Requests for Test Data and Materials: Respond with Care

Managing Fallout from Online Reviews

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Requests for Test Data and Materials: Respond with Care

This article addresses a variety of issues related to handling requests from patients and other parties.

You perform a psychological test on your patient, Mr. X, and send him the report from that test. A month later, Mr. X tells you that he wants to see the test questions and his actual answers. Later, Mr. X becomes embroiled in divorce proceedings and his ex-wife’s attorney subpoenas those same documents because she wants to review them for an upcoming custody battle over the children. How should you respond to each request?

First, you need to understand what type of test information is being requested and consider who is making the request. Psychological testing information must be handled with care to ensure that:

• Clients have appropriate access to their health records.
• Third party requests for test information are properly handled.
• Test utility and validity are protected.
• Psychologists meet applicable ethical and legal requirements.

The validity of many psychological tests depends on keeping the questions and answers secure. For example, the validity of a test of intellectual abilities could be compromised if the questions become widely available and some people were coached in advance of taking the test while others were not.

Proper test security also ensures that tests are administered and interpreted only by professionals who are trained and qualified to use them. Maintaining appropriate test security is even more important now that test information can be so easily distributed via the Internet.

Test data (answers and other responses) poses issues of misuse or misunderstanding by those not trained to interpret that data. The classic example is the test question, “Do you always tell the truth?” Psychologists understand that a “no” response reflects the recognition that we often tell “little white lies” such as, “You look great today,” as part of everyday social interaction. But a lawyer or angry ex-spouse might seize upon that answer to question the person’s credibility.

Despite this concern about test data, in most circumstances, patients are entitled to their test data as well as the test report, but not copyrighted test materials. Attorneys’ requests can often be handled by releasing test reports, with the client’s consent, and explaining why further testing information is being withheld.

This article defines relevant terms, describes applicable ethical standards and laws, recommends how to respond to requests for psychological test information and also suggests preventive measures to reduce potential conflicts and risks.

Definitions: Test reports, test data and test materials

The first step in analyzing this issue is understanding how different types of test information are defined. How you handle test information depends on whether it constitutes test reports, data or materials. (For ease of reference, we refer to all of these as “test information.”)

A psychologist’s test report summarizes the results of an assessment and can generally be handled the same way as any other part of a patient’s record. You are usually required to release test reports in response to a written request or authorization from a patient or a patient’s legal representative (for example, a minor’s parent).
The APA Ethical Principles of Psychologists and Code of Conduct (“Ethics Code”) Standards 9.04 and 9.11 (available online at www.apa.org/ethics/code/index.aspx) define the terms test materials and test data and address special handling for each category of information as follows:

### 9.04 Release of Test Data
(a) The term test data refers to raw and scaled scores, client/patient responses to test questions or stimuli and psychologists’ notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of test data (bold emphasis added). Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release…is regulated by law…(b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

### 9.11 Maintaining Test Security
The term test materials refers to manuals, instruments, protocols and test questions or stimuli and does not include test data as defined in Standard 9.04, Release of Test Data. Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Ethics Code.

Under Standard 9.04, test materials are converted to test data when the data and materials are commingled. For example, when client/patient responses are recorded on a list of test questions, the list of test questions is converted from test materials to test data. As discussed in the following section on Legal Framework, Section 9.04 and the Health Insurance Portability and Accountability Act (HIPAA) might suggest that patients gain access to these “converted” test materials. Trade secret law and contractual obligations to publishers, however, require you to withhold test materials from patients, for example by manually separating them from test data.

The best way to manage this issue is to avoid, to the extent feasible, commingling of test data and materials. For many tests, this can be accomplished by having procedures in place ensuring that patient responses are recorded separately from the test questions or any other test stimuli. However, this solution may not be feasible in some situations, such as when stimuli or questions are included as an integral part of a pre-printed answer sheet.

### Test publishers’ interests
Test publishers may also have a legitimate interest in preventing the release of testing information. Test publishers have copyright protection for the test materials they publish and may have additional rights under federal trade secret laws. Furthermore, when you purchase psychological tests, you typically agree to prevent the unauthorized use of testing materials. For example, Pearson’s “Terms & Conditions for Sale and Use of Pearson Products” specifically prohibit reproduction and/or further distribution of testing materials without prior written permission from Pearson. The next section discusses how to resolve potential conflicts between a test publisher’s rights and a patient’s HIPAA right to see his or her test data.

### Legal framework: State law, HIPAA and trade secrets
In addition to more general laws protecting the confidentiality of health records, some states have laws that specifically limit the disclosure of psychological test data and materials. Given the significant variability in state laws on this topic, it is important for you to be familiar with the law in your particular jurisdiction. For example, Maine recently enacted a law that strictly limits access to test data and materials. Under this law, psychological and neuropsychological test data and materials “the disclosure of which would compromise…objectivity and fairness” may not be disclosed to anyone except a properly qualified psychologist or neuropsychologist who has been designated by the examinee. This new law, which is designed to protect the integrity and validity of tests, was initiated by the Maine Psychological Association, with the support of the APA Practice Organization (bit.ly/MePsych; bit.ly/MeLegislature).

The HIPAA Privacy Rule is important for those who need to comply with HIPAA – generally if you have electronically transmitted patient information in connection with a claim for third-party reimbursement. (See the APA Practice Organization’s HIPAA Privacy Rule Primer; Section B.) The Privacy Rule allows patients to access their protected health information (PHI), with limited exceptions. Although HIPAA does not specifically address psychological test information, test data generally falls under the very broad definition of PHI because it relates to the test subject’s physical or mental health condition and identifies that person.

Because of the way the Privacy Rule interacts with state law, a patient’s broad right of access under the Rule preempts state laws that limit a patient’s access to his or her test data. Conversely, if you are objecting to a third party’s subpoena for that same test data, the state law restricting release of test data remains in effect because it is more protective of patient privacy. In other words, if your practice is covered by HIPAA,
state laws protecting test data apply against third parties trying to get a patient’s test data, but do not block patients from accessing that data.

Trade secret laws, however, can protect copyrighted test materials from patient’s HIPAA access, even where patient answers are written on the test materials. Knapp et al. (2013), in “Assessing and Managing Risk in Psychological Practice” published by The Trust, cite guidance from the US Department of Health and Human Services (HHS) indicating that it would not be a violation of HIPAA to refrain from providing patient access to PHI to the extent that doing so would result in a disclosure of trade secrets. The authors explain that test publishers have interpreted the HHS guidance as permitting psychologists to withhold test materials. Accordingly, they advise psychologists to refrain from sending copyrighted test materials to patients. Where test answers are written on copyrighted test material, the authors recommend that psychologists manually separate questions and answers (for example, by whiting out questions). This gives your patients access to test data without disclosing copyrighted test materials or violating your contractual obligations to the publishers.

