Standard of Practice Regarding Sexual Misconduct and Sexual Abuse[1]

(Effective January 8, 2025)

1.0 Preamble

The Nova Scotia Regulator of Dentistry and Dental Assisting (NSRDDA) is the organization which oversees the practices of dentistry and dental assisting in the province. The role[2] of the NSRDDA, with respect to the practices of dentistry and dental assisting, is to:

- protect the public from harm;
- serve and promote the public interest;
- preserve the integrity of the professions of dentistry and dental assisting, subject to the public interest; and
- maintain the public confidence in the ability of the PDBNS to regulate dentistry and dental assisting.

The NSRDDA *Standard of Practice Regarding Sexual Misconduct and Sexual Abuse* (the "Standard"):

- establishes the NSRDDA's' standards regarding sexual misconduct and sexual abuse;
- defines the types of conduct that constitute sexual misconduct and sexual abuse;
- defines various relationships including patient[3], former patient, and vulnerable former patient;
- provides guidance to registrants[4] to assist them in complying with the standard, and
- is congruent with the standards regarding sexual misconduct and sexual abuse adopted by the other Nova Scotia oral health regulatory bodies.

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[1] This document was developed and enacted in accordance with Section 10 of the *Regulated Health Professions General Regulations* and meets the minimum requirements set out by the Nova Scotia Regulated Health Professions Network and the Department of Health and Wellness; approved by PDBNS Board 2025-01-03 and rebranded to NSRDDA 2024-04-22.

[2] In accordance with Section 6 of the *Regulated Health Professions Act (RHPA)*

[3] Throughout this document, the term "patient" is interchangeable with the term "client" as presented in the *Regulated Health Professions Act (RHPA)* and the *Regulated Health Professions General Regulations*.

[4] In the context of PDBNS documents, the term "registrants" refers to dentists and dental assistants.

2.0 Definitions

2.1 **Sexual misconduct** is any actual, threatened, or attempted sexualized behavior or remarks by a registrant:

- towards a patient or a former vulnerable patient, or
- in the presence of a patient or a former vulnerable patient,

including but not limited to, the following acts or omissions by the registrant:

2.1.1 making sexually suggestive, flirtatious, or demeaning comments about a patient's body, clothing, or sexual history, orientation or preferences;

2.1.2 discussing the registrant's sexual history, sexual preferences, or sexual fantasies with a patient;

2.1.3 any behaviour, communication, gestures, or expressions that could be reasonably interpreted by the patient as sexual;

2.1.4 rubbing against a patient for sexual gratification;

2.1.5 removing the patient's clothing, gown, or draping[5] without consent or emergent medical necessity;

2.1.6 failing to provide privacy while the patient is undressing or dressing, except as may be necessary in emergency situations;

2.1.7 dressing or undressing in the presence of a patient;

2.1.8 posing, photographing, or filming the body or any body part of a patient for the purpose of sexual gratification;

2.1.9 showing a patient sexually explicit materials;

2.1.10 requesting or making advances to date a patient or have a sexual relationship with a patient, whether in person, through written or electronic means;

2.1.11 hugging, touching or kissing a patient in a sexual manner;

2.1.12 fondling or caressing a patient;

[5] "Draping" does not include a "bib" or "napkin" as customarily placed over a patient's regular clothing in a dental setting.

2.1.13 terminating the professional-patient relationship for the purpose of dating or pursuing a romantic or sexual relationship; or

2.1.14 sexual abuse.

2.2 No conduct constitutes sexual misconduct if the conduct is clinically appropriate to the professional services being provided by the registrant.

2.3 **Sexual misconduct** constitutes professional misconduct[6].

2.4 **Sexual abuse** is a form of sexual misconduct. The following acts between a registrant and a patient constitute sexual abuse:

2.4.1 sexual intercourse;
2.4.2 genital to genital, genital to anal, oral to genital, or oral to anal contact;
2.4.3 masturbation of a registrant by a patient or in the patient's presence;
2.4.4 masturbation of a patient by a registrant;
2.4.5 encouraging the patient to masturbate in the registrant's presence; or
2.4.6 sexualized touching of a patient's genitals, anus, breasts, or buttocks.

