Advice to the Profession: Maintaining Appropriate Boundaries

Advice to the Profession companion documents are intended to provide physicians with additional information and general advice in order to support their understanding and implementation of the expectations set out in policies. They may also identify some additional best practices regarding specific practice issues.

The physician-patient relationship is dependent upon **trust**. When a patient seeks care from a physician, the patient must trust that the physician will treat them in a professional manner.

There is an inherent power imbalance within this relationship which is a result of a number of factors:

- A patient depends on the physician's knowledge and training to help them with their health issues.
- A patient shares highly personal information with the physician that they rarely share with others.
- The clinical situation often requires that the physician conduct physical examinations that are of a sensitive nature.
- A patient's vulnerability is heightened when they are unwell, worried or undressed.

As such, a physician must only act in the patient's best interests and must take responsibility for establishing and maintaining boundaries within a physician-patient relationship.

The College has developed this document and the *Boundary Violations* policy to provide expectations and guidance to physicians regarding boundary violations and to help physicians understand and comply with the legislative provisions of the *Regulated Health Professions Act, 1991* (*RHPA*) regarding sexual abuse.

Frequently Asked Questions about Sexual Boundary Violations

What if my patient agrees to or initiates a sexual relationship?

The physician-patient relationship is not equal – there is a power imbalance as described above. Even if a patient has agreed to a sexual relationship; the sexual contact will still be considered sexual abuse under the *RHPA*.

What is the difference between a boundary crossing and a boundary violation?

While the *Boundary Violations* policy sets out firm expectations about boundary violations, boundaries can also be crossed. Boundary crossings are minor deviations from traditional therapeutic activity that are non-exploitative and may even appear to help the therapeutic relationship. For example, accepting a small gift from a patient or holding of the hand of a grieving patient. While these actions may be well-intentioned, it is important for physicians to consider what these actions can mean and their impact on the physician-patient relationship or on other patients in their practice. Repeated boundary crossings, though not necessarily boundary violations themselves, may lead to boundary violations.

Boundary violations, on the other hand, occur when a physician does not maintain the professional limits of a physician-patient relationship and depending on the type of boundary violation can be detrimental to the physician-patient relationship and cause patients harm.

What if I am not able to provide a third party for my patient?

The *Boundary Violations* policy outlines what the College expects of a physician who is not able to provide a third party for their patient when conducting an intimate examination.

A physician may want to consider informing patients (through their administrative staff or themselves) when booking appointments that they are not able to offer a third party, but if the patient would like they may bring their own third party to the appointment.

What should I document in relation to third parties?

A physician is advised to document in the patient's record if a third party is present for the examination or if a third party has been offered by the physician and declined by the patient.

How can I provide privacy for my patients?

As stated in the *Boundary Violations* policy, physicians must provide privacy when a patient undresses and dresses. This can be achieved by having an appropriate place for a patient to undress and dress out of view of anyone, including the physician. For example, a separate examination room outside of which the physician can remain while a patient is changing or a

suitable curtain between the physician and the patient. Merely turning around and facing away from a patient without a curtain is not acceptable.

Why might it not be appropriate for a physician to have sexual relations with a patient even after the physician-patient relationship has ended?

At all times, a physician has an ethical obligation not to exploit the trust, knowledge and dependence that develops during the physician-patient relationship for the physician's personal advantage. This dependence does not disappear once the physician-patient relationship has ended – the power imbalance can persist after a person ceases to be a physician's patient.

As such, for the purposes of sexual abuse, the law treats the physician-patient relationship as continuing one year past the last physician-patient encounter. It is also the College's position that if psychotherapy that is more than minor or insubstantial was provided by a physician, that physician must not engage in a sexual relations with a patient for at least five years after the date of the last physician-patient encounter.

Prior to engaging in sexual contact, physicians are advised to verify that they have not provided treatment to the individual within the prior year or the previous five year period if they have provided psychotherapy to the individual. Even after these time periods have elapsed, sexual relations may be considered professional misconduct.

A physician who is considering having sexual relations with a former patient must use their professional judgment, acting cautiously as they consider the potentially complex issues relating to trust, power dynamics and any transference concerns. As well, it is important for a physician to ensure that the former patient has a good understanding of the dynamics of the physician-patient relationship and the boundaries applicable to that relationship.

Where a physician is in doubt as to whether the physician-patient relationship has ended, they should refrain from any relationship with the patient until they seek advice, for example, from legal counsel.

Why might it not be appropriate for a physician have a sexual relationship with a person closely associated with a patient?

Sexual relations between physicians and individuals who are closely associated with a physician's patients may also raise concerns about breach of trust and power imbalance and may be considered professional misconduct.

In addition to the risk of exploitation, sexual relations between a physician and a person closely associated with a patient can detract from the goal of furthering the patient's best interests. It has the potential of affecting the objectivity of the physician's and the closely associated person's decisions with respect to the health care provided to the patient.

What are the consequences for sexually abusing a patient?

In some instances, physicians who are found to have sexually abused a patient will have their certificate of registration revoked and they cannot reapply for a period of 5 years. When a certificate is revoked, the physician cannot engage in the practice of medicine.

