



## **Position Statement on Confidentiality**

This document is based on ethical principles. The American Psychoanalytic Association endorses these principles for consideration by policymakers, legislative bodies, and third-party payers.

1. The right to privacy in health care must be expressly recognized and protected.
2. Confidentiality may be defined as an understanding between patient and analyst that the analyst will not disclose anything about the treatment to anyone else and will not take any action outside the treatment situation based on what he or she hears inside the treatment situation. It is a fundamental right of the patient and a necessary condition for the viability of the treatment.
3. Privacy and confidentiality are absolute preconditions for the responsible and effective conduct of psychoanalysis and psychoanalytic psychotherapy. As recognized by the United States Supreme Court in *Jaffee v Redmond*, “reason and experience” lead to the conclusion that protecting the confidentiality of communications between therapist and patient serves both the individual's private interests and the public good by fostering the provision of appropriate treatment. No patient in psychotherapy or psychoanalysis should be required to consent to the release of any information protected by the psychotherapist–patient privilege, either as a condition for receiving such treatment or as a precondition to insurance coverage of treatment that falls within the privilege.
4. We strongly oppose the development and use of a unique, universal health identifier on a national or regional basis. We strongly oppose the mandatory reporting of treatment contacts to a national, regional, or local health care database and believe such reporting would diminish access and be incompatible with treatment.
5. Privacy is the right of the patient, and confidentiality may be relinquished only with the patient's prior, noncoerced, informed consent. When such consent is obtained, the information released may be used only for designated, specific purposes with clear limits and with stated safeguards to prevent further dissemination. Release of information under these circumstances for a specific purpose should not require or be construed to imply waiver of the patient's total right to privacy and confidentiality.
6. When a patient's right to privacy conflicts with needs external to the treatment relationship, such as administrative, research, or technical requirements, patient confidentiality and privacy must take precedence. The analyst should use all legal means to safeguard confidentiality.
7. Clinical research is essential to the advance of mental as well as other health care and treatment. But without adequate safeguards for privacy and confidentiality, patients will not reveal and their caregivers will not record accurate information. This will be nowhere more evident than in the therapist/analyst–patient relationship. Any

gathering of identifiable mental health information for research purposes without patient consent would jeopardize both an individual's rights and that individual's welfare, as well as pose a greater than "minimal risk" to the subject. In those rare instances where personally identifiable treatment information is essential to research, there must be valid patient consent, and privacy and confidentiality must be protected. Researchers should obtain a certificate of confidentiality. Researchers should not maintain identifying information in a database beyond the specific research project for which they obtained consent.

8. Any and/or all settings in which clinical information is stored or maintained should have policies identifying those persons who may access that information and should have systems in place which restrict access to that information to such specifically authorized individuals. Patients have a right to know the identity of all persons and/or entities who have access to their clinical information; the identity of persons actually accessing such information should be recorded in approved logs. Identifiable information obtained during treatment encounters should not be entered into computer systems. Patients also have the right to know that information about them is being stored and the content.
9. Law enforcement officials should not be permitted to access treatment records in the absence of a compelling concern for public health and safety. Such access should in no event be permitted without a court order and notice to the affected patient, issued upon a showing of good cause and specific evidence of the threat to public health and safety necessitating access and establishing the inability of law enforcement to obtain the information sought from other, non-privileged sources. Any such order shall be as narrow in scope and content as possible, shall describe the portion of the treatment record sought and the name and title of the requesting person and agency, and shall specify those persons authorized to view the records in question. No one should be allowed to view records within the scope of the court's order until the issuing court has ruled on any claims of privilege raised by the holder of the records. No seized records shall be disseminated or retained in law enforcement files for purposes other than those specified in the court order authorizing their seizure.
10. The patient's treatment record will not be considered or used as a commodity in the marketplace and should not be made available for purchase or sale by any individual or entity.

*Revised September 1999.*