

# The College of Psychologists of Ontario

## College Advisory on Communication of a Diagnosis

### Background

In September, 1995 the Council of the College reviewed a discussion paper prepared by Dr. Maggie Mamen, Dr. Lynn Beale and Ms Elaine Moroney entitled "Diagnosis and Delegation: The Controlled Act in Psychological Practice". This document was approved for circulation to the membership for feedback. Although considerable focus was spent on the provision of psychological services in school settings, the intent of the discussion paper was to raise issues relating to the delivery of psychological services in other settings such as hospitals, corrections, private practice, etc.

Members were asked to provide comments on the discussion paper and proposed guidelines and to respond to specific questions posed by the College for assistance in formulating further guidance to the profession. Nine responses were received from members, either individually or collectively, in practice in schools and in hospitals. A response was received from the Ontario Chief Psychologist's Association and a response was also received from a masters' level provider who was not a member of the College. Responses were thoughtful and detailed despite the rather short time available prior to the December Council meeting at which time all responses from members were provided to Council and considered.

At the December meeting, Council deliberated a number of issues in order to provide a focus for the review of the discussion paper and responses to the consultation. Council reaffirmed the provision in the Standards of Professional Conduct that the Controlled Act should not be performed by an unregulated provider even under supervision. Council considered the difference between diagnosis and feedback, and the implications and potential consequences of each.

Council noted that the identification of a learning disability is not synonymous with making a neuropsychological diagnosis; however, Council was of the view that providing an opinion respecting the presence of mental retardation or development delay fell within the Controlled Act. With respect to work in the education system, Council noted that identification centres on a need, while a diagnosis centres on a cause. Council noted a need for clarification of terminology and of the meaning of diagnosis in general.

Council appointed a sub-committee to integrate the views of Council and to prepare a revision of the diagnosis and delegation discussion paper for review in March, 1996. At the March meeting of

Council, the sub-committee sought clear direction from Council respecting clarification of the Controlled Act concept. At that time, the Council was also in receipt of a response to the original discussion paper from the OPA Section on Psychology in Education. Council provided some general direction to the sub-committee and directed that a final paper be presented for consideration at the subsequent meeting.

At the June meeting, Council received a revised document drafted to provide guidance to members respecting the Controlled Act in the practice of Psychology. A further briefer revision was also provided in a document entitled: "A College Advisory on the Communication of a Diagnosis." After discussion and some minor editorial changes, the latter paper was approved for distribution to the membership. These revisions were developed by Dr. John Goodman, Dr. Judy van Evra, Ms Elaine Moroney and Dr. Gene Stasiak.

The attached Advisory has been approved by Council for the guidance of members. It represents College policy and supersedes the September 1995 discussion paper, which had been intended solely for discussion purposes.

Appended to the Advisory, members will find copies of sections from the Regulated Health Professions Act, a copy of a regulation amendment submitted to the Ministry in 1994 and reference to the Standards of Professional Conduct, Principle 10. Appended also are three resolutions passed by Council at the June 1996 meeting.

Although this Advisory represents College policy, the comments of members continue to be welcomed to assist the College in any future updating or refining of advice to members. §

# A College Advisory on the Communication of a Diagnosis

## 1. Controlled Acts in Psychology

The Regulated Health Professions Act permits members of the College of Psychologists of Ontario to perform two controlled acts: "communicating a diagnosis" and "using aversive stimulation". These are two of 14 acts that have special status within regulation since they are deemed to carry substantial risk of harm if improperly performed. The Regulations under the Psychology Act as well as the Standards and Guidelines of the College, place additional conditions on who may provide these services. Persons who are not regulated by the College of Psychologists or one of the other Colleges under the RHPA to which these acts have been legislated, may not perform them.

This advisory, which supplants the proposed guidelines described in the consultation paper "Diagnosis and Delegation: the Controlled Act in Psychological Practice"<sup>1</sup> is designed to help members and their employers, as well as employers and supervisors of unregulated health professionals who have historically performed these restricted acts, to understand their obligations with respect to this component of the legislation and the ramifications of not adjusting practice to conform with legislative requirements. Particular emphasis is given to the act of "communicating a diagnosis", since this is a service that is provided by a large number of members in many settings, often assisted by non-regulated support staff. However, many of the statements made in this context would also apply to the use of aversive stimulation.

