The Duty to Record: Ethical, Legal, and Professional Considerations for Oklahoma 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’s\(^2\) 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

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

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

Oklahoma 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**

Oklahoma 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 reduce the risk of responsibility in a duty to protect/warn jurisdiction, such as Oklahoma, 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

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

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

Oklahoma has adopted and incorporated by reference the standards of the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct and the ASPPB Code of Conduct as standards of practice its psychologists.

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

Oklahoma courts have held that broader duties to warn exist on the basis of specific clinical findings. For example, in *Shepard v. Dep’t of Mental Health*, the Court of Appeals found that when an evaluating doctor recommended that a client not live around guns, the hospital had a duty to communicate that recommendation to the client’s wife on his release.\(^{11}\) The Court imposed the duty on the basis of the principle that the harm was foreseeable.\(^{12}\)

Relevant citing references to Okla. Admin. Code § 575:10-1-10(a) (re: Code of Conduct for Oklahoma psychologists)

- Do the provisions of 70 O.S.Supp.2007, § 3311(E)(2)(b),\(^{1}\) which describe the psychological evaluation required before any person can be certified as a police or peace officer in this State, relieve Oklahoma psychologists from the duty to comply with any of the relevant rules, regulations, or ethical obligations imposed upon them by the Psychologists Licensing Act, 59 O.S.2001 & Supp.2007, §§ 1351 - 1376, when participating in evaluations under Section 3311(E)(2)(b)? . . . It is, therefore, the official Opinion of the Attorney General that: 1. The Legislature intended to effectively strip from psychologists any duty they may have had under the Psychologists Licensing Act (“PLA”) pursuant to the previous version of Section 3311(E)(2)(b) of Title 70 to fully test and evaluate the psychological suitability of prospective peace or police officers in accordance with the standards implemented pursuant to the PLA and, instead, to place that duty solely upon the prospective officers' employing agencies. 2. The amendment intended for licensed psychologists to interpret and report the results of the psychological tests administered by the employing agencies, but to have no larger role in determining the suitability of would-be law enforcement officers other than having the option to include in such reports “any additional recommendations to assist the employing agency[ies] in determining whether to certify to [CLEET]” that the applicants are suitable. 70 O.S.Supp.2007, § 3311(E)(2)(b). 3. By including the new language expressly prohibiting additional procedures and deleting the previous provision which specifically allowed the evaluating psychologists to use any additional techniques in arriving at a recommendation regarding an applicant’s suitability to serve as a peace or police officer, the Legislature clearly intended to limit,


\(^{12}\) Id.

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without regard to applicable ethical standards adopted pursuant to the PLA, the scope of psychological evaluations conducted pursuant to Section 3311(E)(2)(b). 4. By continuing to mandate, though strictly limiting, the involvement of a “psychologist licensed by the State of Oklahoma,” the Legislature intended to create the appearance that a meaningful psychological evaluation will be performed on every prospective peace or police officer in the State before he or she is certified to carry a weapon or authorized to enforce the laws of the land. 5. Therefore, the provisions of 70 O.S.Supp.2007, § 3311(E)(2)(b), limiting the scope of the psychological evaluations required of prospective peace or police officers in this State, relieve Oklahoma psychologists from the obligation to comply with those rules, regulations, or ethical obligations imposed upon them by the Psychologists Licensing Act, 59 O.S. 2001 & Supp.2007, §§ 1351 - 1376, which may require procedures in addition to those specifically outlined in Section 3311(E)(2)(b), in conducting such evaluations. Okla. Att’y Gen. Op. No. 08-25 (Sept. 16, 2008)

*Annotations to OKLA. STAT. tit. 10A, § 1-2-101 (re: hotline for reporting child abuse / neglect) and citing references to OKLA. STAT. tit. 59, 1376 (re: duty to warn)*

