

North Carolina Psychology Board
Adopted: February, 2008
Amended: December, 2009

Decision Making Regarding Record Keeping Upon Death

This advisory statement is written to provide a general framework for psychologists to consider when making decisions regarding record keeping upon their death. The Board advises that psychologists give serious consideration to the issue of what provision to make for psychological records upon their death and to have a written plan which documents what will happen with their records upon their death. Further, the Board advises that the best practice may be to have the records transferred to another trained individual who will ensure that they are maintained in a confidential manner. This policy is consistent with the N.C. Psychology Practice Act, which requires that records be maintained confidentially for a period of at least seven years from the date of the last provision of psychological services or three years from the date of the attainment of majority (whichever is longer). [N.C. Gen. Stat. § 90-270.15(a)(18)].

The Board advises that psychologists consider making provisions for their records upon their death in estate planning documents. Psychologists may wish to consult with an estate planning attorney to add this provision to their estate planning documents. However, attorneys may have differing opinions about including this in estate planning documents. The individual to whom you would transfer your records would ideally be another psychologist or licensed mental health professional whom you trust to handle your records with due consideration given to the statutory and ethical requirements regarding record maintenance and confidentiality of psychological records. You may also consider designating a back up person in the event that the first person is unavailable. There may also be businesses that store such records. In addition, it may be helpful to review your plans periodically to ensure that they remain consistent with your wishes for your records.

This advisory statement is based upon several pertinent standards in the *Ethical Principles of Psychologists and Code of Conduct* (American Psychological Association, 2002). Specifically, Standard 4.01 requires that psychologists take reasonable precautions to protect confidential information. In addition, Standard 6.02 (c) states that psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice. Further, Standard 3.12 requires that psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by illness, death or other limitations. Finally, Standard 10.09 discusses providing for an orderly and appropriate resolution of responsibility for client/patient care.

In addition, in order to be compliant with HIPAA requirements, psychologists may wish to provide consent forms to their current and new patients in which psychologists inform patients of their plans upon death. Therefore, patients are made aware of whom

psychologists are transferring their records to, and they are able to provide psychologists with the proper written consent to allow such a transfer.

Finally, psychologists may consider a method for informing patients or former patients that the records have been transferred to another clinician and how they may gain access to their records. A psychologist could make provisions to have such a notice published in the newspaper and/or sent to all patients and former patients, if possible.

This advisory statement is intended to provide psychologists with guidance as they attempt to establish their own record keeping policies and practices for transfer/maintenance of their records upon their death.

Psychologists may also wish to review Record Keeping Guidelines, published in the December 2007 edition of the *American Psychologist*, and available on the APA website at www.apa.org.