

A G U I D E T O

# Record Keeping



Ordre  
des psychologues  
du Québec

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## FOREWORD

In 1994, in an effort to promote quality in psychological practice, the Ordre des psychologues du Québec (OPQ), through its Professional Inspection Committee (PIC), issued an initial document intended to help its members fulfill their ethical obligations regarding record keeping. In 2001 the PIC updated this document, which was released by the OPQ under the title *La pratique des psychologues et la tenue des dossiers – Principes d’application et aspects pratiques*. In January 2006, the OPQ’s Direction de la qualité et du développement de la pratique produced a guide to record keeping. The present document is an update of this guide. It incorporates the provisions of the new *Code of Ethics of Psychologists* (hereafter referred to as *Code of Ethics*), answers the most commonly-asked questions on record keeping and identifies the most frequent errors noted by the PIC and its inspectors.

To facilitate the reading of this document, we use the masculine pronoun throughout to designate both genders.

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## INTRODUCTION

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Under the *Professional Code*, the Bureau of a professional order determines, by regulation, the standards on the maintenance and retention of records and keeping of a consulting room. In 1992, the Ordre des psychologues du Québec (OPQ) passed the *Regulation respecting the keeping of records and consulting-rooms by psychologist*, hereafter referred to as the *Regulation*. Section 1 of the *Regulation* states that:

*(...) a psychologist entered on the roll of the Corporation professionnelle des psychologues du Québec shall keep a record for each of his clients at the place where he practises his profession.*

*A psychologist shall ensure that each record is filed and kept up to date.*

In this context, the “psychologist’s record” is the record maintained and kept by the psychologist or by the responsible department of the institution in which he practices. A record is defined by its content and purpose. It:

- is, first and foremost, an official register in which the psychologist documents his service provision;
- serves as a communication tool with other professionals or involved parties and with the client;
- stands as proof of the psychologist’s professional conduct, in keeping with his ethical and civil obligations.

The record is the basic instrument for informing clients on their status and the services provided to them. Legally, it constitutes *prima facie* evidence, that is, its content is presumed to be true unless proven otherwise. The value of the entered information is increased by the brevity of the time lapse between the delivery of the professional act and the entry of the information concerning it. If information is added to the record at a later date, its value is diminished.

Section 37 of the *Civil Code of Quebec* sets the guideposts for various regulatory provisions regarding the creation and maintenance of records:

*Every person who establishes a file on another person shall have a serious and legitimate reason for doing so. He may gather only information which is relevant to the stated objective of the file, and may not, without the consent of the person concerned or authorization by law, communicate such information to third persons or use it for purposes that are inconsistent with the purposes for which the file was*

*established. In addition, he may not, when establishing or using the file, otherwise invade the privacy or damage the reputation of the person concerned.*

The psychologist is responsible for collecting, storing, using and communicating information in compliance with the laws and regulations governing his practice. He may use different storage media (paper, digital document, magnetic tape, micro-film or other) to fulfill his obligations under section 2 of the *Regulation* so long as he takes measures to ensure that the records are stored securely, their integrity is safeguarded and the rules on confidentiality are observed, giving access only to authorized persons<sup>1</sup>.

The psychologist must ensure that the record is stored in a place that is not accessible to the public, under lock and key if necessary, for a period of at least five years after the last professional service was delivered. This five-year requirement is a minimum; the records may be kept longer for various reasons: to ensure continuity of services because a client is likely to return, because possible complications are anticipated, or because of the need to meet an employer’s requirements.

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1. Section 5 of the Act to establish a legal framework for information technology stipulates the following regarding the legal value of documents: *The legal value of a document (...) is neither increased nor diminished solely because of the medium or technology chosen. (...) Where the law requires the use of a document, the requirement may be met by a technology-based document whose integrity is ensured.* Section 34 of the same Act requires that confidentiality be observed: *Where the information contained in a document is declared by law to be confidential, confidentiality must be protected by means appropriate to the mode of transmission, including on a communication network.*

## CONTENT OF A RECORD

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According to section 3 of the *Regulation*:

*A psychologist shall enter the following information in each record:*

1. *the date of opening the record;*
2. *where the client is a natural person, his full name at birth, sex, date of birth, address and telephone number;*
3. *where the client is a partnership or an artificial person, its name or firm name, business address and telephone number, together with the full name, address, telephone number and title of the position of an authorized representative;*
4. *a brief description of the reasons for the consultation;*
5. *a brief description of the professional services provided and their dates;*
6. *the conclusions deriving from the psychological assessment or a description of the treatment plan and recommendations;*
7. *notes on the client's progress after services have been provided;*
8. *any document pertaining to the sending of information to third parties, in particular any document signed by the client and authorizing the sending of such information;*
9. *a copy of any service contract or the description of any special agreement concerning the nature and procedures of treatment;*
10. *the signature of the psychologist who has entered the information mentioned in paragraphs 1 to 9 in the record.*

Generally, the psychologist enters in the record two types of information: factual information and information that results from the exercise of his professional judgment. He ensures that the information is accurate and pertinent, in keeping with the requirement of section 14 of the *Code of Ethics*:

*Psychologists must respect the privacy of the persons with whom they enter into a professional relationship, refraining from gathering information and exploring aspects of private life that have no relation with the professional services agreed on with the client.*

If the information contained in the record is questioned or challenged, section 21 of the *Code of Ethics* states that:

*Psychologists must respond promptly, at the latest within 30 days of its receipt, to any written request made by a client or a person authorized by the client to have information that is inaccurate, incomplete, ambiguous, outdated or unjustified corrected or deleted in any document concerning the client or to make written comments in the record.*

*Psychologists must provide the client, free of charge, with a duly dated copy of the document or part of the document filed in the record so that the client may verify that the information has been corrected or deleted or, as applicable, with an attestation stating that the client's written comments have been filed in the record.*

*Psychologists who refuse to grant a request to correct or delete information in any document concerning the client must notify the client of the reasons for the refusal, enter the reasons in the record and inform the client of the client's recourses.<sup>2</sup>*

However, a client's disagreement with an element in the record relating, for example, to the psychologist's diagnosis, does not mean that the psychologist must correct or delete it. In these circumstances, the psychologist should respond to the client's request, note it in the record and explain the reasons for refusing to comply. Where he deems appropriate, the psychologist may make corrections to the record at his own initiative to more accurately reflect the current situation.

