



# For information

## Bill 21 – *An Act to Protect Patients*

On November 19, 2018, the Government of Alberta gave Royal Assent to Bill 21 – An Act to Protect Patients. Bill 21 speaks specifically to sexual abuse and sexual misconduct by regulated health professionals and introduces many new requirements for regulatory health colleges, including CAD and its members. The amendments are complex and far-reaching and require careful attention by health colleges to implement. This is the largest amendment to the *Health Professions Act* (HPA) since its proclamation in 2001.

Some of the requirements/changes coming to regulated health profession colleges include:

### NEW DEFINITIONS

Within the HPA, clear definitions are set out for:

- **Sexual abuse** is defined in the HPA as 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: (i) sexual intercourse between a regulated member and a patient of that regulated member; (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated member and a patient of that regulated member; (iii) masturbation of a regulated member by, or in the presence of, a patient of that regulated member; (iv) masturbation of a regulated member's patient by that regulated member; (v) encouraging a regulated member's patient to masturbate in the presence of that regulated member; and (vi) touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by a regulated member.
- **Sexual misconduct** is defined in the HPA as 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 service provided.

### CHANGES TO CONDUCT PROCESSES

These amendments have considerable impact on every College's conduct processes; maybe most notably on mandatory sanctions imposed due to findings of unprofessional conduct on these matters. All complaints related to sexual abuse and sexual misconduct must be adjudicated by a hearing tribunal. There is no allowance for the Complaints Director to become involved.

These **mandatory sanctions** are:

- Cancellation of a practice permit for any health professional whose conduct is deemed to be sexual abuse of a patient with no ability to reapply or be reinstated
- Suspension of a practice permit for any health professional whose conduct is deemed to be sexual misconduct toward a patient. The hearing tribunal may opt to cancel the permit of a regulated member for sexual misconduct; if so, the individual is eligible to apply for reinstatement after five years have elapsed.



Before this legislation, penalties for conduct determined to be sexual abuse or sexual misconduct varied across almost 30 health regulatory colleges in Alberta and were determined on a case-by-case basis. The new rules will ensure consistent penalties are applied to all health professionals regulated under the HPA for findings of sexual abuse or sexual misconduct.

### **STANDARDS OF PRACTICE – DEFINITION OF PATIENT**

This bill also included a mandate for College's to amend their Standards of Practice to include:

- Determining who is considered a patient for the purposes of the College's regulated members;
- Determining when a sexual relationship may occur between a regulated member or former member and a patient; and
- Determining when it is acceptable for a regulated member's spouse/interdependent relationship partner to be a patient.

The College's Standards of Practice were amended earlier this year to include the definition of a patient.

**Patient:** a person will be considered a patient for the purposes of the Act, for the time during the dentist/patient relationship and for two years following the formal discharge of the patient.

A dentist's spouse if not considered to be a patient for the purposes of the Act.

### **PATIENT RELATIONS PROGRAM**

Under this new legislation, each College is required to establish a patient relations program to "include measures for preventing and addressing sexual abuse of and sexual misconduct towards patients by regulated members." These measures must include, but are not limited to:

- Educational requirements for regulated members;
- Educational guidelines for the conduct of regulated members towards patients;
- Training for trauma informed practices for College staff, councils and hearing tribunals;
- Information for persons respecting the College's complaints processes; and
- Assistance in directing persons to appropriate resources, persons or organizations that may be able to assist them.

A College must also provide funding for patients who have alleged unprofessional conduct in the forms of sexual abuse and/or sexual misconduct against a regulated member. A special fund must be established for this purpose and we are awaiting the regulations for this; however, it is expected that each College will have to put aside approximately \$23,000 per complaint that has been verified by the Complaints Director in order to provide any counselling or support services that the complainant may access.

All regulated health professionals in Alberta will be required to participate in training as part of this program.

### **PUBLIC-FACING REGISTER**

Colleges must post health professionals' discipline history for sexual abuse or sexual misconduct on a public-facing website.



### **APPLICATIONS FOR REGISTRATION**

As of November 19, 2018, it became law for College's to collect the following information, in addition to already established processes, from all new applicants:

- A valid criminal records check;
- Whether an applicant is currently an investigated person under the HPA or the equivalent in another jurisdiction;
- Whether any conduct of the applicant has previously constituted unprofessional conduct;
- Evidence of whether the applicant has ever had conditions imposed on their practice permit or equivalent; and
- Evidence of whether there has ever been a judgment in a civil action against the applicant with respect to their practice.