



## Background Regarding Proposed Regulation: Five-Year Definition of Client for the Purpose of Preventing Sexual Abuse

Bill 87, the *Protecting Patients Act, 2017*, provides Colleges with the ability to develop a regulation to address the period of time an individual will be deemed to be a client<sup>1</sup> for the purposes of sexual abuse.

The statutory definition of a client states that an individual will be a client for one year after the termination of the therapeutic relationship. Thus, a psychotherapist who engages in sexual contact with a former client within one year of terminating the relationship will be considered to have engaged in sexual abuse and will be subject to mandatory revocation.

Soon after Bill 87 came into force (June 2017), the Client Relations Committee (CRC) began work on the *Sexual Contact with Former Clients Within Five Years Post-Termination of Care* policy. This policy was approved for public consultation on March 29, 2018, and the final version of the policy was approved by Council on June 28, 2018. The policy was an interim solution while the CRPO waited for the government to proclaim into force the ability of the Colleges to pass a regulation extending the minimum waiting period in the *Regulated Health Professions Act, 1991* (RHPA).

The College now has the ability to pass the Regulation Defining Client for Sexual Abuse Provisions. The *Sexual Contact with Former Clients Within Five Years Post-Termination of Care* policy will continue to be posted on the CRPO website and enforced alongside the proposed regulation.

The CRC has drafted a regulation to extend the therapeutic relationship for a period of five years. A five-year ban on sexual contact would allow a significant amount of time to elapse following the termination of the therapeutic relationship, during which the power imbalance between the psychotherapist and former client could resolve. A proposed draft regulation has been developed and was approved by Council in 2018.

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<sup>1</sup> The Regulated Health Professions Act uses the term “patient.” In keeping with the terms common to the profession of psychotherapy, CRPO uses the term “client” instead of “patient.”

## Jurisdictional Scan:

CRPO has undertaken a review of the standards and policies in place at other Ontario colleges where registrants are authorized to perform the controlled act of psychotherapy.

The College of Physicians and Surgeons of Ontario's policy on Sexual Relations After the Physician–Patient Relationship has Ended currently states that “where psychotherapy that is more than minor or insubstantial has been provided, physicians must not engage in sexual relations or engage in sexual behaviour or make remarks of a sexual nature towards their patient for a minimum of five years after the date upon which the individual ceased to be the physician's patient.”

The College of Psychologists and Behavioural Analysts of Ontario recently updated their standards and extended the waiting period to five-years, noting “registrants must not enter, or make plans to enter, into an intimate or sexual relationship with a current or past service recipient or a close relative of the service recipient, unless at least five years has passed since the last professional contact, and it can be demonstrated that the individual is not vulnerable and will not be reasonably expected to require additional services from the registrant.”

The Ontario College of Social Workers and Social Service Workers (OCSWSSW) presently has a lifetime prohibition on relationships, noting in their standards that “sexual intercourse, physical sexual relations and/or touching of a sexual nature between College registrants and clients to whom the registrants have provided psychotherapy and/or counselling services, or with respect to whom the registrants have performed the controlled act of psychotherapy, are prohibited at any time following termination of the professional relationship.”

The College of Occupational Therapists of Ontario and College of Nurses of Ontario both presently rely on the one-year waiting period as required by the RHPA.

## Highlights:

- A time-limited ban on sexual contact with former clients as opposed to an indefinite ban recognizes the wide range of circumstances in which a psychotherapist could practice with a client, including on a short-term and limited basis.
- At the same time, prohibiting sexual contact with former clients within five years promotes public protection, highlighting CRPO's zero tolerance approach to sexual abuse where a power imbalance may exist between the therapist and recent client.
- Once the College makes a regulation to this effect, the mandatory penalty for particular forms of sexual contact (including sexual intercourse) with a client within the five-year post termination period will be a reprimand and revocation of the member's certificate of registration for at least five years, regardless of the circumstances.

- The Discipline Committee would retain discretion to determine the appropriate penalty in cases beyond the five-year period.

**Recommendation:**

- CRPO is recommending the passing of the proposed regulation to fulfill the College's mandate to protect the public, in recognition of the power imbalance that is present within the therapeutic relationship.

**Next Steps:**

- The Ontario government is circulating CRPO's proposed regulation for comment, after which it will be considered for enactment.

The Ministry's is accepting feedback until December 6, 2024. We would encourage you to register any feedback you have on the proposed regulation by using this link: [The College of Homeopaths of Ontario, College of Opticians of Ontario, and College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario Proposed Regulations Related to Protecting Patients Against Sexual Abuse by Members of the Profession \(ontariocanada.com\)](https://www.ontariocanada.com/ontario-canada/ontario-proposed-regulations-protecting-patients-against-sexual-abuse-by-members-of-the-profession)

- CRPO will provide stakeholders and system partners with any further updates.

## **Statutory Definition of Client**

### **ONTARIO REGULATION 260/18**

made under the

### **REGULATED HEALTH PROFESSIONS ACT, 1991**

Made: April 10, 2018

Approved: April 18, 2018

Filed: April 20, 2018

Published on e-Laws: April 20, 2018

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### **PATIENT CRITERIA UNDER SUBSECTION 1 (6) OF THE HEALTH PROFESSIONS PROCEDURAL CODE**

1. The following criteria are prescribed criteria for the purposes of determining whether an individual is a patient of a member for the purposes of subsection 1 (6) of the Health Professions Procedural Code in Schedule 2 to the Act:

1. An individual is a patient of a member if there is direct interaction between the member and the individual and any of the following conditions are satisfied:

- i. The member has, in respect of a health care service provided by the member to the individual, charged or received payment from the individual or a third party on behalf of the individual.
- ii. The member has contributed to a health record or file for the individual.
- iii. The individual has consented to the health care service recommended by the member.
- iv. The member prescribed a drug for which a prescription is needed to the individual.

2. Despite paragraph 1, an individual is not a patient of a member if all of the following conditions are satisfied:

- i. There is, at the time the member provides the health care services, a sexual relationship between the individual and the member.
- ii. The member provided the health care service to the individual in emergency circumstances or in circumstances where the service is minor in nature.
- iii. The member has taken reasonable steps to transfer the care of the individual to another member or there is no reasonable opportunity to transfer care to another member.

## Commencement

2. This Regulation comes into force on the latest of,

- (a) the day section 6 of Schedule 5 to the *Protecting Patients Act, 2017* comes into force;
- (b) May 1, 2018; and
- (c) the day this Regulation is filed.

Made by:

Pris par :

*La ministre de la Santé et des Soins de longue durée,*

HELENA JACZEK

*Minister of Health and Long-Term Care*

Date made: April 10, 2018

Pris le : 10 avril 2018

## Draft Regulation Defining Client for Sexual Abuse Provisions

### Ontario Regulation XX/XX

1. For the purposes of subsection 1 (6) of the Health Professions Procedural Code in Schedule 2 of the *Regulated Health Professions Act, 1991*, “patient”, without restricting the ordinary meaning of the term, includes an individual who was a member’s patient within five years from the date on which the individual ceased to be the member’s patient.