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MEDIA RELEASE

RECORDING A HEALTH CARE CONSULTATION: DOs AND DON'Ts

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LEGAL considerations exist for both clinicians and patients in recording health care consultations, with “surprising diversity” in legislation across the states and territories, according to the authors of an article published online by the *Medical Journal of Australia* today.

Dr Megan Prictor and Dr Carolyn Johnston from the Melbourne Law School at the University of Melbourne, and Amelia Hyatt from Cancer Experiences Research at the Peter MacCallum Cancer Centre, compared the legal implications of overt and covert recordings of health care consultations and addressed key concerns identified by clinicians.

They distinguished between three types of recordings:

- Overt patient-led recordings: for example, a patient recording a consultation with the clinician’s consent. These recordings are akin to a patient’s handwritten notes;
- Overt health service-led recordings: for example, the Second Ears app, where both clinician and patient consent (actively or impliedly) to the recording; the app is facilitated by the health service and the primary version of the recording stored on their system; and,
- Covert patient-led recordings: for example, a patient recording without the clinician’s knowledge or consent.

“Our analysis found surprising diversity in Australian legislation pertaining to consultation recording, leading us to conclude that, to avoid confusion, expressly articulated permissions around the act of recording and the extent of sharing recordings are desirable,” Prictor and colleagues concluded.

“While covert recording is not uniformly unlawful in Australia, transparency promotes trust and enhances the clinician–patient relationship.

“There is some evidence that concerns about a heightened litigation risk as a consequence of recording are unfounded; rather, the existence of a recording should minimise conflicting recollections and enhance a sense of collaboration.

“While the act of recording does not alter a clinician’s duty to disclose relevant information to a patient, communication skills training may be a way to alleviate concerns about being recorded.”

The authors covered the following topics in the article:

- Clinician consent to patient-led recordings;
- Patient consent to clinician-led recordings;
- Consent of other people captured accidentally in overt recordings;
- Consent when someone else joins any overt recording;
- Covert recordings by patients;
- Covert recordings: legal penalties;
- Dealing with unwanted recordings;
- Health care organisations sharing recordings;
- Patients sharing recordings;
- Use of recordings in legal proceedings;
- Ownership of recordings; and,

- Data security and storage of overt recordings.

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CONTACTS: Sam Burt
 Digital Communications and Media Coordinator
 Melbourne Law School and Melbourne School of Government
 University of Melbourne
 Ph: 0466 808 788
 Emai: sam.burt@unimelb.edu.au