

## Workplace bullying and harassment

### Information and support

#### Introduction

There is good evidence that disruptive behaviour, inappropriate behaviour and harassment occurs in the medical workplace. A New Zealand study reported that 50% of house officers and registrars had experienced at least one episode of bullying behaviour during their previous three or sixth-month clinical attachment.<sup>1</sup> An Australian study found that 50% of junior doctors had been bullied in their workplace.<sup>2</sup> International research has shown that bullying in the healthcare profession is not associated with specialty or sex; it appears that bullying is endemic and occurs across all specialties and at all levels of seniority although it is fair to say that where bullying occurs it is more common to be by a more senior employee over a more junior one<sup>3</sup>. Examples of bullying could be a registrar that bullies a medical student or a charge nurse that bullies an enrolled nurse<sup>4</sup>.

Behaviour that is disruptive to patient care and ideal workplace conditions can occur between colleagues, students and employees, and any contractors, patients, and family members with whom they are dealing.

The aims of this resource are to:

- provide a guide for all doctors, medical students, hospital and practice managers to identify and manage workplace bullying and harassment,
- raise awareness and reduce the exposure of doctors and medical students to workplace bullying and harassment, and
- assist the medical profession in combating its perpetuation.

#### Definition

The Equal Employment Opportunities Trust defines **harassment** as “any unwelcome comment, conduct or gesture that is insulting, intimidating, humiliating, malicious, degrading or offensive”. It might be repeated or an isolated incident but it is so significant that it adversely affects someone's performance, contribution or work environment. It can include physical, degrading or threatening behaviour, abuse of power, isolation, discrimination, sexual and/or racial harassment. Harassment is behaviour that is unwanted by the recipient even if the recipient does not tell the harasser that the behaviour is unwanted.

The Employment Relations Authority has offered the following definition of bullying:

*“The concept of bullying has not been defined in a legal sense because it is a difficult concept. Bullying is about behaviours that are repeated and carried out with a desire to exert*

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<sup>1</sup> Scott J, Blanshard C, Child S. Workplace bullying of junior doctors: a cross sectional questionnaire survey. NZMJ 2008;121(1282):10-15.

<sup>2</sup> Rutherford A, Rissel C. A survey of workplace bullying in a health sector organisation. Aust Health Rev 2005;28(1):65-72.

<sup>3</sup> Workplace bullying in NHS community trust: staff questionnaire survey” Quine, L, *BMJ* 1999;318:228-232 ( 23 January )

<sup>4</sup> <https://www.nzma.org.nz/journal/117-1204/1125/>

*dominance and an intention to cause fear and distress. The behaviours usually include elements of personal denigration and disdain of the person subject to it. It is intended to control the behaviours or actions of its target in particular ways.*

*“Bullying usually refers to behaviour of an employer to an employee, between two or more employee's [sic] and occasionally even by an employee towards a supervisor or manager. Criticism or feedback from an employer is not bullying although it might become so because of the manner or purpose of its delivery or a particular vulnerability of the recipient.”<sup>5</sup>*

Such behaviours include but are not limited to:

- physical violence and intimidation
- vexatious reports and malicious rumours
- verbal threats, yelling, screaming, sarcasm, offensive language or inappropriate comments
- excluding or isolating employees (including assigning meaningless tasks unrelated to the job or giving employees impossible tasks or enforced overwork)
- deliberately changing work rosters to inconvenience particular employees
- undermining work performance by deliberately withholding information vital for effective work performance
- inappropriate or unwelcome sexual attention
- demands for special treatment
- not discussing issues with colleagues in a cordial or respectful manner
- racial or ethnic slurs

It is necessary to distinguish the difference between the essential interaction of a manager/employee (or supervisor/trainee) and bullying. In this respect it is important to support and acknowledge a manager or supervisor's responsibility to deal with any performance problems of an employee or trainee, by providing constructive feedback in a positive and professional manner.<sup>6</sup> Personal conflict between colleagues may not necessarily be unprofessional behaviour and must be acknowledged in that context.

### **Impact of workplace bullying**

Inappropriate behaviour can compromise patient care and contribute to adverse outcomes<sup>7</sup>.

Workplace bullying contributes to poor employee/student health including the physical and psychological manifestations of stress and depression.<sup>8</sup> There is an increased risk of error by medical staff in this environment; if others avoid health professionals who exhibit this behaviour, it in turn makes effective communication and patient care difficult. A survey of a funded counselling service for doctors in New Zealand found bullying was one of the specific events that led to doctors utilising the service.<sup>9</sup>

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<sup>5</sup> Isaac v Chief Executive of the Ministry of Social Development 05/06/08, V Campbell (member) AA 200/08

<sup>6</sup> Code of Practice, Violence, Aggression and Bullying at Work. Commission for Occupational Safety and Health (Western Australia) 2006.

<sup>7</sup> Medical Council of New Zealand. Unprofessional behaviour and the health care team. Protecting patient safety. August 2009

<sup>8</sup> Olsen H, Needham A. Workplace bullying- an overview [presentation]. 2003.[accessed 2 Jan 2010].

<sup>9</sup> Cunningham W, Cookson T. Addressing stress related impairment in doctors. A survey of providers' and doctors' experience of a funded counseling service in New Zealand. NZMJ 2009 Aug 7;122(1300):19-28.

