Who is the client and who controls release of records in a forensic evaluation?
A review of ethics codes and practice guidelines

Forensic psychologists often refuse to release evaluation records, especially to the evaluee. One justification for this practice is based on the ethical positions that the referral source '*is the client*' and '*controls release of records*' (also found in the Specialty Guidelines for Forensic Psychology). To determine whether these ethical positions are shared by the field of forensic mental health, official documents from forensic mental health organizations were used as a proxy for the these views. **Method:** Thirty-four supporting arguments for either position were identified from the literature; it was postulated that official documents would support both positions and utilize supporting arguments. Fifty-four official documents were discovered, and qualitative analysis was used to construct a 17-category model of official views. **Results:** Neither position was supported by a majority of documents, and few of the supporting arguments were utilized by supportive documents. **Conclusion:** The positions are unsupported because official documents espouse a wide diversity of views, there are a number of logical flaws in supporting arguments, and even official APA documents hold conflicting views. Ethical arguments are advanced for contrary positions, and the referral-source-control of records-release is contrary to law. A more ethical view is that the psychologist may have multiple, possibly conflicting responsibilities to multiple entities; the psychologist's roles and responsibilities should be clarified with each entity using an informed consent process. Psychologists should release records at the behest of the evaluee, lest they be subject to licensing discipline, HIPAA complaints, and/or civil sanctions. Recommendations are offered for psychologists, future ethics codes and professional practice guidelines, and test security practices.

keywords ethics, access, who is the client, HIPAA, referral source, patient rights, test security, test data, practice guidelines, qualitative analysis, dual agency

Introduction

Most frequently, forensic psychological evaluations are initiated by a request from a referral source to evaluate the referral source's client. Examples of such referral sources include the plaintiff's attorney in a disability case, a defense attorney in a tort case, the Court in a guardianship case, an agency in a rehabilitation case, or an employer (for an employment or fitness-for-duty evaluation). After completion of the evaluation, a report is typically prepared and released to the referral source. If the evaluee wants their own copy, however, many forensic psychologists refuse to release either the report or the underlying records (Greenberg & Shuman, 1997), basing this decision on the position that the referral source is '*the client*' (American Psychological Association, 2013a) (guidelines 8.01, 8.02, Appendix II). Not only do psychologists refuse to release records to evaluees (Bush, Connell, & Denney, 2006), but also to third parties (Bush & Martin, 2010a), the courts (Lees-Haley & Courtney, 2000), non-psychologists (Kaufmann, 2005), and attorneys (Lees-Haley et al., 2005). The most common judicial use of Health Insurance Portability and Accountability Act (HIPAA) by *covered entities* are attempts to shield records from disclosure (Beal & Jones, 2010; Rosenbaum, 2014), although the courts are rarely supportive (Stiles & Petrila, 2011). This is a top HIPAA (OCR HHS, 2002) complaint (Tossell, Stewart, & Goldman, 2006; OCR HHS, 2014) and the top complaint defended by the American Psychiatric Association (Vanderpool, D., personal communication, 6/25/2013).

Anecdotally, refusing to release records appears to be the majority position of forensic psychologists, but is it an ethical position[a] to take? This issue has been (Plotkin, 1978), and continues to be (Erard, 2013), controversial (Bush, et al., 2010, p. 180), often a topic of passionate debate on forensic email forums[b]. As justification for refusing to release records, many authors draw on the persuasive authority of ethics codes (C. B. Fisher, 2012; Kaufmann, 2009) and professional practice guidelines (Gold, 2009, Kaufmann, 2009), even though health records are governed by state[c] and federal law (Kaufmann, 2009). The ethics code continues to be asserted by psychologists as a reason to limit discovery requests (see, e.g., Frazier v. Bd. Of Comm'rs, 2010, Kellar v. U.S., 2009, Riel v. Ayers, 2010, Tibbs v. Adams, 2008).

Supporting Arguments

A search of the literature found a number of supporting arguments, for the position that the referral source is *the client*, including:

- There is no doctor-patient relationship (Bush & Martin, 2008, p. 510; Bush & Martin, 2010b, p. 237; Packer, 2008; Vore, 2007. pp. 506-507)
- The psychologist was hired/retained by the referral source (Bush et al., 2005, p. 998; Rapp, Ferber, & Bush, 2008, p. 472; Melton et al., 2007, [for purposes of evidence law] §4.04(c); Ogloff, 1999, p. 407)
- The psychologist has a contract that specifies this relationship (American Psychological Association, 2013a, p. 19)
- The psychologist is the agent of the referring attorney (Cooke & Bleier, 2011, p. 176; Sadoff, 2003, p. 47; Greenberg & Shuman, 1997, p. 52; Slovenko, 2003, p. 139; Goodman-Delahunt & Foote, 2011, p. 100; Foote & Goodman-Delahunty, 2005, p. 76; Bernet, 1997, p. 45S-46S) or employer (Piechowski & Drukteinis, 2011, p. 578, Foote & Lareau, 2013, p. 188, Corey & Borum, 2013, p. 255).
- Objectivity, accuracy, and impartiality are enhanced (Malina et al., 2005, p. 28)
- Bias and conflicts of interest are reduced (Greenberg & Shuman, 1997, pp. 53-55)
- The purpose of a forensic evaluation is to answer a legal question (Packer & Grisso, 2011)
- The expert's responsibility is to assist in the administration of justice (Mossman et al., 2007, p. S24-S25)
- The expert's responsibility is to tell the truth (Vilar-Lopez & Puente, 2010, p. 322; Weinstock & Garrick, 1995, p. 192)
- The referral source receives a copy of the report (AACN, 2007; IACP, 2009)
- The referral source is the holder of the psychotherapist-patient privilege (Bush & Martin, 2010b, p. 238)
- The referral source "owns" the confidentiality (Ogloff, 1999, p. 407)
- The referral source is responsible for payment of the fee (Shapiro, 2002)
- It is consistent with actual practice and majority opinion (Weinstock & Garrick, 1995, p. 192)
- It is financially protective of the psychologist (Weinstock & Garrick, 1995, p. 188)

The referral source must control release of records, because doing otherwise:

---

[a] As used in this Article - *Position* refers to one of two alternative courses of action that have been described in the literature (e.g., the referral source should be 'the' client). *Supporting argument* refers to a logical or ethical rationale asserted to justify the position taken. *Views* are one or more statements made by an official document, regarding either position. *Views* may support a *position*, take a contrary *position*, or make any number of other statements about the issue.

[b] psylaw-l@listserv.unl.edu, bestinterests-talk@lists.washlaw.edu, FORENSICNP@listserv.ua.edu

[c] See, e.g., Section 456.057, Florida Statutes, available at http://bit.ly/1dVRsDG

- May create the perception of a traditional doctor-patient relationship (Gold et al., 2008; Sadoff, 2011, p. xxvii, 4)
- May cause misuse or misunderstanding, especially of test data (Kane, 2008; Shapiro & Smith, 2011)
- May weaken the validity of psychological tests (Kaufmann, 2007, 2013)
- May interfere with the referral source's business or otherwise harm the referral source (Sadoff, 2011, p. 7)
- May breach attorney-client privilege (Cooke & Bleier, 2011, p. 176; Giorgi-Guarnieri et al., 2002)
- May breach work-product privilege (Greenberg & Shuman, 1997, p. 52; Vore, 2007, p. 507)
- May harm the evaluee (Sadoff, 2011, p. 7; Schwartz & Mack, 2003)
- May precipitate an angry confrontation with the evaluee (reacting to the psychologist's unfavorable opinion), for which the psychologist may be unprepared (Gold et al., 2008)
- May lead to a lengthy and expensive critique of the psychologist's methodology rather than the psychologist's conclusions, undermining the psychologist's effectiveness (Bush et al., 2010)
- May interfere with the contractual relationship between psychologist and referral source (Gold & Davidson, 2007, p. 206)
- May abrogate the property rights of the referral source (Bush, Grote, et al., 2008; Vore, 2007, p. 507)
- May unnecessarily subject the psychologist to potential negative consequences for releasing the records (Sadoff, 2011, p. 7)
- May be unneeded, because the evaluee can obtain the records from other sources (Sadoff, 2011, p. 7)
- May breach the confidentiality owed to the records themselves (Sadoff, 2011, p. 7)
- Is automatically precluded due to the nature of forensic relationships (American Psychological Association, 2002)
- Is specifically prohibited by HIPAA (Connell & Koocher, 2003)
- Is not health care information (Greenberg, Shuman, Feldman, Middleton, & Ewing, 2008, p. 458)
- Is prohibited, as the referral source is the "holder of confidentiality" (Borum, Super, & Rand, 2003, p. 135)
- May violate the Court Order (AFCC Court-involved therapy)

Although "every categorical statement … must be supported in some way" (Taylor, 2002), even the most frequently cited articles on this question (e.g., Greenberg & Shuman, 1997) contain few supporting references, creating difficulty in evaluating credibility or distinguishing personal opinion from scientific research (APA, 2010). Officially promulgated documents, such as ethics codes and professional practice guidelines, on the other hand, may establish greater authority, as they are systematically developed statements about appropriate practice, and reflect the consensus of large groups of experts (Mello, 2000, APA, 2014, Reed et al., 2002, p. 1044). Individually official documents may represent the prevailing standard of care (Reed et al., 2002, p. 1043), and in aggregate, may represent the field as a whole. If the field of forensic mental health *does* hold that the referral source is *the client*, and control release of records, official documents should reflect these positions. This article examines the views of official forensic mental health documents, regarding the questions of '*who is the client'*, and *who controls release of records*; from thence, we analyze the logic of the arguments asserted in support of the positions, assert ethical arguments for a contrary view, and, finally describe the legal requirements in this area.

Research Postulates

Based on the literature review, it is anticipated that a majority of documents will:

1. Express the view that the referral source is *the* client.
2. Express the view that the referral source controls release of records.
3. Utilize supporting arguments as rationale for these views.

Method

Data Collection

The author initiated a search for all relevant official documents, examining the National Guideline Clearinghouse (Department of Health and Human Resources Agency for Healthcare Research and Quality, 2013), lists of ethics codes (Ebert, 2011, Pope & Vasquez, 2011), lists of forensic psychology organizations (American Psychological Association, 2009b; Modern Practices, 2013; Schepers, 2013) and utilizing online searches[d]. Documents prior to 1990 were excluded as being not relevant to current practice. Websites of forensic mental health associations were consulted, and follow-up phone calls to association offices were made when information was unclear. References to patients,[e] duties[f], referral sources,[g] and release of records[h] were selected from each document. Documents from general mental health (nonforensic) organizations were included that referred to third party referral sources; although not all specifically reference forensic evaluations, forensic professionals are still expected to comply with ethics codes (Weinstock & Garrick, 1995), and some general codes were created with forensic services in mind (Behnke, 2004). Documents that did not discuss third party evaluations, such as forensic science, forensic nursing, group therapy, and school psychology, were excluded, although these issues are debated in other sub-fields, as well (Fuqua, Newman, Simpson, & Choi, 2012; Lowman, 2006, Fisher, in press).

Of the 54 official documents located (marking a significant change from that noted by Otto & Heilbrun, 2002), 42 (78%) documents were forensic and 12 (22%) were general in nature. Eight (15%) documents were created internationally and 46 (85%) were from U.S. organizations. Of the 41 professional practice guidelines, 10 (19%) were related to children, eight (15%) were related to neuropsychology, eight (15%) to divorce / parenting, four (7%) were specific to criminal evaluations, four (7%) to disability evaluations, three (6%) to police services, and four (7%) to other issues. Thirteen (24%) documents were ethics codes. Three (6%) documents were specific to treatment services, 31 (57%) to evaluations only, and 20 (37%) were applicable to either evaluation or treatment. Three (6%) documents were published by Social Work or counseling organizations, 14 (26%) were from psychiatric organizations, 26 (48%) were published by psychological organizations, and 11 (20%) were published by organizations applicable to multiple professions. Fifteen (28%) documents were published since 2010, 20 (37%) from 2005-2009, nine (17%) from 2000-2004, eight (15%) in the 1990's, and two (4%) organizations (ABIME, ACFE) declined to provide a publication date.

A general thematic/inductive approach to qualitative analysis (Pistrang & Barker, 2012) identified document views and created view categories. The ENTREQ method (Tong et al, 2012)was utilized to ensure transparency. The author closely read each document, multiple times, identifying relevant views; multiple meanings for each view were considered, as well as how each of those meanings fit with emerging themes, resulting in various view-categories that developed over time. Several methods for establishing credibility and trustworthiness of the analysis were utilized - triangulation (use of a wide range of data sources compared and contrasted against each other), bracketing (holding prior beliefs about the phenomenon under investigation in abeyance) prolonged engagement (multiple, close readings of the text, including analysis of contextual factors), negative case analysis

[d] search terms such as forensic, psychiatric, association, psychological, society, social work, academy, legal, etc.
[e] client, patient, examinee, evaluee, service recipient, party/parties
[f] dual/multiple relationships, dual/mixed agency, duties, responsibilities, role, obligations
[g] referral source, retaining agency, attorney, counsel, lawyer, third party, court, judge
[h] release, reports, information, records, test data, raw data, access, privacy, rights, confidentiality, disclosure, authorization, authority

(constructing an interpretation and then successively modifying it as new instances that provide negative support for the current model are encountered), peer scrutiny, and member checks (authors or chair persons of official documents were contacted and asked to clarify statements within a document that appeared to be unclear or to conflict with other statements in the same document – some authors provided clarification, while others declined to do so).

INSERT TABLE 1 HERE

Table 1 shows document- views regarding the client position, and Table 2 lists views regarding release of records. Column 1 of both tables indicates document title; each subsequent column, in both tables, describes a category of view. Cell entries refer to the section number(s), within each document, where the reader can locate the view(s).

Categories of views regarding the client position (table 1) included - role clarification, laws dictating client status, referral source as client, evaluee as client, multiple duties, descriptions of both referral sources and evaluees, descriptions of evaluees but not referral sources (the last two suggestive that the referral source is not the only entity owed responsibility), confusing or conflicting comments, and documents that do not mention the issue.

INSERT TABLE 2 HERE

Document-view-categories regarding records-release (table 2) included clarification of the limitations of confidentiality and conditions of release, laws dictating release conditions, referral source controls release, evaluee controls release, psychologist discretion / clinical judgment, written authorization required, uncategorizable views, and documents that do not mention the issue.

Results

No Support for the Referral-Source-is-Client Position

Only 14 (26%) documents held the view that the referral source is the client. Ten (19%) documents viewed the evaluee as primary client, and more than half (28, 52%) of the documents espoused a multiple-client view (11), mentioned only the evaluee (5), or discussed both referral sources and evaluees separately (12) (inconsistent with the referral-source-primary-allegiance position). The modal view (23, 43%) was that roles, relationships, and responsibilities should be clarified with all entities. Six (11%) documents acknowledged that laws might determine client status, and thirteen (24%) were either unclear or silent on the matter.[i] Among the 14 documents that viewed the referral source as the client, all were American in origin and 11 forensic. Three were related to police services and parent evaluations, two to neuropsychological, child, and criminal evaluations, and one to guardianship. The SGFP was the only ethics code. Two of the documents held the dual view that there are multiple clients.

