
PROHIBITION OF A SEXUAL RELATIONSHIP WITH A PATIENT

Standard of Practice S-014
Patient Relations Committee

APPROVED BY COUNCIL: FEBRUARY 8, 2005

RE-AFFIRMED BY COUNCIL: FEBRUARY 19, 2009

Amended: April 14, 2010, September 22, 2011, February 14, 2012,
September 20, 2013, September 16, 2017, April 24, 2018, September 15, 2018



Note to Readers: In the event of any inconsistency between this document and the legislation that affects chiropractic practice, the legislation governs.

INTENT

To inform members that a sexual relationship with a patient is strictly forbidden by law.

DESCRIPTION OF STANDARD

Under no circumstances should a member have a sexual relationship with a patient.

Sexualizing a professional relationship is against the law. In Ontario, the *Regulated Health Professions Act (RHPA)* prohibits sexual involvement of health care professionals with patients. The *RHPA* defines sexual abuse as sexual intercourse or other forms of physical sexual relations, touching of a sexual nature, or behaviour or remarks of a sexual nature, between a member and a patient.

Because of the broad definition of sexual abuse outlined in the *RHPA*, it is prohibited for a member to have a sexual relationship with a patient. Even the most casual dating relationship may lead to forms of affectionate behaviour that would fall under this definition and could leave the member open to a possible complaint to CCO.

- A sexual relationship with a patient is prohibited. Under the *RHPA*, the following types of sexual abuse will result in the revocation of a member's licence:
 - sexual intercourse
 - genital to genital, genital to anal, oral to genital, or oral to anal contact,
 - masturbation of the member by, or in the presence of, the patient,
 - masturbation of the patient by the member,
 - encouraging of the patient by the member to masturbate in the presence of the member,
 - touching of a sexual nature of the patient's genitals, anus, breasts or buttocks, and
 - other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*.

For the purposes of this section, "sexual nature does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided."

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- A concurrent sexual and doctor/patient relationship is strictly against the law, no matter which relationship was established first. This prohibition includes providing patient care to a spouse, partner or anyone with whom the member has a sexual relationship. (see Incidental or Emergency Treatment).
- For the purposes of the sexual provisions, the *RHPA* defines “patient” as “patient”, without restricting the ordinary meaning of the term, includes,
 - (a) an individual who was a member’s patient within one year or such longer period of time as may be prescribed from the date on which the individual ceased to be the member’s patient, and
 - (b) an individual who is determined to be a patient in accordance with the criteria in any regulations made under clause 43 (1) (o) of the *Regulated Health Professions Act, 1991*; (“patient”)

Therefore, a member shall not commence a sexual relationship with an individual who is a patient, as defined in the *RHPA*, until at least one year from the date on which the individual ceased to be the member’s patient

- There is a history of complaints against members who have had sexual relationships with their patients/former patients. Complaints have been made by patients, significant others (including spouses of both members and patients) and former significant others. Therefore, the member shall ensure that there is a termination of the doctor/patient relationship, and at least one year has passed from the date the individual ceased to be the member’s patient, before commencing a sexual relationship with a former patient. In such circumstances, the member shall:
 - terminate the care of the patient,
 - provide a referral to another chiropractor,
 - document these actions in the patient health record,
 - give a copy of such correspondence to the patient, and
 - maintain a second copy in the file.At the patient’s request, the member shall transfer patient records to the new attending chiropractor.
- A member is reminded that he/she has an ethical obligation not to exploit the trust, knowledge and dependence that develops during the doctor/patient relationship. Before determining the appropriateness of a sexual relationship with a former patient, a member must think and act cautiously. A panel of the Inquiries, Complaints and Reports Committee, Discipline Committee or Fitness to Practise Committee will consider a number of factors in determining the appropriateness of a sexual relationship with a former patient, including but not limited to:
 - the nature, length and intensity of the former doctor/patient relationship,
 - the nature of the patient’s clinical problem,
 - the type of care provided by the member,
 - the length of time following the termination of the doctor/patient relationship before the commencement of a sexual relationship, and

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- the vulnerability of the patient during and following the doctor/patient relationship and the patient's understanding of the dynamics and boundaries of the doctor/patient relationship.

It may never be appropriate for a member to have a sexual relationship with a former patient or for a member to provide patient care to someone with whom he/she previously had a sexual relationship (for example, when there is a continued power imbalance between the member and the former patient, or the former patient is physically or emotionally vulnerable).

- A member is reminded that he/she is a primary health care provider who is authorized to use the "doctor" title, perform certain controlled act under the *RHPA*, and provides "hands on" therapies and treatments. As such, the member should recognize that a power imbalance exists between the member and patients and patients are often in a physically and/or emotionally vulnerable position.

