dist., Geauga, 10-22-2004\) No. 2003-G-2511, 2004-Ohio-5639, 2004 WL 2376271, Unreported.](#)

plan, healthcare clearinghouse, or healthcare provider under HIPAA so as to be a part of the same circle of confidentiality as the clinic, and HIPAA did not otherwise provide clinic with authority to make the inadvertent disclosure.²⁶

Annotations to OHIO REV. CODE ANN. § 4732.17 Denial, suspension, or revocation of license.

- Rule prohibiting psychologist from engaging in sexual relationship with “immediate ex-client” was not unconstitutionally vague, although rule did not define term “immediate ex-client.”²⁷
- A psychologist violates the rules of professional conduct as a supervisor in the field of psychology when he fails to meet with or assume complete control over the welfare of his supervisee's clients.²⁸
- The state board of psychology, which has discretion to choose the type of sanction imposed against a licensee, may revoke the license of a psychologist who pleads guilty to medicaid fraud for billing medicaid for services provided by his interns.²⁹
- The state board of psychology may refuse to issue a license to an applicant who, after signing an Ohio supervisee registration form thereby agreeing to follow Ohio psychology law and rules, engages in a sexual relationship with an “immediate ex-client” in violation of [OAC 4732-17-01\(A\)\(2\)\(d\)](#) while serving an internship in the state of Kansas.³⁰

Contents of the record that are mandated by law

A number of laws related to contents of records within hospital and public facilities and the institutional requirements have longed been met by providers in Ohio.³¹ The digest will focus upon how the record keeping laws apply to independent

²⁶ [Herman v. Kratche \(Ohio App. 8 Dist., Cuyahoga, 11-09-2006\) No. 86697, 2006-Ohio-5938, 2006 WL 3240680](#), Unreported.

²⁷ [Leon v. Ohio Bd. of Psychology \(Ohio 1992\) 63 Ohio St.3d 683, 590 N.E.2d 1223](#).

²⁸ [Steckler v. Ohio State Bd. of Psychology \(Cuyahoga 1992\) 83 Ohio App.3d 33, 613 N.E.2d 1070](#).

²⁹ [McGee v. Ohio State Bd. of Psychology \(Franklin 1993\) 82 Ohio App.3d 301, 611 N.E.2d 902](#).

³⁰ [Barnett v. Wendt \(Summit 1986\) 33 Ohio App.3d 124, 514 N.E.2d 739](#).

³¹ Recordkeeping requirements for various types of State facilities and other hospitals exist under Ohio law. *See*, OHIO ADMIN. CODE § 5122.29 (re: Rights of Patients): Matter in which patient who was assaulted after being admitted to hospital's psychiatric ward for care and treatment of a mental disorder brought suit against hospital for resulting injuries, and sought to discover information regarding second patient who allegedly committed attack, involved special situation in which public interest outweighed confidentiality of second patient's records, and thus came within exception to

practitioners. Under the rules regulating psychological practice, a duty to disclose certain information to all patients is required and would include the following written content that would be part of the informed consent process before engaging in psychological services. The Health Insurance Portability and Accountability Act (HIPAA)³² calls for a notice of privacy practices³³ that delineates the psychologist's scope of and limitations of confidentiality. It works in tandem with the disclosure document provided to the patient during the informed consent process specified by Ohio law:

Informed client³⁴

A psychologist... shall give a truthful, understandable, and reasonably complete account of a client's condition to the client or to those responsible for the care of the client. The psychologist... shall keep the client fully informed as to the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided.

Informed choice³⁵

A psychologist ...shall accord each client informed choice, confidentiality, and reasonable protection from physical or mental harm or danger.

Confidentiality³⁶

physician-patient privilege allowing discovery of records. However, identifying information, including second patient's name, address, and name of his treating psychiatrist, would be redacted, in order to preserve purpose of privilege while still providing relevant information-- *Fair v. St. Elizabeth Med. Ctr.* (Ohio App. 2 Dist., 01-14-2000) 136 Ohio App.3d 522, 737 N.E.2d 106; OHIO REV. CODE ANN. § 5122.31 (Disclosure of Information).

