



## *Medical Council of New Zealand*

# **A doctor's duty to help in a medical emergency**

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*If asked to attend a medical emergency as defined in this statement, a doctor must respond. This is both an ethical and legal obligation. Rarely there will be times when attending a medical emergency is impossible or unsafe for the doctor or patient. If a doctor chooses not to attend he or she may be required to defend that decision in the event of a charge of professional misconduct or criminal prosecution.*

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### **Definition of a 'medical emergency'**

1. The Medical Council has adopted the definition of a medical emergency by S Miles<sup>i</sup> as:  
*"a sudden, unforeseen injury, illness or complication, demanding immediate or early professional care to save life or prevent gross disability, pain or distress. The immediate responsibility of the doctor faced with, or called to an emergency is to apply his knowledge and skill to the saving of life and relief of suffering and to establish the most favourable conditions for his patient's ultimate recovery. This is the basic philosophy of medicine...."*
2. Further to this definition, case law indicates that an emergency exists if the caller says it does until the doctor has had an opportunity to assess the situation and determine whether a 'medical emergency' exists.<sup>ii</sup> The assessment may take place over the phone but the doctor must be confident that the information provided by the caller (who may not be the patient) provides sufficient detail for an accurate assessment.
3. The definition does not include a "state of emergency", although during a state of emergency a doctor may be confronted by individual medical emergencies.

### **Every doctor must attend**

4. A doctor is at risk of being professionally or criminally responsible if he or she fails to render prompt and appropriate medical care to any person (whether the patient is a current patient or not), in a medical emergency. A doctor who chooses not to attend must have good reason and be able to defend this position at a later time.<sup>iii</sup>
5. Council acknowledges there are situations where a doctor can, may or should not attend a medical emergency. For example:
  - if he or she is already attending another emergency;
  - if it is more appropriate for an emergency service to attend (i.e. ambulance or rescue helicopter);
  - the geographical location of the doctor is such that another doctor or medical service can attend more promptly;
  - if he or she is off duty at the time of the call and has been drinking alcohol or taken medication or other substances to a level that may adversely influence the doctor's level of competence;
  - if attending the emergency places the personal safety of the doctor at risk;

- any other situation (including excessive fatigue) where a doctor believes that his or her level of competence or health may compromise his or her ability to provide the appropriate level of care necessary to deal with the medical emergency situation.
6. In all these situations a doctor still has a duty of care to the patient. If unable to attend a medical emergency the doctor has a duty to make reasonable effort to assist the caller to locate alternative care to ensure that the patient receives appropriate care from another health professional (another practitioner, hospital or ambulance). Failure to attend a medical emergency because it is inconvenient is unacceptable and may result in disciplinary and possibly criminal prosecution. For this reason Council recommends that a doctor keeps a written record of his or her reasons for not attending, in case this decision is queried at a later date.

### Competence

7. Council acknowledges that there are different levels and areas of competence and a doctor may not have the necessary skills to assist with anything more than basic first aid in a medical emergency. It is the doctor who is best able to determine whether his or her competence is sufficient to provide medical care in an emergency. Council endorses Miles, who states:

*“The ethical responsibility of the medical practitioner in an emergency is clear. He offers a service within his proper professional competence. He will supplement, within his ability, the expertise of other professionals involved. If he has no appropriate skills he will present himself as a citizen with some knowledge of emergency first aid. Nothing less would be acceptable.” (Miles 1981)<sup>iv</sup>.*

8. If a doctor does not have the necessary skills the doctor should present him or herself as an individual with some level of medical knowledge and assist where possible.

### The legal position

9. The Code Health and Disability Services Consumers' Rights (HDC Code) states under Right 4(2) that every consumer has the right to have services provided in a manner that comply with legal, professional, ethical and other relevant standards.
10. Under sections 151 and 160 of the Crimes Act 1961, everyone who has charge of any other person by reason of sickness (which may include a doctor asked to look after a person in a medical emergency), has a legal duty to provide the necessities of life to that person<sup>v</sup>. If that person's life is endangered, or health is permanently impaired as a result of a doctor's failure to fulfil this duty, and there is no lawful excuse, a doctor may be criminally liable and subject to imprisonment for a term not exceeding seven years.
11. Failure to fulfil this duty must involve a major departure from the standard of care expected of a reasonable person. Instant decisions may have to be taken in an emergency, and that is a factor when deciding whether there has been a failure to meet the appropriate professional standard.<sup>vi</sup>

