



Consultation paper: Public consultation

19 December 2012

Draft Sexual and professional boundaries: Guidelines for osteopaths

Important information

This draft consultation paper is for public consultation

Interested parties are invited to make written submissions on this proposal. Please note that your submission will be placed on the Board's website unless you indicate otherwise.

However, unless it is confidential the Board will exercise its absolute discretion in the publication of a submission.

If you wish to provide comments on this draft paper, please provide written comments in electronic form to osteoboardconsultation@ahpra.gov.au by close of business on Friday 15 February 2013.

Issued by the Osteopathy Board of Australia under the authority of Dr Robert Fendall, Chair, on 19 December 2012.

Guidelines

XXXX 2013

Sexual and professional boundaries: Guidelines for osteopaths

1. Introduction

These guidelines have been developed under section 39 of the *Health Practitioner Regulation National Law*, as in force in each state and territory (the National Law).

The guidelines aim to guide osteopaths about sexual and professional boundaries. See Attachment A of these guidelines for the relevant sections of the National Law.

The guidelines complement the Osteopathy Board of Australia's *Code of conduct for registered health professionals (Code of conduct)* and provide specific guidance on professional boundaries in the osteopath-patient relationship. Professional boundaries canvassed here include sexual, physical, emotional and familial.

Section 1.2 of the *Code of conduct* states:

'Practitioners have a duty to make the care of patients or clients their first concern and to practise safely and effectively. They must be ethical and trustworthy. Patients or clients trust practitioners because they believe that, in addition to being competent, practitioners will not take advantage of them and will display qualities such as integrity, truthfulness, dependability and compassion. Patients or clients also rely on their practitioner to protect their confidentiality.'

Section 8.2 of the *Code of conduct* states:

'Professional boundaries refers to the clear separation that should exist between professional conduct aimed at meeting the health needs of patients or clients and a practitioner's own personal views, feelings and relationships which are not relevant to the therapeutic relationship. Professional boundaries are integral to a good practitioner-patient/client relationship. They promote good care for patients or clients and protect both parties. Good practice involves:

- *maintaining professional boundaries*
- *never using your professional position to establish or pursue a sexual, exploitative or other inappropriate relationship with anybody under a practitioner's care; this includes those close to the patient or client, such as their carer, guardian or spouse or the parent of a child patient or client*
- *recognising that sexual relationships with people who have previously been a practitioner's patients or clients are often inappropriate, depending on the extent of the professional relationship and the vulnerability of a previous patient or client*
- *avoiding expressing your personal beliefs to your patients or clients in ways that exploit their vulnerability or that are likely to cause them distress.*

Osteopathy often requires physical clinical examination and the use of manual techniques. The setting for osteopathic treatment is different from some other health practitioners in that the patient is usually partly

undressed and the treatment is for a longer appointment behind closed doors with one osteopath rather than a team. In this context, osteopathic treatment has the potential to be perceived as crossing physical boundaries or sexual boundaries.

2. Summary of these guidelines

Good osteopathic practice relies on trust between osteopaths and patients and their families.

The relationship between an osteopath and a patient is not one of equality, because the patient is seeking assistance and guidance and may need to reveal intimate physical and emotional details.

It is unethical and unprofessional for an osteopath to breach trust by entering into a sexual relationship with a patient, regardless of whether the patient has consented to the relationship. It may also be unethical and unprofessional for an osteopath to enter into a sexual relationship with a former patient, an existing patient's carer or a close relative of an existing patient, if this breaches the trust the patient placed in the osteopath. The nature and duration of the previous treatment relationship will determine whether a subsequent personal relationship is ethical.

Where violation of the professional boundary occurs as a result of the behaviour of the patient, but not of the osteopath, the osteopath should seek appropriate professional advice and document the circumstances of the event; the circumstance prior to or after the event; and the response of the osteopath to that behaviour. Any decision made to either continue or terminate the treating relationship by referral to another osteopath or practitioner should include consideration of the best interests of the patient.

The Osteopathy Board of Australia (the Board) will investigate an osteopath who is alleged to have breached these guidelines and if the allegations are found to be substantiated, the Board will take action (see section 11 of these guidelines). These guidelines should be read in conjunction with the Board's *Code of conduct for registered health practitioners* and *Guidelines on clinical records*.

3. Understanding and defining sexual boundaries

Sexual misconduct in the context of osteopathy practice includes a range of inappropriate behaviours such as sexualised behaviour, sexual exploitation or abuse, entering into a sexual relationship, and sexual assault. Criminal offences will be referred for investigation by the police.

