

TOP THREE TIPS FOR A STRESS FREE TWENTY TWENTY

As we welcome in the new decade, we wanted to share our top three tips to assist you in reducing your stress associated with the professional liability aspects of your practice. Please do not hesitate to contact us if you would like more information.

Record Keeping

The first recommendation we can give is to keep careful records. Clinical notes and records not only provide protection to your clients but they are your first and best line of defence in responding to College complaints, Privacy complaints, Human Rights complaints and Civil claims.

Records should be completed during or immediately following a session. The records should identify the date of the session as well as the date of the recording. Identify any changes as an addendum, sign and date.

Records should be legible. If your handwriting is challenging to read, please use a computer. If you use acronyms and abbreviations, make sure you maintain a key so that these are understood.

Records should be detailed. The more information you include the better. For example, we often see College complaints pertaining to informed consent. When we turn to the clinical records to confirm that informed consent was obtained it is most helpful if the records describe what procedure was performed, that the risks and benefits of the procedure were explained and that the client provided verbal consent. If the client asked any questions, this should be noted. If the client did not ask any questions, this should also be noted.

Records should be complete. A client's chart should include all of the documents pertaining to the client – including all forms, consents, notes, correspondence (including emails). Records of phone conversations with the client (or with others calling about the client), should be included in the clinical file. If a client attends at your office but chooses not to consent to an assessment or to treatment, you should keep a clinical file and all of the documentation pertaining to that individual should be in the file – including the note indicating that informed consent was not provided. While it may appear that this individual is not a client because they did not consent to participate, best practice is to maintain a file detailing your interactions in any event.

Records must be secure. The only parties who should have access to the records are the health information custodian, the treatment provider and the client. Health information custodians have obligations to take reasonable steps to ensure that the personal health information is stored in a secure manner. If your records are kept electronically, it is not sufficient to keep your records on a password protected computer if other people have access to your computer. The records themselves must be kept in a separate private and secure folder. If your records are kept in physical storage, best practices include restricted access, alarm systems and locked storage. If you are travelling with your client's physical records, keeping them in a locked briefcase is a good way to ensure the ongoing security of your client's information.



Electronic Communication

In considering the security of your clients' records, the present environment demands that significant efforts be made to protect the integrity and security of electronic information. People casually communicate via email and text message on a daily basis. When it comes to communicating with or about clients electronically, you must ensure that your communication is secure. When sending documents electronically that identify even the name of a client, ensure that the document is password protected or that the communication is sent via a secure document transfer site. Obtain your client's consent to communicate with them via email and ensure that you have their correct email address on file before sending any communication to them.

Personal Health Information

Always be cognisant of your obligations pertaining to the collection, use and disclosure of personal health information. Your role starts with obtaining the appropriate signed informed consent. You must discuss the limits of confidentiality with your clients. Ensure they are aware (and you record that they are aware) of your limited obligations to disclose information which they share with you without their consent (mandatory reports, risks of harm, etc.).

When it comes to the disclosure of personal health information, remember, even the simple identification of an individual as a client amounts to the disclosure of personal health information. If you receive a request for information regarding an individual client of yours, you cannot even confirm that they are client unless you have obtained that client's consent to do so.

If you are asked to produce documents or information, ensure that you have the client's written consent permitting you to do so or that you are required to do so by law (for instance, a Court Order). If you receive an official looking document demanding that you release records, ensure that you read it carefully and understand your obligations. Unless you are familiar with Court documents, you may confuse a Notice of Motion (asking the Court to order you to produce records) with a Court Order (requiring you to produce records). Before you release anything, from your client's name to their full clinical file, ensure that you are permitted to do so.

Be particularly cognisant of your obligations when it comes to minor clients, couples or joint clients, as well as your ongoing obligations to deceased clients. More in-depth reviews of these obligations will be provided in BMS/Gowling WLG posts throughout the year but, in the interim, please review the applicable standards and legislation pertaining to these instances should it be relevant to your practice.

Review and Refresh

While this goes without saying, it is important to keep yourself current with the legislation, standards and guidelines that are applicable to your practice. If you are a member of a regulatory College, review your College website for updates and clarifications on the interpretation of the legislation, standards and guidelines. Participate in your College's webinars and conversations with the Practice Advisors. These sessions will highlight some of the predominate issues that your College is identifying and will illuminate the areas that your College is targeting. Contact your College's Practice Advisor if you are uncertain.

If you have access to Gowling WLG's legal hotline, please make use of the service. Our legal advisors are available to answer any professional liability questions you might have.

- Jahmiah Ferdinand-Hodkin, partner, Gowling WLG