

Pharmacy Insights

Dispensing with inappropriate behaviour – a guide for pharmacists

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In recent years since the #MeToo movement has gained widespread support, we have seen increasing media reporting and public interest in inappropriate workplace behaviours (Harvey Weinstein, Kevin Spacey, Russell Brand to name a few).

Similarly, there has been increased reporting of inappropriate workplace conduct to health regulators in Australia. According to AHPRA's 2022/23 annual report (published in November 2023, and accessible in full [here](#)), there were 841 notifications (complaints) involving possible failures to maintain appropriate professional boundaries. At the lower end of the spectrum, these behaviours can include comments made by practitioners to patients and colleagues that are contrary to their Board's Code of Conduct. More serious cases involve inappropriate sexual relationships and even unlawful sexual acts.

In 2021, AHPRA reported a year-on-year increase in boundary notifications of 63%! Of the boundary notifications in 2022/23, 82.8% were made about practitioners in only three professions: medical practitioners 43%, nurses 26% and psychologists 14%. While there was a 9% reduction in boundary-related complaints from 2022 to 2023, there has still been an increase of more than 40% in complaints of this nature since 2020.

Pharmacists not immune to boundary violations

While it could be said that the pharmacists are 'low risk' for complaints about boundary transgressions, they are certainly not immune.

Our recent experience has been that some pharmacists are 'crossing the line', whether inadvertently or otherwise. AHPRA data reveals that 20 reports were made against pharmacists for alleged boundary violations in 2022-23 (down from 27 in 2021-22).



The purpose of this article is to explain the types of conduct that are likely to be the subject of complaint to regulators so that pharmacists can 'dispense with inappropriate behaviour' and avoid becoming a statistic in AHPRA's next annual report.

Sexual harassment

Sexual harassment can be broadly characterised as a form of inappropriate behaviour that involves unsolicited acts of physical intimacy, demands or requests for sexual favours, remarks with sexual connotations or any other unwelcome conduct of a sexual nature. It is reasonable to expect there is a possibility the person subjected to the sexual harassment will feel offended, humiliated or intimidated.

Examples include:

- deliberate physical touching such as patting, pinching or touching in a sexual way
- unnecessary familiarity such as crude or vulgar jokes with sexual connotations
- commenting on a person's appearance
- requests to socialise outside work, and
- requests for a personal relationship with a current or recent patient.

The circumstance of the conduct is relevant to its characterisation as sexual harassment, but the intention of the alleged perpetrator is not. Factors determinative of sexual harassment include the age and gender of the people involved and the relationship between them. Comments/conduct by an older male supervisor to a junior female employee are more likely to be considered sexual harassment than similar conduct between colleagues of the same age, gender/sexuality and experience.

Examples of sexual harassment complaints against pharmacists that we have seen include:

- a male singing along to a song with sexually suggestive lyrics in the back of the dispensary while female staff can hear
- a male locum continually asking female dispensary technicians and assistants for their phone numbers and social media details
- asking junior colleagues of the opposite sex out for meals, and to 'hang out' on the weekend
- discussing weekend sexual exploits
- asking a patient to meet with the pharmacist after hours or to go on a date
- sexually inappropriate comments regarding a patient's appearance or features, and
- questions about a patient's sexual history when there is no relevance to the client's presentation to the pharmacy.



Awareness of professional expectations and consideration of professional boundaries are vital if a pharmacist is contemplating a personal relationship with a patient or former patient. The shared Code of Conduct (accessible [here](#)) at paragraph 4.9 discusses professional boundaries and relevantly states that practitioners must recognise that there is an inherent power imbalance between them and patients, the potential for conflicts of interest and other risks.

The Code of Conduct states that practitioners:

1. must never use their position to establish or pursue a sexual relationship with anybody under their care, including those close to the patient, such as their carer, guardian, spouse, or the parent / carer / guardian of a child patient, and
2. must recognise that sexual and other personal relationships with people who have previously been patients are usually inappropriate, depending on the extent of the professional relationship and the vulnerability of a previous patient.

Sexual harassment is a serious issue for regulators, as demonstrated by AHPRA's and the National Boards' position statement '*No place for sexism, sexual harassment or violence in healthcare*' (dated 30 June 2021), which reinforces the professional, respectful behaviour expected of registered health practitioners. It includes a requirement to communicate professionally and respectfully with and about others, including when using social media.

