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By email

Medical Board of Australia
medboardconsultation@ahpra.gov.au

Dear Sir or Madam

Sexual boundaries: A guide for doctors and patients

Thank you for the opportunity to comment on the Medical Board of Australia's (the Board's) consultation draft *Sexual boundaries: A guide for doctors and patients*. The Health Quality and Complaints Commission (HQCC) commend the development of these guidelines to assist doctors and patients to understand, establish and maintain sexual boundaries in the doctor-patient relationship thereby protecting patients from harm and maintaining the public's confidence in the medical profession.

About us

The HQCC is Queensland's independent health watchdog dedicated to improving the safety and quality of healthcare. To prevent patient harm and improve healthcare quality we:

- manage healthcare complaints
- investigate serious and systemic issues and recommend quality improvement
- monitor, review and report on healthcare quality
- identify healthcare risks and recommend actions
- share information about healthcare safety and quality
- promote healthcare rights.

HQCC complaints about sexual misconduct

In the three years between 1 January 2007 and 31 December 2010, we received 23 health service complaints regarding sexual misconduct. The following table outlines the types of healthcare providers who were the subject of these complaints.

Provider type	Number of complaints
Medical practitioner	16 (70%)
Chiropractor	2
Massage therapist	2
Hospital (unspecified)	1
Medical radiation technologist	1
Podiatrist	1
TOTAL	23

Of the 16 complaints about medical practitioners, two complaints related to the same individual. The specialties of the 15 medical practitioners are as follows:

Specialty type	Number of complaints
General practitioner	8 (53%)
Obstetrics and gynaecology	3
Medical practitioner	2
Surgeon	1
Paediatrics and child health	1
TOTAL	15

In accordance with our legislation and procedures, we referred 13 of these 16 complaints to the Board under section 66 of the *Health Quality and Complaints Commission Act 2006*. Two complaints have not been confirmed in writing and one is currently being assessed.

General comments

1. We are pleased the guidelines address patients as well as doctors and several of our comments below attempt to strengthen this relevance for consumers. Once finalised, we hope the Board will consider publicising the guidelines to consumer groups and in the broader community.
2. We note that the guidelines support *Good medical practice: A code of conduct for doctors in Australia* and therefore apply specifically to registered medical practitioners. However, the same principles would apply to all registered providers of health services and we wonder whether the Australian Health Practitioner Regulation Agency (AHPRA) has any plans to extend the guidelines to other registered practitioners?

6. Maintaining boundaries

3. This section could be clarified by changing the sub-heading to 'Establishing and maintaining clear boundaries'.
4. In the second sentence, we wonder whether the following acknowledgement will assist doctors and patients to understand the difference between thoughts and behaviours: 'While sexual thoughts or feelings can arise, it is not acceptable for a doctor to act on those feelings or enter into a sexual or inappropriate emotional relationship with a patient, even if the patient has provided his or her consent.'
5. We are of the view that the first list (A doctor should) appears to focus on conducting examinations and could be broadened to include any care or treatment. For example, the first sentence could be changed to 'explain to the patient what is to occur, provide opportunity for questions and ensure the patient understands and agrees before proceeding with any examination, care or treatment'.
6. We also suggest the following statement be included in the list of what a doctor should do: 'be sensitive to cultural differences that affect a patient's ideas about sexual boundaries'.
7. In the list of what a doctor should not do, we query the use of the term 'sexual performance' in two places and suggest that 'sexual history, performance or preferences' may be broader and more appropriate.
8. We also suggest the following additional examples of what a doctor should not do:
 - a. watch a patient undress (unless clinically justified)
 - b. take or keep photographs of a patient that are not clinically necessary
 - c. continue with an examination when consent has been refused or withdrawn
 - d. undress or expose any part of his or her body to the patient
 - e. ask for, or accept, an offer of sex
 - f. exchange drugs or services for sexual favours¹.
9. In order to make the guidelines more relevant to consumers, the Board may wish to consider a list called 'A patient can', and include dot points such as:
 - a. Ask questions and seek clarification regarding your care
 - b. Inform the doctor if you feel uncomfortable at any stage
 - c. Request a chaperone if desired².

¹ Adapted from Council for Healthcare Regulatory Excellence. Clear sexual boundaries between healthcare professionals and patients: Information for patients and carers. (http://www.nhsemployers.org/SiteCollectionDocuments/CHRE_Clear_Sexual_Boundaries_doc_fb210509.pdf)

7. Effective communication

10. In the second sentence, we suggest replacing the words 'becomes clear' with 'can emerge' so as not to imply that all allegations of sexual misconduct are unfounded.

9. Warning signs

11. We suggest the words 'and can start easily' be removed so that crossing sexual boundaries is not inadvertently normalised.
12. The Board may wish to consider reviewing this section to ensure the behaviours listed are clear examples of warning signs and not actual boundary violations.

10. Doctors – What to do if you notice warning signs

13. The Board may wish to consider including a comment on doctors' mandatory reporting obligations such as 'Doctors are reminded that sexual misconduct constitutes 'notifiable conduct' under section 140 of the *Health Practitioner Regulation National Law Act 2009*. A registered practitioner must therefore notify AHPRA as soon as practicable after a reasonable belief has been formed about sexual misconduct of another registered provider.'

We wish you every success in the consultation process and look forward to the finalisation of the guidelines.

Yours sincerely



Cheryl Herbert
Chief Executive Officer

² Adapted from Council for Healthcare Regulatory Excellence. Clear sexual boundaries between healthcare professionals and patients: Information for patients and carers.
(http://www.nhsemployers.org/SiteCollectionDocuments/CHRE_Clear_Sexual_Boundaries_doc_fb210509.pdf)