## 2. Communicating a Diagnosis

The scope of practice of psychology as defined within the Psychology Act includes "the diagnosis of neuropsychological disorders and dysfunctions and psychotic, neurotic and personality disorders and dysfunctions". The related controlled act as described in the RHPA and the Psychology Act places this practice in the context of a **communication to a person to whom the psychological service is being provided or to his/her personal representative, identifying the cause of a person's symptoms, in circumstances in which it is reasonably foreseeable that the individual or his/her personal representative will rely on the diagnosis.**

## 3. Who May Communicate a Diagnosis

Controlled acts may be performed only by those health professionals who are members of a College regulated under the RHPA authorized to perform them directly or through delegation. College regulations and associated standards and guidelines permit delegation only by authorized members of the College (psychologists) to members of the College (psychological associates). Delegation to non-regulated persons who are under the supervision of a member of the College is not permitted regardless of historical practices that preceded the enactment of the RHPA. **The one exception allowed within the RHPA pertains to those persons holding Certificates Authorizing Supervised Practice.** Further, members may only

perform controlled acts if they have had no limitations placed on their certificate and if they have the appropriate training and experience to perform them competently.

#### 4. Criteria for Differentiating Between Feedback and Communication of a Diagnosis

Non-diagnostic feedback is a process of providing a summary of the findings of an assessment to a client or his/her personal representative which may have been gathered from a variety of sources such as formal testing, interview material, parental reports, professional judgement, etc. It may include a description of the procedures used in carrying out the assessment and identification of personnel who were involved in the assessment such as psychometrists or other unregulated providers and a description of their roles. A feedback session usually includes a general description of the test performance and/or an analysis of the information gained in clinical or counselling interviews or behavioral observation and may include recommendations for treatment/interventions to alter behaviour, alleviate symptoms, reduce presenting problems, etc.

Communication of a diagnosis is the end point of the assessment process. It is restricted to the identification for the client or his/her personal representative, usually by categorizing within a diagnostic classification system, of the causes of the presenting disorder or dysfunction. The diagnosis carries with it a high level of certainty based upon appropriate assessment techniques, such as history taking, standardized testing and clinical interviews, dedicated to isolating the causative factors for the presenting symptoms or problems. The communication must be made by the authorized member to the client or his/her personal representative within the context of a professional relationship in which it is likely that the information will be relied upon.

Examples of providing **feedback** to a client and not performing the controlled act include:

- describing a student's current academic achievement or problems, e.g., present vs. expected reading level;
- describing a student's cognitive, linguistic, social/emotional or other behaviour;
- discussing or recommending classroom or program modifications, academic interventions, behavioral strategies or teaching styles;
- restating a diagnosis, previously communicated by an authorized health professional, for the purpose of intervention or treatment;
- communicating diagnostic opinions to other colleagues in situations in which a diagnosis is not being communicated to a client or his/her personal representative, e.g., in multi disciplinary team meetings, IPRC meetings. A **diagnosis is communicated** when a causal or interpretive statement, usually categorized within a diagnostic nomenclature, e.g., DSM-IV, ICD10, is made to a client or his/her personal representative:
  - about a disorder or dysfunction,
  - in the context of a professional relationship,
  - when the client or his/her personal representative is likely to rely on the diagnosis, and
  - when incorrect identification would result in harm.

#### 5. Consequences for Performing a Controlled Act without Authorization

The RHPA specifies the penalties that may be imposed on persons who perform one of the controlled acts without appropriate authorization. A person found guilty of such an offence,

upon conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both. In addition, every person who procures employment for an individual in a position that requires the performance of a controlled act, and who knows that the individual is not authorized to perform such an act, is liable to a fine of not more than \$25,000.

**Restrictions imposed on the performance of controlled acts are not uniquely the policy of the College of Psychology of Ontario; they are legislated under the RHPA and apply to all regulated health professionals, unregulated service providers, and the public generally. (See Appendix).§**

## APPENDIX

The following sections selected from the Regulated Health Professions Act, 1991 describe the controlled acts, who may and may not perform them, to whom they may be delegated, prohibitions against their execution, and prescribed penalties for contravention.

### Prohibitions

27.- (1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

(a) the person is a member authorized by a health profession Act to perform the controlled act; or

(b) the performance of the controlled act has been delegated in accordance with section 28 to the person by a member described in clause (a).

(2) A "controlled act" is any one of the following done with respect to an individual:

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.

