

# Prevention of Sexual Abuse and Boundary Violations

\*(This practice advisory replaces the Prevention of Sexual Abuse and Boundary Violations advisory issued November 2015)

*The practice advisories of the Royal College of Dental Surgeons of Ontario are to be considered by all Ontario dentists in the care of their patients. Practice advisories may be used by the College or other bodies to determine whether appropriate standards of practice and professional responsibilities have been maintained.*

“The sexual abuse of patients is an issue that just won’t go away, and is a longstanding stain on the exemplary record of Ontario’s regulated health professionals. This kind of abuse is a profound breach of trust perpetrated by a relatively small number of the more than 300,000 health professionals regulated by their colleges under the RHPA.”

*To Zero: Independent Report of the Minister’s Task Force (2016) on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act*

Ontario law requires all health care regulatory colleges have a patient relations program with measures to prevent and address the sexual abuse of patients. These mandated measures under the Regulated Health Professions Act, 1991 (RHPA) include:

- establishing educational requirements for members
- setting guidelines for the conduct of members with their patients
- training College staff
- providing information to the public.



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## Sexual Abuse

In general, sexual abuse is unwanted sexual activity, with perpetrators using force, making threats or taking advantage of individuals not able to give consent. In the regulated health professions, such as dentistry, sexual abuse is the misuse of the power imbalance in the patient-dentist relationship.

Boundary violations and/or boundary crossings, which can precede or coincide with sexual abuse, also involve the misuse of the power imbalance between a patient and a dentist.

The RHPA defines sexual abuse of a patient by a dentist as being:

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

When considering allegations of sexual abuse, College committees may consider factors including the following to determine whether a patient-dentist relationship existed at the time of the alleged conduct:

- Was there a consultation/assessment?
- Does the dentist have records for the patient, including billing records or consent forms?
- Were further consultations and/or treatment planned?
- Was any treatment provided? Was any medication prescribed?
- Did the dentist write or receive a report/consult letters or requests for records?
- Were referrals made to other practitioners?
- Did the dentist call the person a patient?
- Did the dentist formally terminate the patient-dentist relationship?
- When did the dentist last have contact with the patient?

By contrast, the following factors will not necessarily determine the existence of a patient-dentist relationship at the time of the alleged conduct:

- Whether treatment was actually performed.
- If the patient had another dentist or other dentists.
- That a subsequent appointment had not been scheduled.
- That a significant period of time had passed between appointments.

Government may establish a definition of a “patient” in the context of sexual abuse. If this occurs, any person who ceased being your patient within the last year, or perhaps longer, would still be considered a patient with respect to allegations of sexual abuse. The RHPA would not define how or when an individual ceases to be your patient, but the government may provide further clarification in regulations. In the meantime, the factors listed above can be used for guidance in thinking about whether or not an individual is/was the patient of a dentist at a particular time.

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## Boundary Violations

Boundaries define the professional role. Dentists should always consider whether a particular action is a legitimate part of their role; they must not allow their self-interest to supersede or replace that of the patient.

Some boundary violations may also be described as sexual abuse. Sexual abuse is often preceded by numerous boundary crossings and violations. Frequently, the starting point is increased familiarity with a patient. This may include the dentist inappropriately disclosing personal information, questioning a patient about highly personal information not relevant to the clinical situation, or even going out for a coffee with a patient.

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## Guiding Principles

The patient-dentist relationship is based on integrity, respect, trust and consideration of the dignity of the patient. Sexual abuse is an extremely serious matter because it violates these principles. Patient “consent” is never a defence for sexual boundary violations or sexual abuse of the patient even if the patient initiates the contact. A patient cannot consent to a sexual relationship with their dentist.

A staff member treated in the office is considered a patient. The relevant patient-specific provisions of the RHPA apply to this patient-dentist relationship.

### **Power Imbalance**

The patient-dentist relationship is always unequal: the patient, in seeking the dentist’s expertise, is dependent on the dentist to provide professional service. This inherent power imbalance is why a sexual relationship between a dentist and a patient is considered sexual abuse. Dentists are obliged to be impartial and objective in their interactions with patients and to put their patients’ health care needs first and foremost.

