

Recording of Consultations by Patients

Explanatory Note:

The Health Information Privacy Code 1994 (the Code) sets specific rules for agencies in the health sector. It covers health information collected, used, held and disclosed by health agencies and takes the place of the information privacy principles for the health sector. It was established to ensure that health agencies abide by strict rules when dealing with information about patients.

However, the Code only applies to health agencies and does not apply in the case of a recording made by a patient. It is possible that the Privacy Act could apply in some circumstances where personal information of the doctor was included in the recording, though this would be unlikely. There are a variety of reasons for which a patient may want to record a consultation.

The Medical Council of New Zealand (MCNZ) refers to this issue in its statement on *Non-Treating Doctors Performing Medical Assessments of Patients for Third Parties (December 2010)*.

11. A patient may want to record the consultation by video or audio tape. You should consider such a request carefully and, if you do not consent, ask for the third-party to arrange for another doctor to conduct the assessment.

It is not illegal to secretly record a conversation to which one is party (as opposed to when a third party records it). A doctor is of course free to decline permission for a recording and could prevent the subsequent airing of a recording through bringing a private action based on the law of confidentiality or privacy. This could be overridden, however, if there are public interest factors. Doctor/patient confidentiality can be waived by a patient but a doctor still has a right to privacy. Any public interest arguments need to be balanced by the public interest in maintaining the privacy of the doctor/patient relationship which is conducive to patient welfare. In some circumstances, a recording may provide additional safeguards for the doctor.

Obviously, where there is no public interest involved any videos posted on YouTube etc can be restrained if court proceedings are brought. A complaint could also be brought to the Privacy Commissioner as the s 56 exception¹ would probably not apply.

Practices may like to consider developing a policy on recording of consultations by patients along the following lines:

¹ Section 56 of the Privacy Act 1993 exempts personal information that is collected or held by an agency that is an individual where the information is collected or held solely or principally for the purposes of, or in connection with, that individual's personal, family, or household affairs.

Sample Policy

Recording of Consultations or Procedures by Patients

If a patient wishes to record a consultation, we would ask that this is discussed with the doctor and that prior consent is gained from the doctor before doing so.

Need more help?

Contact the NZMA:

Phone | 0800 65 61 61

Email | Robyn Fell: robyn@nzma.org.nz