

2 March 2012

Nursing Council of New Zealand
Level 12, Mid City Tower
139 – 143 Willis Street
WELLINGTON

Draft Code of Conduct for Consultation

Thank you for the opportunity to comment on the Nursing Council of New Zealand's Draft Code of Conduct (the Code of Conduct). I commend the Council for its work in developing the Code of Conduct, and trust that the following comments are of assistance.

I support the arrangement of the Code of Conduct around the values of respect, trust, partnership and integrity, and the seven principles which form the framework for the Code. These values and principles are well correlated to the underlying values and principles of the Code of Health and Disability Services Consumers' Rights 1996 (the Code of Rights), and I believe that this consistency between the two Codes is not only helpful, but also very important.

Definition of terms

The term "health consumer" is used throughout the document and, as indicated by the definition section, "is intended to represent terms such as patient, client, resident or turoro". In my view, use of the term "health consumer" does not adequately reflect that many registered nurses are also providing services within the disability sector, where such consumers are more appropriately referred to as "disability services consumers". I suggest you consider using an alternative term such as "consumer" to describe all consumers to whom nurses will be providing services in accordance with the Code of Conduct.

Values underpinning professional conduct

The first value, respect, is explained in the document as follows:

"Treating health consumers, families and colleagues with respect enables nursing relationships that support health consumers' health and wellbeing. Respect means valuing the worth and dignity and uniqueness of oneself and others. It is a fundamental requirement of professional nursing relationships and ethical conduct."

I note that "treating" a consumer, family member or colleague with respect requires more than "valuing" that person's worth, dignity and uniqueness. Respect is as much about a manner of behaving, as well as an attitude. As you are aware, Right 1(1) of the Code of

Rights provides that “Every consumer has the right to be treated with respect”. I suggest you consider rewording the explanation of the value of “respect” as follows:

“Treating consumers, families and colleagues with respect enables nursing relationships that support health consumers’ health and wellbeing. Treating someone with respect means behaving towards that person in a way that values their worth, dignity, and uniqueness. It is a fundamental requirement of professional nursing relationships and ethical conduct.”

The third value, partnership, is explained in the document as follows:

“Partnership occurs when health consumers make informed choices and are included in decision making about their care ...”

A consumer needs to be more than just included in decision making in order to make an informed choice. Informed consent is a process, which comprises a number of components including competence, disclosure, understanding, voluntariness and consent (as embodied by Rights 5, 6 and 7 of the Code of Rights). I suggest you reword this sentence so it is consistent with the Code of Rights, for example:

“Partnership occurs when consumers are given sufficient information, in a manner they can understand, in order to make an informed choice about their care and treatment, and are fully involved in their care and treatment ...”

Guidance: Establishing relationships of trust with health consumers

The Guidance includes the following statement:

“Working in **partnership** includes listening to them and responding to their concerns and preferences and giving them the information and respecting their right to reach decisions about their care and treatment.”

I note that, while it is important to listen to and respect a consumer’s concerns and preferences, it may not always be practicable to respond favourably to a consumer’s preferences. There is a risk that the current wording could be read as imposing that obligation. Right 7(8) of the Code of Rights caveats the right of consumers to express a preference as to who will provide services and the right to have that preference met with the condition “where practicable”. I suggest you consider whether similar wording should be used in this guidance statement in order to avoid creating a standard that may, at times, be unachievable. This comment also applies to standard 1.2 under Principle 1 “Respect the dignity and individuality of health consumers”.

I also note in regards to this guidance statement that the reference to “the information” is rather vague. Elsewhere in the document, reference is made to giving consumers the information they need or want. The guidance statement may be more useful if it provides greater detail here about what it means by “the information”, and I suggest consideration be given to wording that is consistent with Right 6 of the Code, being “the information that a reasonable consumer, in that consumer’s circumstances, would expect to receive”.

I also suggest the guidance statement note that the information should be provided in a form and manner appropriate to the particular health consumer. The right to effective

communication is an important aspect of the provider/consumer partnership and of the right of a consumer to be fully informed and give informed consent. The right to effective communication is currently not specifically reflected in this guidance statement.

Principle 1: Respect the dignity and individuality of health consumers

Standard 1.3 in Principle 1 provides:

“Work in partnership with the family of the health consumer and be respectful of their role in the care of the health consumer.”

