

Protection of Patients from Sexual Abuse and Sexual Misconduct Standards

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These standards outline the expectations for the **NURSE**¹ in the therapeutic and professional relationship with the patient, and help ensure patient safety and trust by maintaining appropriate relationships. These standards are grounded in Canadian Nurses Association's (CNA) *Code of Ethics for Registered Nurses* (2017), and the directions, concepts, and principles are aligned with the following College and Association of Registered Nurses of Alberta (CARNA) documents:

- *Practice Standards for Regulated Members* (2013)
- *Professional Boundaries for Registered Nurses: Guidelines for the Nurse-Client Relationship* (2011)

Purpose

The purpose of these standards is to outline expectations for the nurse and their relationship with a patient in order to strengthen the protection of patients from sexual abuse and sexual misconduct by nurses. The *Health Professions Act* (HPA) does not make a distinction between workplace or 'after hours' settings when referring to a **NURSE- PATIENT RELATIONSHIP**. The obligation of maintaining professional boundaries lies with the nurse, not the patient.

Defining Sexual Abuse and Sexual Misconduct

Sexual Abuse

Sexual Abuse is defined as the "threatened, attempted or actual conduct of the nurse towards a patient that is of a sexual nature" (HPA, 2000). 'Sexual nature' does not include any conduct, behavior or remarks that are appropriate to the service of the public. Sexual Abuse includes any of the following conduct:

- sexual intercourse between the nurse and a patient of that nurse;
- genital to genital, genital to anal, oral to genital, or oral to anal contact between the nurse and a patient of that nurse;
- masturbation of the nurse by, or in the presence of, a patient of that nurse;
- masturbation of the nurse's patient by that nurse;
- encouraging the nurse's patient to masturbate in the presence of that nurse;
- touching of a sexual nature of a patient's genitals, anus, breasts, or buttocks by the nurse.

(HPA, 2000)

¹ Words or phrases in **BOLD CAPITALS** upon first mention are defined in the glossary.

A finding of Sexual Abuse by the Hearing Tribunal against the nurse mandates cancellation of their practice permit.

Sexual Misconduct

Sexual Misconduct means

“any incident or repeated incidents of objectionable or unwelcome conduct, behavior 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”

(HPA, 2000).

A finding of Sexual Misconduct by the Hearing Tribunal against the nurse mandates a minimum of a suspension of their practice permit, with the possibility of cancellation of their practice permit.

Defining a Patient

In these standards, ‘patient’ refers to the individual to whom the nurse provides a health service (HPA, 2000). Factors, which may contribute to the determination of whether an individual is considered the nurse’s patient, include:

- the nurse has provided a health service for the patient;
- the nurse has contributed to a health record or file for the patient; or
- the patient has consented to a health service provided by the nurse.

In a nurse-patient relationship, the nurse has power over the patient due to the professional position of the nurse and their access to, and awareness of, private information of the patient. The nurse must always consider the risk of any power imbalance before entering into a sexual relationship with a former patient. This power imbalance can vary on a continuum, based on several factors, including:

- the duration of the nurse-patient relationship;
- the sensitivity of private information the nurse has access to; and
- the vulnerability of the patient.

When an individual is not considered to be a patient

An individual receiving health services from the nurse is not considered to be a 'patient' as defined in the HPA with respect to Sexual Abuse or Sexual Misconduct if the nurse is their spouse, adult interdependent partner, or if they are in an ongoing, pre-existing sexual relationship with the nurse.

The nurse shall not provide health services to a spouse, adult interdependent partner, or individual with whom they are in an ongoing, pre-existing sexual relationship unless all of the following factors are met:

- the health service provided by the nurse to the individual is due to an emergency or is minor in nature; and
- the nurse has taken reasonable steps to transfer the individual's care or there is no reasonable opportunity to transfer care.

The nurse who provides health-care services to a spouse, adult interdependent partner, or individual with whom they have an ongoing, pre-existing sexual relationship outside of these factors may be found by a Hearing Tribunal to have engaged in unprofessional conduct. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions, including suspension or cancellation of registration and practice permit.

A sexual relationship after termination of the nurse-patient relationship

The HPA prohibits sexual relationships between the nurse and a patient. Therefore, the nurse must ensure the nurse-patient therapeutic and professional relationship is terminated before engaging in a sexual relationship with a former patient and must comply with the timeframes addressed below.

