



College of
Opticians
of Ontario

**Jurisprudence Chapter 1:
Professional Boundaries and Sexual Abuse Prevention**

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Chapter One

Professional Boundaries and Sexual Abuse Prevention

Introduction

The purpose of this module is to assist opticians in understanding the concepts of professional boundaries and their importance. This module will also help opticians develop ways to prevent the crossing of professional boundaries, including those related to sexual abuse, and to recognize how the College addresses them.

Foundational Concepts

In order to understand the nature of professional boundaries and the harm that can result from crossing boundaries, including sexual abuse, it is useful to consider the applicable core concepts. Three foundational concepts are:

1. Trust: a patient's confidence in an optician;
2. Power: the authority or influence given to an optician based their role or position, and;
3. Consent: permission given by the patient to an optician.

Trust

The professional relationship between an optician and a patient is based on trust. "Trust" means that the patient feels confident that an optician is serving the patient's best interests and that the patient can rely upon an optician not to do anything that could harm the patient. Unless the patient feels "safe" with the optician, the patient will not join with the optician to achieve the best result. Safety is not limited to physical safety. A fear, no matter how misguided, that an optician may disclose the patient's personal health information means that the patient will not provide the information needed by the optician. Similarly, a concern that an optician is judging the patient may result in the patient answering questions incompletely so as to "get out of there".

Power

The optician-patient relationship involves a power imbalance in favour of the optician. Here "power" means that the dominant role of an optician, in contrast to the "asking" role of the patient, gives an optician the ability to do things to the patient or to influence the patient that other relative strangers do not have. For example, an optician has the status of a "professional" and has the role of an "expert". The patient comes to an optician in a position of need. The patient may have a sense that the patient's vision is "defective". The patient comes relying on the expertise and knowledge of the optician. The patient is in the position where he or she is expected to disclose personal information about themselves. An optician is not expected to (and indeed, should not) disclose personal information about themselves. An optician is in a position to touch the face, particularly the eye area, of the patient, which involves some intimacy

and vulnerability. Patients feel under scrutiny as an optician examines (indeed, stares at) their face and eyes. Some patients may also be concerned about the cost of the interaction.

A major component of the patient visit relates to the “appearance” of the patient, which makes some people feel quite uncomfortable. Many patients are concerned about how their new appearance will be received by others. With the patient’s appearance being a component of the visit, it is easy for the discussion or an optician’s comments to cross over into unprofessional territory.

These feelings can be aggravated if the patient is in discomfort or if the patient does not speak the language of the optician.

This is not to say that the power differential between an optician and the patient is always exercised by the registrant or experienced by the patient. Some patients will feel quite comfortable and in control of the interactions. However, it is the patients feeling most vulnerable that are at risk of significant harm from boundary crossing or sexual abuse.

Consent

In both our legal and health care system the control of patients over their bodies and their health care is given enormous weight. In part this is done to counterbalance the power of an optician. In part it reflects the values of our society. The authority of the patient to control their bodies and their health care requires that they provide informed consent before any health practitioner acts. This includes the asking of questions and the touching of a patient. In some cultures, this patient-centric philosophy is much less valued.

For consent to be informed, the patient must understand the nature of the proposed action (e.g., touching their face), the expected benefit of the action, any material risks or possible side effects, including emotional ones, and the alternatives including doing nothing. The patient also needs to understand that he or she can withdraw consent at any time. It is the responsibility of an optician to obtain consent before acting. While consent can be implied (e.g., responding to a question asked by an optician), relying on implied consent raises the chances that the patient did not truly give informed consent (e.g., if the patient did not understand how the answer to a particular question would be used).

Principles

As a result of these foundational concepts the following principles apply:

1. An optician must always act in the patient’s best interests.
2. It is the optician’s responsibility to maintain professional boundaries. The patient is not co-responsible.
3. Failing to maintain boundaries can affect the quality of the outcome for the patient.
4. Crossing boundaries can harm patients and can compromise the public’s trust in the profession.

5. Patients must be protected from sexual abuse.

Boundaries

During each visit, an optician must be careful to act as a professional health care provider, and not as a friend, to patients. Becoming too personal or too familiar with a patient is confusing to patients and can make them feel uncomfortable. Patients will be uncertain as to whether the professional advice or services are motivated by something else other than the best interests of the patient. It is also easier for an optician to provide professional services when there is a “professional distance” between them (e.g., telling the patient the truth about the patient’s options and limitations).

