

16 August 2017

Dear practitioner

Consultation on the patient records and privacy of health information practice standard

The Council has reviewed its *Patient information and records* practice standards, and as a result has developed an updated draft practice standard—*Patient records and privacy of health information*. This will replace the existing practice standards, and apply to all oral health practitioners.

We are now seeking your feedback on the draft *Patient records and privacy of health information* practice standard. We welcome your views and have provided consultation questions on p5 of the consultation document to assist your response. The draft *Patient records and privacy of health information* practice standard is provided as Attachment 1.

The Council values all feedback received during its consultation processes. The consultation process provides practitioners and others with an interest in this area with an opportunity to have their say. All feedback received informs the Council's view as it works towards a final decision.

In accordance with the Council's guidelines on consultation, we have invited comment from all practitioners, professional associations and societies, the Ministry of Health, district health boards, educational institutions, and other organisations with an interest in this area. The consultation document is also available on our website, with a similar invitation to comment.

Submissions

All submissions received will be published on the Council's website shortly after receipt, and will remain there as a public document. For submissions made by individuals, only your name and profession, if you are a registered health practitioner, will be published on the Council's website. All personal contact details will be removed from your submission.

As this is a public consultation, "in confidence" information will only be accepted under special circumstances. Please contact us before submitting material in confidence. The Council holds the right not to publish any derogatory or inflammatory submissions.

The submission period closes by end of business on **11 October 2017**.

Send your responses to:

Dental Council
PO Box 10-448
Wellington 6143

Email: consultations@dcnz.org.nz

I look forward to receiving your views on the draft *Patient records and privacy of health information* practice standard.

Yours sincerely



Marie Warner
Chief Executive

Consultation document on the draft patient records and privacy of health information practice standard

Issued: 16 August 2017

Submission closing date: 11 October 2017

Draft patient records and privacy of health information practice standard

1. Introduction

The review of the Council's *Patient information and records* practice standard [April 2006], began in May 2017 with the consideration of the Council's current practice standard and other standards or guidelines related to patients' health information and records from New Zealand and internationally, along with relevant legal and regulatory obligations in New Zealand.

The documents reviewed are listed in the bibliography provided at the end of this consultation document.

The outcome of the review has led to the development of a draft *Patient records and privacy of health information* practice standard ('draft practice standard') which, once finalised, will apply to all oral health practitioners.

The Council wishes to acknowledge the New Zealand Dental Association's code of practice *Patient information, privacy and records*, as a source used in the development of this practice standard. In addition, the Council thanks the office of the Privacy Commissioner for their assistance in reviewing the draft practice standard to ensure alignment with New Zealand privacy-related legislation.

New Zealand law and standards

There are several New Zealand laws and standards that, in combination, describe the appropriate management of patients' health information and records.

The management of all personal information in New Zealand is covered by the Privacy Act 1993. Where the information concerns a patient's health, the Health Information Privacy Code 1994 ('HIPC') additionally applies, and has the same legal standing as the Privacy Act. The Health (Retention of Health Information) Regulations 1996 set the minimum period for retention of patients' records.

The *New Zealand Standard Health Records* (NZS 8153:2002) sets out the minimum requirements for the appropriate documentation and management of health records within public and private healthcare services in New Zealand.

In addition to these, the Health and Disability Commissioner Code of Rights provides that every consumer has the right to have services provided with reasonable care and skill¹ that comply with legal, professional, ethical and other relevant standards; this includes treating patient information appropriately.²

The standards framework contains professional standards related to confidentiality of patients' health information and maintenance of records, at a principle level.

¹ Right 4(1) Health and Disability Commissioner Code of Health and Disability Services Consumers' Rights Regulations 1996

² Right 4(2) Health and Disability Commissioner Code of Health and Disability Services Consumers' Rights Regulations 1996

It is anticipated that by providing more detailed standards and guidance, the *Patient records and privacy of health information* practice standard will assist practitioners in meeting the professional standards of the standards framework and their other obligations in this practice area.

2. The draft practice standard

The purpose of the draft practice standard is to set minimum standards for oral health practitioners in creating and maintaining patient records, and maintaining the privacy of patients' health information.