No Support for the Referral-Source-Controls-Records-Release Position

Only 15 (28%) documents agreed that the referral source controls release of records. More than half (32, 59%) of the documents either stated that the evaluee controls release of records (19) or required written authorization from the evaluee (13). Majority views included clarification of the limits of confidentiality and access to records (30, 56%), and acknowledgement that laws regulate records release (28, 52%). Ten (19%) documents suggest that the psychologist has discretion regarding release of records. Thirteen (24%) documents provided views that could not be categorized, and eleven (20%) organizations did not address the issue of records-release. Among the 15 documents holding the view that the referral source controls the release of records, 12 were forensic in nature, 11 were professional practice guidelines, and 13 were American. Five were related to neuropsychology, two to criminal evaluations, two to parenting, and one each to guardianship, and disability. Ten of these documents also took the contrary view that the evaluee controls records-release, and five of them held the view that the psychologist has discretion to decide whether to release records.

No Agreement Regarding Use of Supporting Arguments

Although postulate three predicted that documents would utilize supporting arguments as rationale for their views, most documents merely expressed a view without asserting any rationale. Most of the supporting arguments were not utilized in any document; of those documents that supported either position, and utilized one of the supporting arguments, no supporting argument was utilized by more than a single document.

[i] Percentages totaled more than 100%, because many documents expressed multiple, often conflicting views.

Discussion

It seems logical that, if a majority of forensic mental health professionals regard either position to be ethical and well-founded, a majority of official documents would hold similar views, but this result was not found and it appears that the opposite positions are better supported. In recognition of the disparate purposes of the official documents here, and that a count of categorically-sorted views might be overly simplistic, a more detailed analysis of the supporting arguments was performed; several logical and ethical problems were observed, and described in the next section. Finally, the author proffers a number of ethical arguments for a multiple-client, multiple-responsibilities position and for evaluee-control of records-release.

Analysis of Supporting Arguments

Illogical supporting arguments.

Many of the supporting arguments seem illogical. For example, it seems unfeasible for a referral source to *own* confidentiality. Confidentiality is a duty (Bersoff, 2000), not property. Determining client status based on payment source also seems irrational; by this logic, insurance companies, friends, family members, anonymous donors could become *the* client. Likewise, obtaining a copy of the report cannot propel the referral source into primary client status; by this reasoning, the court, both attorneys, a second evaluator and a subsequent treating source could all become *the* client. It is unclear what negative consequences the evaluator might be subject to, assuming they lawfully release records. Further, records, as inanimate objects, cannot be "owed confidentiality" or sue to collect on a debt. Finally, the referral source has no property interest in the records; it is the evaluee that has a common law property interest in the information therein (Annas, 2004, p. 227; Roach, 2006, p. 163).

Self-interest.

Some authors take a more personal approach to these issues, arguing that this approach results in more income for the forensic expert (Weinstock & Garrick, 1995), or may help the psychologist avoid an angry confrontation with the evaluee (Gold et al., 2008) or a critique of the psychologist's methodology (Bush et al., 2010). Others simply acknowledge that this is how 'everyone' does it (Weinstock & Garrick, 1995), or that withholding records is automatically precluded (APA, 2002a, 9.10). Others may believe that they may be more susceptible to unfounded licensing complaints or malpractice actions (Sadoff, 2011). Although all professionals must pay attention to their personal and professional needs in order to stay in business, these arguments are not ethical ones. Ethics helps psychologists "… in maintaining their objectivity and competence and avoiding harming others… " (Nagy, 2011, p. 4), and "represents two important aspects: striving to the highest standards in the profession and identifying those behaviors that deserve sanction" (Jones, 2000, p. 239). As an ethical professional, our self-interests generally take a back seat to our fiduciary responsibilities.

Objectivity.

A number of authors assert that the proffered positions enhance objectivity, accuracy, and impartiality (Malina et al., 2005, p. 28) and reduce bias (Greenberg & Shuman, 1997, pp. 53-55; Shuman & Greenberg, 2003), or may encourage truth-telling (Vilar-Lopez & Puente, 2010, p. 322), but this is a false choice. Allegiance to the referral source does not mandate objectivity; in fact, there is inherent bias in the expert role (Murrie et. al, 2013) and the referral source may even seek a biased opinion from the expert (Gutheil et. al, 2001). The psychologist's source of credibility is based on the expert's honesty, competence, thoroughness, relevancy, accuracy, fairness, and the promotion of justice (Shuman & Greenberg, 2003, Bush et al., 2005) as well as the ethical comportment of the psychologist – not allegiance to the referral source. Finally, to the extent that the expert is unwilling

or unable remove bias from his/her opinion(s), the adversarial legal process has ultimate responsibility for doing so (*Daubert v. Merrel Dow Pharmaceuticals*, 1993).

Being an agent of the referral source.

Some authors argue that when the expert is hired by an attorney, the psychologist becomes an agent of the attorney, so the attorney-principal thus controls release of records. This is a false presumption and a misrepresentation of the roles of both attorney and expert, and would lead to absurd results. An agency relationship differs from other fiduciary relationships in that the principal has the right to control the conduct of the agent (the agent has a duty to respond to the desires of the principal), and the agent has the power to effect legal relations of the principal (*Slates v. IHOP*, 1980; Seavey, 1964; Hall, 2006).

When the referring attorney is the evaluee's attorney, s/he is the agent of the evaluee (DeMott, 1998). Attorney and client are thus legally synonymous (See, e.g., *Allen v. Healthport*, 2014, and *Rue & Ziffra v. Health Information Professionals*, 2011, unpublished opinions). Therefore, if the psychologist were an agent of the attorney, s/he would thus be an indirect agent of the evaluee, and would therefore have a duty to follow the instructions of the evaluee (including disclosure of records). Further, disapproving a request for records would create an ethical dilemma for the evaluee's attorney, because s/he is ethically prohibited from contravening client wishes. The Rules of Professional Conduct (American Bar Association, 2012, Rules 1.2 & 1.4) mandate that attorneys act in accordance with the wishes of their client. Further, "… a client owns his or her trial file and a[n] … attorney is obligated to follow his or her … client's … wishes …" (*In Re McCann*, 2013, p. 710). Thus, it appears that if the evaluee controls release of the attorney's records, the attorney does not have authority to prevent release of the psychologist's records.

Being an agent of either attorney would place the psychologist in the role of advocate for that party, abrogating the impartiality of the expert. Psychologists should not be "agents of the attorney who retains them," because we are not "responsible for serving the attorney's best interests" nor "the best interests of the attorney's client;" instead, our professional obligation is "to conduct a competent evaluation and report … clearly, accurately, and honestly, whatever these findings may be, and independently of any motivation to win or lose" (Weiner & Hess, 2014, p. 106; see also Sadoff, 2011 §5.11, seemingly arguing both sides of the issue). Instead, expert witnesses should be ""an advocate of the truth with testimony to help the court and the jury reach the ultimate truth in a case, which should be the basis of any verdict" (*Selvidge v. United States*, 1995, p. 156)

When the evaluation is performed pursuant to stipulation or a court order, there exists no legal relationship with either attorney, regardless of the procedure by which the appointment came about. As a court-ordered expert, the psychologist's obligation is to comply with the order and to gather information toward the abstract goal of justice. Because neither the evaluation, report, nor testimony can be controlled by the referral source, an expert witness is most akin to an independent contractor, not an agent (see, e.g., *Taylor v. Kohli*, 1994). Similar conditions are likely found when hired by an employer or agency. This author is not aware of any circumstances when a psychology licensing board or the APA failed to pursue sanctions for violations of licensing laws or ethics codes, simply because the referral came from a third party (see, e.g., *Budwin v. APA*, 1994; *Deatherage v. BOP*, 1997). Further, a psychologist / referral-source contract does not nullify statutory obligations owed to the evaluee (Knauss, 2006).

"Holding" and breaching privilege.

Some scholars argue that the referral source should be the client because they are the 'holder of privilege' (Bush & Martin, 2010b, p. 238), or because releasing records would somehow violate

privilege (Cooke & Bleier, 2011, p. 176; Giorgi-Guarnieri et al., 2002; Greenberg & Shuman, 1997, p. 52; Vore, 2007, p. 507); this is not accurate. The attorney *does* control material protected by attorney-client or work product privilege; when the psychologist is an employee of the attorney or is a confidential expert, records created pursuant to these roles are thus protected from disclosure to the legal system and likely to anyone else (Gould et al., 2004; Sawaya, 1993; Weinstein & Berger, 2014, §503, *U.S. v. Kovel*, 1961). However, most evaluations are performed when one is a disclosed witness, and no privilege applies (Fed.R.Evid. 502, 705, 706).

The holder of psychologist-patient privilege is the patient / service recipient, and no one else, pursuant to state statutes (e.g., §90.503, Fla. Stats.) and federal privilege (*Jaffee v. Redmond*, 1996). An attorney-referral-source is ultimately answerable to the evaluee, who chooses whether to waive privilege; the referral source cannot assert, waive, or decide privilege. The ultimate decision-maker, when the issue is in dispute, is the trial court, which determines whether privilege applies and which evidence is admissible (based on fact and law, not referral-source-status).

Disclosure of nonprivileged records (within the legal system) are regulated by the rules of discovery; however, the evaluee retains an *independent* right to control release of evaluation records *outside* of the legal system. These disclosures are regulated by federal and state licensing / confidentiality/ privacy laws, which do not apply to legal-system-disclosures (see, e.g., *Johnston v. Weil*, 2011, p. 341); these laws place obligations on psychologists to permit patient access, and are not conditioned on the existence (or not) of litigation.

Harm / maleficence.

Forensic mental health professionals are concerned about harm befalling a number of entities, such as the referral source, the evaluee, or the psychologist. Some scholars are concerned that access to the records may be harmful to the evaluee, the psychologist, or other persons (Kaufmann, 2009; Schwartz & Mack, 2003). It is asserted that the evaluee might be harmed by knowledge of the information in the records (Sadoff, 2011; Schwartz & Mack, 2003; Rogers, 2004) but there is little empirical evidence of such harm (Roth, Wolford, & Meisel, 1980), including harm to forensic patients (R D Miller & Germain, 1989; Robert et. al, 1987; Parrott et. al, 1988; Seitz et. al, 1978) and there is substantial evidence of a lack of harm when patients access their records (Rosner, 2003; Ross, Chen-Tan, & Lin, 2003).

The psychologist might be harmed (Gold et al., 2008) if the evaluee becomes angry or violent on receiving unfavorable results. However, withholding records under these circumstances is not based on the referral source - federal and many state laws already permit psychologists to exercise clinical judgment and withhold information in such cases. Per HIPAA, those portions of the records that might precipitate violence can be redacted and reviewed by another professional regarding whether to withhold some of the records. It would be improper to hold the referral source accountable for this decision, as s/he may not be aware of the records' contents, and/or may not have the expertise to determine whether release would be harmful. It seems both illogical and unethical to abdicate one's professional judgment to the referral source.

Some authors have been concerned that, if the evaluee is permitted access to the records, the referral-source or the expert / referral-source relationship could be harmed (Gold & Davidson, 2007; Bush et al., 2008; Vore, 2007; Sadoff, 2011). Sadoff (2011) suggests that the referral source might hold the report hostage if the evaluee has not paid the referral source, and that it would be acceptable practice for the expert to not interfere. There may indeed be referral sources who wish to prevent the evaluee from learning the contents of the evaluation. One can imagine that police agencies might not want the results of preemployment or fitness for duty evaluations made known, for

example. However, the authors merely hint at the potential for harm, and cite no specific ethical standards that might be violated if the evaluee is permitted access. On the other hand, litigating evaluees will likely obtain access to their records via discovery, and psychologists are legally required to release records to both litigating and nonlitigating evaluees. If both the law and rules of legal procedure mandate evaluee access, the risk of harm to the referral source is likely small.

HIPAA.

Some authors assert that the referral source controls records-release because HIPAA access rights do not apply, but this argument is misplaced. Multiple arguments have been made, such as that HIPAA does not regulate *covered entities* when they perform forensic evaluations (Attix et al., 2007; Axelrod, 2003), prohibits evaluee-access to records, that evaluees are not "patients" (Blase, 2008, p. 501; Bush & Martin, 2008, p. 510), or because forensic evaluations are specifically excepted by HIPAA (Bush et al., 2010), are not healthcare (Connell & Koocher, 2003), or answer a legal question (Packer & Grisso, 2011). However, more recent research has considered these questions, finding that *covered entities* are regulated by HIPAA for every service they perform, including forensic evaluations (Borkosky, 2012; Borkosky, Pellett, & Thomas, 2013; Borkosky & Pellett, 2013). HIPAA regulations mandate that the evaluee solely controls disclosures of records; there is no exception based on the referral source or type of service. Further, it appears that litigants have a HIPAA-based right to control access and disclosure of their records, regardless of the rules of discovery (*Kellar v. U.S.*, 2009).

Release of records unneeded.

It has been asserted that, because evaluees may obtain their records pursuant to discovery[j], s/he has no need to access the records outside of the legal system, and the psychologist has no responsibility to release the records thusly (Sadoff, 2011). However, refusal to release records *can* have a variety of negative consequences, which will be described in the section on non-maleficence. On the face of it, this argument strikes this author as fairly paternalistic and lacking in empathy; making the argument requires the expert to assert that other, less preferable methods of access should take precedence over compliance with the evaluee's request immediately posed. At the very least, the expert is acknowledging that there will be a delay in obtaining the records, and that delaying the request is of greater importance than the potential consequences, regardless of how serious those consequences might be.

The doctor-patient relationship.

Some authors assert that there is no doctor-patient relationship at all in a forensic evaluation. Others that the limited nature of the relationship makes the referral source *the client*, and gives control over records release to that *client* (Gold et al., 2008; Sadoff, 2011; Bush & Martin, 2008; Bush & Martin, 2010b, p. 237; Packer, 2008; Vore, 2007. pp. 506-507). This is another false choice, because forensic evaluees do not lose most rights found in a traditional doctor-patient relationship (American Psychiatric Association, 2013; Gold et al., 2008). As we have seen previously, the expert is not an agent of the referral source, and the expert's obligations to the legal system (e.g., being objective, impartial, etc.) remain unchanged regardless of how the request for evaluation came about.

[j] Litigants are entitled to have access to "any matter, not privileged, which is relevant to the subject matter involved in the pending action" (Fed. R. Civ. Proc., 26(b)(1)), including the expert's substantive facts and opinions, and the bases for the opinions.

Did the EPPCC and SGFP err?

Readers may find it incredulous that the EPPCC and SGFP could have erred in their interpretations of the ethical and legal requirements regarding this issue, given the rigorous vetting process each document undergoes. The 2002 version of the EPPCC began revision in 1993, with appointment of the Ethics Code Task Force in 1996, review of 1366 comments, 270 critical incidents, seven drafts, and final adoption by the APA Council of Representatives in 2002 (APA, 2003, p. 650). Similarly, development of the SGFP required unanimous approval from the Committee for the Revision of the Specialty Guidelines for Forensic Psychology (2002-2011), was vetted by hundreds of forensic psychologists, including extensive online debate, discussions during two public meetings, with multiple drafts approved by the AP-LS executive committee, APA Division 41, and the American Board of Forensic Psychology, culminating in adoption by the APA Council of Representatives in 2011 (APA, 2013a, p. 18).

There may be a number of factors that have contributed to this result. Firstly, some psychologists may be (rightly) concerned about distinguishing the forensic relationship from a clinical one, trying to avoid "confusion and potential harm from referring to and conceptualizing people we assess in forensic contexts as patients" (Otto, R., personal communication, 8/19/2013). Others may be concerned that the evaluee may have false expectations that a treatment relationship exists (Gold et al., 2007, 2008). Further, the views of the document authors and subsequent reviewers may not have fully considered release of records and/or the differing views may reflect varying experiences and practices of individual practitioners (Gold, L. H., personal communication, 07/10/2013). Others, unfortunately, may have less justifiable and more personal reasons for not wanting to release records, ignoring ethics and law. We will forgo pejorative speculation here, but one author has observed that information is power, and that one motivation might be a reluctance to share the power inherent in patient records (Annas, 2004, p. 230).

