

# Guideline: Privacy, Confidentiality and Consent in Professional Development Activities, 2025

The purpose of this document is to provide guidance to nurses, midwives, students and others on how to manage privacy, confidentiality and consent when writing reflections, exemplars, case studies or journaling as part of practice (including use for professional development and recognition programmes and academic assignments). This publication fits with the NZNO Maranga Mai strategy for building member power – supporting members industrially and professionally.

## Overview

NZNO, as a bicultural partner to Te Tiriti o Waitangi, acts to ensure the obligations of active protection are upheld and honoured through supporting ways that are culturally specific to enhancing and empowering identity. NZNO is an organisation that seeks to improve the health status of all people in Aotearoa New Zealand, through participation in health and social policy development. We share the intent of the Ministry of Health's definition of equity which equally applies to NZNO work across professional, industrial and member activities. Further ensuring standards of cultural safety through adopting culturally appropriate approaches that recognise Māori as tāngata whenua, and acknowledge the diversity of all cultural needs, and guarantees positive equitable outcomes.

## Background

Exemplars, case studies and journaling of practice experiences to aid reflection and demonstrate competence is common within nursing and midwifery. These strategies are useful for analysing strengths and weaknesses and identifying growth or change potential and are accepted strategies for professional development and quality improvement activities.

Exemplars, case studies and journals are used for many purposes including:

- education programme requirements
- professional learning and development
- professional development and recognition programmes (PDRP)
- credentialing systems
- recognition of prior learning
- competence assessment
- describing and exploring clinical practice
- evidence of a level of practice development
- presentations in various contexts; and
- publications

Maintaining privacy, confidentiality and obtaining consent is essential. Reflections, exemplars, and journals (and to some extent case studies) contain narratives about nurses, colleagues, health consumers, relationships, care and context. It is easy to

breach privacy and confidentiality inadvertently despite using pseudonyms and even a description of the context of a situation can result in those involved being identifiable. New Zealand is a small country and contextual descriptions, along with the author's location, can result in identification of those involved. Nurses and midwives care for the whole person and their family/whānau in particular practice contexts and locations, making practice complex and significant, but it is also these details which can make people easy to identify.

## Relevant Legislative and Regulatory Frameworks

The Code of Health and Disability Services Consumers' Rights ("the Code") issued under the Health and Disability Commissioner Act 1994, the Privacy Act 2020, the Code of Conduct for Nurses (Nursing Council of New Zealand, 2012), and the Code of Conduct for Midwives (Midwifery Council of New Zealand, 2010/2021) are important documents to guide nurses, midwives and students of nursing or midwifery in their use of written reflections, exemplars, case studies and journaling.

## Nursing Council and Midwifery Council Codes of Conduct

The Nursing Council of New Zealand's Code of Conduct (2012)<sup>1</sup> outlines eight principles that nurses should adhere to in their professional practice. The one relevant to this discussion is Principle 5: respect health consumers' privacy and confidentiality.

The sections of Principle 5 are as follows:

- 5.1 Protect the privacy of health consumers' personal information.
- 5.2 Treat as confidential information gained in the course of the nurse-health consumer relationship and use it for professional purposes only.
- 5.3 Use your professional judgment so that concerns about privacy do not compromise the information you give to health consumers or their involvement in care planning.
- 5.4 Inform health consumers that it will be necessary to disclose information to others in the health care team.
- 5.5 Gain consent from the health consumer to disclose information. In the absence of consent a judgement about risk to the health consumer or public safety considerations must be made.
- 5.6 Health records are stored securely and only accessed or removed for the purpose of providing care.
- 5.7 Health consumers' personal or health information is accessed and disclosed only as necessary for providing care.
- 5.8 Maintain health consumers' confidentiality and privacy by not discussing health consumers, or practice issues in public places including social media. Even when no names are used a health consumer could be identified. (NCNZ, 2012)

The Midwifery Code of Conduct section 1.1 states that: personal information is obtained and used in a professional way that ensures privacy and confidentiality for clients (MCNZ, 2010/2021).