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2. Among the recourses available to a client whose request for correction or deletion of information in a document concerning him has been refused are contacting the OPQ Syndic's Office and filing a complaint with the Access to Information Commission.

## NATURE OF ENTERED DATA

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Psychologists must be very vigilant in their handling of raw data, interpreted data, risks of harm to the client and storage of test protocols. They should clearly understand the definitions of these notions, ensure that they store data derived from tests appropriately and appreciate the potential for harm of this information.

### RAW DATA

An Ethics Guideline<sup>3</sup> produced by the OPQ's Syndic's Office defined the notion of raw data as follows:

*Raw data include all the materials collected during assessment interviews or in the course of psychotherapy (including the verbatim), direct observation and psychometric testing. They also include annotations, the psychologist's hypotheses and avenues to be explored.*

The *Code of Ethics*, in Section 49 of Division VII (Use of Psychological Material), regulates the communication of raw data, even with the client's prior written authorization:

*Psychologists may not give to a third party, other than another psychologist, any raw, unprocessed data from an assessment or resulting from a psychological consultation.*

Because a psychologist may communicate raw data only to another psychologist and because the client has access to his own record, section 5 of the *Regulations* stipulates:

*Without restricting the scope of section 3, a psychologist shall avoid adding to a file any unprocessed data or any unverified information that could harm the client.*

In certain situations, the question of which data to enter in the record or communicate to a third party may be problematic. A psychologist wishing to avoid harming his client may prefer not to disclose certain information, but this can potentially have the opposite effect. For example, the psychologist's expertise may be sought to determine whether a person is eligible, due to his condition, for a subsidy or specialized services. For the client to obtain these benefits, the psychologist must give a third party specific recommendations on the client's eligibility, or indications that are sufficiently clear to allow the third party to make a decision.

An issue that may be contentious is that of the IQ score. Most psychologists regard these scores as raw data, despite the fact that they are obtained through analysis and processing of other data, allowing for comparison of the subject by placing him along a continuum. The view of IQ scores as raw data and reluctance to release these scores sometimes causes misunderstanding between psychologists and third parties, who require unequivocal and precise information. However, communicating IQ scores, regardless of whether or not they are raw data, may be harmful if the third party regards them as absolute measures on which decisions on benefits should be based. Due to these considerations, it is standard practice for many psychologists to avoid including IQ scores in their reports.

Nevertheless, in certain circumstances, entering the IQ score in the record may be justified so long as it is accompanied by clear information to ensure the appropriate interpretation<sup>4</sup>.

### INTERPRETED DATA

As specified in the Ethics Guideline of January 2001:

*What is meant by interpreted data is information that has been subjected to analysis, explanation, assessment or validation by the psychologist. The interpretation may be statistical or clinical. Clinical interpretation is based on a convergence of evidence derived from interviews, observations derived from psychometric results and other data<sup>5</sup>.*

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3. Translated from "Données brutes et dossier du client," Fiche déontologique, Vol. 2, No. 1, January 2001, *Psychologie Québec*, Vol. 18, no. 1.

4. Two articles on this issue have been written by the OPQ's Direction de la qualité et du développement de la pratique. They were published in *Psychologie Québec* magazine in May 2006 and March 2007.

5. Translated from "Données brutes et dossier du client," Fiche déontologique, Vol. 2, No. 1, January 2001, *Psychologie Québec*, Vol. 18, no. 1.

Raw data accompanied by an interpretation no longer constitute raw data.

The psychological diagnosis is neither uninterpreted raw data nor unverified information, and therefore should be entered in the record. However, if its disclosure risks causing serious harm to the client, the psychologist may refuse to communicate it.

#### HARM

Harm may be caused by the psychologist's failure to verify the information he enters in the record and subsequently communicates to another party, or by the presence in the record of information which could be misleading or subject to misinterpretation. However, it is clear that the psychologist cannot anticipate every such situation. On this matter, section 51 of the *Code of Ethics* states:

*In every written or verbal psychological report, psychologists must limit their comments to the interpretation of the psychological material and to the relevant conclusions.*

The psychologist should restrict his statements or recommendations to elements that are relevant to his mandate; he should adequately answer any questions put to him and write in a way that anyone who could have access to his report would be able to understand. He should use accessible language, show respect for his client's sensitivities and take account of the client's limitations. He should specify his mandate and the client's situation at the time when the services were delivered to ensure that the conclusions are pertinent and avoid any risk of harm that could result from undue generalisation of his conclusions to other situations. By taking this approach when entering information in the record, the psychologist reduces the risk that elements harmful to the client will be found therein.

Harm can also result from the fact that another involved party, professional or otherwise, or a duly authorized third party may have access to the record. These parties may be unable to put the information into context or correctly understand what is

written in the record. To the extent possible, the psychologist should consider these possibilities and write his notes and reports accordingly.

#### TEST PROTOCOLS

The handling of test-related information is covered by section 50 of the *Code of Ethics*, which states:

*Psychologists must take the means necessary to not compromise the methodological and metrological validity of a test by revealing the protocol to the client or a third party who is not a psychologist.*

Test protocols (questionnaires, identifying information, answer sheets, correction sheets, verbatim responses to questions asked in the test, etc.) may be given only to another psychologist with the client's written authorization.

However, the psychologist may meet with the client to tell him the results of administered tests and where necessary, provide explanations to help him understand the implications.

The special measures suggested for the storage of test protocols, with access limited to psychologists only, are also intended to avoid harming the client. It is suggested that the psychologist indicate in the progress notes that this test-related information exists and specify where it is stored, making it clear that access is reserved to psychologists.

#### INFORMATION FROM THIRD PARTIES

Two special situations are discussed below, one involving third parties who come from the client's personal or work environment, toward whom the psychologist has an obligation of confidentiality, and the other, involving third parties who are professionals delivering services to the client.

