



Review Resource Document 07 (2011)

## WELFARE OF ANAESTHETISTS SPECIAL INTEREST GROUP

### SEXUAL MISCONDUCT

The registration bodies in Australia and New Zealand (Medical Board of Australia, Australian Health Practitioner Registration Authority, the Medical Council of New Zealand) have policies on sexual misconduct, which are the over-riding policy statements on this matter.

The Health Practitioners Competence Assurance Act 2003 in New Zealand provides registration authorities with functions and powers to ensure that the registered health care workers are competent and fit to practise.

The Australian Health Practitioner Regulation National Law Act 2009 contains the requirements for mandatory reporting.

In section 141 this law states that:

A registered health practitioner must notify AHPRA if he or she (the first health practitioner), in the course of practising the first practitioner's profession, he/she forms a reasonable belief that –

- (a) another registered health practitioner (the second health practitioner) has behaved in a way that constitutes **notifiable conduct**; or
- (b) a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.

In section 140 the term "notifiable conduct" is defined:

**Notifiable conduct** means the practitioner:

- (a) practised the practitioner's profession while intoxicated by alcohol or drugs; or
- (b) **engaged in sexual misconduct in connection with the practice of the practitioner's profession; or**
- (c) placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
- (d) placed the public at risk of harm because the practitioner has practised the profession in a way that constitutes a significant departure from accepted professional standards.

Sexual misconduct can also apply to conduct with colleagues and other staff members with whom an individual works (see also RD 22 Bullying). Misconduct may be more likely to occur if there is a power or age differential, eg senior staff and trainees, academics and their students.

Accessing pornography or other obscene material in the workplace may also constitute sexual misconduct.

Discretion in interpretation and application of these policies is for the courts to determine.

As an example of a code on sexual misconduct, the NSW guidelines are provided below as a guide for anaesthetists.



### Medical Council of New South Wales 1991 Guidelines on SEXUAL MISCONDUCT

- 1 It is an absolute rule that a medical practitioner who engages in sexual activity with a current patient is guilty of professional misconduct.
- 2 While not detracting from the fundamental impropriety of such activity, the sanction applied, as a result of a finding of misconduct, may vary according to the circumstances of each case.
- 3 Factors to be considered include the degree of dependence in the doctor/patient relationship, evidence of exploitation, the duration of the professional relationship and the nature of the medical services provided.
- 4 The rule refers to current patients. The termination of the doctor/patient relationship prior to sexual activity may be raised as a defence, but its strength will be dictated by consideration of the factors referred to in paragraph 3 as well as by the time lapse after the end of the professional relationship.
- 5 The rationale for the Board's position has been supported in many contexts by medical disciplinary authorities. Reasons for the rule include the following:
  - The doctor/patient relationship depends upon the ability of the patient to have absolute confidence and trust in the doctor.
  - The doctor is in a unique position regarding physical and emotional proximity.
  - The doctor/patient relationship is not one of equality. In seeking treatment, the patient is vulnerable. Exploitation of the patient is an abuse of power.
  - The doctor's role is one of authority, by virtue of the patient seeking assistance and guidance.
  - Breaches of the doctor/patient relationship have often caused severe psychological damage to the patient.
  - The community expectation of the medical professional is one of utmost integrity. The community must be confident that personal boundaries will be maintained and the patients are not at risk.
  - Improper sexual conduct by doctors brings community censure and damages the credibility of the medical profession as a whole.
  - The onus is on the doctor to behave in a professional manner. It is unacceptable to seek to blame the patient if a sexual relationship develops.
  - Personal involvement with the patient will often lead to a clouding of clinical judgement.
- 6 The guiding principle is that there be no exploitation of the patient or abuse of the doctor's power. Each case must be examined in relation to the degree of dependency between patient and doctor and the duration and nature of the professional relationship.
- 7 The Board rejects the view that changing social standards require a less stringent approach. The nature of the professional doctor/patient relationship must be one of absolute confidence and trust. It transcends social values and no standard other than the highest can be acceptable.

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#### **Further reading**

Medical Council of New Zealand. [www.mcnz.org.nz](http://www.mcnz.org.nz)

"Sexual boundaries in the Doctor-Patient relationship. A resource for doctors".

Medical Board of Australia. Good Medical Practice. [www.medicalboard.gov.au/Codes-and-](http://www.medicalboard.gov.au/Codes-and-)



Guidelines.aspx

Welfare of Anaesthetists' Special Interest Group Resource Documents (RDs)  
RD 13 The Impaired Colleague  
RD 24 Mandatory Reporting

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ANZCA HOUSE 630 ST KILDA ROAD MELBOURNE VIC 3004  
Telephone: (03) 9510 6299 Facsimile: (03) 9510 6786