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THE PSYCHOLOGICAL ASSOCIATION OF MANITOBA L'ASSOCIATION DES PSYCHOLOGUES DU MANITOBA

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PAM is legally constituted by the Psychologists Registration Act (R.S.M. 1987) as the regulatory body for the practice of all branches of Psychology in Manitoba.

From the President

Teresa Sztaba, Ph.D., C.Psych.,
President, Psychological Association of Manitoba

This year, my first as President, has been a busy one. I am pleased to have this opportunity, along with the other contributors to this newsletter, to update membership about the activities that we have undertaken on your behalf, and the issues that we, as your regulatory association, have tackled.

In April, our long-serving Registrar, Dr. Joe Rallo, resigned his position. Dr. Rallo was an exceptionally knowledgeable Registrar, with a breadth of experience in regulatory issues in local, Canadian, and North American associations. He was a tremendous resource to Council and his contributions (and his sense of humour) were much appreciated. Fortunately, Dr. Rallo will continue to keep abreast of North American regulatory issues, and represent the Canadian perspective, in his role as a Board Member of the Asso-

ciation of State and Provincial Psychology Boards (ASPPB).

I also would like to acknowledge Dr. Alan Slusky's tenure as President, which ended in April following our Annual General Meeting. Dr. Slusky served as President for three years, shepherding us capably through some difficult situations and a period of significant financial concerns. We continue to benefit from his efficiency, experience, hard work and excellent organizational skills as he serves in his new role at Registrar, and continues to attend meetings to develop the Omnibus Health Act.

Following our last Annual General Meeting, one position on Council remained vacant. We are very pleased that Dr. Neal Anderson has joined us. He is enthusiastic and creative, with considerable interest in regulatory issues and, as if that weren't enough, he has agreed to serve as our Newsletter Editor.

Since April, on P.A.M. Council's behalf, in addition to chairing our bi-weekly meetings, I brought greetings to the Manitoba Association of School Psychologists at their AGM; attended a meeting of ACPRO, the association of Canadian regulators; attended the AGM of ASPPB, the association of North American regulators; and chaired our recent Town Hall meeting. We were very pleased with the attendance at the Town Hall meeting, and received positive feedback about the value of this type of informal meeting to keep members posted about ongoing regulatory matters and governmental influences. There was much material presented and it seems that we could have used even more time for discussion, but by

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Manitoba Psychologist is published twice each year in Spring and Fall by the Psychological Association of Manitoba (ISSN0711-1533) and is the official publication of the Psychological Association of Manitoba. Its primary purpose is to assist P.A.M. in fulfilling its legal responsibilities concerning the protection of the public and regulation of psychology in Manitoba. It also seeks to foster communication within the psychological community and between psychologists and the larger community.

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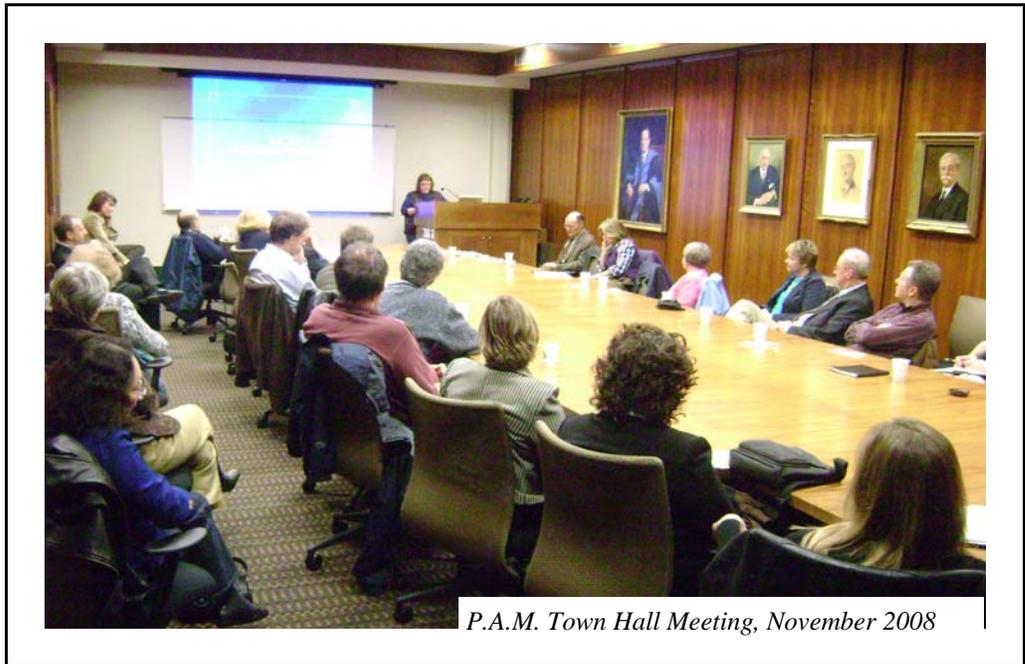
9:30, there were many bleary, tired eyes around the table and the cookies were gone. Not to worry...we hope to have another Town Hall meeting next year and our AGM is just a few months away.

