

The management of patient/client privacy and confidentiality in public provider settings

APS Professional Practice

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The Australian Psychological Society (APS) holds a longstanding commitment to the protection of patient/client privacy. This is expressed in detail in its *Code of Ethics* as an obligation for all members. The Code is also now endorsed by the Psychology Board of Australia as a requirement of registrants. While the APS is not alone among professions in its commitment to such a policy, the presence of sensitive mental health, relationship, developmental and neurological features in the presentations of its member's patients and clients makes more vital the protection of that privacy.

As a consequence the Society has released a policy statement urging members to maintain or adopt a two-part file policy with regard to practice in both private and public sector settings where assessments, treatments and management of patients/clients occur. The Society believes that such a two-part file policy is needed to ensure protection and privacy of patient/client information. The sound reasons and rationale are set out below, but the division of psychology files and records is suggested as between the "Confidential Client File" (sometimes called "practitioner notes") and the "Client Service Record" (sometimes called "patient unit record").

Confidential Client File

This is the sensitive section and may contain confidential, sometimes very intimate, information about the patient/client and even about third parties (e.g. parents, spouses, and children); it may also include diagnostic comments created by the practitioner which may be private to the practitioner; also present may be test records, formal treatment plans or evaluations.

Client Service Record

This is the less sensitive section and for the public sector would be part of the standard organisational unit record where practitioners may record dates of services, progress comments, perhaps diagnoses, intervention plans or other material that practitioners other than psychologists need to know.

To achieve this in the electronic world (eHealth), there needs to be a password protected and quarantined area of the data system to allow for the protection of the Confidential Client File and Client Service Record.

The rationale

To establish an effective relationship with a patient/client with mental health or other sensitive psychological problems, the patient/client needs to be assured of privacy and confidentiality. The professional providing services such as assessment, therapy or expert consultation is faced with a serious dilemma: either promise and deliver privacy or severely limit the openness, quality and effectiveness of the professional relationship. For example, in the management of a mental health issue, the patient/client may need to disclose and discuss, sometimes at length over a number of sessions, very intimate and sensitive matters. This may never have been expected by the patient/client prior to their engagement in the service provision but patients/clients may ultimately concur with this disclosure in the interests of recovery and personal growth. Patients/clients may choose not to do this without reasonable confidence that such discussions are confidential and occur only between themselves and the therapist.

The added complication is that there is another critical component. For such processes to be managed effectively, the professional needs to keep comprehensive notes and in sufficient detail to inform ongoing interactions, appropriate interventions, assessments and even long term management. So either the professional keeps detailed private notes and promises confidentiality (to the best of their ability) or they cannot act in a truly professional way. Failure to keep adequate notes is tantamount to renouncing professional obligations and the APS *Code of Ethics*¹. Section A.5.1 of the Code commits psychologists to safeguarding the confidentiality of information obtained during their provision of services and allows disclosure only under very limited circumstances. At the same time, Section B.2.1 commits them to making and keeping "adequate records".

The confidentiality of practitioner notes and private patient/client information is not negotiable. Apart from the consenting patient/client, the Courts and legislation are the only means by which it can be overridden and even then only with due consideration of justification. Assurances that other health professionals in "the team" are bound by confidentiality agreements miss the vital point and are not adequate protection of the patient/client. The patient/client may just not want others to *know*. They have a right to limit exposure of their personal information. Other members of "the team" may not need to know intimate details - and particularly not third party information, such as facts about the patients/client's relatives etc.

Furthermore, information once given away cannot be reclaimed. For instance, knowledge disclosed to the psychologist that a patient/client had a history of atypical sexual practices once revealed to the team cannot be given back, but may be totally irrelevant to the general health treatment.

Conclusion

The APS strongly urges its members to adopt this policy and to negotiate with its employing health service organisations to allow this protection of patients/clients and endorsement of effective and ethical practice.

[This document is based on a more comprehensive APS document available in hard copy and on the web: Psychologist's records: management, ownership and access]

¹ The Australian Psychological Society (2007), Code of Ethics, Melbourne, Victoria

