Hearing Professional Conduct and Complaints Body

Guidance: The ethics of live streaming and recording of appointments for training purposes

The ethical issue

During the 2024-25 financial year, the HPCCB had anonymous contacts from audiologists and audiometrists regarding their concerns about the ethics of live streaming and/or audiovisual recording of client appointments by their employer.

The audiologists and audiometrists describe that these live streaming and/or recordings are to review the hearing aid device recommendations and subsequent sales the hearing practitioner makes by their manager, training, sales and/or marketing teams.

In some cases, we have heard that the audiologist or audiometrist is asked by the employer to mislead the patient and say that those observing the appointment via the live stream, or viewing the recording later, are also practitioners so that the client 'feels more comfortable'.

We have also heard that the hearing practitioners were not aware in some cases that the appointments were being recorded and/or live streamed by their employer, only finding out inadvertently or being told by their employer later.

This raises a number of significant ethical and legal concerns, including:

- Clients not being aware of who has access to their personal and health information.
- Recording of clients without their informed consent.
- The intentional deceit of clients as to the role and purpose of others who can view their appointment recording or livestream.
- A potential lack of understanding that appointments with audiologists and audiometrists are health consultations and the information shared in these is therefore highly regulated.

Informed consent and ethics

Informed consent is central to ethical practice and a recurring issue across contacts received by the HPCCB.

The topic of informed consent to deliver a service is unpacked further in the HPCCB Guidance 'Informed consent: More than just a signature on a piece of paper' available on the HPCCB website.

In this guidance we address the belief held by some audiologists and audiometrists that they have obtained consent if the client has signed a document agreeing to the service to be provided. However, the signature itself is not the "consent". **Consent is the point in shared decision-making where the client and audiologist reach a mutual understanding and agreement about the services to be provided**.

It is unethical, and illegal in most cases, to record or view a client appointment without the client's informed consent. This means that before the client consents to an appointment being viewed or recorded, the client must understand:

- **how the software used to livestream/record is secure, where the data is stored, and who retains ownership of the data,**
- **who will be able to view the recording and/or live stream and for what purpose(s),**
- **how any recording will be securely stored as part of their clinical/health record, and**
- **how they can receive a copy of the recording.**

If a complaint were to be received by the HPCCB about an audiologist or audiometrist recording or allowing others to view an appointment without the client's informed consent, the HPCCB would likely consider it a potential breach of the following requirements under the Code of Conduct for audiologists and audiometrists:

> *Requirement 3.1 Prior to delivering a hearing service, members must ensure that consent appropriate to the hearing service has been obtained and that the nature of the consent complies with the laws of the jurisdiction.*
>
> *16.1 Members must comply with all relevant federal and state or territory laws and regulations. This includes complying with any contracts with, and related policies of, government funding agencies including, but not limited to, Medicare, the Hearing Services Program, the National Disability Insurance Agency, and the Department of Veterans' Affairs.*
>
> *16.2 Without limiting subclause 16.1, members must comply with the relevant state, territory and federal criminal laws, laws regarding consumer protections, and privacy laws that apply to clients' health information, including the Privacy Act 1988 (Cth) and the relevant state or territory legislation.*
>
> *17.1 Members must maintain accurate, legible and up-to-date clinical records for each client consultation and ensure that these are held securely and not subject to unauthorised access.*
>
> *17.2 Members must retain clinical records for a period of time as determined by relevant legal and legislative requirements.*

Guidance on legal considerations when recording health consultations

Guidance on the recording of appointments/consultations by health professionals, health services and/or clients has been developed. This has largely focussed on the recording of appointments for the purposes of improving the client's understanding and/or recall of the information provided during the appointment, to increase health professional safety, and for medico-legal reasons in the hope it will resolve disputes more easily (1).

The HPCCB was unable to find any legal guidance on the recording of health appointments for the purposes of sales or marketing strategy development or sales-based performance reviews.

A 2022 Briefing Document by Melbourne Law School researchers Dr Megan Prictor and Ms Nikka Milani described the complex regulatory environment regarding the recording of a health appointment is made, which applies to client appointments with audiologists or audiometrists.

