Protecting Patients

Proposing measures to better protect and support patients from physician sexual abuse

Council has proposed a number of changes – both to the legislation which governs us, and to our own processes and practices – aimed at better protecting and supporting Ontario patients from physician sexual abuse.

The proposed changes stem from an initiative to ensure that we are doing all that we can to support and protect patients from physician sexual abuse.

“When we set out to look for ways to better protect and support patients, we made it clear that everything was on the table for discussion,” said Dr. Carol Leet, College President. “Sexual abuse of patients is an issue we take very seriously and it is behaviour that won’t be tolerated,” she said.

What are we proposing? We are recommending changes to our governing legislation. We are looking for opportunities to expand the education of trainees, physicians, College staff, and our committee members. We are examining our own processes to determine how to optimize our committee decision-making. We are also considering the effectiveness and appropriateness of our practice of imposing gender-based restrictions on a physician’s certificate of registration.

Council’s conversation began with approval of an external consultation on draft principles that articulate the College’s approach to sexual abuse matters. The content is informed by the College’s mandate, the principles set out in the College’s current policy on Maintaining Appropriate Boundaries and Preventing Sexual Abuse, and previous Council discussions.

Sexual abuse investigations represent 2% of the College’s total investigations each year. That figure has been constant for 10 years.

Please read the following pages for more details.

Read what we are doing
Drafting Principles to Guide our Approach pg. 20
Proposing legislative change pg. 21
Improving Processes and Practices pg. 24
Improving Patient Support and Access pg. 25
Exploring Opportunities for Education and Training pg. 25
DRAFT PRINCIPLES – Articulating Our Approach

The draft principles articulate the College’s approach to sexual abuse matters with content informed by the College’s mandate, our policy and Council discussion. Please let us know what you think of these principles in our consultation at www cpso.on.ca.

PRINCIPLE 1: Harm and Breach of Trust
Sexual abuse is harmful and physicians must never have any sexual involvement with patients.

There is an inherent power imbalance in the physician-patient relationship. The physician-patient relationship is fiduciary in nature, requiring physicians to act with the utmost good faith and to ensure patients’ best interests are paramount.

Sexual abuse of patients exploits this power imbalance, is contrary to physicians’ fiduciary duties and is a breach of trust. Sexual abuse harms not only the individual patients who are abused, but also the public at large by undermining the public’s trust in the medical profession.

PRINCIPLE 2: Prevention
Education of physicians and medical trainees is essential to prevent sexual abuse of patients. Physicians must have a clear understanding of their obligations to maintain appropriate boundaries with patients, and that any sexual involvement with patients is harmful, is considered sexual abuse, and is never acceptable.

Education of the public is also essential. The public needs clear information about the differences between appropriate and inappropriate physician-patient interactions and what patients can expect from physicians. Patients also need to be aware of steps they can take to keep themselves safe, and to question anything they have experienced that doesn’t feel right. This includes information regarding how to share their concerns with the College and others, and the support the College provides when they do so.

Physicians have responsibility both individually and collectively to prevent sexual abuse of patients and to respond when they learn a patient has been sexually abused.

Individually, physicians must maintain appropriate boundaries with patients and must not sexually abuse patients. Physicians must also make a mandatory report when they learn a patient has been sexually abused by a regulated health-care professional.

Collectively, physicians together with organizations, hospitals and others, have a shared ethical responsibility to prevent and respond to sexual abuse of patients.

PRINCIPLE 4: Respect, Fairness and Transparency
Complaints and disciplinary processes must ensure that all individuals – patients and physicians – are treated with respect. Processes must be fair, impartial and transparent.

In acknowledgment of the inherent power imbalance between physicians and patients, and the challenges patients experience in both reporting sexual abuse and proceeding with the complaints process, the College will continue to support and empower patients throughout the College’s complaints and discipline processes.

PRINCIPLE 5: Public Protection
In fulfilling its regulatory duties, the College has a duty to serve and protect the public interest. Public protection is the College’s top priority in relation to sexual abuse of patients. When a physician has sexually abused a patient, the College will impose penalties that will ensure that individual patients and the broader public are protected.

