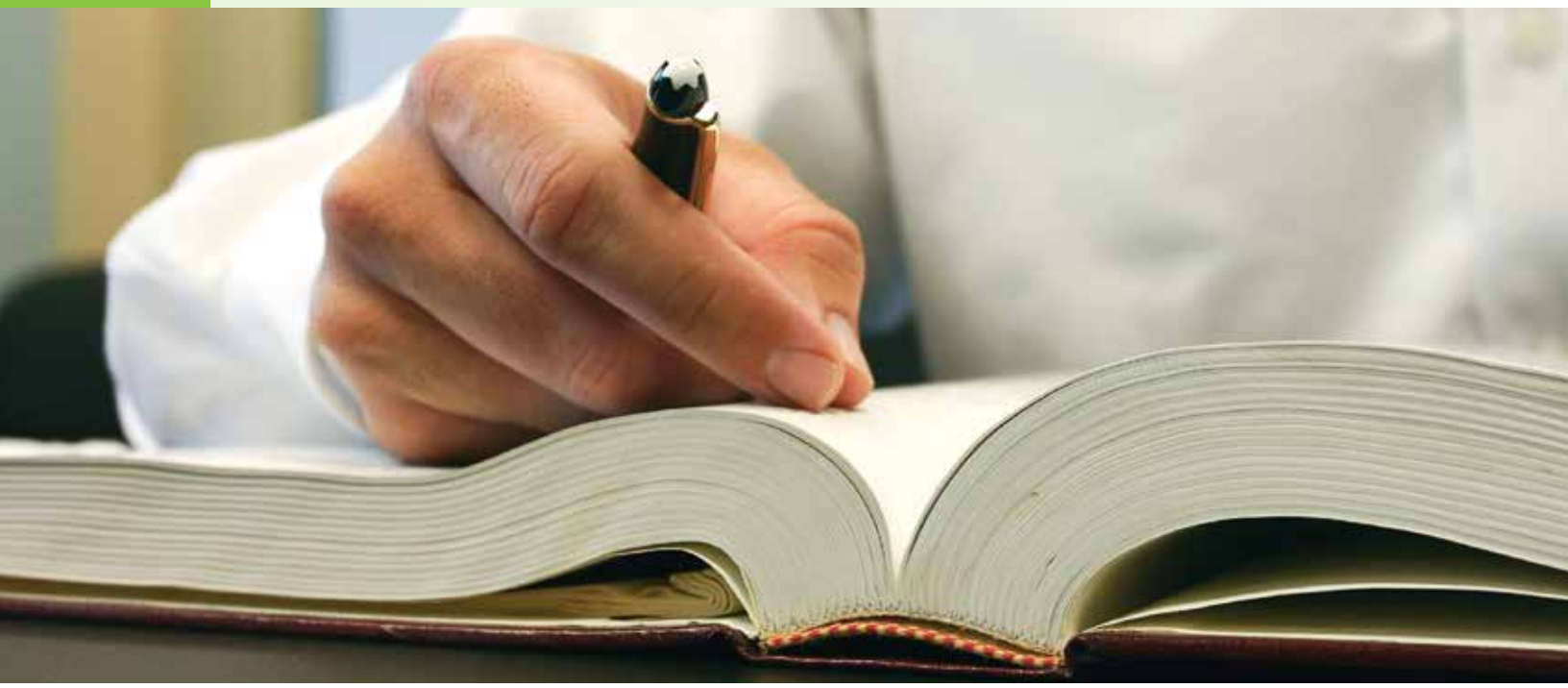
Practice Notes: "Setting the Table" – Issues to Consider When Initiating Client Conversations

CHRISTINA VAN SICKLE, BSW, MSW, RSW, DIRECTOR, PROFESSIONAL PRACTICE



May 11, 2017

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 College members with specific practice inquiries should consult the College, since the relevant standards and appropriate course of action will vary depending on the situation.

An introductory conversation with clients, which sets the parameters of the relationship and the services to be provided, is an essential element of sound and ethical social work and social service work practice. While this opening conversation may happen once, at the beginning of the professional relationship, it is often revisited repeatedly throughout the therapeutic relationship. Whether working with individuals, families, couples or groups, members of the College must ensure that they discuss boundaries, limits and expectations of the professional relationship with their clients in an upfront and transparent fashion. Members who later encounter misunderstandings with their clients and/or find that their clients have concerns about their actions or decisions in the course of the therapeutic relationship may find that these situations can be avoided when these essential, early conversations take place and are properly documented.

The College's Standards of Practice require College members to "provide clients with accurate and complete information regarding the extent, nature, and limitations of any services available to them."[1] As part of this initial conversation, members should discuss the issues of consent and the limits of confidentiality, and inform clients of the foreseeable risks and rights, opportunities and obligations associated with receiving professional services.[2] This conversation is also an appropriate time to discuss the policies of the organization or their own practice, and client expectations of the therapeutic relationship. These conversations may be different depending on the context of where the member works.