Maintaining professional boundaries is, however, also about being reasonable in the circumstances. For example, one should be careful about accepting gifts from patients, but there are some circumstances in which it is appropriate to do so (e.g., a small New Year’s gift from a patient). In other areas, however, crossing professional boundaries is never appropriate. For example, it is always professional misconduct to engage in any form of sexual behaviour with a patient.

It is always the responsibility of an optician to maintain appropriate boundaries with patients. For example, even if the patient initiates the boundary crossing (e.g., brings gifts to an optician, ignores established customs, tries to become the friend of an optician), it is the optician’s responsibility to ensure that the boundary is not crossed. For example, if a patient brings an inappropriately expensive or personal gift to an optician, they should kindly decline it, perhaps by referring to the “rules” that the optician has to follow.

The following are some of the areas where opticians need to be careful to maintain professional boundaries.

Self-Disclosure

When an optician shares personal details about his or her private life, it can confuse patients. Patients might assume an optician wants to have more than a professional relationship. Self-disclosure often suggests the professional relationship is serving a personal need for an optician rather than serving the patient’s best interests. Self-disclosure can result an optician becoming dependent on the patient to serve their own emotional or relationship needs, which is damaging to the relationship.

Self-Disclosure Scenario

Ayesha, an optician, is providing contact lenses to her patient Tess. Ayesha is having difficulty deciding whether to marry her boyfriend and talks to Tess about this issue a lot during the visit. To help Tess, Ayesha decides to tell Tess details of her own doubts in accepting the proposal from her first husband. Ayesha tells of how those doubts had long-term consequences, gradually ruining her first marriage as both her and her husband had affairs. Tess is offended by Ayesha’s behaviour and decides to go elsewhere for glasses only, which is not the best option for Tess given her prescription.

This is not to say that opticians can never say anything about themselves. Ordinary conversation always results in some self-disclosure (e.g., an interesting holiday one went on). Any personal revelations should be relevant to the context (e.g., a humorous example of when the optician not wearing lenses created a problem for the optician in order to reinforce the need for the particular patient to always use lenses when leaving the house). The point is that opticians need to be careful to ensure that self-disclosure is minimized to the extent reasonably possible and is always appropriate.

Giving or Receiving of Gifts

Giving and receiving gifts is potentially dangerous to the professional relationship. A small token of appreciation by the patient purchased while on a holiday, or given at the end of a series of visits may be acceptable. In addition, one must be sensitive to the patient's culture where refusing a gift is considered to be a serious insult. However, anything beyond small gifts can indicate the patient is developing a personal relationship with an optician. The patient may even expect something in return. Gift giving by an optician will often confuse a patient. Even small gifts of emotional value, such as a "friendship" card, can confuse the patient even though the financial value is small. While many patients would find a Christmas / holiday season card from an optician to be a kind gesture and good business sense, some patients might feel obliged to send one in return. So even here, thought should be given to the type of patients in one's practice (e.g., some new Canadians might be unfamiliar with the tradition).

Gift Giving Scenario

David, an optician, has a patient from a Mediterranean culture with a large family who all need David's services. The patient brings food on every visit. David thanks her but tries not to treat it as an expectation. On one visit David happens to mention his home-made pizza recipe. The patient insists that David bring it over to her house for Thanksgiving. David politely declines, giving the patient a written recipe instead. The patient stops bringing in food, is less friendly during visits and starts missing appointments. David acted appropriately in this scenario. However, the scenario illustrates the confusion that can occur with a patient when the boundaries start to be crossed.

Dual Relationships

A dual relationship is where the patient has an additional connection to the optician other than just as a patient (e.g., where the patient is a relative of an optician). Any dual relationship has the potential for the other relationship to interfere with the professional one (e.g., being both the individual's optician and employer). It is best to avoid dual relationships whenever possible. Where the other relationship predates the professional one (e.g., a relative, a pre-existing friend), referring the patient to another optician is the preferred option. Where a referral is not possible (e.g., in a small town where there is only one optician), special safeguards are essential (e.g., discussing the dual relationship with the patient and agreeing with the patient to be formal during visits and never talk about health issues outside of the office).

