Alberta College of
Speech-Language Pathologists
and Audiologists

Guideline

Therapeutic Relationships, Professional Boundaries and the Prevention of Sexual Abuse and Sexual Misconduct

March 2019

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Guideline: Therapeutic Relationships, Professional Boundaries and the Prevention of Sexual Abuse and Sexual Misconduct

***Guideline**: Provides guidance to regulated members to support them in the clinical application of Standards of Practice.*

1.0 INTRODUCTION

The Alberta College of Speech-Language Pathologists and Audiologists (ACSLPA) is the regulatory body for the two professions of speech-language pathology and audiology. ACSLPA carries out its activities in accordance with provincial legislation to protect and serve the public by regulating, supporting and ensuring competent, safe, ethical practice of speech-language pathologists and audiologists. Speech-language pathologists and audiologists have been regulated under the *Health Professions Act* (*HPA*) in Alberta since July 1, 2002. The *HPA* directs the activities of ACSLPA and outlines the regulatory responsibilities of the College required to protect and serve the public.

1.1 Background – *HPA* and Bill 21

The government recently introduced changes to the *HPA* with Bill 21, An Act to Protect Patients. This is the most significant change to the *HPA* since the Act came into force. Under the terms of this legislation, regulatory colleges such as ACSLPA are required to implement a series of measures by April 1, 2019, to prevent **sexual abuse**[1] of and/or **sexual misconduct** towards **patients** by **regulated members**.

This Bill requires that ACSLPA:

- develop Standards of Practice related to sexual abuse and sexual misconduct;
- define who is a patient and set rules regarding **sexual relationships** between patients and regulated members;
- provide a program of education and training for regulated members to prevent and address sexual abuse of and/or sexual misconduct towards patients by regulated members;
- develop a Patient Relations Program that provides funding for treatment and counselling of victims of sexual abuse of and/or sexual misconduct towards patients by a regulated member;
- must institute severe penalties including
    - mandatory cancellation of registration and practice permit for any regulated member whose conduct is deemed to be sexual abuse and/or
    - mandatory suspension of registration and practice permit for any regulated member whose actions are deemed to be sexual misconduct;
- post discipline histories of regulated members for sexual abuse of and/or sexual misconduct towards patients on a public-facing website, and
- provide training for staff, hearing tribunals and council members to prevent and address sexual abuse of and sexual misconduct towards patients by regulated members.

[1] Terms defined in the Glossary are bolded the first time they appear in this document.

1.2 Definition of Health Services and Patient

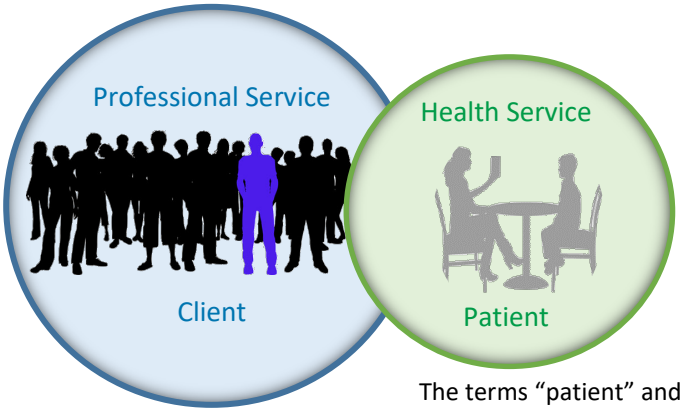
Within the context of the revised *HPA*, two terms require specific definition - **health services** and patient:

- *Health services*, as defined in the *HPA*, refer to the specific services provided by regulated members in their professional roles as speech-language pathologists and audiologists.
- *Patient,* as defined by ACSLPA, is the direct recipient of the health services provided by the regulated member and does not include others such as their parent, guardian or substitute decision-maker.
- Patient does not include the regulated member's **spouse**, **adult interdependent partner** or other person with whom the regulated member is in an existing sexual relationship if the health service is provided in accordance with the Standards of Practice.

ACSLPA foundational documents, including the Standards of Practice, use broader definitions of these terms.

- **Client** refers to "a recipient of speech-language pathology or audiology services, and may be an individual, family, group, community, or population. An individual client may also be referred to as a patient."
- **Professional services** refer to "any service that comes within the practice of a regulated profession; for the professions of speech-language pathology and audiology, these are as outlined in section 3 of Schedule 28 of the *HPA*." The relationship of the four terms can be illustrated conceptually as follows:

The terms "client' and "Professional Service" are broadly defined. The common provisions of the *HPA* and ACSLPA standards apply.



The terms "patient" and "Health Service" apply only to specific activities and individuals. Special mandatory provisions of the *HPA* and ACSLPA standards apply.

It should be noted that throughout this document the more narrowly defined terms of health services and patient are used exclusively in reference to sexual abuse and sexual misconduct. More clarification around the characteristics of the patient can be found in Section 4.2 Who is a Patient, Who is Not?

1.3 Definition of Sexual Abuse and Sexual Misconduct

Sexual abuse, as defined by the *HPA*, "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:

i. sexual intercourse between a regulated member and a patient of that regulated member;
ii. 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;
iii. masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
iv. masturbation of a regulated member's patient by that regulated member;
v. encouraging a regulated member's patient to masturbate in the presence of that regulated member; and
vi. touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated member."[2]

Sexual misconduct, as defined in the *HPA*, "means 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 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."[3]

Sexual abuse of and/or sexual misconduct towards persons other than patients is also deemed inappropriate and may result in the member being investigated for unprofessional conduct.

