

## **NOTEBOOK ON ETHICS, LEGAL ISSUES AND STANDARDS FOR COUNSELLORS AND PSYCHOTHERAPISTS**

### **Let's Give *Informed Consent* the Attention it Requires**

Dr. Glenn Sheppard

*Informed consent* is a core ethical obligation for counsellors and psychotherapists and it is extensively referenced in codes of ethical conduct. This is so because it applies to all aspects of our diverse professional services including: individual, couples, family and group counselling, assessment, supervision, consultation, research and professional preparation programs.

The duty to obtain informed consent has taken on increased significance since the helping professions have substantially abandoned the paternalistic attitude of "helpers always know best." It should be based on a respect for the autonomy of clients and their capacity for self-determination. Informed consent is intended to help clients become knowledgeable about the ground rules for the counselling process and relationship. This applies as well to engagement in other professional services. The process of acquiring consent from clients can be an important first step in establishing a positive therapeutic involvement. It can give an implicit message that the service to be delivered will be based on a relationship of respect and collaboration. Pinals (2009), based on her research, concluded that, "Informed consent can enhance the therapeutic alliance and help improve treatment adherence"

It is not uncommon for counsellors and psychotherapists to provide clients, on their first visit, with an informed consent form, provided by themselves or a receptionist, with a request to begin filling it out while waiting. Many clients will comply and begin this process but others may not be able to do so due to a literacy or language issue or for some other reason so for them this may not be a good start. In any case, completing and signing the form does not ensure that clients have a full and sufficient understanding of the information contained in it. This requires discussion with them once in the office with attention to client questions and the use of the gentle art of inquiry in order ensure that clients fully comprehend that to which they are consenting.

The informed consent process is not static but rather a dynamic one which may change over time. This could be because the counsellor wishes to engage in a different intervention approach or therapeutic activity. It will also have to be revisited if the role changes, for example, from individual to couples or family counselling. Also, client informed consent is not necessarily permanent but can be withdrawn or changed at any time.

Client understanding during the informed consent process can be significantly affected by many factors such as: education or literacy level, age, cognitive developmental disability or other disabilities. Some clients may not be able to provide consent and will have to rely on someone with the appropriate legal status to grant it on their behalf. However, all clients should be encouraged to participate in the process to the maximum extent possible. This ethical obligation is captured in this ethical clause from the CCPA Code of Ethics:

## **B5. Children and Persons with Diminished Capacity**

*Counsellors conduct the informed consent process with those legally appropriate to give consent when counselling, assessing, and having as research subjects' children and/or persons with diminished capacity. These clients also give consent to such services or involvement commensurate with their capacity to do so. Counsellors understand that the parental or guardian right to consent on behalf of children diminishes commensurate with the child's growing capacity to provide informed consent. (Page 8)*

This obligation to maximize client autonomy over the consenting process also means that the common law provision of *mature minor* must be respected. It applies when a minor is capable of consenting or refusing consent to counselling when capable of appreciating the nature and purpose of it and the consequences of giving or refusing consent. Parents/guardians of a minor client are informed that content of the counselling will not be disclosed to them unless there is prior or subsequent consent of the minor to do so in whole or in part. Of course, some disclosure may be necessary if there is concern about abuse or other client safety issues.

Some examples of the application of the informed consent process:

- Couples and family counselling present unique challenges with respect to the maintenance of confidentiality. The matter of how a request for disclosures of information resulting from such counselling will be treated is clarified during the informed consent process. Agreement must be sought among all parties and documented. Unless there is agreement to the contrary the "couple" or "family" will be considered to be the client requiring the consent of all parties in each. However, information from any related individual counselling can be treated in the usual manner.
- When working with clients who are mandated for counselling or assessment services they are informed of what person(s) or agency are entitled to any resultant report or information and of their right to refuse consent and the likely consequence of doing so.
- Students and others who are receiving supervision disclose to their clients that they are supervisees and its implications for the maintenance of confidentiality. They also disclose the identity of the supervisor and their contact information. Clients will then decide if they are willing to receive services under such conditions.
- When counsellors and psychotherapists receive from a third party, such as a current or previous client's legal representative, a request for a copy of their counselling records it often includes a copy of a client informed consent form. It is important with such requests to examine the form to determine its adequacy with respect to content and signature and to make every effort to contact the client. Sometimes the informed consent briefing by the third party fails to meet the standard of practice for it and clients are surprised to learn that the disclosure of their record cannot be selective of the contents but that the complete record must be disclosed. This can result in some reconsideration of their earlier consent. On such occasions the client and the third party might be willing to agree to a written report rather than receiving the entire record. (In my practice this resolution has often been a successful outcome in similar circumstances)
- When counsellors choose to offer their counselling services by distance, social media, and/or technology the informed consent process must be more comprehensive to address the many features and issues unique to those modes of service delivery. The *CCPA Technology and Innovative Solutions Chapter* provides a listing of these additional requirements on Page 22 of its Guidelines (See CCPA website). These will include

agreement on protocols and practices to follow to maximize appropriate client use, maintain security and confidentiality, what to do in emergencies and system failures, and so forth.

There are limits to that which clients may be asked to consent. Client consent may not be considered appropriate, and could be null and void, if the activities to which consent is given are outside the usual ethical code provisions or standards of practice or are incompatible with client safety or public health policy.

At the conclusion of this brief review, readers are referred to a section about **Informed Consent** on Page 15 of the **CCPA Standards of Practice**. There is a reminder there that all informed consent processes must always meet the fundamental conditions that consent is given by clients **voluntarily, knowingly, and intelligently**. Also, you are invited to visit a web page entitled *Informed Consent in Therapy and Counselling: Forms, Standards and Guidelines and References*. It can be found at:

<http://kspope.com/consent/index.php>

It provides access to considerable resources about informed consent.