



Technical Report 07-05  
December 2007

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# **New Resources for Collecting Psychological Conditions Information**

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**BACKGROUND**

For some personnel security investigations, investigators must collect information regarding psychological conditions. In this report, issues related to collecting that information, particularly privacy concerns, and potential obstacles to collecting the information are discussed.

This report summarizes information about procedures personnel security investigators use to collect relevant mental health information, outlines the type of information needed, and describes current laws and professional guidelines related to the release of such information. In addition, we summarize the results of interviews with representatives of several stakeholder groups.

**HIGHLIGHTS**

We gathered input from stakeholder group representatives (e.g., investigators, mental health care facilities) and integrated it with reviews of relevant laws, guidelines and investigation procedures to identify areas of concern for collecting information about psychological conditions and strategies for addressing those concerns. Two professional organizations that represent the majority of mental health care providers were contacted to discuss developing relevant educational literature for their members to facilitate interactions between mental health care providers and personnel security investigators.

An exciting outcome of this research is a resource document developed by the American Psychiatric Association in collaboration with PERSEREC for stakeholders (e.g., investigators, psychiatrists, psychologists) to use to improve understanding and cooperation. The resource document was approved and published by the American Psychiatric Association and is available on their website.



## REPORT DOCUMENTATION PAGE

<b>REPORT DOCUMENTATION PAGE</b>			<b>Form Approved OMB No. 0704-0188</b>		
<p>The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p>					
1. REPORT DATE: 12-01-2007		2. REPORT TYPE Technical Report 07-05		3. DATES COVERED (From – To) March 2005 – October 2006	
4. New Resources for Collecting Psychological Conditions Information		5a. CONTRACT NUMBER:			
		5b. GRANT NUMBER:			
		5c. PROGRAM ELEMENT NUMBER:			
6. AUTHOR(S) Eric L. Lang Leissa C. Nelson Alissa J. Hayes		5d. PROJECT NUMBER:			
		5e. TASK NUMBER:			
		5f. WORK UNIT NUMBER:			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Defense Personnel Security Research Center 99 Pacific Street, Suite 455-E Monterey, CA 93940-2497		8. PERFORMING ORGANIZATION REPORT NUMBER PERSEREC: Technical Report 07-05			
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) Defense Personnel Security Research Center 99 Pacific Street, Suite 455-E Monterey, CA 93940-2497		10. SPONSORING/MONITOR'S ACRONYM(S): PERSEREC			
		11. SPONSORING/MONITOR'S REPORT NUMBER(S):			
12. DISTRIBUTION/AVAILABILITY STATEMENT: Distribution Unlimited					
13. SUPPLEMENTARY NOTES:					
14. ABSTRACT: The report summarizes information about procedures personnel security investigators use to collect relevant mental health information, outlines current laws and professional guidelines related to the release of such information, and describes difficulties faced by personnel security investigators when collecting this information. Research staff worked with the American Psychiatric Association to develop a resource document that should be useful for mental health care providers for understanding and cooperating with investigators' interview requests. The resource document is available on the Internet at <a href="http://www.psych.org/edu/other_res/lib_archives/archives/200602.pdf">http://www.psych.org/edu/other_res/lib_archives/archives/200602.pdf</a> and could be a useful addition to investigators' resource materials.					
15. SUBJECT TERMS: psychological conditions, mental health interviews, patient confidentiality					
16. SECURITY CLASSIFICATION OF: UNCLASSIFIED			17. LIMITATION OF ABSTRACT:	18. NUMBER OF PAGES: 67	19a. NAME OF RESPONSIBLE PERSON: James A. Riedel, Director
a. REPORT: UNCLASSIFIED	b. ABSTRACT: UNCLASSIFIED	c. THIS PAGE: UNCLASSIFIED			19b. TELEPHONE NUMBER (Include area code): 831-657-3000
Standard Form 298 (Rev. 8/98) Prescribed by ANSI td. Z39.18					



## PREFACE

For some personnel security investigations, investigators must collect sensitive information about psychological conditions. Collecting this information can be challenging because not only will the individual applying for the clearance have concerns about confidentiality but those from whom the investigator must collect the information are also likely to view it as confidential. Whereas many mental health care practitioners, professional organizations and state and federal laws support the notion that mental health information should be closely held, professional guidelines and law also support the disclosure of mental health information under certain conditions. This paper documents some of the problems and challenges from the perspective of various groups (e.g., investigators, professional organizations), describes conditions under which disclosure is acceptable, discusses a resource document that was prepared in conjunction with the American Psychiatric Association to educate practitioners about personnel security investigations, and presents additional recommendations to assist investigators who must collect psychological conditions information.

James A. Riedel  
Director





## EXECUTIVE SUMMARY

Personnel security clearance eligibility determinations are made in accordance with the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (2005). The Adjudicative Guidelines include *Guideline I. Psychological Conditions*, which requires the collection of information about certain mental health consultations, a type of sensitive information protected by numerous laws and guidelines. Unfortunately, the standards of protection can vary substantially among authorities, making it difficult for mental health care providers to determine whether a personnel security investigation is a situation in which it is acceptable to respond to questions about a patient's care. Healthcare provider concerns about improper disclosure of information in turn create difficulties for investigators who must collect this information for adjudication purposes.

This report describes the procedures personnel security investigators currently use to collect relevant mental health information for security investigations, outlines current laws and professional guidelines related to the release of such information, and describes difficulties faced by personnel security investigators when collecting this information. The results of interviews with representatives of various groups with a stake in the mental health portion of the investigation are summarized, as is the successful development of a resource document approved and published by the American Psychiatric Association.

## CONCLUSIONS AND RECOMMENDATIONS

Personnel security investigators face several challenges when seeking to gather information in accordance with *Adjudicative Guideline I, Psychological Conditions*. The principal challenge, and the one most directly addressed in this project, is mental health care provider reluctance to provide requested information due to concerns about patient confidentiality. This report describes a resource document created by the American Psychiatric Association in response to this project that addresses these concerns and is currently available on the American Psychiatric Association website. The resource document can be used by investigators as a reference when encountering mental health care practitioners who are unfamiliar with security investigations. Also in response to this project, the American Psychological Association included an article in its monthly newsletter describing circumstances where disclosure of client information is appropriate and included security clearance interviews as an example of such a situation.

Several recommendations for facilitating the gathering of mental health information are made based on the information collected. These include the following:

## EXECUTIVE SUMMARY

## RECOMMENDATIONS

### Investigator Training

1. Add the American Psychiatric Association resource document to the investigator training program. Include discussion of the content and how to use it to educate mental health care providers.
2. After it appears in the *Monitor*, add the article by the American Psychological Association's ethics director to the investigator training program.
3. Add investigation training materials, such as those included in Appendix F, to provide information about relevant federal and state laws as well as policies of mental health care organizations.
4. Create a document that investigators can provide to mental health care providers that outlines laws and policies that support and protect the provision of relevant information.

### Additional Research

5. Contact the National Association of Social Workers, the third major professional organization for mental health care providers, and explore the organization's interest in providing a similar resource document for their members.

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## INTRODUCTION

As part of the process of obtaining employment in jobs that involve classified information or certain kinds of controlled information, individuals undergo a personnel security investigation that evaluates eligibility for access to such information. *The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (2005), upon which eligibility decisions are based, require the evaluation of personal history information as it relates to loyalty, trustworthiness, and reliability. Personal history information covers a broad range of closely held topics including employment, finances, and mental health. Although this information is collected for legitimate and important purposes by trained investigators, information sources may be reluctant to respond to inquiries about these topics due to the sensitive nature of the information. In the case of mental health information and mental health care providers, this is particularly likely to be true. The following review highlights issues and concerns related to the collection of mental health information and provides recommendations for addressing the needs of investigators and the concerns of mental health care providers, as well as the requirements of government regulations and individual privacy.

## INVESTIGATION REQUIREMENTS

A background investigation, or personnel security investigation (PSI), is conducted for each individual seeking either an initial security clearance or a continuation of an existing clearance. All of the information collected during a PSI, including mental health information, is gathered specifically for the purpose of determining eligibility for access to classified information and is considered in the context of the whole-person concept. According to the *Adjudicative Guidelines*:

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”

*Adjudicative Guideline I, Psychological Conditions*, is the guideline that is directly relevant to mental health information and it addresses the concern that “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” The complete guideline appears in Table 1.

**Table 1**  
**Psychological Conditions Guideline**

**“Guideline I: Psychological Conditions”**

**27. The Concern.**

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

**28. Conditions that could raise a security concern and may be disqualifying include:**

- (a) behavior that casts doubt on an individual’s judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;
- (b) an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness;
- (c) the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

**29. Conditions that could mitigate security concerns include:**

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.”

Due to the sensitive nature of the information collected during a PSI, respect for privacy and confidentiality is mandated. In the case of mental health information, state and federal laws, as well as other legal and ethical guidelines, must be taken into account as well. Legal and ethical considerations impact not only the investigators collecting the information but also mental health professionals. Discussions with both experienced investigators and mental health professionals have identified that healthcare providers are sometimes reluctant to respond to personnel security investigator requests for mental health information, and both groups have indicated that guidance specifically addressing this issue would be helpful to both parties. The following sections outline procedures currently used by investigators to obtain mental health information, describe legal and ethical guidelines that both investigators and mental health professionals must follow, and summarize interviews with members of various stakeholder groups including investigators, adjudicators, mental health care providers and representatives of professional organizations. The final section of the report includes a set of recommendations for facilitating the collection of mental health information.

Additionally, related research is under way at the Defense Personnel Security Research Center (PERSEREC) for improving procedures for gathering information about psychological conditions from applicants, clinicians, and other reference sources. The goal of this related research is to identify ways to obtain specific information about psychological conditions that can affect reliability and trustworthiness to better prepare adjudicators to make sound decisions regarding eligibility for access to classified information.

