



Alberta College of
Speech-Language Pathologists
and Audiologists

Hear. Speak. Connect.

Patient Relations Course

Module 2: Sexual Abuse and Sexual Misconduct

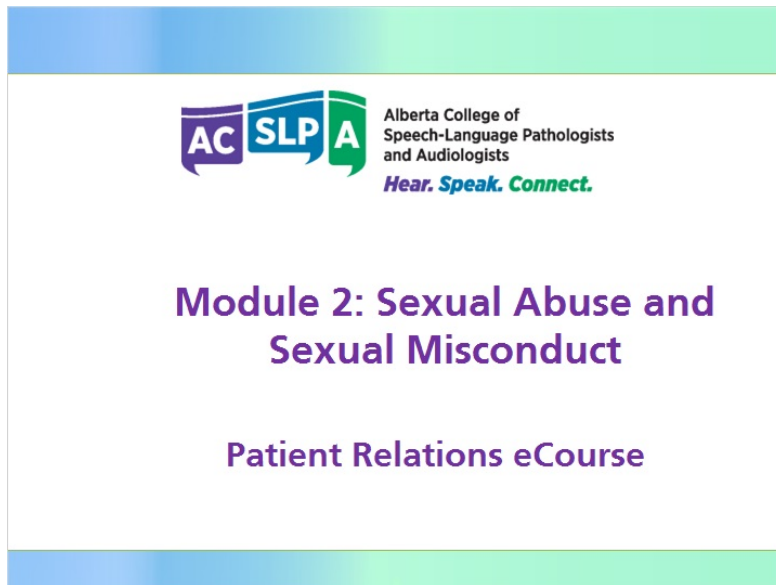
Handout

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2. Sexual Abuse and Misconduct

2.1 Welcome



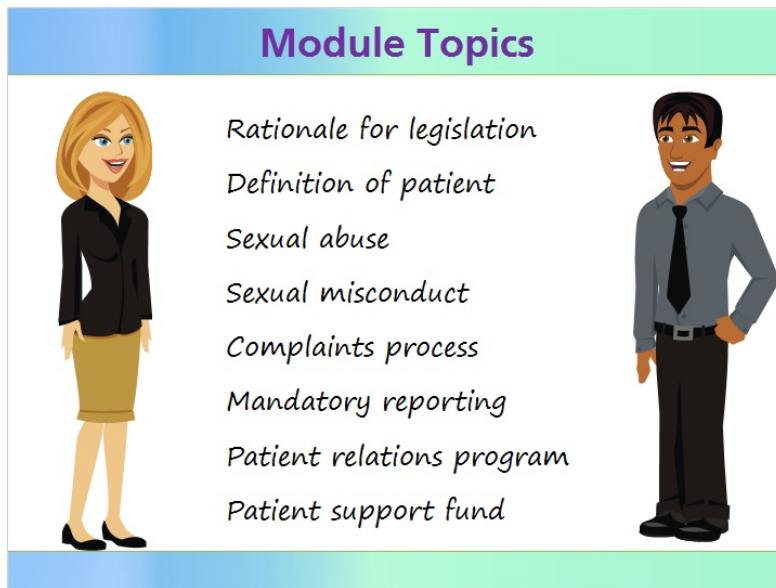
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Narration

No narration, only music.

2.2 Module topics



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Narration

JILL: Hi ... I'm Jill, and with me is my colleague Carlos. Welcome to Module 2 of the Patient Relations Course. This module is about protecting patients from sexual abuse and sexual misconduct by regulated health care workers.

CARLOS: Hi Jill. What specific topics will we be covering in this module?


JILL: We will begin by talking about the purpose and rationale for the amendments to the *Health Professions Act*. We will then define and discuss "patient", "sexual abuse" and "sexual misconduct". We will describe the College's complaints process and potential penalties for regulated SLPs and audiologists charged with sexual abuse or sexual misconduct. We will explain the new mandatory reporting requirements that have been added to the *HPA*. And, finally we will describe the patient relations program and the patient support fund.

CARLOS: These sound like some very serious and important topics. So let's get started!

JILL: Okay.

