Standard of Practice
Sexual Boundaries with Patients, Former Patients & Interdependent Persons

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Standards of Practice of Medicine set out the requirements related to specific aspects for the quality of the practice of medicine. Standards of Practice of Medicine provide more detailed information than contained in the *Regulated Health Professions Act*, Regulations, and Bylaws. All members must comply with Standards of Practice of Medicine, per section 86 of the *Regulated Health Professions Act*.

This Standard of Practice of Medicine is made under the authority of section 82 of the *Regulated Health Professions Act* and section 15 of the CPSM Standards of Practice Regulation.

1. Purpose

This standard of practice:

1.1. sets out the mandatory requirements of members for establishing and maintaining appropriate boundaries with their patients, former patients and persons who are interdependent with their patients;

1.2. prohibits sexual contact and sexualized interactions of any kind between members and their patients;

1.3. identifies the spectrum of conduct and behaviours which are considered to be sexual contact and sexual interactions;

1.4. strictly limits sexual contact and sexualized interactions with former patients and persons who are interdependent with a member's patient;

1.5. provides important context for understanding what is required of members to maintain strict sexual boundaries with their patients, former patients and persons who are interdependent with their patients; and

1.6. complements all other relevant standards of practice and the *CMA Code of Ethics and Professionalism*.

2. Foundation of the relationship

The unique nature of the relationship between patients and the people from whom they seek medical care is the foundation for both prohibiting sexual contact and sexualized interactions between a member and their patient and strictly limiting sexual contact and sexualized interactions with former patients and persons who are interdependent with a member's patient. Important features of this unique relationship, often described as a fiduciary relationship, include the following:

2.1. The relationship between a member and their patient must be understood in the context of the following ethical pillars of members' obligations as reflected in the CMA *Code of Ethics and Professionalism*:

2.1.1. Consider first the well-being of the patient; always act to benefit the patient and promote the good of the patient.

2.1.2. Never exploit the patient for personal advantage.

2.2. The relationship between a member and their patient is a professional relationship founded in trust and characterized by a power imbalance which extends beyond the termination of the relationship.

2.3. Patients are by definition vulnerable when seeking medical care because:

2.3.1. they rely on the specialized training and knowledge of members to diagnose and treat them; and

2.3.2. diagnosis and treatment calls for patients to allow members to touch parts of their body and access their personal information because of members' unique ability to provide them with the medical care they seek.

In this context, members must not use their position of power and trust to exploit patients physically, sexually, emotionally or psychologically.

2.4. The boundaries of a relationship between a member and their patient are defined by the limits of appropriate clinical or professional conduct which is focused on the best interests of the patient. They require keeping an appropriate emotional and physical distance, the confines of which are defined by the nature and scope of the medical services sought and provided.

2.5. The relationship between a member and persons who are interdependent with a member's patient is often subject to the same power imbalances as the member-patient relationship such that appropriate sexual boundaries with interdependent persons must be maintained.

2.6. Patients who receive care from a member for mental health issues are particularly vulnerable and the power imbalance is enhanced.

2.7. Good communication is essential to the relationship. Clear communication by a member with their patient as to what to expect during a clinical encounter, including the physical

examination and taking a history, is the most effective way to avoid misunderstandings as to the purpose and scope of the clinical encounter.

2.8. Failure to keep appropriate boundaries, especially sexual boundaries, prevents a member from providing objective care to a patient and results in harm to the patient.

3. Scope of this Standard of Practice

3.1. To Whom and in what circumstances does it apply?

3.1.1. This Standard applies to all members and associate members of the College, including physicians, surgeons, clinical assistants, physician assistants, and all educational registrants.

3.1.2. The requirements of this Standard apply to all encounters with patients, former patients and persons who are interdependent with a member's patient in any setting, whether in person or through electronic communication and is not limited to encounters for the purpose of providing medical care.

3.2. Who is a patient for the purposes of this Standard?

3.2.1. A patient includes any person to whom a member provides medical care regardless of the setting in which that care is provided and may include a former patient as described below.

