



Amendments to the *Regulated Health Professions Act*¹

On May 1, 2018, changes to the College's governing legislation made by the provincial government will come into effect. One of these changes relates to the definition of a patient in the context of sexual abuse allegations involving regulated health professionals. The changes flow from Bill 87, the *Protecting Patients Act*.

In late April, the Government notified all regulatory colleges of the wording of the regulation that specifies when someone will be considered to be a patient in relation to allegations of sexual abuse and of the timing of the legislative changes. This communication is being provided by the College to ensure that the profession is informed of this important change.

As of May 1, when amendments to the RHPA and the new regulation are in force, there will be specific criteria in regulation for who will be considered to be a patient in the context of sexual abuse. The length of time that an individual will remain a patient for the purposes of sexual abuse will also be specified.

Duration

In the legislation, the definition of patient, in relation to sexual abuse, will include any individual who was a registrant's² patient within **one year** from the date on which the individual ceased to be the registrant's patient.

In other words, for the purposes of defining sexual abuse, under the *Regulated Health Professions Act*, a person will be considered to be a patient for a year after the termination of the patient/practitioner relationship. This means that any homeopath who engages in a sexual relationship with a patient inside the one-year period following the termination of the patient/practitioner relationship will be subject to mandatory revocation. The only exception will be if the treatment was provided in emergency circumstances or was minor in nature, as described below.

Criteria

The regulation sets out criteria specifying when someone will be considered to be a patient in relation to any allegation of sexual abuse. In addition to the existing definition in the case law, the regulation states that:

An individual is a patient of a regulated health professional if there is direct interaction between the registrant and the individual and **any** of the following conditions are satisfied:

- 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.
- The member has contributed to a health record or file for the individual.
- The individual has consented to the health care service recommended by the individual.
- The member prescribed a drug for which a prescription is needed to the individual.

To reiterate, if any of the above interactions take place between an individual and a homeopath, then that individual will be considered, for the purposes of defining sexual abuse, to be that registrant's patient. Further, that individual will continue to be a patient in the context of sexual abuse for a minimum of a full year after the termination of the

¹ This article has been adopted with permission from the April 27, 2018 Special Bulletin of the College of Physicians and Surgeons of Ontario.

² The term registrant and member is used interchangeably in this report.

patient/practitioner relationship. If a frank sexual act were to take place between the homeopath and the individual during that year-long period, then the homeopath will be subject to mandatory revocation. The only exceptions to this definition are stated in the following paragraph.

The regulation includes an exemption from the definition if all of the following conditions are satisfied:

- There is, at the time the member provides the health-care services, a sexual relationship between the individual and the member;
- The member provided the health-care service to the individual in emergency circumstances or in circumstances where the service is minor in nature; and
- 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.

Other Changes

Additional legislative and regulatory changes will also come into effect on May 1. These include specifying the criminal offences from the *Criminal Code (Canada)* which will trigger mandatory revocation, expanding the information to be reported by members to the College and increasing the timeliness of those reports.

Links to the new regulations are provided below.

O. Reg. 260/18 [Patient Criteria under subsection 1\(6\) of the Health Professions Procedural Code](#)

O. Reg. 261/18 [Information Prescribed under subsection 23 \(2\) of the Health Professions Procedural Code](#)

O. Reg. 262/18 [Prescribed Offences – Health Professions Procedural Code](#)

Treating Spouse

It is worth remembering that in accordance with section 1 (3) of the Health Professions Procedural Code³ (the 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) behavior or remarks of a sexual nature by the member towards the patient.

The definition of sexual abuse includes the treatment of spouses even if there was a preexisting spousal relationship prior to homeopathic treatment being performed. It is important to note that a patient's consent to treatment in these cases is irrelevant; it still amounts to sexual abuse as defined in the legislation.

The Code allows each College's Council to make a regulation to create an exception that would allow a registrant to treat his or her spouse without any conduct, behaviour or remarks being considered to be 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.

The CHO will be making its regulatory submission this spring and will keep registrants up to date on progress as it goes through the regulatory channels. Regulations must be reviewed and approved by the Ontario Government before they become law.

³ Schedule 2 of the *Regulated Health Professions Act (RHPA)*

Until the proposed regulation is approved, practitioners are cautioned against treating their spouses. For more information about what constitutes Sexual Abuse you are strongly encouraged to read CHO Practice Management **Module 1: Protecting Patients Act 2017 - Stopping Sexual Abuse**

Q. Can I treat my spouse without it being considered sexual abuse⁴?

A. The Court has suggested that incidental care (e.g., the usual domestic support of a spouse suffering from 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 his or her 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 the 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.

Questions?

The College will be providing additional information on these changes in the coming weeks. If you have specific questions, please contact the College directly at programs@collegeofhomeopaths.on.ca or by calling 416-862-4780.

⁴ Source: Adapted from College of Dietitians of Ontario résumé FALL 2010, written by Richard Steinecke, LLB