

17 February 2023

Dr Anne Tonkin  
Chair  
Medical Board of Australia

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

Dear Dr Tonkin

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**Public consultation on draft revised *Guidelines: Telehealth consultations with patients***

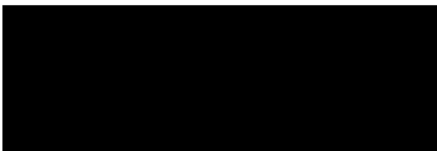
Thank you for the opportunity to provide input into the Medical Board's public consultation on the draft revised *Guidelines: Telehealth consultations with patients*.



Avant is a member-owned doctors' organisation and Australia's largest medical indemnity insurer, committed to supporting a sustainable health system that provides quality care to the Australian community. Avant provides professional indemnity insurance and legal advice and assistance to more than 82,000 healthcare practitioners and students around Australia (more than half of Australia's doctors). Our members are from all medical specialities and career stages and from every state and territory in Australia.

Our submission is attached.

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

Yours sincerely



Georgie Haysom  
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## **Avant submission to Medical Board's public consultation on draft revised guidelines: Telehealth consultation with patients**

Avant is a mutual organisation, owned by its doctor members, and is Australia's largest medical indemnity insurer, providing professional indemnity insurance and legal advice and assistance to more than 82,000 healthcare practitioners and students around Australia. Over half of all Australian doctors are Avant members. Members come from all medical specialities and career stages, and every state and territory.

We assist members in civil litigation, professional conduct matters, coronial matters and a range of other matters. We have a Medico-legal Advisory Service that provides support and advice to members and insured medical practices when they encounter medico-legal issues. We also provide medico-legal education to our members with a view to improving patient care and reducing medico-legal risk.

### **General comments**

Avant regularly provides members with advice, information, education and support about the use of telehealth (see [Avant - Telehealth – what you need to know](#) for our resources on the topic). This occurred before the Covid-19 pandemic but increased during the pandemic. In September 2020, Avant surveyed its members and asked about their experiences with telehealth, including the challenges they faced. The survey was open to members across all specialties and career stages, including trainees. Avant had over 1,300 responses from members who consult with patients. Just over half of respondents were general practitioners. The remainder were physicians, surgeons and other doctors. We understand that it was the largest survey on telehealth conducted in Australia at that time (see our article at [Avant - Australia's largest telehealth survey: what did you tell us?](#))

It is with this background that we provide our submission.

Avant supports Option 3: Revise the guidance.

#### **1. Is the content and structure of the draft revised *Guidelines: Telehealth consultations with patients* helpful, clear, relevant and workable?**

Generally, the content and structure of the draft revised Guidelines is helpful, clear, relevant and workable. We know from our own survey that doctors welcome clear 'standards' which they can apply to their telehealth practice.

We support the inclusion of information about 'what is not telehealth' in the definition.

A significant number of doctors are unaware of the current Guidelines for technology-based patient consultations and their obligations contained in "Good medical practice: A code of conduct for doctors in Australia" (the Code of Conduct) generally. Along with revising the Guidelines, the Board should promote the Code of Conduct and these accompanying Guidelines.

#### **2. Is there anything missing that needs to be added to the draft revised guidelines?**

Generally, the draft revised Guidelines are quite comprehensive. We have suggested some sections which could be expanded and some new sections which could be included.

## **When I provide telehealth consultations with patients**

### Point 3

Point 3(e) goes some way to reassuring doctors that they are not bound to offer a patient a telehealth consultation if it is not appropriate to do so. The word ‘appropriate’ could be explained further to make it clear that this does not only refer to whether or not a telehealth consultation is clinically appropriate but it could include words to empower the doctor to cancel or reschedule the consultation if the doctor decides that the patient is not in an appropriate setting for a telehealth consultation. It is our members’ experience that patients are taking telephone or video calls, for example when driving in a car or in a shopping centre. These settings are not appropriate or conducive to receiving health information, and risk breaching privacy.

The information listed in point 3 could also be expanded to include specific reference to the arrangements that are made for receiving and collecting documentation following a consultation including referrals, examination and test requests and prescriptions.

### Point 10

We suggest that point 10 is amended to provide further clarity to doctors and other health practitioners. The term “appropriate arrangements” should be expanded upon. We consider that appropriate arrangements outside of emergencies and other urgent circumstances should not include a reliance on a patient being seen by another doctor with whom there is no formal arrangement (i.e. simple statements such as “go and see your doctor” or “go to an emergency department” would not represent a sufficient transfer of care). Doctors would benefit from greater guidance, issues to consider, reasoning and examples, which have been useful in other Guidelines. Reasoning in particular assists doctors to understand and accept the Board’s position, even if that reasoning is brief – for example, the Board’s reasoning about why doctors should avoid providing medical care to anyone with whom the doctor has a close personal relationship with as currently set out in the Code of Conduct (Clause 4.15).

