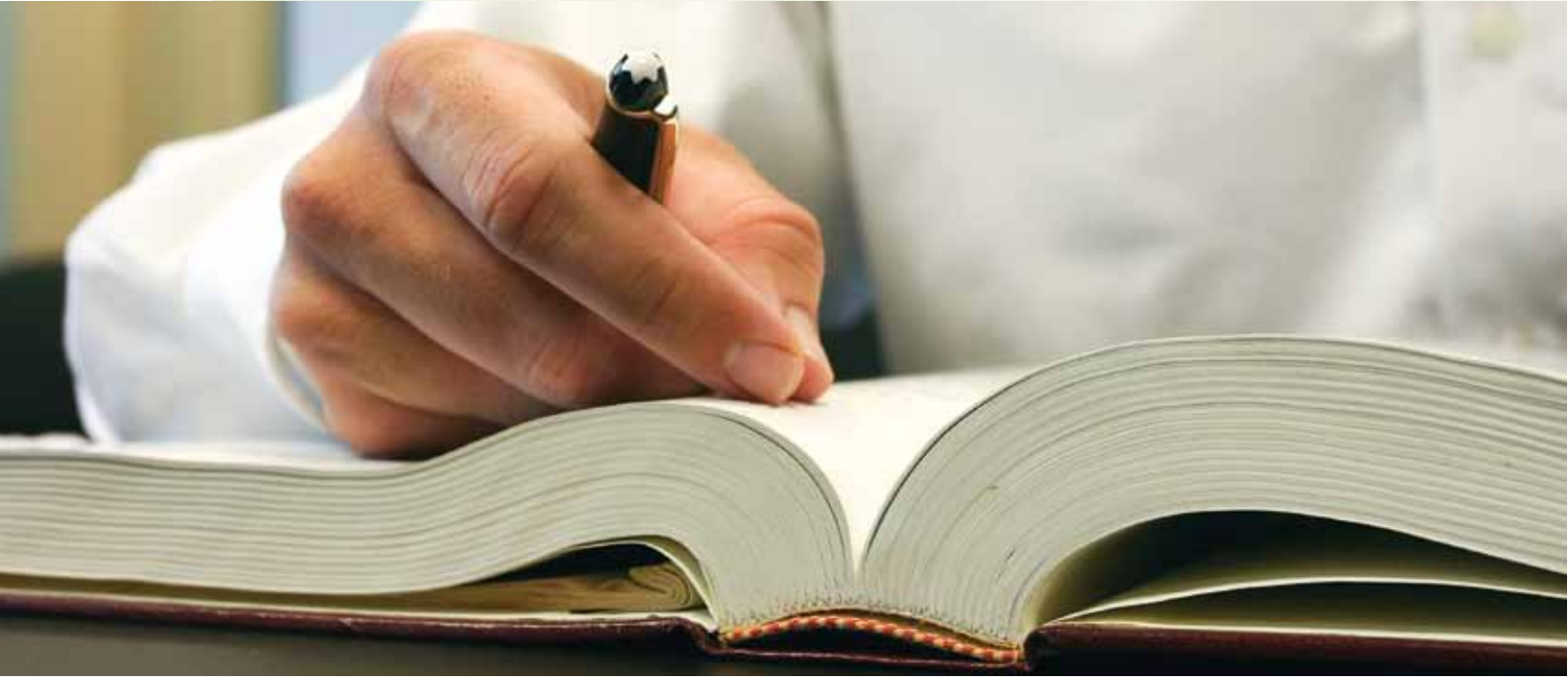




Practice Notes: Private Practice – The Cost of Doing Business

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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 professional practice department and 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.

Independent practice holds strong appeal for many social workers and social service workers, who may view it as an opportunity to define their work and approach, set their own hours and be their own boss. This autonomy and flexibility can certainly contribute to greater work satisfaction and professional pride. The absence of an employer who defines practice and sets policy, and the isolation that can come within the private practice setting, can raise some practice concerns, however. The Professional Practice Department consults frequently with members in private practice facing dilemmas, and the College receives a significant number of complaints about the conduct of members in private practice. Members are encouraged to review the Practice Notes: “Self Employment – Look Before You Leap” (under the Resource Room tab on the College website) for an overview of issues which require consideration prior to embarking on a private practice. This issue of Practice Notes, however, focuses specifically on some of the professional obligations and costs which are associated

with a private practice once it is up and running – specifically boundaries, conflicts of interest and dual relationships, and the other professional obligations associated with accounting and legal services, file storage and supervision.