- Child abuse reporting statutes do not create a private right of action; while knowing and willful failure to report is a criminal misdemeanor, there is no provision for civil liability.\(^\text{13}\)
- Pursuant to 21 O.S.Supp.1994, § 846, any person, including a psychotherapist, which includes all forms of professional therapy providers, who has reason to believe a child has been injured as a result of abuse or neglect must report such information, whether the information be current or historical. Op.Atty.Gen. No. 95-18 (March 20, 1995).
- Under statute, …health professionals must report injuries to children under 18 to county office of Department of Human Services in county where injury occurred if injury appears to have been caused by physical abuse or neglect; if injury appears to have been product of criminally injurious conduct, as defined by statute, …health professional must also report matter to nearest appropriate law enforcement agency. Op.Atty.Gen. No. 85-116 (Nov. 8, 1985).
- Statute requires every person having reason to believe that a child under the age of 18 has had injuries inflicted upon him by other than accidental means to report the matter to the proper authorities. Op.Atty.Gen. No. 81-288 (Jan. 27, 1982).


• The statutory privilege ...arising out of statutorily-mandated child abuse reporting extends across all cognizable theories of liability; when reporting constitutes the instrument through which the damage is inflicted it matters not what type of harm flows from reporting or what common-law theory is invoked by those who seek recovery. Absence of evidence that clinical psychologist released medical report stating that children had been sexually abused by their father and grandmother before submitting report to Department of Human Services (DHS) precluded claims by father and grandmother, who were wrongly accused, against psychologist for intentional and negligent infliction of emotional distress, slander, and professional negligence, as, under psychologist’s qualified reporting privilege, father and grandmother were not entitled to recover for harm that flowed from psychologist’s report to DHS; it was necessary that they show some harm disconnected to consequences of mandatory reporting.14

• In action to recover damages for personal injuries and property damage allegedly sustained by plaintiffs in fire caused by defective disposable cigarette lighter, information relating to one plaintiff’s physical and mental condition for two-year period immediately preceding accident was not protected by physician-patient privilege; moreover, even if requested information was privileged, plaintiffs waived privilege by voluntarily furnishing defendants with hospital records relating to treatment of the plaintiff following the accident.15

• Mere fact that defendant had raised insanity defense did not entitle state to discover information regarding her hospitalization ten years earlier for psychiatric purposes.16

Contents of the record are mandated by law

The psychologist rendering professional services to an individual client (or a dependent), or services billed to a third party payor, shall maintain professional records that include:17

1. the name of the client and other identifying information,

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2. the presenting problem(s) or purpose or diagnosis,
3. the fee arrangement,
4. the date and substance of each billed or service-count contractor service,
5. any test results or other evaluative results obtained and any basic test data from which they were derived,
6. notation and results of formal consults with other providers,
7. a copy of all test or other evaluative reports prepared as part of the professional relationship,
8. any releases executed by the client.

In addition to meeting the ASPPB standards, Oklahoma law calls for the following documentation:

**Documentation of records**\(^\text{18}\)

1. All assessment, testing, and treatment services/units billed must include the following:
   (A) date;
   (B) start and stop time for each session/unit billed;
   (C) signature of the provider;
   (D) credentials of provider;
   (E) specific problem(s), goals and/or objectives addressed;
   (F) methods used to address problem(s), goals and objectives;
   (G) progress made toward goals and objectives;
   (H) patient response to the session or intervention; and
   (I) any new problem(s), goals and/or objectives identified during the session.

2. For each Group psychotherapy session, a separate list of participants must be maintained.

3. Psychological testing will be documented for each date of service performed which should include at a minimum, the objectives for testing, the tests administered, the results/conclusions and interpretation of the tests, and recommendations for treatment and/or care based on testing results and analysis.

**Coverage by category**\(^\text{19}\)

a. Outpatient Behavioral Health Services. Outpatient behavioral health services are covered for children …unless specified otherwise, and when provided in accordance with a documented individualized service plan medical record,
developed to treat the identified behavioral health and/or substance abuse disorder(s).