PRINCIPLE 6: Public Confidence
It is essential that the public have confidence that the College is acting in manner that is consistent with its duty to serve and protect the public. The College’s work must not only be done; it must be seen to be done.

In relation to sexual abuse of patients, the public must have confidence that the outcomes of sexual abuse complaints are just and achieve the goal of public protection.

1. Public confidence is a principle shared with the College’s Transparency Initiative.

Please let us know what you think of these principles in our consultation at www cpso.on.ca.
You can also email us your opinion at sexabuseprinciples@cpso.on.ca.
Proposing Legislative Changes

Council proposes changes to RHPA’s sexual abuse provisions

Council directed that the College seek a number of changes to the sexual abuse provisions in our governing legislation to better protect patients.

The most significant proposal for legislative change is the proposal for two different definitions of sexual misconduct. All physical sexual contact between a physician and patient would fall within the definition of sexual abuse, and would result in revocation. Sexual comments and gestures would be defined as sexual impropriety, and penalties for sexual impropriety would be at the discretion of the Discipline Committee.

This approach would eliminate the list of specific acts that trigger mandatory revocation and would treat all physical sexual contact between a doctor and a patient as a fundamental breach of a physician’s obligation to patients that requires revocation. It would define sexual abuse as physical sexual contact between the physician and a patient. Comments and gestures would be sexual impropriety, not sexual abuse.

This approach means that a wider range of conduct will be caught under mandatory revocation and, as such, the minimum five-year period prior to a reinstatement application may not be appropriate in all cases.

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Council, therefore, is recommending that the Discipline Committee have the power to specify a period between one and five years before a physician can apply for reinstatement following a revocation for sexual abuse or other professional misconduct of a sexual nature.

With respect to other possible enhancements to strengthen the legislative scheme, Council has also directed that the College ask government for the following changes:

**Expand scope of mandatory revocation to include misconduct of a sexual nature that is not sexual abuse**

Council has directed that the College ask government to expand mandatory revocation to also apply to convictions for specified criminal sexual offences, findings of professional misconduct in other jurisdictions that would trigger mandatory revocation in Ontario, and sexual misconduct of any kind with a minor.

This would widen the scope of mandatory revocation to include circumstances similar to — and as egregious as — those in which it currently applies, but where it does not apply because the conduct falls under a different heading of professional misconduct.

It captures conduct that Council believes is seen as reprehensible in the eyes of the public and is consistent with the College’s commitment to zero tolerance.

**Clarify the Discipline Committee’s authority to require that mandatory revocation commence immediately upon a finding rather than waiting for a penalty hearing**

The Discipline Committee’s practice has been that after making a finding of professional misconduct, including one requiring mandatory revocation, a penalty hearing is scheduled, at which counsel make submissions, following which a decision is released and the penalty imposed. This can delay the automatic penalty of revocation for a period of months. As part of an ongoing evaluation of our processes and practices, College prosecutors will now request that following a finding of professional misconduct for which the penalty of revocation is mandatory, the penalty commence immediately upon the finding being made. Any other aspect of the penalty that is discretionary (such as costs, funding for patient therapy and counseling, etc.) will be determined later in accordance with the Discipline Committee’s former practice.

The College will seek legislative change to clarify the Discipline Committee’s power to impose immediate revocation following a finding of professional misconduct for which revocation is mandatory.

**Give the Discipline Committee power to specify a minimum period of time that must pass prior to an application for reinstatement**

This decision flows from the earlier decision to ask government for two definitions of sexual misconduct — sexual abuse and sexual impropriety. Since that option means a wider range of conduct is caught under mandatory revocation, the existing minimum five-year period prior to a reinstatement application may not be appropriate in all cases.

Council has directed that the College seek the discretion to specify a period between one and five years prior to a physician being able to bring a reinstatement application following a revocation for sexual abuse, sexual impropriety or other proscribed findings of professional misconduct. It also proposes to extend to one year the period that must pass prior to a member making a subsequent request for reinstatement, after a previous request has been rejected.