3.2.2. A member provides medical care to a person when the member engages in one or more of the following activities in relation to that person:

3.2.2.i. gathering clinical information to assess the person;

3.2.2.ii. providing a diagnosis;

3.2.2.iii. providing medical advice or treatment;

3.2.2.iv. providing counselling;

3.2.2.v. creating or contributing to a medical record;

3.2.2.vi. charging or receiving payment for providing medical services; and

3.2.2.vii. prescribing a drug for which a prescription is needed.

3.2.3. A person is a patient of a member for the duration of any single encounter during which medical care is provided to that person by the member. That person remains a patient for a reasonable period of time after that encounter ends, including in between and following multiple encounters. What is a reasonable period of time depends on the circumstances of and surrounding the encounter(s), the patient and the member. For example, both a person who attends a member for single encounter at walk-in clinic and a person who has been seeing the member for regular care for many years since

childhood are patients. In determining what is a reasonable period, the following factors are relevant:

3.2.3.i. whether there was a reasonable expectation that care would extend beyond a single encounter;

3.2.3.ii. the number of encounters;

3.2.3.iii. the length of time over which the encounter(s) occurred;

3.2.3.iv. the length of time in between the encounters;

3.2.3.v. the duration of the encounter(s);

3.2.3.vi. the degree to which the encounter(s) involved intimate examinations and/or the exchange of sensitive information;

3.2.3.vii. whether care has been transferred to another member;

3.2.3.viii. the nature and extent of the patient's vulnerability in relation to the member;

3.2.3.ix. the nature of the care sought from or provided by the member;

3.2.3.x. the understanding of the patient in terms of the member's role in their medical care;

3.2.3.xi. the circumstances that led to the termination of the member-patient clinical relationship following one or more encounters, including whether sexual contact between the member and the patient was contemplated by either of them before the clinical relationship ended;

3.2.4. The criteria set out above is for the purposes of establishing who is a patient of a member for this Standard and may not apply to other circumstances.

4. Sexual Boundary Violations – the Spectrum of Prohibited Conduct

Sexual boundary violations are best viewed as prohibited conduct or acts along a continuum as opposed to an exhaustive list of specific prohibited acts or conduct which result in mandatory pre-determined consequences. Violations vary in severity and encompass a spectrum of conduct and behaviour. They range from failing to take appropriate steps to respect a patient's privacy and dignity when conducting or offering to conduct a physical examination or making sexually suggestive comments to committing sexual assault. It is important that members and patients understand the nature and scope of behaviours that fall within the spectrum of prohibited conduct while recognizing that the examples provide guidance but do not constitute an exhaustive list. The following provides guidance as to what constitutes member-patient sexual contact and sexualized interactions.

4.1. Member-patient Sexual Contact

4.1.1. Any form of sexual contact between a member and their patient is strictly prohibited, regardless of the circumstances or setting, and the onus is on the member to ensure that appropriate boundaries are maintained.

4.1.2. Member-patient sexual contact includes but is not limited to the following contact between the member and their patient, regardless of whether the member believes that the patient has consented to the sexual contact or the setting in which the sexual contact occurs:

4.1.2.i. sexual intercourse;

4.1.2.ii. genital to genital, genital to anal, oral to genital, or oral to anal contact;

4.1.2.iii. masturbation of a member by, or in the presence of, a patient;

4.1.2.iv. masturbation of a member's patient by that member;

4.1.2.v. encouraging a member's patient to masturbate in the presence of that member;

4.1.2.vi. the member fondling or sexually touching of any part of a patient's body, including the genitals, anus, breasts or buttocks of the patient. This does not include performing an appropriate physical examination of these body parts that is clinically indicated as part of an encounter for the purpose of providing medical care to the patient;

4.1.2.vii. kissing of a romantic or sexual nature with a patient; and

4.1.2.viii. sexual acts by the member in the presence of the patient.