The interface between HIPAA, state law and test publishers’ copyright rights can be complex – particularly where test materials are comingled with test data. If you are unsure about how these conflicting laws apply in a particular case, you should seek consultation as outlined at the end of this article.

**Responding to subpoenas for testing documents**

In general, psychologists should not provide any client records or information in response to a subpoena without their client’s written authorization or a court order. When responding to a subpoena, a test report can be handled in the same manner as other parts of a patient record. Test data and materials, however, may merit a higher level of protection.

APA’s Committee on Legal Issues (COLI) provides detailed guidance on this topic in its article “Strategies for Private Practitioners Coping with Subpoenas or Compelled Testimony for Client Records or Test Data” (www.apa.org/about/offices/ogc/private-practitioners.pdf). COLI suggests several possible arguments that can be made in attempts to oppose or limit the production of test data, including:

- Dissemination could result in the loss of valuable assessment tools, to the detriment of the public and the profession of psychology.
- Test publishers have an interest in the protection of test information.
- Psychologists may have contractual or other legal obligations not to disclose such information.

**In general, psychologists should not provide any client records or information in response to a subpoena without their client’s written authorization or a court order.**

Psychologists have an ethical obligation to protect the integrity and security of test information.

Thus, you may be able to respond to an attorney’s request for test data and materials by releasing your test report, with the client’s consent, and explaining why further testing information is being withheld.

Psychologists may be court-ordered to produce copyrighted test materials, despite efforts (either personally or through an attorney) to oppose such a release. In these circumstances, psychologists would need to release the court-ordered materials, but may be able to obtain a protective order limiting access to the test materials. A protective order will typically limit disclosure to the attorneys and judge involved in the case, and prohibit the use of the materials outside of the particular case.

For additional information on responding to subpoenas, please see “Providing information in a patient’s lawsuit: FAQs on subpoenas and depositions” at www.apapracticecentral.org/update/2011/11-17/subpoenas-depositions.aspx.

**Assessment for third parties**

One of the most common areas of confusion is when the test subject requests test information after you have tested him or her at the request of a third party, such as a court, a government agency or an employer. In these situations, the test subject is not the client, and his or her right to obtain test information may be controlled by laws, regulations or contracts that operate very differently from those in the health care arena. Also, in third party assessments, the third party generally has the right to receive at least the report. For example, in police fitness-for-duty evaluations, the police department may determine that it will get more candid evaluations if the psychologist knows that the officer being evaluated has no, or only limited, ability to review the final report. As a condition of employment, the department may have required the officer to sign away some or all of his or her HIPAA rights to access the information.

Because of these factors, it is important to clearly set out the roles and rights of the client and the person
being assessed, as required by the APA Ethics Standards below. Check with the third party regarding its rules and procedures so that you understand them and can convey them to the person you are testing. For example, prior to testing you should inform an examinee undergoing an evaluation for disability or workers compensation benefits if the results of the evaluation will become part of the record of an administrative proceeding, and who will have access to the record.

3.07 Third-Party Requests for Services
When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.

9.03 Informed Consent in Assessments
(a) Psychologists obtain informed consent for assessments, evaluations or diagnostic services, as described in Standard 3.10, Informed Consent, except when (1) testing is mandated by law or governmental regulations; (2) informed consent is implied because testing is conducted as a routine educational, institutional or organizational activity (e.g., when participants voluntarily agree to assessment when applying for a job); or (3) one purpose of the testing is to evaluate decisional capacity...

While the application of HIPAA to forensic work is beyond the scope of this article, it is important to note that where HIPAA does apply, there is a forensic exception to a patient’s right of access.

Other guidance
Psychologists who provide assessments should be familiar with the resources available and/or cited on the APA Testing & Assessment webpage (www.apa.org/science/programs/testing/index.aspx), including the “Standards for Educational and Psychological Testing,” which are published collaboratively by APA, the American Educational Research Association and the National Council on Measurement in Education. These standards, which have been adopted as APA policy, reaffirm that test users have the responsibility to protect the security of tests as well as to respect test copyrights (see Standards 9.21-9.23).


The Division 40 position statement includes several recommendations that are consistent with what has been suggested in this article. For example, they note that neuropsychologists may elect to offer the following alternatives to releasing test materials that are com mingled with test data:

- Release data summary sheet alone
- Release data with protocol stimuli blocked out
- Release data to another neuropsychologist, or
- Release data set into a sealed record, or request a protective order

The statement notes, however, that if a patient seeks test data and HIPAA applies, it is advisable to let the patient know of his or her legal right to the actual test data when offering these alternatives (p. 236). This is primarily important for the first and third options, which do not provide the patient with his or her test data.

Forensic psychologists are particularly likely to be involved in complex situations regarding the release of testing information, due to their involvement with the courts, third-party requests for assessment and/or testing with consequences beyond the provision of health services (such as determining decisional capacity). Additional guidance for these situations is provided in APA’s “Specialty Guidelines for Forensic Psychology” (www.apa.org/practice/guidelines/forensic-psychology.aspx). In particular, Guideline 10 (Assessment), Guideline 6 (Informed Consent, Notification & Assent) and Guideline 8 (Privacy, Confidentiality and Privilege) are relevant to the handling of testing data and materials.

Advance planning and other strategies
You can often avoid conflicts by focusing on clinical issues and by planning in advance. From a clinical perspective, your test report generally contains all of the information that is directly relevant to the patient.
Managing Fallout from Online Reviews

What to do about adverse reviews and how to bolster your presence online.

Oscar Wilde once quipped that the only thing in the world worse than being talked about is not being talked about. But that was decades before the Internet.

The anonymity of the Internet is slowly eroding conventional social etiquette. Anybody can post a review on numerous websites and tell the world exactly what they think – and they don’t have to be nice about it.

When it comes to health care provider review sites, consumers know exactly where to post and where to look for reviews. Health care professionals are learning to cope with the increasing threat of offensive, negative and even libelous reviews and comments that can infiltrate popular sites such as Yelp and Healthgrades.

Finding negative reviews about your practice on one of these sites can induce a gut-wrenching reaction. Take, for example, a review that was posted on a popular patient website: “Dr. Bad-Doc is rude, unresponsive and makes you wait an hour after your scheduled appointment. The rest of the staff is condescending and lack professionalism. I wonder why she ever became a doctor. I would not recommend her to a dog.”

If you’re Dr. Bad-Doc, you’re in a tough situation and need to figure out what to do. For all doctors, including psychologists, it’s important to contemplate how to prevent this scenario from happening to you.

How do I avoid bad reviews in the first place?

It is important to remember that a bad review (or even two or three) generally will not ruin your practice. While you may not be able to completely avoid negative reviews, you can mitigate the possibility by addressing the issue of online reviews during the informed consent process before your work with the patient begins. By discussing the protocol for complaints up front, you may avoid a situation that might adversely impact the therapeutic relationship.