### Third Parties Close to the Client

Situations may arise where a third party (parent, spouse, co-worker, etc.) communicates to the psychologist important information about the client that may impact the client or the therapy. An example is the communication of information that there could be a risk of suicide. These situations must be dealt with case by case, and require sound judgment and care by the psychologist, as they may put him in a conflict of interest. Regarding conflicts of interest, section 32 of the *Code of Ethics* provides the following guidelines:

*If psychologists become aware that they are in a real or apparent conflict of interest, they must define the nature and meaning of their obligations and responsibilities, notify their client and agree with the client on the appropriate measures, if any.*

Upon receiving information from a third party, the psychologist should enter it in the client's record or, at the least, make a note of having spoken with the third party. There are certain laws applying in this situation and the psychologist must use his professional judgment, taking account of the risk of harm involved.

Section 18 of the *Act respecting health services and social services* (AHSSS)<sup>6</sup> recognizes the third party's right to confidentiality:

*No user is entitled to be informed of the existence or be given communication of information concerning him furnished by a third person which is contained in his record, where knowledge of the existence or the communication thereof would make it possible to identify the third person, unless that person has agreed in writing to the disclosure of the information and of its source to the user.*

#### Exception

*The first paragraph does not apply where the information was furnished by a health or social services professional or by an employee of an institution in the performance of his duties. For the purposes of this paragraph, trainees, including medical residents, shall be regarded as health or social services professionals.*

6. This Act applies only to psychologists working in an institution within the health and social services network.

The *Act respecting the protection of personal information in the private sector*, consistent with section 39 of the *Civil Code of Quebec*<sup>7</sup>, sets a limit to accessibility when there is risk of harming a third party:

*Any person (...) must refuse to give communication of personal information to a person to whom it relates where disclosure would be likely to reveal personal information about a third person or the existence of such information and the disclosure may seriously harm that third person, unless the latter consents to the communication of the information or in the case of an emergency that threatens the life, health or safety of the person concerned. (Section 40 of the Act respecting the protection of personal information in the private sector).*

The *Code of Ethics* has similar provisions dealing with risk of harm to the client or to a third party:

*(...) Psychologists may temporarily deny access to information contained in a record established in the client's respect if its disclosure would likely cause serious harm to the client's health. In such a case, psychologists must inform the client of the reasons for the refusal, enter the reasons in the record and inform the client of the client's recourses<sup>8</sup>.*

*Psychologists must refuse to release to a client personal information concerning the client if its disclosure would likely reveal personal information concerning a third party or the existence of such information, and the disclosure could seriously harm that third party, unless the latter consents to the communication of the information or in the case of an emergency that threatens the life, health or safety of the person concerned. (Last two paragraphs of section 20 of the Code of Ethics).*

Thus, a third party who communicates information about a client to the psychologist has the right to confidentiality. The psychologist must obtain this party's consent before authorizing access to or disclosure of this information if there is risk of serious harm

7. Sec. 39 du *Civil Code of Quebec*: A person keeping a file on a person may not deny him access to the information contained therein unless he has a serious and legitimate reason for doing so or unless the information is of a nature that may seriously prejudice a third person.

8. Among the recourses available to a client whose request for correction or deletion of information in a document concerning him has been refused are contacting the OPQ Syndic's Office and filing a complaint with the Access to Information Commission.

to the third party<sup>9</sup> and the psychologist deems the access or disclosure necessary to the realization of the treatment plan. The psychologist may choose to ask the third party, before he receives the information, for consent to inform the client about their conversation and to disclose the received information to him, explaining the untenable situation he will be in if he remains bound by professional secrecy. As this information from a third party is usually kept in the client's record, it should be clearly identified, easily findable, and kept separate from other information in the record. This way, it will be easy to remove should the client ask for access to the record or authorize disclosure of the record when consent from the third party has not been obtained.

There may be a number of situations where the psychologist is asked to do an assessment or make a recommendation and is unable to do his work properly without communicating with third parties. This may happen, for example, when a client's mental state is such that additional information must be obtained, or certain information must be validated (cases of cognitive loss, delirium, hallucinations, etc.), or in other types of mandates where recourse to third parties is required.

If, due to the nature of his work and the type of clients he sees, a psychologist is likely to find himself in this situation, he should anticipate the possibility of speaking to third parties and obtain prior consent from the client to do so. In each situation, he must use his professional judgment, giving due consideration to the potential implications of any actions he takes. He is responsible for applying the rules on confidentiality and risk of causing harm to the client or the third party.

### Third Parties Providing Services to the Client

In some cases, the record contains information communicated by another professional who provided or still provides services to the client concerned. The psychologist can legitimately assume that the client gave this professional prior authorization to transmit this information in a specific context. The rules of confidentiality do not apply to this third party because henceforth, this information is part of the record kept by the psychologist. This does not mean that the third party can access all the information in the file, but rather, that permission

9. For psychologists employed by an institution within the health and social services network, under the AHSSS, the obligation of confidentiality towards a third party is complete because it is not accompanied by any condition.

to re-communicate this information must be obtained from the client, not the third party. This is the meaning of the exception provided in section 18 of the AHSSS, cited above. However, re-communicating this information in a different context could be harmful to the client. If the psychologist needs to provide the entire record, he should inform the client of the presence of these elements in the record and explain his reservations concerning their communication to another party, emphasizing the risks and the fact that, not being the author of these elements, he cannot assess the pertinence of their communication in this situation.

### CONSULTATION OR SUPERVISION

When a psychologist uses the services of another professional, for example, for consultation or supervision, the obligation of confidentiality continues to apply. If the psychologist is unable to protect his client's identity, he must obtain, in writing (except in an emergency or if ordered by law), the client's enlightened consent to the communication or sharing of information concerning him.

The psychologist who accepts a consultation or supervision mandate must keep a record in the prescribed form as evidence of the services rendered in his role as psychologist.

When the supervisor puts his signature on a document found in the record of the supervisee's client, he ensures that this attests to professional services actually delivered. He can enter a report or a document in the record, or indicate in a signed note his assessment of the work performed<sup>10</sup>.