³² HIPAA, 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).

³³ 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).

³⁴ OHIO ADMIN. CODE 4732-17-01(C)(3).

³⁵ OHIO ADMIN. CODE 4732-17-01(C)(5).

³⁶ OHIO ADMIN. CODE 4732-17-01(G)(1); OHIO REV. CODE § 4732.19: "The confidential relations and communications between a licensed psychologist or licensed school psychologist and client are placed upon the same basis as those between physician and patient under division (B) of

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.

Confidential information is information revealed by an individual ...or otherwise obtained by a psychologist ...where there is reasonable expectation that it was revealed or obtained as a result of the professional relationship... Such information is not to be disclosed by the psychologist ...without the informed consent of the individual(s).

Legal limits of confidentiality³⁷

At the beginning of a professional relationship a psychologist...shall inform his/her client of the legal limit of confidentiality. To the extent that the client can understand, the psychologist ...shall inform a client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality. When services are provided to more than one patient or client during a joint session (for example to a family or couple, or parent and child, or group), a psychologist ...shall, at the beginning of the professional relationship, clarify to all parties the limits of confidentiality.

Details to meet this standard include describing the specific information about the mandatory reporting duties that apply to psychologists:

- Duty to report abuse or neglect of a child under age 18;³⁸
- Duty to report abuse, neglect, and other major unusual incidents of developmentally disabled adults;³⁹
- Duty to report abuse, neglect or exploitation of vulnerable adults;⁴⁰
- Duty to note knowledge of domestic violence, as defined in section [3113.31](#) of the Revised Code, or and the basis for it in the patient's or client's records and duty to report ;⁴¹
- Duty to exercise reasonable care to protect by warning the intended victim against such danger if the patient presents a serious danger of violence;⁴²

section [2317.02](#) of the Revised Code. Nothing in this chapter shall be construed to require any such privileged communication to be disclosed.”

³⁷ OHIO ADMIN. CODE 4732-17-01(G)(2)(e).

³⁸ OHIO REV. CODE ANN. § 2151.421.

³⁹ OHIO REV. CODE ANN. § 5123.61.

⁴⁰ OHIO REV. CODE ANN. § 5101.61.

⁴¹ OHIO REV. CODE ANN. § 2921.22.

- Duty to participate and release information in the involuntary hospitalization process of a mentally ill patient who refuses treatment and the patient is unable to take care of basic physical needs and/or is a danger to self or others.⁴³

Contents of Record⁴⁴

A psychologist ...rendering professional individual services to a client, or services billed to a third-party payer, shall maintain a professional record that includes:

- (i) The presenting problem(s),
- (ii) The date(s) and purpose, if not self-evident, of each service contact,
- (iii) The fee arrangement,
- (iv) Any test or other evaluative results obtained,
- (v) Test data,
- (vi) A copy of any test or other evaluative reports prepared as part of the professional relationship,
- (vii) Notation and results of formal contacts with other providers, and
- (viii) Authorizations, if any, by the client for release of records or information.

Electronic Signature Systems⁴⁵

(A) As used in this section:

(1) “Electronic record” means a record communicated, received, or stored by electronic, magnetic, optical, or similar means for storage in an information system or transmission from one information system to another. “Electronic record” includes a record that is communicated, received, or stored by electronic data interchange, electronic mail, facsimile, telex, or similar methods of communication.

(2) “Electronic signature” means any of the following attached to or associated with an electronic record by an individual to authenticate the record:

- (a) A code consisting of a combination of letters, numbers, characters, or symbols that is adopted or executed by an individual as that individual's

⁴² OHIO REV. CODE ANN. § 2305.51(B). *Campbell, supra*, note 13, cited this law: “Liability of mental health professionals and organizations for violent behavior of mental health clients or patients” and establishes a duty to exercise reasonable care.

⁴³ OHIO REV. CODE ANN. § 5122.11.

⁴⁴ OHIO ADMIN. CODE 4732-17-01(B)(6)(a).