Whatever you do, refrain from asking your patient to sign an agreement to not rate your services online; they can do so without your permission, and such an agreement is not enforceable. Nor should you encourage patients to post positive reviews. That action may be contrary to the APA Ethics Code, which states, “Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence” (Standard 9.05 Testimonials, Ethical Principles of Psychologists and Code of Conduct).

Pertinent points to cover when discussing online reviews during the informed consent process include:

Confidentiality: Remind patients that your relationship with them is confidential and that, by commenting online, they risk divulging the fact that they are receiving mental health treatment. The more information provided in a review, the greater the chance that patients will unwittingly jeopardize their privacy. Make sure patients understand that they risk revealing their mental health treatment, and that the risk exists even if the comment is made anonymously.

Conflict resolution: Discuss your protocol for responding to complaints by unsatisfied or unhappy patients. Encourage the patient to speak to you privately in the clinical setting first.
so that you can attempt to resolve any problems the patient perceives. Often a patient just wants to be heard.

At some point during treatment, a patient might tell you he or she posted an online review about you or is thinking of doing so in the future. If the patient brings up the subject, your response should reflect the nature of the review. Here are suggestions for handling the ensuing discussion:

**Good reviews:** Respond to the patient inquiry by saying the decision to post a review is his or hers to make. Let the patient know that you are not encouraging testimonials and that positive public comments will have no bearing on your treatment. You may want to remind the patient of privacy concerns and the steps they may take to protect it.

**Adverse reviews:** Discuss the patient’s concerns to see if you can address them during the course of treatment. If the issues are not resolved, you will need to consider whether and how the potential or actual negative public review will impact your relationship.

You might experience a complicated reaction if the review is particularly nasty or malicious. In this case, consider consulting with colleagues about the best way to proceed with patient treatment – for example, whether the relationship can continue or if it has been ruptured and is unable to be repaired. A colleague may help you determine how to proceed or whether it is advisable to terminate the relationship. The patient might be better suited to work with another psychologist if your relationship has deteriorated. If the online postings rise to the level of harassment, threats or abuse, you may need to consult with law enforcement or legal counsel. (See “Dealing with Threatening Client Encounters” in the Winter 2012 issue of Good Practice magazine.)

**A patient (or someone claiming to be a patient) wrote a scathing review. How do I respond?**

You do have the right to respond. You first need to decide, however, whether you should respond. Sometimes the content of the posting is so outrageous that most readers will see it for what it is. It also helps put the situation in perspective for those seeing your reviews online if you have numerous positive reviews and just the one unfavorable review. You may also unintentionally draw greater attention to the negative post by responding to it. Factors such as these may suggest that it would be prudent not to respond at all.

If you think the comment does warrant a response, consider the following questions before composing your message:

1. **Does the patient make a truthful observation?** As hard as it is to experience the very public criticism, take a close look at the comments to identify any kernels of truth from which you can learn. Try to read the review as an objective third party to see if you can improve your or your office staff’s performance.

2. **Can you be objective?** Your job as a practicing psychologist is unique in that your business involves delivering highly sensitive care. You work very hard to help people improve their lives, so negative feedback can feel like a personal attack. If you decide to respond, reflect carefully on the wording of your post so that you are not perceived as being defensive. Take the time necessary to compose an objective, rather than emotional, response.

3. **Will it violate the patient’s right to confidentiality?** Refrain from admitting that the individual who posted the review is or was a patient. Also be sure to refrain from disclosing or confirming any information related to diagnosis, symptoms or method of treatment. The patient may have divulged some of this information in the review, but you should do all you can to protect that person’s privacy.

4. **Does the website allow you to respond in general without replying to that particular post?** Some sites, like Yelp, will allow you to create a personal profile that will appear above reviews. Take advantage of this option and build your profile. Highlight your areas of practice, emphasize your procedure for addressing patient complaints and link to your website.

5. **What should you say?** Whatever you may say, always take the high road. Avoid making accusations or getting into an online argument. Don’t say anything to suggest that you know the identity of the commenter. You might
The New World of Apps

Practitioners need to be prepared for the growing impact on practice.

The rise in consumers who use smartphones and tablets has been accompanied by an increase in the development and use of mobile applications. Better known as “apps,” they help consumers and health care professionals gain access to information when and where they need it.

Increasingly, people are also using apps to help manage their health and wellness. For example, some apps let users monitor the number of steps they take daily and record food intake to determine calorie totals.

The growing trend presents new opportunities for psychologists to connect with patients through mobile apps in ways that could supplement the therapeutic relationship and provide additional support to patients. At the same time, this new world also requires that providers be educated and aware of the rewards and potential problems with using apps.

This article highlights several important considerations. The overarching issue of compliance with the Health Insurance Portability and Accountability Act (HIPAA) is discussed in the sidebar on page 10. Beyond HIPAA, the following questions and answers address additional considerations related to using apps for your practice and with your patients as an adjunct to treatment.

What information does the app collect?

Health care professionals and consumers can go to the “app store” for their specific device and download many apps for free or purchase. When you are looking at apps and before you download one, you often get to see what types of information the app may collect on its own (separate from the data that you or a patient would enter).

When downloading an app on an Android device, a screen will pop up that displays the “permissions” you grant the app when you install it. In order to complete the download, you must hit OK to accept the permissions. Many apps will display a broad array of permissions, such as “your personal information” or “network communications.” It is important to look at the fine print under these categories to determine the extent of information an app may be able to collect from your smartphone or tablet—such as reading your contact data or your web browser’s history.

While using apps may expose you to potential privacy intrusions, it is important to balance the benefits you may get from the app against the potential privacy risk. It is not logical to avoid downloading apps altogether; however, it is important that you make sure the app truly requires the permissions requested. For instance, an app that works like a dictionary to provide information on different mental health diagnoses is unlikely to require the ability to send text messages.

If you become concerned about an app you already have downloaded, keep in mind that most devices will allow you to access the permissions areas of your apps through your menu screen. Take a look at the apps you have downloaded and, if any one concerns you, simply uninstall it from your device.

How do I keep the app secure?

In order to be user-friendly and convenient, some applications will save your login information so that you do not have to log in to the app every time you want to access it. But this makes it easy for anyone gaining access to your phone or tablet to also possibly gain access to HIPAA-protected information. It is important to make sure that, for any app that may access protected health information (PHI), the settings require you to provide login credentials each time you enter the app.

If your app will collect or transmit patient information, the best ways to protect mobile devices from breaches are to have them password-protected and encrypt them in accordance with HIPAA’s technical standards. Under the breach notification rule in HIPAA, if a mobile device’s encryption meets HIPAA standards and is lost or stolen, then there is no breach and the patient(s) do not have to be notified. More information on breach notification standards is available at www.apapracticecentral.org/update/2014/10-23/hipaa-breach.aspx.
Another way to protect mobile devices is to install a remote wiping/disabling program. Such a program allows users to quickly clear and disable a lost or stolen mobile device, which may prevent or reduce the likelihood or magnitude of breaches.

