

# Update on Bill 21: An Act to Protect Patients

College of Dietitians of Alberta  
Shannon Mackenzie, RD, M.Ed.  
Director of Professional Practice  
June 10, 2019

## Bill 21 Overview

- ▶ “Bill 21: An Act to Protect Patients”
  - ▶ Will enhance protection of patients from sexual abuse and sexual misconduct by regulated health professionals in Alberta
  - ▶ Applies consistent penalties to all regulated health professionals
- ▶ Received Royal Assent and was in force on November 19, 2018
- ▶ Specified sections came into effect April 1, 2019
- ▶ Government Requirements

## Bill 21 Overview

- ▶ Key features include:
  - ▶ New definitions added to the *HPA*: Patient, Sexual Abuse, Sexual Misconduct and Sexual Nature
  - ▶ Development of Standards of Practice
  - ▶ Mandatory Reporting
  - ▶ New Registration and Information Requirements
  - ▶ Changes to the Complaints Process
  - ▶ Mandatory Sanctions
  - ▶ Publication of Discipline Decisions
  - ▶ Patient Relations Program

## Bill 21 Definitions

### Sexual Abuse

refers to the threatened, attempted or actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the following conduct: sexual intercourse between a patient and regulated member; genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated member and a patient; masturbation of a regulated member by or in the presence of a patient; masturbation of a regulated member's patient; encouraging a regulated member's patient to masturbate; touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated member.

### Sexual Misconduct

refers to any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature by a regulated member towards a patient that the regulated member knows or ought reasonably to know will or would cause offence or humiliation to the patient or adversely affect the patient's health and well-being but does not include sexual abuse.

### Sexual nature

does not include any conduct, behaviour or remarks that are appropriate to the services provided; if inappropriate to services provided, it is considered sexual abuse.

## Bill 21

### Standards of Practice

- ▶ The Standards of Practice were required to address:
  - ▶ Who is considered to be a patient
  - ▶ When a sexual relationship between a regulated member or former member and a patient can occur
  - ▶ When a person who is a spouse or in an interdependent adult relationship can also be a patient
- ▶ Developed through consultation with regulated members and stakeholders.
- ▶ Reviewed and approved by the Minister of Health.

## Bill 21

### Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention

- ▶ The College's *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention* contain 2 standards.
- ▶ Related CDA Standards of Practice
  - ▶ Boundaries
  - ▶ Consent
  - ▶ Professional Practice Obligations

Standard 1. Registered Dietitians abstain from conduct, behaviour, or remarks towards patients that constitutes sexual abuse or sexual misconduct as defined in the *Health Professions Act*.

#### Indicators

To demonstrate this standard, Registered Dietitians will:

a) Not engage in a sexual relationship with a patient (or their immediate family member) (constitutes sexual abuse) where:

i. An individual is a patient of the Registered Dietitian if there is a direct interaction between the Registered Dietitian and the individual and:

- a. the Registered Dietitian has, in respect of health care/professional service to the individual, charged or received payment from the individual or third party on behalf of the individual, and/or
- b. the Registered Dietitian has contributed to a health record or file for the individual, and/or
- c. the individual has consented to the service or receiving the service recommended by the Registered Dietitian.

## Standard 1. continued

a) ii. An individual is not a patient if:

- a. there is an ongoing, pre-existing sexual relationship between the individual and the Registered Dietitian, or the individual is the Registered Dietitian's spouse; and/or
- b. the Registered Dietitian provides the health care/professional service to the individual in emergency circumstances; and/or
- c. the Registered Dietitian has taken reasonable steps to transfer the care of the individual to another Registered Dietitian or alternate service provider, or there is no reasonable opportunity to transfer care to another Registered Dietitian/service provider.

b) Not engage in any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature toward a patient (constitutes sexual misconduct).

Standard 2. The Registered Dietitian or former Registered Dietitian does not engage in a sexual relationship with a former patient (or their immediate family member) until at least one year has passed from the time of the last documented health care/professional service interaction.