Secondly, although the EPPCC was developed with HIPAA in mind (Fisher, 2012; Behnke, 2003; Erard, 2004a), compliance was not required until 4/14/2003; thus, no case law or disciplinary case examples were available with which to better understand the meaning and implications of the regulations, or intent of the regulators. Now that that a number of such cases have been published, it appears that some initial presumptions were incorrect.

Finally, tradition may contribute to the persistence of these positions (M. A. Fisher, 2009; Ross, 1986). Societal views and social policies change over time, and our ethics codes reflect those changes. For example, the American Medical Association's 1957 ethics code specifically prohibited patients' access to their records (Rosenman, 1997, p. 1508). This was consistent with social policy at that time- as late as the 1970's (Bruce, 1988, p. 162), "hardly more than 10% of psychologists ever allowed clients access to their reports (much less raw data)…" (Erard, 2004b, p. 45); access to test data was even more closely guarded: "until quite recently, many psychologists believed themselves ethically bound to fall on their swords before releasing raw test data to anyone but another qualified professional" (Erard, 2004a, p. 23). The APA's ethics codes required confidentiality of records (by requiring patient consent prior to disclosure) from 1953 on, but it wasn't until 2002 that the code specifically mentioned that patients have a right to a copy of their records. Access to test data was treated similarly - the 1992 code "presumed that test data would be withheld, unless certain conditions were met. In the new Ethics Code, the presumption favors release unless the specified exceptions are present" (Behnke, 2003, p. 70). Thus, these restrictions on patient access rights may not be error, but perhaps merely reflect traditions and societal values that have been changing more quickly than organizations and some individuals can adapt.

What Are The More Ethical Views?

Multiple Clients, Multiple Responsibilities

The single-client position, proffered by majority opinion, can be very misleading (M. A. Fisher, 2009). A more helpful model is to consider the responsibilities owed by the psychologist to a variety of entities, as well as the rights held by those entities (M. A. Fisher, in press) and, contrary to majority position, most forensic organizations prefer a multiple-responsibility model (Table 1, Column 6). One possible reason might be that forensic evaluators have relationships with multiple entities (e.g., the evaluee, the referral source, collateral sources, the evaluee's extended family, actual or potential victims of the evaluee, and/or entities that harmed the evaluee), as well as having obligations to the legal system and licensing agency (Gemberling & Cramer, 2014). These responsibilities may change over time (Third-Party Working Group Ontario Psychological Association, 2012). Most documents agreed that the services to be provided, roles and obligations, the nature of the relationship, uses of the information obtained, confidentiality (and privilege) limits and potential conflicts, should be clarified with all entities (American Psychological Association, 2002, 2013a). At the very least, caution is warranted when determining the responsibilities owed to various entities (American Psychiatric Association, 2013, §4.2-4.9, 8.2).

Evaluee Control over Release of Records

Although evaluee-control over the release of their records has not received the same attention in the literature as has confidentiality (Borkosky, 2013), it is consistent with the ethical values of autonomy, non-maleficence, integrity and justice.

Autonomy.

Evaluee control over release of their records is consistent with the ethical principle of autonomy (APA, 2002a, Principle E; Bush et al., 2006 p. 107). Autonomy is permits patients to act independently, free from external control or influence. Psychologists routinely recognize this principle by obtaining informed consent (APA, 2002a, standards 3.10 & 9.03; APA, 2013a, guideline 6), as well as authorizations to obtain collateral records and to release reports to the referral source (Gold et al., 2008; Mossman et al., 2007; *Kina v. United Airlines Inc.*, 2008).

Control over the release of records (the *patient access* right) is one of a number of rights, collectively known as information rights. They include informed consent, confidentiality, privilege, accuracy, integrity of the records, the right to amend one's records, and the right to an accounting of the records. Access is the flip side of confidentiality, in that confidentiality keeps records from being accessed by persons who should not have access, and access rights enable the psychologist to release the information to persons who should have access. Psychologists recognize these rights in our ethical requirements for the creation, maintenance, retention, release, and destruction of records (APA, 2002a, 2007). These responsibilities primarily concern the information contained in the records, not the physical materials (e.g., paper, computer hard drive) on which the records are recorded (existing until we are legally permitted to destroy the physical medium). These ethical supports for information rights find similar foundation in statutes (OCR DHHS, 2002), and common law (Roach, 2006, p. 163; *Emmett v. Eastern Dispensary & Casualty Hosp*, 1967).

In regards to control over records release, autonomy requires that evaluee understand the information, and that psychologists do not exert any controlling influences over the disclosure (Beauchamp & Childress, 2012, p. 93). To the extent that the psychologist refuses or delays access, the psychologist paternalistically disrespects the evaluee (Brodsky, 1972). On the other hand, unre-

stricted access to the records actively enables the evaluee's capacity for free choice, increases understanding, fosters decision making, and nurtures free agency (Beauchamp & Childress, 2012), creating in the mind of the evaluee, a sense of dignity and worth and having been treated as a civilized person (Solove, 2002).

Thus, in order for an evaluee to ethically authorize release of the report to the referral source, they must be permitted to know the content of the report, and even the underlying records. The evaluee may have valid reasons for wanting to know the contents of the records, such as concern about the possibility of errors (Herman & Freitas, 2010' Parry, 1985, p. 466), or use of offensive language (i.e., patronizing, stigmatizing, flippant, or pejorative) (Bloch et. al, 1994, Crichton et. al, 1992, 1993, Hotopf, 1993). This is not to say that evaluees have a right to demand changes to their report, but the psychologist might be saved some embarrassment on the witness stand by correction of errors or pejoratives.

Psychologists who give evaluees control over release of collateral records and the report (to the referral source) logically and ethically contradict themselves when they refuse to permit the evaluee to control release of records. Forensic psychologists are advised to perform a comprehensive evaluation (APA, 2013a, guideline 11.04), using multiple sources of data (guideline 9.02), including collateral records (guideline 8.03). However, the majority would argue that the evaluee should not be able to control release of records; so if there are two evaluators, the first evaluator might refuse to release those records to the second evaluator because the request did not come from the referral source.

Non-maleficence.

Evaluee-control over the release of records includes the ability of the evaluee to obtain their own copy of the records and, when evaluees are refused access, there are a number of potential harms that could befall them. As mentioned in the previous section, records may contain errors; forensic psychologists strive to avoid making misleading or inaccurate statements (APA, 2013a, guidelines 1, 11.04), and the evaluee has a valid concern to prevent those errors from being disseminated to other organizations or throughout the legal system. Similarly, use of pejorative or embarrassing statements that are irrelevant to the legal system harms the evaluee by showing disrespect (Griffith et al.,2010), and may have long reaching ramifications if that information becomes public in the open courtroom.

The evaluee may seek psychotherapy services, based on recommendations made by the forensic evaluator, but the majority would argue that the evaluee should not have a right to request that the forensic psychologist release a copy of that report to the treating therapist. As a result, it is likely that the effectiveness of that therapy would be diminished, because neither the therapist nor the evaluee would be aware of the information contained in the report.

It may delay access to the records by forcing the evaluee to make multiple requests for records from multiple sources. For example: Requests made to other experts may be similarly refused: discovery requests may result in no production or lengthy delay; records obtained from the Clerk of Court may be expensive, or the Clerk may be unable to release records deemed confidential; finally, only the evaluator will possess the test data or underlying records; other sources will not have these records. Records-requests via discovery can be quite involved, proceeding from evaluee, to the evaluee's attorney, to the psychologist's referral source, to the psychologist, who provides the records to the referral source, then to the evaluee's attorney, and finally to the evaluee – quite a long, drawn out process, one that can fail at each point! Further, many psychologists refuse to provide test data to an attorney, so the evaluee may still not obtain access to their records. Finally, this argument is rendered

moot, once litigation has ended; the attorney represents no one (Melton et al., 2007) and has no authority to approve or deny the request, so the evaluee is unable to obtain their records from the legal system. For *pro se* evaluees, there is no attorney from whom to seek records.

The evaluee can be harmed if the psychologist uses denial of access as a delaying tactic (see the section 'release of records unneeded'). Discovery might not arrive in time for the evaluee to properly prepare (Bruce, 1988, pp. 133-135) for a hearing. Evaluees may need to determine whether to continue with their present attorney, to seek additional legal advice, or to proceed *pro se*. Evaluees not in litigation may need to decide whether to seek legal advice or to understand why a negative decision was made about them. Evaluees have the strongest personal interest in their records, and refusing access degrades their ability to make these important decisions (Annas, 2004, p. 229).

Honesty / integrity.

Honesty (APA, 2002a, Principle C; APA, 2013a, Guideline 1.03) requires the complete, accurate, and objective transmission of information, as well as ensuring that the evaluee understands the information collected about them (Schank & Skovholt, 2006). Those who oppose evaluee-control over records-release argue that the psychologist has fully informed the evaluee that they will not have access to the report/records and that they have agreed to it (Attix et al., 2007, Axelrod et al., 2003).

If the psychologist informs the evaluee at the outset (via informed consent) that they will not be permitted access to the report/records, the consent is not truly informed, because it is coercive and deceptive. Most often, the evaluee is not told about the restriction until s/he arrives for the evaluation. The evaluee is unable to predict their future need for the records, and is likely not aware of the conditions under which they might want to request a copy of the records. Even if they are aware of the unfairness of the evaluator's ultimatum ('sign this or you don't get an evaluation'), they are likely unaware of the potential negative consequences of refusing to sign (e.g., failure to be employed, losing the lawsuit, being accused of failing to cooperate). The surprise factor, combined with the knowledge and power imbalance (Wollschlaerger v. FL, 2014, p. 4) between evaluator and evaluee make these 'consents' coercive and dishonest, is patently unfair, and does not respect evaluee rights (APA, 2002a, Principles C & E; APA, 2013a, Guidelines 1.02, 2.08, 11.01). This view is likely consistent with federal and state laws; for example, HIPAA specifically prohibits a waiver of rights (§164.530(h)) and it seems unlikely that a state-based contract can nullify federal patient rights. Dishonesty and secrecy may cause the evaluee, who now wonders what information about them is contained in these secret records, and why cannot they have access, to distrust the evaluator (Williamson, 2005; Sankar et al, 2003; Solove, 2002)). This distrust could contaminate the entire evaluation and call into question the validity of any conclusions drawn.

Justice.

Evaluee-control over records-release is consistent with ethical concepts of justice. Justice (APA, 2002a, Principle D) is a very broad and complex ethical subject, with many competing theories. In part, justice refers to fairness, protection of civil liberties (Appelbaum, 1997a), moral rightness, equal treatment under the law equitable distribution of services, and guarding against bias and prejudice (Schank & Skovholt, 2006).

According to Aristotelian formal justice, equals should be treated equally; "to deny benefits to some when others of the same class receive benefits is unjust" (Beauchamp & Childress, 2012, page 242). Clinical and forensic evaluees are treated similarly under licensing and confidentiality laws; forensic evaluees should ethically have the same control over the release of their records as clinical patients. According to material principles of distributive justice, the evaluee, as service recipient, has

an equal, if not greater, merit to control the release of records, as does the referral source (Beauchamp & Childress, 2012).

Under a Libertarian view of justice, control over the distribution of one's records affirms the evaluee's liberty and property rights (Nozick, 1977). As described earlier, courts have established the evaluee's common law property right to the information in their records (Rosenman, 1997, pp. 1512-1513; Roach, 2006, p. 163). A transfer of this information property is only just if it is freely chosen by the evaluee, not impeded by the psychologist or referral source (Nozick, 1977).

Under the Fair-Opportunity Rule (an Egalitarian view of justice) forensic evaluees should not lose their right (compared to clinical patients) to control release of their records simply because they are participating in a forensic evaluation (Beauchamp & Childress, 2012). Evaluees may have little or no choice regarding whether they will be evaluated, and what records will be created about them; one method to mitigate the negative effects of these disadvantaged and underserved evaluees (Beauchamp & Childress, 2012) would be to permit access to, or control over the release of, their records.

Is it *Ever* Ethical to Withhold Records?

Withholding records is legally and ethically justified in some circumstances. For example, if release would somehow encumber justice, cause serious bodily harm, or violate a person's rights, unconditional, unrestricted release would be unwise. Additional situations that might invoke ethical consideration of withholding records include misusing the records in a child custody litigation, or using the records to embarrass or shame the victim of a crime (Borkosky and Smith, in press). HIPAA regulations incorporate a procedure for handling some of these situations (45 CFR §164.524(d)); HIPAA regulations may or may not conflict with state law. Psychologists may need to act with due caution, in consultation with the referral source, to find creative solutions to accommodate the rights of multiple entities, under such circumstances. If a referral source or a Court requests that you withhold records, or another professional refuses to release their records, there may be multiple avenues of resolution for these ethical dilemmas (Borkosky, 2014). Psychologists should base specific decisions on the unique facts of the particular situation, possibly guided by a good decision making process (Gottlieb & Handelsman, 2013). It should be noted that these situations are likely exceptions to the general rule.

Concern about test security is well founded (Kaufmann, 2005, 2009; Bush et al., 2010) and ethical (APA, 2002a, standard 9.11); if tests become public knowledge, validity may be compromised when evaluees use that knowledge to manipulate the results. Tests could then become misused by individuals (Kane, 2008; Shapiro & Smith, 2011; Bush et al, 2006, p. 107). Examples might include an evaluee planning to widely publicize test instruments or an attorney planning to coach his/her evaluee. A complete analysis of the many legal and ethical issues regarding release of test data is beyond the scope of this article. However, most of the prior discussion (Kaufmann, 2005, 2009) has been limited to the disclosure of test data to the legal system; the rights of evaluees to access their records outside of the legal system has received limited discussion. The issue is likely to remain both controversial and unresolved, as will be discussed in the section 'Future Directions'.

Limitations

Limitations inherent to qualitative research in general are applicable to this study – official documents may not be typical of the field as a whole or of practitioners in general. Other researchers may create different categories, code the passages differently, or select different passages from documents. Thus, the views expressed by individual documents may not be truly representative of official doctrine. Document analysis was made difficult by the widely varying and ambiguous language used by documents. For example, if an evaluee *should* authorize disclosures to third parties, does that imply a mandatory evaluee-access-right? If the referral source *should* authorize release, or the evaluee should not be afforded an explanation of results, does that preclude an access right? Often, analysis was limited to a judgment call regarding the intent of the passage.

Many official documents offered conflicting or perplexing advice, which limited interpretation. For example, Axelrod et al., (2000) offer an algorithm to handle a variety of records-release conditions, yet does not consider evaluee-requests (Barth, J., personal communication, 7/8/13). Gold et al., (2008) require approvals from *both* referral source *and* evaluee to obtain collateral records (II.B.2). However, once in possession of the evaluator, future releases are then controlled by the referral source (II.B.3); unless, that is, the psychologist is a HIPAA *covered entity*, which then returns control back to the evaluee (II.C). Further, records release to the referral source requires written informed consent from the evaluee (II.B.2). This seems quite confusing. The ethics code of the American Psychological Association (APA, 2002a) appears to be particularly conflicted. The EPPCC suggests that institutional policy or legal proceedings can alter confidentiality requirements (3.05(c)), that forensic evaluations may preclude feedback (9.10) and that the court may control records release (9.04(b)); however, it also mandates release of test data when the evaluee requests it (9.04(a)), unless the test data will be misused, and requires a written authorization from the evaluee (9.04(a)). *Either* the organizational client *or* the evaluee can consent to release of records, but psychologists are not required to release those records (4.05(a)). Further, the EPPCC recognizes that none of this advice may be applicable, because the law may override it - 3.05(c), 3.10(a), (b) & (c), 4.01, 4.05(a) & (b), 6.01, 9.04(a) & (b). This convoluted logic appears to be the result of trying to comport with HIPAA requirements (C. B. Fisher, 2012; Rogers, 2010). Mossman et al., (2007) indicate that collateral records should be obtained using a "written consent directly from the defendant" (VII.C); however, once in the possession of the evaluator, they become "… confidential and under the control of the court or the attorney … and should not be disclosed … without the consent of the referring party" (VII.D). Further, records created during the evaluation become work product but the evaluee, the Court, and the referral source attorney *each* have independent rights to release these records (VII.D). Do access rights depend on which psychologist has possession of them or which task the psychologist is performing? Can the Court or the evaluee force the attorney to release work product?