MAINTAINING BOUNDARIES

While arranging an appropriate space in which to practise may appear to be a straightforward process, it can raise a host of potential issues and ethical dilemmas. These can occur when setting up a practice, but also later when a member may be expanding or reducing his or her practice, or is required to move because of a lease ending or a partnership disbanding. A member called the Professional Practice Department to discuss the following scenario:

The member wanted to know if the College would permit her to practise out of her home. She noted that she had arranged for a quiet and private space, and that clients would use a side entrance when coming to see



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her. She said that her children would be out of the home during the day, so she did not feel concerned about clients running into members of her family on the way in and out of sessions. The member felt that a home office was a practical solution for her as she was only practising part-time and did not want to rent a space and incur the costs associated with this.

While practising out of one's home could offer flexibility as well as some financial benefits, the member would be obliged to consider the risks involved in this arrangement. For example, she would be well advised to consider her own safety as well as that of current and potential clients in a home setting. What provisions would she need to put in place to ensure that she was safe from a potentially violent client or someone connected to that client? Could practising out of her home lead to boundary violations, such as offering appointments at irregular hours or dealing with personal issues while at work? Who else would be coming in and out of her home, and what could clients learn about her as a result of this? Could this be a form of unintended yet inappropriate self-disclosure? How would clients' confidentiality be protected while waiting to see the member? How soundproof is her office, and would renovations be required to address this? What safeguards could she put in place to ensure that she maintained boundaries in terms of when she saw clients and how she responded to crisis situations? What arrangements would need to be made to ensure the secure and confidential storage of clients' files? Practising out of a home office has the potential to make it difficult to set clear boundaries between a member's professional and personal life; the member would need to carefully consider how she might pro-actively address these concerns.

The Code of Ethics and Standards of Practice Handbook, 2nd Edition provides some guidance about these issues. Principle I: Relationship with Clients requires that members "distinguish their needs and interests from those of their clients to ensure

that, within professional relationships, clients' needs and interests remain paramount."¹

Furthermore, Principle II: Competence and Integrity, puts the onus on the member to maintain clear and appropriate boundaries: "College members establish and maintain clear and appropriate boundaries in professional relationships for the protection of clients ... (and) are responsible for ensuring that appropriate boundaries are maintained in all aspects of professional relationships."² Finally, Principle V: Confidentiality requires members to ensure that they "do not disclose the identity of and/or information about a person who has consulted or retained them unless the person consents."³

The member ultimately came to the decision that practising out of her home was no longer as attractive an option as she had once thought. Members who are considering various office space options might find that their decision is influenced as much by the ethical issues raised above as by economic factors. Members have a responsibility to ensure that those features of private practice which benefit them do not impair their judgment or cause them to place their own needs above those of their clients.

AVOIDING CONFLICTS OF INTEREST

The need to establish a strong referral base from a business perspective may also put members in a risky position. The for-profit nature of a private practice may, in certain situations, cloud their professional judgment. Members may decide to open a private practice to complement their part-time employment at an agency, and practising in two settings can lead to some important ethical dilemmas. Consider the following:

A social worker employed part-time at a family counselling agency called the Professional Practice Department to find out if she could accept referrals from another social worker on her team into her

1 Code of Ethics and Standards of Practice, Second Edition 2008, Principle I, Relationship with Clients, interpretation 1.6

2 Code of Ethics and Standards of Practice, Second Edition 2008, Principle II, Competence and Integrity, interpretation 2.2

3 Code of Ethics and Standards of Practice, Second Edition 2008, Principle V, Confidentiality, interpretation 5.3.6



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private practice. The agency had adopted a short-term counselling model and had a long waiting list. The member felt that it could be beneficial for her own clients and those of her colleagues if she saw them while they waited for service at the agency, and also after the agency sessions had finished. Her colleagues also saw this as a benefit to clients, and had made it clear that they wanted to refer to the member's private practice.

There are a number of issues the member must consider in this scenario. As noted previously, members must ensure that their clients' needs and interests, rather than their own, are paramount⁴; this is a particularly important consideration because private practice, as a business, profits the member. What are the optics in the scenario above? Could the member be seen to be exploiting the agency backlog for her own gain? The member would also need to consider whether her plan could create a dual relationship with her clients and/or could be considered a conflict of interest. Members are reminded that they must not "engage in professional relationships that constitute a conflict of interest or in situations in which members ought reasonably to have known that the client would be at risk in any way. College members do not provide a professional service to the client while the member is in a conflict of interest."⁵ Members must consider situations in which there is an actual conflict but also those where there is "a reasonable apprehension" that their "personal, financial or other professional interest or obligation" might influence them in their professional role.⁶ Members should carefully consider Principle II, Competence and Integrity, interpretation 2.2.1 and Footnotes 6 and 7.

