



stopping

sexual abuse



practice management
resources
public protection
results

College of Homeopaths of Ontario
Practice Management Program

Stopping Sexual Abuse of Patients

Heightened Priorities, Legislative Action

Government Initiatives

In 2014, Ontario's Minister of Health and Long-Term Care, the Honourable Dr. Eric Hoskins, formed a Task Force on the Prevention of Sexual Abuse of Clients and the RHPA. After completing a thorough review of complaints and investigative processes across all of Ontario's 26 health regulatory colleges, the Sexual Abuse Task Force ("SATF") asserted that bold reform is needed in the area of sexual abuse prevention.

Last year, the Ministry published the *Report of the Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act, 1991 (RHPA)* which contained 34 recommendations on how to improve regulatory oversight of health professionals, and to prevent sexual abuse of patients in the health-care system.

As a result of the SATF's report, Bill 87, *Protecting Patients Act, 2017*, was introduced with the goal of strengthening and unifying Colleges' approach to dealing with cases of sexual abuse by regulated health professionals. Several of the SATF recommendations have not been addressed by the recent changes to RHPA, and the Ministry is closely assessing them. The Ministry of Health and Long-Term Care has communicated that it is evaluating other ways to improve regulation and in particular, to prevent the sexual abuse of patients¹ and clients.

In addition to the important changes outlined in this publication, the College of Homeopaths of Ontario (CHO or the College) anticipates many more changes to self-regulation in the coming year and will notify registrants² as changes come into being.

Public Protection is Our Mandate

Every patient of a regulated health care professional rightfully expects and deserves to receive ethical, competent and quality care from their practitioner. Further, the public today expects to have access to information that is relevant to their choice of practitioner. All regulatory health colleges have the primary responsibility to protect the public. This is possible by ensuring the:

1. Registration of qualified and competent practitioners;
2. Public has the information they require to make informed choices about their care and who provides that care;
3. Development and enforcement of CHO and Government regulations, as well as CHO bylaws, policies and professional practice standards and guidelines;
4. Education of registrants and the public on the College's professional practice standards, guidelines and promotion of public safety and protection;
5. Monitoring the ongoing competence and compliance of registrants; and
6. Investigation and hearing of inquiries, complaints, and report and taking corrective actions, disciplinary measures and revocation of a registrant's certificate of registration as warranted.

¹ Note that the term "patient" and "client" is used interchangeably throughout this document. Although the CHO primarily uses the term "patient", some professions regulated under RHPA use the title "client".

² Note that the term "member" and "registrant" is used interchangeably throughout this document.

Recent Changes to RHPA Result in More Oversight of Colleges³

To strengthen and address important matters of public protection, the government has introduced a series of changes to the College's investigation and discipline functions, information required to be displayed on the public register, and transparency of the College's operations.

On December 8, 2016, the Minister of Health and Long-Term Care (Minister Hoskins) introduced Bill 87 "*Protecting Patients Act, 2017*". The Bill was passed by the Ontario legislature, and received Royal Assent on May 30, 2017. The passing of Bill 87 changes the *Regulated Health Professions Act, 1991* (RHPA) and other health-related statutes. The RHPA governs the CHO as well as 25 other health regulatory colleges. Hence, these changes impact all registrants of all RHPA regulated health colleges.

Some of the changes took effect immediately upon Royal Assent on May 30, 2017. Other changes will be introduced upon proclamation at a yet-to-be-determined future date. The four major items to be covered over the next few issues include:

- Sexual Abuse and RHPA amendments related to sexual abuse
- Changes to the Register
- Mandatory Reporting
- Further Details of the *Protecting Patients Act, 2017* including the Minister's powers, the College's powers to make interim orders, and changes to the *Immunization of School Pupils Act*

The *Regulated Health Professions Act, 1991* includes sections which apply to all regulatory colleges. It names all of the health professions regulated under the Act, and provides further detail on the objects and administration of programs and functions of Colleges. Schedule 2 of the RHPA is also known as the Health Professions Procedural Code or the Code.

Sexual Abuse is a Serious Matter

Patients must feel safe, respected and protected. Your daily interaction with patients ensures this occurs when you put the patient first, and keep patient protection in mind and practice.

