



# Practice Notes:

## Confidentiality and Disclosure of Client Information Without Client Consent

**Pamela Blake, M.S.W., RSW, Director of Professional Practice and Education**

Practice Notes is designed as an educational tool to help Ontario social workers, social service workers, employers and members of the public gain a better understanding of recurring issues dealt with by the Complaints Committee that may affect everyday practice. The notes offer general guidance only and members with specific practice inquiries should consult the College, since the relevant standards and appropriate course of action will vary depending on the situation.

### **Recurring Issue: Disclosure of client information without client consent**

"Can I breach confidentiality?" is a question frequently posed by members in the throes of a practice dilemma. A cornerstone of social work and social service work practice is the confidentiality of client information and this is stated clearly in the standards of practice, Principle V, Confidentiality:

"College members respect the privacy of clients by holding in strict confidence all information about clients. College members disclose such information only when required or allowed by law to do so or when clients have consented to disclosure."

Confidentiality and disclosure of information is a vast topic. This article is not intended as an exhaustive review of all issues or reporting obligations for OCSWSSW members. In addition, this article is not intended to address the obligations that certain members may have under privacy legislation such as the Personal Information Protection and Electronic Documents Act (PIPEDA) and the Personal Health Information Protection Act (PHIPA). Rather, this article describes a number of practice scenarios that have come to the attention of the College and highlights the standards which guide a member of the OCSWSSW in understanding his or her professional obligations.

It is of course preferable, in most circumstances, to obtain

a client's consent prior to disclosing information to a third party. However, situations can and do arise that obstruct this. For example, disclosing the information may put the client in a negative light as in the case of a mandatory report of child abuse, or if the information of concern pertains to the actions of another person in relation to the client.

As a first step in determining the parameters of disclosing confidential client information without a client's consent, members should review the standards of practice, Principle V, Confidentiality. Interpretation 5.1.6 is particularly pertinent:

"College members in clinical practice do not disclose the identity of and/or information about a person who has consulted or retained them unless the nature of the matter requires it. Unauthorized disclosure is justified if the disclosure is obligated legally or allowed by law, or if the member believes, on reasonable grounds, that the disclosure is essential to the prevention of physical injury to self or others."

Social workers and social service workers should be familiar with the reporting obligations imposed under the Child and Family Services Act (CFSA). This Act requires any "person", "including a person who performs professional or official duties with respect to children", to report to a children's aid society "forthwith" if he or she has reasonable grounds to suspect that a child has suffered or is at risk of suffering certain types of harm defined in the CFSA, including physical harm, emotional harm, sexual molestation or sexual exploitation. This obligation overrides any other obligations, including those under PHIPA, since the CFSA reporting obligation is stated to apply "despite the provisions of any other Act" and specifically despite anything in PHIPA. The reporting obligation applies with respect to certain suspected harm or risks of harm (as defined in the CFSA) regarding children under the age of 16, by a "parent" or "person having charge of the child." For a complete description of

reporting obligations under the CFSA, members are urged to review the legislation at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

Members seem to be less clear about their professional responsibilities with practice issues that do not involve the abuse of children. Consider the following scenario:

*A member who works in an addictions facility sees a new client who is a regulated health professional. The client discloses that she has a history of substance abuse and her employment at a hospital outside Ontario was terminated. She has since moved to Ontario and is not currently working in order to address her addiction problems. The member is unsure what action, if any, to take.*

With Interpretation 5.1.6 as a guideline, the member determined that the situation did not meet any of the circumstances which would justify disclosure without consent. That is, there is no legislation requiring her to report, there is no warrant or court order that obligates or allows her to disclose information and there is no imminent risk of the client harming herself or others. The member was encouraged however, to contact the client's health regulatory body without disclosing identifying information for a consultation about what additional resources might be available to assist the client. She was also encouraged to monitor any changes which could have an impact on whether disclosure without the client's consent was justified. For example, if the client's substance use led to her neglecting children in her care, the member would then be required to make a report to a children's aid society.

The following practice dilemma was raised by a social worker employed in the emergency room of a hospital:

*A female client discloses to her that she has been having a sexual relationship with her physician in the community. The client reports that when she pressured the physician to leave his wife, he angrily rebuffed her, sending her into a crisis and ultimately precipitating her visit to the emergency room. The social worker is unsure if she has an obligation to report this matter to the College of Physicians and Surgeons of Ontario, the regulatory body for physicians.*

In Ontario, more than 20 health professions are regulated under the *Regulated Health Professions Act, 1991* (RHPA), while social workers and social service workers are regulated under the *Social Work and Social Service Work Act, 1998* (SWSSWA). All health professionals regulated under the RHPA must report to the appropriate regulatory body when they have reasonable grounds (obtained in the course of practising their profession), to believe that another professional regulated under the RHPA has

sexually abused a client. This obligation exists even when the reporter is a member of a different health profession from the alleged abuser. By contrast, under the SWSSWA, members of the OCSWSSW are required to report to the OCSWSSW if, in the course of their practice, they obtain reasonable grounds to believe that a registered social worker or social service worker has sexually abused a client. Members of OCSWSSW do not have a mandatory reporting obligation in regard to health professionals regulated under the RHPA.

