

Patient Information Guide

Sexual Abuse and Sexual Misconduct Complaints

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All health care professionals, including optometrists, are considered to be in a position of power over a patient, by virtue of having professional knowledge and skill that a patient must rely on for their health and well-being. In addition, these health professionals have access to a patient's personal health information.

As such, all health care professionals, including optometrists, must always maintain professional boundaries with their patients and avoid any activity that the *Health Professions Act* defines as sexual abuse, sexual misconduct or of a sexual nature. As the Alberta College of Optometrists (ACO) considers violation of professional boundaries to be a serious issue, we have developed this Patient Information Guide to assist you in these matters.

Specific Definitions

a) Sexual abuse is defined in section 1(1)(nn.1) of the *Health Professions Act*. It means the threatened, attempted or actual conduct of an optometrist towards a patient that is of a sexual nature and includes any of the following conduct:

- Sexual intercourse between an optometrist and a patient of that optometrist.
- Genital to genital, genital to anal, oral to genital; or, oral to anal contact between an optometrist and a patient of that optometrist.
- Masturbation of an optometrist by, or in the presence of, a patient of that optometrist.
- Masturbation of an optometrist's patient by the optometrist.
- Encouraging an optometrist's patient to masturbate in the presence of the optometrist.
- Touching of a sexual nature of a patient's genitals, anus, breasts or buttocks by an optometrist.

b) Sexual misconduct is defined in section 1(1)(nn.2) of the *Health Professions Act*. It means any incident or repeated incidents of objectionable or unwelcome conduct, behavior or remarks of a sexual nature by an optometrist towards a patient that the optometrist 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.

c) Sexual nature is defined in section 1(1)(nn.3) of the *Health Professions Act* and does not include any conduct, behavior or remarks that are appropriate to the service provided.

d) A patient means any person to whom the optometrist has delivered, or is delivering, optometric service and that person is not a consenting spouse, partner or other person in an adult interdependent relationship with the optometrist (ACO Standards of Practice, s. 1.5.1).

A person ceases to be considered a patient (Guidelines to the ACO Standards of Practice, GL-1.5.1a):

- Six (6) months after their care has been transferred to another practitioner.
- Six (6) months after last receiving optometric care or being terminated as a patient by the optometrist.

How Do I Know If My Optometrist Committed a Sexual Impropriety?

Optometrists conduct different tests and procedures to examine your eyes, the area around your eyes and your visual system. To conduct these tests, your optometrist is required to occasionally touch your eyes as well as the skin around your eyes. Only in very rare circumstances would an optometrist be required to touch or examine another part of your body – for example, to examine a skin rash on another part of your body that might be related to the infection in (or around) your eyes. As such, it is extremely rare that an optometrist would request that a patient remove their clothing to conduct an eye examination.

The legislation does not make a distinction between "workplace" and "after hours" sexual abuse or sexual misconduct activities directed at a patient. A person who meets the definition of a "patient" is a patient regardless of whether the sexual abuse or sexual misconduct occurred in the workplace or after-hours away from the workplace.

Other individuals (who have experienced sexual abuse or sexual misconduct activities) who are not defined as a patient are still able to submit a written complaint to the Alberta College of Optometrists as per provisions in the *Health Professions Act*. Unfortunately, individuals that do not meet the definition of a patient are not eligible for funding under the ACO Sexual Abuse Funding Program.

The following list will assist you in determining whether your optometrist may have committed a sexual impropriety:

- Did your optometrist do or say something that made you feel uncomfortable?
- Did your optometrist make you remove any clothing without explaining why they need to perform this additional examination on another part of your body?
- Did your optometrist touch you without your permission or in a way that was not medically necessary or appropriate?
- Did your optometrist do or say anything to you that was viewed as sexually suggestive, inappropriate, or, making sexually insulting or offensive comments or jokes?
- Did your optometrist commit a sexual assault?
- Did your optometrist commit an act as defined as sexual abuse, sexual misconduct or of a sexual nature (as defined on the preceding page)?

If you have experienced any of the above listed examples or any other incidents of a similar nature, we request that you contact the Alberta College of Optometrists immediately at 780-466-5999 or 1-800-668-2694.

The ACO recognize that coming forward with a complaint about sexual abuse or misconduct can be extremely uncomfortable or difficult. As such, the ACO office has specially trained professionals who are able to deal with your complaint in a compassionate, private and safe manner. In addition to being able to deal with your complaint, there are many other reasons for reporting these incidents:

- Incidents of sexual abuse may not be isolated cases. By coming forward, you could help ensure similar incidents do not happen to other patients.
- The only way that the ACO finds out about these types of incidents is usually through patient complaints. In order to properly deal with offending practitioners, we need patients to come forward with their complaints.

