



STANDARDS OF PRACTICE

Protecting Patients from Sexual Abuse/Misconduct

PURPOSE

The following standards are developed to assist members to understand the provisions of Bill 21 – *An Act to Protect Patients*, to prevent sexual abuse/misconduct by registered acupuncturists, and ultimately to protect patients from sexual abuse/misconduct.

BACKGROUND

To create additional measures to protect patients from sexual abuse/misconduct and to create enhanced transparency, the Minister of Health introduced Bill 21 – *An Act to Protect Patients* in the legislature on October 30, 2018. Bill 21 – *An Act to Protect Patients* received Royal Assent on November 19, 2018. As part of the implementation plan, all health regulatory colleges under the *Health Professions Act* are required to develop standards of practice. The proposed Standards of Practice would fully apply after the CAAA comes under the *Health Professions Act*.

“**Sexual abuse**” means the threatened, attempted or actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the following conduct:

- (a) sexual intercourse between a regulated member and a patient of that regulated member;
- (b) 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;
- (c) masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
- (d) masturbation of a regulated member’s patient by that regulated member;
- (e) encouraging a regulated member’s patient to masturbate in the presence of that regulated member; or
- (f) touching of a sexual nature of patient’s genitals, anus, breasts or buttocks by a regulated member.

“**Sexual misconduct**” means any incident or repeated incidents of objectionable or unwelcome conduct, behavior or remarks of a sexual nature by a regulated member towards a patient that the

regulated member 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 but does not include sexual abuse.

“**Sexual nature**” does not include any conduct, behavior or remarks that are appropriate to the service provided.

WHO IS CONSIDERED TO BE A PATIENT

For the purpose of a complaint made in respect of unprofessional conduct, a patient means an individual who seeks health services from a registered acupuncturist and has provided their personal health information, and whom the registered acupuncturist has undertaken consultation or diagnosis.

The following is a non-exhaustive list of evidences that would indicate the existence of a practitioner/patient relationship:

1. Record of personal health information
2. Patient medical history
3. Diagnosis/consultation record
4. Plan of management
5. Informed consent to treatment
6. Record of treatment
7. Billing information
8. A formal letter of discharge

STEPS TO ENSURE APPROPRIATE BOUNDARIES

In order to ensure that appropriate boundaries are maintained between the practitioner and the patient, a member should consider implementing the following:

1. A member must not make sexual advances towards a patient nor respond sexually to any form of sexual advance by a patient.
2. A member shall explain the scope of an examination and treatment plan to a patient, and secure their consent prior to the examination/treatments.
3. When a member feels that the presence of a third party during an examination may contribute to both the patient and the member, the patient should be given the option of having a third party present.
4. Under no circumstances should a member have a sexual relationship with a current patient even if the patient consents.
5. A member should avoid touching of patients that may be subject to misinterpretation.

SEXUAL RELATIONSHIP AFTER THE PRACTITIONER/PATIENT RELATIONSHIP ENDS

1. While a practitioner/patient relationship exists, the member must terminate the practitioner/patient relationship before a sexual relationship begins. In such circumstance, the member shall (COOLING PERIOD)
 - (a) terminate the care of the patient;
 - (b) provide a referral to another regulated member;
 - (c) document these actions in the patient file, and provide a copy of such correspondence to the patient; and
 - (d) transfer patient records to the new attending regulated member if requested by the patient.
2. In case of a complaint, the hearing tribunal will consider a number of factors in determining the appropriateness of a sexual relationship with a former patient, including but not limited to:
 - (a) the nature, length and intensity of the practitioner/patient relationship;
 - (b) the nature of the patient's clinical problem;
 - (c) the type of care provided by the member;
 - (d) the length of time between the termination of the practitioner/patient relationship and the start of a sexual relationship;
 - (e) the vulnerability of the patient; and
 - (f) the patient's understanding of the dynamics and boundaries of the practitioner/patient relationship.
3. Please note that it may never be appropriate to develop a sexual relationship with a former patient where a power imbalance exists. For example, a sexual relationship is not appropriate if the former patient is physically, emotionally, OR PSYCHOLOGICALLY vulnerable.
4. If a member is ever in doubt as to whether the practitioner/patient relationship has terminated, the member should refrain from a sexual relationship with the patient until they obtain advice.
5. Evidences that would indicate termination of a practitioner/patient relationship include, but are not limited to:
 - (a) a referral letter to another regulated member;
 - (b) a discharge letter advising the patient that the member will no longer act as the patient's healthcare provider; or
 - (c) evidence that the patient has ceased treatment from the member and is receiving care from another regulated member or healthcare professional.

INCIDENTAL OR EMERGENCY TREATMENT OF A PARTNER

A member may provide treatments to his or her partner if it is incidental or in the case of an emergency. Incidental care is defined as an unplanned instance of care that is minor, casual or subordinate in nature. Despite the fact that the partner is receiving care, the relationship between the member and his or her partner does not constitute a practitioner/patient relationship.

Partner means a regulated member's spouse, adult interdependent partner (as defined in the "Adult Interdependent Relationships Act"), or a person with whom the regulated member has a pre-existing sexual relationship.

SANCTIONS FOR SEXUAL ABUSE/SEXUAL MISCONDUCT

According to Bill 21, *An Act to Protect Patients*, the hearing tribunal can make the following order(s) for a finding of unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct:

1. suspension of a member's practice permit and registration if found to have committed sexual misconduct;
2. cancellation of a member's practice permit and registration if found to have committed sexual abuse;
3. imposition of terms, conditions and limitations on the member's practice permit;
4. payment of a fine.

MANDATORY DUTY TO REPORT

1. An employer or a member who has reasonable grounds to believe that the conduct of a regulated member constitutes unprofessional conduct based on behavior that, in the employer's opinion, is sexual abuse or sexual misconduct must, as soon as possible, give notice of that conduct to the College and Association of Acupuncturists of Alberta.
2. If a member is also a regulated member of any other college and another college makes a decision of unprofessional conduct with respect to the member, the member must, as soon as reasonably possible, report that decision and provide a copy of that decision, if any, to the registrar of the College and Association of Acupuncturists of Alberta.
3. If a member is also a regulated member of a similar profession in another jurisdiction and the governing body in that other jurisdiction made a decision that the conduct of the member constitutes unprofessional conduct, the member must, as soon as reasonably possible, report that decision and provide a copy of that decision, if any, to the registrar of the College and Association of Acupuncturists of Alberta.
4. A member must report in writing to the registrar, as soon as reasonably possible, if the member has been charged with an offence under the *Criminal Code* (Canada) or has been convicted of an offence under the *Criminal Code* (Canada).
5. If the regulated member suspected of engaging in sexual abuse or sexual misconduct is a member of the CAAA, the report is made to the College and Association of Acupuncturists of Alberta. If the regulated member is a member of another College, the report is made to the Complaints Director of that College.