A Guide for Physiotherapists

Protecting Patients from Sexual Abuse or Misconduct

Expectations for Physiotherapists

Background

On November 19, 2018, the Government of Alberta's *Bill 21: An Act to Protect Patients*[1] received Royal Assent. The Bill set out several amendments to the *Health Professions Act*.[2] The changes affect all regulated health professionals in Alberta, and the stakes are high.

The Government of Alberta brought forward Bill 21 to address public concerns regarding sexual misconduct and sexual abuse of patients by health professionals. In doing so, the Government of Alberta followed the lead of the Government of Ontario which enacted similar legislation in 2017.

The Ontario legislation came about subsequent to the high-profile legal case of Dr. J. Peirovy, who was found to have engaged in sexual abuse of four patients.[3] Though not common, the Peirovy case was not an isolated one either. A similar case gained media attention when a physician initiated a sexual relationship with a patient in her care who was undergoing treatment for cancer.[4] Countless other similar situations have received far less media attention. These cases are not limited to physicians, nor are they isolated to other jurisdictions.

In the Peirovy case, concerns were raised by patients, the public, the College of Physicians and Surgeons of Ontario and the Ontario Minister of Health that the penalty handed down by the College of Physicians and Surgeons of Ontario's Discipline Committee was "clearly unfit."[3] In response, the Ontario government created legislation that included specific mandatory penalties for specific actions on the part of health professionals towards their patients. The Government of Alberta has since followed suit.

The Alberta legislation provides clear definitions of behaviours that constitute sexual misconduct or sexual abuse and includes the requirement that prospective registrants provide a criminal record check prior to registration, as well as added requirements for mandatory reporting of such conduct to the registrant's College. The legislation also establishes the minimum mandatory penalties for regulated health professionals found to have engaged in sexual misconduct or sexual abuse and provides clear direction to Colleges and Hearing Tribunals about how to conduct investigations and hearings when complaints that include a component of sexual misconduct or sexual abuse are received.

Definitions

To be clear, sexual misconduct and sexual abuse of patients by physiotherapists were always against the Standards of Practice[5] and the Code of Ethical Conduct.[6] What the new legislation does is define in detail behaviours that are unacceptable in the therapeutic relationship.

Sexual Abuse is defined in the *Health Professions Act*, and "means 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 regulated member and a patient of that regulated member;
- 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;
- Masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
- Masturbation of a regulated member's patient by that regulated member;
- Encouraging a regulated member's patient to masturbate in the presence of that regulated member;
- Touching of a sexual nature of a client's genitals, anus, breasts or buttocks by a regulated member."[1,2]

Sexual Misconduct as defined in the *Health Professions Act*, "means 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."[1,2]

Definitions (continued)

Patient is an individual is a patient of a regulated member when they are a recipient of physiotherapy services and a therapeutic relationship is formed. This occurs when a regulated member has engaged in one or more of the following activities:

- Gathered clinical information to assess an individual
- Contributed to a health record or file for the individual
- Provided a diagnosis
- Provided physiotherapy advice or treatment
- Charged or received payment from the individual or third party on behalf of the individual for physiotherapy services provided
- Received consent from an individual for recommended physiotherapy services

A patient is deemed discharged and no longer a patient if there have been no physiotherapy services provided for one year (365 days).

For the purposes of sexual abuse and sexual misconduct provisions in the Health Professions Act, an individual is not considered a patient if a current sexual, spousal, or adult interdependent partner relationship exists between the individual and the regulated member at the time the regulated member provides physiotherapy services.

Therapeutic relationship refers to the relationship that exists between a physiotherapist and a patient during the course of physiotherapy services. The relationship is based on trust, respect, and the expectation that the physiotherapist will establish and maintain the relationship according toapplicable legislation and regulatory requirements and will not harm or exploit the patient in any way.

Due to the nature of physiotherapy practice, there is always an inherent power imbalance between the patient and their physiotherapist. Because of theexistence of an inherent power imbalance, sexual relationships are prohibited for the duration of the therapeutic relationship even if the patient consents to the sexual relationship.

The therapeutic relationship extends from the time of initial professional contact between the physiotherapist and the patient until one year (365 days) from the date of the last documented physiotherapy service.

