



Practice Notes:

Self Employment - Look Before You Leap

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

The decision to become self-employed in any profession is one that requires much thought and consideration—the social work and social service work professions are no different. The College receives many inquiries from members who are contemplating taking that step for the first time as well as from already established, self-employed members who encounter practice dilemmas.

Members are reminded that when setting up a small business, they should seek appropriate legal, accounting and liability insurance advice to ensure they are meeting their legal responsibilities with respect to setting up a small business.

Indeed, the College receives a substantial number of complaints about the conduct or actions of members who are engaged in various forms of independent practice, such as those contracted for service by Employment Assistance Programs, rehabilitation companies, or Community Care Access Centres; members who conduct capacity assessments or custody and access assessments; and members who do individual, couple, family or group therapy.

The factors leading a member to self-employment are varied. For many, it augments a member's established employment at other organizations. Independent practice may offer flexibility, autonomy, and the opportunity to focus on work that the member finds satisfying or that fulfils a particular need in the community. Whatever the appeal, it brings with it responsibilities for defining practice and setting policies that otherwise would be the responsibility of an employer. There are numerous issues that are crucial for self-employed members to consider and it is wise to do so before embarking on independent practice.

A recommended first step is a thorough review of the standards of practice of the College. Although most members feel they are already familiar with the standards, a focused look with prospective independent practice in

mind will help identify many of the issues that need addressing. This article will highlight some of these issues.

A helpful starting point for the member is to identify areas of competence in order to determine the nature of the services he or she plans to offer. The relevant standards for this analysis are:

2.1.1: "College members are responsible for being aware of the extent and parameters of their competence and their professional scope of practice and limit their practice accordingly."

2.1.2: "College members remain current with emerging social work or social service work knowledge and practice relevant to their areas of professional practice. Members demonstrate their commitment to ongoing professional development by engaging in any continuing education and continuing competence measures required by the College."

2.1.4: "College members ensure that any professional recommendations or opinions they provide are appropriately substantiated by evidence and supported by a credible body of professional social work knowledge or a credible body of professional social service work knowledge."

2.2.7: "College members do not misrepresent professional qualifications, education, experience or affiliation."

Having identified areas of competence, there are a number of questions a member should ask himself or herself: Are these areas within my scope of practice? Can I provide evidence of my competence in these areas? Do I have the requisite knowledge, skills and judgement? Are there some clients who would be better served by an organization or institution than an independent practitioner? How will I address requests for service from clients to whom I determine I am not able to provide services?

Members should be aware of Principle III, Responsibility to Clients. Interpretation 3.5 states: "College members assist potential clients to obtain other services if members are unable or unwilling, for appropriate reasons, to provide the requested professional help." Members should also review appropriate reasons for refusing to provide service and their obligation to the client found in footnotes 4 and 5 of Principle III.

There are additional considerations for members who plan to establish an independent practice such as arranging for consultation or supervision, either with an individual or through a peer supervision group. Applicable to this is Interpretation 2.1.5.

"As part of maintaining competence and acquiring skills in social work or social service work practice, College members engage in the process of self review and evaluation of their practice and seek consultation when appropriate."

Potential referral sources should also be considered by members. Those who are employed at another organization should be aware of Interpretation 3.3: "College members do not solicit their employers' clients for private practice," and note that "The term employer also includes a person or organization with whom the member has an independent service contract." (footnote 1, Principle III). While College members may accept referrals from their current employers (footnote 2, Principle III), it would be prudent to consider any employer policies regarding establishing private practice.

Real or perceived conflicts of interest in certain practice situations may also arise, which members will need to consider. For example, a member works on an inpatient psychiatric unit with a patient and his family, and must curtail her work when the patient is discharged, as defined by her role within the hospital setting. The family is aware that she has a private practice and asks to see her for ongoing support post-discharge. Can she continue to see them? Interpretation 3.7 is relevant to this issue:

"College members avoid conflicts of interest and/or dual relationships with clients or former clients, or with students, employees and supervisees that could impair members' professional judgment or increase the risk of exploitation or harm to clients."

It is important to consider the perspective of various parties, including the patient, family members of the patient, the member's employer and the member's own perspective, to determine if this would be a viable course of action.

At times, members are faced with the dilemma of whether it is acceptable to terminate professional services to a client when a problem arises. For example, a social worker has been seeing a 22 year old, unemployed woman for individual therapy for the past 18 months in her private practice. The woman's parents have assumed responsibility for paying the fees, however they have not paid the social worker for several months and have ignored her attempts to communicate with them about this issue. The client is unaware that a problem exists. What action may the social worker take? Principle VI, Fees, addresses these issues:

6.1.1: "College members explain in advance or at the commencement of a service the basis for all charges, giving a reasonable estimate of projected fees and disbursements, pointing out any uncertainties involved, so that clients may make informed decisions with regard to using a member's services."

6.1.3: "College members ensure that fee schedules clearly describe billing procedures, reasonable penalties for missed and cancelled appointments or late payment of fees, the use of collection agencies or legal proceedings to collect unpaid fees and third party fee payments."

