



Ontario College of
Social Workers and
Social Service Workers

Ordre des travailleurs
sociaux et des techniciens
en travail social de l'Ontario

Consent and Confidentiality with Children and Youth

Guidelines for Social Work and Social Service
Work Members of the Ontario College of Social
Workers and Social Service Workers

Effective September 1, 2009

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Consent and Confidentiality with Children and Youth

Guidelines for Social Work and Social Service Work Members of the
Ontario College of Social Workers and Social Service Workers

ACKNOWLEDGEMENTS

The Ontario College of Social Workers and Social Service Workers thanks the many members and stakeholders who reviewed drafts of these guidelines and provided their feedback and the members of the Standards of Practice Committee for their diligence and hard work.

STATUS OF GUIDELINES

The following guidelines contain information and practice advice which should be considered by social work and social service work members of the Ontario College of Social Workers and Social Service Workers. These guidelines are designed to assist social work and social service work members in interpreting and applying the College's standards to particular circumstances or contexts of practice and to provide additional guidance to members on practice issues.

It should be noted that these guidelines are not themselves standards of practice and have not been enacted by regulation or College by-law. The College's standards, which are the minimum standards applicable to all College members, are the ones set out in the *Social Work and Social Service Work Act, 1998*, the regulations under the *Act*, the College's Code of Ethics and Standards of Practice and the College's by-laws. Those College standards prevail over these guidelines. However, the guidelines may still be used by the College (or other bodies) to assist in determining whether appropriate standards of practice and professional conduct have been maintained by a College member in a particular case.

Practice Dilemmas

The College receives many calls from members who encounter dilemmas with clients who are children and youth. Consider the following situations:

- A social worker in a community health centre is referred a client by a physician from within the centre. According to the physician, the client, a 13-year-old female, makes contact with men through the internet and frequently sneaks out of the house at night to meet them. She has had numerous sexual partners. She agrees to see the social worker only if the social worker does not disclose any information to her parents.

Can the client consent to treatment without parental consent? Is the social worker obliged to inform the parents of her high-risk behaviour? Are there other reporting obligations? What are the obligations of the social worker to keep the information about the 13-year-old confidential?

- A social worker in private practice is referred a 15-year-old girl by the girl's mother with whom she lives. The parents have joint custody. According to the mother, the girl is abusing drugs and alcohol and has expressed some thoughts of self-harm. The mother feels her daughter is in urgent need of help. She also states that her former husband would likely refuse permission for the social worker to see the daughter.

Can the social worker proceed with counselling on the basis of the 15-year-old client's consent only? Or does the social worker require permission from one or both parents? What if the social worker approaches the girl's father and he refuses consent?

- A social worker in the counselling department of a school is providing counselling services to a 17-year-old. The client asks the social worker to see his friend who is distressed after allegedly witnessing a murder. The friend reportedly would like to see the social worker but before doing so, wants reassurance that the social worker will not make a report to the police.

What are the social worker's reporting obligations? Can she guarantee the client's friend that the information he or she provides will be kept confidential?

From these scenarios a host of quandaries arise, largely pertaining to issues of consent and confidentiality. While such issues are common practice dilemmas, they are further complicated when clients are children or youth.

Code of Ethics and Standards of Practice

In sorting out these dilemmas, members are advised to refer to the OCSWSSW Code of Ethics and Standards of Practice, Second Edition. Of particular note is **Principle II, Competence and Integrity, Interpretation 2.1.3** which states:

College members maintain current knowledge of policies, legislation, programs and issues related to the community, its institutions and services in their areas of practice.

There are many pieces of legislation that are relevant when working with minors. *The Child and Family Services Act, Education Act, Health Care Consent Act, and Mental Health Act* are but a few. Members should also review their obligations under the *Personal Health Information Protection Act (PHIPA)*. Members are urged to carefully review the legislation which governs their practice and with which they must comply for direction regarding firstly, whether consent is required to provide services, and, if so, from whom consent is required, and secondly, what limits of confidentiality and/or reporting obligations exist.