Partnering with, and involving, family members is important, particularly where family members are involved in the care of the health consumer, or where the consumer requests that their family be involved. However, it may not always be appropriate to involve family members, for example, where the consumer specifically requests the family not be involved. Currently the document does not reflect that there may be circumstances where it is not appropriate to involve family members in a health consumer’s care and treatment. Accordingly, you may wish to reword this standard to:

“Work in partnership with the family of a health consumer *where appropriate*, and be respectful of their role in the care of the health consumer”.

This comment also applies to other standards and principles in the document that refer to the role of a consumer’s family. In particular, Principle 2.2, which you may wish to consider rewording to:

“Respect health consumers’ rights to participate in decisions about their care and involve them and their families, *where appropriate*, in planning care. The concerns, priorities and needs of the health consumer and family, *where appropriate*, must be elicited and respected in care planning.”

Standard 1.8 in Principle 1 provides:

“You have a right not to be involved in care to which you conscientiously object. You must inform your colleagues but not impeded access to legal treatment.”

In my view, if a nurse conscientiously objects to providing treatment to a health consumer, the nurse has an obligation to inform the consumer and advise the consumer that he or she can obtain the service from another provider. This is consistent with the High Court of New Zealand’s interpretation of section 174 of the Health Practitioners Competence Assurance Act 2004 which, although restricted to conscientious objection in relation to contraception, sterilization, or other reproductive health services, provides that a health practitioner who conscientiously objects to such services is required to inform the consumer requesting the service that the consumer can obtain the service from another health practitioner.¹

Standard 1.10 in Principle 1 provides:

¹ *Hallagan and New Zealand Health Professionals Alliance Incorporated v Medical Council of New Zealand* HC WN CIV-2010-485-222, 2 December 2010.

“Act immediately if a health consumer has suffered harm for any reason. Explain fully and promptly to the health consumer and family affected, what has happened and the likely effects. Put your concerns in writing if there are problems in the environment of care that put health consumers at risk.”

For reasons set out above, I suggest you reword the Standard to “Explain fully and promptly to the consumer affected, and *where appropriate* the consumer’s family, what has happened and the likely effects”.

While I agree that the policy of open disclosure needs to be endorsed, Standard 1.10 does not adequately reflect that a nurse’s role in the open disclosure process may vary depending on the organisation in which they work and that organisation’s internal policies and procedures, the nurse’s role in the event that caused the harm, and the nurse’s role in the multi-disciplinary team. You may consider rewording Standard 1.10 to reflect this.

Guidance: cultural safety

This guidance provides, among other things, that nurses must “avoid imposing prejudice on others and provide advocacy when prejudice is apparent”. To “provide advocacy” is a rather broad obligation which may be difficult to apply. Standard 2.7 also requires nurses to “advocate for” consumers. I suggest the Code of Conduct provide some guidance as to what is expected from a nurse when a nurse is required to “provide advocacy” or “advocate for” consumers.

Principle 2: Work in partnership with health consumers to promote and protect their interests

Standard 2.1 in Principle 2 provides:

“Explain and share information with health consumers in ways that are affirming and useful. Give health consumers information they want or need in a way they can understand and invite questions.”

It is not clear what is meant by the word “affirming”, and further clarification of this standard would be useful. I also note that, to be consistent with Right 6 of the Code of Rights, the standard should be to provide consumers with information they want *and/or* need – the provisions are not mutually exclusive as suggested by wording the statement “want *or* need”. Indeed, as noted above, to be consistent with the requirements of Right 6 of the Code of Rights, it would perhaps be more accurate if the statement read:

“Give consumers the information that a reasonable consumer, in that consumer’s circumstances, would expect to receive, and that they need, in order to make an informed choice and give informed consent. Information should also be provided in a way that they can understand and enables them to ask questions, as necessary.”

Standard 2.4 in Principle 2 provides:

“Meet health consumer’s language and communication needs”.

For the reasons outlined above under “Guidance: Establishing relationships of trust with health consumers”, it may not always be possible to meet a consumer’s language needs,

despite the best endeavors of the nurse. This may happen, for example, in emergency circumstances. Right 5(1) of the Code of Rights provides that:

“Every consumer has the right to effective communication in a form, language, and manner that enables the consumer to understand the information provided. Where necessary *and reasonably practicable*, this includes the right to a competent interpreter”.