Dual Relationships Scenario

Donna, an optician, has Paula as a patient. Paula is a refugee with very little money. Paula works part-time as a house cleaner. Donna decides to hire Paula to clean Donna's house.

Donna also recommends Paula to some of Donna's friends who also hire Paula. Paula is extremely grateful. The following year Donna recommends lenses that will significantly exceed Paula's insurance coverage. Paula wonders to herself if Donna is recommending these lenses in order to get back the money paid for cleaning Donna's house. Paula also feels that she cannot say no or else she will lose her job cleaning the houses of Donna's friends. Did the dual relationship contribute to Paula's confusion?

Ignoring Established Customs

Established customs usually exist for a reason. Ignoring a custom confuses the nature of the professional relationship. For example, meetings are usually held during regular business hours at the dispensary. Meeting the client after hours or at another location (e.g., a restaurant) is outside of the usual practice approach. By ignoring this custom, the patient might begin thinking the meeting is a social visit. Or, the patient might feel he or she has to pay for the meal. Treating patients as special, or different from other patients, can be easily misinterpreted.

Personal Opinions

Everyone has personal opinions, and opticians are no exception. However, opticians should not use their position to promote their personal opinions (e.g., religion, politics or even lifestyle) on patients. Similarly, strongly held personal reactions (e.g., that a client is unpleasant and obnoxious) should not be shared. Disclosing personal reactions does not help the professional relationship.

Personal Opinions Scenario

Joel, a patient, while discussing world events with William, an optician, pushes for William's views on immigration. At first William resists, but eventually says he has some concerns about the abuses of the immigration system. William says he has heard, often directly from patients, about how they have lied to the immigration authorities. Joel responds by loudly criticizing the immigration authorities for allowing too many immigrants into the country. Joel is overheard by other patients in the dispensary at the time, including some who are new Canadians. The other patients tell other staff at the dispensary they feel uncomfortable with either William or Joel around.

Becoming Friends

Being a personal friend with a patient is a form of dual relationship. Patients should not be placed in the position where they feel they must become a friend of an optician in order to receive ongoing care. Opticians bear the sole responsibility to not allow a personal friendship to develop during professional visits. It is difficult for all but the most assertive of patients to communicate that they do not want to be friends.

Caution should even be taken where pre-existing friends use an optician's services. At a minimum an optician should keep the conversation entirely professional in the dispensary. In some cases, where the boundaries cannot be maintained or where an optician finds it difficult to provide the same level of

objective advice as would be given to other patients, an optician should refer the friend to a colleague. For example, billing a friend for professional services can lead to awkwardness or, possibly even, pressure to be misleading to the friend's insurance company.

Touching and Disrobing

Touching can be easily misinterpreted. A patient can view an act of encouragement by an optician (e.g. a hug) as an invasion of space or even a sexual gesture. Extreme care must be taken in any touching of patients. The nature and purpose of any clinical touching must always be explained first, and the patient should always give consent before the touching begins. The most common touching in opticianry is of the face, particularly near the eyes and ears. Touching these areas is inherently intimate and personal. The degree of discomfort of such touching varies with the personality, age, gender, and culture of the patient. Such touching should never be a surprise to the patient. While this advice applies to all patients, it is important to keep in mind that some patients have suffered physical abuse, including face slapping, and suddenly bringing a hand to the patient's face could be startling and upsetting. An optician should ensure that the patient consents to any touching.

It is never appropriate for an optician to ask a patient to disrobe below the neck. For patients who wear head or face coverings any disrobing should be discussed sensitively with the patient. The implications of uncovering the head and face vary significantly from patient to patient. The patient should remove the covering; an optician should not do it.

Children and Youth

Special boundary issues arise where opticians deal with children. The greatest area of risk is where the parent leaves the child alone with an optician (e.g., to go shopping where the optician practises in a mall). The optician then becomes both the health practitioner and the temporary guardian of the child. Misunderstandings can easily arise (e.g., when dealing with a behavioural issue).

Where the patient enters their teenage years, a different issue arises. There is no minimum age of consent in Ontario. Thus, an optician has to determine whether the patient is capable of making their own health care decisions. An optician determines this by assessing whether the patient understands the information necessary to make the decision and appreciates the reasonably foreseeable consequences of the decision. If the patient is capable, it is the patient, not their parent, who has the authority to provide informed consent (including whether their parent should be part of the decision making).