At last year's Town Hall meeting, there was considered and useful discussion about the complaints process. Resulting from that meeting, an ADR Working Group was formed, with the mandate of addressing possible alternate mechanisms for resolving complaints. Dr. Jule Henderson, who chaired the group, presented the results of their extensive deliberations at this year's Town Hall meeting, including the recommendation that a new position, Director of Complaints, be established. The report submitted by the group is posted in its entirety on the P.A.M. website, and we encourage you all to read it and to communicate your opinions and responses to any of P.A.M. Council or to the Registrar. Your feedback will assist Council and the Complaints Committee in our decision-making about any potential changes to current procedure.

As in previous years, your Council chose to have representation at the ASPPB annual meeting. Having recently returned from that meeting, I still am feeling energized and inspired by the wealth of information and consultation with other regulators that was available. For four days, there was a fairly intensive schedule of large- and small-group meetings, as well as highly relevant presentations to educate participants about issues such as Distance Education (and the decisions of Canadian and American regulators about the acceptability of this type of education in registering psychologists),

supervision competencies, cross-cultural issues and criteria related to psychologists from other countries, and EPPP changes. In smaller groups, practical matters related to discipline and hearing processes, publication of names, fines, and fee recovery were discussed. We are fortunate that ASPPB provides a small grant toward the costs of our attendance at this conference and also waives one registration fee, so that we consistently are able to benefit from this excellent resource.

For your information, P.A.M. Council decided to discontinue its corporate membership in the Cana-



dian Register of Health Service Providers in Psychology at the next opportunity, which is one day prior to the next AGM of CRHSPP in January, 2009. (I was recused from voting, given that I am a board member of CRHSPP). The majority of Council felt conflicted about remaining on a Registrar that has a Doctoral standard, given that P.A.M. now is open to registering Masters-level individuals as independent practice Psychological Associates. As such, Council was of the opinion that we could not support CRHSPP's intention to end the long-standing Masters-level grand-parenting. The College of Psychologists of Ontario also has announced its intention to abdicate its membership in CRHSPP.

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Perhaps I've been observing too much politics lately, but it seems appropriate at this time to give you some inkling about my "policy statement." During my tenure, I plan to emphasize the following objectives:

- to be transparent with, and accessible to, registrants with respect to P.A.M. activities

- to provide information about current regulatory issues in as timely as fashion as possible

- to utilize our funds in a responsible and accountable manner, without compromising our efforts to protect the public

- to continue to support appropriate high standards for registration and practice as a psychologist, even in the face of external pressure to lower standards

- to provide representation for Manitoba psychologists in Canadian and North American regulatory associations, and to utilize the resources of these associations as appropriate to assist with our functioning as Manitoba regulators

- to continue to explore and develop complaints processes that are fair and expeditious, while protecting the public in a manner in ac-

cordance with national standards

- to increase the variety and number of volunteers, including some newer registrants, on P. A.M. Council and committees

The business of Council and its committees can be challenging, and our work certainly often extends beyond and between our regular meetings, particularly for our Treasurer and our Committee Chairs. We are extremely fortunate to have a group of highly committed volunteers on Council, who bring much wisdom and expertise to our work and our deliberations. This work is augmented by a number of additional volunteers who serve on Committees, or assist with oral examinations and investigations. Our jobs are rewarding, allow us to make significant contributions, and are seasoned with very satisfying collegiality. Our Nominations Committee Chair, Dr. Jim Newton, is always on the lookout for those who want to be involved in P.A.M. in some way.

Best wishes for a holiday season filled with warm hearts, peace, and cherished memories.

Ψ

From the Registrar

Alan Slusky, Ph.D., C.Psych.

