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The Royal Australasian College of Physicians submission to the New Zealand Medical Association

Update to the NZMA Code of Ethics

Introduction

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to submit feedback on the New Zealand Medical Association's (NZMA) updated Code of Ethics for the New Zealand Medical Profession (the Code).

The RACP works across more than 40 medical specialties to educate, innovate and advocate for excellence in health and medical care. Working with our senior members, the RACP trains the next generation of specialists, while playing a lead role in developing world best practice models of care. We also draw on the skills of our members, to develop policies that promote a healthier society. By working together, our members advance the interest of our profession, our patients and the broader community.

General points

The efforts of the NZMA to continue to produce an up-to-date Code for the profession is to be commended.

- We welcome this latest iteration of the NZMA's Code of Ethics, and believe many of the changes improve the document
- Reference to Te Tiriti o Waitangi (the Treaty of Waitangi) is a particularly positive addition
- The inclusion of the World Medical Association's amended Declaration of Geneva as Appendix to the Code is also welcomed

Responses to the Preliminary Statement and Principles

Our response to specific paragraphs in the first two sections of the updated Code is detailed below.

Preliminary Statement

The function of the Preliminary Statement is to frame the ensuing Code using reference to the broader thematic basis of medical ethics. We note that additional material has been added to the section on doctor autonomy covering aspects of clinical practice including the structure of the system, ethics and standards, but does not include reference to the patient's own participation and influence in decision-making around their own health care and treatment. Having described partnership as a central Principle for a medical ethics for Aotearoa New Zealand, we encourage the NZMA to add the patient's own autonomy in relation to the medical treatment, management and care they receive.

The RACP notes the Code references the Medical Council of New Zealand's (Council) endorsement of the Code as "**the** key source of advice on ethics for the medical profession [emphasis added]". We recommend the NZMA revise this statement to read "**a** key source of advice on ethics for the medical profession [emphasis added]". Parliament has given the Medical Council of New Zealand, as the Regulatory Authority of medical practitioners in New Zealand, the function to "set standards of clinical competence, cultural competence, and ethical conduct to be observed by health

practitioners of the profession" through the Health Practitioners Competence Assurance Act 2003[1]. The statutory functions of a Regulatory Authority should not be delegated.

The Principles

The Principles contained in the Code have been updated to emphasise relationships - the relationship of trust between Doctor and patient (paragraph 3) and the relationships the patient has with others (paragraph 2). We welcome the revisions to paragraph 11 which focus on achieving optimal and equitable health outcomes, rather than equitable access; this statement aligns with the RACP's advocacy campaign to Make Health Equity the Norm for all whānau in Aotearoa New Zealand[2].

The section includes a Principle to "develop a relationship of trust and avoid exploiting the patient in any manner". We recommend the NZMA review this update in the Code, and suggest "maintain and foster a relationship of trust …" The Doctor-patient relationship is founded on a trust between both parties which must be present from the start; further, the Doctor owes fiduciary duties from the commencement of the relationship.

We note that there is no Principle stating medical practitioners must interact in a respectful manner with colleagues, whānau and others in manner that reflects the high level of trust placed in medical practitioners by other health professionals, patients and the wider community. Allegations of bullying, harassment and poor workplace culture (with many upheld) have become apparent in the medical profession[3] [4] [5]. The RACP recommends respectful interactions with others (colleagues, patients, whānau etc) should form a Principle under this Code.

Responses to the Recommendations

Our response to specific paragraphs in the Recommendations of the updated Code is detailed below.

Responsibilities to the patient

Paragraph 2 in this section discusses relationships where there may be a power imbalance (either implicit or actual) such as between a doctor and a patient, or between a doctor and a medical student. The updated code refers to Council's policy on sexual boundaries, but we note that it does not refer to Council's statement on professional boundaries in the doctor-patient relationship as not every transgression of the doctor-patient relationship is overtly or implicitly sexual; crossing

[1] Health Practitioners Competence Assurance Act 2003. s 118(i).
[2] The Royal Australasian College of Physicians. Make it the Norm: Equity through the Social Determinants of Health. Wellington, Sydney: The Royal Australasian College of Physicians; 2017. Available from https://www.racp.edu.au/fellows/resources/new-zealand-resources/new-zealand-election-statement-2017. Accessed 8 April 2019.
[3] Crampton P, Wilkinson T, Anderson L, Walthert S, Wilson H. Bullying in healthcare settings: Time for a whole-of-system response. Editorial. [Internet] N Z Med J. 2015; 128(1424):10-3. Available from http://www.nzma.org.nz/journal/read-the-journal/all-issues/2010-2019/2015/vol-128-no-1424-30-october-2015/6704. Accessed 9 April 2019.
[4] Bala V, Corke, C, Raper R, Pinder M, Stephens D et al. Prevalence of bullying, discrimination and sexual harassment among trainees and fellows of the College of Intensive Care Medicine of Australia and New Zealand. [Internet] Crit Care Resusc. 2016; 18(4):230-34. Available from https://www.ncbi.nlm.nih.gov/pubmed/27903203. Accessed 8 April 2019.
[5] Askew DA, Schluter PJ, Dick ML, Rego PM, Turner C, Wilkinson D. Bullying in the Australian medical workforce: cross-sectional data from an Australian e-Cohort study. [Internet] Aust Health Rev. 2012; 36(2):197-204. Available from https://www.ncbi.nlm.nih.gov/pubmed/22624642. Accessed 8 April 2019.

professional boundaries also has consequences for both parties. Both policies were updated in 2018 and should be referred to in the Code, either as hyperlinks in the text or footnoted[6] [7].