### **The Perspective of an Objective Observer**

Consider what an objective observer, particularly another, objective patient, would think if they looked in on your interaction with a patient. Would an observer find the conduct appropriate in light of the high level of professionalism required in the patient-dentist relationship?

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## Maintaining professional boundaries

### **Patient Background**

Dentists will see patients from many diverse cultures, religions, sexual orientations, socioeconomic and other backgrounds. Your actions and conversations with patients take place in the context of each patient’s personal background. Comments or actions, even if made with good intentions, may be seen by patients as inappropriate boundary crossings or violations, depending on the background of the individual patient.

For example, a male dentist shaking the hand of a female patient may be culturally inappropriate for some patients. Be aware that, for religious, cultural or other reasons, some patients may want to be treated by a health care provider of a specific gender.

### **Respecting Personal Space**

Personal space represents the zone of comfort around a person. The size of that zone will vary among patients. Variation in the size of personal space can relate to a person’s

background and life experiences. Dentists work in close proximity to their patients. You must be aware of your behaviour within this space and act accordingly.

### **Issue of Touch**

Touch is perceived by individual patients in different ways. Be aware that that any patient may have experienced sexual abuse in the past. A patient who has experienced sexual abuse in the past may perceive physical contact as a threat and invasion of their personal space, and it can lead to anxiety and avoidance of dental care. A pat on the arm may be viewed as an invasion of personal space even if your intention was to offer comfort. It is the patient's perception of the interaction and not your intention that is important. It is not appropriate for you to hug or kiss a patient, even as a greeting or as an attempt to offer comfort.

There may be times when a clinical examination, diagnosis and treatment will require touch beyond the oral-facial complex. In these circumstances explain the procedure to the patient and get their consent before proceeding.

Sometimes it is not possible to explain the need for clinical touching, for example, when a patient is under deep sedation or general anesthesia or in cases of life-threatening emergency. In such circumstances, clearly document in the patient record the exact nature of the touching beyond the oral-facial complex and the reasons for doing so. As stated in the College's Standard of Practice on the Use of Sedation and General Anesthesia, specified staff should be present in the treatment room at all times whenever sedation or general anesthesia is used. In addition, whenever possible, a staff member or third party should be present when treatment is rendered outside of regular office hours.

Always use draping practices that respect your patient's privacy and ensure patient bibs or drapes are placed in a professional manner. Never place dental instruments or supplies on a patient's chest, lap or shoulder/neck area.

### **Blurring Lines in the Patient-Dentist Relationship**

Dentists are prohibited from having sexual relationships with patients; this includes comments and touching of a sexual nature as well as sexual intercourse and other sex acts. Even the most casual dating or social relationship with a patient may result in forms of affectionate behaviour that would fall under the RHPA definition of sexual abuse.

The legislation clearly prohibits health care practitioners from engaging in sexual relationships or other forms of affectionate or sexual behaviour with patients. A patient is legally unable to consent to sexual activity with a dentist.

If you have questions about how to conduct yourself in specific circumstances, contact the College.

### **Verbal Communication**

Communication is both verbal and non-verbal. It is affected by context, tone, word choice and body language. Behaviours, gestures and/or remarks that may reasonably be perceived by patients as romantic, sexual, exploitive and/or abusive are considered to be sexual abuse.

Do not tell sexually suggestive jokes, make comments about a patient's or staff member's body, appearance or clothing, make inquiries about intimate aspects of the lives of patients or staff members and/or disclose intimate aspects of your life.

Personal disclosure by a patient does not give you permission to reveal detailed personal information about your own life. If a patient tells you about a history of sexual abuse, this should be used to help you provide services in a sensitive and appropriate way. It is not an opportunity for you to share your personal history.

### **Written Communication**

Dentists are obliged to maintain professionalism in their written communication, including content on websites and social media. The College's Practice Advisory on Guidance on the Use of Social Media provides specific advice. Inappropriate use of social media or websites can harm your practice and your reputation.