Members must also ensure that they do not "solicit their employers' clients for private practice"⁷ however they "may accept referrals from their employers".⁸ While some members consider that they have addressed these Standards by giving

clients a list of providers in private practice which includes their name among several, they must determine whether this approach provides clients with a genuine choice. The more blurred the boundaries between the private practice and the agency, the greater the likelihood of a dual relationship, an actual or perceived conflict of interest and/or what could be construed as solicitation. Even if an agency supports a particular practice, the member must ensure that she is practising in accordance with the Standards of Practice.⁹

The ongoing challenge of building up a client base may also lead members to consider seeing clients who are friends, acquaintances or family members of past or present clients. While marketing strategies may at times suggest otherwise, members need to assess whether taking on these clients could create either dual relationship or conflict of interest situations.

In the previous scenario, the member must also consider issues of confidentiality: how would information be shared between the family counselling agency and the private practice? What information can be shared between settings? Principle IV: The Social Work and Social Service Work Record and Principle V: Confidentiality deal with disclosure of information.¹⁰ Members should ensure that they review these Principles in their entirety. Ultimately, the member decided to keep the boundaries between her paid employment and her private practice very clear; she decided to ask her agency colleagues to refer elsewhere.

RECORD-KEEPING

A third area which poses ethical challenges is that of record-keeping. Some members move into private practice with the expectation that record-keeping requirements will be less onerous than those in an agency. While it is true that a member in private practice may have more ability to

4 Code of Ethics and Standards of Practice, Second Edition 2008, Principle I, Relationship with Clients, interpretation 1.6

5 Code of Ethics and Standards of Practice, Second Edition 2008, Principle II, Competence and Integrity, interpretation 2.2.1

6 A "reasonable apprehension" of conflict of interest will exist where a reasonable person, informed of all the circumstances, would have a reasonable expectation or concern (rather than merely a suspicion) that a personal, financial or other professional interest or obligation might influence the member in the exercise of his or her professional responsibilities. Code of Ethics and Standards of Practice, Second Edition 2008, Principle II, Competence and Integrity, Footnote 6

7 Code of Ethics and Standards of Practice, Second Edition 2008, Principle III, Responsibility to Clients, interpretation 3.3

8 Code of Ethics and Standards of Practice, Second Edition 2008, Principle III, Responsibility to Clients, Footnote 2

9 Code of Ethics and Standards of Practice, Second Edition 2008, Principle II, Competence and Integrity, interpretation 2.2.10

10 Code of Ethics and Standards of Practice, Second Edition 2008, Principle IV, The Social Work and Social Service Work Record, interpretations 4.4.1 and 4.4.2 and Principle V, Confidentiality, interpretations 5.1, 5.2, 5.3.1, 5.3.5, 5.3.6, 5.3.7, 5.3.8, 5.4



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determine the format that his or her records will take, she or he must ensure that she abides by all the interpretations found in Principle IV: The Social Work and Social Service Work Record¹¹. One specific area of concern with respect to record-keeping is the sudden interruption of a practice due to illness or death. A lawyer called the Professional Practice Department with the following dilemma:

The lawyer was managing the estate of a member of the College who had been in private practice and had died suddenly. The member had no provisions in her will for the management of her practice, and the member's family was unsure what to do about her client files. The law firm wondered whether the College would take over the member's records.

Members may be reluctant to consider the unpleasant scenario of their practice closing due to sudden death or a protracted illness, however they have a professional obligation to plan for this possibility. Members should seek legal counsel to discuss their options. They may want to consider the following: does my will include directions for my practice? Is there a colleague to whom I can transfer my records? Will this arrangement meet College Standards as well as the requirements of the *Personal Health Information and Protection Act* (PHIPA)? Should I make prior arrangements for someone familiar with social work practice and College standards to manage communication about my closed practice and to facilitate the closure of files and the transfer of clients? How will this person be paid? Do I need to inform clients of these policies in advance?

Members must always ensure that they record information from sessions "when the event occurs or as soon as possible thereafter".¹² This is particularly important when one considers that a private practice could be interrupted without warning. Where there is no employer to take on responsibilities related to record retention, storage, preservation and security, these obligations fall on the

member. Policies regarding record storage and preservation "should be developed with a view to the potential future need for the record"¹³ and may involve making "arrangements to transfer the records to another College member" and making "reasonable efforts to give notice to their clients of the future location of their records".¹⁴

As soon as they establish their private practice, members should discuss their plans regarding the interruption or closing of their practice, not only with legal counsel but also with those responsible for their estate. Unfortunately, the member in the scenario above had not considered these issues. Her estate, along with the law firm, was able to make arrangements with another member of the College regarding the retention, storage and destruction of the records – services for which the estate paid an agreed-upon fee.

