

THE IMPACT OF PRIVACY LAWS ON THE PRACTICE OF MEDICINE

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WHAT DID THE DOCTORS SAY?

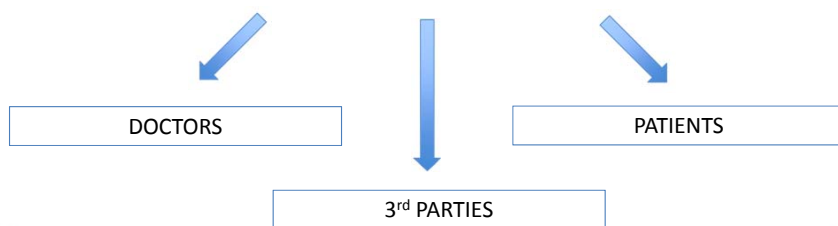
Initial thoughts



WHAT DID THE DOCTORS SAY?

- Specialty
- Time spent in practice
- Hospital vs private practice
- Clinicians dealing with mental health issues

IMPACT



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HISTORICAL CONSIDERATIONS



Paternalism v patient autonomy

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IMAGE http://www.freedigitalphotos.net/images/cartoon-businessman_and_lot_of_work_on_balance-scale-photo-p262511 © iosphere

In the beginning

1982 *Freedom of Information Act 1982 (Cth)*

(Vic 1982; ACT 1989; NSW 1989; Tas 1991; SA 1991; Qld 1992; WA 1992; NT 2002)

Public sector access to medical records

1988 *Privacy Act 1988 (Cth)*

Australia Card & the need for a new Privacy Bill
Double dissolution in 1987
Tax file numbers introduced in 1988 along with new privacy laws
Act still not applicable to private medical practice

IMAGE http://nssdc.gsfc.nasa.gov/photo_gallery/photo_gallery_astro_galaxy.html (Courtesy of NASA & NSSDC)

1996 *BREEN v WILLIAMS [1996] HCA 57*

Ultimately this was not a case about whether patients *should* have right of access to their health records.

It was a case about whether patients *did* have access to their health records under common law

"It is not the function of the courts to change the law by processes which are legislative rather than judicial." (Mahoney J)

A patient has a right to copy the records

A doctor may lawfully refuse if:

- Access is subject to claim of privilege
- There is a risk of serious harm


IMAGE <http://www.sean-parker.com/starscapes/> (IMG 4773 © Sean Parker Images)



IMPACT ON DOCTORS

“The way the Regulator significantly eroded its confidence and its responses in indicating that disclosure of health information for the purpose of adequate treatment is being impeded by the privacy regulatory regime”

National Health and Medical Research Council, Submission PR 114, 15 January 2007.
http://www.alrc.gov.au/publications/62_%20The%20Privacy%20Act%20and%20Health%20Information%20provision%20health%20services%20.htm#73



8 IMAGE <http://www.istockphoto.com/photo/frayed-rope-about-to-break-5711173?si=8bdbb27> © ginosphotos

IMPACT ON DOCTORS Square peg, round hole



Family History

Public Interest Determination No. 12A

This Determination gives general effect to Public Interest Determination No. 12 to permit health service providers to collect third party health information from an individual (or a person 'responsible' for an individual) without the third party's consent, for inclusion in the individual's family, social or medical history.

Relevant Australian Privacy Principle: Australian Privacy Principle 3.3

Effective: 11 December 2011 to 10 December 2016

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LINK <http://www.oaic.gov.au/privacy/applying-privacy-law/privacy-registers/public-interest-determinations/public-interest-determination-no-12a>
<http://www.comlaw.gov.au/Details/F2011L02573>

IMPACT ON DOCTORS Square peg, round hole



Direct marketing

What kind of healthcare provider communications are direct marketing?

“In general, communication directly with patients that uses or discloses personal information to promote services offered by the practice is likely to fall within the definition of direct marketing”

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LINK <http://www.oaic.gov.au/privacy/privacy-topics/health-for-service-providers/healthcare-provider-communications-direct-marketing>

IMPACT ON DOCTORS Square peg, round hole



Direct marketing

“A letter sent to all patients of a practice about the availability of influenza vaccinations or health screening services is likely to be direct marketing because it involves the use or disclosure of personal information to promote services offered by the practice”

“A letter reminding patients that they are due to undergo a health assessment that forms part of an ongoing care plan is unlikely to fall within the definition of direct marketing”

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LINK

<http://www.oaic.gov.au/privacy/privacy-topics/health-for-service-providers/healthcare-provider-communications-direct-marketing>

IMPACT ON DOCTORS Square peg, round hole

Direct marketing

RACGP feedback poll

Do you believe the quality of patient healthcare will be adversely impacted by placing limitations on undertaking health alerts, patient recalls and immunisation reminders?