What apps should be considered?

There are countless available apps that may be useful for your practice. Some basic apps that you may want to consider if you are using a smartphone, tablet or mobile device to send or receive patient PHI are:

• **Locator app**
  These apps help locate your phone if it is lost or stolen. They can be particularly beneficial if you have lost your phone or tablet in your office or car since these apps can help prevent your having to wipe the phone clear of all data. This functionality could save you considerable time because you will not have to recreate or restore your data later.

• **Remote wiping application**
  Many of the phone platforms (Apple and Android) offer some type of remote wiping capability. This kind of application will allow you to remotely delete all information on your phone should it be stolen or lost.

• **Encryption application**
  There are many cloud-based applications you can use to encrypt the data that is being transferred to and from your device. Even so, you also need to protect information that is downloaded or resides on your device itself. Using an encryption app can be helpful if you download any PHI to the device itself. The cost associated with encryption apps varies and may involve a one-time or monthly fee.

• **Recordkeeping app**
  Note-taking or recordkeeping applications that meet HIPAA requirements for encrypted data may be a useful option for many psychologists. These apps allow psychologists to take notes and potentially scan images into files that can be backed up and organized by patient. Such apps can be particularly useful for those psychologists who work in rural areas or those who use tablets in their practices. Many of these applications have a fee associated with them. One application that psychologists may want to research is InsightNotes (www.insightnotes.com). It is important to note that this app is available only for the iPad at this time. If you are utilizing an electronic health record (EHR), a separate recordkeeping app is not necessary; see the next bullet point.

• **Apps that connect tablet/smartphone to your EHR or office management software remotely**
  Many EHR and office management systems will have an application that can be used in conjunction with the software on your desktop computer or laptop. These applications will allow you to access your EHR or office management software from remote locations if necessary or in emergencies. Some EHR systems that may be useful to research are: Office Ally, Therapy Notes, iCANotes and Valen.

Why might I want to use apps to supplement my practice?

Certain apps have been developed for use in conjunction with therapy or treatment with a medical or mental health professional. Two such examples are PTSD Coach and CPT Coach (CPT in this case refers to Cognitive Processing Therapy), both of which were developed by the Department of Veterans Affairs (VA). The VA has been leading the way in developing mobile apps that merge clinical and patient-oriented mobile health.

• **PTSD Coach** provides the consumer with resources meant to be used together with professional treatment. These resources include information on post traumatic stress disorder (PTSD) and treatments, tools for the patient to track symptoms, tools to help consumers handle stress symptoms, and links to support. This app and its resources are a supplement to the treatment that the consumer receives from a health care professional and can

*The use of the remote wiping application and the encryption app can ensure that if you suffer a breach, such as the loss or theft of your smartphone or tablet, you will be spared the trouble and potential embarrassment of having to notify your patients and the US Department of Health and Human Services about the breach as required by HIPAA.*

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**APPS BY THE NUMBERS**

Nielsen data from 2014 shows that U.S. smartphone users 18 and older spend 65 percent more time using mobile apps than they did two years earlier. The average amount of time spent using apps during a month had increased to just over 30 hours. Adults aged 24 to 44 use the greatest number of apps – 29 – per month on average. However, 18 to 24 year olds spend the most time on apps – 37 hours per month.

Another report by Nielsen indicated that almost one-third of mobile phone users, approximately 46 million people, in the U.S. used fitness and health apps in January 2014.
be valuable when a patient is dealing with symptoms of PTSD but is unable to see his or her psychologist quickly.

- CPT Coach is a mobile app that serves as a companion to CPT therapy and is meant to assist the consumer and provider as they work through the CPT treatment manual. Neither CPT, nor this application, is a self-help tool. CPT Coach is geared toward patients with PTSD and includes features such as the ability to track symptoms of PTSD, tools to keep track of tasks assigned by a psychologist between sessions, homework assignments and worksheets that can be completed between sessions and a reminder system for appointments.

The National Center for Telehealth and Technology is another source of apps that can supplement the therapeutic relationship. Two examples of apps from this source include:

- T2 Mood Tracker, available through both Apple and Android, includes a full range of mood scales. Consumers can rate their moods and the results will show in graph form. They can also generate a report allowing them to share the results with you.

- Tactical Breather, also available through both the Apple and Android platforms, was developed to help the consumer gain control over psychological and physiological responses to stress.

It is important to note that apps currently on the market are not intended to supplant therapy. Rather they can be useful tools to supplement the therapeutic relationship and provide extra feedback to the consumer and health care professional about what is happening between treatment sessions.

A threshold question is whether you need to make sure that an app claims to be Health Insurance Portability and Accountability Act (HIPAA)-compliant. When you are learning about new apps, the app store is always a good place to look. There you will find information about how the apps works, what the interface looks like and if it is HIPAA-compliant – which typically means that the data is encrypted and/or the application locks after a period of inactivity.

As an important rule of thumb, an app should be HIPAA-compliant if you are going to use it in your practice to store or transmit patient protected health information (PHI). HIPAA defines PHI as information that:

- relates to the physical or mental health condition of a patient, providing health care to a patient or payment for the patient’s health care;
- identifies the patient or could reasonably be used to identify the patient; and
- is transmitted or maintained in any form or medium.

HIPAA applies to covered entities that use or share patients’ PHI. Covered entities include health care providers and health plans that electronically conduct certain transactions such as submitting billing claims. Importantly, HIPAA does not apply to health care consumers.

Since patients are not covered, HIPAA compliance is not mandated for apps that a patient uses, even if the patient submits data to the app. However, once a psychologist receives that information from the app, the PHI becomes part of the psychologist’s files and subject to HIPAA protection.

THE OVERARCHING ISSUE OF HIPAA COMPLIANCE

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HIPAA applies to covered entities that use or share patients’ PHI. Covered entities include health care providers and health plans that electronically conduct certain transactions such as submitting billing claims. Importantly, HIPAA does not apply to health care consumers.

Since patients are not covered, HIPAA compliance is not mandated for apps that a patient uses, even if the patient submits data to the app. However, once a psychologist receives that information from the app, the PHI becomes part of the psychologist’s files and subject to HIPAA protection.

Useful apps might include those that allow patients to record their mood, exercise data and biometric information, to look up information about illnesses or diseases, and to research medication side effects. Additionally, there are apps that may collect more sensitive information from the patient, such as information on substance use. For example, an app may allow for the patient to input information related to alcohol consumption such as problem drinking behavior triggers (being near a local bar, for example) and send a message through the app to the patient and/or treating provider if the patient is near a trigger area.

Given the sensitivity of information a user may input, practitioners should discuss privacy issues with the patient related to using apps. If a patient wants to utilize an app that asks for sensitive information related to substance abuse, for example, practitioners should consider discussing who may have access to that information and where that information may go. Further, be mindful that many apps that store contact information and photos use cloud-based storage systems which recently have come under scrutiny for not being as secure as they were once considered.