1.4 About This Guideline

1.4.1 Purpose and overview

The purpose of the ACSLPA *Guideline: Therapeutic Relationships, Professional Boundaries and the Prevention of Sexual Abuse and Sexual Misconduct* is to provide regulated members with information in order to:

- understand professional boundaries and therapeutic relationships,
- understand what constitutes sexual abuse and sexual misconduct,
- understand the issues and potential risks which may arise during the delivery of health services,
- be prepared to avoid and prevent misconduct of this nature,
- prevent sexual abuse of and/or sexual misconduct towards patients, and
- understand the mandatory penalties.

This Guideline begins with an overview of the **therapeutic relationship**, followed by a discussion of **professional boundaries**, as well as **boundary crossing** warning signs and management. This information provides the basis for understanding how seemingly innocent situations may lead to sexual abuse of and/or sexual misconduct towards patients and how this conduct can be avoided. A discussion of sexual abuse and sexual misconduct follows and includes key definitions, implications for members in their practice and useful prevention strategies.

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[2] Minister of Health. (2018*). Bill 21. An Act to Protect Patients*. Retrieved from: http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=021&legl=29&session=4)

[3] Minister of Health. (2018*). Bill 21. An Act to Protect Patients*. Retrieved from: http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=021&legl=29&session=4)

The Guideline concludes with an overview of ACSLPA and regulated members' responsibilities related to sexual abuse and/or sexual misconduct under the *HPA*.

1.4.2 Guiding principles

This Guideline is founded upon the following Guiding Principles:

- ACSLPA believes that the sexual abuse of and/or sexual misconduct towards patients by regulated members is unethical and an abuse of the therapeutic relationship; ***ACSLPA holds a zero-tolerance stance*** towards any abuse or misconduct of this nature by regulated members. Regardless of the patient's conduct and/or consent, it is always the responsibility of the regulated member to maintain professional boundaries and abstain from engaging in sexual abuse and/or sexual misconduct.
- ACSLPA regulated members are expected to be fully informed of the terms and Implications of the *HPA* and the issues related to the avoidance and prevention of sexual abuse and/or sexual misconduct.
- ACSLPA regulated members are accountable for practicing in accordance with the ACSLPA Standards of Practice and Code of Ethics regardless of their role, practice area or practice setting. Breach of the Standards of Practice or Code of Ethics may constitute professional misconduct. ACSLPA Standards of Practice including the Standards on Sexual Abuse and Sexual Misconduct, as well as the Code of Ethics, can be found at acslpa.ca .

2.0 THERAPEUTIC RELATIONSHIP

2.1 What is the Therapeutic Relationship?

The therapeutic relationship is the relationship between a regulated member and a patient. This relationship is different from a personal non-professional relationship, as the regulated member must consider the patient's needs first and foremost. There is an expectation that the regulated member will not use the therapeutic relationship for any personal reasons or benefits.

2.2 What Are the Key Components of the Therapeutic Relationship?

In the therapeutic relationship there are three key components that are important for the regulated member to understand when managing professional boundaries. These include power, trust and respect.

Power: The therapeutic relationship involves an imbalance of power between the regulated member and the patient. This imbalance of power is due to a number of factors:

- The regulated member has greater knowledge, authority and influence in the health system.
- The regulated member has access to personal information about the patient.
- The provision of professional services may involve physical closeness and varying degrees of undress (e.g., bedside evaluations, mother nursing an infant).
- The patient is dependent on the regulated member for the professional services provided.

As a result of the power imbalance, the patient may feel vulnerable and avoid confronting the regulated member for fear that the services they need will be compromised or withheld. It is the responsibility of the regulated member to recognize and take steps to reduce the power imbalance by ensuring the patient feels safe and empowered to be an active participant within the therapeutic relationship.

Trust*:* The therapeutic relationship between the regulated member and the patient is based on trust. The patient must trust that the regulated member has the necessary competence, will act in the

patient's best interest and will do no harm. It is the responsibility of the regulated member to be sensitive to the vulnerability of the patient and take the necessary steps to establish and maintain trust.

Respect: In the therapeutic relationship, the regulated member has the responsibility to acknowledge and respect all patients, regardless of background, gender, sexual orientation, culture and beliefs. The regulated member must also respect and support the autonomy of the patient by obtaining **informed consent** for the professional services provided.

3.0 BOUNDARIES

3.1 What is Meant by Professional Boundaries?

Professional boundaries are the parameters that define a safe therapeutic relationship. These parameters set limits for the relationship based on the recognition of the inherent power imbalance, the vulnerability of the patient and the responsibilities of the regulated member in the therapeutic relationship. Professional boundaries help the regulated member and the patient recognize the difference between therapeutic and personal relationships and avoid potential misunderstanding of words and actions.

3.2 What Are Professional Boundary Crossings?

Boundary crossings are behaviours such as feelings, conduct or remarks that compromise the nature of the therapeutic relationship, regardless of who initiates the interaction.

A number of potential risk factors that may result in boundary crossings by regulated members have been identified including:

- physical and mental health issues, including stress and burnout;
- belief that the rules "don't apply to me" or to the situation at hand;
- lack of knowledge or respect for standards of practice and other professional obligations;
- working in isolation (either as a sole charge practitioner or due to team dysfunction resulting in isolation);
- lack of clinical knowledge/experience or failing to maintain currency of knowledge; and
- workload or other system factors.[4]

A boundary crossing can have a serious impact on the therapeutic relationship such as

- breaking the trust between the regulated member and the patient,
- affecting the regulated member's professional judgement and the services being provided,
- preventing the patient from asking questions and providing voluntary consent, and
- violating professional standards which may result in professional misconduct.

