



New Brunswick Standards of Practice

Sexual Misconduct Policy

History

Approved by the Board: July 23, 2010
Effective: August 1, 2010

Purpose and Objective

1. To ensure that NBCA members are aware that the NBCA has a definition of, and specific policy regarding, behaviour or activity that is defined as sexual misconduct.
2. To ensure that both NBCA members and the public are aware that the NBCA is committed to protecting the public from such behaviour, activity and misconduct.

Definitions and Context within this Standard of Practice

The authority vested in any health care provider may, at times, exert undue emotional influence over a patient. Behaviour or activity that takes advantage of that authority is unethical and unprofessional. Doctors of chiropractic must be particularly sensitive to this issue since they treat patients with very “hands on” procedures. Additionally, it is not acceptable to use a clinic as a place to initiate personal relationships or dating opportunities.

Sexual misconduct is any behaviour or activity that exploits the chiropractor/patient relationship in a sexual way. This behaviour or activity may be verbal or physical, including:

- verbal comments or expressions of thoughts and feelings that are sexual in nature or that may be reasonably interpreted to be sexual in nature
- gestures or actions that are sexual in nature or that may be reasonably interpreted to be sexual in nature

Nothing in this Standard of Practice precludes a chiropractor from providing treatment to his or her spouse. For the purpose of this provision, “spouse” is interpreted to include a common-law spouse as defined by provincial legislation.

This Standard specifically identifies two levels of sexual misconduct as listed below. Behaviours or activities listed in either level may be the basis for disciplinary action if found that the behaviour or activity was in the context of the chiropractor/patient relationship.

LEVEL I – Sexual Violation

Sexual violation may include chiropractor/patient sex, whether initiated by the chiropractor or the patient, and/or engaging in any conduct with a patient that is sexual in nature or may be reasonably interpreted to be sexual in nature.

Behaviours or activities, generally of a non-consensual nature are considered to be a sexual violation when occurring between the chiropractor and a patient, and may include but are not limited to:

- sexual intercourse
- genital to genital contact
- oral to genital contact
- kissing in a romantic or sexual manner
- encouraging the patient to masturbate in the presence of the chiropractor or masturbation by the chiropractor while the patient is present
- touching the patient’s breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment for which specific written consent has been obtained prior to proceeding
- touching the patient’s breasts, genitals, or any sexualized body part where the patient has refused or has withdrawn consent for such examination or treatment
- offering to provide practice-related services in exchange for sexual favours
- other physical contact that may be reasonably interpreted as sexual in nature

LEVEL II – Sexual Impropriety

Sexual Impropriety may comprise behaviours, activities, gestures or expressions that are, or may be reasonably interpreted as, seductive in nature, sexually suggestive, or sexually demeaning to a patient. Behaviours or activities considered to be a sexual

impropriety when occurring between the chiropractor and a patient may include but are not limited to:

- gowning or disrobing practices that reflect a lack of respect for a patient's personal privacy and dignity
- inappropriate comments about the patient, including but not limited to:
 - making sexual comments about a patient's body or underclothing
 - making sexual or sexually demeaning comments to a patient criticizing the patient's sexual orientation
 - requesting clinically irrelevant information such as sexual likes or dislikes
- using the chiropractor/patient relationship to solicit a date
- initiation, by the chiropractor, of clinically irrelevant conversation regarding the sexual problems, preferences, or fantasies of the chiropractor
- involvement, by the chiropractor, in a clinically irrelevant conversation regarding the sexual problems, preferences, or fantasies of the patient
- inquiries into a patient's sexual history that are not related to the diagnosis and treatment of the patient's current complaints and would be considered clinically irrelevant
- dating a patient involved in active treatment:
 - including personal relationships pre-existing the onset of treatment, but excluding legally recognized spousal relationships
 - active treatment can be terminated by agreement between the doctor and patient. This agreement should be noted on the patient chart and signed by both parties. The patient should be referred to another chiropractor, the referral must be documented in the patient file, and all financial issues regarding the patient account must be settled immediately.

Sexual Impropriety may also include activities and commentary of a nature that would commonly be considered "sexual harassment". This behaviour does not need to be specifically directed at the patient to constitute sexual harassment. Examples may include but are not limited to:

- idle chatter of a sexual nature and graphic sexual descriptions
- offensive and risqué jokes or jesting and kidding about sex or gender-specific traits
- suggestive or insulting sounds such as whistling, wolf-calls or kissing sounds
- comments of sexual nature about weight, body shape, size or figure
- pseudo-medical advice with sexual overtones
- staged whispers or mimicking of a sexual nature about things such as the way a person walks, talks or sits
- innuendos or taunting
- rough and vulgar humour or language
- gender-based insults or sexist remarks
- comments about a person's looks, dress, appearance or sexual habits
- comments about an individual's sex life or relationship with a sex partner
- telephone calls with sexual overtones

Enforceability

Any member identified to the Complaints Committee as non-compliant in the Standard of Practice related to Sexual Misconduct is subject to the investigations and complaints process under Section 33 of the Association's *Professional Incorporation Act, Bill 45, 1997*. Identification may occur as a result of Practice Visit process, patient written complaint or any other means by which documented information may be brought to the attention of the Complaints Committee.

Proposed Penalties and Sanctions

The NBCA recognizes that the chiropractor/patient relationship and the chiropractor/staff relationship, like all relationships where there is an imbalance of power, carries with it the potential for abuse. Sexual misconduct with patients or employees is considered an extremely serious matter for which NBCA has zero tolerance. During the continuity of the chiropractor/patient relationship, consent of the patient is no defense to an allegation of sexual misconduct. In recognition of the mandate for protection of the public, the sanctions proposed by the NBCA against members who are found guilty of sexual misconduct are intended to be severe. Penalty options are provided to ensure that individual context and circumstances are considered in the determination of appropriate sanctions.

Level I - Sexual Violation: Proposed Penalties and Sanctions

- Suspension of registration for a minimum of 180 days and/or up to permanent revocation of registration
- Conditional Practice Permit (practice under supervision)
- Payment of a fine as set out by the Discipline Committee or Hearing Tribunal
- Payment of costs associated with the investigation, hearing and discharge of any sanctions
- Formal written reprimand presented, in person, by the Board of Directors
- Mandated entry into a treatment facility or program for sexual addiction and/or behaviour modification
- Provision of a written apology to the victim
- Any other penalty as determined appropriate by the Discipline Committee or Hearing Tribunal
- Any combination of the above

Level II - Sexual Impropriety: Proposed Penalties and Sanctions

- Suspension of registration:
 1. First Offence: minimum 60 days suspension

2. Second Offence: minimum 120 days suspension
 3. Third Offence: permanent revocation of registration, or suspension of registration with treatment period, pending report of eligibility for practice (for a minimum of 180 days)
- Payment of a fine as set out by the Discipline Committee or Hearing Tribunal
 - Payment of costs associated with the investigation, hearing and sanctions
 - Conditional Practice Permit (practice under supervision)
 - Formal written reprimand presented, in person, by the Board of Directors
 - A combination of any of the following:
 1. Mandated entry into a treatment facility or program for sexual addiction and/or behaviour modification – regular and timely reports will be provided from the therapist on progress related to appropriateness for practice in the chiropractic profession, and/or
 2. Mandatory psychological assessment and adherence to any recommendations provided as a result of the assessment, and/or
 3. Attend boundary/gender sensitivity courses as set out by the Complaints Committee or Hearing Tribunal
 - Provision of a written apology to the victim
 - Any other penalty as determined appropriate by the Discipline Committee or Hearing Tribunal
 - Any combination of the above