#### Indicators

To demonstrate this standard, current or former Registered Dietitians will:

- a) Not engage in a sexual relationship with a former patient (or their immediate family member) for a minimum of one year from the date the professional relationship was terminated unless:
  - i. Professional service was provided as part of episodic care only, in which case, the professional relationship ended when the episode of care was concluded.
- b) Not engage in a sexual relationship with any former patient (or their immediate family member) who required psychosocial nutrition interventions as a result of an eating disorder diagnosis.

## Standard 2. continued

c) Not engage in a sexual relationship with any former patient (or their immediate family member) when there is a risk that there will be a continuing power imbalance between the Registered Dietitian and the former patient, as determined by considering the following:

- The number of times that the Registered Dietitian and the patient had a professional interaction;
- The duration of the professional relationship;
- The nature of the professional interactions;
- Whether sufficient time has passed since the last professional interaction occurred (one year or more);
- Whether the patient has confided personal information to the Registered Dietitian beyond that which was necessary for the purposes of receiving professional services;
- Whether the patient was emotionally dependent on the Registered Dietitian; and
- Whether the patient is particularly vulnerable as a result of factors such as: age, gender identity, socioeconomic status, or as a result of a mental, intellectual or physical disability

## Standards of Practice Definitions in the Glossary

- ▶ Consent
- ▶ Emergency circumstances
- ▶ Episodic care
- ▶ Immediate family
- ▶ Minimum of one year
- ▶ Patient
- ▶ Professional services
- ▶ Sexual Abuse
- ▶ Sexual Misconduct
- ▶ Sexual nature
- ▶ Sexual relationship
- ▶ Spouse

## Standards of Practice Definitions/glossary

### Consent \*Note

refers to "the consent or agreement of a client to undergo an assessment process or treatment intervention, after gaining an understanding of the relevant facts and risks involved." Consent in this document refers to informed consent. Consent may be "implied" (by participating in a dialogue and agreeing to the continuation of a consultation, the client has implied their consent to treatment) or "expressed" (stated verbally or in writing) by the client. Consent must be documented.

### Emergency circumstances

related to nutrition care are limited to glucagon injection for acute, life threatening hypoglycemia.

### Episodic care

is a single interaction with a patient in which professional services are provided, however past this interaction, neither the Registered Dietitian nor the patient have the expectation of an ongoing professional relationship

## Standards of Practice

### Definitions/glossary

#### Immediate family

refers to a spouse/adult interdependent partner (as defined by Government of Alberta), child, parent, guardian, sibling, grandchild or grandparent, foster child, foster parent, dependent relative, and/or any person who lives with the patient as a family member. For example, having a sexual relationship with a pediatric patient's parent may constitute sexual abuse.

#### Minimum of one year

Although one year is the minimum time frame, greater than one-year may be required based on how long the professional relationship existed and the degree of vulnerability of the former patient. Registered Dietitians should consider the factors noted in Standard 2. A Registered Dietitian might resolve that it would never be appropriate to engage in a sexual relationship with a former patient.

## Standards of Practice

### Definitions/glossary

**Patient:** An individual is a patient of the Registered Dietitian if there is direct interaction between the Registered Dietitian and the individual and:

- a. the Registered Dietitian has, in respect of a health care/professional service to the individual, charged or received payment from the individual or third party on behalf of the individual, and/or
- b. the Registered Dietitian has contributed to a health record or file for the individual, and/or
- c. the individual has consented to the health care/professional service recommended by the Registered Dietitian.

An individual is not considered a patient of the Registered Dietitian if professional services were provided once, and there is no expectation of an ongoing professional relationship on the part of the Registered Dietitian or patient. This is considered episodic care.

## Standards of Practice

### Definitions/glossary

#### Professional services

refer to “all actions and activities of a dietitian in the context of their professional practice.”

#### Sexual relationship

means a relationship involving sexual intimacy, including communications of a sexual nature, and engaging in conduct of a sexual nature.

#### Spouse

refers to someone the Registered Dietitian is legally married to, in a common-law relationship with (as defined by Government of Canada), or is otherwise considered the Registered Dietitian’s adult interdependent partner.

