



POLICY

Sexual Boundaries

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The Fiduciary Relationship

The fiduciary relationship is an ethical relationship of trust between the patient and physician. The relationship is such that a power imbalance exists. The patient depends on the physician's knowledge and training to provide care. There is a one-way transfer of information from the patient to the physician and patients often allow physicians to conduct intimate physical exams. Patients may also feel vulnerable when unwell, fearful or undressed. These factors create an imbalance of power.

The physician assumes responsibility for this relationship and must act only in the patient's best interests. Even when a patient has made sexual advances it is the physician's responsibility to reassert the appropriate boundaries.

Consider the CMA *Code of Ethics and Professionalism*:

- Consider first the well-being of the patient; always act to benefit the patient and promote the good of the patient.
- Never exploit the patient for personal advantage.

The College's position

- Trust is the basis of the patient-physician relationship.
- The patient is considered to be the vulnerable individual in the professional relationship in which assistance and treatment are sought from a professional individual with knowledge and training to make diagnoses and treatment decisions.
- Power imbalance exists in the patient-physician relationship.
- Transference may develop as a result of the power imbalance.
- Sexualized behaviour in the patient-physician relationship is never acceptable.
- A breach of sexual boundaries has potential for significant harm to the patient.

- A physician cannot provide objective care when a sexualized relationship exists.
- The onus is always on the physician to maintain professional boundaries with a patient and not to exploit the patient in any way.
- The nature of a fiduciary relationship makes a consensual sexual relationship between physician and patient impossible.

Guidance to physicians

- A physician should be careful to ensure that any remarks or questions that are asked cannot be construed as demeaning, seductive or sexual in nature.
- It is not only the patient who may be vulnerable in their relationship with a physician. Family members of a patient can be vulnerable as well, particularly if the patient has a chronic illness or is seriously ill, or the circumstances make it difficult for a patient to transfer care to another physician. Physicians should be aware of this potential vulnerability and should be aware that engaging in sexual activity with a patient's family member may be unethical.
- A person who was a patient while a child may remain vulnerable after reaching adulthood. Physicians should be aware of this potential vulnerability and should be aware that engaging in sexual activity with a person who was a patient as a child may be unethical.
- When sensitive subjects, such as sexual matters, have to be discussed, the physician should explain why the questions have to be asked, so that the intention cannot be misconstrued.
- The scope of the examination and the reasons for examination should be explained to the patient.
- Any touching that is not part of the physical examination must be of a type that cannot be misconstrued.
- Use gloves when examining genitals.
- Avoid any behaviour or remarks that may be interpreted as sexual by a patient.
- Endeavour to be aware and mindful of the patient's particular cultural or religious background.
- Do not make sexualized comments about a patient's body or clothing.
- Do not criticize or comment unnecessarily on a patient's sexual preference.
- Do not ask or make comments about sexual performance except where the examination or consultation is pertinent to the issue of sexual function or dysfunction.
- Do not ask details of sexual history or sexual behaviour unless related to the purpose of the consultation or examination.
- Be cognizant of social interactions with patients that may lead to romantic involvement.
- Do not talk with your patients about your own sexual preferences, fantasies, problems, activities or performance.
- Learn to control the therapeutic setting and to detect possible erosions in boundaries.
- Although chaperones are not mandatory, a physician should consider carefully whether a chaperone would contribute to an individual patient's feeling of comfort and security. Also, a chaperone may protect the physician from unfounded allegations. If a patient asks to have an appropriate support person in the room, that request must be honoured. Signage indicating that a chaperone is available or a printed policy regarding the provision of chaperones may be helpful.
- A physician must provide complete privacy for a patient to undress and to dress.
- A patient must be provided with an adequate gown or drape.

- The physician should not assist with removing or replacing the patient's clothing, unless the patient is having difficulty and consents to such assistance.
- A physician should be aware and be mindful of the particular cultural preferences in the diverse patient population.
- A physician should avoid crossing non-sexual boundaries such as dual roles and self-disclosure, as these may accumulate and take the physician down the "slippery slope" into the realm of sexual misconduct.
- Every physician should minimize personal vulnerability by appropriate recognition and attention to personal illness, stressors, emotional neediness and professional isolation.
- When any questions or concerns arise, the physician should feel free to contact the College for advice or direction.