Principle V, Confidentiality of the Code of Ethics and Standards of Practice is of relevance:

College members respect the privacy of clients by holding in strict confidence all information about clients and by complying with any applicable privacy and other legislation. College members disclose such information only when required or allowed by law to do so or when clients have consented to disclosure.

5.1 College members comply with any applicable privacy and other legislation. College members obtain consent to the collection, use or disclosure of client information including personal information, unless otherwise permitted or required by law.

5.3.1 When College members are employed by an agency or organization, College standards of confidentiality may conflict with the organization's policies and procedures concerning confidentiality. Where there is a conflict, College standards take precedence.

5.3.6 College members do not disclose the identity of and/or information about a person who has consulted or retained them unless the person consents. Disclosure without consent is justified if the disclosure is required or allowed by law.

It would also be wise to consider agency policies as well as what is in the best interest of the client. This will require exercising professional judgment. Members may benefit from consulting with a colleague and/or a supervisor, and may in some situations wish to obtain a legal opinion.

Having clarified the consent and confidentiality issues, it is incumbent upon the member to ensure that the client is informed of the member's accountability and obligations. The following standards of practice pertain:

Principle III, Responsibility to Clients:

3.1 College members provide clients with accurate and complete information regarding the extent, nature, and limitations of any services available to them.

3.6 College members inform clients of foreseeable risks as well as rights, opportunities, and obligations associated with the provision of professional services.

Principle V, Confidentiality:

5.2 College members employed by an organization acquire and maintain a thorough understanding of the organization policies and practices relating to the management of client information, including:

- (a) when, how and the purposes for which the organization routinely collects, uses, modifies, discloses, retains or disposes of information;
- (b) the administrative, technical and physical safeguards and practices that the organization maintains with respect to the information;
- (c) how an individual may obtain access to or request correction of a record of information about the individual; and
- (d) how to make a complaint about the organization's compliance with its policies and practices.

Self-employed College members and College members who are responsible for complying with privacy legislation establish clear policies and practices relating to the management of client information, including the matters identified in (a), (b), (c) and (d) above, and make information about these policies and practices readily available in accordance with any applicable privacy and other legislation.

5.4 College members inform clients early in their relationship of the limits of confidentiality of information. In clinical practice, for example, when social work service or social service work service is delivered in the context of supervision or multi-disciplinary professional teams, College members explain to clients the need for sharing pertinent information with supervisors, allied professionals and paraprofessionals, administrative co-workers, social work or social service work students, volunteers and appropriate accreditation bodies. College members respect their clients' right to withhold or withdraw consent to, or place conditions on, the disclosure of their information.

Principle IV, The Social Work and Social Service Work Record:

4.3.1 College members comply with the requirements regarding access to and correction of client information including personal information in a record as set out in applicable privacy and other legislation. College members employed by an organization acquire and maintain an understanding of the organization's policies regarding access to and correction of information in a record. Such policies pertain to access requests by the clients themselves. Self-employed College members and College members who are responsible for complying with privacy legislation establish clear policies regarding access to and correction of information in a record.

