

## Professional Standards of Practice Regarding Sexual Misconduct by Chiropractors

This document sets out standards approved by the Board of the Nova Scotia College of Chiropractors (NSCC).

A standard reflects the **minimum** professional and ethical behaviour, conduct or practice expected by the NSCC. Standards contain recommendations endorsed by the Board of the NSCC. Chiropractors licensed with the NSCC are required to be familiar with and comply with the College standards.

### 1.0 Preamble

The public and the profession are entitled to clarity regarding the NSCC's approach to sexual misconduct by chiropractors. This document seeks to answer that call.

In addition to defining the standards for conduct of a chiropractor, this Standard sets out the disciplinary sanctions that will be sought by the NSCC upon findings of sexual misconduct.

This document:

- establishes the Board of the NSCC Standards regarding sexual misconduct;
- defines the type of conduct that constitutes sexual misconduct;
- outlines the approach to be taken by the Board of the NSCC when addressing allegations of sexual misconduct and other relevant conduct; and
- provides guidance to chiropractors to assist them to comply with the Standards.

### 2.0 Explanation of Terms

2.1 Several terms used in this Standards document require elaboration in order to ensure clarity. When addressing the matter of sexual misconduct, that term itself, along with others such as "sexualized conduct" and "sexual abuse", require definition. Other terms such as "current patient", "former patient" and "vulnerable former patient" also require definition. Each of these terms when used in this Standards document will be interpreted as set out below.

#### 2.2 What is meant by "*sexualized conduct*", "*sexual misconduct*" and "*sexual abuse*"?

"Sexualized conduct" refers to conduct including threatened, attempted or actual conduct, behaviour or words of a chiropractor, with a sexual connotation, character or quality.

2.2.1 The term "sexualized conduct" does not include clinically indicated or relevant questions, discussions, examinations or procedures.

2.2.2 “Sexual misconduct” includes:

2.2.2.1 Any sexualized conduct engaged in by a chiropractor with a *current patient*, including but not limited to:

- a. sexualized comments or questions by a chiropractor to a current patient that lack medical relevance, including comments or questions about a patient’s body, clothing or sexual history;
- b. threatened or attempted sexual contact by a chiropractor to a current patient;
- c. sexual touching of any kind between a chiropractor and a current patient;
- d. intimate examinations or procedures involving a current patient that are not clinically indicated or are performed in a sexualized manner;
- e. a chiropractor encouraging a current patient to engage in sexualized behaviour (including masturbation) within the chiropractor-patient relationship; and
- f. sexual abuse.

2.2.2.2 Any sexualized conduct by a chiropractor *toward any person*, including a current patient, a former patient, family members or support persons of patients or former patients, other health professionals, employees, learners, or others, which the chiropractor knows or ought reasonably to know would be objectionable, unwelcome, cause offence or humiliation to the person, or adversely affect the person’s health and well-being. This includes but is not limited to:

- a. sexual abuse; and
- b. discriminatory comments on the basis of sex and gender, including about a person’s appearance, manner of dress, gender identity, sexual orientation or sexual preferences.

2.2.3 For further clarity, “sexual misconduct” does not include conduct, behaviour or discussions of a sexual or intimate nature which are clinically indicated or relevant. Such conduct may include circumstances, for example, where the presenting clinical issue requires inquiries into the sexual history of the patient, or the conduct of a clinically appropriate intimate examination or procedure.

2.2.4 “Sexual abuse” is a form of sexual misconduct, and includes the following acts between a chiropractor and a current patient or vulnerable former patient of that chiropractor:

2.2.4.1 sexual intercourse including: genital to genital, genital to anal, oral to genital, or oral to anal contact;

2.2.4.2 masturbation of the patient by the chiropractor;

2.2.4.3 a chiropractor encouraging a patient to masturbate in the presence or for the benefit of that chiropractor; or

2.2.4.4 masturbation by the chiropractor in the presence of the patient.

### **2.3 Who is a “current patient“?**

2.3.1 A person becomes a current patient when a chiropractor-patient relationship is formed. When determining whether a chiropractor-patient relationship exists, consideration should be given to one or more of the following factors:

2.3.1.1 the chiropractor has charged or received payment from the individual (or a third party on behalf of the individual) for a health care service provided by the chiropractor;

2.3.1.2 the chiropractor has contributed to a health record or file for the individual;

2.3.1.3 the individual has consented to the health service provided by the chiropractor; and/or

2.3.1.4 other factors relevant to the circumstances of the individual and the chiropractor.

2.3.2 If the current patient is a partner or spouse of the chiropractor, or someone with whom the chiropractor had an existing sexual relationship prior to becoming a current patient, that person is not considered a current patient for purposes of these Standards. However, chiropractors should refrain from providing chiropractic services to such persons unless (i) exceptional circumstances exist, such as an emergency situation where there is no one else available or qualified to do so; or (ii) they are providing infrequent treatment for minor conditions when there is no one else readily available. A “minor condition” is generally a non-urgent, non-serious condition that requires only short-term, routine care and is not likely to be an indication of, or lead to, a more serious condition.

### **2.4 Who is a “former patient“?**

2.4.1 A person ceases to be a current patient and becomes a former patient when:

2.4.1.1 in an ongoing chiropractor-patient relationship, the chiropractor actively terminates the relationship.

