



Medical Board of Australia

GUIDELINES: SEXUAL BOUNDARIES IN THE DOCTOR-PATIENT RELATIONSHIP

12 December 2018

Summary

Good medical practice involves 'never using your professional relationship 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'.¹

Sexual misconduct is an abuse of the doctor-patient relationship. It undermines the trust and confidence of patients in their doctors and of the community in the medical profession. It can cause significant and lasting harm to patients.

These guidelines aim to provide guidance to doctors about establishing and maintaining sexual boundaries in the doctor-patient relationship. These guidelines complement 'Good medical practice: a code of conduct for doctors in Australia' (Good medical practice). Good medical practice describes what the Medical Board of Australia (the Board) expects of all doctors who are registered to practise medicine in Australia.

Doctors who breach these guidelines are placing their registration at risk and in some cases could be committing a criminal offence.

- Sexual misconduct is an abuse of the doctor-patient relationship and can cause significant and lasting harm to patients.
- It is never appropriate for a doctor to engage in a sexual relationship with a current patient.
- A doctor must only conduct a physical examination of a patient when it is clinically indicated and with the patient's informed consent.
- Good, clear communication is the most effective way to avoid misunderstandings in the doctor-patient relationship.
- Doctors are responsible for maintaining professional boundaries in the doctor-patient relationship.

Sexual boundaries in the doctor-patient relationship

1. The foundation of the doctor-patient relationship

1.1 Trust

Trust in the relationship between doctors and patients is a cornerstone of good medical practice. Sexual misconduct is a serious abuse of that trust. Patients have a right to feel safe when they are consulting a doctor.

Patients need to trust that their doctor will act in their best interests, treat them professionally, not breach their privacy and never take advantage of them. Exploitation of the doctor-patient relationship undermines the trust that patients have in their doctors and the community has in the profession. It can cause profound psychological harm to patients and compromise their medical care.

1.2 Good communication

Good, clear communication is the most effective way to avoid misunderstandings in the doctor-patient relationship. Good medical practice includes:

- listening to patients, asking for and respecting their views about their health, and responding to their concerns and preferences
- informing patients of the nature of, and need for, all aspects of their clinical management, including examination and investigations, and giving them adequate opportunity to question or refuse intervention and treatment
- trying to confirm that your patient understands what you have said
- responding to patients' questions and keeping them informed about their clinical progress.

¹ Medical Board of Australia, *Good medical practice: a code of conduct for doctors in Australia*, (as revised from time to time).

2. Why breaching sexual boundaries is unethical and harmful

Doctors are expected to act in their patient's best interests and not use their position of power and trust to exploit patients physically, sexually, emotionally or psychologically. Breaching sexual boundaries is always unethical and usually harmful for many reasons including:

- **Power imbalance:** The doctor-patient relationship is inherently unequal. The patient is often vulnerable and in some clinical situations may depend emotionally on the doctor. To receive healthcare, patients are required to reveal information that they would not reveal to anyone else and may need to allow a doctor to conduct a physical examination. A breach of sexual boundaries in the doctor-patient relationship exploits this power imbalance.
- **Trust:** Patients place trust in their doctor. They have a right to expect that examinations and treatment will only be undertaken in their best interests and never for an ulterior, sexual motive.
- **Safety:** Patients subjected to sexual behaviour from their doctor may suffer emotional and physical harm.
- **Quality:** A doctor who sexualises patients is likely to lose the independence and objectivity needed to provide them with good quality healthcare.
- **Public confidence:** Members of the community should never be deterred from seeking medical care, permitting intimate examinations or sharing deeply personal information, because they fear potential abuse.

3. Breaches of sexual boundaries (spectrum of behaviours)

There is a wide range of behaviours that breach sexual boundaries, from making unnecessary comments about a patient's body or clothing, to criminal behaviour such as sexual assault. Unwarranted physical examinations or inappropriate touching during a consultation and examination may constitute sexual assault. AHPRA will advise and support notifiers² to report criminal behaviour to the police.

3.1 Spectrum of behaviours

Breaches of sexual boundaries include:

- engaging or seeking to engage in a sexual relationship with a patient regardless of whether the doctor believes the patient consented to the sexual relationship
- conducting a physical examination which is not clinically indicated or when the patient has not consented to it. An unwarranted physical examination may constitute sexual assault or abuse
- behaviours of a sexual nature including:
 - making sexual remarks including sexual humour or innuendo
 - flirtatious behaviour
 - touching patients in a sexual way
 - engaging in sexual behaviour in front of a patient
 - using words or acting in a way that might reasonably be interpreted as being designed or intended to arouse or gratify sexual desire
- asking a patient about their sexual history or preferences, when these are not relevant to their healthcare and without explaining why it is necessary to discuss these matters
- sexual exploitation or abuse³
- sexual harassment⁴
- sexual assault.

