PSYCHOLOGY COUNCIL of New South Wales

WELCOME TO THE SECOND EDITION OF THE NSW PSYCHOLOGY COUNCIL NEWSLETTER
Associate Professor Caroline Hunt

In this newsletter we highlight the Council's conduct pathway, outlining the various courses of action available to the Council, including the ability to 'counsel' a psychologist. I encourage everyone to read the feature on common boundary-crossing traps, which tend to make up a large part of the complaints that come to the Council's attention.

There are a number of other issues that the Council would like to bring to the attention of psychologists:

1. Many of the complaints that come to the Council are from patients who are particularly sensitive to misinterpreting our intentions or actions, or may themselves not recognise the importance of maintaining boundaries and distinct professional roles. These patients may be young, have relationship difficulties, or are otherwise vulnerable. The Council's opinion is that it is in these cases in particular that psychologists need to be mindful of keeping strict boundaries while maintaining a positive, empathic regard for patients. The Council does not accept practitioner responses to such complaints that minimise the potential for harm, normalise the behaviour, or blame the patient or their personality.
2. Psychologists are also reminded to ensure that they conduct thorough risk assessments, even in cases where the patient's 'crisis' presentation is typical for them.
3. The Council has recently received two complaints from psychologists in NSW who have entered into franchise agreements relating to their practice. In each case the Council declined to take action as the issues were of a commercial nature and did not involve questions of professional conduct or capacity. The complainants have alleged that the franchises have not yielded the benefits that were promised or that the conduct of the franchisor has been viewed as oppressive by the franchisee. The Council just wishes to suggest to psychologists that if they are planning to enter into such arrangements that they consider seeking professional business and/or legal advice.

Finally, we present the second article in a series on maintaining good self care in the practice of psychology, titled 'Sleep, diet and exercise: Key determinants of health and well-being'. Also included are two more ethical vignettes.

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SELF CARE FOR PSYCHOLOGISTS - SLEEP, DIET AND EXERCISE: KEY DETERMINANTS OF HEALTH AND WELL-BEING

PART 1: MAKING PHYSICAL ACTIVITY A PRIORITY

Dr Robyn Vines
Council Member (Psychologist)

For many of our clients, lifestyle factors play an extensive part in their presenting psychological conditions. Sleep deprivation, poor diet and lack of exercise all contribute to - if not the cause then at least the maintenance of - conditions such as stress, anxiety and depression. Indeed, imbalance in these core behaviours seem to contribute both to the development and maintenance of the "secondary" addictions of alcohol, smoking and other drug disorders, including excessive caffeine consumption (often overlooked as a determinant of heightened physiological stress levels). It has been estimated that approximately 50% of patients in primary care who present with mental health problems have comorbid lifestyle-related conditions: physiological illness/chronic disease and alcohol & other drug disorders – indeed, comorbidity is often viewed as the "norm" rather than the exception.

For ourselves as practitioners, we need to be mindful of these key contributors to our health, well-being and capacity to function effectively. We too are subject to the adverse impact they can have on our lives - and our competencies as practising health professionals. We owe it to ourselves to monitor and manage these core behaviours that correlate with our own health and wellbeing. In addition, "modelling" plays a large part in all forms of learning, and our own ill-health and stress levels can adversely affect our credibility with the clients whom we purport to help. In our profession, more than many others, we really do have to "practice what we preach" and exemplify the kind of lifestyle balance beneficial to those we are trying to assist.

Exercise and physical activity

We are particularly prone as psychologists to "excesses in sedentary behaviour" – indeed sitting is an inherent part of our profession (how rarely, if ever, do we actually walk anywhere with our clients?!) Research evidence now indicates a clear causal link between lack of physical activity and coronary heart disease and that active occupations are significantly less likely to be associated with cardiovascular risk. Current research evidence also indicates that "all cause mortality" (ACM) is correlated with higher levels of sedentary behaviour (Biddle and Mutrie, 2008) – i.e. that "sitting is bad for your health" - and this may only be marginally attenuated by the addition of even a couple of hours of daily physical activity. Sitting itself is now viewed as a key determinant of ill health.

