



College of Physicians and Surgeons of British Columbia

Practice Standard

Sexual Misconduct

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Related topic(s):	Non-sexual Boundary Violations , Photographic, Video and Audio Recording of Patients , Physical Examinations and Procedures , Treating Self, Family Members and Those with Whom You Have a Non-professional Relationship

A **practice standard** reflects the minimum standard of professional behaviour and ethical conduct on a specific topic or issue expected by the College of its registrants (all physicians and surgeons who practise medicine in the province). Standards also reflect relevant legal requirements and are enforceable under the [Health Professions Act](#), RSBC 1996, c.183 (*HPA*) and College [Bylaws](#) under the *HPA*.

Registrants may seek advice on these issues by contacting the College and asking to speak with a member of the registrar staff, or by seeking medical legal advice from the CMPA or other entity.

PREAMBLE

This document is a practice standard of the Board of the College of Physicians and Surgeons of British Columbia.

COLLEGE'S POSITION

The College has a zero-tolerance policy for sexual misconduct. Clear professional boundaries ensure the protection of both patients and registrants. Regardless of how the patient may behave, it is always the registrant's responsibility to ensure that appropriate professional boundaries are maintained to prevent sexual and other professional misconduct. The College considers any violation of a professional boundary between a registrant and a patient as an extremely serious matter. If an investigation of sexual misconduct by a registrant results in a discipline it may include revocation of licensure.

This practice standard outlines sexual misconduct in the patient-registrant relationship. For non-sexual boundary violations, see the *Non-sexual Boundary Violations* practice standard.

THE PATIENT-REGISTRANT RELATIONSHIP

In a patient-registrant relationship, there is a power imbalance where the patient is considered to be vulnerable, especially if the patient is very ill, experiencing pain, afraid or worried, does not speak the same language, has experienced trauma, is of a different cultural background, or is undressed or exposed. This power imbalance may extend to a patient's family members and/or caregivers.

Trust is the foundation upon which the patient-registrant relationship is built. The patient trusts that the registrant will be professional and ethical and will always act in the patient's best interest. Registrants have a fiduciary duty (a legal obligation to act in the best interest of their patients) and must therefore never place their own interests above those of their patients. By maintaining appropriate boundaries, registrants mitigate the risk of complaints alleging sexual or other professional misconduct.

The designation of "**patient**," when used in reference to the definition of sexual misconduct, means an individual who is involved in a patient-registrant relationship. Whether or not a patient-registrant relationship exists is a factual inquiry; however, this type of relationship is generally formed when the registrant has engaged in one or more of the following activities directly with a patient:

- gathered clinical information for the purpose of making an assessment
- provided a diagnosis
- provided medical advice and/or treatment
- provided counselling
- contributed to the health record or file
- charged or received payment for medical services
- prescribed a drug for which a prescription is needed

DEFINING SEXUAL MISCONDUCT

The *Health Professions Act* defines "**professional misconduct**" as including sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession.

Section 1-18(4) of the Bylaws define "**professional misconduct of a sexual nature**" as:

- (a) sexual intercourse or other forms of physical sexual relations between a registrant and a patient,
- (b) touching, of a sexual nature, of a patient by a registrant,
- (c) behaviour or remarks of a sexual nature by a registrant towards a patient

but does not include touching, behaviour and remarks by a registrant to a patient that are of a clinical nature appropriate to the service being provided.

SEXUAL MISCONDUCT BY A REGISTRANT

For the purposes of this practice standard, the term “sexual misconduct” means “professional misconduct of a sexual nature” as defined in the Bylaws above.

Sexualized contact or behaviour of any kind is unacceptable in the patient-registrant relationship and is considered sexual misconduct. Given the power imbalance inherent to the patient-registrant relationship, the patient is never in a position to provide consent. Sexualized contact or behaviour is detrimental to the patient-registrant relationship, harms individual patients, and erodes the public’s trust in the medical profession. Registrants are cautioned to minimize personal vulnerability by recognizing and paying attention to their own emotional stressors, which may lead to sexual or other professional misconduct.

Registrants must:

- establish and maintain clear professional boundaries with patients, regardless of how the patient may behave
- always act in the patient’s best interest
- never terminate a patient-registrant relationship to pursue a sexual relationship
- be aware that in some circumstances, relationships with former patients may be considered professional misconduct, even when the patient relationship was ended for other reasons

The College reminds registrants that the use of technology does not alter the ethical, professional, and legal requirements around the provision of appropriate medical care.