For example, it would be prudent for an optician to obtain consent for touching the face of a young child patient. An optician could explain the need to touch the face of the child to the parent beforehand and obtain the parent's agreement. Then, each time the optician is going to bring his or her hands to the face of the child, they should explain in words what they are going to do. If the child reacts negatively to the touching (e.g., pulling away, crying), an optician should stop and re-explain things in different words before proceeding.

Managing boundaries is important for both opticians and patients.

Sexual Abuse

The *Regulated Health Professions Act (RHPA)* is designed to eliminate any form of sexual contact between opticians and patients. Because of the status and influence of opticians there is potential for any sexual contact to cause serious harm to the patient. Even if the patient consents to the sexual contact, it is prohibited for an optician.

The term “sexual abuse” is intended to convey how seriously the conduct is taken. However, it should not be thought that only deliberately exploitative conduct is captured by the phrase. In fact, sexual abuse includes conduct that might, on the surface, appear to be genuine and sincere.

The term “sexual abuse” is defined broadly in the *RHPA*. It includes the following:

1. Sexual intercourse or other forms of physical sexual relations between an optician and the patient;
2. Touching, of a sexual nature, of the patient by an optician; or
3. Behaviour or remarks of a sexual nature by an optician towards the patient.

For example, telling a patient a sexual joke is sexual abuse. Hanging a calendar on the wall with sexually suggestive pictures (e.g., women in bikinis, a “fire fighters” calendar) is sexual abuse. Non-clinical comments about a patient’s physical appearance (e.g., “guys won’t be able to keep their hands off of you with those glasses”) is sexual abuse. Dating a client is sexual abuse. Comments about a patient’s sexual orientation, gender identity or gender expression is sexual abuse. For example, insisting that a patient who identifies herself as female use the men’s washroom because she is “really” a man is sexual abuse.

It is also important to note that, when it comes to sexual abuse, the *RHPA* takes a very broad approach to determining who is a patient. There is no exhaustive definition, and it can depend on the circumstances. The *RHPA* makes it clear, however, that at a minimum, a person will be considered an optician’s “patient” when they have direct interaction with the optician, and any one or more of the following factors are also true:

1. The optician provided the individual with a health care service and charged the individual for that service, either directly or through a third party (for example, an insurance company);
2. The optician contributed to the individual’s health record or file; or
3. The individual consented to a health care service recommended by the optician.

There is a very narrow exception, but it would almost never be available to opticians as emergency situations / minor service where the referral of the patient to another practitioner is not possible hardly ever arises in the opticianry context.

At the present time, the definition of sexual abuse includes treating one’s spouse. The College is discussing making an exception for treating spouses in some circumstances, but until that exception is enacted, any such treatment is strictly prohibited. A rare exception would be providing first aid to a spouse in the case

of an emergency (e.g., dealing with a foreign object in the spouse's eye). Opticians need to transfer the care of their spouse or lover to another optician. It does not matter if the spousal relationship came first.

Touching, behaviour or remarks of a clinical nature is not sexual abuse. For example, appropriately touching the face of a patient to adjust glasses is acceptable (with informed consent) and is not sexual abuse. Rubbing the person's cheek affectionately would, however, constitute sexual abuse.

While sexual abuse only relates to patients, sexual misconduct towards other persons can constitute disgraceful, dishonourable and unprofessional conduct. For example, flirting with the parent of a young patient would generally be unprofessional. So would sexual harassment of a colleague or employee.

It is always the responsibility of an optician to prevent sexual abuse from occurring. If a patient begins to tell a sexual joke, the optician must stop it. If the patient makes comments about the appearance or romantic life of the optician, the optician must stop it. If the patient asks for a date, the optician must say no (and explain why it would be inappropriate). If the patient initiates sexual touching (e.g., a kiss), the optician must stop it.

Sexual Abuse Scenario No. 1

Natasha, an optician, tells a colleague about her romantic weekend with her husband at Niagara-on-the-Lake for their anniversary. Natasha makes a joke about how wine has the opposite effect on the libido of men and women. Halina, a patient, is sitting in a waiting area and overhears. When being treated by Natasha, Halina mentions that she overheard the remark and is curious as to what Natasha meant by this, as in her experience, wine helps the libido of both partners. Has Natasha engaged in sexual abuse?

