

# 16 Doctors in other roles

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## Management

In addition to clinical roles, many doctors today have roles in management. In such roles while your first duty is to act in the interests and safety of patients, you also have a duty to your organisation, your colleagues and your community. Balancing these responsibilities can be difficult, for example when the needs of individual patients are in conflict with the needs of the population as a whole. Even in these roles medical practitioners are responsible to the Medical Council of New Zealand for their conduct.

When dealing with colleagues a medical manager has a responsibility to deal constructively and sympathetically with any problems that arise in their performance, while ensuring that patient safety is maintained. If a colleague is not fit to practise as a result of a physical or mental condition, it is mandatory to bring this to the attention of the Council. If there are concerns about clinical competence then it is appropriate to put local measures in place to assist with resolving these, as long as patient safety is not compromised. If these measures fail the next step is to refer the doctor to the Council for it to consider whether a competence review is appropriate. Doctors in management should ensure that their organisation has such processes in place and known to all staff, along with mechanisms to protect those doctors who report concerns about their colleagues.

Doctors in management should be careful not to give medical advice outside their own area of clinical expertise. They should participate in regular performance reviews in relation to their work as a manager and ensure they participate in professional development activities in this aspect of their work.

If as a doctor in management you have concerns about a decision that has been made by the organisation because of its potential effects on patient health and safety, then you should follow the advice in the section below on the Protected Disclosures Act.

For further guidance on these issues refer to the Council paper *Responsibilities of doctors in management and governance*.

## Governance

When in a role of governance the fundamental principles to be followed are

- Act in the best interests of the company, trust or society and in accordance to the mission and goals of that body,

- Make all decisions prudently and in good faith,
- Use the skills in fulfilling your role that could reasonably be expected of a person with your skills, experience and background,
- Disclose any personal interest in matters under consideration, and
- Take responsibility to monitor and evaluate performance against the mission and goals.

In addition as a doctor, you have a responsibility to ensure patient safety is protected and decisions are not made that would put patients at risk of harm. If this situation arises see the section on the Protected Disclosures Act below.

### Working in a resource constrained environment

The rationing of health services is becoming more explicit. We live in a resource constrained time, when decisions that require balancing the needs of individual patients and the needs of populations may be difficult.

The following principles apply:

- Doctors must make the care of patients their first concern.
- Doctors should provide the best care they can within the resources available.
- Doctors should act as patient advocates to increase the resources available.
- Doctors have a responsibility to explain to patients who are not receiving ideal care because of resource constraints what else could be done if funding were available.

Doctors working in management or governance roles for organisations making decisions about rationing of services should ensure that decisions are made on the best clinical evidence available. Where wider ethical issues are involved they should also ensure that advice is received from the appropriate ethics committee. If they are concerned that decisions made are a serious risk to patient safety they should use the processes described below on the Protected Disclosures Act to bring their concerns to the attention of the appropriate body.

Doctors should not let their own commercial interests or the commercial interests of an employer override their responsibilities to patients in providing clinical care, cooperating with other providers or publishing accurate reports of their activities. It is important to always declare any potential or real conflicts of interest.

For further guidance on these issues refer to the Council paper *Statement on safe practice in an environment of resource limitation*, and to the booklet *Good medical practice*.

### Protected Disclosures Act

In response to a number of high profile “whistle blowing” incidents in the 1990s, the Protected Disclosures Act 2000 was enacted. This requires organisations in the public sector, and encourages those in the private sector, to set up an internal disclosure system.

Employees and contractors may make disclosures about serious wrongdoing in or by an organisation. Serious wrongdoing includes inappropriate use of public funds, gross negligence or mismanagement by a public official, and acts or omissions that constitute a serious risk to public safety, or constitute an offence.

Those making the disclosure have the right of complete confidentiality.

If a doctor working in medical management or governance is aware of a serious wrongdoing that puts public safety at risk, they should bring this to the attention of the internal disclosure system of their organisation. If their organisation does not

have an internal disclosure system in place, or if a satisfactory outcome is not achieved, then it is appropriate to raise the matter with the Director-General of Health, the Health and Disability Commissioner or the Medical Council.

