

FIELD LAW

Bill 21: What Physiotherapists Need to Know

Leanne Monsma, Field LLP

Field Law is a trademark and trade name of Field LLP.

Introduction

- ▲ Bill 21, an Act to Protect Patients
- ▲ Passed by the Legislature on October 30, 2018
- ▲ Bill 21 represents the most comprehensive and important set of amendments to the *Health Professions Act* in its two decade history

2 fieldlaw.com

Overview of Presentation

- ▲ Purpose of Bill 21
- ▲ The four key definitions
- ▲ Consequences of sexual abuse or sexual misconduct
- ▲ The Standard of Practice

3 fieldlaw.com

Overview of Presentation (cont'd)

- ▲ Mandatory reporting
- ▲ Tips and traps: avoiding professional boundary issues
- ▲ YouTube video: That's Harassment
- ▲ Resources

4

fieldlaw.com

Purpose of Bill 21

- ▲ Protecting patients by preventing, identifying and properly addressing sexual abuse and sexual misconduct by health care professionals

5

fieldlaw.com

The Four Key Definitions

- ▲ Patient
- ▲ Sexual Abuse
- ▲ Sexual Misconduct
- ▲ Sexual Nature

6

fieldlaw.com

A Fundamental Concept

- ▲ The power imbalance means that consent is not legally recognized in a sexual relationship between a regulated member and a patient, as defined in the College's Standard of Practice

7

fieldlaw.com

Consequences of Sexual Abuse

- ▲ Sexual abuse = cancellation of registration and practice permit
 - Plus the potential for other sanctions
 - No possibility of reinstatement

8

fieldlaw.com

Consequences of Sexual Misconduct

- ▲ Sexual misconduct = minimum period of suspension of practice permit for period determined by Hearing Tribunal
 - Plus the potential for other sanctions
 - If registration and practice permit cancelled, no possibility of reinstatement for 5 years

9

fieldlaw.com

Physiotherapy Alberta Standards of Practice:
Sexual Abuse and Sexual Misconduct

- ▲ In force effective April 1, 2019
- ▲ Should be read in conjunction with Standard of Practice: Professional Boundaries

10

fieldlaw.com

Key Concepts Established in the Standard of Practice

1. **Prohibits the physiotherapist from engaging in inappropriate conduct with patients**
 - Physiotherapists must abstain from conduct, behaviour or remarks directed toward a patient that constitutes sexual abuse or sexual misconduct

11

fieldlaw.com

Key Concepts (cont'd)

2. **Clarifies who is a "patient"**
 - A patient is an individual who is the recipient of physiotherapy services where a therapeutic relationship is formed.

12

fieldlaw.com

Key Concepts (cont'd)

2. Clarifies who is a "patient"

- Therapeutic relationships forms when the physiotherapist has engaged in one or more of the following activities:
 - Gathered clinical information to assess the patient;
 - Provided a diagnosis;
 - Provided physiotherapy advice or treatment;
 - Charged or received payment from the individual or third party on behalf of the individual; or
 - Received consent from an individual for recommended physiotherapy services.

13

fieldlaw.com

Key Concepts (cont'd)

3. Clarifies when the therapeutic relationship begins and ends

- Therapeutic relationship begins at the time of the initial professional contact.
- Therapeutic relationship continues to exist for 365 days after the last documented physiotherapy service has been provided.
- This means that:
 - for the purposes of the Standard of Practice, a person continues to be a "patient" for 365 after the last date of service.
 - Provisions in Bill 21 prohibiting sexual contact with the patient continue to apply during this period of time.
 - If physiotherapist engages in sexual relationship with a patient during the one-year period, sexual contact will constitute "sexual abuse" even if the patient consents.

