

## Fact Sheet on the Issue of Mandatory Revocation Provisions and Treatment of Spouses by Regulated Health Professionals

### Purpose:

The purpose of this fact sheet is to act as a brief synopsis of the context surrounding the Minister's referral on the topic of mandatory revocation provisions and treatment of spouses by regulated health professionals.

### "Sexual Abuse" in the *Regulated Health Professions Act, 1991 (RHPA)*:

- The RHPA is an umbrella legislation governing 23 (soon to be 28 upon proclamations) regulated health professions in Ontario to carry out self-regulatory functions and separate health professions acts. The RHPA can be found at [http://www.elaws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_91r18\\_e.htm](http://www.elaws.gov.on.ca/html/statutes/english/elaws_statutes_91r18_e.htm)
- Under the RHPA, health care professionals are prohibited from engaging in a sexual relationship with a patient. That is, a co-existing sexual and patient-professional relationship is considered under the legislation as professional misconduct, defined as sexual abuse.
- The Health Professions Procedural Code of the RHPA defines "sexual abuse" of a patient by a member as:
  - sexual intercourse or other forms of physical sexual relations between the member and the patient;
  - touching, of a sexual nature, of the patient by the member; or,
  - behaviour or remarks of a sexual nature by the member towards the patient.
- The Health Professions Procedural Code, Schedule 2 of the RHPA, states further that certain acts of sexual abuse committed by a regulated health professional are grounds for *mandatory revocation* for a minimum of 5 years. These acts include:
  - sexual intercourse;
  - genital to genital, genital to anal, oral to genital, or oral to anal contact;
  - masturbation of the member by, or in the presence of, the patient;
  - masturbation of the patient by the member; and,
  - encouragement of the patient by the member to masturbate in the presence of the member.

### Application to the treatment of spouses:

- In the RHPA, sexual abuse is defined by an action, not by the intent. In addition, under the RHPA's definition of sexual abuse, only a *patient* can be sexually abused. As such, regulated health professionals who provide treatment to spouses to make them their patients<sup>1</sup> fall within this definition. In other words, if a health professional is found to be treating their spouse (with whom they inherently have established a sexual relationship, including the five explicit acts above) they too would be subject to the mandatory revocation provisions of the RHPA.
- Since the introduction of the sexual abuse provisions above, college disciplinary panels have ruled against health professionals who sexually abuse their clients, and applied sanctions that have included a five-year revocation of their name from the official register.
- A recent appellant court decision (*Leering v. College of Chiropractors*<sup>2</sup>) upheld a disciplinary panel decision, ruling that, where a health professional/client relationship has been established and sexual intercourse has occurred, sexual abuse will be the resulting finding regardless of the nature of the relationship, including a pre-existing spousal or conjugal relationship between the health professional and patient.

---

<sup>1</sup> According to the CPSO guideline "Treating self and family members", episodic treatment of family members for minor conditions is acceptable because such care is unlikely to result in the commencement of physician-patient relationship. As well, emergency care of family members where no else is available is acceptable because the benefits outweigh the "challenges posed by the personal relationship". Guideline may be found at [http://www.cpso.on.ca/uploadedFiles/policies/policies/policyitems/treating\\_self.pdf](http://www.cpso.on.ca/uploadedFiles/policies/policies/policyitems/treating_self.pdf)

<sup>2</sup> *Leering v. the College of Chiropractors*, [2010] O.J. No. 406, 2010 ONCA 87