The standards and guidance in the practice standard are principally based on the legal and professional obligations described in the Privacy Act and the HIPC, the Health (Retention of Health Information) Regulations 1996 and the NZS 8153:2002.

The draft practice standard has maintained almost all of the information in the current patient information and records practice standard, expanded some of the content, and re-formatted the document to achieve consistency with the other updated practice standards.

The key changes in the proposed practice standard are summarised below:

- i) A change in title and purpose statement.
- ii) The addition of "Responsibilities for staff" in the Introduction, which highlights the responsibility practitioners have under the Privacy Act 1993 for the actions of their employees, the need for a privacy officer in the practice, and the associated responsibility for staff briefing or training.
- iii) Greater guidance in the area of the security of health information, with particular emphasis on the security of digital data, including cloud storage.
- iv) The addition of proposed key steps in the management of a privacy breach (Appendix B).

Consultation questions

Stakeholders are invited to comment on the draft practice standard by responding to the following questions:

- Q1. Do you agree/disagree with the proposed draft Patient records and privacy of health information practice standard? If you disagree, please detail why.
- Q2. Does any element of the draft Patient records and privacy of health information practice standard require clarification or further guidance? Please explain.
- Q3. Are there areas you consider to be important that have not been covered in the draft Patient records and privacy of health information practice standard?
- Q4. Do you have any further comments on the proposed Patient records and privacy of health information practice standard?

Bibliography

New Zealand

1. Medical Council of New Zealand. (2008). The maintenance and retention of patient records. Wellington, New Zealand.
<https://www.mcnz.org.nz/assets/News-and-Publications/Statements/Maintenance-and-retention-of-records.pdf>
2. Ministry of Health. *HISO 10029:2015 Health Information Security Framework*.
<http://legislation.govt.nz/regulation/public/1996/0343/latest/DLM225616.html>
3. New Zealand Dental Association. (2016). Code of Practice. Patient Information, Privacy and records.
4. New Zealand Psychologists Board. (2011). Keeping Records of Psychological Services.
http://www.psychologistsboard.org.nz/cms_show_download.php?id=299
5. Nursing Council of New Zealand. (2012). *Code of Conduct for Nurses*. Wellington, New Zealand.
<http://www.nursingcouncil.org.nz/Publications/Standards-and-guidelines-for-nurses>
6. Office of the Privacy Commissioner. *Health Information Privacy Code 1994*. Wellington, New Zealand.
<https://www.privacy.org.nz/assets/Files/Codes-of-Practice-materials/HIPC-1994-2008-revised-edition.pdf>
7. Office of the Privacy Commissioner. (2011). *On the Record. A Practical Guide to Health Information Privacy*. Wellington, New Zealand.
<https://www.privacy.org.nz/news-and-publications/books-and-articles/on-the-record-health-guide/>
8. Office of the Privacy Commissioner. (2013). Cloud computing – a guide to making the right choices. Wellington, New Zealand.
<https://privacy.org.nz/assets/Files/Brochures-and-pamphlets-and-pubs/OPC-Cloud-Computing-guidance-February-2013.pdf>
9. Physiotherapy Board of New Zealand. (2013). Position statement. Physiotherapy health Records.
http://www.physioboard.org.nz/sites/default/files/7_Health_Records_0.pdf
10. Standards New Zealand. NZS 8153:2002 New Zealand Standard. Health Records.
11. St. George, I. *Cole's Medical Practice in New Zealand*. Wellington, New Zealand: Medical Council of New Zealand.
<https://www.mcnz.org.nz/assets/News-and-Publications/Coles/Coles-Medical-Practice-in-New-Zealand-2013.pdf>
12. The Royal New Zealand College of General Practitioners. (2016). *Aiming for Excellence. The RNZCGP standard for New Zealand general practice*.
https://www.rnzcgp.org.nz/RNZCGP/Im_a_Practice/Quality_standards/CORNERSTONE_Aiming_for_Excellence/RNZCGP/Im_a_practice/CORNERSTONE_Aiming_for_Excellence.aspx?hkey=928467b9-5f2b-43d1-a0a7-63dcc244bc0e

