

TO: Council

FROM: Patient Relations Committee

DATE: May 28, 2018

SUBJECT: Updates to the College's Sexual Abuse Prevention Guidelines

PURPOSE:

To review a proposed update to the College's Sexual Abuse Prevention Guidelines.

BACKGROUND:

Under the *Health Professions Procedural Code*, which is Schedule 2 to the *Regulated Health Professions Act*, every College must have a patient relations program that includes measures for preventing and dealing with the sexual abuse of patients. One of the required measures is to have guidelines for the conduct of members with their patients.¹

To that end, the College of Opticians publishes a document entitled *Sexual Abuse Prevention Guidelines* (the "Guidelines") which addresses the conduct of members with their patients. The Guidelines were originally approved on December 5, 2007 and re-approved with no changes in June 2012.

Since 2012, there have been a number of significant changes to both the legislative framework as well as the public discourse surrounding the sexual abuse of patients by health professionals.

On May 30, 2017, Bill 87, the *Protecting Patients Act*, made significant amendments to the *Regulated Health Professions Act* and the accompanying *Health Professions Procedural Code*. The majority of those amendments were focused on protections against sexual abuse, including increasing the list of mandatory revocation offences, making funding for therapy for patients who were sexually abused available earlier, and allowing the ICRC to make interim orders at an earlier stage in order to better protect patients from harm.

On May 1, 2018, the Ontario Government passed three new regulations and proclaimed a number of Bill 87 amendments into force. One important proclamation is a provision that considers an individual to remain a "patient" for the purposes of the sexual abuse provisions of the Act for a period of 1 year after that person ceases to be a patient. The effect of this provision is to legislate a mandatory 1-year "cooling off period" before a member can enter into a sexual relationship with a former patient.

¹ Code, s. 84(3)(b)

FOR CONSIDERATION:

The current Guidelines require updating to address amendments arising out of Bill 87 (including the recent proclamations), and to ensure that members have a clear understanding of the definition of sexual abuse and their obligations to prevent it and report it.

Figure 1 is a copy of the current Guidelines. **Figure 2** is a copy of the proposed update to the Guidelines for Council's review and discussion. The updated Guidelines seek to place additional emphasis on the following:

- The broad definition of sexual abuse under the Code;
- The prohibition of all sexual relationships between members and their patients, and the fact that there is no exception for treating spouses;
- That members must wait at least 1 year before entering into a sexual relationship with a former patient;
- The serious consequences for engaging in sexual abuse;
- Best practices for maintaining professional boundaries; and
- Mandatory reporting obligations with respect to sexual abuse.

RECOMMENDATION:

The Patient Relations Committee recommends that Council approve the updated Sexual Abuse Prevention Guidelines.

ACTION REQUIRED:

Council is asked to decide whether to approve and adopt the proposed updates to the Sexual Abuse Prevention Guidelines, as set out in Figure 2.

PREVENTION OF SEXUAL ABUSE OF PATIENTS

This document is intended to act as a resource for members who are seeking information in regards to:

- What constitutes “sexual abuse” under the *RHPA*;
- Increasing one’s awareness of situations in which sexual abuse may occur;
- Identifying the risks of sexual abuse; and
- Avoiding misunderstandings that may lead to accusations of sexual abuse.

The College’s Position on Sexual Abuse

The College is dedicated to providing opticians with the information and resources that they need to assist them in ensuring that patients are always treated with professionalism and care, and in such a manner that reflects the commitment of the opticianry profession to achieving the highest moral and ethical standards.

The College endorses a policy of **Zero Tolerance** pertaining to any forms of verbal, emotional, physical or sexual abuse. The optician/patient relationship is based on mutual trust and respect, where any form of sexual abuse of a patient by a member is considered to be a betrayal of that trust.

The College recognizes the seriousness and extent of injury that sexual abuse can cause the patient. The College accepts its important responsibility to protect the public by dealing with sexual abuse issues openly, and prioritizing prevention through educating both the members of the profession as well as the public.

The College will investigate all complaints of sexual abuse by members, and will do so in an effective, timely and sensitive fashion. The College will also investigate allegations of sexual abuse that comes to its attention through channels other than reports made by its members. Allegations of sexual abuse may be referred to the Discipline Committee of the College.

Given the severity of the consequences, the College encourages its membership to read this document and to treat it as a reference for not only themselves, but also for their staff, employers and co-workers. The penalties imposed will be at the discretion of the Discipline Committee and may include a range of discipline penalties.

Definition of Sexual Abuse

Section 1 of Schedule 2 to the *Regulated Health Professions Act* defines sexual abuse as follows:

- (3) In this Code,
“sexual abuse” of a patient by a member means,

- (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.
- 1993, c. 37, s. 4.

Exception

- (4) For the purposes of subsection (3),

“sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided. 1993, c. 37, s. 4.