### Point 12

At point 12, or as a separate adjacent new point, we suggest including specific reference to patients being made aware of the arrangements that are made for them to receive and collect documentation following a consultation including referrals, examination and test requests and prescriptions.

### Point 14d

Point 14(d) refers to keeping a record of “consent from all participants if the consultation is recorded and/or when information is uploaded to digital health infrastructure”. We consider this point would benefit from further clarity – is “recorded” intended to refer to audio or visual recording of the consultation? What is “digital health infrastructure” intended to refer to? If the terminology used is deliberately broad, some examples would be beneficial. If it is intended to refer to audio or visual recordings of consultations, this is a complex area crossing a number of state and territory legislative differences. It is also an area that practitioners already grapple with. These issues would need to be addressed before the concept of recording consultations could be included in the Guidelines.

### Suggested additional guidance

Over the past two years, one of the most asked questions from our members related to telehealth is what to do when they believe patients would benefit from a physical examination. It would be useful to include guidance, principles and examples related to this issue.

On a related note, the Board could include a point about a doctor assessing the reasonableness of the mode of telehealth used for a consultation (whether it be over video, the telephone or other). The benefits of a viewing a patient via video could be included but not mandated.

Avant is also concerned that where telehealth services that do not attract a Medicare rebate are provided, there is a risk that these will be provided by doctors who are not experienced, qualified or appropriately supervised in that scope of practice. For example, GP registrars or other junior doctors should only perform general practice services in roles where they are provided with supervision approved by the relevant specialist colleges.

### **Prescribing**

Point 15 would apply whether prescribing in a telehealth consultation or a face-to-face consultation. It would be beneficial to make it clear that this obligation to comply with legislative requirements is the same as when prescribing during a face-to-face consultation. If this is intended to refer to additional requirements when prescribing certain medications via telehealth, further explanation would be helpful, as would reference to relevant resources.

### **Prescribing - if you have not consulted with the patient**

Avant believes that this sub-section needs to be modified and expanded. It should be a stand-alone section addressing providing care, not just prescribing, in the absence of a face-to-face, video or telephone consultation.

We have concerns about the provision of some services where consultations are not performed and there is no contact with a patient, whether face-to-face, via video or via telephone. In particular, the completion of online questionnaires by patients as essentially the sole basis to determine their clinical management (including providing prescriptions, investigation requests and medical certificates) presents a greater risk of harm compared to consultations conducted verbally and generally visually. A pre-determined questionnaire consisting of questions relating to a patient's request for a specific medication or test is unlikely to be a substitute for an appropriate history taking and examination, and this is exacerbated in circumstances where a patient does not have an existing relationship with their doctor.

We are also concerned that this mode of healthcare delivery may lead to fragmentation of the patient's care, in both general practice and all other specialities. It is generally not preferable to offer a telehealth consultation if a medical practitioner, or a member of their practice or colleague in their team, have not seen the patient in a face-to-face consultation within a reasonable period (other than in extenuating circumstances where access to face-to-face care is restricted, such as during natural disasters and weather events, lockdowns, and patients living very remotely).

The Guidelines should stipulate that convenience should not be given a higher priority than quality of care. Avant is aware that some providers are highlighting that their businesses are filling a void created by a lack of access to healthcare. However, it is important that the quality of patient care is not impacted in these new business models and that any such void in patient access is met safely. Doctors, practices, pharmacists and patients are already capable of preventing or dealing with situations where regular patients require another prescription to be written and medication dispensed. In unforeseen situations where a patient requires a doctor other than their regular doctor to write a prescription, it is arguably more important that the new doctor should have a real time conversation with the patient to determine if the prescription is appropriate and that safe care is being provided.

Avant has recently made changes to our *Practitioner Indemnity Insurance Policy*. We continue to support our members in providing telehealth by video or telephone; and by other modalities where doctors have an established clinical relationship with their patients. Avant has reinforced that the provision of telehealth is subject to the same standards of care as the provision of in person healthcare. We no longer provide indemnity for civil claims where telehealth services are provided based on the electronic transmission of medical images and/or patient data (including online questionnaires and/or text-based chat) that involves the provision of a prescription, or a medical certificate, or a pathology request, or a radiology request, or a referral to a health practitioner, unless a previous telephone, videoconference or in person medical consultation has occurred between the practitioner and the patient.<sup>1</sup>

Avant considers regulation of this practice would be best achieved by clear reference to the professional obligations already set out in the Code of Conduct, as specifically regulating the mode of healthcare delivery may not be possible or practical. We support the inclusion of the comment at the start of the Guidelines (under the heading “Background”) that states “The standard of care provided in a telehealth consultation must be safe and as far as possible meet the same standards of care provided in a face-to-face consultation”. We also support reference to the Code of Conduct in the opening section of the Guidelines. We recommend that these comments should be repeated in this particular section, to reinforce the importance of this for medical practitioners reading the Guidelines. This message could also be expanded by stating that consultations with new patients where the only history being taken is in the form of a number of pre-determined questions, is likely to be unsatisfactory practice in many cases, irrespective of the mode of healthcare delivery.

