

THE COLLEGE OF PSYCHOLOGISTS OF ONTARIO L'ORDRE DES PSYCHOLOGUES DE L'ONTARIO

110 Eglinton Avenue West, Suite 500, Toronto, Ontario M4R 1A3 • Tel: (416) 961-8817 • (800) 489-8388 • Fax (416) 961-2635
E-mail: cpo@cpo.on.ca • Web site: www.cpo.on.ca



PREVENTION OF SEXUAL ABUSE OF CLIENTS and MANDATORY REPORTING

The *Regulated Health Professions Act, 1991, (RHPA)*, brought about many changes impacting on the profession of psychology and the other regulated health professions. In the area of sexual abuse and sexual misconduct, concern regarding sexual abuse of clients by health care professionals was great enough to warrant specific legislative changes. Under the *RHPA*, sexual abuse of clients (patients) is an act of professional misconduct. The *RHPA* requires the reporting of sexual abuse by another health professional and provides for funding for therapy and counselling for clients who have been sexually abused by members of a regulated health profession. As well, all regulated health care professions are mandated to develop sexual abuse prevention programs.

DEFINITION OF SEXUAL ABUSE

Section 1 of the *Health Professions Procedural Code (Code)* of the *RHPA* defines sexual abuse as follows:

- (3) In this Code, "sexual abuse" of a patient (client) by a member means,
 - (a) sexual intercourse or other forms of physical sexual relations between a member and the patient (client);
 - (b) touching, of a sexual nature, of the patient (client) by the member; or
 - (c) behaviour or remarks of a sexual nature by the member towards the patient (client).
- (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.

The College of Psychologists is committed to providing Psychologists and Psychological Associates with information and resources to assist them in performing their duties responsibly, consistent with the *RHPA*, and in a manner that reflects the profession's commitment to respecting the personal dignity of every individual who is entrusted to their care.

GENERAL CONSIDERATIONS

Psychologists and Psychological Associates work within a professional relationship with a client and, by their training, understand relationship dynamics. They are especially attentive to issues of professional distance, boundaries and power imbalances, and how these affect the practitioner's and the client's feelings in the relationship. The nature of psychological service provision often involves close relationships with other persons. In these relationships, boundary issues may naturally arise.

The question of how to manage boundaries is an integral part of psychological training, and requires a heightened level of awareness in providing psychological services to clients. In most situations, boundary maintenance is a matter of

professional judgment. In the case of sexual activity however, the law provides clear prohibitions. It is the responsibility of each member of the College to maintain appropriate professional boundaries in their daily practice, and to assist colleagues in doing so as well.

Regulated health professionals must be aware of the legislation that requires them to report allegations of abuse and how the legislation is aimed at curbing abuses that can occur in the course of practising a profession. The public views this issue as important enough to warrant specific restrictions on professional judgment and discretion.

GUIDELINES

- Psychologists and Psychological Associates are cognizant of a variety of factors, including cultural and individual diversity, that shape relationships and client perceptions.
- Psychologists and Psychological Associates exercise appropriate professional judgment in communicating with clients, and avoid any communication that could be construed by the client as seductive or sexually demeaning. Care must be taken to know what the particular client may infer, or understand to be the purpose of a communication.
- Psychologists and Psychological Associates are attuned to any discomfort expressed by a client, and adjust behaviour accordingly, or clarify relevant issues with the client.
- Psychologists and Psychological Associates may conduct assessments (e.g., neurological evaluations) or use methods (e.g., conditioning, bioenergetics, etc.) which involve physical touch or contact. Client consent and understanding must be assured, and the professional must be aware of how potentially sensitive a client may be to this.
- Psychologists and Psychological Associates should not be critical of sexual preference or orientation. In psychological practice, practitioners accept their client's values in sexual areas.
- Psychologists and Psychological Associates set a professional tone in dealing with their clients. They take care not to make remarks of a sexual nature (jokes, offhand comments, use of vulgar language) that could be overheard by a client or a member of the public.
- Psychologists and Psychological Associates may provide professionally supportive behaviours which include physical contact that is nurturing and helpful (e.g. handshake, pat on the head of a child) and therefore acceptable to the client, always being aware of the sensitivities of the individual client.

MANDATORY REPORTING

Sexual Abuse and the Member's Obligation to Report

The *RHPA* makes it mandatory, in accordance with section 85.1 of the *Code*, to “file a report in accordance with section 85.3 if the member has reasonable grounds, obtained in the course of practising the profession, to believe that another member of the same or different College has sexually abused a patient.”

Failure to report sexual abuse of clients when there are reasonable grounds to believe that abuse has occurred is an offence under the *RHPA* and can lead to severe penalties.

PLEASE NOTE . . .

- Members are required to report only information obtained in the course of practising the profession.
- Members must submit a report only if the name of the practitioner who was involved in the alleged abuse is known.
- Members must not include the client's name without his or her written consent.

Specifically, if a member believes that a client has been sexually abused by another member of the same or different College, the member must:

- Submit a written report within 30 days to the Registrar of the College representing the profession of the person who is the subject of the report.
- or**
- Submit the report immediately if there is reason to believe the abuse will continue or abuse of other clients will occur.

The *RHPA* provides protection to a member, who files a report in good faith, from actions or other proceedings being taken against that person.

PENALTIES FOR SEXUAL ABUSE

The *Code* defines the penalties for a member who has been found guilty of committing an act of professional misconduct by sexually abusing a client (section 51(5)). A panel of the College's Discipline committee must:

1. Reprimand the member.
2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,
 - i. sexual intercourse,
 - ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,
 - iii. masturbation of the member by, or in the presence of, the patient,
 - iv. masturbation of the patient by the member,
 - v. encouragement of the patient by the member to masturbate in the presence of the member.

In addition to the above penalties, if a panel of the Discipline Committee finds a member guilty of professional misconduct, it may do one or more of the following [*Code* section 51(2)]:

- Direct the Registrar to revoke the member's certificate of registration.
- Direct the Registrar to suspend the member's certificate of registration.
- Direct the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration.
- Require the member to appear before the panel to be reprimanded
- Require the member to pay a fine of not more than \$35,000 to the Minister of Finance.
- Require the member to pay all or part of the College's legal costs and expenses, the College's costs and expenses incurred in investigating the matter and the College's costs and expenses incurred in conducting the hearing.
- Require the member to reimburse the College for funding provided under the program for therapy and counselling for patients.

Further, an application for reinstatement by a person whose certificate of registration was revoked for sexual abuse of a client shall not be considered earlier than five years after the revocation [section 72(3)].

ZERO TOLERANCE

- The College recognizes the seriousness and extent of injury that sexual abuse causes the victim and others related to the victim.
- Sexual abuse/impropriety by Psychologists or Psychological Associates while providing psychological care to the public will not be tolerated under any circumstances.

Public concern surrounding this important issue requires serious and thoughtful responses from Ontario's health care professionals. The Client Relations Committee of the College of Psychologists of Ontario endeavours to meet the needs of the public and the profession by: ensuring education to the membership, and educating the College's administration with respect to dealing with clients who have been sexually abused.

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