

15 March 2023

Medical Board of Australia

By email: medboardconsultation@ahpra.gov.au

Dear Sir/Madam

Introduction

Thank you for the opportunity to make a submission to Medical Board of Australia's public consultation on the *Draft revised guidelines: Telehealth consultations with patients* (14 December 2022).

About the author

I am a Senior Lecturer specialising in health, law and emerging technologies at Melbourne Law School, and the Centre for Digital Transformation of Health, The University of Melbourne. My specific interest in this area relates to privacy and surveillance associated with the use of telehealth services. More information is available at <https://law.unimelb.edu.au/about/staff/megan-prictor>. The opinions in this submission are mine alone and should not be taken to represent the views of the University of Melbourne.

Summary of key points

1. The Guidelines should explicitly address the privacy and safety of patients using telehealth services.
2. The Guidelines should explicitly address the use of audio and or video recordings of telehealth consultations by clinicians or by patients.

1. Patient privacy and safety

The draft Guidelines specify, clearly and appropriately, that clinicians should 'have a consultation space that is quiet and free from distractions and does not allow others to hear any audio or view the consultation on screen'. However they do not address in sufficient detail the physical environment of patients and other support persons attending the consultation. There is evidence (White et al., 2022) that patients sometimes engage in telehealth consultations in noisy environments and public places, which may impair their privacy and their ability to concentrate on the consultation. This may be by choice or necessity. In one serious example (see Wade et al., 2012), 'patients in a community dialysis centre...were all in the same room and could overhear teleconsultations with a renal specialist'.

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There are also particular risks attached to telehealth consultations for people at risk of abuse, such as in the context of elder abuse, family violence and coercive control. The telehealth context makes it more difficult for clinicians to be aware of and mitigate such risks.

The Guidelines should explicitly promote clinicians' consideration of patients' physical privacy and personal safety in the telehealth consultation, including the use of a space that is private, quiet and free from distractions. The Guidelines should also address more explicitly the need for clinicians' to be aware of who may be listening in to consultations.

2. Audio and video-recording

There is evidence that many patients record healthcare consultations covertly (Adams, 2017; Elwyn et al., 2015; Tsulukidze et al., 2015), and the likelihood of this may be heightened in the context of telehealth consultations because of the comparative ease of recording in secret. This raises ethical concerns and may be a breach of the law specifically related to the use of a telephone or internet service for telehealth consultations (*Telecommunications (Interception and Access) Act 1979* (Cth) ss 6(1), 7(1); see also Prictor et al., 2021). **The Guidelines should explicitly address the need for consent of all parties to any recording of all or part of a telehealth consultation before any recording is made.**

Thank you for the opportunity to make this submission. I am happy to provide further information or clarification on any aspect of it. I can be contacted by email at [REDACTED] or by phone on [REDACTED].

Yours sincerely

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