If a patient suggests or attempts to develop a sexual relationship:

- inform the patient of the legal restrictions and prohibitions and communicate proper boundaries for the doctor/patient relationship.
- refer the patient to another chiropractor if the above actions do not resolve the situation.
- document actions on the patient's chart.

Evidence of a Doctor/Patient Relationship

Regulation 260/18 under the *RHPA* establishes criteria for the purposes of determining whether an individual is a patient of a member, as follows:

“An individual is a patient of a member if there is direct interaction between the member and the individual and any of the following conditions are satisfied:

- i. The member has, in respect of a health care service provided by the member to the individual, charged or received payment from the individual or a third party on behalf of the individual.
- ii. The member has contributed to a health record or file for the individual.
- iii. The individual has consented to the health care service recommended by the member.”

Case law, including *Leering v. College of Chiropractors of Ontario, 2010 ONCA (Leering v. CCO)*, has identified factors that would indicate the existence of a doctor/patient relationship. From *Leering v. CCO*, evidence of a doctor/patient relationship includes, but is not limited to:

- opening of a patient file that includes one or more of the following:
 - patient history
 - physical examination
 - diagnosis

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- plan of management
- prognosis
- diagnostic imaging reports
- written record of treatment
- informed consent to treatment
- billing information
- commencement of billings, including billing to third parties, such as insurance companies
- financial records
- letters of consultation to and from other health professionals
- written communications or statements referring to an individual as a patient
- formal letter of discharge

A panel of the Inquiries, Complaints and Reports Committee, Discipline Committee or Fitness to Practise Committee will consider various factors central to the doctor/patient relationship, including those identified in Regulation 260/18 and caselaw in determining whether a doctor/patient relationship exists.

Evidence of the Termination of a Doctor/Patient Relationship

Factors that would indicate the termination of a doctor/patient relationship include, but are not limited to:

- a referral letter to another chiropractor; or
- evidence that the patient is receiving chiropractic care from another chiropractor.

Incidental or Emergency Treatment

Regulation 260/18 under the *RHPA* states that an individual is not a patient of a member if all the following conditions are satisfied:

- i. There is, at the time the member provides the health care services, a sexual relationship between the individual and the member.
- ii. The member provided the health care service to the individual in emergency circumstances or in circumstances where the service is minor in nature.
- iii. The member has taken reasonable steps to transfer the care of the individual to another member or there is no reasonable opportunity to transfer care to another member.”

In the case of *Leering v. College of Chiropractors of Ontario, 2010 ONCA 87*, the Ontario Court of Appeal made several statements indicating that providing incidental or emergency treatment during the course of a spousal relationship **may not** result in a finding that the spouse was a patient within the meaning of the *RHPA*.

Incidental care was defined as subordinate to something of greater importance, minor in nature, casual or arising in fortuitous conjunction with a spousal relationship. The issue to be determined is whether a treatment is incidental to the spousal relationship and does not constitute the spouse as a patient, or whether the spouse receiving treatment is a patient under the *RHPA*. Examples of

incidental care given by the Ontario Court of Appeal are a doctor providing spot emergency care to a spouse following an accident or a chiropractor providing a manipulation to a spouse who suffers a muscle spasm to provide immediate relief.

A panel of the Inquiries, Complaints and Reports Committee, Discipline Committee or Fitness to Practise Committee will determine if a concurrent doctor/patient relationship and sexual relationship occurred, as follows:

- Review the factors of incidental or emergency treatment, as determined by Regulation 260/18 under the *RHPA* and the Ontario Court of Appeal
- Apply these factors to the specific facts of a complaint or hearing

If a finding of a concurrent doctor/patient relationship and sexual relationship is made, the sexual abuse provisions of the *RHPA* will apply.

A member who provides incidental or emergency treatment to someone with whom he/she is engaging in a sexual relationship and decides that the person would benefit from receiving additional chiropractic care must refer that person to another chiropractor and/or health care professional and document this referral. ~~In addition, the member should document this referral.~~

FINAL WORDS

- A sexual relationship with a patient is strictly forbidden by law.
- Information regarding allegations of sexual abuse comes to the attention of CCO through the ICRC, and/or mandatory reporting by a member or another health professional.
- The penalties for a finding of professional misconduct relating to sexual abuse of a patient, which are found in section 51(2) of the *Code*, include:
 - revocation of a member's licence for five years;
 - stringent conditions on a member's licence before applying for reinstatement;
 - results of the discipline proceedings will remain on the public register indefinitely; and
 - financial obligations, such as paying for therapy and/or counselling for the victims and reimbursing CCO for legal and investigative costs.