Registrar, Psychological Association of Manitoba

As the newly hired Registrar for the Psychological Association of Manitoba it gives me great pleasure to bring you, our members, up to speed on issues of a regulatory nature affecting Psychology in Manitoba and across Canada. I would also like to take this opportunity to express my gratitude to PAM Executive Council for providing me the opportunity to serve as Registrar, acknowledging the very large shoes that Dr. Joe Rallo has left behind, to fill. I look forward to working with PAM Executive Council and the membership of

PAM to continue to strive towards excellence in public protection in Manitoba with respect to Psychology practitioners, but also to serve our members in the areas of membership/registration as well as consultation around issues affecting standards of practice and ethical decision making.

On a local level, there has been little movement on the development of omnibus health professions legislation over the past several months. A generally agreed upon set of controlled Acts

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have been put forth by the regulators of these health professions and this is an issue that was discussed at the recent Town Hall Meeting for members of the Association. With respect to Psychology, the controlled acts of communicating a diagnosis and psychosocial intervention are both relevant. The government has also put forth a draft of a complaints process for feedback with this draft very closely approximating the current process outlined in PAM by-laws. As you know the by-laws for the Psychological Association of Manitoba were amended in February 2006, and as such represent the current "state of the art" with respect to regulatory practices for health professions. Never-the-less, as evidenced by recent discussions around the report provided by the ADR working group, there is certainly room for alternative view points on this process and PAM members are strongly encouraged to read the ADR report currently available on the website and provide feedback/comments to this report. PAM has sought legal consultation with respect to the possibility of integrating some of the recommendations of the ADR report into the current draft complaints process. These discussions are ongoing and completely exploratory in nature at the present time. I continue to attend these meetings and will keep members abreast of developments as they arise.

A more recent and significant development affecting psychology in Manitoba involves the decision by the Council of the Federation (the heads of Provincial and Territorial governments) to amend the Agreement on Internal Trade with respect to labour mobility. Although Psychology in Canada has been justifiably proud of its Mutual Recognition Agreement (which has been in force since 2001) the Council of the Federation concluded in July 2008 that labor mobility across Canada has not proceeded at the pace they had initially hoped for and as such significant changes to the AIT have been proposed. With respect to Psychology, the most important changes to mobility is the position that the government is now taking on how recip-

rocity registrants will be evaluated prior to entering into a new jurisdiction. Given the perception by government that there are real or disguised barriers to mobility for workers in this country, they are now adopting a position which sees mobility as "the default", unless a jurisdiction can provide evidence that additional requirements are necessary in order to fulfill a legitimate objective. These legitimate objectives will most commonly address issues of public safety, concern over health, maintaining public order, etc., and discussions with government representatives indicate that in order to be in compliance with the amended agreement on internal trade, the single most important criteria to evaluate is an individual's scope of practice. PAM has been a signatory to the Mutual Recognition Agreement and has respected the scopes of practice of all incoming reciprocity applicants, however has also reserved the right to examine applicants on differences in scope of practice where they exist. For example, individuals practicing in the area of forensic psychology, who come to Manitoba and claim competence in the area of neuropsychology, have been asked to undergo an evaluation to determine their competence to practice in that area. We continue to believe that in the interests of public protection, that such examinations are necessary however assuming equivalence of scope of practice between an individual's practice in their sending jurisdiction and ours, we see no incompatibilities between our current reciprocity registration procedures and those being proposed under the amended AIT. Unlike some Canadian jurisdictions, Manitoba has, for the past 3 years, registered Masters level practitioners for independent practice at the Psychological Associate (independent practice) level. As such, individuals practicing in another jurisdiction with a Masters degree, are free to move to Manitoba and maintain their scope of practice, under a different title. This is also an issue that Manitoba continues to feel quite strongly about and is assertively advocating to government representatives at this time. Like developments in the Omnibus Health Legislation Act, I and Council will continue to keep members

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abreast of these developments as they unfold.

