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# Standard of Practice:

## Sexual Abuse and Sexual Misconduct

2019

## Introduction

The purpose of this Standard of Practice is to define who is considered to be a patient for the purposes of the sexual abuse and sexual misconduct provisions in the *Health Professions Act*, and to clarify the consequences of engaging in sexual abuse or sexual misconduct with a patient.

## Definitions

**Adult interdependent partner:** means a person as defined in section 3(1) of the *Adult Interdependent Relationships Act* SA 2002, c A-4.5.<sup>1</sup>

**Dentist:** means a regulated member of the Alberta Dental Association and College, registered under section 33(1)(a) of the *Health Professions Act*.

**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 this Standard of Practice, as described below.

**Professional interaction:** means a direct interaction between a dentist and an individual, where at least one of the following has occurred:

- the dentist provided professional services to the individual;<sup>2</sup>
- the individual consented to receiving professional services from the dentist;
- the dentist has charged or received payment from the individual or a third party on behalf of the individual; or
- the dentist has contributed to a health record or file for the individual.

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

- sexual intercourse between a regulated member and a patient of that regulated member;

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<sup>1</sup> Section 3(1) of the *Adult Interdependent Relationships Act* defines adult interdependent partner as follows:

3(1) Subject to subsection (2), a person is the adult interdependent partner of another person if

- (a) the person has lived continuously 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 partnership agreement with the other person under section 7.

(2) Persons who are related to each other by blood or adoption may only become adult interdependent partners of each other by entering into an adult interdependent partner agreement under section 7.

<sup>2</sup> "Professional services" is defined in section 3 of Schedule 7 to the *Health Professions Act*, and includes: evaluating, diagnosing, and treating diseases, disorders and conditions of (i) the mouth (ii) the maxillofacial area (iii) the adjacent and associated structures of the head and neck, to maintain and improve a person's physical, psychological or social health. Professional services also includes the provision of restricted activities authorized under the Regulations.

- 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;
- masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
- masturbation of a regulated member's patient by that regulated member;
- encouraging a regulated member's patient to masturbate in the presence of that regulated member; or
- 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 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.

**Spouse:** is a person who is married.

## Defining a Patient

For the purposes of this Standard of Practice, a patient is defined as an individual who is or has had a professional interaction with a dentist, where the dentist knew or ought to have known that the patient is or was the dentist's patient.

The following persons will **not** be considered to be a patient for the purposes of this Standard of Practice:

- A dentist's spouse;
- A dentist's adult interdependent partner; or
- An individual who is engaged in an ongoing sexual relationship with the dentist on the date that the dentist first had a professional interaction with that individual.

## Termination of the Dentist-Patient Relationship

A dentist-patient relationship is formed when a dentist and a patient have a professional interaction, as described above.

The dentist-patient relationship continues until it is terminated. For the purposes of this Standard of Practice, the dentist-patient relationship is terminated as soon as one of the following has occurred:

- Neither the dentist nor the patient have an expectation of an ongoing care relationship;
- The dentist has formally discharged the patient;
- The dentist has transferred the patient's care to another dentist; or
- It has been 12 months since the last professional interaction between the dentist and the patient.

Once the dentist-patient relationship has been terminated, the individual who had a professional interaction with the dentist will still be considered to be a patient for the purposes of this Standard of Practice in circumstances where a reasonable person would believe there is a risk of a continuing power imbalance, as described below.

## Responsibilities and Prohibitions

There may be an inherent power imbalance between a dentist and a patient that arises as a result of the fact that the dentist has knowledge, experience and expertise that the patient does not possess. Patients may also disclose sensitive personal and health information to dentists, which may further contribute to the power imbalance.

Dentists are responsible for ensuring that the boundaries of the dentist-patient relationship are respected at all times.

Dentists are prohibited from engaging in conduct that constitutes sexual abuse toward anyone defined as a patient in this Standard of Practice. Even if the patient provides their consent to engage in a sexual relationship, sexual conduct between a dentist and their patient will be considered to constitute sexual abuse as defined in the *Health Professions Act*.

Dentists are also prohibited from engaging in any acts that constitute sexual misconduct toward a patient.

## Former Patients

A dentist is prohibited from engaging in a sexual relationship with a former patient in circumstances where a reasonable person would believe there is a risk of a continuing power imbalance. In determining whether there is a risk of a continuing power imbalance, the following factors will be considered:

- The number of times that the dentist and the patient had a professional interaction;
- The duration of the professional relationship;
- The nature of the professional interactions;
- Whether sufficient time has passed since the last professional interaction occurred;
- Whether the patient has confided personal information to the dentist beyond that which was necessary for the purposes of receiving professional services;
- Whether the patient was emotionally dependent on the dentist; and
- Whether the patient is particularly vulnerable as a result of factors such as: age, gender identity, socioeconomic status, or as a result of a mental, intellectual or physical disability.

If a dentist enters into a sexual relationship with a former patient in circumstances where a reasonable person would believe there is a risk of a continuing power imbalance, the former patient will be considered to be a patient for the purposes of this Standard of Practice. In such circumstances, sexual contact between the former patient and the dentist will be considered to be sexual abuse, even if the sexual contact was consensual.

## Consequences of Breaching this Standard of Practice

Dentists must be aware that the consequences for breaching this Standard of Practice are serious, and could result in cancellation of registration. The consequences are as follows:

- **Sexual abuse:** If a hearing tribunal finds that a dentist has engaged in sexual abuse, the hearing tribunal must cancel the dentist's registration and practice permit, and the dentist is never permitted to apply for reinstatement. The hearing tribunal can also make other orders specified in section 82 of the *Health Professions Act*.
- **Sexual misconduct:** If a hearing tribunal finds that a dentist has engaged in sexual misconduct, the hearing tribunal must suspend the dentist's practice permit for a period of time determined to be appropriate. The hearing tribunal can impose more significant orders, including cancellation of the dentist's registration and practice permit. If a regulated member's registration and practice permit are cancelled because of sexual misconduct then they cannot apply for reinstatement for at least 5 years.