⁴⁵ OHIO REV. CODE ANN. § 3701.75.

electronic signature;

(b) A computer-generated signature code created for an individual;

(c) An electronic image of an individual's handwritten signature created by using a pen computer.

(3) "Health care record" means any document or combination of documents pertaining to a patient's medical history, diagnosis, prognosis, or medical condition that is generated and maintained in the process of the patient's treatment.

(B) All notes, orders, and observations entered into a health care record, including any interpretive reports of diagnostic tests or specific treatments, such as radiologic or electrocardiographic reports, operative reports, reports of pathologic examination of tissue, and similar reports, shall be authenticated by the individual who made or authorized the entry. An entry into a health care record may be authenticated by executing handwritten signatures or handwritten initials directly on the entry. An entry that is an electronic record may be authenticated by an electronic signature if all of the following apply:

(1) The entity responsible for creating and maintaining the health care record adopts a policy that permits the use of electronic signatures on electronic records.

(2) The entity's electronic signature system utilizes either a two-level access control mechanism that assigns a unique identifier to each user or a biometric access control device.

(3) The entity takes steps to safeguard against unauthorized access to the system and forgery of electronic signatures.

(4) The system includes a process to verify that the individual affixing the electronic signature has reviewed the contents of the entry and determined that the entry contains what that individual intended.

(5) The policy adopted by the entity pursuant to division (B)(1) of this section prescribes all of the following:

- (a) A procedure by which each user of the system must certify in writing that the user will follow the confidentiality and security policies maintained by the entity for the system;
- (b) Penalties for misusing the system;
- (c) Training for all users of the system that includes an explanation of the appropriate use of the system and the consequences for not complying with the entity's confidentiality and security policies.

In light of the duty for Ohio psychologists to terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship, and shall offer to help locate alternative sources of professional services or assistance if indicated, further content in the record must show compliance with this duty.⁴⁶

Maintenance and security of records

Ohio law has established a series of confidentiality protections that affects the maintenance and security of the record:⁴⁷

(1)(a) When rendering psychological services as part of a team or when interacting with other appropriate professionals concerning the welfare of a client, a psychologist or school psychologist may share confidential information about the client provided that reasonable steps are taken to ensure that all persons receiving the information are informed about the confidential nature of the information being shared and agree to abide by the rules of confidentiality.

(b) When any case report or other confidential information is used as the basis of teaching, research, or other published reports, a psychologist or school psychologist shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client or subject identification.

(c) A psychologist ...shall ensure that no diagnostic interview or therapeutic sessions with a client are observed or electronically recorded without first informing the client or the client's guardian and, where the sensitivity of the material requires it, obtaining written consent from same.

⁴⁶ OHIO ADMIN. CODE 4732-17-01(C)(8).

⁴⁷ OHIO ADMIN. CODE 4732-17-01(G).

(d) A psychologist ...shall limit access to client records and shall ensure that all persons working under his/her authority comply with the requirements for confidentiality of client material.

(e) A psychologist ...shall continue to treat all information regarding a client as confidential after the professional relationship between the psychologist ...has ceased.

(f) In a situation in which more than one party has an appropriate interest in the professional services rendered by a psychologist ...to a client, the psychologist ...shall, to the extent possible, clarify to all parties the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.

(i) Such clarification is specifically indicated, among other circumstances, when the client is an organization or when the client has been referred by a third party.

(ii) In accord with paragraphs (C)(3) and (F)(3)(c) of this rule, a psychologist ...shall clarify with the individual receiving services because of a third-party referral whether, and under what conditions-including costs, information or feedback will be provided to the individual receiving those psychological services.

(2) ...In accordance with section [4732.19](#) of the Revised Code, the confidential relations and communications between a licensed psychologist or licensed school psychologist and clients are placed under the same umbrella of a privilege as those between physician and patient under division (B) of section [2317.02](#) of the Revised Code. The privilege is intended to protect the interest of the client by encouraging free disclosure to the licensed psychologist or the licensed school psychologist and by preventing such free disclosure to others. Thus, the client rather than the licensed psychologist or the licensed school psychologist holds and may assert the privilege.

