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Kia ora Kanny

What to do when you have concerns about another doctor

Thank you for the opportunity to provide feedback on the Medical Council's draft updated statement on *What to do when you have concerns about another doctor*. As you know, the Association of Salaried Medical Specialists (ASMS) is the union and professional association of salaried senior doctors and dentists. We were formed in April 1989 to advocate and promote the industrial and professional interests of our members, most of whom are employed by District Health Boards as medical and dental specialists, including physicians, surgeons, anaesthetists, psychiatrists, oncologists, radiologists, pathologists and paediatricians. We have over 5,000 members.

ASMS has significant experience with workplace relationships, including those arising from conduct, performance and competence of our members, who are senior medical officers.

We have serious concerns about the proposed draft statement. We believe that the revision has shifted the statement away from a regime intended to help doctors address concerns they may have about a colleague. The removal of contextual information and advice in the existing statement has, to all intents and purposes, created a new statement. There appears to be an expectation in the proposed draft that doctors will make complaints to the Medical Council about **any** concerns they may have about another doctor's competence, whether they work with them or not. We consider this change in reporting to the Medical Council comes close to introducing a mandatory requirement on doctors.

We make the following specific comments.

Amended title of draft statement

ASMS does not support the proposed change from referring to 'a colleague' to 'another doctor' in the title. We do not agree that doctors should be encouraged to raise concerns about doctors they do not directly work with. This amendment changes the intent of the statement, and we question why the Medical Council wishes to widen the scope.

The change in purpose

We are concerned about the proposed change to the purpose of the statement. Paragraph 1 of the 2010 statement states that the purpose is to help a doctor to understand where the threshold lies for acting on concerns about a medical colleague's conduct, performance or health. It also states that the purpose of the statement is to help doctors to raise concerns and access the help and support available to them.

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The revised draft statement replaces the above. Firstly, it states that the purpose is to discuss the different types of concerns that could arise about another doctor and the appropriate options for raising these internally and/or externally. We note that the revised statement does not actually cover different concerns that could arise. Secondly, it states that the purpose is to outline when a doctor should notify the Medical Council of their concerns about another doctor's conduct, performance or health. We believe this is a new purpose statement and shifts the focus to encouraging doctors to raise any concerns directly with the Medical Council.

Reporting to the Council

Paragraph 16 of the revised statement requires doctors to report to the Medical Council any concern they may have about a colleagues conduct, competence or health and how that is impacting on their practice. This is very loose and throws the net wide on the kinds of concerns that could be raised with the Medical Council. There is a strong sense that the proposed statement effectively imposes a mandatory requirement on doctors to notify concerns to the Medical Council and that failure to do so would be considered a breach of ethics.

We are particularly concerned about the advice on when to notify the Medical Council about another doctor's competence. The existing statement outlines where thresholds of "risk of harm" and "risk of serious harm" lie in relation to raising concerns about a colleague's competence. It also advises doctors that they need to use their judgement on what to do about their concerns. The revised statement omits this information. The new draft provides no guidance to doctors on the thresholds or hierarchy of concerns about competence to assist them decide whether to take any action. The wording in the draft proposed statement suggests there are no thresholds of concerns to consider before notifying the Medical Council.

What happens when you notify the Medical Council of a concern

A shift in approach is also apparent in this section. The existing statement advises that a doctor's notification will not be considered a formal complaint without their cooperation. However, the revised statement advises that if the Medical Council considers the concern raises a risk of harm it may act, whether or not the doctor wants it to take their concern further. As noted above, the revised statement provides no information about the thresholds for "risk of harm" or "risk of serious harm". This stance is a departure from the existing statement that recommends a doctor should take action to raise concerns locally about a colleague's competence if a risk of harm exists.

Support for doctors going through an inquiry

The draft proposed statement appears to acknowledge at clause 35 the stress and upset a notification may cause. In our experience, they cause enormous distress and anxiety, and it is difficult to see the value of encouraging more complaints/notifications to the Medical Council and the long-term harm this may cause.

In conclusion, ASMS is disappointed in the approach the Medical Council has taken to the revision of this statement. We are very concerned there is a shift towards encouraging complaints to the Medical Council and the introduction of a mandatory element. We consider the effect of the proposed changes is to reintroduce the risk of double jeopardy for our members and potentially prolonged investigations.

ASMS acknowledges that the principal purpose of the Medical Council is to protect the health and safety of the public by providing mechanisms to ensure doctors are competent and fit to practise.¹

¹ *Cole's Medical Practice in New Zealand*, 2017, p6.

However, we strongly believe that it can achieve this purpose without amending the statement as proposed. For the most part, concerns about a doctor's conduct, competence and performance may be addressed within an employment relationship framework, and policy should require notifications to the appropriate employer as a matter of preference.

ASMS has considerable experience with complaints about doctors. We would be happy to meet with you to discuss the issues we have raised and to provide any further information.

Nāku noa, nā



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