



COLLEGE OF
LICENSED PRACTICAL NURSES
OF ALBERTA

STANDARDS OF PRACTICE FOR LICENSED PRACTICAL NURSES ON

Boundary Violations: Protecting Patients from Sexual Abuse and Sexual Misconduct

Approved by the Council and come into force on March 19, 2019

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CONTENTS

Introduction	4
Definitions	6
STANDARD 1: The LPN–Patient Relationship	8
STANDARD 2: Prohibited Sexual Conduct	10
STANDARD 3: Sexual Relations with Former Patients	11
STANDARD 4: Sexual Relations with Individuals Closely Associated with the Patient	12
STANDARD 5: Providing Professional Nursing Services to Partners	13
STANDARD 6: Reporting	14
STANDARD 7: Education on Sexual Abuse and Sexual Misconduct	15
STANDARD 8: Other Types of Boundary Violations	16
Legislation and Regulations	17
Bibliography	17
Appendix 1	18

INTRODUCTION

The Government of Alberta's 2018 amendments to the *Health Professions Act* (HPA) consider proven allegations of sexual relations between a regulated health professional and a patient to be sexual abuse and require the permanent cancellation of the health professional's registration and practice permit. In the case of proven allegations of sexual misconduct, a suspension must be imposed.

The College of Licensed Practical Nurses of Alberta (CLPNA) supports this policy direction of the Government of Alberta and has zero tolerance for sexual abuse or sexual misconduct towards patients. Sexual abuse or sexual misconduct by an LPN is a betrayal of trust.

These Standards of Practice define who is and who is not a "patient" for the purposes of the sexual abuse and sexual misconduct provisions under the HPA. When an LPN is found to have engaged in sexual abuse by a Hearing Tribunal, the Hearing Tribunal must order cancellation of the LPN's registration and practice permit. In cases of sexual misconduct, the Hearing Tribunal must order at least a suspension but can order more severe sanctions up to and including cancellation. If a registration or practice permit is cancelled due to a finding of sexual misconduct, the LPN cannot apply for reinstatement until at least 5 years have elapsed from the date that the decision of unprofessional conduct was made by the Hearing Tribunal. The HPA also requires the CLPNA to list an LPN's discipline history for sexual abuse and sexual misconduct on the CLPNA website.

It is important to understand that an agreement to engage in sexual relations by a patient is never considered "consent" in the context of the LPN-patient relationship. Even if the patient agrees to sexual relations with the LPN, this conduct is considered sexual abuse by the HPA and by the CLPNA. As professional nurses, LPNs are held to the highest standard of care and must act in the best interest of the patient and their safety. The LPN possesses professional nursing knowledge and holds a position of power and trust over the patient.

Due to the position of power and trust over the patient, a consensual sexual relationship is never possible. A complaint raised about sexual relations with a patient will be treated and prosecuted as a complaint about sexual abuse or sexual misconduct by the CLPNA regardless of whether the patient had agreed to such a relationship. An LPN who has any questions about these standards is encouraged to consult with a CLPNA Practice Consultant.

A note about LPNs legislative framework in Alberta:

Standards of practice are part of the overall legislative framework that governs the LPN Profession in Alberta. Standards of practice provide the minimum standard of behaviour that LPNs are expected to meet in their nursing practice. LPNs should always strive to practice above the minimum standards. Performance below the minimum standard could result in disciplinary action. Standards of practice are enforceable under the HPA and a breach of a standard of practice is considered unprofessional conduct. For the purposes of these standards of practice, findings of sexual abuse or sexual misconduct have mandatory penalties. Some other legislation and documents which govern Alberta LPNs include the:

- *Health Professions Act* (including Schedule 10)
- *Licensed Practical Nurses Profession Regulation, Alta Reg 81/2003*
- *Standards of Practice for Licensed Practical Nurses in Canada* (Canadian Council for Practical Nurse Regulators (CCPNR), 2013)
- *Code of Ethics for Licensed Practical Nurses in Canada*, (CCPNR, 2013)
- *Competency Profile for Licensed Practical Nurses*, 3rd edition (CLPNA, 2015)
- *CLPNA Bylaws* (as amended March 2016)

In addition to these standards of practice, it is the responsibility of all LPNs to understand the above documents and apply them to their nursing practice, regardless of practice setting or areas of responsibility.

