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Mr Martin Fletcher
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Dear Mr Fletcher

MIGA submission – National Boards / AHPRA Supervised practice framework

1. MIGA appreciates the opportunity to provide a submission on the *Supervised practice framework* proposed by a range of National Boards, including the Medical Board of Australia, and AHPRA.
2. It has a number of issues to raise from the perspective of a medical defence organisation and medical / professional indemnity insurer on the content and operation of the proposed framework.

Consultation between supervisor and supervisee

3. The consultation paper poses the question of whether the term ‘consult’ in the context of a supervisee communicating with their supervisor is sufficiently clear.
4. To reduce the chances of misunderstandings around what constitutes a requirement for supervisees to ‘consult’ with their supervisor/s, it would be helpful to include a definition of the term ‘consult’ at the beginning of Section 5 – ‘Levels of supervised practice’ in the final framework as follows

When a supervisee is required to ‘consult’ with their supervisor/s, this means the supervisee and supervisor must engage and interact with each other in a way which is consistent with the level of supervision required and appropriate for the relevant practice context.

Emergency practice without supervision

5. It is important that both supervisees and supervisors know that it may be appropriate for supervisees to provide care outside the supervision arrangement in an emergency.
6. Helpfully the draft fact sheet ‘Information for supervisees’ addresses the situation of when urgent lifesaving / emergency care is required, but supervision is not available.
7. For the avoidance of doubt this should also be recognised in both the final framework, particularly where there is an obligation imposed on the supervisee to notify AHPRA within two business days if they provide emergency treatment outside their supervisory arrangement.
8. The position on emergency treatment by supervisees should also be outlined in the fact sheet ‘Information for supervisors’ so supervisors are clear on what a supervisee both can and should do in such situations.

Insurance position for supervisors and supervisees

9. The consultation paper raises issues about the position of professional indemnity insurance in supervised practice situations.
10. The nature and extent of medical / professional indemnity insurance for supervisors can vary across providers and contexts.

11. There may be limitations on insurance cover provided around supervisory arrangements based on
 - Circumstances giving rise to the need for supervision
 - Who is involved in providing supervision
 - Whether it involves supervision in the same field of practice / specialty within which the supervisor practices
 - How supervision is to be provided.
12. Although there are references to supervisees and supervisors checking their insurance coverage in the draft fact sheets, the need for this should be made clear in the framework. MIGA proposes that in Section 6 the following changes be made
 - **'The Board's expectation of supervisors'** – this existing provision in the proposed framework should contain an additional clause indicating that supervisors should check with their medical / professional indemnity insurance provider and their employer / contracting body to ensure they have appropriate professional indemnity coverage in place to act as supervisor under the framework
 - **'The Board's expectations of employers'** – where there is mention in the proposed framework of the need to check if an employer's professional indemnity insurance meets minimum Board requirements, there should also be mention of a need to check whether the insurance also covers the proposed supervisory arrangement.
13. Consistently in the fact sheets 'Information for supervisees' and 'Information for Supervisors' the following changes should also be made
 - **'General requirements'** - the provisions relating to supervision by a practitioner from another profession in exceptional circumstances should also explain the need for the supervisee and supervisor to check with their respective professional indemnity insurers, or employer who arranges such cover, whether insurance covers such an arrangement
 - **'Professional indemnity insurance'** - the wording of the final sentence should be changed to read *"...check with your insurance provider (or employer / other entity arranging cover) to make sure you meet minimum requirements and to confirm that your supervised practice arrangements meets the requirements of your insurance cover."*

Shared financial or business interests between supervisor and supervisee

14. MIGA acknowledges the logic behind the proposed framework precluding a supervisory relationship where there are shared financial or business interests between supervisor and supervisee
15. It is concerned this preclusion may pose an unreasonable and unnecessary practical impediment to practice in certain circumstances.
16. There are situations where it may be impossible not to have as supervisor a person with whom the supervisee has a financial or business interest. Examples include
 - A GP practice partner returning from maternity / paternity leave or a 'career break' and requiring supervision on recency of practice grounds
 - A surgeon who owns a specialist group practice with a number of colleagues and who has supervisory conditions imposed following regulatory or disciplinary action by a National Board or other disciplinary body.
17. Unless the supervision was at the lowest 'remote' level under the proposed framework in each scenario
 - The supervisee would have to end their financial or business interest in the practice (i.e. become an employee or independent contractor
 - The supervisee would need to find a new practice and have no business or financial interest in it, or
 - A new practitioner would have to be brought into the practice as an independent contractor to act as supervisor.
18. In many situations such requirements can be unnecessary, impractical and unfair.

19. Notably the draft fact sheets 'Information for supervisees' and 'Information for supervisors' seem to go against this preclusion on a supervisee and supervisor having a shared financial or business interest where they
 - Merely require the supervisee to declare such arrangements as potential conflicts of interest
 - Indicates that such disclosure does not mean the supervisory relationship will be precluded.
20. To reflect these issues and realities, the preclusion on supervisors and supervisees having shared financial or business interests should be removed and replaced by
 - A preference for there to be no shared financial or business interests between the supervisor and supervisee
 - If it is impractical or unreasonable to find a supervisor who does not share a financial or business interest with the supervisee, there should be scope for a National Board to approve supervision where there is a shared financial or business interest on a case by case basis, considering factors such as
 - o Whether there is any risk to patient health and safety
 - o The nature of practice, supervision required and shared interest
 - o Steps the supervisor and supervisee will put in place to avoid the possibility of a conflict of interest.

