

# Guideline: Prevention of Sexual Abuse and Maintenance of Professional Boundaries

## INTRODUCTION

The *Regulated Health Professions Act, 1991* (RHPA), recognizes the seriousness of the sexual abuse of clients by registrants and incorporates measures to encourage the reporting of sexual abuse and ultimately to eradicate this type of misconduct.

The RHPA requires registrants to report sexual abuse of clients by other health professionals, makes sexual abuse of clients an act of professional misconduct, and provides for the mandatory suspension or revocation of a registrant's certificate of registration where a finding of sexual abuse is made based on certain acts of sexual comment or contact.

As part of this goal, the College of Dental Hygienists of Ontario (CDHO) is mandated to develop programs to prevent the sexual abuse of clients by registrants, including providing funding for therapy and counselling for clients who may have been sexually abused by registrants.

## ZERO TOLERANCE

The CDHO recognizes the seriousness and extent of injury that sexual abuse causes. The CDHO is committed to the eradication of sexual abuse and has a policy of zero tolerance for sexual abuse of clients by registrants. The CDHO will not tolerate sexual abuse under any circumstances and will investigate and address all allegations of sexual abuse in accordance with the law.

The CDHO is equally committed to providing dental hygienists with information and resources to assist them in treating their clients responsibly, in keeping 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.

## DEFINITION OF SEXUAL ABUSE

The RHPA defines sexual abuse of a client by a registrant as follows:

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

"Sexual nature" does not include touching, behaviour, or remarks of a clinical nature appropriate to the service being provided.

## APPLICATION OF SEXUAL ABUSE PROVISIONS

With limited exceptions (such as spousal relationships), the definition of sexual abuse in the RHPA applies to **all** concurrent treatment and sexual relationships between a registrant and a client. It also applies to certain sexual relationships that developed **after** the treatment relationship ended or where **no treatment** was provided.

It does not matter whether the sexual relationship pre-dated the treatment relationship or developed afterwards. Any concurrent treatment and sexual relationship between a registrant and a client, subject to limited exceptions, is considered sexual abuse.

It is also important to note that the client's consent to a sexual relationship is irrelevant; a concurrent treatment and sexual relationship is still considered sexual abuse as defined in the RHPA regardless of whether the client consented.

## TREATMENT (CLIENT) RELATIONSHIPS

The RHPA defines when a person is a client and therefore when the sexual abuse provisions apply to the relationship between the registrant and the person. It is important to understand that who is a client of a registrant is much broader than simply those persons receiving current dental hygiene treatment from the registrant.

### WHO IS A CLIENT?

For the purposes of the sexual abuse provisions in the RHPA, a person is a client of a registrant in any of the following circumstances:

- The person is a client within the ordinary meaning of the term.
- There is a direct interaction between the registrant and the person and any one of the following conditions are met:
  - The person received health care services from the registrant and payment is charged or received,
  - The registrant made an entry in the person's health record,
  - The person consented to a health care service recommended by the registrant, or
  - The registrant prescribed a drug for the person.
- Less than one year has passed since the person was last considered a client (i.e., a person is still considered a client for one year following the last circumstance that made them a client).

Not all of the above circumstances need to apply for a person to be considered a client; any one of these circumstances is enough for a person to be considered a client.

### EXAMPLE

If a registrant spoke with a person regarding their new client information form and made a corresponding entry in the person's clinical chart, the person would be considered the registrant's client, even if the registrant never provided dental hygiene services to the person. Moreover, the person would still be considered the registrant's client for a period of one year following this interaction, even if the registrant never saw the person again.

**A dental hygienist must wait at least one year after the treatment relationship ends before pursuing a romantic or sexual relationship with a former client.**

## CONSEQUENCES TO REGISTRANTS FOR SEXUAL ABUSE

In keeping with the aim of the RHPA to eliminate the sexual abuse of clients by registrants, a finding of sexual abuse made against a registrant carries significant penalties. These penalties are designed to discourage registrants from committing sexual abuse and to recognize the serious negative impacts that sexual abuse can have on clients.

Where the CDHO becomes aware of allegations of sexual abuse, including circumstances where a registrant is treating a sexual partner who is not their spouse, the matter will be investigated by the CDHO. This investigation may lead to a referral of allegations of professional misconduct to the Discipline Committee.

If the Discipline Committee makes a finding of sexual abuse against a registrant, the RHPA establishes mandatory minimum penalties. Where the sexual abuse involves certain acts of explicit sexual conduct listed in the RHPA<sup>1</sup>, the mandatory penalty includes the revocation of the registrant's certificate of registration for a period of at least five years. For other acts of sexual abuse, the mandatory penalty includes a suspension of the registrant's certificate of registration; however, the Discipline Committee may also choose to impose revocation. In either case, the registrant will also be subject to a reprimand, and they may be required to pay for amounts relating to the client's therapy or counselling.

## TREATMENT OF SPOUSES

October 8, 2020, the Ontario government passed a spousal exception regulation that permits registrants to treat their spouses, provided that the dental hygiene treatment is kept separate from any sexual activity.

<sup>1</sup> Sexual intercourse; genital to genital, genital to anal, oral to genital or oral to anal contact; masturbation of the registrant by, or in the presence of, the client; masturbation of the client by the registrant; encouraging the client to masturbate in the presence of the registrant; touching of a sexual nature of the patient's genitals, anus, breasts, or buttocks.

Importantly, the definition of a “spouse” for the purposes of this regulation is very narrowly defined, and includes only

- (a) a person who is the registrant’s spouse as defined in section 1 of the Family Law Act (i.e., a person to whom the registrant is married), or
- (b) a person who has lived with the registrant in a conjugal relationship outside of marriage continuously for a period of at least three years.