### **Documentation**

Proactive documentation serves the patient's interest and yours. Prudent practitioners document in the patient record any time there has been a boundary crossing or violation by the patient and/or the dentist, including if you have instinctively used touch to comfort a severely distressed patient or if a patient has made sexual comments or advances or has crossed boundaries. Do this as soon as possible after the incident occurs; include your observations and statements from any dental staff who were present.

### **Workplace Environment**

You are obligated to maintain a professional workplace. Make sure your workplace does not include sexually suggestive jokes, posters, pictures and/or documents that could be offensive to patients or staff. In addition, dentists should be mindful of patient perceptions regarding the conversations they have with staff members during treatment.

The abuse and harassment of staff members is an extremely serious issue. A dentist may be found guilty of professional misconduct for sexual harassment of staff or boundary violations with staff if the conduct would reasonably be regarded by dentists as disgraceful, dishonourable, unprofessional or unethical, as set out in the College's Professional Misconduct regulation. Penalties can include revocation.

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## **Committee powers related to allegations and findings of sexual abuse**

### **During an investigation**

At any time from the filing of a complaint or the appointment of an investigator under sections 75(1) or (2) of the RHPA, the Inquiries, Complaints and Reports (ICR) Committee may suspend a dentist's certificate of registration or impose certain terms, conditions or limitations if the panel believes that the dentist's conduct exposes or is likely to expose patients to harm or injury. This order would be in place until varied by the Committee or until the matter is finally disposed of by the Committee. The terms, conditions or limitations imposed by the Committee cannot be gender-based, such as restricting a dentist from treating patients of a particular gender.

### **At a Discipline Hearing**

The RHPA sets out mandatory orders of a Discipline Committee if there has been a finding that a dentist has committed an act of professional misconduct by sexually abusing a patient, if the abuse includes any of 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;
- touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.

The Minister of Health and Long-Term Care has the power to define by regulation other conduct of a sexual nature that would also result in these mandatory orders.

If there has been a finding of sexual abuse specific to any of the acts noted above, the Discipline Committee shall:

- immediately suspend the member's certificate of registration until such time as the panel revokes the member's certificate of registration;
- reprimand the member as part of its penalty order; and
- revoke the member's certificate of registration for a period of not less than five (5) years as part of its penalty order.

In addition to the above, the Discipline Committee may also require the member to:

- pay a fine of not more than \$35,000 to the Minister of Finance;
- reimburse the College for funding provided for the patient for therapy or counselling required as a result of the sexual abuse;
- post security to guarantee the payment of any amounts the member may be required to reimburse the College.

If a finding of sexual abuse is made that does not consist of or include any of the acts specified above, the Committee has the discretion to decide whether or not revocation of the dentist's certificate of registration is the appropriate penalty. At a minimum, the Committee must suspend the dentist's certificate of registration and issue a reprimand.

When a Discipline Committee revokes or suspends a dentist's certificate of registration or orders terms, conditions or limitations following a finding of sexual abuse, these orders take effect immediately despite any appeal.

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## Funding for Therapy and Counselling

The College provides funding for therapy or counselling for patients who have been or are alleged to have been sexually abused by a dentist while they were a patient. This funding is administered through the College's Patient Relations Committee.

A patient is eligible for funding for therapy or counselling if:

- they have filed a complaint alleging sexual abuse by a dentist (effective January 1, 2018)
- are part of a Registrar's investigation into allegations of sexual abuse by a dentist (effective January 1, 2018)
- there has been a finding of sexual abuse by the Discipline Committee.

A patient's eligibility for funding prior to a finding of sexual abuse by the Discipline Committee does not constitute a finding against the dentist and will not be considered by any other College committee dealing with the dentist.

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### Support for Individuals Reporting Allegations of Sexual Abuse or Boundary Violations of a Sexual Nature

Reporting and discussing details of alleged sexual abuse or boundary violations can be traumatic. The timing of the reporting of such instances may vary greatly.