Consistency and clarity – framework and fact sheets

21. The fact sheets for each of supervisees and supervisors set out a number of obligations not contained in the proposed framework.
22. It may not be well understood or appreciated that the fact sheets are more than explanatory documents and themselves set out various responsibilities.
23. To deal with this issue either
 - The obligations on each of supervisees and supervisors contained in the fact sheets which are not already in the proposed framework should be included in the final framework
 - There should be an indication in the final framework that further obligations are outlined in the fact sheets, which themselves should be renamed 'Supervisor's responsibilities' and 'Supervisee's responsibilities'.

Resources for supervisors and supervisees

24. MIGA supports the intention to provide a range of resources to supervisors and supervisees, including fact sheets, FAQs, training materials, a supervised practice plan and report templates.
25. It is important these resources continue to evolve and material is developed as required to respond to evolving and new issues.
26. It would also be helpful to centralise this material in one online hub, accessible as relevant from individual National Board websites.
27. Hyperlinking references to other materials within documents can also be a very helpful approach.

Other issues

28. There are a number of other issues around which MIGA seeks clarity, namely
 - **Framework, section 3 – Who should use this supervised practice framework?**
 - o There should also be a reference to 'committees' as additional bodies who may impose a period of supervised practice arising out of a notification, regulatory and / or disciplinary action
 - o Such committees include Professional Standards Committees in New South Wales, to which medical, nursing and midwifery disciplinary matters can be referred
 - **Framework, section 3 – Accountability and transparency**
 - o What is considered to constitute a failure to act in good faith is unclear

- It could potentially be interpreted to include a range of errors or mistakes in complying with the proposed framework, which may then lead to disciplinary action
- This would mistakenly equate any breach of the proposed framework with a failure to act in good faith which may then lead to disciplinary action
- To address this MIGA proposes adding a new second sentence between the existing two sentences of the first paragraph, and modifying the beginning of what becomes the third sentence, so both would together read

Failures to meet these obligations could lead to review or termination of the supervision arrangement. In certain circumstances, if the supervisee or supervisor does not act in good faith, a National Board may consider whether to take disciplinary action.

- **Framework, section 3 – Individual approach** – the reference to “*employment situation*” should be changed to “*practice situation*” to reflect better the range of employment and contractual situations supervisees may practice within
- **Framework, section 5 – Levels of supervised practice / Supervised Practice Levels fact sheet**
 - Direct – the final sentence should be amended to read “*The care provided must be directly observed by the supervisor who is present with the supervisee at all times **whilst the care is being provided***”
 - Indirect 1 (present) – change second sentence to read “*The supervisee must consult with the supervisor who is always physically present in the workplace **when the supervisee is providing care and available to observe and discuss at agreed intervals and as necessary...***”
 - Indirect 2 (accessible) and Remote – change second sentences to read “*...supervisor who is accessible by telephone, **video conference** or other means of telecommunication ...*”
- **Fact sheet – Information for supervisees**
 - ‘Why is the Board requiring I complete supervised practice’ – there should be a note that the framework does not apply to certain registrant groups, and that practitioners should check with their National Board whether the framework applies to them or if another arrangement applies
 - ‘Preparing for supervised practice’ – there should be examples of who is the ‘senior person’ at a workplace who should receive a copy of the supervised practice arrangement – examples would include a CEO, medical / clinical director or head of department
- **Fact sheet – Information for supervisors**
 - ‘What must I do before agreeing to be a supervisor’ – add new final sentence to read “*If you are not an employee the setting within which you work (i.e. a hospital or practice) may still need to approve you acting as supervisor*”
 - ‘Clinical/nonclinical supervision’ – third bullet point – change to read “*give clear direction and constructive feedback to the supervisee on their **professional legal** responsibilities...*” – this describes better the responsibilities which a supervisor should communicate to supervisees, and avoids confusion caused by potential misapprehensions that a supervisor should give a supervisee guidance which is tantamount to legal advice
 - ‘Breach of supervised practice or risk to the public – responsibility of supervisor to notify AHPRA of various circumstances, namely
 - First bullet point – change to read “*the relationship between the supervisor and supervisee **irrevocably** breaks down – **if there are difficulties in the supervisory relationship both supervisors and supervisees are encouraged to consider first informal methods for resolving these difficulties, involving colleagues, employers / hospitals / practice entities and professional colleges / associations as appropriate***”
 - Text box “*Any practice that occurs outside the approved supervised practice arrangement...*” – there should be details provided here about situations where a supervisee can appropriate practice in an emergency situation, consistent with that set out in the fact sheet ‘Information for supervisees’
 - ‘Mandatory reporting’ – final sentence – this should include reference and a web link to AHPRA’s guidelines on mandatory notification

- 'What if I don't comply with the framework' – given not all breaches of the framework and supervisory arrangements would be sufficiently serious to warrant a National Board considering disciplinary action, re-word the sentence underneath to read "*...the National Board may consider whether to **terminate the arrangement or in certain cases take disciplinary action...***"
29. MIGA would also appreciate being consulted on key fact sheets referred to in the framework which are yet to be developed, particularly 'Information for employers' and 'Planning, assessment, monitoring and compliance'.
30. If you have any questions or would like to discuss, please contact [REDACTED]
[REDACTED]

Yours sincerely

[REDACTED]
[REDACTED]
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[REDACTED]
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