Paragraph 3 states that "any complaints about a sexual relationship with a former patient therefore need to be considered on an individual basis before being regarded as unethical". We contend that all complaints should be considered on an individual basis, and as such this phrase does not need to be included in this sentence.

In paragraph 5 "Doctors should, within reason, provide adequate information to their patients …" the phrase "within reason" is superfluous, given as the obligation is already stated to provide 'adequate information' – which, in itself is a good summation of the law[8].

Paragraph 19 states that "Doctors should recognise the needs of patients to receive culturally sensitive and competent care". The RACP recommends that the NZMA revise this statement to read "Doctors should recognise the rights of patients to receive culturally sensitive and competent care".

Paragraph 21 concerns issues of moral or clinical disjuncture between the views of the Doctor and the patient. While potentially contentious for some, this paragraph should be augmented to state "Doctors should, insofar as practical, refer the patient to another practitioner in such circumstances".

We welcome the sentiment intended by "a sense of their own value" in paragraph 28 but suggest this is amended slightly to read "a sense of their own value and humanity". Paragraph 28 states that doctors have an obligation to preserve life wherever possible and justifiable". We acknowledge that documents such as the Code should be able to sit alongside contemporary debates on matters of conscience, including medical assistance in dying and abortion without undue reference or influence in the document itself. We recommend the NZMA replaces "justifiable" with "desirable" to continue to emphasise the importance of the patient-centred approach.

First and foremost, our duty of care is to the patient. We acknowledge that conflict may arise where there are differences between the wishes of patients and their whānau. We would encourage the NZMA to include specific reference in Paragraph 29 to patient-centred decision-making, while recognising the importance of wider consultation with whānau, colleagues and legal and ethical professionals if indicated.

In paragraph 34, regarding Doctors treating members of their family, the RACP agrees with Council that it is never appropriate to provide care to family members, and should only be considered in exceptional circumstances, as per the MCNZ's "Statement on providing care to yourself and those close to you"[9]. We encourage NZMA to change this paragraph from "it may be indicated" to "it may be acceptable".

In paragraph 37, the RACP recommends amending the wording of this statement from "develop a properly-informed attitude towards accepted and traditional practices" to "become informed about

[6] Medical Council of New Zealand. Sexual boundaries in the doctor-patient relationship. Wellington: Medical Council of New Zealand; 2018. Available from https://www.mcnz.org.nz/assets/News-and-Publications/Statements/Nov-2018Sexual-boundaries-in-the-doctor-patient-relationship-version-posted-on-website-in-Dec-2018.pdf. Accessed 9 April 2019.
[7] Medical Council of New Zealand. Professional boundaries in the doctor-patient relationship. Wellington: Medical Council of New Zealand; 2018. Available from https://www.mcnz.org.nz/assets/News-and-Publications/Statements/Nov-2018Professional-Boundaries-in-the-Doctor-Patient-Relationship-version-posted-on-website-in-Dec-2018.pdf. Accessed 9 April 2019.
[8] Health and Disability Commissioner (Code of Health and Disability Consumers' Rights) Regulations 1996. Schedule Right 6. Available from http://legislation.govt.nz/regulation/public/1996/0078/latest/DLM209085.html#DLM209085. Accessed 9 April 2019.
[9] Medical Council of New Zealand. Providing care to yourself and those close to you. Wellington: Medical Council of New Zealand; 2016. Available from https://www.mcnz.org.nz/assets/News-and-Publications/Statements/Statement-on-providing-care-to-yourself-and-those-close-to-you.pdf. Accessed 9 April 2019.

accepted and traditional practices". The former implies that some medical practitioners' attitudes are not properly-informed.

Declaration of Geneva

The RACP welcomes the inclusion of the World Medical Association's Declaration of Geneva, including its most recent amendments (October 2017) as an appendix to the Code. The importance of doctors attending to their own health and wellbeing reduces the risk of burnout and mental health conditions. It recognises that doctors have tended to prioritise care for others, often at the expense of their own wellbeing, which could risk poor clinical decision-making and patient harm. Many colleges, including the RACP, have prioritised work in this area, and we recognise, in line with the World Health Organization's definition of health, that to be healthy is more than the absence of disease. The RACP believes that improving the health and wellbeing of medical professionals requires the cooperation of government, employers, colleges, regulators, doctors' health services, senior leaders, supervisors, colleagues and doctors themselves[10]. Acknowledging this shift in changing medical culture in a document such as the Code of Ethics reinforces its centrality and universal importance to the profession.

Conclusion

The RACP thanks the NZMA for the opportunity to provide feedback on this consultation and looks forward to the release of the updated Code. The efforts of the NZMA to continue to produce an up-to-date Code for the profession are commended. To discuss this submission further, please contact the NZ Policy and Advocacy Unit at policy@racp.org.nz.

Nāku noa, nā

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[10] The Royal Australasian College of Physicians. Physician health and wellbeing. [Internet] Sydney: The Royal Australasian College of Physicians; 2019. Available from https://www.racp.edu.au/fellows/physician-health-and-wellbeing. Accessed 10 April 2019.