DEFINITIONS

For the purposes of these Standards of Practice, the following words and phrases mean:

Adult Interdependent Partner:

A personal partnership as defined in the Adult Interdependent Relationships Act (SA, 2002): In Alberta, two people are considered adult interdependent partners if they have made a legal agreement to become partners (i.e., share their lives, are emotionally committed to one another, and function as an economic and domestic unit); they have lived together for a continuous period of three years or more; or if they have lived together for less than three years but are in a relationship of some permanence, and there is a child of the relationship by either birth or adoption.

Episodic Care:

Episodic care is defined as an encounter with a patient for a defined professional nursing service, where neither the LPN nor the patient has the expectation of continuing care and an ongoing LPN-patient relationship.

Licensed Practical Nurse (LPN):

A person registered on a register listed in Section 2 of the Licensed Practical Nurses Profession Regulation.

Patient:

For the purposes of a complaint made in relation to sexual abuse or sexual misconduct, patient is defined in these Standards of Practice as an individual to whom the nurse provides a professional nursing service. See Standard 1 for other situations where an individual may be considered a patient.

Patient Relations Program:

A mandatory program required by the Health Professions Act that must include, in addition to other things, education for regulated health professionals on measures for preventing and addressing sexual abuse of and sexual misconduct towards patients by regulated members.

Professional Nursing Service:

A professional service as defined in the Health Professions Act means a service that comes within the practice of a regulated profession and for LPNs includes the application of nursing knowledge, skills and judgment to assess patients' needs and the provision of nursing care for patients and families.

Psychotherapeutic treatment:

Interventions intended to treat the underlying condition or to provide ongoing support and guidance to an individual with a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs the individual's judgment, behaviour, capacity to recognize reality, or ability to meet the ordinary demands of life.

Reasonable Grounds:

There is enough credible evidence to lead a person of ordinary and prudent judgment to the suspicions and belief that he or she holds.

Sexual Abuse:

As defined in section 1(1)(nn.1) of the Health Professions Act, sexual abuse is the threatened, attempted or actual conduct of a regulated health professional towards a patient that is of a sexual nature and includes any of the following conduct:

- (i) sexual intercourse between an LPN and a patient of that LPN;
- (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between an LPN and a patient of that LPN;
- (iii) masturbation of an LPN by, or in the presence of, a patient of that LPN;
- (iv) masturbation of an LPN's patient by that LPN;
- (v) encouraging an LPN's patient to masturbate in the presence of that LPN;
- (vi) touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by an LPN;

Sexual Misconduct:

As defined in section 1(1)(nn.2) of the Health Professions Act, sexual misconduct includes:

- an incident or repeated incidents of objectionable or unwelcome conduct ;
- behaviour; or
- remarks

of a sexual nature by an LPN towards a patient that the LPN 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:

As defined in section 1(1)(nn.3) of the Health Professions Act, sexual nature does not include any conduct, behaviour or remarks that are appropriate to the service provided.

Spouse:

A spouse is a legally married person.

STANDARD 1: The LPN-Patient Relationship

An individual is considered to be an LPN's patient for the purposes of the sexual abuse and sexual misconduct provisions in the HPA while receiving a professional nursing service provided by the LPN and for a minimum of one year from the last day professional nursing services were provided.

An LPN–patient relationship comes into existence when:

An individual is considered a **patient**¹ when the LPN provides a **professional nursing service**, or when

- the LPN has issued billings or received payment in connection with a healthcare service provided to that patient,
- the LPN has contributed to a patient record or file for that patient, or
- the patient has consented to receive a professional nursing service to be provided by the LPN.

Sexual abuse:

1.1 An LPN must not engage in behaviour towards a patient that can be considered sexual abuse. A sexual relationship between an LPN and a patient is considered sexual abuse. Sexual intercourse or sexual touching as described in the definition of sexual abuse is considered sexual abuse.

- A finding of sexual abuse results in permanent cancellation of the LPN's registration and practice permit with no opportunity to be reinstated.

Sexual misconduct:

1.2 An LPN must not engage in behaviour towards a patient that is objectionable or unwelcome, including acting in a manner, or making remarks of a **sexual nature**, that the LPN knows, or ought reasonably to know, will cause offence or humiliation or adversely affect the patient's health and well-being. This behaviour is considered sexual misconduct.