As 2008 draws to a close, I would like to take this opportunity to express my gratitude as well to the new Registrar's Assistant and Assistant to Council, Ms. Launey Chudy, who has shown a remarkable ability to climb a very steep learning curve with respect to assisting myself and Council in its work. Although current staffing and resources do not permit us to respond in a live, real time fashion to telephone inquiries, we are endeavoring to return all calls within 24 hours, to assist both members of the public and our membership in accessing the information that they require. We continue to appreciate our members' understanding in this regard. We are also quite grateful to members for their cooperation at renewal time and with the end of the year approaching, this is a matter very much on our minds entering into next Spring. It is our hope

to provide you, in March 2009, with a renewal package which will simplify this process for you, assist in the compiling and reporting of CE requirements, and provide you with timely information regarding our upcoming Annual General Meeting. We have also begun to utilize email as a communication tool and have received positive feedback from members on this. We appreciate those members who have called in to request written material (as opposed to email communication) and will continue to honour those requests. We do believe however that electronic communication is a far more environmentally friendly, efficient, and rapid method of distributing information and will continue to use this communication tool where appropriate.

I wish all a warm, relaxing, and joyous Holiday Season.



Proposed Guidelines for Declaring Competencies

H. Wallbridge, Ph.D., C.Psych.

Vice President, Psychological Association of Manitoba

Over the years the Membership and Registration Committee has noticed some inconsistencies regarding how new registrants declare areas of competence. Specifically, some applicants declare only one area whereas others declare several, even though the educational background of these applicants may be quite similar. M&R is, therefore, proposing to clarify the directions given to new applicants regarding declaring competencies so that this step in registration operates in a more standardized way.

Applicants will be directed that they can identify one area of competence (e.g., clinical psychology or neuropsychology), which under most circumstances would follow from the name of the program from which the applicant obtained his or her post-secondary degree. Declaration of additional areas of competence (e.g., health, forensic, clinical, etc.) would be permitted, but now

the applicant would be asked to provide additional information about his or her training and experience that would justify this additional area of competence. M&R would review this additional information and make a determination if an additional area(s) of competence seemed appropriate. In addition, the structure of the oral exam would continue to be guided by the applicants declared areas of competence, as it is now.

We are also interested in developing a mechanism for post-registration adjustments in areas of competence for currently registered members. We foresee that this could become a more important issue in the future should PAM begin to disclose areas of competence of registered psychologists to the general public, as occurs in some other jurisdictions.



Report of the Ad Hoc Committee for ADR

Neal D. Anderson, Ph.D., C.Psych.

(Currently) Member-at-Large, P.A.M Executive Council; (Past) ADR Committee Member

At P.A.M.'s October, 2007 Town Hall Meeting, there was some spirited discussion about what some members viewed as limitations inherent in P.A.M.'s current Complaints process. Some members argued that the current process is too often unsatisfying for complainant and psychologist alike, and wondered whether any public complaints could be addressed without resort to our formal and adversarial Complaints process, without compromising P.A.M.'s fundamental responsibility for protecting the public. Shortly after the 2007 Town Hall, P.A.M. Executive Council appointed Dr. Jule Henderson to chair an ad hoc committee, to explore P.A.M.'s options for alternate dispute resolution when members of the public complained about a psychologist's actions, or for adjustments to the current Complaints process. Dr. Henderson's ADR Committee met between February and May 2008 and reported to Council in July, and at this year's Town Hall in November, 2008, Dr. Henderson provided an overview of her committee's recommendations.

The committee worked to educate itself about how P.A.M.'s Complaints process currently works, canvassed the Canadian Psychology regulatory jurisdictions as well as other self-regulating professions about their approaches, and identified some advantages and disadvantages of the various approaches. The committee reviewed the mandate of a Complaints Committee within a self-regulating professional body as one of protecting the public through the appropriate address of its members' allegedly inap-

propriate actions. Satisfying a particular complainant or psychologist is not central to the mandate of a complaints committee, the committee found, even though complainant or psychologist or both may be satisfied with the outcome of a complaint process: protecting the public is always the first priority. In building its recommendations, the committee was especially interested in the approaches of the College of Psychologists of Alberta, and the Manitoba College of Physicians and Surgeons.

The ADR Committee's full report is on P.A.M.'s website (www.cpmc.ca).

The Committee highlighted common concerns about the current process, including the often extremely long time needed to deal with a complaint and close a file, along with a perceived lack of flexibility to the process. The committee wondered whether

the exclusively adversarial and formal approach might in some cases actually create or unnecessarily deepen controversy by forcing parties into entrenched positions over long periods of time. Importantly, the ADR Committee noted that limits upon the action of P.A.M.'s Registrar and Complaints Committee members are such that they are barred from expressing opinions to a potential complainant about the strength or justice of a complaint, cannot attempt to resolve a dispute between complainant and Psychologist, and must refer all complaints into the same formal Complaints process.