2.5 **Sexualized conduct**[7] refers to conduct including threatened, attempted or actual conduct, behaviour or words of a registrant, with a sexual connotation, character or quality.

2.6 **A patient is**:

2.6.1 an individual who is the recipient or intended recipient of health care services from a registrant;

2.6.2 a substitute decision-maker for the recipient or the intended recipient of health care services (where the context requires); or

2.6.3 a vulnerable former patient.

[6] "Professional misconduct" is as defined in Section 2 of the *Regulated Health Professions Act (RHPA)*.

[7] This is referenced in Articles 3.3 and 3.4.

2.7 **Exemption for Spouses and Intimate Partners**

2.7.1 Registrants are permitted to treat their spouses or intimate partners as dental patients while continuing consensual sexual relations within a spousal or intimate partner relationship.

2.7.2 Conduct, behaviour or remarks of a sexual nature would not constitute sexual misconduct or sexual abuse of a patient if the patient is the registrant's spouse or intimate partner and the registrant is not engaged in the practice of dentistry or dental assisting at the time that the conduct, behaviour or remarks occur.

2.7.3 For the purposes of this standard, the definition of "spouse" means two persons who:

- are married to each other, or
- have cohabitated in a conjugal relationship[8] with each other continuously for at least two years.

2.7.4 For the purposes of this standard, the definition of "intimate partner" is a person with whom one has been in a conjugal relationship for at least six months, regardless of whether or not they cohabitate.

2.7.5 The exemption for spouses and intimate partners does not provide blanket protection for a registrant from findings of professional misconduct for abuse of a patient if the spouse or intimate partner was subjected to abusive behaviour.

2.8 **Former Patient**: A person ceases to be a current patient and becomes a "former patient" when:

2.8.1 a dentist has actively terminated the dentist-patient relationship in accordance with the *PDBNS Guidelines for Ending the Dentist Patient Relationship* six months prior; or

[8] A "conjugal relationship" is defined by the Government of Canada as "one of some permanence, where individuals are financially, socially, emotionally and physically interdependent, where they share household and related responsibilities, and where they have made a serious commitment to one another. Conjugal does not mean "sexual relations" alone. It indicates that there is a significant degree of attachment and mutual commitment between two partners."

2.8.2 in a setting where ongoing periodic care[9] is provided, a patient has formally indicated[10] that they have transferred to another provider/setting six months prior; or

2.8.3 if there has been no formal termination of the professional-patient relationship, twenty-four months have passed, and no appointment has been booked.

2.9 **Vulnerable Former Patient**

2.9.1 A "vulnerable former patient" is a patient who is no longer a current patient, but who requires particular protection from sexual misconduct for reasons of ongoing vulnerability. For some former patients, their degree of vulnerability is such they always will be considered vulnerable former patients. For other former patients, their degree of vulnerability will lessen with the passage of time following the termination of the professional-patient relationship.

2.9.2 When determining whether a former patient is a vulnerable former patient, consideration should be given to:

2.9.2.1 the length and intensity of the former professional relationship;

2.9.2.2 the nature of the former patient's medical and social history;

2.9.2.3 the extent to which the former patient has confided personal or private information to the registrant;

2.9.2.4 the vulnerability the former patient had in the professional-patient relationship; and

2.9.2.5 such other factors relevant to the particular circumstances.

2.9.3 Generally, the lengthier the former professional-patient relationship and the greater the dependency, the more likely the person will be found to be a vulnerable former patient by those adjudicating an allegation of sexual misconduct.

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[9] "Ongoing periodic care" refers to the situation in a typical dental practice wherein there are patients who return periodically for routine care (e.g., recall examinations).

[10] This would typically be indicated by a written request by the patient for the transfer of their records to another provider or clinic.

2.9.4 Where the application of the factors in Article 2.9.2 suggests a low degree of vulnerability of the former patient, the former patient will nonetheless be considered a vulnerable former patient for a period of time beyond what is outlined in Article 2.8.

