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The Executive Officer, Medical  
AHPRA  
GPO Box 9958  
MELBOURNE VIC 3001

Avant Mutual Group Limited  
ABN 58 123 154 898

Registered Office  
Level 28 HSBC Centre  
580 George Street Sydney NSW 2000

PO Box 746 Queen Victoria Building  
Sydney NSW 1230

DX 11583 Sydney Downtown

[www.avant.org.au](http://www.avant.org.au)

Telephone 02 9260 9000 Fax 02 9261 2921  
Freecall 1800 128 268 Freefax 1800 228 268

**By email: [medboardconsultation@ahpra.gov.au](mailto:medboardconsultation@ahpra.gov.au)**

**Medical Board of Australia's Consultation on Registered medical practitioners who provide cosmetic medical and surgical procedures**

Avant welcomes the opportunity to provide input into the Medical Board's consultation on cosmetic medical and surgical procedures.

Our submissions on the consultation paper and proposed guidelines are attached. Our submissions are based on our extensive experience of assisting our members in claims and complaints and in providing risk and medico-legal advisory services to our members. We have a long history of dealing with the issues discussed in the consultation paper, including participation in the NSW Committee of Inquiry into Cosmetic Surgery in 1998.

Please contact me on the details below if you require any further information or clarification of the matters raised in this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Georgie", followed by a long horizontal flourish.

Georgie Haysom  
Head of Advocacy

Direct: (02) 9260 9185

Email: [georgie.haysom@avant.org.au](mailto:georgie.haysom@avant.org.au)

**About Avant**

Avant Mutual Group Limited ("Avant") is Australia's largest medical defence organisation, and offers a range of insurance products and expert legal advice and assistance to over 64,000 medical and allied health practitioners and students in Australia. Our insurance products include medical indemnity insurance for individuals and practices, as well as private health insurance, which is offered through our subsidiary The Doctors' Health Fund Pty Limited.

Our members have access to medico-legal assistance via our Medico Legal Advisory Service. We have offices throughout Australia, and provide extensive risk advisory and education services to our members with the aim of reducing medico-legal risk.



## **Avant Submissions on the Medical Board of Australia's Public Consultation Paper and Regulation Impact Statement: Registered medical practitioners who provide cosmetic medical and surgical procedures**

### **A. General comment**

Avant agrees that cosmetic medical and surgical procedures are, in general, higher risk procedures. Cosmetic surgery is classified as a high risk category, and cosmetic practitioners and plastic surgeons have higher claims frequencies than other practice categories.

Avant agrees that there needs to be more regulation in the area of cosmetic medical and surgical treatment, and that national guidelines are appropriate.

Avant agrees that option 3 is the preferable option.

### **B. Responses to selected consultation questions**

#### **Problem**

1. Do you agree with the nature and extent of the problem identified in this consultation paper, for consumers who seek cosmetic medical and surgical procedures provided by registered medical practitioners?

Yes.

Our data indicates that the majority of complaints, claims and incidents involving cosmetic procedures are primarily about clinical outcomes and patient dissatisfaction with results and/or treatment received, as well as inadequate consent.

2. Is there other evidence to suggest that there is a problem with consumers making rushed decisions to have cosmetic medical and surgical procedures provided by registered medical practitioners without adequate information?

Our experience is that in many instances consumers do make rushed decisions without adequate cooling off periods and/or without sufficient and adequate information about the outcomes. Many practitioners use before and after photographs on their websites to demonstrate outcomes but with inadequate labelling of the number of days/weeks post procedure. This can lead to patients having unrealistic expectations about outcomes.

5. Is there evidence that offers of finance for these procedures may act as an inducement for consumers to commit to a procedure before they have had adequate time to consider the risks?

It is not uncommon to encounter offers of discounts and sales for cosmetic products including Botox and filler injections. Some will also offer discount vouchers for favourable reviews or comments. These vouchers provide a discount not only for injections and other non-invasive cosmetic procedures, but also for other invasive procedures. This can also encourage hasty decision-making by consumers. These inducements may also lead to the consumer to later question the integrity of the doctor-patient relationship and raise allegations of conflict of interest.

### Option one

9. Does the Board's current code of conduct and the existing codes and guidelines of the professional bodies provide adequate guidance to medical practitioners providing cosmetic medical and surgical procedures?

In our view, the Medical Board's current codes and guidelines, including the code of conduct, do not provide adequate guidance to medical practitioners providing cosmetic medical and surgical procedures.

The NSW Medical Council's Cosmetic Surgery Guidelines provide some guidance to practitioners in NSW. However in our experience they are not widely known by practitioners, and they do not differentiate between non-invasive and invasive procedures.

The National Law provisions about advertising and AHPRA's advertising guidelines provide useful guidance about advertising generally. The advertising guidelines should complement the Board's guidelines for cosmetic medical and surgical treatment and should be consistent with them.

10. How effective are existing professional codes and guidelines in addressing the problem identified by the Board?

See answer to question 9 above. Current codes and guidelines, while useful in a general sense, do not focus on the particular challenges of cosmetic medical and surgical treatment and thus have limited impact on addressing the problem identified by the Board. We therefore agree that the Board should provide additional guidance in this particular area as contemplated by the Consultation Paper.

