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## ADVOCATING FOR SPOUSAL EXCEPTION FOR ONTARIO DENTAL HYGIENISTS

**September 26, 2019 (Burlington, ON)** — The Ontario Dental Hygienists' Association (ODHA) supports member dental hygienists in Ontario. The association is aware of a number of cases over the past several years where registered dental hygienists have had their certificates of registration (license) revoked by the College of Dental Hygienists of Ontario (CDHO) for treating a spouse. Enforcement of this regulation is a mandate of the CDHO and not ODHA. The legislation is very clear and requires that the revocation take place and that the public register record the reason (sexual abuse of a patient).

When the *Regulated Health Professions Act, 1991*, (the "RHPA") came into force it prohibited all health professionals regulated under the regime from treating their spouses. This was due to the definition of sexual abuse in subsection 1(3) of the Health Professions Procedural Code which is part of the RHPA:

- 1(3) In this Code, "sexual abuse" of a patient by a member means,*
- (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,*
  - (b) touching, of a sexual nature, of the patient by the member, or*
  - (c) behaviour or remarks of a sexual nature by the member towards the patient. 1993, c. 37, s. 4.*

Clearly, spouses engage in conduct that fits within this definition of sexual abuse. Therefore, if regulated health professionals treat their spouse, they would be considered to be sexually abusing their patient. In 2013, in order to remedy this difficult situation, the government amended the Code to create a spousal exception for the sexual abuse provisions. The exception is contained in subsection 1(5) of the Code which provides as follows:

- 1(5) If the Council has made a regulation under clause 95 (1) (0.a), conduct, behaviour or remarks that would otherwise constitute sexual abuse of a patient by a member under the definition of "sexual abuse" in subsection (3) do not constitute sexual abuse if,*
- (a) the patient is the member's spouse; and*
  - (b) the member is not engaged in the practice of the profession at the time the conduct, behaviour or remark occurs.*

Dentistry is the only profession in Ontario that has a spousal exception regulation so dentists can treat their spouse. ODHA has never received an explanation why the regulation was passed for dentists but not for other healthcare professionals including dental hygienists.

ODHA has and continues to advocate with the Government of Ontario to change this law as outlined in the *Regulated Health Professions Act* (RHPA) by passing a "spousal exception" regulation under the *Dental Hygiene Act*. Until the Government of Ontario agrees to this change, it is against the law for dental hygienists to treat their spouse. "ODHA understands the importance of spousal exception to our members and will continue to work with the Ministry of Health to move this regulation into the legislative timetable," says Margaret Carter, ODHA Executive Director.

Until there is a regulation in place, ODHA will continue to push for change and advises dental hygienists in Ontario to practice in compliance with the law to preserve their ability to practice in Ontario.

Established in 1963, the ODHA advocates for the profession. Dental hygiene is one of the largest regulated health-care professions in the province. ODHA's mission is to advance dental hygiene practice and primary health-care promotion in the interest of the profession and the public of Ontario.