Under the RHPA, sexual abuse means any sexual words, gestures or touching between a registered health professional and a patient. It is important to note that under this definition,

1. *Sexual abuse does not have to involve actual sex. Sexualized banter or other non-touching activities are included.*
2. *Consent is irrelevant. Even if the patient initiates or willingly participates in the sexual activity, it is still prohibited.*
3. *Evidence of exploitation is not required. Even if both parties are genuinely in love at the time, sexual relations with a patient are never permitted.*

³ Acknowledgement to Legal Counsel Richard Steinecke, College of Dental Hygienists of Ontario and College of Massage Therapists of Ontario for sharing relevant content.

*This strict approach is taken to prevent abuse of the power and status that health practitioners often have over their patients in a clinical context. It further recognizes that patients can be vulnerable.*⁴

Additional grounds for mandatory revocation of College registrants have been added to RHPA. This applies to those who are found to have committed sexual abuse including sexual touching of a patient's genitals, anus, breasts or buttocks. These are referred to as "frank acts" of sexual abuse.

Upon making a finding of "frank" sexual abuse, a panel of the College's Discipline Committee must immediately make a temporary order (called an interim order) suspending the registrant's certificate pending the penalty phase of the hearing.

Discipline panels who find registrants engaged in lesser sexual abuse (i.e., for conduct other than the "frank" acts), will be required to suspend the registrant's certificate of registration. Further, if a registrant is found guilty of sexually abusing a patient, the College will revoke the registrant's certificate of registration for five years, meaning he or she may no longer use the title or practice as a homeopath.

Immediate Changes under RHPA effective May 30, 2017

Amendments Related to Sexual Abuse

The College and the province's Ministry of Health and Long-Term Care have a *Zero Tolerance*⁵ stance towards sexual abuse of all patients and all health professionals. In "getting to zero" both the College and registrants play a crucial role in eliminating sexual abuse in the profession, and in maintaining the public's trust and confidence in the profession by prioritizing patient safety and well-being.

Unfortunately, incidents of sexual abuse are still present in the health-care system. Recent and future changes to RHPA are aimed at protecting patients, providing abused patients with adequate support after reporting the abuse, and giving the Colleges the power to act quickly once an incident has been reported. Powers include the ability to quickly remove a registrant from practice until the disciplinary process is complete.

Finally, the RHPA changes have broadened the current list of sexual abuse acts that result in an automatic mandatory revocation⁶ of a health professional's Certificate of Registration. Mandatory revocation means that the registrant's license is removed for a period of time (i.e. for at least five (5) years.)

Here's a top-line review of the changes related to sexual abuse⁷:

Now in Effect

- Requirement of immediate suspension of a health practitioner's practice or imposition of Terms, Conditions or Limitations as soon as a sexual abuse complaint is made if the member exposes or is likely to expose the patient to harm or injury⁸.

⁴ Zero Tolerance for Sexual Abuse, Richard Steinecke, LL.B, résumé Fall 2010 College of Dietitians of Ontario, page 5-6.

⁵ The term "zero tolerance" is used as shorthand for the philosophy that sexual abuse of patients/clients by members of the College will not be tolerated. Source: College of Kinesiologists of Ontario, Practice Standard Sexual Abuse.

⁶ Mandatory revocation is the removal of one's license to practice as a regulated health professional and the rescinding of the registrant's certificate of registration

⁷ Should you wish to review the complete list of amendments contained in the Act, please [click here](#).

⁸ RHPA, Code 25.4.