According to the Psychology Board of Australia Chair, Rachel Phillips '*Respect is a cornerstone of good, professional practice and it is fundamental to the Australian community's trust in registered health practitioners. Sexual harassment by registered health practitioners is unprofessional conduct and AHPRA and the National Boards encourage reporting of this type of behaviour.*'

Bullying

Bullying is repeated unreasonable behaviour that creates a risk to health and safety. It can take many forms, including verbal abuse, physical intimidation, exclusion, isolation and unreasonable workplace demands. Bullying can have a significant impact on the mental health and well-being of victims, leading to anxiety, depression, and stress.

Examples include:

- aggressive or intimidating behaviour
- threatening someone with work equipment
- teasing or practical jokes
- humiliating or belittling comments
- playing mind games
- spreading hurtful rumours
- using rosters to deliberately inconvenience someone
- exclusion from work-related events
- assigning unreasonable, demeaning or pointless work demands
- withholding important information needed for effective performance, and
- giving someone impossible jobs.



Normal workplace management is not usually considered bullying. Employees can still be sacked, transferred, not promoted, or disciplined and management can direct and control the work that is done, as long as those decisions are reasonable and management acts in a reasonable way.

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Bullying and harassment can also occur between a pharmacist and a client, though this is less commonly reported. There may be occasions when a client or a family member alleges that a pharmacist has bullied, pressured or harassed a person.

Examples include:

- pressure applied to vulnerable people by pharmacists for financial gain such as gifts or financial reward
- denial of service such as DAA provision or opioid replacement therapy where accounts are not immediately settled by the client or family
- failing to counsel without appropriate discretion, and
- inquiring of a patient so that others can hear *“Are you sure you don’t want the generic brand of Viagra? It’s cheaper!”*

Discrimination

Discrimination can be direct or indirect. Direct discrimination involves treating people differently based on an attribute such as race, gender, age, religion, sexual orientation, or other protected characteristics. Indirect discrimination occurs when decisions, policies or procedures affect others with certain attributes differently, or if they are less likely to be able to comply.

Discrimination can take many forms including in the hiring process, promotion, work assignments and service of customers. It can have a significant impact on the individuals involved, leading to feelings of isolation, low self-esteem, and reduced job satisfaction.

Examples of alleged discrimination that we have seen in the pharmacy context include:

- refusing to hire a female pharmacist due to pregnancy status
- terminating a pharmacist due to their race or perceived character traits of the race
- refusing to allow access to a pharmacy for failure to comply with a mask mandate
- not providing disabled access to a pharmacy
- failing to recognise or acknowledge a transgender patient by their preferred gender or name, and
- scheduling meetings when people with family responsibilities are unable to attend.



We are currently acting for a number of pharmacists who are the subject of complaints of discrimination. Such complaints, if successful can result in awards of damages.

Financial and commercial dealings

The shared Code of Conduct for health practitioners requires that practitioners be honest and transparent in financial arrangements with patients.

Good practice involves:

- not exploiting the vulnerability or lack of knowledge of patients when providing or recommending services

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- not influencing patients to give, lend or bequeath money or gifts that will benefit practitioners directly or indirectly
- not pressuring patients to make donations to other people or organisations
- not accepting gifts from patients other than tokens of minimal value such as flowers or chocolates. Small gifts should be the subject of a file note and/or notification to colleagues
- not becoming involved financially with patients, such as through loans and investment schemes
- being transparent in financial and commercial matters relating to work, including dealings with employers, insurers and other organisations or individuals, and in particular:
 - declare any relevant and material financial or commercial interest in any aspect of patient care; and
 - declare to patients any professional and financial interest in any product or service endorsed or sold and not making an unjustifiable profit from the sale or endorsement.

While pharmacy is not considered to be a health profession which is at high risk of this kind of boundary transgression, it is not unheard of. We are currently assisting a pharmacist who was given multiple small gifts and engaged in text messages and short telephone conversations with a patient unrelated to the provision of pharmacy services. The matter remains under investigation.

Conclusion

Inappropriate behaviour can have negative consequences for patients, colleagues, and the reputation of the profession. For this reason, pharmacists are expected to uphold high standards of behaviour. They must maintain professionalism, respect the rights and dignity of patients, and colleagues and work collaboratively to provide the best possible care.

Failure to adhere to these standards can result in disciplinary action, which can include a caution or reprimand, fines, conditions being imposed on registration (such as, requiring education or mentoring), and in serious cases referral to responsible tribunals which can order the suspension, or cancellation of registration.

About Meridian Lawyers

Meridian Lawyers regularly assists health professionals with a variety of legal matters, including the defence of civil claims, responding to regulatory inquiries, commercial employment and work, health and safety matters.

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