### GROUP RECORD

Record keeping for clients who are seen in a group is subject to the same requirements as for individual treatment. In this regard, section 4 of the *Regulation* offers the following possibility:

*Notwithstanding sections 1 and 3, a psychologist may, for a group consultation, keep a single record for any treatment including the information mentioned in paragraph 2 of section 3, a description and evaluation of the treatment and, where applicable, the information mentioned in paragraph 9 of section 3.*

10. For more information, see Desjardins, P. (2008). "Les ingrédients d'une supervision réussie," *Psychologie Québec*, Vol. 25, No. 3, pp. 13-14.

This section states that the psychologist “*may*” keep a single record for the group. However, pursuant to the AHSSS, psychologists who are employed by a health or social services institution must keep an individual record for each client.

Regardless of the type of record kept, the psychologist must take measures to protect the confidentiality of information disclosed during group sessions, as specified in section 17 of the *Code of Ethics*:

*Psychologists providing professional services to a group must inform the members of the group of the possibility of some aspect of the private life of one of the members or a third party being revealed. They must secure a commitment from the members of the group to preserve the confidentiality of information on the private life of the members or third party.*

More information on this issue can be found in the article *L'intervention auprès de groupes et de familles*<sup>11</sup>.

#### TEAMWORK AND RECORD KEEPING

Treatment may be provided jointly by a psychologist and one or more other professionals, psychologists or other. In this case, each one may enter in the record the required information for his respective practice. It is also possible to enter in the record a single joint report on the treatment signed by all the professionals involved. In this case, the psychologist must ensure that:

1. the content of the report meets the professional standards for psychologists;
2. the psychologist has the professional competence to validate all the information contained in the report and warranted by his signature;
3. he does not create the impression that he performed an act outside his field of practice or requiring competencies he does not have.

If these conditions are not met, he must write his own report on the professional acts he delivered.

Sometimes, a psychologist is asked to serve as the secretary of a committee of which he is a member. His task is to produce a report that reflects the discussions as faithfully as possible.

In this situation, he must identify himself as the committee secretary, making it clear that his signature does not attest to work done in his capacity as a psychologist.

#### INFORMATION CONCERNING THE SERVICE CONTRACT

Point 9 in section 3 of the *Regulation* refers to elements related to the contract, which the psychologist discusses with the client, such as:

1. the fees:
  - different professional acts which may be subject to fees (interviews, communications with third parties, writing of special reports, etc.);
  - the established amount, foreseeable increases;
  - terms and methods of payment;
  - interaction with third party payers (insurance, CSST, EAP, etc.);
  - issuance of tax receipts, certificates for claims from insurance companies;
2. other expenses (court testimony or other).

In keeping with section 54 of the *Code of Ethics*, the psychologist should keep in the record a copy of the written agreement made with the client on matters related to the fees. This section states that:

*Psychologists may, by written agreement with the client,*

- 1° *require an advance to cover the payment of expenses necessary to perform the professional services required;*
- 2° *require partial payment if they act as consultants to a client in connection with a long-term contract;*
- 3° *require administrative fees for an appointment missed by the client according to predetermined and agreed-upon conditions, those fees not to exceed the amount of the lost fees; and;*
- 4° *subject to the applicable legislative provisions, charge fees supplementary to those reimbursed by a third party.*

11. Dupuis, D. (2004). “L'intervention auprès de groupes et de familles,” *Psychologie Québec*, Vol. 21, No. 2, p. 9.

## PSYCHOLOGIST'S WORKING DOCUMENTS

Except for separate storage of test protocols, the psychologist should not keep any parallel record on his client. There is only one record on the client and all the information it contains must be fully accessible to him, as stipulated by the *Civil Code*, *Privacy Act*, *Professional Code* and sections 20 and 21 of the *Code of Ethics*. The psychologist should not accumulate large quantities of information without judging its pertinence, identifying a topical thread or indicating an interpretation. A parallel record may draw away important information from the client's record before the psychologist has been able to interpret it and make it accessible.

Sometimes, when writing a report or preparing a consultation or supervision, the psychologist records certain information outside the record, for example, possible approaches to the understanding of a problem, diagnostic or other hypotheses, a verbatim he considers particularly significant or other personal notes serving as a memory aid. The documents thus constituted must not contain any nominative data or other identifying information on the client. Moreover, it is recommended that the psychologist destroy these draft documents as soon as the report is completed or they are no longer needed in view of their potential to cause harm.

## PSYCHOLOGICAL REPORTS

Normally, records, individual or group, contain not only factual information, but also progress notes and various reports. Progress notes are generally recognized by professionals as formal indications of the work performed.

Although progress notes suffice to meet the requirements of section 3 of the *Regulation*, a variety of psychological reports have been developed as a way of organizing the recorded information in a clear and coherent manner. Each type of report is structured to respond to specific demands of psychological practice. Not every type of report will be found in a given psychological record.

Although these reports were developed to meet specific needs of clinical practice, all psychologists can use them and adapt them to their own area of practice.

## EVALUATION REPORT

The content of the evaluation report should make clear:

- the mandate given to the psychologist;
- the methods used to carry it out;
- the conclusions reached.

The report may include the following sections, in keeping with the requirements of section 3 of the *Regulation*:

1. nominative information (e.g. client's name and surname, address, telephone number, date of birth, sex, occupation, employer, civil status, identity of the insurer paying the fees, etc.);
2. date of opening of the file, date of the report and dates of treatment;
3. reason for consultation, indicating who made the referral;
4. terms of the service provision (frequency and place of meetings, specific context, authorizations, etc.);
5. methodology used (guided interview, simulation or other);
6. background of the problem, including history and previous consultations (history focused on the problem);
7. observations or impressions (clinical: symptoms, behaviour, observed, reported or inferred attitudes, etc.);
8. assessment tests used (description of tools used, client's participation, results, interpretation, etc.);
9. summary understanding of the situation;
10. conclusions (result of the process);
11. recommendations (treatment plan).

