

USING A CHECKLIST & OTHER STRATEGIES TO NAVIGATE THE ETHICAL IMPLICATIONS OF RELEASING CLIENT RECORDS TO THIRD PARTIES



*CPA's Annual Convention 2022 Jessica Hudson &
Dawn McBride Counsellor Education Program
www.dawn-mcbride.com*

1



1. Ethical implications associated with releasing information about a client (e.g., info, file release, parts of a file)
2. Recommendations on how to uphold our ethical values when responding to release of client information.



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

2

Ethical Implications: x4

“It is the rare patient who doesn’t look worse on paper”
(Ellis, 2010, p. 142)

- A. Informed Consent
- B. Risks of a Record Release
- C. Alternatives to a Record Release
- D. Client Rights



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

3



“Better a friendly refusal than an unwilling consent”



Spanish proverb cited in The Cap Monitor, 2008 by Richard Steinecke

CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

4

A. Informed Consent

- It's informed consent not consent
 - client's full & active participation in the decision-making process (CPA, 2017, I.16).
- Consent does not travel → needs to be 2 way
- B.R.A.I.N
 1. Benefits & risks of releasing their private information.
 2. Alternatives available to releasing the information.
 3. Refuse ANY release their information.



Upcoming: Consent Form for Release of Information

CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

5

B. Risks to Third-Party Record Release

- Some Possible Risks
 - **Ponder** – truly able to give consent if feeling desperate, overwhelmed, exhausted, dependent on authority figures, etc.?
 - **Impact on therapeutic relationship** (Jenkins, 2003)
 - **Potential damage** client's reputation, relationships, & undermine client's credibility (Borkosky & Smith, 2015; Ellis, 2010; Jenkins, 2003)
 - Counselling information **may not contain** the information being sought & material may be accessed/used that was not initially sought for



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

6

C. Alternatives to Record Release

■ Explore Possible Alternatives:

- Conversation via phone may be more suitable
- Brief letter to answer a specific question(s)
 - e.g.. Seeking only a verification of attendance
- Written summary instead of a record release
- Seek ad hoc privilege ...



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

7

D. Client Rights

- Decline – say “no”, “I don’t know yet”
 - *To refuse to discuss any topic in counselling that they do not want the third-party to have knowledge of*
- Ask how their information will be used, stored, & who will see it
- To know what is shared & learned about them
- To see what is in their file



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

8

1. Ethical implications associated with third-party record release.

2. Recommendations on how to uphold ethical values when responding to third-party record release requests.

- A. Informed Consent
- B. Risks of Third-Party Record Release
- C. Alternatives to Complete Record Release
- D. Client Rights

University of Lethbridge

CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

9

Recommendations to Reduce Risk of Releasing Records

1. Document according to CPA – record with dignity, respect, & relevancy
2. Detailed Release of Information Consent Form
3. Fight NOT to release: Legal Considerations

University of Lethbridge

CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

10

Recommendation #1: Documentation

- **Keep brief, relevant, theme-based notes:**
 - Record info germane to the agreed upon contract (CPA, I.39) to show dignity & respect; reduces risk of releasing sensitive info
- **Separate records** → family, couple, & group work (Knauss, 2006; Reamer, 2005)
- **Use in-session (open) notes:** (e.g., ask & record their take-a-ways)
 - increase client’s recall of what occurred in sessions
 - strengthen the therapeutic alliance
 - ct’s learn/educate to others → their file is not a ‘historical’ record



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

11

Recommendation #2: Detailed CONSENT

- **Clearly outline:**
 - Full name/contact info. of the information is being released to
 - Listing what client information shall & shall not be released
 - Purpose of the intended use
 - How the information will be released (e.g., phone, secure email)
 - Risks & limitations of releasing the info (e.g., what, how)
 - Date, signature, & **expiration date** of the client giving consent for this information to be released (assuming it is not just a one-time release)



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

(Koocher & Keith-Spiegel, 2008)

12

Recommendation #2: Detailed CONSENT

- Consent form → showcase “Relational” (dignity & care)
 - **AVOID:** one-size-fits-all approach
 - **USE:** language to match comprehension level; ability to process information
 - **OFFER:** space on the consent form to document the specific benefits/risks & client’s reaction to this information

“Reasonable Person”



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

13

Recommendation #3: LEGAL Blocks

- **Fight NOT to release info** → e.g., write a letter, Judge chambers, use Wigmore criteria (*ad hoc* privilege)

- I. The communication of information occurred within a confidential relationship
- II. The element of confidence is necessary to maintain the relationship
- III. The relationship is one that the community believes should be protected and maintained
- IV. The damage done to the relationship resulting from the disclosure will be greater than the benefit gained (legally from the disclosure)



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

(M. (A). v. Ryan, 1997; Robinson et al., 2015)

14

Recommendation #4: Use A Checklist

To Access The Checklist:



Hodson, J., & McBride, D. (2022). Ethical implications of third-party record release. *Journal of Ethics in Mental Health, 11*, 1-11.

<https://jemh.ca/issues/open/document/s/JEMH%20Article%20Records.pdf>



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

15

✓ Checklist to Consider Prior to Releasing a Client's Record, #1 of 5

Task 1: Receive the third-party record release request

- Was the third-party record release request submitted directly by the client? If not, did I contact the client to verify the client is aware of the third-party record release request?
- Does the form the client signed seem to accurately represent informed consent (e.g., the risks and alternatives are clearly outlined)? If not, I need to address these gaps.



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

16

✓ Checklist to Consider Prior to Releasing a Client's Record, #2 of 5

Task 2: Obtain informed consent from the client

- Have I reviewed benefits, risks, and alternatives associated with their decision?
 - Did I offer to write a summary report or letter instead of releasing the entire record?
- Asked the client what else they need to know about releasing their private information before they offer their permission or declining the request?
- Did I check the client's recall as an indicator of if the client comprehended the information presented to them?
- Did I offer possible interpretations of how this information could be misinterpreted by the third-party?



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

17

✓ Checklist to Consider Prior to Releasing a Client's Record, #3 of 5

Task 3: Document the informed consent process

- Was it presented in a manner that can be understood by the client?
- Did I record the relevant info such as:
 - Name of person or agency the record is being released to
 - What specific record information is being released
 - The purpose of the intended use of the information
 - The date the form was signed
 - The expiration date of consent (if it is an ongoing release request)
 - Limitations of the information being released
 - The name and signature of the person authorizing the release
 - Signature of a witness if the person is signing outside of my presence
 - Specific benefits & risks to the release that we discussed during the informed consent process
 - Any questions the client asked and my response to their questions?



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

18

✓ Checklist to Consider Prior to Releasing a Client's Record, #4 of 5

Task #4: Collaborate with the third-party

- Did I receive the client's consent to share details about them to the requesting third-party?
- ■ Have I encouraged the client to speak to the third-party themselves about any specific questions they might have?
- ■ Have I consulted with the third-party to determine the purpose of their request and what specific information they require before sharing any info about my client?
- Did I offer to write a summary report including the specific information they require instead of releasing the entire record?



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

19

✓ Checklist to Consider Prior to Releasing a Client's Record, #5 of 5

Task #5: Action

- Whenever possible, "less is more"
- Avoided triangulation
- Kept the client in the loop
- Willing to take responsibility for the outcome of this release, particularly if the client experiences a negative outcome?
And, improve my form where needed?



CPA 2022: Jessica Hodson & Dawn McBride – www.dawn-mcbride.com

20