Some may criticize this article because lawsuits in different venues (family court, civil lawsuits, criminal venues) have different requirements for work-product and attorney-client privilege, but these disclosures are regulated by the rules of discovery or privilege, and are not disputed here. Further, attorney-client privilege applies primarily to attorneys, not experts; although an expert retained as a confidential expert might be subject to attorney-client privilege, we only discuss circumstances when the expert is a disclosed witness. Further, such arguments would themselves be moot for our discussions here, when the case has been disposed and/or when the request for records is made via a state or HIPAA request.

Future Directions

Psychologists should expect that patient rights will continue to increase. Autonomy, patient rights, and society's valuation of those rights have been increasing over time. There have been several enhancements to HIPAA since 2003, increasing both patient rights and penalties for infractions, and many states have modified their statutes, giving patients equal or greater rights than that required by HIPAA (see, e.g., http://bit.ly/1unRZ7c).

The test security issue is likely to remain controversial and unresolved. The Department of Health and Human Services is unlikely to protect test data; §13424 of the Health Information Technology for Economic and Clinical Health Act (HITECH, P.L. 111-5) required a study, but did not require promulgation of any rules, or even a report (and none has been forthcoming). Although test publishers have espoused the importance of test integrity and validity (Blackwell et al., 2001), they continue to publish tests with overlapping test data and test materials and where the test data reveals the stimuli. Further, despite the fact that computer-administered testing offers an extraordinary opportunity to separate test data from test materials, publishers have not seen fit to do so (see, e.g., http://bit.ly/1fz1pbF). However, the present situation is that test materials become test data when they include responses from, or information about, the evaluee (APA, 2002a, Standard 9.04), and test data must be disclosed at the request of the evaluee (APA, 2002a, 2004), and by the rules of evidence (Fed. R. Evid. Rule 705, Fed. R. Civ. P. 26 (a)(2), Fed. R. Cr. P. 12.2, and *U.S. v. Johnson*, 2005). HHS seems unlikely to issue guidance, as they have with general mental health issues (DHHS, 2014http://1.usa.gov/1s20EKs).

Publishers should design paper-based and computer-administered tests to separate test data and test materials (Chadda & Stein, 2005). Reports including *protected health information* (PHI) must be easy to produce, so that providers can comply with state and federal privacy laws. Professional associations should collaborate with publishers to create definitions for various categories of computer-generated test data (including metadata). If an industry definition is not created, the legal system is likely to create a hodgepodge of conflicting opinions. HHS will likely look to professional associations to define this nascent field of computer-administered testing-data.

In regards to state laws that are more restrictive than HIPAA, resolution is unlikely until and unless a psychologist files a federal lawsuit asking a court to resolve the issue (see, e.g., *OPIS v. Dudek*, 2011). This would be an expensive and time-consuming project with little potential benefit for the psychologist who pursues it, making it even more unlikely to happen. Psychology licensing boards are unlikely to address the subject, because state laws will not be a conflict for non- *covered entities*, and the boards may not have the authority to opine on federal law. Thus, uncertainty is likely to persist regarding state laws that restrict patient access. However, the plain language of the HIPAA preemption clause appears to be clear that these laws will be preempted, should the matter ever be litigated (*Findley v. Findley,* 2006, p. 916; *Bihm v. Bihm*, 2006, p. 735); both cases compared Louisiana law to HIPAA and, because HIPAA places more restrictions on access to one's records, HIPAA does not preempt state law. In fact, "there appears to be only one way … that a state law can ever be contrary to [and *more stringent* than] HIPAA—when the state law prohibits or restricts a disclosure that HIPAA mandates … when the disclosure is to an individual at the individual's request" (Cohen, 2006, p. 1126; see also Roach, 2006, p. 112). This is the situation we find ourselves in here – the evaluee has requested a copy of his/her records, HIPAA mandates release, but state law prohibits or restricts release; thus, these state laws will eventually fall (see also, "where HIPAA and state health information privacy laws conflict, the one that … gives clients greater access to their own records, will prevail," Shapiro & Smith, 2011). Further, a psychologist "should not rely upon a state law until it has determined that the law has not been preempted by HIPAA (Roach, 2006, p. 129).

Although the number and scope of professional practice guidelines for specific kinds of evaluations or services have grown significantly since 2002 (Otto & Heilbrun), there appear to be a number of areas in need of guidelines –evaluations of emotional damages in tort cases, employment discrimination and harassment, civil commitment, educational disability, death penalty, and violence risk assessment (inpatient and outpatient). Guidelines in need of a more psychological focus include child sexual abuse and juvenile delinquency.

Future official documents should better articulate these patient access rights issues. Recommendations based on the APA Criteria for professional practice guidelines (APA, 2002b) include additional considerations for respect for human rights and dignity (attribute 2.1), the conditions under which disclosures are required, permitted, and/or prohibited (attribute 2.11), a clear rationale for prohibited disclosures to the evaluee (attribute 2.4), and clear acknowledgement that laws govern patient ownership of their records (attribute 2.12). Disclosure / ownership rights should be made consistent within each document and across documents from the organization (APA, 2002b, p. 1049). Future ethics codes and professional practice guidelines should replace discussions of confidentiality with a recognition that the patient / evaluee is the 'owner' of the information contained in the records, even when that right is subject to exceptions or limitations. Clear distinctions should be made between disclosures to the legal system and disclosures to third parties or the patient.

The literature on evaluee-control of records-release (*patient access rights*) remains incomplete. Still needed are discussions of whether an evaluator-evaluee contract might affect access rights and how HIPAA might be impacted by the laws regulating practice in different settings. A more detailed explication of test security and disclosure of test data during litigation and per HIPAA is warranted, as well as an analysis of how the doctor-patient relationship in a forensic evaluation might be impacted by HIPAA's patient access rights. An article describing the historical background and context of patient access rights generally and within psychology would be quite helpful, as would an examination of the concept of records 'ownership'.

Some Legal Issues

Regardless of the ethics of this issue, psychologists are *required,* per state and federal laws, to release records to the evaluee, and law supersedes ethics (Bush et. al, 2010, Holloway, 2003, Grote & Pyykkonen, 2011, p. 105) - especially when there is no overriding ethical concern. This renders ethical arguments for withholding records moot. Very few statutes distinguish forensic evaluations from clinical services, requiring all records created pursuant to all psychological services to be released to the service user[k]. All state laws (save three – NC, IA, WY) have privacy statutes or rules requiring release of records (Pritts, Choy, Emmart, & Hustead, 2002a, 2002b)[l]. As noted earlier, if the psychologist is a HIPAA *covered entity* (45 CFR §160.103), HIPAA regulates all services performed by the *covered entity*, including forensic evaluations (Borkosky et al., 2013; Borkosky & Pellett, 2013, Borkosky, 2012), and requires that *covered entities* release records to the evaluee (45 CFR §164.524), permit the evaluee to amend the records (45 CFR §164.526), and provide an accounting of disclosure made (45 CFR §164.528).

Psychologists who withhold records risk various forms of sanction, including HIPAA complaint,[m] license discipline for violations of HIPAA[n], and license discipline for failing to release records[o],[p] (Sadoff, 2011; Willick, Weinstock, & Garrick, 2003). HHS' enforcement of HIPAA violations has recently been characterized as "record breaking", and an HHS official reported that enforcement activity will continue to increase (Sessions, Wong, and Fix, 2014). Complaints about evaluations are a common source of malpractice lawsuits (Belar & Deardoff, 2009, p. 222) and psychologists are cautioned against arguing that there is no doctor-patient relationship, should the malpractice carrier deny coverage for forensic services (Weinstock & Garrick, 1995, p. 191) Ethical sanctions are also possible (Robert Weinstock & Garrick, 1995); professional societies have disciplined members for failing to abide by professional practice guidelines (Binder, 2002; *Budwin v. APA*, 1994), ethics complaints can result in disciplinary actions (Gold et al., 2008), and ethical violations can result in licensing discipline in those jurisdictions that have adopted the APA Ethics Code as part of their licensing law (APA COPPS, 2003). Finally, although HIPAA provides for no private right of action (*Acara v. Banks*, 2006, p. 571), psychologists who withhold records may be subject to civil liability in several states[q]. Similarly, evaluees may seek remedies via various civil statutes, such as declaratory judgments (e.g., Ch. 86, Fla. Stats.) or unfair trade practices and unjust enrichment, for imposition of unlawful

---

[k] For example, 490.003(4), the definition of "practice of psychology" does not distinguish clinical from forensic services. Similarly, the only rule that mentions forensic services includes 64B19-18.007 (prohibiting dual roles in the child custody action). Cf., rule 64B19-19.002, defining 'client' as "that individual who, by virtue of private consultation with the psychologist, has reason to expect that the individual's communication with the psychologist during that private consultation will remain confidential, regardless of who pays for the services of the psychologist", and rule 64B19-19.005(1) "Any licensed psychologist who agrees to provide copies of psychological records to a service user, a service user's designee, or a service user's legal representative, shall be accorded a reasonable time, not to exceed thirty (30) days, to make final entries and copy the psychological records …" See also New York's "definition of the practice of psychology" (§7601-a; see also California's relevant statutes (http://www.psychology.ca.gov/laws_regs/2012lawsregs.pdf), which makes no mention of forensic services.

[l] See also http://www.healthinfolaw.org/comparative-analysis/individual-access-medical-records-50-state-comparison (21 state privacy laws considered to be the same as, or more stringent than, HIPAA)

[m] Denial of access to an IME exam: http://1.usa.gov/17CMINY, Denial of access to collateral records: http://1.usa.gov/15HLi06

[n] See, e.g., §456.072(1)(k), Fla. Stats., making it a disciplinary violation for licensee to fail to perform any statutory or legal obligation placed upon them. http://bit.ly/17c4OFT

[o] For example, see, in one state, in 12 years, DOH v. Hulbert, Case No. 049171 (DOH 2001, DOAH Case No. 00-1115), DOH v. Kashlak, Case No. 12709 (DOH 2002), DOH v. Krop, Case No. 33680 (DOH 2004), DOH v. Rosenberg, Case No. 37972 (DOH 2004), DOH v. Madsden, Case No. 16914 (DOH 2008), DOH v. Owens, Case No. 00719 (DOH 2009).

[p] See also Minnesota Board of Psychology. Agreement for Corrective Action, 7/11/2003. A psychologist who refused to release records of police officer applicants, as required by his contract with the referring police department, was required to provide copies to evaluees (Schoener, G., and Schaffer, J., personal communication, 7/7/13)

[q] http://www.healthinfolaw.org/comparative-analysis/individual-right-action-medical-records-access-50-state-comparison (13 states in all; it appears that CA, IL, LA, MD, MA, MT, NY, WA, WI, and WV apply to psychologists.

fees or restricting access (see, e.g., *Allen v. Healthport*, 2014, and *Rue & Ziffra v. Health Information Professionals*, 2011, unpublished judgments). Application for APAIT professional liability insurance now requires acknowledgment of HIPAA complaints or awareness of possible violations.

Any change in policy will result in conflicts somewhere, and changing from withholding records to releasing them is no different. For example, a judge (or local court rule) may prohibit the psychologist from releasing records; such court orders may be valid (until and unless they are overturned on appeal), but that creates a dilemma for the psychologist, because the our licensing laws require us to release records. Although judges have prohibited experts from releasing records and to destroy records (see, e.g., *Iowa v. Cashen*, 2010, pp. 408-409), psychologists are not relieved from notifying the Court of their legal and ethical obligations, and judges must comply with the law, including state and federal laws requiring release of records (American Bar Association, 2011). Whether such orders or rules would take precedence over licensing laws is unclear because, to date, no opinions have ruled on this matter. On the other hand, one attorney has suggested that "*everything* related to a court-ordered evaluation is subject to the supervision and control of the court that ordered the evaluation. References to the evaluator as a private actor are based on a faulty paradigm. The evaluator acts purely as an officer of the court, not as a privately retained service provider. Although no court can direct the psychologist to violate the law, the question of whether a particular law applies in a particular fact pattern is a question of law that must be addressed by looking at the legislative intent of both statutory schemes and whether application would further or frustrate the purposes of each statutory scheme" (Shear, L., personal communication, 09/03/2013). As noted elsewhere, psychologists should anticipate and clarify potential conflicts, with all entities, at the initiation of services, such as requesting that judges include in their orders, clear language regarding required and prohibited access (Martindale, 2008).

Further, releasing records may conflict with state laws and rules that limit the evaluee's access to their records; psychologists should be aware of those conflicts and try to resolve them. For example, more than twenty (20) states have enacted laws or rules restricting patient access to test data (Kaufmann, 2005, 2009). Similar statutes continue to be enacted (e.g., Maine statute 22 M.R.S. §401-1725 (2013)). For those forensic psychologists who are not HIPAA *covered entities*, there is no conflict. However, requests for access create a real dilemma for the majority of HIPAA *covered entities*. Refusing to comply with the evaluee-request may be a violation of HIPAA, and releasing the records may be a violation of state law. Perhaps the most equitable solution might be to meet with the evaluee, explain the dilemma, and solicit the evaluee's assistance in creating a solution that does not require the psychologist to violate either law. Examples of this collaborative effort might include permitting the evaluee to view the records and answering questions about them, or releasing the records to another psychologist, of the evaluee's choosing; some evaluee's might admit that, in retrospect, they do not truly need a copy of the MMPI-2 answer sheet (for example), and that other records will satisfy their needs. If the matter cannot be resolved to everyone's satisfaction, the psychologist should consult a licensed attorney.

Psychologists should become familiar with the differences between confidentiality with privilege; this is an all-too-common problem (Borkosky & Thomas, 2013; Borkosky & Smith, in press). The rules of privilege, evidence, and discovery apply when records are released to the legal system, and records may properly be withheld (perhaps even from the evaluee him- or herself. Confidentiality / privacy laws apply to disclosures to persons outside the legal system (such as to the patient or a treating source). This article concerns whether the evaluee controls release of records, which will primarily occur outside the legal system.

Implications and Recommendations for Practitioners

Fisher (2009, in press), proposes replacing 'who is the client' with a new question, which this author finds compelling - "what are my ethical responsibilities to each entity involved in this situation?" This way of framing the question is consistent with APA ethics codes (APA, 2009, 2013a), as well as a majority of the documents reviewed herein and other scholarly advice (e.g., Appelbaum 1997b). Use of this model has three benefits – clarification of the rights of each entity, clarification of policies or situations that might affect other entities, and avoidance of ethical conflicts. Fisher also suggests that the informed consent process / document can serve as the vehicle to both communicate and document these roles and relationships. This advice is wholly consistent with forensic psychology ethics (APA, 2013a), which advise communication (guidelines 3.03, 4.02.02, 6, 10.08, & 11), clarification (guidelines 4.01, 6.05, & 7.02), and informed consent (guidelines 6, 8, 10.07, & 11.07). Further, SGFP Guideline 2.04 (APA, 2013a) advises psychologists to be aware of evaluee rights, and to not impair those rights (withholding records would impair rights established by state laws and HIPAA). All related issues (e.g., the limits of confidentiality and who may have access to the records) should be clarified at the outset of services; a portion of informed consent may be the responsibility the referral source (Foote & Shuman, 2006).