LEGISLATIVE CONTEXT

Health Professions Procedural Code, Schedule 2 to the Regulated Health Professions Act, 1991

Sexual Abuse of a patient

Section 1(3): In this *Code*, “sexual abuse” of a patient by a member means,

- (a) sexual intercourse or other forms of physical relations between the member and the patient,
- (b) touching, of a sexual nature, of the patient by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the patient.

Exception

Section 1(4): For the purposes of subsection (3), “sexual nature does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

Definition of Patient

Section 1(6): For the purposes of subsections (3) and (5), “patient”, without restricting the ordinary meaning of the term, includes,

- (a) an individual who was a member’s patient within one year or such longer period of time as may be prescribed from the date on which the individual ceased to be the member’s patient, and
- (b) an individual who is determined to be a patient in accordance with the criteria in any regulations made under clause 43 (1) (o) of the *Regulated Health Professions Act, 1991*; (“patient”)

Exception

Section 1(4): For the purposes of subsection (3), "sexual nature does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.”

Statement of purpose, sexual abuse provisions

1.1 The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and counselling for patients who have been sexually abused by members and, ultimately, to eradicate the sexual abuse of patients by members.

Orders relating to sexual abuse

Section 51(5): If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Revoke the member’s certificate of registration if the sexual abuse consisted of, or included, any of the following,
 - i. Sexual intercourse
 - ii. Genital to genital, genital to anal, oral to genital, or oral to anal contact,
 - iii. Masturbation of the member by, or in the presence of, the patient,
 - iv. Masturbation of the patient by the member,
 - v. Encouraging of the patient by the member to masturbate in the presence of the member,
 - vi. touching of a sexual nature of the patient’s genitals, anus, breasts or buttocks, and

- vii. other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*.

Interpretation

(5.1) For greater certainty, for the purposes of subsection (5), “sexual nature” does not include touching or conduct of a clinical nature appropriate to the service provided. 2017, c. 11, Sched. 5, s. 19 (3).

Mandatory revocation

- (5.2) The panel shall, in addition to anything else the panel may do under subsection (2), reprimand the member and revoke the member’s certificate of registration if,
- (a) the member has been found guilty of professional misconduct under clause (1) (a) and the offence is prescribed in a regulation made under clause 43 (1) (v) of the *Regulated Health Professions Act, 1991*; or
 - (b) the member has been found guilty of professional misconduct under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5). 2017, c. 11, Sched. 5, s. 19 (3).

Statement re: impact of sexual abuse

Section 51(6): Before making an order under subsection (5), the panel shall consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of the sexual abuse on the patient.

Same

Section 51(7): The statement may be made by the patient or by his or her representative.

Notice to member

Section 51(8): The panel shall not consider the statement unless a finding of professional misconduct has been made.

Section 51(9): When a written statement is filed, the panel shall, as soon as possible, have copies of it provided to the member, to his or her counsel and the College.

Application for Reinstatement

Section 72(1): A person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings may apply in writing to the Registrar to have a new certificate issued or the suspension removed.

Section 72 (3): An application under subsection (1), in relation to a revocation for sexual abuse of a patient, shall not be made earlier than,

- (a) five years after the date on which the certificate of registration was revoked; or
- (b) six months after a decision has been made in a previous application under subsection (1).

Ontario Regulation 260/18

1. The following criteria are prescribed criteria for the purposes of determining whether an individual is a patient of a member for the purposes of subsection 1 (6) of the Health Professions Procedural Code in Schedule 2 to the Act:

1. An individual is a patient of a member if there is direct interaction between the member and the individual and any of the following conditions are satisfied:

- i. The member has, in respect of a health care service provided by the member to the individual, charged or received payment from the individual or a third party on behalf of the individual.
- ii. The member has contributed to a health record or file for the individual.
- iii. The individual has consented to the health care service recommended by the member.
- iv. The member prescribed a drug for which a prescription is needed to the individual.

2. Despite paragraph 1, an individual is not a patient of a member if all of the following conditions are satisfied:

- i. There is, at the time the member provides the health care services, a sexual relationship between the individual and the member.
- ii. The member provided the health care service to the individual in emergency circumstances or in circumstances where the service is minor in nature.
- iii. The member has taken reasonable steps to transfer the care of the individual to another member or there is no reasonable opportunity to transfer care to another member.

Ontario Regulation 262/18

Prescribed offences

1. The offences mentioned in sections 151, 152, 153, 153.1, subsection 160 (3) and sections 162, 162.1, 163.1, 170, 171.1, 172.1, 172.2, 271, 272 and 273 of the Criminal Code (Canada) are prescribed offences for the purposes of clause 51 (5.2) (a) of the Health Professions Procedural Code in Schedule 2 to the Act.