Natasha clearly has crossed boundaries by making the comment in a place where a patient could overhear it. However, the initial comment was not directed towards Halina and was not meant to be heard by her. It would certainly be sexual abuse for Natasha to continue the discussion with Halina. Natasha should apologize for making the comment in a place where Halina could hear it and state that Natasha needs to focus on Halina's treatment.

Because sexual abuse is such an important issue, the College takes it very seriously. The College has a Zero Tolerance policy towards sexual abuse. This means that all complaints or reports are taken seriously, investigated thoroughly and acted upon responsibly. Where the Discipline Committee finds that sexual abuse of a patient has been proved, comprehensive orders are made. While the order made varies with the type of sexual abuse that occurred, where the sexual abuse involved frank sexual acts with patients, the order must include revocation for a minimum period of five years. All findings of sexual abuse are posted, permanently, on the College's public, website register.

Each College must take steps to prevent sexual abuse from occurring. For example, the Patient Relations Committee of the College has developed a sexual abuse prevention plan that will educate opticians, employers of opticians, and the public, about the nature of sexual abuse, the harm that it causes, the expectations on opticians and how sexual abuse can be avoided.

As discussed in more detail below, opticians are required to make a report where an optician has reasonable grounds to believe another health care provider has engaged in sexual abuse. The report is made to the Registrar of any health College where the other health provider is an optician. For example, if a patient tells an optician her physiotherapist fondled her, the optician must make a written report to the Registrar of the College of Physiotherapists of Ontario.

There are also a number of special provisions dealing with the handling of sexual abuse matters in the complaints and discipline process. Such complaints are always taken seriously. They are investigated fully. They are not resolved through an alternate dispute resolution process. A referral to discipline is likely where a substantiated complaint of sexual touching of a patient is made. At the discipline hearing the identity of the patient is protected (e.g., if the patient requests, the Discipline Committee will ban publication of the identity of the patient).

The patient may even be given a role at the discipline hearing (e.g., to make a statement on the impact of the sexual abuse on the patient if a finding is made). Where the sexual abuse involved sexual intercourse or the sexual touching of a patient's genitals, anus, breasts or buttocks, and a finding is made, there is a mandatory minimum penalty. Certain offences findings, primarily of a sexual nature, or findings of sexual abuse by other regulators will also result in the mandatory minimum penalty. An optician's registration will be revoked for a period of at least five years. In all cases where a finding of sexual abuse has been made, an optician will be reprimanded. If a finding of sexual abuse has been made, an optician can be ordered to pay for the costs of any counselling and therapy or other support of the patient.

Where an allegation of sexual abuse is made, the College is also responsible to pay for at least some of the costs of any counselling or therapy or other support needed by the patient. The Patient Relations Committee administers the funding program. An optician who was found to have abused the patient can be required to reimburse the College for the funding.

Mandatory Reports

Part of being an optician of a regulated health profession means that one cannot remain silent when another health care provider is harming a patient. An optician must speak up in those circumstances. The *RHPA* carefully balances the need to protect patients by requiring opticians to make a report against the need to avoid disrupting the health care system with many unnecessary reports. The statute also recognizes that if opticians unnecessarily report on their colleagues, it will harm the supportive atmosphere necessary for interprofessional collaboration. This section of the handbook describes the mandatory reporting provisions of the *RHPA* that are relevant to sexual abuse. Other mandatory reporting provisions (e.g., for incompetence or incapacity, under the *Child and Family Services Act*) will not be dealt with.

Both the *RHPA* and case law provide immunity to opticians who make a mandatory report in good faith. In addition, other protection is often available. For example, any optician who retaliates against a mandatory report could face discipline by the College.

The mandatory reporting requirements also create an exception to the optician's usual duty of confidentiality. In addition, the *Personal Health Information Protection Act* permits a report to the College be made as an exception to the privacy duties under that statute.

