**CONFIDENTIALITY OF MENTAL HEALTH RECORDS**

**§ 5100.31. Scope and policy.**

 (a)  This chapter applies to records of persons seeking, receiving or having received mental health services from any facility as defined in section 103 of the act (50 P. S. §  7103).

 (b)  Persons seeking or receiving services from a mental health facility are entitled to do so with the expectation that information about them will be treated with respect and confidentiality by those providing services. Confidentiality between providers of services and their clients is necessary to develop the trust and confidence important for therapeutic intervention. While full confidentiality cannot be guaranteed to everyone as a result of Federal and State statutes which require disclosure of information for specific purposes, it remains incumbent upon service providers to inform each current client/patient of the specific limits upon confidentiality which affect his treatment when these limits become applicable. When facilities are required by Federal or State statutes or by order of a court to release information regarding a discharged patient, a good faith effort shall be made to notify the person by certified mail to the last known address.

 (c)  As used in this chapter, ‘‘records’’ includes, but is not limited to, all written clinical information, observations and reports or fiscal documents, relating to a prospective, present or past, client or patient, which are required or authorized to be prepared by the act or by the Mental Health and Mental Retardation Act of 1966. This includes any central file of client/patient records and reports which are required to be maintained by the Department’s regulations or other statutes and regulations regarding service content for mental health programs. Every therapist who reports objective findings must carefully consider the impact of placing in the records statements made privately in therapy sessions.

 (d)  Nothing in this chapter shall limit the facility’s obligation to attempt to obtain social history and other records necessary to properly treat an involuntarily committed patient, or to obtain information on financial resources or insurance coverage necessary to determine the liability for services rendered.

 (e)  This section applies to all records regarding present or former patients of mental health facilities, including records relating to services provided under previous mental health acts.

 (f)  Records of a person receiving mental health services are the property of the hospital or facility in which the person is or has received services. The person who is or was receiving services shall exercise control over the release of information contained in his record except as limited by §  5100.32 (relating to nonconsensual release of information), and be provided with access to the records except to the limitations under §  5100.33 (relating to patient’s access to records and control over release of records).

 (g)  The presence or absence of a person currently involuntarily committed at a mental health facility is not to be considered a record within the meaning of subsection (c) and such information may be released at the discretion of the director of a facility in response to legitimate inquiries from governmental agencies or when it is clearly in the patient’s best interest to do so.

 (h)  No document which was a public record prior to the person’s treatment shall become confidential by its inclusion in the facility’s records.

 (i)  When information and observations regarding clients or patients are not made part of a record, there remains a duty and obligation for staff to respect the patient’s privacy and confidentiality by acting ethically and responsibly in using or discussing such information.

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5100.33 (relating to patient’s access to records and control over release of records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).

**§ 5100.32. Nonconsensual release of information.**

 (a)  Records concerning persons receiving or having received treatment shall be kept confidential and shall not be released nor their content disclosed without the consent of a person given under §  5100.34 (relating to consensual release to third parties), except that relevant portions or summaries may be released or copied as follows:

   (1)  To those actively engaged in treating the individual, or to persons at other facilities, including professional treatment staff of State Correctional Institutions and county prisons, when the person is being referred to that facility and a summary or portion of the record is necessary to provide for continuity of proper care and treatment.

   (2)  To third party payors, both those operated and financed in whole or in part by any governmental agency and their agents or intermediaries, or those who are identified as payor or copayor for services and who require information to verify that services were actually provided. Information to be released without consent or court order under this subsection is limited to the staff names, the dates, types and costs of therapies or services, and a short description of the general purpose of each treatment session or service.

   (3)  To reviewers and inspectors, including the Joint Commission on the Accreditation of Hospitals (JCAH) and Commonwealth licensure or certification, when necessary to obtain certification as an eligible provider of services.

   (4)  To those participating in PSRO or Utilization Reviews.

   (5)  To the administrator, under his duties under applicable statutes and regulations.

   (6)  To a court or mental health review officer, in the course of legal proceedings authorized by the act or this chapter.

   (7)  In response to a court order, when production of the documents is ordered by a court under §  5100.35(b) (relating to release to courts).

   (8)  To appropriate Departmental personnel §  5100.38 (relating to child or patient abuse).

   (9)  In response to an emergency medical situation when release of information is necessary to prevent serious risk of bodily harm or death. Only specific information pertinent to the relief of the emergency may be released on a nonconsensual basis.

