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

Introduction

The American Psychological Association Practice Directorate has provided an excellent online presentation about electronic healthcare records (EHRs) and the basic terminology related to EHRs; the presentation dispels common myths about EHR systems and provides detail about their meaningful use in integrated health care settings.¹

The Division 31 and 42 EHR working group’s² primary goal was to create a series of State specific templates that would work well for psychologists as they transition into the use of EHRs, particularly in integrated health care settings where shared information is clinically essential and specific laws or regulations may dictate at least some of what is included in those records. To achieve this goal, we conducted a review of the laws related to record keeping, and the relevant and recent literature (particularly the last decade) regarding EHRs, including variations across states. Further, we consulted with key psychologists that have been using EHRs on a day to day basis, who have developed experience establishing polices and processes within their own institutions and practices. They have effectively used this developing technology to improve clinical care while protecting patient rights. They have found that the EHR enables collaborating professionals within the integrated health care settings to understand the behavioral risk factors that exist in each case and to be kept informed about the health behavior changes that occur with psychological service interventions (HRSA, 2012).³

In order to digest the laws accurately, we examined the annotated codes and regulations available on Westlaw and Lexis for the 50 states and the District of

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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.

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Columbia with reference to several relevant state-by-state surveys retrieved from Lexis 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.

Tennessee 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**

Tennessee law suggests the need for an intake and evaluation note, and progress notes. The contents of the two templates for these documents comply with the law digested below. We believe that a termination note will likely reduce exposure to arguments about continued duty of care, and recommend that psychologists use this template, too.

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

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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**


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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.


10 **TENN. COMP. R. & REGS. § 1180-1-.09 PROFESSIONAL ETHICS.** “(1) The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its ethical standards the specific “Ethical Standards” which are part of the “Ethical Principles of Psychologists and Code of Conduct” published by the American Psychological Association (A.P.A.). The version adopted by the Board was approved by the A.P.A.’s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.” Copies of the APA Code 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.
Common Law

In *Turner v. Jordan*, the Supreme Court of Tennessee cited *Tarasoff* when it found that a psychiatrist at an inpatient facility had a duty of care to warn, or otherwise protect, a nurse at the same facility when the psychiatrist was treating a client with a known history of violence, an “unreasonable risk of harm was reasonably apparent,” and the psychiatrist had the ability to control the client.\(^1\)

*Relevant* annotations to TENN. CODE ANN. § 37-1-403 (re: persons required to report [child abuse]); contents of report:

- Tennessee statute imposing criminal liability for failure to report suspicions of child abuse provides that person reporting harm shall be presumed to be acting in good faith created immunity from any liability, civil or criminal, for diagnosis, reporting, and subsequent communications with state officials about medical diagnosis rendered by physicians. Tenn.Code, §§ 37-1-403(a), 37-1-410(a). Evidence that physicians refused to reassess their original diagnosis of child's condition as Shaken Impact Syndrome or Shaken Infant Syndrome (SIS) or to admit that their initial diagnosis may have been in error and that hospital refused to release child's medical records when requested to do so involved events that occurred well after original report of suspected child abuse, did not support finding of bad faith in complying with reporting requirements of Tennessee statute, and could not deprive physicians of their immunity from liability. Tenn.Code, §§ 37-1-403(a), 37-1-410(a).\(^2\)

- Civil damage liability for failing to report complaints of child sexual abuse will arise only when it proximately causes injury to another. T.C.A. §§ 29-20-205, 29-20-205(1), 37-1-403(a)(4), 37-1-605(a)(4).\(^3\)

*Relevant* annotations to TENN. CODE ANN. § 71-6-102 (re: adult protection)


\(^1\) *Turner v. Jordan*, 957 S.W.2d 815 (Tenn. 1997).


