



The College of Optometrists of Ontario

PRACTICE ADVISORY

Prevention of Sexual Abuse in Optometric Practice

Introduction

The College of Optometrists of Ontario views any form of abuse of a patient, whether sexual or otherwise, as professional misconduct that will not be tolerated. The *Regulated Health Professions Act, 1991 (RHPA)* and the Health Professions Procedural Code (the Code) set out specific requirements for the manner in which the College deals with sexual abuse and provides severe sanctions for members who are found to have sexually abused a patient. This advisory sets out the legislated standards of conduct that are required of members, and provides guidelines to assist members in avoiding allegations of sexual impropriety.

Definition of sexual abuse

Sexual abuse is defined in the Code as:

- 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.

According to the Code, touching, behaviour or remarks of a clinical nature appropriate to the services provided are not considered to be touching of a 'sexual nature'.

Discipline and Penalties

If a member is found to have committed an act of professional misconduct by sexually abusing a patient, sanctions imposed by a panel of the Discipline Committee may include any or all of the following:

- revoking the member's certificate of registration;
- suspending the member's certificate of registration for a specified period of time;
- imposing specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time;
- reprimanding the member;
- requiring the member to pay a fine of up to \$35,000 ;
- requiring the member to reimburse the College for the cost of therapy; and counselling provided for the sexually abused patient under a program established by the College.

If the sexual abuse consisted of or included:

- 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;
- encouragement of the patient by the member to masturbate in the presence of the member,

a panel of the Discipline Committee is required by the Code to:

- **revoke, for a minimum of five years**, the member's certificate of registration; and **reprimand the member**.

In addition, the optometrist may be fined up to \$35,000 and be required to reimburse the College for the cost of therapy and counselling provided for the sexually abused patient under a program established by the College.

Prevention

Members need to be exceptionally careful in their interaction with patients to ensure that their behaviour is not misinterpreted. Suggestive comments, profanity or sexual jokes may be misunderstood and could lead to allegations of professional misconduct. Optometrists should be aware of how their behaviour may be perceived by the patient as well as anyone who may observe or overhear the interaction.

Members should also be aware that patient expectations differ based on cultural background, religion, gender, age, and sexual orientation. Accordingly, a high level of respect and sensitivity is required to ensure that people of all backgrounds are treated with dignity.

The College advises all members to take a second look at their behaviour, be alert to the potential for allegations of sexual impropriety and, where necessary, change their behaviour.

The following advice is provided to assist members in avoiding allegations of sexual impropriety or sexual abuse:

- Having a patient disrobe is never appropriate;
- Hugging and kissing is inappropriate and should never be initiated by the optometrist;
- Touching should only be used as necessary to facilitate the optometric examination;
- Physical assistance may be required to facilitate patient positioning and head, eyelid or brow manipulation for ocular examination;
- Reclined patient positioning for examination may make a patient feel vulnerable.
- The reason for reclining the patient should be explained, and consent obtained.
- Comforting or reassuring a nervous or upset patient should be done with words rather than with touch.
- Appropriate touching for greeting purposes (such as shaking hands) or for assisting in the transfer of patients (for example from a wheel chair to examination chair), may enhance the comfort of a patient;

- Face to face proximity as is required in direct ophthalmoscopy should be explained. Patient and doctor comfort may be enhanced through the use of a face mask;
- Questioning and conversation must avoid references to sexual practices, thoughts, and orientation except where necessary, as in cases of diagnosis and treatment of ocular manifestations of sexually transmitted disease;
- Do not comment on a patient's appearance, clothing, or body unless clinically necessary;
- Do not tell jokes or stories of a sexual nature;
- Do not display material within the office that is sexual or suggestive, or may be offensive to patients or staff;
- Ensure that a member of the office staff or a third party is in attendance when services are performed within the optometry office outside of normal office hours;

If a patient initiates sexually inappropriate conversation or behaviour, this should be respectfully discouraged and a record of the incident made. Having a staff member or third party in attendance throughout the examination may help prevent misunderstanding or accusation. If the patient persists in the inappropriate behaviour, the optometrist should end the optometrist/patient relationship by dismissing the patient.

Because of the power differential in the optometrist/patient relationship, it is always the responsibility of the optometrist to maintain appropriate boundaries. Sexual activity between an optometrist and a patient, even if perceived as consensual by those involved, is by definition, considered to be professional misconduct.

Dating patients

Because of the broad definition of sexual abuse in the *RHPA*, it is problematic for an optometrist to have a social relationship with a current patient. There are different types of social engagements that may be considered "dating", however professional misconduct occurs whenever a relationship with a patient involves behaviour or remarks of a sexual nature.

There are ethical dilemmas beyond the potential for sexual abuse allegations that may arise when dating a patient. The best course of conduct for members is to avoid dating any current patient. If an optometrist intends to date a patient, he or she should first terminate the patient/practitioner relationship by dismissing the patient.

The *RHPA* does not provide exemption from the sexual abuse provisions for a spouse who is also a patient, however recent interpretations of this regulation imply that the sexual abuse provisions were not intended to prevent members from treating their spouse¹.

Sexual harassment of office staff

While not dealt with in the *RHPA*, any form of harassment of office staff, including professional associates, may lead to allegations of professional misconduct.

¹ Stienecke, Richard, *A Complete Guide to the RHPA*, page 10-4.1, Canada Law Book Inc., Release No. 6, November 2000

A staff member who has received assessment or treatment services from an optometrist is considered to be a patient for the purpose of applying the sexual abuse provisions of the *RHPA*.

Mandatory Reports

If, in the course of practising the profession, an optometrist obtains reasonable grounds for believing that another regulated health professional has sexually abused a patient, the optometrist must make a report to the Registrar of the College of which the alleged abuser is a member. The report must be made within 30 days of obtaining such information and must contain the name of the reporter, the name of the alleged abuser, the details of the alleged abuse, and the name of the patient (**but only if the patient consents in writing** to the inclusion of his or her name in the report).

PATIENT FUNDING AND COUNSELLING PROCESS

The College has appropriated an amount of \$35,000 for the Patient Relations Fund. The legislation provides that patients who were sexually abused by their optometrist may apply for funding for therapy and counselling. This funding is available only if the member has been found guilty of sexually abusing the patient by a panel of the Discipline Committee.

Victims of sexual abuse must apply for funding. Consideration of the application is by the Patient Relations Committee. The maximum amount that can be paid for therapy or counselling is fixed by the regulations under the Regulated Health Professions Act at the equivalent of 200 half hour sessions with a psychiatrist.

The legislation allows the College to make regulations specifying alternative criteria for funding. The Council has not made any such regulations. Funding does not continue indefinitely. The therapy or counseling must be completed within 5 years from either the first therapy session for which funding was requested or, if funding is not provided, the day on which the person becomes eligible for funding.