

24 June 2020

Statement on Unprofessional Behaviour

The Association of Salaried Medical Specialists (ASMS) is the union and professional association of salaried senior doctors and dentists employed throughout New Zealand. We represent 5,000 doctors and dentists, most of whom are employed by District Health Boards (DHBs) as medical and dental specialists. The ASMS promotes improved health care for all New Zealanders and recognition of the professional skills and training of our members, and their important role in health care provision. We are committed to the establishment and maintenance of a high quality, professionally led publicly owned and publicly provided health system.

ASMS welcomes the opportunity to provide feedback on this statement. ASMS has been heavily involved with work in this space including conducting the first nationwide survey of bullying and unprofessional behaviours ([ASMS bullying survey](#)) sitting on the professional behaviours taskforce, promoting new initiatives and approaches to resolving conflict through the [Cognitive Institute](#) and advocating for restorative practices and providing advice to our members in the form of a Bullying Standpoint ([Bullying standpoint](#)).

Our feedback on the statement is structured by the questions posed. We would be more than happy to assist with feedback on any future iterations if required.

Does the proposed change in title for our statement on unprofessional behaviour reflect what our statement is about?

Do you have any suggestions for alternative titles we could consider for our statement on unprofessional behaviour?

In our view, instead of focussing on negative 'unprofessional' behaviours it is more constructive to accentuate the need and benefit of positive 'professional' behaviours. For example, all work by DHBs and the MOH on bullying and harassment is now under the "Professional Behaviours" banner. As such, we suggest changing the title of the statement to "Professional Behaviour: How it improves patient safety and team-based care". Accordingly, we would encourage reviewing the structure of the statement to emphasise the positives of professional behaviours before advising against and explaining problems that arise when professional behaviours are not maintained.

In the absence of a question for the "About our statement on unprofessional behaviour" section we note that in the second paragraph "can" is used where it would be more appropriate to use "may" or "might".

Are there any changes we should make to the section on 'What is unprofessional behaviour'?

The ASMS remains concerned that some referrals of doctors by DHBs for alleged 'unprofessional behaviour' are based on complaints that have not yet been investigated. The ASMS feels this is unfair and inappropriate. In the experience of our industrial officers, we know that most doctors view a referral to the Council as not only very serious but quite distressing and unpleasant, with potential consequences for both their professional and personal confidence. In our view, referral to the Council should not be based on an allegation that has not been investigated by the DHB. While we accept that



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repeated instances of unprofessional behaviour are unacceptable, if this is not 'clinical' and has not yet been investigated, a referral should not be automatic or expected by the Council. If, following a fair and thorough investigation, an individual is found to have been involved in inappropriate behaviour, we understand and accept that a referral may be appropriate.

The ASMS refers the Council to the work we have produced detailing the various types of unprofessional behaviours, including our Bullying Standpoint (LIST AND LINK). While most of the behaviours listed in the Council's draft Statement are consistent with those detailed in our statement, ASMS has some concerns with components of the examples of unprofessional behaviours provided, particularly with regards to how an identified behaviour might be defined as real or not. Our specific points are as follows:

"Insensitive comments" is poorly defined. We are aware from our industrial work that DHBs are often too quick to conclude or assume that comments that may have 'offended' an individual are therefore 'bad'. The previous iteration covered this somewhat by the comment that "Criticism offered in good faith, with the intention of improving patient care ---- is appropriate behaviour". We note with some concern that this section has been removed as has the reference to industrial action and may result simply encourage an increase in minor and unfair complaints or referrals.

'g' includes "or expected to be available". We feel this is inappropriate because it is too broad. Doctors can only be "expected to be available" when they are on call. This is already well covered in 'g'.

'n' "not working collaboratively or cooperatively" is new and problematic and we feel strongly should be deleted. For example, if one doctor wants to proceed in a way that another doctor does not agree with, for good clinical reasons, this could be interpreted as not working collaboratively. A doctor may refuse to collaborate with a colleague when they feel the colleague is not fit to practice, for example, due to exhaustion. We feel that "o" covers "n" in any case.