4.2. Sexualized Interactions

4.2.1. Sexualized interactions between a member and their patient is a boundary violation and is prohibited.

4.2.2. What constitutes a sexualized interaction with a patient must be viewed from the perspective of the patient. The prohibited conduct can occur in the context of any encounter with a patient, whether the encounter is a clinical one for the purpose of providing medical care or an intentional or chance encounter outside of the clinical setting. It includes an encounter over social media or other forms of digital communication.

4.2.3. Appropriate medical care will sometimes require a member to ask relevant questions of a personal nature, including questions about sexual health or involve the member conducting an examination of their patient's breasts, genitalia or anal area. These require appropriate explanations and provisions for privacy and if conducted appropriately are not sexualized interactions and are not prohibited.

4.2.4. Sexualized interactions include any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature by a member towards a patient that the 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. It includes sharing of images or remarks through social media or other digital communication. It does not include conduct that is professional and clinically indicated as part of an encounter for the purpose of providing medical care to the patient.

4.2.5. In the context of an encounter for the purposes of obtaining medical care, the patient is in a particularly vulnerable situation having put their trust in the member to limit the interaction during that encounter to what is reasonably expected to provide the care they are seeking. A member must limit physical examinations of their patient to what is clinically indicated and such that it only includes that to which the patient has provided their informed consent.

4.2.6. It is often in the best interests of both the patient and the member to have a chaperone/attendant present for sensitive examinations. A member must give the individual needs of the patient priority over their own. They must consider whether the patient may be more comfortable with the presence of a chaperone/attendant or whether the specific circumstances of the patient and/or the nature of the encounter indicate that the offer should be made.

4.2.7. Depending on the circumstances, prohibited conduct may include, but is not limited to one or more of the following:

4.2.7.i. not providing privacy while the patient is undressing or dressing;

4.2.7.ii. assisting with undressing or dressing, unless the patient is having difficulty and expressly consents to such assistance;

4.2.7.iii. providing inadequate draping;

4.2.7.iv. not offering the presence of a chaperone/attendant before conducting a sensitive examination or proceeding with a sensitive examination in the absence of a chaperone/attendant where the circumstances of the patient and/or the encounter indicate that such an offer should have been made;

4.2.7.v. making remarks about a patient's sexual orientation, gender identity or activities that could reasonably be perceived as being judgmental or discriminatory;

4.2.7.vi. making comments or gestures that could reasonably be construed as flirtatious, seductive or sexual by a patient, including reference to the patient's appearance or clothing;

4.2.7.vii. requesting details of the sexual history or sexual behaviour of a patient when not medically indicated or without explaining why it is relevant to their medical care;

4.2.7.viii. discussing a member's own or others sexual preferences or activities with a patient;

4.2.7.ix. not explaining the scope of or need for intimate or sensitive examinations or not obtaining informed consent before conducting intimate or sensitive examinations;

4.2.7.x. not providing the patient with an opportunity to question or refuse an intimate or sensitive examination or to withdraw consent;

4.2.7.xi. using unorthodox examination techniques, including inappropriate touching of the breasts, genitalia, or anus;

4.2.7.xii. intentional touching of the breasts, genitalia, or anus during an otherwise clinically indicated examination where the touching is not clinically indicated;

4.2.7.xiii. failing to use gloves when examining genitalia or anus;

4.2.7.xiv. sexualizing body contact, which can include hugging in some circumstances. This does not prohibit hugging in appropriate circumstances where there is no sexual aspect to the physical contact; and

4.2.7.xv. unnecessarily scheduling appointments for examinations outside normal office hours for any reason not related to providing medical care.

4.2.8. In the context of encounters between a member and their patients outside of the clinical setting, sexualized interactions also include:

4.2.8.i. socializing with a patient or former patient in the context of developing an intimate romantic or sexual relationship;

4.2.8.ii. responding sexually to advances made by a patient or former patient; and

4.2.8.iii. initiating any form of sexual advance toward a patient or former patient;

4.2.8.iv. sending sexually explicit emails or text messages; and

4.2.8.v. making inappropriate advances on social media.

