

Standard Area 5.0

Sexual Abuse, Sexual Misconduct and FGM (DRAFT December 2022)

Introduction

Speech-language pathologists and audiologists provide professional services in a range of settings to a variety of individuals. ACSLPA recognizes that there may be a power imbalance between regulated members and the patients to whom they provide services. In recognition of this, and in accordance with amendments to the *Health Professions Act (HPA)* by way of Bill 21: *An Act to Protect Patients (2018)* and Bill 10: *The Health Professions (Protecting Women and Girls) Amendment Act, 2022*, ACSLPA has developed these Standards of Practice. Every recipient of speech-language pathology and audiology services should feel safe and protected from sexual misconduct and sexual abuse.

Although procuring or providing female genital mutilation (FGM) is a criminal act under the *Criminal Code of Canada* and would be considered unprofessional conduct under many previously existing ACSLPA Standards of Practice, the Government of Alberta has emphasized that this is an unacceptable activity for any health professional to engage in by requiring all health colleges to have specific standards in place addressing FGM.

These standards of practice are intended to ensure professional boundaries are defined and maintained, and to protect patients from sexual abuse and sexual misconduct by speech-language pathologists and audiologists. These standards supplement and build on, but do not replace, existing ACSLPA Standards of Practice, including but not limited to 3.3 Professional Boundaries. They are part of the overall legislative scheme and form a continuum with other documents including the Code of Ethics, Advisory Statements, Position Statements, Guidelines, Protocols, and Competency Profiles.

5.1 Sexual Relationships

Standard

A **regulated member** of ACSLPA abstains from conduct, behaviour or remarks directed towards **patients** that constitutes **sexual abuse** as defined by the *Health Professions Act*.

Indicators

To demonstrate this standard, the regulated member:

- a) must not enter into or have a **sexual relationship** with a patient.
- b) must not threaten or attempt to have a sexual relationship with a patient.

5.2 Sexual Misconduct

Standard

A **regulated member** of ACSLPA abstains from conduct, behaviour or remarks directed towards **patients** that constitutes **sexual misconduct**, as defined by the *Health Professions Act*.

Indicators

To demonstrate this standard, the regulated member:

- a) must not engage in any behaviour, either physical or verbal, with a patient that could reasonably be perceived to be of a **sexual nature**, including:
 - i. making sexually suggestive comments or gestures;
 - ii. requesting details of a patient's sexual history unless relevant to the **health service** that the speech-language pathologist or audiologist is performing; or
 - iii. exploiting or attempting to exploit any real or perceived imbalance of power.
- b) 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, in which case the member must, in advance of the physical contact:
 - i. explain to the patient why contact is clinically necessary;
 - ii. indicate to the patient the nature, purpose and the likely duration of the contact;
 - iii. receive informed consent (from the patient or the patient's parent, agent or guardian) prior to the contact; and
 - iv. ensure that the patient is offered appropriate privacy for the physical contact that occurs.
- c) must not communicate with or solicit a patient for the purpose of entering a **sexual relationship**.
- d) 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 a **former patient** or to communicate with or solicit a patient for the purpose of entering a sexual relationship.

5.3 Managing Professional Boundaries

Standard

A **regulated member** recognizes when professional boundaries may be compromised by feelings, conduct, behaviour or remarks of a **sexual nature**, regardless of who initiates.

Indicators

To demonstrate this standard, the regulated member must manage professional boundaries by:

- a) taking steps to ensure the professional relationship and professional boundaries are maintained, or
- b) where professional boundaries cannot be maintained, terminating the professional relationship and taking steps to transfer care of the patient to another regulated health professional.

The regulated member must document any decisions made and steps taken.

5.4 Sexual Relationships with Former Patients

Standard

A **regulated member** of ACSLPA abstains from conduct, behaviour or remarks directed towards **former patients** that constitutes **sexual abuse** or **sexual misconduct**, as defined by the *Health Professions Act*.

Indicators

To demonstrate this standard, the regulated member does not enter into a **sexual relationship** with a former patient unless:

- a) there is no ongoing power imbalance between the patient and the speech-language pathologist or audiologist arising from the former professional relationship;
- b) sufficient time has passed since the last time **health services** were provided by the speech-language pathologist or audiologist, having regard for the nature and extent of the professional relationship between the speech-language pathologist or audiologist and the patient;
- c) the patient knows and understands that the professional relationship has ended; and
- d) the patient has consented and is capable of providing consent.

5.5 Existing Sexual Relationships

Standard

A **regulated member** of ACSLPA, except 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**.

Indicators

To demonstrate this standard, the regulated member:

- a) will only provide 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, if:
 - i. the member provided the health service to the individual in emergency circumstances or in circumstances where the service is minor² in nature;
 - ii. there is no abuse of a power imbalance arising from the health service being provided, and
 - iii. 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.

5.6 Conduct of a Sexual Nature

Standard

A **regulated member** of ACSLPA abstains from any unwanted or unwelcome behaviour, either physical or verbal, with a **patient's** substitute decision-maker, guardian, or parent that could reasonably be perceived to be of a **sexual nature**.

Indicators

To demonstrate this standard, when engaging with a patient's substitute decision-maker, guardian, or parent the regulated member:

- a) must not make sexually suggestive comments or gestures;
- b) must not exploit or attempt to exploit any real or perceived imbalance of power.

103 5.7 Mandatory Education

104 Standard

105 A **regulated member** of ACSLPA completes mandatory educational requirements prescribed by the Council for
106 preventing and addressing **sexual abuse** and **sexual misconduct**, as defined by the *Health Professions Act*,
107 towards **patients**.

108 5.8 FGM

109 Standard

110 A **regulated member** of ACSLPA shall not **procure** or perform **female genital mutilation** as defined by
111 the *Health Professions Act*.

