Guidelines for Nurses and Midwives, Privacy, Confidentiality and Consent in the Use of Exemplars of Practice and Journaling

The use of exemplars of practice and journaling of practice experience has become commonplace within nursing and midwifery over the last decade. These two strategies for aiding reflection on practice are useful in analysis of strengths and weaknesses and identifying growth or change potential; they are professional development and quality improvement strategies.

Exemplars and journals are used for multiple purposes including
- Education programme requirements
- Professional learning and development
- Credentialing systems
- Recognition of prior learning
- Competence assessment
- Describing and exploring clinical practice
- Evidence of a level of practice development
- Presentations in various contexts
- Publications

The use of exemplars for these laudable reasons is not without risk. Matters of privacy, confidentiality and consent must be paramount in the use of exemplars. Consideration should be given to other methods of describing and reflecting on practice and exemplars and journaling used only when other methods are not appropriate. Exemplars and journals use narratives about nurses, colleagues, patients, relationships, care and context. It is all too easy to breach privacy and confidentiality even if pseudonyms are used. A description of the entire context of a situation often results in those involved being identifiable.

In addition, the journals, diaries and exemplars of nurses have been requested as evidence in certain investigations, an example being the Health and Disability Commissioner’s enquiry into the events at Christchurch Hospital in 1996.

Brown (2000) quoted Sue Johnson, NZNO legal adviser, as saying Reflective practice journals could be used as evidence in a court of law and further that if the reflection said such things as In hindsight I think I should have done “x”, or I would not do “y” in the future, the nurse could be in difficulty.

Jones (1997), an independent nurse consultant, who has provided significant leadership in the use of exemplars to explicate practice, highlighted the issues of consent, privacy and confidentiality in a conference paper stating that Although exemplar writers are encouraged to change details in order to conceal the identity of the patients and significant others involved, matters of consent, privacy and

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4 Ibid 2002

The Legislative Framework – Privacy and Consent

The Code of Health and Disability Services Consumers’ Rights (“the Code”) and the Health Information Privacy Code (“HIPC”) are important documents to guide nurses in their use of exemplars and journals.

If the exemplar is to be used for teaching or research, then the Code comes into effect. The definition of services provided to consumers includes teaching and research. Sue Johnson quoted by Trim (2002) says In order not to be in breach of the Code, the consumer should be informed they will be involved in teaching through the information in the exemplar and given the opportunity to make an informed choice and give informed consent.4

This is not well understood by nurses. Many of the situations in which nurses and midwives journal or use exemplars are for the purposes of teaching and learning and adherence to the Code is required. Informed consent is to be gained from the patient. This is not always feasible because the writing of an exemplar may occur well after the event however effort should be made to gain consent even after the event and if this is not possible then it is safer that the exemplar is not used for teaching and research purposes.

In situations other than teaching and research, content of the exemplar and the maintenance of confidentiality and privacy are important. Nurses and midwives need to comply with the HIPC and their ethical obligation of confidentiality when they are sharing patient information. Unless the patient has consented to identifiable material about them being disclosed then no information that could identify the patient should be put in an exemplar. New Zealand is a small country and contextual descriptions along with the author’s location can result in identifying person(s) involved in the exemplar. Nurses and midwives care for the whole person and their family in particular practice contexts and locations; that is what makes our practice complex and significant but it is also these details which often build an identifying picture.

Jones (1997) outlines Kleinman’s approach in her paper as one way in which identifying information could be changed and Sue Johnson supports this approach. Kleinman (1988)5 states [t]o protect the anonymity of patients and practitioners, I have removed or changed certain information that might identify them. When I have made such changes, I have drawn on information from patients with similar problems to make the alteration valid in the light the experiences of the patient group as a whole. (xv) This is a sound approach. Ask if potentially identifiable information is necessary to disclose...
for the exemplar and if not exclude it. If it is necessary for the reflective process and is potentially identifying, then consider changing that information or other information in a way which will then maintain the privacy of those involved.

Jones (2004) recommends that nurses talk with patients about what is involved in reflective practice and gain consent, a process which would involve sharing the story with that patient and have them know how it would be used.

