

6 June 2011

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Dear Dr Flynn

## SEXUAL BOUNDARIES GUIDELINES

Thank you for the opportunity to provide a submission in relation to the Medical Board of Australia's Draft Guidelines "Sexual boundaries: A guide for doctors and patients" ("Draft Guidelines").

As you are aware, MDA National is one of Australia's leading providers of medical defence and medico-legal advocacy services. MDA National works in close partnership with the medical profession on a wide range of issues which impact on medical practice. In addition to its advocacy and advisory services, MDA National's insurance subsidiary (MDA National Insurance) offers insurance policies to MDA National's members which provide cover for the cost of investigations of professional misconduct and for claims for compensation by third parties. The MDA National insurance policy provides medical practitioners with \$20 million of civil liability cover as well as a range of other professional risk covers.

MDA National is concerned about the statement outlined under point 2 of the Draft Guidelines which states:

"In this document *patient* also refers to the parent, spouse, partner, close relative, guardian or carer of a patient or former patient".

This sentence appears to imply a very broad definition of the word "patient". MDA National also notes that if this definition of patient is adopted, then the term "patient" would be inconsistently used throughout the Draft Guidelines. For example, the first paragraph under point 2 refers to "patients, their families and carers"; under point 3, the first paragraph refers to "patients and their families" and later in the same paragraph refers to "former patient or a close relative of a patient".

MDA National submits that the requirement for a doctor to offer the presence of a chaperone during all intimate physical examinations under point 6 of the Draft Guidelines may not be practical in all clinical settings. For example, in some rural and remote settings, a chaperone may be unavailable and so the doctor would be unable to offer this to the patient and would be deemed in breach of the Guidelines.

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MDA National notes that the Draft Guidelines are to be “used by the public, including patients, their families and carers to inform and guide them about dealing with any concerns about sexual behaviour by medical practitioners that arise in the context of the doctor-patient relationship”. In this regard, MDA National notes under point 11 that the Draft Guidelines state:

*“Patients should trust their own judgement, respect their own feelings and, when in doubt, talk to someone – a trusted friend, a family member or another health care professional”.*

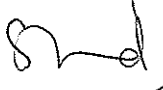
MDA National submits that the Draft Guidelines should include a statement that health care professionals have a legal responsibility to report all “notifiable conduct”. “Notifiable conduct” is defined in the *Health Practitioner Regulation National Law Act 2009* (the National Law) and means the practitioner has:

- (a) practised the practitioner’s profession while intoxicated by alcohol or drugs; or
- (b) engaged in sexual misconduct in connection with the practice of the practitioner’s profession; or
- (c) placed the public at risk of substantial harm in the practitioner’s practice of the profession because the practitioner has an impairment; or
- (d) placed the public at risk of harm because the practitioner has practised the profession in a way that constitutes a significant departure from accepted professional standards.

Therefore, if a health care professional forms a “reasonable belief” after discussion with a patient that another practitioner has engaged in sexual misconduct in connection with their practice, that health care professional is legally required to report the matter to AHPRA. MDA National suggests that the Draft Guidelines clearly confirm that this report must be made even if the patient does not wish to make a report and/or want their health care professional to breach their confidentiality in making a report to AHPRA.

Thank you for the opportunity to provide a submission in relation to the Draft Guidelines “Sexual boundaries: A guide for doctors and patients.” We look forward to discussing these issues further.

Yours sincerely



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