3.3 How Can Clear Professional Boundaries be Established?

It is important that the regulated member set clear boundaries for the therapeutic relationship. There are several simple steps that one can take to establish and maintain professional boundaries:

- Treat all patients with compassion, dignity, sensitivity and respect.
- Introduce yourself by name, protected title and role.
- Use the patient's preferred name or title.
- Adapt communication strategies to facilitate the patient's understanding of proposed services.
- Obtain and document patient's informed consent to proposed health services, ensuring consent is specifically obtained for procedures that could be misinterpreted (e.g., touching and physical closeness).

[4] Pugh D. (2011). A fine line: The role of personal and professional vulnerability in allegations of unprofessional conduct. *Journal of Nursing Law,* 14(1):21-31.

- Avoid comments and behaviours that are not appropriate in a therapeutic relationship (e.g., self-disclosure, sexually suggestive comments/actions or the expression of personal opinions/remarks).
- Avoid practicing outside of professional norms (e.g., outside of typical hours or settings).
- Maintain an environment that protects the privacy and confidentiality of patient information in all contexts of service delivery.
- Maintain accurate records including decisions made and steps taken, to protect both the regulated member and the patient.
- Engage in the process of self-reflection; be responsible and accountable for one's actions at all times.
- Terminate the professional relationship if boundaries cannot be established or maintained, transferring care, as necessary.

3.4 What Are the Warning Signs of Professional Boundary Crossings?

It is the responsibility of the regulated member to frequently assess and manage boundaries in order to maintain the therapeutic relationship. Boundary crossing behaviours may be deliberate and clearly not appropriate, or they may be unplanned and accidental. There are grey areas in the therapeutic relationship where a single comment or action may seem harmless, but when considered with other behaviours could result in a situation where the professional boundary has been compromised or crossed.

It is important to be aware of the warning signs of boundary crossings such as

- selecting patients based on appearance, age, or social status;
- acting defensively, being uncomfortable or making excuses when your relationship with a patient is questioned;
- dressing differently when a particular patient is booked;
- offering treatment or attention to a particular patient that is different from normal practice (e.g., frequently extending appointments beyond the scheduled time, keeping the patient on treatment longer than what is needed, offering appointments in "off" hours, cancelling appointments to fit the patient in, extending credit for payment for services);
- doing something unethical or illegal for a particular patient (e.g., lending money, providing false receipts, checking the hospital records of a relative of the patient);
- exchanging expensive or personal gifts with a particular patient;
- experiencing feelings of attraction to a particular patient that are beyond the therapeutic relationship;
- flirting or responding to personal advances by a patient;
- deliberately meeting socially with a patient;
- sharing excessive personal information with a patient (e.g., personal issues, contact information for non-clinical reasons); and
- assisting a patient with something that is outside of the therapeutic relationship.

3.5 How Can You Determine if Professional Boundaries Have Been Crossed?

Regulated members wondering if they have crossed the line in terms of professional boundaries should consider the following questions:

- Who benefits from my actions?
- Are my actions in the patient's best interest?
- Are my actions something the patient needs in order to achieve the agreed upon treatment plan?
- Do my actions affect the professional services I am delivering?
- Will my actions be potentially confusing for the patient?
- Will my actions change the patient's expectations in any way?
- Are my actions different than what I would do for my other patients?
- Am I comfortable recording my actions in the patient's record?
- How would my colleagues, employer, the College, the funder and family/friends view my actions?
- Could my actions be perceived to be inappropriate in a therapeutic relationship (e.g., violate professional standards, be deemed professional misconduct or break the law)?

3.6 What Should be Done in Situations of Suspected Boundary Crossing?

It is the responsibility of the regulated member to establish, assess and manage the boundaries of a therapeutic relationship. If a boundary crossing is suspected, it is important to take action:

- Reflect on what led to the boundary crossing.
- Consult with colleagues and/or ACSLPA representatives, as required.
- Take necessary steps to re-establish the therapeutic relationship, if possible, or terminate the relationship and transfer care, as necessary.
- Document the actions that lead to the boundary crossing and actions taken to re-establish or terminate the therapeutic relationship.

3.7 What Should be Done When a Patient Crosses Professional Boundaries?

During the delivery of health services, situations can arise when the patient crosses professional boundaries and demonstrates inappropriate behaviour or remarks toward the regulated member. In this case, it is the responsibility of the regulated member to ensure that professional boundaries are established and maintained. The following strategies should be considered to manage boundary crossings and prevent potential allegations of sexual abuse and/or sexual misconduct:

- Identify situations of high potential risk for boundary crossings and sexual abuse and/or sexual misconduct and conscientiously take active measures to maintain professional boundaries.
- Request a co-worker be present if the regulated member has concerns about boundary crossings and/or inappropriate conduct of a sexual nature on the part of the patient.
- If a patient makes sexual advances and/or comments/gestures of a sexual nature, refuse to be engaged; explain the ethical and regulatory responsibilities of the therapeutic relationship and maintaining professional boundaries.
- Think before acting or speaking, and refrain from any comments or actions that could be misinterpreted.
- Document in the patient's chart the dates, the nature of their conduct and remarks and the measures taken to stop their behavior.
- Consult with colleagues and ACSLPA representatives as required.
- If the behavior does not stop, discharge the patient, transfer to another provider and document appropriately.

3.8 What Are Some Examples of Potential Boundary Crossing Situations?

This section describes four common situations that can potentially result in boundary crossings. They provide examples of how actions, which may seem insignificant and/or innocent at the boundary level, could potentially lead to sexual abuse and/or sexual misconduct. Each example poses questions/considerations for the regulated member to reflect on in order to prevent or avoid inappropriate conduct.

3.8.1 Giving and accepting gifts

Generally speaking, giving and accepting gifts are part of a personal relationship rather than a therapeutic relationship. A small gift given as a token of appreciation by a patient may in some cases be acceptable. However, giving or accepting a gift may also suggest that a personal relationship is developing and may cause confusion for the patient. Therefore, it is important to consider the context of the situation.

