

Standard of Practice
Sexual Abuse and Sexual Misconduct
DRAFT (December 5, 2018)

Introduction

This Standard of Practice addresses Sexual Abuse and Sexual Misconduct. This Standard of Practice establishes who is considered to be a “patient” for the purposes of a complaint of unprofessional conduct in relation to Sexual Abuse or Sexual Misconduct under the *Health Professions Act* (“HPA”).

Definitions

“Patient” is defined in section 1(1)(x.1) of the *Health Professions Act* as:

- “patient” for the purposes of a complaint made in respect of unprofessional conduct in relation to sexual abuse or sexual misconduct, means a patient as set out in the standards of practice of a council;

“Adult interdependent partner” is defined in section 3(1) of the *Adult Interdependent Relationships Act* as:

- Subject to subsection (2), a person is the adult interdependent partner of another person if
 - (a) the person has lived with the other person in a relationship of interdependence
 - (i) for a continuous period of not less than 3 years, or
 - (ii) of some permanence, if there is a child of the relationship by birth or adoption,
 - or
 - (b) the person has entered into an adult interdependent partner agreement with the other person under section 7.

“Regulated member” is a member of the College of Physicians & Surgeons of Alberta registered as a member under section 33(1)(a) of the *Health Professions Act*.

“Sexual Abuse” is defined in section 1(1)(nn.1) of the *Health Professions Act* :

- “sexual abuse” means the threatened, attempted or actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the following conduct:
 - (i) sexual intercourse between a regulated member and a patient of that regulated member;

- (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated member and a patient of that regulated member;
- (iii) masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
- (iv) masturbation of a regulated member's patient by that regulated member;
- (v) encouraging a regulated member's patient to masturbate in the presence of that regulated member;
- (vi) touching of a sexual nature of a patient's genitals, anus, breasts, or buttocks by a regulated member;

"Sexual Misconduct" is defined in section 1(1)(nn.2) of the *Health Professions Act* as;

- "sexual misconduct" means any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature by a regulated member towards a patient that the regulated member knows or ought reasonably to know will or would cause offence or humiliation to the patient or adversely affect the patient's health and well-being but does not include sexual abuse

"Sexual nature" is defined in section 1(1)(nn.3) of the *Health Profession Act* as not including "any conduct, behaviour or remarks that are appropriate to the service provided."¹

"Spouse" is a person who is married.

Prohibitions

A regulated member must never engage in sexual conduct with a "patient". The consequences are as follows:

1. If a regulated member is found by a Hearing Tribunal to have committed unprofessional conduct based in whole or in part on "Sexual Abuse", then the Hearing Tribunal must cancel the regulated member's registration and practice permit. The regulated member is never permitted to apply for reinstatement.
2. If a regulated member is found by a Hearing Tribunal to have committed unprofessional conduct based in whole or in part on "Sexual Misconduct", then the Hearing Tribunal must at least suspend the regulated member's practice permit for a period of time determined by the Hearing Tribunal to be appropriate. The Hearing Tribunal can impose more severe sanctions than a

¹ In other words, touching of the patient's body by a regulated member does not constitute Sexual Abuse if the touching is appropriate to the health care service being provided. However, regulated members are reminded of the obligation to obtain a patient's informed consent prior to an examination, assessment, treatment or procedure. (See the CPSA's Standard of Practice on "Informed Consent" and its Advice to the Profession on "Informed Consent for Adults" and "Informed Consent for Minors".) As noted in "Informed Consent for Adults", written consent or explicit oral consent should be in place and documented whenever an examination or treatment involves touching the patient (page 4).

suspension. If a regulated member's registration and practice permit are cancelled because of "sexual misconduct" then the regulated member cannot apply for reinstatement for at least 5 years.

All types of sexual relationships with patients are prohibited even if the regulated member believes that the patient is "consenting." The *Health Professions Act* does not recognize such alleged "consent" as a valid defence because of the existence of the inherent power imbalance that typically exists in the regulated member-patient relationship.

If a regulated member engages in the type of behaviour set out in the definition of Sexual Abuse or Sexual Misconduct with a person who is not his or her patient (such as colleagues, staff, or others) then this conduct may still be considered "unprofessional conduct" by the regulated member but the mandatory sanctions for Sexual Abuse and Sexual Misconduct would not apply.

If a regulated member engages in inappropriate conduct with a patient that does not fall within the definition of "Sexual Abuse" or "Sexual Misconduct", a Hearing Tribunal may still consider the conduct to be "unprofessional conduct" subjecting the regulated member to sanctions.

A regulated member must not:

- a. enter into a close personal or sexual relationship with any person with whom a patient has a significant interdependent relationship (eg. parent, guardian, child or significant other);
- b. request details of a patient's sexual or personal history unless related to the patient's care;
- c. socialize or communicate with a patient for the purpose of pursuing a close personal relationship; or
- d. terminate a regulated member-patient relationship for the purpose of pursuing a close personal or sexual relationship.

A violation of (a) to (d) is not considered to be Sexual Abuse but may be considered by a Hearing Tribunal to be unprofessional conduct under the *Health Professions Act*. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions including suspensions and cancellation of registration and practice permit.

Who is considered to be a "patient"?

The Sexual Abuse and Sexual Misconduct provisions in the *Health Professions Act* apply to "patients". For the purposes of this standard of practice, an individual is a regulated member's "patient" in two circumstances:

1. When a regulated member-patient relationship has been formed and has not ended.
2. When a regulated member engages in the type of sexual acts described in the definition of "Sexual Abuse" with a "former patient" within 1 year from the date the individual ceased to be the regulated member's patient.