In the end, the ADR Committee recommended that P.A.M. consider two changes to the current Complaints process aimed at providing more opportunity for flexibility and informality to our processes: creating a position of Director of

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Complaints and increasing the flexibility or discretionary power of the Complaints Committee. The Director of Complaints (DoC) for P.A.M. (most likely either our Registrar or Complaints Committee Chair) would become the first point of contact for members of the public concerned about the actions of a psychologist, and would engage actively with the complainant and possibly the psychologist. Depending upon the nature of the complaint, the DoC would, within a short time frame refer the complaint to the Complaints Committee (as is always done now), determine that the complaint is without merit and dismiss it, or actively and informally deal with the issues raised in the complaint. The ADR Committee saw this option for active resolution to be potentially very helpful to all concerned. The DoC would be able to take on a highly interactive role—listening, explaining and educating, and facilitating resolution, with a balance of informality (so that the work of the DoC doesn't get bogged down unnecessarily in minutiae) and accountability and transparency on the other,

with clear appeals options, appropriate recording of decisions, and oversight by the full Complaints Committee. The Committee looked to the approaches of the Alberta College of Psychologists as a model, apparently working well for some years.

Consistent with a move toward greater flexibility of process, the ADR Committee also recommended that the Complaints Committee be freed somewhat to facilitate resolution or to dismiss a complaint without resort to a full formal process. The committee questioned whether handling of all complaints requires the same process.

Dr. Henderson's Committee recommended that P.A.M. seek a legal opinion about how these proposed changes would work within draft legislation around complaints with Provincial Government Omnibus Legislation for Health Care Professionals.



Managing Ethical Issues with Third Party Payers

Jean Pettifor, R. Psych.

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Thanks to Dr. Alexandra Kinkaide, Registrar, College of Psychologists of Alberta.

Vignette: I am employed by an agency whose main source of income is from fee-for-service for clients that receive psychotherapy. An insurance company has approved eight sessions of therapy for a woman whom her physician has referred because he believes that there are psychological reasons for her headaches and insomnia. On the sixth session the client discloses that she was sexually abused as a child. She needs several sessions beyond the eight session cap, and she cannot afford to pay for them herself. My supervisor says I must terminate therapy at the end of the eighth session. I do not want to abandon her and I believe that it would be harmful for her to change therapists at this point in her treatment.

Today psychological services are increasingly offered in the context of involved third parties that vary in their degree of personal relationship with the individuals receiving services. Professional codes of ethics have traditionally addressed the relationship between the professional and the immediate client. They have made the individual professional solely responsible for the decisions and actions that the person takes, and have paid insufficient attention to the external pressures and systems that impact on the services provided. When the interests of a third party, the ethical and practice standards of the profession, and the best interests of the direct recipient of the services are

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consistent, no conflict exists; differences can be negotiated in a manner respectful of all parties. When these interests conflict, serious dilemmas arise for psychologists who feel responsible for actions with which they may disagree, but which are determined by an outside authority or third party.

The issues and concerns of psychologists around their relationships with third parties are longstanding and, if anything, increasing as systems for delivering services grow in complexity and are implemented with greater frequency. Michael King and Alexandra Kinkaide (2002)

describe ethical dilemmas involving budgetary cutbacks in services that compromise the quality of care provided. The psychologist who speaks out for higher standards may be labeled a “poor team player.” The Ontario Psychological Association’s Ethics and Policy Committee established the Third Party Working Group to develop resources to help members deal with problems associated with situations involving third parties (Sinclair, 2007). In the early 90s the Practice Review Committee of the Psychologists Association of Alberta addressed professional and employer relationships, as members reported having difficulties with the topic and sought guidance. As far back as 1978, the belief was expressed that ethical practice at times requires interventions in systems in order to deliver appropriate services to individual clients: “Professionals must learn how to shape organizational structures so that they do not interfere with the attainment of professional goals and they must discover how to monitor and use bureaucratic policies and procedures for the benefit of their clients (Mearig, 1978).

Third parties vary in their personal professional

distance from the individual receiving services and in the degree of authority they have in making decisions that affect the direct service provided. The vulnerability of the immediate client (and of the direct service provider) appears to increase as the third party’s personal interest in the client becomes more distant, and also as the decision making authority of the third party increases— as, for example, when the third party determines the conditions for funding services.