3.2 Other behaviours that may breach sexual boundaries

Other behaviours that may breach sexual boundaries include:

- asking a patient to undress more than is necessary or providing inadequate privacy screening or cover for a physical examination
- engaging in a sexual relationship with an individual who is close to a patient under the doctor's care, such as a patient's carer, guardian, spouse, family member or the parent of a child patient
- engaging in a sexual relationship with a former patient.

² Notifier/s means a person who has made a notification (complaint) to AHPRA about the alleged conduct of a health practitioner.

³ See 'Definitions' in these guidelines.

⁴ See 'Definitions' in these guidelines.

4. Guidance on maintaining sexual boundaries with current patients

Doctors are responsible for establishing and maintaining sexual boundaries with their patients.

There is no place for sex in the doctor-patient relationship, either in the guise of a 'consensual' sexual relationship, or in the form of sexualised comments or behaviour, or indecent or sexual assault.

The start of a sexual relationship between a doctor and a patient may not always be immediately obvious to either the doctor or patient. Doctors need to be alert to warning signs that could indicate that boundaries are being, or are about to be crossed.

Warning signs include but are not limited to:

- a doctor revealing to a patient intimate details of their life, especially personal crises or sexual desires or practices
- a doctor who finds themselves daydreaming or fantasising about a patient
- doctors and patients inviting each other out socially
- patients requesting or receiving non-urgent appointments at unusual hours or locations, especially when other staff are not present
- patients asking personal questions, using sexually explicit language or being overly affectionate
- patients attempting to give gifts.

If a doctor senses any of these warning signs, or if a patient talks about or displays inappropriate feelings towards a doctor or exhibits sexual behaviour, the doctor should consider whether this is interfering with the patient's care and/or placing the doctor or the patient at risk. In these situations, the doctor should try to constructively re-establish professional boundaries and seek advice from an experienced and trusted colleague or their professional indemnity insurer about how to best manage the situation.

If there is a possibility that sexual boundaries could be breached, or that the doctor may not remain objective, the doctor should transfer the patient's care to another doctor. This should be done sensitively so that a potentially vulnerable patient is not further harmed.

5. Guidance on maintaining sexual boundaries with former patients

It may be unethical and unprofessional for a doctor to engage in a sexual relationship with a former patient, if this breaches the trust the patient placed in the doctor. Doctors should recognise the influence they have had on patients and that a power imbalance could continue long after the professional relationship has ended.

A doctor should consider carefully whether they could be exploiting the trust, knowledge and dependence that developed during the doctor-patient relationship before they decide whether to pursue or engage in a relationship with a former patient.

When deciding whether a doctor used the doctor-patient relationship to engage in a sexual relationship with a former patient, the Board will consider a range of factors including:

- the duration, frequency and type of care provided by the doctor; for example, if they had provided long-term emotional or psychological treatment
- the degree of vulnerability of the patient
- the extent of the patient's dependence in the doctor-patient relationship
- the time elapsed since the end of the professional relationship
- the manner in which, and reason why, the professional relationship ended or was terminated
- the context in which the sexual relationship started.

6. Guidance on maintaining sexual boundaries with individuals close to the patient

A patient usually has a personal or emotional relationship with the individual⁵ involved or interested in their healthcare. This individual may provide them with support and advice. In some cases, such as when they are the parent of a child patient, they may make decisions on behalf of the patient about their health care. The individual close to the patient also relies on the doctor and trusts that the doctor is acting in the best interests of the patient.

A sexual relationship between a doctor and the individual close to a patient may affect the judgement of both the doctor and the individual and as a result, may undermine the patient's healthcare. Such a relationship may be unethical if the doctor has used any power imbalance, knowledge or influence obtained as the patient's doctor.

⁵ An individual close to a patient includes a parent of a child patient, a spouse, carer, guardian or family member.

When deciding whether a doctor used the doctor-patient relationship to engage in a sexual relationship with an individual close to the patient, the Board will consider a range of factors including:

- the duration, frequency and type of care provided by the doctor to the patient; for example, if they had provided long-term emotional or psychological treatment
- the degree of emotional dependence on the doctor by the individual close to the patient
- whether the doctor used any knowledge or influence obtained as the patient's doctor to engage in a sexual relationship with the individual close to the patient
- the importance of the patient's clinical treatment to the patient and to the individual close to them
- the extent to which the patient is reliant on the individual close to them.

