

Ethics Article #3: Government Access

The final party knocking at your door would be the State or Federal government, usually taking the form of subpoenas, court orders, and the like. In the State of California, for example, the Legislature has passed laws, including the psychology licensing law which is found in the Business and Professions Code, and the courts enforce these. The various reporting requirements, from child and elder abuse to Tarasoff situations, have resulted from government deciding that, under certain situations, your door should be unlocked. Some law, specifically Evidence Code section 1024, allows psychologists to make certain disclosures if they *choose* to, such as to protect property or prevent a suicide.

The newest laws to affect psychology practice come from the federal legislation known as the Health Care Information and Portability Act (HIPAA) which contains over 1000 pages of often contradictory regulations. The most relevant rules affecting psychotherapy require that psychologists provide patients with written notice of privacy practices, with information as to how their Protected Health Information (PHI) will be handled and processed, and with special “Authorization” forms which take the place of the old “Release” forms.

The law could come a’ knocking at your door in friendly forms, i.e. your patient requests that you testify on their behalf in some sort of proceeding, or it come in unfriendly forms, i.e. by an attorney or a court that wants to hear about your patient. Various safeguards protect you from doing so, depending on the specific situation, but

these are not foolproof. Your ultimate protest, should you choose to do so, would be to resist to the point of contempt of court and then face possible jail time.

Before you pack your lunch for the Big House, remember that the new Ethics Code, like the old one, allows you to speak up in any legal proceeding and indicate that the Ethics code conflicts with the law. You should speak up loudly, where indicated, but always know how you can lose and what the costs will be.

- I. Intrusions originating from Government
 - A. Defining government: Federal, state, legislature, court precedent resulting from appeals court or supreme court decisions plus professional organizations.
 - i. From Section 1, General Standards. 1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority: If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority. *A disappointing conclusion; note how it allows adherence to the law without negative impact. We have become the New Informants.*
 - B. Ethics Code, as already considered.
 - C. Psychology Licensing Law
 - i. Eg, section 2918 of licensing law reads, "The confidential relations and communications between psychologists and client shall be privileged..."
 - ii. Psychologists can be disciplined, or lose their licenses, for violations of 2960(h) "willful, unauthorized communication of information received in professional confidence."
 - D. Section 1024, Evidence Code, defer to BF
 - i. Section 9, Test Data: 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*. 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 of confidential information under these circumstances 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.

- E. Medicare and related insurance legislation: Medicare audits.
- F. HIPAA requirements
- G. Child and elder abuse reporting
- H. Tarasoff and the duty to warn
- I. Certain Institutional Requirements