



THE ROYAL
AUSTRALIAN AND NEW ZEALAND
COLLEGE OF PSYCHIATRISTS

Guidance for Electronic Media Recording and Storage

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1. Introduction

Medical procedures involving patients may only be recorded digitally, on electronic media recording, audio recording or on film, if the patient has given free and informed consent, except in specific circumstances set out below. The making and use of such records should be governed by clear codes of practice to ensure confidentiality, and to protect the patient's right to autonomy and privacy. Recording of medical procedures is now commonplace, and readily accepted by most patients. However, the recording of medical procedures, including consultations between patient and doctor, can cause the patient embarrassment and distress, and may be experienced as intrusive. The subsequent use of recordings may be a source of continuing concern to the patient, particularly if he/she can be identified. Doctors may make use of these guidelines whenever recordings are to be made of their patients, even when the patient is not identifiable and when the doctor is not directly involved in the making and use of the recording.

2. Use of recorded material

Recordings are used in psychiatry for clinical purposes, teaching, examination, training and research. One recording may sometimes be used for more than one purpose. Each purpose must be clearly and separately identified to the patient.

Examples of the use to which recordings may be put include the following:

2.1 Clinical uses

- (a) To monitor therapeutic change over a period of time.
- (b) To enable patients and/or family members to observe and learn from their own interactions.
- (c) To give feedback to the patient about their behaviour or appearance.
- (d) To provide parents with training in handling children's behaviour.
- (e) To facilitate the involvement of the wider clinical team.

2.2 Teaching

- (a) Illustration of clinical signs.
- (b) Demonstration of interviewing techniques.

2.3 Training

- (a) For demonstration purposes in the ongoing training of the clinical team.
- (b) For clinical supervision in the training of psychiatrists and other staff.

2.4 Research

2.5 Investigative purposes

- (a) Interviews with children suspected of having been abused (usually sexually).
- (b) Interviews with families where emotional abuse is suspected.

2.6 Promotional or commercial purposes

Recordings made for these purposes are outside the scope of this document however, it remains the clinicians responsibility to ensure patients are not exploited for commercial or promotional purposes.

3. Confidentiality

Ownership of the recording belongs to the institution that employs the clinician who makes the recording, or by the clinician, if he or she works independently, subject to any special legislation in the relevant jurisdiction. Electronic media recordings made for any of the above reasons should be treated with the same degree of confidentiality as case notes. Once made, recordings should be secured, and a procedure for signing in and out of storage is recommended. This should include provision to ensure that copying or other breaches of the terms of consent do not occur.

Where a patient agrees to be interviewed for the sake of a promotional videotape to be distributed by, for example, a drug company, or a patient is interviewed by staff of another agency (e.g. social services), the issues of confidentiality and the possession of the record will need clarification beforehand.

4. Teaching and training

Electronic media recordings made exclusively for the purpose of teaching, examination and/or training are not generally regarded as part of the medical record however, such information may still fulfill the broad definitions of “health information” used under relevant privacy legislation. Those responsible for the production of such recordings should be aware of these legal requirements as detailed in section 5 below.

When patients sign a consent form either for regarding themselves or on someone else’s behalf there must always be a consented time frame and should consider review.

Before being used in teaching or training sessions, parts of the recording which might identify the patient’s family (e.g. surnames or addresses) should be erased. Audiences must be reminded of their duty of confidentiality. Audience members should be invited to declare personal acquaintance, in which case the presenter should then ask the participant to leave the room or decide not to use that recording.

It may be reasonable to use comprehensively de-identified recordings for teaching and training purposes without obtaining consent however great care should be taken when presenting patients with unusual conditions, where the subject matter alone may be sufficient for the patient to be identified. Particular care should also be taken before using such recordings as part of a broader publication in a textbook or journal. Many journals now require consent for all published case reports.

