

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

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

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.

Rhode Island 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

Rhode Island 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.⁵

Because the documents permit hovering over the underline fields with a cursor to select an option or permit filling in the shaded text boxes, they cannot be inserted

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.

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

The Rhode Island Board of Psychology has adopted and incorporated the standards of the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct (2003) (“APA Code of Ethics”).¹⁰

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 R.I. GEN. LAWS § 5-44-18 (6), the Rhode Island Board of Psychology has adopted The Ethical Principles of Psychologists and Code of Conduct. Copies of the APA Code of Ethics are available from American Psychological Association Order Department, 750 First Street, NE, Washington, D.C. 20002-4242 and on the APA’s website at <http://www.apa.org/ethics/code/principles.pdf> (last accessed Aug. 1, 2012) [hereinafter “APA CODE OF ETHICS”].

Common Law

There is no case law interpreting the specific recordkeeping obligations for Rhode Island psychologists.

Contents of the record are mandated by law

The APA Code of Ethics also would be applied with the Health Insurance Portability and Accountability Act (HIPAA)¹¹ to psychological records:

3.10 Informed Consent¹²

(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](#).)

¹¹ 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).

¹² APA CODE OF ETHICS, *supra* note 10.

A HIPAA notice of privacy practices¹³ 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 Rhode Island law would require disclosure about the following exceptions to protecting patient confidentiality:

- Mandatory duty to report child abuse or neglect;¹⁴

APA Standard 4.04(a) suggests that psychologists focus the documentation in a manner that is very protective of their client's privacy rights:

4.04 Minimizing Intrusions on Privacy¹⁵

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

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

6.06 Accuracy in Reports to Payors and Funding Sources¹⁶

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 Assessments¹⁷

(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

¹³ 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).

¹⁴ R.I. GEN. LAWS § 40-11-3.

¹⁵ APA CODE OF ETHICS, *supra* note 10.

¹⁶ *Id.*

¹⁷ *Id.*

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

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

9.02 Use of Assessments¹⁸

(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 Results¹⁹

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 Rhode Island would use an intake and evaluation note, progress note, and termination note templates.²⁰

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Record keeping laws are delineated further for State funded or reimbursed programs (Admission of patients generally--Rights of patients--Patients' records--Competence of patients- R.I. GEN. LAWS 40.1-5-5(g); Disclosure of confidential information and records- R.I. GEN. LAWS 40. 1-5-26; Release of information to patient's family- R.I. GEN. LAWS § 40.1-5-27; Disclosure by mental health professional- R.I. GEN. LAWS § 40.1-5-27.1).

Maintenance and Security of Records

Under APA Code of Ethics Standard 4.01 - Maintaining Confidentiality,²¹ “[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 Fees²²

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](#).)

Rhode Island has a series of laws regarding records and their release:

Confidentiality of Healthcare Communications and Information Act²³

- Applies to psychologists²⁴

Limitations on and permitted disclosures²⁵

(a)(1) Except as provided in subsection (b) of this section or as specifically provided by the law, a patient's confidential health care information shall not be released or transferred without the written consent of the patient or his or her authorized representative, on a consent form meeting the requirements of subsection (d) of this section. A copy of any notice used pursuant to subsection (d) of this section, and of any signed consent shall, upon request, be provided to the patient prior to his or her signing a consent form ... This provision shall not restrict or prohibit the transfer of

²¹ APA CODE OF ETHICS, *supra* note 10.

²² *Id.*

²³ R.I. GEN. LAWS §§ 5-37.3-1, *et seq.*

²⁴ R.I. GEN. LAWS § 5-37.3-3.

²⁵ R.I. GEN. LAWS § 5-37.3-4.

information to the department of health to carry out its statutory duties and responsibilities.

...(5) Any contract or agreement which purports to waive the provisions of this section shall be declared null and void as against public policy.

(b) No consent for release or transfer of confidential health care information shall be required in the following situations:

(1) To a[n]y health care]personnel who believes, in good faith, that the information is necessary for diagnosis or treatment of that individual in a medical or dental emergency;

...(3) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations, actuarial, insurance underwriting, or similar studies; provided, that personnel shall not identify, directly or indirectly, any individual patient in any report of that research, audit, or evaluation, or otherwise disclose patient identities in any manner;

(4) By a health care provider to appropriate law enforcement personnel, or to a person if the health care provider believes that person or his or her family is in danger from a patient; or to appropriate law enforcement personnel if the patient has or is attempting to obtain narcotic drugs from the health care provider illegally; or to appropriate law enforcement personnel or appropriate child protective agencies if the patient is a minor child or the parent or guardian of said child and/or the health care provider believes, after providing health care services to the patient, that the child is or has been physically, psychologically or sexually abused and neglected as reportable pursuant to § 40-11-3; or to law enforcement personnel in the case of a gunshot wound reportable under § 11-47-48; The disclosures authorized by this subsection being limited to the minimum amount of information necessary to accomplish the intended purpose of the release of information.

