Medical Protection

PMAANZ 2024 COMBINED:

PRIVACY PITFALLS, AI RISKS AND OTHER MEDICOLEGAL PERILS

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What are we going to cover today

First Impressions count

Who can access patient notes

Unsolicited third party information

Is your enrolment policy discriminatory?

Use of AI transcription systems

What can you say to the media?

First Impressions count

Why the receptionist is key to a patient's experience

Patient's are our customers – without them we have no job

Resource constraints in healthcare are making people increasingly frustrated

It takes 3- 5 seconds to make a first impression

First impressions need to be:

- Professional
- Polite
- Positive

Right to be treated with Dignity and Respect

- Tone of voice
- Body language
- Courtesy
- Keeping people updated re wait times.

When a patient is being Rude/Abusive

- Stay calm
- Try to acknowledge their concern
- Offer to escalate to Practice Manager
- If you feel unsafe, remove your self
- Make sure every event is fully documented

Could you consider this a verbal complaint?

Document their concerns – using their words, if possible

Reassure them that their concerns are being taken seriously

Give them a copy of complaints policy

Explain that the PM will contact them within 5 days

Don’t direct straight to HDC, but advocacy service may be appropriate

Access to Patient notes

Who can access the patient's notes

The Patient!

Or their representative

If they want a copy – can you charge?

How often can they request?

Can you remove anything (redact)?

Can the patient ask you to remove something?

In what form do you have to provide it?

Who can access the patient's notes

Family

Guardians

Parents – up to age of 16yrs –but not always

EPOA

Check you have the health/welfare document

Is it activated?

Executor/Administrator of their Estate

Who can access the patient's notes

ACC/ insurance companies

Do you scan in all the ACC45 authority pages, which includes the patient signature?

Check the consent – is it up to date? Is there a valid signature?

If in doubt contact the pt to confirm consent

Can the patient ask that you omit some clinical information?

Who can access the patient's notes

Your staff

Can all your staff access the clinical notes?

Confidentiality agreements for non registered staff?

Other health practitioners (not employed) – pharmacist, HIP etc?

Staff training on privacy with constant reminders

Staff members family who are registered?

Who can access the patient's notes

Police/Oranga Tamariki/MSD

Often requests can sound like you are obliged to respond
Generally better to get consent, if that won't jeopardise anyone's safety or police investigation
Use of HIPC rule 11
Different agencies do have some different legislation re what you can be required to release
With the police a Production order is normally the safest for the practice – but each case needs to be judged on its merits

Who can access the patient's notes

Remember

First option is always to seek explicit consent

In general there is no rush – you have 20 working days

Remember to remove 3rd party information

Unsolicited Third Party information (don’t tell Mum I told you but……)

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Third party information is information you obtain about a patient which comes from a source other than the patient themselves, or another clinician involved in their care/clinical records made by another clinician.

CASE EXAMPLE

The wife of a patient emailed a GP with information about her husband. She had concerns about his mental health and described his actions and behaviours at home. She asked that this information was not shared with her husband. The information was accepted and scanned onto the husband's clinical record.

Some months later the patient asked for a copy of their notes and the email from their wife was shared with them. This has had a considerable and ongoing impact on the family.

Unsolicited Third Party information (cont)

Principles

- We must not lie to or deceive patients and we should never promise or even suggest to others that we will.
- Information from someone other than the patient (or clinicians involved in their care), consider is this ‘third party information’ which needs to be handled differently from other health information.
- Obligation to verify before adding to notes or acting on it

Unsolicited Third Party information (cont)

Principles (cont)

- Very rare that we would not release information to patients, when it is about them, or affects their care
- The informant should be told that the information will be verified before acting on it – which may involve telling the patient – never promise anonymity
- If the informant will not allow you to verify the information, and wants the information to remain secret from the patient concerned, you have the option of ‘rejecting’ the information.