An individual becomes a patient when a regulated member-patient relationship is formed. This type of relationship is formed when there is a reasonable expectation that care will extend beyond a single encounter and the regulated member has engaged in one or more of the following activities:

1. Gathered clinical information to assess a person;
2. Provided a diagnosis;

3. Provided medical advice or treatment;
4. Provided counselling to the patient.
5. Created a patient file for the patient.
6. Billed for medical services provided to the patient.
7. Prescribed a drug for which a prescription is needed to the patient.

A regulated member who engages in the type of sexual acts described in the definition of “Sexual Abuse” with a patient commits Sexual Abuse.

Sexual Conduct after the End of the Regulated Member-Patient Relationship

For the purposes of the sexual abuse provisions in the *Health Professions Act*, an individual may still be considered a “patient” after the date on which the individual ceased to be the regulated member’s patient.

An individual is considered to be a “patient” for the purposes of the Sexual Abuse provisions for a 1 year period after the date on which the individual ceased to be the regulated member’s patient. As a result, a regulated member must not engage in the type of sexual acts described in the definition of “Sexual Abuse” with such an individual for a minimum of 1 year after the individual ceased to be the regulated member’s patient. If a regulated member has any doubt as to whether or when a regulated member - patient relationship ended they may wish to seek advice from the CMPA or the CPSA.

Sexual conduct may still be considered to be inappropriate after the 1 year period has elapsed. Sexual conduct with a former patient is inappropriate if there is more than a minimal risk of a continuing power imbalance. A non-exhaustive list of factors in determining whether there is more than a minimal risk of a continuing power imbalance is as follows (in this list the patient is referred to as the “individual”):

1. Whether the individual understands the inherent power imbalance that typically exists in a regulated member-patient relationship.
2. Whether sufficient time has passed since the end of the regulated member -patient relationship, given the nature and extent of the regulated member -patient relationship.
3. The nature of the individual’s clinical problems.
4. The type of medical care provided by the regulated member.
5. Whether the individual has confided close personal or sexual information to the regulated member.
6. The length and intensity of the former regulated member-patient relationship.
7. Whether this is a situation where there is a likelihood of transference.
8. The vulnerability of the individual including a consideration of whether the individual is a member of a vulnerable population such as, for example: those who have diminished capacity, those who are economically disadvantaged, those suffering from addictions and the homeless.
9. Whether the regulated member-patient relationship was established while the individual was a minor.
10. Whether there is a history of the regulated member prescribing to the patient drugs associated with substance use disorders or substance-related harms.

Sexual conduct with a former patient beyond the 1 year period that is considered inappropriate given all the circumstances is not considered to be Sexual Abuse. However, such conduct may be considered by a Hearing Tribunal to be unprofessional conduct under the *Health Professions Act*. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions including suspensions and cancellation of registration and practice permit.

Any regulated member who engages in sexual conduct with a former patient after the 1 year period has elapsed runs a risk that the conduct will be considered inappropriate and unprofessional conduct. Regulated members with any doubt as to the propriety of their conduct may wish to seek advice from the CMPA or the CPSA.

Psychotherapeutic Treatment

A regulated member who has provided psychotherapeutic treatment to a patient must never engage in sexual conduct with the former patient regardless of the amount of time that has passed since the end of the regulated member-patient relationship. In other words, for the purposes of the Sexual Abuse provisions in the *Health Professions Act*, the individual is always considered to be a “patient” regardless of the amount of time that has lapsed since the end of the regulated member-patient relationship.

Episodic Care

For the purposes of the sexual abuse and sexual misconduct provisions, a regulated member-patient relationship is formed when a regulated member provides “Episodic Care” as defined in the Standard of Practice on “Episodic Care.” However, the regulated member-patient relationship does not extend beyond the conclusion of the episodic care. The individual is considered a patient during the episodic care. Therefore, a regulated member who engages in the type of activity described in the definition of Sexual Abuse or Sexual Misconduct while providing episodic care will be considered to have committed Sexual Abuse or Sexual Misconduct, as the case may be.

Sexual conduct between a regulated member and a former patient after the completion of episodic care may still be considered to be inappropriate. This conduct is considered to be inappropriate if there is more than a minimal risk of a continuing power imbalance. A non-exhaustive list of factors in determining whether there is more than a minimal risk of a continuing power imbalance is set out in the section “Sexual Conduct after the End of the Regulated member-Patient Relationship.”

Sexual conduct with a former patient after the conclusion of episodic care that is considered inappropriate given all the circumstances is not considered to be Sexual Abuse. However, such conduct may be considered by a Hearing Tribunal to be unprofessional conduct under the *Health Professions Act*. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions including suspensions and cancellation of registration and practice permit.

Medical Treatment of Spouses, Adult Interdependent Partners and those in Pre-Existing Sexual Relationships

For the purposes of the sexual abuse provisions in the *Health Professions Act*, a person receiving medical treatment from a regulated member is not considered a patient if the regulated member is their spouse or adult interdependent partner or if they are in a pre-existing sexual relationship with the regulated member.

However, it is considered to be unprofessional conduct for a regulated member to provide medical treatment to a spouse, adult interdependent partner or person with whom they are in a pre-existing sexual relationship unless all the following conditions are met:

1. The treatment is limited to a “minor condition” or an “emergency”.
2. Another physician is not readily available or the individual receiving treatment could suffer harm from a delay in obtaining the services of another physician.

“Minor condition” is considered a non-urgent, non-serious condition that requires only short-term, routine care and is not likely to be an indication of, or lead to, a more serious condition requiring medical expertise.

An “emergency” is considered to exist when an individual is experiencing severe suffering or is at risk of sustaining serious bodily harm if medical intervention is not promptly provided.

After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions including suspensions and cancellation of registration and practice permit.