### Informed consent and emergencies

12. Right 7(4) of HDC Code states that if the patient is not competent to make an informed choice and give informed consent, and no person entitled to give consent on behalf of the

patient is available, a doctor may provide services without obtaining the informed consent of the patient when:

- (a) it is in the best interests of the patient; and
- (b) reasonable steps have been taken to ascertain the views of the patient; and either
- (c) the provider believes, on reasonable grounds, that the provision of the service is consistent with the informed choice that the patient would have made if he or she were competent; or
- (d) if the patient's views have not been ascertained, the provider takes into account the views of other suitable people who are interested in the welfare of the patient and available to advise the provider.

13. Clause 3 of the HDC Code states that a provider is not in breach of the Code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties of the Code. It also states 'the circumstances' means all the relevant circumstances, including the consumer's clinical circumstances and the provider's resource constraints.

14. Therefore a doctor may not need to obtain consent before providing emergency services. This would be one example of a situation where Clause 3 of the HDC Code would apply. However, only necessary treatments should be provided. Where time is of the essence and delay to obtain consent would be considered unreasonable or further threaten the patient's well-being, a doctor may take action without actively seeking the patient's consent. As with any other health service, a competent patient has the right to decline treatment, even in an emergency.

### **The ethical position**

15. The New Zealand Medical Association's Code of Ethics takes the position that a doctor cannot refuse to care for a patient in an emergency.

16. Section 8(3) of the Health Practitioners Competence Assurance Act 2003 allows a qualified doctor, who is not registered, to render medical or surgical aid to any person in an emergency.

### **Teamwork**

17. There is a professional duty to work with other people in the health service, and recognise the professional competencies or particular skills of other practitioners. At times it may be more appropriate for a non-medical practitioner, including ambulance staff, to provide the patient's care in an emergency situation, with assistance from a doctor.

### **Approved by Council August 2006**

*This statement is scheduled for review by August 2011. Legislative changes may make the statement obsolete before this review date.*

### **Notes and References:**

<sup>i</sup> Miles S. In Duncan AS, Dunstan GR, Welbourn RB (eds). *Dictionary of medical ethics*. Second edition. Darton, Longman & Todd, London. 1981. 155-156.

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- ii CAC v Dr J P de la Porte. Decision of the Medical Practitioners Disciplinary Tribunal dated 10 June 1999
- iii A recent opinion from the Health and Disability Commissioner found the medical practitioner did not breach the Code when he was unavailable to attend an emergency. When the person called the medical practitioner the phone was answered by an answerphone explaining the medical practitioner was off duty and that in an emergency the caller should dial 111 or attend the closest hospital. The HDC accepted that the medical practitioner had worked long hours that day and been on-call for the 3 prior nights. The medical practitioner was exhausted and therefore it would have been unsafe to expect the medical practitioner to practise in this state. An anonymised version of the Commissioner's letter outlining the case is available from Council's office on request.
- iv Miles S. *In* Duncan AS, Dunstan GR, Welbourn RB (eds). *Dictionary of medical ethics*. Second edition. Darton, Longman & Todd, London. 1981. 155-156.
- v According to Adams (Robertson et al, *Adams on Criminal Law*, Wellington, Brookers 1992) the necessities of life include food, clothing, shelter and medical attention. Legal commentary believes this section could be invoked if a medical practitioner neglected (to a high degree) to supply essential medication or systems necessary to support a patient's life.
- Auckland Area Health Board v A-G [1993] 1 NZLR 235. The answer as to whether a ventilator was to be construed as a necessary of life depended upon the facts. Where a patient was surviving only by virtue of mechanical means and was beyond recovery, the provision of a ventilator could not properly be construed as a necessary of life. There was "lawful excuse" to discontinue ventilation when there was no medical justification for continuing that form of medical assistance. It was not unlawful to discontinue if the discontinuance accorded with good medical practice.
- vi A v M B Bottrill [2002] UKPC 44. Exemplary damages may be granted in the case where the level of negligence is so high that it amounts to an outrageous and flagrant disregard for the patient's safety, meriting condemnation and punishment.