   (10)  To parents or guardians and others when necessary to obtain consent to medical treatment.

   (11)  To attorneys assigned to represent the subject of a commitment hearing.

 (b)  Current patients or clients or the parents of patients under the age of 14 shall be notified of the specific conditions under which information may be released without their consent.

 (c)  Information made available under this section shall be limited to that information relevant and necessary to the purpose for which the information is sought. The information may not, without the patient’s consent, be released to additional persons or entities, or used for additional purposes. Requests for information and the action taken should be recorded in the patient’s records.

**Notes of Decisions**

   *Duty to Report*

   Mental healthcare workers do not have an affirmative duty to investigate and report possible crimes involving their patients. *Hennessy v. Santiago*, 708 A.2d 1269 (Pa. Super. 1998).

   *Release of Information in Response to Medical Emergency*

   Regulations which provide for the nonconsensual release of confidential information when release is necessary to prevent harm or death in response to medical emergency may include situations wherein a psychiatric patient’s threats to harm a third party are disclosed. *Ms. B. v. Montgomery County Emergency Service*, 799 F.Supp. 534 (E.D. Pa. 1992), affirmed, 989 F.2d 488 (3d Cir. Pa. 1993); cert. denied, 510 U. S. 860, 126 L. Ed. 2d 133, 114 S. Ct. 174 (U. S. 1993).

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5100.31 (relating to scope and policy); 55 Pa. Code §  5100.34 (relating to consensual release to third parties); 55 Pa. Code §  5100.90a (relating to State mental hospital admission of involuntarily committed individuals—statement of policy); 55 Pa. Code §  5200.41 (relating to records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).

**§ 5100.33. Patient’s access to records and control over release of records.**

 (a)  When a client/patient, 14 years of age or older, understands the nature of documents to be released and the purpose of releasing them, he shall control release of his records. For a client who lacks this understanding, any person chosen by the patient may exercise this right if found by the director to be acting in the patient’s best interest. In the event that the client/patient is deceased, control over release of records may be exercised by the client’s/patient’s chosen executor, administrator or other personal representative of his estate, or, if there is no chosen personal representative, by a person otherwise empowered by court order to exercise control over the records. In the event that the client/patient is less than 14 years of age or has been adjudicated legally incompetent, control over release of the client’s/patient’s records may be exercised by a parent or guardian of the client/patient respectively.

 (b)  The term ‘‘access’’ when used in this section refers to physical examination of the record, but does not include nor imply physical possession of the records themselves or a copy thereof except as provided in this chapter.

 (c)  A person who has received or is receiving treatment may request access to his record, and shall be denied such access to limited portions of the record only:

   (1)  Upon documentation by the treatment team leader, it is determined by the director that disclosure of specific information concerning treatment will constitute a substantial detriment to the patient’s treatment.

   (2)  When disclosure of specific information will reveal the identity of persons or breach the trust or confidentiality of persons who have provided information upon an agreement to maintain their confidentiality.

 (d)  A patient may obtain access to his records through the facility, or in the case of those records kept by the county administrator, through the physician or mental health professional designated by the administrator. Any third parties who are granted access to records may discuss this information with the patient only insofar as necessary to represent the patient in legal proceedings or other matters for which records have been released. Discussion of records with patients should be part of the therapeutic process and is not to be undertaken by other than mental health professionals.

 (e)  The limitations in subsection (c) are applicable to parents, guardians, and others who may control access over records as described in subsection (a) except that the possibility of substantial detriment to the parent, guardian, or other person may also be considered.

 (f)  If a person wishes to enter a written reaction qualifying or rebutting information in their records which they believe to be erroneous or misleading, they shall have the right to prepare such statement for inclusion as part of their record. The patient’s written reaction shall accompany all released records.

 (g)  The director of the treatment team or the facility director may require that a mental health professional, who is a member of the treatment team, and who has reviewed the record in advance, be present when the patient or other person examines the record to aid in the interpretation of documents in the record. If the records pertain to a former patient, an appropriate mental health professional may be designated by the facility director.

 (h)  Access to presentence reports, which may be part of the persons’ records, is governed Pa.R.Crim.P. No. 1404 (relating to disclosure of reports), and the patient may have access to these records only upon order of the sentencing judge. Any conditions of confidentiality imposed by the sentencing judge must be complied with. Similarily, parole and probation reports shall be released or access to them given only in accordance with 37 Pa. Code Part II (relating to Board of Probation and Parole).

