

ANNEXURE A – Models surrounding confidentiality in a multi-disciplinary practice

1. St Joan models

By virtue of the collaborative arrangement with a third party such as a social worker, the confidence between lawyer and client is effectively lost. Jacqueline St Joan identifies three discreet models that aim to address this conflict:¹

1.1. The Consultant Model

The social worker is in the position of a consultant to the lawyer in this model. This will prevent the social worker's mandatory reporting obligations (if any) overriding the lawyer's duty of confidentiality to the client.

1.2. The Employee Model

This model is similar to the consultant model in effect as it sees the social worker in an employment relationship with the law firm. The result of this is that the social worker is bound by the ethical obligations of the law firm.

1.3. The Independent Model

This model involves each professional working separately, with multidisciplinary reviews occurring from time to time at which point the case is discussed together. In this model, the lawyer and the social worker each comply with their own professional ethical obligations and information confidential to the client is not shared.

2. Norwood and Paterson models

Norwood and Paterson propose four slightly more formal models following their examination of multidisciplinary practices in the United States. These models are broadly aligned with St Joan's models:²

2.1. The 'Leadership' Model

The lawyer leads a multidisciplinary team, with team members in the position of employees of the lead lawyer and answerable to that person or partnership. This model clearly aligns with St Joan's employee model.

¹ Margaret Castles, 'Possibilities for Multidisciplinary Collaboration in Clinical Practice: Practical Ethical Implications for Lawyers and Clients' (2008) 34(1) *Monash University Law Review* 116, 129-130, citing Jacqueline St Joan, 'Building Bridges Building Walls: Collaboration between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality' (2001) 7 *Clinical Law Review* 403, 431-4.

² Castles, above n 1, 130, citing J Michael Norwood and Alan Paterson, 'Problem Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Service?' (2002) 9 *Clinical Law Review* 377, 356.

2.2. The 'Ancillary Business' Model

'Spin off' separate corporate entities handle particular non-legal aspects of the client's business (for example, the creation of lobbying or real estate partnerships to handle non legal related needs of clients). Referral of clients to these independent 'spin off' entities can then occur.

2.3. The 'Coordinated Collaborative' Model

Independent professionals work in loosely formed teams, on an ad hoc basis, or have a more formal cross referral relationship between different firms. This model is most closely aligned with St Joan's Independent Model.

2.4. The 'Full Partnership' Model

This model envisions a fully integrated multidisciplinary practice of different professionals in a legal partnership. As a basis for furthering debate, the American Bar Association has proposed five models for MDPs that are broadly similar to the models outlined by Norwood and Paterson, and St Joan.

3. Consent Model

A criticism of the previously mentioned models is that each model prioritises one role over another. It is a multidisciplinary firm that provides legal, psychological, financial, and workplace advice.³ St Joan's consent model addresses the competing professional obligations and standards and provides a more equivalent approach.⁴ Boston Law Collaborative in the United States adopts this approach. This model is better aligned to the ASCR and how the profession practises in Queensland.

The consent model envisages a client being informed of the different roles of the lawyer and the other professional/s and being asked to consent to the sharing of information between the members of the team.

The client must be warned of the implications of information sharing and must be informed of the nature of the collaborative relationship, such that he or she can understand the implications of information sharing and be able to consent or otherwise to the proposed arrangement.

Clients are asked for a waiver of confidentiality vis-a-vis other professionals in the practice, if it is believed that consultation between professionals will be advantageous to the client. If the client disagrees with this and consent is not given, the professionals can still collaborate, but cannot transfer identifying information to colleagues.

4. Teamwork Model

In this model, information is shared freely, however client files are not shared. It provides for professional autonomy for social workers, with legal interventions considered as complementary to the holistic approach of social workers.

³ Rees Hawkins, 'Not "If," but "When" and "How": A look at Existing De Facto Multidisciplinary Practices and What They can Teach Us About the Ongoing Debate' (2005) 83 *North Carolina Law Review* 481, 510-1.

⁴ Castles, above n 1, 134.