Third parties with the closest personal relationship with the direct recipient of services include parents, spouses and friends. Others with a personal interest, but one step removed, include

teachers, physicians, coaches and social workers. The administrative or managerial level of a large employing organization might be considered the next level of third party— somewhat removed from service clients, but accountable for good business practices and public relations, and often providing services under budgetary constraints. A fourth level

of distancing from the immediate client is represented by the third party that sets conditions for reimbursing services, as discussed further below.

Two additional types of third party interests may be defined, not so much by payment issues as by strikingly different objectives for the psychological interventions. Psychologists working in correctional, prison or policing settings must clarify both the purpose of their interventions and whose needs are being served. Can the needs of the third party be served in ways that do not harm the individual? Serving the rehabilitation or mental health needs of inmates may conflict with assessing and recommending on level of risk for probation or discharge, or on

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level of competency to understand the nature of the crime. Respect and caring for vulnerable individuals may conflict with rules and procedures of the institution, and with protection of the public.

Even more chilling are the allegations that psychologists (and other professionals) are serving the needs of the military by participating in, consulting about, and instructing or monitoring the use of torture and other cruel, inhumane or degrading treatments or punishments, in contrast to serving detainees' needs for health care. Can serious harm to detained individuals be justified by the belief that such harm is necessary for national security and the protection of the general citizenry? The range of third party interests is wide indeed, and Alberta psychologists will be affected in only some instances.

Returning to the ethical issues involving third

party payers and psychologists, all of the authors referenced above recommend, to as great an extent as possible, negotiating conditions that are consistent with quality care for the direct recipients of services, who may also be recognized as the most vulnerable person in need of protection. This approach requires that the psychologist understand the positions of other parties, treating them with courtesy and respect. At the same time, the psychologist speaks up for the interests of the client and for professional standards. The psychologist may need to know when to respectfully say "no." To ask "Who is the client?" does not in itself resolve the dilemma if the third party sets conditions for reimbursement and the psychologist has obligations to both parties. It is essential that the psychologist know, prior to offering the service, what conditions are set by the third party payer,

and that those conditions are consistent with ethical principles and responsibilities. Any conditions agreed on with the third party payer are presented to the immediate client as part the informed consent process. Third party restrictions may apply to confidentiality, consent, access to results of assessments, recommendations, length of reimbursed services, options for further treatment and so on. Psychologists must also take care not to incur disciplinary complaints because of their adherence to conditions set by third party funders, such as abandoning a client who has reached the limit of funded sessions for reimbursement. The psychologist may need to distinguish to what extent differences must be resolved now, for the benefit of identifiable clients,

and to what extent long-term collective efforts are required to bring about changes in the policies and philosophies of third party payers so as to merge their business needs with the clients' needs for professional standards.

George (2006) developed Ethical guidelines for negotiating contracts

with third-party funders for the purpose of helping professionals negotiate contractual agreements that enable services to be provided for clients in ways that are acceptable to third-party funders, while still allowing psychologists to adhere to professional ethics and standards of care. The guidelines are intended to avoid the specific problems encountered with third party payer organizations, as reported in the North American literature. Conditions are openly negotiated and all parties, including the immediate recipients of service, are aware of them and give informed consent. George organizes the guidelines around the four principles of the Canadian Code of Ethics for Psychologists. She also includes a modification of the ethical decision making steps in the Canadian Code, to assist psychologists in analyzing and resolving the

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ethical issues they encounter with third party payers.

Consider the vignette at the beginning of this article. It involves the immediate, vulnerable client, the therapist serving the interests of the client, the supervisor who represents the policies of the agency, the director of the agency and the third party payer who determines the conditions for payment to the agency. What can the therapist do to resolve this situation? How does one pursue a better arrangement for the immediate client? Is more collective action appropriate, to negotiate changes in third party payer policies that will allow adherence to professional standards so as to serve the interests of vulnerable populations?

The need is evident for more dialog, articles, workshops and support for psychologists in facing the complexities of service delivery systems that involve increasing numbers of parties.

Psychologists need not passively accept what is

offered without question, and they need the skills to negotiate respectfully for what they, and their profession, believe is right. Rules do not cover all situations. In a constantly changing world, the true professional (and professional associations) must accept responsibility for the ongoing reconstruction of what is right. Our Canadian Code of Ethics provides us with a strong ethical foundation.

