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**Medical Board of Australia**
medboardconsultation@ahpra.gov.au

Dear Executive Officer,

**Re: Draft revised guidelines 'Sexual boundaries in the doctor-patient relationship'**

We write as representatives of the intersex community and from peer-led intersex organisations.

Morgan Carpenter is a co-executive director of the national intersex-led Public Benevolent Institution, OII Australia.[1] He is also a signatory of the *Yogyakarta Principles plus 10* on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics.[2] OII Australia promotes the human rights and bodily autonomy of people born with intersex variations/variations in sex characteristics.

Bonnie Hart is an intersex women and president of the AIS Support Group Australia,[3] a national organisation that delivers peer support and advocacy for individuals with intersex variations and their families. She has been a public advocate for intersex rights and meaningful inclusion since the documentary she made with her sister, *Orchids: My Intersex Adventure,*[4] was first screened on ABC in 2010. Bonnie provides personalised peer support and in-hospital patient advocacy services to people with any variation in sex characteristics and their families. She also sits on several state level steering committees and expert reference groups, regularly participating in policy review for organisations and government departments.

Intersex variations (often contentiously termed "disorders of sex development" in clinical settings) relate to personal sex characteristics, and so these guidelines are of particular concern to us and our members and constituencies. We are pleased to have the opportunity to respond to the public consultation paper on the draft guidelines on sexual boundaries in the doctor-patient relationship, and we welcome the principles established in the document. In particular, we warmly welcome the acknowledgement:

[1] http://oii.org.au
[2] Yogyakarta Principles. The Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics, to Complement the Yogyakarta Principles [Internet]. 2017 [cited 2017 Nov 21]. Available from: http://www.yogyakartaprinciples.org/principles-en/yp10/
[3] http://aissga.org.au
[4] http://www.orchids-themovie.com

*that unnecessary physical examinations may constitute sexual assault or abuse. This includes conducting or allowing others, such as students, to conduct examinations on anaesthetised patients, when the patient has not given explicit consent for the examination (page 3)*

Genital examinations are often a precursor to surgical intervention, and they are typically deemed to be required following surgical interventions. In relation to this, the Yogyakarta Principles plus 10 enable necessary procedures to be distinguished from unnecessary procedures:

*Everyone has the right to be free from torture and cruel, inhuman and degrading treatment or punishment on the basis of sexual orientation, gender identity, gender expression and sex characteristics. No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person.*[2]

The Principles identify the following State obligations that are relevant to these guidelines, including pre- and post-surgical examinations, and other examinations:

*A. Guarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination*
*B. Ensure that legislation protects everyone, including all children, from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics*
*C. Take measures to address stigma, discrimination and stereotypes based on sex and gender, and combat the use of such stereotypes, as well as marriage prospects and other social, religious and cultural rationales, to justify modifications to sex characteristics, including of children*
*D. Bearing in mind the child's right to life, non-discrimination, the best interests of the child, and respect for the child's views, ensure that children are fully consulted and informed regarding any modifications to their sex characteristics necessary to avoid or remedy proven, serious physical harm, and ensure that any such modifications are consented to by the child concerned in a manner consistent with the child's evolving capacity;*
*E. Ensure that the concept of the best interest of the child is not manipulated to justify practices that conflict with the child's right to bodily integrity;*
*F. Provide adequate, independent counselling and support to victims of violations, their families and communities, to enable victims to exercise and affirm rights to bodily and mental integrity, autonomy and self-determination;*
*G. Prohibit the use of anal and genital examinations in legal and administrative proceedings and criminal prosecutions unless required by law, as relevant, reasonable, and necessary for a legitimate purpose.*[2]

We have concerns, however, at numerous omissions and gaps:

1. The nature of medical indications, and the scope of parental consent are not discussed in any detail. This vagueness about clinical indications facilitates over-examination. Patients and parents will not often be aware of the necessity or lack of necessity of medical examinations, particularly given that intersex variations by definition relate to sex characteristics. Individuals may not realise that they should not have to submit to genital examinations, or examinations of secondary sex characteristics, on *every* visit; the degree or invasiveness of an examination may not be warranted, or their frequency may not be warranted; patients and guardians may not realise that they do not have to agree to student or unnecessary examinations in order to maintain a positive doctor-patient relationship.

2. Intersex variations are often perceived to be individually rare and of particular interest to clinicians, and to student doctors. This rationale should never be used as a justification for genital and related examinations as such examinations are otherwise unnecessary. The necessity and nature of all persons present during an examination must always be disclosed prior to an examination, with the subject providing personal consent for each person present. Similarly, the historical mention of a congenital variation in sex characteristics on someone's medical records should not be sufficient reason to prompt unwarranted lines of questioning about a person's genitals or current sexual function.

3. Medical photography is not mentioned, but should be included within the scope of the guidelines.[5] Medical photography has historically served to other and dehumanise intersex subjects; it has been the cause of distressing events at the time photographs were made, and at subsequent discovery or disclosure. Medical photographs of children's genitalia and other sex characteristics should not be taken or shared, for any reason.

4. No mention is made of genital sensitivity tests, while clinical reports suggest that vibration and touch sensitivity tests may take place in Australia on individuals subjected to early genitoplasties before they are old enough to consent.[6] The necessity of such testing is dubious and should be prohibited by these guidelines.[7]

5. The problematisation of intersex characteristics is associated with a sexualisation of children, and often an expectation that children should grow up to be hetersexual and cisgender (identify with sex assigned at birth), with a functional capacity for heterosexual intercourse. Thus, a 2016 Family Court case mentions how a 5-year old child may need further surgery to make her body capable of heterosexual intercourse, subsequent to a

[5] Creighton S, Alderson J, Brown S, Minto C. Medical photography: ethics, consent and the intersex patient. BJU International. 2002;89:67–72.
[6] Villegas R, Morris A, Bogdanska M, Grover S. Congenital adrenal hyperplasia (CAH) in Melbourne: Surgical timing and complications, with outcomes including body image and genital sensation in a cohort study. 5th I-DSD Symposium; 2015 Jun 11; Ghent, Belgium.
[7] Dreger A. The Cutting and the Vibrators Continue [Internet]. 2015 [cited 2015 Nov 15]. Available from: http://alicedreger.com/cutting
Dreger A, Feder EK. Bad Vibrations [Internet]. Hastings Center Bioethics Forum Blog. 2010 [cited 2012 May 18]. Available from: http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=4730

clitorectomy and labioplasty described as surgery that "enhanced the appearance of her female genitalia".[8]

6. More generally, the status of the guidelines should be examined to ensure that they provide standards of care that can be enforced.

Thank you for your time and consideration of our concerns. If you require any further explanation on the comments made here, additional information, or would like to engage our organisations in further dialogue around how to make medical services and experiences safer and more beneficial to all people, irrespective of their sex characteristics, please contact us directly.

Yours sincerely

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[8] Re: Carla (Medical procedure) [2016] FamCA 7 (20 January 2016)