Sexual Abuse Reports

An optician must report sexual abuse by another health care provider. The duty arises if an optician, in the course of practising the profession or while operating a health facility (which probably includes a dispensary), obtains reasonable grounds to believe the sexual abuse occurred. The reasonable grounds could arise even if the optician did not personally observe the sexual abuse. For example, if a patient tells an optician detail of the abuse, that would likely constitute reasonable grounds. An optician does not have to investigate the events further to make a report. Nor does an optician have to actually believe that the information is true (e.g., the optician might know the alleged abuser and cannot believe that he or she would do such a thing). If the information constitutes reasonable grounds, the report must be made. Reasonable grounds means information that would cause a reasonable person who does not know the individual involved to conclude that it is more likely than not that the information is correct.

The report must be made in writing to the Registrar of the College with whom the alleged sexual abuser is registered. The report has to contain the reporting optician's name and the grounds of the report. **However, the report cannot contain the patient's name unless the patient agrees in writing that his or her name can be included.** This limitation is intended to protect the privacy of patients who may be in a vulnerable position. The report must be made within 30 days of receiving the information. If it appears that patients are continuing to be harmed and there is an urgent need for intervention, the report must be made right away.

Sexual Abuse Mandatory Report Scenario

Mei-Ling, an optician, is told by Claire, a patient, that Claire had an affair with her family doctor. Mei-Ling asks Claire if her family doctor was treating her while the affair was ongoing. Claire says yes. Mei-Ling tells Claire that she is required by law to report this information to the Registrar of the College of Physicians and Surgeons of Ontario (CPSO). Mei-Ling explains that the CPSO will want to investigate the report. It will be very difficult for the CPSO to investigate the report if Claire's name and contact information is not included in the report. The CPSO will likely want to interview Claire about the affair. The investigation could lead to a discipline hearing. However, Mei-Ling cannot include Claire's name and contact information unless Claire is prepared to sign a written consent form permitting Mei-Ling to do so. Mei-Ling says that they can together call the CPSO right now, on an anonymous basis, to see what the process would be like. Claire agrees to the telephone call. After the call is completed, Claire says that she will not give her consent to include her name and contact information. Mei-Ling then provides the report in writing without identifying Claire.

Offenses: Self-Reporting

Opticians have to report themselves when they have been charged with or found guilty of an offence. All offences have to be reported. Thus, criminal offences, offences under federal drug or other legislation and provincial offences (e.g., occupational health and safety matters) need to be reported. Only courts can make offence findings. Thus, any charges or findings by a body that is not a court (often called "tribunals") are not reportable under this provision. All court charges and findings are reportable regardless of

whether or not they resulted in a conviction (i.e., a finding of guilt that leads to an absolute or conditional discharge is not a conviction). Thus sexual offence charges or findings made against an optician have to be reported to the Registrar of the College.

Opticians are also required to report any bail conditions or other restrictions imposed on or agreed to by them. For example, if the terms of release for the charge require an optician to only see patients under supervision, that must be reported.

Reports are to be made to the Registrar of the College as soon as possible after the finding and should contain the following information:

1. The name of the optician filing the report;
2. The nature of, and a description of the offence;
3. The date the optician was found guilty of the offence;
4. The name and location of the court that found the optician guilty of the offence; and
5. The status of any appeal initiated respecting the finding of guilt.

The report will be reviewed by the College and may result in an investigation. If there is an appeal of the finding, an updated report must be made.

Opticians must also advise the Registrar if they are registered with a regulatory body for a profession. This applies to both other professions in Ontario (e.g., massage therapy) or in another jurisdiction (e.g., registration as an optician in another province or another country). In addition, if an optician is found to be incompetent or to have engaged in professional misconduct, an optician must report the full details to the Registrar as soon as possible. Any changes to the findings (e.g., on appeal) must also be reported as soon as possible.

Sample Test Question

Is a mandatory report required where an optician overhears another optician tell two male patients a sexually explicit joke that causes the patients to laugh loudly?

- a. No, dirty jokes are not sexual abuse.*
- b. Yes, this is sexual harassment. The report should be made to the Human Rights Tribunal.*
- c. No, the patients liked the joke and were not offended by it.*
- d. Yes, this constitutes sexual abuse.*

The best answer is **d**. Sexual abuse includes comments of a sexual nature to a patient. Reporting sexual abuse is mandatory. While it is unlikely that punitive action will be taken by the College (perhaps the

optician will be asked to complete a sensitivity course), it is still important that opticians learn that such conduct can be harmful to some patients. One never knows what experiences patients have had in their past that might make even a dirty joke harmful.