7. Physical examinations

A physical examination is an important part of the medical consultation. It can provide valuable information to assist in the diagnosis of patients. However, physical examinations should be clinically warranted. An unwarranted physical examination may constitute sexual assault. This includes conducting or allowing others, such as students, to conduct examinations on anaesthetised patients, when the patient has not given explicit consent for the examination.

Before conducting a physical examination, good medical practice involves:

- explaining to the patient why the examination is necessary, what it involves and providing an opportunity for them to ask questions or to refuse the examination
- obtaining the patient's informed consent
- obtaining the patient's permission if medical students or anyone else is to be present during an examination or consultation
- assessing whether a patient who is a child or young person or who is impaired is capable of giving informed consent and if they are not capable, seeking consent from their substitute decision maker⁶
- allowing the patient to undress and dress in private. A doctor should not assist a patient to undress or dress unless the patient is having difficulty and asks for assistance

⁶ See 'Definitions' in these guidelines.

⁷ See 'Definitions' in these guidelines.

- allowing a patient to bring a support person who may be a parent, carer, guardian, spouse, family member or friend.

When conducting a physical examination, good medical practice involves:

- being aware of any verbal or non-verbal sign the patient has withdrawn consent
- not continuing with an examination when consent is uncertain, has been refused or has been withdrawn
- providing suitable covering during an examination so that the patient is covered as much as possible, to maintain their dignity
- using gloves when examining genitals or conducting internal examinations
Note: Gloves may not be necessary when conducting external examinations of neonates, infants and young children. When conducting external examinations of these patients, doctors are expected to follow the accepted standards of practice described by accredited specialist medical colleges and expected by their peers. They must also follow accepted standards of hygiene and infection control.
- not allowing the patient to remain undressed for any longer than is needed for the examination.

7.1 Use of observers

Patients may find intimate examinations stressful and embarrassing. The definition of an intimate examination⁷ depends on the patient's perspective, which may be affected by cultural values and beliefs. An intimate examination usually means examination of the breasts, genitalia or an internal examination (vaginal or rectal). Doctors should be sensitive and respectful of a patient's views when discussing the reasons for an intimate examination and should ensure the patient's comfort, dignity and privacy when conducting an intimate examination.

A doctor may choose to have an observer present during an intimate examination of a patient or in any consultation. The observer is essentially a witness to the consultation and may be a registered nurse employed in the practice. An observer can provide an account of the consultation if later there is an allegation of improper behaviour. Their presence may also provide a level of comfort to the patient.

The observer should:

- be qualified e.g. a registered or enrolled nurse, other registered health practitioner or appropriately trained, that is, they understand the support role they are performing on behalf of the patient
- be a person acceptable to the patient or the patient's support person
- respect the privacy, confidentiality and dignity of the patient.

A patient has the right to decline the presence of an observer. In that case, the doctor can proceed with the consultation without the observer, or choose not to proceed and instead help the patient to find another doctor. The patient also has the right to ask to be accompanied by a support person of their choice.

8. Social media and other digital communication

The principles in *Good medical practice* apply to the use of social media and other digital communication (e.g. email and text messages) as well as to face-to-face consultations with patients. The Board expects doctors to maintain professional boundaries when using social media and other digital communication to communicate with patients. Doctors must not use social media to pursue a sexual, exploitative or other inappropriate relationship with a patient.

Doctors should also be aware of the potential risks of engaging with patients through social media. Social media can blur professional and personal boundaries and may affect the nature of the doctor-patient relationship.

If a patient tries to engage with a doctor through social media or other digital communication about matters outside the professional relationship, the doctor should politely decline to interact with them and direct them instead to the doctor's usual professional healthcare communication channels.

For more information, the Board's *Social media policy* is accessible from www.medicalboard.gov.au.

9. Obligation to report allegations of sexual misconduct

The National Law requires registered health practitioners, employers and education providers to report 'notifiable conduct' to AHPRA (or the relevant authority in a co-regulatory jurisdiction), to prevent the public being placed at risk of harm.⁸

'Notifiable conduct' includes engaging in sexual misconduct in connection with the practice of the profession. This means engaging in sexual misconduct with individuals under a doctor's care or linked to a doctor's practice of their profession.

