



Consultation recording in healthcare settings: an overview

Dr Megan Pricor and Ms Nikka Milani, Melbourne Law School, May 2022

This paper provides a brief overview of the practice of, and research into, the recording of healthcare consultations between clinicians and patients. It has been prepared in conjunction with the launch of the University's Collaborative for Better Health and Regulation.

The benefits of consultation recording

The audio recording of healthcare consultations has emerged as a useful way for patients and clinicians (including doctors, nurses, and other health professionals) to collect and recall health information. Patients report that access to consultation recording increases their understanding of their diagnosis, and enhances their confidence in treatment decision-making. Clinicians also recognise that consultation recording can improve the quality and efficiency of medical care.¹

New technologies to facilitate consultation recording

Several smartphone technologies have been developed to facilitate consultation recording. For instance, the *SecondEars* app at the Peter MacCallum Cancer Centre uploads recordings to the patient's medical record before the patient can access them.² *Abridge* provides transcripts of recordings and links to definitions of medical terms used in consultations. *Medcorder* also provides transcripts and lets patients attach notes to their recordings. All of these technologies allow patients to share recordings with carers and family members.

People's practices and preferences

Research in the US reports that approximately 1 in 5 patients have recorded consultations, and 2 in 3 are interested in recording future appointments.³ A similar level of interest was reported in a UK study.⁴

Researchers at Melbourne Law School and the Peter MacCallum Cancer Centre have launched a national survey to investigate how often people record their healthcare consultations (openly or in secret) in Australia, and to examine people's preferences for making and sharing recordings. <https://go.unimelb.edu.au/j36e>.

Covert consultation recording

Reports have revealed that both patients and clinicians sometimes engage in covert consultation recording. UK research indicates that 26% of patients have made covert recordings or are aware of someone who has. 35% of patients reported that they would consider recording covertly.⁵ Some patients covertly record due to a lack of trust in the health system to provide them with quality care, and past experiences of poor medical care. Others believe that it affords patients a greater sense of control in the doctor-patient relationship.⁶

Health service-led consultation recording

Recordings can be used for education and quality improvement purposes in clinical settings. For instance, intensive care clinicians report that recordings can help to guide reflection and improve individual approaches to teamwork, communication, and the management of clinical emergencies.⁷ Consultation recording has also been endorsed by clinicians as a less obtrusive way to audit clinical practice.

Health services also use recording technologies for security and surveillance. In Victoria, body worn cameras can be used in these settings to deter occupational violence. Staff members are advised to activate a recording if they perceive a threat to their own or another's safety.⁸

Medico-legal issues

Recording consultations raises legal questions around consent and sharing recordings. The legal requirements derive from surveillance devices laws, which differ across the country (and globally). Under Victorian law, patients do not need clinician consent to record their own face-to-face consultation, but clinician consent is needed for the patient to play the recording to anyone else.⁹ To record telehealth appointments, the consent of both parties is needed.¹⁰ The variety and complexity of the legal settings in this arena, coupled with a lack of legal knowledge on the part of those considering recording, can impede implementation of this useful technology.

There is limited research on the impact of recording on disputes and litigation arising from health care. One study of over 2800 patients found no instances of litigation when video recording was promoted in a high-risk setting.¹¹ It seems logical that allowing consultation recording may **reduce** the risk of disputes emerging, as it is likely to engender trust and resolve differences in recollection between two parties. It may also facilitate quicker, less costly resolution of disputes, by providing reliable evidence of what happened.

Health services' policy approach

Preliminary research suggests that health services adopt a defensive approach to consultation recording. For instance, at least one major Victorian hospital only permits consultation recording with the clinician's consent; while another prohibits any recording of telehealth consultations (even with consent) – both policies constrain recording beyond the legal requirements. The published policies lack guidance on the subsequent use of recordings, such as who they can be shared with. More research in this area is needed.

Complex regulatory environment

Recordings in healthcare settings invoke diverse and overlapping spheres of regulation (see *Figure 1*), which interface across the patient-professional relationship, with its inherent obligations of privacy and confidentiality.

Looking to the future

Given the strong evidence of the benefits of enabling patients to record and listen back to their clinical consultations, removing legal and policy impediments to this practice and encouraging its uptake is important. Our work at Melbourne Law School will address knowledge gaps concerning current recording practices in Australia and the role of recordings in medico-legal disputes to date. The field also needs national alignment of surveillance devices legislation – or a bespoke regime applicable in healthcare settings that removes consultation recording from the 'wiretapping' realm. Alongside legal reform, the development of clear policies supportive of appropriate recording practices that acknowledge the needs of all parties, and are consistent across healthcare settings, is warranted.

