



## Patient Relations Plan – Sexual Abuse Prevention

### Purpose

The College of Chiropodists of Ontario is committed to zero-tolerance of sexual abuse of patients by registrants of the College. We recognize the importance of having a robust sexual abuse prevention plan for our registrants and responsive strategies regarding the sexual abuse of patients. The College’s Sexual Abuse Prevention Plan outlines the strategies we have in place to protect the public.

The legislation referenced in this document refers to “member” rather than “registrant” when referring to a regulated healthcare professional. This document refers to registrants, rather than members, but the terms are interchangeable.

### What is Sexual Abuse?

Sexual abuse of a patient by a registrant is defined as:<sup>1</sup>

- Sexual intercourse or other forms of sexual relations between the member (registrant) and the patient;
- Touching of a sexual nature, of the patient by the member (registrant); or
- Behaviour or remarks of a sexual nature, by the member (registrant) towards the patient.

Sexual abuse does not include touching, behaviour, or remarks that are clinically appropriate to the service being provided.

#### (a) Who is a Patient?

Although the RHPA’s definition of “patient” is not exhaustive,<sup>2</sup> it makes it clear that, at a minimum, a person is considered a registrant’s patient for the purpose of the sexual abuse provisions if there is direct interaction and any of the following has happened:

- The registrant has, in respect of a health care service provided by the registrant to the person, charged or received payment from the person or a third party on behalf of the individual;
- The registrant has contributed to a health record or file for the person;
- The person has consented to a health care service recommended by the registrant;<sup>3</sup> or
- The registrant has prescribed a drug to the person for which a prescription is needed.<sup>4</sup>

The only situation in which a person who falls within the definition above may not be classified as a patient is if all the following conditions are met:

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<sup>1</sup> [Subsection 1\(3\) of the HPPC, Schedule 2 to the RHPA](#)

<sup>2</sup> [Subsection 1\(6\) of the HPPC, Schedule 2 to the RHPA](#)

<sup>3</sup> [Health Care Consent Act, 1996](#)

<sup>4</sup> [Subsection 1.1 of O. Reg. 260/18 under the RHPA](#)

- There is an existing sexual relationship between the person and the registrant at the time the health care service is provided;
- The health care service provided to the person by the registrant was minor in nature or was provided in an emergency; and
- The registrant has taken reasonable steps to transfer the person’s care, or there is no reasonable opportunity to transfer care.<sup>5</sup>

The Code also establishes a minimum period of **one year** after a person ceases to be a health care professional’s patient, during which time a sexual relationship between registrants and former patients is prohibited. The one-year period runs from the date the registrant-patient relationship is formally terminated, which does not necessarily coincide with the date the patient last received health care services from the registrant. Termination often requires the registrant to take active steps to end the professional-patient relationship.

Engaging in a sexual relationship with a patient before waiting the full year after terminating the registrant-patient relationship can lead to a finding by the Discipline Committee of professional misconduct for sexual abuse of a patient. As discussed below, such a finding may require a mandatory penalty of revocation of the registrant’s certificate of registration.

(b) Spousal Exemption

As of October 2020, registrants are permitted to treat their spouses without it constituting sexual abuse of a patient, provided the registrant’s spouse meets the statutory definition of “spouse”<sup>6</sup> – either the registrant and the patient are married to each other or the patient has lived with the registrant in a conjugal relationship, outside marriage, for a period of not less than three years.<sup>7</sup> As well, the registrant must keep the sexual relationship entirely out of the office setting. While treating a spouse, registrants must follow professional formalities and maintain the same professional distance that registrants would for any other patient.

(c) Consent

Consent between a registrant and a patient is irrelevant, even if the patient initiates or willingly participates in the sexual activity. Sexual relations with a patient are never permitted, and evidence of sexual exploitation is not required.

(d) Relationships with a Former Patient

The registrant must ensure that at least one year has elapsed before engaging in a sexual or romantic relationship with a former patient.

Even after one year has passed, the registrant must consider whether the clinical relationship has created a vulnerability or dependency on the part of the patient that may make it inappropriate to engage in a sexual or romantic relationship, regardless of the amount of time that has elapsed after terminating the clinical relationship.

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<sup>5</sup> [Subsection 1.2 of O. Reg. 260/18 under the RHPA](#)

<sup>6</sup> [Subsection 1\(6\) of the HPPC, Schedule 2 to the RHPA](#)

<sup>7</sup> [Subsection 1\(6\) of the HPPC, Schedule 2 to the RHPA](#)

- Sexual contact with a former patient may be considered professional misconduct even if it is not considered sexual abuse as defined under the Code. A sexual or romantic relationship is inappropriate in cases where the clinical relationship has created a vulnerability or dependency on the part of the patient such that the power imbalance in the registrant-patient relationship continues to affect the patient's objectivity.

