

STATEMENT ON INTERNET AND ELECTRONIC COMMUNICATION

Background

The Health Practitioners Competence Assurance Act of 2003 (HPCA Act) requires the Board to set standards of ethical conduct to be observed by health practitioners. The Board's *Standards of Ethical Conduct* require Optometrists and Dispensing Opticians (practitioners) to abide by all relevant legislation, and Board guidelines and statements. The purpose of this statement is to ensure that practitioners are aware of their legal and ethical obligations if conducting their practice or parts of their practice when using the internet or electronic communication.

Statement

- (1) Internet communication is referred to as the sharing of information, ideas, or simply words over the World Wide Web, or the Internet. Internet communication also includes the use of social media. Well-known social media applications include, but are not limited to, Facebook, Twitter, LinkedIn, Snapchat, instant messaging, content sharing websites such as YouTube and Instagram, and blogs. Social media is evolving constantly.
- (2) Electronic communication includes a transfer of information using an electronic device that may or may not use the internet. These include but are not limited to email, facsimile and texting. Content includes, but is not limited to, text, photographs, images, video and audio files.
- (3) The internet and electronic communication are useful tools which can help practitioners deliver quality healthcare, communicate with their patients and colleagues, and source information to assist in treatment of patients. Patients may also use the internet to inform themselves about their conditions and treatment options.
- (4) Whilst these tools may enhance the practice of optometry and optical dispensing when used in a manner consistent with the Board's *Standards of Ethical Conduct* and *Standards of Clinical Competence*, practitioners need to recognise that in using such tools there are limitations and inherent risks associated with their use. Practitioners need to ensure that in using these tools they do not put a patient's safety at risk, or breach any of the patient's rights under Aotearoa New Zealand privacy laws or the Code of Health and Disability Services Consumers' Rights.

Issues

(A) Communication

- (5) Whatever methods practitioners use to communicate with colleagues and/or patients, whether it is viewed by the public or only a specific group of people they must consider issues of privacy, security and the sensitivity of health information.
- (6) Practitioners need to ensure that any communication complies with the Health Information Privacy Code of 2020. In particular, storage and security of patients' personal information must be sufficient to protect against:
 - loss
 - access, use, modification or unauthorised disclosure
 - other misuse.¹
- (7) If a practitioner uses email to communicate with a patient, any limits on that communication should be advised at the outset (for example, the patient should be advised not to use email if urgent advice is required). The practitioner must ensure receipt of the email, as far as possible, by the appropriate person.
- (8) Because it is difficult to verify a person's identity from an email (for example, some families and groups share a common email and computers may be accessed by a number of different people), practitioners should only use email addresses provided by the patient as contact information when specifically authorised by the patient as a means of communication. Receiving an email should not be taken as verification of identity or as consent that the patient is happy to receive personal information by email.
- (9) Practitioners should make a record of all clinical communication with the patient, regardless of the medium by which that information is delivered.
- (10) Patient information (including images) should only be emailed or sent electronically when the means of transmission is secure (as far as possible) and preserves the quality of the information.
- (11) Maintain the confidentiality and privacy of consumers. Do not share or communicate health consumer information or practice issues in public places, including on social media or wifi connections where you are unsure of security. Be mindful that a communication or post that you may have intended to be private may subsequently be disseminated - by others to others - regardless of your own privacy settings.

(B) Provision of clinical advice

- (12) The Board's view is that practitioners, and Optometrists in particular, should be wary of providing patients with clinical advice by email (or even letter) in lieu of a physical examination. There is the possibility that the patient may misunderstand the advice and there are also inherent risks in providing such advice when a physical examination is not possible. Written communication cannot substitute an in-person consultation.

¹ Rule 5, Health Information Privacy Code of 2020 (www.privacy.org.nz)

- (13) Practitioners need to be confident that a physical examination would not add critical information before providing treatment or advice to a patient, and must be prepared to defend that position, with evidence, in the event of a subsequent complaint or legal proceedings.

Second opinion considerations

- (14) Providing a colleague with a second opinion on an emailed retinal photograph, for example, is very different to providing a patient with direct advice about the same photograph.
- (15) A second opinion is provided to a professional peer who will assimilate that advice into the other clinical information they have gathered. Advice given directly to a patient without a complete picture of the patient's medical history or of any other examination findings may lead the patient to misunderstand the current status of their ocular health, and this can have serious consequences for the patient.