 (i)  If a person is denied access to all or part of his record, this fact and the basis for the denial shall be noted in the person’s record.

 (j)  When records or information have been forwarded from one agency to another agency, the receiving agency may not refuse the client or patient access to the records received except in accordance with subsection (c). Records received from other agencies become part of the client/patient’s active record and are subject to the controls exercised over them by the client, patient, or those with authority over records as defined in §  5100.31 (relating to scope and policy).

**Notes of Decisions**

   Patient access to whatever record was made of commitment hearing, in the form it exists, is a minimal requirement to comport with procedural due process. *In re S.O.*, 492 A.2d 727 (Pa. Super. 1985).

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5100.31 (relating to scope and policy); 55 Pa. Code §  5100.34 (relating to consensual release to third parties); 55 Pa. Code §  5200.41 (relating to records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).

**§ 5100.34. Consensual release to third parties.**

 (a)  Access to records, as defined in §  5100.33(b) (relating to patient’s access to records and control over release of records) will be granted to persons other than the patient upon written consent of the client/patient. With the consent, copies of excerpts or a summary of a record may be provided to specific persons at the discretion of the director. If copies of excerpts or summaries are provided, a charge may be made against the patient or person receiving the record for the cost of making the copies. The facility may require payment for the copies in advance.

 (b)  When a patient designates a third party as either a payor or copayor for mental health services, this designation carries with it his consent to release information to representatives of that payor which is necessary to establish reimbursement eligibility. Unless otherwise consented to by the patient, information released to the third-party payors shall be limited to that necessary to establish the claims for which reimbursement is sought.

 (c)  Clients, patients, or other persons consenting to release of records are to be informed of their right, subject to §  5100.33 to inspect material to be released.

 (d)  When records are released or disclosed under §  5100.32 (relating to nonconsenual release of information) or subsections (a) and (b) the written or oral disclosure shall be accompanied by a written statement which reads as follows:

 ‘‘This information has been disclosed to you from records whose confidentiality is protected by State statute. State regulations limit your right to make any further disclosure of this information without prior written consent of the person to whom it pertains.’’

 (e)  The limitation in subsection (d) does not prohibit the re-release of information in accordance with §  5100.32.

 (f)  Each facility shall prepare a form for use in the voluntary release of records which shall meet the following requirements:

   (1)  A time limit on its validity which shows starting and ending dates.

   (2)  Identification of the agency or person to whom the records are to be released.

   (3)  A statement of the specific purposes for which the released records are to be used.

   (4)  A statement identifying the specific relevant and timely information to be released.

   (5)  A place for the signature of the client/patient or parent or guardian and the date, following a statement that the person understands the nature of his release.

   (6)  A place for the signature of a staff person obtaining the consent of the client/patient or parent or guardian and the date.

   (7)  A place to record a verbal consent to release of information given by a person physically unable to provide a signature and a place for the signatures of two responsible persons who witnessed that the person understood the nature of the release and freely gave his verbal consent.

   (8)  Indication that the consent is revocable at the written request of the person giving consent, or oral request as in paragraph (7).

 (g)  A mental health facility receiving a request for information from a governmental agency may accept that agency’s release of information form if signed by the patient/client or the person legally responsible for the control of information unless the patient has specifically expressed opposition to that agency receiving information.

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5100.32 (relating to nonconsensual release of information); 55 Pa. Code §  5200.41 (relating to records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).

**§ 5100.35. Release to courts.**

 (a)  Each facility director shall designate one or more persons as a records officer, who shall maintain the confidentiality of client/patient records in accordance with this chapter.

 (b)  Records shall comply with the following:

   (1)  Whenever a client/patient’s records are subpoenaed or otherwise made subject to discovery proceedings in a court proceeding, other than proceedings authorized by the act, and the patient/client has not consented or does not consent to release of the records, no records should be released in the absence of an additional order of court.

   (2)  The records officer, or his designee, is to inform the court either in writing or in person that, under statute and regulations, the records are confidential and cannot be released without an order of the court. Neither the records officer nor the facility director has any further duty to oppose a subpoena beyond stating to the the court that the records are confidential and cannot be released without an order of the court; however, nothing in this section shall be construed as authorizing such a court order.

