Progress update: What we have done

Implementing the recommendations of the *Independent review of the use of chaperones to protect patients in Australia*

04 August 2017

Summary

This is a progress update from the Medical Board of Australia (MBA) and the Australian Health Practitioner Regulation Agency (AHPRA) on how we have progressed the recommendations from the report *Independent review of the use of chaperones to protect patients in Australia*.

Background

In August 2016, the MBA and AHPRA commissioned a review to consider whether, and if so in what circumstances, it is appropriate to impose a chaperone condition on the registration of a health practitioner to protect patients while allegations of sexual misconduct are investigated.

The independent review report, by Professor Ron Paterson, found the use of chaperones does not meet community expectations and does not always keep patients safe.

We published the final report on 11 April 2017, accepted all 28 recommendations and set about implementing those recommendations.

This report provides an update on our progress towards implementing the recommendations in the review in all states and territories in which the MBA and AHPRA has responsibility for managing notifications (complaints).

As at 1 January 2017 there were 39 medical practitioners subject to chaperone restrictions. By 1 July 2017 there were only 28 medical practitioners subject to chaperone restrictions.

What we have done

The report's 28 recommendations fall into two main areas, abandoning the use of chaperones and improved handling of sexual misconduct cases (recommendations 1 -10) and the use of chaperones (practice monitors) in exceptional cases only (recommendations 11 – 28).

Action has occurred on all 28 recommendations. Major highlights include that:

We changed the way the MBA deals with allegations of sexual misconduct

- The MBA issued guidance to its boards and committees in each state and territory confirming that it had accepted all the recommendations in the report. Since that time, there have been no new decisions made by the Board to require any additional practitioners to practise with a chaperone present.
- The MBA has established a National Sexual Boundaries Notifications Committee. This is a National Committee made up of practitioner and community Board members from every state and territory who are dealing with all matters about sexual misconduct. Professor Anne Tonkin, Chair, South Australian Board of the MBA, has been appointed as Committee Chair. The Committee held its first meeting in July 2017.
- We are auditing all practitioners whose registration was already subject to a chaperone requirement in order to ensure, the restriction is adequately protecting the public, having regard to any further information obtained during investigation. Since 1 July 2017, when recommendations from the audit first started being presented to the National Sexual Boundaries Notifications Committee, 25% of all practitioners affected have been audited.

- Specialist AHPRA investigators have been identified and received specialist training to manage complaints and/or concerns about sexual misconduct.
- We established a National Specialist Compliance Team within AHPRA to monitor practitioners with conditions related to allegations of sexual misconduct.
- Members of the National Sexual Boundaries Notifications Committee and the staff that engage with victims have received training from Yarrow Place Rape and Sexual Assault Service and have set about changing the way we engage with patients reporting allegations of sexual misconduct.
- Our work to establish clear inter-agency protocols with police departments across Australia continues including appointing a dedicated senior legal officer who will manage information disclosure to and relationships with police jurisdictions across Australia. A strengthened protocol on information disclosure to police will be in place by September 2017.

We reviewed and updated our policies and procedures

- Our National Restrictions Library has been updated with a new gender-based restriction and related protocol. The library provides a consolidated structure for common restrictions (conditions and undertakings) used across the National Scheme's regulatory functions to ensure consistency in decision-making and in monitoring and compliance. The restrictions continue to be published on the public *Register of medical practitioners*.
- Our processes have been updated and a new practice monitor restriction and related protocol is now in place that includes all of the changes recommended from the report. This is to deal with any situations where a decision-maker may decide to impose a practice monitor restriction.

The detail on each individual recommendation and the status of its implementation by the MBA and AHPRA can be found in Appendix A.

Working with others

Outside of the report's direct recommendations work has also taken place to share the report's findings and recommendations with Ministers and the health practitioner regulatory community. This has included:

- We have written to all Health Ministers to inform them about the outcomes of the report, its recommendations and our response to it.
- We have informed independent tribunals of the report, and in June 2017, hosted a presentation by Professor Paterson to representatives of tribunals to share his recommendations and our response to the report.
- We are working with the other 13 National Boards that work with us in the National Scheme to consider the wider implications of the report's recommendations. Professor Paterson's report was presented to all National Boards to consider its core recommendations at their July 2017 meetings. This includes recommendations for abandoning the use of chaperones and implementing the new guidance for decision-makers.
- We have encouraged our co-regulatory partners in New South Wales and Queensland to consider recommendations from the independent report.