For the purposes of the Sexual Abuse provisions in the HPA, an individual may still be considered a 'patient' after the termination of the therapeutic and professional relationship. An individual is considered to be a 'patient' for the purposes of the Sexual Abuse provisions for a one-year period after the date of the last clinical encounter where a health service was provided by the nurse. As a result, the nurse must not engage in the type of sexual acts described in the definition of Sexual Abuse with such an individual for a minimum of one year after the last clinical encounter.

Sexual conduct may still be considered inappropriate after the one-year period has elapsed depending on all the circumstances. In determining whether a sexual relationship between the nurse and a former patient after the one-year period is inappropriate, the factors to be considered include:

1. whether there is a risk of a continuing power imbalance;
2. the length of time that has passed since the last clinical encounter;
3. whether the nurse-patient therapeutic and professional relationship existed for a lengthy period of time;
4. the nature of the care provided:
 - a. whether a former patient who was provided care is likely to require the nurse's care again in the future, and
 - b. the type, intensity, and duration of the nursing care; and
5. the **VULNERABILITY** of the patient during the course of the therapeutic relationship:
 - a. how mature and vulnerable the former patient is, and
 - b. whether the former patient has impaired decision-making.

Beyond the one-year period, sexual conduct with a former patient that is considered inappropriate given all the circumstances, is not considered to be Sexual Abuse.

However, such conduct may be considered to be unprofessional conduct by a Hearing Tribunal. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions, including suspension or cancellation of registration and practice permit.

When the nurse provides episodic care

The nurse may provide **EPISODIC CARE** to a patient when there is no expectation of continuing care, and there is no expectation of the continuation of the therapeutic and professional relationship. The nurse providing episodic care to a patient must:

- collect and document any relevant history;
- assess and provide nursing interventions as appropriate;
- inform the patient that the nurse will not provide continuing care beyond addressing the patient's defined health-care need;
- document this clinical encounter on the patient's health record so the primary provider can access the documentation.

For the purposes of the Sexual Abuse and Sexual Misconduct provisions, a nurse-patient relationship is formed during the provision of episodic care. Therefore, the nurse who engages in the type of activity described in the definition of Sexual Abuse or Sexual Misconduct while providing episodic care will be considered to have committed Sexual Abuse or Sexual Misconduct.

The individual is not considered to be a patient after the completion of the episodic care. However, sexual conduct at any time after the conclusion of episodic care may still be considered inappropriate if there is a risk of an ongoing power imbalance. The factors outlined in the section 'A sexual relationship after termination of the nurse-patient relationship' must be considered.

Sexual conduct within the one-year time period or after the one-year time period with a former patient who has received episodic care that is considered inappropriate given all the circumstances is not considered to be Sexual Abuse. However, such conduct may be considered by a Hearing Tribunal to be unprofessional conduct under the HPA. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions, including suspensions and cancellation of registration and practice permit.

When a sexual relationship with a former patient is NEVER considered appropriate

There are circumstances when it is NEVER considered appropriate for the nurse to engage in a sexual relationship with a former patient. The nurse must NOT engage in a sexual relationship if the nurse provided the patient with **PSYCHOTHERAPEUTIC** treatment.

In these circumstances, a sexual relationship between the nurse and a former patient would constitute Sexual Abuse as defined in the HPA, and a Hearing Tribunal will impose cancellation of registration and practice permit.

Standard 1: Therapeutic and Professional Boundaries

The nurse must maintain therapeutic and professional boundaries in all interactions with the patient in the provision of professional services.

Professional boundaries keep the nurse-patient relationship safe and respected. A patient trusts the nurse to set and maintain limits that respect the patient as a person in need of care and the nurse as a person providing the care (CARNA, 2011). Establishing boundaries addresses the power differential and sets limits to the nurse-patient relationship (CARNA, 2011). Violations of these boundaries that betray the therapeutic relationship is a breach of trust.

A boundary violation occurs when the nurse abuses their authority over the patient, causing confusion and may result in distress for the client. Sexual relations between the nurse and a

patient are unethical and abusive, and are considered a serious breach of trust (College of Physicians and Surgeons of Ontario, 2018).

