

Our Ref: CSM:LH  
Your Ref:

6 June 2011

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Dear Sir

**Re: Draft Guidelines: Sexual Boundaries: A Guide for Doctors and Patients**

Thank you for the opportunity to provide feedback on this document.

Medical Insurance Group Australia is a national provider of medical indemnity insurance to medical practitioners and other clients around Australia. It has a breadth of experience in assisting medical practitioners in disciplinary and like matters investigated by the Medical Board of Australia and we endorse the introduction of Guidelines to assist medical practitioners in their practise of medicine.

We have annexed to this response a copy of the Guidelines annotated with our suggested amendments. Many of the suggestions are self explanatory. To the extent that explanation is required we offer the following comments.

We suggest that the words "if this breaches the trust the patient placed in the doctor", appearing beneath the heading "3. Summary of these Guidelines" are deleted. In our view the qualification is redundant and we note is not repeated in Section 8 which deals with former patients. In our view the statement "it may also be unprofessional for a doctor to enter into a relationship with a former patient or a close relative of a patient" is sufficient for the purpose of the Guidelines.

We have suggested that the words "or an improper emotional", which appear throughout the Guidelines, be deleted. The Guidelines are said to relate to sexual boundaries and we recommend they be limited accordingly. A reference to "improper emotional" relationship creates a degree of subjectivity which is unhelpful. Which emotional relationships are improper and which are proper may not always be identifiable and so to include this invites a degree of subjectivity which will more likely create confusion.

Finally, in our view it is unnecessary and inappropriate to list the various sexual assault services. Of course these services are extremely important however in our experience violation of the sexual boundaries at the most significant and potentially criminal end of the scale is extremely uncommon. The listing of sexual assault services implies (incorrectly in our view) that a sexual relationship between doctor and patient always constitutes a sexual assault. While we accept that a sexual relationship with a current patient is unethical it may not be a sexual assault e.g. where the sexual interaction is consensual between both parties. For this reason reference to the availability of these services, as distinct from listing them, is sufficient and provides an appropriate balance in the wording in this document which is intended for use by both doctors and patients.

We trust that these few comments and suggested amendments are helpful. Please let us know if this response requires any clarification or if we can assist further.

Yours sincerely



*for* **Cheryl McDonald**  
Claims Department Manager

Encl: Amended Guideline document



## Draft Guidelines

30 March 2011

### Sexual boundaries: A guide for doctors and patients

#### 1. Introduction

These guidelines have been developed under section 39 of the *Health Practitioner Regulation National Law Act* (the National Law) as in force in each state and territory. <sup>They</sup> ~~it~~ provides guidance to registered medical practitioners about maintaining and understanding sexual boundaries in the doctor-patient relationship. X

#### 2. Who needs to use these guidelines?

These guidelines apply to all registered medical practitioners. The guidelines can also 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 document **patient** also refers to the parent, spouse, partner, close relative, guardian or carer of a patient or former patient.

#### 3. Summary of these guidelines

Good medical practice relies on trust between doctors and patients and their families. It is always wrong for a doctor to breach this trust by entering into a sexual, or an improper emotional relationship with a patient, regardless of whether the patient has consented to the relationship. 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.~~ X

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.

#### 4. Background

These guidelines support "**Good Medical Practice: A Code of Conduct for Doctors in Australia**" and provide further specific guidance for doctors about sexual boundaries. <sup>(Good Medical Practice)</sup> X

Section 1.4 of Good Medical Practice states:

*"Doctors have a duty to make the care of patients their first concern and to practise medicine safely and effectively. They must be ethical and trustworthy."*

<sup>^</sup> *"Patients trust their doctors because they believe that, in addition to being competent, their doctor will not take advantage of them and will display qualities such as integrity, truthfulness, dependability and compassion. Patients also rely on their doctors to protect their confidentiality."* X

Section 8.2 of Good Medical Practice states:

*"Professional boundaries are integral to a good doctor-patient relationship. They promote good care for patients and protect both parties. Good medical practice involves:*

- *maintaining professional boundaries.*
- *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.*

- avoiding expressing your personal beliefs to your patients in ways that exploit their vulnerability or that are likely to cause them distress."

