

Have you received a subpoena for treatment notes of a sexual assault victim? Information for GPs and medical centres

As a GP you will often be one of the first people that your patient will talk to about their experience of sexual assault. This information sheet tells you how to keep records of these conversations confidential, and how to protect the relationship of trust between you and your patients.

Privilege and general practitioners

The Sexual Assault Communications Privilege (SACP) is a set of rules which apply to subpoenas in **criminal proceedings and when dealing with Apprehended Violence Orders (AVOs)**. The privilege does not apply in family law matters.

If a person has ever reported being a victim of sexual assault, the SACP rules say that all counselling communications by, to or about that person (called the protected confider) are privileged. Counselling communications do not need to be about a sexual assault to be privileged.

Privileged material **cannot be subpoenaed or used in evidence** without permission (called "leave") from the court.

What is privileged?

The definition of counselling is broad and includes "advise, give therapy to or treat" for a variety of types of harm.

In a GP practice, the privilege almost certainly applies to:

- informal counselling and wellbeing checks
- mental health services including mental health care plans, referrals and reports and
- assistance with drug and alcohol issues.

These records do not need to be about sexual assault to be privileged.

What you should do

If your practice receives a subpoena for a criminal case and you are aware that your patient has been a victim of sexual violence, then at least some of your records will be privileged.

Check the records to see if anything like the documents in the yellow box are captured by the schedule of the subpoena.

If they are, then the subpoena has legal requirements, and you are prohibited from sending the records unless the subpoena was issued with leave of the court to capture privileged material.

If you believe that the subpoena includes privileged material:

1. Check the subpoena and the correspondence accompanying it for any indication that leave was granted, such as a copy of a court order granting leave.
2. Contact the registry of the issuing court and ask which judge or magistrate granted leave to issue the subpoena and on what date.

Assistance from Legal Aid NSW

The Sexual Assault Communications Privilege Service (SACPS) at Legal Aid NSW assists professionals responding to subpoenas for privileged material and can give you legal advice if you need it. We can help to identify privileged material, and can confirm whether a court has given leave for a subpoena.

We also provide lawyers for sexual assault victims who are enforcing their rights over their counselling information.

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