\(^3\) *Doe v. Coffee County Bd. of Educ.*, 1992, 852 S.W.2d 899, appeal denied.
of patient was not supported by substantial and material evidence despite presence of maggots and necrotic tissue and alleged laxity in record keeping, where physicians indicated that presence of rotting flesh and maggots was not preventable under the circumstances and no circumstance was shown to evidence negligence in record keeping which directly impacted the care of the subject patient or which was of such obvious seriousness that all nursing homes and the public could have notice such negligence would invoke a Class B penalty. T.C.A. §§ 68-11-801, 68-11-803, 71-6-102.14

Relevant annotations to TENN. CODE ANN. § 63-11-213 (re: privilege)

- Employer sued by former employee for sexual harassment was not entitled to mental health records of former employee dated earlier than her employment at particular office where alleged harassment occurred; although former employee waived her psychiatrist, psychologist and social worker privileges under Tennessee law by seeking damages for emotional distress, documents dated prior to her employment at particular office were not relevant.15
- Clinical psychologist was immune from suit by husband arising from psychologist’s disclosure, in divorce proceeding, of confidential communications which husband made during joint marital counseling sessions given that psychologist would have been found in contempt if he declined to give testimony.16

Contents of the record 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.17 Tennessee laws regulating psychologists have a number of requirements:18

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14 Claiborne and Hughes Convalescent Center, Inc. v. State, Dept. of Health, 1994, 881 S.W.2d 671, appeal denied.
17 Recordkeeping requirements for various types of facilities under the jurisdiction of the Department of Mental Health exist: See, TENN. COMP. R. & REGS. 0940-05-16-.09 (hospital patient records); 0940-05-17-.06 (individual record requirements / Mental Health Adult Residential Treatment Services); TENN. CODE ANN. §§ 33-3-103 - 33-3-113 – Confidentiality of Mental Health Records of applicants for services regulated under Title 33 (Mental Health and Substance Abuse and Intellectual and Developmental Disabilities) / Disclosure to Service Recipient of Records Kept and Procedures for Accessing records / Amendments to patient records; TENN. CODE ANN. §§ 68-11-102.
Patient records include, but are not limited to:
(i) modalities and frequencies of treatment furnished
(ii) results of clinical tests
(iii) counseling session start and stop times
(iv) summaries of:
   (I) diagnosis
   (II) functional status
   (III) treatment plan
   (IV) symptoms
   (V) prognosis
   (VI) progress to date

Not included in patient records are:\footnote{19}
(i) test data – raw and scaled scores, client/patient responses to test questions or stimuli, and notes and recordings concerning client/patient statements and behavior during an examination.
(ii) test materials – manuals, instruments, protocols, and test questions or stimuli.
(iii) psychotherapy notes – notes recorded (in any medium) by a psychologist, senior psychological examiner or psychological examiner, who is designated as

\footnote{18} TEnn. CoDe Ann. §§ 1180-1-.06 (4)(c) PATIENT RECORDS: “Content – All patient records, or summaries thereof, produced in the course of the practice of psychology for all patients shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2) and such additional information that is necessary to insure that a subsequent reviewing or treating psychologist …can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.”

\footnote{19} TEnn. CoDe Ann. § 1180-1-.06 (4)(c)2.
a health service provider as defined in Rule 1180-1-.01, that document or analyze the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's patient record.

The APA Code of Ethics also would be applied with the Health Insurance Portability and Accountability Act (HIPAA)\(^\text{20}\) to psychological records:

3.10 Informed Consent\(^\text{21}\)
(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.)


\(^{21}\) APA CODE OF ETHICS, supra note 10.
A HIPAA notice of privacy practices 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 Tennessee law would require disclosure about the following exceptions to protecting patient confidentiality:

- Mandatory duty to report child abuse or neglect;
- Mandatory duty to report adult abuse or neglect.