Other useful information

- Download the Independent review of the use of chaperones to protect patients in Australia.
- Find out more about what the MBA and AHPRA are doing in response to the report's recommendation: Response to the recommendations of the Independent review of the use of chaperones to protect patients in Australia.
- Submissions from the public consultation completed to inform the independent review are published on the National Health Practitioner Ombudsman and Privacy Commissioner website.

Appendix A

Table showing the actions taken by the MBA and AHPRA to implement the recommendations in the review.

Recommendation	Status
No chaperones and improved handling of sexual misconduct cases (Recommendations 1 -10)	
1. The use of mandated chaperones as an interim restriction in response to allegations of sexual misconduct be abandoned.	**Change implemented.** The Medical Board has issued guidance for decision-makers confirming that it accepts all the recommendations in the report, including that the use of mandated chaperones as an interim restriction in response to allegations of sexual misconduct be abandoned. No new decisions have been made to impose chaperone conditions as an interim restriction in response to allegations of sexual misconduct by MBA and/or other National Boards.
2. The use of chaperones be replaced by other immediate action conditions (including greater use of gender-based prohibitions or prohibitions on patient contact) and suspensions.	**Ongoing.** Since the report was released, MBA decision-makers who have taken immediate actions in relation to new allegations of sexual misconduct have not imposed conditions requiring chaperones or practice monitors.
3. AHPRA develop highly specialised staff and investigators for handling sexual misconduct cases, who can establish rapport and deal with victims empathetically, invest in specialist training and skills, and prioritise the investigation of allegations of sexual misconduct.	**Change progressing.** Specialist AHPRA investigators have been identified and are working to manage complaints and/or concerns about sexual misconduct. The members of the National Sexual Boundaries Notifications Committee and the staff that engage with victims have worked with Yarrow Place Rape and Sexual Assault Service and have set about changing the way we engage with patients reporting sexual misconduct. A dedicated resource with a background in investigating sexual offences will work with our investigators to continue to improve the way we investigate allegations of sexual misconduct.
4. AHPRA revise the guidance for National Boards on relevant factors in the exercise of immediate action powers, including the threshold for taking immediate action and the appropriate level of intervention.	**Change progressing.** Comprehensive advice about immediate action has been provided to the MBA and other National Boards.

Recommendation	Status
5. The MBA develop highly specialised delegated decision-makers for regulatory decision-making about sexual misconduct cases.	**Change fully implemented.** MBA has established a National Sexual Boundaries Notifications Committee. The new Committee is responsible for decision -making in all cases where there is an allegation of a sexual boundary violation or sexual misconduct. Meetings started at the start of July and members have received specialised training.
6. The MBA undertake an audit of all sexual misconduct immediate action decisions, to ensure they are adequately protecting the public.	**Audit is progressing.** The MBA is progressively auditing all open notifications (complaints) where sexual misconduct has been alleged and where immediate action has been taken. To be completed by mid- September. Since 1 July 2017, when recommendations from the audit first started being presented to the National Sexual Boundaries Notifications Committee, 25% of all practitioners affected have been audited.
7. AHPRA implement operational changes to improve communication with notifiers who report sexual misconduct, in particular notifiers personally affected by practitioner conduct.	**Change progressing.** See Recommendation 3.
8. AHPRA develop procedural guidance to clarify when staff should notify police and progress work, including possible Memoranda of Understanding (MOUs) with police, to ensure good communication and information sharing between AHPRA and police.	**Change progressing.** AHPRA has written to all police departments seeking to develop clear inter-agency protocols for sharing information. AHPRA has appointed a Senior Legal Advisor– Information Disclosure who will take the lead on managing relationships with police. AHPRA is currently finalising a strengthened internal protocol to improve information disclosure to police which will be in place by September 2017.
9. All interim restrictions and suspensions be reviewed at least every six months, and earlier if there are triggers for review; and not remain in place more than 12 months, except in exceptional cases of delay necessitated by external decision-makers (police, tribunals or courts).	**Change progressing.** A set of triggers for review have been developed and will be considered by the National Sexual Boundaries Notifications Committee in August 2017. A process for reviewing cases every six months has been developed.