(5) Between or among qualified personnel and health care providers within the health care system for purposes of coordination of health care services given to the patient and for purposes of education and training within the same health care facility; or

(6) To third party health insurers including to utilization review agents as provided by § 23-17.12-9(c)(4), third party administrators licensed pursuant

to chapter 20.7 of title 27 and other entities that provide operational support to adjudicate health insurance claims or administer health benefits;

(7) To a malpractice insurance carrier or lawyer if the health care provider has reason to anticipate a medical liability action; or

(8)(i) To the health care provider's own lawyer or medical liability insurance carrier if the patient whose information is at issue brings a medical liability action against a health care provider. (ii) Disclosure by a health care provider of a patient's health care information which is relevant to a civil action brought by the patient against any person or persons other than that health care provider may occur only under the discovery methods provided by the applicable rules of civil procedure (federal or state)...

(9) To public health authorities in order to carry out their functions as described in this title and titles 21 and 23, and rules promulgated under those titles. These functions include, but are not restricted to, investigations into the causes of disease, the control of public health hazards, enforcement of sanitary laws, investigation of reportable diseases, certification and licensure of health professionals and facilities, review of health care such as that required by the federal government and other governmental agencies;

(10) To the state medical examiner in the event of a fatality that comes under his or her jurisdiction;

(11) In relation to information that is directly related to current claim for workers' compensation benefits or to any proceeding before the workers' compensation commission or before any court proceeding relating to workers' compensation;

(12) To the attorneys for a health care provider whenever that provider considers that release of information to be necessary in order to receive adequate legal representation;

...(14) To a law enforcement authority to protect the legal interest of an insurance institution, agent, or insurance-support organization in preventing and prosecuting the perpetration of fraud upon them;

(15) To a grand jury or to a court of competent jurisdiction pursuant to a subpoena or subpoena *duces tecum* when that information is required for the investigation or prosecution of criminal wrongdoing by a health care provider relating to his or her or its provisions of health care services and that information is unavailable from any other source; provided, that any information so obtained is not admissible in any criminal proceeding against the patient to whom that information pertains;

- ...(17) To certify, pursuant to chapter 20 of title 17, the nature and permanency of a person's illness or disability, the date when that person was last examined and that it would be an undue hardship for the person to vote at the polls so that the person may obtain a mail ballot;
- ...(19) To the Medicaid fraud control unit of the attorney general's office for the investigation or prosecution of criminal or civil wrongdoing by a health care provider relating to his or her or its provision of health care services to then Medicaid eligible recipients or patients, residents, or former patients or residents of long term residential care facilities; provided, that any information obtained shall not be admissible in any criminal proceeding against the patient to whom that information pertains;
- (20) To the state department of children, youth, and families pertaining to the disclosure of health care records of children in the custody of the department;
- (21) To the foster parent or parents pertaining to the disclosure of health care records of children in the custody of the foster parent or parents; provided, that the foster parent or parents receive appropriate training and have ongoing availability of supervisory assistance in the use of sensitive information that may be the source of distress to these children;
- ...(23) To the workers' compensation fraud prevention unit for purposes of investigation under §§ 42-16.1-12 -- 42-16.1-16. The release or transfer of confidential health care information under any of the above exceptions is not the basis for any legal liability, civil or criminal, nor considered a violation of this chapter; or
- (24) To a probate court of competent jurisdiction, petitioner, respondent, and/or their attorneys, when the information is contained within a decision-making assessment tool which conforms to the provisions of § 33-15-47.

