

## **Why does the CDHO not permit dental hygienists to treat their spouses?**

The CDHO has the mandate, delegated to it by the Ministry of Health, to apply the *Regulated Health Professions Act, 1991* (RHPA). The Ministry of Health has defined “sexual abuse of a patient” in the RHPA to include “sexual intercourse or other forms of 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 definition of patient includes spouses. Therefore, if the patient is the member’s spouse (assuming they have a sexual relationship), then the dental hygienist is engaging in sexual abuse of a patient by treating their spouse.

## **I thought the CDHO Council had approved a regulation to exempt spouses from the sexual abuse provisions in the RHPA?**

The CDHO Council has approved a regulation to exempt spouses but the Ministry of Health has not yet passed it, therefore it is not law. The only applicable law until such a regulation is passed is what is currently in the RHPA and existing regulations.

## **Why can dentists treat their spouses without being found guilty of sexual abuse?**

The Ministry of Health has approved the spousal exemption regulation for dentists. It is not clear why the Ministry has passed it for dentists but not for any other of the other health professions governed by the RHPA (there are 26 professions governed by the RHPA).

## **Isn’t it confusing for dental hygienists, who usually work with dentists, when the rules are different?**

Yes, it can be very confusing for dental hygienists if they take advice from other professions about what the rules for dental hygienists are. This would be the case in relation to any subject matter and not just sexual abuse. For example, the rules around record keeping might be different for other practitioners in the same office but a dental hygienist is required to comply with the rules and standards of the CDHO, not the rules and standards of another profession. Dental hygienists are professionals who are obliged to be aware of the rules of their own regulator.

## **If the CDHO has approved a regulation to exempt spouses from the sexual abuse provisions, why can't the screening committee (ICRC) just choose to not refer these types of cases to discipline?**

The Ministry of Health delegates to health colleges, like the CDHO, the ability to govern a profession but the Ministry continues to grant this delegation only so long as the health college governs the profession in the public interest. The CDHO is created by the RHPA and it must meet the objects set out in the RHPA. The overriding object of the CDHO is set out in subsection 3(2) of the *Health Professions Procedural Code* (the "Code") and says that "In carrying out its objects, the College has a duty to serve and protect the public interest." Section 1.1 of the Code also says that "the purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and counseling in connection with allegations of sexual abuse by members, and, ultimately, to eradicate the sexual abuse of patients by members." The CDHO must abide by these provisions when it carries out its work, otherwise the Ministry of Health may find that the College is not regulating in the public interest.

The Minister of Health periodically reviews how Colleges administer the sexual abuse provisions. For example, it appointed a Sexual Abuse Task Force a few years ago to give advice to the Minister and health colleges with respect to the sexual abuse provisions in the RHPA. Part of that advice was that Colleges were not taking the zero tolerance of sexual abuse seriously and recommended taking away the authority of Colleges to investigate and discipline sexual abuse matters. The Ministry is still considering those recommendations. Colleges need to take sexual abuse seriously and enforce both the letter and the spirit of the zero tolerance provisions at all stages of the investigation, screening and discipline process.

The ICRC is an independent Committee of the College and is expected to use its authority appropriately in accordance with the purposes and intent of the legislation while fully considering the individual circumstances of each case. Verifiable evidence of a concurrent sexual and professional relationship would warrant a referral to discipline as it meets the definition of sexual abuse in the RHPA.

## **Does the Discipline Committee have the choice not to revoke a certificate of registration if the dental hygienist is found guilty of treating a spouse? Doesn't it seem harsh?**

The RHPA provides for a mandatory penalty of revocation when a dental hygienist has been found guilty of sexual abuse involving sexual intercourse or one of the more physical acts of sexual touching listed in the RHPA. There is no discretion on the part of the Discipline Committee to order a lesser penalty based on the identity of the patient or any other factor. This mandatory revocation provision has been in place for some time.

## **Does the dental hygienist have the right to appeal a decision made by the Discipline Committee?**

Yes, the dental hygienist has the right to appeal the Discipline Committee's decision to the Divisional Court.

## **What about client/patient's right to decide who they receive dental hygiene treatment from including their spouse?**

The courts have been quite clear in their decisions relating to the sexual abuse provisions of the RHPA that there is no "right" to practise a regulated profession and no "right" to have a sexual relationship with a person that a practitioner chooses to see as a client/patient. The courts have also held that marrying a health care professional and seeking to be treated by that health care professional is a choice rather than a right that is protected by the Charter of Rights and Freedoms. The Legislature (which writes the applicable legislation) has the legal authority to decide that it is against the law for health professionals to both treat and have sexual relations with the same person.

## **Can the dental hygienist, if revoked, ever apply to practise again? Could they move to another province to practise?**

Dental hygienists who are revoked for sexual abuse are entitled to apply for reinstatement after five years. Their applications go to a new panel of the Discipline Committee and the RHPA places the onus on the revoked person to show that they should be reinstated.

The CDHO only has authority over dental hygienists registered in Ontario, however, other Canadian regulators would be aware of a finding of sexual abuse made in Ontario. The CDHO cannot say how another regulator would treat a finding of sexual abuse by the CDHO.

## **What is the risk if a health regulator chooses to not comply with the RHPA?**

The Minister of Health can enact regulations changing the way sexual abuse is investigated, referred and disciplined. It can also propose amendments to the RHPA. In recent years the Ministry has been actively considering amendments to end the election of professional members to the Councils of Colleges and to establish an oversight agency for all RHPA Colleges. Such changes are currently occurring in British Columbia and we know the Ministry is watching those changes with interest.

In addition, the Minister of Health has authority in the RHPA to inquire into a health college's activities and to require the Council of a health regulator to do anything that the Minister believes is necessary to carry out the intent of the RHPA. The Minister of Health can, and already has once, appointed a Supervisor to essentially take over the running of a health college if it believes the health college is not acting in the public interest.

Apart from the Minister, regulatory colleges lose credibility with the public when they do not take sexual abuse matters seriously.

## **What are the other options for regulating a profession if we believe that self-regulation is not working?**

The Ministry of Health can choose to regulate the profession directly without having a Council that includes members of the profession, or it could reform the regulation of professions as discussed above.

## **How will the law change if the regulation to exempt spouses from the sexual abuse provisions is passed?**

If the regulation to exempt spouses is passed it will only apply to the narrow circumstances of where a pre-existing and well-established spousal relationship existed before the professional relationship started. In addition, no form of sexual comments or behaviour can occur, even with a spouse, when a dental hygienist is practising the profession.

Therefore, even if the regulation is passed, it will not permit dental hygienists to enter into sexual relationships (even if that leads to a loving, committed “spousal” relationship) with their client without waiting at least one full year after the last professional interaction. There would also have to be clear proof as to the date of the termination of the professional relationship and the standards with respect to discharging patients would also have to be met. The CDHO cannot get into details with respect to any particular cases currently before it or the courts, but it is important to keep in mind that even if the spousal exemption regulation had been in force in the past, it would not actually be available as a defence to dental hygienists unless the sexual/spousal relationship at issue had pre-existed the professional relationship, and this would generally be for a period of three years if there is not a formal marriage or children.

## **What can members of the profession do if they want the Ministry to pass the regulation exempting spouses from the sexual abuse provisions of the RHPA?**

Members of the profession can lobby the Ministry to pass the regulation for dental hygiene like it has done with the profession of dentistry.