Preventing sexual misconduct during medical examinations

To ensure proper boundaries are maintained during physical examinations, registrants must:

- Inquire whether the patient wishes to have another person of their choice present during the physical examination or procedure. This is particularly important for sensitive examinations or where disrobing is required.
- Only ask questions or make comments about the patient’s sexual health history when the information is relevant to the physical examination or procedure, or the patient’s overall health and the care being provided.
- Be aware and respectful of the patient’s cultural or religious background.
- Clearly explain to the patient the scope and the rationale for the examination, treatment, or procedure, answer any questions the patient may have and obtain consent prior to beginning the examination, treatment, or procedure.
- Re-confirm consent from the patient prior to conducting the sensitive examination.

- Stop the physical examination or procedure upon the patient's request.
- Give the patient privacy to undress/dress when it is required for the physical examination or procedure.
- Not assist the patient with the adjustment or removal of clothing unless the patient requests assistance and consents.
- Provide the patient with a gown or cloth to drape during the physical examination or procedure if clothing needs to be removed, and only expose the area specifically related to the physical examination or procedure. Frequently both a gown and a drape are required to ensure patient privacy and comfort.
- Only touch the patient's breasts and/or genitals when it is medically necessary during a medical examination when such contact is necessary to complete the examination and after obtaining the patient's consent.
- Use gloves when performing genital, rectal or oral examinations.
- A parent, guardian or trusted adult must be present during a genital examination of a child, unless the child has capacity to consent otherwise.
- Not engage in sexualized contact or behaviour with a patient.
- Refrain from reciprocating any form of sexualized contact or behaviour by the patient.

Sexual relations between registrants and persons closely associated with patients

In most instances it is inappropriate for a registrant to engage in sexual relations with a person closely associated with a patient (any person with whom a patient has a dependent or reliant relationship, such as a parent, guardian, child, significant other or a person who has medical decision-making power for the patient). A registrant may be found to have committed an act of professional misconduct if the registrant engages in sexual relations with a person closely associated with a patient. Prior to engaging in sexual relations with a person closely associated with a patient, a registrant must consider the following factors:

- the nature of the patient's clinical problem
- the type of clinical care provided by the registrant
- the length and intensity of the professional relationship between the registrant and the patient
- the degree of emotional dependence the individual associated with the patient has on the registrant
- the degree to which the patient is reliant on the person closely associated with them

Registrant-learner and registrant-coworker relationships

Registrants must be aware of and never exploit the power-imbalance in a registrant-learner or registrant-coworker relationship. Registrants must not make sexual comments or gestures toward a learner or co-worker or enter a close personal or sexual relationship with a learner or co-worker while directly or indirectly responsible for mentoring, teaching, supervising, or evaluating that individual.

REPORTING SEXUAL MISCONDUCT

Registrants have a statutory duty under [section 32.4 of the *Health Professions Act*](#) to report sexual misconduct by another registrant to their respective College.

- 32.4 (1) If a registrant has reasonable and probable grounds to believe that another registrant has engaged in sexual misconduct, the registrant must report the circumstances in writing to the registrar of the other registrant's college.
- (2) Despite subsection (1), if a registrant's belief concerning sexual misconduct is based on information given in writing, or stated, by the registrant's patient, the registrant must obtain, before making the report, the consent of
- (a) the patient, or
 - (b) a parent, guardian, or committee of the patient, if the patient is not competent to consent to treatment.
- (3) On receiving the report under subsection (1), the registrar must act under section 32(2) as though the registrar had received a complaint under section 32(1).

Note: Registrants must also be aware of their duty to report a child in need of protection under sections 13 and 14(1) of the [Child, Family and Community Service Act, RSBC 1996, c.46](#).

Registrants who have questions about reporting may contact the College or CMPA.

REFERENCES

College of Physicians and Surgeons of Alberta. Standard of practice: boundary violations: sexual [Internet]. Edmonton, AB: College of Physicians and Surgeons of Alberta; 2019 Apr 1 [cited **2020-Aug-26**]. Available from: <http://www.cpsa.ca/standardspractice/boundary-violations-sexual/>

College of Physicians and Surgeons of Ontario. Boundary violations [Internet]. Toronto: College of Physicians and Surgeons of Ontario; 2008 [updated 2019 Dec, cited **2020-Aug-26**]. Available from: <https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Boundary-Violations>

University of British Columbia Board of Governors. Sexual misconduct and sexualized violence policy [Internet]. Vancouver, BC: University of British Columbia; 2020 [cited **2020-Oct-15**]. Available from: https://universitycounsel-2015.sites.olt.ubc.ca/files/2020/09/Sexual-Misconduct-Policy_SC17.pdf