Ethics should not be used as a justification for withholding records. If one has withheld records from an evaluee, and then that evaluee files a complaint (e.g., licensing, ethics, HIPAA), one must choose one or more arguments to justify one's actions. One may attempt to justify one's actions arguing it was an ethical choice. It is true that standards or guidelines *can* provide valuable justifications for one's actions, to the extent that they identify a valid and defensible approach to practice (Otto & Heilbrun, 2002). However, such a defense may prove problematic here, as official ethical views are disparate and conflicting, and the majority opinion does not support the withholding of records. Some authors specifically advise against using ethics codes as a shield to bar the release of records (Koocher & Rey-Casserly, 2003).

Consistent with the ethical principle of autonomy, evaluees could be permitted to review relevant documents as part of their participation in the evaluation process. Permit evaluees to review the informed consent document prior to initiation of services (e.g., by placing the form online). The referral source and evaluee should be encouraged to ask questions and dispute any portion of the form. Any conflicts that present themselves can be thus resolved, and the evaluee will not be surprised or feel rushed (although some referral sources may decide to seek services from another psychologist when they learn of the records policy, early clarification may avoid misunderstandings). Consider having the evaluee review the history portion of the report, prior to release of the final report. This practice may have multiple benefits, including reduced requests for all records (e.g., test data), increased trust in the psychologist, increased acceptance of the results, reduction of trivial (e.g., spelling) or critical (e.g., dates of important events) errors, and avoidance of witness stand embarrassment (by being cross-examined about an error).

The referral source may have a legitimate need to know when records are released, so notification may be both legal and ethical. Fortunately, HIPAA permits CE's thirty (30) days (unless state laws require a shorter timeframe) within which to comply with a request, so that should permit sufficient time to notify the referral source (assuming that the authorization for disclosure to the referral source is still in effect), and for the referral source to complete any action it may need to take (such as a hearing before the presiding judge for cases still in active litigation, Bush & Heilbronner, 2012). At the very least, the referral source will not be surprised by learning of the release of records from other sources, and notification may avoid potential conflicts between the psychologist and referral source (e.g., if the attorney has refused to release a copy of the report, because the evaluee has not

paid the bill – Sadoff, 2011). Further, psychologists can seek a protective order from the court, limiting future disclosure, if test data is being sought (see, e.g. *Riel v. Ayers*, 2010, *Taylor v. Erna*, 2009).

Based on the foregoing, a short list of recommendations for the practitioner is provided:

- Release records when the evaluee requests - it is required by law
- Don't risk multiple sanctions by withholding records
- Don't try to defend a complaint (for withholding records) based on ethics, because professional practice guidelines and ethics codes don't support such actions
- Identify responsibilities owed to multiple entities, and clarify with all
- Consider permitting evaluees to review documents relevant to their participation
- Notify referral source if records are to be released
- Resolve conflicts that may arise due to release of records, such as court orders or more restrictive state laws
- Don't confuse privilege with confidentiality; know which laws/rules apply to the request for records
- Withhold records only when legally permitted.

Conclusions

Based on anecdotal evidence and literature review, as well as the Specialty Guidelines for Forensic Psychology (APA, 2013a), the majority opinion of forensic psychologists appears to be that the referral source is the primary client, and controls release of evaluation records. Many supporting arguments have been proffered for these positions. The majority positions appear to be unfounded, however, for several reasons. First, the positions are not supported by a majority of forensic mental health ethics codes or professional practice guidelines. Second, the arguments proffered in support of these positions suffer from a number of serious logical flaws. Third, based on several ethical counter arguments tendered, a multiple relationships model (with competing, possibly conflicting, obligations) seems to be more ethical, as does evaluee-control over records-release. Fourth, ethical arguments are rendered moot by state and federal laws that require evaluee-control over records-release. Finally, APA professional practice guidelines and ethics codes espouse conflicting views, both between documents and even within the same document; this is troubling, given that these documents reflect official APA policy (APA, 2014). Psychologists should comply with ethical and legal requirements by recognizing the evaluee's information rights; psychologists own the medium on which the records are maintained (e.g., paper, electronic), but patients, including evaluees, own the information contained in the records[r].

The author wishes to thank the following people for their comments on a previous version of this article: Goeffrey Kanter, Gary Schoener, and especially, Jack Schaffer and Eileen Kohutis.

[r] See, e.g., N. H. Rev. Stat. Ann. §332-I:1 "All medical information contained in the medical records in the possession of any health care provider shall be deemed to be the property of the patient."

TABLE 1. Document views regarding client status

DOCUMENT	Clarify	Laws	Referral source	Evaluee	Multiple clients	Both mentioned	Evaluee mentioned	unclear	silent
Principles of Medical Ethics (American Psychiatric Association, 2013)	2.5. 4.6 8.3.			2.5					
Fiduciary Duty of Psychiatrists (Chaimowitz, Milev, & Blackburn, 2010)					Dual Agency				
Psychiatric Evaluation of CST (Mossman et al., 2007)	E.		IV.B Ethics framework						
Evaluation of Psychiatric Disability (Gold et al., 2008)					II.B.				
Ethics for Forensic Psychiatry (American Academy of Psychiatry and the Law, 2005)					I.				
Evaluation of Insanity (Giorgi-Guarnieri et al., 2002)			IV.					V. IV.	
Child and Adolescent Evaluations (Kraus et al., 2011)	2.		2.						
Assessment of children with conduct disorder (Steiner & The Work Group on Quality Issues, 1997)									XXX
Assessment of youth in corrections (Penn, Thomas, & The Work Group on Quality Issues, 2005)	6	14.		6	intro				
AACAP Eval of Children abused (Bernet & the Work Group on Quality Issues, 1997)			Role definition						
Code of Ethics (American Academy of Child and Adolescent Psychiatry, 2009)	II.								
Practice Parameters for CCE (Stephen P Herman & the Work Group on Quality Issues, 1997)			Role of Evaluator						
AAP Eval of sexual abuse in children (Kellog et al., 2005)									XXX
AAP Eval of children in primary care setting when sexual abuse is suspected (Jenny et al., 2013)									XXX
1991 SGFP (Committee on Ethical Guidelines for Forensic Psychologists, 1991)	IV.A							IV.E.	
2013 SGFP (APA, 2013a)	4.01. 7.02		4., Definitions						
Evals in Child Protection (American Psychological Association, 2013b)	III.9		II.7. III.9.						
1992 Ethical Principles (American Psychological Association Ethics Committee, 1992)	1.07(a)., 1.07(b)., 1.21(a)	1.07 (b)							
2002 Ethical Principles of Psychologists (APA Committee on Legal Issues, 2002)	1.03., 3.05(c)., 3.07., 9.03(a)., 10.02								
CCE in Family Law (American Psychological Association, 2009b)							XXX		
CCE in divorce (American Psychological Association Practice Directorate, 1994)	III.9					III.9.		II.4	
Parenting Coordination (American Psychological Association, 2012)	5a			1.	8				
Record Keeping (APA, 2007)								Intro.	
Diminished Capacity (American Bar Association, American Psychological Association, & Assessment of Capacity in Older Adults Project Working Group, 2008)			IV. p.36						
Consulting Police Psychologists (IACP Police Psychological Services Section, 2011)			3.2		1.1				
Pre-employment Psych. Evaluation (IACP Police Psychological Services Section, 2005)			7.						
Psychological FFD Evaluation (IACP Police Psychological Services Section, 2009)	8.2	8.2	10.1.		8.2				
AACN PG Neuropsych Assessment (American Academy of Clinical Neuropsychology Board of Directors, 2007)	5.A.		5.B 5.C.						

DOCUMENT	Clarify	Laws	Referral source	Evaluee	Multiple clients	Both mentioned	Evaluee mentioned	unclear	silent
TPO in Neuropsychology (American Academy of Clinical Neuropsychology, Hamsher, Lee, & Baron, 2001)						Definitions., Observer Adverse Effects.			
CPA Policy on TPO (Canadian Psychological Association, 2009)						Page 1			
Test Security (Axelrod et al., 2000)							XXX		
Test Security: Update (Axelrod et al., 2003)				Intro.					
Disclosure of Neuropsychological Test Data (Attix et al., 2007)							Intro.		
Forensic Neuropsychological Examinations (Bush & NAN Policy & Planning Committee, 2005)	Informed Consent and Disclosure of Potential Conflicts of Interest:	State and Federal Laws:	Neuropsychologist-Retaining Party Relationship, Neuropsychologist-Patient: Relationship:						
AFCC Model Standards for CCE (Task Force for Model Standards of Practice for CCE et al., 2006)					P.3(a).				
AFCC Parenting Coordination (Association of Family and Conciliation Courts Task Force on Parenting Coordination, 2006)			Overview, VII., Module 4						
Brief Focused Assessments (Cavallero & Hanks, 2012)					XII.				
Court-Involved Therapy (Fidnick, Koch, Greenberg, & Sullivan, 2011)	6.5(a), 6.5(b), 6.5(e), 7.7(b)	7.1(a), 7.1(a)(1)		Defs.C.Client/Patient:, 6.3, 6.3(a), 6.6					
Practice Guidelines in Child Custody Evaluations for Licensed Clinical Social Workers (Luftman et. al, 2005)	2			1, Ethical considerations			2, 3, Written Report	Ethical Considerations, 5(d), Written Report	
OPA Third Parties (Third-Party Working Group Ontario Psychological Association, 2012)					Who is the client?	Who is the client?"			
ATSA Ethics (Association for the Treatment of Sexual Abusers, 2001)				Defs(a). (d)					
APSAC psychosocial evaluation of suspected sexual abuse in children, 2nd ed., (APSAC, 1997)						II.B.1.		Statement of purpose	
APSAC psychosocial evaluation of suspected psychological maltreatment in children and adolescents, (APSAC, 1995)	V			VI.					XXX
NAFC Ethics (National Association of Forensic Counselors, n.d.)	3.3.					3.3			
NOFSW Ethics (National Organization of Forensic Social Work, n.d.)						Canon I8.			
Disability and Impairment (Canadian Academy of Psychologists in Disability Assessment, 2004)	11.5.3					Defs.			
Who is the Client in Forensics (Barros-bailey et al., 2009)						Definitions of Parties		Roles of Parties	
ABIME Ethics (American Board of Independent Medical Examiners, n.d.)		7				3.c.			
CPA Practice Guidelines (Canadian Psychological Association, 2001)	III.1.				Definitions.				
Psychology Services in Jails (International Association For Correctional And Forensic Psychology, 2010)						D-20.K.	Defs.		
ACFE Creed (American College of Forensic Examiners, n.d.)									XXX
CPA Ethics (Canadian Psychological Association, 2000)				Def. of Terms				Def. of Terms	
APS Ethics (APS, 2007)	B.4								
APS forensic guidelines (APS, 2013)	4.1	12		3.1, 4.3		12			

TABLE 2. Document views regarding *control over release of records*

DOCUMENT	Clarify	Laws	Referral source	Evaluee	Written consent	Judgment / Discretion	Other	Si-lent
Principles of Medical Ethics	4.6	4.2			4.2			
Fiduciary Duty of Psychiatrists				Fiduciary Duty				
Psychiatric Evaluation of CST		IV.A	VII.D	IV.E.	VII.C		III., VIII., VII.D	
Evaluation of Psychiatric Disability	III.A.		II.B.3	II.C.	II.B.3, II.C	III.A.	III.A, III.C.I.	
Ethics for Forensic Psychiatry	II, III.	II.						
Evaluation of Insanity	V.	V.	IV, VII					
Child and Adolescent Evaluations	2.				2.		2.	
Assessment of kids with conduct disorder								XXX
Assessment of youth in corrections								XXX
Eval of Children who may have been abused								XXX
Code of Ethics	V.B.	X.						
Practice Parameters for CCE				II.O.				
AAP Eval of sexual abuse in children (Kellog et al., 2005)								XXX
AAP Eval of children in primary care setting when sexual abuse is suspected (Jenny et al., 2013)								XXX
1991 SGFP		V.A. V.A.2. V.D		IV.E.3. V.A.2 V.D				
2013 SGFP	4.01. 6.03. 10.05.	8. 8.02	8. 8.01. 8.02. 8.03	10.05.		6.03		
Evaluations in Child Protection	III.9	III.9.					III.14	
1991 Ethical Principles	1.21 (a)	1.24, 5.05(a), 5.05(b)	2.09	2.02(b)		2.02(b). 5.05 (b)		
2002 Ethical Principles of Psychologists	3.05(c)., 3.07., 3.10(c)., 4.02(a). 9.10	3.05(c), 3.10(a)&(b)&(c), 4.01, 4.05(a)&(b), 6.01, 9.04(a)&(b).	4.05(a), 9.04(b), 9.10	9.04(a)	9.04(a)	4.05(a)	4.05(a)	
CCE in Family Law								XXX
CCE in divorce	III.10, III.15	III.16						
Parenting Coordination	5a	6		6			6	
Record Keeping		3. HIPAA						
Diminished Capacity		VIII.	IV.					
Consulting Police Psychologists	5.1	5.1. 5.2						
Pre-employment Psych. Evaluation						6		
Psychological FFD Evaluation	8.1., 8.1.2., 8.3				8.3	8.1. 8.1.3.		
Neuropsychological Assessment	5.A. 5.C.	5.C	5.B. 6.I.	6.I.		5.B.		
TPO in Neuropsychology							Responsibility in Forensic Situations.	
CPA Policy on TPO				V.3. V.3.c.				
Test Security			INTRO		Appendix.		Page 384.	
Test Security: Update		Introduction.	revised	Introduction	Introduction.			

DOCUMENT	Clarify	Laws	Referral source	Evaluee	Written consent	Judgment / Discretion	Other	Silent
Disclosure of Neuropsychological Test Data	When does one consider not releasing test data?	What are Test Data. Handling requests for test data? When does one consider not releasing test data?	What are Test Data? When does one consider not releasing test data?	What are Test Data. Handling Requests for Test Data.				
For. Neuropsychological Examinations	Confidentiality:	State and Federal Laws:	Presentation of Findings:					
AFCC Model Standards for CCE	3.4., 4.1(b)	4.1(b)				3.4	3.4	
AFCCParenting Coordination	V.B.		XI.D.				V.A.	
AFCC Brief Focused Assessments		IX.1.				IX.1.		
AFCC Court-Involved Therapy	6.8(a), 8.7(b), 9.6	7.1(a), 7.6.	7.7(d).	7.2(a).			7.7 (a).	
PG's in CCE's for LCSWs	2						Written Report	
OPA Third Parties								XXX
ATSA Ethics	9. confidentiality(a),(b)				9(i). 9(j)			
APSAC psychosocial evaluation of suspected sexual abuse in children, 2nd ed., (APSAC, 1997)		II.F1.		II.F.2.			II.F.3.	
APSAC psychosocial evaluation of suspected psychological maltreatment in children and adolescents, (APSAC, 1995)								XXX
NAFC Ethics	4.2. 4.3	4.2			4.4			
NOFSW Ethics	Canon I8.				Canon 24.			
Disability and Impairment	2.2	2.2. 11.1			2.3	2.1. 11.1		
Who is the Client in Forensics								XXX
ABIME Ethics		7						XXX
CPA Practice Guidelines	III.1.a.	V.3.d.		V.1.c. V.3.a.	V.3.			
Psychology Services in Jails	E-1.	E.7.		E.2. E.5.				
ACFE Creed								XXX
CPA Ethics	III.15			III.15				
APS Ethics	B.4			A.6				
APS forensic guidelines	4.1		4.1					

REFERENCES

Acara v. Banks, 470 F.3d 569 (5th Cir. 2006).

