



COMPLYING WITH YOUR AUDITORY PRIVACY OBLIGATIONS

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Auditory privacy is an increasing concern as practices switch to 'green' fitouts with low ambient background noise and larger numbers of patients are seen in the close proximity of smaller consulting rooms. Further, with high profile data breaches by large companies in recent times and public discussion of concepts such as metadata, the public has become more aware of their privacy generally and more likely to complain or change practitioners if their privacy is breached.

As a result, practitioners and clinics need to be aware of their obligations under privacy legislation and standards, as well as the best way to mitigate the unique risks of auditory privacy breaches.

WHAT IS AUDITORY PRIVACY?

The Royal Australian College of General Practitioners (RACGP) Standards for general practices (4th ed) provides:

Auditory privacy means a patient's conversation with a member of the clinical team cannot be overheard by an inappropriate person, such as another patient or staff member. (p 103)

WHY IS IT SO IMPORTANT?

Breach of a patient's privacy can result in significant medico-legal, reputational and commercial risk. There are both legal and ethical requirements to ensure that patients' personal information is not available to others. Ensuring that auditory privacy is maintained will protect both patients and providers from the negative consequences of a lack of privacy.

If patients sitting in the waiting room can overhear health or other personal information being provided by the receptionist, they may be concerned that their own information is unsafe. Similarly, a patient who can overhear a conversation between a doctor and another patient in an adjoining consulting room may be worried that their own consultation could be overheard.

Cindy Tucker, a Partner at TressCox Lawyers' Victorian Health practice says the potential negative consequences for a clinic or provider arise in many ways. "At a clinical level, a breach of auditory privacy could result in a patient being reluctant to disclose information to their doctor, affecting the doctor's ability to diagnose and treat their condition. This could result in patient complaints, medico-

legal investigations or claims, and could see patients switch to another practice.

"From a legal perspective there is also the risk of complaints to the Health Services Commissioner or Privacy Commissioner regarding breaches of privacy principles, potentially with findings that there have been failures to ensure proper protection and security of personal information. These can be costly and time consuming processes, even if no adverse findings are made."

WHAT ARE THE REGULATIONS GOVERNING AUDITORY PRIVACY?

The relevant federal legislation is the *Privacy Act 1988*, which includes the Australian Privacy Principles (APPs). The Office of the Australian Information Commissioner (OAIC) administers the Act and its website has guides to the APPs, as well as resources that health services providers can use to ensure they are familiar with their obligations under the APPs. The OAIC receives complaints about breaches of the APPs, attempts to resolve complaints through conciliation and (where necessary) assist the Information Commissioner to issue a determination. The Information Commissioner can also accept undertakings which are enforceable by the courts and has the power to see monetary penalties for serious or repeated breaches of the APPs.

Some States have their own health privacy legislation. In Victoria, the relevant legislation is the *Health Records Act 2001*, which includes the Health Privacy Principles (HPPs). The Health Services Commissioner administers the HPPs and acts to facilitate the resolution of complaints about health privacy breaches.

Neither the *Privacy Act* nor the *Health Records Act* contain provisions specific to auditory privacy. Instead auditory privacy is governed by the requirements to ensure that health information is not disclosed for an unauthorised



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purpose and to ensure that security of health information is maintained. Ms Tucker explains: "Privacy legislation is intended to ensure that information about a person is kept secure and is only disclosed with their consent or in circumstances where they, and the law, would expect that it would need to be disclosed – such as passing on information to another practitioner as part of the patient's treatment. It's unlikely that anyone would consent to their sensitive information being overheard by other patients, or being talked about by reception staff in front of other patients."

The RACGP Standards also offer guidance on practices' obligations to ensure auditory privacy is maintained (see Standards 1.1, 4.2 and 5.1).

HOW CAN PROVIDERS BEST ACHIEVE AUDITORY PRIVACY?

The ABCs of acoustical design – Absorb, Block and Cover – represent the best practice for auditory privacy, and is a useful tool for reviewing auditory privacy measures. For example, the RACGP guidelines suggest that the following physical conditions will facilitate auditory privacy:

... the use of appropriate background music to mask conversations between staff members and between staff and patients. [ie "Cover"]

The auditory privacy of consultation rooms can be significantly enhanced by having solid doors (rather than doors with paper cores), using 'draught proofing' tape around door frames and a draught excluder at the base of the door. [ie "Block"] (p. 103)

These measures can, however, be expensive. One cost effective solution is acoustic sound masking. An ambient background sound – similar to airflow, and specifically tuned to human speech frequencies – is introduced. This solves the problem of sound transference through air vents, via light fittings and over walls, and avoids the need to pay licensing fees to the Australasian Performing Rights Authority (APRA) for broadcasting music. This solution is especially attractive where ambient background sound is currently low.

Other solutions can be integrated at design stage or retrofitted. For example, during design, minimise reverberant shiny surfaces. If reverberation is in place, offset the issue by the inclusion of soft furnishings.

Designing the floor plan to allow for as much space between consultants can assist, as can the use of acoustic plaster. Reconfiguring furniture in an existing space can have a similar effect.

Investing in an acoustic consultant's advice can also ensure that a practice complies with its auditory privacy obligations. Ms Tucker also recommends that practices review the resources for health providers published by the OAIC and HSC and procedures are compliant with both the APPs and HPPs.

CONCLUSION

Maintaining auditory privacy is a vital aspect of ensuring compliance with obligations under privacy legislation, but can be readily accomplished using best practice guidelines and some simple acoustic principles.

CASE STUDY

Patient A telephones their GP clinic to ask whether the results of their blood tests have arrived. As part of the clinic's usual process, the receptionist asks Patient A to confirm their identity by providing their full name and date of birth. The receptionist repeats the name and date of birth over the phone as that information is given to them. These details can be overheard by other patients in the waiting room, including Patient B who knows Patient A. The receptionist then proceeds to tell Patient A that their results have arrived, and that the conclusion on the report says that they have very low iron levels.

Later that day Patient B contacts Patient A and mentions Patient A's blood test results. Patient A is confused how Patient A knows of the results, and Patient B explains that they overheard them at the GP clinic.

If Patient A commenced a complaint against the clinic (either to the HSC or the OAIC), the clinic would be at risk of findings that the clinic had not complied with APP 6 and HPP 2 (regarding use or disclosure of personal information), and APP 11 and HPP 4 (regarding security of information). Depending on the effects of the breaches and Patient A's approach, potential steps to resolve the complaint may range from provision of an apology to payment of compensation.