



Sexual boundaries in the doctor-patient relationship

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In December 2018, the Medical Board of Australia published revised [Guidelines: Sexual Boundaries in the Doctor-Patient Relationship](#). The Guidelines aim to provide guidance to doctors about establishing and maintaining sexual boundaries in the doctor-patient relationship. The Guidelines are designed to 'complement' the Medical Board's code of conduct (not replace it).

It is recommended that all doctors familiarise themselves with the Guidelines in full, however below is a short summary of the key principles.

What type of conduct constitutes a breach of sexual boundaries?

The Guidelines make clear that there is a wide range of behaviours that can constitute a breach of boundaries:

3.1 – Conduct that (always) breaches sexual boundaries:

- Engaging or seeking a sexual relationship with a patient (regardless of consent);
- Conducting a physical examination which is not clinically indicated, or to which patient has not consented;
- Behaviour of a sexual nature: sexual remarks/humour, flirtatious behaviour, touching patients sexually, engaging in sexual behaviour in front of a patient, using words designed or intended to arouse or gratify sexual desire;
- Asking a patient about sexual history/preferences when it is not relevant to health care, or without explaining why it is necessary to discuss these matters;

- Sexual exploitation or abuse;
- Sexual harassment;
- Sexual assault.

3.2 – Conduct that *may* breach sexual boundaries:

- Asking a patient to undress more than is necessary or providing inadequate privacy screening or cover for physical examination;
- Engaging in a sexual relationship with an individual who is close to a patient under the doctor's care (carer, guardian, spouse, family member or parent of a child patient);
- Engaging in a sexual relationship with a former patient.

What to look out for

Doctors need to be alert to warning signs that could indicate that boundaries are being, or are about to be crossed. As outlined above, it is the doctor's responsibility to maintain professional boundaries, not the patients.

Warning signs include but are not limited to:

- a doctor revealing to a patient, intimate details of their life such as sexual desires;
- a doctor who finds themselves daydreaming or fantasising about a patient;
- doctors and patients inviting each other out socially;
- patients requesting or receiving non-urgent appointments at unusual hours or locations, especially when other staff are not present;
- patients asking personal questions, using sexually explicit language or being overly affectionate; and
- Patients attempting to give gifts.

If a doctor is presented with any of these warning signs, it is recommended that they try to constructively re-establish professional boundaries and seek advice from an experienced colleague or their professional indemnity insurer.

Engagement by patients via social media

A patient may try to engage with a doctor through social media about matters outside the professional relationship. If this occurs the doctor should decline to interact with them and direct them instead to the doctor's usual professional healthcare communication channels.

Sexual activity with a former patient may still be sexual misconduct

Engaging in sexual activity with a person formerly under a doctor's care, after the professional relationship has ended, may also be sexual misconduct.

This depends on:

- whether the patient or client is vulnerable because of age, capacity or health conditions;
- the means by which sexual activity was established (for example, whether a practitioner used information obtained during a treating relationship to contact a patient and commence sexual activity);
- the extent of the professional relationship (for example, a one-off treatment in an emergency department compared to a long-term program of treatment); and
- the length of time since the practitioner–patient/client relationship ended.

Important principles

1. *"Doctors who breach these guidelines are placing their registration at risk and in some cases could be committing a criminal offence".*
2. It is never appropriate for a doctor to engage in a sexual relationship with a current patient.
3. A doctor must only conduct a physical examination when it is clinically indicated and with the patient's informed consent.
4. Good clear communication is the most effective way to avoid misunderstandings.
5. Doctors are responsible for maintaining professional boundaries in the doctor-patient relationship.

Get help from a professional misconduct lawyer

We recommend that if you have any concerns or are the subject of allegations of a breach of sexual boundaries you [seek legal advice](#) as soon as possible. Allegations in this area often cross over into [allegations of criminal conduct](#), and our expertise in criminal law assists our clients in obtaining comprehensive legal advice and protection.

We continue to provide the best criminal law services during the coronavirus outbreak.

You can contact us by phone or email to arrange a consultation.

Contacting Gilshenan &Luton

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.