



THE IMPORTANCE OF CLEAR SEXUAL BOUNDARIES IN THE PATIENT-DOCTOR RELATIONSHIP

A guide for patients

Medical Council of New Zealand

Protecting the public, promoting good medical practice

Te tiaki te iwi whānau me te whakatairanga pai i te mahi e pā ana ki te taha rongoā

The Medical Council supports touch as a crucially important part of the practice of medicine. Healing touch is caring and non-intrusive – it is not sexual or exploitative.

Registered doctors

To practise, doctors must be registered. Registration means the doctor is trained to standards set and monitored by the Medical Council of New Zealand.

The medical register is available from the Council. The Council's website lists doctors actively practising in New Zealand. It includes doctors' names, qualifications, details of when they were registered, and any vocational branch (eg, paediatrics). The register also lists any restrictions on the doctor to practise. The website address is www.mcnz.org.nz.

Doctors update their education regularly, with annual checks by the Council.

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Introduction

The patient-doctor relationship is one of confidence and trust.

This relationship is different to the relationship you have with other professionals because it involves physical contact and the sharing of very private information. It is important that you are comfortable and feel safe. Clearly understood boundaries between you and your doctor are important.

This booklet outlines your doctor's responsibility to keep appropriate sexual boundaries with patients, former patients and family members of patients. It explains for you:

- why boundaries are needed
- what to do if you feel that your doctor has breached the boundaries
- provides other information to guide your relationship with your doctor.

Sexual behaviour in a patient-doctor relationship is not only about inappropriate genital or physical behaviour. It includes any words or behaviour used to arouse or satisfy a doctor's sexual desires or which you find sexually out of place or wrong. It can involve:

- sexually suggestive words
- inappropriate or poorly chosen comments about your body
- flirting
- improper touching.

Sexual boundary breaches can occur with both male and female doctors and either male or female patients.

You may need to talk to your doctor about very personal things, including private parts of your body, sex and your sexual concerns, history, activity or preferences.

If it is not clear why your doctor asks certain questions, you have a right to query them and be clear about why the answers will be helpful before you choose to answer.

If you feel uncomfortable, tell your doctor. If you have any more questions after reading this booklet, or are worried about something that has happened or is happening to you, please call the Health and Disability Commissioner on freephone 0800 11 22 33.

Patient Information

Why sexual boundaries need to be defined

1. Today's more relaxed social values do not change the professional nature of the doctor-patient relationship.
2. The Medical Council believes it is never acceptable for a doctor to have a sexual relationship with someone who is his or her patient. Neither does Council accept that a doctor can end the patient-doctor relationship for the purpose of initiating a sexual relationship. There are proven reasons for sexual boundaries between doctor and patient:
 - **Safety** – A breach of sexual boundaries in the patient-doctor relationship has been shown to be harmful to patients. It may cause emotional and/or physical injury to the patient.
 - **Trust** – A breach of boundaries is a breach of trust. When you visit your doctor you trust him or her with your personal information and health care. Your doctor may have physical contact during an examination or you may tell your doctor private information. Therefore it may not be immediately clear when a boundary in your doctor-patient relationship is breached. Recognised boundaries allow people more confidence in trusting that they are safe within the doctor-patient relationship.
 - **Good health care** – Your doctor's judgement about your care or the treatment you need may be confused by emotions and feelings.

A breach of boundaries and lack of trust may also affect decisions about your care.

Why sexual boundaries are important

3. It is not acceptable for a doctor to have a sexual relationship with a patient, even if the patient consents.
4. The patient-doctor relationship is not equal. Your doctor may:
 - get, keep and use private and personal information about you and others
 - make and influence decisions about you
 - ask you to undress
 - physically examine you.

5. It is part of the doctor's role to help you to remain healthy. At times you may feel emotional and at times you may depend on your doctor for peace of mind. These feelings may be surprising in their intensity and are not always understandable. It is the doctor's professional duty to be sensitive to these emotions, to put them in context and to behave appropriately.
6. You do not ask, or expect to ask, the same things from your doctor. You may never have thought about how one-sided your relationship with your doctor is. However, this imbalance exists in every patient-doctor relationship, whether the patient is a child, a young person or an adult – whatever their level of education, confidence or health status.
7. The Medical Council has over 200 published articles that explain the imbalance in the doctor-patient relationship and the damage that can be caused when a doctor breaches sexual boundaries with a patient.

