

## Spousal Exception Regulation Guideline

### Background

Under the *Regulated Health Professions Act, 1991* (RHPA), it is considered sexual abuse if a regulated health professional treats their spouse, and the penalty is an automatic revocation of a practitioner's licence to practise for five years.

In 2012, the Ministry of Health and Long-Term Care received a [report on the issue of treatment of spouses and the associated mandatory revocation](#), which recommended changing the definition of sexual abuse to exclude spouses. The Ministry changed the RHPA to allow individual professions to decide if they wanted to exempt spouses from the RHPA's definition. Colleges wishing to exempt spouses are required to submit a regulation allowing this exemption. Such a regulation will apply only to pre-existing spousal or common law relationships. It is always considered sexual abuse to initiate a sexual relationship with an existing patient, and, in some cases, former patients.

The College's Patient Relations Committee considered the issue, and after discussions and extensive analysis on November 7, 2014 and consultation with a working group of kinesiologists on April 10, 2015, recommended to Council on May 27, 2015 that the spouses of registered kinesiologists be exempt from the definition of sexual abuse. Council considered the recommendation on June 15, 2015 and decided to pursue a regulation.

On October 21, 2021, O. Reg. 718/21, amending O. Reg. 401/12 General Regulation under the *Kinesiology Act, 2007* was filed with the Registrar of Regulations. The amended regulation will allow kinesiologists to treat their spouses as patients without triggering the sexual abuse provisions under the *Regulated Health Professions Act, 1991*.

### Description of the Spousal Exception Regulation

The Spousal Exception Regulation permits registrants to provide kinesiology treatment to their spouses, without triggering the sexual abuse provisions under the *Regulated Health Professions Act, 1991* (RHPA).

Please note that the definition of a "spouse" for the purposes of this regulation is very narrowly defined in the Health Professions Procedural Code of the RHPA, and includes only:

- (1) a person who is the registrant's spouse as defined in section 1 of the Family Law Act (i.e., a person to whom the member is married), or**
- (2) a person who has lived with the registrant in a conjugal relationship outside of marriage continuously for a period of not less than three years.**

Kinesiologists are thus now permitted to treat their spouses, but only where the registrant's spouse meets the statutory definition of "spouse" as defined above.



Moreover, while treating a spouse, Registered Kinesiologists must follow all legislation, standards of practice, policies, and guidelines that they would for any other patient, while complying with appropriate boundaries and separation between the professional relationship and personal relationship.

***It is important to note that treating a sexual partner who does not meet the above definition of a spouse under the RHPA will trigger the sexual abuse provisions under the RHPA.***

### **Application**

The College of Kinesiologists is committed to proactively ensuring that all members behave in accordance with the highest standards of personal and professional conduct. The College will continue to be vigilant in protecting the public by working to prevent and prosecute sexual abuse, harassment, and misconduct of any kind.

As a result, the College advises:

- a) That registrants consider the potential conflicts of interest and other risks associated with treating close personal relations, including spouses, and that **registrants of the College should therefore refrain from treating spouses or other close personal relations except in demonstrably exceptional circumstances.**
- b) That registrants are mindful that sexual abuse can occur within a spousal relationship and are aware that this spousal exception does not grant immunity from investigation or prosecution if a member's conduct, behaviour, or remarks towards their spouse meet the definition for sexual abuse in any context.
- c) That registrants are expected to maintain a high standard of personal and professional conduct, including compliance with the College's Code of Ethics as well as all other practice standards and guidelines.
- d) That registrants who are also registered with another regulatory College are aware of the regulations of that College with respect to spousal treatment and sexual abuse. **The College of Kinesiology expects that registrants will adhere to the strictest standard required of them.**

### **Frequently Asked Questions**

To assist Kinesiologists to interpret the expectations outlined in the standard, several frequently asked questions have been identified.

#### **1. Do all health colleges have a spousal exception?**

Most health colleges do not have an exception in place; however the following colleges have recently implemented the spousal exception regulation:

- Chiropractors

- Optometrists
- Denturists
- Dental Hygienists
- Dentists

## 2. Does this mean I may treat my fiancé(e)?

No, unless the relationship meets the criteria for common-law or conjugal living (i.e.: you have co-habited with this partner for no less than 3 years).

## 3. I am a Registered Kinesiologist who also practices and is registered as a Massage Therapist. May I treat my spouse?

No. The College of Kinesiologists expects that it's registrants will adhere to the strictest standard to which they are accountable. In this case, as the College of Massage Therapists of Ontario has not adopted the Spousal Exception regulation, a dual-registered Kinesiologist/Massage Therapist would not be able to treat their spouse.

## 4. If I go for a run, or lift weights, with my partner, is that sexual abuse?

Kinesiologists are encouraged to think about the boundaries that exist between their practice and personal lives. Factors such as power or knowledge imbalance are important. The following criteria used to define a "patient" may be helpful:

A patient can be defined as anyone who has had an interaction with the Kinesiologist and:

- The Kinesiologist has charged or received payment for a healthcare service for the individual.
- The Kinesiologist has contributed to a health record or file for the individual.
- The individual has consented to a healthcare service recommended by the Kinesiologist.

It is true that, for Kinesiologists, the line between treatment and recreation can seem, at times, difficult to judge. Some points to consider:

- Are you providing instruction, information or support to your romantic/sexual partner that is not reasonably available to the general public? If the answer to this is "yes", there may be a power imbalance present that could constitute sexual abuse.
- Is this activity being done for recreational or social purposes, or as part of a goal-oriented, structured treatment plan or routine? If the latter is the case, who is responsible for goal-setting and routine planning/programming?
- Are you providing information or a service to your partner, relative or spouse in a manner differently (for example, without billing) than you would to a member of the general public?

- Is the relationship, particularly any sexual activity, in any way derived from, associated with or contingent upon the activity?
- Would a reasonable outside observer consider your partner to be your patient as per the definition of a “patient”?
- Does your partner meet the criteria for the spousal exception?

**5. I am a Kinesiologist working as a sports coach. An athlete and I developed mutual romantic feelings for each other. We married. Does the spousal exception apply to our relationship?**

In theory, yes, the spousal exception would permit you to act as a coach to your spouse. That said, the College discourages Kinesiologists from treating close personal relations, including spouses, unless there are exceptional circumstances.

It is also important to note that the initial romantic feelings in this case appear to have developed while there was a coach-athlete or Kinesiologist-patient relationship. Good faith compliance with the spousal exception would require the professional relationship to have been fully disclosed at the time it began, treatment to have been discontinued as soon as possible (including discharge to another Kinesiologist), and for the Kinesiologist and the patient or athlete to wait at least 1 year before commencing the romantic and/or sexual relationship.

It may be helpful to consider differences between two athletes (for example collegiate track and field team members) engaging in a consensual sexual or romantic relationship vs an athlete and a coach engaging in a consensual sexual or romantic relationship.