5. Clinical use

Where recordings are not made for the exclusive purpose of teaching, examination and/or training; then the same conditions apply to electronic recordings as to health records under the privacy legislation. In Australia clinicians should be aware of the requirements under the *Privacy Act 1988* (Commonwealth of Australia) and any relevant state legislation. In New Zealand the *Health Information Privacy Code 1994* takes the place of the twelve information privacy principles of the *Privacy Act 1993* for the health sector. Recordings made for clinical purposes form part of the medical record unless or until they are erased. Individuals may subsequently ask to see their electronic recordings. Ordinarily, an organisation holding personal (including health) information about an individual must provide that individual with access to the information unless certain exceptional circumstances apply. Where clinicians agree to such a request, it may be wise for a health professional able to provide support and explanation to be available. Electronic

media recordings, like written medical records, can be subpoenaed by a court. The possibility of such disclosure is acknowledged under privacy legislation. It may be prudent to explain this as part of the consent procedure to electronic recording.

6. Investigative purposes

Particular ethical issues are raised by the use of electronic media surveillance and recording for investigative purposes, especially where the use and intention of such procedures is covert. At such times, particularly in relation to investigative work with children and their possible abusers, written consent may not be feasible. Investigative interviewing of young people should only be carried out within the context of a child protection investigation undertaken under the auspices of local child protection policies.

7. Media recordings

Recordings must not be published or broadcast without explicit, written consent. Invitations to or arrangements with a television company or other external individuals or organisations to film patients in a health care setting, must be approved by the employing authority and the organisation in which the patients are being treated if this is different.

Where a recording is made for a television programme, or other publicly available media, those who own the recording (e.g. the television company) are not bound to accept withdrawal of consent to use the recorded material after the filming process has been completed. Any restrictions on the use of material, should be agreed to in writing from the owners of the recording before recording begins.

If the treating doctor fears the recording is having an adverse effect on the consultation or on treatment, he/she must take steps to see that filming stops. For example, suspension of the consultation and written assurance sought that the recording will not be screened.

In Australia the various broadcasting industry sectors set their own programming guidelines, in the form of codes of practice. These are periodically reviewed by the Australian Communications and Media Authority. The Authority provides privacy guidelines for broadcasters which are binding on the licensee. The Authority also monitors complaints. The Broadcasting Standards Authority performs a similar role in New Zealand.

8. In advance of the recording

The usual principles of consent will apply. The term 'patient' is used here as shorthand for the person giving consent. Before proposing to the patient that a recording is made, the psychiatrist should consider carefully the potential impact of recording on the patient, the therapeutic relationship and subsequent compliance. This is especially important if a therapeutic consultation or treatment session is to be recorded because recording may have a significant influence on subtle dynamic processes within the therapeutic relationship. The patient should understand the purpose for which the recording will be used. Each specific purpose should be separately explained.

The patient should understand who will see the recording and where it will be shown. The number of potential viewers should be discussed. The general categories of viewer should be specified at the time of consent and the reasons for their access to the material explained. The patient should be confident that the viewers of the electronic media recording will refrain from discussing what they have seen outside the session in which they viewed it.

The patient should understand whether copies will be made, the storage arrangements for the recording and how long it will be kept for. If this is for an indefinite period this should be specifically stated.

In this context, the patient has the right to refuse permission for electronic media recording. It must be made explicit that refusal will not affect clinical care given to the patient and the request should be made in neutral terms. Where it is considered important to make a electronic media recording, exploration about the reasons for the reluctance often helps to dispel patient concerns.

The patient should be given adequate time to properly consider the request. The doctor should ensure that the patient has a full understanding of the significance of the proposed procedure. In some cases, the process of explanation and obtaining consent may need to be carried out over a period of time. If necessary, translations should be provided.

For children under the age of 16 specific considerations apply that are outlined in a companion document.

In situations where the patient does not have the capacity to give informed consent, for example because of cognitive impairment, agreement must be sought from a duly appointed legal guardian as set down for other medical or research procedures.

People agreeing to recordings on behalf of others must be given the same rights and information as patients acting on their own behalf. In exceptional circumstances, the clinician may judge that it is in the patient's best interests to record a patient without first seeking consent. Such circumstances may arise, for example, where there is reason to believe that a child is the victim of abuse. Before recording a patient without consent it is advisable to discuss this decision with an experienced colleague.

