



I'VE RECEIVED A REQUEST FOR MY RECORDS, WHAT SHOULD I DO?

Ordinarily, mental health professionals want to protect their clients' privacy and to protect the records they maintain. Both Texas law and Federal law make the protection of mental health records mandatory, and both laws, impose a burden for proper protection of records on the counselor. Privacy is a good thing! However, when a client requests the release their own records (directly, through their lawyer, or through another healthcare provider), those same state and federal rules require mental health professionals to take make records available.

Protection of the records is protection against *inappropriate* release, not against any release. When a client (or their representative) asks for release of their records those same laws require the counselor *take proper action within 15 days* of receipt of a request for records. If a mental health professional fails to respond properly to a client request, the failure to provide records opens the door to a complaint to their licensing board, and at the federal level with the Department of Health and Human Services Office of Civil Rights.

Here is what you should do when you receive a request or a subpoena that asks you to provide your client's treatment records:

- ✓ First, does the document appear, on its face, to be legitimate. As a mental health professional, you are not called to be a private investigator or police officer. If the request looks legitimate, go to step two.¹
- ✓ Second, call your client (if you can) to clarify the request and its authenticity. By calling your client you are complying with both federal and state requirements.
- ✓ Third, be sure that you have authorization to release. A subpoena or a friendly request letter, alone, is not sufficient. Be sure you have your client's written permission to release so you can document your actions down the road, and that the form covers mandated information.
- ✓ Fourth, make a copy of the requested information,² and send it according to the request or subpoena.

A few of things to remember:

You must *respond* within 15 days of the request by providing the records or explaining why you are not providing them. While HIPAA outlines a 30-day window, the Texas Health and Safety Code imposes a stricter duty.

Charge for records must be reasonable. OCR has come down quite strongly in recent years that these fees can *only* be related to the *actual copying and postage*, not for reviewing requests or retrieving files.

You may NOT withhold records because the client owes you unpaid fees for services. You must provide the records upon payment of a *reasonable* fee for copying and mailing.

Don't risk fines or licensing board complaints by ignoring or refusing a proper records request. Be sure that you have a release from your client, then make the records available.

¹ If the request looks fishy, you still must respond, but you should be more cautious – or call a lawyer for advice.

² While your file should include accurate records of the intake assessment, the dates of treatment, principal treatment methods, progress or case notes, treatment plan, and billing information (see your licensing board requirements for your files), you should release only the information requested.



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Have you ever wondered what state grievances look like on your record, or what some common grievances are? Common errors include making custody recommendations, failure to maintain professional boundaries by engaging in dual relationships, and not releasing records. Here's some links to the Texas boards:

http://www.dshs.state.tx.us/counselor/lpc_enforce.shtm

http://www.dshs.state.tx.us/mft/mft_enforce.shtm

http://www.dshs.state.tx.us/socialwork/sw_cmp.shtm

<http://www.tsbep.state.tx.us/board-licensees-with-disciplinary-sanctions>

Notice the amount of sanctions for professionals, "Failure to release records or to respond to a request for records." You don't want to see your name on the lists. Our licensing boards require that we follow the rules of the **Texas Health and Safety Code, Chapter 611**.

Texas Health and Safety Code § 611.004. Authorized Disclosure of Confidential Information Other than in Judicial or Administrative Proceeding [disclosure can be made to]

(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

Texas Health and Safety Code § 611.008. REQUEST BY PATIENT.

(a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances **but not later than the 15th day after the date of receiving the request, shall:**

(1) make the information available for examination during regular business hours **and** provide a copy to the patient, if requested; or

(2) inform the patient if the information does not exist or cannot be found.

(b) Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.

(c) A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.

HIPPA imposes many additional requirements in order to make patient access to their records easier. These cover everything from costs (as noted above), to format (paper or electronic), to the right to have information sent directly to a designated third party. Remember, while rules related to HIPAA Authorizations covers how a provider **may** disclose information, the patient's Right of Access **requires** disclosure in most circumstances. Health and Human Services covers this in much greater detail at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>

***Awareness of requirements keeps you out of trouble while getting patients records they need.
When in doubt re-review the applicable codes to make sure you have the latest information!***