- A finding of sexual misconduct will result in a minimum of suspension of a practice permit. A Hearing Tribunal will determine the length of the suspension and can impose more severe sanctions including cancellation of registration and practice permit.

When the LPN-patient relationship ends:

1.3 It is the LPN's responsibility to ensure that termination of the LPN-patient relationship is communicated to the patient; that the termination is documented at the time of discharged from care in the patient's record; and that a minimum of one year from the last day of providing professional nursing services has occurred before engaging in a sexual relationship with a former patient.

1.4. If the LPN has a sexual relationship with the patient before the one year is over, this behaviour will be considered sexual abuse and the LPN's registration and practice permit will be subject to cancellation.

1.5 Where applicable, an LPN must also ensure that any transfer of care is communicated to the patient and is documented in the patient's record.

¹Key terms or phrases that were listed under the Definitions are bolded upon first reference in the standards.

When the LPN provides a professional nursing service (episodic care) to a patient:

There are circumstances where an LPN may provide nursing services to a patient for a particular health issue and neither the LPN nor the patient has the expectation of continuing care and an ongoing LPN-patient relationship. This is considered to be **episodic care**. The individual is not considered to be a patient *after* the completion of the episodic care. However, an LPN-patient relationship is formed *during* the provision of the episodic care. An LPN who engages in sexual activity as listed in the definitions of sexual abuse and sexual misconduct during the provision of episodic care will be considered to have committed sexual abuse or sexual misconduct.

1.6 The LPN providing episodic care must:

- collect and document any relevant history;
- assess and provide nursing interventions as appropriate;
- inform the patient that the LPN will not provide continuing care beyond addressing the patient's defined healthcare need; and
- document the nursing encounter on the patient's health record so that other care providers can access the documentation.

Although an individual is not considered to be a patient after the completion of the episodic care, sexual relations may still be considered unprofessional conduct with the sanctions to be determined by a Hearing Tribunal.

1.7 The LPN must weigh the following factors when considering engaging in sexual relations with an individual to whom they have provided episodic care:

- the risk of a power imbalance;
- the nature of the individual's health concern;
- the type of healthcare provided by the LPN;
- whether sufficient time has passed since providing the professional nursing service;
- the extent to which the individual has confided personal or private information to the LPN; and
- the vulnerability of the individual.

NOTE

An LPN who is uncertain about the appropriateness of entering into a sexual relationship with an individual to whom they have provided episodic care should consult with a CLPNA Practice Consultant or their legal counsel.

STANDARD 2: Prohibited Sexual Conduct

Sexual abuse:

- 2.1 An LPN must not threaten, attempt or engage, in any of the following conduct with a patient:
- sexual intercourse;
 - genital to genital, genital to anal, oral to genital, or oral to anal contact between an LPN and a patient of that LPN;
 - masturbation of an LPN by, or in the presence of, a patient of that LPN;
 - masturbation of an LPN's patient by that LPN;
 - encouraging an LPN's patient to masturbate in the presence of that LPN; or
 - touching of a sexual nature of a patient's genitals, anus, breasts or buttocks.

NOTE

A finding of sexual abuse results in permanent cancellation of the LPN's registration and practice permit with no opportunity to be reinstated.

Sexual misconduct:

- 2.2 An LPN must not:
- make sexual comments or gestures toward a patient;
 - give and share sexually explicit content with a patient;
 - photograph or record anything of a sexual nature of a patient;
 - enter into a sexual relationship with a patient;
 - request details of a patient's sexual or personal history unless related to the patient's care; or
 - socialize or communicate with a patient for the purpose of pursuing a sexual relationship.

NOTE

A finding of sexual misconduct will result in a minimum of suspension of a practice permit. A Hearing Tribunal will determine the length of the suspension and can impose more severe sanctions including cancellation of registration and practice permit.

STANDARD 3: Sexual Relations with Former Patients

Sexual relations between LPNs and former patients raise concerns about breach of trust and power imbalance. As provided in Standard 1, an individual is considered to be an LPN's patient for the purposes of the sexual abuse and sexual misconduct provisions in the HPA for a minimum of one year from the last day professional nursing services were provided. However, there are circumstances when it is *never* appropriate for the LPN to engage in a sexual relationship with a former patient.