2.3 Rationale

Rationale for Legislation



- Consistency across health colleges*
- Protection of patients' well-being*
- Eliminate sexual abuse/misconduct*
- Increase awareness and accountability among health care professionals*
- Remove abusers from health system*
- Provide funds for counselling and treatment*

Narration

JILL: Let's take a look at the reasons why the government felt it necessary to amend the *Health Professions Act*. Before this legislation, penalties for sexual abuse or sexual misconduct varied across the 30 regulatory colleges in Alberta. Convictions and penalties were determined on a case-by-case basis. The new rules ensure that consistent penalties are now applied to all health professionals regulated by the *HPA* for findings of sexual abuse and sexual misconduct.

CARLOS: The primary focus for this legislation is the protection of the patient's safety, health and well-being. Because of the power imbalance between a health care professional and their patient, abuse is a significant betrayal of trust. Sexual abuse and sexual misconduct can have long-term traumatic consequences for the victims. Therefore, no abuse is acceptable!

JILL: The intent of the new rules is to ultimately eliminate sexual abuse and sexual misconduct towards patients. Health care professionals will be educated with regard to what is considered acceptable and unacceptable behaviour, and the consequences for the unacceptable behaviours.

CARLOS: The *Act* has provisions to remove sexual abusers from the health care system. A health professional found guilty of sexually abusing a patient will permanently lose their registration and practice permit. Mandatory reporting will also ensure that convicted professionals will NOT be able to practice again in Alberta nor in many other jurisdictions. Findings of sexual misconduct will also result in serious consequences.

JILL: Finally, the legislation now requires regulated colleges to provide a fund for victims who may require counselling and treatment for any sexual abuse committed by a regulated member.

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2.4 Definition of patient

Definition of a Patient

Individual who received a health service

But does NOT include:

- *patient's substitute decision-maker, guardian or parent*
- *spouse or adult interdependent partner*
- *person with pre-existing sexual relationship*

Must abstain from providing health services to this group except in certain situations

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Narration

JILL: The *HPA* requires the College to define the term “patient”. *ACSLPA's amended Standards of Practice* defines “patient” as any individual to whom a regulated member provides a health service in their capacity as a speech-language pathologist or audiologist. A “health service” means a service provided to people to: a) protect, promote or maintain their health; b) prevent illness; c) diagnose, treat or rehabilitate; or d) take care of the health needs of the ill, disabled, injured or dying.

The definition of “patient” is much narrower than the broader term “client” that is frequently used in College documents. A client is **any** individual, family, substitute decision-maker, group, agency, government, employer, business, organization or community who is the direct or indirect recipient of the regulated member's expertise.

CARLOS: For the purpose of the sexual abuse and sexual misconduct provisions of the *HPA*, the following persons are NOT considered to be a patient: a patient's substitute decision-maker, legal guardian, or parent; the regulated member's spouse, adult interdependent partner or other person with whom the regulated member is in an existing sexual relationship.

JILL: The College's *Standard of Practice 5.5* states that “A regulated member of *ACSLPA*, except for in particular circumstances, abstains from providing a health service to a spouse, an adult interdependent partner or other person with whom the speech-language pathologist or audiologist is in an existing sexual relationship.

CARLOS: And what are these particular circumstances?

2.5 Existing relationships

Existing Sexual Relationships

Must abstain from providing health service to spouse, partner or individual with existing sexual relationship, except for:

- *emergency or minor service*
- *no abuse of power imbalance*
- *transfers care to another professional*

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Narration

JILL: The Standard states that a regulated member will only provide a health service to a spouse, adult interdependent partner or other person with whom the SLP or audiologist is in an existing sexual relationship if: the member provided the health service to an individual in emergency circumstances or in circumstances where the service is minor in nature.

CARLOS: If there is no abuse of power imbalance arising from the health service being provided.

JILL: And if further care is required, the member takes reasonable steps as soon as possible to transfer care of the individual to another member or regulated health professional.

2.6 Former patients

Former Patients

Patient becomes former patient after:

- 7 days (for episodic care)
- 30 days (for acknowledged termination of professional relationship)
- one year (365 days of no health services)

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Narration

CARLOS: It's important for SLPs and audiologists to understand when someone is a patient, and when they are no longer considered to be a patient. So Jill, when does a patient become a former patient?

JILL: Well, that depends on the nature of the professional service provided. If an SLP or audiologist provided episodic care – that is an isolated, short-duration and minor health service – and if there is no expectation of an ongoing professional relationship between the regulated member and the patient, the person becomes a former patient after 7 days.

CARLOS: In the event that the patient and/or regulated member has terminated the professional relationship, and the termination has been acknowledged by both parties, then 30 days after the termination, the person become a former patient.