Sexual misconduct

Mandatory reporting requirements oblige practitioners, employers and education providers to report 'notifiable conduct', which includes engaging in sexual misconduct in connection with the practice of the profession and providing osteopathic care. (Refer to section 10 of these guidelines for more information.)

Sexual misconduct includes:

- engaging in sexual activity with:
 - a current patient regardless of whether the patient consented to the activity or not
 - a person who is closely related to a patient who is under the osteopath's care
 - a former patient
- making sexual remarks, touching patients or clients in a sexual way, or engaging in sexual behaviour in front of a patient.

In managing sexual boundaries, an osteopath should be aware that:

- sexualised behaviour includes any words or actions that might reasonably be interpreted as being designed or intended to arouse or gratify sexual desire
- sexual exploitation or abuse includes sexual harassment or entering into a sexual relationship with a patient or patient's carer or close relative who has attended consultations

- sexual harassment is unwelcome behaviour of a sexual nature including, but not limited to, gestures and expressions. The osteopath's intention does not minimise the seriousness of the behaviour. Sexual harassment includes:
 - (a) making an unsolicited demand or request, whether directly or by implication, for sexual favours
 - (b) irrelevant mention of a patient's or osteopath's sexual practices, problems or orientation
 - (c) ridicule of a patient's sexual preferences or orientation
 - (d) comments about sexual history that are not relevant to the clinical issue
 - (e) requesting details of sexual history or sexual preferences not relevant to the clinical issue
 - (f) conversations about the sexual problems or fantasies of the osteopath
 - (g) making suggestive comments about a patient's appearance or body
- inappropriate disrobing or inadequate draping for a physical examination may be considered a breach of sexual boundaries
- conducting intimate examinations without adequate prior explanation (and thus without informed consent) is always considered a breach of sexual boundaries
- sexual assault can range from physical touching or examination without consent to rape, and should be investigated by the police. If proven, sexual assault is a criminal offence
- a sexual relationship describes a totality of the relationship between two people, when the relationship has some sexual element, including any sexual activity between an osteopath and their patient. This is the case whether or not the sexual relationship was initiated by the patient.

4. Why breaching sexual boundaries is unethical and usually harmful

A breach of sexual boundaries is unethical and unprofessional because it exploits the osteopath-patient relationship, undermines the trust that patients (and the community) have in their health professionals, and may cause psychological harm to patients and compromise their care.

Power imbalance

The osteopath-patient relationship is unequal. The patient would be considered to be vulnerable. The Board considers it an abuse of this power imbalance for an osteopath to enter into a sexual relationship with a patient. The existence of actual harm to the patient is not relevant to the consideration of whether the sexual behaviour is exploitative or abusive.

In order to be diagnosed or treated a patient has to share personal information and this is a power imbalance of which it is the responsibility of the osteopath to manage. A patient may be unfamiliar with what is appropriate professional practice.

Loss of objectivity

A sexual relationship, even if the patient is a consenting adult, could potentially impair the osteopath's clinical judgement and compromise the patient's management and care.

Community impact and standing

A sexual relationship with a member of a current patient's immediate family may also be considered improper and unprofessional. Each case will be assessed individually if a notification or complaint is made.

If a current patient invites a sexual relationship, then the practitioner must decline the invitation, and consider the appropriateness of terminating the therapeutic relationship. Termination of the therapeutic

relationship may require referral of the patient to another practitioner and disclosure of the reason for the referral.

5. Sexual relationships with former patients

It may be unprofessional for an osteopath to enter into a sexual relationship with a former patient as this may breach the trust the patient placed in the osteopath.

When considering an allegation that the osteopath has engaged in unprofessional conduct, the Board would take into account:

- the duration of care provided by the osteopath; for example, if there had been long-term treatment and support provided
- the level of vulnerability of the patient or if the patient suffered a disorder likely to impair judgement or hinder decision-making
- the degree of dependence in the osteopath-patient relationship
- the time elapsed since the end of the professional relationship
- whether the patient was under the age of consent when the personal / sexual relationship commenced
- the manner in which and reason why the professional relationship was terminated
- whether appropriate referral arrangements for continuing and future health needs of the patient were made
- the context in which the sexual relationship was established; for example, resulting from a genuine coincidental social meeting, or by contrast, there being no opportunity for spontaneous contact outside the context of treatment
- the presence of an osteopath in a small community.