## PROGRESS NOTE

The progress note is the entry into the client's record of any professional act delivered to the client, including assessment, treatment, telephone calls or case discussions. The note documents everything done by the psychologist. The following elements are recommended for a progress note:

1. a summary of subjects discussed;
2. a summary of interventions;
3. the client's progress in relation to the treatment plan and recommendations;
4. professional interpretations that are understandable to potential readers and accessible to the client;
5. where needed, a reference to theoretical considerations, in a form and content also accessible to the client.

## PROGRESS SUMMARY

The progress summary is a summary of service provision over a given period of time. This report gives a broader perspective than a progress note. Its purpose is to show the client's progress in relation to the objectives or treatment plan and make recommendations on continuation of the process. The progress summary covers the different elements contained in the progress notes.

## FINAL REPORT

The final report is written by the psychologist at the end of the service provision, rendering account of all the work done. It summarizes the information found in the record to show the client's progress in relation to the objectives or treatment plan and to support the recommendation concerning cessation of services.

This report should contain:

1. the reason for consultation,
2. the treatment plan;
3. frequency of meetings and duration of services;
4. professional acts performed;
5. the client's progression;
6. evaluation of the services by the client and the psychologist;

7. reasons for cessation of services;
8. client's condition at this stage;
9. recommendations for follow-up where necessary;
10. client's reaction to the recommendations.

## EXPERT ASSESSMENT REPORT

The psycho-legal or expert assessment report differs from the evaluation report by the fact that it is produced for legal purposes. When preparing this report, the psychologist must take account of this specific context. The report may contain the same sections as the evaluation report; like the latter, it must be complete and self-supporting and provide the necessary information for the reader to understand its conclusions.

In addition to these four general types of reports, the OPQ has, in the last few years, issued guidelines on other documents relating to specific areas of practice<sup>12</sup>.

## WRITING METHODS

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The psychologist, who is responsible for maintaining his records, needs to organize his thoughts when writing his reports to ensure that they meet the quality standards:

- the report must be complete, as defined by the laws and regulations;
- the content must be organized and presented in clearly identified and easily findable sections;
- the information must be accurate;

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12. The OPQ has produced the following documents for its members: *Guidelines for the Assessment of a Child in Connection with a Request for Derogation to the Age of School Admission*, *Guidelines for Expert Assessment concerning Child Custody and Access Rights* and *Lignes directrices pour l'évaluation du retard mental*. Also available is the psychosocial assessment guide for international adoptions, *Grille d'évaluation psychosociale pour un projet d'adoption internationale*, published by the Secrétariat à l'adoption internationale.

- the information must be relevant; it must meet the criteria of necessary and legitimacy established by the legislator for the collection of personal information<sup>13</sup>;
- the information must be current, written without a short lapse of time;
- the presentation must be concise, with an absence of extraneous information.
- the content must be interpreted.

The psychologist should also ensure that:

- information identifying the client is found on every page;
- record entries and reported service provisions are dated;
- only known abbreviations and symbols are used;
- the psychologist's signature (name, surname and professional title<sup>14</sup>) appears at the bottom of each entry, clearly identifying the author.

If the notes or reports are handwritten, the psychologist is advised to:

- write legibly;
- ensure that the text can't be changed by writing in ink;
- avoid erasing an error; instead, cross it out or put the text to be changed in brackets, write in the correct version, and initial and date it;
- avoid adding information between the lines;
- avoid leaving empty spaces, where it would be possible to add text altering the original.

The psychologist must use his judgment regarding the level of detail to put in his notes and reports. In some situations, it may be appropriate to present the information in general terms, especially if the client is concerned about privacy. This also applies when the psychologist has concerns about possible access to the record by third parties. However, depending on the mandate given, there is sometimes a need to provide greater detail or give specific clarifications to permit appropriate follow-up of the client in situations where the psychologist cannot be available or involved.

13. This refers to the *Code of Ethics* sections 14 and 51, as mentioned earlier.

14. Indication of the professional title is important for psychologists employed in the public sector because the record is kept by different professionals and the client may be confused about the identity of the professional consulted.

## HUMAN RIGHTS REQUIREMENTS

The standards and proper practices of record keeping by psychologists are based on fundamental human rights, as recognized by the *Quebec Charter of Human Rights and Freedoms*. Sections 4, 5 and 9 of the *Charter* are particularly relevant in this regard:

4. *Every person has a right to the safeguard of his dignity, honour and reputation.*
5. *Every person has a right to respect for his private life.*
9. *Every person has a right to non-disclosure of confidential information.*

*No person bound to professional secrecy by law and no priest or other minister of religion may, even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him or by an express provision of law.*

*The tribunal must, ex officio, ensure that professional secrecy is respected.*

The importance of respecting these three fundamental rights is confirmed by several provisions of the *Code of Ethics*, including those dealing with the psychologist's obligation of professional secrecy and the respect due to every person who consults a psychologist, regardless of the problem treated or the purpose of the service provision. It is only when clients feel assured that these rights will be respected that they can they enter into a therapeutic process or develop the working relationship necessary for the achievement of the established objectives.

### PROFESSIONAL SECRECY

Division II of the *Code of Ethics* provides some clarification on confidential information. Section 15 stipulates:

*Psychologists, for the purpose of preserving professional secrecy,*

- 1° *must not disclose any information on their client, except the information authorized in writing by the client, or verbally in an emergency, or unless so ordered by law;*

- 2° must inform a client who intends to authorize the communication of confidential information to a third party of the consequences of the disclosure and of any reservations they may have;
- 3° must not disclose that a client has requested their professional services or intends to use their professional services;
- 4° must not mention any factual information likely to identify the client and must modify, if required, certain information identifying the client when using information obtained from the client for didactical, pedagogical or scientific purposes;
- 5° must obtain prior written authorization from the client to record or videotape an interview or activity; the authorization must specify the subsequent use of the recording and the terms of revocation of the authorization; and
- 6° must not disclose, without authorization, the name of a client when consulting or being supervised by another professional.

#### LIMITS TO PROFESSIONAL SECRECY

There are some circumstances where the psychologist is permitted to break his obligation of professional secrecy and others where it is mandatory for him to do so. These situations are defined in various laws and regulations.