Patients' responsibilities

8. Your doctor is responsible for keeping the patient-doctor boundaries. You can help by telling your doctor if you feel uncomfortable, don't like something that is happening, are in pain or uncomfortable, or have questions about what he or she is doing.
9. If you don't like what the doctor is doing or saying you can say 'stop' at any time.

Doctors' responsibilities

10. When a doctor is registered in New Zealand he or she must follow the professional and ethical standards of New Zealand's medical profession. It is the doctor's responsibility to maintain boundaries.

Clear communication

11. When you and your doctor talk to each other it is important that you are both open and honest. You must be told what you need or want to know about your health and care. Your doctor should answer all your questions and check to make sure you understand the answers.

12. You should be told why the doctor's questions or a physical examination is needed, and what will happen in the examination or treatment. If you do not understand something, or do not know why you are being asked something, ask your doctor to explain it so that you understand. If you are unhappy about the consultation, the suggested treatment or the examination, say so.

Undressing facilities

13. If you need to take off your clothes, there should be a place to undress, out of view of anyone else including the doctor (although you should feel free to ask for help if you need it).

Undressing areas may be a curtained space or a separate changing room. You should be given something to wear if you have to move from where you have undressed to an examination area.

14. The doctor should not ask you to undress or to stay uncovered for any longer than needed for the examination. Partial undressing may be enough, and you should be able to get dressed as soon as your doctor ends the examination.

15. If the examination includes several parts of your body, your doctor should try to keep as much of your body covered as possible during the different stages.

When another person is present

16. You or your doctor may want another person present. This may help you or your doctor feel more comfortable in what could be an embarrassing and/or physical examination. Appendix 1, at the end of this booklet, gives more information about this.

What to do if you feel a doctor has breached sexual boundaries

17. If you believe that a doctor has breached sexual boundaries with you or someone else, it is best to discuss this with staff of the Health and Disability Commissioner or a patient advocate. The Commissioner is responsible for investigating complaints about health practitioners such as doctors and nurses in New Zealand.

18. Information about patient advocates, the Commissioner and how the Commissioner's office can help you, is available from the Health and Disability Commissioner helpline, 0800 11 22 33, or website www.hdc.org.nz.

What happens when you complain

19. The Commissioner's complaints process is specified by law. If the Commissioner decides that it may be a disciplinary matter the doctor will be referred to the Director of Proceedings. The Director of Proceedings decides whether to start disciplinary proceedings by laying a charge before the Health Practitioners Disciplinary Tribunal. A Tribunal hearing will have a legal chair, three doctors and a member of the public who have all been appointed by the Minister of Health. Detailed information about the Tribunal process is available from the Tribunal office or the Tribunal website www.hpdt.org.nz.
20. If found guilty, the doctor may be fined, have to pay some of the costs of the hearing, be suspended from practice for a period of time, have conditions placed on his or her registration, or be removed from the medical register, meaning that he or she cannot practise medicine. The Tribunal does not have the power to remove a doctor from the medical register for life, but can specify a certain time limit before the doctor can reapply for registration.
21. The Medical Council is responsible for considering a doctor's application to re-register after he or she has been removed from the register. The Council will not re-register a doctor unless it is sure the doctor is safe to practise.¹
22. Sometimes a doctor may be re-registered but only allowed to practise under conditions. These may include:
- supervision
 - having a chaperone present
 - restricted practice, eg, the doctor's practice may be limited to a certain type of medicine or working in a specific medical practice.
23. Conditions ordered by the Council do not have any time limit. Natural justice, however, means that the Council regularly looks at any conditions to make sure they continue to be correct and fair.

¹ **Successful application for re-registration** – the doctor will have to provide evidence of successful therapy and rehabilitation, supported by an independent assessment by a person appointed for that purpose by the Council and indicating the doctor can safely return to practice.