Potential conduct and registration impacts

All complaints received by the College are investigated, this includes complaints received from patients, members of the public, and others (e.g., employers). Although some complaints may be resolved informally, all complaints received by the College that include a component of sexual misconduct or sexual abuse must be referred to a hearing. The Complaints Director may not use informal complaint resolution processes for complaints of this nature. Depending on the nature and details of the complaint received, the Complaints Director or Hearing Tribunal may also recommend an interim suspension of a member's practice permit while the complaint is being investigated or while the hearing is proceeding.[1,2]

IF a hearing tribunal finds that a member's conduct constitutes unprofessional conduct based in whole or in part on sexual abuse, the hearing tribunal must order the cancellation of the investigated person's practice permit and registration. The cancellation of the investigated person's practice permit is permanent.[1,2] The result is a lifetime ban on the ability to practice physiotherapy in the province of Alberta.

IF a hearing tribunal finds that a member's conduct constitutes unprofessional conduct based in whole or in part on sexual misconduct, the hearing tribunal must order the suspension of the investigated person's practice permit for a specified period of time.

IF a member's practice permit is suspended or cancelled, the Registrar must provide this information to all physiotherapy regulators in Canada (HPA Section 119).[1,2] Although a finding of sexual misconduct is less egregious than a finding of sexual abuse, both penalties are significant and will affect the member's professional standing, employability and future. Keep in mind that when physiotherapists move and attempt to register in a different province or country, it is standard practice for the other jurisdiction to obtain information from Physiotherapy Alberta about the physiotherapist's regulatory history. If there is a history of findings related to sexual misconduct or sexual abuse, the *Health Professions Act* (HPA Section 119) requires that we release the information.

In other words, this history will move with the physiotherapist. It is up to the new province or country to determine if they can and will grant the physiotherapist a license to practice in light of their regulatory history.

Under the revised legislation, physiotherapists are required to report to the Registrar as soon as reasonably possible if they have been charged with an offence under the Criminal Code of Canada. This includes reporting any charges of sexual abuse (HPA Section 127.1).[1,2]

In instances where the physiotherapist has reasonable grounds to believe that another regulated member from any College regulated under the *Health Professions Act* has engaged in conduct that constitutes sexual abuse or sexual misconduct, they must report that conduct to the College of that regulated health professional (HPA Section 127.2).[1,2]

The amendments to the *Health Professions Act* require that "An employer who has reasonable grounds to believe that the conduct of a regulated member constitutes unprofessional conduct based on behaviour that, in the employer's opinion, is sexual abuse or sexual misconduct must, as soon as possible, give notice of that conduct to the complaints director" (HPA Section 57 (1.1)).[1,2]

This change is in addition to existing wording of the *Health Professions Act* which state that in instances where a physiotherapist's employment is terminated or suspended, or the physiotherapist resigns due to conduct that in the opinion of the employer constitutes unprofessional conduct, the employer must notify the Complaints Director as soon as reasonably possible (HPA Section 57).[2]

Effects of sexual abuse on patients

The mandatory penalties for health providers address longstanding issues with perceived inconsequential penalties, and the challenges that Hearing Tribunals have faced when trying to apply more significant penalties in the face of historical precedent. While these penalties are significant, it is worth considering the significant impact that sexual abuse has on survivors.

Although the consequences vary between individuals, sexual abuse survivors are known to have an increased likelihood of experiencing:[7,8,9]

- Post-traumatic stress disorder
- Physical health concerns
  - Migraines
  - Nausea
  - Fatigue
  - Gastro-intestinal issues
  - Sexual dysfunction
  - Pelvic pain
  - Chronic pain
  - Increased health care utilization and costs
- Psychological adverse effects
  - Fear
  - Anxiety
  - Depression
  - Self-harm
  - Suicidal thoughts and attempts
  - Substance abuse
  - Loss of social supports
  - Health risk behaviours
- Social/relational adverse effects
  - Decreased trust
  - Isolation
  - Fear of intimacy

It has been noted that "the nature of the perpetrator-victim relationship has been found to be associated with severity of subsequent symptoms."[10] However, little is known about the specific effects on patients of being sexually abused by a trusted health professional and how this may affect their subsequent symptoms, health seeking and health risk behaviour.