Allen v. Healthport Technologies, LLC. (Fla. 13th Jud. Cir. Ct., case 12-CA-013154 May 1, 2014).

American Academy of Child and Adolescent Psychiatry. (2009). *Code of ethics*. Washington, D.C.: Author. Retrieved from http://bit.ly/1ndM8xd

American Academy of Clinical Neuropsychology Board of Directors. (2007). American Academy of Clinical Neuropsychology (AACN) practice guidelines for neuropsychological assessment and consultation. *The Clinical Neuropsychologist*, *21*, 209–231. DOI:10.1080/13825580601025932

American Academy of Clinical Neuropsychology, Hamsher, K., Lee, G. P., & Baron, I. S. (2001). Presence of third party observers in neuropsychological assessments. *The Clinical Neuropsychologist*, *15*, 379–380. DOI:10.1093/arclin/15.5.379

American Academy of Psychiatry and the Law. (2005). *Ethics guidelines for the practice of forensic psychiatry*. Bloomfield, CT: Author. Retrieved from http://www.aapl.org/ethics.htm

American Bar Association. (2011). *Model code of judicial conduct*. Chicago: Author. Retrieved from http://bit.ly/1cMOnBZ

American Bar Association. (2012). *Model rules of professional conduct*. Chicago, IL: American Bar Association. Retrieved from http://bit.ly/19DpZRM

American Bar Association, American Psychological Association, Wood, S. & Moye, J. (2008). *Assessment of older adults with diminished capacity : A handbook for psychologists*. Washington, D.C.: Author. DOI:978-1-60442-234-4

American Board of Independent Medical Examiners. abime (n.d.). *Guidelines of conduct*. Retrieved from http://bit.ly/1iOzZt1

American College of Forensic Examiners. (n.d.). *Creed*. Retrieved from http://www.acfei.com/about_acfei/creed/

American Professional Society on the Abuse of Children. (1997). *Psychosocial evaluation of suspected sexual abuse in children,* (2nd ed.). Chicago, IL: Author.

American Psychiatric Association. (2013). *The principles of medical ethics with annotations especially applicable to psychiatry, 2013 edition*. Washington, D.C.: American Psychiatric Association. Retrieved from http://bit.ly/17TBRRZ

American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, *47*, 1597–1611. DOI:10.1037/0003-066X.47.12.1597

American Psychological Association. (1994). Guidelines for child custody evaluations in divorce proceedings. *American Psychologist*, *49*, 677–680. DOI:10.1037/0003-066X.49.7.677

American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist*, *57*, 1060–1073. DOI:10.1037/0003-066X.47.12.1597

American Psychological Association. (2002b). Criteria for practice guideline development and evaluation. *American Psychologist, 57*(12), 1048-1051. doi:10.1037/0003-066X.57.12.1048

American Psychological Association. (2003). Report of the ethics committee. *American Psychologist*, *58*, 650–657. doi: 10.1037/0003-066X.58.8.650

American Psychological Association (2004). Health Insurance Portability and Accountability Act (HIPAA): Fact sheet for neuropsychologists. Newsletter 40, Division of Clinical Neuropsychology, 22(1), 12-19.

American Psychological Association. (2007). Record keeping guidelines. *The American Psychologist*, *62*, 993–1004. DOI:10.1037/0003-066X.62.9.993

American Psychological Association. (2009a). Guidelines for child custody evaluations in family law proceedings. *American Psychologist*, *65*, 863–867. DOI:10.1037/a0021250

American Psychological Association. (2009b). *Table of health and mental health association codes of ethics: provisions regarding conflicts between ethics and law*. Washington, D.C.: Author. Retrieved from http://bit.ly/Skg1l2

American Psychological Association. (2010). *Publication manual* (6th ed.). Washington, D.C.: Author.

American Psychological Association. (2012). Guidelines for the practice of parenting coordination. *The American Psychologist*, *67*, 63–71. DOI:10.1037/a0024646

American Psychological Association. (2013a). Specialty guidelines for forensic psychology. *The American Psychologist*, *68*, 7–19. DOI:10.1037/a0029889

American Psychological Association. (2013b). Guidelines for psychological evaluations in child protection matters. *The American Psychologist*, *68*, 20–31. DOI:10.1037/a0029891

American Psychological Association. (2014). APA guidelines: Their importance and a plan to keep them current: 2013 annual report of the Policy and Planning Board. *American Psychologist, 69*(5), 511-519. doi:10.1037/a0036643

American Psychological Association. Committee on Professional Practice and Standards. (2003). Legal issues in the professional practice of psychology. *Professional Psychology: Research and Practice*, *34*, 595-600. DOI: 10.1037/0735-7028.34.6.595

Annas, G. J. (2004). *The rights of patients: The authoritative ACLU guide to the rights of patients* (3rd ed.). New York: New York University Press.

Appelbaum, P. S. (1997a). A theory of ethics for forensic psychiatry. *The journal of the American Academy of Psychiatry and the Law*, *25*, 233–47. Retrieved from http://www.jaapl.org/content/25/3/233.full.pdf

Appelbaum, P. S. (1997b). Ethics in evolution: The incompatibility of clinical and forensic functions. *American Journal of Psychiatry*, *154*, 445–446. Retrieved from http://bit.ly/1oMS4eG

Association for the Treatment of Sexual Abusers. (2001). *Professional code of ethics*. Beaverton, Or.: Author. Retrieved from http://bit.ly/14pLh6W

Association of Family and Conciliation Courts Task Force on Parenting Coordination. (2006). Guidelines for parenting coordination. *Family Court Review*, *44(1)*, 164–181. DOI:10.1111/j.1744-1617.2006.00074.x

Attix, D. K., Donders, J., Johnson-Greene, D., Grote, C. L., Harris, J. G., & Bauer, R. M. (2007). Disclosure of neuropsychological test data: Official position of division 40 (Clinical Neuropsychology) of the American Psychological Association, Association of Postdoctoral Programs in Clinical Neuropsychology, and the American Academy of Clinical Neuropsychology. *The Clinical Neuropsychologist*, *21*, 232–8. DOI:10.1080/13854040601042928

Australian Psychological Society. (2007). *Code of ethics*. Melbourne, Australia: Author.

Axelrod, B., Heilbronner, R., Barth, J., Larrabee, G., Faust, D., Pliskin, N., Fisher, J., & Silver, C. (2000). Test security: Official position statement of the National Academy of Neuropsychology. *Archives of Clinical Neuropsychology*, *15*, 383–6. DOI:10.1016/S0887-6177(00)00055-X

Axelrod, B., Heilbronner, R., Barth, J., Larrabee, G., Faust, D., Pliskin, N., Fisher, J., & Silver, C. (2003). *Test Security: An Update. Official statement of the National Academy of Neuropsychology*. Retrieved from http://bit.ly/17ICpGm

Barros-Bailey, M., Carlisle, J., Graham, M., Neulicht, A. T., Taylor, R., & Wallace, A. (2009). Who is the Client in Forensics? *Journal of Forensic Vocational Analysis*, *12*, 31–34. http://abve.net/JFVA_Abstract_V12N1.htm

Beal, T., & Jones, J. C. W. (2010). Disclosure of mental health records. *Journal of the American Academy of Psychiatry and Law*, *38*, 275–278. Retrieved from http://bit.ly/UhPnt7

Beauchamp, T. L., & Childress, J. F. (2012). *Principles of biomedical ethics* (7th ed.). Oxford: Oxford University Press.

Behnke, S. H. (2004). Forensic matters and the new APA ethics code. *Monitor on Psychology*, *35*, 84. Retrieved from http://www.apa.org/monitor/may04/ethics.aspx

Behnke, S. H. (2003). Release of Test Data and APA's New Ethics Code, *Monitor on Psychology, 34*. 70. Retrieved from http://www.apa.org/monitor/julaug03/ethics.aspx

Belar, C. D., & Deardorff, W. W. (2009). *Clinical health psychology in medical settings: A practitioner's guidebook* (2nd ed.). Washington, D.C.: American Psychological Association.

Bernet, W. (1997). Practice parameters for the forensic evaluation of children or adolescents who may have been physically or sexually abused. *Journal of the American Academy of Child and Adolescent Psychiatry*, *36*, 37S–56S. DOI:10.1097/00004583-199703000-00026

Bersoff, D. N. (2000). Confidentiality. In A. E. Kazdin (Ed.) *Encyclopedia of psychology*. Washington, D.C.: American Psychological Association. DOI:10.1037/10517-097

Bihm v. Bihm, 932 So. 2d 732 (La. Ct. App. 2006).

Binder, R. L. (2002). Liability for the psychiatrist expert witness. *American Journal of Psychiatry*, *159*, 1819–1825. DOI:10.1176/appi.ajp.159.11.1819

Blackwell, T. L., Autry, T. L., Guglielmo. (2001). Ethical issues in disclosure of test data. *Rehabilitation Counseling Bulletin, 44*, 161-169. DOI: 10.1177/003435520104400306

Blase, J. (2008). Trained third-party presence during forensic neuropsychological evaluations. In A. M. Horton, Jr. & D. Wedding (Eds.), *The neuropsychology handbook* (3rd ed., pp. 499–514). New York: Springer.

Bloch, S., Riddell, C. E., & Sleep, T. J. (1994). Can patients safely read their psychiatric records? Implications of freedom of information legislation. *The Medical Journal of Australia. 161*(11-12), 665–6. Available from: http://www.ncbi.nlm.nih.gov/pubmed/7830632;

Borkosky, B. (2012). Why forensic records are no longer "owned" by the referral source: psychologists are required to permit patient access and release of forensic records. *The Florida Psychologist*, *63*, 8–9, 22–23. Retrieved from http://flapsych.com.

Borkosky, B. (2013). Patient access to records: the invisible confidentiality right. *National Psychologist*, *22*, 9–10. Retrieved from http://bit.ly/19lsHZC

Borkosky, B. (2014). HIPAA's patient access rights: What patients and providers need to know when patients want a copy of their records. Retrieved from http://bit.ly/1oMS4eG and http://bit.ly/1lKQ7Bl (with references).

Borkosky, B., & Pellett, J. M. (2013). Can FMHPs refuse to release records to evaluees because the records are "information compiled in reasonable anticipation of" litigation (as defined by HIPAA)? *American Journal of Forensic Psychology*, *31*, 21–40.

Borkosky, B., and Smith, D. M. (2014). The Risks and Benefits of Disclosing Psychotherapy Records to the Legal System: What Psychologists and Patients Need to Know for Informed Consent. *International Journal of Law and Psychiatry* (in press).

Borkosky, B., & Thomas, M. S. (2013). Florida's psychotherapist-patient privilege in family court. *Florida Bar Journal*, *87*, 35–40. Retrieved from http://bit.ly/1dL2eMc

Borkosky, B., Pellett, J. M., & Thomas, M. S. (2013). Are forensic evaluations "healthcare" and are they regulated by HIPAA? *Psychological Injury and Law, 7*(1), 1-8. DOI:10.1007/s12207-013-9158-7

Borum, R., Super, J., & Rand, M. (2003). Forensic assessment for high-risk occupations. In A. M. Goldstein & I. B. Weiner (Eds.), *Handbook of psychology, volume 11, forensic psychology* (pp. 133–148). Hoboken, NJ: Wiley.

Brodsky, S. L. (1972). Shared results and open files with the client. *Professional Psychology, 3*, 362-364. doi: 10.1037/h0033988

Bruce, J. A. C. (1988). *Privacy and confidentiality of health care information* (2nd ed.). Chicago: American Hospital Publishing.

Budwin v. American Psychological Association, 29 Cal. Rptr. 2d 453 (1994).

Bush, S. S., Connell, M. A., & Denney, R. L. (2006). Documentation of findings and opinions. In *Ethical practice in forensic psychology: A systematic model for decision making* (pp. 91–112). Washington, D.C.: American Psychological Association. DOI:10.1037/11469-005

Bush, S. S., Grote, C. L., Johnson-Greene, D. E., & Macartney-Filgate, M. (2008). A panel interview on the ethical practice of neuropsychology. *The Clinical Neuropsychologist*, *22*, 321–44. DOI:10.1080/13854040601139187

Bush, S. S., & Heilbronner, R. L. (2012). The neuropsychological IME. In S. S. Bush & G. L. Iverson (Eds.) *Neuropsychological assessment of work-related injuries*, (pp. 280-302). New York: Guilford Press.

Bush, S. S., & Martin, T. A. (2008). Confidentiality in neuropsychological practice. In J. A. M. Horton & D. Wedding (Eds.), *The neuropsychology handbook* (3rd ed., pp. 515–530). New York: Springer.

Bush, S. S., & Martin, T. A. (2010a). The ethical and clinical practice of disclosing raw test data: Addressing the ongoing debate. *Applied Neuropsychology : Adult*, *13*, 115–124. DOI:10.1207/s15324826an1302_6

Bush, S. S., & Martin, T. A. (2010b). Privacy, confidentiality, and privilege in forensic neuropsychology. In A. M. Horton, Jr. & L. C. Hartlage (Eds.), *The handbook of forensic neuropsychology* (2nd ed., pp. 235–244). New York: Springer.

Bush, S. S., & NAN Policy & Planning Committee. (2005). Independent and court-ordered forensic neuropsychological examinations: Official statement of the National Academy of Neuropsychology. *Archives of Clinical Neuropsychology*, *20*, 997–1007. DOI:10.1016/j.acn.2005.06.003

Bush, S. S., Rapp, D. L., & Ferber, P. S. (2010). Maximizing test security in forensic neuropsychology. In A. M. Horton, Jr. & L. C. Hartlage (Eds.), *The handbook of forensic neuropsychology* (2nd ed., pp. 177–196). New York: Springer.

Canadian Academy of Psychologists in Disability Assessment. (2004). *Practice standards for the psychological assessment of disability and impairment*. Thornhill, Ontario: Author. Retrieved from http://bit.ly/15HTU6N

Canadian Psychological Association. (2000). *Canadian code of ethics for psychologists*. Ottowa, Ontario, Canada: Author. Retrieved from http://bit.ly/1eki5QD

Canadian Psychological Association. (2001). *Practice guidelines for providers of psychological services*. Ottawa, ON: Author. Retrieved from http://bit.ly/1aba3GW

Canadian Psychological Association. (2009). *Policy on third party observers*. Ottowa, Ontario, Canada: Author. Retrieved from http://bit.ly/13lMNEb

Cavallero, L., & Hanks, S. E. (2012). Guidelines for brief focused assessment. *Family Court Review*, *50*, 558–569. DOI:0.1111/j.1744-1617.2012.01473.x

Chadda, R., & Stein, S. J. (2005). Test publisher's perspective: Release of test data to non-psychologists. *Journal of forensic psychology practice*, *5*(2), 59-69. Doi:10.1300/J158v05n02_04

Chaimowitz, G., Milev, R., & Blackburn, J. (2010). Position paper: The fiduciary duty of psychiatrists. *The Canadian Journal of Psychiatry*, *55*, insert 1–6. Retrieved from http://bit.ly/ReJOKS

Cohen, B. (2006). Reconciling the HIPAA privacy rule with state laws regulating ex parte interviews of plaintiffs' treating physicians: A guide to performing HIPAA preemption analysis. *Houston Law Review*, *43*, 1091-1142.