If at least one year has passed since the termination of the clinical relationship, there is no vulnerability or dependency on the part of the patient, and there are no other circumstances that would make a sexual or romantic relationship inappropriate, registrants who subsequently begin a sexual or romantic relationship with a former patient must be cautious not to provide any chiropody or podiatry services (including advice) to the former patient. If such advice or services are provided, it may re-establish a registrant-patient relationship, thereby engaging the sexual abuse provisions of the RHPA.

## **The College's Regulatory Obligations**

### **(a) Patient Relations Program**

The Patient Relations Program enhances and promotes the therapeutic relationship between registrants and patients. The College expects registrants to meet a high standard of behaviour and it regards any act of abuse or harassment of a patient as unacceptable. The Patient Relations Program provides resources, advice, training, and support to prevent and deal with sexual abuse of patients.

Administered by the Patient Relations Committee, the Program helps patients understand what to expect when they visit a chiropody clinic and what to do if they feel they have not received appropriate care or have been sexually abused.

Both the Patient Relations Program and the Patient Relations Committee are requirements under the RHPA.<sup>8</sup> The Committee's primary responsibilities include monitoring the Patient Relations Program and administering the victim compensation fund. The Committee also works to encourage positive communications between registrants and patients, with a view to continually improve the quality of chiropody/podiatry care and services.

### **(b) Funding for Therapy and Counselling**

The College provides funding for therapy and counselling for patients who have made allegations of sexual abuse by a chiropodist or podiatrist or where there has been a finding of sexual abuse by a chiropodist or podiatrist. The funding is administered by the Patient Relations Committee.

Funding is available for five years from the day on which the person first received therapy or counselling after the alleged sexual abuse occurred, or five years from the day the College receives a complaint or report of sexual abuse by a registrant. The maximum amount of funding that may be provided is the amount that the Ontario Health Insurance Plan (OHIP) would pay for 200 half-hour sessions of individual out-patient psychotherapy with a psychiatrist on the day the person becomes eligible for funding.<sup>9</sup>

Funding recipients can choose any therapist or counsellor as long as the counsellor or therapist:

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<sup>8</sup> [Subsection 84\(1\) of the HPPC, Schedule 2 to the RHPA](#)

<sup>9</sup> [O. Reg. 59/94 under the RHPA](#)

- is not a family member;
- has not been found guilty of sexual misconduct or been found civilly or criminally liable for a similar act;
- signs a document to confirm they are not the subject of professional discipline if they are a regulated health professional.<sup>10</sup>

There are many different forms of therapy and counselling that may help, and applicants can decide what works best for them. The funds can be used for more than one therapist or counsellor. Applicants may decide to seek support from a non-licensed care provider, however, in that case there is no opportunity to express concern about the quality of care provided (for example, to a regulatory college).

#### (c) Sexual Abuse in the Complaints Process

The College receives information about possible sexual abuse of a patient through its complaints process. In this process, the patient, or a third party, may file a complaint with the College alleging that a registrant sexually abused a patient. Once a complaint is received, the College sends a copy of the complaint to the registrant, and the registrant has 30 days to respond to it, in writing.

A Panel of the Inquiries, Complaints and Reports Committee (ICRC) is formed to oversee the investigation of the complaint and to ensure the investigation is fair and objective. The Panel is made up of individuals appointed by the Provincial Government and professional members. Once the investigation of the complaint is complete, the ICRC Panel can:<sup>11</sup>

- Take no further action;
- Issue written advice;
- Require the registrant to appear in person for an oral caution;
- Direct the registrant to complete a specified continuing education and remediation program (SCERP);
- Refer the registrant to the Discipline Committee for specified allegations of professional misconduct;
- Refer the registrant to a panel of the ICRC for incapacity proceedings;
- Take action it considers appropriate that is not inconsistent with the RHPA.

#### (d) Mandatory Revocation

When allegations of sexual abuse are referred to the Discipline Committee, a hearing is held. Patients alleging sexual abuse have certain rights to help protect their privacy during these proceedings, including the right to have an order banning publication of their identity and restrictions on the right of access to their counselling or therapy records.

When a panel of the Discipline Committee finds a registrant guilty of sexually abusing a patient, it must revoke the registrant's certificate of registration (for a minimum of five years), if the sexual abuse consisted of, or included, any of the following:<sup>12</sup>

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<sup>10</sup> [Subsection 85.7\(7\) of the HPPC, Schedule 2 to the RHPA](#)

<sup>11</sup> [Subsection 26\(1\) of the HPPC, Schedule 2 to the RHPA](#)

<sup>12</sup> [Subsection 51\(5\)\(3\) of the HPPC, Schedule 2 to the RHPA](#)

- i. Sexual intercourse;
- ii. Genital to genital, genital to anal, oral to genital or oral to anal contact;
- iii. Masturbation of the member (registrant) by, or in the presence of, the patient;
- iv. Masturbation of the patient by the member (registrant);
- v. Encouraging the patient to masturbate in the presence of the member (registrant); and
- vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.

