



College of Psychologists
of New Brunswick

Collège des psychologues
du Nouveau-Brunswick

PREVENTION OF SEXUAL MISCONDUCT AND MANDATORY REPORTING

Psychologists work within a professional relationship with a client and, by their training, understand relationship dynamics. They are especially attentive to issues of professional distance, boundaries and power imbalances, and how these affect the practitioner's and the client's feelings in the relationship. The nature of psychological service provision often involves close relationships with other persons. In these relationships, boundary issues may naturally arise.

The question of how to manage boundaries is an integral part of psychological training and requires a heightened level of awareness in providing psychological services to clients. In most situations, boundary maintenance is a matter of professional judgement. In the case of sexual activity however, the law provides clear prohibitions. It is the responsibility of each member of the College to maintain appropriate professional boundaries in their daily practice, and to assist colleagues in doing so as well.

Regulated health professionals must be aware of the legislation that requires them to report allegations of abuse and how the legislation is aimed at curbing abuses that can occur in the course of practising a profession. The public views this issue as important enough to warrant specific restrictions on professional judgement and discretion.

Definition of Sexual Abuse

Section 43 of the *Psychologists Act* defines sexual abuse as follows:

- (1) A member who sexually abuses a patient or client commits an act of professional misconduct.
- (2) "Sexual Abuse" of a patient or client by a member means:
 - (a) sexual intercourse or other forms of physical sexual relations between the member and the patient or client,
 - (b) touching, of a sexual nature, of the patient or client by the member, or

- (c) behaviour or remarks of a sexual nature by the member towards the patient or client.
- (3) For the purposes of subsection (2), “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

Sexual Relationships

Rule #8 of the *Code of Conduct of the College of Psychologists of NB* states that:

- III. 8. 1. The psychologist does not engage in sexual intimacies with current clients.
- III. 8. 2. The psychologist does not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients.
- III. 8. 3. The psychologist does not terminate the professional relationship to circumvent this standard.
- III. 8. 4. The psychologist does not accept as therapy clients persons with whom they have engaged in sexual intimacies.
- III. 8. 5. The psychologist does not engage in sexual intimacies with former clients to whom the psychologist has at any time within the previous 24 months provided a psychological service including but not limited to performing an assessment or rendering counselling, psychotherapeutic, or other professional psychological services for the evaluation, treatment or amelioration of emotional distress or behavioral inadequacy.
- III. 8. 6. The prohibitions set out in subparagraph 5 shall not be limited to the 24-month period but shall extend indefinitely if the client is proven to be clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the psychologist.

Guidelines

- Psychologists are cognizant of a variety of factors, including cultural and individual diversity, that shape relationships and client perceptions.
- Psychologists exercise appropriate professional judgment in communicating with clients and avoid any communication that could be construed by the client as seductive or sexually demeaning. Care must be taken to know what the particular client may infer or understand to be the purpose of a communication.
- Psychologists are attuned to any discomfort expressed by a client, and adjust behaviour accordingly, or clarify relevant issues with the client.

- Psychologists may conduct assessments (e.g., neuropsychological evaluations) or use methods (e.g., conditioning, bioenergetics, etc.) which involve physical touch or contact. Client consent and understanding must be assured, and the professional must be aware of how potentially sensitive a client may be to these methods.
- Psychologists should not be critical of sexual preference or orientation. In psychological practice, practitioners accept their client's values in sexual areas.
- Psychologists set a professional tone in dealing with their clients. They take care not to make remarks of a sexual nature (e.g., jokes, offhand comments, use of vulgar language) that could be overheard by a client or a member of the public.
- Psychologists may provide professionally supportive behaviours which include physical contact that is nurturing and helpful (e.g., handshake, pat on the head of a child) and therefore acceptable to the clients, always being aware of the sensitivities of the individual client.

Mandatory Reporting

Section 44 of the *Psychologists Act* states that:

- (1) A member who, in the course of practising the profession, has reasonable grounds to believe that another health professional has sexually abused a patient or client and who fails to file a report in writing in accordance to subsection (4) with the governing body of the health professional within twenty-one days after the circumstances occur that give rise to the reasonable grounds for the belief commits an act of professional misconduct.
- (2) A member is not required to file a report pursuant to subsection (1) if the member does not know the name of the health professional who would be the subject of the report.
- (3) If the reasonable grounds for filing a report pursuant to subsection (1) have been obtained from one of the members' patients or clients, the member shall use best efforts to advise the patient or client that the member is filing the report before doing so.
- (4) A report filed pursuant to subsection (1) shall contain the following information:
 - (a) the name of the member filing the report;
 - (b) the name of the health professional who is the subject of the report;
 - (c) the information the member has of the alleged sexual abuse; and

- (d) subject to subsection (5), if the grounds of the member filing the report are related to a particular patient or client of the health professional who is the subject of the report, the name of the patient or client.
- (5) The name of a patient or client who may have been sexually abused shall not be included in a report unless the patient or client or, if the patient or client is incapable, the patient's or client's representative, consents in writing to the inclusion of the patient's or client's name.
- (6) Subsections 43(2) and (3) apply with the necessary modifications to sexual abuse of a patient or client by another health professional.
- (7) No member filing a report pursuant to subsection (1) shall be subject to any liability as a result thereof unless it is proved that the report was made maliciously.

Measures to Prevent Sexual Abuse

Section 65 of the *Psychologist Act* states that:

- (1) The College shall undertake measures for prevention of the sexual abuse of patients or clients by its members.
- (2) Such measures referred to in subsection (1) shall include
 - (a) education of members about sexual abuse,
 - (b) guidelines for the conduct of members with patients or clients,
 - (c) providing information to the public respecting such guidelines, and
 - (d) informing the public as to the complaint procedures under this Act.
- (3) Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or associations of health professionals.

Consequences for Sexual Abuse

Any reporting of sexual abuse by a member to the College of Psychologists of New Brunswick will be handled as a complaint and procedures will be followed as set out in the Act and By-Laws.

Zero Tolerance

- The College recognizes the seriousness and extent of injury that sexual abuse causes the victim and others related to the victim.

- Sexual abuse/impropriety by psychologists while providing psychological care to the public will not be tolerated under any circumstances.

Public concern surrounding this important issue requires serious and thoughtful responses from New Brunswick's health care professionals. The College of Psychologists of New Brunswick endeavours to meet the needs of the public and the profession by ensuring education to the membership.

The College of Psychologists of New Brunswick would like to acknowledge the College of Psychologists of Ontario in helping develop some of this information.