Workplace bullying may affect medical students, RMOs, senior specialists and other health professionals. Workplace bullying and harassment may impact on the training and education of medical students and doctors. It creates a poor learning environment due to the continued erosion of confidence, skills and initiative of the student/doctor, thereby creating a negative attitude towards their chosen specialty.<sup>10</sup> This unprofessional behaviour may subsequently be learnt and displayed by students in their careers.

The combination of RMO workloads and training hours make RMOs particularly vulnerable to stress and associated ill-health issues.<sup>11</sup> These factors combined with social, geographical and professional isolation can make RMOs more susceptible to the effects of bullying.

### **Cost**

The costs of workplace bullying can be direct and indirect in nature. Direct costs include absenteeism, greater staff turnover, and higher rates and cost of illness, accidents and disability. Indirect costs include diminishing staff performance/productivity, reduced staff morale and reduced quality of patient care. Resources are also taken in further recruitment.

### **The legal framework**

Workplace bullying and harassment is against the law.

The Health and Safety in Employment Act 1992 requires that employers take all practical steps to ensure the safety of employees while at work. Workplace stress has been accepted by the Courts as a workplace hazard which the employer is responsible for<sup>12</sup>. In 2003 the Act amended the definition of “hazard” so that it now provides as follows:

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- (a) means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation or substance (whether arising or caused within or outside a place of work) that is an actual or potential cause of harm; and
- (b) includes:
  - (i) a situation where a person's behaviour may be an actual or potential cause or source of harm to the person or another person; and
  - (ii) without limitation, a situation described in subparagraph (i) resulting from physical or mental fatigue, drugs, alcohol, traumatic shock, or other temporary condition that affects a person's behaviour.

The amendment means that the employer may now be liable for workplace bullying. This may include general bullying such as assault and abusive language, and management bullying<sup>13</sup>.

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<sup>10</sup> AMASurvey report on Junior Doctor health and Wellbeing. Australian Medical Association (2008):9.

<sup>11</sup> Di Martino V (2003) Workplace violence in the health sector: relationship between work stress and workplace violence in the health sector. Geneva: ILO

<sup>12</sup> Gilbert v Attorney General in respect of the Chief Executive of the Department of Corrections [2000] 1 ERNZ 332 (EC); Attorney General v Gilbert [2002] 1 ERNZ 31 (CA).

<sup>13</sup> Brookers Employment Law, Health and Safety in Employment Act 1992 2.20.03(2)

Section 21 of the Human Rights Act 1993 sets out certain prohibited grounds of discrimination. These are:

- (a) Sex, which includes pregnancy and childbirth
- (b) Marital status
- (c) Religious or ethical belief
- (d) Colour
- (e) Race
- (f) Ethnic or national origins
- (g) Disability (including physical or mental)
- (h) Age
- (i) Political opinion,
- (j) Employment status,
- (k) Family status,
- (l) Sexual orientation.

Under that Act it is an offence in relation to employment —

- (a) To refuse or omit to employ the applicant on work of that description which is available; or
- (b) To offer or afford the applicant or the employee less favourable terms of employment, conditions of work, superannuation or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description; or
- (c) To terminate the employment of the employee, or subject the employee to any detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subjected to such detriment; or
- (d) To retire the employee, or to require or cause the employee to retire or resign;

— by reason of any of the prohibited grounds of discrimination<sup>14</sup>.

Sexual harassment is expressly prohibited under section 62 of that Act.

Finally section 103 of the Employment Relations Act 2000 provides the employee with the ability to take a personal grievance action against the employer in relation to bullying or harassment where it can be shown that the

- (a) employee's employment, or 1 or more conditions of the employee's employment, was affected to the employee's disadvantage by some unjustifiable action by the employer; or
- (b) employee has been discriminated against in the employee's employment; or
- (c) employee has been sexually harassed in the employee's employment; or
- (d) employee has been racially harassed in the employee's employment.

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<sup>14</sup> Section 22 Human Rights Act 1993.

### **Factors behind workplace bullying**

Such behaviour can be the result of many factors including personality or communication skills, health or domestic matters, and work matters. It is important that if there are any concerns regarding the individual's health that appropriate measures are taken to address those concerns.

### **Support and advice**

There are actions and strategies that individual doctors can use to reduce bullying and harassment and their impact. If you believe you are being bullied, the NZMA advises that you:

- Document threats or action taken by the bully.
- Consider whether self management is appropriate i.e. discussing your concerns, feelings and action you wish to be taken with the individual/individuals. The NZMA acknowledges this may not always be possible.
- Discuss your concerns with your supervisor (or someone equivalent if your supervisor is the bully).
- Consider making a formal complaint through your employer/university. Most employers/universities have grievance, occupational health and safety or equal opportunity officers who can assist in accessing the appropriate part of the complaints procedure. If your employer/university does not have a policy, consider using an informal/formal complaint procedure, and
- Seek support from your peer network, colleagues, and other organisations (e.g. your employer's Employee Assistance Programme), who can give you advice on your options and rights and some of which may act on your behalf.
- Consider making a formal complaint through the appropriate college or New Zealand Medical Council.
- Consider your legal remedies such as taking a personal grievance action, or lodging a complaint with the Human Rights Commission.

### **Acknowledgements**

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## **Need more help?**

**Contact the NZMA:**

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