The following are questions the regulated member may wish to consider when giving and/or receiving gifts:

- What motivated the patient to give me this gift (e.g., a desire for a "special relationship" or preferential treatment, something I disclosed which made the patient feel obligated)?
- Why do I want to give a gift to this patient (e.g., if I am not giving all of my patients a gift, why this one? Are my reasons in the best interest of the patient?)?
- Will accepting this gift affect my clinical decision-making ability with this patient?
- Will accepting this gift create confusion or a misunderstanding where the patient feels the relationship is personal (e.g., friendship or something more)?
- Will giving this gift make the patient feel the need to give me something in return?
- Will the patient's family or others think that the gift from the patient was the result of theft, fraud or manipulation on my part?

3.8.2 Treating relatives/friends

Treating relatives/friends results in an overlap between personal and therapeutic relationships that can make maintaining boundaries a challenge. This type of dual relationship should be avoided for a number of reasons:

- The regulated member may not be able to be objective.
- The regulated member may make some assumptions and be less thorough.
- The patient may not want to answer questions honestly (due to embarrassment or reluctance to share confidential information).
- The patient may not feel that they can refuse to provide consent.
- The regulated member may be placed in a situation of conflict of interest.
- The personal relationship may be affected, especially if the therapeutic relationship is not successful.

In some instances, such as when practicing in a rural setting, it may be difficult to avoid treating relatives/friends as there may not be another provider available. In these instances, the regulated member needs to consider how they can manage professional boundaries to ensure that the services are truly patient-centred and privacy/confidentiality is respected.
In these situations, the regulated member may wish to consider the following questions:

- Do I have the necessary competencies to treat this relative/friend?
- Do I feel right treating this relative/friend? Will they be at ease being treated by me?
- Will I be able to be objective and provide patient-centred care?

- Will I be able to maintain my professional obligations?
- Will I be able to maintain privacy and confidentiality of all information? How will this be done?
- How will differing opinions be managed, if they occur? What if I disagree with the choices made by the patient?
- Are financial arrangements an issue and if so, how will they be managed?
- Is any type of special treatment expected? How will this type of expectation be managed?
- Will I be able to discontinue the services if/when required?

Members must take special note of Section 4.2.3 (What about the regulated member's partner or spouse?) which specifically speaks to treating a spouse, adult interdependent partner or other person such as a friend with whom the member is in an existing sexual relationship.

3.8.3 Social media

The same professional obligations for face-to-face interactions with patients also apply for on-line activities. As a result, the regulated member needs to reflect on how to establish and maintain professional boundaries when using social media for professional and personal purposes.

The following should be considered when using social media:

- Maintain a professional communication style in all electronic communications.
- Establish and maintain separate personal and professional social media pages and email accounts. Keep your personal life private.
- Do not post anything on social media that you would not want to see on the news.
- Do not assume that anything posted on social media is private or that only "friends" can see the content.
- Respect patient privacy and confidentiality. Do not post on social media any information where a patient may be identified.
- Develop a policy for dealing with patient requests for online communication.

3.8.4 Personal space and physical contact/touching

Many patients, due to factors such as culture, background and/or individual preferences, are uncomfortable when others come too close and invade their **personal space**. Personal space is the invisible area surrounding an individual, where if another person comes in close proximity, the individual can feel uncomfortable, threatened or exposed. Regulated members, during the delivery of health services, must approach patients cautiously and with sensitivity, recognizing that one's tolerance for closeness is highly individual. Physical proximity and actions such as an innocent comforting hug or pat on the knee of encouragement could be misinterpreted by patients and lead to accusations of sexual abuse or sexual misconduct. The following considerations are useful to help guide the regulated member's actions. Above all, it is essential that the patient is fully informed and has provided consent to all aspects of the health services delivered by the regulated member.

Although physical contact/touch is a requirement of many therapeutic procedures, it may be misunderstood by the patient. Some examples of physical contact/touching commonly used by speech-language pathologists and audiologists, which could be misinterpreted include:

- tactile facial prompts provided as part of phonological therapy,
- abdominal and/or chest touch during breathing exercises,
- close physical proximity and facial/head contact as part of an audiologic assessment or hearing aid fitting, and
- contact with the neck and face during feeding and swallowing interventions.

The regulated member needs to ensure that the patient understands the intent and nature of the touch and consents to the physical contact throughout the delivery of health services. The following provides some considerations for respectful physical contact with patients:

- Recognize that physical contact is context specific (e.g., consent for treatment does not necessarily include consent for physical contact such as hugging).
- Recognize how culture and past experience can affect the patient's attitude about physical contact.
- Always explain the reason and nature of the physical contact and ask for consent prior to touching a patient.
- Reassure and check regularly with the patient throughout the treatment to ensure that they understand and continue to consent.
- Recognize that the patient has the right to change their mind at any time about consenting to treatment, including physical contact.
- Use gloves as required for infection control and to reduce intimacy.
- Use appropriate draping to respect patient dignity at all times.
- Avoid unnecessary physical contact and use physical barriers (e.g., pillows or draping) to prevent contact with other body parts.

4.0 SEXUAL ABUSE AND SEXUAL MISCONDUCT

Sexual abuse of and/or sexual misconduct towards patients by regulated members is considered unprofessional conduct. It can destroy patient confidence and well-being, and can erode the public's trust of speech-language pathologists and audiologists. It involves an abuse of power on the part of the regulated member resulting in blurring of professional judgment and objectivity, essential to the delivery of patient-centred services. In most cases, sexual abuse and/or sexual misconduct are the result of failing to maintain professional boundaries and not heeding the warning signs of potential boundary crossings.