These lists are provided as guidance and are not exhaustive.

5. Persons Interdependent with the Patient

A member often communicates with a person who is interdependent with their patient in the context of providing care to their patient and may develop a relationship with that person. An interdependent person may be as vulnerable as the patient. This is particularly so for the adult parents or guardians of patients who are minors.

5.1. For the purposes of this Standard, an interdependent person can be any person who has a close relationship with a member's patient and is involved in their patient's medical care, including, but not limited to their patients' parents, spouse, children, legal guardian or caregiver.

5.2. A member must never use their professional relationship with a person who is interdependent with a member's patient to establish or pursue sexual contact with or sexualized interactions with that person. The factors to be considered in determining whether sexual contact or sexualized interactions with a person who is interdependent with a member's patient is a boundary violation include but are not limited to:

5.2.1. the duration, frequency and type of care provided to the patient;

5.2.2. the degree of emotional dependence of the patient and or the interdependent person to the member;

5.2.3. the extent to which the member used any knowledge or influence obtained from providing medical care to the patient to establish or pursue sexual contact with or sexualized interactions with the interdependent person; and

5.2.4. the extent to which the patient is reliant on the person who is interdependent with them.

6. Former Patients

There is always a risk that a member may use or exploit the trust, information, emotions or power created by any former relationship with a patient.

6.1. The inherent power imbalance from any member-patient relationship can continue long after that relationship ends. Any relationship or encounter between a member and their former patient which includes sexualized interactions or member-patient sexual contact is strongly discouraged for that reason.

6.2. The onus is on a member to satisfy the College that a "reasonable period" has elapsed in accordance with section 3.2.3 above before engaging in what is otherwise prohibited conduct as defined in this Standard of Practice with a patient.

6.3. A member who is considering engaging in a sexual relationship with a former patient must first consider the risks and whether the contemplated contact or interactions would be considered prohibited contact. They should seek advice from an experienced and trusted colleague, their professional indemnity provider (CMPA for many members), legal counsel or contact the Registrar of the College to ensure that the member fully

understands the risks and potential consequences before having sexual contact or engaging in sexualized interactions with a former patient.

7. Psychotherapeutic Relationships

The risk that a member may use or exploit the trust, information, emotions or power imbalance associated with a relationship with a patient where a member has provided psychotherapeutic care to their patient is particularly concerning given the unique nature of that relationship. Patients with mental health issues are particularly vulnerable and the power imbalance is enhanced. The nature, scope and duration of the psychotherapy provided has a significant impact on the risk.

7.1. A member who has had a significant psychotherapeutic relationship with a patient must not have sexual contact with or engage in sexualized interactions with that patient at any time during or after the psychotherapeutic relationship. Significant psychotherapeutic relationships include, but are not limited to relationships between:

7.1.1. a psychiatrist and their patient;

7.1.2. any member and their patient where the member has provided therapeutic counselling or treatment to the patient for mental health issues beyond what would reasonably be expected of a member as supportive advice or comments related to the provision of medical care to the patient.

7.2. There is no "reasonable period" after which member-patient sexual contact or sexualized interactions are no longer prohibited between a member who has had a significant psychotherapeutic relationship with a patient and that patient. All sexual contact or sexualized interactions with that patient are sexual boundary violations.

8. Consequences of Breaching this Standard of Practice

Violating sexual boundaries with a patient, former patient or a person who is interdependent with a patient is a very serious matter. Like the violations themselves, the nature and extent of the measures required to address them and the consequences to a member who has violated boundaries with a patient are best viewed as being on a continuum and determined by the unique circumstances of each case. Serious violations will require formal disciplinary action and usually result in a lengthy suspension of or loss of the member's ability to practice medicine. Less serious violations may require remedial and protective measures, including conditions on a member's practice, but not necessarily result in formal disciplinary action.