

Guidelines on record keeping

1. Introduction

1.1. Client psychological records include any information recorded that identifies the client and/or documents the nature, delivery, progress, results, or recommendations of psychological services; for example, appointment diary entries, working notes, assessment material, information stored in a computer, and 'Post-it'TM notes.

1.2. Psychological records document and review the delivery of psychological services, and the nature and extent of such records will vary depending upon the type and purpose of these services. While members will create and maintain records for a variety of reasons, the most important reason is the service to and benefit of the client. These Guidelines refer primarily to records created by members that contain personal data, that is, information about a particular person, or persons, who can be identified from the record, and apply to clients as defined in the *Code of Ethics* (2003):

Client means a direct recipient of psychological services. There may be multiple recipients in cases where services have been contracted, paid for, or given consent for, by a person or organisation other than the person being assessed, evaluated or treated by the member. The term may subsume patients, students, research participants, supervisees, other direct recipients, other professionals, referral agencies or organisations. Other parties, such as third party payers, facilitators or sponsors, may also be involved in the service arrangement.

1.3. Given that there may be multiple recipients of information relating to one client, it is possible for the same source material to be represented in different ways, for example technical and non-technical reports as appropriate for each recipient. In such cases, all possible versions would be recorded in the file, or a note on the file would indicate where other records of the member regarding the client are held.

1.4. Professional judgement should be used in applying these Guidelines, as well as an awareness of advancements in the technology of record keeping. Complete and accurate record keeping and secure storage of these records benefit members, by guiding them to plan and implement an appropriate course of psychological services, to review work as a whole, and to self-monitor more accurately.

2. General overview

Refer to the *Code of Ethics*, Section B 'Relationships with Clients':

B1: Undue invasion of privacy must be avoided in the collection and dissemination of information. Information obtained in consulting relationships, or evaluative data concerning clients, may be communicated only for professional purposes and only to persons legitimately concerned with the case and with the informed consent of the client. Written and oral reports may present only data germane to the purpose of the evaluation.

B2: Members must make and keep adequate records for a minimum of seven years since last client contact unless legal requirements specify otherwise. In the case of records collected while the client was a child, records should be retained at least until the individual attains the age of 25 years.

B3: Members must make provisions for maintaining confidentiality in the access, storage, and disposal of records, subject to the legal requirements of their employment conditions.

B4: Members must not refuse any reasonable request from clients, or former clients, for the release of data for which they have professional responsibility. Such psychological data may be released only to appropriately qualified persons who have a legitimate interest in the data, subject to the legal requirements of the member's employment conditions.

Refer to the *Guidelines for providing psychological services and products on the internet*.

2.1. Maintenance of appropriate records may be relevant for a variety of organisational, financial, and legal purposes. State and Commonwealth laws in many cases require the creation and maintenance of appropriate records for certain kinds of psychological services. Adequate records may be a requirement for third party payment for psychological services.

In addition, well-documented records may assist members to defend against allegations of professional negligence or breaches of the *Code of Ethics*. In these circumstances, the adequacy of relevant records may be judged to reflect on the professionalism of members. At times, there may be conflicts between legal requirements for record keeping, organisational requirements and these Guidelines. In such circumstances, members should be mindful of their obligations to conform to applicable law. When laws or institutional rules appear to conflict with the principles of these Guidelines, members should use their professional training and judgement to identify the relevant issues, and to reach a solution that, to the maximum extent feasible, conforms both to law and to professional practice, as required by ethical principles.

2.2. Members should be cognisant of the possibility that, at times, their records could be required, through subpoena, to be disclosed against the wishes of the member or client. Therefore, members should ensure that clients are aware of the limits of confidentiality. Members should assume that no record is free from disclosure at any time, regardless of the wishes of the client or the member. Members should always write client records mindful of the strong possibility that they may be read by the client.

2.3. It is understood that the category of client records extends to include any working notes compiled by the member. For each client there needs to be a comprehensible, communicable record, which may be the member's working notes or a summary of them (see Section 1.1).

3. Legal requirements

Refer to the *Code of Ethics*:

General Principle III (d): *Members must be mindful of the legal context in which they work, their obligations towards clients and employers, and their duties towards clients.*

Relationships with Clients, Clause B13: *When a member agrees to provide services to a client at the request of a third party, the member assumes the responsibility of clarifying the nature of the relationships with all parties concerned.*

3.1. Increasingly, psychological services are delivered in circumstances that make it more likely that professional and ethical issues will arise relating to who has access to the records. For example, members frequently work in interdisciplinary teams where multiple access to client records is standard practice.

3.2. The *Code of Ethics* states that the onus is on members to clarify relationships where third parties are involved (as will be the case if members work in an organisation).