Australia

13. Australian Government. Department of Health (2017). *Administrative record keeping guidelines for health professionals online version*.
<http://www.health.gov.au/internet/main/publishing.nsf/content/admin-record-keeping-book>
14. Dental Board of Australia. (2010). *Guidelines on dental records*.
<http://www.dentalboard.gov.au/Codes-Guidelines/Policies-Codes-Guidelines.aspx>
15. Australian Dental Association. *Policy Statement 5.17 – Dental records*.
https://www.ada.org.au/Dental-Professionals/Policies/Third-Parties/5-17-Dental-Records/ADAPolicies_5-17_DentalRecords_V1
16. Australian Dental Association. Policy statement 6.15 – Dental Informatics and Digital Health.
https://www.ada.org.au/Dental-Professionals/Policies/Dental-Practice/6-15-eHealth-Data-Governance-and-Dentistry/ADAPolicies_6-15_eHealthDataGovernanceandDentistry

United Kingdom

17. Dental Defence Union (DDU) Guide. (n.d.). *Dental records*. Retrieved from
<https://www.theddu.com/guidance-and-advice/guides/dental-records/keeping-good-records>
18. Dental Protection. (n.d.). *Safe-Communication*. London, United Kingdom.
<https://www.dentalprotection.org/docs/librariesprovider4/dental-advice-booklets/dental-continuum-safe-communication-gen.pdf?sfvrsn=10>
19. General Dental Council. (2013). Standards for the Dental Team.
<http://www.gdc-uk.org/dentalprofessionals/standards/pages/standards.aspx>
20. NHS Professionals. (2010). *CG2 – Record Keeping Guidelines*. Retrieved from
<http://www.nhsprofessionals.nhs.uk/download/comms/CG2%20-%20Record%20Keeping%20Clinical%20Guidelines.pdf>
21. Unite the Union. (2012). Record Keeping Guidelines.
<http://www.unitetheunion.org/uploaded/documents/Job%205408%20Record%20keeping11-7737.pdf>

Canada

22. College of Dental Surgeons of British Columbia. (2013). *Dental Recordkeeping Guidelines*. Vancouver, Canada.
<https://www.cdsbc.org/CDSBCPublicLibrary/Dental-Recordkeeping-Guidelines.pdf>
23. Royal College of Dental Surgeons of Ontario. (2008). Guidelines. Dental Recordkeeping. Toronto, Canada.
http://plp.rcdso.org/Assets/DOCUMENTS/Professional_Practice/Guidelines/RCDSO_Guidelines_Dental_Recordkeeping.pdf

United States of America

24. American Academy of Paediatric Dentistry. *Guideline on Record-Keeping*. (Revised 2012). Retrieved from http://www.aapd.org/media/Policies_Guidelines/G_Recordkeeping.pdf
25. Dental Association. (2010). *Dental Records*. Retrieved from
http://www.ada.org/en/~/media/ADA/Member%20Center/Files/dentalpractice_dental_records

26. New York University. (n.d.). *Chapter 10: The Dental Record*. Retrieved from <http://www.nyu.edu/dental/careers/students/startingyourdentalpractice/chapter10.pdf>
27. Psychological Association. (2007). Record Keeping Guidelines. *American Psychologist*. Retrieved from <http://www.apa.org/pubs/journals/features/record-keeping.pdf>
28. WHO-SEARO coding workshop. (2007). *Guidelines for Medical Record and Clinical Documentation*.
https://occupationaltherapy2012.files.wordpress.com/2012/03/2007_guidelines_for_clinical_doc.pdf

Relevant New Zealand legislation (relevant excerpts from these are included in the Appendix of the HIPC)

29. Health (Retention of Health Information) Regulations 1996
<http://www.legislation.govt.nz/regulation/public/1996/0343/latest/whole.html>
30. Health and Disability Commissioner Act 1996
<http://www.hdc.org.nz/the-act--code/the-act>
31. Privacy Act 1993
<http://www.legislation.govt.nz/act/public/1993/0028/latest/whole.html>
32. Children, Young Persons, and Their Families Act 1989
<http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM147088.html>