This demonstrates the College’s strong stance

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**SEXUAL ABUSE AND SEXUAL ASSAULT ARE ISSUES THAT ARE IMPORTANT TO THE COLLEGE.** They are also issues of broad social concern. The College is committed to doing all it can to ensure patients are protected from sexual abuse by physicians, and those who have experienced abuse are supported in coming forward to report the abuse. The College cannot act alone. In order to address these issues properly and to prevent sexual abuse and sexual assault from occurring in society, a collaborative approach is required. Participation from government, regulatory colleges, the private sector, community support agencies, educational institutions; and others is necessary.
against sexual misconduct while allowing the Discipline Committee the flexibility to specify a period of time shorter than five years for an application after a finding of sexual misconduct seen to be less serious.

**Amend Code to increase threshold and guarantee standing for patient/complainant on motions for disclosure of victim’s confidential records (“third party records motions”)**

One of the most invasive aspects of a discipline hearing for complainants is the ability of the physician to access and then reveal publicly at a hearing details of their private medical records, which can include psychiatric records, records of therapy sessions, and other records with extremely confidential information. There is case law setting out the circumstances in which the physician is entitled to such records; however, the current application of the legal test results in frequent disclosure of arguably irrelevant records of a highly sensitive and personal nature.

Council directed that the College seek changes to the Code to incorporate a specific elevated threshold for the production and disclosure of confidential records in College discipline proceedings, and to require that a patient/complainant whose records are the subject of such a motion automatically be granted full standing on the motion, if requested.

**Expand circumstances in which victims have clear right to file victim impact statements**

Council directed that the College ask the government to extend the requirement for a panel to consider a “victim impact statement” for sexual impropriety in addition to sexual abuse. We believe this will improve the hearing process and experience for victims of sexual abuse.

**Amend Code to require colleges to file periodic reports with the Minister of Health on sexual abuse**

In order to demonstrate our ongoing commitment to ensuring best practices with respect to issues related to sexual abuse, Council has directed that the College ask for amendments to the Code requiring all regulated health colleges to report to the Minister on a periodic basis on certain specified questions related to sexual abuse.

It is expected that the College would also post such reports publicly. This would help ensure transparency and consistency on an important issue for the public and the College. It could also help drive process improvements in the future and help demonstrate that the College is maintaining its focus on this key area of its mandate.

**Give College greater discretion to provide information to police**

Under s. 36 of the Regulated Health Professions Act, the College can only provide information to police about members. Council directed that the College seek an amendment that would allow us to provide information to the police about persons other than doctors where that would be in the public interest.

**Work in Progress:** Work related to the review and analysis of opportunities for legislative change will continue over the coming months. The issues that Council will consider going forward include the following: whether to seek to include in legislation specified criteria for reinstatement applications; and legislative amendments to the funding for therapy and counselling program administered by the Patient Relations Committee.
We have also been looking more carefully at our own internal processes and practices to determine how we can improve. Specifically, we want to ensure public protection by conducting thorough and timely investigations and prosecutions; and promote public confidence by optimizing committee decision making.

ICRC Decision Making – Specialized ICRC Panel
Discipline Committee outcomes are informed by the penalty submissions of the College and the physician. To help ensure that the Inquiries, Complaints and Reports Committee (ICRC) instructions to College prosecutors are consistent and valid, ICRC recommended the formation of a specialized ICRC panel for considering post discipline referral penalty instructions and settlement proposals.

This specialized panel will consist of standard membership – approximately 10-12 physician and public members. The panel will be comprised of both male and female members, of individuals who represent varied specialties, and individuals who have experience with discipline or legal matters.

The goal in using a standardized panel is to enhance consistency in penalty and settlement instructions. Additional steps that will be taken to enhance consistency include standardizing the materials the panel reviews, and enhancing the panel’s training in discipline processes and penalty principles.

The anticipated start time for the specialized panel meeting is fall 2015.