112 5.9 Mandatory Duty to Report

113 Standard

114 A **regulated member** of ACSLPA, acting in their professional capacity, who has reasonable grounds to believe that
115 the conduct of another regulated member of any college constitutes the **procurement** or performance of **female**
116 **genital mutilation (FGM)** as defined by the *Health Professions Act*, or constitutes **sexual abuse** or **sexual**
117 **misconduct**, as defined by the *Health Professions Act*, has a duty to report that conduct to the complaints director
118 for the applicable college, in accordance with section 127.2(2) of the *Health Professions Act*.

119 Definitions

120 **“female genital mutilation” (or “FGM”)** is defined at s. 1(1) (m.1) of the *Health Professions Act* to mean “the
121 excision, infibulation or mutilation, in whole or in part, of the labia majora, labia minora, clitoral hood or clitoris
122 of a person, except where valid consent is given, and

- 123 (i) a surgical or other procedure is performed by a regulated member of a College under the *Health*
124 *Professions Act* for the benefit of the physical health of the person or for the purpose of that person
125 having normal reproductive functions or normal sexual appearance or function, or
- 126 (ii) the person is at least 18 years of age and there is no resulting bodily harm”.

127 **“former patient”** means a person to whom one of the following apply:

- 128 i. for **episodic care**, no health service has been provided for at least 7 days and there is no
129 expectation of an ongoing professional relationship between the regulated member and the
130 patient,
- 131 ii. the patient and/or regulated member has terminated the professional relationship, the
132 termination has been acknowledged by both parties, and at least 30 days has passed since the
133 termination, or
- 134 iii. if neither of the above apply, there has been no health service provided by the regulated member
135 to the patient for one year (365 days).

136 **“episodic care”** means an isolated, short-duration, and minor health service provided to a patient where
137 there is no expectation of continuing care by the regulated member.

138 **“health service”** means a service provided to people:

- 139 i. to protect, promote or maintain their health,
- 140 ii. to prevent illness,
- 141 iii. to diagnose, treat or rehabilitate, or
- 142 iv. to take care of the health needs of the ill, disabled, injured or dying.

143 **“patient”**, for the purposes of s. 1(1) (x.1) of the *Health Professions Act*, means any individual to whom a
144 **regulated member** provides a **health service** in their capacity as a speech-language pathologist or audiologist,
145 but does not include:

- 146 i. a patient’s substitute decision-maker, legal guardian, or parent, or
- 147 ii. the regulated member’s spouse, adult interdependent partner or other person with whom the
148 regulated member is in an existing sexual relationship if the health service is provided in
149 accordance with these standards.

150 **“procure”** means to obtain or get, to persuade or cause someone to do something, or to bring about by
151 indirect means.

152 **“regulated member”** refers to “an individual who is registered with ACSLPA in any of the regulated categories of
153 membership prescribed by ACSLPA Bylaws, the Health Professions Act and our Regulations.”

154 **“sexual abuse”** is defined at s. 1(1) (nn.1) of the *Health Professions Act* to mean “the threatened, attempted or
155 actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the
156 following conduct:

- 157 (i) sexual intercourse between a regulated member and a patient of that regulated member;
- 158 (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated
159 member and a patient of that regulated member;
- 160 (iii) masturbation of a regulated member by, or in the presence of, a patient of that regulated
161 member;
- 162 (iv) masturbation of a regulated member’s patient by that regulated member;
- 163 (v) encouraging a regulated member’s patient to masturbate in the presence of that regulated

164 member;
165 (vi) touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated
166 member".

167 "**sexual misconduct**" is defined at s. 1(1) (nn.2) of the *Health Professions Act* to mean "any incident or repeated
168 incidents of objectionable or unwelcome conduct, behaviour, or remarks of a sexual nature by a regulated
169 member towards a patient that the regulated member knows or ought reasonably to know will or would cause
170 offence or humiliation to the patient or adversely affect the patient's health and well-being but does not include
171 sexual abuse".

172 "**sexual relationship**" means a relationship involving sexual intimacy, including communications of a sexual
173 nature, and engaging in conduct of a sexual nature, including masturbation, genital to genital, genital to anal,
174 oral to genital, or oral to anal contact and sexual intercourse.

175 "**sexual nature**" as defined at s. 1(1) (nn.3) of the HPA, "does not include any conduct, behaviour or remarks that
176 are appropriate to the professional service being provided". For the purposes of Standard Area 5.0, whether a
177 regulated member's conduct, behaviour or remarks are of a sexual nature must be determined in light of all the
178 circumstances, from the perspective of a reasonable observer. Factors that may be considered include the
179 following:

- 180 a. The nature of the conduct, behaviour or remarks;
- 181 b. The situation in which the conduct, behaviour or remarks occurred;
- 182 c. The patient's perception of what occurred;
- 183 d. The regulated member's intent and purpose;
- 184 e. Whether the regulated member's motive was sexual gratification;
- 185 f. Whether the conduct, behaviour or remark was appropriate to the service provided;
- 186 g. Whether the regulated member was under a misguided or clearly mistaken belief in the necessity of care;
- 187 h. Whether care was taken to respect the privacy and integrity of the patient during the provision of the
188 service (e.g., appropriate draping, presence of another person in the room, if appropriate);
- 189 i. Whether informed consent was provided for the provision of the service;
- 190 j. In the case of touching, whether it was accidental or incidental;
- 191 k. Whether the conduct, behaviour or remark was unrelated to service provision; and
- 192 l. Any other relevant factors.

193 No single factor is determinative. Instead, each of the relevant factors should be considered as part of the
194 analysis to assist in determining whether the sexual nature of the conduct, behaviour or remark is apparent to a
195 reasonable observer.