- Part of the healing process is getting a sense of closure from knowing that the offending practitioner will undergo an investigation and possible disciplinary action.

Therapy and Counselling Funding

Funding for therapy and counselling is available to qualified complainants. The purpose of this fund is to compensate the costs of therapy and counselling for patients who were subject to sexual abuse and/or sexual misconduct by an optometrist while that person was a patient of that optometrist. Additional information on eligibility and funding limits can be found in the ACO Therapy and Counselling Funding Information document or by contacting the Alberta College of Optometrists office.

Complaint Process

All formal complaints to the Alberta College of Optometrists (ACO) must be submitted in writing and signed. The ACO is not able to launch an investigation unless your complaint is received in this manner. After your written, signed complaint is received at the ACO office, the ACO Complaints Director will send you confirmation to acknowledge receipt of the complaint. The ACO Complaints Director will then appoint an investigator, or investigators, who will contact you in order to gather additional information, including names of other persons who might have information related to the investigation. The *Health Professions Act* requires the Complaints Director to also notify the optometrist about the complaint being brought against them and to have the ACO investigator(s) also meet with the optometrist to gather additional information.

Once the investigation is complete, all materials and reports gathered by the investigator(s) are forwarded to the ACO Complaints Director who reviews all of the information and makes a decision on appropriate action. The Complaints Director may:

- Dismiss the complaint due to insufficient or no evidence of unprofessional conduct.
- Refer the matter back to the investigator to gather specific additional information.
- Refer the matter to the ACO Hearing Director to convene a Hearing Tribunal that will hear evidence and make a decision on whether the optometrist is guilty of unprofessional conduct.

Hearing Tribunal Process

If your matter is referred to a Hearing Tribunal, the ACO Hearings Director creates a tribunal panel of optometrists and government-appointed public members that will hear evidence from the College as well as from the optometrist (HPA s. 16(1)). Following the conclusion of hearing, the Hearing Tribunal will be required to make a ruling on whether the optometrist committed an act of unprofessional conduct.

Where the hearing relates to a complaint alleging sexual abuse or sexual misconduct, the Health Professions Act requires the ACO Hearings Director to make every reasonable effort to ensure that at least one member of the hearing tribunal shares your gender identity, and that every tribunal member has completed training on trauma-informed practice and sexual violence before serving on the tribunal (s. 16(1.1)).

Prior to the Hearing Tribunal, the ACO will advise you on whether it is necessary for you to attend the hearing as a witness.

If the Hearing Tribunal finds that the optometrist's conduct constituted unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct, you will be given an opportunity to present a written or oral statement describing the impact the sexual abuse or sexual misconduct has had on you before the tribunal decides on an order (HPA s. 81.1(2)).

If the Hearing Tribunal finds that the optometrist committed an act of unprofessional conduct, there are real consequences. The Hearing Tribunal may caution or reprimand the optometrist, place conditions on their practice permit, suspend their practice permit, require them to undertake counselling or a treatment program, and order them to pay a fine and the costs of the investigation and hearing (Health Professions Act, s. 82(1)).

Where the finding is based in whole or in part on sexual abuse, the Act goes further: the Hearing Tribunal is required to "order the cancellation of the optometrist's practice permit and registration" (s. 82(1.1)(a)).

Where the finding is based in whole or in part on sexual misconduct, the Hearing Tribunal is required to "order the suspension of the optometrist's practice permit for a specified period of time" (s. 82(1.1)(b)). Either way, the Act does not allow the Hearing Tribunal to soften this outcome with "any gender-based conditions" on the optometrist's practice permit (s. 82(1.2)).

All decisions of the Hearing Tribunal are subject to an appeal process whereby the optometrist or the ACO Complaints Director (on behalf of the ACO) may appeal the Hearing Tribunal's decision.

Hearings are generally open to the public unless the Hearing Tribunal orders that the hearing be held in private or an application is submitted for the hearing to be held in private. In cases of sexual abuse or sexual misconduct, the ACO is required to publish the name of the offending optometrist where the Hearing Tribunal, Council or a court has found that the optometrist's conduct constituted unprofessional conduct (s. 135.92(2)(e)). In cases involving misconduct of a sexual nature, the Hearing Tribunal is required to order a publication ban on information that could identify you – if you request.

The ACO must not publish this information, and an optometrist may request that previously published information be removed, where the Hearing Tribunal, Council or a court has found that the optometrist's conduct did not constitute unprofessional conduct in relation to the allegation and the complaint proceedings have been fully concluded. Any disclosure of your personal or health information by the ACO is limited to what is in the public interest and reasonably necessary (s.135.93(3).

Contact Information

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