OTHER PROFESSIONAL OBLIGATIONS

Members in private practice may find that they are not only inconvenienced but also out-of-pocket when they are required to retain other professionals or address legal matters which require them to take time out of their practice.

A member called the College to ask about how he should respond to a subpoena which would require him to take up to five days out of his practice. The member wondered what options he had. He was shocked that he may have to consult with a lawyer and, in addition, cancel his appointments for the week in question.

In consultation with the College's Professional Practice Associate, the member considered Principle IV: The Social Work and Social Service Work Record, which states that "College members who are served with a formal notice or subpoena to produce client records before a court and who are of the opinion that disclosure would be detrimental to the client, should themselves, or through legal counsel, advocate for non disclosure to the court."¹⁵

11 Code of Ethics and Standards of Practice, Second Edition 2008, Principle IV, The Social Work and Social Service Work Record

12 Code of Ethics and Standards of Practice, Second Edition 2008, Principle IV, The Social Work and Social Service Work Record, interpretation 4.1.6

13 Code of Ethics and Standards of Practice, Second Edition 2008, Principle IV, The Social Work and Social Service Work Record, interpretation 4.2.3

14 Code of Ethics and Standards of Practice, Second Edition 2008, Principle IV, The Social Work and Social Service Work Record, interpretation 4.2.4. Members should also review interpretation 4.2 Record Maintenance in its entirety.

15 Code of Ethics and Standards of Practice, Second Edition 2008, Principle IV, The Social Work and Social Service Work Record, interpretation 4.4.3



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Whether or not a member will be required to appear in court will depend upon the particular circumstances of each situation. However, it would nevertheless be wise for members to be aware that this is a foreseeable cost of private practice; it should be anticipated and planned for. In other instances, members may be required to obtain legal services beyond what is covered through their professional association, to obtain accounting advice, and to pay for the storage, management and disposal of records. Many of these activities are not only part of running a business, but also a professional responsibility.

A final issue for consideration when in private practice is that of supervision. While private practice offers an opportunity to work in the way one chooses, it can also be isolating. Failing to take the time to think through clinical and ethical issues, on one's own and in consultation, can lead to errors with potentially serious consequences. As noted in the previous section, members may also be reluctant to take time out of their practice to do additional learning, due to costs in the form of registration and tuition fees and lost income.

A College member in private practice called the Professional Practice Department because she was extremely concerned about the possibility that a client was going to complain about her. She had graduated two years prior, and had been working with a family through a high conflict separation and divorce. The member continued to work with the children and one parent after the parents separated, and the other parent had recently become angry with the member, claiming that she had taken sides. The member was unsure how to manage this situation.

In the consultation with the Professional Practice Department, it was apparent that the member was inexperienced, had not sought any supervision in the case,

and was unclear about her contract and goals with the family. She had started her private practice shortly after graduating because she had had difficulty finding employment in her community. She said that she had been unable to arrange supervision, and relied on her social work education and extensive reading on her own.

It is advisable for members embarking on private practice to do so only after obtaining extensive experience and supervision. Private practitioners face a multitude of complex practice issues which they must deal with in relative isolation. Members are reminded that they "are responsible for being aware of the extent and parameters of their competence and their professional scope of practice and (must) limit their practice accordingly."¹⁶ Furthermore, members must "ensure that the services he or she provides are competently provided by seeking additional supervision, consultation and/or education"¹⁷ and "remain current with emerging social work or social service work knowledge and practice relevant to their areas of professional practice"¹⁸. Members must also demonstrate their commitment to ongoing professional development by engaging in any continuing education and complying with continuing competence measures required by the College.¹⁹

This article has discussed some of the professional and ethical issues which members in private practice should consider. Further review of the Code of Ethics and Standards of Practice, 2nd Edition is strongly advised.

For more information about this or other practice issues, please contact the Professional Practice Department at practice@ocswssw.org

¹⁶ Code of Ethics and Standards of Practice, Second Edition 2008, Principle II, Competence and Integrity, interpretation 2.1.1
¹⁷ Code of Ethics and Standards of Practice, Second Edition 2008, Principle II, Competence and Integrity, interpretation 2.1.1
¹⁸ Code of Ethics and Standards of Practice, Second Edition 2008, Principle II, Competence and Integrity, interpretation 2.1.2
¹⁹ Code of Ethics and Standards of Practice, Second Edition 2008, Principle II, Competence and Integrity, interpretation 2.1.2