



stopping

sexual abuse



practice management  
resources  
public protection  
results

# Prevention of Sexual Abuse of Patients<sup>1</sup>

The rules of the *Regulated Health Professions Act* (RHPA) apply to registrants<sup>2</sup> of all [26 regulatory health colleges](#) in Ontario.

An important function of the RHPA is to protect patients from sexual abuse by:

- (a) defining the conduct that constitutes sexual abuse;
- (b) empowering colleges to investigate and prosecute allegations of sexual abuse;
- (c) establishing serious consequences for registrants who sexually abuse their patients;
- (d) requiring registrants to report sexual abuse by any registrant of any RHPA college; and
- (e) providing funding for therapy and counselling for patients who have been sexually abused by registrants.

This document is a guideline with respect to the prevention of sexual abuse of patients and the maintenance of professional boundaries between registrants and their patients.

## The College's Position on Sexual Abuse

The College is dedicated to upholding the best interest of patients in Ontario and endorses a Zero Tolerance policy toward any forms of sexual abuse. The College regards any act of sexual abuse of a patient as unacceptable and such actions are subject to investigation as professional misconduct.

The registrant/patient relationship is based on mutual trust and respect, and any form of sexual abuse of a patient by a registrant is considered to be a betrayal of that trust.

The College recognizes the seriousness and extent of harm that sexual abuse can cause the patient. The College accepts its important responsibility to protect the public by dealing with sexual abuse issues openly, and prioritizing prevention through educating both the registrants of the profession as well as the public.

The consequences for sexual abuse are serious. Under the legislation, the Discipline Committee is required to, at a minimum, reprimand and suspend any registrant who is found to have committed an act of professional misconduct by sexually abusing a patient. In certain circumstances, the legislation requires the Discipline Committee to revoke the registrant's certificate of registration.

Given the severity of the consequences, the College encourages its membership to read this document and to treat it as a reference for not only themselves, but also for their staff and co-workers.

## Definition of Sexual Abuse

The Health Professions Procedural Code, which is Schedule 2 to the RHPA, defines sexual abuse of a patient as:

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

"Sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the care provided.

---

<sup>1</sup> From the College of Opticians of Ontario, Prevention of Sexual Abuse of Patients Information to Registrants

<sup>2</sup> The term "Member" and "Registrant" is used interchangeably throughout this document.

Under this definition, any conduct of a sexual nature between a registered health professional and a patient is “sexual abuse”, and therefore professional misconduct. It does not matter who initiated the conduct, or if it was consensual.

In addition, the RHPA does not provide an exemption from the sexual abuse provisions for a spouse who is also a patient. This means that it is not permitted under the legislation for a registrant to treat his or her spouse (except for in an emergency where a referral is then made or for minor treatment).

### **The Registrant/Patient Relationship**

The relationship between the patient and the registrant is one of a professional nature, where sexually abusive behaviour is considered to be a fundamental betrayal of the trust that is implicit in such a relationship. The registrant is always responsible for any occurrence of abuse, and thus also bears the onus to prevent it.

A patient entrusts his or her health care to a registrant based on the homeopath’s knowledge and professional skills. It is assumed by the public that the registrant will address the health care needs of the patient in a manner that is sensitive, caring and professional.

The registrant’s knowledge and expertise places him or her in a position of power in the registrant/patient relationship, and it is paramount that this hierarchy not be exploited by registrants.

### **Professional Boundaries**

Each registrant has the personal responsibility to maintain professional boundaries and is responsible for using his or her professional judgement to determine when relationships have exceeded professional boundaries.

As set out above the definition of “sexual abuse” is very broad and captures all sexual relationships between a registrant and a patient (including a patient who is a spouse). In addition, registrants must not enter into intimate or romantic relationships with former patients unless:

- The registrant/patient relationship has been terminated, and arrangements have been made for another registrant to treat the patient; and
- At least one year has elapsed since the registrant/patient relationship was terminated.

In some cases, due to the imbalance of power inherent to some professional relationships, it may never be appropriate for a registrant to commence a sexual relationship with a former patient.

## Maintaining Professional Boundaries

The registrant is always both responsible and accountable for any occurrence of abuse. This is true even if the patient takes the initiative to change the relationship. The registrant, therefore, must at all times be mindful of maintaining appropriate professional boundaries, including as follows:

1. Never express romantic or sexual interest in a patient. If the registrant develops romantic feelings for a patient, the registrant must immediately put a stop to them, or transfer care of the patient to another registrant. If a patient expresses romantic or sexual interest in the registrant, the registrant must respectfully but firmly, discourage it, and if necessary transfer the patient's care to another registrant. A notation of any action taken by the registrant should be noted in the patient's file.
2. Do not date patients.
3. Avoid engaging with patients socially, whether in person, by phone or online (for example, through social media).
4. Do not touch a patient, except where necessary for assessment purposes. For full details see the CHO Guidelines of Practice: Patient Communications and Physical Examination. As an overview, where it is clinically necessary to touch a patient, the registrant should always:
  - (a) Prior to any physical contact, explain to the patient why, where and when the registrant needs to touch him or her;
  - (b) Obtain the patient's written informed consent before moving into close physical proximity and/or making physical contact;
  - (c) Respect, as much as possible, the patient's personal sense of space;
  - (d) Give clear instructions to the patient;
  - (e) Provide reassurance and explanations throughout the assessment;
  - (f) Provide opportunities for the patient to ask questions; and
  - (g) Ensure the patient he/she can remove their consent for assessment and/or treatment at any time.
5. Registrants should never:
  - (a) Engage in any behaviour of a sexual nature that can cause discomfort to anyone, including patients or colleagues;
  - (b) Make comments, tell stories, or make jokes that are, or could be perceived as being, of a sexual nature in the presence of a patient;
  - (c) Inquire about the patient's sexual life, practices or orientation unless it is relevant to the homeopath's case and assessment;
  - (d) Make sexualized comments about the patient's physical appearance.
6. Monitor for warning signs that professional boundaries are becoming crossed or blurred. Signs might include things such as making personal disclosures, giving or receiving gifts, connecting with patients on social media, offering special treatment to certain patients, scheduling visits or treatment outside of or after-hours, or engaging in social or leisure activities with a patient. [Add link to standard].
7. Be mindful of the ways in which a patient's sense of personal boundaries might be affected by his or her age, gender, ethnicity, culture, religion, sexual orientation, gender identity, physical differences and/or socio-economic status.