JILL: And if neither of the above apply, and there has been no health service provided by the regulated member to the person for one year or 365 days, then the person is considered a former patient.

CARLOS: So if any of these conditions have been met, then the regulated member is free to enter into a sexual relationship with a former patient?

JILL: Yes, but only after several other conditions are met.

CARLOS: And these are?

2.7 Former patient relationships

Relationships with Former Patients

Sexual relationship with a former patient is acceptable only if:

- *there is no ongoing power imbalance*
- *sufficient time has passed*
- *former patient knows professional relationship has ended*
- *former patient has consented*

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Narration

JILL: The *College's Standard 5.4* says that a regulated member can enter into a sexual relationship with a former patient only if: there is no ongoing power imbalance between the person and the SLP or audiologist arising from the former professional relationship.

CARLOS: The second requirement is that sufficient time has passed since the last health services were provided by the SLP or audiologist, having regard for the nature and extent of the professional relationship between the regulated member and former patient.

JILL: Another important condition is that the former patient knows and understands that the professional relationship has ended.

CARLOS: And the final requirement is that the former patient has consented and is capable of providing consent.

JILL: ACSLPA members are encouraged to contact the College if they are unsure about whether they are at risk of violating any of these standards.

CARLOS: Given the significant consequences for sexual abuse and sexual misconduct imposed by the *Health Professions Act*, getting clarification before you get personally involved with a former patient is a good idea!

JILL: Yes, I agree!

2.8 Sexual abuse

Sexual Abuse

Threatened, attempted or actual conduct of a regulated member towards patient including:

- *sexual intercourse*
- *genital to genital, genital to anal, oral to genital, or oral to anal contact*
- *member and/or patient masturbation*
- *sexual touching of genitals, anus, breasts or buttocks*

Sexual nature does NOT include any conduct, behaviour or remarks appropriate to service

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Narration

CARLOS: The HPA is very explicit about what constitutes sexual abuse. 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: sexual intercourse between a regulated member and a patient of that regulated member.

JILL: 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.

CARLOS: Masturbation of a regulated member's patient by that regulated member; or encouraging a regulated member's patient to masturbate in the presence of that regulated member.

JILL: Touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated member.

CARLOS: It is important to stress that any of this behaviour between a regulated member and their patient is sexual abuse, REGARDLESS if it happens in the office or after work hours!


JILL: Yes, Carlos, you are correct. But there are two exceptions. First, any of these sexual activities between a regulated members and his/her patient are NOT sexual abuse if the patient is a spouse, interdependent adult, and someone with an ongoing pre-existing sexual relationship. Second, touching of the genitals, anus, breasts or buttocks is NOT sexual abuse if it is part of a required health assessment or treatment process.

2.9 Abuse penalties

Sexual Abuse Penalties

College registration and practice permit permanently cancelled

Other penalties allowed by HPA may also apply



Narration

JILL: An SLP or audiologist found guilty of sexual abuse of a patient will have their registration and practice permit permanently cancelled. The College has no discretion as this penalty is mandated by legislation. This means that the SLP or audiologist can never again be employed in their profession in Alberta.

Other penalties in section 82 of the *Health Professions Act* may also apply.

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2.10 Sexual misconduct

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| <p><i>Sexual misconduct is defined as:</i></p> <ul style="list-style-type: none"><i>• incident or repeated incidents of objectionable conduct, behaviour, remarks that cause offence or humiliation or adversely affect health and well-being</i> <p><i>Does not include sexual abuse</i></p> <p><i>If found guilty, member may have registration and permit cancelled for 5 years</i></p> | <ul style="list-style-type: none">2.1 Welcome2.2 Module Topics2.3 Rationale2.4 Definition of a Patient2.5 Existing Relationships2.6 Former Patients2.7 Former Patient Relationships2.8 Sexual Abuse2.9 Abuse Penalties2.10 Sexual Misconduct2.11 Misconduct Examples2.12 Suggested Precautions2.13 Complaints Process2.15 Member's Response2.16 Member Reporting2.17 Other Reporting2.18 Public Reporting2.19 Patient Relations2.21 Patient Fund2.22 Summary2.23 The End |

Narration

CARLOS: Sexual misconduct is defined as 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 to reasonably know, will or would cause offence or humiliation to the patient or adversely affect the patient's health and well-being.