(a) A psychologist ...shall not testify concerning a communication made to him/her by a client. The psychologist ...may testify by express consent of the client or legal guardian or, if the client is deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of such deceased client. If the client voluntarily testifies, the psychologist ...may be compelled to testify on the same subject; or if the client, the executor or

administrator files a claim against the psychologist ...such filing shall constitute a waiver of this privilege with regard to the care and treatment of which complaint is made.

(b) Court decisions construing the scope of the physician-patient privilege, pursuant to section [2317.02](#) of the Revised Code, are applicable to this privilege between the licensed psychologist ...the client.

(c) A psychologist ...may disclose confidential information without the informed written consent of a client when the psychologist ...judges that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on himself/herself or on another person. In such case, the psychologist ...may disclose the confidential information only to appropriate public authorities, the potential victim, professional workers, and/or the family of the client.

(d) A psychologist ...shall safeguard the confidential information obtained in the course of practice ...other professional duties. With the exceptions as required or permitted by statute, a psychologist ...shall disclose confidential information to others only with the informed written consent of the client.

(e) At the beginning of a professional relationship a psychologist ...shall inform his/her client of the legal limit of confidentiality. To the extent that the client can understand, the psychologist ...shall inform a client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality. When services are provided to more than one patient or client during a joint session (for example to a family or couple, or parent and child, or group), a psychologist or school psychologist shall, at the beginning of the professional relationship, clarify to all parties the limits of confidentiality.

(f) A psychologist ...may release confidential information upon court order or to conform with state or federal laws, rules, or regulations.

(g) A psychologist ...shall be familiar with any relevant law concerning the reporting of abuse of children or vulnerable adults.

Specific standards about storing and access to records have been established by

Ohio law:⁴⁸

A psychologist ...shall store and dispose of written, electronic, and other records of clients in such a manner as to ensure their confidentiality. Licensees shall make plans in advance to facilitate appropriate transfer and to protect the confidentiality of records in the event of the psychologist's ...withdrawal from positions or practice. Each licensee shall report to the board on the biennial registration (renewal) form the name, address, and telephone number of a psychologist ...or other appropriate person knowledgeable about transfer and custody of records and responsibility for records in the event of the licensee's absence, emergency or death.

Ohio laws exist regarding how their patient records may be released, inspected, copied, or denied for inspection/copying, and they apply to psychologists:⁴⁹

A patient, a patient's personal representative or an authorized person who wishes to examine or obtain a copy of part or all of a medical record shall submit to the health care provider a written request signed by the patient, personal representative, or authorized person dated not more than one year before the date on which it is submitted. The request shall indicate whether the copy is to be sent to the requestor, physician or chiropractor, or held for the requestor at the office of the health care provider. Within a reasonable time after receiving a request that meets the requirements of this division and includes sufficient information to identify the record requested, a health care provider that has the patient's medical records shall permit the patient to examine the record during regular business hours without charge or, on request, shall provide a copy of the record in accordance with section 3701.741 of the Revised Code, except that if a physician or chiropractor who has treated the patient determines for clearly stated treatment reasons that disclosure of the requested record is likely to have an adverse effect on the patient, the health care provider shall provide the record to a physician or chiropractor designated by the patient. The health care provider shall take reasonable steps to establish the identity of the person making the request to examine or obtain a copy of the patient's record.

Ohio law establishes the charges for copying records:⁵⁰

⁴⁸ OHIO ADMIN. CODE 4732-17-01(B)(6)(c).

⁴⁹ OHIO REV. CODE ANN. § 3701.74 (B).

(A) Each health care provider ...shall provide copies of medical records in accordance with this section.

(B) Except as provided in divisions (C) and (E) of this section, a health care provider ...that receives a request for a copy of a patient's medical record shall charge not more than the amounts set forth in this section.