## **ANALYSIS OF MEDICAL INTERVIEWS**

In order to better understand the problems investigators report in obtaining mental health information, a database containing Reports of Investigation (ROIs) for cases closed in calendar year 2003 (CY03) was examined. A total of 40,599 Single-Scope Background Investigations (SSBIs) and 46,679 SSBI-Periodic Reviews (SSBI-PRs) were closed in CY03. Of those cases, a total of 5,087 involved medical interviews. Medical interviews were unsuccessful in 1,183 cases (i.e., were not completed for some reason). Of the 1,183 unsuccessful medical interviews, 275 included the reason for lack of success. These 275 were reviewed and categorized by reason (see Table 2). Approximately 16% of the medical interviews were unsuccessful due to provider refusal to comply with a signed medical release form (194 of 1,183). Approximately 2% were unsuccessful because the practitioner required monetary compensation either for his or her time or for retrieving records from storage (19 of 1,183). Approximately 5% were unsuccessful because no medical release form was provided (62 of 1,183).

INTRODUCTION

**Table 2**  
**Analysis of Medical Interviews CY03**

<i>Case Type</i>	<i>Medical Interviews</i>	<i>Unsuccessful Medical Interviews</i>		<i>Refused Compliance</i>		<i>Interview Outcome Payment Required</i>		<i>No Medical Release</i>	
	N	Freq	%	Freq	%	Freq	%	Freq	%
<b>SSBI</b>	3018	700	59	127	18	14	2	44	6
<b>SBPR</b>	2069	483	41	67	14	5	1	18	4
<b>Total</b>	5087	1183	100	194	16	19	2	62	5

The results of this analysis are consistent with reports from investigators about difficulties they encounter when trying to obtain mental health information. Many of the failed interviews did not provide explanation for the failure, but those that did identified reasons similar to those reported by personnel security investigators.



## **PSYCHOLOGICAL CONDITIONS INVESTIGATION COMPONENTS**

The psychological conditions portion of personnel security investigations consists of three primary components: the security form completed by the candidate, the medical release form(s) signed by the candidate, and the interview questions used by investigators to gather information from mental health care practitioners. Each investigation component and its role in the investigation is discussed below.

### **A. SECURITY FORMS – BACKGROUND INFORMATION**

An individual initiates a security clearance investigation or reinvestigation by completing a background questionnaire (typically the SF-86) that covers a range of personal history items. The mental health section of the questionnaire asks the applicant whether he or she has consulted with a mental health professional or other provider about a mental health condition. If the condition involved only marital, family, or grief counseling, and did not involve violence on the part of the applicant, no further information is requested. If the condition does not meet the list of exceptions or it did involve violence, the applicant is asked for information about the treatment provider and the dates of treatment. The applicant is also typically asked to sign a medical release form allowing investigators to contact the mental health professional or other providers for additional information. The completed background questionnaire and medical release form are sent to an investigation agency where the information is used to determine the scope of the investigation and identify sources that must be contacted to obtain further information about the applicant. The investigation is then assigned to one or more personnel security investigators who complete the investigation by interviewing the applicant and contacting relevant sources.

### **B. MEDICAL RELEASE FORMS**

An important requirement of most legal and ethical guidelines covering mental health information is that the client or patient provides authorization before any information is released to an outside source. An authorization to release information sets out the details of the information disclosure, ensures that the client acknowledges that the information will be shared, and that he or she has an understanding of the type of information to be shared.

The first release of information form most applicants sign as part of the security clearance process appears as one of the pages of the background questionnaire. The release form that accompanies the SF-86 (Appendix A) states that the applicant is authorizing the investigator to obtain information from the mental health professional in response to three questions meant to capture basic mental health information. The first question the investigator asks the mental health professional is whether the applicant has a condition or treatment that could impair his or her judgment or reliability. The second question concerns the nature of the condition, and the third asks about the prognosis for the applicant.

## **PSYCHOLOGICAL CONDITIONS INVESTIGATION COMPONENTS**

The second medical release form, the Office of Federal Investigations Form 16A (OFI 16A; see Appendix B) is typically signed during the personal interview portion of the investigation. The OFI 16A authorizes any federal investigator, special agent or accredited representative of the Office of Personnel Management (OPM), or other federal investigative agency, to obtain medical information, and allows for expanded coverage of mental health information, reflecting the need to collect more detailed information for efficient adjudication of the case.

### **C. OPM INVESTIGATIVE GUIDELINES**

OPM, which has primary responsibility for most personnel security investigations, has established guidelines for investigators to follow to ensure that investigations are conducted in an efficient and standardized fashion. One important aspect of these guidelines is to make certain that sources, such as mental health professionals, understand who the investigator represents and what the investigator seeks to accomplish. Investigators generally contact sources in advance of an interview to make arrangements to meet and to explain the purpose of the interview. Upon meeting the source and requesting a private interview, the investigator presents his or her credentials and the signed medical release form, makes an appropriate introduction, and explains the purpose (e.g., national security, suitability or public trust concerns) and importance of the investigation so that these things are clear to the person they are interviewing. The introduction explains that the information being sought is limited to that necessary to make a suitability, public trust or national security decision and provides the source with the substance of the Privacy Act (e.g., “The Privacy Act of 1974 requires me to tell you that all pertinent information you provide, including your identity, will be in a written report of investigation; the report will be furnished to the agency requesting the investigation, other agencies as warranted and to the person investigated upon their specific request”) before any applicant-specific information is sought.

Following the introductory explanation and presentation of the medical release, investigators ask questions about treatment, diagnosis, and potential impact on judgment and reliability. If the OFI 16A release form is presented, the investigator uses a list of 11 questions to direct the questioning, rather than the three questions listed on the SF-86 release form. The expanded list of questions helps to make certain that all the information needed by adjudicators for decisionmaking is collected, including any disqualifying or mitigating factors. The list of questions appears in Table 3.

## PSYCHOLOGICAL CONDITIONS INVESTIGATION COMPONENTS

**Table 3**  
**PSI Questions for Providers**

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***Personnel Security Mental Health Questions***

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- Dates of treatment.
  - The initial complaint/reason why treatment was sought.
  - The identity and amount of any medication prescribed.
  - The nature of any additional treatment provided or recommended.
  - Whether the Subject followed all prescribed or recommended treatment.
  - The exact nature of any diagnoses made.
  - Whether and to whom the Subject was referred and whether and from whom the Subject was referred.
  - The prognosis.
  - The potential for the Subject's condition or treatment to impact on his or her ability to properly safeguard sensitive (in public-trust cases) or classified (in national security cases) information.
  - The potential for the Subject's condition or treatment to impact his or her judgment or reliability.
  - Whether the Subject has or may engage in any violent or otherwise reckless or aberrant behavior because of his or her condition or treatment.
- 

In order to further protect privacy, mental health information obtained during interviews with mental health care providers appears in a separate investigation report under the heading MEDICAL/PSYCHIATRIC INFORMATION. When the case is closed, the separate report is placed in a specially marked envelope (OPM Form 60-B) which is preprinted with an appropriate restriction notification.

The OPM investigative guidelines were recently expanded to allow investigators to pay up to \$150 for medical interviews when payment is requested by the healthcare provider. As the earlier analysis indicated, a small number of interviews with mental health care providers in the past have been unsuccessful because investigators were not allowed to pay for practitioners' time. The new payment policy payment is likely to be particularly useful in situations where a practitioner is faced with many requests for clearance interviews, or when the mental health provider works for a large organization that requires such payment.

## **LAWS AND POLICIES**

### **LAWS AND POLICIES**

Despite the fact that investigators typically accompany their requests for interviews with mental health care providers with signed medical release forms and explanations of the purpose and importance of the investigation, providers are still sometimes hesitant to supply the requested information. Mental health care providers are faced with the dilemma of determining where investigator requests fit under the various guidelines the providers must follow, and they may experience reluctance due to their uncertainty.

The importance of maintaining mental health information in confidence is strongly endorsed by many authorities, as evidenced by numerous federal and state laws, ethical guidelines of professional organizations, and rules in operation at facilities providing care. The principle of confidentiality is deemed important for fostering trust in the treatment relationship, ensuring privacy, and reducing the stigma and discrimination associated with mental health care. When investigators request information about the mental health of an applicant, a mental health care provider may perceive the request as conflicting with these principles of confidentiality.

Stated principles of confidentiality, however, are also generally accompanied by descriptions of situations in which it is acceptable to disclose information. Unfortunately, the standards governing both confidentiality and disclosure can vary a great deal from authority to authority. Variations in disclosure standards make it difficult for mental health care providers to determine whether a federal personnel security investigation is a situation in which it is acceptable to respond to questions about patient care. A clarification of laws and professional organization guidelines would allow healthcare providers to have a better understanding of how best to cooperate with federal investigators. The following sections summarize current information about confidentiality and disclosure standards established by various authorities.

### **U.S. LAWS**

Two major federal laws have implications for the disclosure of medical information. The first is the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the USA PATRIOT Act (known formally as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act [2001]) is the second. HIPAA concerns itself specifically with medical information, particularly as such information relates to the administration and security of healthcare transactions. The primary focus of the PATRIOT Act is national security, but it does have some implications for medical information. Both laws contain language that can be interpreted as supporting the disclosure of protected health information in a personnel security investigation context, although neither directly compels such disclosure.

## **HIPAA**

HIPAA is focused on electronic holdings of protected healthcare information and has three primary aims: to simplify transactions, to provide a minimum privacy standard, and to standardize the security of electronic information. Of greatest relevance to the concerns of personnel security investigators are the privacy regulations included in HIPAA, particularly those governing the release of healthcare information. The privacy regulations in HIPAA emphasize the necessity of obtaining consent and authorization before using or sharing protected health information.

