

27 May 2015

Executive Officer
Medical
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By Email: medboardconsultation@aphra.gov.au

Dear Executive Officer

PUBLIC CONSULTATION PAPER AND REGULATION IMPACT STATEMENT - COSMETIC MEDICAL AND SURGICAL PROCEDURES

Thank you for the opportunity to provide a submission in relation to the Medical Board of Australia's consultation paper *Registered medical practitioners who provide cosmetic medical and surgical procedures* ("the Consultation Paper"), dated 17 March 2015.

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 Consultation Paper:

The problem

MDA National agrees with the nature and extent of the problem identified. There is no single regulatory body and the existing professional codes and guidelines do not provide specific enough guidance to medical practitioners providing cosmetic medical and surgical procedures.

The most appropriate response

Of the four options proposed in the Consultation Paper MDA National supports 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.*

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The Draft guidelines (Appendix B of the Consultation Paper):

While MDA National supports Option three, we make the following submissions and proposed amendments regarding the Draft guidelines.

3. Additional responsibilities when providing cosmetic medical and surgical procedures for patients under the age of 18.

3.2 The medical practitioner must assess and be satisfied by the patient's capacity to consent to the procedure.

MDA National submits that this paragraph should be reworded to reflect the wording in the House of Lords decision of Gillick¹, that is;

"Where a minor is proposing to consent to their own cosmetic surgery, the medical practitioner must assess that the patient has sufficient understanding and intelligence to enable him or her to fully understand what is proposed, in accordance with the principles in Gillick²."

3.3 The medical practitioner should, to the extent that is practicable, have regard for the views of a parent of the patient under 18, including whether the parents supports the procedure being performed.

MDA National believes that this paragraph may lead to some confusion amongst medical practitioners. Where a young person has been assessed to have the capacity to consent to their own cosmetic procedure, then the medical practitioner is not able to discuss the procedure with their parents unless they have the young person's express consent.

MDA National submits that paragraph 3.3 should be amended to state:

"Where a young person is assessed by a medical practitioner as having capacity to consent to their own procedure, medical practitioners should encourage the young person to discuss the proposed procedure with their parents. "

4. Consent

MDA National submits that the process for obtaining consent is comprehensively detailed in the NHMRC's 'General Guidelines for Medical Practitioners on Providing Information to Patients'. MDA National submits that the Draft guidelines for cosmetic medical and surgical procedures should not contain information that substantially deviates from these established guidelines.

Importantly, the information provided to patients who are considering cosmetic medical and surgical procedures should include the option of having no procedure at all.

We submit the following wording, which closely mirrors the NHMRC guidelines, is appropriate:

Doctors should discuss the following information with their patients:

- what the proposed procedure entails
- the expected benefits

¹ Gillick v West Norfolk and Wisbech Health Authority [1986] 1 AC 112

² Gillick v West Norfolk and Wisbech Health Authority [1986] 1 AC 112

- common side effects and material risks of the procedure (see below)
- whether the procedure is conventional or experimental,
- who will undertake the procedure
- other options for treatment
- the degree of uncertainty about the outcome
- the likely consequence of not choosing the proposed procedure or treatment, or of not having any procedure or treatment at all
- any significant long term physical, emotional, mental, social, sexual, or other outcome which may be associated with the proposed procedure
- the time involved; and
- the costs involved, including out of pocket costs.

MDA National submits that as cosmetic medical and plastic surgery procedures may involve experimental or new techniques it would be advisable for the medical practitioner to advise the patient of their level of expertise. Further, MDA National submits that the medical practitioner should advise the patient of the expected post-operative time away from work or similar.

We further note that 'the complaints process and how to access it' should not be included under this heading, as this does not form part of the consent process.

6. Provision of patient care by other health practitioners

6.2 When a medical practitioner is assisted by another registered health practitioner or assigns an aspect of a procedure or patient care to another registered health practitioner, the medical practitioner retains overall responsibility for the patient. This does not apply when the medical practitioner has formally referred the patient to another registered health practitioner.

MDA National submits that the wording of 6.2 be changed to “..the medical practitioner retains oversight for the patient..”. It is our submission that in circumstances where a medical practitioner assigns an aspect of a procedure or patient care to another registered health practitioner, this registered health practitioner has the responsibility of the patient’s care.

7. Prescribing and administering schedule 4 (prescription only) cosmetic injectables (p 58)

7.2 Medical practitioners must not prescribe schedule 4 (prescription only) cosmetic injectables unless they have had a face-to-face consultation with the patient. A face-to-face consultation is required for each course of injections. Remote prescribing (for example by phone, email or video conferencing) of cosmetic injectables is not appropriate.

MDA National submits that the wording of 7.2 be amended. MDA National considers that the requirement for a face to face consultation is very restrictive, when a video conference would be sufficient to determine a patient’s suitability for a cosmetic injectable. MDA National accepts that remote prescribing by phone and email may not be appropriate; however we submit that a video conference would be sufficient, in circumstances where the procedure is of a relatively low risk.

10. Advertising and marketing

10.2 Advertising content and patient information material should not glamorise procedures, minimise the complexity of a procedure, overstate results or imply patients can achieve outcomes that are not realistic.

MDA National submits that paragraph 10.2 be amended and that "...patient information material should not glamorise procedures.." should be deleted. We submit that 'glamorise procedures' requires a subjective assessment and medical practitioners should comply with the Medical Board of Australia's Guidelines for Advertising of Regulated Health Services.

12. Financial arrangements MDA National submits that paragraph 12 be amended to reflect that medical practitioners should comply with the Medical Board of Australia's Good Medical Practice: A Code of Conduct for Doctors in Australia, paragraph 8.12 Financial and commercial dealings.

12.4 The medical practitioner should not offer financing schemes to patients (other than credit card facilities), either directly or through a third party, such as loans, as part of the cosmetic medical or surgical services.

We submit that the term 'financing schemes' is not defined and is likely to cause confusion and should be clarified. We submit that 'financing schemes' could mean a contractual arrangement involving credit to allow purchase of a good or service before the individual has the funds available to pay for that good or service other than a credit card. We submit that if practitioners direct patients to finance providers they should not nominate a range of providers and they should ensure that they personally, as well as their clinic or company, do not receive any 'kick-back' or other incentives arising from referral of patients to finance providers.

Thank you for the opportunity to provide a submission in relation to the Consultation Paper. 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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