Insurance Council of Australia

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Dr Anne Tonkin
Chair
Medical Board of Australia
C/- Australian Health Practitioner Regulation Agency
National Boards
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Dear Dr Tonkin

Regulation of medical practitioners who provide cosmetic medical and surgical procedures

The Insurance Council of Australia **(ICA)**[1] represents general insurers, and in particular medical indemnity insurers[2].

The ICA welcomes the opportunity to participate in the consultation and to provide this submission on the proposed standard and guidelines released by the Medical Board of Australia.

The proposed standard and guidelines, along with other measures such as education, will make a valuable contribution to improving the practice of cosmetic surgery.

This submission seeks to provide constructive input to the development of the proposed standard and guidelines. The submission consists of an overview followed by more detailed responses to selected questions from the consultation form.

Overview

The draft registration standard would benefit from clarification of the criteria and assessment process for an application for recognition of substantially equivalent qualifications.

The proposed guidelines for cosmetic procedures include a requirement for GP referral. The submission identifies a number of issues for consideration, including, application to medical practitioners making a referral, guidance on the purpose of the referral and expectations on GPs, potential for increased medico-legal risk and lack of billability to Medicare.

The proposed guidelines for cosmetic procedures specify requirements for GP referral. Clarification and simplification of the requirements would improve the operation of the guidelines. We suggest clarification of when face to face consultation is required for consent to be given and the role of Telehealth.

[1] The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 89% of private sector general insurers. As a foundational component of the Australian economy the general insurance industry employs approximately 60,000 people, generates gross written premium of $59.2 billion per annum and on average pays out $148.7 million in claims each working day ($38.8 billion per year).

[2] The ICA represents medical indemnity insurers Avant, Guild, MDA National, MIGA and MIPS.

Major cosmetic surgery should be undertaken in an accredited facility under a nationally consistent and uniform approach to minimum standards. A national agreement for minimum accreditation and licensing requirements for facilities where cosmetic surgery is performed could support national consistency.

The proposed advertising guidelines could be extended to apply to minor as well as major procedures given the principles and the nature of the population are inherently similar. We suggest including references to testimonials in the proposed advertising guidelines because this is an area of medical advertising which concerns practitioners and has attracted complaints.

Draft Registration standard: Endorsement of registration for cosmetic surgery for registered medical practitioners.

Q1 Are the requirements for endorsement appropriate?

We appreciate the draft standard will be complemented by a range of measures, however we have concerns about the extent to which the policy aims of the standard will be met, given limitations on enforcement.

We understand that practitioners without an endorsement will still be able to perform major cosmetic medical and surgical procedures (cosmetic surgery) as well as minor procedures as defined in the proposed guidelines for cosmetic procedures.

Under the National Law section 39, failure to comply with a registration standard may be grounds for disciplinary action. However, it is not an offence to practice without an endorsement, so Ahpra has no prosecutorial role in this regard, unless, for example, the practitioner breaches the advertising prohibitions under section 133 of the National Law or is in breach of the guidelines for cosmetic procedures (noting these are also under review and subject to proposed changes). We understand that the Board or Ahpra can only act on the basis of a notification and thus cannot monitor and initiate action in response to a potential breach.

If the standard cannot be sufficiently enforced, it may not act as an effective deterrent to practitioners practising without the endorsement.

Q2. Are the requirements for endorsement clear?

It is unclear what criteria the Board will use to determine whether a practitioner holds a qualification that is “substantially equivalent to, or based on similar competencies to, an approved qualification”.

The draft registration standard notes that it is for the practitioner to establish equivalency, but it is not clear what information will be required from the practitioner to do so, and how the Board will assess this information.

It would be helpful to develop guidance material to ensure the practitioner provides the Board with the information it needs to properly assess the application. This may be able to be drawn from previous considerations or application of section 98 of the National Law and could be released as something along the lines of a Practice Note to educate practitioners.

Guidelines for medical practitioners who perform cosmetic medical and surgical procedures.

Q5. Does splitting the guidance into sections for major and for minor cosmetic procedures make the guidance clearer?

There are benefits from both options. Splitting the guidance may make it easier for a practitioner who only did one or the other. However, many practitioners may perform both major and minor cosmetic procedures, including for the same patient. Further, the distinction between major and minor cosmetic procedures may, at times, be unclear, having separate guidance for each could result in loopholes or gaps.

There are also many common themes raised by both cosmetic surgery and non-surgical cosmetic medical procedures that need to be addressed in the guidance (e.g., informed consent, patient vulnerability, advertising, financial arrangements etc.). Consequently, there is much duplication and repetition, increasing the length of the document.

Q7. Do you support the requirement for a GP referral for all patients seeking major cosmetic surgery?

The intention of the proposal is unclear as are the additional expectations on GPs. While GPs have an interest in a patient's decision to seek cosmetic surgery, the case needs to be made for the proposed regulatory requirement.

GPs may want to know if their patients are seeking to access cosmetic surgery, and many may want to discuss the benefits and risks of cosmetic surgery with their patients to ensure that their patients are making appropriate and informed choices.

In addition, there are clear benefits for the practitioner performing cosmetic surgery to be apprised of the patient's past medical history (including past cosmetic procedures or past psychiatric history) to assist in their assessment of the prospective patient's suitability for cosmetic surgery.