Refer to the *Code of Ethics*, Section B 'Relationships with Clients', Clause B1 (as above).

3.3. Legal requirements, and the Code, stress the importance of obtaining informed consent before client records are released to third parties. Members need to be aware of, and familiar with, legislation that is relevant to their work setting. Some recent pertinent legislation includes, but is not restricted to, the following Acts:

- The *Privacy Act 1988* (Cth) (which incorporates the Private Sector Provisions of the Privacy Act 2000).
- The *Health Records Privacy and Access Act 1997* (ACT).
- The *Information Act 2000* (Northern Territory).
- The *Health Records Act 2001* (Victoria).
- The *Health Records and Information Privacy Act 2002* (NSW).

Some of these Acts have published guidelines to aid in their interpretation. For further useful information go to websites such as:

- www.privacy.gov.au
- www.health.vic.gov.au/hsc
- www.lawlink.nsw.gov.au/pc.nsf/pages/index

4. Ownership of and access to records

4.1. Where members are in a contractor/sub-contractor arrangement, there should be clarification about who owns and has responsibility for the client records. This should be done before the arrangement commences. Particular care should be taken to clarify issues such as who is responsible for the long-term storage or transfer of information should either the client or the sub-contractor/practitioner change the nature of the original contract.

4.2. It is important (and in some contexts legally required) to inform clients about their rights with regard to access to their records.

Refer to the *Code of Ethics*, Section B 'Relationships with Clients':

B14: Members must make advance financial arrangements that safeguard the best interests of and are clearly understood by clients. They must avoid financial arrangements which may, currently or subsequently, influence deleteriously the psychological services provided.

Refer to *Guidelines regarding financial dealings and fair trading*.

4.3. Members may charge a reasonable fee for review and reproduction of records. Depending on the State or Territory in which the member is practising there may be statutory regulations which limit the amount that may be charged.

Refer to the *APS Privacy Policy for Recruitment-Related Psychological Assessments* (section on Access).

4.4. As outlined in relevant legislation there are situations where it is possible for members not to allow clients access to their files. These are generally situations where providing access would pose a serious threat to the life or health of any individual. Refer to the Privacy and Health Records Acts in Section 3.3 for a comprehensive list of exceptions to access.

4.5. Members may not withhold records under their control that are requested and needed for a client's emergency treatment solely because payment has not been received.

5. Informed consent regarding client records

Refer to the *Code of Ethics*, General Principle III(a): *Members must respect the confidentiality of information obtained from clients in the course of their professional work. They may reveal such information to others only with the consent of the person or the person's legal representative. However in those unusual circumstances where failure to disclose may result in clear risk to the client or to others, the member may disclose minimal information necessary to avert risk. Members must inform their clients of the legal and other limits of confidentiality.*

5.1. When commencing the provision of psychological services, members should inform their clients of how the information collected in consultations will be used, and to whom the information may be disclosed.

5.2. When appropriate, or upon request, members should inform their clients of their policies regarding the management, construction, and destruction of records. This information should include a statement on the limitations of the confidentiality of the records.

6. Content of records

Refer to the *Code of Ethics*, Section B 'Relationships with Clients':

B2: Members must make and keep adequate records ...

6.1. Members should make every effort to maintain accurate, current, and complete records of psychological services. There should be sufficient detail to permit planning for continuity in the delivery of psychological services in the event that another psychologist takes over that responsibility, including in the event of death, disability, or retirement. In addition,

members need to maintain records in sufficient detail to allow for review of psychological service delivery.

Refer to the *Code of Ethics*:

General Principle III(b): *Members must be sensitive to cultural, contextual, gender and role differences and the impact of those on their professional practice on clients. Members must not act in a discriminatory manner nor condone discriminatory practices against clients on the basis of those differences.*

6.2. A psychological report should always contain a rationale for the production of the report. Reports of psychological services should be organised to maximise clarity and readability with the recipient in mind. Clarity is enhanced by the avoidance of technical language, jargon, and repetition. All reports should present material precisely so that facts can be distinguished from hearsay, professional opinions and interpretations. Reports should be written in respectful and non-discriminatory language, and be sensitive to cultural, contextual, gender and role considerations.

6.3. Reports may include:

- information about the member writing the report such as his/her position and qualifications;
- data identifying the person who is the subject of the report;
- the report's rationale and purpose;
- the report's intended recipients;
- dates and times of services delivered;
- types of services and length of time spent with the client;
- if applicable, information obtained from other sources, clearly identified as such;
- where applicable, test results in a form appropriate for the intended reader(s);
- assessment, plan for intervention, consultation, summary reports, and/or testing reports and supporting data as may be appropriate; and
- a statement indicating that material in the report is confidential to the report's intended recipients.