When engaging in these conversations, members must always consider the legislation that applies in their workplace and clinical context as well as any relevant

1. *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle III: Responsibility to Clients, interpretation 3.1.
2. *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle III: Responsibility to Clients, interpretation 3.6.

Practice Notes: "Setting the Table" – Issues to Consider When Initiating Client Conversations

CHRISTINA VAN SICKLE, BSW, MSW, RSW, DIRECTOR, PROFESSIONAL PRACTICE

organizational policies. Members are reminded that in cases where a workplace policy conflicts with the College's Standards of Practice, the member's obligation is to the Standards of Practice.[3] In instances where there is a conflict between the Standards of Practice and workplace policy, members advocate for workplace conditions and policies that are consistent with the Standards of Practice.[4]

CONSENT

It is very important for members to determine at the outset of the professional relationship whether the client can consent to service and/or treatment. Members should make every effort to resolve this issue before the therapeutic relationship begins, and this assessment should be part of the initial conversation. However, there may be times when issues of consent aren't clear or come up later, during the course of professional services. This can be particularly true for members who are working with youth and vulnerable populations.

Members should be aware that their practice setting impacts the issue of consent, as different legislation may apply to different workplace and clinical settings.

For example, many members have obligations under the *Health Care Consent Act* (HCCA) and the *Personal Health and Information Protection Act* (PHIPA)[5]. Under the HCCA, a capable individual may consent to health care treatment. An individual is assumed to be capable so long as there are no reasonable grounds to assume they are incapable. An individual is considered capable if they are able to understand the information that is relevant to making a decision, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.[6] There is no age limit attached to capacity. Under PHIPA, a capable person can consent to the collection, use or disclosure of personal health information. Members may wish to consult the College resource: Privacy Toolkit for Social Workers and Social Service Workers for more information.

CONSIDER THE FOLLOWING SCENARIO:

A social worker in private practice contacted the College's Professional Practice Department unsure about how to respond to the concerns of a father who had just found out that his son had been seeing the member for low mood and behavioural outbursts, at the request of his mother. According to the social worker, the couple had ended their relationship and their young child, the member's client, was now living with (and was in the custody of) his mother. The mother sought the services of the member as she felt that her son could benefit from counselling to process the feelings surrounding his parents' divorce. The member explained that she had developed a therapeutic relationship which appeared to be benefiting the child. The father's concerns arose when his son revealed to him that he had been seeing a social worker for counselling. According to the social worker, the father was incensed as he did not give his consent for his son to attend counselling. He contacted the social worker to inform her that he did not consent for his child to meet with her any longer. The father also insisted that he be given access to his son's case notes.

In this scenario the social worker should consider:

- What does the applicable legislation say regarding consent to service/treatment in this context?
- Who is consenting to service/ treatment?
- What principles in the Standards of Practice (including Principle IV: The Social Work and Social Service Work Record and Principle V: Confidentiality) are relevant?
- What is the applicable legislation regarding the release of client information?
- Who is permitted to consent to the release of client information?
- What custody arrangements and order are in place?

Staff in the Professional Practice Department assisted the social worker in identifying the issues to consider with respect to the situation she faced, and encouraged her to seek legal advice. After her call to the College the

3. *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, interpretation 2.2.10.
4. *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, footnote 10.
5. *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A
6. *Health Care Consent Act, 1996*, S.O. 1996, c. 2, Sched. A

Practice Notes: "Setting the Table" – Issues to Consider When Initiating Client Conversations

CHRISTINA VAN SICKLE, BSW, MSW, RSW, DIRECTOR, PROFESSIONAL PRACTICE

member decided to seek a legal opinion, after which she determined that the HCCA applied to her clinical work. She recognized that she was a health practitioner who was providing treatment to her client. She used her clinical judgment to determine that her client was able to consent to treatment independently, despite his age. She was careful to document in the record that the client was able to articulate to her in an age-appropriate way that he understood: why he was meeting with her; the purpose and goals of their work; that the topics they discussed could be emotionally difficult; and that he would be able to stop meeting with her at any time if he chose to do so.

The member then reflected on the father's request for copies of the client's chart. Principle V: Confidentiality, interpretation 5.1 in the Standards of Practice states that "College members comply with any applicable privacy and other legislation … (and) obtain consent to the collection, use or disclosure of client information including personal information, unless otherwise permitted or required by law."

The member's consultation with the Professional Practice Department, as well as the legal consult she obtained and her personal reflection, assisted her in determining that she was a Health Information Custodian (HIC) under PHIPA[7]. She decided that consent from the client would be required to disclose client information.