The potential value from GP involvement would not necessarily translate into the adoption of the proposed regulatory requirement. While some patients may choose to seek advice from their GP before deciding to access cosmetic surgery, many will not. The value of a GP referral may not be as great where practitioners performing cosmetic surgery are complying with the proposed requirements outlined in the draft guidelines for cosmetic procedures.

In relation to the proposed regulatory requirement, we raise the following issues:

Health system pressures

There is currently a well-documented shortage of GPs across Australia. Many Australians are experiencing long waiting times in accessing GP consultations. Requiring a GP referral for all patients seeking major cosmetic surgery would add to these waiting times because patients seeking a referral for cosmetic surgery would be directly competing for limited appointments with other patients who need to access a GP for acute medical conditions.

Medico-legal risks for GPs

If a patient is referred by a GP to a practitioner performing cosmetic surgery and the patient experiences a poor outcome, the referring GP may be included in any ensuing claim or complaint. Our members are aware of instances where GPs have been joined as a party to a civil claim because they referred the plaintiff patient to a cosmetic surgery practitioner that is subject to a negligence claim.

Application of the Draft Guidelines to GPs is unclear

It is currently unclear whether the guidelines for cosmetic procedures are intended to apply to GPs who consult with patients for the purpose of referring them to a practitioner who performs cosmetic surgery.

If the referring GP is expected to assess and screen the patient for psychological vulnerability and/or suitability for cosmetic surgery then such a complex assessment could not be completed within a standard 15-minute consultation.

If GP referrals are to be required, then we suggest the Medical Board articulate the expected roles and responsibilities of referring GPs and the extent to which the guidelines for cosmetic procedures apply to GP consultations for the purpose of a referral.

Medicare billing uncertainty

If the sole purpose of a patient consultation is to obtain a referral for a cosmetic procedure, that is not rebatable from Medicare, it is unclear whether the GP could bill Medicare for the referral.

Q8. Do you support the requirement for major cosmetic surgery to be undertaken in an accredited facility?

Major cosmetic surgery should be undertaken in an accredited facility. We agree there needs to be a nationally consistent and uniform approach to minimum standards for facilities where cosmetic surgery can be undertaken. Currently the requirements are not clear and differ across states. Some States focus on accreditation and others licensing/registration and some both and one none.

We are unclear whether the requirement for accreditation alone achieves the desired outcomes for patients. A national agreement for minimum accreditation and licensing requirements for facilities where cosmetic surgery is performed could support national consistency.

Enforcement

We are concerned with how this will be enforced and whether having such requirements will ensure cosmetic surgery is undertaken in appropriate facilities and patients are able to independently verify the status of a facility.

We propose medical practitioners undertaking cosmetic surgery be required to undertake procedures in facilities that meet the agreed minimum licensing and accreditation requirements, and patients have access to a register of accredited facilities for cosmetic surgery.

Q9. Is anything missing?

Other matters that the Medical Board may wish to consider are:

Definition of cosmetic surgery

The definition of cosmetic medical and surgical procedures should read “operations and other procedures that intend to revise or change the appearance…” We believe that the intended outcome, not the actual outcome, of procedure should define cosmetic procedures.

Second opinion

At 2.6, there could be a suggestion that practitioners who decline to perform a cosmetic procedure consider facilitating a second opinion. This might make the declinature appear less paternalistic.

Face to face and Telehealth consultation

The requirements for face-to-face consultations and for consent to be given during a face-to-face consultation (in Section 3) are unclear and overlap with 5.5. It is unclear why the signed consent must occur face-to-face given that the provision of information could occur using Telehealth. We suggest

more clearly delineating the use of Telehealth for pre-procedure consultations and where face to face consultation is required, express what is expected from a face-to-face consultation that cannot be provided using Telehealth.

Refunds

In section 13, consideration should be given to providing guidance about refunding patients their deposit or fee for any major or minor cosmetic procedure.

Discounts

Consideration should be given to providing additional guidance on restricting the practice of offering discounts to patients who book in procedures early.

Guidelines for medical practitioners who advertise cosmetic surgery.

Q10. Is the guidance in the draft Advertising Guidelines appropriate?

Overall, this guidance is appropriate, and it is helpful in making clear that medical practitioners are responsible for their advertising, and that practitioners need to ensure that anyone creating advertising content for them complies with the National law and the proposed advertising guidelines. The specific examples of inappropriate terminology are also helpful.

We understand that the draft advertising guidelines apply only to major cosmetic medical and surgical procedures because this was the focus of the Independent Review which prompted the development of proposed advertising guidelines. However, we support the inclusion of minor (non-surgical) cosmetic medical procedures and major procedures in the same guidelines. This is because the principles within the guidelines and the nature of the patient population are inherently similar, despite the potential adverse outcomes from major procedures generally being more serious.

Q12. Is anything missing?

Important features of the National Law that we have seen to be problematic for advertisers in the cosmetics industry are not included: testimonials, terms and conditions of offers, and acceptable evidence for claims. These items could be referenced at the point where readers are advised that these guidelines:

> "…should be read together with:
>
> Guidelines for advertising a regulated health service (which detail requirements regarding testimonials, offers and discounts, and evidence for claims made)
>
> …"

It would be helpful to also include the prohibition on testimonials in the advertising guidelines as it is an area of medical advertising which concerns practitioners and has attracted complaints.

We trust that our initial observations are of assistance. If you have any questions or comments in relation to our submission please contact [redacted], on telephone: [redacted] or email: [redacted]

Yours sincerely

Andrew Hall
Executive Director and CEO