More recently Tustin-Payne (2005) has considered approaches to enable safe use of exemplars to explicate nursing practice in applications for professional development and recognition programmes. She describes a reflective practice model utilising components of reflection from several theorists. The model is centred on the nurses’ management of aspects of their practice, not the patient. Initial trials of this model have been positive and it will continue to be evaluated and refined.

Ethics Committee approval is required for health related research involving patients. The Ethics Committee, in reviewing the research proposal, will scrutinize participant information and consenting processes. The Committee will review the research methodology and confidentiality and privacy matters also.

If the exemplar or journal is solely for private reflective practice and will not be disclosed to anyone else at all then the nurse or midwife can put in whatever he/she wishes. However should there be a formal investigation involving the nurse, midwife or their patient(s) then that private journal or exemplar may be required as evidence.

**Disclosure and Evidence of Misconduct**

Under the Health Practitioners Competence Assurance Act 2003 the Minister of Health can approve quality assurance activities. Participation in approved activities has wide protection from disclosure in other forums (such as professional misconduct hearings). Thus comments regarding one's own or a colleagues poor practice will generally not be able to be disclosed. This protection extends to documents created solely for the purposes of the quality assurance activity. Note however there are limited exceptions to the non-disclosure rule here, such as where there is evidence of a serious criminal offence.

Notes which a practitioner creates after an incident for their own use if later required, can potentially be ordered to be provided in a later investigation or court proceeding. In order to help protect against this, we recommend writing on the notes that they were prepared for the purpose of legal advice, and sending them to the NZNO lawyer (for NZNO members). This way they should be able to be protected by legal profession privilege against having to be disclosed.

**Guidelines for the Use of Exemplars and Journals**

NZNO errrs on the side of caution regarding the use of exemplars and journals whilst acknowledging that they do have value in aiding the reflective process and professional development. If you can avoid the use of journals and exemplars by using another method to aid reflection, then do so.

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8 Tustin-Payne W (2005) *Reflective Writing – are nurses able to safely tell their stories?* Unpublished but sent for publication Kai Tiaki Nursing New Zealand.
Obtain consent from those involved in the situation described when using exemplars or journals for the purpose of teaching or research. When exemplars are used for purposes other than teaching and research, try to obtain consent from those involved. Write the exemplar or journal using fictitious names and in a way in which the context and details do not identify those involved. This is extremely difficult in some circumstances, for example rural nurses working in very small communities or for those with unusual health and social situations. In these circumstances, if consent for use of information cannot be gained, then do not use the situation.

Table one provides a guide to the legislative frameworks impacting on the use of exemplars and journals. It guides nurses and midwives in thinking through the issues when using exemplars or journals for specific purposes.

### Table One. Guide to legislative and ethical frameworks for use of exemplars or journals in reflecting on practice

<table>
<thead>
<tr>
<th>Exemplar or journal purpose</th>
<th>HPCA</th>
<th>HIPC</th>
<th>H&amp;D Code</th>
<th>Ethics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal reflection only (not seen by others. Legal risk if subpoena)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Reflection with peers (peer review, peer panel)</td>
<td>Yes (but only if approved Quality Activity)</td>
<td>Yes (teaching or research)</td>
<td>Yes (teaching or research)</td>
<td>No</td>
</tr>
<tr>
<td>Teaching</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Appraisal (with immediate line manager)</td>
<td>No</td>
<td>Yes</td>
<td>Probably No</td>
<td>No</td>
</tr>
<tr>
<td>Evidence of competence level</td>
<td>Yes (only if credentialing programme is approved as Quality Assurance Activity)</td>
<td>Yes</td>
<td>Probably No</td>
<td>No</td>
</tr>
<tr>
<td>Research</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Publication</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Possibly (yes if a research project)</td>
</tr>
<tr>
<td>Student nurses (sharing with lecturer, preceptor, other students)</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Presentations to colleagues (conferences, staff forum etc)</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

**Acknowledgement**

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**References**


Jones S (2004), Private Correspondence with Susanne Trim, 29 October.


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**Correspondence to:** nurses@nzno.org.nz

**Mission statement**

NZNO is committed to the representation of members and the promotion of nursing and midwifery. NZNO embraces Te Tiriti o Waitangi and works to improve the health status of all peoples of Aotearoa/New Zealand through participation in health and social policy development.

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