- Additional grounds for mandatory revocation of College registrants which apply to those who are found to have committed sexual abuse including sexual touching of a patient’s genitals, anus, breasts or buttocks. These are referred to as “frank acts” of sexual abuse.
- Expanded criteria for mandatory revocation (and the corresponding inability to apply for reinstatement for at least five years). The additional criteria include touching of a sexual nature of the patient’s genitals, anus, breasts or buttocks [Code 1(4) makes it clear that as an exception “sexual nature” does not include touching, behavior or remarks of a clinical nature appropriate to the service provided. 1993, c.27,s.4). *Code 51(5), (5.1) and (5.0.1)*]
- Mandatory revocation also applies where another regulator makes a finding of professional misconduct that involves the expanded criteria listed above of revocable sexual acts. If another regulator revokes a registrant’s registration based on a finding of sexual abuse, the CHO will automatically also revoke the individual’s certificate of registration. *Code 51(5).2.*
- *Other Orders by the Disciplines Committee in Sexual Abuse Cases:* A discipline panel is prevented from ordering gender-based restrictions in any case (not just sexual abuse cases). In addition, where a discipline panel makes a finding that requires mandatory revocation (i.e., a finding of sexual abuse, or a prescribed-offence finding or a finding based on a determination by another regulator that involves frank acts of sexual abuse) and defers the penalty portion of the hearing, it must immediately suspend the member’s certificate of registration until the mandatory revocation is ordered. *Code s. 51(4.1), (4.2) and (4.3), 51(5).3(vi) and (vii), 51(5.0.1), 62(2)*
- Discipline panels who find registrants engaged in lesser sexual abuse (i.e., for conduct other than the “frank” acts), will be required to suspend the registrant’s certificate of registration. No minimum period has been set for such suspensions.
- Penalties under RHPA for failing to report sexual abuse are serious and have been increased. The maximum fine on a first offence for failing to make a mandatory report is now \$50,000 for individuals and \$250,000 for corporations. *Code s. 93(2) and (3).* To find out more about your obligations to report, refer to CHO Professional Practice Standard 12 – Mandatory Reporting on Patient Care.
- The Minister of Health can now make regulations specifying how Colleges are to investigate and prosecute sexual misconduct cases. In addition, the Minister can make regulations providing for further “functions and duties” for Colleges as they related to sexual abuse. (e.g., they may require Colleges to provide legal counsel paid for by the College for individuals alleging sexual abuse, or conduct research on sexual abuse by their members). *RHPA s. 43(1)(u), (v), (w) and (z).*
- The Sexual Abuse Therapy Fund is already in place and is a requirement of each College. The most recent change relates to timely access. Funding for sexual abuse therapy has been expanded to be available to complainants/patients, or persons named in a report to the College, upon the filing of the complaint or report. In addition, the Minister may make regulations specifying that the College provide funding to patients of registrants who were allegedly sexually abused by the registrant for matters other than counselling/therapy, and enlarging the class or type or persons who may receive funding.

Defining Sexual Abuse

Frank Acts of Sexual Abuse	Other Forms of Sexual Abuse
<p>Sexual intercourse or other forms of physical sexual relations between the member and the patient including:</p> <ul style="list-style-type: none"> 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 the patient to masturbate in the presence of the member. vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks. vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the <i>Regulated Health Professions Act, 1991</i>, 2017, c. 11, Sched. 5, s. 19 (3). 	<p>Behaviour or remarks of a sexual nature by the member towards the patient.</p>

What is sexual abuse?

From the legislation:

In accordance with section 1 of the Health Professions Procedural Code, Schedule 2 of the RHPA.

Sexual abuse of a patient

(3) *In this Code,*

“sexual abuse” of a patient by a member means,

- (a) *sexual intercourse or other forms of physical sexual 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. 1993, c. 37, s. 4.*

Exception

(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. 1993, c. 37, s. 4.

Exception, spouses

(5) *If the Council has made a regulation under clause 95 (1) (0.a), conduct, behaviour or remarks that would otherwise constitute sexual abuse of a patient by a member under the definition of “sexual abuse” in subsection (3) do not constitute sexual abuse if,*

- (a) *the patient is the member’s spouse; and*
- (b) *the member is not engaged in the practice of the profession at the time the conduct, behaviour or remark occurs. 2013, c. 9, s. 1 (1).*

Definition

(6) *For the purposes of subsection (5),*

“spouse”, in relation to a member, means,

- (a) *a person who is the member’s spouse as defined in section 1 of the Family Law Act, or*
- (b) *a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years. 2013, c. 9, s. 1 (1).*

Further a registrant’s Certificate of Registration can be revoked if found guilty of professional misconduct related to sexual abuse, pursuant to section 51(5)3. of the Code.

3. *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 the patient to masturbate in the presence of the member.*
- vi. *Touching of a sexual nature of the patient’s genitals, anus, breasts or buttocks.*
- vii. *Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the Regulated Health Professions Act, 1991. 2017, c. 11, Sched. 5, s. 19 (3).*

The College's Responsibilities

From the legislation:

RHPA Code: Professional misconduct

Orders

51 (2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

- 1. Directing the Registrar to revoke the member's certificate of registration.*
- 2. Directing the Registrar to suspend the member's certificate of registration for a specified period of time.*
- 3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.*
- 4. Requiring the member to appear before the panel to be reprimanded.*
- 5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.*
- 5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.*
- 5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1. 1991, c. 18, Sched. 2, s. 51 (2); 1993, c. 37, s. 14 (2).*

Orders relating to sexual abuse

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. Suspend the member's certificate of registration if the sexual abuse does not consist of or include conduct listed in paragraph 3 and the panel has not otherwise made an order revoking the member's certificate of registration under subsection (2).*
- 3. 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 the patient to masturbate in the presence of the member.*
 - vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.*
 - vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the Regulated Health Professions Act, 1991. 2017, c. 11, Sched. 5, s. 19 (3).*

Interpretation

51 (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

51 (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).

