

## STANDARDS OF PRACTICE

# Boundary Violations: Sexual

Under Review: No

Issued By: Council: April 1, 2019

The *Standards of Practice* of the College of Physicians & Surgeons of Alberta (“CPSA”) are the **minimum** standards of professional behavior and ethical conduct expected of all regulated members registered in Alberta. Standards of Practice are enforceable under the *Health Professions Act* and will be referenced in the management of complaints and in discipline hearings. CPSA also provides *Advice to the Profession* to support the implementation of the Standards of Practice.

**ADVISORY NOTE: Complaints received by CPSA on or after April 1, 2019 will be adjudicated based on the sanctions of the *Health Professions Act* regardless of when the alleged incident occurred.**

## 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 *HPA* 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

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- 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 *HPA*.

“Sexual abuse” is defined in section 1(1)(nn.1) of the *HPA* as:

- “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 *HPA* as:

- “sexual misconduct” means any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual

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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 *HPA* as not including "any conduct, behaviour or remarks that are appropriate to the service provided."

- 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 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).

"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 suspension. If a regulated member's registration and practice permit are cancelled because of

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“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 *HPA* 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 Hearing Tribunal found that this conduct constituted unprofessional conduct, then a Hearing Tribunal would have the discretion to impose the type of orders that it considers appropriate up to and including suspension and cancellation of registration and practice permit.

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 sexual relationship with any person with whom a patient has a significant interdependent relationship (e.g. parent, guardian, child or significant other);
- b. request details of a patient’s sexual or personal history unless related to the patient’s care; or
- c. [terminate a regulated member-patient relationship](#) for the purpose of pursuing a sexual relationship.

A violation of (a) to (c) is not considered to be sexual abuse but may be considered by a Hearing Tribunal to be unprofessional conduct under the *HPA*. A violation of (b) may be found by a Hearing Tribunal to constitute sexual misconduct. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range

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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 *HPA* 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. For a period of 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; or
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.

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A regulated member who engages in the type of sexual acts described in the definition of sexual misconduct with a patient commits sexual misconduct.

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

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 [CPSA](#).

As described above, 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

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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 *HPA*. 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 [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 *HPA*, 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

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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 even if it takes place within 1 year of providing episodic care. However, such conduct may be considered by a Hearing Tribunal to be unprofessional conduct under the *HPA*. 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.

The provisions of this Standard of Practice concerning episodic care are only for the purposes of defining who is a patient for the purposes of the sexual abuse and sexual misconduct provisions in the *HPA*. The provisions of this Standard of Practice do not diminish any ongoing professional responsibilities of the regulated member under the *Episodic Care* Standard of Practice.

### **Medical Treatment of Spouses, Adult Interdependent Partners and Those in Pre-Existing Sexual Relationships**

For the purposes of the sexual abuse provisions in the *HPA*, 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 an ongoing 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 an ongoing preexisting sexual relationship unless all the following conditions are met:

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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.

## **RELATED STANDARDS OF PRACTICE**

- [\*Boundary Violations: Personal\*](#)
- [\*Code of Ethics & Professionalism\*](#)
- [\*Duty to Report a Colleague\*](#)
- [\*Informed Consent\*](#)
- [\*Terminating the Physician-Patient Relationship\*](#)

## **COMPANION RESOURCES**

- [\*Advice to the Profession: Boundary Violations: Sexual\*](#)
- [\*Patient FAQs: Personal & Sexual Boundary Violations\*](#)
- [\*CMPA’s Good Practices Guide: Maintaining appropriate boundaries\*](#)
- [\*CMPA’s Good Practices Guide: Why and when do we need consent?\*](#)

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