   (3)  If it is known that a patient has a current attorney of record for the given proceedings, that attorney shall be informed of the request of subpoena, if not already served with a copy, and shall be expected to represent and protect the client/patient’s interests in the confidentiality of the records. The person whose record has been subpoenaed shall be notified of such action if they are currently receiving services and their whereabouts are known, unless served with a copy of the subpoena. Those currently in treatment shall also be advised that they may wish to obtain an attorney to represent their interests. In the case of persons no longer receiving services, the facility shall send this notification by certified mail to the last known address.

 (c)  If a present or former patient sues a person or organization providing services subject to the act in connection with said patient’s care, custody, evaluation or treatment, or in connection with an incident related thereto, defense counsel for said service provider shall have such access to the present or former patient’s records as such counsel deems necessary in preparing a defense. Counsel receiving such records shall maintain their confidentiality and shall limit the disclosure of the contents thereof to those items they deem necessary to allow counsel to prepare and present a proper defense.

 (d)  All employes of a facility shall be informed of the rules and regulations regarding confidentiality of records and shall also be informed that violation of them could potentially subject them to civil or criminal liability. Training for employes regarding confidentiality remains the responsibility of the facility director.

**Notes of Decisions**

   *Release Appropriate*

   Information in defendant’s treatment records which had been the subject of earlier newspaper articles and had been discussed without objection in deposition was a rational and admissible source for the jury to consider in determining the harm caused to plaintiff’s reputation which was brought about by the emotional and mental stress under which defendant wrote articles with underlying hatred for plaintiff and plaintiff’s pursuit of prosecution of defendant for wiretapping. It was beyond argument that defendant’s mental and emotional problems had become so familiar in the public domain that the additional notice of certain medical records had no impact and was harmless evidence in this case. *Sprague v. Walter*, 656 A.2d 890 (Pa. Super. 1995); appeal denied 623 A.2d 336 (Pa. 1996).

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5100.32 (relating to nonconsensual release of information); 55 Pa. Code §  5200.41 (relating to records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).

**§ 5100.36. Departmental access to records and data collection.**

 (a)  Notwithstanding any part of this chapter to the contrary, employes of the Department shall not be denied access to any patient records where such access is necessary and appropriate for the employe’s proper performance of his duties. The facility director shall make such decision, and shall be responsible for limiting access to those portions which are relevant to the request.

 (b)  Any conflict as to access by an employe to patient records at State hospitals shall be resolved by the Regional Commissioner of Mental Health.

 (c)  Collection and analysis of clinical or statistical data by the Department, the administrator, or the facility for administrative or research purposes may be undertaken as long as the report or paper prepared from the data does not identify any individual patient without his consent.

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5200.41 (relating to records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).

**§ 5100.37. Records relating to drug and alcohol abuse or dependence.**

 Whenever information in a patient’s records relates to drug or alcohol abuse or dependency, as defined in 71 P. S. §  1690.102, those specific portions of the patient’s records are subject to the confidentiality provisions of section 8(c) of the Pennsylvania Drug and Alcohol Abuse Control Act (71 P. S. §  1690.108(c)), and the regulations promulgated thereunder, 4 Pa. Code §  255.5 (relating to projects and coordinating bodies: disclosure of client-oriented information).

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5200.41 (relating to records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).

**§ 5100.38. Child or patient abuse.**

 Nothing in this chapter shall conflict with the mandatory statutory or regulatory requirements of reporting suspected or discovered child abuse or patient abuse. Whenever a conflict exists between the reporting requirements of the Child Protective Services Act (11 P. S. § §  2201—2224), and the confidentiality of mental health records, the reporting requirements shall govern.

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5100.32 (relating to nonconsensual release of information); 55 Pa. Code §  5200.41 (relating to records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).

**§ 5100.39. Release of records.**

 Under 42 Pa.C.S. § §  8721—8725 (relating to availability of otherwise confidential information), records which are otherwise confidential may be made available to certain investigating bodies upon order of a judge of the Commonwealth Court.

**Cross References**

   This section cited in 55 Pa. Code §  3800.20 (relating to confidentiality of records); 55 Pa. Code §  5100.4 (relating to scope); 55 Pa. Code §  5200.41 (relating to records); 55 Pa. Code §  5200.47 (relating to other applicable regulations); 55 Pa. Code §  5210.26 (relating to records); 55 Pa. Code §  5210.56 (relating to other applicable regulations); 55 Pa. Code §  5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code §  5230.17 (relating to confidentiality); and 55 Pa. Code §  5320.26 (relating to confidentiality).