ACSLPA holds a zero-tolerance stance towards any regulated member who engages in sexual abuse of and/or sexual misconduct towards patients. ACSLPA regulated members are to abstain from conduct, behaviour or remarks directed towards patients that constitute sexual abuse and/or sexual misconduct. Regulated members should not enter into sexual relationships with patients. Regulated members need to be cognizant of the circumstances and/or issues that can lead to, or be misinterpreted, as sexual abuse and/or sexual misconduct. The consequences to the regulated member resulting from a complaint of sexual abuse and/or sexual misconduct are mandatory and severe and include cancellation or suspension of the registration and practice permit.

4.1 What Is Sexual Abuse and Sexual Misconduct?

The definitions of sexual abuse and sexual misconduct, according to the *HPA*, have been outlined previously in Section 1.3 Definition of Sexual Abuse and Sexual Misconduct. However, what does this conduct mean to the practice of regulated members?

Sexual abuse applies to a variety of actions that include, not only actual physical touching or intimate behaviour, but also any threats or attempts of a sexual nature.

It involves:

- the conduct of sexual intercourse or similar activities of an intimate, sexual nature between the patient and the regulated member;
- genital exposure, intimate touching and or/masturbation of the patient by the regulated member; and
- touching the patient by the regulated member around the genital area, breasts, buttocks or other body areas that could reasonably be perceived to be of a sexual nature (for complete definition see Section 6.0 Glossary).

Sexual misconduct covers a broad spectrum of activities. It is characterized by behaviour or remarks of a sexual nature towards a patient that are unwelcome, unwanted and inappropriate, and that the regulated member ought reasonably to know will offend, humiliate or have an impact on the patient's well-being. Sexual misconduct does not include sexual abuse. Some examples of sexual misconduct can include:

- sexually suggestive comments or gestures,
- inappropriately touching or hugging a patient,
- commenting inappropriately on a patient's appearance,
- requesting details of a patient's sexual history that is not relevant for the health service provided by the speech-language pathologist or audiologist, and/or
- exploiting any real or perceived imbalance of power in a manner that is sexual in nature.

It is the regulated member's responsibility to closely monitor their interactions with patients to ensure that behaviour and comments are always professional and appropriate to the therapeutic relationship. Regardless of a patient's sexual advances and/or consent, it remains inappropriate for a regulated member to engage in a sexual relationship with a patient**.**

It should be noted that any touching, conduct, behaviour or remarks of a sexual nature that are appropriate to the professional services being provided, is not considered sexual abuse or sexual misconduct.

4.2 Who Is a Patient, Who Is Not?

4.2.1 Who is a patient?

Within the context of the *HPA*, ACSLPA's definition of a patient refers specifically to the individual receiving health services from a regulated member. It does not include the patient's parent, legal guardian, substitute decision-maker, or any other person associated with that individual.

4.2.2 What about the patient's parent, guardian, substitute decision-maker?

In addition to refraining from sexual abuse/sexual misconduct with patients, regulated members should avoid any actions of a sexual nature, physical or verbal, with a patient's parent, guardian or substitute decision-maker. Unwelcome sexual comments or gestures to individuals associated with a patient are inappropriate and can destroy the trust of the therapeutic relationship. Intimate relationships with these individuals create a conflict of interest situation, obscure the regulated member's objectivity and judgement in relation to their patient, and may result in a finding of unprofessional conduct.

4.2.3 What about the regulated member's partner or spouse?

ACSLPA's Standards of Practice state that regulated members must abstain from providing health services to their spouse, adult independent partner or other person with whom the regulated member is in an existing sexual or **adult independent partner relationship**. In other words, a regulated member's partner or spouse cannot be their patient. Romantic liaisons can

disrupt the trust and inherent power imbalance of the therapeutic relationship and influence the regulated member's objectivity and judgment in terms of the patient's best interests and needs.

Only under very specific circumstances is it permissible for regulated members to provide health services to an individual with whom they are in a sexual relationship. These situations include:

- in an **emergency**, and/or
- when the health services provided are **minor in nature**.

If additional health services are required beyond these two particular situations, the regulated member must make every effort to transfer the individual to another appropriate provider as soon as possible.

4.3 When Is a Patient no Longer a Patient?

Regulated members should use judgement, caution and reflection before considering a romantic relationship with a **former patient**. A former patient means "a person to whom one of the following applies:

- If the person was seen for **episodic care**, no health service has been provided for at least seven days and there is no expectation of an ongoing professional relationship between the regulated member and the patient;
- If the patient and/or regulated member has terminated the professional relationship, the termination has been acknowledged by both parties, and at least 30 days has passed since the termination, or
- If neither of the above apply, there has been no health service provided by the regulated member to the patient for at least one year (365 days)."[5]

The following list of considerations may help regulated members make wise and prudent decisions regarding former patients:

- As per the definition of former patient, a sufficient period of time should have elapsed since the last health services were provided by the regulated member.
- There is no ongoing power imbalance between the patient and the regulated member arising from the former professional relationship.
- There is evidence that the patient is capable of knowing and understanding that the professional therapeutic relationship has ended.
- The patient has consented and is capable of providing consent.
- The length of time the regulated member provided services to the patient i.e., the greater the time period, the higher the chance of a developed dependency.
- The nature of the patient's health issue, their degree of vulnerability and the extent to which issues of a personal nature were discussed.
- Should speech-language pathology/audiology services be required sometime in the future, the individual should be transferred to another appropriate provider.

Regulated members contemplating a sexual relationship with a former patient should take all of these factors into consideration. If there is any uncertainty around whether it is appropriate to enter into a romantic relationship with a former patient, advice should be sought from sources such as colleagues and ACSLPA representatives. In the end, it may never be appropriate to have a sexual relationship with a former patient; even if the provider/patient relationship has officially ended, this conduct could eventually be considered as sexual abuse or sexual misconduct.