These instances include the following:

- sexual intercourse;
- 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; encouraging the patient to masturbate in the presence of the member; or
- touching of a sexual nature of the patient's genitals, anus, breast or buttocks.[1]

A physician's certificate of registration will also be revoked in the following situations:

- when the physician has been found guilty of professional misconduct by the governing body of another health profession in Ontario, or by the governing body of a health profession in a jurisdiction other than Ontario; and
- the misconduct includes or consists of the specific acts of sexual abuse described above.[2]

If a physician's certificate is revoked because they were found to have sexually abused a patient, that physician cannot reapply for a new certificate until five years after the date their certificate of registration was revoked.[3]

In all other instances of sexual abuse, the Discipline Committee is required to, at a minimum, reprimand the physician and order a suspension of their certificate of registration. In these instances, the Committee has the power to order revocation of the physician's certificate, although such revocation is not mandatory.[4] The Committee also has the power to order terms,

[1] Section 51(5) of the *HPPC*.
[2] Section 51(5.2) of the *HPPC*.
[3] Section 72(3) of the *HPPC*.
[4] Section 51(5), paragraph 2 of the *HPPC*.

conditions and limitations on the physician's certificate of registration and to require the physician to reimburse the College for funding for therapy and counselling that was provided to the patient.[5]

Frequently Asked Questions about Non-Sexual Boundary Violations

How do non-sexual boundary violations impact the physician-patient relationship?

Non-sexual boundary violations can occur when a physician has a social relationship and/or a financial/business relationship with a patient.

It is important for physicians to be aware of the increased risk associated with managing a dual relationship with a patient, including the potential for compromised professional judgment and/or unreasonable patient expectations. The following activities *may* have the potential to cause harm particularly when the physician uses the knowledge and trust gained from the physician-patient relationship.

Social relationships can include the following activities:

- Giving or receiving inappropriate or elaborate gifts;
- Asking patients directly, or searching other sources, for private information that has no relevance to the clinical issue;
- Asking patients to join faith communities or personal causes; or
- Engaging in leisure activities with a patient.

Financial/business relationships can include the following activities:

- Lending to/Borrowing money from patients,
- Entering into a business relationship with a patient, or
- Soliciting patients to make donations to charities or political parties.

What should I do when my patients are part of my social network?

Living and working in a small community increases the likelihood that a physician will be invited to, or engaged in, social events and activities with patients. A similar scenario can occur, for example, when a physician and patients belong to the same ethnic group or religious faith and attends the same social or religious events.

[5] Section 52 (2) of the *HPPC*.

As set out in the answer above, physicians need to be aware of the increased risk associated with managing a dual relationship with a patient.

The College's Physician Treatment of Self, Family Members, or Others Close to Them policy also contains important information with respect to this issue.

Resources

The information below provides additional guidance for physicians with respect to maintaining appropriate boundaries and avoiding sexual abuse complaints.

Dialogue Articles

Dialogue, the College's quarterly publication for members, regularly addresses themes or issues relating to boundary violations, including sexual abuse. While some expectations may have changed since these articles were published, they contain helpful advice. Some examples are linked below:

- Practice Points, Issue 4 2018
- Bill 87 – Protecting Patients Act, Issue 1, 2017
- Mandatory Reporting for Sexual Abuse, Issue 4, 2016

Discipline Committee Findings

Past findings of the College's Discipline Committee can also be instructive as to what behaviours have resulted in findings of sexual abuse and/or disgraceful, dishonourable or unprofessional conduct.

The lists below are not exhaustive and the Discipline Committee would examine the facts of a specific case to see whether the conduct amounts sexual abuse or disgraceful, dishonourable or unprofessional conduct.

The Discipline Committee has made findings of sexual abuse in situations which include the following conduct:

- Remarks of a sexual nature to a patient including comments sexualizing the patient's appearance where there is no therapeutic value in the remarks,
- Stroking a patient's buttocks as they were leaving an appointment,
- Sexual touching while the patient was under anesthetic, and

- Kissing a patient.

Additionally, the Discipline Committee has determined that the following types of behaviour amounted to disgraceful, dishonourable or unprofessional conduct.

- Borrowing money from a patient;
- When providing counselling: hugging and providing a kiss on the cheek, meeting outside of the office on three occasions including at a restaurant;
- Failing to provide adequate explanation and obtaining informed consent prior to and during a sensitive examination
- Failing to provide adequate coverage for an examination resulting in unwanted exposure;
- Repeated, unwanted touching of nursing colleagues; and
- Engaging in a sexual relationship with a patient too soon after the termination of the doctor-patient relationship.

CPSO's Professionalism and Practice Program

How a doctor delivers care is just as important as the care provided. To that end, the CPSO has partnered with medical schools across Ontario to develop modules on key professionalism topics. These modules include PowerPoint presentations, and case studies ground in real life issues and trends seen by the CPSO. They are also grounded in relevant frameworks, such as CanMEDs. We encourage medical students — and anyone else interested in medical professionalism —to visit the Professionalism and Practice area on our website and to download the Boundaries and Sexual Abuse Module.

Canadian Medical Protective Association

The CMPA is a national organization and provides broad advice about a number of medico-legal issues. For Ontario specific information physicians are advised to look at the CPSO policy and advice document regarding boundary issues. However, the CMPA has a number of resources on the issues generally that physicians may find helpful.

For example:

Recognizing Boundary Issues

Is it Time to Rethink Your Use of Chaperones?

Rural Practice – Strategies to Reduce Medico Legal Risk

Good Practice Guide: Respecting Boundaries