(C) Use of internet for information

- (16) Patients may wish to discuss information about their conditions and/or treatment options available obtained from the internet with their practitioner. Whilst the practitioner should not discourage their patient from using the internet for such research, the practitioner should take the opportunity to advise their patient that internet research cannot take the place of an in-person consultation and that material on the internet may be of varying quality. It may be that information obtained from the internet is of poor quality and/or creates certain expectations, and in such cases practitioners must take care to provide their patient with sound reasons as to why they should reject some or all of the information and, where possible, provide documentation to support any alternative advice or treatment that they are recommending.
- (17) Practitioners using the internet as a source of information must also take into consideration the varying quality of information available and ensure that the information they are sourcing is from a reliable source.

(D) Use of Social Media

- (18) Be aware of confidentiality and privacy obligations (for example, do not discuss patients or post pictures of procedures, case studies, patients, or sensitive material which may enable patients to be identified without having obtained consent in appropriate situations).
- (19) Present information in an unbiased, evidence-based context.
- (20) Do not viewing, downloading or posting pornographic, obscene or discriminatory material.
- (21) Do not make unsubstantiated claims.
- (22) Be aware of blurring professional and private boundaries and keep personal social media for personal contacts. Patients should be encouraged to follow the practice social media rather than the practitioner's personal account.
- (23) Be accountable for what you post or write online and avoid bringing the profession into disrepute. Practitioners need to maintain professional standards at all times, even on seemingly anonymous fora.

- (24) Practitioners must not to use social media to post online any information that may influence any regulatory proceedings or investigations.
- (25) To be aware of any potential criminal or civil proceedings that could be taken in the event of any unlawful activity related to the social media site.
- (26) Social media should not be used to post personal or derogatory comments about patients or colleagues. It is important to ensure your on-line conduct is always consistent with your professional obligations.
- (27) Remember to be appropriate when engaging in communication through social media. Inappropriate information or contact may breach professional ethics which could result in violating professional boundaries
- (28) If an employee or third party represents you as the practitioner online, it is important that you provide them with clear guidance on how to adhere to the Boards guidelines set out in this document. Failure to do so may leave you as the practitioner liable and therefore in breach of the guidelines.

(E) Prescriptions for medicines

- (29) Under section 39 of the Medicines Regulations 1984 (the Regulations), an Optometrist (who may prescribe) is not permitted to prescribe medication to an individual unless it is for the treatment of a patient under his or her care. In the Board's view, for a patient to be "under his or her care", an Optometrist must have had an in-person consultation with the patient or have discussed the patient's treatment with another Optometrist (or medical practitioner/Ophthalmologist) who can verify physical data and identity. Optometrists may therefore only prescribe medication when they have had an in-person consultation with a patient or have discussed the patient's treatment with another Optometrist (or medical practitioner/Ophthalmologist) who can verify physical data and identity.

Prescription requirements

- (30) Because sections 40-41 of the Regulations require that a prescription must be legibly and indelibly printed and personally signed by the prescriber with their usual signature (not a facsimile or stamp). A prescription issued only by email does not meet Aotearoa New Zealand legislative standards, except where this is in compliance with a waiver issued by the Director-General of Health.

Requirements for electronic transfer of patient information

- (31) Where a practitioner receives a request from another practitioner for electronic transfer of patient information, and where patient details such as full name and date of birth are provided, the practice holding the information should disclose it unless they have reasonable grounds for believing that the individual does not wish the information to be disclosed. If the practitioner who holds the information has genuine doubts, on reasonable grounds, about the *bona fides* of the request, they should request written consent from the patient to release that information to the practice.

(32) If a prescription is electronically transmitted from one practice to another, before advising or treating a patient the practitioner must confirm to their satisfaction the identity of the patient.

(F) Prescriptions for optical appliances

(33) In the event that a patient has an eye examination and/or obtains a prescription for glasses from one practice and goes to another to have their prescription filled, advice or treatment to the patient in that location must meet the same standards as care provided in the initial in person consultation. The practitioner is responsible for the evaluation of the information received and if information required to make a fair assessment is not present, advice or treatment should not be given without obtaining further information either from the relevant practice or from another eye examination.

(34) In the event that a patient has an eye examination and/or obtains a prescription for glasses and / or contact lenses and then orders them on the internet, the practitioner is responsible for the suitability of the prescription but not for the accuracy or fitting of the final product.

Acknowledgments

- Medical Council of New Zealand
- Dieticians Board
- Podiatrists Board

Related statements

- Statement on release and receipt of patient information
- Guidelines on the maintenance of professional boundaries
- Board standards of ethical conduct

*Approved by the Board: February 2019
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