The Privacy Rule, as it is called, outlines to whom and under what circumstances providers can disclose patient information. It should be noted, however, that the Privacy Rule sets the minimum standard, and covered entities are free to establish more protective policies. Given that HIPAA does not specifically mention personnel security investigations in its outline of acceptable circumstances for disclosure and that it represents a minimum privacy standard, it is understandable that healthcare providers would be inclined to err on the side of caution and thus be reluctant to cooperate with PSIs if HIPAA is their only guidance. However, disclosure of mental health information in a PSI is not precluded by HIPAA, nor was it intended to be, particularly since PSI-related requests are typically accompanied by a signed consent form, a HIPAA requirement.

There is also a section of the HIPAA Privacy Rule that allows for the use and disclosure of protected health information, even without an individual's authorization or permission. Such disclosure is permitted when it involves authorized federal officials conducting "lawful intelligence, counterintelligence, and other national security activities." While this language might be useful in discussions with mental health care providers when they have questions about releasing information, it must also be noted that the U.S. Department of Health and Human Services states in the Preamble to the December 2000 Privacy Rule that the Rule does not confer any new authority with regard to disclosures related to national security or protective services because it does not compel covered entities to release information for these purposes (Fed. Reg., 2000, p. 82706).

## **USA PATRIOT Act**

The USA PATRIOT Act serves to expand U.S. law enforcement powers for fighting terrorism domestically and abroad. The PATRIOT Act gives federal officials greater authority to track and intercept communications, combat money laundering, protect U.S. borders, and access business records. Section 215, the section of the act concerned with business records, has the greatest relevance to the disclosure of mental health records. Section 215 is entitled "Access to Records and Other Items under the Foreign Intelligence Surveillance Act" and it requires businesses to comply with the government by turning over "any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against

## **LAWS AND POLICIES**

international terrorism or clandestine intelligence activities” [Title II, Section 215 (a)(1)]. Despite the fact that Section 215 has generated a great deal of controversy and was scheduled to sunset in 2005, efforts to renew this and other sections of the act have succeeded and this provision remains in effect with very minor changes.

Analysis of Section 215 has shown that “business records” can be construed as including medical and psychological records (Mansdorfer, 2005). In addition, Section 215 is framed in such general terms that it could be viewed as referring to the entirety of any such database of business records, not just the records associated with a specific individual or specific investigation (“Revising the Patriot Act,” 2005). A broad interpretation of the USA PATRIOT Act could thus be seen as *requiring* mental health care provider cooperation with personnel security investigations. Given the level of controversy surrounding this provision and the fact that such a broad interpretation appears to run counter to many of the existing protections for medical information, it does not seem advisable to use the PATRIOT Act to compel mental health care providers to cooperate with PSIs. However, the act could be cited as general support for cooperation, particularly when coupled with a medical release form signed by the applicant indicating his or her consent to the investigation.

## **STATE LAWS**

State laws vary greatly in the extent to which they establish protections for medical information and regulate disclosure. For example, while a majority of states (37) place a duty on physicians to maintain the confidentiality of medical records in their possession, a smaller number of states (33) require that healthcare institutions maintain the confidentiality of medical records and only 26 states impose a confidentiality requirement on other types of healthcare providers. Other states provide even more limited statutory protection for healthcare information. For example, Tennessee has no general state statute imposing a duty to protect the confidentiality of medical records and does not recognize physician-patient and therapist-patient privilege, although it does place conditions on the disclosure of mental health information.

State laws, like federal laws, that provide for the confidentiality of medical records can generally be interpreted as permitting disclosure with patient consent but not requiring disclosure. It would benefit any investigator who is seeking mental health information about an applicant to become familiar with the regulations regarding medical privacy, and mental health records in particular, for the state or states in which they operate. At the time of this writing, a useful central source for at least an introduction to state medical privacy regulations could be found on the website of the Health Privacy Project ([www.healthprivacy.org](http://www.healthprivacy.org)) in the state law section of the site. The Health Privacy Project has compiled summaries of health privacy statutes for all 50 states and the District of Columbia. Examples of the information available appear in Table 4 below and in Appendix C.

**Table 4  
State Laws**

<i>State</i>	<i>Law</i>
Delaware	The clinical records of patients in mental health hospitals or residential centers are not public records and generally may not be released to any person or agency without the consent of the patient (or his parent or legal guardian). [Del. Code Ann. tit.16, § 5161(13).]
District of Columbia	Generally, mental health professionals, mental health facilities, data collectors and their respective employees and agents are prohibited from disclosing (or permitting the disclosure of) mental health information to any person, including an employer, without the authorization of the client (or his parent or legal guardian) or expressly permitted by law. [D.C. Code Ann. §§ 7-1201.02; 7-1202.01; 7-1202.05.]  A written authorization to disclose mental health information must be signed and dated by the person authorizing the disclosure and must specify the nature of the information to be disclosed, the type of persons authorized to disclose the information, to whom the information may be disclosed and the specific purposes for which the information may be used. [D.C. Code Ann. §§ 7-1202.02]  In certain circumstances, the mental health professional primarily responsible for the diagnosis or treatment of a client may refuse to disclose or limit disclosure of the client’s mental health information even though the mental health information may be disclosed by virtue of a valid authorization. [D.C. Code Ann. §§ 7-1202.06]
Maryland	The Confidentiality of Medical Records Act (CMRA) [See Md. Code Ann., Health-Gen. § 4-301, et. seq.] outlines protections for medical information in general and mental health information in particular. When mental health records are disclosed without the authorization of the patient, including to another healthcare provider for the treatment of the patient, only the information in the record relevant to the purpose for which disclosure is sought may be released. [Md. Code Ann., Health-Gen. §§ 4-305(b)(4); 4-307.] Documentation of all disclosures must be entered into the recipient’s medical record. [Md. Code Ann., Health-Gen. § 4-307(g).]

Current concerns about terrorism and national security have reemphasized the importance of balancing privacy expectations and national security and have left both federal and state privacy laws in a state of flux. Many of the laws that assure confidentiality also allow for disclosure of information with patient consent and, in some circumstances, typically involving law enforcement, without consent. An investigator armed with a medical release signed by the applicant and knowledgeable of the relevant laws governing disclosure of mental health information is best prepared to solicit cooperation from mental health care providers.

**PROFESSIONAL ORGANIZATION POLICIES**

The majority of mental health care providers in the United States belong to the American Psychological Association or the American Psychiatric Association. Both organizations have established ethical guidelines that outline both aspirational goals and enforceable rules for conduct. Membership in either of the organizations carries with it the requirement to comply with the standards of that organization’s

## LAWS AND POLICIES

ethics code. Confidentiality of patient information is a core principle in the ethics codes of both organizations, although the strictness with which the principle is stated varies somewhat between organizations. The American Psychiatric Association states that psychiatric records must be protected with extreme care whereas the American Psychological Association states that psychologists have a primary obligation and must take reasonable precautions to protect confidential information. The ethics codes of both organizations also have in common the fact that they allow for disclosure of information given the consent of the client.

The American Psychiatric Association follows the ethical guidelines published by the American Medical Association (American Medical Association, 1998) with annotations especially applicable to Psychiatry (American Psychiatric Association, 2001). Section 4 of the American Medical Association (AMA) guidelines covers confidentiality and makes the overall statement that “A physician shall respect the rights of patients, colleagues, and other health professionals and shall safeguard patient confidences and privacy within the constraints of the law.” The American Psychiatric Association annotations further state that:

“A psychiatrist may release confidential information only with the authorization of the patient or under proper legal compulsion. The continuing duty of the psychiatrist to protect the patient includes fully apprising him/her of the connotations of waiving the privilege of privacy. This may become an issue when the patient is being investigated by a government agency, is applying for a position, or is involved in legal action.” (American Psychiatric Association, 2003; p. 8).

The American Psychiatric Association annotations also discuss examinations conducted for security purposes and emphasize the importance of discussing the lack of confidentiality such an examination implies. While a security examination differs somewhat from the type of security investigation that is the concern of this report, it is possible that this part of the annotations increases the likelihood that psychiatrists will want to discuss the personnel security investigation interview with the client before meeting with the investigator.

Although stated in less stringent terms, the American Psychological Association’s ethics code also emphasizes the importance of maintaining patient confidentiality (Section 4, American Psychological Association, 2003). Section 4.05 (a) states “Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.”



## **INTERVIEWS**

Interviews were conducted with members of groups that play a role in the collection or use of mental health information for personnel security purposes. All interviews were conducted individually, over the telephone. Project research staff interviewed several senior personnel security investigators and adjudicators as representatives of the groups who collect and use the information. Representatives of different types of healthcare facilities and professional organizations were interviewed to gain insight into the prerequisites for providing the requested information. Interview topics varied somewhat by group and covered the type of information sought during an investigation, obstacles encountered in obtaining the information, problems with the information obtained, and prerequisites to providing the information.

## **INVESTIGATORS**

Research staff interviewed four experienced personnel security investigators to gather information about their experiences collecting mental health information. The individual telephone interviews were conducted with investigators from two different parts of the country: the Washington, DC, area and California. Given differences in number of government employees in these disparate locations, an important difference between the two groups of investigators is the frequency with which they encounter mental health professionals who are familiar with the security clearance process. Investigators who work in the Washington, DC, area, where there are more jobs requiring security clearances, are much more likely to deal with mental health professionals who are familiar with the process, whereas investigators in California are more likely to encounter mental health professionals who are unfamiliar with, and potentially suspicious of, the security investigation process.