For example, in general, people who are survivors of sexual abuse demonstrate increased health-care utilization; however, it is unclear if this remains true for individuals who have been sexually abused by a health care professional. Given that individuals who have been survivors of sexual abuse demonstrate decreased trust and may avoid circumstances similar to those of the abuse,[7,8] it would seem likely that people who have been sexually abused by a health professional would avoid seeking similar services in the future and that this avoidance of health services would further affect their health and well-being.

Power and the therapeutic relationship

It is widely accepted that the root of sexual violence is power inequality.[11] It is also widely accepted that there is an inherent power imbalance between the health-care provider and patient. This power imbalance stems from the health-care provider's unique knowledge and skills, their access to the patient's private information, and the patient's reliance on them for care.[12]

While physiotherapists must be mindful of and seek to equalize the balance of power in the therapeutic relationship, it is acknowledged that this is never fully achieved. This inherent power imbalance between patient and health provider demands that physiotherapists remain vigilant to avoid circumstances that may be perceived as sexual misconduct or sexual abuse, realizing that their patients are already in a vulnerable position when seeking care.

This inherent power imbalance also provides the rationale for why it is prohibited for physiotherapists to enter into romantic or sexual relationships with patients within one year of providing them with treatment.[13] The Sexual Abuse and Sexual Misconduct Standard of Practice includes definitions of the terms patient and therapeutic relationship, and provides clarification for when an individual is or is not considered to be in a therapeutic relationship and, therefore, subject to the rules established by the changes to the *Health Professions Act* (see definitions). Members are also directed to review the Standard in full.

Sensitive practice as a universal precaution

It has been estimated that 33% of females and 16% of males will experience sexual assault within their lifetime. It has also been estimated that 50% of girls and 33% of boys will experience sexual abuse (defined as exposure of a child to sexual contact, activity or behavior – including exhibitionism, exposure to pornography, sexual touching or sexual assault) by the time they are 16 years old.[14] With this in mind, the assertion that "all health-care practitioners – whether they know it or not – encounter adult survivors of interpersonal violence in their practices"[15] and sexual violence in particular, is well founded. Indeed, physiotherapists may be somewhat more likely to encounter survivors of abuse than other health-care practitioners. Why? Survivors generally demonstrate increased health-care seeking behaviour, and as already stated, survivors of abuse more likely to have headaches, migraines, chronic pain, and pelvic pain – conditions physiotherapists commonly treat.[7,8,9]

It has also been identified that a significant proportion of individuals who have been sexually abused exhibit symptoms of PTSD, even years after the abuse occurred,[7,8,9] and that this may affect their response to seemingly innocuous triggers.

With such a high proportion of people having a history (whether recent or remote) of sexual abuse, and considering the rules established by the Bill 21 amendments to the *Health Professions Act*, physiotherapists need to adopt sensitive practice as a universal precaution in all their patient interactions.

The concept of sensitive practice is based on the objective of fostering feelings of safety for the patient. Founded on nine key principles, many of which also underpin patient centered care, the principles take on even greater significance for individuals with histories of sexual abuse.[15]

Principles of sensitive practice

- Respect
- Taking time
- Rapport
- Sharing information
- Sharing control
- Respecting boundaries
- Fostering mutual learning
- Understanding non-linear healing
- Demonstrating awareness and knowledge of interpersonal violence[15]

As Schachter et al. point out "examinations and procedures that health-care providers might consider innocuous or routine can be distressing for survivors, because they may be reminiscent of the original trauma."[15] Physiotherapists need to be thoughtful about their interactions with patients and carefully consider the patient perspective. How could your actions or comments be misconstrued or misunderstood?

How do the principles of sensitive practice apply to pelvic health physiotherapy?

It is easy to see how some areas of practice, for example pelvic health, would be rife with situations that patients may misunderstand if not properly and fully explained, and it is worth noting that "conduct, behaviour or remarks that are appropriate to the service provided do not constitute 'touching of a sexual nature' as defined under the Act and are not prohibited."[1] In other words, if a physiotherapist working in the area of pelvic health needs to conduct an internal examination for the purpose of completing an assessment appropriate for the patient's condition or providing care, this would not constitute touching of a sexual nature.

