

# **B.C. ASSOCIATION OF CLINICAL COUNSELLORS STANDARD FOR INFORMED CONSENT TO CLINICAL COUNSELLING**

## **AND THE COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION**

### ***INTRODUCTION***

This document sets out the standards a clinical counsellor should follow to obtain a client's informed consent to counselling therapy, services and treatment ("clinical counselling"), and to the use, collection and disclosure of personal information.

The BCACC Board has approved a separate standard on *Payment for Clinical Counselling Services*, which sets out the standards a counsellor should follow to obtain a client's agreement for the payment of clinical counselling services.

All standards are interpreted and applied with reference to the BCACC *Code of Ethical Conduct*. RCCs should familiarize themselves with the *Code*, and may wish to consult in particular paragraphs 11-17, 19, 22, 24, 25 and 27 under Respect for the Dignity of All Persons and Peoples, paragraphs 3 and 6 under Responsible Caring, and paragraphs 6 and 7 of Integrity in Relationships.

### ***INFORMED CONSENT TO CLINICAL COUNSELLING***

Obtaining the informed consent of a client to the proposed clinical counselling is a critical, first-step in the counselling relationship. If a counsellor provides counselling services without consent, the counsellor could be liable for any resulting negative consequences.

Consent must be informed. That is, the person giving a truly informed consent needs to have sufficient information to fully understand the nature of the treatment being proposed. The counsellor must therefore provide the client with sufficient information to allow the client to understand the purposes, risks and benefits of the proposed counselling. The counsellor must also allow the client to ask questions and receive clear and relevant answers that address the client's concerns.

Generally, the sort of information a counsellor must provide to a client before the client can give informed consent is information that a reasonable person in the client's particular circumstances would require so as to understand the proposed services and make an informed decision. Usually, this will include information about the client's condition or situation for which the

services are being proposed, the nature of the proposed clinical services, the risks and benefits of those services that a reasonable person would expect to be told about, as well as any clinical options, including not doing anything. Further, a counsellor has a duty to communicate with a client in a way that is appropriate to that client's particular skills, ability and language.

In most situations, a counsellor can presume that every adult client the counsellor sees is capable of giving, refusing or revoking consent to clinical counselling services. In the rare circumstance that the counsellor believes that an adult client is not capable of giving or is unable to communicate informed consent (e.g. because of mental defect or a physical, psychological or emotional incapacity, as examples), the counsellor should obtain consent from an authorized substitute decision maker.<sup>1</sup> Legally, a client under the age of 19 who is mature enough to and does fully understand the nature of the therapy can also give their consent to their own therapy. The child in that instance can give consent without a parent or guardian's knowledge or approval.<sup>2</sup>

*Once the client gives consent, this does not end the process.* The counsellor must ensure that informed consent continues throughout the counselling relationship. The counsellor may have to seek the client's consent again if circumstances change, such as when the nature of counselling services changes significantly from what was originally agreed, or when a new treatment modality is proposed. The general rule is, when in doubt, seek to renew informed consent.

Consent can be expressed in several ways, from the very formal and overt to the merely implicit. Some common forms of consent are:

The written Consent Form. These forms are of value for dealing with general matters such as overall therapeutic orientation or other items that will apply to all clients throughout the therapy process. However, they should **never** be interpreted as a blanket consent to any and all treatment.

1. Other written consent. This may be an additional Consent Form, or it may be as simple as asking the client to sign off on a short note in the clinical records. Written consent should be considered for significant changes or the introduction of new therapeutic processes as the therapy progresses.
2. Verbal consent. Counsellors should however ensure that there are no language or comprehension barriers that can void verbal consent.
3. Implied consent. This would include a nod of the head or other, similar gesture.
4. A client can also consent to clinical counselling by action or conduct, such as voluntarily giving the counsellor information and participating in therapy.

A more formal, overt consent, rather than informal or implied consent techniques should be used at the outset as well as for particularly sensitive or emotionally difficult clinical interventions, and in situations which represent a significant shift from previous therapy you

have been conducting with the client.

Even where consent is very informal or implied, the counsellor should document the consent. For example, a counsellor can make a note in the clinical record that the client was informed and gave an implied or an oral consent.

The client can also withdraw consent at any time, thus effectively ending the counselling relationship. The withdrawal of consent may also be expressed in both formal and overt ways or be merely implied. Counsellors should be sensitive to the possibility of an implied withdrawal of consent and should check in with the client if they think this may be occurring. In so doing counsellors would be well advised to remain aware of the effects of culture, to educate themselves as to these effects, and to seek information from the client about the client's cultural norms.

### ***CONSENT TO USE OF PERSONAL INFORMATION***

The *Personal Information Protection Act* (PIPA) came into force on January 1, 2004, and applies to all self-employed counsellors in private practice who are not employed by or under contract with an agency that may itself be subject to the PIPA or other similar legislation outside the jurisdiction of British Columbia.

This standard is intended to highlight the legal obligations of counsellors whose practices are subject to PIPA or similar legislation outside the jurisdiction of British Columbia. The legal obligations set out under PIPA have consolidated prior common law, statute, and ethical principles to create comprehensive instructions for the collection, use and disclosure of personal information. RCCs in private practice in British Columbia are to inform themselves as to the impact of PIPA and ensure that they are following practices consistent with PIPA. RCCs seeking further information about PIPA may consult *Personal Information Protection Act: A Counsellor's Guide for Developing Client Personal Information Protection Policies and Procedures* (approved by the Board on October 16, 2004 and available on the BCACC website). RCCs should also not hesitate to seek independent legal advice.