Answer a is incorrect because dirty jokes are sexual abuse as that term is defined in the RHPA.

Answer b is not the best answer because there are no mandatory reporting requirements under the Human Rights Code. Also, the RHPA uses the term sexual abuse rather than sexual harassment and gives that term a unique meaning.

Answer c is not the best answer because whether the patient was a willing participant or not is irrelevant. The comment still should not have been made. Also, one never knows what experiences patients have had in their past that might make even a dirty joke harmful. In addition, sexualizing the practice of the profession is inherently confusing to patients who assume that there is not a sexual aspect to their relationship with opticians.

Tips for Preventing Sexual Abuse Concerns

All opticians should consider ways of preventing sexual abuse (or even the perception of sexual abuse) from arising. Experience indicates most sexual abuse is not done by predators. Rather, in most cases the optician and the patient develop romantic feelings for each other, and the optician fails to respond appropriately.

Where any romantic feelings develop, an optician has two choices:

1. Put a stop to them immediately, or
2. Transfer the care of the patient to another optician immediately.

Other suggestions for preventing even the perception of sexual abuse include the following:

3. Do not engage in any form of sexual behaviour or comments around a patient.
4. Intervene when others, such as colleagues and other patients, initiate sexual behaviour or comments.
5. Do not display sexually suggestive or offensive pictures or materials. Monitor the advertising posters, calendars and magazines used in the dispensary.
6. If a patient initiates sexual behaviour, respectfully but firmly discourage it.
7. Do not date patients.
8. Monitor warning signs. For example, avoid the temptation to afford special treatment to patients one likes, such as engaging in excessive telephone conversations or scheduling visits outside of dispensary hours. Be cautious about connecting with patients on social media.
9. Unless there is a very good reason for doing so, avoid meetings outside of the dispensary.
10. Avoid self-disclosure.
11. Avoid comments that might be misinterpreted (“Those glasses are sexy on you”).

12. Similarly, avoid comments about a patient's appearance, clothing or body unless clinically necessary.
13. Do not touch a patient except when necessary for dispensing purposes. If one needs to touch a patient, first explain the nature of the touching, the reason for the touching and be very clinical in one's approach. For example, be sure there is fully informed consent before inserting a contact lens in the eye of a patient.
14. Use informed consent principles before moving into close physical proximity to the face of the patient.
15. Be sensitive when offering physical assistance to patients who may not be mobile. Ask both whether and how best to help them before doing so.
16. Avoid hugging and kissing patients. While there may be rare exceptions (e.g., hugging a long-time, elderly patient who has just lost a close family member), the risk of misinterpretation is high.
17. Be aware and mindful of cultural, religious, age, gender and other areas of differences. If in doubt ask if one's proposed action is acceptable to the patient.
18. If there is a separate fitting room, consider having a third person in the room when with the patient.
19. Where feasible, have an open concept to the dispensary with glass doors and walls so that everyone is visible at all times.
20. Where possible, try to have third parties in the dispensary, particularly when dealing with a vulnerable patient or where a misunderstanding is more likely (e.g., when dealing with a teenager).
21. Do not comment on a patient's romantic life.
22. Ensure any incidents or misunderstandings are fully and immediately documented.

Dating former patients is a sensitive issue. It can still be unprofessional where an optician still has power over the patient. There should be an appropriate "cooling off" period. In fact, the Act now requires that a one-year cooling off period between the termination of the professional relationship and when a sexual relationship can begin. Otherwise, it will still be sexual abuse.

The length of the cooling off period beyond one year will depend on the circumstances (e.g., how long the person was a patient; how intimate the professional relationship was).

Sexual Abuse Scenario No. 2

Javier, an optician, is attracted to his patient Alexander. Javier notices he is looking forward to Alexander's visits. Javier extends the visits a few minutes in order to chat informally with Alexander. Javier thinks Alexander might be interested as well by the way that he makes eye contact. Javier notices he is touching Alexander on the back and the arm more often. Javier decides to ask Alexander to join him for a coffee after his next visit to discuss whether Alexander is interested in him. If he is interested, Javier will transfer Alexander's care to a colleague. If Alexander is not interested, then Javier will make the relationship purely professional. Javier decides to ask a colleague, Chandra, for advice.