Public health guidelines for sedentary behaviour are a relatively new development (Hillsdon, M; Foster, C; Cavill, N; Crombie, H; Naidoo; B, 2004). Research studies indicate that strategies to reduce sedentary behaviour (both in clients and practitioners) should be implemented in parallel with those focused on increasing physical activity and exercise - two sides of the same coin. Both are needed as preventative and treatment interventions for both chronic disease and mental health disorders. Evidence-based guidelines are now available both for sedentary behaviour (which is not merely a deficit in physical activity but a cluster of sitting and lying behaviours that impact on an individual's health) and physical activity levels appropriate to each age group (see resources below). These are worthwhile becoming familiar with, both for our own sake and that of our clients.

References/Resources

1. Biddle, S. and Mutrie, N. Psychology of Physical Activity: Determinants, Well-being, and Interventions, Routledge, UK 2008
2. Hillsdon, M; Foster, C; Cavill, N; Crombie, H; Naidoo; B: The effectiveness of public health interventions for increasing physical activity among adults: A review of reviews: Evidence briefing summary; UK, 2004 –
3. http://www.nice.org.uk/niceMedia/documents/physical_activity_adults_eb.pdf
4. UK Physical Activity Guidelines: https://www.gov.uk/government/publications/uk-physical-activity-guidelines

5. Sedentary Behaviour Evidence Briefing: http://www.bhfactive.org.uk/homepage-resources-and-publications-item/328/index.html

Next Edition: The impacts of sleep deprivation and sleep hygiene strategies

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COMPLAINTS ABOUT A PSYCHOLOGIST'S CONDUCT

Ms Myra Nikolich
Executive Officer

Any person may make a complaint about the conduct, health or performance of a psychologist to the Psychology Council of New South Wales (Council) or the Health Care Complaints Commission (Commission). Under the co-regulatory regime in New South Wales, a complaint made to one agency is deemed to have been made to both. When the Council receives a complaint, it must, as soon as practicable, notify the Commission and the Psychology Board of Australia, the latter through the Australian Health Practitioner Regulation Agency (AHPRA). Before any action is taken on a complaint, the Council and the Commission must consult to see if agreement can be reached about the course of action to be taken concerning the complaint.

Section 145B of the *Health Practitioner Regulation National Law (NSW) No 86a* (Law (NSW)) sets out the courses of action available to the Council in respect of complaints. In addition, section 150 of the Law (NSW) provides the Council with powers to take immediate action to suspend or impose conditions on a practitioner for the protection of the public. Section 150 proceedings will be discussed in more detail in a future publication.

Types of conduct

Certain behaviour may be categorised as unsatisfactory professional conduct or professional misconduct.

Unsatisfactory professional conduct is conduct which demonstrates that the knowledge, skill or judgment of the psychologist is significantly below a reasonable standard. It includes each of the following:

(a) conduct significantly below reasonable standard;
(b) contravention of this Law or regulations;
(c) contravention of conditions of registration or undertaking;
(d) failure to comply with decision or order of Committee or Tribunal;
(e) contravention of requirement under Health Care Complaints Act 1993;
(f) accepting benefit for referral or recommendation to health service provider;
(g) accepting benefit for recommendation of health product;
(h) offering a benefit for a referral or recommendation;
(i) failure to disclose pecuniary interest in giving referral or recommendation;
(j) engaging in over-servicing;
(k) supervision of assistants; and/or
(l) other improper or unethical conduct

More serious matters may constitute professional misconduct. This means:

(a) conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration; or
(b) more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration.

Examples of conduct that could give rise to a complaint may include:

- unacceptable behaviour, e.g. aggression, bullying, harassment and intimidation;
- communication issues, e.g. dishonesty, disrespectful manner and insensitivity to cultural needs;
- inappropriate behaviour, e.g. violation of professional boundaries such as inappropriate sexual comments, contact or relationship; and
- a criminal charge or conviction.

This article explains two courses of action available to the Council following a complaint about a psychologist's conduct: prosecution before a Tribunal, and an inquiry at a meeting of the Council. A third course of action is

directing a practitioner to attend a counselling interview with two or three members of the Council who constitute a Counselling Committee. This course of action is the most common and is discussed in more detail in a later article in this newsletter.

