

## Health insights

# Medical Board seeks community input on revised sexual boundaries guidelines

The Medical Board of Australia (MBA) is currently taking submissions regarding changes it proposes to make to the existing guidelines concerning sexual boundaries in the doctor-patient relationship (Guidelines). The proposed draft can be found on the Medical Board of Australia website, and will be available for community consultation until 29 March 2018.

The review has been informed by a report prepared by Professor Ron Paterson regarding the use of chaperones to protect patients in Australia, together with the MBA's ongoing experience with notifications concerning sexual boundary violations.<sup>2</sup>

Although much of the core content of the existing Guidelines is proposed to remain the same, the structure and wording of the document has been expanded and elaborated upon "to improve readability and clarification of terms and definitions used".<sup>3</sup>

There are also several notable proposed additions to the Guidelines, including a new Section 6 regarding maintaining sexual boundaries with individuals close to a patient. 'An individual close to the patient' is defined in the draft Guidelines to include a parent of a child patient, a spouse, carer, guardian or family member.<sup>4</sup>



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<sup>1</sup> *Guidelines: Sexual boundaries in the doctor-patient relationship* published 28 October 2011.

<sup>2</sup> Public consultation: Revised draft *Guidelines: Sexual boundaries in the doctor-patient relationship* dated 29 January 2018, page 2.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Draft Guidelines: Sexual boundaries in the doctor-patient relationship* page 4.

Whilst the issue of maintaining sexual boundaries with persons close to the patient is not a novel concept, the existing Guidelines only refer to it briefly, without providing further information as to the ethical concerns involved. By way of contrast, the proposed draft Guidelines examine not only the ethical pitfalls of such relationships, but they elaborate on the factors which will be considered by the Board in determining whether such a relationship is inappropriate. These include:

- the duration and type of care provided by the doctor to the patient; for example if they had provided long-term emotional or psychological treatment
- the degree of emotional dependence on the doctor by the individual close to the patient
- whether the doctor used any knowledge or influence obtained as the patient's doctor to engage in a sexual relationship with the individual close to the patient
- the importance of the patient's clinical treatment to the patient and to the individual close to them
- the extent to which the patient is reliant on the individual close to them.<sup>5</sup>

Whilst sexual relationships with persons close to the patient are not prohibited altogether, the proposed inclusion of this new section in the draft Guidelines cautions strongly against them, warning of the risk that such relationships may "...affect the judgement of both the doctor and the other individual, and as a result, may undermine the patient's health care."<sup>6</sup>

Other additions to the draft Guidelines include a breakdown of the spectrum of sexual behaviours, from conducting a physical examination which is not clinically indicated through to sexual assault. The draft Guidelines explicitly emphasise that doctors should only conduct physical examinations when clinically warranted and that unnecessary physical examination may constitute sexual assault.

Meridian Lawyers can assist you to understand your professional obligations, including any impact that the proposed changes to the Guidelines may have.

<sup>5</sup> Draft Guidelines: Sexual boundaries in the doctor-patient relationship page 4.

<sup>6</sup> Ibid.

**THIS ARTICLE WAS WRITTEN BY PRINCIPAL MARIANNE NICOLLE AND ASSOCIATE ANNA MARTIN. PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS OR IF YOU WOULD LIKE FURTHER INFORMATION.**

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