4.3.2 College members inform clients of their policies regarding access to and correction of information in a record.

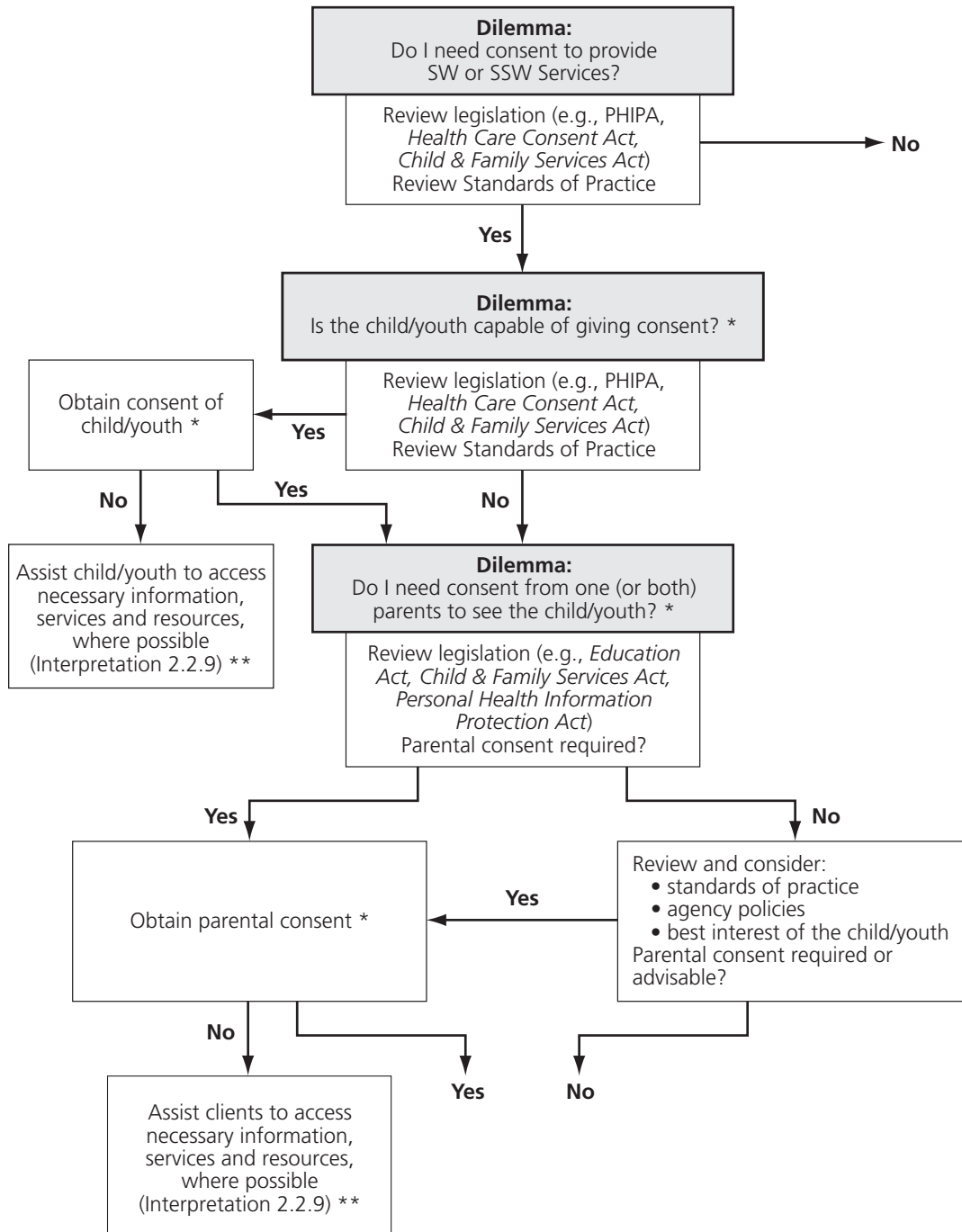
4.4.1 College members inform clients early in their relationship of any limits of client confidentiality including with respect to the client record. When clients or their authorized representatives consent in writing, College members disclose information from the record to third parties within a reasonable time. The consent must specify, (i) the information that is to be disclosed, for example a partial record, the entire record, or a summary of the member's contact with the client, (ii) the party or parties to whom the information is to be disclosed, and (iii) the term of validity of the consent. If, in the member's professional judgment, disclosure of information from the record to a third party could result in harm to the client, College members make a reasonable effort to inform the client of the possible consequences and seek to clarify the client's consent to such disclosure. Members may disclose information from the record to third parties without the client's consent only if disclosure is required or allowed by law.

Members should also review Interpretations 4.3.3 to 4.3.5 and 4.4.1 to 4.4.5 for guidance about access and disclosure of information from records.

For further assistance, it is suggested that members refer to the decision tree "Consent and Confidentiality with Children and Youth" on pages 10 and 11. Members may also wish to refer to the "Summary of Age-Based Legal Milestones for Youth in Ontario, Canada" on the website of Justice for Children and Youth www.jfcy.org. Members are cautioned however, that this does not constitute legal advice, that they should review the relevant legislation in its entirety, and that legislation may change. Members are advised to obtain the most up to date legislation from the Ontario Statutes and Regulations e-Laws website www.e-laws.gov.on.ca. For further guidance about PHIPA, members may refer to the OCSWSSW PHIPA Toolkit, which was provided to all members in hard copy and may also be found on the College website www.ocswssw.org.

