Chief Psychiatrist's Community of Practice Summary
Confidentiality and Information Sharing – Part 1

Welcome - Dr Emma Crampin, Deputy Chief Psychiatrist

Understanding the what, who, how and when of sharing information is essential for mental health staff to build trust, for good communication and is key to person-centred care planning. Here, we clarify staff's responsibilities, in working with personal information in mental health care.

Key Messages

The Legal Side of Confidentiality

- It is generally acceptable to share a patient's information with other clinicians involved in the immediate care of the patient, e.g., multi-disciplinary team.
- Personal information obtained under Mental Health Act 2014 (MH Act) and Health Services Act 2016 (HS Act) is subject to a duty of confidentiality.
- The MH Act and the HS Act prohibit disclosure of "personal information" (e.g. id. numbers, names, details indicating identity) obtained while providing a treatment and care.
- Under the MH Act, carers, nominated persons and close family have a right to a person's information, unless the psychiatrist applies exclusions.
- The common law provides that information obtained under legislation may only be used for the purpose for which it was obtained unless legislation provides otherwise.
- Consumers have a right to privacy, autonomy and to consent - what to share and with whom.
- Clinicians have an obligation to seek consent and to provide information to those involved.

Circumstances where disclosure is not a breach of confidentiality

- Exceptions to duty of confidentiality - provisions which permit disclosure are listed in section 577(1) MH Act
    - With the consent of the individual (or their guardian/ substitute decision maker)
    - In course of duty
    - Express authority under the MH Act (e.g. carers, families, nominated persons)
    - To a court or under the order of a court
    - Allowed by another law
    - For an investigation of a suspected offence or disciplinary matter
- Mental Health Regulations 2015 reg. 20 permits disclosure when:
    - Disclosure is for use in the Mental Health Tribunal and,
    - Disclosure of information to warn of risk: The recording, disclosure or use of the information is necessary to lessen or prevent a serious risk to the life, health, or safety of any individual or immediate danger to the public.

Rights of the Carer and Consumer about their information

- Any carer, close family member or nominated person of a patient is **entitled to be provided with information**, relating to the patient's treatment and care (MH Act s. 285, s. 266).
- If the patient does not have the capacity to consent – the carer or close family member or nominated person is **entitled to be provided with information**, unless the patient's psychiatrist believes it is not in the patient's best interest (MH Act ss. 289 and 292, MH Act s. 269).
- For an Involuntary or mentally impaired accused patient, with capacity to consent – if they refuse to provide consent, the carer or close family member is **not** entitled to be provided with information **if the patient's psychiatrist** considers the refusal is reasonable (MH Act s. 288).

Contact: communityofpractice@ocp.wa.gov.au
GPO Box: A5, Perth Business Hub WA 6849
T: (08) 6553 0000 | F: (08) 6553 0099

Consent to disclosure - who can give it

- Consent must be valid - informed, express, or implied, and freely given without coercion.
- **Competent adult or mature minor** – there is no breach of confidentiality if disclosure is consistent with the consent given (e.g. type of information, to whom it may be disclosed, etc).
- **Incompetent adult** – the consent of legal guardian is needed.
- **Child** – usually consent of parent(s) is needed.
- **Person unable to give consent - substitute decision-maker** – person responsible - listed in Guardianship and Administration Act 1990 s. 110ZD(3).

OCP Clinical Helpdesk
clinical.consultant@ocp.wa.gov.au
Tel: 08 6553 0000

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