National Council of
Women of New Zealand
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Wahine O Aotearoa

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Submission to the Medical Council on the Disclosure of Harm

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 nationally organised societies. It has 33 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action. NCWNZ has a longstanding history of encouraging the promotion of social and health issues, particularly as they affect women.

Members of the Health Standing Committee and other interested parties were asked for their input into this document. The following is a summary of their comments.

General Comments

These guidelines regarding the disclosure of harm are to be commended. As is usual with documents produced by the Medical Council, this draft was clear and used language that was easy to understand. We note however, that there is no distinction made between Medical Error and Medical Misadventure. It may be appropriate to look at this terminology in light of the outcomes of the recent review of the ACC Medical Misadventure discussion document. The use of standardised and well-defined terms should prevent confusion in the public's understanding.

NCWNZ recognise that the public still look to 'blame' someone, often a doctor, when things go wrong. There is also a public perception that when things do go wrong the medical profession will close ranks. This perception has been reinforced in recent years by some well-publicised cases. Some respondents state that at morbidity meetings all health professionals present learn from others' mistakes. This is commendable, but if patients are still treated as outsiders, then the harm has not been satisfactorily dealt with for all parties. It is for this reason that NCWNZ agree that the time has come for a document such as this Draft to be brought to wider public attention. News media play an important role in shaping public opinion and for this reason there needs to be more cooperation with the media to ensure the public has a better understanding of what has happened when someone is harmed.

As health teams become larger and treatment more specialised and fragmented, it is important that the lead doctor should know the health professionals treating the patient. Most patients having sought treatment expect that they will be made better than they were before treatment. It is vital, therefore, that the public is educated about the risks of adverse reactions to medication and the harm that may be associated with some treatments. To minimise risks patients must also accept some responsibility for their own health, e.g. stopping smoking, losing weight, following medical advice.

One member has indicated that in her readings the incidence of harm has been reported as high as 10 -16% in Australia and the USA rather than the, "approximately 3-10% of all hospital admissions" noted in this Draft.

Specific Comments

Attributes of Harm
Rigorous investigation procedures should be implemented as they are in some British and American hospitals. The procedures should involve inclusion, consultation and full disclosure. The results of the investigation should be made available to all staff involved and those to whom the harm has occurred, together with their families, where appropriate, and support people where requested.

NCWNZ suggests that there should be a range of scopes of investigation depending on the extent of harm that has occurred. There needs to be a balance between the extent of the investigation, including the number of people involved, and the degree of harm. NCWNZ is concerned about resourcing (people, time and money) of the investigative and disclosure process. It should be adequate to achieve the objectives but should not compromise other services.

Accepted Risks of Treatment
NCWNZ believes that discussion regarding the accepted risks associated with treatment should where ever possible take place with at least one other person present in a support capacity, particularly when the treatment and/or the risks may be considerable. This discussion should start as soon as possible but may have to be done in stages as many people may become overwhelmed by the details of the treatment options and the associated risks. By taking some time all parties will have time to sort out any outstanding questions before treatment commences.

It should be remembered that some patients are not interested in potential risks; they simply want the treatment. In such circumstances, and if possible a support person/relative should be informed of the risks having been given the permission of the patient to discuss this.

Purpose of open disclosure
The purpose is clearly spelled out and makes accountability more transparent. NCWNZ agree with the purpose and that it "is not about attributing blame." Open disclosure together with open discussion of risks should also help to dispel the popular misconception that treatments are without risk.

NCWNZ accepts that open disclosure will be 'voluntary'. It is probable that institutions will be more proactive in ensuring that the process for disclosure of harm is followed in the majority of cases. Practitioners in small practices may require education and support to ensure compliance. It is not clear, however, how high levels of compliance will be achieved if there is still a significant risk of disciplinary action or even prosecution.

Expectations of open disclosure
Patients will generally cope if the truth is brought forward in honest, straightforward terms. This may have to be done in stages, as the main focus for the patient, at this time, is recovery. There also needs to be time allowed for the investigation of the events that contributed to the harm.

NCWNZ believe that medical professionals and others need to have training that will help them cope with any negative reactions. Open disclosure will also reinforce to doctors and other medical professionals that although they have high ethical standards and professional capabilities, they are human also. It is easier to live with the disclosure of a mistake and remedying that to the best of their ability than trying to live under a cloud of doubt and suspicion. Colleagues and others will also have to learn that it could happen to them and not to be overly censorious. In hospitals and

other health establishments, it is essential that any problems are dealt with appropriately and transparently as rumour and gossip are very harmful.
Whatever has happened the most important element is that all learn from the experience, including management and administrative staff. Other staff who might encounter similar situations also need to be informed. If a system or procedural failure has occurred it must be remedied as soon as practicable. When new or revised systems and/or procedures are implemented appropriate information/training must be provided.

What should happen before disclosure of harm?
NCWNZ strongly agree with the point raised in section 15, that "it may be more appropriate for the initial disclosure as soon as practical, with a more detailed discussion with the patient to follow once the team has had an opportunity to meet and assess the circumstances that led to the patient being harmed."

NCWNZ would suggest that as well as the immediate treatment team an independent person or team of persons should assist with the investigation, depending on the seriousness of the harm caused. They should have access to all information they deem relevant to such an investigation. The independent investigator(s) should have no connection to supply, accounting or insurance companies providing services to the establishment. It is vital that there is no covering up of problems.

Disclosing harm to the patient
NCWNZ support the idea that, "the senior doctor responsible should disclose the harm to the patient." It may on occasions be useful to have other members of the team present depending on their degree of involvement when the harm occurred, as it enables credibility to be established. Hospital administrative staff or management can't answer for medical matters and are more likely to appear to be protecting institutional interests.

Documentation is often the most poorly done aspect of any investigation. Doctors and any investigation team need to ensure that they are quite clear on their obligations regarding this and take care that it is unambiguous.

The patient's reaction to the disclosure needs to be documented, including what questions were asked and the responses given. NCWNZ understands that patients may not fully comprehend the nature of the harm and its long-term effects on first disclosure of it. NCWNZ suggests that it might be useful to have a support person present at the time of the disclosure. It should be recognised that the patient and any support person may need time to assimilate the facts disclosed.

NCWNZ endorses the need for support as outlined in section 17.

Support for doctors
While most of this document discusses the concern for the patient who has suffered harm there are likely to be problems that arise for medical personnel. When harm has occurred to a patient there may be a tendency to look for practitioner error first, however the problem may have been system error.

NOTES
NCWNZ believes that disclosure must be for the patient's benefit and a learning process for the practitioner and others included in the treatment of the patient. Insurers must not be allowed to compromise the free disclosure of information.

NCWNZ thank you for this opportunity to make comment and we look forward to viewing the final document.

Beryl Anderson
National President

Catherine Gurnsey
Convenor, Health Standing Committee