...(2) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent.

...(c) Children. Coverage for children includes the following services:

...(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in the psychologist's office, clinic, or other confidential setting. Group therapy is a face to face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is six patients for children four years of age up to the age of 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of a SoonerCare eligible child four years of age or older as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Assessment/Evaluation and testing is provided by a psychological technician of a psychologist or a LBHP utilizing tests selected from currently accepted assessment test batteries. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Eight hours/units of testing per patient (over the age of two), per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Behavioral Health Provider Manual. Test results must be reflected in the service plan or medical record. The service must clearly document the need for the testing and what the testing is expected to achieve. Testing for a child younger than three must be medically necessary and meet established criteria as set forth in the Behavioral Health Provider Manual. Justification for additional testing beyond allowed amount as specified in this must be clearly explained and documented in the medical record. Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation. . . .

The APA Code of Conduct and the Health Insurance Portability and
Accountability Act (HIPAA)\textsuperscript{20} also would apply to Oklahoma psychological records.

\textbf{3.10 Informed Consent}\textsuperscript{21}

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

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

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

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

A HIPAA notice of privacy practices\textsuperscript{22} 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


\textsuperscript{21} APA CODE OF ETHICS, supra note 10.

3.10, 9.03, and 10.01. In addition, the Oklahoma law would require disclosures about the following exceptions to protecting patient confidentiality:

- Duty to report child abuse and neglect;\(^{23}\)
- Duty to report vulnerable adult is suffering from abuse, neglect or exploitation;\(^{24}\)
- Duties to commit the client when the client is a danger to himself,\(^{25}\) to warn when the client makes explicit threats,\(^{26}\) and to warn when a client is known to be violent and the clinician believes the client will attempt to harm another.\(^{27}\)

In light of the Oklahoma privilege standard, psychologists also should informed their patients that confidential information must be released if any of the exceptions to the psychotherapist-patient rule applies:

**Psychotherapist-Patient Privilege\(^{28}\)**

As used in this section:

1. A “patient” is a person who consults or is examined or interviewed by a physician or psychotherapist;

…3. A “psychotherapist” is: a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, orb. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is “confidential” if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

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\(^{23}\) OKLA. STAT. tit. 10A, § 1-2-101.

\(^{24}\) OKLA. STAT. tit. 43A, § 10-104(A) – (C).

\(^{25}\) OKLA. STAT. tit. 59, § 1376(3)(a).

\(^{26}\) *Id.* § 1376(3)(b).

\(^{27}\) *Id.* § 1376(3)(c).

\(^{28}\) OKLA. STAT. ANN. tit. 12, § 2503.
B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, the patient's guardian or conservator or the personal representative of a deceased patient. The person who was the psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. The following shall be exceptions to a claim of privilege:

1. There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;
2. Communications made in the course of a court-ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, are not privileged under this section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise;
3. The privilege under this Code as to a communication relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense is qualified to the extent that an adverse party in the proceeding may obtain relevant information regarding the condition by statutory discovery;
4. When the patient is an inmate in the custody of the Department of Corrections or a private prison or facility under contract with the Department of Corrections, and the release of the information is necessary:
   a. to prevent or lessen a serious and imminent threat to the health or safety of any person, or
   b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the

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individual has escaped from a correctional institution or from lawful custody; or

5. The testimonial privilege created pursuant to this section does not make communications confidential where state and federal privacy law would otherwise permit disclosure.

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

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.

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

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

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

29 APA CODE OF ETHICS, supra note 10.
31 APA CODE OF ETHICS, supra note 10.
32 Id.

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examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.)