11. Do you agree with the costs and benefits associated with retaining the status quo as identified by the Board?

With the increasing demand by consumers for cosmetic procedures, an increasing range of procedures on offer, and the increase in complaints against medical practitioners generally, it is likely that adverse events and complaints in this area will also increase. The cost to the community is therefore likely to increase rather than decrease if the status quo is maintained.

### Option two

13. Would consumer education material be effective in addressing the problem?  
If so, how could it be designed to ensure it is effective and kept up to date and relevant?

Consumer education material is important but needs to be up to date, relevant and accurate. Consumer education material may help to address some of the issues identified in the consultation paper but it should not replace a detailed discussion between the doctor and the patient about expectations and likely outcomes.

14. Who do you think is best placed to design consumer education material about cosmetic medical and surgical procedures provided by medical practitioners?

We do not believe that it is the role of the Board to provide consumer education material. Rather information should be provided by the colleges and professional bodies, or other independent health information provider.

### Option three

17. The Board seeks feedback on elements for potential inclusion in guidelines:

- 17.1 Should there be a mandatory cooling off period for adults considering a cosmetic medical or surgical procedure (other than for minor procedures)? If so, is seven days reasonable?

We advise our members performing cosmetic procedures to allow patients a cooling off period to allow the patients sufficient time to consider treatment options.

We agree that there should be a mandatory cooling off period for adults considering a cosmetic medical or surgical procedure (other than for minor procedures). There should be a minimum 7 day cooling off period.

- 17.2 Should there be a mandatory cooling off period for patients under the age of 18 who are considering a cosmetic medical or surgical procedure? If so, is three months reasonable?

Yes. We agree there should be a mandatory cooling off period for patients under the age of 18. Three months is generally appropriate although it may be appropriate to allow exceptions in some circumstances where the patient has been comprehensively assessed, including by a psychiatrist or psychologist.

- 17.3 Should medical practitioners be expected to assess patients for indications that the patient has significant underlying psychological problems which may make them an unsuitable candidate for the procedure?

Yes. We have had claims and complaints where the patient was unhappy with the outcome but had unrealistic expectations due to an underlying psychological condition which was not considered or properly assessed by the practitioner.

- 17.4 Should medical practitioners be expected to refer these patients to an independent psychologist or psychiatrist for evaluation?

Yes – where a practitioner is concerned that a patient may have a significant underlying psychological condition, the patient should be referred to an independent psychologist, psychiatrist, or their general practitioner for evaluation and/or referral. This is consistent with the advice we give to our members when faced with a patient who they believe may have underlying conditions that may impact on their expectations of the outcome of cosmetic surgery.

- 17.5 Is it reasonable to expect that registered medical practitioners refer all patients under the age of 18 to an independent psychologist or psychiatrist for evaluation before a cosmetic medical or surgical procedure is performed, regardless of whether legislation exists (as it does in Queensland via the *Public Health Act 2005*)?

Yes.

- 17.7 Should a medical practitioner be expected to have a face-to-face consultation (in person, not by video conference or similar) with a patient before prescribing schedule 4 prescription only cosmetic injectables? If not, why?

Practitioners should certainly assess each patient before a schedule 4 cosmetic injectable is prescribed. While a face-to-face consultation between the patient and the prescribing practitioner is always preferable, there may be exceptional circumstances where it is not always possible in this country where many consumers live in rural and remote areas.

For any video consultation practitioners should ensure that they comply with the Medical Board of Australia's Guidelines on Technology-Based Consultations, particularly the requirement that practitioners make a judgment about the appropriateness of a technology-based consultation, in particular whether a direct examination is necessary.

### **Preferred option**

27. Which option do you think best addresses the problem of consumers making rushed decisions to have cosmetic procedures without adequate information?

- Option one – Retain the status quo of providing general guidance about the Board's expectations of medical practitioners providing these procedures via the Board's approved code of conduct
- Option two – Provide consumer education material about the provision of cosmetic medical and surgical procedures by medical practitioners
- Option three – Strengthen current guidance for medical practitioners providing cosmetic medical and surgical procedures through new, practice-specific guidelines that clearly articulate the Board's expectations of medical practitioners
- Option four – Strengthen current guidance for medical practitioners providing cosmetic medical and surgical procedures through new, practice-specific guidelines as per option 3 but which provide less explicit guidance to medical practitioners
- Other – please specify.

Avant agrees that option 3 is the preferred option to give guidance to medical practitioners providing cosmetic medical and surgical procedures.

As noted in the consultation paper, option 4 would not include guidance for medical practitioners in relation to a cooling off period, procedures for patients under 18 or guidance on prescribing and administering schedule 4 (prescription only) cosmetic injectibles. In our experience, these are precisely the areas where we see a need for guidance. Option 4 does not provide sufficient safeguards to patients and guidance to practitioners in this high risk area of medicine.

### **C. Comments on particular provisions in the draft guidelines**

The definitions section of the guidelines does not include the paragraph in the Definitions section of the consultation paper (page 7) commencing "Other procedures are minor....". This definition is currently contained in footnote 3 of the guidelines. We suggest that this paragraph be included in the definitions section of the guidelines.

Clause 3.1: we recommend adding a reference to exceptional circumstances in light of our commentary on question 17.2 above.

Clause 4.1: the draft guidelines indicated that the information must include "the complaints process and how to access it". We recommend that this be replaced by "information about how to deal with any concerns after the surgery."