Alberta College of Pharmacy

Q and A: Standards of Practice

Sexual abuse and sexual misconduct

1. How are allegations of sexual abuse or sexual misconduct proven?

ACP's complaints process has not changed. Any allegation must be proven with evidence gathered in a thorough investigation. While the investigation is ongoing, ACP may put measures in place to ensure patient safety. If the complaint is referred to a disciplinary hearing, a Hearing Tribunal panel must be comprised of at least 50 per cent public members. The Hearing Tribunal will consider the evidence and may call witnesses before making a decision. Under the new legislation, at least one member of the Hearing Tribunal must be the same gender identity as the complainant. Investigated persons involved in serious complaints are advised to obtain legal counsel.

2. If I need to have physical contact with a patient in the process of providing them with a professional service, what should I do?

If a professional service for the patient requires physical contact, it is important that the regulated member communicate with the patient prior to initiating any touching. The regulated member must first explain to the patient why the physical contact is clinically necessary; indicate to the patient the nature, purpose, and the likely duration of the physical contact; ensure that the patient is offered appropriate privacy for the physical contact that occurs; and receive informed consent prior to the physical contact, including consent as to the room or other space within which the regulated member will be providing the professional service that involves physical contact.

In addition, the regulated member may offer to have a chaperon present during the contact or decide to include a chaperon where they feel it is appropriate.

3. Do the definitions of sexual abuse and sexual misconduct align with provincial and federal legislation?

Yes, the definitions are exactly as stated in Alberta's *Health Professions Act*.

Section 1(1)(nn.1): "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:

i. sexual intercourse between a regulated member and a patient of that regulated member;
ii. 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;
iii. masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
iv. masturbation of a regulated member's patient by that regulated member;
v. encouraging a regulated member's patient to masturbate in the presence of that regulated member; or
vi. touching of a sexual nature of a patient's genitals, anus, breasts, or buttocks by a regulated member.

Section 1(1)(nn.2): "sexual misconduct" means any incident or repeated incidents of objectionable or unwelcome conduct, behaviour, 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.

4. Are ACP's investigation and conclusion processes congruent with those of Courts of Law, both provincial and federal?

Yes, ACP's processes for complaints investigation and disciplinary hearings must stand up in the Court of Appeal and are congruent with legal requirements. The processes are established in the *Health Professions Act*.

5. If a regulated member provides a professional service to a patient but does not personally meet the patient and does not provide any advice or counselling to the patient, is there a pharmacist-patient relationship?

Within the standard, a patient is defined as a person to whom a regulated member provides a professional service and includes a parent or guardian of a patient who is a minor. As a result, in a situation as described above, the individual would be considered a patient.

However, consideration is given to the fact that a regulated member did not know, or could not reasonably have known, despite the exercise of due diligence, that the patient was a patient of the regulated member at the time the regulated member entered into the sexual relationship or communicated with a patient for the purpose of entering a sexual relationship. For example, if a pharmacist dispensed a medication to a patient from a hospital dispensary, they may not have personally met with the patient or provided any counselling. In fact, at a later date, they might not even recognize that they provided a professional service to the patient.

Consideration would also be given in another scenario where the regulated member may have only provided an episodic professional service to the patient (provided the patient is not a vulnerable patient) and more than 48 hours have passed since the episodic professional service was provided to the patient by the regulated member. For example, a situation where a pharmacist interacts with a patient one time to help them select a schedule 3 product.

6. What is the difference between suspension and cancellation? If a regulated member's practice permit is cancelled, can they reapply to have it reinstated?

- Mandatory, permanent cancellation with no opportunity for reinstatement will be imposed if a regulated member is proven to have committed sexual abuse of a patient.
- Mandatory suspension will be the minimum penalty imposed if a regulated member is proven to have committed sexual misconduct toward a patient. Suspension means loss of registration or a practice permit for a specified period of time, as decided by a Hearing Tribunal. Reinstatement will be automatic once the period of suspension ends, unless other considerations prevent this.

In the event a Hearing Tribunal cancels a regulated member's practice permit for sexual misconduct toward a patient, the regulated member cannot apply for reinstatement for at least five years. ACP will consider such applications on a case-by-case basis.

7. Regarding the definition of a patient, when does an individual cease to be a patient?

Except for episodic care, a regulated member who intends to enter into a sexual relationship with a patient must first terminate the patient relationship in compliance with Standard 2.9 of the Standards of Practice for Pharmacists and Pharmacy Technicians and receive voluntary consent to the termination of the professional relationship from the patient.

A regulated member must not terminate a professional relationship with a vulnerable patient for the purpose of entering into a sexual relationship with that vulnerable patient.

As stated in Standard 11, a regulated member may only enter into a sexual relationship with a former patient if

- there is no ongoing power imbalance between the regulated member and the former patient arising from the former professional relationship;
- sufficient time has passed since the last time a professional service was provided by the regulated member, having regard for the nature and extend of the professional relationship between the regulated member and the former patient;
- the former patient knows and understands that the professional relationship has ended;
- the former patient has consented and is capable of providing consent; and
- the former patient was an adult at the time the regulated member provided professional services to the former patient, or, if the former patient was a minor at the time the regulated member provided professional services, the former patient is now an adult and more than two years have passed since the regulated member provided any professional services to the former patient.

If a regulated member provided the former patient with professional services for a substance use disorder, like an addiction to narcotics or an addiction to another drug or substance where there is an inherent power imbalance, the regulated member must not have a sexual relationship with that former patient until at least two years have passed from the last time that the regulated member provided any professional service to that former patient.

8. Is there now an expectation that regulated members obtain written consent prior to appropriate physical contact with a patient?

There’s no change to ACP’s expectations for obtaining informed consent. Regulated members are also advised to document any consent discussions in the patient’s record.