## 5. The patient-doctor relationship – why it is important

### Trust

Trust is the foundation of a good doctor-patient relationship. Patients need to trust that their doctor will maintain the confidentiality of their private information. Patients are required to divulge personal information as part of the consultation and ~~are often required to permit~~ intimate examinations. Patients give access to their private thoughts and sometimes their homes. Patients trust that their doctor has the experience, knowledge and skills to treat them. It is a breach of trust for a doctor to enter into a sexual or ~~improper emotional~~ relationship with a patient. This breach of trust may impact on that patient's (or other patients') ability to trust other doctors.

to assist diagnosis  
may be asked to  
consent  
to

### Power imbalance

The doctor-patient relationship is not equal. In requiring treatment, the patient is ~~usually~~ vulnerable. The patient may depend emotionally on the doctor. The social status conferred on doctors by society exacerbates this unequal power relationship. It is an exploitation of the power imbalance for a doctor to enter into a sexual or ~~improper emotional~~ relationship with a patient.

may be

### Loss of objectivity

A sexual or ~~an improper emotional~~ relationship, even if the patient is a consenting adult, may cloud or impair the doctor's judgement and make him or her less objective. The quality of care that the doctor provides may therefore be compromised.

### Patient safety

A breach of boundaries may cause severe psychological damage to the patient. It may also harm others (for example, relatives) and create a barrier to others seeking help.

## 6. Maintaining boundaries

Doctors are responsible for establishing and maintaining boundaries with their patients. It is not acceptable for a doctor to enter into a sexual or ~~inappropriate emotional~~ relationship with a patient, even if the patient has provided his or her consent. It is ~~also~~ improper to begin a sexual or ~~inappropriate emotional~~ relationship that has arisen out of the doctor-patient relationship.

appropriate

### A doctor should:

- explain to the patient what is to occur in a medical examination and ensure the patient understands and agrees to the procedure
- allow a patient to undress for an examination in private and provide suitable covering during the examination
- use gloves when examining genitals or conducting internal examinations
- not allow the patient to remain undressed for any longer than is needed for the examination
- ask for the patient's permission if anyone else, including medical students, are to be present during an examination or consultation and
- offer the presence of a chaperone during intimate physical examinations if this would make the patient feel more comfortable.

may also be

### A doctor should not:

- discuss his or her own sexual problems or fantasies
- make unnecessary comments about a patient's body or clothing or make other sexually suggestive comments by way of sexual innuendo or jokes (comments regarding a patient's body should be clinically necessary)

relevant

only be  
made if



- ask questions or make comments about a patient's sexual performance unless this is relevant to the patient's problem or the doctor has explained why it is necessary to discuss the matter
- request irrelevant or unnecessary details of a patient's history or sexual performance or
- attempt to go out with, date or otherwise enter into a sexual relationship with a patient.

#### 7. Effective communication

The Board receives notifications regularly from patients who have felt that a doctor's actions were inappropriate and/or sexually motivated. When the matter is investigated, it becomes clear that the consultation was appropriate and the examination was indicated clinically, but that the doctor did not explain (or the patient did not understand) why he or she asked particular questions or conducted a particular examination. Good, clear communication is the most effective way to avoid misunderstandings.

#### 8. Former patients

*In making a decision the Board*  
It may be unprofessional for a doctor to enter into a sexual or inappropriate emotional relationship with a former patient. The Board would consider each case individually, including:

- the time lapsed since the end of the professional relationship
- the manner in which the professional relationship was terminated
- the type of services provided by the doctor; for example, if there was long-term emotional or psychological support
- whether the patient had a mental health problem or a condition that affected his or her judgement at the time of treatment
- the degree of dependence in the doctor-patient relationship and/or
- whether the doctor used a power imbalance or information gained while treating the patient.

#### 9. Warning signs

The initiation of a sexual or improper emotional relationship between a doctor and a patient may not always be obvious to either the doctor or the patient and can start easily. Doctors and patients need to watch for warning signs that indicate that boundaries are being crossed.

Warning signs include: *but are not limited to:*

- patients requesting or receiving non-urgent appointments at unusual hours or locations, especially when other staff are not present
- inviting each other out socially and/or
- a doctor revealing intimate details of his or her life, especially personal crises or sexual desires or practices, to patients during a professional consultation.

#### 10. Doctors - What to do if you notice warning signs

*talks about or displays*  
If a doctor detects any of these warning signs or if a patient develops inappropriate feelings towards them, the doctor should consider whether this is interfering with the patient's care. It might be advisable to discuss the situation with a trusted colleague or a professional indemnity insurer.

*how to manage*  
If there is a possibility that the doctor may not remain objective or that boundaries could be breached, the doctor should transfer the patient's care to another practitioner. This does not mean that the doctor can begin a sexual relationship with the patient, but it ensures the patient continues to receive appropriate and safe care.