Employed or contract counsellors should follow their employer's privacy policies and procedures to ensure compliance with the appropriate privacy statutes.

Personal information is defined as "information about an identifiable individual". It is likely that most of the information contained in clinical records will be information about the client him- or herself. Nevertheless, it is important to remember that the person having a privacy interest in the information is the person who is the subject of the information, whether they are your client or not. Personal information, as defined by PIPA, about another person that has been disclosed by the client in therapy, may not be disclosed pursuant to a consent given by your client. Your client is not the person who owns that personal information. In such situations it is appropriate to redact records prior to disclosure to remove the personal

information belonging to others. If there are any doubts about what should be disclosed, RCCs should not hesitate to seek independent legal advice.

Under PIPA, the principle of informed consent applies. The counsellor must provide the client with sufficient information to allow the client to give informed consent to the collection, use and disclosure of the client's personal information. While PIPA sets out certain exceptions to the consent requirement and allows a counsellor to rely on deemed consent in certain situations, as a matter of practice BCACC recommends that RCCs document a client's consent to the collection, use and disclosure of the client's personal information.

Section 8(3) of PIPA allows a counsellor to collect, use or disclose personal information about a client for specified purposes if four conditions are met:

- (a) The counsellor provides the client with a notice, in a form the client can reasonably be considered to understand, that the counsellor intends to collect, use or disclose the client's personal information for those purposes,
- (b) The counsellor gives the client a reasonable opportunity to decline within a reasonable time to have his or her personal information collected, used or disclosed for those disclosed purposes,
- (c) The client does not decline, within the time allowed under paragraph (b), the proposed collection, use or disclosure, and
- (d) The collection, use or disclosure of personal information is reasonable having regard to the sensitivity of the personal information in the circumstances.

### ***CONTENTS OF A GENERAL CONSENT FORM***

It is good practice to use a general consent form that covers both information about therapeutic modality and PIPA requirements as to the collection, use and disclosure of personal information (although the general consent form, as previously noted, should not be relied upon as giving a blanket consent).

The consent form should be separate from the payment agreement between the counsellor and the client.

A general consent form should include:

1. The counsellor's name, academic qualification(s), professional membership in BCACC and professional registration number.
2. A description of the nature of the counsellor's professional practice, i.e. the counsellor's therapeutic orientation.
3. A brief description of the benefits of clinical counselling, taking into account the counsellor's orientation; benefits could include, for example, gaining personal insights, learning new ways to cope with or solve problems, developing new skills, and changing unwanted behaviours.

4. A brief description of the known or anticipated risks of clinical counselling, taking into account the counsellor's particular orientation; risks could include, for example, evoking strong emotions or difficult memories, changes in self-awareness, and different ways of relating to others.
5. A description of the purposes for which the counsellor will collect, use and disclose the client's personal information, including disclosure of information to third parties (as required by PIPA).
6. The client's rights to access the information in their clinical records or to obtain a copy of those records, and the counsellor's fee for this service, if any.
7. The client's right to refuse particular therapeutic modalities and to withdraw consent to counselling at any time during the counselling process.
8. That all information provided by the client to the counsellor will be kept confidential, subject to common law and statutory exceptions. The exceptions include but are not limited to the mandatory reporting of suspected child abuse,<sup>3</sup> the possible reporting of risk of serious harm to self or other,<sup>4</sup> or when so ordered by a court of law.
9. If a client has a concern and is not satisfied that the RCC has addressed that concern, the client's right to then file a written complaint against the RCC with the BCACC and contact information for that purpose (see paragraph 12 under Respect for the Dignity All Persons and Peoples in the BCACC *Code of Ethical Conduct*).
10. The client's and counsellor's names and signatures, and the date the form was signed by each.
11. Other items can and should be included depending on the particular circumstances of the client or practice of the RCC, where it is possible that they will impact the client's ability to give a truly informed consent.

Both counsellor and client should have a copy of the signed consent form, with the counsellor keeping the original.

*Standard for Informed Consent to Clinical Counselling  
and the Collection, Use and Disclosure of Personal Information  
Approved Board of Directors  
October 16, 2010*

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<sup>1</sup> As it is highly unlikely that a clinical counsellor will be providing counselling services to a client who is incapable or unable to give informed consent, this standard will not address the requirements for obtaining substitute consent. Counsellors who do find themselves in such a situation should obtain independent advice before proceeding.

<sup>2</sup> Bryce, G. "Obtaining Consent from Children", 12:2 *Insights* at 11, 12 & 20 (Summer 2000), see also Bryce, G. & M. Sandor "Consent for Counselling Children during Marital Breakdowns", 13:3 *Insights* at 12 to 14, 25 to 26 (Winter 2002). Both articles are also posted at the BCACC website.

<sup>3</sup> Bryce, G. "Reporting Suspected Child Abuse or Neglect: An Exception to a Counsellor's Duty of Confidentiality", part 1 @ 11:2 *Insights* at 9-10 (Summer 1999), and part 2 @ 11:3 *Insights* at 10-11 (Winter 1999). This article is also posted at the BCACC website.

<sup>4</sup> Bryce, G. "A Counsellor's Duty to Warn Foreseeable Victims of a Client's Violence", 14:1 *Insights* at 10 to 12, & 25 (Spring 2002). This article is also posted at the BCACC website.