Mandatory revocation is attached to other findings of professional misconduct, in addition to sexual abuse of a patient. Regulations under the RHPA specify that professional misconduct associated with findings of guilt related to certain sexual offences within the *Criminal Code* also trigger mandatory revocation of a regulated health professional's certificate of registration.<sup>13</sup> Convictions for these *Criminal Code* offences (and the related mandatory revocation provisions) do not require the victim to be a patient.

After the mandatory five-year period, a registrant may apply for reinstatement. The application for reinstatement will be reviewed by the Discipline Committee.<sup>14</sup>

(e) Information on the Public Register

The College is committed to increasing the transparency of information on the public register about its registrants. The public has access to information about their health care providers on the public register, which includes:

- information about charges, findings of guilt and conditions of release made under the *Criminal Code* and/or the *Controlled Drug and Substances Act*;
- other information respecting charges, findings of guilt and conditions of release under federal, provincial or other offence the Registrar believes is relevant to the registrant's suitability to practice;
- every referral to the Discipline Committee by the ICRC;
- information on interim orders;
- findings of professional misconduct or incompetence made by other regulators.

It is important for patients to be aware of conduct that could affect the therapeutic relationship with a registrant, even if the conduct occurred outside Ontario. The [public register](#) is available on the College's website.

### **College Regulations, Guidelines, Standards and Policies**

The Code specifies that measures for preventing and dealing with sexual abuse of clients must include "guidelines for the conduct of members with their patients."<sup>15</sup> The College's Professional Misconduct Regulation under the *Chiropractic Act, 1991*, specifies that abuse of a client of any kind — this includes sexual abuse — is considered professional misconduct.<sup>16</sup>

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<sup>13</sup> [O. Reg. 262/18 under the RHPA](#)

<sup>14</sup> [Subsection 72\(3\) of the HPPC, Schedule 2 to the RHPA](#)

<sup>15</sup> [Subsection 84\(3\)\(b\) of the HPPC, Schedule 2 of the RHPA](#)

<sup>16</sup> [O. Reg. 750/93 under the Chiropractic Act, 1991](#)

(a) The Chiropodist/Podiatrist/Patient Relationship

The purpose of the registrant/patient relationship is to provide care within the scope of practice set out in the *Chiropody Act, 1991*.

The practice of chiropody is the assessment of the foot and the treatment and prevention of diseases, disorders or dysfunctions of the foot by therapeutic, orthotic or palliative means.<sup>17</sup>

It is the registrant's responsibility to establish and maintain a professional relationship with patients. The patient depends on the registrant for their expertise in chiropody or podiatry, which creates a power imbalance in the relationship where the patient is vulnerable. For successful care, a patient must trust that the services provided by the registrant will not harm them. Sexual abuse is a violation of that trust and a fundamental betrayal of the registrant-patient relationship.

While sexual abuse in the context of the RHPA relates to patients, sexual misconduct towards other persons can constitute disgraceful, dishonourable and unprofessional conduct. For example, flirting with the parent of a young patient would generally be unprofessional. So would sexual harassment of a colleague or employee.

(b) Patient Relations Standard

The College's [Patient Relations standard](#) contains a section on sexual ethics that specifically states that registrants "shall not commit sexual abuse of a patient."

The Standard outlines the criteria:

1. \*The member shall not have sexual intercourse or other forms of physical sexual relations with a patient.
2. \* The member shall not carry out touching, of a sexual nature that includes, but is not limited to:
  - 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,
  - encouragement of the patient by the member to masturbate in the presence of the member,
  - oral to breast contact
3. \* The member shall not exhibit behaviour, or utter remarks of a sexual nature to a patient. Behaviour and remarks include, but are not limited to:
  - disrobing or draping practices that reflect a lack of respect for the patient's privacy.
  - deliberately watching a patient dress or undress.
  - sexual comments about a patient's underclothing.
  - criticism of the patient's sexual orientation.
  - discussion of the patient's sexual performance.

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<sup>17</sup> [Chiropody Act, 1991, section \(4\)](#)

- conversations regarding the sexual preferences or fantasies of the member or patient.
  - kissing of a sexual nature
4. \* The member has a legal obligation to abide by the mandatory reporting requirements outlined in the *Regulated Health Professions Act*.<sup>18</sup>

(c) Mandatory Reporting of Sexual Abuse

All health care professionals governed by the RHPA are required to file a written report with the Registrar if, in the course of practising their profession, they form reasonable grounds to believe that a registrant of any regulated health profession has sexually abused a patient.<sup>19</sup>

The report must be made within 30 days after the obligation to report arises; however, if there is reason to believe that there is continuing sexual abuse of a patient, or that a registrant will sexually abuse other patients, then the report must be made immediately.