Registration will be Revoked for at Least 5 Years

The two sides of the patient sexual abuse coin are:

1. Homeopaths cannot have sexual relations with a patient.
2. Homeopaths cannot treat a sexual partner or spouse.

Where a registrant is found guilty of sexual activity which involves any form of frank sexual acts, their registration will be revoked for at least five years.¹

Future Changes Related to Sexual Abuse

A definition of “patient” for the purposes of sexual abuse provisions has been added to RHPA (pending proclamation). **A patient is an individual who was a registered health professional’s patient within the last year (or within another period that may be “prescribed” by regulation by a College if a College wishes to make the time frame longer), or who fits criteria detailed by the Minister in regulations.**

The definition of patient would apply to all patients of homeopaths. It also means if you have an intention to pursue a romantic interest/relationship with a former patient you must wait one year (365 days) from the end of the patient/practitioner relationship before you may pursue a romantic or sexual relationship. RHPA s. 43(1)o, Code s. 1(6).

As has always been the case, in accordance with Code section 1(3), (4) and (5), Schedule 2 of the *Regulated Health Professions Act, 1991*, a practitioner/registered member is forbidden to treat his or her spouse. Treating one’s own spouse is an act of professional misconduct and considered to be sexual abuse.

No Spousal Exemption

Needless to say, the zero-tolerance approach to eliminating sexual abuse has had its detractors, particularly in professions where the status and power imbalance issue may not be as pronounced as it is for physicians

and mental health practitioners. There have been three major court challenges during the past fifteen years asserting that the provisions were “over-sweeping” in nature. In each case, the Ontario Court of Appeal affirmed the validity (including constitutional validity) and societal importance of the provisions. The most recent case, decided in 2010, was *Leering v. the College of Chiropractors of Ontario*.

As is often the case, the complaint in the *Leering* case was initiated by the chiropractor’s sexual partner after the relationship ended badly. There was no dispute that the patient consented to the sexual activity. In fact, the person first became a sexual partner and developed an established personal relationship with the chiropractor before receiving any treatment. However, the court held that the definition of “sexual abuse” in the RHPA was clear: there is no spousal exemption unless “the Council has made a regulation under clause 95(1)(0.a),” which the College of Homeopaths of Ontario has not yet done.

So, who is a “Client or Patient”?

The Court of Appeal indicated that there may be some discretion for Discipline Committees on determining who is a client or patient. The determining factor is whether there was an ongoing clinical relationship. In the *Leering* case, the chiropractor had clearly provided clinical care and billed for it as treatment. The Court suggested that incidental care (e.g., the usual domestic support of a spouse undergoing a headache, fever or cold) would likely not make the family member a patient. [A homeopath who provides basic information about remedy and lifestyle choices would not be making their spouse a patient simply because the homeopath might be more knowledgeable about those issues.]

However, where more than an informal discussion is involved, or where the support becomes ongoing or systematic, then a spouse could well become a patient. This would particularly be the case where the homeopath is replacing what would generally be done by another registered health professional in other circumstances. For example, if the spouse has broken a leg, he or she must be referred to another care provider to set the cast and monitor the spouse’s care. The spouse may suggest an immediate pain remedy to assist in managing the pain. Long-term care and pain management should be provided by another qualified practitioner.

Homeopaths should not conclude from the *Leering* case that as long as one does not create a chart or submit a bill, the person is not a client or patient. The issue is whether a clinical relationship has developed.

Definition of Patient for Sexual Abuse Purposes RHPA s. 43(1)(o), Code s. 1(6)

These provisions deem a former patient to remain a “patient” for the purposes of the sexual abuse provisions for a period of one year from when the person would otherwise cease to be a patient (or such longer time or never as prescribed in a College’s regulation). These provisions also allow a Minister’s regulation to set additional criteria for defining a patient for the purposes of the sexual abuse provisions. For example, the criteria might state that the practitioner does not have to be paid for the practitioner / patient relationship to be established.

