

April 2019; Revised April 2023

## Standard Area 5.0

### Sexual Abuse, Sexual Misconduct and Female Genital Mutilation (FGM)



#### 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.



## Glossary

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

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

**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)”.

**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”.

**health service** 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”.

**patient**, for the purposes of s. 1(1) (x.1) of the *HPA*, 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:

- i. a patient’s substitute decision-maker, legal guardian, or parent, or
- ii. 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”.

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

**regulated member** refers to “an individual who is registered with ACSLPA in any of the regulated categories of membership prescribed in Regulation and in the ACSLPA Bylaws”.

## Glossary (continued)

**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 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.

**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:

- a. The nature of the conduct, behaviour or remarks;
- b. The situation in which the conduct, behaviour or remarks occurred;
- c. The patient’s perception of what occurred;
- d. The regulated member’s intent and purpose;
- e. Whether the regulated member’s motive was sexual gratification;
- f. Whether the conduct, behaviour or remark was appropriate to the service provided;
- g. Whether the regulated member was under a misguided or clearly mistaken belief in the necessity of care;
- h. 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);
- i. Whether informed consent was provided for the provision of the service;
- j. In the case of touching, whether it was accidental or incidental;
- k. Whether the conduct, behaviour or remark was unrelated to service provision; and
- l. 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.