THE OPTICIAN/PATIENT RELATIONSHIP

The relationship between the patient and the optician is one of a professional nature, where sexually abusive behaviour is considered to be a fundamental betrayal of the trust that is implicit in such a relationship. The optician is always responsible for any occurrence of abuse, and thus also bears the onus to prevent it.

A patient entrusts his or her vision care to an optician based on the member’s unique knowledge and professional skills. It is assumed by the public that the optician will address the health care needs of the patient in a manner that is sensitive, caring and professional.

It is generally recognised that a power differential may exist between health care professionals and their patients, and that this imbalance will vary in degree depending on the type of health care practitioner. Knowledge and expertise can place an optician in a position of power in the optician/patient relationship, and it is paramount that this hierarchy is not exploited by members.

PROFESSIONAL BOUNDARIES

Each optician has the personal responsibility to maintain professional boundaries. Professional boundaries are the limits between where a strictly professional relationship ends and a non-professional relationship begins. Non-professional relationships are social relationships, which may be casual, friendly, or romantic.

The optician is responsible for using his or her professional judgement to determine when relationships have exceeded professional boundaries. Be aware that the definition of “sexual abuse” is very broad. If an optician intends to date a patient, the optician/patient relationship must first be terminated. Arrangements must be made for another optician to treat the patient. The optician must then wait an acceptable period of time before beginning to date that patient. What constitutes an acceptable length of time is specific to the unique set of circumstances that surround each case, where the Optician is strongly encouraged to consult with the College prior to commencing a relationship with the previous patient.

The optician is always both responsible and accountable for any occurrence of abuse. This is true even if the patient takes the initiative to change the relationship. Some warning signs which may indicate blurring or crossing of professional boundaries might include:

- Deliberately scheduling a patient’s sessions to take place when other persons are not present, if not related to the patient’s expressed health care needs;

- Excessive telephone conversations with the patient which are not necessary for the patient's treatment;
- Reducing or waiving professional fees if not related to ability to pay;
- Giving or receiving gifts, especially expensive gifts or those of a personal nature;
- Experiencing personal feelings about a patient; and
- Meeting socially with the patient or attempting to do so.

The optician should self-monitor for the above behaviours, since one or more of these occurrences could lead to a sexually abusive relationship, or may be perceived by a patient as something outside of the optician/patient relationship. If any of the above signs are present, the optician should honestly examine his or her motivation and, where appropriate, immediately adjust his or her behaviour. If a patient attempts to encourage a relationship, the member must inform the patient about the restrictions with respect to personal relationships and document the discussion in the patient's health record.

While the College recognizes that this document does not cover all possible situations, most instances of sexually demeaning conduct or boundary violations are preventable through increased awareness and education. Some suggestions that may help to avoid either a patient lodging a complaint, or a misunderstanding that could lead to accusations of sexual abuse are listed below.

Members need to be careful during their interactions with patients to ensure that one's behaviour is not misinterpreted. Opticians should be aware of how one's behaviour may be perceived by patients, as well as by anyone who may observe or overhear the interaction. The College advises all members to take a second look at his or her own behaviour; to be alert to the potential for allegations of sexual impropriety and, where necessary; to change behaviour accordingly. The following are examples of conduct that, if performed by an Optician, may lead to allegations of sexual abuse:

- Engaging in any behaviour of a sexual nature that can cause discomfort to anyone, including colleagues or patients;
- Engaging in conversations or making comments of a sexual nature in the presence of a patient;
- Expressing sexual interest in a patient;
- Touching a patient excessively, unnecessarily or in inappropriate body areas;
- Having a patient disrobe - it is never appropriate;
- Making comments, or telling jokes or stories, of a sexual nature in the presence of patients;

- Using gestures, tones or expressions that may be interpreted as sexual, seductive or demeaning;
- Commenting, inquiring or speculating about a patient's sexual life, practices or orientation;
- Making provocative or suggestive comments about a patient's appearance;
- Performing treatment outside the office or work setting if this is not ordinarily part of the services provided; and
- Giving or receiving gifts, especially expensive gifts or those of a personal nature.

CULTURAL SENSITIVITY

Today's society is culturally diverse. Boundaries may be different for each person depending upon his or her age, gender, ethnicity, religion, sexual orientation, physical differences and/or socio-economic background. It is important to learn about and understand how these differences may affect the optician/patient relationship.

Lack of knowledge regarding cultural and other differences may cause a patient unnecessary discomfort and embarrassment and lead to misunderstandings between the optician and patient. Opticians may find that it is helpful to ask a patient what type of contact and interaction is acceptable and what is not. In some cases, a patient may wish to have his or her care transferred to an optician of a different sex. A patient may also wish to have an additional health care worker (e.g. someone the patient knows and trusts) or a family member present during an assessment or fitting.