6.4. For further information specifically about reporting test results refer to the *APS Supplement to Guidelines for the use of psychological tests*, 1997, p18.

7. Construction and control of records

Refer to the *Code of Ethics*, Section B 'Relationships with Clients':

B3: *Members must make provisions for maintaining confidentiality in the access, storage, and disposal of records, subject to the legal requirements of their employment conditions.*

7.1. Members should make reasonable efforts to protect against the misuse of records and to maintain their confidentiality. They must take into account the anticipated use by the intended or anticipated recipients when preparing records. Members should adequately identify impressions and tentative conclusions as such.

7.2. Members must protect the confidentiality of records. They must take reasonable steps to establish and maintain the confidentiality of information arising from their own delivery of psychological services, or the services provided by others working under their direct supervision.

7.3. Members have ultimate responsibility for the content of their records. Members should be mindful of the need to monitor the records of those under their supervision. Where appropriate, this requires that the member oversees the design and implementation of record keeping procedures, and monitors their observance.

7.4. Members should maintain control over their clients' records, taking into account the policies of the organisations in which they practise. In situations where members ordinarily have control over their clients' records and where changed circumstances make it no longer feasible to maintain control over such records, members should seek to make appropriate arrangements to ensure confidentiality.

7.5. Records should be constructed in a manner that facilitates their use by the member and other authorised persons. Members should strive to ensure that record entries are legible and intelligible. Records should be completed in a timely manner.

7.6. Records may be maintained in a variety of media, so long as their utility, confidentiality and durability are assured. Arrangements should be in place to maintain the confidentiality of records in the event of the member's incapacity or death.

Refer to the *Guidelines for providing psychological services and products on the internet*.

7.7. Members should ensure that electronic records are maintained securely, and that appropriate safeguards are in place to stop such records from being amended retrospectively or accessed inappropriately. If reports are modified after completion, each version should be saved separately indicating the date of production.

8. Retention of records

Refer to the *Code of Ethics*, Section B 'Relationships with Clients':

B2: Members must make and keep adequate records for a minimum of seven years unless legal requirements specify otherwise. In the case of records collected while the client was a child, records should be retained at least until the individual attains the age of 25 years.

8.1. Members should be aware of relevant Federal, State, and Territory laws and regulations governing record retention. Such laws and regulations supersede the requirements of these Guidelines. In the absence of such laws and regulations, records - or a summary - are maintained for seven years before disposal. If the client is a minor, the record period is extended until seven years after the age of majority. Keeping records beyond the minimum requirements is a matter of professional judgement for members. In making such a judgement, members take into account the nature of the psychological services, the source of the information recorded, the intended use of the record and his or her professional obligations. All records, active and inactive, must be maintained safely and securely, with properly limited access, and from which timely retrieval is possible.

8.2. For members practising in the Northern Territory, the required length of time to keep Indigenous records is currently under review. It is likely that the review will recommend permanent retention.

9. Removal or transfer of records

Refer to the *Code of Ethics*, Section B 'Relationships with Clients':

B4: Members must not refuse any reasonable request from clients, or former clients, for the release of data for which they have professional responsibility. Such psychological data may be released only to appropriately qualified persons who have a legitimate interest in the data, subject to the legal requirements of the member's employment conditions.

9.1. Members should ensure that if original records are removed from their care (such as by subpoena or police warrant), they receive a written confirmation/receipt of the documents removed, the person removing them and their authority to do so.

9.2. Upon request by a client, members may make their file information held about the client, available to other treating practitioners of the client.

10. Destruction, theft and loss of records

10.1. Where appropriate, clients should be informed about the requirements for members to retain records. These requirements override any requests from clients to destroy their records.

10.2. When members destroy records that have been retained beyond the minimum requirement, this should be done in a secure and confidential manner. Some methods include confidential shredding and full electronic erasure of files.

10.3. Members should be able to communicate to clients their policy on the management of client records, which includes when and how the records may be destroyed.

10.4. When records are lost or stolen, members should consider the possible effects on affected clients, and take appropriate actions to protect the welfare of these clients.

11. Outdated records

Members should be attentive to situations in which records have become outdated due to passage of time, personal change or change of circumstances, and may therefore not be a valid reflection of the current situation, particularly where disclosure might cause adverse effects. When disclosing such information members must comply with applicable laws but exercise professional judgement by noting that information's outdated nature and limited utility.

References

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Further reading

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Acknowledgment

The Australian Psychological Society gratefully acknowledges the assistance of the American Psychological Association for providing their Record Keeping Guidelines, from which these Guidelines have been developed.

June 2004

Format revised November 2004

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ABN 23 000 543 788