The report must include:

- The name of the patient who has been sexually abused (only if written consent has been given by the patient OR, if the patient is incapable, by the patient's representative);
- The name of the registrant filing the report;
- The name of the registrant who is the subject of the report; and
- An explanation of the alleged sexual abuse.<sup>20</sup>

Once the report is received by the College, the information will be reviewed to determine next steps, which may include conducting a formal investigation.

Failure to submit a mandatory report could result in a fine of up to \$50,000 for an individual or up to \$200,000 for a corporation. Registrants are protected from reprisal for making reports in good faith.<sup>21</sup>

### **Educating the Profession**

The College is committed to providing ongoing education, direction, and support to registrants on the topic of sexual abuse of patients. The objectives of the College's professional education program include:

- Increasing awareness of professional development opportunities for registrants on the topic of sexual abuse and its impact on patients;
- Developing and collecting resource materials related to the topic of sexual abuse;
- Collaborating with business, professional, and educational partners to enhance the development and delivery of education to registrants;
- Alerting registrants to high-risk situations and the consequences of engaging in sexual abuse;

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<sup>18</sup> [College Patient Relations Standard](#)

<sup>19</sup> [Section 85.1 of the HPPC, Schedule 2 to the RHPA](#)

<sup>20</sup> [Section 85.3 of the HPPC, Schedule 2 to the RHPA](#)

<sup>21</sup> [Subsections 93\(1\)-\(3\) of the HPPC, Schedule 2 to the RHPA](#)

- Providing assistance, direction and resource support to registrants in matters related to the reporting or disclosure of information concerning sexual abuse of patients in respect of a registrant of this or another regulated health profession;
- Educating registrants and employers about mandatory reporting requirements;
- Educating registrants about the complaints process and special procedures available for the reporting of complaints related to sexual abuse.

These objectives are achieved by:

- Developing and compiling resource and educational materials related to sexual abuse and its prevention;
- Collecting data on reports and complaints of sexual abuse;
- Making available educational materials concerning circumstances arising from complaints and discipline matters and providing clear guidance on how such situations can be prevented;
- Complying with all terms of any evaluation of the College's Patient Relations Program by the Health Professions Regulatory Advisory Council as set out in the RHPA;
- Collaborating with other colleges, either individually or through the HPRO in the development and delivery of educational materials;
- Providing information to registrants and the public on mechanisms for the reporting of sexual abuse including the complaints process and mandatory reporting requirements;
- Recognizing the different needs of diverse populations, (e.g., children, people of different cultural, religious).

The College's website contains resources for registrants on [professional boundaries and sexual abuse](#).

### **Public Education**

The College is committed to protecting the public by providing public education about the role of the profession, standards of care and the College's regulatory responsibilities. Issues related to sexual abuse and reporting mechanisms are an integral part of this process.

The College strives to further protect the public by educating them about the role of the College and by providing supportive and accessible resources to the public and registrants. Elements of a public education strategy to increase awareness of the College and its role in the prevention and elimination of sexual abuse by registrants include:

- Publication of information on the definition of sexual abuse;
- Publication of information on reporting and complaints procedures in general, and on reporting and complaints procedures specific to sexual abuse;
- Provision of information and resources to the public and registrants on how to access support groups for survivors of sexual abuse and funding for therapy and counselling for patients who were sexually abused by registrants;
- Collaboration with HPRO and with individual colleges and others in activities designed to increase knowledge of the RHPA and its various provisions for preventing and dealing with sexual abuse.



## Legislative References

- *Protecting Patients Act, 2017*
- [Regulated Health Professions Act, 1991](#), SO 1991, c18
  - [Health Professionals Procedural Code](#), Schedule 2
  - [Funding for Therapy or Counselling for Patients Sexually Abused by Registrants](#), O Reg 59/94
- [Chiropractic Act, 1991](#), S.O. 1991, c. 20
  - [Professional Misconduct](#), O. Reg. 750/93
- [Family Law Act](#), RSO 1990, c F.3
- [Criminal Code](#), RSC., 1985, c. C-46
- [Health Care Consent Act, 1996](#)

## Resources

- [To Zero: Independent Report of the Minister's Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act, 1991](#)
- [File a Complaint with the College](#)
- [Funding for Therapy and Counselling](#)
- [Mandatory Reporting of Sexual Abuse](#)
- [Professional Boundaries and Sexual Abuse Resources](#)
- [Patient Relations standard](#)

## Contact the College

Contact the College's practice advisory services for more information: [practice@cocoo.on.ca](mailto:practice@cocoo.on.ca)