However, when physiotherapists engage in activities that have the potential to be misunderstood, whether in the context of pelvic health or otherwise, the physiotherapist has a clear requirement to explain the therapeutic purposes for their actions and ensure that they have received consent from the patient to proceed.

How do the principles of sensitive practice apply to general physiotherapy practice?

Physiotherapists who don't work in pelvic health also need to consider how a history of sexual abuse may affect their patients' response to assessment or treatment.

As Schacter points out, many of the things we do as clinicians are such routine components of a physiotherapy examination or treatment that we may be desensitized to how the patient, particularly a survivor of sexual abuse, may feel during that examination. Examples include:

- Being within the patient's personal space.
- Asking the patient to disrobe and don a gown or adjust their clothing (e.g., lowering a waistband or moving a bra strap) to expose the area to be treated.
- Touching the patient, especially when the purposes of the touch are not explained.
- Observing the patient's movement from behind, as in the assessment of spinal range of movement.
- Having the patient lie prone on a treatment bed.

Pause and think back to your first physiotherapy lab class and the vulnerability and discomfort you felt the first time you were asked to remove your t-shirt. Keep that in mind and you will be in a better position to understand the patient experience in general. How would your perceptions change if added to that vulnerability was a history of sexual abuse? How might a patient perceive a physiotherapist applying traction to their neck if they had been choked as part of past sexual abuse?

How can physiotherapists apply sensitive practice principles in their clincial interations?

A key aspect of sensitive practice is consent. As outlined in the Consent Guide, consent is only valid if the patient fully understands what they are consenting to and the implications of that consent. Consent is an ongoing process. Every time the physiotherapist undertakes a treatment procedure or test they need to re-confirm that they have the patient's consent to do so. Consent is not something that the physiotherapist obtains once and then assumes for the remainder of the therapeutic relationship. Patients must also know that they can revoke consent at any time.[16]

Applying the principles of sensitive practice as a universal precaution in physiotherapy means assuming every patient you encounter has a history of sexual abuse and then acting accordingly. Some ways that physiotherapists can exhibit this include:[15]

- Slowing down and taking the time to listen to the patient, to engage with them, and develop a therapeutic relationship by being present and attentive to their concerns.
- Explaining what you are planning to do and why it is important before you begin.
- Sharing control with the patient, both by ensuring the patient has provided informed consent, but also by being alert to subtle cues that the patient is not comfortable with the assessment or treatment procedures and making it clear to the patient with both words and actions that they can withdraw their consent at any time.
- Patients with a history of sexual abuse may need to be encouraged to advocate for themselves and may need to be "given permission" to say no. It may not be enough to simply tell the patient "if you are uncomfortable, tell me." The physiotherapist also needs to watch for and be sensitive to non-verbal signs that the patient is no longer comfortable with the intervention. These signs may include, but are not limited to:

- Physically withdrawing
- Tensing hands or body
- Shallow breathing
- Decreased responses to questions

- Patients with a history of sexual abuse also demonstrate "non-linear healing," meaning that what they can tolerate on one day may be different on the next. Physiotherapists can demonstrate an awareness of this fact by reaffirming patient consent for different treatment procedures at each appointment, rather than making assumptions that past consent remains valid. This is not only consistent with sensitive practice, it is also an expectation outlined in the Standards of Practice[5] and Consent Guide.[16]

The bottom line: what are the expectations for physiotherapists?

- Be informed – understand the prevalence of sexual abuse and the impacts a history of sexual abuse may have on the patients you treat.
- Be sensitive to the inherent power imbalance between patients and their physiotherapists. Make an intentional effort to share power and minimize the imbalance to the extent possible.
- Be vigilant about potential perceived boundary crossings and make corrections when you find yourself entering grey zones in your relationships with patients. (See the Therapeutic Relationships Guide for more information.)
- Refrain from suggestive comments or telling dirty jokes to patients, or in places where patients may overhear you.
- Do not enter into personal romantic or sexual relationships with patients, including past patients whom you have treated within the past year. (See definitions or the Standard of Practice for more information).

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