Current Patients

The College recognizes that there are no circumstances in which sexualized conduct in the current patient/physician relationship is acceptable. Such activity is abusive regardless of whether the physician believes he or she has consent. It is the responsibility of the physician to never cross the line into sexual impropriety/violation. The College bylaws state:

- (iv) "sexual misconduct" means the threatened, attempted or actual conduct of a physician towards or with a patient that is of a sexual nature and includes any of the following conduct:
 - (i) sexual intercourse between a physician and a patient of that physician;
 - (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between a physician and a patient of that physician;
 - (iii) masturbation of a physician by, or in the presence of, a patient of that physician;
 - (iv) masturbation of a physician's patient by that physician;
 - (v) encouraging a physician's patient to masturbate in the presence of that physician;
 - (vi) touching of a sexual nature of any part of a patient's body, including a patient's genitals, anus, breasts or buttocks by a physician. For the purpose of this paragraph "touching of a sexual nature" does not include performing an appropriate physical examination that is appropriate to the service provided;
 - (vii) Kissing of a sexual nature with a patient;
 - (viii) Sexual acts by the physician in the presence of the patient.
- (ix) Any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature by a physician towards a patient that the physician knows or ought reasonably to know will or would cause offence or humiliation to the patient or adversely affect the patient's health and well-being. For the purpose of this paragraph "sexual nature" does not include any conduct, behaviour or remarks that are appropriate to the service provided;
- (x) Acts or behaviours which are seductive or sexually-demeaning to a patient or which reflect a lack of respect for the patient's privacy, such as examining a patient in the presence of third parties without the patient's consent or sexual comments about a patient's body or underclothing;

- (xi) Making sexualized or sexually-demeaning comments to a patient;
- (xii) Requesting details of sexual history or sexual likes or dislikes when not clinically indicated;
- (xiii) Making a request to date a patient or dating a patient;
- (xiv) Initiating or participating in a conversation regarding the sexual problems, preferences or fantasies of the physician;

(b) The following acts or failures are defined to be unbecoming, improper, unprofessional or discreditable conduct for the purpose of Section 46(p) of the Act. The enumeration of this conduct does not limit the ability of Discipline Hearing Committees to determine that conduct of a physician is unbecoming, improper, unprofessional or discreditable pursuant to Section 46(o):

- (xvi) Committing an act of sexual misconduct;
- (xvii) Committing an act of sexual harassment in the physician's professional capacity.

- (xxiii) failing to respect patient privacy.

“Former” patients

The dynamics of a patient/physician relationship do not necessarily end with the completion of treatment or transfer of patient care. There is always a risk of abuse of power on the part of the physician since, consciously or not, he or she may use or exploit the trust, information, emotions or power created by the former relationship. For that reason, the College has adopted a bylaw which prohibits sexual conduct in certain circumstances with an individual, even after the physician has ceased providing medical care to that individual. The bylaws state:

(iii) “Patient”, when used in reference to the definition of sexual misconduct means an individual who has formed a physician-patient relationship. This type of relationship is formed when there is a reasonable expectation that care will extend beyond a single encounter and the physician has engaged in one or more of the following activities:

1. Gathered clinical information to assess a person;
2. Provided a diagnosis;
3. Provided medical advice or treatment;
4. Provided counselling to the patient;
5. Created a patient file for the patient;
6. Billed for medical services provided to the patient;
7. Prescribed a drug to the patient for which a prescription is needed.

An individual remains a patient for a reasonable period **after** the date the individual ceased to be under the physician's care. In determining what is a “reasonable period” the following factors are relevant:

1. Whether there has been a specific transfer of care to another physician;
2. Whether the physician and the patient have mutually agreed to end the doctor-patient relationship;

3. The extent to which the patient was in a position of vulnerability in the physician-patient relationship;
4. The extent to which the patient's decision-making is affected by the physician-patient relationship;
5. A physician can never enter into a sexual relationship with a patient to whom the physician has provided psychotherapy or psychiatric counselling;
6. In most cases a "reasonable period" will be a minimum of one year after the individual last received medical care from the physician.

"Patient" does not include a person who was in a pre-existing sexual relationship with the physician when the physician provided the health service.

Physician Reporting

Physicians are expected to report a boundary breach by another physician to the College. Paragraph 33 of the Code of Ethics for Saskatchewan physicians, part of College regulatory bylaw 7.1 states:

33. Take responsibility for promoting civility, and confronting incivility, within and beyond the profession. Avoid impugning the reputation of colleagues for personal motives; however, report to the appropriate authority any unprofessional conduct by colleagues or concerns, based upon reasonable grounds, that a colleague is practising medicine at a level below an acceptable medical standard, or that a colleague's ability to practise medicine competently is affected by a chemical dependency or medical disability.

Penalties for Sexual Misconduct

The Council of the College has recognized that societal attitudes have changed and that penalties which health regulatory bodies have historically imposed for sexual misconduct may not be reflective of current societal norms, and the need to denunciate sexual misconduct in the strongest of terms.

That is demonstrated by legislation that has been adopted by the governments of Alberta, Ontario, Prince Edward Island and Quebec. The penalties for the most serious forms of sexual misconduct prescribed by legislation are significantly more severe than has historically been imposed by the Council.

The Council of the College has decided that the most serious forms of sexual misconduct should result in revocation of a physician's licence, with an inability to apply for restoration for a longer period of time than has been imposed in the past for sexual misconduct.

The Council has decided that there should be a "presumptive penalty" for such sexual misconduct which should generally be imposed for the most serious forms of sexual misconduct. The adoption of such a "presumptive penalty" does not bind the Council to impose that penalty, and there may be extraordinary circumstances in which that penalty may not be appropriate.

