



Practice Notes:

Confidentiality and Conflict of Interest

Pamela Blake, M.S.W., RSW, Deputy Registrar

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.

Recurring issue: Confidentiality and conflict of interest

The College has received a number of complaints concerning the conduct of members in the context of private practice, marital counselling and child custody and access matters.

Many of the cases involved a College member who provided counselling services, at one point, to both a husband and wife. The joint counselling was followed by individual counselling with one of the spouses and the preparation of a written report, for court purposes, at the request of the spouse who received individual counselling. The complaints revolve around disclosure of confidential information and conflict of interest.

Practice Considerations

A basic principle in establishing a professional relationship is the belief that clients have the right and capacity to determine their own objectives. Indeed, an initial step that members and clients take is to participate together to identify the purpose for the professional relationship and the goals the client wishes to attain. This statement of purpose will guide the working contract to which the members and clients agree. At this early stage in the relationship, it is also important that the member clarify a number of other issues. These include, but are not limited to:

- ❖ Providing clients with "accurate and complete information about the extent, nature and limitation of any services available to them"

- ❖ Informing clients of "foreseeable risks as well as rights, opportunities, and obligations associated with the provision of services"

It is also critical at this time to inform clients of any limits of confidentiality, and in the case of members in private practice, to establish clear policies regarding disclosure of client information.

While clarity of purpose and goals are important elements of a contract, equally important is a degree of flexibility, which allows goals to be renegotiated as the needs of the clients change.

A couple, for example, may attend counselling together with the shared goal of resolving their conflicts in order to enhance their relationship. In the course of counselling, however, one or both partners may decide that the conflicts are not resolvable and the initial goal of maintaining the relationship is no longer viable. The initial goals must then be re-examined and the contract renegotiated. The goal might shift to helping the partners separate in a constructive manner, especially if children are involved. Alternatively, one or both members of the couple could decide that since the initial goals are not attainable, that the couple's counselling should terminate. It is also possible that one partner may wish to continue to see the member for individual counselling, after the couple counselling has ended. This option may be acceptable to all parties involved and may seem practical in locations where counselling resources are limited. In fact, agreement of all parties is strongly advised when the terms of the original agreement are changed in this way. If there is objection from either partner, the member is advised to refrain from providing either partner with individual counselling and to assist either or both partners to obtain the individual counselling services elsewhere.

Additionally, it is critical for the member to carefully consider any potential risks in providing individual counselling to one partner after the termination of couple counselling even where both partners consent to

the new arrangement. In particular, the member must consider how this change will affect each partner, as well as the member. Will this change in working relationship place the member in a conflict of interest situation? Who possibly could request information about the couples counselling and/or the individual counselling? What information could justifiably be disclosed and under what circumstances? Members must be mindful that when a record pertains to more than one client (that is, when the record arises from joint couple counselling sessions rather than from individual counselling), authorization must be obtained from each individual client prior to releasing information. Members records should clearly reflect information obtained through couple counselling and information obtained through individual counselling.

Members should also be careful not to include information obtained through couple counselling in the individual counselling records pertaining to one of the partners. Failure to clearly and consistently segregate the two types of information can lead to a number of difficulties such as the inadvertent disclosure of couple counselling information upon the release of individual counselling records without the consent of both partners.

In addition to issues of record keeping and confidentiality, issues of conflict of interest may arise where a member provides couple counselling, followed by individual counselling to one of the partners, where the couple is in conflict. These conflict of interest issues are especially pronounced where the couple is engaged in litigation such as, for example, a custody and access dispute concerning their children. The member may be asked by the current client or the client's lawyer to provide a letter or report in that litigation. In these circumstances, there is significant potential for a conflict of interest, particularly if the report being sought is to comment on any of the matters in dispute in the litigation and will be used "against" the interests of the other partner (i.e. the member's former client).

The "classic" third party disclosure situation involves the member disclosing information from the individual counselling record to the current client's lawyer or to another professional who is performing a custody/access assessment. If the information disclosed originated in the couple counselling and the disclosure was made without the consent of both partners, a breach of confidentiality issue arises. Many of those breaches could be avoided by more rigorous record keeping practices. In particular, they could be largely avoided by ensuring that the individual counselling record does not contain information which originated in the couple (i.e. joint) counselling record.

When a change is proposed such as seeing one spouse in individual counselling after having seen both spouses in couple counselling, it is advisable for the member to revisit each of the aforementioned practice considerations identified at the outset of the therapeutic relationship. These practice considerations should be revisited yet again if the member is asked to supply any report, letter or information that may potentially be used in litigation between the spouses. This process can serve to identify potential conflicts down the road, and direct the member to consider how these issues could be addressed, prior to making a decision about whether to continue the member's work with the individual only. In carefully considering the possible consequences of a change in the working relationship, a member must ultimately make a decision that constitutes sound and ethical practice for all parties concerned.

If you have professional practice questions, please email practice@ocswws.org.

If you have questions about the complaints process, please email investigations@ocswws.org

Please note that any references to the College's Standards of Practice in the 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.

For further information about relevant guidelines, please refer to the Code of Ethics and Standards of Practice Handbook:

- ❖ Principle I, Relationship with Clients - 1.1
- ❖ Principle II, Competency and Integrity - 2.2.1
- ❖ Principle III, Responsibility to Clients - 3.7
- ❖ Principle IV, The Social Work and Social Service Work
- ❖ Record - 4.3.1, 4.3.2, 4.3.6
- ❖ Principle V, Confidentiality - 5.1.5, 5.2

¹ In the event of any discrepancy between the Practice Notes and the Social Work and Social Service Work Act, regulations made under the Act or the College's bylaws including the standards of practice will prevail.

² Code of Ethics and Standards of Practice Handbook: Responsibility to Clients, 3.1

³ Code of Ethics and Standards of Practice Handbook: Responsibility to Clients, 3.6