JILL: Sexual misconduct does not include any of the sexual abuse behaviours previously defined. An SLP or audiologist found guilty of sexual misconduct must have their practice permit suspended and may have their registration and practice permit cancelled at the discretion of the Hearing Tribunal. A regulated member whose registration and practice permit is cancelled due to sexual misconduct may apply for reinstatement only after 5 years. Other penalties in section 82 of the HPA may also apply.

CARLOS: The definition of sexual misconduct is rather long and complicated. Perhaps it would be useful if we provide a few examples from *Standard 5.2* so that ACSLPA members have a clearer idea of what is involved.

JILL: Yes, I agree.

2.11 Misconduct examples

Sexual Misconduct Examples

Suggestive sexual comments or gestures
Requesting details of sexual history
Exploiting imbalance of power
Inappropriate physical contact
Communicate / solicit for sexual relationship
Must not use personal or health information to pursue sexual relationship

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Narration

CARLOS: *Standard 5.2 Sexual Misconduct* states that a regulated member must not engage in any behaviour, either physical or verbal, with a patient that could reasonably be perceived of as sexual in nature.

JILL: This includes making sexually suggestive comments or gestures; or requesting details of a patient's sexual history unless it is relevant to the health service being provided; or exploiting or attempting to exploit any real or perceived imbalance of power.

CARLOS: A regulated member must not engage in any physical contact with a patient that could reasonably be perceived to be of a sexual nature unless the physical contact is required for the health service to occur. If physical contact is necessary, the member must explain the purpose and get the patient's consent.

JILL: A regulated member must not communicate with or solicit a patient for the purpose of entering a sexual relationship.

CARLOS: A regulated member must not use any personal information or health information obtained in the course of providing health services to pursue a sexual relationship with a patient or former patient.

JILL: These are just a few examples. There is a checklist in Supplementary Resources with more examples of behaviours that could be grounds for sexual misconduct.

2.12 Suggested precautions

Suggested Precautions

Know what constitutes abuse & misconduct
Maintain clear and firm boundaries
Avoid any sexual behaviour or comments
No sexual jokes
No comments about patient's body or sex life
Limit or avoid self-disclosure
Deflect any patient's emotional attachments

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Narration

CARLOS: So what is a regulated SLP or audiologist supposed to do to reduce their risks of being accused of sexual abuse or sexual misconduct of their patients?

JILL: The most obvious and important thing is to be thoroughly familiar with the unacceptable behaviours and communications that are considered to be sexual abuse and sexual misconduct. These are explained in this module and *ACSLPA's Guideline: Therapeutic Relationships, Professional Boundaries and the Prevention of Sexual Abuse and Sexual Misconduct*.

CARLOS: SLPs and audiologists should set and maintain clear and firm professional boundaries. We discuss professional boundaries in greater detail in the next module.

JILL: To be safe, simply avoid all behaviours, conversations or remarks that could be misinterpreted by the patient as sexually orientated.

CARLOS: No sexual jokes! If the patient or another team member initiates one, politely put a stop to it immediately.

JILL: Do not make any comments about a patient's body or sex life. Consider compliments carefully as they may be misinterpreted.

CARLOS: Professional boundaries dictate that regulated members must limit their self-disclosure, especially about topics that may be intimate, personal or sexual.

JILL: There will be times when a patient develops an emotional attachment to you. As flattering as this may be, it is important that you strictly maintain and adhere to your professional boundaries.

2.13 Complaints process

Complaints Process

Requires formal written complaint

College collects data and interviews:

- *complainant, if possible*
- *witnesses and accused regulated member*

Hearing tribunal convened:

- *where possible, one member must be same gender identity as patient*
- *all members trained in trauma-informed practice and sexual violence*

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Narration

JILL: An emphasis in the new legislation is that colleges have to make it very clear to patients how they can go about filing a complaint of sexual abuse or sexual misconduct against a regulated member.

CARLOS: The complaints process remains the same, except for a couple of exceptions. A formal written complaint must be submitted to the College. The Complaints Director will review the complaint and determine whether it has merit for further investigation. If so, then the College will assign an investigator to collect data and interview the complainant, possible witnesses, and the regulated member accused of sexual abuse or sexual misconduct.

JILL: A Hearing Tribunal is then convened to review the evidence and make a decision. As per the new legislation, colleges must make every reasonable effort to ensure that at least one member of the Hearing Tribunal is the same gender identity as the patient. The other requirement is that all members of the Hearing Tribunal for these types of cases must be trained in trauma-informed practice and sexual violence.