#### Discretionary Disclosure of Confidential Information

##### CODE OF ETHICS

The *Code of Ethics* provides the possibility of communicating information protected by professional secrecy in order to prevent an act of violence. Section 18, reflecting the provisions of section 60.4 of the *Professional Code*, stipulates:

*Psychologists may communicate information protected by professional secrecy to prevent an act of violence, including a suicide, where they have reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons.*

*Despite the foregoing, psychologists may only communicate the information to a person exposed to the danger or that person's representative, and to the persons who can come to that person's aid.*

*Psychologists may only communicate such information as is necessary to achieve the purposes for which the information is communicated.*

This section opens the possibility of disclosing confidential information to protect a person who is in danger. This possibility is conditioned by:

- the exercise of professional judgement on the degree of danger;
- evaluation of the imminence of the danger;
- identification of the person(s) to be protected.

When a psychologist determines that there is a need, in these circumstances, to disclose confidential information, he is bound by the terms of section 19:

*Psychologists who communicate information protected by professional secrecy to prevent an act of violence must enter the following particulars in the client's record:*

- 1° the reasons supporting the decision to communicate the information and the other available means that did not enable the psychologist to prevent the act of violence; and
- 2° the circumstances of the communication, the information that was communicated and the identity of the person or persons to whom the communication was addressed.

#### HIGHWAY SAFETY CODE

The *Highway Safety Code* (section 603) allows psychologists, among other health professionals<sup>15</sup>, to make a report to the Société d'assurances automobile du Québec (SAAQ) if he judges that the state of health of one of his clients is incompatible with the driving of a road vehicle<sup>16</sup>.

#### Mandatory Disclosure of Confidential Information

Certain laws make it mandatory to disclose information otherwise deemed confidential.

15. Section 4 of the *Highway Safety Code* expressly designates doctors, optometrists, psychologists, occupational therapists and nurses as health professionals who may act under the law.

16. See the Ethics Guidelines dealing with this issue, published in September 2007 in *Psychologie Québec*.

## YOUTH PROTECTION ACT

The *Youth Protection Act* is very emphatic on this point when a child's development is endangered, as specified in sections 38 and 39:

38. *For the purposes of this Act, the security or development of a child is considered to be in danger if the child is abandoned, neglected, subjected to psychological ill-treatment or sexual or physical abuse, or if the child has serious behavioural disturbances.(...)*
39. *Every professional who, by the very nature of his profession, provides care or any other form of assistance to children and who, in the practice of his profession, has reasonable grounds to believe that the security or development of a child is or may be considered to be in danger within the meaning of section 38 or 38.1, must bring the situation to the attention of the director without delay. The same obligation is incumbent upon any employee of an institution, any teacher, any person working in a childcare establishment or any policeman who, in the performance of his duties, has reasonable grounds to believe that the security or development of a child is or may be considered to be in danger within the meaning of the said provisions.(...)*

The Youth Protection Office is responsible for assessing the danger in the inquiry it is obliged to conduct. Since the revision of the *Youth Protection Act* in 2007, a Youth Protection delegate may have access to the professional record kept in a health or social services institution without the client's authorization if the situation requires it. This provision does not apply outside the health and social services network<sup>17</sup>.

## PROFESSIONAL CODE AND CODE OF ETHICS

Under section 114 of the *Professional Code*, hindrance of the work done by a professional order as part of its mandate of protection of the public is prohibited:

*It is forbidden to hinder in any way a member of the committee, the person responsible for professional inspection appointed pursuant to section 90, an inspector, an investigator or an expert, in the performance of the duties conferred upon him by this Code, to mislead him by*

17. On this subject, see the Ethics Guideline "Reporting to Youth Protection and Requests for Information Made by Authorized Personnel," published as the Fiche déontologique in the November 2006 issue of *Psychologie Québec*.

*concealment or false declarations, refuse to furnish him with any information or document relating to an inspection or inquiry carried out by him under this Code or to refuse to let him take copy of such a document.*

This also applies to Syndics and Assistant Syndics under section 122.

Section 63 of the *Code of Ethics* reaffirms these provisions:

*Psychologists may not, in any way whatsoever, intimidate or hinder a representative of the Ordre des psychologues du Québec acting in the performance of duties assigned to the representative by the Professional Code and its regulations.*

## ACT RESPECTING THE DETERMINATION OF THE CAUSES AND CIRCUMSTANCES OF DEATH

Section 48.1 of the *Act respecting the determination of the causes and circumstances of death*, known as the Coroners Act, states that:

*If the coroner believes that it is necessary in the performance of his duties to examine a deceased person's record referred to in the first paragraph of section 7 of the Act respecting health services and social services for Cree Native persons (chapter S-5) and held by an institution within the meaning of that Act, a deceased person's record contemplated by Chapter II of Title II of Part I of the Act respecting health services and social services (chapter S-4.2) and held by an institution within the meaning of that Act or a deceased person's record held by a health professional governed by the Professional Code (chapter C-26), he may order the holder of the record to deliver the record to him or make it available to him, within the time he fixes.*

## ACCESS TO AND CORRECTION OF THE RECORD

Division III of the *Code of Ethics* contains provisions on the rights of access to and correction of documents:

*Psychologists must respond promptly, at the latest within 30 days of its receipt, to any written request made by a client or a person authorized by the client to consult or obtain a copy of documents that concern the client in any record made in his or her respect.*

*Psychologists may charge the client reasonable fees not exceeding the cost of reproducing or transcribing documents or the cost of transmitting a copy of the documents.*

*Psychologists who intend to charge such fees must inform the client of the approximate amount to be paid before reproducing, transcribing or transmitting the information.*

*Psychologists may temporarily deny access to information contained in a record established in the client's respect if its disclosure would likely cause serious harm to the client's health. In such a case, psychologists must inform the client of the reasons for the refusal, enter the reasons in the record and inform the client of the client's recourses.*

*Psychologists must refuse to release to a client personal information concerning the client if its disclosure would likely reveal personal information concerning a third party or the existence of such information, and the disclosure could seriously harm that third party, unless the latter consents to the communication of the information or in the case of an emergency that threatens the life, health or safety of the person concerned. (Section 20)*

Any refusal by a psychologist to give access to information contained in the record must be based on serious grounds.