The two Washington investigators each said that mental health care providers only very rarely refuse to cooperate with personnel security investigators after a signed release form is presented and that the OFI-16A release form generally works well for investigation purposes because it is suitably open-ended. These investigators reported that they have encountered mental health care practitioners that require payment, which can create problems, and they agreed that the change in OPM's payment policy should help eliminate this as an issue.

Interviews with the two investigators in California also elicited the information that mental health care providers generally cooperate with the investigation when a signed release form is presented. The California investigators indicated that the main difficulty in the past has been with those providers who require payment for their time. They also agreed that OPM's new policy of providing payment should improve that situation. Unlike the investigators from Washington, DC, the California investigators indicated that they have encountered providers who refused to disclose any information. Often practitioners misunderstand HIPAA and do not believe they can release the information.

## **INTERVIEWS**

Other interview findings included the fact that, on occasion, a provider may require that the applicant sign a release form specific to the provider's healthcare organization in addition to the OFI-16A. In addition, investigators also mentioned that they have found it helpful to explain to mental health care providers that by answering investigators' questions the provider may be able to help clients gain employment or advance in their jobs. Providers then feel they are providing a service to their client rather than betraying their client's confidence. Finally, investigators were asked about the usefulness of new OPM mental health interview questions and the likely impact on the interview process. Investigators indicated that although the list of questions is longer, it is unlikely to cause problems with provider cooperation and has the advantage of collecting more of the specific information that adjudicators need.

In summary, interviews with investigators found that the majority of mental health providers will disclose requested psychological conditions information when a signed release is presented, although they may require payment and/or additional information about the process and how it benefits their clients. The interviewers also agreed that it would be beneficial if mental health care practitioners' professional organizations would produce guidance for supporting the investigation process.

## **ADJUDICATORS**

Adjudicators make clearance eligibility determinations by reviewing the information obtained by personnel security investigators and then applying the adjudicative guidelines. Individual telephone interviews were conducted with five representatives of the adjudication community: a total of three adjudicators from two different central adjudication facilities (CAFs) and two representatives of the Defense Office of Hearings and Appeals (DOHA). Interviews focused on those aspects of mental health information most relevant to adjudication decisions and the types of problems encountered with information received.

The adjudicators indicated that the pieces of information most important for adjudication decisions include diagnosis, prognosis, medication, hospitalization and dates of treatment. The three-question format outlined in the SF-86 and discussed earlier does not always elicit all of these pieces of information, but when the new OPM questions were discussed, adjudicators agreed that they had a better chance of getting the necessary information. One type of problem that adjudicators described encountering resulted from apparent attempts by mental health care providers to protect clients by downplaying clear behavioral indicators of problems such as multiple citations for driving under the influence. There was some hope that the expanded OPM interview questions will offset such tendencies on the part of providers.

Adjudicators also pointed out that qualified mental health professionals are available for consultation if adjudicators have questions about the implications of

psychological information in the PSI. In addition, the adjudicator from DOHA stated that a consultation with a qualified mental health professional would be required before a statement of reasons (SOR) for denying clearance eligibility were issued.

### **MENTAL HEALTH CARE FACILITIES**

Mental health care providers can be found in a variety of healthcare facilities. For this study, representatives from three of the most common mental health care settings were interviewed via telephone: an HMO representative, a community hospital representative, and a university counseling center representative. Discussions with facility representatives explored facility policies regarding the release of mental health information and, in particular, medical release form requirements and the issue of payment.

The HMO representative stated that the policy for their facilities is that information may be released only in response to a signed written authorization from the patient. The HMO policy also specified the information the authorization must include: the name of the member, member identification number, member address, name of the individual to whom the information will be released (e.g., the personnel security investigator), specific description of the information to be released, and an expiration date after which the release is no longer valid. Payment requirements are left to each individual business office. As an example, one of their business offices was contacted and stated they do charge for such an interview. The maximum fee allowed by OPM (\$150) would get 20 minutes of the provider's time which is generally enough time to cover the list of 11 OPM questions.

A representative from a mid-sized, nonprofit community hospital that included psychiatric and drug treatment services was contacted about facility policies governing medical information disclosure. The hospital representative indicated that their facility policy required a signed release form before information may be disclosed, but that the policy did not specify the information that the authorization must include. Hospital policy also leaves the issue of payment to each individual provider, so some may require payment while others may not.

The university counseling center representative indicated that the counseling center will release information to a federal investigator even without a signed release form. They were aware of the PATRIOT Act's provisions regarding the release of medical information and now include it as a part of their informed consent, signed by clients when they begin therapy. Payment is not required to get an interview with a counselor at this facility.

Although the sample of facilities was very small, all three had policies that allowed disclosure of patient information under certain circumstances. Investigators could increase the chances a provider will be able to cooperate by becoming familiar with the disclosure policy in place at the facilities of providers they must interview.

## INTERVIEWS

### PROFESSIONAL ORGANIZATIONS

A representative from the American Psychological Association and one from the American Psychiatric Association were telephoned to determine whether either offered its members any guidance for responding to requests for information from personnel security investigators. Neither organization addressed this topic in its existing guidelines and both organizations indicated that it is extremely difficult to make changes or additions to their guidelines. However, each organization suggested other strategies such as position statements or articles in membership newsletters that they felt would be just as effective for encouraging members to cooperate with investigators.

#### **American Psychiatric Association**

After consultation with PERSEREC research staff, the American Psychiatric Association developed a resource document for its members that provides background on the security clearance process, the type of information required in a PSI, and the positive aspects of cooperating with a PSI. The resource document (Appendix D) notes that psychiatrists are not expected to provide specialized assessments of patients' (or former patients') reliability, judgment, or potential for violence, but may have some perspective on these issues based on information gathered in the course of treatment. The document reminds the reader that psychiatrists frequently make similar judgments such as determining patients' ability to return to work, to be discharged, or to require civil commitment due to risk of violence. While the document provides some cautionary advice for psychiatrists, such as discussing the disclosure with the patient in advance if the psychiatrist believes that the patient has a condition that is likely to impair judgment and reliability, it also states that it is sensible practice to cooperate with the PSI.

The guidelines were approved by the Association's Council on Psychiatry and Law in March 2006 and by the Joint Reference Committee in June 2006. The document is published on the American Psychiatric Association website at [http://www.psych.org/edu/other\\_res/lib\\_archives/archives/200602.pdf](http://www.psych.org/edu/other_res/lib_archives/archives/200602.pdf) and an article appeared in the September 15, 2006, issue of *Psychiatric News*. The text of the article appears in Appendix E.

#### **American Psychological Association**

The strategy suggested by the American Psychological Association's director of ethics was to write a column discussing conditions for disclosure of confidential information for inclusion in the April, 2007 edition of the American Psychological Association's "*APA Monitor*." The *APA Monitor* is a monthly newsletter produced by the Association that contains regular columns and articles about matters of interest to psychologists. The article discussed principles guiding disclosure of client information and circumstances under which such disclosure is acceptable. The relevant text of the article appears below:

“Disclosures pursuant to client consent, unlike mandatory disclosures, place the client’s self-determination central to the psychologist’s ethical analysis. In many instances a disclosure will further the client’s wishes and the psychologist therefore discloses the information pursuant to the client’s release. As an example, recently a psychologist approached the Ethics Office requesting a consultation regarding what should properly occur in response to a signed release from a former client seeking a security clearance. Providing information relevant to the question was in keeping with the client’s wishes, and therefore consistent with the Ethics Code and the client’s self-determination. This manner of responding to a client’s consent is a way of putting Principle E, Respect for People’s Rights and Dignity, into practice, because such a disclosure in response to a competent client’s release promotes the client’s own values and goals.”

The director felt that an explanation of this type would give psychologists guidance on how to handle requests for information pursuant to a security clearance.

### **Summary**

The document prepared by the American Psychiatric Association is useful regardless of the particular profession of the mental health care practitioner. A large portion of the American Psychiatric Association resource document is devoted to providing generally useful explanatory information, such as discussions of security clearances, investigations, and adjudication. The information it contains could be useful not only to psychiatrists, but also to psychologists and social workers. The column in the American Psychological Association *Monitor* provides general guidance and reinforces the message from the American Psychiatric Association resource document.

## CONCLUSIONS

### CONCLUSIONS

Personnel security investigators face several challenges when seeking to gather information in accordance with *Adjudicative Guideline I, Psychological Conditions*. The principal challenge, and the one most directly addressed in this project, is mental health care provider reluctance to provide requested information due to concerns about patient confidentiality. This report describes a resource document created by the American Psychiatric Association in response to this project that addresses these concerns and is currently available on the American Psychiatric Association website. The resource document can be used by investigators as a reference when encountering mental health care practitioners who are unfamiliar with security investigations. Also in response to this project, the American Psychological Association included an article in their monthly newsletter describing circumstances where disclosure of client information is appropriate and included security clearance interviews as an example of such a situation.

Additional recommendations resulting from this research are described below.

### RECOMMENDATIONS

#### Investigator Training

1. Add the American Psychiatric Association resource document to the investigator training program. Include discussion of the content and how to use it to educate mental health care providers.
2. After it appears in the *APA Monitor*, add the article by the American Psychological Association's ethics director to the investigator training program.
3. Add investigator training materials, such as those included in Appendix F, to provide information about relevant federal and state laws as well as policies of mental health care organizations.
4. Create a document that investigators can provide to mental health care providers that outlines laws and policies that support and protect the provision of relevant information.

#### Additional Research

5. Contact the National Association of Social Workers, the third major professional organization for mental health care providers, and explore the organization's interest in providing a similar resource document for its members.