- 3.1 Where the LPN provided nursing care as part of the patient's **psychotherapeutic treatment**, the LPN *must never* engage in a sexual relationship with a former patient. In these circumstances, a sexual relationship at any time between the LPN and a former patient would constitute sexual abuse as defined in the HPA, and a Hearing Tribunal will impose cancellation of registration and practice permit.
- 3.2 Where the LPN provided nursing interventions to a patient that are not considered psychotherapeutic treatment, such as giving information and providing advice to enhance personal development, providing emotional support or guidance on lifestyle choices, one year *may still not* be sufficient time for a sexual relationship with a former patient to be considered appropriate.

To determine the appropriateness of a sexual relationship between an LPN and a former patient, the LPN must weigh the following factors:

- the nature of the patient's health issue;
- the risk of a continuing power imbalance;
- whether sufficient time has passed since providing the last professional nursing service, given the nature and extent of the nurse-patient relationship;
- the length and intensity of the former LPN-patient relationship;
- the extent to which the patient has confided personal or private information to the LPN; and
- the vulnerability the patient has in the LPN-patient relationship.

For the purposes of Standard 3.2, a breach of this standard is not considered to be sexual abuse but may be considered unprofessional conduct with the sanctions to be determined by a Hearing Tribunal.

NOTE

An LPN who is uncertain about the appropriateness of entering into a sexual relationship with a former patient should consult with a CLPNA Practice Consultant or their legal counsel.

STANDARD 4: Sexual Relations with Individuals Closely Associated with the Patient

- 4.1 Sexual relations between LPNs and individuals closely associated with the patient may also raise concerns about breach of trust and power imbalance. The LPN must weigh the following factors when considering engaging in sexual relations with a person closely associated with a patient:
- the nature of the patient's health concern;
 - the type of healthcare provided by the LPN;
 - the length and intensity of the LPN-patient relationship;
 - the degree of emotional dependence the individual associated with the patient has on the LPN; and
 - the degree to which patient is reliant on the person closely associated with them.
- 4.2 A breach of this standard is not considered to be sexual abuse but may be considered unprofessional conduct with the sanctions to be determined by a Hearing Tribunal.

NOTE

An LPN who is uncertain about the appropriateness of entering into a sexual relationship with an individual closely associated with the patient or former patient should consult with a CLPNA Practice Consultant or their legal counsel.

STANDARD 5: Providing Professional Nursing Services to Partners

- 5.1 For the purposes of the sexual abuse provisions in the HPA, a person receiving professional nursing services from an LPN is not considered to be a patient if the LPN is their spouse, their **adult interdependent partner**, or if the person was in an ongoing pre-existing sexual relationship with the LPN.
- 5.2 However, it may be considered to be *unprofessional conduct* for an LPN to provide professional nursing services to a spouse, adult interdependent partner or a person with whom they are in a pre-existing sexual relationship *unless*:
- the care is considered personal care of the type that can reasonably be provided to family members, or
 - the professional nursing service was provided by the LPN to the individual in an emergency situation, and there was no reasonable opportunity to transfer care to another qualified healthcare professional.

STANDARD 6: Reporting

Reporting by LPNs:

- 6.1 An LPN must report, in writing, the following decisions made against them to the CLPNA Registrar as soon as reasonably possible:
- a finding of unprofessional conduct made by another regulatory college in Alberta that the LPN is a regulated member of;
 - the LPN must also provide a copy of that decision to any other regulatory college they are registered with;
 - a finding of unprofessional conduct from regulatory colleges of a similar profession in other jurisdictions;
 - the LPN must also provide a copy of the decision to the CLPNA Registrar;
 - a finding of professional negligence made against the LPN; and
 - any charges and convictions under the *Criminal Code* (Canada, 1985) on or after April 1, 2019.
- 6.2 An LPN must report the conduct of other regulated health providers if, in the course of the LPN acting in their professional capacity, the LPN has **reasonable grounds** to believe that the conduct of another regulated member of any college constitutes sexual abuse or sexual misconduct. The LPN must report the conduct to the complaints director of that regulated member's profession.
- 6.3 An LPN must also report the following:
- if an unregulated healthcare provider's conduct constitutes sexual abuse or sexual misconduct, the LPN must report that conduct to the healthcare provider's employer or the police; and
 - LPNs are required to comply with the mandatory reporting provisions in other legislation such as the *Protection for Persons in Care Act* and HPA and under this Standard of Practice.
- 6.4 If an LPN fails to comply with mandatory reporting provisions, a Hearing Tribunal may find that the LPN engaged in unprofessional conduct.

