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17 May 2011

Executive Officer
Medical Board of Australia
G.P.O. Box 9958
MELBOURNE VIC 3001

Dear Executive Officer

Thank you for providing the Australian Medical Association (AMA) with the opportunity to comment on the draft guidelines for consultation entitled *Sexual boundaries: A guide for doctors and patients*.

The AMA offers the following comments, relevant to the headings used in the guidelines:

1. Introduction

The guidelines are entitled 'a guide for doctors *and patients*' (emphasis added), which is commendable. The AMA believes it is important to inform registered medical practitioners (doctors), patients, their family and carers, and the wider public of the standard of behaviour expected of doctors in relation to sexual boundaries within the doctor-patient relationship.

In accordance with the *AMA's Code of Ethics 2004. Editorially Revised 2006*, the AMA believes that the doctor-patient relationship is a partnership, based on mutual respect and collaboration. Within the partnership, both the doctor and the patient have rights as well as responsibilities.

It's imperative that doctors understand and respect their ethical and legal duties in relation to sexual boundaries. It's also important that patients, their family members and carers understand and respect these boundaries as well. As such, the guidelines need to be clear, comprehensive and avoid ambiguity.

3. Summary of these guidelines

The word 'wrong' should be changed to 'unethical'. Professional conduct is normally described in terms of 'ethical or unethical' rather than 'right or wrong'.

The guidelines refer to an 'improper emotional relationship' on several occasions but this is not actually defined. A definition should be clear and unambiguous in order to provide guidance to doctors; otherwise, it may be difficult for a doctor (or patient or other relevant individual) to determine whether an 'improper emotional relationship' has occurred. Should it prove difficult to clearly define, then some examples should be provided that help guide doctors and patients.

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

The issue of respect should be acknowledged in this section as respect is critical to maintaining appropriate boundaries within the doctor-patient relationship (it could be incorporated into the section on Trust). As above, a successful doctor-patient relationship involves mutual respect and collaboration.

Under the paragraph entitled 'trust', it states that 'patients *are required* to divulge personal information as part of the consultation and *are often required* to permit intimate examinations' (emphasis added). Patients are not 'required' to undertake either – patients make autonomous decisions regarding what information they divulge and whether or not they undertake an intimate examination. We suggest changing 'are required to' and 'are often required to' with 'may' (or similar) to recognise the autonomy of the patient.

8. Former patients

Clearer guidance should be provided on this section. It says that the Board would consider each case individually (which is acceptable), but no guidance is provided in relation to any of the dot points; therefore, a doctor has no specific measurable criteria by which to assess his/her own behaviour? Eg., is it acceptable to enter into a relationship with a former patient if:

- there has been a significant lapse in time since ending the professional relationship? (eg., 10 years as opposed to 1 year) (dot point 1);
- the professional relationship was terminated because the doctor moved to another practice far away (perhaps interstate), thus terminating the professional relationship with all his/her patients (and not just the former patient)? (dot point 2);
- the doctor is a surgeon (or other) but not a psychiatrist? (dot point 3), etc.

Whilst we recognise the difficulty (and perhaps impracticality) in attempting to specifically quantify or define which circumstances are acceptable and which circumstances are not acceptable to enter into a relationship with a former patient, more guidance is nonetheless required for doctors. The way the dot points are currently written, neither a doctor, a patient, or others can make an assessment. As above, some examples should be provided that help guide doctors and patients.

We look forward to the further development of these guidelines.

Sincerely



Dr Andrew Pesce
President