



Position Statement on Patient Control over Computerized Records

The American Psychoanalytic Association strongly supports the rights of psychoanalytic and psychotherapy patients to restrict their personal health information (other than minimally necessary administrative data) from being entered, stored, used or disclosed in networked electronic record keeping systems.

Requiring patients to authorize or give consent for their personal health information to be entered into a networked electronic system, whether such information is derived from psychotherapy or psychoanalysis evaluation or treatment, should not be a condition for patients obtaining or of clinicians providing psychotherapy or psychoanalysis. Personal health information derived from psychotherapy or psychoanalysis evaluation or treatment may be entered into computerized electronic networks only if accompanied by the patient's non-coerced informed consent or authorization.

Rationale and Discussion

The intent of this position statement is to heighten members' awareness of, and develop a policy to minimize the potential negative impact of, networked electronic information systems on psychotherapy and psychoanalysis.

This position statement aims to address this serious issue by establishing a policy that will enhance and preserve a robust patient privacy as a necessary cornerstone of effective and ethical psychodynamic psychotherapy and psychoanalysis.

Historically, APSAA's ethical standards and advocacy efforts for medical record privacy are based on a fundamental premise: Effective psychotherapy and psychoanalysis depend on the patient's ability to openly communicate with his/her analyst or therapist about intimate personal issues, thoughts, memories and feelings. This requires trust, made possible by the patient's expectation of confidentiality. The latter was affirmed by the US Supreme Court in its landmark [1996 Jaffee v. Redmond decision](#) (Jaffee v. Redmond, 518 U.S. 1, 116 S.Ct. 1923 (1996), which recognized the importance of maintaining the psychotherapist-patient privilege as a necessary precondition for effective psychotherapy. Networked computerized record systems that now exist within the health care system have an immense capacity to disperse private health information far beyond the patient's or treating professional's control, and there is evidence that these systems are not secure. Although the [HIPAA Privacy Rule](#) provides guidelines that cover uses and disclosures of personal health information, it was not intended to be a 'best practices standard,' was not intended to override more stringent state law privacy protections, does not include or recognize the psychotherapist-patient privilege as defined in Jaffee v. Redmond and was never intended to supplant standards of professional ethics. Damaging information may still fall into the hands of employers, private investigators, insurance data pools (affecting future insurability), law enforcement agencies without due process, and others who may abuse the information and harm the patient. Recent legislative proposals to establish a nation-wide electronic medical information network will further erode patient privacy, if enacted.

As has long been recognized in the U. S. Supreme Court's Jaffee v. Redmond decision, under conditions of eroded or uncertain privacy protection, patients will avoid or delay necessary care and the common

good will suffer. Absent strong privacy protections, psychotherapy or psychoanalysis, if obtained at all, will be compromised and effective treatment will be significantly weakened if not impossible.

Implications for HIPAA

The HIPAA Privacy Rule has two provisions that relate to this position statement: 1. Under the Rule, patients have the "right to request restrictions" on the use/disclosure of their protected health information. Further, the Privacy Rule has been interpreted by the Department of Health and Human Services to provide that the covered entity that holds the information retains the discretion to decide whether information should be disclosed. APsaA strongly urges psychotherapists/psychoanalysts to discuss this issue with their patients, and abide by patients' request to keep information out of a networked electronic system. 2. Second, the Psychotherapy Notes provision of the Rule establishes heightened protection for such notes, provided they are kept separate from the rest of the general medical record. To ensure that psychotherapy notes are only disclosed in accordance with the patient's express authorization (some exceptions specified in the HIPAA rule apply), these notes should not be entered into a networked general medical record.

This position statement was approved by APsaA's Executive Council on June 19, 2008.