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Membership Advisory

Final Checklist For Creating A Consent Form For Collecting And Releasing Private Information

As a template consent form cannot adequately cover all of the varied contexts psychologists work in, in 2013 the Ad Hoc Committee on Privacy concluded that a checklist would better address the Executive Council's request that the committee, "... develop examples of consent forms, policy pertaining to privacy issues...".

Preamble:

The information provided below is not legal advice, but rather it is intended to be general practice advice. The information below does not absolve the individual psychologist of their professional responsibility to ensure competent, legal, ethical practices are adhered to.

Obtaining informed consent allowing one to gather, use, and disclose personal information is a process and is not simply a form. Obtaining informed consent is part of a general set of rules and principles that govern how information is to be managed by professionals:

1. Collection and purpose: Information collected is limited to only what is needed for a defined purpose, and the client must be informed what that purpose is.
2. Use and Disclosure: Information may be used and disclosed with consent for the purpose the information was collected, and where allowed by law.
3. Retention: Records should be retained as long as is necessary to serve the purpose for which it was collected or as specified by law. The College's **Professional Practice Guides state: 10.5 - Length of record retention** - Members shall ensure that all information in their clinical service provision records, organizational client records, and supervision records are maintained for not less than seven years after the last date that services were rendered or in the case of a minor not less than seven years after they reach the age of majority (18 years). In cases with extenuating circumstances where factors such as age at the time of service delivery or capacity are at issue, records may need to be retained for longer periods. Members should consult any relevant organizational or legal requirements outside of these Guidelines, and the longer retention period should be adopted.
4. Safeguards: These are necessary and include administrative (policies, codes); physical (locks, safe storage); technical (firewalls, encryption).
5. Right to access and right of correction.
6. Consent: Unless exempted by law or imminent risk of harm or emergency, informed consent must be obtained to engage in and provide services, and in regard to gathering, storage and access to client information.

7. Accountability: Each professional and/or trustee is accountable for the personal information collected about a client that remains in his/her possession, as per Professional Practice Guidelines (10.6 Security of and access to records), and Practice Advisory: Release of Psychology Records.
8. Openness and compliance: Policies and procedures should be available to the public.

The Canadian Psychological Association's Canadian Code of Ethics for Psychologists reminds us:

1. **I.17** – Recognize that informed consent is the result of a process of reaching an agreement to work collaboratively, rather than of simply having a consent form signed.
2. **I.23** – Provide, in obtaining informed consent, as much information as reasonable or prudent individuals and groups (e.g., couples, families, organizations, communities, peoples) would want to know before making a decision or consenting to the activity. Typically, and as appropriate to the situation and context, this would include: purpose and nature of the activity; mutual responsibilities; whether a team or other collaborators are involved; privacy and confidentiality limitations, risks and protections; likely risks and benefits of the activity, including any particular risks or benefits of the methods or communication modalities used; alternatives available; likely consequences of non-action; the option to refuse or withdraw at any time, without prejudice; over what period of time the consent applies; and how to rescind consent if desired. (Also see Standards **III.13-17**)
3. **I.24** – Relay the information given in obtaining informed consent in language that the individuals and groups involved understand (including providing translation into another language, if necessary), and take whatever reasonable steps are needed to ensure that the information is, in fact, understood.
4. **I.27** – Take all reasonable steps to ensure that consent is not given under conditions of coercion, undue pressure, or undue reward.
5. **I.29** - Take all reasonable steps to confirm or re-establish freedom of consent, if consent for service is given under conditions of duress or conditions of extreme need.
6. **I.30** – Respect the moral right of individuals and groups (e.g., couples, families, organizations, communities, peoples) to discontinue participation or service at any time, and be responsive to non-verbal indications of a desire to discontinue if the individuals or groups involved have difficulty with verbally communicating such a desire (e.g., young children, individuals with language disabilities) or, due to culture, are unlikely to communicate such a desire orally.

Defining a Record: The Freedom of Information and Protection of Privacy Act, The Local Authority Freedom of Information and Protection of Privacy Act and The Health Information Protection Act all have the same definition, which is: a “record” means a record of information in any form and includes information that is written, photographed, recorded, digitized or stored in any manner, but does not include computer programs or other mechanisms that produce records.

Key Considerations in developing a process for obtaining informed consent to gather, use, and disclose personal information:

1. Psychologists must understand what legislation applies to their practices, because this will influence what kinds of consent are needed and under what circumstances.
 - a. This will involve a review of relevant legislation (see list).
 - b. Consultation with colleagues, supervisors and/or managers.
2. The checklist does not cover obtaining informed consent for psychological assessment or psychological treatment.
3. Does HIPA prevail as the authority regarding personal health information in your custody or control?
4. Can the client provide voluntary consent? i.e., is the client in the age of understanding* and does he/she have the cognitive capacity to understand what giving informed consent to use private information entails?
5. Is the consent related to the purpose for which the information was required?
6. Is the consent voluntary?
7. Is the consent informed?
8. Has the client been informed about why the information is being collected and all anticipated uses and disclosures?
9. Has the client been informed about how their information will be stored, who will have access to that information, and that they themselves may access that information?
10. Have you provided information about how consent may be revoked?
11. Are you collecting personal health information only for the benefit of the person the information is about?
12. Has the term of the consent been established?