There are many reasons why a patient may delay reporting or not even report incidents of sexual abuse. There may be an overwhelming fear about not being believed, of retaliation or about being ostracized from the community. Some patients may not know who to contact about the dentist's misconduct or may believe that the conduct was "not serious enough" to warrant an investigation. As a result, patients or staff may not bring concerns about a dentist's conduct to the College's attention until a number of months, or even years, have passed.

Not all patients respond to boundary violations or sexual abuse in the same way. Some patients may appear detached or withdrawn, some may avoid the situation or try to carry on as if nothing occurred, and others may become confrontational or aggressive. Patients may use various coping strategies or try to solve the situation in a variety of different ways. For this reason, the College offers an independent support service to patients and others reporting concerns to the College about sexual abuse or boundary violations of a sexual nature by a dentist.

This support service is provided by a qualified regulated health professional with expertise in the area of sexual abuse. The service is confidential and is provided by someone not on College staff.

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### Spousal exemption

There is a regulation in place allowing Ontario dentists to treat their spouses. The regulation states that conduct, behaviour or remarks of a sexual nature would not constitute sexual abuse of a patient if the patient is the dentist's spouse and the dentist is not engaged in the practice of dentistry at the time that the conduct, behaviour or remarks occur. The intention of the exemption is to allow dentists to treat their spouses as patients while continuing consensual sexual relations within a spousal relationship. For the purposes of the regulation, the definition of spouse is set out in the Family Law Act and is defined as someone who has lived with the dentist in a conjugal relationship outside of marriage continuously for a period of not less than three years.

The spousal exemption provision does not provide blanket protection for a dentist from findings of professional misconduct for abuse of a patient if the spouse was subjected to abusive behaviour.

## Mandatory Reporting

If a dentist has reasonable grounds, obtained in the course of practising the profession, to believe that another dentist or a member of another health care regulatory college (e.g., physician, nurse, dental hygienist, chiropractor, pharmacist, etc.) has sexually abused a patient, the dentist must submit a report to the Registrar of the College of the member who is the subject of the report. You have a legal obligation to report incidents of sexual intercourse, genital to genital, genital to anal, oral to genital, or oral to anal contact, masturbation and/or touching of a sexual nature of the patient's genitals, anus, breasts or buttocks, and to report any other sexual touching or behaviour or remarks of a sexual nature.

It is not necessary for a dentist to have spoken directly to the patient to have reasonable grounds to suspect sexual abuse by another health care practitioner. Sometimes information will come to the dentist's attention through a family member, friend or caregiver of the patient. It is always best to err on the side of patient protection and to file a report if you are aware of allegations of sexual abuse. You should make best efforts to advise the patient of your requirement to file a report before doing so.

The College expects that you will file the report as soon as possible. The RHPA sets out that a health care practitioner will file with the Registrar of the appropriate College within 30 days of receiving the information. However, if the dentist believes that the other practitioner will continue to sexually abuse the patient or will sexually abuse other patients, the report must be filed immediately.

If you fail to file a mandatory report within the required timeframe, or at all, such failure may result in an investigation by the College and a finding of professional misconduct by the Discipline Committee. The RHPA sets out a fine up to \$50,000 for an individual and \$200,000 for a corporation.

The report must contain, at a minimum:

- the name of the person filing the report
- the name of the health care practitioner who is the subject of the report
- an outline of the alleged sexual abuse: what occurred, when it occurred and where it occurred, as well as any other relevant information and
- the name of the patient if the patient has provided written consent to the dentist to include his/her name in the report. If the patient has not consented to include their name in the report, the dentist must still file a report but must do so without the patient's name.

*This Practice Advisory should be read in conjunction with the Regulated Health Professions Act, 1991 and the Professional Misconduct Regulation made under the Dentistry Act.*



Royal College of  
Dental Surgeons of Ontario

*Ensuring Continued Trust*

6 Crescent Road  
Toronto, ON Canada M4W 1T1  
T: 416.961.6555 F: 416.961.5814  
Toll Free: 800.565.4591 [www.rcdso.org](http://www.rcdso.org)