[5] ACSLPA. (2019). *Standard Area 5.0 Sexual Abuse and Sexual Misconduct*. Retrieved from: acslpa.ca

Similarly, if the regulated member is considering a sexual relationship with the parent, guardian or substitute decision-maker of a former patient, the same process of reflection should be followed. It may never be appropriate to have a romantic liaison with a person closely associated with a former patient as this conduct could be considered unprofessional conduct.

4.4. What Are Some Useful Strategies to Avoid and Prevent Sexual Abuse and Sexual Misconduct?

Professional boundary crossings usually occur prior to situations of sexual abuse and/or sexual misconduct. It is therefore essential that clear boundaries with patients be established and maintained.

In addition to the information already provided in Section 3.0 Boundaries, the following may be useful considerations to prevent and/or avoid potential situations of sexual abuse and/or sexual misconduct:

- Consider the context of the situation and think before acting or speaking. If in doubt, refrain from any comments or actions that could be misinterpreted.
- Be constantly aware that there are no excuses for inappropriate behaviour of a sexual nature; ignorance, lack of understanding or intention will not absolve the regulated member from allegations of sexual abuse and/or sexual misconduct.
- Identify situations of high potential risk for sexual abuse and/or sexual misconduct and take active measures to maintain professional boundaries.
- Request the patient have someone accompanying them if either the patient or the regulated member has concerns of possible sexual abuse/sexual misconduct allegations.
- Request a co-worker be present if the regulated member has concerns about safety, and/or inappropriate conduct including that of a sexual nature on the part of the patient.
- Provide the patient with a complete explanation of the procedures to be carried out.
- Exercise additional care to ensure that informed consent is obtained and documented for procedures that patients could misinterpret as sexual in nature such as touching and physical closeness.
- Abstain from making sexual advances or demonstrating conduct of a sexual nature with patients such as offensive jokes, comments or gestures.
- If a patient makes sexual advances or comments/gestures of a sexual nature, refuse to be engaged; explain the ethical and regulatory responsibilities of the therapeutic relationship sensitively.
- Terminate the therapeutic relationship if appropriate professional boundaries cannot be established or maintained and risks of sexual abuse and/or sexual misconduct are increased, transferring the patient's care to another provider if necessary.
- Maintain complete records to document items such as patient's consent, refusal, concerns and reactions; accurate record keeping may prove to be important evidence should there be future claims of sexual abuse and/or sexual misconduct.
- Seek advice from colleagues and/or ACSLPA representatives as required in potential situations of sexual abuse/sexual misconduct.

4.5 What Is Mandatory Duty to Report?

Under the *HPA*, regulated members of ACSLPA must adhere to the following reporting requirements:

- ***Self-reporting***
    - Regulated members of ACSLPA, who have membership in more than one regulatory college, must self-report findings of unprofessional conduct made in one regulatory college, to the other colleges in which they are a member, including colleges of a similar profession in other jurisdictions (e.g., other provinces or territories).

- Regulated members must also report to the Registrar of ACSLPA, any findings of professional negligence or offenses they have been charged with under the Criminal Code of Canada.

- ***Reporting of regulated members***
  - Regulated members of ACSLPA, in the course of serving in their capacity as speech-language pathologists and audiologists, must report the unprofessional conduct of other regulated members (regulated members of ACSLPA and other regulatory colleges) whom they have **reasonable grounds** to believe have demonstrated unprofessional conduct in relation to sexual abuse or sexual misconduct.
  - The report must be made to the complaints director of the appropriate regulatory college.
- ***Reporting by an employer***
  - An employer, who terminates or suspends the employment of a regulated member due to unprofessional conduct, must report this occurrence to the complaints director of ACSLPA. The employer must also report if the regulated member resigns due to this unprofessional conduct.
  - In situations where an employer has reasonable grounds to believe that a regulated member's behaviour includes sexual abuse of and/or sexual misconduct towards a patient, the employer must file a complaint regardless of whether the regulated member has been suspended or terminated.

In addition, as per section 80(2) of the *HPA*, if a hearing tribunal is of the opinion that there are reasonable and probable grounds to believe that an investigated person has committed a criminal offence, a copy of the written decision under section 83 must also be sent to the Minister of Justice and Solicitor General.

If a regulated member has been told in confidence by a friend/colleague that they have been the victim of boundary crossings, sexual abuse and/or sexual misconduct by a member of a regulatory college, the regulated member should:

- discuss how the *HPA* is attempting to address and prevent this conduct,
- try to encourage the friend/colleague to make a report to the appropriate regulatory college and/or appropriate authorities,
- help the friend/colleague access resources as appropriate and able, and
- contact ACSLPA representatives to discuss the regulated member's responsibilities related to mandatory duty to report in this situation.

4.6 What Are the Consequences of Sexual Abuse and Sexual Misconduct?

According to the *HPA*, in the event of sexual abuse of or sexual misconduct towards a patient, ACSLPA *must* impose the penalties outlined below:

- A regulated member, whose conduct is deemed to be sexual abuse of a patient, will have their registration and practice permit cancelled with no ability to reapply or to be reinstated. Their name and discipline history will be available to the public and posted on the ACSLPA website indefinitely. Fines and other penalties could also be imposed.
- A regulated member, whose conduct is deemed to be sexual misconduct towards a patient, will have their practice permit suspended. They may also have their practice permit cancelled, in which case, they will be banned from applying for reinstatement for at least five years. Other fines and penalties could also be imposed.
- A regulated member may have their practice permit suspended for the duration of an investigation if it is in the public interest to do so.

