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### **Record Keeping and Issues to consider under the Health Information Privacy Act (2003)**

All psychotherapists are regarded as “health practitioners” by virtue of being eligible for registration under the Health Practitioners Competence Assurance (HPCA) Act 2003 and therefore all laws which refer to health information, health records and health practitioners encompass all psychotherapists.

#### Purpose of Record keeping

- To ensure there are records for each client including the assessment notes and record of any intervention to aid appropriate ongoing intervention, for the client’s personal use, for any legal process and to provide documented evidence in the event of any subsequent complaint or competence concern.
- As a memory aid for the psychotherapist
- To enable transfer to another clinician.
- To comply with relevant legislation.
- To support accounting processes and keeping statistical data.

**HIPC ( Health Information Privacy Code 1994)** These are rules which inform our practice and are designed to ensure people retain a degree of autonomy over their own personal health information.

- Rule 1. Information should only be collected for a lawful purpose. The information must be necessary for that purpose. If records are requested by the person, information from the third person must be blanked out to protect the confidentiality of the person who offered the opinion.
- Rule 2. Wherever practicable- information should be collected directly from the person concerned. We need to get authorised permission before collecting information from somewhere/someone else.
- Rule 3. When collecting information all reasonable steps should be taken to ensure that the individual is aware; that the collection is taking place, who is collecting and the intended purpose of the information. It should be clear whether the supply of information is voluntary or mandatory, and under which law.
- Rule 4. Health Information must only be collected by means which are lawful, fair and in ways which do not intrude on the individual personal affairs.
- Rule 5. Anyone holding health information must take steps to ensure that it is guarded against loss or unauthorised access and use. Records must be kept secure and other an approved health professional only those who have been given approval by the client may read or copy them.

- **Rule 6.** Individuals have the right to access or request any health information about them. Any request should be responded to promptly (within 20 working days). If a request is refused the individual should be informed of their right to complain to the Privacy commissioner. **Possible reasons for refusing a request may involve; it would endanger the safety of an individual, breach confidentiality with regard to another individual, prejudice the mental or physical health of an individual, be contrary to the individual's best interests (where under the age of 16) or be not possible if the information is not retrievable.**

**Specifically:**

### **Requests by Parents and Guardians**

Under section 22F of the Health Act (1956), parents and guardians have a limited right of access to the medical records of their children under the age of 16.

This sort of request under section 22f may be refused where:

- i. It would be contrary to the interests of the child or young person to disclose
- ii. The child or young person does not or would not wish the information to be disclosed.
- iii. Withholding grounds in sections 27-29 of the Privacy Act would have applied, had the request been made by the person concerned.
- iv. The views of one parent or guardian of the child are generally not relevant to a section 22f request by another parent or guardian.

- **Rule 7.** Individuals have the right to request correction of health information about them if they believe it to be wrong. Even if this request is refused the request must be noted.
- **Rule 8.** Health information needs to be as accurate and up-to-date as possible if used. The degree of rigour and accuracy needs to be specified.
- **Rule 9.** Health Information should not be kept longer than is required.
- **Rule 10.** Health Information obtained for one purpose cannot be used for any other purpose. Exceptions include where an individual authorises use for another purpose or where information is required for court proceedings.
- **Rule 11.** Limits on disclosure are applicable such that information should only be disclosed if the individual to whom the information pertains has given authorisation. This continues to apply until 20 years after the individual's death. **Some exceptions are; with regard to a child or young person the level of their emotional maturity and cognitive skills should determine the weight given to their requests and consent to disclose personal info. Parents do not have the automatic right to be given info about their child unless this is one of the purposes for which the**

information was obtained. A child or young person is at risk of being abused or neglected.

Psychotherapists should guard against inadvertent disclosure through the sending of a fax or email which risks the information being read by an unauthorised recipient.

- Rule 12. Some areas of work are not covered by the Privacy Act e.g. assessments carried out on referral from the Family Court and under the Care of Children Act 2004 or the Children Young Persons and their Families Act 1989 are exempt from the Privacy Act. Requests for information would be not responded to under in these situations; instead the person would refer the applicant back to the family court or CYF.

### **Retention of Records**

Records must be retained for 10 years minimum. A psychotherapist in private practice owns the records created in that practice and is therefore responsible for the safe storage of those records.