While this regulation now permits registrants to treat their pre-existing spouses, it only applies to individuals who meet the definition of “spouse” set out above. Moreover, registrants who treat their spouse must ensure that they keep the sexual relationship entirely separate from the clinical or office setting.

Registrants are still prohibited from treating individuals with whom they are in a sexual relationship but who do not meet the definition of “spouse”, save in limited circumstances explained below. Providing treatment to such an individual outside of these narrow exceptions is sexual abuse under the RHPA.

## EMERGENCY AND MINOR TREATMENT

Registrants are permitted to provide treatment to individuals with whom they are in a pre-existing sexual relationship but who are not their spouse in the following limited circumstances:

- (a) Where the treatment is provided in an emergency or is minor in nature; and
- (b) The registrant transfers treatment of the individual to another oral healthcare provider.

Emergency circumstances in dental hygiene are extremely rare. They could only occur in situations where access to another oral healthcare provider is not available within a reasonable period, and the client would be at risk of serious harm or other complications without the intervention. Any treatment provided in emergency circumstances must fall within the scope of dental hygiene practice, and the dental hygienist must be able to justify why the treatment was necessary because of the emergency.

Minor treatment is limited in scope and seriousness and would be treatment that does not involve significant intervention by the dental hygienist. Providing basic oral hygiene instruction or assisting to remove a piece of food trapped interproximally are examples of minor treatment. Scaling, polishing, and restorative treatment are not minor treatment for the purpose of this exception.

Where a registrant provides treatment in an emergency or provides minor treatment, they must transfer care of the individual to another oral healthcare provider at the earliest opportunity. The registrant is not permitted, under the emergency or minor treatment exceptions, to provide treatment on an ongoing or regular basis to an individual with whom they are in a pre-existing sexual relationship but who is not their spouse.

## **PROFESSIONAL BOUNDARIES**

The foundation of a health professional/client relationship is based on the principles of trust, respect, and confidence. It is generally recognized that a power imbalance exists between a health professional and their client. This imbalance will vary in degree depending on the type of health professional and the nature of the treatment relationship. The practice of dental hygiene has elements of power imbalance. By demonstrating respect for, and sensitivity to, personal boundaries, dental hygienists model healthy boundaries and reinforce clients' worth and right to personal autonomy.

### **ESTABLISHING PROFESSIONAL BOUNDARIES**

It is a registrant's responsibility to establish and maintain professional boundaries with their clients. Registrants should keep in mind that boundaries are unique to the client, and are influenced by such factors as the client's personal experiences, cultural expectations, age, and values. What one client may see as welcome and appropriate, another may see as unwelcome and inappropriate.

Many clients feel particularly vulnerable in the oral healthcare setting. Registrants should therefore use their professional judgment to determine the client's comfort level and whether additional measures may be required to ensure that the client's personal boundaries are respected.

As healthcare professionals, registrants are responsible for communicating effectively by paying attention to the ways in which information is conveyed and the words selected when speaking with clients. They must also be compassionate listeners and be sensitive to the concerns and needs of clients. Awareness of cultural and physical barriers that may interfere with clear communication, and respect for these differences will help dental hygienists practise in a responsive and responsible manner.

Registrants should keep the following guidance in mind with respect to client interactions:

- Registrants should demonstrate professionally supportive behaviour; if this includes physical contact, the client's consent must be obtained.
- Registrants should never rest instruments or other materials on a client's chest or elsewhere on the client's body.
- Registrants should recognize cultural diversity. They should seek opportunities to learn about cultural attitudes and behaviours so that inappropriate behaviour does not occur as a result of ignorance.
- Registrants must never exhibit behaviour or employ gestures, expressions or comments of a sexual nature, including sexual humour, innuendo, or similar remarks.
- Registrants should be cautious in sharing personal information with or seeking personal information from clients unrelated to the clinical needs of the client.
- Registrants should be mindful of a client's verbal and non-verbal signals that they may be uncomfortable with the registrant's words or behaviour and modify their actions accordingly.
- Registrants should employ a tone that is professional and respectful, but that displays caring and empathy.
- Registrants should avoid commenting on or engaging in conversations with clients about topics that may be controversial or offensive.

## **BOUNDARY CROSSINGS**

A boundary crossing occurs when a registrant fails to maintain an appropriate professional boundary with a client, or permits aspects of a non-professional or social relationship to improperly enter into or influence the professional treatment relationship. Either the registrant or the client may initiate a boundary crossing; however, in either circumstance it is the registrant's responsibility to appropriately identify and respond to it.

Boundary crossings are more likely to occur where the registrant has connections to the client outside of the clinical setting, such as social, familial, business, or other relationships. Registrants are encouraged to consider that combining non-professional and professional relationships can make it very difficult to define boundaries between the two relationships.

## **WARNING SIGNS OF POTENTIAL BOUNDARY CROSSINGS**

The following can be indications of actual or potential boundary crossings:

- A dual relationship with the client outside of the treatment relationship, such as a business, social, or other relationship
- The giving or receiving of gifts between the registrant and client
- Providing special treatment for the client, such as accommodating appointment requests outside of normal office hours
- Disclosing or sharing intimate personal information by the client or registrant
- Engaging in activities, whether social or business related, with the client outside of the clinical setting
- Making comments or gestures not directly related to clinical care
- Thinking about or communicating with the client outside of the clinical setting

## **ADDRESSING BOUNDARY CROSSINGS**

Registrants must be vigilant for the potential for boundary crossings and respond appropriately when a boundary is breached. This includes identifying the breach, correcting the behaviour, re-establishing appropriate boundaries, and documenting the incident in the client record.

Where a registrant is unable to appropriately re-establish and maintain professional boundaries due to a client's behaviour, the registrant should arrange to transfer the care of the client to another provider.

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