STANDARD 7: Education on Sexual Abuse and Sexual Misconduct

The HPA requires all health profession regulatory colleges establish a **Patient Relations Program**. The Patient Relations Program includes, but is not limited to, education for regulated health professionals on measures for preventing and addressing sexual abuse of and sexual misconduct towards patients by regulated members.

7.1 An LPN must:

- successfully complete any education requirements established by the CLPNA's Patient Relations Program for LPNs regarding preventing and addressing sexual abuse of and sexual misconduct towards patients by LPNs and other regulated health professionals; and
- apply educational guidelines established by the CLPNA regarding the conduct of LPNs towards patients.

STANDARD 8: Other Types of Boundary Violations

Other Types of LPN Boundary Violations

In addition to Standards 1 to 7, which focus on sexual abuse and sexual misconduct, the CLPNA requires that all types of boundary violations be avoided. For example, entering into a close personal relationship with a patient can be a boundary violation. All boundary violations may give rise to allegations and findings of unprofessional conduct.

- 8.1 An LPN must maintain professional boundaries in the LPN-patient relationship at all times. Boundary violations:
 - can be related to behaviours between an LPN and a patient in areas such as cultural insensitivity, gift giving or receiving, emotional or financial abuse, and
 - may occur physically and verbally.
- 8.2 An LPN must maintain professional boundaries with their colleagues and co-workers. Boundary violations:
 - can be related to behaviours between an LPN and a co-worker in areas such as an incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks and sharing of unwanted sexually explicit content of a sexual nature by an LPN towards a colleague that the LPN knows or ought reasonably to know will or would cause offence or humiliation.

Legislation and Regulations

Adult Interdependent Relationships Act, RSA 2002, c A-4.5.

Government Organization Act, RSA 2000, c G-10, Schedule 7.1.

Health Professions Act, RSA 2000, c H-7.

Licensed Practical Nurses Profession Regulation, Alta Reg 81/2003.

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Appendix 1

Bill 21 Section 24 - The following is added after section 133: Specific standards of practice

- 133.1(1) A council must develop and propose standards of practice
- (a) setting out who is considered to be a patient for the purposes of the college's regulated members,
 - (b) respecting when a sexual relationship may occur between a regulated member or former member and a patient, and
 - (c) respecting when a person who is a spouse of or in an adult interdependent relationship with a regulated member may also be a patient.
- (2) Factors that must be considered by a council under subsection (1)(b) and (c) include
- (a) whether there is or was a power imbalance between the regulated member and the patient, and if any existed, whether there is minimal risk of a continuing power imbalance between the regulated member and the patient,
 - (b) the nature and extent of the professional relationship between the regulated member and the patient, and if relevant, whether sufficient time has passed since the last time professional services were provided to the patient by the regulated member,
 - (c) whether the regulated member knew or ought to have known that the patient is or was the regulated member's patient at the time the sexual relationship was established,
 - (d) whether the regulated member has provided the patient with psychotherapeutic treatment, and
 - (e) whether the patient is in need of urgent care.
- (3) A college must provide, for review and comment, a copy of the proposed standards of practice developed under this section to
- (a) its regulated members,
 - (b) the Minister, and
 - (c) any other persons the council considers necessary.
- (4) After a college has reviewed and considered comments received from a review described in subsection (3), and made any amendments that the college considers necessary to the proposed standards of practice, the council must submit any standards of practice developed under this section to the Minister for final approval.
- (5) A council may not adopt any standards of practice under this section unless the standards of practice have been approved by the Minister.
- (6) The Minister may set timelines for the development, proposal, review, comment and approval of standards of practice developed under this section.
- (7) The Regulations Act does not apply to standards of practice adopted under this section.

- (8) A college must ensure that copies of standards of practice adopted under this section are readily available to the public and regulated members, and the copies may be distributed in the manner directed by the council.
- (9) Standards of practice referred to in subsection (1) must be adopted by a council and come into force on or before March 31, 2019.
- (10) On or after April 1, 2019, the process set out in section 133 applies to proposed amendments to standards of practice adopted by a council under this section.



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