



Notes from the College January 18, 2018

When Acts Collide: Duty to Report, Client Confidentiality and the Highway Safety Act

The **Duty to Report under the Highway Safety Act** Membership Advisory invoked some concern and corresponding confusion among the membership. The need for further clarification was discussed during an Executive Council meeting and I was invited to respond.

<http://www.skcp.ca/pdf%20files/duty-to-report-under-traffic-safety-act-advisory.pdf>

To refresh your memory, the advisory reminded psychologists of their “*duty to report*”:

The name, address and clinical condition of every person who:

- a) is 15 years of age or over attending on the medical practitioner for medical services; and
- b) in the opinion of the medical practitioner, is suffering from a condition that will make it dangerous for that person to operate a vehicle.

The Advisory went on to provide additional details:

Psychologists are advised that there is a **legal duty to report** when in their professional opinion there is the potential for harm as an individual suffers from a condition which “will make it dangerous for that person to operate a vehicle”. The Medical Review Unit at Saskatchewan Government Insurance (SGI) make decisions regarding licensure and coverage based on the practitioner reporting. If a member of the public disagrees with a decision made by SGI they have the right of appeal to the Highway Traffic Board.

Psychologists are reminded of their professional and ethical obligations in regard to the issues of informed consent, assessment and diagnostic practice in making such a report.

The last sentence in the advisory identifies the key issues that psychologists must consider in making a report; informed consent, assessment, and diagnosis. Those issues will be examined in more depth relative to the Canadian Code of Ethics for Psychologists 4th Edition (2017):

Informed Consent

- Having established a “trusting relationship” [I.17] with a client facilitates the subsequent and ongoing sequence of events designed to provide “as much information as reasonable or prudent individuals and groups would want to know before making a decision or consenting to the activity.” [I.23].
- Closely related to the informed consent process is the confidentiality provision in the Code of Ethics that clearly outlines those conditions or circumstances where confidentiality will need to be overridden by “duty to report” or “duty to protect” provisions [I.45; II. 42; IV. 17; IV. 18].
- In the case of a duty to report concerns about a client’s ability to operate a motor vehicle safely, the duty required under the Highway Safety Act, supersedes the duty under the Health Information Protection Act (HIPA) to protect client confidentiality.

- Unless it's an emergency and the need to act is immediate, take the time to consult with colleagues to determine "the most ethical course of action" [IV.18] while keeping in mind that "mandatory reporting" [IV.17] is part of our **Responsibility to Society** [Principle IV.].
- It is essential that during the informed consent process, clients are made aware of the exceptions to confidentiality including the duty to report (I.16, I.23).

Assessment

Reminders:

- You are not being asked to assess your client for their fitness to operate a motor vehicle.
- You are not being asked to make a recommendation about your client's fitness to operate a motor vehicle.
- You are being asked to identify possible concern about your client's ability to safely operate a motor vehicle.
- The final decision about whether or not your client is able to continue driving is that of SGI
- **Responsible Caring** entails:
 - A Thorough **Risk/Benefit** analysis where the assessment methods used "are appropriate to the particular cultural and social contexts of the individuals and groups involved" [Principle II.13]
 - **Maximize benefit** by "selecting assessment tools, methods, interventions, and communication modalities" [Principle II.18]
 - Results of assessments "would be communicated in ways that are developmentally, linguistically, and culturally appropriate, and that are meaningful and helpful" [Principle II.20]
 - **Offset/Correct Harm**: "Do everything reasonably possible to stop or offset the consequences of actions by others when these actions are likely to cause imminent serious bodily harm to themselves or others" [Principle II.42]

Diagnosis

- Members establishing diagnoses must have the Authorized Practice Endorsement (APE) on their license. - Caution is advised about "reaching" in regard to the potential impact a particular diagnosis could have on one's competence to drive – this is a decision for SGI and not the Psychologist.
- The focus of any diagnostic statement should be on the specific client and their presentation. The following statement from the original practice advisory may allay some concerns about the potential consequences of filing a report on a client to the Medical Review Unit at Saskatchewan Government Insurance (SGI):

- 4) A report made pursuant to this section:
 - (a) is privileged for the information of the administrator only;
 - (b) is not open to public inspection; and
 - (c) is not admissible in evidence in any trial, except to show that the report was made in good faith in accordance with this section

Related excerpts from:

**Canadian Code of Ethics for Psychologist
(CPA 2017)**

http://www.cpa.ca/docs/File/Ethics/CPA_Code_2017_4thEd.pdf

Principle I: Respect for the Dignity of Persons and Peoples

Informed consent

I.16 Seek as full and active participation as possible from individuals and groups (e.g., couples, families, organizations, communities, peoples) in decisions that affect them, respecting and integrating as much as possible their opinions and wishes. This would include respect for written or clearly expressed unwritten advance directives. Also, when working in an organizational or community context, it would include seeking participation of relevant individuals and subgroups that may not be represented by or may not have a role in the formal leadership.