Funding for Sexual Abuse: RHPA s. 43(1)y, Code s. 1.1, 85.7, 95(1)(q.1)

Funding has always been available to victims of sexual abuse by practitioners. With the new changes to RHPA, funding for individuals who may have been sexually abused has been expanded significantly.

- In the future, funding will be available from the time that the complaint or report is received. At the moment, funding does not start until the allegation is proven.
- A complaint is a complaint is a complaint; therefore, there will be no screening of the merits of the complaint once received and all complainants are deemed eligible for funding.
- CHO will look at the need to develop its own regulation prescribing when the funding may end (e.g., where the ICRC takes no action on the complaint or report).
- The Minister of Health may also make regulations expanding the types of expenses for which funding must be provided. Until now only the cost of therapy is covered. The Ministry will consider other items which are deemed fair and reasonable for the complainant.
- Finally, currently the Code gives the College the right, through the courts, to recoup the cost of therapy from the individual registrant who abused the patient. Changes will allow the College to recoup all of the allowable costs for the eligible person(s).



Zero Tolerance for Sexual Abuse – Practice Scenarios (Adapted)⁹



SCENARIO 1: RECEIVING A REFERRAL TO TREAT A SPOUSE

Bernard is a homeopath working in a remote area in Northern Ontario. He is the only homeopath working within a 500-km radius. Bernard’s wife Betty has recently been diagnosed with chronic fatigue syndrome and depression and has stated her preference for homeopathic care. Her physician has referred Betty to see a homeopath. Bernard has received the referral to see Betty for chronic fatigue syndrome and depression. Is Bernard able to provide homeopathic care to Betty to help her manage her condition?

In this scenario, Bernard and Betty are presumably engaged in a sexual relationship that predates the pending professional relationship. Even if Betty consents to receiving homeopathic care from Bernard, the court’s zero-tolerance rule would apply. Bernard would be in the “Danger Zone” of the sexual abuse scale above, and would be prohibited from providing homeopathic care to Betty.

It would be important for Bernard to communicate with the referring physician so he/she is aware that Bernard is not permitted to provide active treatment to his wife. As Bernard is the only homeopath working within a 500-km radius, there would not be another local homeopath to refer to. As a result, Bernard, Betty, and the physician brainstorm about other options and come up with the following possibilities:

- a) The MD could refer Betty to a homeopath who works in a neighbouring community. As the distance would be +500 km away, this homeopath could provide care to Betty remotely through telephone or web-based means.
- b) Betty could consult with any homeopath of her choice via the internet or by phone. Bernard would not be directly involved in Betty’s treatment, but could be a homeopathy resource, as needed.

Bernard and Betty discuss the options and Betty’s preferred choice is to seek care from a homeopath who works in a neighbouring community by Skype. A series of Skype appointments were scheduled and all homeopathy care was provided remotely.

It is important to note that Bernard may assist Betty with questions or issues surrounding her care, especially those related to routine daily care activities (i.e. good nutrition and other positive lifestyle changes). Provided Bernard is not involved in a formal patient-professional therapeutic relationship with Betty, he would not be violating the sexual abuse restrictions for regulated health care professionals in Ontario.

⁹ Source: Adapted from College of Dietitians of Ontario résumé FALL 2010, written by Deborah Cohen, MHSc, RD.

SCENARIO 2: HAVING ROMANTIC FEELINGS FOR A PATIENT

Dorothy is a homeopath who has been providing care to a patient regularly for the last six months. Dorothy has recently started to develop romantic feelings for this patient. Although the professional-patient relationship has been appropriate until now, the feelings appear to be mutual. At the patient's last visit, he asks Dorothy if she would like to accompany him to an upcoming charity gala dinner. Dorothy accepts the invitation and they attend the function.

The evening goes well and sparks are flying! It is clear to both Dorothy and her patient that there is an undeniable attraction between them. At the end of the evening, they say goodbye and indicate they will see each other at his next appointment. Are there any concerns with Dorothy continuing to see this patient for homeopathy care?

In this scenario, Dorothy would be in the "Caution Zone" of the *Sexual Abuse Scale* and perhaps heading towards the "Danger Zone." Despite the fact that no acts of a sexual nature have occurred between Dorothy and her patient, it is clear they have mutual romantic feelings for one another.

There is a strong possibility that the physical attraction may lead to acts of a sexual nature which include touching, sexual behaviour or sexual remarks, as defined in the RHPA.