Body Language

How you say something can be as important as what you say. Your tone of voice and body language can communicate as much as, or more than your actual words. Patients may misunderstand your message if your body language contradicts what you are saying. This may be particularly relevant for patients of different cultural backgrounds.

When dealing with patients, it is important that the optician:

- Maintain appropriate eye contact;
- Use physical gestures carefully;
- Convey concern and empathy with appropriate facial expressions;
- Respect others' cultural, religious, sexual and physical differences;
- Tell the patient what you are about to do before proceeding with the assessment or procedure; and

- Be cognisant of any discomfort that is expressed, either verbally or non-verbally, by the patient.

Touching and Other Physical Contact

Any physical contact with a patient must be appropriate to the services that you are providing. Patients should be offered choices in regards to how and by whom they are to be touched.

Some physical contact that is common in Western culture, such as a handshake, can be interpreted by members of other cultures as unsolicited physical contact that is intrusive and/or sexually abusive. Some patients are often offended by any uninvited touching, where such physical contact might be as seemingly innocuous as touching the ears to adjust the eyeglass frame.

When preparing to touch a patient the optician should:

- Explain to the patient why, where and when you need to touch him or her prior to doing so;
- Respect, as much as possible, the patient's personal sense of space;
- Give clear instructions to the patient;
- Provide reassurance and explanations throughout the assessment; and
- Provide opportunities for the patient to ask questions.

Effective communication is essential. Employing professional practices, such as providing patients with clear and complete information and ensuring that patients are involved in all decisions, will assist in avoiding misunderstandings. Best practices include, but are not limited to:

- Introducing yourself and/or any student/staff member observing or involved in an assessment/fitting;
- Being aware of your behaviour and whether or not your actions or comments could be offensive to a patient;
- Being sensitive to a patient's discomfort to your words or behaviour, and changing them if necessary;
- Being aware of, and acknowledging a patient's fear or embarrassment;
- Acting in a professional manner that is appropriate to the services or care that you are providing;
- Being aware of a patient's uneasiness with your physical proximity to him or her, and responding appropriately;
- Demonstrating respect, empathy and concern during your interactions with patients;

- Maintaining a high level of professionalism throughout your practice;
- Maintaining patient confidentiality;
- Ensuring, as much as possible, that the patient clearly understands the purpose for any procedure;
- Verifying that the patient understands the message by repeating and/or rephrasing the information and, if necessary, asking the patient to repeat the information back to you;
- Inviting a parent or guardian to be in attendance when fitting minors;
- Speaking directly to the patient when you are working with an interpreter or with members of the patient's support network;
- Verbally comforting and reassuring a nervous or upset patient; and
- Being aware and in control of your tone of voice, body language and facial expressions.

Additional Considerations:

- Record in the patient's file all propositions and/or requests from a patient which you feel may be unacceptable within the patient/practitioner relationship;
- Schedule appointments with patients during normal business hours. If appointments must be made before or after business hours then make all reasonable attempts to ensure that another staff person, or third party, is present; and
- Incorporate transparent windows and open-door environments where possible.

FIGURE 2



PREVENTION OF SEXUAL ABUSE OF PATIENTS

An important function of the *Regulated Health Professions Act* (RHPA) is to protect patients from sexual abuse by:

- (a) defining the conduct that constitutes sexual abuse;
- (b) empowering colleges to investigate and prosecute allegations of sexual abuse;
- (c) establishing serious consequences for members who sexually abuse their patients;
- (d) requiring members to report sexual abuse by other members; and
- (e) providing funding for therapy and counselling for patients who have been sexually abused by members.

This document is intended to act as a guideline with respect to the prevention of sexual abuse of patients and the maintenance of professional boundaries between members and their patients.

The College's Position on Sexual Abuse

The College is dedicated to upholding the best interest of patients in Ontario, and endorses a **Zero Tolerance** policy toward any forms of sexual abuse. The College regards any act of sexual abuse of a patient as unacceptable and such actions are subject to investigation as professional misconduct.

The member/patient relationship is based on mutual trust and respect, and any form of sexual abuse of a patient by a member is considered to be a betrayal of that trust.

The College recognizes the seriousness and extent of harm that sexual abuse can cause the patient. The College accepts its important responsibility to protect the public by dealing with sexual abuse issues openly, and prioritizing prevention through educating both the members of the profession as well as the public.

The consequences for sexual abuse are serious. Under the legislation, the Discipline Committee is required to, at a minimum, **reprimand** and **suspend** any member who is found to have committed an act of professional misconduct by sexually abusing a patient. In certain circumstances, the legislation requires the Discipline Committee to **revoke** the member's certificate of registration.

Given the severity of the consequences, the College encourages its membership to read this document and to treat it as a reference for not only themselves, but also for their staff, employers and co-workers.