APA Standards suggest that psychologists focus the documentation in a manner that is very protective of their client’s privacy rights:

**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.

**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

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23 TENN. CODE ANN. § 37-1-403.
24 TENN. CODE ANN. § 71-6-103(b)(1); TENN. CODE ANN. § 71-6-102: (2)"Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person’s own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services; (3) "Advanced age" means sixty (60) years of age or older.
26 Id.
27 Id.
techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

(b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions and appropriately limit the nature and extent of 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 Tennessee would use an intake and evaluation note, and progress notes templates.

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28 Id.
29 Id.
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### Maintenance and Security of Records

Tennessee law has established a very strong privilege law. Under APA Code of Ethics Standard 4.01 - Maintaining Confidentiality, psychologists 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

**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.)

Under Tennessee law, a patient may obtain the records in the following manner:

1. Within ten (10) working days of receipt of a written request from a patient or the patient's authorized representative, an individual licensed by this Board shall provide a complete copy of the patient's records, or summary of such records which were maintained by the provider.

2. A licensee shall be entitled to charge reasonable costs not to exceed ten

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30 TENN. CODE ANN. § 63-11-213 - Confidential relations and privileged communications: “For the purpose of this chapter, the confidential relations and communications between licensed psychologist or, psychological examiner or, senior psychological examiner or certified psychological assistant and client are placed upon the same basis as those provided by law between attorney and client; and nothing in this chapter shall be construed to require any such privileged communication to be disclosed.”

31 APA CODE OF ETHICS, supra note 10.

32 Id.

33 Tenn. Comp. R. & Regs. 1180-1-.13.
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.

dollars ($10.00) for reports twenty (20) pages or less in length and twenty-five cents (25¢) per page for each page copied after the first twenty (20) pages for copying and mailing patient records.

HIPAA also permits sharing protected health information (PHI) with other health care professionals who are engaged in the evaluation and treatment of the same patient. HIPAA also enables the patient to inspect and obtain Protected Health Information (PHI) records, except the Psychotherapy Notes created by the psychologist, as long as those records are maintained. In addition, patients have a right to amend any part of the record; Under this section, a denial of the proposed amendment can occur if the record was not created by the psychologist (unless the patient provides a reasonable basis to believe that the originator of PHI is no longer available to act on the requested amendment) or if the record is accurate and complete (other subsections are not discussed as they are unlikely to arise for psychologists). Finally, patients may obtain an accounting as to who has accessed the PHI and the details about each disclosure.

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

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

(b) If confidential information concerning recipients of psychological services 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.

35 45 CFR 164.524 (a)(1)(i); HIPAA is more expansive of the patient’s rights so the more restrictive State law would not apply (TENN. CODE ANN. § 63-2-101).
36 45 CFR 164.526 (a).
37 45 CFR 164.528.
38 APA CODE OF ETHICS, supra note 10.

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(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.)

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

Tennessee Nebraska law regulates mandatory release of records, the timing and the charges:

1. Within ten (10) working days of receipt of a written request from a patient or the patient's authorized representative, an individual licensed by this Board shall provide a complete copy of the patient's records, or summary of such records which were maintained by the provider.

2. A licensee shall be entitled to charge reasonable costs not to exceed ten dollars ($10.00) for reports twenty (20) pages or less in length and twenty-five cents (25¢) per page for each page copied after the first twenty (20) pages for copying and mailing patient records.

An APA standard also exists:

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.

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).  

39 45 CFR 164.508.
40 TENN. COMP. R. & REGS. § 1180-1-.13.
41 APA CODE OF ETHICS, supra note 10.
42 45 CFR 164.508 (b)(4); HIPAA is more expansive of the patient’s rights so the more restrictive State law would not apply (TENN. CODE ANN. § 63-2-102).
Retention of Records

The rules promulgated by Tennessee Board set forth the following requirements regarding the retention of records:\textsuperscript{43}

Patient records shall be retained for a period of not less than seven (7) years from the last clinical contact between the patient and the psychologist, senior psychological examiner or psychological examiner, or their professionally certified supervisees except for the following:

1. Records for incompetent patients shall be retained indefinitely.

2. Records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or seven (7) years from the date of the last clinical contact with the patient, whichever is longer.

