



OPERATIONAL CIRCULAR

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Subject: **PATIENTS ACCESS TO PERSONAL RECORDS**
MENTAL HEALTH ACT 1996 (ss 160,161)

Authority

The *Mental Health Act 1996* states that:

The Chief Psychiatrist has responsibility for the medical care and welfare of all involuntary patients (section 9 (1))

In respect of other patients, the Chief Psychiatrist is required to monitor the standards of psychiatric care provided throughout the State (section 9 (2))

Access to personal records (s.160)

Personal records are any relevant document, that relates to a patient or former patient that is in the possession of, or under the control of the person in charge of a hospital or any person employed in the department. This may include electronic data including personal information on PSOLIS, LAMIS, TOPAS and E-MAILS.

*A person who is or has been an involuntary patient at any time either in hospital or living in the community, or a mentally impaired defendant detained in an authorized hospital, has the right to inspect and receive copies of any document pertaining to themselves.

Section 160 gives patients a right without restriction to copies of any forms, apart from forms 1 and 7 (s.159) and the right that a person may have under any other law (eg: Freedom of Information Act) to inspect or be given a reproduction of a document.

The access should be granted in a timely manner, unless the exceptions (s 161) are applicable. Granting timely access is particularly relevant when the access is sought to assist representation before the Mental Health Review Board (MHRB). The MHRB may at times adjourn a review so that proper access to medical records may be completed.

In granting access to the patient or their representative a private location should be made available for access and copies of records kept in a safe place as the medical record remains confidential to the patient.

Access personal records – representation (s160)

If consent has been provided then the right described above* extends to the person's representative or another person acting on behalf of the person. This right is separate from the right of a patient to seek access to personal records through the *Freedom of Information Act 1992*.

In taking instructions to represent the patient, the representative may request access to the medical record of the patient in preparation for the review. Every effort to allow access to a patient's medical record must be taken, though exceptions to this right need to be taken into consideration, as access of records to a representative is access of the record to the patient.

Exceptions to this right (s161)

The right to access personal records (s.160) is qualified by exceptions to this right (s.161), which limits in certain circumstances a patient or his or her representative's access to personal records. These circumstances are:

- (a) that disclosure would have a substantially adverse effect on the health and safety of the patient, former patient or any other person;
- (b) reveal personal information about another individual, whether living or dead;
- (c) reveal information of a confidential nature obtained in confidence, however access may be granted if a person, other than the patient, who has provided confidential or personal information (ie a 'third party') permits the access (s.161(1)(b)(c)). Access should not be granted until this is confirmed in writing.

The limitation placed on the disclosure of confidential communications includes all communications passing between Legal and Legislative Services and hospital/health services or Departmental staff for the dominant purpose of obtaining or Legal and Legislative Services giving legal advice (and includes the legal advice itself).

In order to ascertain whether these exceptions apply the person in control of the medical record, usually the psychiatrist responsible for treatment or supervision, or another person nominated on behalf of that person should examine the medical record.

If no exceptions as described above are noted then the person and/or representative should be provided with access to the medical record or a copy of the record.

If exceptions do apply then the person in charge of the medical record may decide not to permit access either to the person or his or her representative.

Any exceptions do not prevent access to parts of the medical record where the exceptions are not relevant. In those circumstances the person or his or her representative should be informed that they are being allowed partial access.

Suitably qualified person (s161)

Should the patient be deemed unable to access their medical record then the patient or former patient may nominate a 'suitably qualified person' access to their medical record. A 'suitably qualified person' is a consultant psychiatrist.

A patient's legal representative does not have the authority to withhold information from their client of the type described above and as such is not deemed a 'suitably qualified person' by the Chief Psychiatrist.

Further Details

Information about Patient Access to Personal Records can be found in the *Supplement to the Clinicians Guide, Mental Health Act 1996*. The Supplement is available on the Chief Psychiatrist's website: www.chiefpsychiatrist.health.wa.gov.au or a copy may be obtained by contacting the office on 9222 4462.

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