2.14 Complaints process

| Complaints Process |
|---------------------------------------------------------------------|
| Member & complainant given 30 days notice |
| If member found guilty of sexual abuse: |
| • practice permit suspended immediately |
| • allow patient to make impact statement |
| Hearing tribunal must order: |
| • cancellation of practice permit and registration for sexual abuse |
| • suspension of practice permit for sexual misconduct |

Narration

CARLOS: The regulated member who is subject of a sexual abuse or sexual misconduct complaint, must be given 30 days' notice of when the hearing will be held. The complainant must also receive thirty days' notice of the hearing.

JILL: If the regulated member is found to be guilty of sexual abuse, their practice permit will be suspended immediately by the Registrar. The affected patient will be allowed to make an impact statement as to how this incident affected them.

CARLOS: The Hearing Tribunal **MUST** order the permanent cancellation of the practice permit and registration for convictions of sexual abuse. The Tribunal **MUST** order the suspension of the practice permit for sexual misconduct and may order cancellation of the registration and practice permit. Members convicted of sexual misconduct, and whose registration and practice permit are cancelled, will **NOT** be allowed to reapply for their practice permit for a minimum of five years. Other penalties stated in section 82 of the *Health Professionals Act* may all apply.

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2.15 Member's response

Member's Response

Regulated members are advised to:

- *provide full cooperation*
- *respond promptly to the College, providing a full and detailed response*
- *submit all documents required by College*
- *NOT alter any documents*
- *NOT contact or communicate with patient who filed the abuse complaint*

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Narration

JILL: The regulated SLP or audiologist who has a sexual abuse or sexual misconduct complaint filed against them should fully cooperate with the College and any investigator assigned to gather information about the complaint.

CARLOS: The regulated member should respond promptly to the College, providing a full and detailed response, and submit all documents required by the College or investigator.

JILL: The member must NOT alter any related documents or records. Also, the member should NOT contact or communicate with the patient who filed the sexual abuse or misconduct complaint.

CARLOS: Why shouldn't the member contact the patient?

JILL: Sometimes the College encourages the member and complainant to get together to try and resolve the problem. However, when it comes to sexual abuse or sexual misconduct, having the member contact the patient may result in re-traumatization of the individual. Therefore, any further contact with the patient should be avoided.

CARLOS: Ah ha, okay. That makes sense.

2.16 Member reporting

Mandatory Member Reporting

Report if found guilty by another college of unprofessional conduct

Report if found guilty in another jurisdiction of unprofessional conduct

Report any finding of professional negligence

Report any charges or convictions under Criminal Code

Report to Complaints Director any suspected sexual abuse or misconduct by another member

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Narration

JILL: Several new mandatory reporting provisions are included in the new legislation. The first one is that any regulated member who is found guilty of unprofessional conduct by another college must report this and provide documentation to the College's Registrar.

CARLOS: Related to that, any regulated member who is found guilty of unprofessional conduct in another jurisdiction must report this and provide documentation to the College's Registrar.

JILL: All regulated members must report any findings of professional negligence to their Registrar. They must also report any charges or convictions under the Criminal Code of Canada. The College also has a responsibility to report any criminal convictions to the Solicitor General.

CARLOS: Finally, the HPA now requires all regulated SLPs and audiologists to report any suspected sexual abuse or sexual misconduct of patients by ANY regulated member to the appropriate Complaints Director of that individual's college. SLPs and audiologists, in their professional capacity, MUST report any observed, credible incidents of sexual abuse or sexual misconduct of any regulated health professional, not just other ACSLPA members. Failure to report sexual abuse or sexual misconduct of patients, may result in a finding of unprofessional conduct.

JILL: That is one serious responsibility and legal obligation.

CARLOS: Sure is!

2.17 Other reporting

Other Reporting

Annual Report:

- *number of complaints alleging sexual abuse and sexual misconduct*
- *number of findings of unprofessional conduct related to sexual abuse/misconduct*
- *description of patient relations program and any annual changes*

Narration

JILL: The College is now required to provide additional information in their Annual Report that they submit to the government. The College must now report on the number of complaints alleging sexual abuse and sexual misconduct; the number of findings of unprofessional conduct related to sexual abuse and sexual misconduct; and a description of the College's patient relations program along with any annual changes.

