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Consultation – Draft revised guidelines “Sexual boundaries in the doctor- patient relationship

Thank you for the opportunity to provide input into the Medical Board of Australia draft revised guidelines ‘Sexual Boundaries in the doctor-patient relationship’ (the draft guidelines).

Avant is Australia’s largest medical defence organisation, providing professional indemnity insurance and legal advice and assistance to more than 75,000 healthcare practitioners and students around Australia.

We have reviewed the draft guidelines and make the following comments.

General Comments

Avant supports clause 8.2 of the Medical Board’s [Good medical practice: a code of conduct for doctors in Australia](#) which states that good medical practice involves:

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...

Subject to our comments below, Avant believes that the draft guidelines provide appropriate guidance to practitioners about sexual boundaries in the doctor-patient relationship. The draft guidelines are a more helpful guide for practitioners than the *Sexual boundaries: Guidelines for doctors* dated October 2011 with the reference to interactions over social media a welcome addition.

Specific comments

We have specific comments about the following clauses in the draft guidelines.

Clause 3 (first paragraph): *Unnecessary physical examinations or touching during a consultation and examinations without informed consent are criminal offences.*

This statement is not accurate. There are times when medical practitioners are unable to obtain consent from patients such as during an emergency where a patient may be unconscious.

We recommend that this paragraph be amended by deleting the words “*are criminal offences*” and replacing them with the words “*may constitute sexual assault*”. This suggested wording is consistent with the wording used in the first paragraph of part 7 of the draft guidelines.

Clause 3.1 (bullet point 4): *asking a patient about their sexual history or preferences, when these are not relevant to the patient’s clinical issue.*

We are concerned that this section may be misconstrued. In our experience, patients do not always understand why a practitioner may need to obtain a full sexual history as part of a patient’s background. For example, a patient may present with a fever and to rule out pelvic inflammatory disease or a urinary tract infection, a doctor should obtain a sexual history.

We agree that a doctor should explain to a patient the rationale for asking about sexual history or preferences. However, this point might be better included in clause 1.2 of the draft guidelines which deals with good communication. We suggest that clause 1.2 (bullet point 2) be amended to emphasise the importance of doctors informing patients about the rationale for obtaining a sexual history or preferences.

Clause 4 (first paragraph): *Doctors are responsible for establishing and maintaining sexual boundaries with their patients, regardless of their patient’s behaviour. A patient cannot give their informed consent to a sexual relationship with their doctor because of the power imbalance in the doctor-patient relationship and their reliance on the doctor for their health care. Patient consent is never a valid reason for doctors to engage in sexualised behaviour.*

We have two concerns here. The first is the reference to *consent* in the second sentence of the paragraph. The existence of consent is a legal question and not one which should be prescribed in the draft guidelines. The second concern is the inconsistency between the second and third sentences of this paragraph.

We suggest that a preferable way to approach this aspect is for these two sentences to be deleted and replaced with the following words from the [Independent review of the use of chaperones to protect patients in Australia](#):

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.¹

Clause 7 (bullet point 6): *A doctor should not assist a patient to undress or dress unless the patient is having difficulty and asks for assistance*

Sometimes it is obvious that a patient, such as a frail elderly person, will require assistance. Some patients may be embarrassed to ask for assistance and a doctor waiting to be asked to assist in these circumstances seems impractical. It would be appropriate in circumstances such as these for the doctor to offer to assist, but to only assist with the

¹ See page 26 of the Report.

agreement of the patient. We recommend that the clause 7 be amended to account for this situation.

Please contact me on the details below if you require any further information or clarification of the matters raised in this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Ge", followed by a long horizontal flourish that ends in a small arrowhead.

Georgie Haysom
Head of Advocacy