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Ψ

Informed Consent

Richard Steinecke

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*Better a friendly refusal
than an unwilling consent.*

— *Spanish Proverb*

Informed consent might be one of those principles that is honoured more in its breach than in its practice. A fundamental concept for all professions, client consent is essential to the professional relationship. Without it the trust necessary for the professional relationship to work is missing.

Applies to All Professions

While perhaps originating in health care, the

principle of informed consent applies to all professional relationships. Often other terms are used to describe the concept such as: informed choice, acting on client instructions, the “know-your-client” rule and receiving a project mandate. Regulators can foster consent by practitioners through educational initiatives.

Spheres of Consent

In fact, the need for consent generally arises in three distinct areas:

1. consent to provide professional services,
2. consent to collect, use and disclose personal

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information, and

3. consent for the billing arrangements with the client.

Often practitioners need to be reminded to obtain consent in all three spheres.

Need for Consent

Failure to obtain consent can result in professional, civil and even criminal liability (e.g., assault, theft, fraud). Some professionals ignore the need to obtain consent in the hope that they will not be held civilly liable for damages because the client would have agreed to the professional service if the client had been informed of all of the facts. However, in a recent Ontario Court of Appeal case a physician was sued successfully for failing to obtain informed consent even though there was no negligence: *Huisman v. MacDonald*, 2007

ONCA 391. The court concluded that this particular patient might not have voluntarily assumed the risks that the physician assumed she would take.

The values of our society reject, with increasing frequency, the arrogance of the proposition that the professional knows what is best for the client. Such an approach to clients is now viewed almost universally as unacceptable paternalism. Certainly such conduct is becoming an increasingly significant source of complaints for regulators. It is no longer sufficient to say "leave it with me".

As in personal relationships, professional relationships should not operate on the principle that "it is better to ask for forgiveness afterwards than to ask for permission first".

Obtaining Consent

To be genuine, consent must be based on a discussion of the relevant considerations in making the decision. Clients have to understand the nature of what is proposed to be done on their behalf. They need to know why it should be done. They have to be acquainted with what could go awry and the chances or odds of that happening. It is equally as important that clients must appreciate their options, including the alternative of doing nothing. Clients must have the ability to raise any individualized issues that may separate them from the "usual" client. Only then is the practitioner safe in accepting that they have authority to act.

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professional knows what is
best for the client.

It is not adequate to say that the matter is too complicated to explain. Even though clients come to you for your expertise in an area that they do not understand, it is still possible to give clients the "big picture" of what is involved and a sense of what the risks and

benefits are.

Many practitioners assume that obtaining written instructions is sufficient to protect them. This assumption is incorrect. A written document that has not been explained and understood by the client is of no value. In many hearings clients assert that they were rushed to sign a paper they did not read and did not appreciate that they had a choice. This type of assertion is often credible because it resonates with the experiences we all have every day at the bank, the dry cleaner, renting a car or surfing the internet.

R eal consent is obtained by the meeting of the minds between the client and the practitioner. A broad spectrum of strategies is necessary to achieve these goals including:

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1. using handouts,
2. verbal explanations,
3. employing visual aids where feasible,
4. seeking client feedback as to what they understand,
5. asking clients if they have any questions,
6. proper use of a consent form,
7. documentation in the file of the consent obtained, and
8. frequent updates and reports while providing the service.

Of course, the ability to communicate clearly in non-technical language is a huge asset. Obtaining consent should be viewed as a process, not an event.

Application to Regulators

In some respects, regulators are frequently ahead of practitioners in the consent realm. While practitioners rarely have the right to proceed without consent (basically only where there is an emergency or an express legal duty to disregard the client's wishes), professional regulators have the legal ability to act unilaterally in much of what they do. However, many regulators go out of their way to circulate proposals, consult with stakeholders, poll leaders of the profession, place website postings and give formal notice before establishing policies or taking regulatory action. Even after making a decision on a matter, regulators frequently develop a communications plan as part of implementation.

Both to benefit their members and to proactively reduce complaints, regulators should strive to communicate with members about how to obtain informed consent for all professional services.

Nobody can hurt me without my permission.
—Mahatma Gandhi

Grey Areas is a newsletter published by Steinecke Maciura LeBlanc, a law firm practising in the field of professional regulation.



THE PSYCHOLOGICAL ASSOCIATION OF MANITOBA L'ASSOCIATION DES PSYCHOLOGUES DU MANITOBA

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