



### Client Abuse, Neglect, and Family Violence: Duty to Report & Client Confidentiality

#### GUIDELINES

#### *Client Abuse, Neglect, and Family Violence: Duty to Report & Client Confidentiality*

##### PURPOSE

The purpose of this document is to assist registrants in determining their professional duty to report as well as the appropriate level of client confidentiality where there is evidence or an allegation of child abuse, neglect, or family violence.

##### CHILDREN (under 19 years of age) / YOUTH (16 years of age or over but under 19 years of age)

***Q1: I have reason to believe that my (child) client, or the child of my client, is being abused and/or neglected by a caregiver/family member. Do I have a professional duty to report, and what level of client confidentiality am I obligated to maintain?***

A1: The *Child, Family and Community Service Act (CFCSA)* requires that anyone, including a health care professional, who has reason to believe that a child or youth has been or is likely to be abused or neglected, and that the parent is unwilling or unable to protect the child or youth, must report the suspected abuse or neglect to a **child welfare worker**<sup>1</sup>, or in an

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<sup>1</sup> Child welfare workers employed by the Ministry of Children and Family Development (MCFD) are delegated under the *CFCSA* to assess reports, provide support services, investigate as needed and collaborate with other service providers, such as police, school personnel, health practitioners, etc. to help ensure the safety and well-being of children and youth.

emergency situation, the police. The only exception to this requirement is in the case of a client-solicitor (lawyer) relationship.

As a health care provider, you have a key role to play in helping to keep children and youth safe. You can read about your role in the [BC Handbook for Action on Child Abuse and Neglect](#).

If you think a child or youth under 19 years of age is being abused or neglected, you have the legal duty to report your concern to a **child welfare worker**. Phone **1 800 663-9122** at any time of the day or night.

If the child or youth is in immediate danger, call **9-1-1** or your local police.

***Q2: I have been asked by a parent of my (child) client, or the parent's lawyer, to release patient records or client information to them. Am I obligated to release that information? What if that parent is the one who pays for my services even though the child doesn't live with them?***

A2: Regardless of 'who pays the bills', under the *Family Law Act (FLA)*, your principal duty is to the child.

Where a parent is asking for patient records, client or billing information, you need to know who the child's guardian is. Only a guardian has access to a child's health services information.



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Parenting arrangements – either by agreement or court order – can be complicated. One or both parents may be a guardian, and parental responsibilities and parenting time is established by the arrangement. Only a guardian can have parental responsibilities. The parent accompanying the child to your clinic will be a guardian with parenting responsibilities; the other parent may not. Where you are unsure if the parent asking for this formation is entitled to it, you can ask to see a copy of the agreement/court order. Also, a letter from a lawyer is not the same thing as an order of the court

***Q3: I have been asked by a parent of my (child) client, or the parent's lawyer, to appear in court, and/or provide evidence, as part of a family law matter. Am I obligated to appear and/or provide evidence?***

A3: If you are being asked to appear or testify, you need to be compelled to do so in the form of a court-ordered subpoena.

#### ADULTS (19 years or older)

***Q4: I have reason to believe that my adult client is the victim of family violence. Do I have a professional duty to report, and what level of client confidentiality am I obligated to maintain?***

A4: Without a consent waiver, pre-signed by the client – one that clearly outlines the limits of confidentiality you will operate under as their health care provider (e.g., reporting child abuse, family violence, or uttering threats of self-harm or harm to others) -- you cannot report any actual or alleged violence without their consent. People are entitled to make bad decisions -- you

can provide assistance, provide them with advice on what they should do, and even offer to call the police on their behalf, but again, you cannot report an incident without their consent.

***Q5: I have reason to believe that my adult client is suffering from an apparent mental disorder, and has threatened to harm him/herself (or has threatened to harm someone else). Under the Mental Health Act, to involve the police, must a person with an apparent mental disorder commit a crime or be physically violent?***

A5: No. Under the *Mental Health Act*, if it is not possible for a person who apparently has a mental disorder to see a physician, the Act authorizes the police to intervene in some circumstances. The person need not commit a crime or be physically violent. Requests for police assistance often involve emergency or urgent situations where the usual procedures of seeing a physician or going to the hospital are not possible. The police officer must be satisfied the person is apparently suffering from a mental disorder, as defined in the Act, and is acting in a manner likely to endanger their own safety or that of others.

Police involvement with people with mental disorders can arise from complaints about the person by others, direct observation of the person's behavior by the police or in response to requests for assistance from health professionals or family members.

You can read about your role, and the role of the police, in the [Guide to the Mental Health Act](#).



