

28 February 2018

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By email: [medboardconsultation@ahpra.gov.au](mailto:medboardconsultation@ahpra.gov.au)

Dear Dr Flynn,

**Draft revised guidelines ‘Sexual boundaries in the doctor-patient relationship’**

Rape & Domestic Violence Services Australia (R&DVSA) thank the Medical Board of Australia (the Board) for the opportunity to comment on the public consultation paper on the draft revised guidelines ‘Sexual boundaries in the doctor-patient relationship’.

R&DVSA is a non government organisation that provides a range of counselling services to people whose lives have been impacted by sexual, family or domestic violence<sup>1</sup> and their supporters. Our services include the NSW Rape Crisis counselling service for people in NSW who have experienced or have been impacted by sexual violence; Sexual Assault Counselling Australia for people who have been impacted by the Royal Commission into Institutional Responses to Child Sexual Abuse; and Domestic and Family Violence Counselling Service for Commonwealth Bank of Australia customers who are seeking to escape domestic or family violence.

R&DVSA support the proposed changes to the guidelines aimed to improve readability and make clear the Board’s expectations of medical practitioners.

However, we believe the guidelines could be further improved by:

- enhanced guidelines for medical practitioners who receive a patient disclosure;

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<sup>1</sup> R&DVSA prefer the term *people who have experienced sexual assault and/or domestic and family violence* to describe individuals who have suffered this type of violence, rather than the terms survivors or victims. This is in acknowledgement that, although experiences of sexual assault and/or domestic and family violence are very significant in a person’s life, they nevertheless do not define that person.

- discussion of the risk of vicarious trauma for medical practitioners who receive a patient disclosure; and
- clarification of the rights of medical practitioners who are subject to sexual harassment or sexual assault by a patient.

These recommendations are discussed in more detail below.

### **Guidelines for medical practitioners who receive a patient disclosure**

R&DVSA recommend that the Board consider amending the guidelines to include more detailed direction for medical practitioners who receive a disclosure from a patient of an alleged breach of sexual boundaries by another doctor.

We note that the draft guidelines do include information about a medical practitioner's legal obligations to report 'notifiable conduct' including allegations of sexual misconduct. However, we believe that medical professionals would benefit from further discussion of their ethical obligations in these circumstances.

The Medical Council of New Zealand's guidelines on 'Sexual Boundaries in the doctor-patient relationship: A resource for doctors' provide a useful model in this respect. These guidelines provide an extensive discussion of a doctor's ethical duties to support a patient who discloses an alleged breach of sexual boundaries by another doctor at paragraphs 48-55.

R&DVSA consider that a doctor receiving a disclosure has an ethical duty to:

- Provide a compassionate and supportive response;
- Assist the patient by explaining their options, including their right to report the behaviour to the police and to make a complaint against the medical practitioner;
- Offer to help the patient make a complaint or access support services.

We recommend the Board consider including guidelines to this effect.

### **Discussion of the risk of vicarious trauma**

R&DVSA suggest that the guidelines should include a medical professionals' right to access support and assistance with managing vicarious trauma where they receive a disclosure of sexual assault. Vicarious trauma refers to the deleterious effects upon people not directly affected by traumatic events, but nevertheless exposed to them in some way. Vicarious trauma is common amongst professionals who receive disclosures of sexual assault. Strategies which may assist with managing the risk of vicarious trauma include education, risk reduction, monitoring, early intervention and offsetting symptoms.

## **Rights of medical practitioners who experience sexual harassment or sexual assault**

R&DVSA recommend the guidelines be amended to clarify the rights of medical practitioners who are subject to sexual harassment or sexual assault by a patient. In particular, the guidelines must make clear a medical practitioner's right to report these behaviours and access appropriate support.

Currently, the draft guidelines provide:

Doctors are responsible for establishing and maintaining sexual boundaries with their patients, regardless of their patient's behaviour.

(Section 4: Guidance on maintaining sexual boundaries with current patients)

While it is important to acknowledge the inherent power imbalance that exists within a doctor-patient relationship, the guidelines must also recognise that intersecting power structures may render medical practitioners vulnerable to sexual harassment and sexual assault in certain circumstances. Where this occurs, it is not appropriate to place responsibility onto the medical practitioner for the patient's behaviour.

Sexual harassment and sexual assault are gendered phenomena. Overwhelmingly, they are experienced by women at the hands of male perpetrators. As such, female medical practitioners may be vulnerable to sexual harassment or assault perpetrated by male patients. Medical practitioners who identify as LGBTIQI, have a disability, or come from diverse cultural backgrounds may also be at higher risk of sexual harassment or assault by a patient.

A 2010 survey of 180 Australian female general practitioners found that more than half had been sexually harassed by a patient. The study, published in the *Medical Journal of Australia*, showed that common forms of sexual harassment experienced by female doctors included requests for inappropriate examinations, inappropriate exposure of body parts, gender-based remarks, inappropriate gifts and sexual remarks. Two-thirds of female doctors said the experience had caused them to change their consulting style, including by becoming more formal and not doing physical examinations.<sup>2</sup>

Peter A Bratuskins, one of the authors of this study, noted that many female doctors feel unable to report these issues and instead, often respond by making changes to their practice. He stated:

I think it would be useful to make it clear to doctors working in a practice that this is something that may happen and if it does happen it is something that should be reported, that the doctor will be supported and offered help, that the patient can be excluded from the practice as well.<sup>3</sup>

R&DVSA recommend that the Board consider including guidelines to this effect.

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<sup>2</sup> Peter A Bratuskins, Heather A McGarry and Stephen J Wilkinson (2013) 'Sexual harassment of Australian female general practitioners by patients', *Med J Aust*, 199(7), 454.

<sup>3</sup> ABC News, 'More than half of female doctors sexually harassed by patients: survey', 7 October 2013, accessed online 28 February 2018, <http://www.abc.net.au/news/2013-10-07/more-than-half-of-female-doctors-sexually-harrassed-by-patients/5001954>.

Please do not hesitate to contact me on [REDACTED] or by email at [REDACTED]  
[REDACTED] if you have any questions.

Yours faithfully,

**Rape and Domestic Violence Services Australia**

A handwritten signature in black ink, consisting of a stylized, cursive 'K' followed by a horizontal line extending to the right.

**Karen Willis**

**Executive Officer**