

Understanding Bill 21

An Act to Protect Patients

Introduction

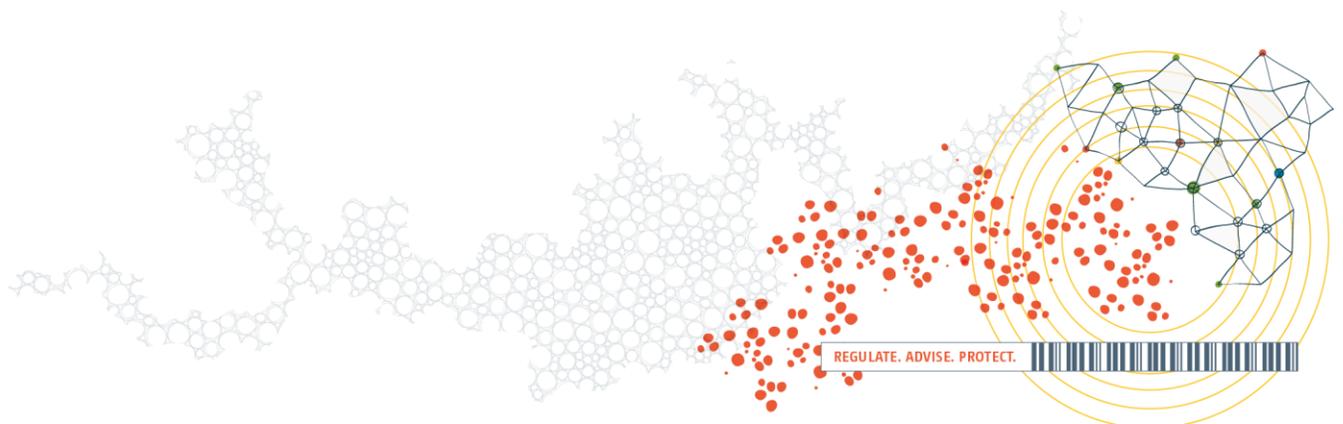
Bill 21 – *An Act to Protect Patients* received Royal Assent on November 18, 2018. The Bill introduced significant changes to the *Health Professions Act* (HPA) providing specific guidance to regulated health professions for preventing and addressing sexual contact with patients.

All regulated health professions operating under the HPA are subject to these amendments. The amendments along with the CMLTA Standards of Practice and Code of Ethics provide specific direction to MLTs for professional conduct and establishing and maintaining professional boundaries with patients.

The Bill adds section 135.7 to the HPA which requires colleges to establish a Patient Relations Program as follows:

- 135.7(1) A patient relations program must include measures for preventing and addressing sexual abuse of and sexual misconduct towards patients by regulated members.
- (2) The measures for preventing and addressing sexual abuse of and sexual misconduct towards patients by regulated members must include
 - (a) educational requirements for regulated members,
 - (b) educational guidelines for the conduct of regulated members towards patients,
 - (c) training requirements for the college's staff, council members and any members appointed under section 13 or 15,
 - (d) information for persons respecting the college's complaints process, and
 - (e) assistance in directing persons to appropriate resources, persons or organizations that may be able to assist them.

In accordance with the requirements set out above in s.135.7(2)(a) and (b), the following information and the accompanying questions are presented to assist your understanding of the amendments to the HPA.



Educational Requirements and Guidelines for the Conduct of MLTs

Definitions

The amendments to the HPA provide specific definitions for sexual misconduct and sexual abuse.

“**Sexual abuse**” 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:

- (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;
- (vi) touching of a sexual nature of a patient’s genitals, anus, breasts or buttocks by a regulated member;

“**Sexual misconduct**” 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.

“**Sexual nature**” does not include any conduct, behaviour, or remarks that are appropriate to the service provided.

*Each college is required to define the term ‘patient’ for the purpose of its regulated members.

“**Patient**” is defined in [CMLTA Practice Standard 4](#) as:

- (iii) For purposes of this Standard, an individual is a **patient** of an MLT if ANY of the following circumstances exist:
 - (a) The MLT has provided a health service to the individual on an ongoing or episodic basis.
 - (b) The MLT has provided a health service regardless of whether the MLT charged or received payment from the individual or a third party on behalf of the individual.



- (c) The MLT has knowingly contributed to a written or electronic health record or file for the individual.
- (d) The individual has consented to the health service to be performed by the MLT.
- (e) The MLT has collected and analyzed biological samples, performed quality control procedures, and communicated results that have been critically evaluated to ensure accuracy and reliability.