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If you have reason to believe your client is acting in a manner likely to endanger their own safety or that of others, and is unwilling or unable to seek assistance from a physician or go to a hospital voluntarily, **call 9-1-1 or your local police.**

#### VULNERABLE ADULTS (19 years or older)

***Q6: My adult client has a severe hearing impairment. I have reason to believe that they are being neglected by a caregiver/family member. Do I have a professional duty to report, and what level of client confidentiality am I obligated to maintain?***

A6: Under the *Adult Guardianship Act (AGA)*, where an adult client is someone who is being abused or neglected AND is unable, in this case due their disability, to seek support and assistance on their own, you may report that information to a designated agency.<sup>2</sup>

#### RELATED DOCUMENTS

- [BC Handbook for Action on Child Abuse and Neglect January 2016](#)
- [Domestic Violence Toolkit for Health Care Providers in BC 2014](#)
- [Guide to the New BC Family Law Act October 2012](#)
- [Guide to the Mental Health Act Apr 2005](#)

#### GLOSSARY

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<sup>2</sup> Community Living British Columbia (CLBC) is designated as an agency, as well as each regional health board is designated as an agency for its region. Providence Health Care Society is designated as an agency in relation to adults who are patients or persons in care at hospitals or facilities owned and operated by Providence Health Care Society.

#### **Access**

Under the *Divorce Act*, this refers to the time a child spends with a parent who does not have custody of the child. The terms “custody” and “access” are only used where parents have applied for a court order about their family issues under the *Divorce Act* in Supreme Court. The terms are not used if parents have applied for a court order under the *Family Law Act* in Supreme Court or in Provincial Court.

#### **Caregiver**

A person who is legally responsible for a child’s day-to-day care, for example, a foster parent.

#### **Child**

In British Columbia, under the *Child, Family and Community Service Act (CFCSA)*, a child is anyone under the age of 19.

#### **Child Welfare Worker**

A person delegated under the *Child, Family and Community Service Act (CFCSA)* to provide child welfare services, including responses to suspected child abuse and neglect.

#### **Contact/contact with the child**

Under the *Family Law Act (FLA)*, contact is the time that a person who is not a guardian spends with the child. This person could be a parent who doesn’t have guardianship, or another relative, like a grandparent.

#### **Custody**

Under the *Divorce Act*, this is used to describe who will live with the children and be responsible for providing daily care. The terms “custody” and “access” are only used where parents have applied for a court order about their family issues under the *Divorce Act* in Supreme Court. The terms are not used if



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parents have applied for a court order under the *Family Law Act* in Supreme Court or in Provincial Court.

#### **Delegated Aboriginal Child and Family Services Agency**

An organization that provides culturally-appropriate services to Aboriginal children, youth and families, and whose child welfare workers have delegated authority under the *Child, Family and Community Service Act* (CFCSA) to provide child welfare services, including responses to suspected child abuse and neglect.

#### **Divorce Act**

Federal law that gives the Supreme Court of British Columbia the authority to grant divorces and, as part of the divorce, to deal with child and spousal support, child custody, and access.

#### **Family Law Act**

The *Family Law Act* (FLA) governs family law in British Columbia. It emphasizes that decisions at separation involving children's care must be based only on the best interests of the children. It also focuses on parental responsibilities and encourages separating couples to decide their family law issues through agreement rather than going to court.

#### **Family Violence**

Family violence includes physical, sexual, and psychological or emotional abuse of a family member. Psychological or emotional abuse includes intimidation, harassment, coercion, threats, financial abuse, stalking, and intentional damage to property. In the case of a child, it includes witnessing or being exposed to family violence. Family violence does not include self-defense.

#### **Guardian/Guardianship**

A guardian is responsible for their child's care and upbringing. Under the *Family Law Act* (FLA), the general rule is that a parent is a guardian of their child, except where they have never lived with their child. Only a guardian may have parental responsibilities and parenting time. A parent can be added or removed as a guardian by agreement or court order. A non-parent can become a guardian of a child through a court order.

#### **Parental responsibilities**

These are the responsibilities guardians have when raising a child, including:

- Daily decisions made when caring for a child
- Important decisions like those related to education, religion, and medical treatment
- Receiving information about the child from others (including about health and education), and
- Protecting the child's legal and financial interests

Parental responsibilities can be shared or allocated between the guardians by agreement or court order so that parenting arrangements can be tailored to a family's circumstances.

#### **Parenting arrangements**

The arrangements the guardians make about how they will parent their child together. Parenting arrangements include the allocation of parental responsibilities and parenting time. It does not include contact.

#### **Parenting assessment**



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A report prepared by a family justice counsellor, social worker or other person authorized by a judge to help determine what living situation will best meet the needs of a child.

who is 16 years of age or over but is under 19 years of age.

#### **Parenting orders**

Orders made about how parents will continue to parent their children after separation. The orders describe how parents will allocate parenting responsibilities and parenting time.

#### **Parenting time**

The time a child spends with a guardian. During parenting time, a guardian makes day-to-day decisions about and is responsible for the care and supervision of the child. Parenting time must be arranged in a way that is in the child's best interests. Parents can decide how to divide parenting time and set it out in an agreement or a judge can make a court order.

#### **Vulnerable adult**

Under the *Adult Guardianship Act (AGA)*, a vulnerable adult is someone who is abused or neglected and who is unable to seek support and assistance because of a physical restraint, a physical handicap that limits their ability to seek help, or an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.

Anyone who has information indicating that an adult is abused or neglected, *and* is unable, for any of the reasons mentioned in section 44, to seek support and assistance, may report the circumstances to a designated agency.

#### **Youth**

In British Columbia, under the *Child, Family and Community Service Act (CFCSA)*, youth is anyone