I.17 Recognize that obtaining informed consent is a process that involves taking time to establish an appropriate trusting relationship and to reach an agreement to work collaboratively, and may need to be obtained more than once (e.g., if significant new information becomes available).

I.18 Respect the expressed wishes of individuals to involve others (e.g., family members, community members, community leaders) in their decisions regarding informed consent.

I.19 Obtain informed consent from all independent and partially dependent individuals and groups (e.g., couples, families, organizations, communities, peoples) for any psychological services provided to them except in circumstances of urgent need (e.g., disaster or other crisis). In urgent circumstances, psychologists would proceed with the assent of such individuals and groups, but fully informed consent would be obtained as soon as possible. (Also see Standard I.29.)

I.20 Obtain informed consent for all research activities that involve obtrusive observation or measures, invasion of privacy, risk of harm, or any attempt to change the behavior of research participants.

I.21 If signed consent forms are required by law or desired by the psychologist, the individuals or groups giving consent, or the organization for whom the psychologist works, establish and use signed consent forms that specify the dimensions of informed consent or that acknowledge that such dimensions have been explained and are understood.

I.22 Accept and document non-written consent (e.g., oral, a verbal agreement, a handshake or other culturally normative exchange) in situations in which signed consent forms are not acceptable culturally or in which there are other good reasons for accepting non-written consent.

I.23 Provide, in obtaining informed consent, as much information as reasonable or prudent individuals and groups (e.g., couples, families, organizations, communities, peoples) would want to know before making a decision or consenting to the activity. Typically, and as appropriate to the situation and context, this would include: purpose and nature of the activity; mutual responsibilities; whether a team or other collaborators are involved; privacy and confidentiality

limitations, risks and protections; likely risks and benefits of the activity, including any particular risks or benefits of the methods or communication modalities used; alternatives available; likely consequences of non-action; the option to refuse or withdraw at any time, without prejudice; over what period of time the consent applies; and how to rescind consent if desired. (Also see Standards III.23-27.)

Principle II: Responsible Caring

Risk/Benefit Analysis

II.13 Assess the individuals and groups (e.g., couples, families, organizations, communities, peoples) involved in their activities adequately enough to ensure that they will be able to discern what will benefit and not harm them, using assessment methods that are appropriate to the particular cultural and social contexts of the individuals and groups involved.

Maximize benefit

II.18 Strive to provide and/or obtain the best reasonably accessible service for those seeking psychological services. This may include, but is not limited to, selecting assessment tools, methods, interventions, and communication modalities that are: (a) relevant and tailored to the needs, characteristics, and contexts of the primary client or contract examinee; and (b) based on the best available evidence in light of those needs, characteristics, and contexts. It also may include, but is not limited to: consulting or collaborating with service-providing organizations in the community, members of other disciplines, individuals and groups relevant to the culture or belief systems of those receiving or being subject to services; or advocating on behalf of a primary client when appropriate and needed.

II.20 Provide suitable information, unless declined or contraindicated (e.g., some critical inquiry studies, possibility of harm, legally disallowed), about the results of assessments, evaluations, or research findings to the individuals and groups (e.g., couples, families, organizations, communities, peoples) involved. This information would be communicated in ways that are developmentally, linguistically, and culturally appropriate, and that are meaningful and helpful.

Offset/Correct Harm

II.42 Do everything reasonably possible to stop or offset the consequences of actions by others when these actions are likely to cause imminent serious bodily harm to themselves or others. This may include, but is not limited to, the possibility of disclosing some confidential information to appropriate authorities (e.g., the police), an intended victim, or a family member or other support person who can intervene. (Also see Standard I.45.)

Principle III Integrity in Relationships

Straightforwardness/openness

III.13 Be clear and straightforward about all information needed to establish informed consent or any other valid written or unwritten agreement (e.g. fees, including any limitations imposed by third-party payers; relevant conflicts of interest; relevant business policies and practices; contact information of accountability bodies; mutual concerns; mutual experiences; possible conflicts; possible outcomes; and expectations for processing, using, and sharing any information generated.

III.16 Fully explain reasons for their actions to the individuals and groups that have been affected by their actions, if appropriate and if asked.

Principle IV: Responsibility to Society

Beneficial activities

IV.11 Protect the skills, knowledge, and interpretations of psychology from being misinterpreted, misused, used incompetently, or made useless (e.g., loss of security of assessment techniques) by others.

Respect for Society

IV.17 Familiarize themselves with the laws and regulations of the societies in which they work, especially those that are related to their activities as psychologists (e.g., mandatory reporting, research regulations, jurisdictional licensing or certification requirements), and abide by them. If those laws or regulations seriously conflict with the ethical principles contained herein, psychologists would do whatever they could to uphold the ethical principles. If upholding the ethical principles could result in serious personal consequences (e.g., jail, physical harm), decision for final action would be considered a matter of personal conscience.

IV.18 Consult with colleagues or appropriate others, including advisory groups, if faced with an apparent conflict between abiding by a law or regulation and following an ethical principle, unless in an emergency, and seek consensus as to the most ethical course of action and the most responsible, knowledgeable, effective, and respectful way to carry it out.