Referral to Tribunal

Serious complaints must be referred to the Psychology Tribunal of New South Wales (Tribunal). This may occur upon receipt of the complaint; however, generally the matter is first investigated by the Commission. Complaints that are referred to the Commission for investigation are complaints that at the time of assessment appear to raise a significant issue of public health or safety, or, if substantiated, would provide grounds for disciplinary action against the psychologist.

When the Commission has concluded its investigation, the Council and the Commission again consult on what action to take. Often the question is whether the matter should be referred to the Commission's Director of Proceedings to make a determination whether or not the matter should be prosecuted before the Tribunal. If the two agencies agree, the matter is referred to the Director of Proceedings who independently determines whether the matter warrants prosecution. In most cases, having reached this stage, it does. If the two agencies do not agree, the higher call prevails and that course of action is taken.

In making a determination, the Director of Proceedings must consider:

- the protection of the health and safety of the public;
- the seriousness of the alleged conduct;
- the likelihood of proving the alleged conduct; and
- any submissions by the practitioner.

Once the Director of Prosecutions has made the determination to prosecute, the Commission once again consults with the Council to seek agreement. It is important to note that the Director of Proceedings is not subject to the direction and/or control of the Commissioner in relation to dealing with any particular complaint that has been referred for consideration, and can prosecute a matter without Council agreement.

The Tribunal proceedings are initiated with the Director of Proceedings lodging the complaint document with the Executive Officer of the Council who then refers the matter to the Tribunal.

Following the hearing of the matter, if the Tribunal finds the complaint proven, it can reprimand, fine and/or impose conditions on the practitioner. It is the only adjudication body that can suspend or cancel a practitioner's registration, and it can issue a prohibition order that bans or limits a practitioner from practising in another area of health service, for example, a psychologist whose registration is cancelled can be banned from working as a counsellor.

It should be noted that while Tribunals hearings are open to the public, other processes remain confidential.

Inquiry at a meeting of the Council

Another course of action available to the Council is to hold an inquiry at a meeting of the Council. The Council may make such a determination following its initial consultation with the Commission. Sometimes, however, the Council requires additional information before making the decision. In these circumstances, the Council may refer the matter to its Assessment Committee (Committee) who can then obtain medical, legal, financial or other material it considers necessary. The Council may also direct the Committee to have the practitioner, the subject of the complaint, undergo skills testing.

Following its assessment, the Committee provides a report to a Council which may include a recommendation that the Council:

- deal with the complaint by inquiry at a meeting of the Council as a complaint of unsatisfactory professional conduct;

- direct the relevant health practitioner to attend counselling; or
- dismiss the complaint.

If the Committee recommends that the Council deal with the complaint by inquiry at a meeting of the Council as a complaint of unsatisfactory professional conduct, the Council must comply with the recommendation.

An inquiry is considered an appropriate course of action when the nature of the complaint is sufficiently serious to warrant a closer examination of the facts and circumstances that gave rise to the complaint, but which are not deemed sufficiently serious to refer to the Commission for investigation. Unlike the Tribunal, the Council does not have the power to make a finding of professional misconduct, only unsatisfactory professional conduct. This means that it cannot suspend a practitioner or cancel their registration to practice.

During an inquiry, the Council may inform itself on any matter in the way it thinks fit; however, it must proceed with as little formality and as much expedition as possible. The Council is not bound by rules of evidence and may proceed to deal with the complaint in the absence of the psychologist. If the psychologist attends the inquiry, they are not entitled to be legally represented but may be accompanied by a support person who can be an Australian lawyer. The Commission may also make written and/or oral submissions in relation to the complaint.

Following an inquiry, the Council has a number of options available to it. The Council can:

- caution or reprimand the practitioner;
- direct that specified conditions be imposed on the practitioner's registration;
- order that the practitioner complete an educational course specified by the Council;
- order that the practitioner report on his or her practice at the times, in the way and to the persons specified by the Council;
- order that the practitioner seek and take advice, in relation to the management of his or her practice, from persons specified by the Council; and
- impose a fine in certain cases.

Whilst the Council does not have the power to suspend a practitioner or cancel their registration, it can recommend suspension or cancellation of registration by referring the matter with its recommendation to the Chairperson of the Tribunal.