Corey, D. M., & Borum, R. (2013). Forensic Assessment for High-Risk Occupations. In R. K. Otto & I. B. Weiner, (Eds.) *Handbook of psychology, volume 11: Forensic psychology*, (2nd ed., pp. 246-270). Hoboken, NJ: Wiley.

Crichton, P., Douzenis, A., Leggatt, C., Hughes, T., & Lewis, S. (1992). Are psychiatric case-notes offensive? *Psychiatric Bulletin*, *16*(11). 675–677. DOI: 10.1192/pb.17.5.304-b

Crichton, P., Douzenis, A., Leggatt, C., Hughes, T., & Lewis, S. (1993). Are psychiatric case-notes offensive?--Reply. *Psychiatric Bulletin*, *17*(4). 245 DOI: 10.1192/pb.17.4.245.

Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior*, *15*, 655–665. DOI:10.1007/BF01065858

Connell, M. A., & Koocher, G. P. (2003). HIPAA and forensic practice. *AP-LS News*, *23*, 16–19. Retrieved from http://bit.ly/1fG57R1

Cooke, G., & Bleier, H. R. (2011). Diminished capacity in federal sentencing. In E. Y. Drogin, F. M. Dattilio, R. L. Sadoff, & T. G. Gutheil (Eds.), *Handbook of forensic assessment: Psychological and psychiatric perspectives* (pp. 171–186). Hoboken, NJ: Wiley.

Daubert v. Merrell Dow Pharmaceuticals, Inc. 509 U.S. 579. (1993).

Deatherage v. Examining Board of Psychology, 948 P.2d 828 (Wash. 1997).

Dept. of Health and Human Resources, Agency for Healthcare Research and Quality. (2013). *National Guideline Clearinghouse*. Retrieved from http://www.guideline.gov/

Dept. of Health and Human Resources. (2014). HIPAA privacy rule and sharing information related to mental health. Retrieved from http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/mhguidance.html

Ebert, B. (2012). Ethical and practice standards and guides for mental health professionals. In D. Faust (Ed.), *Coping with psychiatric and psychological testimony*, (6th ed., pp. 266-278). New York: Oxford.

Emmett v. Eastern Dispensary & Casualty Hospital, 396 F.2d 931 (D.C. Cir. 1967)

Erard, R. E. (2004a). "A raw deal" reheated: Reply to comments by Rogers, Fischer, Smith, and Evans. *Journal of Personality Assessment, 82*(1). 44–47. DOI: 10.1207/s15327752jpa8201_8

Erard, R. E. (2004b). Release of test data under the 2002 ethics code and the HIPAA privacy rule: A raw deal or just a half-baked idea? *Journal of Personality Assessment, 82*(1), 23–30. DOI: 10.1207/s15327752jpa8201_4

Erard, R. E. (2013). An ethical prohibition that isn't and never really was. *National Psychologist*, *22*, 8–9. Retrieved from http://bit.ly/1iOBqI5

Fidnick, H. L. S., Koch, K. A., Greenberg, L. R., & Sullivan, M. (2011). Guidelines for court-involved therapy: A best practice approach for mental health professionals. *Family Court Review*, *49*, 557–563. Retrieved from http://bit.ly/ReK3pk

Findley v. Findley, 937 So. 2d 912 (La. Ct. App. 2006)

Fisher, C. B. (2012). *Decoding the ethics code: A practical guide for psychologists* (3rd ed.). Thousand Oaks, Ca: Sage.

Fisher, M. A. (2009). Replacing "who is the client?" with a different ethical question. *Professional Psychology: Research and Practice*, *40*, 1–7. DOI:10.1037/a0014011

Fisher, M. A. (in press). Why "who is the client?" is the wrong ethical question. *Journal of Applied School Psychology*, (in press). DOI:1080/15377903.2014.888531

Foote, W. E., & Goodman- Delahunty, J. (2005). *Evaluating sexual harassment: Psychological, social, and legal considerations in forensic examinations*. Washington, D.C.: American Psychological Association.

Foote, W. E., & Lareau, C. R. (2013). Psychological evaluation of emotional damages in tort cases. In R. K. Otto & I. B. Weiner, (Eds.) *Handbook of psychology, volume 11: Forensic psychology*, (2nd ed., pp. 172-200). Hoboken, NJ: Wiley.

Foote, W. E., & Shuman, D. W. (2006). Consent, disclosure, and waiver for the forensic psychological evaluation: Rethinking the roles of psychologist and lawyer. *Professional Psychology: Research and Practice*, *37*(5), 437–445. DOI:10.1037/0735-7028.37.5.437

Frazier v. Bd of county comm'rs of the county of Arapahoe, Civil Action No. 08-cv-02730-WYD-BNB (D. Colo. Feb. 3, 2010).

Fuqua, D. R., Newman, J. L., Simpson, D. B., & Choi, N. (2012). Who is the client in organizational consultation? *Consulting Psychology Journal: Practice and Research*, *64*, 108–118. DOI:10.1037/a0027722

Gemberling, T. M., & Cramer, R. J. (2014). Expert testimony on sensitive myth-ridden topics: Ethics and recommendations for psychological professionals. *Professional Psychology: Research and Practice, 45*(2), 120-127. DOI: 10.1037/a0036184

Giorgi-Guarnieri, D., Janofsky, J., Keram, E., Lawsky, S., Merideth, P., Mossman, D., … Zonana., H. (2002). Forensic psychiatric evaluation of defendants raising the insanity defense. *The Journal of the American Academy of Psychiatry and the Law*, *30*, S1–S40. Retrieved from http://www.aapl.org/docs/pdf/Insanity%20Defense%20Guidelines.pdf

Gold, L. H. & Shuman, D. W. (2009). Employment evaluations and the law. In *Evaluating mental health disability in the workplace* (pp. 25–42). New York: Springer.

Gold, L. H., Anfang, S. A., Drukteinis, A. M., Metzner, J. L., Price, M., Wall, B. W., … Zonana, H. V. (2008). AAPL practice guideline for the forensic evaluation of psychiatric disability. *The Journal of the American Academy of Psychiatry and the Law*, *36*, S3–S50. Retrieved from http://bit.ly/1kA0xke

Gold, L. H., & Davidson, J. E. (2007). Do you understand your risk? Liability and third-party evaluations in civil litigation. *The Journal Of The American Academy Of Psychiatry And The Law*, *35*, 200–210. Retrieved from http://bit.ly/1mlf3vT

Goodman- Delahunty, J. & Foote, W. E. (2011). *Evaluation for Workplace Discrimination and Harassment*. London: Oxford

Gottlieb, M. C., & Handelsman, M. M. (2013). A model for integrated ethics consultation. *Professional Psychology: Research and Practice*, *44*(5), 307–313. DOI:10.1037/a0033541

Gould, J. W., Kirkpatrick, H.D., Austin, W. G., & Martindale, D. A. (2004). Critiquing a colleague's forensic advisory report: A suggested protocol for application to child custody evaluations. *Journal of Child Custody, 1*(3), 37-64. DOI: 10.1300/J190v01n03_04

Greenberg, S. A., & Shuman, D. W. (1997). Irreconcilable conflict between therapeutic and forensic roles. *Professional Psychology: Research and Practice*, *28*, 50–57. DOI:10.1037/0735-7028.28.1.50

Greenberg, S. A., & Shuman, D. W. (2007). When worlds collide: Therapeutic and forensic roles. *Professional Psychology: Research and Practice, 38*(2), 129–132. DOI: 10.1037/0735-7028.38.2.129

Greenberg, S. A., Shuman, D. W., Feldman, S. R., Middleton, C., & Ewing, C. P. (2008). Lessons for forensic practice drawn from the law of malpractice. In A. M. Goldstein (Ed.), *Forensic psychology: emerging topics and expanding roles* (pp. 446–464). Hoboken, NJ: Wiley.

Griffith, E. E., Stankovic, A., & Baranoski, M. (2010). Conceptualizing the forensic psychiatry report as performative narrative. *Journal of the American Academy of Psychiatry and the Law*, *38*(1), 32-42. Retrieved from http://bit.ly/1rkw414

Grote, C. L., & Pyykkonen, B. A. (2005). Ethical practice of forensic neuropsychology. In G. L, Larrabee (Ed.), *Forensic neuropsychology: A scientific approach*, (pp. 92-114). New York. Oxford University Press.

Gutheil, T. G., Commons, M. L., & Miller, P. M. (2001). Withholding, seducing, and threatening: A pilot study of further attorney pressures on expert witnesses. *Journal of the American Academy of Psychiatry and Law*, *29*, 336–339. Retrieved from http://bit.ly/1stYjKX

Hall, S. R. (2006). Child abuse reporting laws and attorney-client privilege: Ethical dilemmas and practical suggestions for the forensic psychologist. *Journal of forensic psychology practice*, *6*(4), 55-68. **DOI:** 10.1300/J158v06n04_04

Hart, S., Brassard, M., National Psychological Maltreatment Consortium, & American Professional Society on the Abuse of Children. (1995). *Psychosocial Evaluation of Suspected Maltreatment in Children and Adolescents*. Chicago, IL: Author.

Herman, S. P, & the Work Group on Quality Issues. (1997). Practice parameters for child custody evaluation. *Journal of the American Academy of Child & Adolescent Psychiatry*, *36*, 57S–68S. DOI:10.1097/00004583-199710001-00005

Herman, S. P., & Freitas, T. R. (2010). Error rates in forensic child sexual abuse evaluations. *Psychological Injury and Law*, *3*, 133–147. DOI: 10.1007/s12207-010-9073-0

Holloway, D. J. (2003). What takes precedence: HIPAA or state law? *Monitor on Psychology, 34*, 28. Retrieved from http://www.apa.org/monitor/jan03/hipaa.aspx

Hotopf, M. (1993). Are psychiatric case-notes offensive?--Reply. *Psychiatric Bulletin*, *17*(4). 244. doi:10.1192/pb.17.4.244-a

IACP Police Psychological Services Section. (2005). Pre-employment psychological evaluation services guidelines. *The Police Chief*, *72*, 68. Retrieved from Retrieved from http://bit.ly/1qiDXEB

IACP Police Psychological Services Section. (2009). Psychological fitness-for-duty evaluation guidelines. *The police chief*, *September*, 70. Retrieved from Retrieved from http://bit.ly/WkxdJo

IACP Police Psychological Services Section. (2011). Guidelines For Consulting Police Psychologists, Chicago, Ill. Retrieved from http://bit.ly/1qLaijn

IACFP Practice Standards Committee. (2010). Standards for psychology services in jails, prisons, correctional facilities, and agencies (3rd ed). *Criminal Justice and Behavior*, *37*, 749–808. DOI:10.1177/0093854810368253

In Re McCann, Case Nos. AP-76998, AP-76999 (Tex: Ct. Crim. App., Nov 20, 2013).

Iowa v. Cashen, 789 N.W. 2d 400 (Iowa 2010)

Jaffee v. Redmond. 116 S. Ct. 1923 (1996)

Jenny, C., Crawford-Jakubiak, J. E., Christian, C. W., Flaherty, E. G., Leventhal, J. M., Lukefahr, J. L., & Sege, R. D. (2013). The evaluation of children in the primary care setting when sexual abuse is suspected. *Pediatrics*, *132*(2), e558-e567. DOI: 10.1542/peds.2013-1741

Johnston v. Weil, 241 Ill.2d 169, 349 Ill.Dec. 135, 946 N.E.2d 329 (2011).

Jones, S. E. (2000). Ethics. In A. E. Kazdin (Ed.), *Encyclopedia of psychology,* (Vol. 3, pp. 239-242). Washington, D.C.: American Psychological Association. DOI:10.1037/10518-087

Kane, A. W. (2008). Forensic psychology, psychological injuries, and the law. *Psychological Injury and Law*, *1*(1), 36–58. DOI:10.1007/s12207-007-9000-1

Kaufmann, P. M. (2005). Protecting the objectivity, fairness, and integrity of neuropsychological evaluations in litigation. A privilege second to none? *The Journal of Legal Medicine*, *26*(1), 95–131. DOI:10.1080/01947640590918007

Kaufmann, P. M. (2007). Releasing raw data and psychological test materials: Ethical dilemmas, legal requirements, and simple solutions to discovery demands. Presentation at the *National Academy of Neuropsychology,* Scottsdale, AZ, 11/14/2007.

Kaufmann, P. M. (2009). Protecting raw data and psychological tests from wrongful disclosure: A primer on the law and other persuasive strategies. *The Clinical Neuropsychologist*, *23*, 1130–59. DOI:10.1080/13854040903107809

Kellar v. U. S. Dept Of Veteran Affairs, Civil Action No. 08-cv-00761-WYD-KLM (D. Colo. Feb. 6, 2009).

Kellogg N., & American Academy of Pediatrics Committee on Child Abuse and Neglect. (2005). The evaluation of sexual abuse in children. *Pediatrics, 116*(2). 506–512. DOI: 10.1542/peds.2005-1336

Kina v. United Airlines Inc. N.D. Cal. WL 5071045, (2008). Dec. 1, 2008.

Knauss, L. K. (2006). Who is the client? *SPA Exchange*, *18*(2), 14–15. Retrieved from http://bit.ly/UejG4m

Koocher, G. P., & Rey-Casserly, C. M. (2003). Ethical issues in psychological assessment. In I. B. Weiner, J. R. Graham, & J. A. Naglieri (Eds.), *Handbook of psychology, assessment psychology* (Vol. 10, 2nd ed., pp. 165–180). Hoboken, New Jersey, Wiley.

Kraus, L. J., Thomas, C. R., Bukstein, O. G., Walter, H. J., Benson, R. S., Chrisman, A., … Medicus, J. (2011). Practice parameter for child and adolescent forensic evaluations. *Journal of the American Academy of Child and Adolescent Psychiatry*, *50*, 1299–1312. DOI:10.1016/j.jaac.2011.09.020

Lees-Haley, P. R., & Courtney, J. C. (2000). Disclosure of tests and raw test data to the courts: A need for reform. *Neuropsychology Review*, *10*(3), 169–174; discussion 175–182. DOI: 10.1023/A:1009031615267

Lees-Haley, P. R., Courtney, J. C., & Dinkins, J. P. (2005). Revisiting the need for reform in the disclosure of tests and raw test data to the courts: The 2002 APA ethics code has not solved our dilemma. *Journal of Forensic Psychology Practice*, *5*, 71–81. DOI:10.1300/J158v05n02_05

Lowman, R. L. (2006). Disposition of psychological reports. In R. L. Lowman (Ed.), *The ethical practice of psychology in organizations* (2nd ed., pp. 111–114). Washington, D.C.: American Psychological Assn. DOI:10.1037/11386-034

Luftman, V. H., Veltkamp, L. J., Clark, J. J. Lannacone, S., & Snooks, H. (2005). Practice guidelines in child custody evaluations for licensed clinical social workers. *Clinical Social Work Journal, 33*(3). 327-357. DOI: 10.1007/s10615-005-4947-4

Malina, A. C., Nelson, N. W., & Sweet, J. J. (2005). Framing the relationships in forensic neuropsychology: Ethical issues. *Journal of Forensic Neuropsychology*, *4*, 21–44. DOI:10.1300/J151v04n03_03

Martindale, D. A. (2008). Are attorneys entitled to psychological test data? *The Matrimonial Strategist*, *26*(8), 1-2, 5-6.