FIGURE 2

Definition of Sexual Abuse

The [Health Professions Procedural Code](#), which is Schedule 2 to the RHPA, defines sexual abuse of a patient 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.

Under this definition, **any conduct of a sexual nature between a registered health professional and a patient is “sexual abuse”, and therefore professional misconduct. It does not matter who initiated the conduct, or if it was consensual.**

In addition, the RHPA does **not** provide an exemption from the sexual abuse provisions for a spouse who is also a patient. This means that it is not permitted under the legislation for a member to treat his or her spouse.

The Member/Patient Relationship

The relationship between the patient and the member is one of a professional nature, where sexually abusive behaviour is considered to be a fundamental betrayal of the trust that is implicit in such a relationship. The member is always responsible for any occurrence of abuse, and thus also bears the onus to prevent it.

A patient entrusts his or her vision care to a member based on the member's unique knowledge and professional skills. It is assumed by the public that the member will address the health care needs of the patient in a manner that is sensitive, caring and professional.

The member's knowledge and expertise places him or her in a position of power in the member/patient relationship, and it is paramount that this hierarchy not be exploited by members.

Professional Boundaries

Each member has the personal responsibility to maintain professional boundaries and is responsible for using his or her professional judgement to determine when relationships have exceeded professional boundaries.

As set out above the definition of “sexual abuse” is very broad and captures **all** sexual relationships between a member and a patient (including a patient who is a spouse). In addition, members must not enter into intimate or romantic relationships with **former patients** unless:

FIGURE 2

- The member/patient relationship has been terminated, and arrangements have been made for another member to treat the patient; **and**
- At least one year has elapsed since the member/patient relationship was terminated.

In some cases, due to the imbalance of power inherent to some professional relationships, it may never be appropriate for a member to commence a sexual relationship with a former patient.

Maintaining Professional Boundaries

The member is always both responsible and accountable for any occurrence of abuse. This is true even if the patient takes the initiative to change the relationship. The member, therefore, must at all times be mindful of maintaining appropriate professional boundaries, including as follows:

1. Never express romantic or sexual interest in a patient. If the member develops romantic feelings for a patient, the member must immediately put a stop to them, or transfer care of the patient to another member. If a patient expresses romantic or sexual interest in the member, the member must respectfully but firmly, discourage it, and if necessary transfer the patient's care to another member. A notation of any action taken by the member should be noted in the patient's file.
2. Do not date patients.
3. Avoid engaging with patients socially, whether in person, by phone or online (for example, through social media).
4. Do not touch a patient, except where necessary for dispensing purposes. Where it is clinically necessary to touch a patient, the member should always:
 - (a) Prior to any physical contact, explain to the patient why, where and when the member needs to touch him or her;
 - (b) Ensure that the member has the patient's informed consent before moving into close physical proximity and/or making physical contact;
 - (c) Respect, as much as possible, the patient's personal sense of space;
 - (d) Give clear instructions to the patient;
 - (e) Provide reassurance and explanations throughout the assessment; and
 - (f) Provide opportunities for the patient to ask questions.
5. Members should never:
 - (a) Engage in any behaviour of a sexual nature that can cause discomfort to anyone, including colleagues or patients;

FIGURE 2

- (b) Make comments, tell stories, or make jokes that are, or could be perceived as being, of a sexual nature in the presence of a patient;
 - (c) Inquire about the patient's sexual life, practices or orientation;
 - (d) Have a patient disrobe – it is never appropriate;
 - (e) Make sexualized comments about the patient's physical appearance.
6. Monitor for warning signs that professional boundaries are becoming crossed or blurred. Signs might include things such as making personal disclosures, giving or receiving gifts, connecting with patients on social media, offering special treatment to certain patients, scheduling visits or treatment outside of the dispensary or after-hours, or engaging in social or leisure activities with a patient.
 7. Be mindful of the ways in which a patient's sense of personal boundaries might be affected by his or her age, gender, ethnicity, culture, religion, sexual orientation, gender identity, physical differences and/or socio-economic status.

Mandatory Reports

All members are required to file a report in writing with the appropriate health regulatory college if they have reasonable grounds, obtained in the course of practicing opticianry, to believe that a member of any health profession has sexually abused a patient. The report must be made within 30 days (or sooner if the member believes the regulated health professional may continue to sexually abuse patients). The report must contain:

1. The name of the member filing the report;
2. The name of the member who is the subject of the report;
3. The name of the patient who may have been sexually abused, but only if that patient provides written consent; and
4. An explanation of the alleged sexual abuse.

Once the report is received, the relevant college will review the information and determine next steps, which may include initiating a formal investigation.

The failure by a member to file a report may result in a fine of up to \$50,000 and/or disciplinary action by the College.