Obtaining informed consent to release private information is a competency requirement for psychologists in clinical practice, supervision, research and consultation. The process of obtaining informed consent is complex and requires an understanding of the context in which the need for informed consent occurs. These contexts involve the nature of your clinical, research, supervision and consultation activities; the laws applicable to your work (see List of Relevant Legislation); professional practice guidelines; and the ethical code.

In some cases, informed consent is not required to release information or is not expected under law, e.g., duty to warn, duty to protect, as in reporting imminent risk of suicide, homicide, or child in need of protection, or other mandatory reporting requirements. Other examples of mandatory requirements include duty to report if an individual is unfit to operate a motor vehicle (under the Traffic Safety Act), and providing health information if an injury claim has been filed in regard to a client (the Saskatchewan Workers' Compensation Act).

Under the Workers' Compensation Act 2013 (WCA) health care professionals (as defined in the WCA, psychologist is among them) have a responsibility to provide to the WCB Board health information in their control that relates to a filed injury claim relating to a client. Legal opinion is that the duty to report an injury lies with the employer and employee. If an injury claim is filed, health information regarding the claimed injury must be provided to assist in the adjudication of that claim. A signed consent form to provide this information is not required but is prudent.

Consideration must also be given to how, when, and under what circumstances informed consent may be obtained. These considerations include: is the client so emotionally distressed as to be unable to provide informed consent; has a request for information been received to prompt a discussion about releasing information? Is the request specific, or is it a request for the entire record at issue? What duty do you have to produce information requested of you? This will depend on what information is requested (e.g., progress reports, test data, test protocols), and under what circumstances (e.g., a solicitor requests a copy of your entire chart; an insurance carrier requests you complete a provided form summarizing your diagnosis, treatment, and visits with a client; a police officer has a few questions about your client).

When processing a request for information regarding a client, a psychologist must consider whether the person or agency requesting the information would be able to understand and appropriately use any information that might be disclosed.

What form of consent is needed in the particular circumstance you are dealing with – is verbal consent with file documentation sufficient, or must a consent form be signed? While a signed consent form is preferable, on occasion, a verbal consent is adequate. For example, an individual leaves your clinic to return to their remote-rural home but failed to give written permission for the assessment report to be released to their physician. A verbal consent to release the report, that is witnessed (i.e., another person working with the psychologist also listens to the conversation to verify), is acceptable in some situations. Non-witnessed verbal consent is not advised. Verbal consent should be clearly documented in the client record.

If a signed consent form is used, what are the essential features of a professional, legal, ethical consent form? The checklist below was developed to assist psychologists in developing consent forms for obtaining informed consent.

A Checklist for Developing a Consent Form for Collecting and Releasing Private Information:

- You are a trustee as defined by HIPA, or you work under the Mental Health Services Act.
- You create records that have personal health information, in the course of your work as a psychologist (i.e., clinical, research, consultation, supervision).
- The justification for gathering private information is explained in the form.
- You collect, use or disclose personal information only on a need-to-know basis. Unless required by law or justifiable exception (e.g. risk, emergency), the psychologist is obligated not to release information unless it matches the request for which consent to release has been obtained.
- There is a statement to inform clients of anticipated uses and disclosures of the information collected.
- Consent to collect and release information forms are not needed in all circumstances, you will have determined one is needed for your situation.
- Your consent form addresses your client's right to access and amend personal information in your possession.
- Your consent form includes your name, title, and contact information.
- If you are a Provisional member, your consent form also includes the name, title and contact information of your supervisor(s).

- The consent form includes the name of the client, signature and date (note: not all types of consent involve a signed consent form, e.g., some are verbal).
- The information to be released is specified.
- When a request for release of information is received.
 - The request is examined to determine that it signed by your client.
 - That request is for specific information for a specific purpose. If the request is for the psychologist's entire file/chart, then clarification is sought from the requesting individual or agency. A letter from a client's lawyer requesting information is not sufficient to release information. A letter from an insurance company with an omnibus general release for all information does not meet practice expectations or legislative requirements for protecting private information.
 - The person or agency requesting the information is deemed to have the capacity to understand and use any information released in a proper manner (e.g., (e.g., if the request is for raw test data or test protocols, the release is made to another equally qualified psychologist who has the requisite skills and knowledge to interpret the information provided).
 - There is no prohibition to providing the information requested to the party making the request.
- The individual(s)/organization(s) recipient(s) of the private information is/are listed in the consent form.
- The consent form contains a statement that the consent was given voluntarily.
- The consent form contains a statement that the client understands the provisions in the consent form.
- The consent form contains a statement that the client was given opportunity to discuss the issues pertaining to providing consent, and the questions were answered to the client's satisfaction, i.e., that the consent provided was informed (Note: A legal test resembles the following: Is enough information provided to enable the individual to make an informed decision about consent?).
- The consent form explains that consent may be revoked at any time, but no revocation shall be retroactive. The form specifies how consent may be revoked (i.e., by written request).
- The period of time the consent may apply is specified in the consent form.
- If the client is not at the age of understanding* or lacks capacity, provision for custodians to provide consent are in the consent form.
- The consent form lists the limits to confidentiality, situations in which information must be disclosed (i.e., suicide, homicide, child in need of protection, legal requirement).

*Age of Understanding refers to provision in HIPA: Part VIII General: Exercise of rights by other persons – 56(c) by an individual who is less than 18 years of age in situations where, in the opinion of the trustee, the individual understands the nature of the right or power and the consequences of exercising the right or power.

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