Practitioners who are unhappy with a decision have a right of appeal to the Tribunal against a finding of the Council under section 159 of the Law (NSW).

No further action / Agree to discontinue

The Council and the Commission may also agree to discontinue the matter.

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COUNSELLING AND NO FURTHER ACTION WITH ADVICE
Ms Carly Barbuto
Deputy Executive Officer

The Psychology Council of New South Wales (Council) is a statutory body established under the *Health Practitioner Regulation National Law (NSW) No 86a* (Law (NSW)). The Council's principle role is to protect the public of New South Wales by ensuring that all psychologists in the State are fit to practise psychology at the high standard the public is entitled to expect.

In dealing with complaints against psychologists, the Council has a range of actions available to it, as outlined in section 145B(1) of the (Law (NSW). The most frequent courses of action taken by the Council are the action of directing a practitioner to attend counselling pursuant to section 145B(1)(g) of the Law (NSW), and the decision to take no further action pursuant to section 145B(1)(j) of the Law (NSW). This article outlines more about the counselling process, as well as no further action, and what they mean for practitioners.

Counselling

Counselling does not constitute a disciplinary inquiry nor is it a reprimand for unproven allegations; rather, it provides an opportunity for the Council to address possible areas for improvement. Counselling occurs when there are issues of concern to the Council which may constitute a departure from acceptable standards of practice or where the Council needs to assure itself that a psychologist is aware of the acceptable standards of practice and/or conduct. The Council directs a psychologist to attend counselling as an effective means by which to convey these concerns.

The main purpose of the counselling interview is to remind psychologists of their professional responsibilities and, if needed, to assist them in finding ways to enhance and improve their professional practice. The interview is confidential and largely advisory and educative in nature, and the Counselling Committee (Committee) will discuss with a practitioner, in an informal way, the issues that have brought them before it.

When a practitioner is directed to attend counselling, they receive a letter outlining the issues which will form the focus of the counselling interview. Common areas of focus include dual roles and relationships, conflicts of interest, and confidentiality concerns.

The counselling interview generally takes between 30 minutes to an hour and is generally conducted by two members of the Council who make up the Committee.

Following the interview, if the Committee is satisfied with the outcome of the discussion, that will be the end of the matter. Occasionally, however, further issues come to light during the course of the interview. If any issues arise that cause the Committee concern, or if it is not satisfied with the outcome of the discussion, there is the option for the matter to be referred back to the Council for consideration of other courses of action. This outcome is rare, however, it remains a possibility.

The counselling interview process is confidential within the Council. The complainant is advised that the practitioner has been directed to attend counselling to discuss the issues contained in the complaint. However, the complainant is not advised of the specific issues for discussion, or the content of the interview. During the interview, notes are recorded for the Council's record keeping purposes; however, these are not shared with any third parties, including the complainant or registration bodies. However, in the event that a practitioner receives more than one complaint against them, section 41O of the Law (NSW) requires the Council to take into consideration other/prior complaints against the practitioner, in the consideration of the present complaint. As such, it is necessary that the Council holds an accurate record of the issues discussed in the counselling interview, should any subsequent complaints be made against that practitioner. The fact that a practitioner has been directed to attend counselling, and the details of the counselling interview, are not made available to the public, and are not recorded on the AHPRA national register.

While counselling is a low level course of action available to the Council, section 145F of the Law (NSW) outlines the results of failure to attend counselling without reasonable excuse or failure to comply with a direction under section 145B of the Law (NSW).

The Council's experience is that responding to a complaint and being counselled by the Council is a valuable lesson for a psychologist, and helps maintain and raise standards of psychological practice in this State.

No further action following advice

In determining the outcome of a complaint, the Council is also able to take no further action pursuant to section 145B(1)(j) of the Law (NSW). The Council makes this decision when it considers that the psychologist, in their response to the complaint, has adequately addressed the issues raised by the complainant.

The Council may, in some matters, consider it appropriate to provide advice to the practitioner in relation to possible areas for improvement stemming from the issues raised in the complaint. In these circumstances, the practitioner is provided with a letter containing advice, culminating in no further action pursuant to section 145B(1)(j) of the Law (NSW). This outcome reflects the Council's determination that there are no major areas of concerns held by the Council, but there may be suggestions for future improvements.