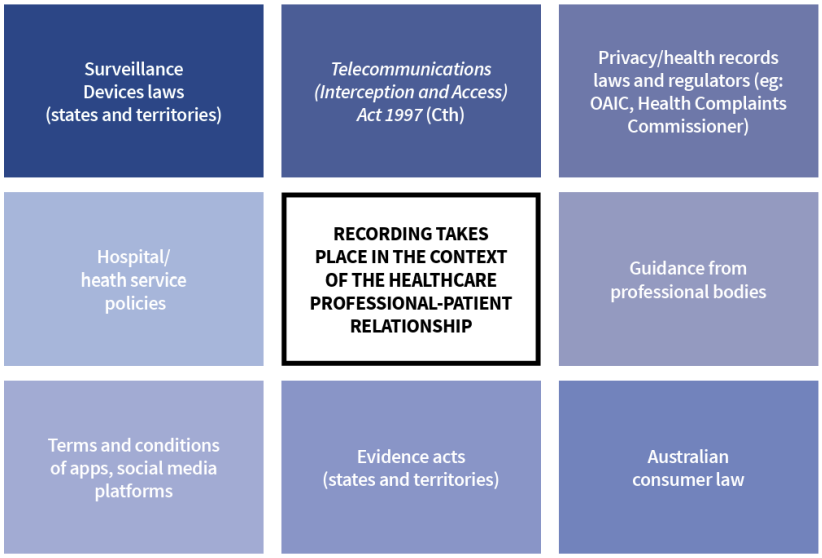

Figure 1. Consultation recording exists in a complex regulatory environment in Australia. Reproduced with permission. Original source: Prictor and Milani, 2022. Consultation recording in healthcare settings: an overview. Melbourne Law School, The University of Melbourne.

Key messages from legal and ethical guidance to health professionals on recording appointments:

- In general, under the law, and ethically, you must get your client's consent before recording their appointment (2)(3)(4).
- The recording forms part of the client's clinical/health record. This means you must follow the relevant legislation and guidelines about storing the recording securely and allowing others to access/view the recording (2)(3)(4).
- The client should preferably be given a copy of the recording and a request to access the recording by the client cannot be denied in most cases as it forms part of their clinical/health record (2)(3).
- You must consider how the software used to record the appointment stores/transfers the information securely, and whether the software developers have any rights in the recording (2).

Concerns about your employer's appointment recording practices?

You are welcome to call or email the Ethics Officer at the HPCCB for a confidential discussion regarding any concerns you have about your employer's recording of client appointments. This conversation can also be anonymous, if you wish.

The Ethics Officer will be able to consider your concerns and give information about possible next steps, which may include connecting you with:

- The state/territory health/disability complaints entity which handles complaints about health services, which includes hearing service businesses.
- The state/territory and/or National Information Commissioner(s) that handle complaints and give advice regarding the misuse of personal information, including breaches of privacy.

References

(1) Prictor, M. and N. Milani, 2022. Consultation recording in healthcare settings: an overview. Melbourne Law School, The University of Melbourne. Available online at: https://law.unimelb.edu.au/__data/assets/pdf_file/0006/4560504/Audio-Recording-for-Healthcare-Professionals-PLS-A4-2022.pdf

(2) The University of Melbourne and the Peter MacCallum Cancer Centre, 2022. Audio Recording Healthcare Appointments: Information for Healthcare Professionals about the Law. Available online at: https://law.unimelb.edu.au/__data/assets/pdf_file/0006/4560504/Audio-Recording-for-Healthcare-Professionals-PLS-A4-2022.pdf

(3) Medical Indemnity Protection Society, 2020. Managing Patient Recordings: A Guide. Available online at: https://support.mips.com.au/home/managing-patient-recordings-a-guide

(4) Prictor, M., C. Johnston, and A. Hyatt, 2021. Overt and covert recordings of health care consultations in Australia: some legal considerations. Medical Journlal of Australia , 214(3): 119-123. Available online at: https://www.mja.com.au/system/files/issues/214_03/mja250838.pdf