Chandra correctly tells Javier he has already engaged in sexual abuse by letting the attraction develop while continuing to treat Alexander. Chandra also says that it is important for Javier to transfer the care of Alexander right away and certainly before they get together for coffee.

Sample Test Question

Which of the following is sexual abuse:

- a. Commenting that the patient's pupil distance is somewhat narrow.*
- b. Using glamour shots of scantily dressed Hollywood stars as your interior design theme in order to attract younger patients.*
- c. Making repeated passes at the clinic's receptionist.*
- d. Dating a former patient after one-year has passed.*

The best answer is **b**. These pictures sexualize the atmosphere at the dispensary which is inappropriate in a health care setting.

Answer a is not the best answer because the comment about the patient's body is clinically relevant and will affect the options for glasses for the patient.

Answer c is not the best answer because the sexual abuse rules only apply to patients. Sexual harassment of an employee may be both unprofessional under another definition of professional misconduct and a breach of the Human Rights Code, but it is not sexual abuse (unless the receptionist was also a patient).

Answer d is not the best answer because the person is not a patient at the time of dating. However, consideration should still be given to whether a cooling off period of more than one year is appropriate.

Sexual Harassment

While the *RHPA* emphasizes the need to prevent and address the sexual abuse of patients, opticians should also be aware of their obligations to prevent and address sexual harassment in the workplace. Engaging in sexual harassment in the dispensary is unprofessional. It constitutes professional misconduct and opticians have been disciplined for doing so, facing significant disciplinary penalties. Not only is the conduct inherently unprofessional, it also often involves an abuse of power, and it inappropriately sexualizes the health care setting. Patient care is easily affected if the trust and respect of the health care team is compromised.

However, sexual harassment at the workplace has many other implications, beyond it being unprofessional. Such conduct breaches the *Ontario Human Rights Code*. The *Code* defines sexual harassment as "engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome." One incident can sometimes be enough to meet this definition. Examples of sexual harassment include:

- Sexual advances or repeatedly requesting a date.
- A poisoned work environment created by discussing one’s sexual activities or teasing others with sexual language.
- Comments and actions that demean a person because of their gender (e.g., expressing views about “women’s work”).
- Any form of sexual touching such as unwanted hugs or patting or rubbing the body of a colleague.

More recently, sexual harassment has been incorporated into occupational health and safety legislation as a safety issue related to workplace harassment and violence. The definition of sexual harassment in this context is almost identical to that in the *Human Rights Code*: “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.”

Occupational health and safety legislation makes explicit what has already long been implicit in human rights law, namely the duty of the employer to make every reasonable effort to protect workers from harassment, including sexual harassment. At a minimum, this would involve the development of policies for the organization and the education of staff about the nature of sexual harassment and the need to avoid it. Similarly, occupational health and safety legislation makes explicit the employer’s obligation to investigate and address appropriately any complaints of sexual harassment. Such complaints have to be taken seriously and be investigated thoroughly. Where the complaint is substantiated, appropriate discipline measures should be taken as well as measures taken to prevent a re-occurrence of the conduct. Employers also need to take steps to ensure that there is no retaliation against the person making a complaint.

Sexual harassment would often also involve a breach of contract or a civil wrong (called a tort) that could result in a civil court proceeding (e.g., a small claims court action) for damages against both the perpetrator and the employer. In addition, some forms of sexual harassment could constitute a criminal offence (e.g., sexual assault). Thus, opticians have good reasons, relating to their legal duties, workplace morale and the duty to achieve high quality patient care, to ensure that there is no sexual harassment in the dispensary.

Conclusion

Professional boundaries are established to protect both opticians and patients from inappropriate behaviour. A professional boundary demarks the point where the professional relationship has crossed over to another sort of relationship. Sexual abuse is a particularly serious example of a boundary crossing.

Opticians need to understand what kinds of conduct amount to sexual abuse, the harm that can flow from such behaviour, the need to participate in the province-wide effort to eliminate sexual abuse and take reasonable measures to avoid even the perception of sexual abuse. An optician found to have engaged in sexual abuse will face serious consequences including, in some cases, revocation of his or her registration for at least five years.