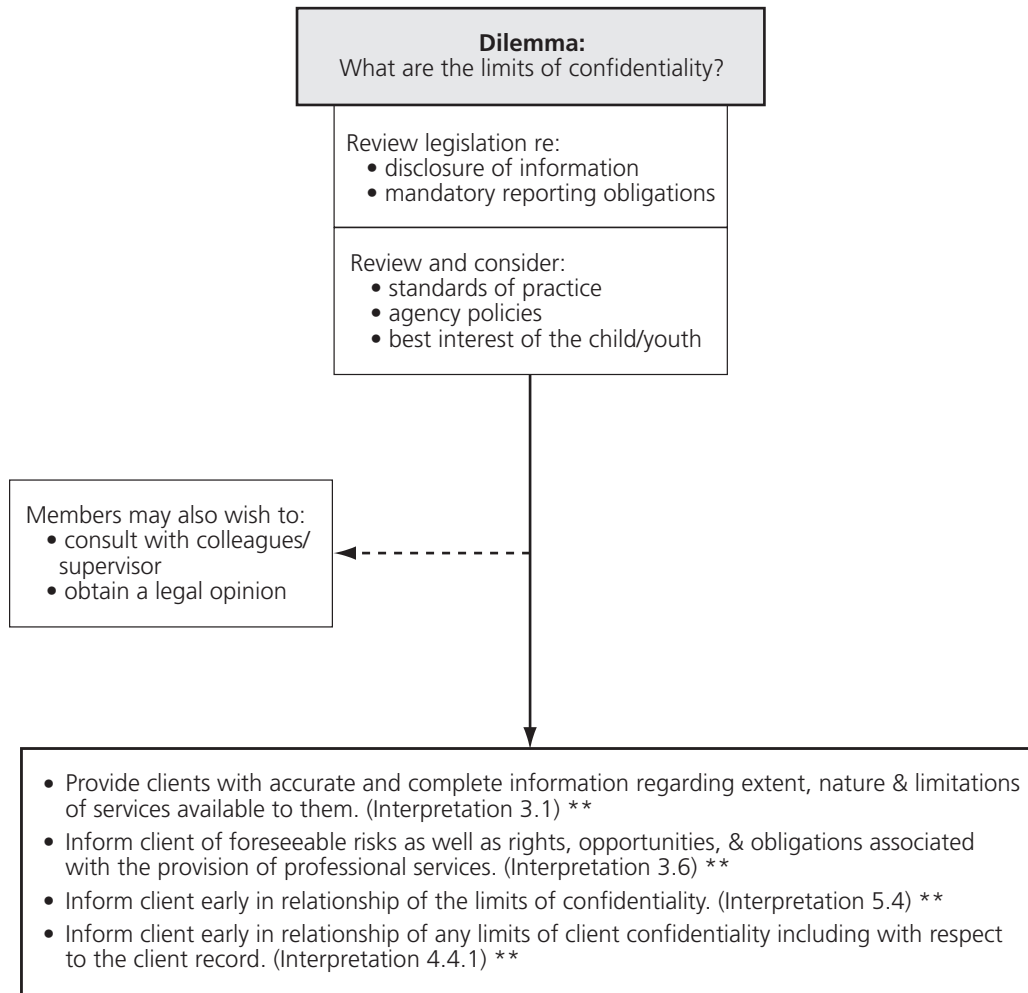
For more information, contact the College's Professional Practice Department at 416-972-9882 or 1-877-828-9380.

Consent and Confidentiality with Children and Youth Consent Issues Decision Tree



* Confidentiality issues are intertwined with the consent process and should be considered at various stages of this process. See Confidentiality Issues — Decision Tree.

Consent and Confidentiality with Children and Youth Confidentiality Issues Decision Tree



** OCSWSSW Code of Ethics and Standards of Practice, Second Edition.



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