



This CPD Activity was part of the Psychologists Protection Society's 40th Birthday Symposium - "Professional Issues in Therapeutic Practice"

1. LEGAL CONTEXT OF RECORD KEEPING

- No general statutory requirement to keep records
- No requirement to keep records outside of contract of employment
- Duty of care to client?
- BACP Ethical requirement?
- Limited case law:
 - Durant [2003]
 - HCPC (2012)



My thoughts....

2. RECORDS AS NARRATIVES?

- **Level 1: The client's story**
 - Unfolding and ‘telling’ the story in therapy
 - Co-constructing a new *joint* verbal narrative
- **Level 2: The therapist's *version* of the client's story**
 - Keeping records of therapy
 - Co-constructing a meta-narrative in supervision
- **Level 3: Shaping a narrative for *other parties, other purposes***
 - Writing for publication
 - Case presentation
 - Audit within the agency
 - Referral to another agency
 - Reporting to the courts
 - **Use of records as *evidence* in legal proceedings**

My thoughts....

3. ACCESS TO RECORDS BY CLIENT

- Right of access under Data Protection Act 1998?
 - Removal of third party material
 - Hard copy / explaining content
- Education, health or social work record?
 - If so, a risk of serious harm?
- Handwritten or computerised record?
- Public authority, voluntary agency or private practice?

My thoughts....

4. ACCESS TO RECORDS BY POLICE

- protection under s. 12, PACE 1984
- Warrant required from Circuit judge
- Cardiff case [1993]
- Wintercomfort case [1999]



My thoughts....

5. ACCESS TO RECORDS BY COURT

- Confidentiality is not a form of privilege
- No privilege for counsellors (except marital counsellors' *clients*)
- 'Public interest' in discovery process
- Applies to 'second sets' of notes

My thoughts....

6. PROBLEM AREAS FOR THERAPY

- Nature of therapeutic recording
- Pre-trial therapy for vulnerable and child witnesses
- Therapy as 'contaminating' evidence?

My thoughts....

7. USE OF RECORDS IN COURT: ADVERSARIAL USE OF CLIENT RECORDS AS EVIDENCE

Client factors

- psychiatric history, medication,
- alcohol/drug abuse

Therapist factors

- inaccurate/absence of recording
- 'coaching'

My thoughts....

8. STRATEGIES TO LIMIT DISCLOSURE

- Report writing
- Public Interest Immunity
- Application to judge, with support from:
 - Professional Indemnity Insurance Society
 - Psychologists Protection Society

My thoughts....

9. SHAPING A NARRATIVE FOR OTHER PARTIES, OTHER PURPOSES

- Issues of client's informed consent to disclosure of records?
- Use of sensitive therapeutic material in an *adversarial* setting
- Unintended outcomes of disclosure of client/patient previous history on status as witness/plaintiff
- Ethical value of recording and non-maleficence?

My thoughts....

REFERENCES

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CPD TRAINING RESOURCES

Jenkins, P. (2013) Counselling, Confidentiality and the Law. (*Training DVD*) from: Counselling DVDs, in association with University of Wales (<http://counsellingdvds.co.uk>) This is a training DVD for group or individual reference, study, CPD, training, etc.

Jenkins, P. (2014) Record-Keeping, Data Protection and Access to Records. MindEd. This is a free, on-line training package, designed primarily for use by counsellors working with children and young people, but of relevance to any therapists wanting to increase their understanding of record-keeping and data protection law. It can be accessed via: www.minded.org.uk – first register on the site as a counsellor, then select this session from the list of training sessions available. It can be stored for future reference and then accessed via your PC, laptop, smartphone, etc.



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