Sexual relationships between a patient and his or her former doctor

24. A patient may want to start a personal relationship with his or her former doctor or vice versa.
25. Research shows that a patient may be harmed as a result of having a relationship with his or her former doctor. Each patient-doctor relationship is individual and every person reacts differently, so it is difficult to have clear rules about when this type of relationship is not appropriate.
26. There are some situations where it would never be appropriate for a doctor to have a relationship with a former patient. A sexual relationship between you and your former doctor is not appropriate if:
- the patient-doctor relationship involved psychotherapy, or long term counselling (informal or formal) or emotional support
 - you have had in the past, or you now have, a difficulty likely to confuse your judgement
 - you have been sexually abused in the past.
27. A sexual relationship between you and your former doctor will always be seen as unethical if it can be shown that the doctor has used any power imbalance, knowledge or influence obtained while he or she was your doctor.
28. If you are thinking of having a relationship with your former doctor, you should know about the harm that may result from a patient-doctor relationship. You may want to talk to a counsellor.
29. You may also want to think about the following questions and answers.
- How long was the patient-doctor relationship?
The longer the patient-doctor relationship, the more likely the power imbalance will still be there.
 - When did the patient-doctor relationship end, and what interaction have you had since?
Research shows that if you have only recently become a former patient you may still have a patient's emotional connection to the doctor.

- Did the doctor's professional relationship include him or her giving you support, advice or counselling?

Research shows that when a patient-doctor relationship has included support, advice or counselling (formal or informal) the patient and doctor may be more likely to confuse feelings and boundaries. This is often called 'transference'. It may seem that both parties jointly agree to start the relationship, but problems develop around this later.

- Are there privacy issues to consider?

Even when you are no longer in a professional relationship with the doctor, you need to remember that, as your doctor, he or she was aware of all your health information. If the doctor is still treating people you know, no information about their health should be shared with you, even if you are now in a personal relationship.

Sexual relationships between a family member of a patient and a doctor

30. A family member of a patient may want to start a personal relationship with the patient's doctor or vice versa.
31. If you are thinking of having a relationship with a family member's doctor, you should know about the harm that this may cause the patient. You may want to talk to a counsellor.
32. A sexual relationship between a family member of a patient and a doctor will always be seen as unethical if it can be shown that the doctor has used any power imbalance, knowledge or influence obtained as the patient's doctor.

The Medical Council of New Zealand

33. The Medical Council of New Zealand is the statutory body for the registration of doctors.
34. Its principal purpose is: *To protect the health and safety of the public by providing for mechanisms to ensure that medical practitioners are competent and fit to practise medicine.*
35. The Medical Council and the Health and Disability Commissioner are responsible only for doctors who practise in New Zealand.

Appendix 1

When another person is present during a consultation

For some or all consultations, a doctor or patient may want another person present. When a third person attends a consultation, the doctor and the patient should understand their rights to grant or withhold consent and when the attendance of a third person is mandatory. The role and function of the third person should be clearly understood by all parties.

1. The use of a third person is not restricted to consultations between male doctors and female patients or when conducting physical or intimate examinations. Male and female patients may wish to have a third person present for any number of reasons and doctors, whether they are male or female, may also have this preference.

Definition and role of the third person

2. The individual circumstances of the consultation, the doctor and the patient, will determine the role of the third person in a consultation. A third person may be present to participate in one of the following five roles as defined in this statement:
 - a support person for the patient
 - an interpreter for the patient
 - an observer for the doctor
 - a student or trainee
 - the doctor's chaperone.

Support person for the patient

3. Right 8 of the Code of Health and Disability Services Consumers' Rights states that "every consumer has the right to have one or more support persons of his or her choice present, except where safety may be compromised or another consumer's rights may be unreasonably infringed".

4. The support person(s) may be present in all or part of the consultation to provide support for the patient. Any aspect of a consultation, not just a physical examination, may cause discomfort or confusion and the patient has a right to request one or more support people in attendance. The function and role of the support person(s) focuses on the needs of the patient, whether it be holding the patient's hand, observing the consultation or asking questions on behalf of the patient.
5. Some reasons a patient may request the presence of a support person(s) are:
 - he or she feels more comfortable with the presence of a support person(s)
 - it is the first consultation in a new doctor-patient relationship
 - the patient's cultural expectations include the presence of a third person
 - the patient's age (either young or old)
 - the patient would like assistance to understand what happens in the consultation
 - the patient has some form of mental or physical disability.