Dorothy has two options:

- 1) End the professional relationship
- 2) End the social/romantic relationship

If Dorothy chooses 1) she may then freely see her patient in a social or romantic manner. Once the new provisions go into effect under the Regulated Health Professions Procedural Code¹⁰ section 1(6), Dorothy would have to wait one year beyond the end and discharge of the patient-practitioner relationship before pursuing a romantic relationship with her former patient.

If Dorothy chooses 2) she would need to clearly explain her reasoning to her patient. Dorothy would also need to be honest with herself and assess whether this strong attraction to the patient may affect her ability to objectively exercise her professional judgment in providing patient-centred care. Because of the nature of her social interaction and sexual attraction to the patient it may be challenging for Dorothy to determine whether the professional relationship has already or has the future potential to be compromised.

In addition, this scenario presents a clear-cut boundary crossing. Dorothy and her patient have now engaged in a dual relationship as they have interacted socially at the charity gala dinner. Boundary crossings should be avoided as it can interfere with the professional relationship between a homeopath and her/his patient.

There should always be a clear delineation of the professional-patient relationship. Homeopaths have the responsibility to identify when they or their patients are crossing boundaries and take corrective actions.

¹⁰ Regulated Health Professions Act, 1991, Schedule 2.

SCENARIO 3: MY PATIENT IS IN LOVE WITH ME

Terry is a homeopath who has been providing care to a patient who has experienced significant success with her fibromyalgia. At the most recent visit, his patient informs Terry that she is ecstatic with her progress and reports that she's in love with him. Terry is flattered but indicates that he is happily married. In addition, he mentions that as a regulated health care provider he has a responsibility to ensure that he always maintains a professional relationship with his patients and only a professional one. Has Terry managed this situation appropriately?

There may be many circumstances in which a patient could develop feelings for a homeopath, especially if the homeopath was supportive and instrumental in the patient's positive management of their health concerns. In this case, it was important for Terry to have an open discussion with his patient regarding patient professional boundaries:

- He respectfully explained that homeopaths need to ensure they do not engage in romantic relationships with their patients.
- He indicated that their relationship could only be professional in nature and that if the patient is willing, he would continue to provide homeopathic care in this manner.
- He explained that if the patient is uncomfortable or has difficulty adhering to these boundaries, Terry would refer her to another homeopath for care.

In this case, Terry is considered to be in the "Safe Zone" of the sexual abuse scale as he has openly addressed the romantic feeling from his patient, offered to continue with the professional relationship, and provided the patient with options for alternative care as needed.



CHO Frequently Asked Questions & Answers about Sexual Abuse and Professional Boundaries

Q. Is it okay to use sexual language, tell sexual jokes and stories or share pictures with my patients?

A. No. Behavior of a sexual nature including language, jokes, stories and pictures is not appropriate professional behaviour.

Q. What should I do if a patient acts out in my presence i.e. strips naked when I ask to examine a rash on their leg, brushes up against me in a sexual way or attempts to masturbate in my presence?

A. These types of situations are uncomfortable, and are clear boundary crossings. It is important to have a prompt and open discussion with the patient regarding patient-professional boundaries. If the patient is uncomfortable or has difficulty adhering to these boundaries, the homeopath may refer the patient to another homeopath or health-care professional for care. If the problem continues consult the College programs department at programs@collegeofhomeopaths.on.ca, by phone at 416-862-4775 or the Registrar at Basil.Ziv@collegeofhomeopaths.on.ca, by phone at 416-862-4783.

Q. Can I treat my spouse without it being considered sexual abuse¹¹?

A. The Court has suggested that incidental care (e.g., the usual domestic support of a spouse undergoing a headache, fever or cold) would likely not make the family member a patient. A homeopath who provides basic information about remedy and lifestyle choices would not be making their spouse a patient simply because the homeopath might be more knowledgeable about those issues.

The issue is whether a clinical relationship has developed. Therefore, where more than an informal discussion is involved, or where the support becomes ongoing or systematic, then a spouse could well become a patient. This would particularly be the case where the homeopath is replacing what would generally be done by another registered health professional in another circumstance. For example, if the spouse has broken a leg, he or she must be referred to another care provider to set the cast and monitor the spouse's care. The homeopath may suggest an immediate pain remedy to assist their spouse in pain management. Long-term care and pain management should be provided by another qualified health-care provider. Once care of a spouse becomes more than incidental and becomes a clinical relationship, your spouse becomes a patient in the eyes of the law. Treating your spouse under these circumstances is an act of professional misconduct; if found guilty of sexually abusing a patient, the result is revocation of your certificate of registration.