REFERENCES

- Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, December 29, 2005.
- American Medical Association. (1998). *Patient confidentiality*. Retrieved March 5, 2006, from <http://www.ama-assn.org/ama/pub/category/4610.html>
- American Psychiatric Association. (2001). *The principles of medical ethics with annotations especially applicable to psychiatry*. Retrieved March 5, 2006, from [http://www.psych.org/psych\\_pract/ethics/ethics.cfm](http://www.psych.org/psych_pract/ethics/ethics.cfm)
- American Psychological Association. (2003). *Ethics code*. Retrieved March 5, 2006, from <http://www.apa.org/ethics/>
- Federal Register (2000, December 28). *Rules and Regulations*, 65, 82706.
- Mansdorfer, J.B. (2005). Psychologists and the Patriot Act. *The National Psychologist*, 13(4).
- Revising the Patriot Act. (2005, April 25). *The New York Times*, p. 11.

## REFERENCES



**APPENDIX A**  
**MEDICAL RELEASE FORM SF-86**

## APPENDIX A

Standard Form 86  
 Revised September 1995  
 U.S. Office of Personnel Management  
 5 CFR Parts 731, 732, and 736

Form approved:  
 OMB No. 3206-0007  
 NSN 7540-00-634-4036  
 86-111

**UNITED STATES OF AMERICA**  
**AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION**

Carefully read this authorization to release information about you, then sign and date it in ink.

**Instructions for Completing this Release**

This is a release for the investigator to ask your health practitioner(s) the three questions below concerning your mental health consultations. Your signature will allow the practitioner(s) to answer only these questions.

I am seeking assignment to or retention in a position with the Federal government which requires access to classified national security information or special nuclear information or material. As part of the clearance process, I hereby authorize the investigator, special agent, or duly accredited representative of the authorized Federal agency conducting my background investigation, to obtain the following information relating to my mental health consultations:

Does the person under investigation have a condition or treatment that could impair his/her judgment or reliability, particularly in the context of safeguarding classified national security information or special nuclear information or material?

If so, please describe the nature of the condition and the extent and duration of the impairment or treatment.

What is the prognosis?

I understand the information released pursuant to this release is for use by the Federal Government only for purposes provided in the Standard Form 86 and that it may be redisclosed by the Government only as authorized by law.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for 1 year from the date signed or upon termination of my affiliation with the Federal Government, whichever is sooner.

Signature (Sign in ink)		Full Name (Type or Print Legibly)		Date Signed
Other Names Used				Social Security Number
Current Address (Street, City)			State	ZIP Code
				Home Telephone Number (Include Area Code) (     )

**Figure A-1 Medical Release Form SF-86**

## APPENDIX A

**APPENDIX B**  
**MEDICAL RELEASE FORM OFI-16A**

**APPENDIX B**



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
OFFICE OF FEDERAL INVESTIGATIONS



**SPECIFIC RELEASE**

I, \_\_\_\_\_, hereby authorize any Federal Investigator, Special Agent or duly accredited representative of the U.S. Office of Personnel Management (OPM), or other Federal investigative agency bearing this release, or a copy thereof, to obtain the information identified below pertaining to me which is maintained by the person or organization specified below:

PERSON OR ORGANIZATION: \_\_\_\_\_  
\_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

The information to be released is as follows:

**MEDICAL** (May include, but not limited to: dates of confinement; participation or treatment; diagnosis; doctors' orders; medication sheets; urine result reports; attendance sheets; prognosis and medical opinions regarding my health, recovery and/or rehabilitation; as well as any other information indicated below):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am aware that the information released by the above named person or organization may, but not necessarily, contain data pertaining to my use and/or abuse of alcohol and/or drugs, and my participation in a rehabilitation program with the above named organization.

**OTHER (Specify):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The execution of this release is voluntary on my part, and is made without duress or promise on the part of OPM or other Federal Investigative agency. I am aware that this release is valid only when presented to the addressee within 3 months from the date of its execution by me to obtain financial records (as defined by the Right to Financial Privacy Act) and has no expiration date for other purposes.

I have read and fully understand the Privacy Statement on the back of this form. I understand the purpose for which the information to be released is required as described in the Privacy Statement. I hereby release any individual, including record custodians, from any and all liability for damages of whatever kind or nature which may at any time result to me on account of compliance, or any attempts to comply, with this authorization. I consent to the release of any and all financial information obtained with this release to any Federal agency that requests it, consistent with the conditions of its collection under the Right to Financial Privacy Act, for employment suitability or security clearance purposes.

Signature (Full Name)	Social Security Number	Area Code and Telephone Number	Date (Month, Day, Year)
Current Address (Street, City, State, ZIP)		Signature of Parent/Guardian (As Required)	

Figure B-1 Medical Release Form OFI-16A

**PRIVACY STATEMENT**

(Pursuant to the Privacy Act of 1974 and the  
Right to Financial Privacy Act of 1978)

**ALL INFORMATION AND RECORDS:**

**Authority for Collecting Information**

Solicitation of this information is authorized by: Sections 1303 (Investigations), 1304 (Loyalty Investigations), and 3301 (Suitability), of Title 5, United States Code; Section 2165 (Contractor Investigations), of Title 42, United States Code; Executive Order 10450 (Security Requirements for Government Employment); Rule V (Regulations, Investigation, and Enforcement) of Title 5, Code of Federal Regulations; and Parts 731 (Suitability), 732 (Personnel Security) and 736 (Investigations), of Title 5, Code of Federal Regulations.

**Purposes and Uses**

Information provided by you on this form will be furnished to the addressee in order to obtain information concerning your activities in connection with an investigation to determine your (1) fitness for Federal employment, (2) clearance to perform contractual service for the Federal government, (3) security clearance or access. The information obtained may be furnished to Federal agencies for the above purposes and in fulfillment of official responsibilities to the extent that such disclosure is permitted by law.

**Consent to Release and Effects of Nondisclosure**

Your consent is voluntary and, in the case of financial records, may be revoked at any time before the information is released. In the case of financial records maintained at a financial institution (as defined by the Right to Financial Privacy Act), your consent is not required as a condition of doing business with any financial institution. **If you do not provide your consent, however, the Office of Personnel Management or other authorized Federal investigative agency will not be able to obtain the requested data.** Consequently, failure to furnish all or part of the information requested of you on the form may result in discontinuance of the investigation, and a lack of further consideration for employment, clearance or access, or in the termination of your employment.

**RECORDS COVERED BY THE RIGHT TO FINANCIAL PRIVACY ACT:**

**Access by Federal Agencies Without Your Consent**

The Right to Financial Privacy Act permits financial institutions to disclose your financial records to Federal agencies under certain conditions without your consent. Such disclosure is ordinarily made only in response to a lawful subpoena, summons, formal written request, or search warrant. Generally, the Federal agency must give you advance notice, explaining why the information is sought and telling you how to object in court. The Federal agency must also send you copies of court documents to be prepared by you with instructions for filling them out.

**Records of Disclosures to Federal Agencies**

Financial institutions are required to maintain a record of disclosure of financial data to Government authorities. Upon request, financial institutions must provide you with a copy of any record of their disclosure of your financial records to a Government authority, including the identity of the Government authority to which disclosure was made, unless the authority has obtained a court order delaying such a notice.

**Transfer of Information by a Federal Authority**

Generally, a Federal agency must tell you if any financial records pertaining to you, which were obtained from a "financial institution," are transferred to another Federal agency without your consent.

**Penalties**

If a Federal agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or to seek compliance with the law. If your suit is successful, you may be repaid your attorney's fees and costs.



**APPENDIX C**  
**STATE LAW EXAMPLES**

## APPENDIX C

**Table C-1**  
**State Law Examples**

State	Law
Arizona	<p>All information and records obtained in the course of evaluation, examination or treatment pursuant to the statutory provisions on mental health services (including voluntary and involuntary commitment) are confidential and are not public records. [Ariz. Rev. Stat. § 36-509.]</p> <p>Information and records may be disclosed, pursuant to rules established by the department of health services to: physicians and providers of health, mental health or social and welfare services...; individuals to whom the patient has given consent to have information disclosed; ... [Id.]</p>
California	<p>Institutional or community mental health program information falls under the Lanterman-Petris-Short Act. [Cal.Welf. &amp; Inst. Code §§ 5328 and 5540.] This information is generally considered to be confidential and only may be released in accordance with the restrictions listed in the statute. For instance, a mental health facility must obtain the affirmative consent of the patient (or his representative) before information can be disclosed. [Id.]</p> <p>Outpatient psychotherapy information falls under California Civil Code, Cal. Civ. Code § 56.104. The entity requesting the information must submit to the patient and the holder of the information a written request specifying: the intended use of the information; the length of time during which the information will be kept before being destroyed or disposed of; that the information will not be used for any purpose other than its intended use; and that the information will be destroyed or returned in the time period specified. [Id.]</p>
Florida	<p>Clinical records are confidential... [Fla. Stat. Ann. § 394.4615.] The confidential status of the record cannot be waived except by the express and informed consent of the patient or his guardian. [Fla. Stat. Ann. § 394.4615.]</p> <p>The clinical record <i>must</i> be released in the following circumstances: when the patient or his guardian authorizes the release; when the patient is represented by counsel and the records are needed by the counsel for adequate representation; when the court orders release; and when the patient is committed to, or returned to, certain state-run facilities. [Id.]</p>
Illinois	<p>All records and communications of providers of mental health or developmental disabilities services are confidential and may not be disclosed without the written consent of the recipient of these services (or his parent or guardian) except as provided by the Mental Health and Developmental Disabilities Act. [740 Ill. Comp. Stat. 110/3 and 110/5.]</p> <p>The format of the consent form is mandated by statute, and generally must specify to whom disclosure is to be made and the purpose of the disclosure. [740 Ill. Comp. Stat. 110/5.]</p>
Massachusetts	<p>Generally, a psychologist needs a patient's written consent to disclose any confidential communications about that patient, including the fact that the patient is undergoing treatment. [Mass. Gen. Laws ch. 112, § 129A.]</p>