- No impact
 Some impact
 Significant impact

Vote

Vote Option	Percentage
No impact	5
Some impact	13
Significant impact	81

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LINK

<http://www.racgp.org.au/yourracgpnews/fridayfacts/25-07-2014/>

IMPACT ON DOCTORS

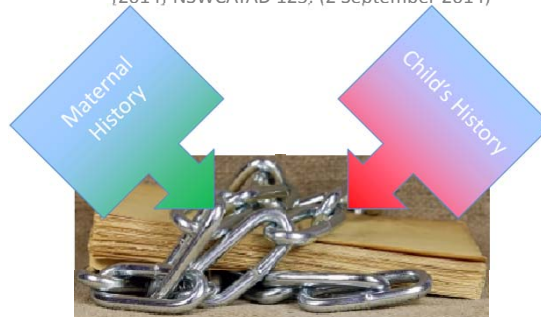
Square peg, round hole



New South Wales Civil and Administrative Tribunal -
Administrative and Equal Opportunity Division

AJD v Royal Prince Alfred Hospital

[2014] NSWCATAD 125; (2 September 2014)



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LINK

<http://www.austlii.edu.au/au/cases/nsw/NSWCATAD/2014/125.html>

IMAGE

© dan www.freedigitalphotos.net/images/2agree-terms.php?td=100175318

IMPACT ON DOCTORS

Square peg, round hole

AJD v Royal Prince Alfred Hospital



“An issue that relates to medical events that occurred before the child's birth cannot be the health information of the child”

“While health information may overlap, it is possible to distinguish the health information of each individual”

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LINK

<http://www.austlii.edu.au/au/cases/nsw/NSWCATAD/2014/125.html>

IMPACT ON DOCTORS

Square peg, round hole



AJD v Royal Prince Alfred Hospital

“In the Privacy Commissioner's view it is best practice to ensure that only information that relates to the individual concerned is held in a health record”

“If health information relates to another person it should be noted separately for the purposes of identification”

15 LINK <http://www.austlii.edu.au/au/cases/nsw/NSWCATAD/2014/125.html>

IMPACT ON PATIENTS

“I do not believe that any responsible and ethical physician would omit from a medical record any information that, in the interests of proper medical care, belongs in it because of the possibility that the patient may ask to inspect it”

16 LINK 1980 Report of the Commission of Inquiry into the Confidentiality of Health Information: Ontario, Canada 'Krever Report'

IMPACT OF THIRD PARTY REQUESTS

Despite privacy legislation being enacted to grant patients reasonable access to their clinical records, privacy legislation is now being increasingly used as a 'back door' for 3rd party access to those same records, without patients fully understanding the scope of this access



17 IMAGE <http://www.istockphoto.com/photo/frayed-rope-about-to-break-5711173?si=8bdbb27> © ginosphotos

IMPACT OF THIRD PARTY REQUESTS

The AMA is increasingly concerned that some third party requests for a patient's complete medical record may be inappropriate and unnecessary. In order to assist the patient in making an informed decision whether or not to consent to disclosure of their medical record to a third party, the doctor and patient should undertake the following:

18 LINK <https://ama.com.au/position-statement/guidelines-doctors-disclosing-medical-records-third-parties-2010>

IMPACT OF THIRD PARTY REQUESTS

The Lawson Clinic

748 Pacific Highway
GORDON NSW 2072
Tel: (02) 9418 4488
Fax: (02) 9418 4499
www.lawsonclinic.com.au

MEDIA RELEASE
4 August 2014

MENTAL HEALTH RECORDS UP FOR GRABS!

A Mental Health Advocacy Network, based at the Lawson Clinic in Sydney, calls for a major overhaul of privacy laws to better protect the confidentiality of mental health records in Australia.

Dr Gary Galambos, Chair of the NSW Branch of the Royal Australian and New Zealand College of Psychiatrists, indicates that psychiatrists have drawn to the College's attention that the courts are forcing psychiatrists to hand over their confidential medical records, sometimes under threat of being arrested and gaoled. The College of Psychiatrists is concerned about this issue and is exploring options to address the problem.

“This is an issue we are not going to let go of, we are concerned for our patients and will continue to lobby for a tightening of laws to protect a patient’s privacy” (RANZCP President)

19 LINK <http://journalists.medianet.com.au/DisplayAttachment.aspx?i=8074438&w=28&h=2906322>
<https://www.ranzcp.org/News-policy/Media-Centre/Media/Patient-privacy-under-threat.aspx>

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TORT OF PRIVACY??

8. Seriousness and Proof of Damage

Proof of damage not required

Recommendation 8-2 The plaintiff should not be required to prove actual damage to have an action under the new tort.

20 LINK <https://www.alrc.gov.au/publications/8-seriousness-and-proof-damage/proof-damage-not-required>

THE IMPACT OF PRIVACY LAWS ON THE PRACTICE OF MEDICINE

- “It seems clear that there is a need for guidance and training for health service providers to ensure a better understanding of the intent and application of principles-based regulation and the privacy principles”

Australian Law Reform Commission Report 108

- A better attempt by privacy regulators to understand the unique needs of health care
- Introduce better protection or advice for patients in respect of 3rd party requests for health records

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LINK http://www.alrc.gov.au/publications/62_%20The%20Privacy%20Act%20and%20Health%20Information%20provision-health-services

Thank you

Questions & Comments welcome

YouTube



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