Mandatory notification requirements aim to prevent the public being placed at risk of harm. The law requires health practitioners to notify AHPRA (or the relevant authority in a co-regulatory jurisdiction) if they believe that another health practitioner has behaved in a way which presents a serious risk to the public. Health practitioners also have a professional and ethical obligation to protect and promote public health and safety and may therefore make a voluntary notification.

For more information about the obligations of health practitioners, employers and education providers to report 'notifiable conduct', refer to the Board's *Guidelines for mandatory notifications* accessible from www.medicalboard.gov.au.

Who do these guidelines apply to?

These guidelines apply to medical practitioners registered under the National Law.

⁸ There are some limited exceptions to the requirement of health practitioners to report 'notifiable conduct' in Western Australia and Queensland in certain circumstances. The requirement of education providers to make a mandatory notification relates to students and only applies where a student has an impairment that may place the public at substantial risk of harm.

How will the Board use these guidelines?

Section 41 of the National Law states that an approved registration standard, or a code or guideline approved by the Board, is admissible as evidence of what constitutes appropriate professional conduct or practice of the profession, in proceedings against a registered health practitioner under this law or a law of a co-regulatory jurisdiction.

The Board or the relevant authority in a co-regulatory jurisdiction will investigate a doctor who is alleged to have breached these guidelines. If the allegations are substantiated, the Board or the relevant authority in a co-regulatory jurisdiction will take action to protect the public.

Definitions

AHPRA means the Australian Health Practitioner Regulation Agency.

Doctor/s means a registered medical practitioner/s.

Informed consent means a person's voluntary decision about medical care that is made with knowledge and understanding of the benefits and risks involved. Good medical practice includes:

- providing information to patients in a way that they can understand before asking for their consent
- obtaining informed consent or other valid authority before you undertake any examination, investigation or provide treatment (except in an emergency), or before involving patients in teaching or research.

Intimate examination means an examination that a patient or a member of the public may reasonably regard as intimate, usually the breasts, genitalia or an internal examination (vaginal or rectal). The definition of an intimate examination may also be affected by a patient's cultural values and beliefs.

National Law means the Health Practitioner Regulation National Law, as in force in each state and territory.

Sexual exploitation or abuse in the doctor-patient relationship means a doctor using the power imbalance, knowledge or influence developed in the doctor-patient relationship to abuse or exploit the patient's trust or

vulnerability for sexual purposes or sexual gratification, including by conducting unwarranted physical examinations.

Sexual harassment means any unwelcome sexual behaviour which is likely to offend, humiliate or intimidate. Sexual harassment is a type of sex discrimination and the *Sex Discrimination Act 1984 (Cth)* makes sexual harassment unlawful in some circumstances.

Sexual harassment includes:

- making an unsolicited demand or request for sexual favours, either directly or by implication
- irrelevant mention of a patient's or doctor's sexual practices, problems or orientation
- ridicule of a patient's sexual preferences or orientation
- comments about sexual history that are not relevant to the patient's healthcare
- requesting details of sexual history or sexual preferences not relevant to the patient's healthcare
- conversations about the sexual problems or fantasies of the doctor
- making suggestive comments about a patient's appearance or body
- sending sexually explicit emails or text messages
- making inappropriate advances on social media
- requests for sex or repeated unwanted requests to go out on dates
- behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, stalking, obscene communications or sexual assault.⁹

Sexual relationship means the totality of the relationship between two people, when the relationship has some sexual element, including any sexual activity between a doctor and their patient.

Substitute decision-maker means a person who has the authority to make decisions on behalf of a patient who does not have the capacity to make their own decisions. A substitute decision-maker can be a parent or a legally appointed decision-maker. If in doubt, seek advice from the relevant guardianship authority.

⁹ Definition adapted from the Australian Human Rights Commission definition of sexual harassment, <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/know-your-rights-sex-discrimination-and-sexual-harassment>, accessed 14 August 2018

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- Professor Ron Paterson, *Independent review of the use of chaperones to protect patients in Australia*, February 2017.
- The Medical Council of New Zealand, *Sexual boundaries in the doctor-patient relationship: A resource for doctors*, 2009.
- The Royal Australian and New Zealand College of Obstetricians and Gynaecologists, *Guidelines for gynaecological examinations and procedures*, March 2016.
- General Medical Council, *Maintaining a professional boundary between you and your patient*, March 2013.

Authority

These guidelines are issued under section 39 of the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

Review

Date of issue: 12 December 2018

Date of review: These guidelines will be reviewed from time to time as required. The Board will review these guidelines at least every five years.

These guidelines replace the guidelines that came into effect from 28 October 2011.