**APPENDIX C**

<b>State</b>	<b>Law</b>
Michigan	Information in the record of a recipient of mental health services is confidential and is not open to public inspection. [Mich. Comp. Laws § 330.1748.] The information may be disclosed only as specifically provided for by law. [ <i>Id.</i> ] All disclosures are to be limited to information that is germane to the authorized purpose for which the disclosure was sought. [ <i>Id.</i> ] Confidential information may be disclosed upon the written consent of the mental health services recipient (or his parent or guardian). [Mich. Comp. Laws § 330.1748(6).]
New York	Each facility licensed or operated by New York’s Office of Mental Health or New York’s Office of Mental Retardation and Developmental Disabilities is required to maintain a clinical record for each patient or client. It [the record] cannot be released outside these offices or its facilities to any person or agency without patient consent with a few exceptions, including disclosures: pursuant to a court order upon the finding by the court that the interests of justice significantly outweigh the need for confidentiality; to the mental hygiene legal service; and to an endangered individual and law enforcement agency [N.Y. Mental Hyg. Law § 33.13(c).]
Pennsylvania	All documents concerning persons receiving inpatient mental health treatment and those receiving involuntary outpatient treatment are confidential and may not be released without the patient’s written consent except in very limited circumstances. [Pa. Cons. Stat. Ann. tit. 50, §§ 7103; 7111.]
Virginia	<p>Each person has the right to be assured of the confidentiality of his medical and mental records. [Va. Code Ann. § 37.1-84.1(A)(8).] Virginia statutorily specifies the type and amount of healthcare information a professional who is authorized to diagnose or treat a mental health... condition is permitted to disclose to a third party payor. [Va. Code Ann. §§ 37.1-226; 37.1-227.]</p> <p>A patient’s consent authorizing a third party payor to disclose this type of information must be in writing, must be signed and dated by the patient and must specify: to whom disclosure is to be made, the nature of the information to be disclosed, the purpose for which disclosure is to be made and the inclusive dates of the records to be disclosed. [Va. Code Ann. § 37.1-229.]</p>
Washington	In general, information from treatment records cannot be released without the informed, written consent of the individual who is the subject of the records or the person legally authorized to give consent for the individual. [Wash. Rev. Code Ann. § 71.05.620.] The consent form must contain the name of the individual or entity to which the disclosure is to be made; the name of the patient; the purpose of the disclosure; specific type of information to be disclosed; time period during which the consent is effective; date; and signature of the patient or person legally authorized to provide consent.

**APPENDIX D**  
**AMERICAN PSYCHIATRIC ASSOCIATION RESOURCE DOCUMENT**

## APPENDIX D

The American Psychiatric Association • 1000 Wilson Blvd., Suite 1925 • Arlington, VA 22209-3901 Telephone: (703) 907-7300 • Fax: (703) 907-1085 • Email: [apa@psych.org](mailto:apa@psych.org)

## **PSYCHIATRISTS' RESPONSES TO REQUESTS FOR PSYCHIATRIC INFORMATION IN FEDERAL PERSONNEL INVESTIGATIONS**

### **Resource Document**

*Approved by the Joint Reference Committee, June, 2006*

The findings, opinions, and conclusions of this report do not necessarily represent the views of the officers, trustees, or all members of the American Psychiatric Association. Views expressed are those of the authors.” -- APA Operations Manual.

*Approved by the Council on Psychiatry and Law, March 1, 2006.*

### **Introduction**

Psychiatrists routinely receive and respond to patient authorizations to release information to third parties. However, a security clearance-related request for information differs from an ordinary release of information generally encountered in clinical practice. An ordinary release specifies records, notes, admission or discharge summaries, or other information generated in the course of clinical care. Most often, the information is to be released to another provider or facility for use in a therapeutic context, for the benefit of the individual patient. In contrast, the security clearance release may call for the psychiatrist to make a judgment about his or her patient (i.e., does the patient have a condition that could impair judgment or reliability in the context of safeguarding national security information, or be at risk for future violent behavior) that could be disqualifying for employment. Although this resource document deals only with requests for psychiatrists' disclosures with regard to security clearances, the similarities to other work-related evaluations (e.g., can the individual return to work, can the individual function as a police officer), or to other circumstances in which disclosures may be used for legal or administrative purposes (e.g., forensic evaluations) should be noted.

### **Background**

Millions of U.S. citizens are employed in positions that require security clearances. The U.S. government requires background investigations for clearance purposes for individuals who are to hold positions involving national security or other positions of public trust. In general, the security clearance process affects people employed in jobs that provide access to information that is restricted, often referred to as “classified,” by the federal government. Alternatively, they may hold positions of public trust that involve substantial discretionary judgment, including employment in secure facilities, such as military or defense facilities, or have access to nuclear materials. Security clearances are a prerequisite for employment for members of the military and certain employees of the government or government contractors, and

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some employees of entities that are grantees or licensees of the government. The requirement for security clearance encompasses employment in the telecommunication industry, educational institutions, and financial entities. The Office of Personnel Management estimates that nearly a million clearance requests are initiated annually.

Following a conditional offer of employment for a position requiring a security clearance, an individual is asked to complete the Questionnaire for National Security Positions, Standard Form 86, known as SF-86, that calls for extensive disclosure of information regarding personal history, including residential, employment, travel, education, relatives, police and correctional history, illegal drug use, alcohol use, financial information, civil legal history, and related information. The SF-86 describes the investigatory process and includes a release of information form, to be signed by the potential employee. Instructions inform the applicant that information will be used for the purpose of the security clearance investigation and that the federal Privacy Act (5 USC 552a(b)) governs any subsequent disclosure of the information without consent.

The investigation that leads to a security clearance is designed to screen out individuals who should not be entrusted with government secrets, weapons, or other assets that could be used to endanger the public. Investigators conduct in-person interviews with clearance applicants and review the disclosed information, including questions regarding mental health treatment. The ensuing investigations seek to confirm the veracity of the information reported by the applicants on SF-86 and during the interviews, and seek to ascertain whether the subjects of investigation are “reliable, trustworthy, of good conduct and character, and loyal to the United States” (Executive Orders 10450 and 12968). The instructions also inform the subjects of investigation:

“In addition to the questions on this form, inquiry also is made about a person’s adherence to security requirements, honesty and integrity, vulnerability to exploitation or coercion, falsification, misrepresentation, and any other behavior, activities, or associations that tend to show the person is not reliable, trustworthy, or loyal.”

The depth of the investigation is based on the level of security clearance that is required for a given position. Once the investigation is complete, the information is reviewed in the adjudication phase, in accordance with established guidelines. Additional information, including past mental health treatment records may be sought, prior to adjudication. The adjudicative process is described as “the careful weighing of a number of variables known as the whole-person concept.” In essence, this means that the adjudicator takes into consideration a broad range of information in reaching a determination.

According to the Adjudicative Guidelines, final determination concerning clearance is in the hands of the specific department or agency responsible for the position.



The ultimate determination “must be an overall commonsense judgment based upon careful consideration of “:

- (A) allegiance to the United States,
- (B) foreign influence,
- (C) foreign preference,
- (D) sexual behavior,
- (E) personal conduct,
- (F) financial considerations,
- (G) alcohol consumption,
- (H) drug involvement,
- (I) psychological conditions,
- (J) criminal conduct,
- (K) handling protected information,
- (L) outside activities, and
- (M) use of information technology systems.

According to the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (approved by the President, December 29, 2005), the following factors are considered in weighing the relevance of an individual’s conduct

- a) The nature, extent, and seriousness of the conduct;
- b) The circumstances surrounding the conduct, to include knowledgeable participation;
- c) The frequency and recency of the conduct;
- d) The individual’s age and maturity at the time of the conduct;
- e) The extent to which the participation is voluntary;
- f) The presence or absence of rehabilitation and other permanent behavioral changes;
- g) The motivation for the conduct;
- h) The potential for pressure, coercion, exploitation, or duress; and
- i) The likelihood of continuation or recurrence.

Obtaining a security clearance typically requires 6 months to a year. Recent expansion in defense-related industries has resulted in a backlog of several

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hundred thousand security clearance requests. An individual with a security clearance is required to update and resubmit a security application every 5 to 15 years, depending on the type of clearance. This process also entails a reinvestigation. In addition, random periodic reinvestigations are also conducted.

### **Security Clearances and Psychiatry**

The SF-86 asks applicants several questions that relate to psychiatric treatment. The first question asks applicants to indicate whether they have consulted with a mental health professional within the last 7 years and, if so, to disclose the dates of treatment, and the name and address of the physician or therapist. However, the disclosure of treatment dates and the contact information is not required if the “consultation(s) involved only marital, family, or grief counseling, not related to violence by you.” In another section, the applicant is asked if their use of alcohol has resulted in any alcohol-related treatment or counseling in the last 7 years. Again, if the applicant replies affirmatively, they must supply the dates of treatment, identity of the physician or counselor, and related contact information.

The SF-86 includes an “Authorization for Release of Medical Information”. This authorization allows the investigator to obtain responses to three questions concerning “mental health consultations.” The form indicates to applicants, “Your signature will allow the practitioner(s) to answer only these questions.” The three questions are: (1) Does the person under investigation have a condition or treatment that could impair his/her judgment or reliability, particularly in the context of safeguarding classified national security information or special nuclear information or material? (2) If so, please describe the nature of the condition and the extent and duration of the impairment or treatment, (3) What is the prognosis?