Consistent with the Code of Rights, you may wish to consider including the terms “reasonably practicable” when requiring a nurse to meet a consumer’s language needs, to avoid creating a standard that may, at times, be unachievable.

Standard 2.5 in Principle 2 provides:

“Where a health consumer is unable or unwilling to decide or speak independently ensure their perspective is represented by an appropriate advocate.”

I note that “advocate” is not defined in the draft Code of Conduct and so the requirements of this standard are somewhat unclear. Right 7(4) of the Code of Rights sets out the steps a provider must take before providing services to a consumer who is not competent to make an informed choice and give informed consent. I recommend you consider rewording Standard 2.5 to be consistent with Right 7(4) of the Code of Rights, so that the professional guidance to nurses in the Code of Conduct is consistent with their legal obligations.

I note that Principle 2 of the draft Code of Conduct does not include a specific provision relating to an obligation to provide honest and accurate information in relation to nursing care. This is a provision that is included in the Australian Nursing and Midwifery Council Code of Professional Conduct for Nurses in Australia. Right 6(3) of the Code of Rights also provides that consumers have the right to honest and accurate answers to questions relating to services. Honesty and accuracy of information are two important aspects of building a trusting relationship between nurse and consumer, and a relationship which allows both nurse and consumer to work in partnership. Accordingly, you may wish to consider including a specific standard within Principle 2 that addresses this.

Guidance: Working with Māori to improve health outcomes

This guidance requires nurses to “incorporate models of Māori health”, “facilitate equality of access and opportunities for Māori and non-Māori” and “pursue equality in health outcomes”. It is difficult to give effective meaning to these broadly expressed requirements when considering an individual nurse’s obligations, and I suspect that maintaining these ideals may often be outside the control of an individual nurse. I suggest Council give thought to expressing these requirements in a way that is perhaps more relevant to individual nursing practice.

Principle 3: Provide safe and competent care

Standard 3.7 of Principle 3 provides, “Deliver care based on best available evidence or best practice.” Best practice is informed by evidence, and in my view, best practice should be consistent with the best available evidence – the concepts are not alternatives as suggested by use of the word “or”. Accordingly, I suggest you reword Standard 3.7 to read, “Deliver care based on best available evidence *and* best practice.”

Principle 4: Respect health consumer privacy and confidentiality

I note that this principle focuses solely on information privacy. I suggest you give consideration as to whether it would be appropriate to also include standards to guide nursing obligations in respect of physical privacy.

Principle 6: Act with integrity to justify health consumer trust

Standard 6.7 in Principle 6 provides:

“Your practice should not be compromised by the use of alcohol or drugs.”

I suggest Council give consideration to a more stringent standard in this regard. Council may wish to consider the wording of the Australian Nursing and Midwifery Council Code of Professional Conduct for Nurses in Australia which provides:

“Nurses practise in a safe and competent manner that is not compromised by personal health limitations, including the use of alcohol or other substances that may alter a nurse’s capacity to practise safety at all times.”

Principle 7: Maintain public trust and confidence in the nursing profession

Standard 7.9 in Principle 7 provides:

“Do not use your professional position to promote or sell products or services for personal gain.”

It is unclear how this Standard relates to a nurse employed to sell or promote particular therapeutic products, particularly on a commission basis. Surely, the important point is not the sale or promotion of particular products, but that a nurse’s personal interests in doing so do not override the best interests of the consumer. I suggest you consider providing greater clarity on this point in Standard 7.9.

Related documents

I recommend that in the list of related documents you specifically reference the Code of Health and Disability Services Consumers’ Rights 1996, the legal basis for patient rights in New Zealand, rather than just the educational pamphlet “Your Rights When Using a Health or Disability Service in New Zealand and How to Make a Complaint”.

Provider compliance clause

Clause 3(1) of the Code of Rights provides:

“A provider is not in breach of this Code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties, in this Code.”

“The circumstances” is defined in Clause 3(3) to mean, “all the relevant circumstances, including the consumer’s clinical circumstances and the provider’s resource constraints”. This Clause recognises that, on occasion, despite the best efforts of a provider, it may not always be possible to comply with the requirements of the Code of Rights. I suggest Council consider whether a similar rider be placed on the requirements in the Code of Conduct, because there will be circumstances where compliance is simply not possible.