This scenario illustrates that it is essential for members to discuss consent and confidentiality with clients from the outset of treatment, in order to ensure that clients are not confused, uncertain or perceive that there has been a breach of trust. Upon reflection, the social worker recognized that it would have been advisable to have discussed with the client's mother when she initially contacted the member to retain the member's services, that it would be her child who would be consenting to service/treatment. Had she done this, the member would have been able to explain to the client's father that under the relevant legislation, it was his child who must give his consent to treatment and to the release of his records.

The scenario above makes it clear that legislation has a significant impact on the delivery of service, and members are therefore obliged to understand what legislation is relevant to their practice. Principle II: Competence and Integrity states that "College members (must) maintain current knowledge of policies, legislation, programs and issues … in their areas of practice."[8] If a member is unclear about what legislation applies to their work, they should speak to their supervisor and/or consider obtaining a legal consult. Members may also wish to use the Continuing Competence Program (CCP) to identify areas in which they need to gain further knowledge.

CONFIDENTIALITY

Confidentiality must also be discussed with clients in an initial conversation or early in the relationship.[9] The limits of confidentiality are understood as the reasonable limits in which some client information may not be kept confidential, despite the restrictions that generally apply to the therapeutic relationship between the social worker or social service worker and their client(s). Members must share information about the limits of confidentiality at the outset of their work with clients, so that they may choose what information to share in the therapeutic setting.

Members are typically familiar with their obligation to discuss with clients the limits of confidentiality with respect to mandatory reporting obligations under the *Child and Family Services Act*, and the fact that they must breach confidentiality and have a duty to report if they have reasonable grounds to suspect that a child is in need of protection.[10]

Similarly, members must recognize the need to discuss with clients the fact that in some circumstances they may

7. *Privacy Toolkit for Social Workers and Social Service Workers, Guide to the Personal Health Information Protection Act, 2004* (PHIPA), Ontario College of Social Workers and Social Service Workers, 2005, page 11.
8. *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, interpretation 2.1.3
9. *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008,* Principle V: Confidentiality, interpretation 5.4.
10. This article was published on May 11, 2017. On April 30, 2018 the *Child and Family Services Act* was repealed, and the *Child, Youth and Family Services Act, 2017* came into force. Section 125 relates to the duty to report a child in need of protection. For more information, please see the College's article on the Duty to Report.

Practice Notes: "Setting the Table" – Issues to Consider When Initiating Client Conversations

CHRISTINA VAN SICKLE, BSW, MSW, RSW, DIRECTOR, PROFESSIONAL PRACTICE

have a common law "duty to warn" or "duty to protect." There is a legal threshold that would need to be met in order to trigger this obligation, based on their assessment of whether there is a real, severe and imminent risk to an identifiable person, including the client or others.[11] This is a determination that a member would have to make with legal advice, since the existence of a duty to warn is a question of law. For further information on this common law duty to report, members may wish to review the College's Practice Notes on Meeting Professional Obligations.

Principle V: Confidentiality, interpretation 5.4 in the Standards of Practice states that:

> 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.

It is important for members to note that they are required to respect clients' right to withhold or place conditions on the disclosure of their information. This requirement can pose some challenges in practice, particularly for those members who work on interdisciplinary teams in which all members of the team share in client care. In these workplaces, client information is often shared in team rounds, or accessed by team members in the client record, for the purpose of providing care. However, some clients may not want to have all information shared with the team, and College members must be aware that clients have the right to place conditions on the disclosure of their information.

CONSIDER THE FOLLOWING SCENARIO:

The client of a College member contacted the College's Professional Practice Department to report that her social service worker was sharing information about her with his colleagues at the community services organization where she attends an adult day program for seniors. The client stated that she speaks to her social service worker in individual sessions about the stresses and difficulties that she is having coping at home on her own. At a recent visit to the day program, the client's social service worker informed her that he was going to share some details about her care with his interprofessional team, in order to get some ideas about other supports and resources that might assist her with living independently in the community. The client felt that this was a breach of confidentiality and did not want intimate details of her life shared with other staff members. She stated she had worked hard to build up trust with her social service worker, and that she considered what she shared with her worker to be private. The client told Professional Practice staff that when she voiced this concern to her worker, he had told her that he had implied consent to share details about her with his team members. The client was upset by his response, stating that she did not give consent to the social service worker to share this personal information with the rest of the team. She did not want the social service worker to talk about her with his colleagues.

In this scenario it is important for the member to consider:

- Were the limits of confidentiality clearly explained early in the therapeutic relationship?
- What does the applicable legislation say regarding confidentiality in this context?
- What is implied consent?
- What do the Standards of Practice require of College members?

The client told the Professional Practice staff that her social service worker had explained to her in their first session that he shares information with his colleagues regarding his clients. She said that he explained that he does this in order to get guidance on how best to serve his clients.