(c) Third parties receiving and retaining a patient's confidential health care information must establish at least the following security procedures:

- (1) Limit authorized access to personally identifiable confidential health care information to persons having a "need to know" that information; additional employees or agents may have access to that information which does not contain information from which an individual can be identified;
- (2) Identify an individual or individuals who have responsibility for maintaining security procedures for confidential health care information;

- (3) Provide a written statement to each employee or agent as to the necessity of maintaining the security and confidentiality of confidential health care information, and of the penalties provided for in this chapter for the unauthorized release, use, or disclosure of this information. The receipt of that statement shall be acknowledged by the employee or agent, who signs and returns the statement to his or her employer or principal, who retains the signed original. The employee or agent shall be furnished with a copy of the signed statement;
 - (4) Take no disciplinary or punitive action against any employee or agent solely for bringing evidence of violation of this chapter to the attention of any person.
- (d) Consent forms for the release or transfer of confidential health care information shall contain, or in the course of an application or claim for insurance be accompanied by a notice containing, the following information in a clear and conspicuous manner:
- (1) A statement of the need for and proposed uses of that information;
 - (2) A statement that all information is to be released or clearly indicating the extent of the information to be released; and
 - (3) A statement that the consent for release or transfer of information may be withdrawn at any future time and is subject to revocation, except where an authorization is executed in connection with an application for a life or health insurance policy in which case the authorization expires two (2) years from the issue date of the insurance policy, and when signed in connection with a claim for benefits under any insurance policy the authorization shall be valid during the pendency of that claim. Any revocation shall be transmitted in writing.
- (e) Except as specifically provided by law, an individual's confidential health care information shall not be given, sold, transferred, or in any way relayed to any other person not specified in the consent form or notice meeting the requirements of subsection (d) of this section without first obtaining the individual's additional written consent on a form stating the need for the proposed new use of this information or the need for its transfer to another person.
- (f) Nothing contained in this chapter shall be construed to limit the permitted

disclosure of confidential health care information and communications described in subsection (b) of this section.

Transfer and amendment of information²⁶

- (a) Upon occurrence of an action or decision of any third party, which adversely affects a patient, and which is based in whole or in part upon that patient's confidential health care information (including, but not limited to, the following actions or decisions: (1) denial of an application for an insurance policy; (2) issuance of an insurance policy with other than standard and uniform restrictions; (3) rejection in whole or in part of any claim for insurance benefits; (4) denial of an employment application or termination of employment when that denial or termination is for health reasons) and upon the written request of that patient or his or her authorized representative (or, if that patient is deceased, then his or her heir or beneficiary or their authorized representative, or his or her estate), a third party shall transfer copies of all of that patient's confidential health care information in its possession to a physician designated in that written request. Prior to making this transfer, a third party may require payment of its actual cost of retrieval, duplication, and forwarding of that information.
- (b) A physician [or psychologist] receiving confidential health care information pursuant to subsection (a) of this section may review, interpret, and disclose any or all of that information to the person at whose request that information was transferred, as that physician deems in his or her professional judgment to be in the best interests of the patient to whom that information relates.
- (c) After reviewing his or her confidential health care information pursuant to this section, a patient or his or her authorized representative may request the third party to amend or expunge any part he or she believes is in error, or request the addition of any recent relevant information. Upon receiving such a request, the third party shall notify the health care provider who initially forwarded that information to the third party, and when that health care provider concurs with that request, the third party shall return that information to that health care provider for modification. Prior to making that return, a third party may require payment of its actual cost of notice,

²⁶ R.I. GEN. LAWS § 5-37.3-5.

- duplication, and return of that information. Except upon court order, the third party shall not itself modify that information. A patient, after requesting and reviewing his or her confidential health care information, has the right, in any case, to place into the file, at his or her own cost, a statement of reasonable length of his or her view as to the correctness or relevance of existing information or as to the addition of new information. That statement or copies of the statement shall at all times accompany that part of the information in contention.
- (d) A person or his or her authorized representative has the right, when there is an unreasonable refusal to change the records as provided in this section, to apply to the district court to amend or expunge any part of his or her confidential health care information in a third party's possession which he or she believes to be erroneous.

Court proceedings--Confidential health care information²⁷

- (a) Except as provided in § 5-37.3-6, a health care provider or custodian of health care information may disclose confidential health care information in a judicial proceeding if the disclosure is pursuant to a subpoena and the provider or custodian is provided written certification by the party issuing the subpoena that:
- (1) A copy of the subpoena has been served by the party on the individual whose records are being sought on or before the date the subpoena was served, together with a notice of the individual's right to challenge the subpoena; or, if the individual cannot be located within this jurisdiction, that an affidavit of that fact is provided; and
 - (2) Twenty (20) days have passed from the date of service on the individual and within that time period the individual has not initiated a challenge; or
 - (3) Disclosure is ordered by a court after challenge.
- (b) Within twenty (20) days after the date of service of a subpoena, an individual or his or her authorized representative may file a motion to quash the subpoena in the court in which the case is pending or, if no case is pending, in superior court. A copy of the motion to quash shall be served by the movant upon the party issuing the subpoena in accordance with the rules of civil procedure.