THE TAKEAWAY: When it comes to apps that store PHI, it is good practice to generally encourage your patients to use only HIPAA-compliant apps. But keep in mind that patients may find it beneficial and worth the potential privacy risk to use certain apps that are not HIPAA-compliant.
How can I learn more about an app I may want to use or recommend?

If a provider wishes to use or recommend any apps to a patient, it is important to try to discern if the app has undergone any specific vetting process.

The use of behavioral health applications as an adjunct to therapy is an emerging field, and there are limited resources that detail the app development and validation processes. The most rigorous of these processes are presently being funded by the federal government (several may be found by searching clinicaltrials.gov) and undertaken by various research institutions.

Meanwhile, practitioners can talk with colleagues about apps they may use to supplement therapy with their patients, read relevant research about mobile applications and therapy, and research different apps available through app stores to determine if they would be useful for you or your patient.

There are many lists of available apps. For example, the federal government has several different agencies that provide information on mobile applications. Additionally, the American Psychological Association (APA) has developed a number of apps that help practitioners access useful research, journals and articles. See the accompanying sidebar about APA and other resources.

PLEASE NOTE: Legal issues are complex and highly fact-specific and require legal expertise that cannot be provided by any single article. In addition, laws change over time and vary by jurisdiction. The information in this article does not constitute legal advice and should not be used as a substitute for obtaining personal legal advice and consultation prior to making decisions regarding individual circumstances. Further, the service providers and products mentioned here are provided simply as examples and do not constitute endorsements by the APA Practice Organization. There are other similar products and services available that are not identified in this article.

RESOURCES


VA National Center for PTSD. The Department of Veteran’s Affairs has developed treatment companion apps that may be useful with mental health consumers. 1.usa.gov/1wpKb8L

HHS/OCR Guidance on mobile devices. The Department of Health and Human Services and the Office for Civil Rights provide many helpful resources for maintaining privacy and securing information on mobile devices. bit.ly/HHSOCRmobile

USA.gov Federal Mobile Apps Directory. USA.gov provides a listing of all apps that are available through governmental agencies. Many of these apps may not be useful for mental health providers. However, HHS, the American Red Cross and the Centers for Disease Control all have apps that may be useful, depending on your practice. www.usa.gov/mobileapps.shtml

US Food and Drug Administration. The FDA provides guidance related to mobile medical apps and medical devices. The FDA website includes useful resource information. 1.usa.gov/1yHRuHV

National Center for Telehealth and Technology (T2). T2 is closely aligned with the Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury (DCoE) and the U.S. Army Medical Research and Materiel Command. The Center specializes in applications for military, veterans and their families; however, many of the apps listed here could be utilized with your own patients. t2health.dcoe.mil/products/mobile-apps

iMedical Apps is an independent online medical publication for medical and mental health professionals interested in mobile technology and health care apps. Here you will find forums for discussion, listing of different types of apps and articles to review. www.imedicalapps.com/
In the eight years since the 2007 introduction of the initiative now known as the Physician Quality Reporting System (PQRS), the program has changed fundamentally. The original iteration was a voluntary reporting program that paid eligible health care professionals, including psychologists, bonuses simply for participating. By contrast, the current PQRS imposes payment penalties for all Medicare charges on providers who do not participate successfully – in other words, who fail to report quality measures on services provided to Medicare beneficiaries. For example, eligible providers who fail to report appropriately in 2014 will face a two-percent payment reduction in 2016 (see sidebar on this page).

Another aspect of the evolution in PQRS relates to the mental health measures available for reporting. There was only one such individual measure when the program began. In 2015, there will be twelve individual measures related to mental health care as well as a measures group (a set of clinically related measures) on dementia available for reporting.

In essence, PQRS represents a move toward tying Medicare payments to improved patient outcomes.

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**THE SHIFT FROM BONUS PAYMENTS TO PENALTIES**

Psychologists who participate in Medicare can still receive a 0.5 percent bonus payment for all Medicare payments by participating in PQRS for the 2014 reporting year. Bonus payments apply for the year in which Medicare services are delivered. However, 2014 marks the final year of bonus payments under the program.

The shift in PQRS from giving bonuses to applying penalties has necessitated a two-year time lag between the reporting period and imposition of the penalty. In 2015, CMS will apply a 1.5 percent payment reduction to all Medicare payments for providers who failed to successfully report PQRS data in 2013. Providers who do not successfully report for 2014 face a 2 percent penalty in 2016.

Practitioners have until February 2015 to submit claims with a reported measure for a service that was provided during calendar year 2014.
Basics of PQRS participation

There is no application or registration process involved in PQRS participation. You must be enrolled as a Medicare provider under the ‘clinical psychologist’ designation and have a national provider identifier (NPI) number. Then you can begin reporting on services provided on or after January 1 of the current year.

There are three ways to participate in PQRS: claims-based reporting; in a registry approved by the Centers for Medicare and Medicaid Services (CMS); or via an electronic health record (EHR).

Claims-based reporting is done by adding Measures Codes and Quality Codes to the electronic or paper claim form that you currently submit to Medicare. Detailed instructions for selecting and using measures and quality codes are available in the 2014 PQRS Individual Claims Registry Measure Specification Manual at go.cms.gov/1GIXQdv.

CMS has not made changes to the claims-based reporting method for 2015, but the agency states in the 2015 Medicare fee schedule final rule that it will not continue to support this reporting method indefinitely. CMS has not specified a date other than to say that claims-based reporting for PQRS will be eliminated in future rulemaking.

Eligible professionals (EPs, either as individuals or as a group practice) may also satisfy the requirements for PQRS by reporting quality measures data to a participating registry, which collects and transmits data to CMS. The APA Practice Organization (APAPO), in collaboration with Healthmonix, has launched a registry available to all eligible mental health professionals. For more information, see the article on page 15. PQRS registries must meet criteria set by CMS such as having secure methods for data transmission and providing feedback to registry participants. More information on registry reporting is available at go.cms.gov/1wLWF8C.

Finally, eligible professionals and group practices can submit quality measure data directly from their own EHR system, provided it is considered certified EHR technology (CEHRT), or through an EHR Data Submission Vendor which collects clinical quality data directly from the EP’s or group practice’s CEHRT and submits it on their behalf. More information on EHR reporting is available at go.cms.gov/1u2vP1F.

In order to successfully report for 2014 and 2015, EPs must submit data on nine measures, which must fall into at least three out of six categories called domains. There are six available domains identified by the National Quality Strategy (NQS) that represent federal priorities in the effort to improve health and the quality of health care.