11. Betteridge, Lise, "Practice Notes: "Meeting Professional Obligations and Protecting Clients' Privacy: Disclosure of Information Without Consent" ", *Perspective*, Spring 2013. https://www.ocswssw.org/wp-content/uploads/2014/11/Meeting-Professional-Obligations-and-Protecting-Clients-Privacy-Disclosure-of-Information-Without-Consent-final-revised-20180430.pdf

Practice Notes: "Setting the Table" – Issues to Consider When Initiating Client Conversations

CHRISTINA VAN SICKLE, BSW, MSW, RSW, DIRECTOR, PROFESSIONAL PRACTICE

The client stated that she was initially comfortable with this sharing of information, but after a recent, negative experience with one of the other staff members at the day program, decided that she does not want her private information shared with this other staff member.

Professional Practice staff discussed with the client the fact that the social service worker is bound by the College's Standards of Practice. The client was also informed that some legislation may permit workers to share information about clients with their colleagues, if those colleagues are also involved in providing care to those clients.[12] In this context, consent to share information about the client may be implied, not explicit, in part because the information may be needed by all members of the team in order to provide service.

Professional Practice staff also explained to the client that the consultation with the interdisciplinary team may also improve the quality of care they receive because it contributes to the member's learning and professional development. The client was told that the Standards of Practice state that members must be aware of the extent of their competence and that a client may be referred elsewhere if the client's needs fall outside the worker's usual area of practice. However, if a client wishes to continue the therapeutic relationship, the worker must ensure that they enhance their competence by seeking additional supervision, consultation and/or education.[13]

In the course of the discussion, the client was informed that the Standards of Practice permit members to discuss client information in certain situations including but not limited to supervision, team meetings and student placements, but give clients the right to place conditions and limit what information is shared with which colleagues.[14]

The client was also informed that under PHIPA, clients may restrict the use and disclosure of some or all of their personal health information - a provision known as a "lockbox."[15] It was suggested to the client that if her worker felt that sharing information in the lockbox with his colleague was important to providing her health care, he would be obliged to tell his colleague that there was additional information he could not share that was relevant to her care.[16]

As a result of her discussion with Professional Practice staff, the client better understood why in some circumstances her social service worker might share her personal information with his colleagues. She also understood that she was empowered to determine what information would be shared with the team. The client felt better because she understood some of the reasons that the social service worker might share information. She stated that she was going to have a conversation with her worker about whether or not to place conditions on certain information.

Although the social service worker had had a conversation with the client in which he explained the limits of confidentiality of information, it may be advisable for him to consider in his future practice a more detailed discussion in order to enhance his practice and decrease the likelihood that clients may be concerned about his practice. Ethical and professional practice requires members to explain to their clients the limits of confidentiality, including the meaning of implied consent, and how this can impact the care they receive. It's through this clear and direct communication that members can ensure that they promote client empowerment and self-determination.

---

12. *Privacy Toolkit for Social Workers and Social Service Workers, Guide to the Personal Health Information Protection Act, 2004* (PHIPA), Ontario College of Social Workers and Social Service Workers, 2005, page 24.
13. *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, interpretation 2.2.1
14. *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle V: Confidentiality, interpretation 5.4
15. *Privacy Toolkit for Social Workers and Social Service Workers, Guide to the Personal Health Information Protection Act, 2004* (PHIPA), Ontario College of Social Workers and Social Service Workers, 2005, page 32.
16. Ibid.

Practice Notes: "Setting the Table" – Issues to Consider When Initiating Client Conversations

CHRISTINA VAN SICKLE, BSW, MSW, RSW, DIRECTOR, PROFESSIONAL PRACTICE

CONCLUSION

This article has discussed the importance of initial and early conversations between a member and their client. By being clear and transparent with clients, members can ensure that they provide ethical and effective services while promoting client autonomy.

CHECKLIST FOR INITIATING CLIENT CONVERSATIONS

Members may wish to seek supervision and ensure that they are familiar with workplace policies when completing the check list below:

- ☐ I have identified the relevant legislation applicable to my practice. (Ontario legislation can be accessed at www.e-laws.gov.on.ca)
- ☐ I have identified the client(s).
- ☐ I have identified who is able to give consent to service/ treatment.
- ☐ I have identified what (if any) custody order is in place.
- ☐ I have explained the limits of confidentiality - including but not limited to the need to share pertinent information with colleagues and mandatory reporting requirements.
- ☐ I have informed my client of their right to withhold or withdraw consent to, or place conditions on the disclosure of their information, and any potential impact on care or service delivery.
- ☐ I have reviewed the *The Code of Ethics and Standards of Practice Handbook* and have considered the standards and interpretations relevant to my area of practice.
- ☐ I have considered legal issues related to the issue and my area of practice, and have obtained a legal opinion if necessary.