²⁷ R.I. GEN. LAWS § 5-37.3-6.1.

- (c) The party issuing the subpoena may file with the court these papers, including affidavits and other sworn documents, as sustain the validity of the subpoena. The movant may file with the court reply papers in response to the issuing party's filing. The court, upon receipt of these papers may proceed in camera. The court may conduct any proceedings as it deems appropriate to rule on the motion, but shall endeavor to expedite its determination.
- (d) The court shall grant a motion to quash unless the requesting party can demonstrate that there is reasonable ground to believe the information being sought is relevant to the proceedings, and the need for the information clearly outweighs the privacy interest of the individual.
- (e) In determining whether the need for information clearly outweighs the privacy of the individual, the court shall consider:
 - (1) The particular purpose for which the information was collected;
 - (2) The individual's reasonable expectation of privacy in the information;
 - (3) The degree to which disclosure of the information would embarrass, injure, or invade the privacy of the individual;
 - (4) The effect of the disclosure on the individual's future health care;
 - (5) The importance of the information to the lawsuit or proceeding; and
 - (6) Whether the information is available from another source, including Rule 35 of the Superior Court Rules of Civil Procedure.
- (f) If the court determines that a subpoena should issue, the information shall not be disclosed for any other purpose except as authorized by this chapter.
- (g) Nothing contained in this section shall be construed to bar a health care provider or custodian of health care information from filing a motion to quash a subpoena for this information in accordance with the rules of civil procedure.

The APA Code of Ethics also has created other standards related to maintenance and security of records:

6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional...²⁸

(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](#).)

HIPPA establishes privacy protections for all transmissions of PHI records, and requires specific patient authorizations (with a right of revocation) to transfer PHI records to third parties.²⁹ HIPPA also enables the patient to inspect and obtain Protected Health Information (PHI) records, including Psychotherapy Notes created by the psychologist, as long as those records are maintained.³⁰ In addition, patients have a right to amend any part of the record;³¹ 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.³²

Concrete security standards are established for all electronic healthcare

²⁸ APA CODE OF ETHICS, *supra* note 10.

²⁹ 45 CFR 164.508.

³⁰ 45 CFR 164.524.

³¹ 45 CFR 164.526 (a).

³² 45 CFR 164.528.

information (45 CFR 160).

6.03 Withholding Records for Nonpayment³³

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).³⁴

Retention of Records

Although no Rhode Island requirement exists for private practitioners, HIPAA³⁵ mandates that a covered entity must retain the documentation ...for six years from the date of its creation or the date when it last was in effect, whichever is later.

Violations of the specific duty

Rhode Island Board of Psychology shall ...deny, revoke or suspend any license issued by the Department in accordance with the Act, or discipline a psychologist upon proof that the person: ³⁶

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license or temporary license;

(2) Is guilty of a felony or of a crime of immorality.

...(5) Is incompetent or negligent in the practice of psychology and has violated the provisions of the Act, or these Regulations.

(6) Has violated the ethical principles governing psychologists and the practice of psychology, as adopted by the Board and in force at the time a charge is made regardless of whether or not the person is a member of any national, regional, or state psychological association; provided, that those ethical

³³ APA CODE OF ETHICS, *supra* note 10.

³⁴ 45 CFR 164.508 (b)(4).

³⁵ 45 CFR 164.530 (j)(2).

³⁶ R.I. GEN. LAWS § 5-44-18.

principles are a national recognized standard; and departure from or the failure to conform to the minimal standards of acceptable and prevailing psychology practice.

...(10) Has failed to furnish the Department or its legal representative information requested by the Board as part of a disciplinary action.

Violations of the Healthcare Communications and Information Act³⁷

...(2) Any person who violates the provisions of this section may be liable for actual and punitive damages.

(3) The court may award a reasonable attorney's fee at its discretion to the prevailing party in any civil action under this section.

(4) Any person who knowingly and intentionally violates the provisions of this section shall, upon conviction, be fined not more than five thousand (\$5,000) dollars for each violation, or imprisoned not more than six (6) months for each violation, or both.

³⁷ R.I. GEN. LAWS § 5-37.3-4(a).