

Position Statement on Release of Patients' Records to State Medical Boards

Approved by the Board of Trustees, December 2007
Approved by the Assembly, November 2007

"Policy documents are approved by the APA Assembly and Board of Trustees...These are...position statements that define APA official policy on specific subjects..." – *APA Operations Manual*.

The American Psychiatric Association endorses the following principles regarding the release of records involving psychiatric and other medical treatment to medical licensure boards:

1. Patients filing complaints regarding a current or former treating physician should be required to sign releases for the board to access their records before their complaint is investigated.
2. When complaints are filed by third parties about the treatment of identified patients, the board should determine whether there is sufficient substance to warrant further investigation and whether the medical records of the identified patients are necessary to its investigation before seeking access to those patients' records. If review of records is believed to be necessary, identified patients should be contacted by the board for consent. If patients do not grant the board consent for release of records and the board continues to believe that access is necessary, an independent review process should exist for determining whether the board's interest in obtaining the records outweighs the patients' interest in privacy. Patients should receive notice of the review and have an opportunity to object to the board's request. The APA acknowledges that a variety of review mechanisms may be acceptable for this purpose, and that different jurisdictions may have reasons to select one mechanism over another. Possible mechanisms include review by a hearing officer, by an administrative agency, or by a court, and may be based on evidence from written submissions or from hearings. The key elements of any process are that it is independent of the medical board and that patients are guaranteed notice and a right to object.
3. When complaints are filed by third parties about a pattern of improper treatment or behavior by a physician, or when a medical board otherwise has reason to believe that such a pattern may exist, medical boards will often desire access to a sample of patients' records to evaluate whether there is a pattern of misconduct. As with complaints regarding the treatment of identified patients, the board should first determine whether there is sufficient substance to warrant further investigation and whether access to patient records is necessary. If the board believes that access is necessary for its investigation, it should pursue approval from the independent review mechanism (see principle 2 above) established in that jurisdiction. In contrast to complaints solely involving the treatment of identified patients, reasons of feasibility and fairness to an accused physician may preclude the medical board from notifying patients whose records are sought. Insofar as is feasible, reviews of patterns of practice should be conducted with records from which identifying information has been deleted.
4. The use of patient records obtained by the board should be limited to investigating wrongdoing by the physician. Medical records may contain information relevant to civil and criminal matters involving patients. Records or copies of records obtained by medical boards should not be admissible for these purposes.
5. A medical board that has obtained patient records is obligated to safeguard patient privacy. Records obtained by the board should not be made available to other agencies or persons, their physical security must be protected, and they should be destroyed or returned to the physician or entity that owns them after completion of the investigation or disciplinary proceedings and any related appeals.
6. To the extent that regulatory or statutory changes are needed to authorize the procedures outlined in principles 1-5, the APA urges that states adopt such regulations and statutes.