Gender-Based Restrictions
As part of our work in reviewing processes and practices related to sexual abuse matters, the College is re-assessing the effectiveness and appropriateness of imposing gender-based restrictions (GBRs) on a physician’s certificate of registration.

GBRs are terms, conditions and limitations on a physician’s certificate of registration that are posted on the College’s public register. The two primary types of GBRs are the chaperone requirement, and the absolute practice restriction.

i) Chaperone Requirement
The College has in some cases agreed to an undertaking or ordered that a physician not see patients of a particular gender unless in the presence of a chaperone acceptable to the College. In recent years, the chaperone has typically been required to be a regulated health professional. The chaperone in these cases is required to sign an undertaking with the College to maintain a log of all patients of the restricted gender seen by the physician, initial the corresponding patient charts, and report to the College any breaches by the physician of his or her undertaking.

ii) Absolute Restriction on Encounters with Patients of a Particular Gender
In other cases, the College has agreed to an undertaking or ordered that a physician not see patients of a particular gender in any professional encounters.

The College has used GBRs to provide public protection in the context of ongoing investigations or discipline findings of sexual abuse, boundary violations and/or other sexual misconduct by physicians dating back to at least 1993.

As of May 2015, the College had GBRs in place with respect to approximately 30 physicians.

At its meeting in September 2015, Council will be presented with analysis on the use of GBRs and asked for direction as to whether the College should continue to rely upon GBRs, and if so, in what circumstances.
Patient Survey
Patients who have been involved with the College’s investigative and discipline processes provide a very valuable perspective. Their views and experiences would be a strong source of information in terms of evaluating processes and practices.

That is why we are currently conducting a survey to assess patient satisfaction levels with College processes and to accordingly identify possible areas for improvement and enhancement.

The ICRC has also directed that steps be taken to incorporate a mechanism in College processes that would allow both patients and physicians to provide real-time feedback about their experience with the process.

Reporting to Police
There is a limited exemption to the College’s overriding duty of confidentiality in the Regulated Health Professions Act, to allow the College to share information with police in certain circumstances. Council has asked the College to seek legislative change to reduce some of the limitations on this ability to share information (see RHPA Provisions section.)

Council also directed the College to develop an internal policy to standardize the approach to exercising this discretionary power to share information. The policy, which will be developed later this year, could set out the types of situations in which information sharing may be appropriate, and the factors to be considered in determining whether to share information in any given case.

PATIENT SUPPORT AND ACCESS
Council reviewed how we interact with victims of sexual abuse and directed the College to improve patient access and support by:

- Developing a Rights and Responsibilities document for patients that would focus on the duties and obligations that physicians owe their patients. This would not be limited to addressing the issues of sexual abuse.

- Developing a multilingual education brochure about sexual abuse that would be used as an outreach tool to provide information about the College’s role and to encourage patients to come forward.

The Rights and Responsibilities document for patients would be added to the existing complement of information and resources available with respect to sexual abuse on the College’s website. We will also have an online list of resources about available community services/agencies that provide support to victims of sexual abuse. These resources will be available to patients who want to seek support beyond what the College provides.

The brochure will be a condensed version of the information that is currently available on the College’s website, including the specific information regarding sexual abuse complaints.

EDUCATION AND TRAINING
The College is now exploring opportunities to improve and expand upon education and training for the profession, medical trainees, Council, Committees and staff on matters relating to sexual abuse of patients by physicians.

The College is already involved in education and training work around boundaries, sexual misconduct and sexual abuse. This includes a course on Boundaries, offered at Western University which is available to practising physicians. (See the article on page 47 for more information). Council’s Sexual Abuse Initiative will build on ongoing education and training initiatives and identify new opportunities to augment education and training.

“Relevant education and training is absolutely key to achieving the principles that ground the College’s Sexual Abuse Initiative,” said Dr. Carol Leet, College President.

Thoughtful scoping and planning, including clarifying how this initiative fits into the College’s broader education work, will be the focus of the first of this initiative’s three phases. At its September meeting, Council will consider a detailed plan setting out anticipated learning needs and objectives and will provide direction for moving forward.