To uphold the principles of the respective codes of conduct, nurses, midwives and students of nursing or midwifery must ensure healthcare consumer confidentiality and privacy are not breached at any time while writing a reflection/exemplar, case study or journaling. They should not access health consumer notes to assist with this without consent of the healthcare consumers (or the health consumer's family or whānau if the health consumer is unable to give consent) and their manager. Consent may be written or verbal but if it is verbal this should be documented, and ideally signed by the health

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<sup>1</sup> Under review at the time of writing

consumer or health consumers family member or whānau. A template for gaining written consent is provided in Appendix 1.

## **The Code of Health and Disability Services Consumers' Rights**

The Code of Health and Disability Services Consumers' Rights (1996) ("The Code of Rights" or "the Code") sets out the 10 rights consumers can expect from their health or disability service providers. Providers and individual health practitioners are obliged to uphold the 10 rights by law (HDC, 1996).

Specific rights to be aware of include:

- Right 1 - Right to be treated with respect.
- Right 2 - Right to freedom from discrimination, coercion, harassment, and exploitation.
- Right 5 - Right to effective communication.
- Right 6 - Right to be fully informed.
- Right 7 - Right to make an informed choice and give informed consent.
- Right 9 - Rights in respect of teaching or research.
- Right 10 - Right to complain.

In summary, if writing reflections/exemplars or case studies,

- The healthcare consumer involved must be fully informed.
- The healthcare consumer must give informed consent and be made aware of what the exemplar or case study will be used for.
- The healthcare consumer has the right to complain about any exemplar or case study.
- The exemplar or case study must be written in a manner that respects the healthcare consumer both individually and culturally.

Access to healthcare consumer records for the purposes of writing exemplars, case studies or journals must adhere to the Code of Health and Disability Services Consumers' Rights (1996), the Health Information Privacy Code (2020) and the Nursing and Midwifery Councils Codes of Conduct. To adhere to the requirements of all four codes, NZNO recommends seeking informed consent from the healthcare consumer, family/whānau or legal guardian in all situations. Where informed consent cannot be obtained, nurses, midwives and students of nursing or midwifery should not use that healthcare consumer's information in their writing.

## **Health Information Privacy Code 2020 (HIPC)**

The Health Information Privacy Code (2020) sets out 13 rules covering health information use, storage and disclosure. The Health Information Privacy Code applies to health information about identifiable individuals and applies to all agencies that provide personal or public health including; disability services such as primary health organisations; rest homes; supported accommodation; doctors; nurses; dentist;, pharmacists; optometrists; and some other agencies who are part of the health sector but do not provide health services to individuals, e.g. the Ministry of Health, ACC, the Health Research Council, professional disciplinary bodies and health insurers.

The HIPC has two key concepts:

1. Purpose - Agencies must know why they are collecting health information and collect only the information they need. Once health information has been collected from a healthcare consumer for a particular purpose, it can be used or disclosed for that purpose without additional consent.
2. Openness - Agencies need to let healthcare the consumer know how their information is going to be used and disclosed so the healthcare consumers can make decisions about whether to provide it.

(Privacy Commissioner, 2020a)

The HIPC Rules:

1. Purpose of collection of health information.
2. Source of health information.
3. Collection of health information from individual.
4. Manner of collection of health information.
5. Storage and security of health information.
6. Access to personal health information.
7. Correction of health information.
8. Accuracy etc of health information to be checked before use or disclosure.
9. Retention of health information.
10. Limits on use of health information.
11. Limits on disclosure of health information.
12. Disclosure of health information outside New Zealand.
13. Unique identifiers.

Rule 11 *prohibits* the disclosure of information except where an exception applies under the HIPC. Case studies, exemplars and journaling are not an exception under the code and permission must be obtained to use information about any person in this way.

## Disclosure and risk

Nurses, midwives and students of nursing or midwifery are often in a position where they hold information that should be kept confidential and have both a legal and ethical obligation to uphold confidentiality. This also applies to writing a journal, exemplar or case study. Breaches of confidentiality can result in professional disciplinary action against the nurses, midwives and students of nursing or midwifery, or legal action against them by the healthcare consumer, the healthcare consumer's family or whānau in a civil lawsuit.

In some situations, a nurse, midwife or student of nursing or midwifery may disclose incompetent, unethical or unsafe practice in the course of writing an exemplar. While you are encouraged to be honest in reflective accounts, you should also be aware of the risks, choose appropriate examples and take the appropriate steps to maintain confidentiality. Although rare, journals, diaries, case studies and reflections/exemplars of health practitioners can be requested as evidence in investigations or court proceedings.