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2.18 Public reporting

Reporting to the Public

College website:

- *decisions made by tribunal, council or court related to sexual abuse/misconduct*
- *decisions must be published indefinitely*
- *if member's practice permit has been cancelled or suspended due to sexual abuse/misconduct*
- *conditions placed on member's practice permit as a result of sexual abuse/misconduct*
- *members may request correction or removal of information that is inaccurate/incomplete*

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Narration

CARLOS: The *Health Professions Act* now requires additional College reporting to the public. For example, the College's website must now have copies of decisions made by a tribunal, council or court related to sexual abuse or sexual misconduct by its regulated members. This information must be available to the public and be posted on the College's website indefinitely.


JILL: If a regulated member's practice permit has been cancelled or suspended due to sexual abuse or sexual misconduct, this information must be included in the Public Registry. Also, if any conditions have been placed on a member's practice permit as a result of sexual abuse or sexual misconduct, this information must also be posted in the Public Registry.

CARLOS: It is important to note that the *HPA* entitles any regulated member to request correction or removal of any of this public information, if they can show their public information is inaccurate or incomplete.

2.19 Patient relations

Patient Relations Program

College must develop patient relations program to prevent and address sexual abuse and sexual misconduct of patients by regulated members.



Narration

JILL: The HPA requires each college to develop and implement a Patient Relations Program to prevent and address sexual abuse and sexual misconduct of patients by regulated members.

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2.20 Patient relations

Patient Relations Program

Patient relations program must include:

- *educational requirements for members*
- *guidelines for conduct by regulated members*
- *training for college's staff, council and hearing tribunal members*
- *information for persons about the college's complaints process*
- *helping persons find appropriate resources or organizations to assist them*

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Narration

CARLOS: The Patient Relations Program must include: educational requirements for regulated members; educational guidelines for the conduct of regulated members towards patients; training requirements for the college's staff, council members and any members selected for hearing tribunals.

JILL: Other measures in the Patient Relations Program include providing information for persons respecting the College's complaints process; and, assistance in directing persons to appropriate resources, professionals and organizations that may be able to assist them.


2.21 Patient fund

Patient Support Fund

College must create a fund to:

- *pay for treatment and counselling*
- *for patients who have been subject to sexual abuse or sexual misconduct by a member*

Funding does NOT constitute a finding of unprofessional conduct and cannot be considered in hearings



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Narration


JILL: Finally, the College must provide funding for the purposes of providing treatment or counselling to patients who have been a victim of sexual abuse or sexual misconduct by a regulated member.

CARLOS: The *Act* states that a decision to provide funding does not constitute a finding of unprofessional conduct against the investigated person and must NOT be considered in any tribunal hearings. In other words, a regulated member does not have to be found guilty of sexual abuse or sexual misconduct before funding can be provided to a patient. The two processes are independent.

JILL: That's good to know. SLPs and audiologists should be aware of the workings of this fund as they are in the best position to inform patients about it.

2.22 Summary

Summary



- Rationale for legislation*
- Definition of patient*
- Sexual abuse / misconduct*
- Complaints process*
- Mandatory reporting*
- Patient relations program*
- Patient support fund*

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Narration

JILL: This brings us to the end of Module 2. Carlos, do you mind doing a short summary of what we covered?

CARLOS: Sure, I would be happy to! We began by explaining the reasons for the legislation amending the *Health Professions Act*. The primary focus was to introduce consistency in definitions and penalties across the regulated health professions in dealing with sexual abuse and sexual misconduct by their regulated members.

Next, we defined who is considered to be a patient of an SLP or audiologist along with some important exclusions related to sexual abuse and misconduct. We described the legal definitions of sexual abuse and sexual misconduct and the penalties that regulated members would face if found guilty of these offenses. The College's complaints process was explained, pointing out several new requirements for tribunal membership and training when the hearings are related to sexual abuse or sexual misconduct.

We discussed some new mandatory reporting requirements for members related to unprofessional conduct, negligence or criminal code offenses. SLPs and audiologists are now required to report any suspected incidents of sexual abuse or sexual misconduct by any regulated health care professional. We concluded our presentation by briefly explaining the newly mandated Patient Relations Program and the Patient Support Fund. Did I miss anything?

JILL: No, that summarizes this module. Thanks for doing that. I'm Jill, here with Carlos, saying goodbye for now. We will see you again soon.

CARLOS: Bye.

2.23 The End



Narration

No narration, only theme music.

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