Recommendation	Status
10. The public *Register of practitioners* include web links to published disciplinary decisions and court rulings.	**Change progressing.** The MBA has made a decision to add a link from the *Register of practitioners* to any tribunal decision relating to any medical practitioner on the register. AHPRA is scoping technical solutions to enable the necessary links to be added to the register.
Use of chaperones (practice monitors) in exceptional cases only (Recommendation's 11 – 28)	
Chaperones in exceptional cases only If mandated chaperones do continue to be used as an interim restriction, they should be imposed only in exceptional cases, subject to the following limits:	
11. Chaperone conditions only be considered where: a) the allegation of sexual misconduct involves only a single patient, and b) the allegation, if proven, would not constitute a criminal offence, and c) the health practitioner has no relevant notification or complaint history.	**Changes fully implemented.** Recommendations 11 – 28 have been achieved by AHPRA updating its processes to reflect the requirements of the recommendations. A new practice monitor restriction and related protocol is now in place that includes all of the changes recommended in the report. The restriction and protocol is also supported by an operational policy and guideline for monitoring of the restriction. The new protocol will be used only in exceptional cases by AHPRA and MBA.
12. Chaperones not be imposed in the context of: a) psychotherapeutic practice such as by psychiatrists, or b) allegations that a health practitioner has engaged or sought to engage in a sexual relationship with a patient, where no criminal offending is alleged.	
13. Chaperone conditions not specify: a) the type of clinical examination permitted to be performed by a practitioner, or b) any limit on the age of the patients for whom a chaperone is required.	
14. Chaperone conditions only be imposed where the practitioner commits to work in no more than three locations, with no more than four chaperones to be approved for each of the practitioner's workplaces.	
15. The term 'chaperone' be replaced with 'practice monitor'.	
Information for patients	

Recommendation	Status
16. Patients be told that the National Board requires that their practitioner practise with a chaperone due to allegations of misconduct, and given fuller details (i.e., disclosing that sexual misconduct has been alleged) if they seek more information.	**Underway.** Changes to protocols and procedures have included requirements for providing more information to patients before they see the doctor who has practice monitor conditions imposed. Recommendation 20 requires a change to the National Law. Changes to the National Law are first considered by the Australian Health Workforce Ministerial Council prior to the Queensland Parliament (as the host jurisdiction for the National Law) considering potential amendments to the National Law. The parliament of Western Australia must also pass amendments to the National Law in that state. Ministers are currently considering reforms to the National Law in several stages. The first stage of reforms has led to an amendment Bill being progressed to the Queensland Parliament in June this year. AHPRA understands that Ministers are considering a second stage of reforms to commence later this year. More information on the reform process can be found on the COAG Coucil website. AHPRA and the MBA have highlighted to Ministers the recommended change to the National Law regarding disclosures to patients and the full briefing of chaperones, and will provide further advice and assistance on this recommendation as needed.
17. The above information be given to the patient: a) at the time of booking an appointment or, in the case of an unbooked appointment, at the time of presenting at a health facility and seeking an appointment, and b) by someone other than the doctor subject to the chaperone condition, such as a receptionist or the chaperone, who should be fully informed as to reasons for the chaperone condition and properly trained.	
18. The patient be asked to sign and date an acknowledgement of having been told of the chaperone requirement and agreeing to the chaperone's presence.	
19. Patients be told that AHPRA may contact them in order to monitor compliance with the conditions imposed on the practitioner's registration, and that any objection will be noted and notified to AHPRA.	
20. The National Law be amended as necessary to allow a National Board to require a practitioner to disclose the reasons for a restriction to patients and to permit chaperones to be fully briefed as to those reasons.	
21. Subject to implementation of recommendations 16-20, the requirement for a practice sign be discontinued.	
Chaperone requirements	
22. Only a registered health practitioner, who does not have a pre-existing employment, contractual or financial relationship with the practitioner, may be approved as a chaperone.	**Underway.** Changes to protocols and procedures have included requirements for chaperones including changes to who can be nominated as a chaperone, what information needs to be provided to a
23. A patient-nominated chaperone may not be approved as a chaperone.	

Recommendation	Status
24. The chaperone be provided with full information about the nature of the allegations made against the practitioner and a full copy of the conditions that have been imposed on the registration of the practitioner.	chaperone, what needs to be in place before a chaperone can begin and how chaperone conditions are monitored.
25. Chaperones be fully briefed and provided with training about the functions and requirements of the chaperone role before commencing duty as a chaperone.	
26. A practitioner subject to chaperone conditions not be permitted to practise until all practice locations are known and chaperones are approved, briefed and trained.	
27. The monitoring of chaperone conditions be the responsibility of a national specialist team within AHPRA.	
28. Any breach of chaperone conditions be brought promptly to the attention of the National Board delegate and consideration given to the need to suspend the practitioner, with a low threshold for imposition of a more onerous interim restriction or suspension if more information emerges indicating a higher risk to patients or to the public interest, or evidence of breach of a chaperone condition.	