At the time of the in-person interview with the investigator, upon verification of past or current mental health treatment, the clearance applicant is asked to sign a second release, Specific Release OFI-16A. The OFI-16A authorizes the federal investigator to obtain information from clinicians or organizations identified by the applicant. This form provides two boxes that the applicant can check to specify the information to be released. The first, headed “Medical,” states, parenthetically, “May include, but not limited to: dates of confinement, participation, or treatment; diagnosis; doctors’ orders; medication sheets; urine result reports; prognosis; and medical opinions regarding my health, recovery and/or rehabilitation; as well as other information indicated below,” followed by lines to be filled in by the applicant. At the end of the lines appears the statement, “I am aware that the information released by the above named person or organization may, but not necessarily, contain data pertaining to my use and/or abuse of alcohol and/or drugs, and my participation in a rehabilitation program with the above named organization.” The second box, headed “Other,” provides several lines for information to be specified.

The standard investigator practice is to arrange to meet with the applicant-identified psychiatrist and to present the signed OFI-16A. The SF-86 release is not

routinely presented, except in unusual circumstances: for example, when the investigator interviews the psychiatrist prior to the applicant interview and, therefore, an OFI-16A has not been executed. The OFI-16A is the preferred release form.

The Office of Personnel Management provides an investigator's handbook that provides a set of questions about applicants, to be answered by the identified psychiatrists. These questions are as follows:

1. Dates of treatment;
2. The initial complaint/reason why treatment was sought;
3. The identity and amount of any medication prescribed;
4. The nature of any additional treatment provided or recommended;
5. Whether the Subject followed all prescribed or recommended treatment;
6. The exact nature of any diagnoses made;
7. Whether and to whom the Subject was referred and whether and from whom the Subject was referred;
8. The prognosis;
9. The potential for the Subject's condition or treatment to impact on their ability to properly safeguard sensitive (in public trust cases) or classified (in national security cases) information;
10. The potential for the Subject's condition or treatment to impact their judgment or reliability; and
11. Whether Subject has or may engage in any violent or otherwise reckless or aberrant behavior because of their condition or treatment.

Adjudicators review all information compiled during the course of the investigation and determine whether clearance will be granted. In some cases, adjudicators may require that specialized evaluations be performed to assess security risk. A positive response from the treating psychiatrist to questions 9, 10, or 11 indicating that the person under investigation has a condition that could affect their ability to safeguard information, impair judgment or reliability, or is at risk for violent or aberrant behavior, is likely to trigger a request for more information and a specialized mental health evaluation. Specialized mental health evaluations also result when treating psychiatrists are unable to address those questions, or indicate that they have "no opinion." Reportedly, the majority of applicants with psychiatric treatment histories, and the majority of those who have specialized evaluations, receive security clearances. In some instances, clearance may be made contingent upon continued psychiatric treatment.

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### Adjudicative Guidelines

The Adjudicative Guidelines provide greater context regarding how psychiatric information is used in the clearance process. Guideline I, Psychological Conditions, in its entirety reads as follows:

**The Concern.** Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

Conditions that could raise a security concern and may be disqualifying include:

- a) Behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;
- b) An opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness;
- c) The individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

Conditions that could mitigate security concerns include:

- a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- d) The past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;
- e) There is no indication of a current problem.

Other Adjudicative Guidelines also address the mental health of the applicant. Guideline D, Sexual Behavior identifies concern as applying to “sexual behavior that involves a criminal offense, indicates a personality or emotional disorder.” Guideline G, Alcohol Consumption, states, “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Guideline H, Drug Involvement, indicates that “Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.”

### **Responding to a Release of Information for Security Clearance**

There are two releases that may result from applicants’ disclosure of psychiatric treatment. The first release is attached to the applicant questionnaire, SF-86. This release authorizes psychiatrists to answer three questions. In doing so, the psychiatrist is called on to provide an opinion that is likely not to have been formulated in the course of treatment and, therefore, not directly documented in the medical records. The first question is, “Does the person under investigation have a condition or treatment that could impair his/her judgment or reliability, particularly in the context of safeguarding classified national security information or special nuclear information or material?” The second release, the OFI-16A, resembles an ordinary medical record release form, authorizes a broad range of information to be released, and provides a blank space that may be filled in to authorize specific disclosures. Investigators generally present the OFI-16A and ask the former or current treating psychiatrists to respond to questions (see above) that address treatment, compliance, referrals, and diagnoses. In addition, the questions call for psychiatrists to address applicants’ judgment and reliability, potential for violence, and ability to safeguard information.

The security clearance process raises two areas of concern for psychiatrists:

1. Providing assessments of patients’ abilities related to safeguarding security. Treating psychiatrists are not expected to provide specialized assessments of patients’ (or former patients’) reliability or judgment in the context of safeguarding sensitive information, or potential for future violence. Indeed, few treating psychiatrists will have experience with the special circumstances of handling classified information or nuclear material. Specialized assessments of patients’ potential for future violence are generally conducted by forensic psychiatrists, or by other psychiatrists with the requisite training and experience. However, the treating psychiatrist may have some perspective on the patient’s judgment and reliability based on information gathered in the course of treatment. Psychiatrists typically make similar judgments regarding patients’ ability to return to work, to be allowed on unsupervised passes, or to be discharged from the hospital. Psychiatrists often make clinical judgments about the risk of violence, for example in civil commitment

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proceedings. It is appropriate for the treating psychiatrist to formulate responses to the security questions based on his or her general view of the patient's psychiatric history, judgment, risk, and reliability. In some cases, for example, when the patient was seen briefly in the past, the psychiatrist may not have a reasonable basis for forming an opinion.

2. Privacy and the authorizations for release of information. Psychiatrists should be aware of potential problems related to the release authorizations. Some security clearance applicants may give little thought to how their psychiatrists will respond to investigators' questions. Also, the routine use of two authorization forms (SF-86 and OFI-16A) may be confusing and, unintentionally, may mislead applicants. For example, applicants may reasonably interpret the SF-86 form as limiting the scope of disclosure provided by the OFI-16A. Moreover, it is reasonable to assume that patients or former patients under investigation have authorized release (via the SF-86 form) with the expectation that their psychiatrists will not indicate they have impaired judgment or reliability. Finally, applicants may not be aware that their OFI-16A releases authorize investigators to ask not only about routine clinical matters (e.g., handbook questions 1-8), but also their risk for violence (which is not covered by the SF-86 release). These problems are addressed below.

In many, perhaps most, instances the treating psychiatrist will not identify the subject of investigation as having impaired judgment or reliability, or as being at risk for violent or aberrant behavior. In these circumstances, responding could be viewed as a routine matter. However, when the psychiatrist reaches the judgment that there is a basis for concern, or has no opinion and, therefore, cannot provide the sought-after clearance, automatic compliance with investigators' questioning may not be appropriate.

Even if signed requests for psychiatrists to speak with investigators meet the legal requirements for authorization, psychiatrists may want to speak directly with patients and former patients before talking with investigators, when the consequences are likely to be negative or problematic. This may facilitate preservation of the therapeutic relationship and the maintenance of patients' trust in psychiatry. Many patients (or former patients) applying for security clearance will not have full appreciation of the relationship between their psychiatric diagnoses and treatment, and the government's security interests. Discussion of the nature and scope of disclosure in this context may be useful in strengthening the therapeutic alliance and in allowing patients to anticipate the consequences of disclosure. In particular, when a patient (or former patient) has signed both an SF-86 release and an OFI-16A, it is important to convey to the patient (or the former patient) that investigators will be seeking answers to questions in addition to those specified by the SF-86. Ideally, the psychiatrist would review the anticipated questions and clarify the patient's intended scope of authorization to disclose.

As an example, consider the case of a patient who has been in therapy for over a year and is now applying for a security clearance. He initially sought treatment

because of marital problems; also, he had done some questionable things while intoxicated. The treating psychiatrist believes that the patient does have a condition that, if untreated or exacerbated, could impair judgment or reliability and this could occur in the context of national security. The psychiatrist schedules a special session to discuss the security clearance release. The patient is surprised to learn that there would be any security concern based on his psychiatric history. He had not considered his problems or his treatment to be alcohol-related. The patient had indicated on the SF-86 that he had not had alcohol-related treatment. He now realizes that his answer was incorrect and may be viewed as deceptive. The psychiatrist points out that the patient's prognosis is very good: the alcohol abuse had stemmed from his wife's infidelity and had resolved following their agreement to a divorce. The psychiatrist had planned to divulge this information during the security clearance interview. The patient asks the psychiatrist not to indicate details of his wife's infidelity. The psychiatrist agrees that details are not germane to the security inquiry. As a result of the discussion, the patient amended his SF-86 and authorized the psychiatrist to disclose the relevant psychiatric history and some details of the prognostic factors.

This brief example underscores the importance of discussing security clearance releases with patients. It should be emphasized that it is not appropriate for psychiatrists to negotiate their opinions with patients (or former patients). In interviews with investigators, psychiatrists must not conceal information in their responses to questions within the scope of the authorized disclosure. Discussion, however, may lead patients to revoke their authorizations. Psychiatrists should respect these decisions and convey to investigators that the subject of investigation has revoked authorization.

In the typical practice, a security clearance investigation will be an unusual occurrence and will likely involve a patient/applicant seeking an initial clearance. However, in some settings, such as the practices of military psychiatrists and State Department psychiatrists, security clearance-related issues are common and are often at the forefront of patients' concerns as they enter treatment. Psychiatrists who practice in these settings often engage their patients in discussions of the impact of psychiatric diagnoses, treatments, and judgments on security clearance. These discussions occur as part of the process of informing patients about the implications of treatment and are important to the development of a therapeutic relationship.