(1) If the request is made by the patient or the patient's personal representative, total costs for copies and all services related to those copies shall not exceed the sum of the following:

(a) Except as provided in division (B)(1)(b) of this section, with respect to data recorded on paper or electronically, the following amounts: (i) Two dollars and seventy-four cents per page for the first ten pages; (ii) Fifty-seven cents per page for pages eleven through fifty; (iii) Twenty-three cents per page for pages fifty-one and higher;

...(c) The actual cost of any related postage incurred by the health care provider...

(2) If the request is made other than by the patient or the patient's personal representative, total costs for copies and all services related to those copies shall not exceed the sum of the following:

(a) An initial fee of sixteen dollars and eighty-four cents, which shall compensate for the records search;

(b) Except as provided in division (B)(2)(c) of this section, with respect to data recorded on paper or electronically, the following amounts: (i) One dollar and eleven cents per page for the first ten pages; (ii) Fifty-seven cents per page for pages eleven through fifty; (iii) Twenty-three cents per page for pages fifty-one and higher.

...(d) The actual cost of any related postage incurred by the health care provider...

⁵⁰ OHIO REV. CODE ANN. § 3701.741.

(C)(1) On request, a health care provider ...shall provide one copy of the patient's medical record and one copy of any records regarding treatment performed subsequent to the original request, not including copies of records already provided, without charge to the following:

(a) The bureau of workers' compensation, in accordance with Chapters 4121. and 4123. of the Revised Code and the rules adopted under those chapters;

(b) The industrial commission, in accordance with Chapters 4121. and 4123. of the Revised Code and the rules adopted under those chapters;

(c) The department of job and family services or a county department of job and family services, in accordance with Chapters 5101. and 5111. of the Revised Code and the rules adopted under those chapters;

(d) The attorney general, in accordance with sections [2743.51](#) to [2743.72](#) of the Revised Code and any rules that may be adopted under those sections;

(e) A patient, patient's personal representative, or authorized person if the medical record is necessary to support a claim under Title II or Title XVI of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 401 and 1381, as amended, and the request is accompanied by documentation that a claim has been filed...

HIPAA 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.⁵¹ In addition, patients have a right to amend any part of the record;⁵² 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.⁵³

⁵¹ 45 CFR 164.524.

⁵² 45 CFR 164.526 (a).

⁵³ 45 CFR 164.528.

HIPAA also 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.⁵⁴ Concrete security standards are established for all electronic healthcare information (45 CFR 160).

Retention of Records

Psychologists must “ensure that each data entry in the professional record is maintained for a period of not less than five years after the last date of service rendered, or not less than the length of time required by other regulations if that is longer. The general record or a summary thereof shall be kept for a period of not less than twelve years after the last date of service rendered.”⁵⁵

Violations of the specific duties

If a psychologist fails to furnish a record, the patient, personal representative, or authorized person who requested the record may bring a civil action to enforce the patient’s right of access to the record.⁵⁶

In addition, a violation of the rules of professional conduct constitutes unprofessional conduct and is sufficient reason for a reprimand, suspension or revocation of a license, or denial of either original licensure or reinstatement of licensure.⁵⁷ The state board of psychology may refuse to issue a license to any applicant, may issue a reprimand, or suspend or revoke the license of any licensed psychologist or licensed school psychologist, on any of the following grounds:⁵⁸

...(4) Willful, unauthorized communication of information received in professional confidence;

(5) Being negligent in the practice of psychology or school psychology;

...(7) Subject to section [4732.28](#) of the Revised Code, violating any rule of professional conduct promulgated by the board;

⁵⁴ 45 CFR 164.508.

⁵⁵ OHIO ADMIN. CODE 4732-17-01(B)(6)(b).

⁵⁶ OHIO REV. CODE ANN. § 3701.74 (C).

⁵⁷ OHIO ADMIN. CODE 4732-17-01(A)(3).

⁵⁸ OHIO REV. CODE ANN. § 4732.17 Denial, suspension, or revocation of license.

...(10) Waiving the payment of all or any part of a deductible or copayment that a patient ...that covers psychological services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider...

In the event a complaint has been filed, a psychologist ...shall provide the original or a full copy of the client file...⁵⁹

⁵⁹ OHIO ADMIN. CODE 4732-17-01(B)(6)(d).