The measures most applicable to psychologists are in the following domains:

**PATIENT SAFETY**
- No. 130: Documentation of medication
- No. 181: Elder maltreatment screen and follow-up plan

**EFFECTIVE CLINICAL CARE**
- No. 9: Antidepressant medication management
- No. 106: Adult MDD: Comprehensive depression evaluation
- No. 107: Adult MDD: Suicide risk
- No. 247: Substance use disorders: Counseling
- No. 248: Substance use disorders: Screening for depression
- No. 325: Adult MDD: Coordination of care of patients with specific comorbid conditions

**COMMUNITY/POPULATION HEALTH**
- No. 128: Preventive screening: BMI
- No. 131: Pain assessment and follow-up
- No. 134: Preventive care: Depression screening
- No. 173: Preventive care: Unhealthy alcohol use

What’s new in 2015

Several important changes to PQRS take place for the 2015 program year, including:

**Available measures:** There are two new measures in 2015 on which psychologists can report: Antipsychotic Medications for Individuals with Schizophrenia (No. 383), which falls in the Patient Safety domain, and Follow-up after Hospitalization for Mental Illness (No. 391), which applies to children ages 6 and older as well as adults and will satisfy...
the domain for Communication and Care Coordination. CMS will not allow claims-based reporting for these new measures; they can only be reported through a registry or EHR. A complete list of measures is available at www.cms.gov/pqrs.

In addition, measure 107, Adult Major Depressive Disorder (MDD): Suicide Risk Assessment, will be reportable only through electronic health records in 2015.

Further, for 2015, CMS is eliminating three measures previously reported by mental health providers: #106 Adult Major Depressive Disorder (MDD): Comprehensive Depression Evaluation: Diagnosis and Severity; #247 Substance Use Disorders: Counseling Regarding Psychosocial and Pharmacologic Treatment Options for Alcohol Dependence; and #248 Substance Use Disorders: Screening for Depression Among Patients with Substance Abuse or Dependence.

Cross-cutting measures: For 2015 eligible providers will be expected to report nine measures across three domains. For those participants who have face-to-face encounters with patients, one of the nine measures must be a cross-cutting measure. Cross-cutting measures are existing PQRS measures that reflect improvement in patients’ functional status. Measure No. 134 (Preventive Care and Screening; Screening for Clinical Depression and Follow-up Plan) is an example of a cross-cutting measure.

Measure-Applicability Validation (MAV): Those who report fewer than nine measures across three domains will be subject to Medicare’s Measure-Applicability Validation (MAV) process. The MAV process examines whether the measures reported are part of a clinically related “cluster,” meaning a group of measures applicable to a particular health problem. Only the cluster on depression contains several measures likely to be used by psychologists.

Eligible professionals can still report successfully if the MAV process does not find other measures that the participant could have used in reporting. The APA Practice Organization (APAPO) expects that many psychologists will need to go through the MAV process based on their patient populations and the limited number of services they provide to Medicare beneficiaries. More information on the MAV process is available at www.apapracticecentral.org/update/2014/04-24/pqrs-track.aspx.

It’s not too late.

There’s still time to report PQRS measures for 2014 if you register online by January 31, 2015.

apapo.pqrspro.com

The Quality Improvement Programs section of APAPo’s Practice Central website contains the latest information for 2014 and 2015 for both new participants and those who are already reporting in the program. Resources include a list of measures available for 2014 and 2015, a quick reference guide that links applicable codes to each measure, frequently asked questions and video tutorials on participating in PQRS. (www.apapracticecentral.org/reimbursement/improvement/index.aspx)

The Centers for Medicare and Medicaid Services page on the Physician Quality Reporting System go.cms.gov/Vkaa8V

Certified Health IT Product list (CERHT) oncchpl.force.com/ehrcert/ehrproductsearch
APAPO Launches New PQRS Registry

This new service is designed for psychologists and other mental health professionals.

Practicing psychologists now have a new option for participating in Medicare’s Physician Quality Reporting System (PQRS). The APA Practice Organization (APAPO) – in collaboration with Healthmonix, a leading health care data and technology company – launched a PQRS registry in December 2014 to help psychologists and other mental health professionals successfully report quality measures through the PQRS program.

The APAPO PQRS PRO registry is accessible online at apapo.pqrspro.com.

All mental and behavioral health professionals eligible to participate in PQRS can register online at a cost of $199 per provider for each reporting year, with discounts for group practices of five or more providers. The reporting period is the calendar year when the services for which the measures are being reported were furnished. For example, the 2014 reporting period is for services provided between January 1, 2014 and December 31, 2014.

Currently, there are three ways to participate in PQRS: claims-based reporting; through a registry approved by the Centers for Medicare and Medicaid Services (CMS); and electronic health record submission. However, in the Medicare final rule on the 2015 fee schedule, CMS indicates that it will not continue to support claims-based reporting for PQRS indefinitely.

Though many eligible professionals prefer claims-based reporting, they have higher rates of success when reporting through registries and electronic health records. CMS statistics show that claims-based reporting has a 56-percent success rate, while registry reporting has a 96-percent success rate. Healthmonix had a better than 99-percent success rate in 2013 with other partner organizations.

Signing up for the registry is an important step for psychologists seeking to protect their Medicare payments for 2014. By successfully reporting on PQRS measures for the 2014 reporting year, psychologists can earn a 0.5-percent bonus on their entire 2014 Medicare charges plus avoid a 2.0-percent penalty in 2016.

In order to report data for 2014 through APAPO PQRS PRO psychologists must enroll on the registry’s website by January 31, 2015, and submit their 2014 reporting data by February 15, 2015.

“As the program becomes more difficult to navigate, we’re concerned that practitioners who use claims-based reporting will face a Medicare payment penalty. We want to help our members succeed in PQRS by offering this registry.”

– Katherine C. Nordal, PhD
APAPO Executive Director

Information about how to use APAPO PQRS PRO is available on the registry website, including tutorials to guide participants through the reporting process. For anyone needing additional support the website also lists contact information for Healthmonix. The APAPO PQRS PRO system will automatically calculate and validate your data to ensure successful submission.

Even if you have already filed claims to Medicare and received payment for your services without reporting PQRS data, you can still report data through a registry to potentially receive the payment bonus for 2014 and avoid the 2016 payment penalty. If you already began submitting PQRS data in 2014 through claims-based reporting, you can still participate through the APAPO PQRS PRO registry as well. Just be aware that CMS will not combine the data from the two reporting methods. CMS will examine both sets of data and determine if one of the two meets the PQRS requirements for successful reporting.

According to APAPO Executive Director Katherine C. Nordal, PhD, APAPO PQRS PRO helps practitioners faced with the growing complexity of PQRS. “As the program becomes more difficult to navigate, we’re concerned that practitioners who use claims-based reporting will face a Medicare payment penalty,” says Dr. Nordal. “We want to help our members succeed in PQRS by offering this registry.”