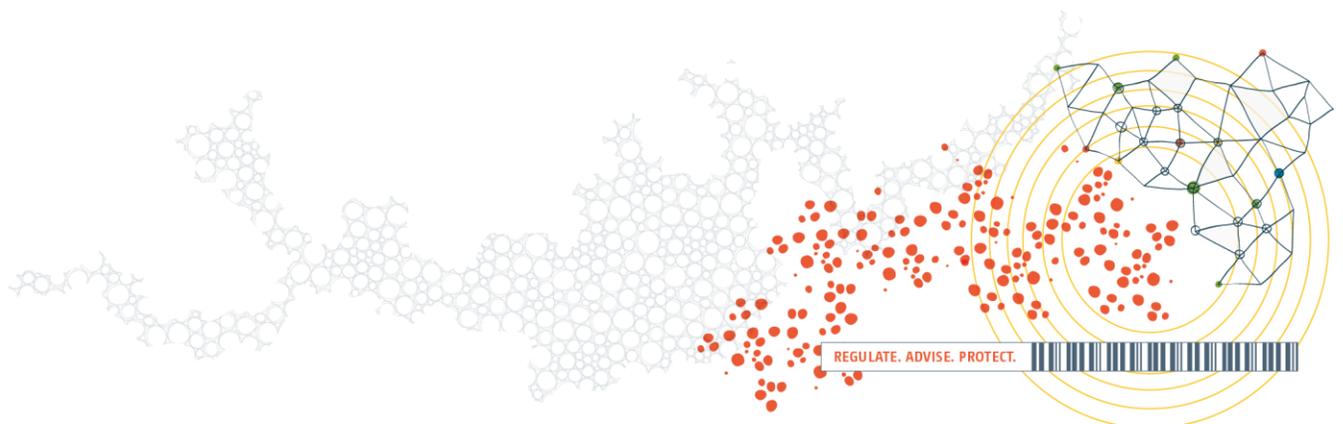
*** The terms 'patient' and 'client' are not interchangeable.**

- (iv) An individual who is currently engaged in a sexual relationship with an MLT is **not a patient** if ALL of the following circumstances exist:
 - (a) There is, at the time the MLT provides the health services, an ongoing sexual relationship between the MLT and the individual, including but not limited to, spouse or adult interdependent partner (as defined in section 3(1) of the *Adult Interdependent Relationships Act SA 2002, C A-4.5*).
 - (b) The MLT provides the health service to the individual in emergency circumstances or in circumstances where the health service is minor in nature.
 - (c) The MLT has taken reasonable steps to transfer the care of the individual to another MLT or appropriate healthcare provider or there is no reasonable opportunity to transfer care to another MLT or appropriate healthcare provider.

Note

*CMLTA Standard 4 provides that for purposes of the sexual abuse and sexual misconduct provisions of the HPA, an individual continues to be a patient of the MLT for **one (1) year** after the MLT has provided the health service to that patient.

*CMLTA Standard 4 provides that a patient's **consent** or willingness to participate in a sexual relationship is not a defense for inappropriate behavior, sexual abuse, or sexual misconduct, and does not affect the applicability of this Standard. Consent cannot be obtained when there is a power imbalance, which is inherent in a patient and practitioner relationship.



New Mandatory Requirements applying to all regulated members:

1. Registration Process

- Applicants to the CMLTA must provide a criminal records check.
- Applicants to the CMLTA must provide evidence on whether applicant is under investigation under the HPA or in another jurisdiction.
- Applicants to the CMLTA must provide information required by the Registrar on conduct that has previously constituted unprofessional conduct.
- Applicants must provide evidence of whether the applicant has ever had conditions imposed on the practice permit.
- Applicants must provide evidence as to whether there has been a civil judgment against the applicant with respect to the applicant's practice.

2. Reporting

- **Self-Reporting**
 - If the MLT is a regulated member of more than one college including similar professional bodies in other jurisdictions and subject to a decision of unprofessional conduct or professional negligence, the MLT must report the decision to the Registrar.
 - If the MLT has been charged or convicted of an offence under the *Criminal Code*, the MLT must report in writing to the Registrar.
- **Reporting another MLT**
 - If an MLT acting in their professional capacity has reasonable grounds to believe the conduct of another regulated member constitutes sexual abuse/sexual misconduct, they must make a report to the Complaints Director.
- **Employer Reporting**
 - An employer who has reasonable grounds to believe the conduct of an MLT constitutes sexual abuse/sexual misconduct must give notice of that conduct to the Complaints Director.

3. Complaint and Hearing Process

- The Complaints Director may not use the Alternative Complaint Resolution provision in the HPA for complaints alleging sexual abuse or sexual misconduct.
- Hearing Tribunals must be composed of at least one person of the same gender identity as the complainant.
- The college must establish a fund to support the treatment needs for complainants alleging sexual abuse or sexual misconduct.



4. Mandatory Sanctions

- Where a complaint results in a decision of unprofessional conduct based on sexual abuse, the hearing tribunal must order the permanent cancellation of the MLT's practice permit and registration.
- Where a complaint results in a decision of unprofessional conduct based on sexual misconduct, the hearing tribunal must order a suspension of the MLT's practice permit for a specified period. The hearing tribunal may order conditions on the member's permit or cancel the permit.
- If the person's permit was cancelled as a result of a decision on unprofessional conduct based on sexual misconduct, the person may not re-apply for a practice permit for 5 years.

5. Publication

- Decisions made by a hearing tribunal, council, or court of unprofessional conduct based on sexual abuse or sexual misconduct must be published on the college website indefinitely.

Guidelines for Maintaining Professional Boundaries

1. Take responsibility for establishing and maintaining appropriate professional boundaries with each patient.
2. Ensure interactions with patients are respectful of the patient's dignity and privacy.
3. Respect patient's cultural and social sensitivities.
4. Ensure the patient understands the clinical procedure to be performed.
5. If any procedure requires physical contact, explain where and why this physical contact is necessary.
6. Obtain consent for the procedure.
7. Explain to the patient the need for removing clothing or other items that may interfere with the procedures.
8. Avoid disclosure of personal information that is unconnected to the professional health service provided.
9. Avoid verbal and physical interactions that may be considered suggestive, inappropriately affectionate, or disrespectful.
10. Avoid inappropriate use of humour.