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

9.02 Use of Assessments

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

9.10 Explaining Assessment Results

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

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

33 APA CODE OF ETHICS, supra note 10.
34 Id.
Maintenance and Security of Records\textsuperscript{35}

Under APA Code of Ethics Standard 4.01 - Maintaining Confidentiality,\textsuperscript{36} “[p]sychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship.” (See also Standard 2.05, Delegation of Work to Others.) This standard supports the record keeping standards:

6. Record Keeping and Fees\textsuperscript{37}

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 Protected Health Information (PHI) records, including Psychotherapy Notes created by the psychologist, as long as those records are maintained.\textsuperscript{38} In addition, patients have a right to amend any part of the record;\textsuperscript{39} 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.\textsuperscript{40}

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\textsuperscript{35} For record laws related to inpatient, hospital or public practices see OKLA. ADMIN. CODE §§ 317.30-5275 – 317:30-5-97 (re: Inpatient Psychiatric Hospitals); OKLA. STAT. ANN. tit. 76, § 19. (re: Access to medical records--Copies--Waiver of privilege--Exception for inmates when threat to safety or security of self or institution); OKLA. STAT. ANN. tit. §§ 310.667-19-1 to 310:667-19-14 (re: Standards for Hospital Medical Records Departments).

\textsuperscript{36} Id.

\textsuperscript{37} Id.

\textsuperscript{38} 45 CFR 164.524.

\textsuperscript{39} 45 CFR 164.526 (a).

\textsuperscript{40} 45 CFR 164.528.
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6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional…

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

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

(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

Record keeping laws exist for inpatient contexts.43 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.44 Concrete security standards are established for all electronic healthcare information (45 CFR 160).

6.03 Withholding Records for Nonpayment

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.

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41 APA CODE OF ETHICS, supra note 10.
42 Id.
43 OKLA. STAT. tit. 43A, §1-109.
44 45 CFR 164.508.
45 APA CODE OF ETHICS, supra note 10.
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).46

**Retention of Records**

Oklahoma has rejected the silence of ASPPB Code of Conduct Rules of Conduct (A) (7) (b) Maintenance and Retention of Records, and requires all records to be retained for a period of six years after the last date on which service was rendered or for a longer period of time if required by other law.47

**Violations of the specific duty**

The Oklahoma State Board of Examiners of Psychologists will discipline psychologists and any other persons under the supervision of the psychologist who fail to conform to the ethical and professional standards promulgated by the by rule, and HIPAA. The Board has the power and duty to suspend, place on probation, require remediation, or revoke any license to practice psychology or to take any other action specified in the rules whenever the Board shall find by clear and convincing evidence that the psychologist has engaged in any of the following acts or offenses:48

1. Fraud in applying for or procuring a license to practice psychology;

3. Practicing psychology in a manner as to endanger the welfare of clients or patients;

4. Conviction of a felony. A copy of the record of conviction, certified by the clerk of the court entering the conviction shall be conclusive evidence of conviction;

5. Conviction of any crime or offense that reflects the inability of the practitioner to practice psychology with due regard for the health and safety of clients or patients;

9. Gross malpractice or repeated malpractice or gross negligence in the practice of psychology;

11. Conviction of or pleading guilty or nolo contendere to fraud in filing Medicare or Medicaid claims or in filing claims with any third party payor. A copy of the record of plea or conviction, certified by the clerk of the court entering the plea or conviction, shall be conclusive evidence of the plea or conviction;

12. Exercising undue influence in a manner to exploit the patient for financial advantage beyond the payment of professional fees or for other

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46 45 CFR 164.508 (b)(4).
47 OKLA. ADMIN. CODE § 575:10-1-10(b).
48 OKLA. STAT. tit. 59, § 1370.
personal advantage to the practitioner or a third party;
13. The suspension or revocation by another state of a license to practice psychology. A certified copy of the record of suspension or revocation of the state making such a suspension or revocation shall be conclusive evidence thereof;
14. Refusal to appear before the Board after having been ordered to do so in writing by the executive officer or chair of the Board;
15. Making any fraudulent or untrue statement to the Board;
16. Violation of the code of ethics adopted in the rules and regulations of the Board…