14

fieldlaw.com

Key Concepts (cont'd)

4. Establishes exception for spouses, partners, and those who are engaged in pre-existing sexual relationships

- Specifies that a person is not considered to be a "patient" if a current sexual, spousal, or adult interdependent relationship exists at the time the physiotherapist provides physiotherapy services
- Means that sexual activity with a spouse, partner or individual who is also a patient will not constitute "sexual abuse" as long as the sexual relationship already exists at the time physiotherapy services are provided

15

fieldlaw.com

Key Concepts (cont'd)

5. Establishes an exception to the definition of "patient" when the physiotherapist has provided "episodic care"

- A person is not considered to be a patient if:
 - the physiotherapist provides "episodic care" to a patient;
 - and 48 hours has passed before the sexual relationship or communications occurs

16

fieldlaw.com

Key Concepts (cont'd)

5. Episodic care (cont'd)

- Episodic care is a single encounter with a patient focused on a presenting concern; and
- Both the physiotherapist and the patient have no expectation of an ongoing care relationship.

17

fieldlaw.com

Mandatory Reporting: Three Types Under the HPA

1. Employer reporting
2. Self-reporting
3. Reporting other health care professionals

18

fieldlaw.com

Employer Reporting of Unprofessional Conduct

- ▲ Unprofessional conduct: current provision but now "as soon as reasonably possible"
- ▲ Sexual abuse or sexual misconduct

19

fieldlaw.com

Self-Reporting to Physiotherapy Alberta

- ▲ Findings of unprofessional conduct by another College
- ▲ Findings of unprofessional conduct by a regulatory body of a similar profession in another jurisdiction
- ▲ Findings of professional negligence

20

fieldlaw.com

Reporting of Other Regulated Members

- ▲ Charges or convictions under the *Criminal Code*
- ▲ Not restricted to reporting other physiotherapists
- ▲ Applies to regulated members of any College under HPA

21

fieldlaw.com

Elements Triggering Mandatory Reporting of Other Regulated Members

1. In course of physiotherapist acting in their professional capacity
2. Physiotherapist has "reasonable grounds to believe"
3. Conduct of another regulated member constitutes sexual abuse or sexual misconduct

22

fieldlaw.com

Reporting Sexual Abuse or Sexual Misconduct

- ▲ Report to the Complaints Director of the other regulated member's College
- ▲ Exception to duty to report information obtained in the course of providing professional services to the other regulated member

23

fieldlaw.com

20 Tips and Traps: Avoiding Professional Boundary Issues

24

fieldlaw.com

Tips + Traps

1. Get familiar with Physiotherapy Alberta's Standards of Practice: Sexual Abuse and Misconduct, and the definition of "patient".

25

fieldlaw.com

Tips + Traps (cont'd)

2. Understand the definition of "sexual abuse" and the concept of "sexual misconduct".

26

fieldlaw.com

Tips + Traps (cont'd)

3. Recognize what the risk factors are and guard against them.
4. Identify specific situations of high potential risk and take proactive and preventative measures to maintain professional boundaries in those situations.

27

fieldlaw.com

Tips + Traps (cont'd)

- 5. Introduce yourself by name, protected title and role.
- 6. Use the patient's preferred name or title in all of your communications with and about them.

28

fieldlaw.com

Tips + Traps (cont'd)

- 7. Obtain informed consent for your proposed health services and then document the fact that you obtained informed consent. This is especially important when it comes to procedures that could be misinterpreted, like touching the patient's body (especially a sensitive part of their body) or close physical examination.

29

fieldlaw.com

Tips + Traps (cont'd)

- 8. Communicate in an way that facilitates the patient's understanding of what is happening, especially when describing your proposed health services in order to obtain informed consent.

30

fieldlaw.com

Tips + Traps (cont'd)

9. Be intentional and careful when touching the patient.

31

fieldlaw.com

Tips + Traps (cont'd)

10. Maintain complete and thorough records to document items such as the patient's consent, refusal, concerns and reactions.

32

fieldlaw.com

Tips + Traps (cont'd)

11. Avoid disclosing information about yourself, including your personal opinions or experiences.

12. Avoid practicing outside of normal professional customs (e.g. hours).

33

fieldlaw.com

Tips + Traps (cont'd)

- 13. Maintain a professional environment. Don't comment on a patient's appearance (unless it is for the purpose of the health service being provided) or make any other comments, jokes or engaged in behaviours that are or may be interpreted to be sexually suggestive.

34

fieldlaw.com

Tips + Traps (cont'd)

- 14. Develop a policy or strategy for dealing with patient request for online communication.
- 15. Maintain a professional communication style in all electronic communications.
- 16. Establish and maintain separate personal and professional social media pages and email accounts. Keep your personal life private.

