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Don't Trust Your Memory

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However good you think your memory is, there are still risks if you rely on memory alone. A practitioner's memory can be supported by contemporaneous notes which can invariably be of assistance in dealing with any professional negligence claim made against a practitioner where there is clear evidence in the practitioner's file to dispute the claim.

Memory cannot be accurate over a long period of time particularly when you have dealt with hundreds of matters.

A 'paper trail' is fundamental and in principle of "if it's not written down then it didn't happen" should be applied.

The purpose of a file note is to support your memory so that if needed you can attest accurately to the event recorded in it. The lack of a file note can easily inhibit the performance of a practitioner handling the file and makes it difficult for practitioners new to the file to follow what has already transpired, and why.

The note should include the date and time, details of the persons present or details provided by the client / third party, advice provided to the client or a summary of the key points discussed. Of course if important issues were discussed / dealt with, these need to be documented. The note needs to be legible if hand written and signing it can assist with the authentication of the note.

It is suggested that if you do not already have a protocol for document management for both hard copy documents and electronic stored information then you develop one. The importance of such a protocol cannot be underestimated and should address methods by which information is created, stored, reproduced, archived and destroyed. All staff members need to be familiar with the protocol and follow it.

With regard to emails they should either be printed and filed on a hard copy file or electronically stored in a database specific to each matter. Storing them in the email account of an individual practitioner is not sufficient.

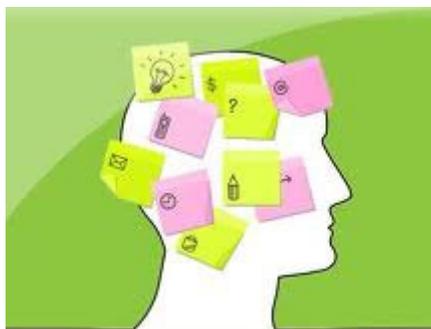
Once again, a protocol for electronic information is also necessary and this of course can be as detailed and sophisticated as appropriate to the scale of your practice. It goes without saying that all electronic information needs to be backed up and consideration should also be given to a Disaster Recovery Plan for accessing data and restoring systems in the event of a complete failure.

Query whether hard copy records are preferable to electronic ones because they are not quite as susceptible to loss or damage. If you have a paperless office and store all files in an electronic form you need to be in a position to retrieve all parts of the file if needed to defend a claim against you. You need also to be mindful of the fact that where editable electronic records leave your office, it is important to keep an exact copy of each document, so that any changes by others can be easily traced.

In a professional negligence claim often the key issue in the final outcome is documentation shortcomings. The lack of full and legible attendance notes can often compromise the practitioner's ability to defend the claim even when the practitioner has provided the right advice verbally.

The court may place more reliance upon what the client says than upon the practitioner's unsupported version of events.

It is also important to remember that your file note may not accord with your client's version of the same conversation or meeting. Confirmation by letter provides a good method for avoiding disputes.



For any queries about this or other Risk Management Services offered by Law Claims, please contact the PII Risk Manager, Gianna Di Stefano on 8410 7677.

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