Unfortunately, in the situation described above the social worker had not informed the client and family at the outset of her policy regarding non-payment of fees. The problem was compounded by the fact that the client was not aware that her parents were not meeting their financial responsibility. The member was grappling with whether to terminate professional services to the client or to attempt to resolve the situation with her. In regard to termination of professional services, members should note Interpretation 3.10:

"College members terminate professional services to clients when such services are no longer required or requested. It is professional misconduct to discontinue professional services that are needed unless:

- i) the client requests the discontinuation,
- ii) the client withdraws from the service,
- iii) reasonable efforts are made to arrange alternative or replacement services,
- iv) the client is given a reasonable opportunity to arrange alternative or replacement services, or
- v) continuing to provide the services would place the member at serious risk of harm,

and in the circumstances described in subparagraph i, ii, iii, or iv, the member makes reasonable efforts to hold a termination session with the client."

Interpretation 6.1.4 is also relevant:

"College members may reduce, waive, or delay collecting fees in situations where there is financial hardship to clients, or they may refer clients to appropriate alternative agencies so that clients are not deprived of professional social work or social service work services."

In this situation, the member decided to try to renegotiate the contract with the client and work out an alternative arrangement for the payment of fees.

It is vital to examine the multitude of issues pertaining to the record. Members who have an independent service contract should clarify with the organization the organization's policies about record maintenance and storage, as well as access and disclosure. In other situations the member will need to determine his or her own policies. The following excerpts from Principle IV, The Social Work and Social Service Work Record, are of relevance:

4.2.1: "College members employed by an organization acquire and maintain a thorough understanding of the organization's policies with regard to retention, storage, preservation and security of records. Self-employed College members establish clear policies relating to record retention, storage, preservation and security."

4.2.3: "College members ensure that each client record is stored and preserved in a secure location for a period of time not less than seven years from the date of the last entry. Longer periods of storage time may be defined by the policies of a member's employing organization or by the policies of a self-employed member. Such policies should be developed with a view to the potential future need for the record."

4.3.1: "College members employed by an organization acquire and maintain an understanding of the organization's policies regarding access to confidential client information. Such policies pertain to access requests by the clients themselves as well as by other parties. Self-employed College members establish clear policies regarding access to and disclosure of confidential client information".

Consider the dilemma of a social worker that is contacted by a former client requesting her record. The social worker provided psychotherapy services to the client for two years and describes their professional relationship as a stormy one, though the termination of services, which took place two years previously, was mutual and amicable. The records are in the member's illegible handwriting. Of even greater concern is that the record contains his personal notes with respect to the therapy sessions and contains his

reactions to the client, often reflecting his negative feelings. He states that the notes helped him to clarify his own feelings in order to engage appropriately and effectively with the client. Indeed, this course of action is supported in Principle I, Relationship with Clients:

1.5: "College members are aware of their values, attitudes and needs and how these impact on their professional relationships with clients."

1.6: "College members distinguish their needs and interests from those of their clients to ensure that, within professional relationships, clients' needs and interests remain paramount."

While these notes were undoubtedly useful to the social worker, the following record-keeping guidelines, found in Principle IV, must be adhered to:

4.1.1: "College members keep systematic, dated, and legible records for each client or client system served."

Footnote 2.

"An accurate record will:

- (a) Document the client's situation/problem exactly and contain only information that is appropriate and useful to the understanding of the situation and the management of the case;
- (b) Report impartially and objectively the factors relevant to the client's situation. The record clearly distinguishes the College member's observations and opinions from the information reported by the client;
- (c) Be easily understandable, avoiding vague, unclear or obscure language and symbols;
- (d) Identify corrections;
- (e) Be free of prejudice and discriminatory remarks;
- (f) Identify sources of data.

Footnote 1.

"Social work and social service work records include any or all of the following: narrative reports (handwritten, typed, or electronic); progress notes; checklists; correspondence; minutes; process logs; journals or appointment records; films and audio or video tapes. The tools or data used by the College member in developing a professional opinion may be or need not be included in the record. Such tools may be personal notes, memos or messages, test results, sociograms, genograms, etc. Once placed in the record, however, they become an integral part of that record. If they are kept separate from the record, the College member observes the same standards with respect to confidentiality, security, and destruction as with the social work and social service work record."

In addition to these requirements, the member will need to ensure that the record includes the minimum content as outlined in footnote 3 of Principle IV.

An essential decision for the member is whether to include personal notes in the record or keep them separate. Requests for part or all of a record by a client occur with regularity. A request from a client's lawyer also is a common occurrence. The member should conduct his or her practice and develop policies with regard to content and access/disclosure with this in mind. As well, members are advised to review in their entirety the guidelines found in 4.3 Access and Disclosure, which address issues such as establishing policies, providing access to the record, acceptable restrictions on access, authorization required to release records, and records that pertain to more than one client. Members should also review Principle V, Confidentiality.

As of November 1, 2004, members of the College who provide health care must comply with the Ontario Personal Health Information Protection Act, 2004 (PHIPA), which governs the collection, use and disclosure of personal health information. The College has created a PHIPA Toolkit for members in order to assist them in understanding the Act and the changing privacy expectations of clients and the public. The Toolkit is available to download from the College's Web site and hard copies were mailed to all members. Furthermore, members who collect, use or disclose personal information in the course of a commercial activity must now ensure their compliance with the Personal Information Protection and Electronic Documents Act (PIPEDA), which came into effect on January 1, 2004 in Ontario. For more information on PIPEDA, please refer to the Fall/Winter 2003/2004 issue of Perspective, pages 15 and 16. Members must also be aware of other legislation pertaining to their work. Note Principle II, Competence and Integrity:

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

This article touches on a number of issues that are relevant to self-employed members. A thorough review of the Code of Ethics and Standards of Practice Handbook in its entirety is critically important.

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