*Editor's Note: The remaining 13 acts listed within this subsection are not within the scope of practice of psychology and have been omitted for this excerpt.*

28.- (1) The delegation of a controlled act by a member must be in accordance with any applicable regulations under the health profession act governing the member's profession.

(2) The delegation of a controlled act to a member must be in accordance with any applicable



regulations under the health profession act governing the member's profession. 1991, c. 18, s. 28.

29.- (1) An act by a person is not a contravention of subsection 27 (1) if it is done in the course of,

(a) rendering first aid or temporary assistance in an emergency;

(b) fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession;

(c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;

(d) treating a member of the person's household and the act is a controlled act set out in paragraph 1,5 or 6 of subsection 27 (2); or

(e) assisting a person with his or her routine activities of living and the act is a controlled act set out in paragraph 5 or 6 of subsection 27 (2).

(2) Subsection 27 (1) does not apply with respect to a communication made in the course of counselling about emotional, social, educational or spiritual matters as long as it is not communication that a health profession Act authorizes members to make. 1991, c. 18 s. 29.

30.- (1) No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious physical harm may result from the treatment or advice or from omission from them.

(2) Subsection (1) does not apply with respect to treatment by a person who is acting under the direction of or in collaboration with a member if the treatment is within the scope of practice of the member's profession.

(3) Subsection (1) does not apply with respect to an act by a person if the act is a controlled act that was delegated under section 28 to the person by a member authorized by a health profession Act to do the controlled act.

(4) Subsection (1) does not apply with respect to anything done by a person in the course of,

(a) rendering first aid or temporary assistance in an emergency;

(b) fulfilling the requirements to become a member of a health profession if the person is acting within the scope of practice of the profession under the supervision or direction of a member of the profession;

(c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;

(d) treating a member of the person's household; or

(e) assisting a person with his or her routine activities of living.

(6) Subsection (1) does not apply with respect to an activity or person that is exempted by the regulations, 1991, c. 18, s. 30.

40.- (1) Every person who contravenes subsection 27 (1) or 30 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both.

. Every person who procures employment for an individual and who knows that the individual cannot perform the duties of the position without contravening subsection 27 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. 1991, c. 18, s. 41.

42.- (1) The employer of a person who contravenes subsection 27 (1) while acting within the scope of practice of his or her employment is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

(2) In addition, if the employer described in subsection (1) is a corporation, every director of the corporation who approved of, permitted or acquiesced in the contravention is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

(3) Subsection (2) does not apply with respect to a corporation that operates a public hospital within the meaning of the *Public Hospitals Act* or to a corporation to which Part III of the *Corporations Act* applies. 1991, c. 18, s. 42.

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An amendment to Ontario Regulation 878/93 was submitted by the Council of the College of Psychologists of Ontario to add the following section:

The following is a condition of the certificate of registration for psychological associates:

(1) A psychological associate may not perform the controlled act unless performance of the controlled act has been delegated to the psychological associate in accordance with the regulations.

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Principle 10 of the Standards of Professional Conduct provides an interpretation of the statute and regulation. See also Guideline "Delegation of the Controlled Act of Diagnosis"

### Council Meeting 96.02: June, 1996

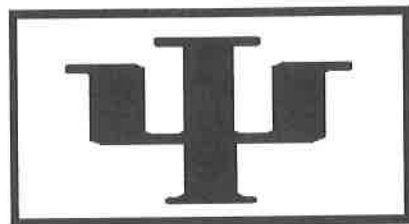
Resolution 1: That Council adopt the paper "Guidance Regarding the Controlled Act in the Practice of Psychology".

Resolution 2: That Council inform College members that in no circumstances may the controlled act be carried out by unauthorized member or unregulated providers except in those circumstances allowed under RHPA in sections 29 and 30 and in the College regulations.

Resolution 3: That Council adopt the resolution that, given the strict legislative boundaries set up around controlled acts, all employers and/or supervisors of unregulated providers be informed and urged to move quickly to encourage and assist those who are eligible for registration to become registered as soon as possible. §

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<sup>1</sup> Insert to The Bulletin, Volume 22, No. 2



The College of Psychologists of Ontario  
1246 Yonge Street, Suite 201  
Toronto, Ontario  
M5R 1V2

tel: (416) 961-8817 fax: (416) 961-8817  
e-mail: [cpo@cpo.on.ca](mailto:cpo@cpo.on.ca)