



Office of the Director-General

Professor Ron Paterson
Chaperone Review
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Dear Professor Paterson

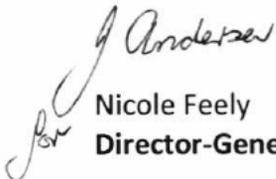
ACT Health Submission to the Independent review of chaperones to protect patients

Thank you for inviting submissions to the independent review of the use of chaperoning to protect patients. I would also like to thank you for providing ACT Health with additional time to provide a submission on this important matter and apologise for the delay in responding to you.

The ACT Health submission is attached. This submission may be published on the National Health Practitioner Ombudsman and Privacy Commissioner website.

I look forward to the outcome of this review.

Yours sincerely


Nicole Feely
Director-General

/ November 2016

ACT Health Submission:

Independent review of chaperones to protect patients

October 2016

INTRODUCTION

ACT Health delivers a wide range of public health services to the ACT population through hospital and community based services.

ACT Health's vision is *'Your Health - Our Priority'* and our values are:

Care - Go the extra distance in delivering services to our patients, clients and consumers. Be diligent, compassionate and conscientious in providing a safe and supportive environment for everyone. Be sensitive in managing information and ensuring an individual's privacy. Be attentive to the needs of others when listening and responding to feedback from staff, clinicians and consumers.

Excellence - Be prepared for change and strive for continuous learning and quality improvements. Acknowledge and reward innovation in practice and outcomes. Develop and contribute to an environment where every member of the team is the right person for their job, and is empowered to perform to the highest possible standard.

Collaboration - Actively communicate to achieve the best results by giving time, attention and effort to others. Respect and acknowledge everyone's input, skills and experience by working together and contributing to solutions. Share knowledge and resources willingly with your colleagues.

Integrity - Be open, honest and trustworthy in communicating with others, and ensure correct information is provided in a timely way. Be accountable, reflective and open to feedback. Be true to yourself, your profession, consumers, colleagues and the government.

This vision and these values inform ACT Health's responses to the review questions below.

1. DO YOU THINK CHAPERONE CONDITIONS ARE AN EFFECTIVE MEASURE TO PROTECT PATIENTS, AND WHY?

ACT Health does not consider chaperone conditions an effective measure to protect patients.

ACT Health proposes that practitioners should not be permitted to consult or treat patients whilst under investigation for serious misconduct, in particular for alleged sexual misconduct. Patients need to be able to trust that Health Professional Boards make patient safety their first priority.

AHPRA's requirement to practise with a chaperone is generally applicable only to health practitioners (practitioners) who are engaged in private practice¹. Boards are currently permitted to use restrictions requiring chaperones as a protective measure while allegations are investigated and/or evidence is tested at a hearing. On occasion, a panel, tribunal or a court may use restrictions requiring a chaperone as part of the orders these bodies make at the conclusion of proceedings.

In ACT Health, where an alleged misconduct is being investigated, a practitioner is generally suspended with or without pay pending the outcome of the investigation².

ACT Health considers that patients consulting a practitioner in the private sector are entitled to the same protections they receive in the public sector. In the case of [REDACTED]³, the chaperone conditions did not provide adequate protection. The use of a chaperone to permit a practitioner to continue to work carries a level of risk contrary to the provision of high quality and safe healthcare, and may undermine public trust in our health system.

2. IF CHAPERONE CONDITIONS ARE APPROPRIATE IN SOME CIRCUMSTANCES, WHAT STEPS DO YOU THINK NEED TO BE TAKEN TO ENSURE PATIENTS ARE PROTECTED AND ADEQUATELY INFORMED?

AHPRA does not provide a list of the circumstances where a Board may impose a requirement for a chaperone so it is unclear if there are any circumstances where the condition of chaperoning may be considered an appropriate approach. ACT Health does not support the use of a chaperone as a condition of continuing to practice where there are allegations of serious or sexual misconduct.

In ACT Health patients have the right to have another person present during intimate body care or intimate examination. The support person's role is to provide emotional support to the patient and observe the care being provided. The support person must be agreed to by the patient, should be the same gender as the patient, where possible, and could be a family member, carer or another health care worker⁴.

ACT Health considers that chaperones are only appropriate in the above circumstances where the intent is to make the patient feel more comfortable. If the chaperone is there to protect the patient from a practitioner under investigation, or as a result of an investigation, then the patient should not be exposed to the practitioner.

¹ AHPRA Chaperone Protocol November 2015

² ACT Public Sector Enterprise Agreements 2013-2017

³ Statement from the Medical Board of Australia and AHPRA: [REDACTED]

⁴ Canberra Hospital and Health Services Standard Operating Procedure: Intimate Body Care and Examinations by Health Care Workers

3. IN WHAT CIRCUMSTANCES DO YOU THINK CHAPERONE CONDITIONS ARE NOT APPROPRIATE, AND WHY?

The restrictions may specify that a chaperone is required for a subset of patients or practice including: patients within a certain age range, patients of a certain gender or gender identity or patients undergoing particular types of procedures, examinations or assessments¹.

In the case of general practitioners, the nature of the consultation may not be known in advance which may make it difficult to identify which consultations will need a chaperone.

ACT Health considers that allowing a practitioner to continue to treat and have contact with patients under these circumstances is unethical and potentially puts patients at risk. This approach breaches the trust that patients are entitled to expect in practitioners and in the practitioner regulatory system. It is likely that the general public would not consider it fair or reasonable to allow a practitioner to continue to see patients while under investigation for sexual misconduct with a patient.

The AHPRA Chaperone Protocol requires that patients/clients are informed of the necessity for a chaperone to be present and directly observing any contact between the practitioner and the patient at all times. ACT Health notes that a practitioner who is innocent of allegations made against them is likely to lose the trust of their patients/clients if required to practice with a chaperone present. It is likely to be less damaging for the practitioner if they stop practicing while under investigation and return to practice if they are cleared of the allegations.

4. CAN YOU SUGGEST AN ALTERNATIVE REGULATORY MEASURE TO PROTECT PATIENTS WHILE ALLEGATIONS OF SEXUAL MISCONDUCT ARE INVESTIGATED?

ACT Health proposes that the accused practitioner should be suspended (with or without pay), or reassigned to work that does not involve patient contact while the alleged misconduct is being investigated. If the accusation is found to be false the practitioner would then have the option to take legal action to seek reimbursement for lost earnings and damage to reputation.

5. DO YOU HAVE ANY GENERAL COMMENTS FOR THE REVIEW TO CONSIDER?

Public safety, trust in our health system and high quality care should be prioritised by health boards and regulators over maintaining the practice of individual health practitioners. This approach supports the delivery of high quality, safe, and sustainable healthcare to meet the needs of the community into the future.

The review should also consider the impact on the workplace when chaperones are imposed, for example, what is the impact on patients when other practitioners are reallocated to undertake the role of chaperone?

ACT Health understands that the chaperone approach may help to overcome issues with workforce shortages-particularly where there is no other practitioner to replace the practitioner under investigation. Health services may be affected in some areas, however this is not a sound rationale to allow a practitioner to continue to practice when serious allegations of misconduct are being investigated, especially in areas with minimal supervision and peer support, and where there are vulnerable individuals and communities.