17 February 2023

Dr Anne Tonkin
Chair, Medical Board of Australia
Australian Health Practitioner Regulation Agency
National Boards
GPO Box 9958 Melbourne VIC 3001
medboardconsultation@ahpra.gov.au

1800 061 113
info@mips.com.au
PO Box 24240
Melbourne Vic 3001

mips.com.au

Dear Dr Tonkin

Re: Public Consultation on draft revised Guidelines: Telehealth consultations with patients

Thank you for inviting MIPS to respond to the *Public Consultation on the draft revised Guidelines: Telehealth consultations with patients* ("the draft Guidelines"). MIPS is a member-based organisation that provides professional indemnity insurance to over 47,000 members, including medical practitioners and medical students. MIPS has extensive experience assisting its members respond to regulatory notifications lodged with Ahpra, including claims, inquiries and requests for advice relating to the use of Telehealth. MIPS commends the important work of Ahpra and the Medical Board of Australia ("the Board") in improving patient outcomes and addressing the need for clearer regulation and guidance on the use of Telehealth. MIPS has previously responded to the Targeted Consultation through the Insurance Council of Australia and now provides the following additional response to this Public Consultation.

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

Apart from our comments below regarding prescribing and treating patients where there has been no prior real-time interaction, MIPS believes that the content and structure of the draft Guidelines are helpful, relevant, and workable. MIPS agrees with the Board that Option 3 is the preferred approach to regulating the use of Telehealth. Telehealth now forms a significant proportion of many practitioners' clinical encounters. According to the Commonwealth Department of Health, over 100 million telehealth services were delivered to 17 million Australians during the first two years of the COVID-19 pandemic. According to the most recent data released by the Australian Bureau of Statistics, nearly one-third of Australians had a telehealth consultation in the 2021-2022 financial year. The nature of Telehealth is also evolving, particularly in relation to asynchronous telehealth, and this may create novel and unforeseen risks that need to be identified and managed carefully.

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

First, the focus of the draft Guidelines is rightly on the use of Telehealth in the context of a therapeutic relationship. However, they could also address the use of Telehealth for the purpose of **independent medico-legal examinations**, particularly in the context of psychiatry, where a physical examination may not always be required.

Second, on page 9 of the Public Consultation document under "What do I need to do?", the draft Guidelines specify that "a personal account" must not be used for Telehealth. However, "personal account" needs to be defined. For example, does it refer to a Telehealth account that is also used for personal calls, or does it refer to a Telehealth account that is only used for professional Telehealth purposes but is accessed using a personal email address? More importantly, if the telehealth calls themselves are secure, why is there a concern if the same

account is also used for other purposes? The definitions and parameters that underlie this requirement must be further articulated to avoid confusion and uncertainty among practitioners.

Third, while it is reassuring for practitioners to know that patients cannot insist upon a consultation being conducted using Telehealth if a face-to-face consultation is more appropriate, what should a practitioner do if the patient refuses a face-to-face consultation and a Telehealth consultation is considered preferable to no consultation at all? The current approach in 3(e) over-simplifies the difficult decisions that practitioners have to make in these challenging circumstances. MIPS suggests that the information provided under "In emergency situations" on page 11 could be expanded to articulate expectations in these circumstances.

Fourth, the Board's current position in the draft Guidelines regarding prescribing and treating patients where there has been no prior real-time interaction **does not appear workable**. In their current form, they seem to be saying that practitioners cannot consult with new patients for the first time under any circumstances, including where the intended interaction is face-to-face. We do not believe that this is the intention of the Board. If the intention of the Board is to preclude telehealth, or specifically asynchronous telehealth, where there has been no prior real-time interaction, then this must be clearly articulated in order to avoid confusion.

Fifth, the Board's position regarding prescribing for patients using asynchronous telehealth where there has been no prior real-time interaction could be more clearly defined, given this is an emerging area of healthcare. For example, it would be helpful for the Board to clearly and carefully enunciate why it does not support the use of asynchronous telehealth in these circumstances and why it believes it is not good practice. It should also clarify whether this restriction would apply if the patient has previously been seen in real-time by another practitioner at the same clinic? If the patient has been seen previously in real-time, is there any restriction on the length of time that can elapse since the prior consultation? For example, must the prior consultation have occurred within the previous 12 months? Any position adopted by the Board must be clearly articulated, evidence-informed and consider existing literature and notifications data. Indeed, has the Board collected data on the volume and severity of notifications that relate to asynchronous telehealth? If so, this should be shared with the public in de-identified form so it can better understand the risks. If no such data exists, the Board should justify its position.

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

Finally, the following table sets out some suggested minor amendments to wording within the Guideline and the reasons for these suggested changes.

Page	Current wording	Suggested wording	Reason
1	*Telehealth is used…as an alternative to face-to-face consultations.*	*Telehealth is used…as an **addition** to face-to-face consultations.*	The use of telehealth can (and often does) occur in conjunction with face-to-face healthcare and in the context of an existing therapeutic relationship that was initiated by face-to-face contact. It is part of the tools available to clinicians and has an appropriate place alongside face-to-face healthcare.
8	*Telehealth…should not be considered as a substitute for face-to-face care*	*Telehealth…should not be considered as a substitute for **all** face-to-face care.*	During the pandemic, it has become clear that telehealth is not inferior to face-to-face care in many clinical situations,

Page	Current wording	Suggested wording	Reason
			including for mental health consultations.
10	*You should…keep a record of…the patient's consent to the telehealth consultation.*	*You should…keep a record of…the patient's consent (**where required to be sought**) to the telehealth consultation.*	Many Telehealth consultations will be booked online by patients who specifically request this. It is unclear why their consent to the use of Telehealth ought to then be sought and documented. It is no more necessary than when a patient requests a face-to-face consultation.
11	*Any practitioner who prescribes for patients…must…*	*Any practitioner who prescribes **or provides healthcare** for patients…must…*	If the draft Guidelines are adopted in their current form, this sentence needs to be consistent with the sentence found two paragraphs above, where it states that the Board does not support "prescribing or providing healthcare" for a patient with whom there was no prior face-to-face, video or telephone consultation.

Please do not hesitate to contact me if you require any further information. I can be contacted on [redacted] or [redacted].

Yours sincerely

[redacted]

Dr Owen Bradfield
Chief Medical Officer, MIPS
cc: Natasha Anning, Chief Executive Officer, MIPS