The following suggested approaches were formulated with a general psychiatric practice in mind. By following these approaches, psychiatrists can comply with government requests for information while acting in their patients' best interests.

### **Considerations for Psychiatrists**

1. The psychiatrist has no professional obligation to perform any additional evaluation or specialized assessment as part of the security investigation.

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Responses to the questions should be based on diagnoses and judgments formed in the course of the treatment relationship. The psychiatrist should make clear to the investigator that no specialized security risk assessment was performed.

2. The psychiatrist should ask the investigator to present both the authorization forms provided by the applicant. Under current procedures, every applicant is required to provide an SF-86 authorization. The psychiatrist should read the OFI-16A release carefully, taking note of any modifications that may have been made in the space provided on the form. For example, applicants may have indicated authorization for release of information regarding their risk for violent or aberrant behavior.

3. The psychiatrist should decline to provide the investigator with additional information or judgments that fall outside the scope of the authorized disclosure(s). The psychiatrist should inform the investigator that the requested information falls outside the scope of the patient's authorization and, if additional information is required, a new authorization will need to be obtained from the patient. This applies specifically to those instances in which the security applicant has signed only the SF-86 authorization (and not the OFI-16A). It also applies to instances in which applicants have not modified the OFI-16A to authorize disclosure of information relevant to their risk for violent or aberrant behavior. In these instances, psychiatrists should restrict disclosures to information relevant to answering the three SF-86 questions.

4. When the psychiatrist believes that a patient (or former patient) under investigation does not have a condition or treatment that could impair his/her judgment or reliability as specified in the SF-86 release, then it is sensible practice to respond accordingly when contacted by the security investigator. In this context, the psychiatrist is complying with the request and responding as expected by the patient who signed the SF-86 release. To require more would be burdensome and not alter the outcome.

5. When the psychiatrist believes that a patient (or former patient) has a condition that could impair judgment or reliability as specified by the federal guidelines, or has no opinion, then a sensible procedure is for the treating psychiatrist to engage in a discussion with the patient under investigation. The psychiatrist should formulate responses to the eleven anticipated questions in advance and share them with the patient, prior to disclosure to the security investigator. The psychiatrist should review the basis for the opinion, including anticipated responses to the investigator's questions regarding the nature, extent, and duration of the underlying condition, and the prognosis.

6. In some cases, it may not be possible to locate a patient or a patient may not wish to discuss the release, it may be counter-therapeutic to contact the patient, or it may not be practical to engage the patient in a discussion for other reasons. In



these cases, it is reasonable for psychiatrists to respect authorizations for disclosure without further discussion.

7. Following disclosure of information to the investigator, the psychiatrist should document the exchange.

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**PSYCHIATRIC NEWS ARTICLE SEPTEMBER 15, 2006**

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Psychiatric News September 15, 2006  
Volume 41, Number 18, page 6  
© 2006 [American Psychiatric Association](#)

Retrieved October 13, 2006 from:

<http://pn.psychiatryonline.org/cgi/content/full/41/18/6?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&author1=daly&searchid=1&FIRSTINDEX=0&sortspec=relevance&resourcetype=HWCIT>

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## PROFESSIONAL NEWS

### APA OFFERS HELP NAVIGATING SECURITY-CLEARANCE CHECKS

Rich Daly

Although some psychiatrists express concerns over their participation in security-clearance investigations, others view their role as a service to their patients.

Psychiatrists who are contacted as part of government security-clearance background checks on current or former patients now have an APA document to guide them following approval in June of a resource document by the Joint Reference Committee.

The guidelines were requested by officials at the Defense Personnel Security Research and Education Center (PERSEREC), a government agency whose mission is to improve government and industry personnel-security procedures. The agency has requested similar guidelines from the American Psychological Association and has shared APA's guidelines with that organization.

"PERSEREC came to APA because many psychiatrists were not cooperating with background checks or understanding how to cooperate," said Steven Hoge, M.D., a member of APA's Council on Psychiatry and Law, which developed the guidelines.

The guidelines outline the approach and aims of federal security checks in general and the specific steps such investigations follow. It also indicates what information investigators may request from psychiatrists and suggests what disclosures are appropriate.

### ADDITIONAL EVALUATION NOT REQUIRED

Investigators seek out psychiatrists who have treated security-clearance applicants and ask an established set of questions aimed at understanding the scope of illness and the effectiveness of treatment provided. Psychiatrists are not obligated to perform "any additional evaluation or specialized assessment as part of the security investigation," the guidelines point out.

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All discussions with investigators should begin with psychiatrists obtaining one of two federal authorization forms signed by the applicant, according to the guidelines. Psychiatrists should discuss the evaluation with current patients to make sure they understand the ramifications of the release they have signed and review the responses the physician plans to give investigators. This step is especially important in cases in which a psychiatrist is concerned the patient is at risk for impaired judgment or violence—red flags in the background checks.

The background checks may not affect many psychiatrists outside of areas with many federal or military workers but they can impact many within such regions. Millions of Americans require security clearances as part of their jobs in the government, the telecommunications industry, and financial institutions, and nearly 1 million clearance requests are initiated each year, according to the federal Office of Personnel Management. The expansion of defense-related industries in recent years has led to a backlog of several thousand security clearances.

The federal guidelines on background searches specify that no negative inference is to be drawn solely from the fact that an employee or potential employee has sought mental health care. Even the presence of major psychiatric conditions does not prevent applicants from clearing the background check if their condition is “readily controllable” and they have adhered to the prescribed treatment regimen.

### **‘FISHING EXPEDITION’ RARE**

Brian Crowley, M.D., a Washington D.C., forensic psychiatrist who has participated in security investigations for about 30 years, said he views his role as providing a service requested and approved by his current or former patients.

“I may want to discuss it with current patients to make sure they understand the ramifications of what they are approving, but it has been a routine part of my practice, and I’ve never found the investigators are embarking upon a fishing expedition,” Crowley said.

It is important, he added, that psychiatrists emphasize that their assessments of a patient’s abilities to safeguard security are limited to the timeframe that the patient was under their care. Psychiatrists contacted to assess former patients should specify their views only apply to their understanding of the patient at the time of care.

The APA Council on Psychiatry and Law sought the views of many members through forums at various APA meetings, and some psychiatrists expressed reservations with the appropriateness of their involvement with such investigations.

“Some wanted the security checkers to check these [applicants’ mental stability] themselves,” Hoge said, about psychiatrists concerned with the fact that their treatment of a patient never focused on the patient’s trustworthiness or other questions raised by investigators.

The guidelines attempt to reflect this concern by specifying that psychiatrists who are unable or unwilling to provide the sought-after clearance information should not automatically respond to the questions of security-clearance investigators.

Investigators arrange for a “specialized mental health evaluation” when psychiatrists are unable to answer their questions or when they receive responses of “no opinion.”

Conversely, psychiatrists who choose to participate in investigations authorized by their patients should provide information and judgments to investigators that fall within the authorized disclosures. The guidelines emphasize that it is inappropriate for psychiatrists to negotiate with patients over what opinions they will disclose to investigators. However, before talking to investigators it would be appropriate for psychiatrists to discuss with their patient what central aspects of their condition would be disclosed and whether more peripheral details should be disclosed.

“We try to be very clear in these guidelines and prevent psychiatrists from feeling like they are out on a limb when responding to these investigations,” Hoge said.

***The resource document “Psychiatrists’ Responses to Requests for Psychiatric Information in Federal Personnel Investigations” is posted at***

***<[www.psych.org/edu/other\\_res/lib\\_archives/archives/200602.pdf#search=%22personnel%20investigations%22%22](http://www.psych.org/edu/other_res/lib_archives/archives/200602.pdf#search=%22personnel%20investigations%22%22)>. ■***

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**INVESTIGATOR TRAINING FOR THE AMERICAN PSYCHIATRIC  
ASSOCIATION RESOURCE DOCUMENT**

## APPENDIX F

## USING THE AMERICAN PSYCHIATRIC ASSOCIATION RESOURCE DOCUMENT

The Defense Personnel Security Research Center collaborated with the American Psychiatric Association to develop a resource document describing personnel security investigations. The document, approved by the American Psychiatric Association Board of Trustees, is available on the American Psychiatric Association website as a reference for practitioners who are unfamiliar with personnel security investigations and unsure how to handle requests for security clearance-related client information.

In addition to providing general background information about personnel security investigations, the American Psychiatric Association resource document makes the point to practitioners that the investigation process is important to clients seeking jobs that require clearances and reminds practitioners that clients sign release forms agreeing to the disclosure of mental health information. It also suggests that, in most circumstances, cooperating with the investigator is in the client's best interests.

The background information portion of the resource document describes the rationale for investigations along with the fact that investigations are a requirement for employment for many jobs. It outlines the Executive Orders that define the investigative requirements as well as relevant Adjudicative Guideline information. In addition, it also describes the medical release forms that typically accompany a request for mental health information (e.g., the medical release for that is part of the SF-86 form or form OFI-16A) and the types of questions that investigators are likely to ask of practitioners.

Finally, the resource document addresses potential concerns about handling questions about judgment and reliability. First, it reassures practitioners that they are not required to perform specialized assessments and informs them that such assessments are typically performed by practitioners with specialized training. It also suggests to practitioners that these judgments have a great deal in common with similar judgments they must make, such as decisions about a patient's ability to return to work or clinical judgments about the risk of violence.

The resource document is a useful tool for investigators as well as for mental health practitioners. Investigators must contact mental health care practitioners in order to arrange an appointment and should enquire at that time if the practitioner has any questions about the process. If the practitioner does express concerns, the investigator can direct the practitioner to the resource document on the American Psychiatric Association website or offer to provide a copy.