35

fieldlaw.com

Tips + Traps (cont'd)

- 17. If a patient makes sexual advances or comments or gestures of a sexual nature, refuse to engage. Explain your ethical and regulatory responsibilities. Again, make sure to document what happened.

36

fieldlaw.com

Tips + Traps (cont'd)

18. Watch out for signs of boundary erosion.

37

fieldlaw.com

Tips + Traps (cont'd)

19. Terminate the therapeutic relationship if appropriate professional boundaries cannot be established or maintained and transfer the patient's care to another provider if necessary.

38

fieldlaw.com

Tips + Traps (cont'd)

20. Before commencing a relationship with someone you treated, make absolutely certain that the person is no longer a "patient" under the Standard of Practice.

39

fieldlaw.com

YouTube Video

- ▲ Watch the YouTube Video
- ▲ #ThatsHarassment: The Doctor (featuring Cynthia Nixon and Michael Kelly)
- ▲ Series of videos intended to capture what #MeToo moments look like in real life

40

fieldlaw.com

YouTube Video (cont'd)

- ▲ As you watch consider the Tips and Traps
- ▲ Pay attention to the patient's reaction and expression as matters develop
- ▲ Note all the professional boundary and other issues in the examination
- ▲ See how many you identify

41

fieldlaw.com

#ThatsHarassment: The Doctor 20 Problematic Behaviours

1. Assumes the patient consents to be examined by someone other than her regular doctor.
2. Tells her to bend over without initially telling her why.
3. Puts his hand on her shoulders to push her head down towards his waist area.

42

fieldlaw.com

#ThatsHarassment (cont'd)

4. Touches her shoulder.
5. Rests his closed hand on her knee area when he is using the tongue depressor.
6. Begins to physically touch her neck area without explaining why.

43

fieldlaw.com

#ThatsHarassment (cont'd)

7. When a patient asks if it is sinusitis, he responds in a condescending way, "Patience. You need patience."
8. Rests his hands quite high up on her thigh after completing the neck examination.
9. Does not explain why he is going to tap her forehead area and keeps his hand on her thigh.

44

fieldlaw.com

#ThatsHarassment (cont'd)

10. After finishing tapping her forehead area, rests both hands on her thigh area.
11. Pulls up her shirt to put the stethoscope on her back without explaining what he is doing.
12. Tells her to undo the buttons on her blouse without explaining why.

45

fieldlaw.com

#ThatsHarassment (cont'd)

- 13. Does not explain why one button being open is not enough.
- 14. Fairly roughly opens her blouse further.
- 15. Rests his other hand on her stomach.

46

fieldlaw.com

#ThatsHarassment (cont'd)

- 16. Asks her age. Perhaps medically relevant to the issue of getting a mammogram.
- 17. "You have a lovely chest. It would be a shame not to have it checked." Comments on physical appearance and comments of a sexual nature.
- 18. Begins breast examination without asking for explicit consent.

47

fieldlaw.com

#ThatsHarassment (cont'd)

- 19. Squeezes her breast at the end of the examination. Gropes the patient.
- 20. Pats her on the breast area.

48

fieldlaw.com

Questions to Ponder

1. Is this Sexual Misconduct under the *Health Professions Act*?
 - Comment about patient having a nice chest could be Sexual Misconduct
2. Is this Sexual Abuse under the *Health Professions Act*?
 - Groping the breast for no medical reason would be Sexual Abuse

49

fieldlaw.com

Questions to Ponder (cont'd)

3. Does the patient know whether she has just been assaulted?
4. What do you think the patient will do?

50

fieldlaw.com

Questions to Ponder (cont'd)

5. If the patient felt that her breasts were perhaps being touched inappropriately, do you make any assumptions based on how she reacted? She did not object or leave. Are you in danger about engaging in stereotypical thinking about how patients undergoing trauma react?

51

fieldlaw.com

Resources

- ▲ Physiotherapy Alberta College + Association Standards of Practice
 - Sexual Abuse and Sexual Misconduct
 - Professional Boundaries

52

fieldlaw.com

THANK YOU

Leanne Monsma
780-423-3003
lmonsma@fieldlaw.com

53

fieldlaw.com