3. Notwithstanding the foregoing, no patient record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

Destruction of Patient Records\textsuperscript{44}

1. No patient record shall be singled out for destruction other than in accordance with established office operating procedures.

2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.

3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.

4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference.

Violations of the specific duty

The Tennessee Board has several methods to discipline a psychologist:\textsuperscript{45}

(1) Grounds and authority for disciplinary actions. The Board shall have the

\begin{footnotesize}
\textsuperscript{43} Tennessee Comp. R. & Regs. § 1180-1-.06 (4)(e).
\textsuperscript{44} Tennessee Comp. R. & Regs. § 1180-1-.06 (4)(f).
\textsuperscript{45} Tennessee Comp. R. & Regs. § 1180-1-.10.
\end{footnotesize}
power to deny an application for a license or certificate to any applicant. The Board shall have the authority to suspend or revoke a license or certificate, reprimand or otherwise discipline by a monetary fine any licensee or certificate holder. Formal disciplinary proceedings before the Board shall comply with the Administrative Procedures Act, T.C.A. §§ 4-5-301, et. seq. The grounds upon which the Board shall exercise such power include, but are not limited to, the following:

(a) Unprofessional, dishonorable, or unethical conduct;

(b) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the Psychology Act or any lawful order of the Board issued pursuant thereto, or any criminal statute of the state of Tennessee;

(c) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the practice as a licensee;

(d) Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of practice as a licensee or certificate holder;

...(f) Willfully betraying a professional secret;

(g) The advertising of Psychologist, Senior Psychological Examiner, Psychological Examiner, or Certified Psychological Assistant practice in which untrue or misleading statements are made, or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment, or condition;

(h) Willful violation of the rules promulgated by the Board to regulate advertising by practitioners who are under the jurisdiction of such Board;

(i) Conviction of a felony, conviction of any offense under state or federal drug laws, or conviction of any offense involving moral turpitude;

(j) Making or signing in one’s professional capacity any certificate that is known to be false at the time one makes or signs such certificate;

...(m) Engaging in practice as a licensee or certificate holder under a false or assumed name, or the impersonation of another practitioner of a like, similar or different name;

...(p) Violation of the scope of practice statutes T.C.A. §§ 63-11-201 through 63-11-206; or

(q) Disciplinary action against a person licensed, certified, registered, or permitted to practice psychology by another state or territory of the United States for any acts or omissions which would constitute grounds for discipline.
of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of violation of this subparagraph and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed or certified in this state.

(2) Upon a finding by the Board that a Psychologist, Senior Psychological Examiner, Psychological Examiner, or Certified Psychological Assistant has violated any provision of the Tennessee Psychology Act (T.C.A. §§ 63-11-201, et seq.) or the rules promulgated pursuant thereto, the Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense:

(a) Advisory censure. This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Formal censure or reprimand. This is a written action issued for single occurrence and less severe violations. It is a formal disciplinary action.

(c) Probation. This is a formal disciplinary action which places a Psychologist, Senior Psychological Examiner, Psychological Examiner, or Certified Psychological Assistant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual’s activities during the probationary period.

(d) License or certificate suspension. This is a formal disciplinary action which suspends the right to practice for a fixed period of time. It contemplates re-entry into practice under the license or certificate previously issued.

(e) Revocation for cause. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license or certificate previously issued. The Board, in its discretion, may allow reinstatement of a revoked license or certificate upon conditions and after a period of time which it deems appropriate. No petition for reinstatement and no new application for licensure or certification from a person whose license or certificate was revoked shall be considered prior to the expiration of at least one (1) year from the date of entry of the order unless otherwise stated in the Board’s revocation order.
(3) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee or certificate holder petitions, pursuant to paragraph (4) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.

(4) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed or uncertified practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.

(a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:

1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or

2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or

3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license or certificate previously revoked.