For additional information on participating in PQRS, visit the Quality Improvements Program section of APAPO’s Practice Central website at www.apapracticecentral.org/reimbursement/improvement/index.aspx. For more on what’s new for PQRS in 2015, see the article on page 12.
Many psychologists enter the profession to help people in need. Discussions among colleagues about treatment approaches for various disorders can be lively and interesting. When the conversation turns to the business of running the practice and financial matters, however, eyes may glaze over. Though not as engaging as clinical matters, financial management issues nonetheless are key to ensuring practice solvency.

This article explores two critical issues for financial success: protecting cash flow and preventing internal fraud or theft.

**Ensuring cash flow**

Money is a sensitive topic that makes many people uncomfortable. As emphasized by the field of financial psychology, thoughts, feelings and values affect the way people handle money and make financial decisions.

Unless you are volunteering or offering pro bono services, clients and patients (or their parents or guardians) are responsible for paying you for the services you provide. Too often, unfortunately, practitioners find themselves owed thousands of dollars that they might never collect.

As difficult as it may be for some practitioners, talking with your clients and providing clear information about financial policies and procedures is vital for the financial health of your practice. If you have a new client information packet, for example, it should include your policies and procedures related to financial matters such as scheduling and cancelling appointments, no-shows and the forms of payment you accept, including your participation in any third-party insurance.

Openly discuss with patients your billing procedures and the collection process you may use in the case of late and missed payments. According to Standard 6.04(e) of The Ethical Principles of Psychologists and Code of Conduct, this discussion should be held as early as possible in the professional relationship. Ideally, these financial topics should be addressed during the initial informed consent process, and not after payments have started trickling in late.

The APAPO HIPAA for Psychologists product (available online at www.apa.org/education/ce/1370022.aspx) and the Trust (www.trustinsurance.com/applications/inf.doc.pdf), have language about billing and payment in informed consent templates known as the psychotherapist-patient agreement; their language covers the first five items in the list below. Review your own forms to see if they include the following items:

- Your fee for the services you are or will be providing
- Who is responsible for payment
- When payment is due
- Who is responsible for submitting for insurance reimbursement
- The process for collecting unpaid balances, including but not limited to contacting collection agencies and attorneys
- The process for dealing with bad checks or declined credit cards, including fees charged (check your state laws regarding limits to fees); and
- Circumstances that may lead to patient transfer/termination of care

APA Ethics Code Standard 3.12, Interruption of Psychological services, states, “Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist’s illness, death, unavailability, relocation or retirement or by the client’s/patient’s relocation or financial limitations” (bold emphasis added).

Psychologists can often anticipate financial limitations – for example, by learning that a patient is about to lose his or her job – and may be able to identify a temporary payment plan to which both the patient and psychologist can agree. Examples might include using a sliding fee scale until the patient’s financial situation improves or arranging for a monthly repayment plan.

When a patient refuses to pay after your attempts to secure payment, you may decide to discontinue your services. If
you get to this point, keep in mind the limitations stated in the APA Ethics Code; Standard 10.10 specifically addresses situations where therapy is terminated. Psychologists should take care to protect the client’s or patient’s welfare by making appropriate referrals to other sources of care. Practitioners should also be mindful of relevant state laws and regulations and comply with laws regarding termination of care. See the article, Transitions and Terminations: Legal and Ethical Issues When Discontinuing Treatment, from the Spring/Summer 2014 issue of Good Practice for additional information.

Psychologists often worry if taking a patient to collections or court over unpaid bills might result in a licensing board complaint. Indeed, the risk of a complaint can be elevated if you initiate action to collect past due bills. When a patient has not paid you after several attempts to collect, you need to weigh the potential benefits of pursuing collection against the likelihood of action by the patient. Your insurance malpractice carrier and/or an attorney can help you decide whether to pursue collection. Having a discussion with your patient about financial issues at the beginning of the therapeutic relationship should help reduce surprises and hard feelings by the patient if you find it advisable to take collection action.

Theft and fraud prevention
Theft and fraud is big business. Unfortunately, employees contribute to part of that business. According to the Association of Certified Fraud Examiners (ACFE), 5 percent of all revenues are lost annually as a result of internal fraud. The association’s 2014 “Report to the Nations on Occupational Fraud and Abuse” listed statistics about fraud around the globe:

- The median duration of theft before discovery was 18 months.
- The median loss to employers was $145,000.
- 87 percent of offenders had no criminal record.
- 92 percent of the cases included at least one behavioral red flag.
- Having internal controls in place reduced the incidence of fraud.

In its report, ACFE also revealed that most employees who commit fraud demonstrate several red flags. Not every person who demonstrates the following characteristics is worthy of suspicion. But you should be aware of changes in behavior, or a combination of these factors, especially if you have noticed a change in your financial picture:

- Living beyond means/financial difficulties
- Unusually close relationship with vendor or customer
- Control issues – for example, unwillingness to share job duties and refusal to take vacations

A good accountant can be a trusted business advisor. To help build that trust, be open and honest with your accountant and make sure he or she is intimately familiar with the business operations of your practice. Knowing your professional and financial goals will allow your accountant to offer concrete suggestions for how to achieve these goals.

Your accountant contributes to your practice success by helping you create a solid business plan, take full advantage of your practice’s strengths, use your resources more effectively, and manage revenues and expenses in a way that improves your bottom line. He or she also can help you analyze your business operations, identify problems and suggest possible solutions. And if you are thinking about selling your practice, doing estate planning or applying for a business loan, your accountant can assist you in determining the value of your practice.

- Divorce/family problems/instability in life circumstances
- Irritability, suspiciousness or defensiveness
- Addiction problems
- Complaints of inadequate pay
- Past employment-related or legal problems

If you are in the position to make hiring decisions or provide input to the hiring process, here are some steps you can take to reduce risk to the practice.

1. Make smart hiring decisions. Though it may seem obvious, careful screening of prospective employees can help avoid surprises. Do your homework and verify information provided by applicants. According to a 2014 survey conducted by Career Builder, 58 percent of hiring managers said they have caught a lie on a resume.

Common lies include embellished skill set, overstated job responsibilities, and unfactual dates of employment, job title, academic degree and employment history.

Take time to check references. Call former employers to verify dates of employment, job title and responsibilities. Confirm any listed academic credentials or awards. The few minutes you take to verify this information could save you a lot of work and money in the long run.

Be careful to check federal laws as well as laws in your jurisdiction about conducting a credit or criminal background check. Even if the employee is being hired
to handle finances, employers must follow rules before engaging in this process. The Federal Trade Commission and the Equal Employment Opportunity Commission created a joint publication to help employers through the process, which is available online at 1.usa.gov/1yj7H2l.

Laws regarding the use of credit reports in employment settings vary by state. Several states prohibit or restrict the use of credit reports in hiring decisions. States that do allow this practice have requirements, such as prior written consent and adverse notice provisions. If you plan to use credit history and/or criminal background checks in your hiring process, check with an employment attorney in your state for advice.