The nature of the power imbalance between a registrant and a patient creates a vulnerability for every patient, and some period of time must elapse prior to the commencement of any sexual interaction in order to reduce the presence of the vulnerability.

The application of the factors in Article 2.9.2 will govern the determination of the appropriate period of time that must elapse prior to any conduct, behaviour or remarks of a sexual nature by a registrant toward a former patient amounting to anything other than sexual misconduct.

2.9.5 In considering whether to engage in any conduct, behaviour or remarks of a sexual nature with a former patient, the registrant must fully assess the vulnerability of the former patient.

3.0 Professional Standards

3.1 A registrant must not engage in sexual misconduct.

3.2 A registrant must not engage in any conduct, behaviour or remarks of a sexual nature with a former patient, unless all of the following apply:

3.2.1 the professional-patient relationship has ended as set out in Article 2.8;

3.2.2 the registrant has made a full assessment of the vulnerability of the former patient; and

3.2.3 the former patient is not a vulnerable former patient[11].

3.3 Sexualized conduct between a registrant and any person over whom they have supervisory, evaluative or other authority (such as students, supervisees, employees, or research participants) may also be considered professional misconduct.

[11] A “vulnerable former patient” is described in Article 2.9.

3.4 Sexualized conduct by a registrant that involves an individual who is not a patient or in a context that is entirely unconnected to the registrant's practice or their status as an oral healthcare professional may constitute "conduct unbecoming the profession[12]" under the RHPA if the sexualized conduct tends to bring discredit upon the professions of dentistry or dental assisting.

4.0 Duty to Report

4.1 A registrant must report to the registrar if the registrant has reasonable grounds to believe that another registrant has engaged in sexual misconduct.

4.2 A registrant must report to the regulatory body of another health profession if the registrant has reasonable grounds to believe that a member of that profession has engaged in sexual misconduct.

4.3 A registrant must report to an employer if the registrant has reasonable grounds to believe that a regulated or unregulated employee has engaged in sexual misconduct.

5.0 Cooperation with Regulatory Bodies

5.1 A registrant must cooperate with any regulatory body or committee of a regulatory body with respect to any regulatory process related to this standard.

6.0 Consent

6.1 Consent is not a defence in response to an allegation of sexual misconduct involving a current patient or vulnerable former patient. A current patient or vulnerable former patient cannot consent to any sexual interaction with a registrant.

[12] As defined in Section 2 of the *Regulated Health Professions Act (RHPA)*, "conduct unbecoming the profession means conduct that tends to bring discredit upon registrants or a regulated health profession."

7.0 Guidelines

7.1 To ensure compliance with the standards set out above, registrants should have regard to the following guidelines. A breach of a guideline may constitute a breach of this standard.

7.2 Registrants should:

7.2.1 refrain from placing dental instruments on a patient's bib when not clinically necessary;

7.2.2 explain the scope of an examination, the steps involved, and the reasons for examinations/procedures to patients (e.g., an extraoral examination of the head and neck region as part of a dental examination);

7.2.3 provide an adequate gown or drape as required (e.g., in a hospital or operating room setting) and refrain from assisting with removing or replacing the patient's clothing, unless the patient is having difficulty and consents to such assistance;

7.2.4 show sensitivity and respect for the patient's privacy and comfort at all times, including providing privacy to a patient when undressing and dressing;

7.2.5 consider the patient's cultural or religious background and recognize that different cultural needs arise in a diverse patient population;

7.2.6 not ask or make comments about sexual performance;

7.2.7 in situations where it is clinically appropriate to ask questions of a sexual nature (e.g., when updating a patient's medical history regarding medications or infectious diseases), explain why the questions are being asked;

7.2.8 encourage patients to ask questions and to speak up immediately if they feel uncomfortable or are in distress;

7.2.9 refrain from responding sexually or providing encouragement to any form of sexual advance made by a patient or a person close to them;

7.2.10 respect the boundaries of the professional-patient relationship. For example, refrain from using the patient as a confidante or for personal support; and

7.2.11 document any sexualized behaviour by the patient in the chart.

Acknowledgements

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