There should also be direct references in this section to the important aspects of the Code of Conduct, along with scenarios that are likely to be considered unsatisfactory by the Board. In particular, the requirements for good patient care in Section 3 of the Code of Conduct should be detailed in the Guidelines, including in relation to history taking, appropriate physical examination, suitable management plan, maintaining adequate records, communicating effectively with patients, facilitating coordination and continuity of care and providing treatment options.

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<sup>1</sup> Some exceptions apply, including for pathologists and radiologists, some hospital-based care or where there is a written agreement with a medical practitioner or practice with whom an in person consultation has taken place and the doctor has access to the medical records. See [Avant - Medical indemnity insurance for medical practitioners Notice of change – 1 January 2023](#).

Avant is concerned that the statement “This includes requests ... communicated by text, email or online that do not take place in real-time and are based on the patient completing a health questionnaire but where the practitioner has never spoken with the patient” is unclear. We recommend that the Guidelines reflect that any conversation with a patient should have been in relation to the specific medical condition subsequently being managed by text, email or online, and that the doctor should be able to form the reasonable opinion that it is appropriate to provide further care for that condition without a visual or verbal review.

If there is any regulatory attempt to limit the mode of healthcare delivery, the Board needs to ensure it does not have unintended consequences and form barriers to the provision of appropriate healthcare, both now and with advances in the future.

Once made into a stand-alone section, we recommend a more appropriate title for this section may be “Providing a service in the absence of a face-to-face, video or telephone consultation”, for the following reasons:

1. Some services other than prescribing are also being conducted in a similar manner, including the provision of medical certificates and pathology and radiology requests. Limiting the section to prescribing does not address concerns about practises such as:
  - a. Employers being uncertain about the validity of medical certificates where patients have not spoken with a doctor about their reasons for needing a certificate, and where patients have entered their own dates to complete the document. Some services have been offering a service where multiple certificates will be provided for an annual fee.
  - b. Non GP specialists not knowing which GP to correspond with in order to ensure continuity of care after seeing a patient.
  - c. Pathology and radiology requests that are not clinically indicated, or that will produce results that require liaison between the treating doctors.
  - d. Patients being inappropriately referred to non GP specialists.
2. There is a developing use of terminology by some providers that uses the word “consultation” to describe a patient’s completion and subsequent practitioner review of a health questionnaire, despite not speaking with the patient in real time.

### **3. Do you have any other comments on the draft revised guidelines?**

Overall, the Guidelines should balance the need to promote safety, quality and professionalism in healthcare, and the need to encourage innovation in the sector and ensure patient access to care.

Avant supports Option 3: Revise the guidance. Our members have told us that it would be beneficial to have guidance in this area to help them deliver healthcare that is of a high standard.

The key to the success of the Guidelines will be in ensuring doctors are aware of and adhere to them. It is important that the Guidelines are disseminated and promoted continually or at regular intervals. As the use of telehealth grows so does the need to remind doctors of their obligations to promote safety and quality in medical care.

Avant is aware of some providers of telehealth services claiming that “Guidelines” are not binding on practitioners. Ahpra and the Medical Board could consider renaming them as a “code” or similar, or making a clear comment that practising in contravention of the Guidelines may result in findings that a practitioner’s performance or conduct is unprofessional.

Ahpra and the Medical Board could consider having a ‘useful resources’ webpage which could also include FAQs – similar to the pages developed for advertising and cosmetic surgery. We note there is currently an additional resource about inter-jurisdictional consultations which would presumably need to be reviewed and updated/re-released for consistency once the review of the Guidelines is completed. The proposed additional resources would assist doctors with more practical elements of embedding the safe and appropriate delivery of telehealth in their practice.

Our members have called for more assistance in choosing the appropriate technology platforms for telehealth or at least more guidance or standards related to the technology software. Reference to, and collaboration with, the Australian Digital Health Agency or another government supported agency may help to achieve this.

With the increased uptake of telehealth over the past two years, and the likely rapid development of technology in the future, we suggest that the Guidelines be reviewed in three years (instead of five years as suggested in the draft).

Avant Mutual Group  
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