## Mandatory Reports

All registrants are required to file a report in writing with the appropriate health regulatory college if they have reasonable grounds, obtained in the course of practicing the profession, to believe that a registrant of any health profession has sexually abused a patient. The report must be made within 30 days (or sooner if the registrant believes the regulated health professional may continue to sexually abuse patients). The report must contain:

1. The name of the registrant filing the report;
2. The name of the registrant who is the subject of the report;
3. The name of the patient who may have been sexually abused, but only if that patient provides written consent; and
4. An explanation of the alleged sexual abuse.

Once the report is received, the relevant college will review the information and determine next steps, which may include initiating a formal investigation.

The failure by a registrant to file a report may result in a fine of up to \$50,000 and/or disciplinary action by the College. For more information see the Standard of Practice on Mandatory Reports.

## CHO Sexual Abuse Prevention Plan

Follow this link to the CHO website to read about the [College's Sexual Abuse Prevention Plan](#)

## Under the Act (RHPA)

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> <ol style="list-style-type: none"><li>i. Sexual intercourse.</li><li>ii. Genital to genital, genital to anal, oral to genital or oral to anal contact.</li><li>iii. Masturbation of the member by, or in the presence of, the patient.</li><li>iv. Masturbation of the patient by the member.</li><li>v. Encouraging the patient to masturbate in the presence of the member.</li><li>vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.</li><li>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).</li></ol>	<p>Behaviour or remarks of a sexual nature by the member towards the patient.</p>

## Who is a Patient?

The RHPA<sup>3</sup> also defines a patient which includes:

- a person whom a homeopath has charged or received payment from (directly or via a third-party payor) for health care services;
- a person who has consented to receive health care services from the homeopath;
- a person who had a health record or file created by a homeopath;
- an individual who was a homeopath's patient within one year from the date on which the individual ceased to be the homeopath's patient; and/or
- a person who was prescribed a drug by their health care provider (does not apply to homeopaths).

Despite the above, an individual is **not** a patient of a registrant if all of the following conditions are satisfied:

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

## 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 four major court challenges during the past twenty 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. One case of interest is the 2010 case of *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),”<sup>4</sup>.

A patient is an individual who was a registered health professional's patient within the last year.

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.

---

<sup>3</sup> *Ontario Regulation 260/18, under RHPA, 1991, Patient Criteria Under Subsection 1 (6) Of The Health Professions Procedural Code*

<sup>4</sup> The College of Homeopaths of Ontario has made such a submission and is awaiting feedback from the Ministry of Health. Until the submission is reviewed, accepted and approved by the Government of Ontario a homeopath treating her/his spouse, except if that treatment is made in an emergency situation or is minor in nature, is considered sexual abuse.

## So, who is a “Patient”?

The Court of Appeal indicated that there may be some discretion for Discipline Committees on determining who is a 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.

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 homeopath or 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. Similarly, 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. Occasional care for acute conditions may be okay, but ongoing management of a spouse’s chronic condition would be inappropriate.

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 patient. The issue is whether a clinical relationship has developed.

## Zero Tolerance for Sexual Abuse – Practice Scenarios (Adapted)<sup>5</sup>



### 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 using remote telecommunication from a homeopath who works in a neighbouring community. A series of video 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.

---

<sup>5</sup> 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. In accordance with the provisions under the Regulated Health Professions Procedural Code<sup>6</sup> 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.

---

<sup>6</sup> Regulated Health Professions Act, 1991, Schedule 2.

### SCENARIO 3: MY PATIENT IS IN LOVE WITH ME

Ramesh 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 Ramesh that she is ecstatic with her progress and reports that she's in love with him. Ramesh 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 Ramesh 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 Ramesh 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, Ramesh would refer her to another homeopath for care.

In this case, Ramesh 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 Registrar at [Basil.Ziv@collegeofhomeopaths.com](mailto:Basil.Ziv@collegeofhomeopaths.com), by phone at 647-749-4950.

**Q. Can I treat my spouse without it being considered sexual abuse<sup>7</sup>?**

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 legislation allows for care that is minor in nature or provided in an emergency situation.

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.

---

<sup>7</sup> 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 or inappropriate 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 6<sup>8</sup> 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: a. First explain why this is indicated and precisely what will be done; b. Obtain written consent; c. Consider having a witness present, with the patient’s consent; d. Do everything possible to avoid unnecessary touching; and, e. 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.

The CHO Professional Practice Guideline 5 *Patient Communications and Physical Examination* and

---

<sup>8</sup> 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.

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

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 by phone at 647-749-4956 or the Registrar at [Basil.Ziv@collegeofhomeopaths.com](mailto:Basil.Ziv@collegeofhomeopaths.com), by phone at 647-749-4950.

**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 registrant by or in the presence of the patient, masturbation of the patient by the registrant, encouraging the patient to masturbate in the presence of the registrant, 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.