

# Communicating a Diagnosis

Richard Steinecke, LL.B., Legal Counsel



The first court decision interpreting the controlled act of communicating a diagnosis has been released. While rendered in the context of massage therapy, it provides some valuable guidance to dietitians.

## REVIEWING THE HISTORY

For two decades now, one of the most challenging controlled acts to understand, by both regulators and practitioners, is the first one prohibiting the communication of diagnosis. The precise wording of the provision is:

“Communicating to the individual or his or her personal representative a diagnosis identifying a disease or

disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.” (*Regulated Health Professions Act, 2 (1)*).

There are three components to this prohibition. All three of these components must be present for the conduct to be prohibited:

1. **Communication.** It only covers communications with a client. It does not prohibit a dietitian from forming an impression leading to a diagnosis. It only prevents the dietitian from telling the client of a new or existing diagnosis for which the client is unaware.

2. **Content.** It is not every communication about a patient's health that constitutes a diagnosis. The diagnosis has to identify (i.e., label) a disease or disorder (which does not include symptoms, for example) as the cause of symptoms (rather than the mere existence of symptoms or what might assist in addressing the symptoms).
3. **Circumstances.** The communication only becomes a problem when the client is likely going to rely on it to make significant treatment decisions.

### COMMUNICATING THE RESULTS OF AN ASSESSMENT

There is a fourth "C" to consider as well: Context. Even though dietitians are not authorized to communicate a diagnosis, they are legally obliged to obtain informed consent before providing care/service to a client. Informed consent requires a client to be told the reason, nature and prospects of any proposed treatment. The informed consent rule requires a dietitian to communicate the results of his or her assessment before commencing treatment. This context means that the prohibited communication of a diagnosis must be distinguishable from the required communication of the results of an assessment. How can dietitians thread this fine needle?

The Divisional Court of Ontario (Ontario's second highest court) has recently given some guidance on this question in *Spurrell v. College of Massage Therapists of Ontario*. Mr. Spurrell caused a pneumothorax on a client when administering acupuncture. When the client returned the next day complaining of breathing difficulties Mr. Spurrell stated that she was likely suffering from a muscle spasm and that it was unlikely that she had a pneumothorax. He also minimized the option of her going to the hospital. It turned out she did have a pneumothorax requiring medical treatment.

The Court concluded that while a muscle spasm may not be a "disease or disorder", a pneumothorax is one. By advising a client that she probably does not have a "disease or disorder" (i.e., a pneumothorax), the massage therapist communicated a diagnosis. In addition, the third component (i.e., client reliance on the communication) was clearly met by discouraging the client from going to the hospital.

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This case confirms that communicating symptoms (e.g., a muscle spasm) is acceptable while communicating a formal medical label (e.g., pneumothorax) often is not. The case also confirms that the client's reliance on the communication involves, at the very least, discouraging a client from going to others for a second opinion or for other treatment. The requirement of client reliance may include more things, but it clearly includes that.

The Spurrell case raises more questions than it answers. However, it is a start in determining how to apply this, admittedly, confusing controlled act in one's practice.

### HOW A DIETITIAN COMMUNICATES THE INFORMATION IS AS IMPORTANT AS THE INFORMATION ITSELF

Dietitians should feel comfortable in advising clients as to the findings of their assessment, including symptoms or areas for which treatment would be useful. Dietitians should also ensure that they obtain informed consent when initiating an intervention including describing the reason, nature and prospects of any proposed treatment. However, dietitians need to be cautious about communicating a formal medical label (that the client does not already know) or from discouraging a client from seeking a second opinion or other treatment. Advising a client that one has serious concerns in a particular area (e.g., concerning eating behaviours, gastrointestinal symptoms, abnormal biochemical tests) and encouraging them to see a practitioner who can diagnose them would, of course, remain appropriate.

As always, how a dietitian communicates the information is as important as the information itself. A dietitian will not get into trouble for saying "you have a number of symptoms consistent with diabetes, include x, y and z, and I think it is very important that you see your family doctor as soon as you possibly can". A dietitian will get into trouble for saying "I think you have diabetes."

As the Chinese proverb says: "To be uncertain is to be uncomfortable, but to be certain is to be ridiculous".