5.0 RESPONSIBILITIES UNDER THE *HPA*

5.1 ACSLPA Responsibilities

Under the terms of the *HPA*, ACSLPA is required to have the following measures in place:

- ***A Complaints Process***
  Patients who feel they have been the subject of sexual abuse or sexual misconduct are encouraged to make a complaint with the ACSLPA Complaints Director. More information related to the processes for dealing with concerns and complaints can be found at acslpa.ca
- ***A Patient Relations Program*** which includes
  - education for regulated members to prevent and address sexual abuse of and sexual misconduct towards patients;
  - funding for treatment and counselling of patients who make a complaint of sexual abuse and/or sexual misconduct by regulated members;
  - education and training for ACSLPA staff, council and hearing tribunal members on sexual abuse and/or sexual misconduct to deal sensitively and knowledgably with patients and regulated members; and
  - public education on what can be expected from regulated members related to sexual abuse and sexual misconduct and how, if required, to register a complaint.
- ***A Public Facing Register***
  ACSLPA is required to post the discipline history of any regulated member who has been disciplined for sexual abuse or sexual misconduct on a web page that is fully accessible to the public.

5.2 Regulated Member Responsibilities

Under the terms of the *HPA*, regulated members are required to

- be aware and up to date, at all times, on the terms of the *HPA* and the impact of this legislation on their practice;
- complete mandatory educational requirements prescribed by the council for preventing and addressing sexual abuse of and sexual misconduct towards patients;
- practice in compliance with the *HPA*, ACSLPA Standards of Practice and Code of Ethics to prevent sexual abuse of and sexual misconduct towards patients;
- understand how boundary crossings can jeopardize the therapeutic relationship and may lead to allegations of sexual abuse and/or sexual misconduct; and
- prevent sexual abuse of and/or sexual misconduct towards patients during all aspects of health services delivery.

6.0 GLOSSARY

Adult interdependent partner is defined as "a person is the adult interdependent partner of another person if:

(a) the person has lived with the other person in a relationship of interdependence

(i) for a continuous period of not less than 3 years, or

(ii) of some permanence, if there is a child of the relationship by birth or adoption, or

(b) the person has entered into an adult interdependent partner agreement with another person."[6]

Adult interdependent partner relationship is "a relationship outside of marriage in which two people: share one another's lives; are emotionally committed to one another; and, function as an economic and domestic unit. A person who is a spouse cannot be part of an adult interdependent relationship."[7]

Boundary crossings are behaviours that compromise the nature of the therapeutic relationship.

Client refers to "a recipient of speech-language pathology or audiology services, and may be an individual, family, group, community or population. An individual client may also be referred to as a patient".

Emergency - An emergency is considered to exist when an individual is experiencing severe suffering or is at risk of sustaining serious bodily harm if intervention is not promptly provided. It is rare that the services provided by ACSLPA registered members would qualify as emergency services. Examples could include swallowing concerns or concerns related to potential sudden sensorineural hearing loss.

Episodic care means "an isolated, short-duration, and minor health service provided to a patient where there is no expectation of continuing care by the regulated member."[8]

Former patient means "a person to whom one of the following apply:

i. for episodic care, no health service has been provided for at least 7 days and there is no expectation of an ongoing professional relationship between the regulated member and the patient,
ii. the patient and/or regulated member has terminated the professional relationship, the termination has been acknowledged by both parties, and at least 30 days has passed since the termination, or
iii. if neither of the above apply, there has been no health service provided by the regulated member to the patient for one year (365 days)."[9]

Health service(s) "means a service provided to people:

i. to protect, promote or maintain their health,
ii. to prevent illness,
iii. to diagnose, treat or rehabilitate, or
iv. to take care of the health needs of the ill, disabled, injured or dying."[10]

Informed consent refers to the situation when "a client gives consent to receive a proposed service following a process of decision-making leading to an informed choice. Valid consent may be either

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[6] Alberta Queen's Printer. (2014). *Adult Interdependent Relationships Act*. Retrieved from: http://www.qp.alberta.ca/documents/Acts/A04P5.pdf

[7] Alberta Queen's Printer. (2014). *Adult Interdependent Relationships Act*. Retrieved from: http://www.qp.alberta.ca/documents/Acts/A04P5.pdf

[8] ACSLPA. (2019). *Standard Area 5.0 Sexual Abuse and Sexual Misconduct*. Retrieved from: acslpa.ca

[9] ACSLPA. (2019). *Standard Area 5.0 Sexual Abuse and Sexual Misconduct*. Retrieved from: acslpa.ca

[10] Alberta Queen's Printer. (2018). *Health Profession's Act*. Retrieved from: http://www.qp.alberta.ca/documents/Acts/h07.pdf

verbal or written unless otherwise required by institutional or provincial/territorial regulation. The client is provided with sufficient information, including the benefits and risks, and the possible alternatives to the proposed service, and the client understands this information. The client can withdraw informed consent at any time."[11]

Minor in nature - Health services that are minor would be considered non-urgent and non-specific in nature. As it relates to speech-language pathology and audiology, minor services would involve suggesting commonly used strategies that could be applied to any individual with a similar presentation. This would be in contrast to individualized, specific assessment and intervention. Minor services would also include situations where speech-language pathologists and audiologists are following through on recommendations for home practice in relation to speech, language, or hearing interventions where another SLP or audiologist is responsible for the care provided.

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

1. a patient's substitute decision-maker, legal guardian, or parent, or
2. the regulated member's spouse, adult interdependent partner or other person with whom the regulated member is in an existing sexual relationship if the health service is provided in accordance with these standards.

