



Boundary Violations

Policies of the College of Physicians and Surgeons of Ontario (the “College”) set out expectations for the professional conduct of physicians practising in Ontario. Together with the *Practice Guide* and relevant legislation and case law, they will be used by the College and its Committees when considering physician practice or conduct.

Within policies, the terms ‘must’ and ‘advised’ are used to articulate the College’s expectations. When ‘advised’ is used, it indicates that physicians can use reasonable discretion when applying this expectation to practice.

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2 Definitions

3 **Boundary:** defines the limit of a safe and effective professional relationship between a
4 physician and a patient. There are both sexual boundaries and non-sexual boundaries within a
5 physician-patient relationship.

6 **Boundary Violation:** occurs when a physician does not establish and maintain the limits of a
7 professional relationship with their patient. There are sexual boundary violations and non-
8 sexual boundary violations.

9 **Patient:** In general, a factual inquiry must be made to determine whether a physician-patient
10 relationship exists, and when it ends. The longer the physician-patient relationship and the
11 more dependency involved, the longer the relationship will endure.

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13 However, for the purposes of the sexual abuse provisions of the *Health Professions Procedural*
14 *Code (HPPC)*, a person is a physician’s patient if there is direct interaction and **any** of the
15 following conditions are met:

- 16 • the physician has charged or received payment from the person (or a third party on
17 behalf of the person) for a health care service provided by the physician,
- 18 • the physician has contributed to a health record or file for the person,
- 19 • the person has consented to the health care service recommended by the physician, or
- 20 • the physician prescribed the person a drug for which a prescription is needed.^{1,2}

¹ O. Reg. 260/18 under the *Regulated Health Professions Act, 1991*, S.O. 1001, c.18 (RHPA).

² A person is not a physician’s patient if **all** of the following conditions are met:

- There is a sexual relationship between the person and the physician at the time the health care service is provided to the person;
- The health care service provided by the physician to the person was done due to an emergency or was minor in nature; and



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22 In addition, for the purposes of the sexual abuse provisions of the *HPPC*, the physician-patient
23 relationship endures for one year from the date on which the person ceased to be the
24 physician's patient.³

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26 **Sexual Abuse:** The *HPPC* defines sexual abuse as follows:

- 27 • sexual intercourse or other forms of physical sexual relations between a physician and
28 their patient;
- 29 • touching, of a sexual nature, of a patient by their physician; or
- 30 • behaviour or remarks of a sexual nature by a physician towards their patient.⁴

31 Policy

32 1. Physicians **must** establish and maintain appropriate boundaries with their patients.

33 Sexual Boundary Violations

34 2. Physicians **must not** engage in sexual relations with a patient, touch a patient in a sexual
35 manner or engage in behaviour or make remarks of a sexual nature towards a patient.⁵

36 3. To help ensure sexual boundaries are maintained and that sexual boundary violations do not
37 occur, physicians **must**:

- 38 a. **Not** make any sexual comments or advances towards a patient.
- 39 b. **Not** respond sexually to any form of sexual advance made by a patient.
- 40 c. Explain to patients in advance, the scope and rationale of any examination,
41 treatment or procedure.
- 42 d. Only touch a patient's breasts, genitals or anus when it is medically necessary, and
43 use appropriate examination techniques when doing so.
- 44 e. Use gloves when performing pelvic, genital, urinary, perineal, perianal, or rectal
45 examinations.
- 46 f. Show sensitivity and respect for a patient's privacy and comfort by:

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- The physician has taken reasonable steps to transfer the person's care, or there is no reasonable opportunity to transfer care. (O. Reg. 260/18 under the *RHPA*)

³ Section 1(6) of the *HPPC*, Schedule 2, to the *RHPA*.

⁴ Touching, behaviour or remarks of a clinical nature appropriate to the service provided do not constitute sexual abuse (Subsections 1(3) and (4) of the *HPPC*). It is an act of professional misconduct for a physician to sexually abuse a patient (Section 51(1), paragraph (b.1) of the *HPPC*).

⁵ Such activity constitutes sexual abuse under the *HPPC*.



- 47 i. Providing privacy when patients dress or undress.
48 ii. Providing patients with a gown or drape during the physical examination or
49 procedure if clothing needs to be removed, and only exposing the area
50 specifically related to the physical examination or procedure.
51 iii. Ensuring that the gown or draping adequately covers the area of the
52 patient's body that is not actively under examination.
53 iv. During an examination, only assisting patients with the adjustment or
54 removal of clothing or draping if the patient agrees or requests the physician
55 to do so.
56 g. **Not** ask or make comments about a patient's sexual history, behaviour or
57 performance except where the information is relevant to the provision of care.
58 h. **Not** make any comments regarding their own sex life, sexual preferences or
59 fantasies.
60 i. **Not** socialize or communicate with a patient for the purpose of pursuing a sexual
61 relationship.
62 j. Use their professional judgment when using touch for comforting purposes.
63 Supportive words or discussion may be preferable to avoid misinterpretation.