The presumptive penalty will apply to sexual misconduct which includes any of the following:

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

- (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated member and a patient of that regulated member;
- (iii) masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
- (iv) masturbation of a regulated member's patient by that regulated member;
- (v) encouraging a regulated member's patient to masturbate in the presence of that regulated member;
- (vi) touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated member.

The presumptive penalty for such sexual misconduct will include the following:

- a) An inability to apply for restoration for a minimum period of three years;
- b) A requirement that before applying for restoration, the regulated member must provide a satisfactory report from a professional person, persons or organization chosen by the Council which attests that the regulated member has undertaken counseling at the member's expense for sexual misconduct, has gained insight into the matter and has achieved a measure of rehabilitation which protects the public from risk of future harm from the regulated member.

The Council may consider whether any additional conditions should be imposed as a precondition for the regulated member to apply for restoration.

The Council may impose a longer or shorter period of ineligibility to apply for restoration. In considering whether the Council should impose a period of ineligibility of more than three years, a significant factor should be the degree of vulnerability of the patient in the relationship with the physician. Among the factors which may justify a more significant period of ineligibility to apply for restoration are the following:

- a) If the physician has provided psychiatric treatment to the patient (including psychotherapy);
- b) If the patient has a mental health disorder;
- c) If the conduct may reasonably be regarded as a criminal sexual offence.

The presumptive penalty will apply to any penalty for sexual misconduct imposed by the Council after the Council adopts this policy, whenever the misconduct occurred.

Support for Complainants

The College of Physicians and Surgeons recognizes that sexual misconduct by physicians can be traumatic for patients and that some patients may find counselling will assist them in addressing the aftermath of such conduct.

The College recognizes that if counselling does not occur until there is a final determination whether a physician has engaged in sexual misconduct, such counselling may be delayed and be of much less assistance.

A complainant who alleges sexual misconduct by a physician can apply to the Registrar of the College for financial assistance to access counselling or legal assistance related to the alleged sexual misconduct. The Registrar can, in her/his absolute discretion, grant or refuse financial assistance to complainants. The Registrar may ask the complainant to provide any information that the Registrar concludes would be helpful in determining the financial assistance, if any, to be provided to the complainant. The maximum amount of financial assistance which will be provided to a complainant to access counselling services or legal assistance will be \$3000. The Registrar can, if satisfied there are extraordinary circumstances which require additional assistance, authorize a larger amount to be paid.

Resources

Recognizing Boundary Issues – (CMPA 2014) <https://www.cmpa-acpm.ca/en/advice-publications/browse-articles/2014/recognizing-boundary-issues>

Boundaries and Sexual Abuse Module, available through the College of Physicians and Surgeons of Ontario <http://www.cpsso.on.ca/Physicians/Policies-Guidance/Professionalism-Practice-Programs>

Professional Standards and Guidelines Regarding Sexual Misconduct in the Physician-Patient Relationship - College of Physicians and Surgeons of Nova Scotia <https://cpsns.ns.ca/wp-content/uploads/2017/10/Sexual-Misconduct-in-Physician-Patient-Relationship.pdf>

Maintaining Appropriate Boundaries and Preventing Sexual Abuse - College of Physicians and Surgeons of Ontario <https://www.cpsso.on.ca/Physicians/Policies-Guidance/Policies/Maintaining-Appropriate-Boundaries-and-Preventing>

Boundary Violations: Sexual - College of Physicians and Surgeons of Alberta <http://www.cpsa.ca/standardspractice/boundary-violations-sexual/>

Boundary Violations in the Patient-Physician Relationship - College of Physicians and Surgeons of British Columbia <https://www.cpsbc.ca/files/pdf/PSG-Boundary-Violations-in-the-Patient-Physician-Relationship.pdf>

College of Physicians and Surgeons of Saskatchewan, Regulatory Bylaw 7.1 – The Code of Ethics <http://www.cps.sk.ca/iMIS/Documents/Legislation/Legislation/Regulatory%20Bylaws.pdf>

College of Physicians and Surgeons of Saskatchewan, Regulatory Bylaw 7.2 – Code of Conduct <http://www.cps.sk.ca/iMIS/Documents/Legislation/Legislation/Regulatory%20Bylaws.pdf>

College of Physicians and Surgeons of Saskatchewan, Regulatory Bylaw 8.1 – Unbecoming, Improper, Unprofessional or Discreditable Conduct <http://www.cps.sk.ca/iMIS/Documents/Legislation/Legislation/Regulatory%20Bylaws.pdf>

College of Physicians and Surgeons of Saskatchewan, Policy – Victim Impact Statements https://www.cps.sk.ca/imis/CPSS/CPSS/Legislation_ByLaws_Policies_and_Guidelines/Legislation_Content/Policies_and_Guidelines_Content/Victim_Impact_Statements.aspx