Stipulating a time period beyond the end of a therapeutic relationship is problematic. The Board will look behind the time period to look at the duration of the therapeutic relationship, for example where the osteopathic interventions concerned an acute condition that was resolved after three treatments. In contrast the therapeutic relationship may have continued for more than twelve months with the health condition of the patient being complex with co-morbidities.

6. Professional standards in examinations and treatment

While an osteopath is accustomed to treating many patients in a day who are in a state of undress, an individual patient may not be comfortable or used to being in a state of undress in the presence of their health practitioner. The osteopath has a professional responsibility to understand and respond sensitively and respectfully to the needs of each patient. Good osteopathic practice in conducting physical examinations includes:

- only providing services for which the practitioner is competent and on the basis of a sound evidence informed clinical rationale
- explaining to the patient what is to occur in the treatment and providing an opportunity for the patient to ask questions. This is particularly important when treating parts of the body other than the site of injury or complaint, or intimate areas
- gaining the consent of the patient to conduct an examination and treatment. Consent for assessment and treatment of an intimate area should be gained wherever possible while the patient is dressed and sitting, rather than in a more vulnerable position during treatment
- being sensitive to any sign the patient has withdrawn consent
- not continuing with an examination when consent is uncertain or where consent has been refused or withdrawn

- keeping appropriate records of intimate area contact
- allowing a patient to undress and dress in private, which may mean the osteopath leaves the room. An osteopath should not assist a patient to undress or dress unless the patient is having difficulty and requests assistance. Undressing or partially undressing should be kept to a minimum.
- providing suitable covering during an examination. Clean gowns or towels should always be offered and freely available for patients
- being sensitive to cultural diversity and treating a patient in a way that reflects their views and wishes whilst preserving their dignity
- being aware of their own state of dress as a professional and not blurring boundaries in how patients may interpret their own presentation
- using gloves when conducting internal examination or treatment
- not allowing the patient to remain undressed for any longer than is needed for the examination or treatment
- gaining the patient's permission if anyone else, including a student, is to be present during an examination or treatment and having no more people present during the consultation than is necessary.
- allowing a patient to bring a support person who may be a family member, close relative or friend.

Use of chaperones when conducting intimate examination or treatment

When discussing what is to occur in an intimate or internal treatment, an osteopath should respond sensitive and educative manner to a patient's and/or chaperone's questions and concerns. The osteopath should explore with the patient the value of a chaperone being present during the treatment (even if the osteopath is the same gender as the patient) or allow the patient to bring a support person of their choice, if this would make the patient feel more comfortable. If a chaperone is not available, or the patient or osteopath is not comfortable with the choice of chaperone, the osteopath should postpone the treatment.

A chaperone must be of a gender agreed by the patient or the patient's support person such as a parent, carer, guardian or friend, and must respect the privacy, confidentiality and dignity of the patient. If the chaperone is provided by the osteopath, that person should understand the nature and importance of their role. The name of a chaperone and their role should be recorded in the clinical records in appropriate detail.

7. Warning signs and risk management

The beginning of a sexual relationship between an osteopath and a patient may not always be immediately obvious to either person. Osteopaths need to be alert to warning signs that indicate that boundaries may be crossed. Warning signs include:

- an osteopath giving inappropriate special status to a patient, or where a patient requests or receives non-urgent appointments at unusual hours or locations, especially when other staff are not present
- inviting each other out socially
- expressing an attraction
- an osteopath revealing intimate details of his or her life, especially personal crises or sexual desires or practices, to a patient during a professional consultation
- a patient asking personal questions, using sexually explicit language or being overly affectionate, and/or
- a patient attempting to give the osteopath expensive gifts.

There are factors that can increase the risk that an osteopath may engage in behaviours that violate professional boundaries. Each osteopath should be alert to the following factors in their own lives and take steps to ensure these do not adversely affect their professional relationships with their patients:

- personal life stress
- breakdown of a personal relationship
- drug or alcohol abuse
- professional isolation, and/or
- mental illness.

An osteopath should never give a patient their personal contact details, or those of another practitioner, nor should an osteopath encourage a patient to visit their home or to develop a relationship with a friend or family member of the osteopath.

In the clinical encounter, this should not involve asking the patient for details of a private or personal issue, or providing details of an osteopath's own private life. Disclosure of personal information by the patient or the osteopath can increase vulnerability or misunderstandings. When the osteopath is seeking or providing any disclosure, it is important to assess whether the patient would benefit from the disclosure. If so, document all disclosure.

Where an osteopath has reason to believe that there are risks that a professional boundary may be breached, they can have a mutually acceptable third party such as an appropriate professional present during examinations or treatments. Osteopaths may refuse to conduct examinations or treatments if the patient refuses consent for an appropriate third party to be in the room. In such a situation, appropriate referral to another osteopath should occur.