## Standards of Practice

Questions to ask yourself if considering a sexual relationship with a former patient:

- ▶ When does the patient-RD relationship end?
- ▶ Episodic care: factors to consider, what places the patient/RD at risk?
- ▶ Can/should an RD date a former patient?

## Bill 21

### Mandatory Reporting: Self-Reporting

- ▶ Obligation to self-report findings of
  - ▶ unprofessional conduct made by other Colleges or in other jurisdictions
  - ▶ professional negligence or charges and/or convictions under the Criminal Code of Canada (these reporting requirements apply to conduct that arises after November 19, 2018).
- ▶ Reporting another Regulated Health Professional
  - ▶ Other RDs within Alberta: to CDA
  - ▶ Other regulated health professionals
    - ▶ To the appropriate College

## Bill 21

### Mandatory Reporting: Employers

- ▶ Made to the College as soon as reasonably possible
  - ▶ Unprofessional conduct leading to termination or suspension or regulated member resigns
  - ▶ Unprofessional conduct related to sexual abuse or sexual misconduct

## Bill 21

### New Registration and Information Requirements

- ▶ Amendment to legal activity declarations required for all applicants and regulated members:
  - ▶ currently an investigated person under the *HPA* or the equivalent in another jurisdiction,
  - ▶ any conduct has previously constituted unprofessional conduct,
  - ▶ conditions imposed on their practice permit or equivalent, and
  - ▶ a judgment in a civil action against them with respect to their practice.
- ▶ The College must make available to the public a directory of regulated members which includes current status and any conditions on practice permits.

## Bill 21

### Changes to the Complaints Process

- ▶ Removal of Complaints Director's discretion to engage in informal resolution processes.
- ▶ Colleges: reasonable effort to ensure that hearing tribunal members have
  - ▶ Received training on trauma informed practice and sexual violence,
  - ▶ And at least one member of every hearing tribunal has the same gender identity as the patient.

## Bill 21

### Mandatory Sanctions

- ▶ Sexual abuse: cancellation of a practice permit with no ability to reapply or be reinstated.
- ▶ Sexual misconduct: suspension of a practice permit with prohibitions/delays in application for reinstatement.
- ▶ Interim suspensions and conditions can be imposed any time after a complaint is made up to the time that a Hearing Tribunal makes orders.
- ▶ Registrars required to **cancel** or **suspend**, accordingly, a regulated member's registration if there is a finding of unprofessional conduct in another jurisdiction relating to such issues.

## Bill 21

### Publication of Discipline Decisions

- ▶ Website available to the public which includes
  - ▶ decisions made by a Hearing Tribunal, Council or Court, and
  - ▶ any information regarding suspensions, cancellations or conditions on practice permits.
- ▶ College report to the Minister the number of complaints and findings of unprofessional conduct related to sexual abuse and sexual misconduct.
- ▶ College is required to provide information upon request to a governing body in another jurisdiction about whether a member is in the complaint process.

## Bill 21

### Patient Relations Program

- ▶ Within Bill 21 amendments to the *Health Professions Act (HPA)*, all Colleges must:
  - ▶ increase transparency by posting health professionals' discipline history on their public website.
  - ▶ establish a patient relations program to include education, training and public information to regulated members
  - ▶ provide funding for patients who have alleged unprofessional conduct (sexual abuse and/or sexual misconduct) against a regulated member.

## Patient Relations Program

### Public Access to Disciplinary Process and Findings

- ▶ Website
  - ▶ The College must maintain a website available to the public which includes information on: annual reports, regulatory documents, directory of regulated members, decisions made by a Hearing Tribunal, Council or Court, and information regarding suspensions, cancellations or conditions on practice permits.
    - ▶ About Us - Annual Reports
    - ▶ About Us - Regulatory Documents
    - ▶ Public Register link found on College website
    - ▶ Complaints - Complaints of a Sexual Nature
    - ▶ Complaints - Hearing Decisions
  - ▶ A regulated member may request correction of information on the register that is inaccurate or incomplete.

