

6 June 2011

Dr Joanna Flynn
Chair
Medical Board of Australia
GPO Box 9958
Melbourne VIC 3001

Dear Joanna

Consultation paper - Sexual boundaries: A guide for doctors and patients

We enclose our submission in respect to the draft guidelines on sexual boundaries for medical practitioners.

Yours faithfully



David Nathan
Chief Executive Officer

Att

Medical Board of Australia

Sexual Boundaries: A Guide for Doctors and Patients

Draft Guidelines for Consultation : Submission of Avant Mutual Group

Avant Mutual Group

Avant Mutual Group (**Avant**) is Australia's largest medical defence organisation with a membership of more than 55,000. We provide medical indemnity policies for health practitioners and private hospitals as well as risk advisory and educational services. Avant has offices in every state and is the only medical defence organisation with a substantial body of 'in-house' lawyers who provide advice to, and act for, members pursuant to their medical indemnity policies.

A significant part of Avant work involves assisting doctors in relation to their dealings with the Medical Board of Australia (**MBA**) its agency, AHPRA and the other regulatory agencies in each state. In particular, Avant has much experience in assisting its members with complaints arising from medical practice, the investigation of complaints, and disciplinary and professional conduct matters.

Avant supports the publication of guidelines for professional conduct, such as the proposed guidelines relating to sexual boundaries. It is important to set standards of conduct expected of doctors in order to foster, develop and sustain professional behaviour and individual accountability.

We make the following comments with respect to key features.

Definition of patient

The guideline defines patient as including parent, spouse, partner, close relative, guardian or carer of a patient or former patient.

Avant submits this definition of a "patient" is unnecessary and confusing. We submit that a patient should be defined as just that, a patient, within the ordinary meaning of the word.

Avant submits that the MBA's obligation to protect the public, and as such close relatives and friends of the patient, is adequately met by the following:

1. The statement located under the *Summary of these guidelines* section:

"It may also be unprofessional for a doctor to enter into a relationship with a former patient or a close relative of a patient, if this breaches the trust the patient placed in the doctor."

2. The quotation taken from *Section 8.2 of Good Medical Practice* which states good medical practice to include:

"Never using your professional position to establish or pursue a sexual, exploitative or other inappropriate relationship with anybody under your care. This includes those close to the patient, such as their carer, guardian or spouse or the parent of a child patient."

3. The statement under the heading *Trust*:

"This breach of trust may impact on the patient's (or other patients') ability to trust other doctors."

We submit that to extend the definition of patient beyond its ordinary meaning is confusing. As the quotation from Section 8.2 illustrates, it assumes a person "under care" is more than the patient and includes persons who may have no connection to the doctor at all, and receive no care from him or her. The emphasis should properly be placed on the type of conduct, not on the extended relationship between the patient and other people. In our submission, each case needs to be examined to assess whether the conduct is exploitative and this examination would necessarily include an assessment of the relationship between the patient and doctor, and where appropriate, other persons.

To include other classes of persons in a definition of "patient" does not assist in making the policy clear to readers. For instance, under the heading *Boundaries* this definition will have the effect of requiring the doctor to explain to not only the patient, but also the patient's parents, spouse, partner, close relative, guardian or carer of a patient or former patient what is to occur in a medical examination and ensure the patient understands and agrees to the procedure. This problem is repeated throughout the draft guidelines, when applying the definition of patient.

The role of the guideline

Avant generally supports the statement that: *"The Medical Board of Australia (The Board) will investigate a doctor who is alleged to have breached these guidelines and if the allegations are found to be substantiated, the Board will take action;"* However in our view there is not a clear outline of what action is likely to be taken in the event of a breach. Whilst we support the view that each case must be dealt with on its particular merits, more guidance on what the profession and the public can expect in this regard would assist in achieving a clear and consistent approach, which in turn assists in maintaining confidence in the regulation of the profession both from the perspective of the public and the profession.

Improper inappropriate emotional relationship

Avant submits that the inclusion of the word "emotional" does not assist in defining breaches of boundaries. It should be sufficient to state that an improper or inappropriate relationship can exist in the absence of a sexual relationship.

Former patients

Avant supports the criteria set out under number 8 "former patients". However, the statement under number 6 "*it is also improper to begin a sexual inappropriate emotional relationship that has arisen out of the doctor – patient relationship*" is confusing and should be clarified. It appears to be inconsistent with the statement "*it may also be unprofessional for a doctor to enter into a relationship with a former patient or close relative of a patient...*". Avant submits that relationships can start for any number of reasons, for example families living next door to each other or the doctor and patient working together.

It is submitted that how the relationship commenced and the extent to which a doctor-patient relationship was the cause of the sexual relationship is a matter to be considered in every case.

Breach of guidelines

As the consequences of a breach of the guidelines can be extremely serious for a practitioner, we consider that some clarity is necessary regarding what amounts to a breach and what consequences are likely to flow. We think there should be some clarity within the document as to what is a guideline, breach of which is likely to have professional consequences, and what is recitative or background information and what are statements of principle. For example, number 7 Communication. A failure of communication should not be considered in the same light as a breach of professional boundaries. Failing to meet this particular guideline should not expose a practitioner to action by the Board in the same way as a breach of the prohibition on personal relationships.

Conclusion

In general Avant supports these guidelines. We consider that they adequately address the issues involved in the complexities of interpersonal and professional relationships between doctors, their patients and others. Avant would like to see a simpler definition of "patient" and further clarification of some aspects as set out above.

Avant Mutual Group Limited