Interpreter

6. In some circumstances an interpreter may be present to assist in the communication between the doctor and patient. An interpreter may assist with translating a different language (ie a foreign language) or with the communication or understanding of someone with a disability or alternative form of communication (ie sign language). This is the patient's right under Right 5(1) of the Code of Health and Disability Services Consumers' Rights.

Observer for the doctor

7. This person is present at the doctor's request. A doctor may request an observer for a number of reasons:
 - it is the policy of the organisation or practice to have an observer in attendance. Some employers have a practice policy that a third person should be in attendance for certain types of examinations or consultations (eg internal examinations)
 - an observer may be used in continual professional development (CPD) to assess the doctor, with the intention of providing advice and guidance on how the doctor can improve his or her skills.

8. The role of the observer is to observe the consultation or part of a consultation on the doctor's behalf, including the communication between the doctor and patient and any examination that takes place. The level of the observer's interaction in the consultation should be agreed to before the consultation is initiated, both between the doctor and observer, and between the doctor and patient.
9. Consent for the presence of the observer should be obtained from the patient prior to the start of the consultation.

Students or trainees

10. As part of their education, health professional students and trainees need to have the opportunity to access and learn from senior doctors with on-the-job training. This means attending actual patient consultations. Participation in teaching is covered by the Code of Health and Disability Services Consumers' Rights.
11. If a doctor would like to have one or more students or trainees attend a consultation, the patient should be provided with an explanation prior to the consultation about the role that the student or trainee may take in the consultation and asked whether he or she consents to the student or trainee being present.
12. If a student or trainee is present during a consultation, he or she should be formally introduced to the patient.

Chaperones

13. Some doctors have conditions on their registration or annual practising certificate that require a chaperone to be present at certain types of consultations. This condition is usually as a result of past disciplinary action and is intended to provide protection for patients. It requires a notice to be put up in the waiting and examination areas to inform patients.
14. The doctor who has this condition on his or her practice should inform any employer of the conditions.
15. The presence of a chaperone is not optional and if a patient does not feel comfortable with this requirement the patient will need to see another doctor. A doctor with a chaperone condition should disclose the reason behind the requirement if questioned why by a patient.

16. The only exception to the chaperone condition is in an emergency situation. A doctor with a chaperone condition may attend an emergency, even when a chaperone cannot be located.

Principles of the process

17. Third person policies should be displayed in the practice waiting and examination areas. Arrangements for the presence of a third person should be in place prior to the start of the consultation.
18. All parties involved in the consultation must understand the role of the third person. The patient must give informed consent for a third person to be present and the role they will take.
19. The Council advises that the doctor speak with the patient about the presence of a third person in private, away from the nominated third person. This is to ensure that the patient does not feel obligated to accept someone due to the discomfort of saying 'no' in front of the third person.
20. The Council recommends to doctors that if they require a third person to attend a consultation the third person should preferably be another health professional.
21. If a third person attends all or part of a consultation or procedure you need to ensure that the third person is aware of its confidential nature and that the patient's personal information and physical privacy must be respected.

What if the patient or doctor refuses to have the nominated third person?

22. Not every patient will want to have a third person in attendance, especially if there is an intimate aspect to the consultation that includes a physical examination for which the patient may have to undress. Some patients have indicated that a third person makes them feel an audience is present. A patient has the right to decline a third person being present.
23. If there is no agreement on the attendance of a third person, or who that third person should be, either the doctor or the patient has the right to withdraw from the consultation until a mutually acceptable third person is available. Alternatively, the patient may be referred to another doctor. This should not have any adverse effect on the care that is provided.

Complaints

To make a complaint about your doctor, contact:

The Health and Disability Commissioner
P O Box 1791
Auckland
Freephone 0800 11 22 33
Fax 09 373 1061
Email hdc@hdc.org.nz
Website www.hdc.org.nz

Note: The Medical Council and the Health and Disability Commissioner are responsible only for the standards of doctors who practise in New Zealand



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