

Managing Patient Recordings: A Guide



Reading time:
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MIPS has received notifications from members regarding the issue of patients recording consultations, a task which can now be easily performed by any smart phone. More recently, there has been a criminal case in Australia of a patient using a concealed video recorder to record a consultation without the doctor's consent (Toth V DPP NSW 2014). Some patients have even posted some of these recordings online. Patients might seek your permission to the consultation or decide to record it secretly. Should you grant permission to be recorded or should it be discouraged? Is recording a consultation without your permission illegal?

It may be concerning to you if a patient makes such a request, but if it makes you uncomfortable, you have the option to decline the recording. Should you be suspicious of a patient's intentions or if you believe the professional relationship has been compromised, another option might be to terminate the patient-doctor relationship. Naturally, you should facilitate continuity of care. Termination may not be appropriate where urgent treatment is required and/or the patient is at risk of any harm.

Always be mindful of your professional behaviour in respect of ending a professional relationship (see 4.14 of [Good Medical Practice: A code of conduct for doctors in Australia](#)).

Alternatively, a recording may be viewed as an excellent resource and evidence of your appropriate professional conduct, accepted level of clinical care, behaviour, consent etc. and therefore, stymieing any complaint or allegation of sub optimal care. It may also be used by the patient to better understand the health issues at hand or the management plan you propose. Perhaps you may agree to the consultation being recorded on the basis you are provided with a copy of the recording and include this in the patient record. It should be noted that all electronic communications such as texts, emails and recordings would form part of the patient's record. As members would be aware any detailed record keeping is a valuable asset in defence of any complaint, claim or investigation against you.

There is specific State/Territory legislation relating to audio recordings of private conversations and whether consent of all parties is required . In all jurisdictions except Victoria, Queensland and Northern Territory, it is illegal for patients to record your consultation without your permission and members with concerns could advise their patients of this scenario.

Key points

- Any recording must be stored in the medical records. Recording a consultation, either in-person or via telehealth, is not a substitute for accurate and contemporaneous medical records.
- It is advisable to ensure the patient agrees to the recording in writing, confirms the details of the file and the restrictions on its use.
- Ensure you document any restrictions regarding the use of the recording in the medical records and provide a written statement explaining these conditions to the patient.
- If you agree to record a consultation, is it advisable that you record it yourself and share a copy with the patient. If you decline to a recording request, explain your reasons and offer an alternative course of action.

For further advice contact MIPS' clinico-legal support line on 1800 061 113.

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