MDA National
Support Protect Promote

21 May 2012

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Chair
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By Email: medboardconsultation@aphra.gov.au

Dear Dr Flynn

CONSULTATION - COSMETIC MEDICAL AND SURGICAL PROCEDURES

Thank you for the opportunity to provide a submission in relation to the Medical Board of Australia's Draft supplementary guidelines on cosmetic medical and surgical procedures for "Good Medical Practice: A code of conduct for doctors in Australia ("Draft Guidelines").

MDA National is one of Australia's leading providers of medical defence and medico-legal advocacy services. MDA National works in close partnership with the medical profession on a wide range of issues which impact on medical practice. In addition to its advocacy and advisory services, MDA National's insurance subsidiary (MDA National Insurance) offers insurance policies to MDA National's members which provide cover for the cost of investigations of professional misconduct and for claims for compensation by third parties. The MDA National insurance policy provides medical practitioners with up to $20 million of civil liability cover as well as a range of other professional risk covers.

MDA National provides the following comments in relation to the Draft Guidelines:

Providing good care (page 1)

MDA National is concerned about the statement outlined under point 1 which states:

> *"The first consultation should be with the operating doctor, not with an agent/patient adviser."*

MDA National submits that the term 'agent/patient adviser' should be interpreted as referring to individuals whose business it is to make a financial commission from referrals to particular doctors, and not include employees of the doctor. We are concerned that this statement could be interpreted as precluding an operating doctor's nurse or other medical practitioner in the practice (other than the operating doctor) from having an initial or first consultation with the patient. This multi-disciplinary form of care can be beneficial to the patient, enabling more time for patient questions and education. If the intention is for the patient to attend a prior consultation with the operating doctor rather than the 'first' consultation having to take place between the operating doctor and the patient, MDA National considers that the wording should be changed to reflect this, for example 'Prior to a procedure, the patient should attend an initial consultation with the operating doctor.'

MDA National notes point 2(b) states:

> *"An exploration of the person's expectations of the requested surgery/procedure to ensure they are realistic."*

MDA National submits that the word 'realistic' requires an assessment to be made by the doctor without regard to an objective standard. For this reason MDA National suggests that the wording be changed to 'reasonable.'

Similarly, point 3 states:

> *"If there are indications that the person has self-esteem or mental health problems, the person should be referred to a GP or an appropriately qualified health professional (eg psychiatrist, psychologist or specialist counsellor) for review."*

MDA National considers that 'self-esteem' as an indicator for referral is impractical for doctors who perform cosmetic medical and surgical procedures. The very nature of cosmetic medicine, as reflected in the definition in the Draft Guidelines, is to achieve for the patient 'what they perceive to be a more desirable appearance or boosting the patient's self-esteem.' It is MDA National's submission that the word 'self-esteem' should be removed. Furthermore, this sentence suggests that it is always necessary to provide a referral to an appropriately qualified health professional for review when a patient with a mental health problem presents for a cosmetic procedure. MDA National submits that in this situation it may also be entirely appropriate to simply decline to perform any procedure.

MDA National submits point 3 should be amended to read:
'If there are indicators that the person has mental health problems, that person should be referred to an independent GP or another appropriately qualified health professional (eg psychiatrist, psychologist or specialist counsellor) for review or alternatively, the operating doctor should decline to perform the procedure.'

MDA National submits that this final option to decline to perform the procedure is crucial in recognising the important decision making capacity of doctors. As the Draft Guidelines are currently silent on this issue, MDA National submits that the Draft Guidelines should include this option as an alternative to referring the patient to another health professional for review. The addition of 'or alternatively, the operating doctor should decline to perform the procedure' should also be included under points 2 and 3 in relation to children and young people.

MDA National notes point 5 states:

> *"A cooling-off period between the initial consult and performance of the procedure is encouraged."*

MDA National submits that this is unnecessary and impractical for doctors who perform minor, non-surgical cosmetic procedures, such as laser skin treatments, dermabrasion, and chemical peels. MDA National notes that the New Zealand Medical Council's 'Statement on cosmetic procedures' differentiates between types of cosmetic surgery with a 'period of reflection of at least seven days between any initial consultation and performance of a procedure that involves 'cutting beneath the skin.''[1] MDA National supports this distinction.

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[1] *www.mcnz.org.nz*

Providing a suitable management plan (page 2)

MDA National is concerned about the statement outlined under point 1 which states:

> *"There should be protocols and pathways in place to cover all aspects of postoperative care, including the full range of complications and arrangements with specific hospitals and staff to be involved in care should the patient unexpectedly require it."*

MDA National submits that the reference to 'full range of complications' places an unreasonable responsibility and onerous burden on doctors to consider all possible complications and to make specific arrangements for each patient. Accordingly, MDA National submits that this wording should be replaced with 'any serious complications' and that the provision with regard to arrangements with specific hospitals should be removed.

A further concern is with regard to point 3 which states:

> *"The operating doctor is responsible for all aspects of pre-operative, operative and post-operative care. Delegation of care must be appropriate and arranged in advance of any procedure and these arrangements should be made known to the patient."*

MDA National submits that this sentence appears to imply that the operating doctor is liable for the actions exercised by other health professionals, such as surgical assistants or anaesthetists. Furthermore, the requirement that delegation of care 'must be ... arranged in advance' may not be practical in all clinical settings and therefore the term 'where possible' is preferable.

In regard to points 4 and 5, MDA National suggests that they could be combined to avoid repetition and read:
'Documented post-operative instructions should be provided to patients and include:

a) How to obtain medical care if complications arise
b) The usual range of post-operative symptoms
c) Appropriate instructions for any medications
d) Details of dates for follow up visits.'

Working with Patients (page 3)

MDA National notes point 1 states:

> *"At the initial consultation, the person must be provided with written information in easily understood language about:*
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> *a) What the surgery/procedure involves*
> *b) The range of possible outcomes of the surgery/procedure*
> *c) The risks and possible complications associated with the surgery/procedure*
> *d) Recovery times and specific requirements during the recovery period*
> *e) Information about your qualifications and experience*
> *f) Total cost*
> *g) That any deposits taken, be refunded fully or partly at any point prior to when the procedure is undertaken*
> *h) Other options for addressing the person's concerns*

i) *Information should be displayed at the doctor's premises advising patients that there is a complaints process available and how to access it, beginning with approaching the operating doctor."*

MDA National submits that these provisions are comprehensively detailed in the NHMRC's 'General Guidelines for Medical Practitioners on Providing Information to Patients'[2]. MDA National submits that these Draft Guidelines should not contain information that deviates from established principles. For example, the equivalent reference to 'total cost' is 'costs involved' which reflects the practical reality that it is not always possible for doctors to advise of a figure that represents the total cost of the procedure upfront.

With regard to informing patients of the availability of a complaint process, MDA National submits that this information is already provided for in Good Medical Practice: A code of conduct for doctors in Australia at 3.10.8 which states: 'Ensuring patients have access to information about the processes for making a complaint'. As these Draft Guidelines are supplementary to this Code, MDA National proposes that this final point should be removed.

Thank you for the opportunity to provide a submission in relation to the Draft Guidelines. Should you have any questions in relation to this submission, please do not hesitate to contact us. We look forward to discussing these issues further.

Yours sincerely

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[redacted]

[2] *http://www.nhmrc.gov.au/guidelines/publications/e57*