*Psychologists must respond promptly, at the latest within 30 days of its receipt, to any written request made by a client or a person authorized by the client to have information that is inaccurate, incomplete, ambiguous, outdated or unjustified corrected or deleted in any document concerning the client or to make written comments in the record.*

*Psychologists must provide the client, free of charge, with a duly dated copy of the document or part of the document filed in the record so that the client may verify that the information has been corrected or deleted or, as applicable, with an attestation stating that the client's written comments have been filed in the record.*

*Psychologists who refuse to grant a request to correct or delete information in any document concerning the client must notify the client of the reasons for the refusal, enter the reasons in the record and inform the client of the client's recourses. (Section 21)*

*Psychologists must respond promptly to any written request from a client to have a document returned to the client. (Section 22)*

The sections cited above deal with the rights of access to and correction of documents, which are expressly protected by the *Act respecting access to documents held by public bodies and the protection of personal information* (the legislation that created the Access to Information Commission) and the *Act respecting the protection of personal information in the private sector*. These laws take precedence over the *Professional Code* and give effect to sections 34 to 39 of the *Civil Code of Quebec*. It is these laws that have changed the nature of the professional record, turning it into a record kept for the benefit of the client.

In certain circumstances, depending on the setting in which the psychologist practices, he may be required to provide a report to his client. A service established by the employer may serve as the intermediary. Although an employer's directives or internal policies may guide the psychologist in what he does, they cannot oblige him to contravene his ethical obligations.

In the case where the client is a couple, family or group and one of the participants requests a copy of the record, the psychologist must obtain all the participants' consent before complying with the request. If certain information was confided to the psychologist in the absence of the other participants and he does not have permission to disclose it, he must remove it from the record before giving a copy of the record to the requestor. Information of this type must be handled in the same way as information from a third party so that it can be removed from the file if the couple, family or group requests access to it or authorizes its disclosure when the other person has not consented to have his information, provided without the knowledge of the couple, family or group, disclosed. This information should be clearly identified, easily findable and kept separate from other information in the record.

#### FREE AND ENLIGHTENED CONSENT

The *Code of Ethics* and the *Regulation* have provisions on the need to obtain free and enlightened consent from the client for any services provided to him, and on access to and communication of information concerning the client. In both cases, there must be documentation in the record.

## Consent to Psychological Services

On the issue of consent to the provision of services, section 11 of the *Code of Ethics* stipulates:

*Before providing professional services, psychologists must, except in an emergency, obtain the free and enlightened consent of the client, the client's representative or the client's parents in the case of a child under 14 years of age, informing the client of*

- 1° the objective, nature, relevance and main terms of the professional services, the advantages and disadvantages of the services and alternatives, the limits and mutual responsibilities of the parties, including any agreement on fees and terms of payment;*
- 2° the possibility of refusing the professional services offered or ceasing to receive professional services at any time; and*
- 3° the rules and limits of confidentiality and the terms related to the transmission of confidential information pertaining to the intervention.*

*Disclosure of the information must be adapted to the context of the professional services provided.*

The consent to be obtained does not have to be in writing. However, if the consent is verbal, the psychologist should make note of this fact and the measures taken in the record.

## Consent Form

The psychologist may create and use a consent form specifying the consent given and the fact that it has been explained and understood when the use of this form is required by law, the client wishes it, the interest of the client demands it, or the psychologist deems it appropriate. The client and psychologist jointly sign the form, which should then be placed in the record. The psychologist may choose to give a copy to the client as a reference and for further discussion if needed.

However, using a general consent form at the outset of the professional relationship may give the psychologist the false impression that he has complied with all his obligations. In fact, in the course of the service provision, the initial objectives may change, or the client may develop a different understanding of the implications. The psychologist should note in the record any change in services that would necessitate adjustment of the client's consent. He should also ensure that the client under-

stands the implications of the changing services, as required by section 13 of the *Code of Ethics*, which states that:

*Psychologists must ensure that the consent remains free and enlightened throughout the professional relationship.*

In the public system<sup>18</sup>, the client may have already signed a general consent form that did not come from the psychologist. It is the psychologist's responsibility to ensure that clients, or their parents or guardians for clients under 14, clearly understand the scope and implications of the consent given. The psychologist should be explicit about his mandate, whether involving assessment, treatment or the communication of information. This obligation is discussed in the *Code of Ethics*, Division I, Chapter III.

## Consent to Communication of Information

The obligation to maintain professional secrecy implies that communication of information on the client to a third party requires written consent from the client (or his representative or parents in the case of a child under 14), except in an emergency or if ordered by law. This consent may be sent by e-mail or fax so long as precautions are taken to protect the confidentiality of the transmitted information. However, not all situations can be foreseen and there are exceptions that require the psychologist to use his professional judgment.

An emergency is a situation where introducing a delay to get written consent would prevent the client from obtaining required services. This may happen in cases of geographical distance or when the client lacks the necessary telecommunication tools. In these situations, the psychologist should obtain the client's verbal authorization and enter this fact in the record, specifying the reasons why consent was obtained in this manner. The psychologist should then obtain the client's written confirmation of the verbal authorization at the next appointment or by mail, e-mail or fax. This written confirmation will dispel any potential misunderstanding and reduce the risk of a dispute regarding consent to communication.

<sup>18</sup>. This refers in particular to the health and social services network and the educational system.

Consent to communication of information usually includes mentions of the following:

1. the person responsible for communication of the information;
2. the recipient of the information;
3. the purpose of the request for communication of information;
4. the nature of the information to be communicated;
5. when the communication will take place, with allowance for the 15-day period imposed by the *Regulation* and the possibility for the client to renounce the 15-day period<sup>19</sup>.
6. the validity period of the given consent;
7. the expected use of the information to be communicated;
8. the advantages, consequences, probable risks and, where applicable, psychologist's reservations concerning communication of the information.

For more detailed information on free and enlightened consent, see Annex 1 of this document and the Guide to the *Code of Ethics*.