Criteria

The nurse must:

- 1.1 take responsibility for maintaining therapeutic and professional boundaries;
- 1.2 not **SEXUALIZE** any interaction with a patient;
- 1.3 avoid requesting details of a patient's sexual or personal history unless the information is pertinent to the patient's care (College of Physicians and Surgeons of Alberta [CPSA], 2018);
- 1.4 inform a patient if they are providing episodic care;
- 1.5 refrain from socializing or communicating with a patient for the purpose of pursuing a sexual relationship (CPSA, 2018);
- 1.6 refrain from entering into a sexual relationship with a patient or any person with whom a patient has a significant interdependent relationship (i.e. parent, guardian, child, or significant other) (CPSA, 2018);
- 1.7 must not engage in a sexual relationship at any future point with any patient where the nurse-patient relationship was psychotherapeutic;
- 1.8 seek impartial advice and refrain from any relationship with the individual if there is any doubt that the individual is still their patient; and
- 1.9 acknowledge that the nurse-patient relationship remains a professional relationship for a minimum of one year following the last clinical encounter.

Standard 2: Self Reporting by Nurses

Nurses are required to self-report to the registrar of all relevant regulatory bodies they are associated with, as soon as reasonably possible, any finding of unprofessional conduct against them.

Nurses may be registered in more than one regulatory college within Alberta, or across other jurisdictions. In these cases, the nurse is obligated to report any finding of unprofessional conduct against them to all regulatory colleges with which they are registered.

Criteria

The nurse must report, in writing to the registrar, as soon as reasonably possible:

- 2.1** a decision of finding of unprofessional conduct from another regulatory college in Alberta that nurse is registered with, and provide a copy of that decision to any other regulatory college they are registered with;
- 2.2** any finding of unprofessional conduct from regulatory colleges of similar professions in other jurisdictions making similar findings, and provide a copy of that decision, if any, to the registrar;
- 2.3** any finding of professional negligence made against the nurse to the registrar, as soon as reasonably possible, after the finding has been made; and
- 2.4** any charges and convictions under the Criminal Code (Canada, 1985) after April 1, 2019.

Standard 3: Reporting a Member of a Regulated Profession

If a nurse has reasonable grounds to believe that the conduct of any regulated member of any regulated profession, constitutes Sexual Abuse or Sexual Misconduct, that nurse must report the conduct of that member to the complaints director of the appropriate regulatory college.

Every nurse has the responsibility to take reasonable steps to ensure the safety, security, and well-being of a patient (*Protection for Persons in Care Act, 2015*).

Criteria

The nurse must:

- 3.1** while acting within their professional capacity, if they have **REASONABLE GROUNDS** to believe that a regulated member of any regulated profession have conducted themselves in a manner that constitutes Sexual Abuse or Sexual Misconduct, report this behavior to the complaints director of that regulatory college with which they are registered.

Glossary

ADULT INTERDEPENDENT PARTNER AGREEMENT – the relationship between two persons who are adult interdependent partners of each other; formerly referred to as ‘common-law’. The three ways people can become adult interdependent partners are: cohabit for 3 years; cohabit and have a child together; or enter into an adult interdependent partner agreement (*Adult Interdependent Relationships Act, 2014*).

EPISODIC CARE – a single clinical encounter with the patient for a defined health-care need, where neither the nurse nor the patient have the expectation of continuing care and the therapeutic and professional relationship.

HEALTH SERVICE – a service provided to people to protect, promote or maintain their health; to prevent illness; to diagnose, treat or rehabilitate; or to take care of the health needs of the ill, disabled, injured or dying (*Health Professions Act, 2018*).

NURSE – refers to regulated member of CARNA, including registered nurses (RN), graduate nurses (GN), nurse practitioners (NP), graduate nurse practitioners (GNP), and certified graduate nurses (CGN), and those on the courtesy register.

NURSE-PATIENT RELATIONSHIP – a relationship established and maintained by the nurse through therapeutic interactions, which enable the nurse to provide safe, competent, and ethical care.

POWER – the power of the nurse comes from the professional position and the access to the private knowledge about the client (CARNA, 2011).

PROFESSIONAL SERVICES – a service that comes within the practice of a regulated professional (HPA, 2000).

PSYCHOTHERAPEUTIC – planned and structured psychological, psychosocial, and/or interpersonal interventions influencing a behavior, mood, and/or emotional reactions to different stimuli (College of Nurses of Ontario, 2006).

REASONABLE GROUNDS – enough credible evidence to lead an ordinary person to prudent judgment of the suspicions and belief that he/she holds.

SEXUALIZE – to make sexual: endow with a sexual character or cast (*Webster, 2018*).

SPOUSE – a person to whom one is married.

VULNERABILITY – susceptibility to health problems, harm or neglect that could either be caused or influenced by physical, psychological, or sociological factors; is situational based on individual’s experiences (Healslip & Ryden, 2013).

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