At no time should patients be placed under pressure to give consent. A practitioner must not participate in a recording made against a patient's wishes. In some circumstances it may also be appropriate for an interview to commence with the patient's verbal consent to the interview being recorded.

9. During the recording

The recording must be stopped if, at any time, the patient requests it. The recording should also be stopped if at any time the interviewer feels that the benefit to the patient from the consultation has been reduced by the act of recording it.

The recording may also have to be stopped because the need to protect others becomes apparent during the interview. Sometimes other individuals who will never be in a position to be asked for consent for the recording to be used are named during an interview and confidential information about them is discussed.

10. After the recording

The patient should now consider whether to vary or withdraw consent. The recording can only be used for the specific purpose(s) for which consent has been given.

If the recording is to be viewed by anyone other than the immediately responsible health care team or outside the locality of the place at which the recording is made, then the patient must understand this and the implications of it.

The patient must be offered the opportunity to view the recording, in the form in which it will be shown, before the recording is first used. Some patients will lack an understanding of the significance of agreement, and therefore be unable to give valid consent, unless they have an opportunity to see what others would see.

The patient has the right to withdraw consent to the use of the recording at this stage. If the patient withdraws consent, now or at any future time, the recording must be erased immediately. Patients' instructions about the erasure or storage of recordings must be followed.

11. Storage & Retention of Recordings

The storage, security and retention of all health information is subject to the relevant New Zealand, or Australian Federal, state or privacy legislation. As indicated above, electronic recordings would be deemed health information under such legislation. Whilst there is some variation in the precise requirements, the onus is usually on the organisation holding the information to ensure that it is protected from misuse and loss and from unauthorized access, modification or disclosure. The deletion and destruction of such information is also strictly controlled.

All those involved in producing such recordings should familiarise themselves with the relevant privacy requirements.

12. References

Privacy Act 1988 (Commonwealth of Australia)

Health Information Privacy Code 1994 New Zealand Government

13. Source material

General Medical Council (1994) *Guidance for Doctors on Electronic media recordings of Consultations between Doctors and Patients, and of other Medical Procedures, for the Purposes of Training and Assessment*. London: GMC.

— (1997) *Making And Using Visual And Audio Recordings of Patients*. London: GMC.

Royal College of Psychiatrists (1993) *Code of Practice for the Use of Video recording in Child Psychiatric Practice* (Council Report CR20). London: Royal College of Psychiatrists.

Royal College of General Practitioners (1996) *Membership Examination, Assessment of Consulting Skills, Instructions to Candidates*. London: Royal College of General Practitioners.

14. Acknowledgements

The RANZCP would like to thank the Royal College of Psychiatrists for their permission to adapt their document "Guidance for Video Recording", to meet Australian and New Zealand conditions.

Appendix Sample media recording consent form

Place of electronic media recording _____

Date _____

Patient's name _____

Consent to Electronic Media Recording

We are hoping to make a electronic media recording of the interview with:

(Name) _____

The recording will be used for the purpose of _____

All electronic media recordings are carried out according to guidelines issued by the Australian Medical Council and the Royal Australian and New Zealand College of Psychiatrists.

The recording will be seen by _____

The recording will be stored in a locked cabinet and is subject to the same degree of confidentiality and security as medical records. The recording will be erased as soon as practicable and in any event within

Dr _____ is responsible for the security and confidentiality of this recording recording.

You do not have to agree to your interview being recorded. This is not a problem, and will not affect your care in any way. Please say if you want the camera turned off at any time during the recording. But if you do not mind your consultation being recorded, we are grateful to you.

If you wish you may view the recording.

If you consent to this interview being recorded, please sign below. Thank you very much for your help.

Signed _____

Date _____

Signature(s) of any accompanying person(s) _____

After you have finished, please sign below to confirm that you are still happy to have the recording used.

Signed _____

Date _____

Time frame

I am aware that I may change my mind in the future and this possibility has been discussed with me.

The potential audience for this recording has been discussed with me and I consent to this recording being used in this way.

I hereby consent to this recording being able to be used for

12 months 5 years Forever

Other: _____