2. **Set up internal controls.** If you work in or run a small practice, it can be difficult to allocate responsibility over finances among several employees. Leaving one employee in charge of all financial matters makes it easier for that person to misappropriate funds. Here are some tactics you can use to make sure that money is not being embezzled or misappropriated:

- You should not allow the same person to collect and deposit money. Ideally, one person collects the money, another person records it and a third person deposits it.
- Conduct random audits of your accounting software. Ask the bookkeeper to send you several different months of records and compare them to the bank statements.
- Hire an outside firm to run payroll.
- Hire an outside firm or have your accountant/financial consultant conduct an annual review of your books.
- Avoid delegating check-writing authority. If you have to do this, do not authorize payment of bills over a certain amount without your prior approval.
- Know all passwords to accounts so that you can spot check.

3. **Regularly review financial statements.** Stay on top of the flow of income and expenses from month to month, and compare to prior years. Frequent review will alert you to abnormalities in cash flow.

4. **Be aware of changes in employee behavior,** such as the red flags mentioned earlier. Trust your instincts and do more investigation if an employee is exhibiting suspicious behavior.

By maintaining a hands-on approach to your finances, you are more likely to avoid situations of nonpayment for services and employee theft. But if you find yourself in a situation that requires action, consult with your certified public accountant (CPA; see sidebar on page 17 about using an accountant) or other financial consultant and/or a knowledgeable licensed attorney in your state.

**PLEASE NOTE:** Legal and financial issues are complex and highly fact-specific and require expertise that cannot be provided by any single article. In addition, laws change over time and vary by jurisdiction. The information in this article does not constitute legal or financial advice and should not be used as a substitute for obtaining personal legal or financial advice and consultation prior to making decisions regarding individual circumstances.
Requests for Test Data and Materials: Respond with Care  continued from page 5

For purposes of continuity of care, further assessment or a second opinion, you can offer to send all documents relating to the testing (including the test report, test data and test materials) to another qualified mental health professional, after obtaining the patient’s authorization. This type of release allows you to share potentially relevant clinical information while maintaining test security.

One form of advance planning is having thorough informed consent procedures. In complex assessment situations (such as those involving third parties and/or potential litigation) it is especially important to set appropriate expectations about roles, confidentiality and access to information.

As mentioned at the end of the Definitions section, another helpful form of advance planning is keeping patients’ responses to test questions and stimuli completely separate from test materials (for example, on a separate sheet of paper) if possible. When responses are recorded separately, you avoid questions about test materials being converted to test data under the Ethics Code. More importantly, you avoid the nuisance and difficulty of whiting out test questions.

Conclusion

Questions about the release of test information can be complicated, but some advance planning and a careful review of the relevant rules and guidance will allow you to resolve most situations.

If you are nonetheless unable to resolve a request for test information in a way that satisfactorily addresses the clinical, ethical and legal issues discussed above, you should seek consultation, for example from your malpractice insurer or an attorney in your state. Members can also contact the APA Practice Organization’s Office of Legal and Regulatory Affairs Department at praclegal@apa.org, 202-336-5886 or 800-374-2723.

*The terms “patient” and “client” may be used interchangeably in this article to refer to recipients of psychological assessment services.

Please note: Legal issues are complex and highly fact-specific and require legal expertise that cannot be provided by any single article. In addition, laws change over time and vary by jurisdiction. The information in this article should not be used as a substitute for obtaining personal legal advice and consultation prior to making decisions regarding individual circumstances.

References and Resources


Managing Fallout from Online Reviews continued from page 7

simply wish to note that your practice follows and makes patients aware of standard procedures for addressing any complaints that may arise during treatment.

For example: I read the review complaining about my service. My professional Ethics Code and the laws governing psychology generally do not allow me to respond to individual complaints online because I cannot publically acknowledge whether I have seen a particular patient. I must protect the confidentiality of each person who comes to see me. I encourage patients to talk with me privately about any concerns they have. Most of my patients have told me that they are very satisfied with my services (if accurate). Please see my website [provide link or web address] for more information.

Can I take legal action?

People who offer opinions on review websites generally have broad protection under the law. Unless you can prove that the statement is false and that it has caused you harm, you have little chance of prevailing in a civil lawsuit.

People who offer opinions on review websites generally have broad protection under the law.

Even if you have a good case, taking legal action might not be the best course. If the patient has limited financial means, you will not succeed in collecting damages or attorney fees. And if you gain the reputation of being a litigious practitioner, it may harm efforts to build your practice. A win for principle’s sake alone might be hard to justify if you cannot collect enough to pay for your lawyer, and you get a bad reputation to boot.

Similarly, suing the website is not typically an option. Websites are under no obligation to remove postings without a court order, and most have language in the user agreements that places responsibility for the content of a review on the poster. The website is not in the business of mediating disputes and generally will not investigate your claim that the commenter made false statements.

If you suspect that the “patient” is actually a competitor, however, you do have some recourse. Most review websites prohibit the practice of competitors posing as customers and writing bad reviews. They typically will remove a posting without court order once they can verify that the post was made by a competitor.

Although filing a lawsuit is not typically the best approach, there are circumstances that might warrant this response. Consult with an attorney and your malpractice insurance carrier to discuss your options and potential repercussions.

The best defense is a good offense

You can mitigate the impact of negative reviews and ratings by being proactive with your online – and offline – presence. Create an electronic footprint and make it positive, professional and easy to find. Here are several tactics to assist with this strategy:

- Invest in a professional website. This is your first impression on most patients, so make it a good one!
- Consider structuring your website to accept comments. Perhaps people will go there before using a review website to voice concerns. You also have more control over what is published.
- Ask colleagues who refer to you to write positive reviews about your practice and include these reviews on your website.
- Google yourself and then set up a Google Alert to monitor online activity. You will receive an alert when your name is mentioned online. This helps keep you apprised and enhances your ability to address negative feedback quickly.
- Publish. Write articles for your local paper, contribute to blogs, or submit pieces for your state psychological association or volunteer organizations. You will likely show up on their respective websites, which will boost your presence during an online search.
- Get involved in the community. Participation in civic and community organizations (Rotary, Kiwanis and Chamber of Commerce, for example) allows people to know you outside of the confines of the online world. False or questionable accusations about you are unlikely to gain traction when a lot of people know you personally.

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My experience with TherapyNotes this past month has been fantastic!
Firstly, the system is easy to navigate, thorough, flexible, and extremely clinically intuitive. Secondly, technical and customer support has been efficient, fast, and very personal. I am leaving another EHR system for TherapyNotes... gladly. I'm very happy that you've created such a quality product. Thank you!

Dr. Christina Zampetti, FT, Licensed Clinical Psychologist

Just want to say that I truly love the system!
It takes all the guesswork out of tracking paperwork. Being able to schedule appointments and then have the system take over and track what's due for each client is wonderful.

Kathleen Bremer, PCG-3

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