64 **Third Party Attendance at Intimate Examinations**

- 65 4. When performing intimate examinations⁶, physicians **must** explain the indication for the
66 examination and consider the patient's comfort at all times. In doing so, physicians **must**
67 give patients the option of having a third party present during an intimate examination,
68 including bringing their own third party if the physician does not have one.
- 69 5. If a patient requests a third party, physicians **must** provide one if available.
70
- 71 6. If no third party is available or if there is no agreement on whom the third party should be
72 and the examination is non-emergent, physicians **must** suggest the following options to the
73 patient:
74 a. either the physician or the patient may withdraw from the examination until a
75 mutually acceptable third party is available and the examination can be
76 rescheduled, or
77 b. where possible the physician can refer the patient to another physician who has
78 a third party available for the examination.
79

80 **Sexual Relations after the Physician-Patient Relationship has Ended**

- 81 7. If physicians engage in sexual relations with a patient or engage in sexual behaviour or
82 make remarks of a sexual nature towards their patient within one year after the date upon
83 which the individual ceased to be the physician's patient, this will constitute sexual abuse

⁶ Intimate exam includes breast, pelvic, genital, urinary, perineal, perianal and rectal examinations of patients.



84 under the *HPPC*.⁷ Therefore, physicians **must not** engage in sexual relations with a patient
85 or engage in sexual behaviour or make remarks of a sexual nature towards their patient
86 during this time period.

87 8. Where the treatment provided by the member involved psychotherapy that is more than
88 minor or insubstantial a physician **must not** engage in sexual relations or engage in sexual
89 behaviour or make remarks of a sexual nature towards their patient for a minimum of five
90 years after the date upon which the individual ceased to be the physician's patient.⁸

91 9. Even after the one or five year time period has passed, it may still be inappropriate for a
92 physician to engage in sexual relations with a former patient.⁹ Prior to engaging in sexual
93 relations with a former patient, a physician **must** consider the following factors:

- 94 • the length and intensity of the former professional relationship,
- 95 • the nature of the patient's clinical problem,
- 96 • the type of clinical care provided by the physician,
- 97 • the extent to which the patient has confided personal or private information to the
98 physician, and
- 99 • the vulnerability the patient had in the physician-patient relationship.

100 **Sexual Relations between Physicians and Persons Closely Associated with Patients**¹⁰

101 10. It may be inappropriate for a physician to engage in sexual relations with a person closely
102 associated with a patient. The College may find that this behaviour constitutes professional
103 misconduct.¹¹ Prior to engaging in sexual relations with a person closely associated with a
104 patient, a physician **must** consider the following factors:

⁷ Subsections 1(3) and (6) of the *HPPC*, Schedule 2, to the *RHPA*. The *HPPC* provides for mandatory revocation for specific acts of sexual abuse including sexual intercourse. For a complete list, see *Advice to the Profession: Maintaining Appropriate Boundaries*.

⁸ Physicians may be found to have committed disgraceful, dishonourable or unprofessional conduct if they engage in sexual relations with a patient in these circumstances. The Courts have found that certain physician-patient relationships may endure subsequent to the end of the formal relationship, for example, in the case of a long-standing psychotherapeutic relationship.

⁹ See footnote 8.

¹⁰ Individuals who possess one or more of the following features:

- They are responsible for the patient's welfare and hold decision-making power on behalf of the patient.
- They are emotionally close to the patient. Their participation in the clinical encounter, more often than not, matters a great deal to the patient.
- The physician interacts and communicates with them about the patient's condition on a regular basis, and is in a position to offer information, advice and emotional support.

Examples of such individuals include but are not limited to: patients' spouses or partners, parents, guardians, substitute decision-makers and persons who hold powers of attorney for personal care.

¹¹ Allegations of professional misconduct could be made under the following grounds: act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by



- 105 • the nature of the patient’s clinical problem,
- 106 • the type of clinical care provided by the physician,
- 107 • the length and intensity of the professional relationship between the physician and the
- 108 patient,
- 109 • the degree of emotional dependence the individual associated with the patient has on
- 110 the physician, and
- 111 • the degree to which the patient is reliant on the person closely associated with them.

112 **Mandatory Duty to Report Sexual Abuse**¹²

- 113 11. Physicians must comply with the reporting requirements of the *HPPC*.
- 114 a. Physicians **must** report if they have reasonable grounds, obtained in the course of
- 115 practising the profession, to believe that another member of the same or a different
- 116 regulated health college has sexually abused a patient.
- 117 b. Physicians or others who operate a facility **must** report if they have reasonable grounds
- 118 to believe that a member of a regulated health college practising in the facility has
- 119 sexually abused a patient.

120 **Non-Sexual Boundary Violations**

- 121 12. Physicians **must not** exploit the power imbalance inherent in the physician-patient
- 122 relationship.
- 123
- 124 13. Physicians’ obligations to establish and maintain appropriate boundaries with patients are
- 125 not limited to sexual interactions. Physicians **must** establish and maintain appropriate
- 126 boundaries with patients at all times, including with respect to social or financial/business
- 127 matters.
- 128 14. Physicians **must** consider the impact on the physician-patient relationship and on others in
- 129 their practice when engaging with a patient in a non-clinical context (social or
- 130 financial/business relationships).

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132 For further information about maintaining appropriate boundaries, please see the Advice to the

133 Profession: Maintaining Appropriate Boundaries document (link to document will be provided).

members as disgraceful, dishonourable or unprofessional and/or conduct unbecoming a physician (Section 1(1), paragraphs 33 and 34 of the *Medicine Act, Professional Misconduct Regulation*).

¹² Sections 85.1 to 85.6 of the *HPPC*. Reports must be in writing to the Registrar of the College to whom the alleged abuser belongs.