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MINOR BOUNDARY INFRINGEMENTS
Ms Wendy McCartney
Council Member (Psychologist)

Each month the Council receives complaints about psychologists whose practice has 'slipped' into unprofessional conduct in regard to boundaries. Each month the Council counsels such psychologists. Sometimes practice concerns just one boundary, sometimes several. Occasionally such practice is a 'one off' behaviour, mostly it is habitual behaviour. Sometimes such behaviour appears unthinking or inadvertent, and has led to deleterious consequences where the psychologist's judgement is compromised and the client confused or harmed. Generally, it is the client who ultimately complains.

Common infringements include:

1. Having a counselling session in a coffee shop; having a cup of coffee with a client; allowing the client to pay for coffee, paying for the client's coffee; having a lunch therapy session; attending an occasion with the client, or an exercise class. Here the psychologist-client relationship becomes confused, and confusing for the client. The client expects the psychologist to act professionally but may often be led, at least initially, to follow the psychologist's example. In non- professional surroundings, the therapeutic conversation maybe hi-jacked, and move towards a friendship-style/sociable meeting with original therapeutic goals put aside.

2. Psychologists are often compassionate people who have empathy with the client's situation. Some psychologists have given the client a lift in their car; employed a client to assist with the gardening; employed a client in an admin role in their office; mown the lawn for a client; visited a client's home to fix something; had a shower at a client's house after exercise; helped one of the client's children in some way. Vulnerable clients may have many needs but it is wise to remember that psychologists fulfil only one; that is to address psychological well-being in appropriate therapy. Boundary slippage impairs the objectivity and judgment of the psychologist.

3. Some clients have received gifts from a psychologist, and psychologists have received substantial gifts from clients that go beyond the guidelines of acceptance.

4. The Council is aware that some interventions may require the psychologist to guide the client through a specific desensitising task or similar. The psychologist should maintain an objective and transparent approach and the behaviour itself should be a coherent part of an overall therapeutic plan that would be seen by peers to be acceptable as a treatment.

It is essential for psychologists to be aware, not only of the Ethical Codes and Guidelines of professional practice, but also aware of, and consider, any niggling suspicion or hesitancy about a proposed action that may push them over a professional boundary. At the outset of any innovation in treatment, it pays to reflect on best practice and to think of possible consequences of a particular behaviour. It is the psychologist who is responsible for maintaining professional boundaries during therapy. Too often spontaneous suggestions or agreements lead to blurring therapy with friendship, or friendly concern, or lead to dependency or confusion or later shock, on the part of the client, and ultimately for the psychologist. Wise reflection, reviewing guidelines and ethical codes is far preferable to finding a complaint has been made.

Codes of Ethics and similar help us to develop a set of appropriate treatment principles and the development of an internal gauge by which to measure or evaluate behavioural choices. The above

examples constitute minor boundary infringements but depart from accepted practice in our field. If in doubt, always seek the advice of a senior psychologist, or psychologists.

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ETHICAL VIGNETTES

Case 1

You are counselling a gay man who has tested as HIV positive. He has not told his lover, with whom he is not practising safe sex. His lover is known to have tested negative for the virus. Your client is afraid to tell his lover because he fears that he may be rejected by him. You feel that this decision puts the lover at considerable risk, and you feel responsible for this.

What are the relevant ethical issues and what is your ethical responsibility in this situation?

Case 2

Dr Hope Charity, a clinical psychologist, had just completed six structured sessions of behaviourally focussed treatment for Mr Gold, a solicitor, for management of social anxiety that was confined to his work place. Mr Gold, a handsome man whom she quite liked, was otherwise well-adjusted. Two weeks after the termination of their successful therapeutic venture, Mr Gold sent Dr Charity a bunch of red roses, and a note conveying his thanks and an invitation to coffee. She found that she really wanted to accept the invitation.

If she did, would she be transgressing the Code of Conduct? If so, why?

The Council encourages you to reflect on these issues and where appropriate, raise them for discussion in supervision.