#### 11. Patients - What to do if boundaries are crossed

If a patient feels uneasy about the conduct of their doctor, this should be regarded as a warning sign that something may be wrong and that boundaries may be being crossed.

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. Raising the issue with the doctor at the time may clarify the situation and prevent a problem progressing.

*or a time reasonably proximate*

Patients can report a breach of boundaries to the Board by downloading a notification form available on the Board's website at [www.medicalboard.gov.au](http://www.medicalboard.gov.au) and posting the completed form to the Australian Health Practitioner Regulation Agency (AHPRA), GPO Box 9958 in your capital city.

Or patients may call AHPRA on 1300 419 495 to make a verbal notification.

Help is also available from a range of sexual assault services available in each state and territory. ~~For example:~~

**Australian Capital Territory**

Canberra Rape Crisis Centre  
Phone: (02) 6287 3618  
24 hour crisis line: (02) 6247 2525  
Website: [www.rapecrisis.org.au](http://www.rapecrisis.org.au)  
Email: [crcc@rapecrisis.org.au](mailto:crcc@rapecrisis.org.au)

**New South Wales**

NSW Rape Crisis Centre  
Phone: (02) 9819 7357  
24 hour crisis line: 1800 424 017  
Website: [www.nswrapecrisis.com.au](http://www.nswrapecrisis.com.au)  
Email: [info@nswrapecrisis.com.au](mailto:info@nswrapecrisis.com.au)

**Northern Territory**

Alice Springs Sexual Assault Referral Centre, Phone: (08) 8951 5880  
Darwin - Ruby Gaea, Phone: (08) 8945 0155  
Darwin Sexual Assault Referral Centre, Phone: (08) 8922 7156  
Katherine - Family Link, Phone: (08) 8971 0777

**Queensland**

Brisbane Rape & Incest Survivors Support Service  
Support: (07) 3391 0004  
Website: [www.brissc.org.au](http://www.brissc.org.au)  
Email: [admin@brissc.org.au](mailto:admin@brissc.org.au)

**South Australia**

Yarrow Place  
After Hours and Emergency: (08) 8226 8787  
Phone: (08) 8226 8777 Toll Free in SA: 1800 817 421  
Email: [yarrowplc@mail.wch.sa.gov.au](mailto:yarrowplc@mail.wch.sa.gov.au)

**Tasmania**

North - Laurel House, Phone: (03) 6334 2740, Email: [laurel@tassie.net.au](mailto:laurel@tassie.net.au)  
North West Centre Against Sexual Assault, Phone: (03) 6431 9711, Email: [nwcasa@southcom.com.au](mailto:nwcasa@southcom.com.au)  
South - Sexual Assault Support Service, 24 hour crisis line: (03) 6231 1817, Email: [admin@sass.org.au](mailto:admin@sass.org.au)

**Victoria**

Centre Against Sexual Assault (CASA)  
1800 806 292 – 24 hour crisis line  
Counselling & Support Lines: 03 9349 1766  
Website: [www.casahouse.com.au](http://www.casahouse.com.au)  
Email: [casa@thewomens.org.au](mailto:casa@thewomens.org.au)

**Western Australia**

Sexual Assault Resource Centre  
24 hour counselling line: (08) 9340 1899  
24 hour crisis line: (08) 9340 1828 Freecall: 1800 199 888

*and patients  
can contact  
AHPRA for  
further information  
about these  
services.*

Website: [www.kemh.health.wa.gov.au/services/sarc/index.htm](http://www.kemh.health.wa.gov.au/services/sarc/index.htm)  
Phone: (08) 9340 1820

In the case of sexual assault, rape or other criminal offences, the Board encourages patients to make a report to the police. Criminal offences should be investigated by the police.

## 12. The role of the Medical Board of Australia

All medical practitioners practising in Australia must be registered with the Medical Board of Australia (the Board).

The primary role of the Board is to protect the public by ensuring that only medical practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.

The Board can investigate concerns about the professional conduct, professional performance or health of registered medical practitioners. It can also take a range of actions to protect the public.

In cases of serious unprofessional conduct, the Board has the power to suspend registration and/or refer the matter to a Tribunal or Court where a medical practitioner's registration may be cancelled. In cases about less serious unprofessional conduct, the Board has the power to impose conditions on the doctor's registration, require the medical practitioner to undergo counselling, supervision, undertake further education, caution the practitioner or accept an undertaking from the practitioner.

### Review

These guidelines will begin on (a date to be advised after the consultation process is complete). The Board will review these guidelines within three years of that commencement date.