Practicalities

- Need to just think – is this 3rd party information?
- Need to have a system so all emails/phone conversations do not automatically go into patient notes
- Never promise anonymity
- It can be rejected
- Do you have a file to store this information before it is verified?

Is your enrolment Policy Discriminatory

- ‘Back to Back’ Contracted Provider Agreement
- Human Rights Act 1993
- The “Enrolment Requirements for Contracted Providers and Primary Health Organisations” published by the Ministry of Health (6 November 2018)

Part 2 of the Human Rights Act 1993

For the purposes of this Act, the **prohibited grounds** of discrimination are— …

(h) disability, which means— physical/psychiatric/intellectual/infective

(i) age

(k) employment status

(l) family status, which means – having care of children, being married or in a relationship with a person, being a relative of a particular person

Measures to ensure equality

Anything done or omitted which would otherwise constitute a breach of any of the provisions of this Part shall not constitute such a breach if—

(a)

it is done or omitted in good faith for the purpose of assisting or advancing persons or groups of persons, being in each case persons against whom discrimination is unlawful by virtue of this Part; and

(b)

those persons or groups need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.

Application to common enrolment criteria

Geographical boundary – not prohibited

Therapeutic Relationship previous broken down – not prohibited

Family member or other association – discriminatory, but risk is low

Maybe a better policy to have a geographical boundary and then to say:

The practice will consider enrolment requests from patients who live outside the geographical boundary, provided that:

- The practice has sufficient resources to enrol new patients/its books are open;
- The practice has not previously decided to end its relationship with the relevant patient; and
- The relevant patient has a pre-existing connection with the practice which means accepting their enrolment will further the purpose of protecting, promoting, and improving the health of the community. (For example, if providing care to the same members of a wider whānau group will lead to better health outcomes.)

Use of AI transcription tools

MPS does not offer advice on/endorse any particular system

They are coming and likely to be ubiquitous within the next few years

As a practice, have you weighed up the risks/benefits?

How do your patient’s feel about them?

Use of AI transcription tools

All systems are not equal

Do they store the recordings/transcripts?

What do they do with them?

They all say data is anonymised, is that enough?

Where are their servers?

If they are not charging, how are they making money?