Martindale, D. A., Martin, L., Austin, W. G., Drozd, L., Gould-Saltman, D., … Hunter, L., Task Force for Model Standards of Practice for Child Custody Evaluations. (2006). Model standards of practice for child custody evaluation. *Family Court Review*, *45*, 70–91. DOI:10.1111/j.1744-1617.2007.129_3.x

Mello, M. M. (2000). Of swords and shields: The role of clinical practice guidelines in medical malpractice litigation. *University of Pennsylvania Law Review, 149*. 645-710.

Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers (3rd ed.)*. New York: Guilford.

Miller, R. D., & Germain, E. J. (1989). Should forensic patients be informed of evaluators' opinions prior to trial? *The Journal of the American Academy of Psychiatry and the Law*, *17*, 53–9. Retrieved from http://bit.ly/WkVhvN

Miller, R. D., Morrow, B., Kaye, M., & Maier, G. J. (1987). Patient access to medical records in a forensic center: A controlled study. *Hospital & Community Psychiatry*, *38*(10), 1081–1085. Retrieved from http://bit.ly/1nQ7pih

Modern Practices. (2013). *Codes of Ethics and Conduct for Behavioral Health Professionals*. Retrieved from http://bit.ly/1mlFbqm

Mossman, D., Noffsinger, S. G., Ash, P., Frierson, R. L., Gerbasi, J., Hackett, M., … Zonana, H. V. (2007). AAPL practice guideline for the forensic psychiatric evaluation of competence to stand trial. *The Journal of the American Academy of Psychiatry and the Law*, *35*(Suppl), S1–S72. Retrieved from http://bit.ly/1jUMnPU

Murrie, D. C., Boccaccini, M. T., Guarnera, L. A., & Rufino, K. A. (2013). Are forensic experts biased by the side that retained them? *Psychological Science*, *24*, 1889–1897. DOI:10.1177/0956797613481812

Nagy, T. F. (2011). *Essential ethics for psychologists: A primer for understanding and mastering core issues*. Washington, D.C.: American Psychological Association. DOI:10.1037/12345-006

National Association of Forensic Counselors. (2010). E*thical standards and code of conduct*. Fort Wayne, IN: Author. Retrieved from http://bit.ly/19nFk8E

National Organization of Forensic Social Work. (2011). *Code of Ethics*. Middletown, CT: Author. Retrieved from http://nofsw.org/wp-content/uploads/2014/03/NOSFW-Code-of-Ethics-Changes-2-16-12.pdf

Nozick, R. (1977). *Anarchy, State, and Utopia*. New York: Basic Books.

Office for Civil Rights, Department of Health and Human Services. (2002). Standards for privacy of individually identifiable health information: final rule. *Federal Register*, *67*, 53182–53273.

Office for Civil Rights, Department of Health and Human Services. (2014). Top five issues in investigated cases close with corrective action, by calendar year. Retrieved from http://1.usa.gov/1jCPfkb

Ogloff, J. R. P. (1999). Ethical and legal contours of forensic psychology. In R. Roesch, S. D.Hart, & J. R. P. Ogloff, (Eds.), *Psychology and law: The state of the discipline* (pp. 405–422). New York: Kluwer

OPIS Management Resources, LLC v. Dudek, Case No. 2011-400, 2011WL6024092 (ND Florida, 2011), affirmed *OPIS Management Resources, LLC v. Secretary Fla AHCA*, Case No. 12-12593 (11th Cir. 2013)

Otto, R. K., & Heilbrun, K. (2002). The practice of forensic psychology: A look toward the future in light of the past. *American Psychologist*, *57*(1), 5-18. DOI: 10.1037//0003-066X.57.1.5

Packer, I. K. (2008). Specialized practice in forensic psychology: Opportunities and obstacles. *Professional Psychology: Research and Practice*, *39*, 245–249. DOI:10.1037/0735-7028.39.2.245

Packer, I. K., & Grisso, T. (2011). *Specialty competencies in forensic psychology*. New York: Oxford University Press.

Parrott, J., Strathdee, G., & Brown, P. (1988). Patient access to psychiatric records: The patients' view. *Journal of the Royal Society of Medicine*, *81*, 520–522. doi: 10.1177/014107688808100908

Parry, J. (1985). Decision-making rights over persons and property. In S. J. Brakel, J. Parry, & B. A. Weiner (Eds.) *The mentally disabled and the law*, (3rd ed., pp. 435-506). Chicago: American Bar Association.

Penn, J. V., & Thomas, C. (2005). Practice parameter for the assessment and treatment of youth in juvenile detention and correctional facilities. *Journal of the American Academy of Child & Adolescent Psychiatry*, *44*(10), 1085–1098. DOI:10.1097/01.chi.0000175325.14481.21

Piechowski, L. D., & Drukteinis, A. M. (2011). Fitness for duty. In E. Y. Drogin, F. M. Datilio, R. L. Sadoff, & T. G. Gutheil, (Eds.) *Handbook of forensic assessment: Psychological and Psychiatric Perspectives,* (pp. 571-592). Hoboken, NJ: Wiley.

Pistrang, N., & Barker, C. (2012). Varieties of qualitative research: A pragmatic approach to selecting methods. In H. Cooper, P. M. Camic, D. L. Long, A. T. Panter, D. Rindskopf, K. J. Sher, (Eds.) APA handbook of research methods in psychology, Vol 2: Research designs: Quantitative, qualitative, neuropsychological, and biological, (pp. 5-18). Washington, D.C.: American Psychological Association.

Plotkin, R. (1978). In the balance: Through the looking glass: Clients' access to their own records. *Monitor on Psychology*, *19*, 10. DOI:10.1037/e309482005-019

Pope, K. S., & Vasquez, M. J. T. (2011). *Ethics in psychotherapy and counseling: A practical guide* (4th ed.). Hoboken, NJ: Wiley.

Pritts, J., Choy, A., Emmart, L., & Hustead, J. (2002a). *The state of health privacy. A survey of state health privacy statutes, vol. I. Health Privacy Project* (2nd ed.). Washington, D.C. Institute for Health Care Research and Policy, Georgetown University. Retrieved from http://bit.ly/1r7do37

Pritts, J., Choy, A., Emmart, L., & Hustead, J. (2002b). *The state of health privacy. A survey of state health privacy statutes, vol. II. Health Privacy Project* (2nd ed.). Washington, D.C. Institute for Health Care Research and Policy, Georgetown University. Retrieved from http://bit.ly/1wBadk3

Rapp, D. L., Ferber, P. S., & Bush, S. S. (2008). Unresolved issues about release of raw test data and test materials. In A. M. Horton, Jr. & D. Wedding (Eds.), *The neuropsychology handbook* (3rd ed., pp. 469–497). New York: Springer.

Reed, G. M., McLaughlin, C. J., & Newman, R. (2002). American Psychological Association policy in context: The development and evaluation of guidelines for professional practice. *American Psychologist, 57*(12), 1041-1047. doi:10.1037/0003-066X.57.12.1041

Riel v. Ayers, No. Civ S-01-0507 LKK KJM (E.D. Cal. Apr. 13, 2010).

Roach, Jr., W. H. (2006). *Medical records and the law* (4th ed.) Sudbury, MA: Jones and Bartlett.

Rogers, R. (2004). APA 2002 ethics, amphibology, and the release of psychological test records: A counterperspective to Erard. *Journal of Personality Assessment*, *82*(1), 31–34. DOI: 10.1207/s15327752jpa8201_5

Rosenbaum, S. J., Borzi, P., Burke, T., & Nath, S. W. (2007). Does HIPAA preemption pose a legal barrier to health information transparency and interoperability? *BNA's Health Care Policy Report*, *15*(11), 1-13.

Rosenman, H. (1997). Patients' rights to access their medical records: An argument for uniform recognition of a right of access in the United State and Australia. *Fordham International Law Journal, 21*(4), 1500–1557. Retrieved from: http://bit.ly/1nT5ASk

Rosner, R. (2003). *Principles and practice of forensic psychiatry* (2nd ed.). London: CRC Press.

Ross, A. P. (1986). The case against showing patients their records. *British Medical Journal (Clinical Research Ed.), 292(Mar.)*, 578. Retrieved from: http://1.usa.gov/1kv4xl2

Ross, S. E., & Lin, C.-T. (2003). The effects of promoting patient access to medical records: A review. *Journal of the American Medical Informatics Association*, *10*, 129–138. DOI:10.1197/jamia.M1147

Roth, L. H., Wolford, J., & Meisel, A. (1980). Patient access to records: Tonic or toxin? *The American Journal of Psychiatry*, *137*, 592–596. Retrieved from http://bit.ly/1qiRV9I

Rue & Ziffra, P.A., v. Health Information Professionals, Inc. 19 Fla. L. Weekly Supp 268a (Fla. 7th Jud. Cir. Ct., Dec 19, 2011).

Sadoff, R. L. (2003). Practical issues in forensic psychiatric practice. In R. Rosner, (Ed.), *Principles and practices of forensic psychiatry (2nd Ed.)* (pp. 45–51). London: Arnold.

Sadoff, R. L. (2011). Ethical issues in forensic psychiatry in the United States. In *Ethical issues in forensic psychiatry: Minimizing harm* (pp. 3–26). Hoboken, NJ: Wiley.

Sankar, P., Mora, S., Merz, J. F., & Jones, N. L. (2003). Patient perspectives of medical confidentiality. *Journal of general internal medicine*, *18*(8), 659-669.

Sawaya, T. D. (1993). The work product privilege in a nutshell. *The Florida Bar Journal*, *67*, 32–33. Retrieved from http://bit.ly/RaG8dA

Schank, J. A., & Skovholt, T. M. (2006). Ethics in a broad context. In *Ethical practice in small communities: Challenges and rewards for psychologists* (pp. 7–18). Washington, D.C.: American Psychological Association. DOI:10.1037/11379-001

Schepers, G. (2013). Forensic Psychology Organizations. Bellingham, WA: XYZ Media, Inc. Retrieved from http://bit.ly/1rPa6Pr

Schwartz, H. I., & Mack, D. M. (2003). Informed consent and competency. In R. Rosner (Ed.), *Principles and practice of forensic psychiatry* (2nd ed., pp. 97–106). Boca Raton, FL: CRC Press.

Seavey, W. A. (1964). *Agency*. St. Paul, MN: West.

Seitz, J. F., Ward, A., & Dobbs, W. H. (1978). Granting patients access to records: The impact of the Privacy Act at a federal hospital. *Hospital & Community Psychiatry*, *29*, 288–289. Retrieved from http://bit.ly/1mlLTwN

Sessions, L., Wong, K. M., & Fox, C. J. (2014). HHS Attorney: Major HIPAA Fines and Enforcement Coming, Blog post, 6/13/2014, Retrieved from http://bit.ly/UepSta

Shapiro, D. (2002). Ethical issues in forensic psychological evaluations. In B. Van Dorsten (Ed.), *Forensic psychology: From classroom to courtroom* (pp. 35–64). New York: Kluwer Academic / Plenum Publishers.

Shapiro, D. L., & Smith, S. R. (2011). Confidentiality and privacy. In *Malpractice in psychology: A practical resource for clinicians.* (pp. 61–77). Washington, DC.: American Psychological Association. DOI:10.1037/12320-004

Shuman, D. W., & Greenberg, S. (2003). Expert witness, the adversary system, and the voice of reason: Reconciling impartiality and advocacy. *Professional Psychology: Research and Practice*, *34*, 219–224. DOI:10.1037/0735-7028.34.3.219

Slates v. Int'l House of Pancakes, Inc., 413 N.E.2d 457, 90 Ill. App. 3d 716, 46 Ill. Dec. 17 (App. Ct. 1980).

Slovenko, R. (2011). Confidentiality and testimonial privilege. In R. Rosner, (Ed.), *Principles and practices of forensic psychiatry (2nd Ed.,* pp. 137-146). London: Arnold.

Solove, D. J. (2002). Conceptualizing privacy. *California Law Review*, *90*, 1087–1156. Retrieved from http://bit.ly/15CRYU5

Steiner, H. (1997). Practice parameters for the assessment and treatment of children and adolescents with conduct disorder. *Journal of the American Academy of Child and Adolescent Psychiatry*, *36*, 122S–139S. doi:10.1097/00004583-199710001-00008

Stiles, P. G., & Petrila, J. (2011). Research and confidentiality: Legal issues and risk management strategies. *Psychology, Public Policy, and Law*, *17*(3), 333–356. DOI:10.1037/a0022507

Taylor v. Erna, No. 08-10534-DPW, 2009 WL 2425839 (D. Mass., Aug. 3, 2009),

Taylor v. Kohli, 642 N.E.2d 467, 162 Ill. 2d 91, 204 Ill. Dec. 766 (1994).

Taylor, D. (2002). Appropriate use of references in a scientific research paper. *Emergency Medicine Australasia*, *14*(2), 166–70. DOI: 10.1046/j.1442-2026.2002.00312.x

Third-Party Working Group, Ontario Psychological Association. (2012). *Third parties in psychological practice: Resource materials for anticipating, preventing and resolving ethical problems*. Unpublished manuscript. Ontario, Canada: Author.

Tibbs v. Adams, No. Civ S-05-2334 LKK KJM P (E.D. Cal., June 25, 2008).

Tong, A., Flemming, K., McInnes, E., Oliver, S., & Craig, J. (2012). Enhancing transparency in reporting the synthesis of qualitative research: ENTREQ. *BMC medical research methodology*, *12*(1), 181.

Tossell, B., Stewart, E., & Goldman, J. (2006). *The Health Insurance Portability and Accountability Act Privacy Rule and patient access to medical records*. Washington, D.C.: Health Privacy Project, AARP Public Policy Institute. Retrieved from http://bit.ly/10nkQdR

U. S. v. Johnson, 362 F. Supp. 2d 1043 (N.D. Iowa 2005).

U. S. v. Kovel, 296 F.2d 918 (2d Cir. 1961).

Vilar-Lopez, R., & Puente, A. E. (2010). Forensic neuropsychological assessment of members of minority groups: The case for assessing Hispanics. In A. M. Horton, Jr. & L. C. Hartlage (Eds.), *Handbook of forensic neuropsychology* (2nd ed., pp. 309–332). Hoboken, NJ: Springer

Vore, D. A. (2007). The disability psychological independent medical evaluation: Case law, ethical issues, and procedures. In A. M. Goldstein (Ed.), *Forensic psychology: emerging topics and expanding roles* (pp. 489–510). New York: Wiley.

Weiner, I. B., & Hess, A. K. (2014). In I. B. Weiner & R. K. Otto (Eds.), *The handbook of forensic psychology*, (4th Ed., pp. 85-110). Hoboken, New Jersey: Wiley.

Weinstein, J., & Margaret Berger, M. A. (2014). *Weinstein's evidence manual.* Dayton, OH: LexisNexis.

Weinstock, R., & Garrick, T. (1995). Is liability possible for forensic psychiatrists? *The Journal of the American Academy of Psychiatry and the Law*, *23*, 183–193. Retrieved from http://bit.ly/1fEcWXA

Williamson, C. (2005). Withholding policies from patients restricts their autonomy. *BMJ*, *331*(7524), 1078-1080. Retrieved from http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1283199/

Willick, D., Weinstock, R., & Garrick, T. (2003). Liability of the forensic psychiatrist. In R. Rosner (Ed.), *Principles and practice of forensic psychiatry* (2nd ed., pp. 73–78). Boca Raton, FL: CRC Press.

Wollschlaeger, et al. v. Governor of the State of Florida, et al. No 1:11-cv-22026-MGC (11th Cir., Jul. 25, 2014),