## Patient Relations Program Requirements for Training

- ▶ The College will develop educational guidelines and provide mandatory training for
  - ▶ Regulated Members: to prevent and address sexual abuse of and sexual misconduct towards patients.
  - ▶ Staff and Council
- ▶ Hearing Tribunal and Complaint Review Committee Members
  - ▶ Hearing Tribunal/Complaint Review Committee members will receive training when selected to sit on a tribunal/appeal panel. Their training will include information regarding Trauma Informed Practice and sexual violence.

## Patient Relations Program Fund for Treatment or Counselling for Patients

- ▶ For patients who have experienced sexual abuse or sexual misconduct by a regulated member.
- ▶ To be eligible, filing a formal complaint with the College while still a patient is required

## Summary: Impacts to regulated members

- ▶ Regulated members must comply with the new *Standards of Practice* for sexual abuse and sexual misconduct prevention
- ▶ Mandatory penalties
- ▶ Prevention from reinstatement for sexual abuse, and/or application denied for 5 years for sexual misconduct
- ▶ Colleges must post discipline history on a public website, indefinitely
- ▶ Colleges must train staff, council, regulated members on prevention of sexual abuse and sexual misconduct
- ▶ Hearing tribunal members must receive training on trauma informed practice and sexual violence

## References/Resources

- ▶ College of Dietitians of Alberta. (2018). *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention*. Available at: <http://collegeofdietitians.ab.ca/wp-content/uploads/2019/03/Standards-of-Practice-Bill-21-March-2019.pdf>
- ▶ College of Dietitians of Alberta. (2018). *Standards of Practice*. Available at: <http://collegeofdietitians.ab.ca/wp-content/uploads/2018/12/CDA-Standards-of-Practice-October-2018.pdf>
- ▶ College of Dietitians of Alberta. (2008). *Code of Ethics*. Available at: <http://collegeofdietitians.ab.ca/wp-content/uploads/2017/01/Code-of-Ethics-Masterrevised-April-2008.pdf>
- ▶ College of Dietitians of Alberta. (2014). *The Professional Practice Handbook for Dietitians in Alberta*. Available at: <http://collegeofdietitians.ab.ca/wpcontent/uploads/2017/01/Professional-Practice-Handbook-for-Dietitians-in-Alberta2014.pdf>

## References/Resources

- ▶ College of Dietitians of Ontario. (2014). Sexual Abuse Prevention Program. Available at: [https://www.collegeofdietitians.org/resources/professional-practice/standards-ofpractice/sexualabusepreventionmarch2017\).aspx](https://www.collegeofdietitians.org/resources/professional-practice/standards-ofpractice/sexualabusepreventionmarch2017).aspx)
- ▶ Government of Alberta. (2002). Adult Interdependent Relationships Act. Available at: <http://www.qp.alberta.ca/documents/Acts/A04P5.pdf>
- ▶ Government of Alberta. (2018). Bill 21: An Act to Protect Patients, with amendments. Available at: [http://www.assembly.ab.ca/net/index.aspx?p=bills\\_status&selectbill=021&legl=29&session=4](http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=021&legl=29&session=4)
- ▶ Government of Canada. (2018). Marital status. Available at: <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-address-information/maritalstatus.html>
- ▶ Government of Ontario (1991). Regulated Health Profession Act. Patient criteria under subsection 1(6) of the Health Professions Procedural Code. Available at <https://www.ontario.ca/laws/regulation/180260> Glossary

## Where can RDs find more information?

- ▶ College website:
  - About Us - Regulatory Documents  
<http://collegeofdietitians.ab.ca/about-us/regulatory-documents/>
  - Complaints  
<http://collegeofdietitians.ab.ca/complaints/>

## Who can I speak with if I have questions?

- ▶ Shannon Mackenzie, Director of Professional Practice
  - ▶ 403-669-7435
  - ▶ [ppc@collegeofdietitians.ab.ca](mailto:ppc@collegeofdietitians.ab.ca)
  
- ▶ Call the College office
  - ▶ 780-448-0059
  - ▶ 1-866-493-4348
  - ▶ [office@collegeofdietitians.ab.ca](mailto:office@collegeofdietitians.ab.ca)