Personal space refers to "the physical space surrounding us that encompasses the area that we feel safe, and where any threat to that personal space would make us feel uncomfortable."[12]

Professional boundaries refer to "the limitations around relationships between clients and health care providers to ensure the delivery of safe, ethical client-centered care. Professional boundaries are characterized by respectful, trusting, and ethical interactions with clients that are free of abuse, sexual and/or romantic encounters, racism, and/or discrimination."

Professional services refer to "any service that comes within the practice of a regulated profession; for the professions of speech-language pathology and audiology, these are as outlined in section 3 of Schedule 28 of the *Health Professions Act*."

Reasonable grounds refer to a sufficient amount of evidence that is credible and concrete obtained from a reliable source.

Regulated member(s) refers to "an individual who is registered with ACSLPA in any of the regulated categories of membership prescribed by ACSLPA Bylaws, the *Health Professions Act* and our Regulations."

[11] ACSLPA. (2015). *Standards of Practice*. Retrieved from: acslpa.ca

[12] Gonzalez, K. (2019). *Personal Space in Psychology: Definitions, Cultural Differences & Issues*. Retrieved from: https://study.com/academy/lesson/personal-space-in-psychology-definition-cultural-differences-issues.html

Sexual abuse is defined at s. 1(1) (nn.1) of the HPA to mean "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:

i. sexual intercourse between a regulated member and a patient of that regulated member;
ii. 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;
iii. masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
iv. masturbation of a regulated member's patient by that regulated member;
v. encouraging a regulated member's patient to masturbate in the presence of that regulated member;
vi. touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated member."

Sexual misconduct is defined at s. 1(1) (nn.2) of the HPA to mean "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 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."

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

1. The nature of the conduct, behaviour or remarks;
2. The situation in which the conduct, behaviour or remarks occurred;
3. The patient's perception of what occurred;
4. The regulated member's intent and purpose;
5. Whether the regulated member's motive was sexual gratification;
6. Whether the conduct, behaviour or remark was appropriate to the service provided;
7. Whether the regulated member was under a misguided or clearly mistaken belief in the necessity of care;
8. Whether care was taken to respect the privacy and integrity of the patient during the provision of the service (e.g., appropriate draping, presence of another person in the room, if appropriate);
9. Whether informed consent was provided for the provision of the service;
10. In the case of touching, whether it was accidental or incidental;
11. Whether the conduct, behaviour or remark was unrelated to service provision; and
12. Any other relevant factors.

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

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

Spouse refers to "a person who is legally married."[13]

Therapeutic relationship refers to the relationship between a regulated member and a patient. This relationship is different from a personal non-professional relationship as the regulated member must consider the patient's needs first and foremost. There is an expectation that the regulated member will not use the relationship for any personal reasons or benefits.

[13] Alberta Queen's Printer. (2014). *Adult Interdependent Relationships Act.* Retrieved from: http://www.qp.alberta.ca/documents/Acts/A04P5.pdf

7.0 RESOURCES

Alberta College of Speech-Language Pathologists and Audiologists. (2017). *Code of Ethics*. Retrieved from: acslpa.ca.

Alberta College of Speech-Language Pathologists and Audiologists. (2019). *Standard Area 5.0 Sexual Abuse and Sexual Misconduct*. Retrieved from: acslpa.ca.

Alberta College of Speech-Language Pathologists. (2015). *Standards of Practice*. Retrieved from: acslpa.ca.

College of Audiologists and Speech-Language Pathologists of Ontario. (2014). *Position Statement Professional Relationships and Boundaries.* Retrieved from: http://www.caslpo.com/sites/default/uploads/files/PS_EN_Professional_Relationships_and_Boundaries.pdf

College of Dietitians of Ontario. (2017). *Boundary Guidelines*. Retrieved from: https://www.collegeofdietitians.org/resources/standards/boundaryguidelinesfinal-website-version.aspx

College of Nurses of Ontario. (2006). *Therapeutic Nurse-Client Relationship Learning Module*. Retrieved from: http://www.cno.org/en/learn-about-standards-guidelines/educational-tools/learning-modules/therapeutic-nurse-client-relationship/#title2

College of Occupational Therapists of Ontario. (2018). *PREP (Prescribed Regulatory Education Program) Module – Professional Boundaries and the Prevention of Sexual Abuse*. Retrieved from: https://www.coto.org/docs/default-source/prep-modules/prep-module---professional-boundaries-and-the-prevention-of-sexual-abuse-2018.pdf?sfvrsn=abc9d26f_2

College of Physical Therapists of British Columbia. (2015). *Where's the Line: Professional Boundaries in a Therapeutic Relationship***.** Retrieved from: https://cptbc.org/wp-content/uploads/2015/03/CPTBC-Wheres-the-Line_2015.pdf

Minister of Health. (2018). *Bill 21. An Act to Protect Patients*. Retrieved from: http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=021&legl=29&session=4

Physiotherapy Alberta College and Association. (2017). *Therapeutic Relationships Resource Guide for Alberta Physiotherapists*. Retrieved from: https://www.cpta.ab.ca/for-physiotherapists/resources/guides-and-guidelines/therapeutic-relationships-guide/

For more information related to issues of sexual abuse and/or sexual misconduct contact:
Alberta College of Speech-Language Pathologists and Audiologists (ACSLPA)
#620, 4445 Calgary Trail NW, Edmonton, AB T6H 5R7
PH: 780-944-1609 /TF: 1-800-537-0589 / Contact ACSLPA: acslpa.ca

8.0 SCHEDULE 1 EXAMPLES OF POTENTIAL SEXUAL ABUSE AND SEXUAL MISCONDUCT SITUATIONS

This companion to the ACSLPA Guideline: Therapeutic Relationships, Professional Boundaries and the Prevention of Sexual Abuse and Sexual Misconduct can be found in a separate document.