If an osteopath senses any of these warning signs, or if a patient talks about or displays inappropriate feelings towards the osteopath or begins to exhibit sexualised behaviour, the osteopath should consider whether this is interfering with the patient's care and/or placing the osteopath (or the patient) at risk.

Where a breach of the professional boundary occurs as a result of the behaviour of the patient, but not of the osteopath, the osteopath should seek the opinion of a practitioner with similar ethics bound to keeping the confidentiality of the patient; and document their discomfort within their clinical records. Any decision made to either continue or terminate the treating relationship by referral to another osteopath or practitioner must include consideration of the best interests of the patient. Assessment of the risks for both the patient and the osteopath must be considered if the osteopath continues treating a patient who has made an inappropriate advance towards the osteopath and subsequently experiences rejection.

If there is a risk that the osteopath may not remain objective or that boundaries could be breached, the osteopath should terminate the treating relationship immediately, transfer the patient's care to another practitioner, and document this process within their clinical records.

8. Treating family members and close friends

The Board expects any osteopath who provides osteopathic care to an immediate family member, partner, or close friend to provide the equivalent standard and continuity and duty of care as is provided to a member of the general public. This includes confidentiality, record-keeping and referral.

9. The importance of good communication

From time to time, the Board receives notifications from patients who have felt that an osteopath's actions were inappropriate and/or sexually motivated. All notifications are taken seriously and investigated. In some cases, it has become apparent that the consultation was appropriate and the examination was clinically indicated, but that the osteopath did not explain (or the patient did not understand) why the osteopath asked particular questions or conducted a particular examination and the patient did not know what to expect from a consultation. Good, clear communication is the most effective way to avoid misunderstandings.

10. Obligations of osteopaths to report allegations of sexual misconduct

Engaging in sexual misconduct in connection with the practice of the osteopathy profession is 'notifiable conduct' under section 140 of the National Law.

To prevent the public being placed at risk of harm, mandatory reporting requirements oblige practitioners, employers and education providers to report 'notifiable conduct', in sections 141 to 143 of the National Law, to the Australian Health Practitioner Regulation Agency (AHPRA).

Notifiable conduct includes engaging in sexual misconduct in connection with the practice of the profession. This means engaging in sexual misconduct with persons under an osteopath's care.

For more information about mandatory notifications refer to the *Guidelines for mandatory notifications* on the Board's website at www.osteopathyboard.gov.au.

11. The role of the Osteopathy Board of Australia

All osteopaths practising in Australia must be registered with the Board.

The primary role of the Board is to protect the public by ensuring that only osteopathy practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.

The Board can investigate concerns about the professional conduct, performance, and/or health of registered osteopathy practitioners. The Board can take immediate action because the conduct poses a serious risk to the persons or to protect public health and safety (see Section 156 of the National Law). It can also take a range of actions to protect the public.

In cases of professional misconduct, the Board has the power to suspend registration and/or refer a matter to a tribunal or court, where an osteopath's registration may be cancelled. In cases involving allegations of unprofessional conduct, the Board has the power to impose conditions on the osteopath's registration, require the osteopathy practitioner to undergo counselling, supervision, undertake further education, caution the practitioner or accept an undertaking from the practitioner.

Sexual misconduct outside of the professional context can also impact on practice because Board may consider the practitioner is not a 'suitable person' to hold registration as an osteopath (see section 5 for definition of 'professional misconduct' and also section 144(1)(c) of the National Law).

These guidelines can be used in proceedings under the National Law as evidence of what constitutes appropriate professional conduct or practice for osteopathy under Section 41 of the National Law. The setting of boundaries is an osteopath's responsibility and patient consent is not a defence.

12. Review

These guidelines will take effect on XXXXX 2012. The Board will review these guidelines at least every three years.

Attachment A

Extract of relevant provisions from the Health Practitioner Regulation National Law, as in force in each state and territory

Division 3 Registration standards and codes and guidelines

39 Codes and guidelines

A National Board may develop and approve codes and guidelines—

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

Example: A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

40 Consultation about registration standards, codes and guidelines

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.
- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website—
 - (a) a registration standard developed by the Board and approved by the Ministerial Council;
 - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect—
 - (a) on the day it is published on the National Board's website; or
 - (b) if a later day is stated in the registration standard, code or guideline, on that day.

41 Use of registration standards, codes or guidelines in disciplinary proceedings

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.