¹¹ Source: Adapted from College of Dietitians of Ontario résumé FALL 2010, written by Richard Steinecke, LLB.

Q. Is it okay to kiss or hug patients?

A. This is a grey area. While cordial hugs and kisses may be culturally acceptable in some groups, not every patient is comfortable with that degree of physical contact. Additionally, such contact may not be considered professional and can lead to boundary crossing. Homeopaths should avoid inappropriate interactions with a patient including inappropriate touching, hugs, kisses, body language; rudeness/patronizing; unprofessional tone or humour; favouritism; judgmental attitude; cynicism; co-dependence; possessive or secretive behavior; roughness; bullying; or assault.

Q. What does the RHPA mean when it says “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided?

A. Touching, behaviour or remarks must be clinically appropriate to the care provided and must be professional at all times.

For the purposes of assessing a patient, touch may or may not be required during the course of a regular patient visit. A homeopathic physical examination may be required and must be performed within the homeopathic scope of practice. Not all Registrants will choose to undertake a physical examination of a patient. It is at the discretion and judgment of the Registrant to determine if a physical examination is necessary or required.

Some examples of homeopathic physical examination may include: visual observation, basic diagnostic testing such as taking blood pressure, using a stethoscope to monitor heart or lung function, muscle testing, reflexes, and gentle appropriate surface touch or appropriate palpation.

A homeopathic physical examination may not include any controlled acts as outlined in the *Regulated Health Professions Act, 1991*, Section 27(2), including any of the invasive procedure as set out in paragraphs 2 or 6¹² such as needle pricking, blood work, or probing with an instrument, hand or finger.

If a Registrant needs to examine, touch or palpate tissue anywhere on the patient’s body, the Registrant should:

- First explain why this is indicated and precisely what will be done;
- Obtain consent;
- Consider having a witness present, with the patient’s consent;
- Do everything possible to avoid unnecessary touching; and,
- Expose only the area to be examined or use a draping cloth or sheeting to cover areas which are not being examined to ensure patient privacy.

¹² Regulated Health Professions Act, 1991, Section 27(2) Controlled Acts: 2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth.

- Putting an instrument, hand or finger,
 - beyond the external ear canal,
 - beyond the point in the nasal passages where they normally narrow,
 - beyond the larynx,
 - beyond the opening of the urethra,
 - beyond the labia majora,
 - beyond the anal verge, or
 - into an artificial opening into the body.

The CHO Professional Practice Guideline 5 *Patient Communications and Physical Examination* and Professional Practice Standard 16 *Therapeutic Relationships and Professional Boundaries* provide clear guidance on the steps registrants must take for clinically appropriate examinations and conduct. If you have additional questions, contact the College programs department at programs@collegeofhomeopaths.on.ca, by phone at 416-862-4775 or the Registrar at Basil.Ziv@collegeofhomeopaths.on.ca, by phone at 416-862-4783.

Q. Can I take pictures of my patient for file purposes?

A. If it is necessary to record clinical impressions with pictures, as opposed to words, pictures may be taken with your patient's permission (informed consent). Sensitivity and professional care must be used. Only capture pictures of what is required for the purposes of making a homeopathic diagnosis and tracking a patient's progress.

Use of pictures for any reason other than assessing and monitoring the patient, e.g., research and educational purposes, requires further consent of the patient. Never take sexually explicit or compromising photos of patients. Pictures should be stored in a secure manner in the patient's file or in encrypted electronic medium and securely destroyed in accordance with the CHO Professional Practice Guideline 1 *Record Keeping*.

Q. What are the consequences for a regulated health professional who has committed professional misconduct by sexually abusing a patient?

A. Sexual intercourse with a patient, genital to genital, genital to anal, oral to genital or oral to anal contact with a patient, masturbation of the member by or in the presence of the patient, masturbation of the patient by the member, encouraging the patient to masturbate in the presence of the member, touching of a sexual nature of a patient's genitals, anus, breasts, or buttocks, and other conduct of a sexual nature prescribed in regulations will now result in mandatory revocation for a minimum of five (5) years. For findings of sexual abuse not listed above, the minimum penalty must include a suspension and reprimand, in addition to anything else a panel of the College shall decide.



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