As per the above comment, ASMS is concerned at the removal of the second paragraph after the list of unprofessional behaviours. In our view this should not be removed; it is very important when DHB 'laypeople' are looking at this document with a view to referral. Our concern hinges on the possibility that, in light of the proposed changes, anything that a person might say can be taken as unprofessional if the other person is in any way offended. Doctors must feel responsible and empowered to offer e constructive criticism via open and honest discussion. If this paragraph is not retained, our concern is that constructive workplace discussion may be inhibited out a fear of complaint.

Are there any changes we should make to the section on 'What effect does unprofessional behaviour have'?

We have the following suggested changes:

c "Relationships with colleagues – Colleagues may avoid a health professional whom they see as problematic, *as tending to easily take offence, misunderstand constructive criticism, or be prone to complaint* resulting in professional isolation and a breakdown in communication"



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A new 'g': – **“Teachers teaching environments** – Teachers may become hesitant to provide negative feedback when observing unprofessional behaviours or poor practice if such feedback might result in complaint or referral to the Council or Medical College”

'd' and 'e' should be “may” rather than “can”, and in 'e' “It is” should be “it may be”.

What changes, if any, should we make to the section on ‘What may cause unprofessional behaviour in a health care team’?

From our experience and research in this field, we understand that the most common factors giving rise to unprofessional behaviour in the workplace are related to fatigue/exhaustion/stress and the lack of resources. We see the current clauses more appropriately ordered as b, c and a.

Are there any changes we should make to the section ‘Organisational strategies to manage unprofessional behaviour’?

ASMS notes that the most common complaints of unprofessional behaviour relate to so-called bullying and harassment; therefore, we note that “zero tolerance” approaches do not work. In our view, zero tolerance policies should themselves be a form of bullying. In the ASMS’ experience, zero tolerance approaches will lead to unfair complaints being made and may actually encourage malicious or vexatious complaints. By contrast, supportive workplaces that seek to educate rather than punish are proven to be far more successful. We note the ASMS Standpoint on Bullying in the workplace / unprofessional behaviours, specifically the section on page 7 “Dealing with Bullying”. Notably rather than as (a) proposes - “consider raising the issue directly with the person responsible for the behaviour” - we have held our members responsible to a higher level by stating we expect members to raise concerns when seeing unprofessional behaviour with the person directly at the time, if possible.

We are very supportive of “Work to create a culture of respect” in (b). This includes treating an alleged offender fairly and supportively. We note that you have deleted “all policies must comply with employment law”. This may be superfluous, but our experience is that it is not. We consider that a reminder is timely and necessary.

Are there any changes we should make to the section on ‘When to notify Council’?

ASMS has concerns pertaining to this section with regard to aspects that have been deleted. As previously intimated in this submission, ASMS remains concerned that some of our members may be referred to the Council for complaints that have not been investigated, either at all or superficially and unfairly. The current statement records, in slightly differing words, “If you consider a health professional poses a risk to public health and safety you should notify the council immediately”. For supervisors it states, “if a health practitioner is concerned that a doctor may pose a risk of harm to the public by practising below the level of competence the health practitioner may notify the council”. The new wording states “If you have particular concerns about the conduct, competence or safety of a doctor’s practice, you should notify the medical council”. This new wording institutes a much lower threshold for complaints and referrals to the Council than in the past. In this regard, we refer to our earlier concerns regarding misinterpretation of what constitutes insensitive comments etc. We strongly oppose the deletion of the current wording that makes clear any referral should reflect a serious concern and should not be made impulsively ‘at the drop of a hat’, as appears to be all too common within DHBs in respect of workplace complaints against colleagues.



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Finally, we note deletion of the current wording regarding “Notification to Council at termination of employment due to competence concerns”. The HPCAA applies so deletion does not mean the employer no longer has this obligation (as we understand it) and we believe that it is worth retaining to ensure that people are aware of this obligation.