**If you are asked to write a reflection or exemplar as part of an investigation, then NZNO strongly recommend you contact the NZNO Member Support Centre for advice before writing it (Phone: 0800283848).**

The Health Practitioners Competence Assurance Act 2003 provides some protection in relation to quality assurance activities, but these must be approved by the Minister of Health. Participation in approved activities provides wide protection from disclosure in other forums (such as professional misconduct hearings). This protection extends to documents created solely for the purposes of the quality assurance activity. However, there are limited exceptions to the non-disclosure rule here, such as where there is evidence of a serious criminal offence (HPCA Act, 2003).

## Things to consider when writing exemplars, case studies, or journaling

1. Select appropriate patient for a case study, or an appropriate clinical example to write about.
2. Nurses, midwives and students of nursing or midwifery need to comply with the HIPC, the Code of Health and Disability Services Consumers' Rights, and their ethical obligation of confidentiality as per Principle 5 of the Nursing Council Code of Conduct and Section 1.1 of the Midwifery Council Code of Conduct when they are writing reflections, exemplars, case studies or journaling.

NZNO Practice guidelines:

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New Zealand Nurses Organisation PO Box 2128, Wellington 6140. [www.nzno.org.nz](http://www.nzno.org.nz)

3. Recommended best practice before writing a reflection, exemplar or case study is to talk with the healthcare consumer about what is involved in reflective practice and seek written or verbal consent from them, their family, whānau, or legally appointed guardian. Consent should be documented in the health consumer's notes and a copy of the consent form attached to the reflective writing.
4. Discretion should be used when seeking consent. If a health consumer, their family or whānau expresses or demonstrates any concern or duress during the consent process, the consent process should be stopped or delayed until a more appropriate time. Students may want their educator or another staff member to be with them while they seek consent.
5. When obtaining written consent is not possible, verbal consent should be documented with the date, time and any witnesses.
6. Where informed consent cannot be obtained, the nurse, midwife or student of nursing or midwifery should not proceed with writing about this person or event.
7. Unless the healthcare consumer has consented to identifiable material about them being disclosed, no information that could identify them should be put in any reflective writing or case study.
8. To protect the privacy of healthcare consumers, nurses, midwives and students of nursing or midwifery, information that may identify them should be removed or changed. Such information may include name, geographical location, occupation, job title, and/or context. It is important the practitioner or student review the reflection, exemplar, case study or journal note with a critical eye, taking into consideration all contextual factors that may identify the client. The nurse, midwife or student of nursing or midwifery may draw on information from healthcare consumers with similar problems and make the changes relevant to the experiences of the consumer group as a whole to maintain confidentiality.
9. A statement describing any changes that have been made should accompany the reflection, exemplar or case study.
10. Healthcare consumers notes should only be accessed to support writing the reflection, exemplar or case study with consent from the healthcare consumer (or healthcare consumer's family, whānau or legally appointed guardian) and the nurse or midwife's manager. Notes should only be accessed if the healthcare consumer is or has been cared for by the nurse, midwife and student of nursing or midwifery.
11. It is never acceptable to download or print off healthcare consumer notes for the purposes of learning.
12. Rule 11 (2)(c) (iii) of the HIPC (2020) may be enacted, if the exemplar or case study is being written for the purposes of research and ethical approval has been given. However, NZNO recommends that the consent of the healthcare consumer, family or legally appointed guardian if the healthcare consumer is unable to give consent, is sought in all cases.
13. If an exemplar is solely for private reflective practice and will not, in theory, be disclosed to anyone else, we still recommend the same processes outlined above are followed. Journals may be inadvertently left where others can read them, and information can be requested during formal investigations.
14. It is **never** acceptable to put excerpts from exemplars, case studies or journals on Facebook, or any other social media site regardless of privacy settings.
15. The nurse, midwife or student of nursing or midwifery should be aware that, if a formal investigation involving the nurse, midwife or healthcare consumer occurs, any private journal or exemplar may be required as evidence.
16. Organisations should review their policies and procedures around access to health consumer notes for the purposes of professional development and ensure a robust

structure that outlines the required consents and procedures for access is in place. This review could include consideration of a blanket healthcare consumer request and consent process for the use of anonymised notes for teaching and learning processes.