## Research

Medical advances are based on new discoveries from research; therefore accept a responsibility to participate in such studies where possible.

However before initiating or participating in research studies you have a responsibility to ensure that the purpose of the research is appropriate and the study will create important new knowledge. In addition it is important the study is well designed and has been independently reviewed.

Wherever human subjects are involved they must be fully informed as to the potential benefits of the study, what is expected of them, and any possible harm that could result from their involvement. The interests of science should not take precedence over considerations related to the wellbeing of subjects and neither should their treatment be in any way affected by their agreement or refusal to participate in research. Approval by a properly constituted ethics committee is required to ensure that all ethical requirements are met.

All research must be conducted with the utmost honesty and integrity which involves; following the approved research protocol, recording all findings thoroughly and truthfully, not accepting payments other than those declared in the ethical committee application, and ensuring all authors of any publications were fully involved in the research design and application.

The results of medical research should first be communicated in recognised scientific channels to ensure they are exposed to peer review and debate before becoming public.

For further guidance on these issues refer to *The New Zealand Medical Association Code of Ethics* (chapter 19).

## Teaching

All medical practitioners are encouraged to promote their profession by both taking opportunities to educate the public and by contributing to the education and training of medical students and other doctors.

When accepting a teaching role you are expected to develop the knowledge and skills required of a competent teacher. If responsible for medical students or junior colleagues you must ensure they are adequately supervised and supported.

When patients are involved as part of clinical teaching you must ensure that they fully understand what is involved and have freely consented to what is proposed. Patients must be clearly informed that if they do not consent to participate, this will in no way affect the standard of care they receive.

## Expert witness

As an expert witness you are there to assist the court (or the ACC, HDC, or Health Practitioners Disciplinary Tribunal); you are not a witness for the defence, nor for the prosecution. The Tribunal has recently adopted the *High Court code of conduct for expert witnesses*, which states the overriding duty of the expert witness is to assist the Tribunal.<sup>1</sup> You are there to help those who must make the decision, and to do so with good information. You should not give advice that is biased, false or unscientific. You should not be partisan: this will reduce your credibility. Contingency charging (no win, no fee) should never be acceptable to the expert witness.

Almost certainly you are not an expert on the **credibility** of complainant or defendant. If there is a difference in their versions of events, you may note inconsistencies (“The patient says the doctor did not examine her breasts at all, yet in the original clinical records the doctor has clearly detailed her examination”), but credibility of witnesses is best assessed by the court (Tribunal, HDC, ACC, etc) listening, and observing the witnesses’ demeanour, face to face.<sup>2</sup> You might write, “If the Commissioner accepts the complainant’s version of events, it follows that...”, but you should not state your own preference for one version of events over another.

The **ultimate issue** in, for example a medical disciplinary case, is, “Was the behaviour of the doctor so bad that it amounted to professional misconduct?” Or in an HDC inquiry, “Did the doctor’s actions breach the Code?” While an expert’s opinion will be helpful and often determinative of a particular outcome, ultimately the parties to any legal process are entitled to have their case determined by the court or tribunal, not by the pronouncements of an expert witness.<sup>3</sup> It is inappropriate for an expert to be asked to comment on or express a view on what the outcome should be.

To be convincing, **write your own report**. It is important to follow the advice on report writing in the *High Court code of conduct for expert witnesses*.<sup>1</sup>

*In any evidence given by an expert witness, the expert witness must*

- (a) acknowledge that the expert witness has read this Code of Conduct and agrees to comply with it.*
- (b) state the expert witness’s qualifications as an expert.*
- (c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert’s area of expertise.*
- (d) state the facts and assumptions on which the opinions of the expert witness are based.*
- (e) state the reasons for the opinions given by the expert witness.*
- (f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness.*
- (g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.*

*If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.*

*If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.*

## References

1. MPDT Practice Note Number Three. *NZ Med J* 2004; 117: 807.  
<http://www.nzma.org.nz/journal/117-1190/807/>
2. *Cross on evidence, New Zealand edition*. Butterworths September 2004, Chapter 1, para 1.30.
3. Fitness to Practise Panel, 15 July 2005. Professor Sir Samuel Roy Meadow.  
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