### **What is included in the Records**

Records should include a complete record of contact with the client. They should be full enough to track the initial assessment, Formulation, planning and the progress of intervention. Risk issues should be noted and any, “out of the ordinary” communications. Records refer to both electronic and written stored information.

Records should be up-to date and initialled and dated. Every face to face contact should be recorded with identity of the recorder, date, and date of notes. Text messages and phone calls should be recorded as file notes if considered of sufficient significance.

Once notes are recorded they should not be deleted unless as part of an archives clean-up after the mandated retention period has passed. Any destruction must be done in a way to preserve confidentiality.

Information “held in mind” can be subject to an access request, for example conversations or specific issues that were discussed at a meeting a number of weeks ago could be expected to be revealed.

### **Confidentiality of Records**

Confidentiality rules apply except where there is deemed to be a risk to the safety of the person concerned.

### **Release of Records or Information**

The general principle that applies to records is that they should only be released with the permission of the client who is the subject of the records. If the client requests in writing that the records be released to another professional then that should be acted on promptly- it can be a summary.

### **Planning Ahead**

The psychotherapist needs to make adequate plans for access to and disposal of records in the event of serious illness or death of the psychotherapist.

**Extracts from:**

**Privacy Act 1993**

An agency may refuse to disclose any information requested pursuant to [principle 6](#) if—

29 (1)(b) the disclosure of the information or of information identifying the person who supplied it, being evaluative material, would breach an express or implied promise—(i) which was made to the person who supplied the information; and

(ii) Which was to the effect that the information or the identity of the person who supplied it or both would be held in confidence; or

29 (1)(d) in the case of an individual under the age of 16, the disclosure of that information would be contrary to that individual's interests;

**Health Act 1956**

**22F Communication of information for diagnostic and other purposes**

(1)

Every person who holds health information of any kind shall, at the request of the individual about whom the information is held, or a representative of that individual, or any other person that is providing, or is to provide, services to that individual, disclose that information to that individual or, as the case requires, to that representative or to that other person.

(2)

A person that holds health information may refuse to disclose that information under this section if—

(a)

that person has a lawful excuse for not disclosing that information; or

(b)

where the information is requested by someone other than the individual about whom it is held (not being a representative of that individual), the holder of the information has reasonable grounds for believing that that individual does not wish the information to be disclosed; or

(c)

refusal is authorised by a code of practice issued under [section 46](#) of the Privacy Act 1993.

(3)

For the purposes of subsection (2)(a), neither—

(a)

the fact that any payment due to the holder of any information or to any other person has not been made; nor

(b)

the need to avoid prejudice to the commercial position of the holder of any information or of any other person; nor

(c)

the fact that disclosure is not permitted under any of the information privacy principles set out in [section 6](#) of the Privacy Act 1993—

shall constitute a lawful excuse for not disclosing information under this section.

(4)

Where any person refuses to disclose health information in response to a request made under this section, the person whose request is refused may make a complaint to the Privacy Commissioner under [Part 8](#) of the Privacy Act 1993, and that Part of that Act, so far as applicable and with all necessary modifications, shall apply in relation to that complaint as if the refusal to which the complaint relates were a refusal to make information available in response to an information privacy request within the meaning of that Act.

(5)

Nothing in subsection (4) limits any other remedy that is available to any person who is aggrieved by any refusal to disclose information under this section.

Section 22F: replaced, on 1 July 1993, by section 2 of the Health Amendment Act (No 2) 1993 (1993 No 32).

Section 22F(1): amended, on 1 January 2001, by [section 111\(1\)](#) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

## **References**

**Counselling & the Law – A new Zealand Guide 2nd edition.** Robert Ludbrook Dunmore Publishing Ltd 2012

Health Act 1956, [www.legislation.govt.nz](http://www.legislation.govt.nz)

Health Information Privacy Code, [www.privacy.org.nz](http://www.privacy.org.nz)

Privacy Commissioner; **On The Record- A Practical guide to Health Information Privacy.** 3<sup>rd</sup> edition, 2011

The Psychotherapists Board of Aotearoa New Zealand, **Record Keeping** pg 7, [pbanz.org.nz](http://pbanz.org.nz)

**The Code of Ethics for New Association of Child and Adolescent Psychotherapists**, in rules of the New Zealand Association of Child and Adolescent Psychotherapist Inc 2015.

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