Despite the potential risks associated with writing reflections, exemplars, case studies or journals, NZNO recommends nurses, midwives and students of nursing and midwifery continue to use writing as a tool for reflection and learning. These NZNO guidelines identify a number of risks but also a number of approaches for managing these risks. NZNO hopes members will use these guidelines to develop safe practice in the writing of exemplars, case studies and journaling. Further information and examples of reflective writing can be found in NZNO's guideline on Reflective Writing.

## References

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### 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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## Appendix 1. Template for Consent<sup>2</sup>

[YOUR INSTITUTIONAL LETTER HEAD]

**Informed Consent Form for healthcare/consumers and their family or whānau who are invited to give their consent for a health practitioner or student to access their notes, and/or use any information gained in the course of providing care to the healthcare consumer and their family or whānau, for the purposes of writing an exemplar, case study or reflection.**

[Name of nurse/midwife/student/health practitioner]  
[Name of Organisation/University/Institute]

### **Purpose**

One of the most important learning tools for nurses, midwives and students of nursing or midwifery is to reflect on practice. Often this takes the form of writing an exemplar, case study or journal. In order to gain the most from this practice, it is sometimes helpful to review healthcare consumer notes. This form is to seek your permission to review your notes, and/or use any information gained in the course of providing care to you, for the purposes of writing an exemplar, case study or journal note. This consent form may contain words that you do not understand. Please ask me to stop as we go through the information and I will take time to explain. If you have questions later, you can ask them of me, my clinical teacher or the unit manager.

### **What reviewing your notes, and/or using information gained in the course of caring for you, will involve**

Reviewing your notes will involve me accessing and reviewing these at the nurse's desk. I may need to review the notes several times to obtain all the information I need but I will never remove your notes from this area. Any information you have shared while I have been providing care to you may also help inform an exemplar, case study or journal note.

### **Voluntary Participation**

Giving your consent for me to review your notes and/or use your information is entirely voluntary. You do not have to say yes. Whether you choose to say yes or no, all the services you receive will continue and nothing will change.

### **Anonymity**

Information obtained from your notes, and/or in discussions with you, and used in any exemplar, case study or journal will be completely anonymized. This means anyone who is reading the exemplar, case study or journal note will not know that it is you. Any details that may identify you will be changed – this includes your name and any specific details that may identify you such as where you are from.

### **Sharing the exemplar, case study or journal note**

Once any details that may identify you have been removed, the exemplar, case study or journal note may be shared with others including (but not limited to) my teachers, other colleagues and/or other students. In some cases, the exemplar or case study may be published in an academic or

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<sup>2</sup> Given the consent form identifies people by name, care needs to be taken with storage and archiving especially if the consent form and write up are in the same physical or digital location.

industry journal in order to help others learn. You will be given or shown a copy of the exemplar, case study or journal note if you wish.

**Right to Refuse or Withdraw**

If, after reading the exemplar, case study or journal note you would prefer for it not to be shared, you have the right to say no to this.

**Who to Contact**

If you have any questions, please contact me [name] on [phone number], my teacher [name] on [phone number] or the unit manager [name] on [phone number].

**Part II: Certificate of Consent**

I have read the foregoing information, or it has been read to me. I have had the opportunity to ask questions about it and any questions I have been asked have been answered to my satisfaction. I consent voluntarily to:

	Yes	No
1. Allowing [name of person seeking consent] to access my notes for the purposes of writing an exemplar, case study or journal note.		
2. Allowing [name of person seeking consent] to use any information gained in the course of providing care to me for the purposes of writing an exemplar, case study or journal note.		
3. Allowing [name of person seeking consent] to share an anonymized exemplar, case study or journal note with their teacher/colleagues/students for the purposes of learning.		
4. Allowing publication of the anonymized exemplar, case study or journal note in an academic or industry journal.		
5. I would like to read or have read to me the anonymized exemplar, case study or journal note.		

**Any other comments or notes:**

Print Name of healthcare consumer \_\_\_\_\_

Signature of healthcare consumer \_\_\_\_\_

Date \_\_\_\_\_  
Day/month/year

Time \_\_\_\_\_

**Witness in the case of verbal consent:**



I have witnessed the accurate reading of the consent form to the potential participant, and the individual has had the opportunity to ask questions. I confirm that the individual has given consent freely.

Print name of witness \_\_\_\_\_ Signature of witness \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_