## CONCLUSION

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As made evident by this guide, the psychologist's professional work is complex. What may appear to be a simple task – keeping a record – proves to be rather difficult, as the *Professional Code*, *Code of Ethics*, *Regulation* and other less-known laws and regulations set out requirements that impact the recording, retention, communication of and access to confidential information.

These requirements go beyond the strictly clerical aspects of recording keeping; they turn it into a professional practice entailing many ethical obligations. These obligations, while individually clear, may be difficult to consider in relation to each other and apply correctly. The psychologist must often rely on his professional judgment. Proper record keeping demands a considerable investment of time and energy, which in turn, demonstrates the psychologist's commitment to his clients.

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19. Pursuant to section 12 of the *Regulation respecting the keeping of records and consulting-rooms by psychologists*, psychologists practising in an institution within the meaning of the *Act respecting health services and social services* are subject to the rules of that institution, and the 15-day period recommended by the Ordre des psychologues du Québec does not apply.

# ANNEX 1: FREE AND ENLIGHTENED CONSENT

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The obligation to obtain free and enlightened consent raises a number of questions among psychologists. What follows is an attempt to answer those asked most frequently.

This obligation is based on the principle that, for provision of services and communication of information, the client must be informed and his wishes must be respected. The psychologist must take reasonable measures in his practice to obtain the client's consent, using language that is accessible to the client given his age, maturity and level of development, and ascertain that the client really understands the information he is given.

The clinical and ethical considerations associated with consent should be mentioned to the client to obtain his agreement. The efforts made to obtain consent should be consistent with the type of mandate (clinical or other) the psychologist is given. To fulfill his duty of informing the client, the psychologist should mention the following points in the initial interview:

1. The purpose and nature of the service provision:
  - theoretical approach, objectives, techniques used and expected procedure;
  - the client's and the psychologist's responsibility;
  - the time expected for the service provision (example: length of treatment, number and frequency of meetings, absences, days off and holidays, etc.);
  - when the objectives will be reviewed;
2. the advantages, consequences and probable risks of obtaining and not obtaining the services<sup>20</sup>;
3. other intervention possibilities;
4. the client's right to withdraw his consent at any time, unless otherwise prescribed by law;
5. the psychologist's skills;
6. the obligation to keep a record, which also involves the production of reports and access to the record;
7. the client's right to professional secrecy, and its corollary, the psychologist's obligation to maintain professional secrecy, and the limits to confidentiality;
8. the special conditions governing professional secrecy for the treatment of children under 14 and adolescents aged 14 to 18;
9. any other questions the client may have concerning the services.

These points reflect the provisions of section 11 of the *Code of Ethics*.

## CHILDREN UNDER THE AGE OF 14

Generally, when providing services to a minor child under 14 years of age, the psychologist obtains the consent of only one of the parents unless he has reason to believe (tense family situation, negative comments) that the other parent is unaware of the request for consultation or would object to the provision of professional services. The fact that the parents do not live together does not in itself imply disagreement regarding consent. In cases of doubt, or when required for clinical reasons,

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20. It is important to distinguish between probable risks, that is, those likely to occur, and possible risks, which are all the risks that can potentially be imagined.

the psychologist should take all reasonable measures to obtain the consent of both parents. If the absence of service risks seriously harming the child, the psychologist gives priority to the child and provides the service without the parents', or one of the parent's, consent, so long as this is justified by the urgency of the situation. It should be noted that the psychologist is not entitled to dispense with parental consent simply because his work organization leaves him insufficient time to obtain the consent. In this case, it is up to him to change his work methods to ensure that he meets his professional obligations.

Parents who are separated both retain parental authority unless otherwise decided by the court, particularly for issues concerning education and health, even if their day-to-day involvement with the children is not equal.

If a child is placed under the responsibility of the Director of Youth Protection, this does not mean that his parents have lost their authority. The psychologist must take measures to obtain the parents' consent by going through the DYP.

#### CONTEXT OF SERVICE PROVISION

The information that the psychologist gives to the client in order to obtain his free and enlightened consent may vary depending on the context of the service provision. This applies in particular:

- in a crisis situation, where the ability to give information is conditional on the client's state. If the services are delivered, the psychologist takes subsequent measures to confirm or obtain the necessary consent;
- with a client whose freedom of choice is limited or who consults under duress. Here, the psychologist tries to obtain enlightened consent for the specific objectives of the service delivery, making clear to the client the inherent constraints of the situation.

As specified in section 12 of the *Code of Ethics*:

*Psychologists must take the reasonable and necessary measures, including when the emergency has ended, to ensure that the consent is free and enlightened by ensuring that the client has properly understood the information communicated.*

#### TYPE OF CLIENT

The information provided to the client in order to obtain free and enlightened consent may also vary according to:

- the type of client to whom the psychologist is providing services (individual, couple, family or group);
- the nature of the service provision.

When providing services to organizations or communities, or when the services are delivered at the request of another party, the psychologist must clarify to everyone involved the nature of the multiple relationships created. The information given includes the objectives of the service, the use that will be made of collected information and the limits to confidentiality inherent in the situation.

## ANNEX 2: COMMON ERRORS

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So long as he meets the standards and minimal requirements concerning information to be entered in the record, the psychologist has some latitude in his record keeping and is able to adapt it to the specific needs of his practice. Having latitude, however, is not the same as allowing errors. The most common errors encountered by the Professional Inspection Committee are the following:

- waiting too long before entering information in the record;
- absence of information on the mandate given to the psychologist, the reason for consultation, the context in which the services are delivered and the treatment methods;
- absence of patient history when it is required and is not otherwise available to the reader;
- presence of uninterpreted raw data or information that could harm the client;
- presence of information that is not relevant to the mandate;
- lack of organization in reports (example: absence of clearly-identified sections), which affects the coherence of the text and impedes comprehension;
- absence of detail on the sources of information used;
- confusion of factual and interpretive (clinical impression or other) information;
- introduction of value judgments and their confusion with clinical judgments, which must be based on sufficient professional and scientific information;
- absence or insufficiency of information describing the assessment tools used, the context of their use and their limitations;
- insufficiently supported diagnostic impressions or conclusions.

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