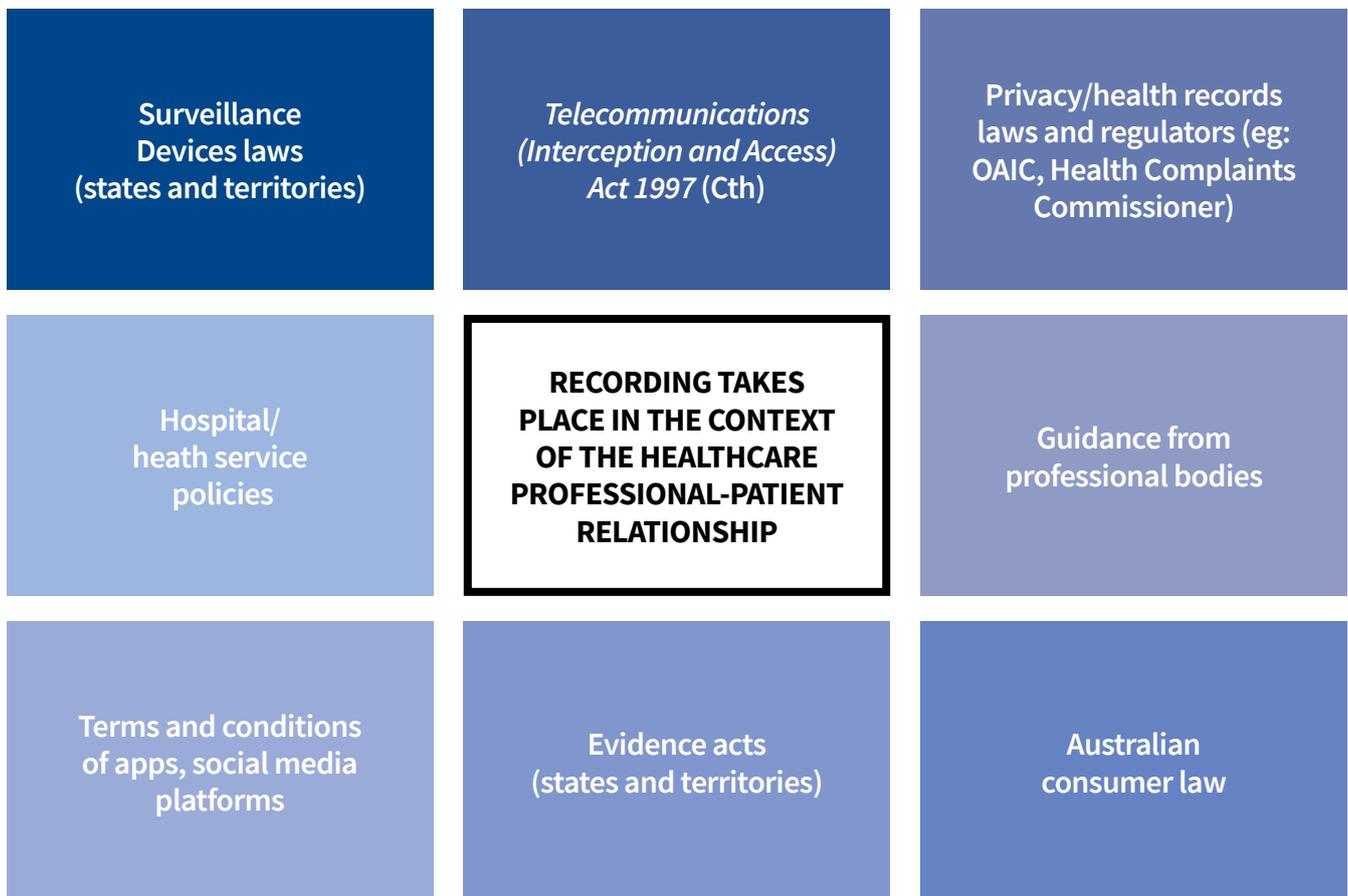


Figure 1: Consultation recording exists in a complex regulatory environment in Australia

Endnotes

- 1 Marie Pitkethly, et al, "Recordings or Summaries of Consultations for People with Cancer," *Cochrane Database of Systematic Reviews*, No. 3 (2008); Maka Tsulukidze et al., "Providing Recording of Clinical Consultation to Patients: A Scoping Review," *Patient Education and Counseling* 95, No. 3 (2014): 297–304; Lisanne J. Dommershuijsen, et al, "Consultation Recording: What Is the Added Value for Patients Aged 50 Years and Over? A Systematic Review," *Health Communication* 36, No. 2 (2021): 168–78.
- 2 Amelia Hyatt et al., "Testing Consultation Recordings in a Clinical Setting with the SecondEars Smartphone App: Mixed Methods Implementation Study," *JMIR MHealth and UHealth* 8, No. 1 (2020): e15593.
- 3 Paul J. Barr et al., "Audio-/Videorecording Clinic Visits for Patient's Personal Use in the United States: Cross-Sectional Survey," *JMIR* 20, No. 9 (2018): e11308.
- 4 Glyn Elwyn, et al, "Patients Recording Clinical Encounters: A Path to Empowerment? Assessment by Mixed Methods," *BMJ Open* 5, No. 8 (2015): e008566.
- 5 *Ibid.*
- 6 *Ibid.*; Tsulukidze et al., "Patients Covertly Recording Clinical Encounters: Threat or Opportunity?" *PLoS One* 10, No. 5 (2015): e0125824.; Stuart W. Grande et al., "A Digital Advocate? Reactions of Rural People Who Experience Homelessness to the Idea of Recording Clinical Encounters," *Health Expectations* 20, No. 4 (2017): 618–25.
- 7 Christian Karcher, "Staff Perceptions of Routine Audio-Video Surveillance in the Intensive Care Unit (ICU)" (Minor Thesis, Master of Clinical Education, Parkville, University of Melbourne, 2020).
- 8 Department of Health and Human Services Victoria, "Body Worn Cameras Policy Template," November 2018.
- 9 *Surveillance Devices Act 1999* (Vic).
- 10 *Telecommunications (Interception and Access) Act 1979* (Cth).
- 11 Andrew J Meeusen and Randall Porter, "Patient-Reported Use of Personalized Video Recordings to Improve Neurosurgical Patient-Provider Communication," *Cureus* 7, No. 6 (2015): e273.

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