



CPA Position Statement

The Confidentiality of Psychiatric Records and the Patient's Right to Privacy

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The right to privacy is a fundamental value in all democratic societies (1). Article 12 of The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations (2), and the Canadian and Quebec charters of rights and freedoms (3,4) all recognize the importance of preserving privacy in a free society.

Unfortunately, the basic principles set out in these documents, although generally accepted, do not always provide the degree of protection that one might expect. The Canadian Psychiatric Association (CPA) has become increasingly aware of potentially dangerous practices that threaten the confidentiality of psychiatric records. In recent years, serious incursions have been made by governments, powerful commercial interests, law enforcement agencies, and the courts on the rights of persons to their privacy. On a societal level, the relative importance of individual versus collective rights is once again being brought into question (5–11).

With the arrival of the digital age and the relative ease with which huge databases can be created and exchanged, the risks to individual privacy have grown even more rapidly (12). Individual health care information, once entrusted only to one's physicians or close family members, has now become routinely available to a much broader audience.

The Hippocratic oath enjoins physicians to respect the privacy of patients under their care, but statutes now require medical professionals to report to regulatory agencies instances of a whole range of diseases, behaviours, and risks. Professional, ethical, and legal safeguards, such as the requirement of informed consent, offer individuals only limited

protection as the pendulum swings in favour of complete disclosure.

Exceptions to the rule of confidentiality now include a growing variety of situations that require not only the production of records but which impose new responsibilities, such as the duties to report, warn, or protect. Governments, insurers, and a range of professional associations all seek increasingly detailed information regarding the activities of health care providers and their patients.

In 1998, the Canadian Medical Association (CMA) developed a *Health Information Privacy Code* (13,14), which articulated "principles for protecting the privacy of patients, the confidentiality and security of their health information and the integrity of the therapeutic relationship." This excellent document proposes clear guidelines for the ethical exchange of health care information.

The adequate protection of private information requires limitations at all levels—that is, to its collection, use, access, and disclosure. Information should be collected and used only for specific, clearly defined, and limited purposes and revealed and disseminated only to those for whom it is intended. The respect of these limitations is particularly important in the case of electronic data because the potential for abuse is high and because many individuals are unaware of the improper uses to which such information can be put.

The CPA endorses the CMA *Health Information Privacy Code* and wishes to stress the following considerations as they apply to our own particular type of practice:

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The Psychiatrist–Patient Relationship

Confidentiality is a prime condition in enabling the establishment of an effective therapeutic relationship. In no other medical specialty is so much private information required for establishing an accurate diagnosis and treatment plan.

Breaches or potential breaches of confidentiality in the context of therapy seriously jeopardize the quality of the information communicated between patient and psychiatrist and also compromise the mutual trust and confidence necessary for effective therapy to occur.

Patients are able to reveal sensitive or embarrassing information about themselves because they understand that this information will remain within the therapeutic context. When this basic assumption is not respected, the patient may feel humiliated and betrayed.

Patients who have suffered traumatic life experiences (such as sexual abuse or the inappropriate use of parental authority) have difficulty trusting others. Consequently, the process of developing a secure, stable therapeutic relationship is often long and painstaking. Only within a situation of mutual trust and confidence can a patient's resistance to becoming vulnerable begin to be overcome. A break in this confidence, within the therapeutic frame, can be catastrophic. Without confidentiality there can be no trust; without trust there can be no therapy.

The Psychiatric Record

Psychiatric records contain important information that contributes to establishing a diagnosis and treatment plan for patients suffering from emotional disorders (15). As a rule, records include not only historical information about the patient, but also his or her recollections, fantasies, feelings, fears, and preoccupations from the past as well as in the present. As such, psychiatric records differ from many other types of medical records.

Psychotherapy notes may not be verbatim, systematic, or all-inclusive. They tend to identify themes or develop hypotheses; their content may be highly selective or impressionistic. Particularly when notes are written in the context of certain forms of psychodynamic therapy, the therapist may include speculation and analogy as well as verifiable, factual data. What is recorded is usually determined solely by the exigencies of diagnosis and treatment.

In psychotherapy, the therapist attempts to meet the patient at some point in his or her subjective experience of the world. Psychotherapy as a process attempts to address subjective as well as objective reality and may not discriminate between historical fact and fantasy; it strives to be open and non-judgemental. These factors influence both the content and

structure of psychiatric records and limit their usefulness within other contexts.

More specifically, psychiatric records are not designed to provide a basis for ethical, moral, or legal judgements nor to evaluate commercial or civil risk. Forensic or insurance evaluations are carried out and recorded differently.

The psychiatric record is created with the understanding by both parties that its purpose is strictly therapeutic and not to be used for legal purposes except under very limited and specific circumstances, even after the treatment has been terminated. It is widely believed that a significant number of patients would forgo therapy were this not the case.

Informed Consent and Exceptions to the Rule of Privacy

The information contained in the psychiatric record belongs to the patient. With few exceptions, it can be released only with his or her *informed* consent. When a patient consents to the disclosure of private information, he or she must be competent to do so and the consent must be given freely and without coercion (16).

The psychiatrist is responsible for ensuring that when consent is given, the patient be afforded the opportunity to understand to whom the information is to be disclosed, the nature of the information which is to be released, the purposes for which it is to be used, and the potential consequences of its release.

A person's right to privacy is not absolute. There are particular situations in which confidentiality may justifiably be breached. These include situations in which the patient has a specific incapacity, the patient has become a danger to him- or herself or others, the public good is at stake, or a serious injustice might occur were relevant, significant information to be withheld (17).

In these situations, the CPA recommends that precautions be taken to ensure that the release of any information without the express consent of the patient is required by law and judged by an impartial authority as being relevant to the situation at hand. The information released should be limited in extent to what is clearly required in the interest of justice or the common good.

Certain anonymous or impersonal data may be used for educational purposes, efficient program administration, or ethical research. Nevertheless, appropriate safeguards should be established to ensure that such information be used only to improve the quality of or access to health services. When identifiable information is being collected or employed in this way, it should be with the individual's consent.

Transparency and Accuracy

The psychiatrist–patient relationship is based on privacy with respect to the outside world, but on honesty and openness within the therapeutic setting. For this reason, not only must the principle of confidentiality be strictly respected, but also any exceptions to the rule must be made known as transparently and explicitly as possible. The responsibility for this lies with the patient as well as the physician and extends to anyone to whom private information ultimately is revealed (18,19).

Psychiatric records should include all information necessary for the provision of appropriate care to the patient. All records must be accurate and complete; they must never be altered, but any errors that are identified should be noted as such without delay.

Technology

The use of computerized records, often with multiple access points and multiple users, makes obvious the need for enhanced security measures (20–22). Technical solutions do not relieve individual professionals from their responsibility to their patients to protect their personal information from unauthorized or unnecessary access and to ensure the quality of the information that has been collected and stored.

Sharing the Responsibility

Psychiatrists constitute only a part of an increasingly complex health care system (23). We must be ready to work with others to ensure the highest quality treatment for our patients while at the same time protecting their privacy. This will require coordinating our efforts not only with other health care professionals but also with professionals in other fields: jurists, information system specialists, insurers, administrators, and politicians, to name just a few. The CPA accepts this

responsibility and looks forward to collaborating with all those whose goal it is to improve the health care of our fellow citizens.

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