Use of AI transcription tools

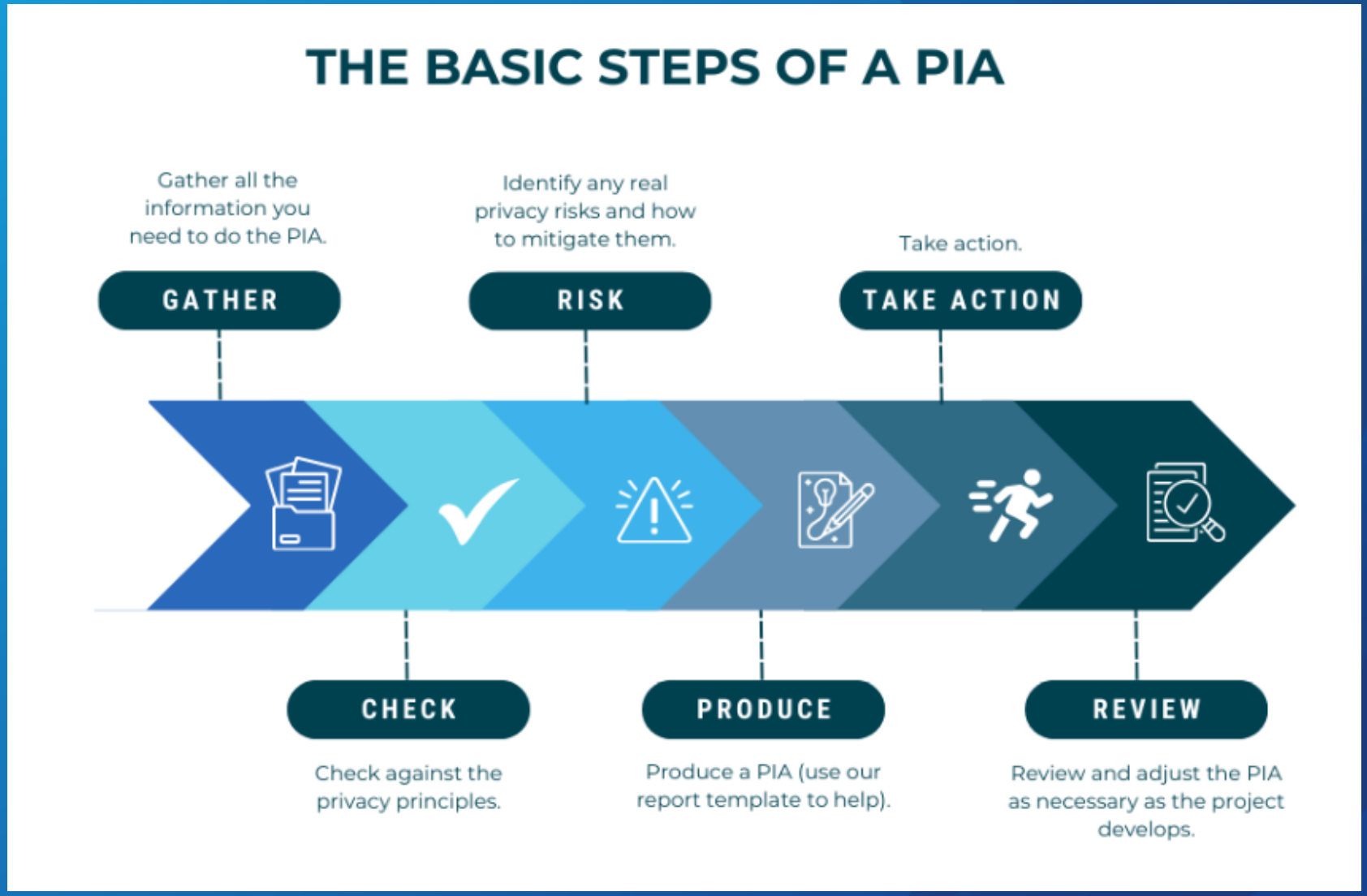
Weighing up the Pros and Cons

Have you done a Privacy Impact Assessment?

Have you thought about consent?

Medical Protection

Privacy Impact Assessment Toolkit



What can you say to the media

You get a call from a reporter at 1pm, saying they are planning to run a story tomorrow about an issue relating to the care of a patient who has complained to them.

She tells you the name of the patient making the complaint.

Confirms that she has patient's permission to speak with you and the patient is happy for you to answer the journalist's questions

You know the patient, she went through the practice complaint system but was not satisfied and has now complained to HDC, but you are still waiting for the HDC decision.

The reporter wants a comment from the practice before 4.30pm

Stall But Call

- Ask for their name and media organisation
- Clarify the nature of information – possible angle
- Deadline for the story
- Explain you’re busy right now but will contact them as soon as possible

When you put the phone down….

Call your indemnifier

If you do want to comment, ask for questions in writing

Need to consider very carefully before discussing any clinical case in the media – even if the patient has given permission

Try not to say ‘no comment’

Be aware ,the journalist wants a ‘story’ and although they have an obligation to achieving fairness and balance, what they really want is the human aspect

If you do decide to engage – do so calmly, honestly and openly

Consider….

“ This matter is currently being looked into by the HDC. I do not believe it is professional to discuss a specific patient in a public forum but if Ms X wishes to contact the clinic directly we would be happy to talk to her about her concerns”

But….

- In the majority of cases Medical Protection will advise members not to engage with journalists, if the underlying issue is a complaint which the patient is wishing to be aired in a public forum
- Clinicians may want to explain any mitigating factors or justify their actions, but all too often this often comes across as defensive and arrogant

Questions?

Listen to our podcast!

Contact us -

- Telephone: **0800 CALL MPS (2255 677)**
- Medicolegal email: **advice@medicalprotection.org**
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