Although in the example given, the social worker did not have an obligation to report to the College of Physicians and Surgeons of Ontario, the social worker was a member of a team which included health professionals regulated under the RHPA, who would need to review their own reporting obligations. Typically, social workers who work in the emergency room of a hospital are members of a multidisciplinary team, and routinely share information with other team members. Members who practise in this way are reminded of Interpretation 5.2 found in the standards or practice:

"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 para professionals, administrative co workers, social work or social service work students, volunteers, and appropriate accreditation bodies."

However, in this situation the member would also need to take into account the right of a patient to "lock" personal health information under PHIPA. For more information on the lockbox provision, please see Section 3.10 of the College's PHIPA Toolkit.

Although social workers, social service workers and regulated health professionals have mandatory reporting responsibilities regarding fellow professionals, under both the RHPA and the SWSSWA, the name of the client who was allegedly abused may not be reported unless that person provides his or her written consent. For complete information about reporting obligations under the RHPA and the SWSSWA, members are strongly encouraged to review both pieces of legislation at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca). Members may also refer to the "Mandatory Reports" section found on the College's website [www.ocswssw.org](http://www.ocswssw.org) for further information about reporting obligations for members of the OCSWSSW and/or their employers.

There may be times when a member has grave concerns

about information received from a client, but does not have consent to disclose the information and the situation does not meet the criteria set out in the College's Standards of Practice for disclosure without the client's consent. Contemplate the following:

*A member is seeing a client in weekly counselling sessions to work on her anger problems and a past history of abuse. The client, who lives alone and is socially isolated, discloses that she periodically hurts her pet cat. While she feels remorseful after her cruelty, she also feels unable to control her behaviour. The member is very troubled by this information and unsure what to do.*

As already stated, the College's Standards of Practice permit disclosure of client information without the client's consent where, among other things, the member believes, on reasonable grounds, that the disclosure is essential to the prevention of physical injury to self or others.

Accordingly, the member's focus in this scenario needs to be on whether there is such a risk of physical injury to "self or others". In addition, the member may need to obtain legal advice regarding whether any other legal obligations may exist in relation to this information, since the mistreatment of animals is the subject of certain provisions in both provincial legislation and the Criminal Code.

Such situations also call for clinical judgement and skill. The member planned to continue to work with the client, to among other things, examine what triggers her anger and alternative ways of expressing it. The member was also encouraged to seek consultation to assist her with her strong emotional reactions to the client's behaviour, so that she could continue an effective working relationship with her.

At times members call the College with urgent requests for guidance about how to respond to a demand from the police or a lawyer to disclose information. Often the position of authority or the force with which the request is made can be intimidating for a member and lead to confusion about his or her obligations and responsibilities. Members are again reminded to review whether their client or clients have provided permission to disclose information, and if not, whether the situation meets the circumstances under which disclosure without the client's consent may take place. In the event of receiving a court order, warrant or subpoena, a member should have this reviewed by legal counsel to determine whether and to what extent the member may be required to disclose information. A subpoena can be issued on anyone's request. It does not provide legal authority to disclose

information. It just requires attendance with the documents, if any, referred to in the subpoena. Members may also wish to obtain a legal opinion about whether there are any reporting requirements under federal or provincial legislation which may apply.

This article discusses the issue of confidentiality and when it is permissible to disclose confidential information without the consent of the client. This article is intended to highlight situations which may arise and how a member might go about making a sound and ethical decision. It is not intended as an all encompassing review of the multitude of issues about an immense and complex topic. Members are encouraged to review the standards of practice and the legislation that will affect them in their professional roles and to consult when needed.

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*For more information, please contact Pamela Blake, M.S.W., RSW, Director, Professional Practice and Education at 416-972-9882 or 1-877-828-9380, ext. 205. or e-mail: [pblake@ocswssw.org](mailto:pblake@ocswssw.org).*

***Please note that any references to the College's Standards of Practice in this article refer to the first edition of the Standards. The second edition of the Standards of Practice did not come into effect until July 2008.***

In determining when to disclose confidential information without a client's consent, members are encouraged to:

- ◆ Review the Standards of Practice, in particular Principle V, Confidentiality and Principle IV, 4.3 Access and Disclosure
- ◆ Review obligations under legislation, e.g. *Social Work and Social Service Work Act, Child and Family Services Act, Personal Health Information Protection Act, Criminal Code, Coroners Act* etc.
- ◆ Identify other legislation relevant to one's practice and review obligations under that legislation, e.g. *Mental Health Act, Nursing Homes Act, Workplace Safety and Insurance Act*
- ◆ Seek supervision or consultation to assist in understanding obligations, organizational policies and dealing with troubling information.
- ◆ Seek legal consultation when obligations are unclear or when served with a court order, warrant or subpoena
- ◆ Document the decision and how it was arrived at