2.4.1.2 in an episodic care relationship, a reasonable person would not expect that care would extend beyond the last episode.

## **2.5 Who is considered a “vulnerable former patient“?**

2.5.1 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 from the termination of the chiropractor-patient relationship.

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

2.5.2.1 the length and intensity of the former professional relationship;

2.5.2.2 the nature of the former patient’s clinical problem;

2.5.2.3 the extent to which the former patient has confided personal or private information to the chiropractor;

2.5.2.4 the vulnerability the former patient had in the chiropractor-patient relationship; and

2.5.2.5 such other factors relevant to the particular circumstances.

2.5.3 Generally, the lengthier the former chiropractor-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.

2.5.4 Where the application of the factors in Article 2.5.2 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. The nature of the power imbalance between a chiropractor 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 2.5.2 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 chiropractor toward a former patient amounting to anything other than sexual misconduct.

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

2.5.6 Where a chiropractor is in doubt as to the vulnerability of the former patient, or whether the chiropractor-patient relationship has been properly terminated, they may wish to seek advice from the malpractice coverage provider.

### **3.0 Professional Standards**

3.1 A chiropractor must not engage in sexual misconduct.

3.2 A chiropractor 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 chiropractor-patient relationship has been terminated;

3.2.2 an appropriate time interval has elapsed since the termination of the chiropractor-patient relationship;

3.2.3 the chiropractor has made a full assessment of the vulnerability of the former patient; and

3.2.4 the former patient is not a vulnerable former patient<sup>[7]</sup>.

3.3 A chiropractor must always obtain informed consent prior to performing a clinically indicated intimate examination or procedure.

3.4 A chiropractor must immediately notify the College upon forming reasonable grounds to believe that another chiropractor is committing or has committed sexual misconduct.

### **4.0 Consent**

4.1 Consent is not a defence 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 chiropractor.

### **5.0 Board of the NSCC Approach to Complaints Alleging Sexualized Conduct**

5.1 The Board recognizes the authority of the Investigation Committee and the Hearing Committee under the Chiropractic Act to make findings and to determine the disposition of matters brought before them. As a party in a proceeding under the Act, the Board will take the following positions:

5.1.1 Sexual misconduct involving a current patient or a vulnerable former patient constitutes professional misconduct within the meaning of the Chiropractic Act;

5.1.2 Sexualized conduct by a chiropractor with a former patient that runs contrary to Article 3.2 also constitutes professional misconduct within the meaning of the Chiropractic Act;

5.1.3 Sexualized conduct by a chiropractor that is entirely unconnected to the chiropractor's practice, his or her status as a chiropractor, or the chiropractic profession may constitute "conduct unbecoming", if the sexualized conduct tends to bring discredit upon the chiropractic profession;

5.1.4 Where there is a finding of either professional misconduct or conduct unbecoming that constitutes sexual abuse, the Board will seek the revocation of the chiropractor's licence.

5.1.5 Where there is a finding of professional misconduct or conduct unbecoming arising from a finding of sexual misconduct that does not constitute sexual abuse, the Board will seek a licensing sanction against the chiropractor. The licensing sanction will be commensurate with the relevant circumstances. A licensing sanction creates a disciplinary record for the chiropractor, and can include one or more of a reprimand, conditions or restrictions, periods of suspension from practice, or a revocation of the chiropractor's licence.

5.1.6 Where an intimate physical examination or procedure is clinically indicated but is performed contrary to acceptable standards in a manner that does not constitute sexual misconduct, the Board will consider whether to address the actions of the chiropractor as "incompetence" or as a matter that should lead to a non-disciplinary outcome such as advice, remedial education or a caution.

5.1.7 Where there is any other finding of a breach of these Standards, the Board will seek a disposition that is commensurate with the relevant circumstances.

## 6.0 Guidelines

6.1 To ensure compliance with the Standards set out above, chiropractors should have regard to the following Guidelines. A breach of a Guideline may constitute a breach of this Standard.

6.2 Chiropractors should:

- (a) conduct themselves professionally at all times;
- (b) explain the scope of an examination, the steps involved, and the reasons for examinations/procedures to patients, particularly where the examination involves the potential for touching the breasts, genitals or anus of a patient;
- (c) with the patient's consent, consider having a third party ("chaperone") present for examinations of a sensitive nature such as coccygeal exams or, in cases where this not possible, inform the patient that they may bring with them a person of their choosing;
- (d) refrain from assisting with removing or replacing the patient's clothing, unless the patient is having difficulty and consents to such assistance;
- (e) show sensitivity and respect for the patient's privacy and comfort at all times, including providing privacy to a patient when undressing and dressing;
- (f) consider the patient's cultural or religious background and recognize that different cultural needs arise in a diverse patient population;
- (g) not ask or make comments about sexual performance except where the examination or consultation is pertinent to the issue of sexual function or dysfunction;

(h) in situations where it is clinically appropriate to ask questions of a sexual nature, explain why the questions are being asked;

(i) encourage the patient to ask questions and to speak up immediately if they feel uncomfortable or are in distress;

(j) avoid lighthearted banter or use of humour during a sensitive examination;

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

(l) respect the boundaries that separate the patient and chiropractor relationship. For example, refrain from using the patient as a confidante or for personal support; and

(m) document any sexualized behaviour by the patient in the chart.