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Dr Zena Burgess
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Dear Dr Burgess

Developing the next edition of the RACGP Standards for general practices

Avant welcomes the opportunity to provide input into the development of the next edition of the Standards for general practices (the Standards).

Our submissions on the first draft of the Standards are attached.

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

Yours sincerely

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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 first draft of the 5th edition RACGP Standards for General Practice

Avant supports the overall intent of the Standards in providing a framework for good practice and a template for quality care and risk management in Australia. However, in our experience, when medico-legal issues arise in claims or complaints, the Standards have in many circumstances been used to define the minimum standard against which a doctor's actions is judged. Although each case is judged on its merits, it is our experience that the Standards carry more weight than other published materials such as guiding principles, position statements, and guidelines. Using strong words such as "must" when explaining or defining how doctor, or practice, can comply with a flagged criterion places a high onus on the doctor or practice. While a proposed requirement may represent best or ideal practice, we warn against setting the bar too high and imposing requirements that are not yet reasonable or accepted clinical practice and where no legal duty exists.

Avant's comments are contained in the attached table.

We acknowledge that this is the first edition of the Standards, and commend and support the collaborative efforts by the College in developing these Standards.

Avant's Comments on the Standards

Proposed RACGP Standard/Criteria Number/page number	RACGP standards and explanatory notes state	Avant Submission
• 1.1: page 15	• Under "Induction Program" there is reference to "occupational health and safety issue"	• In light of legislative amendments, the correct terminology to be used is "work health and safety"
• 1.1: page 16	• "A risk register is a helpful way to record problems that could result in a risk becoming a reality, so that you can identify potential risks and take action to reduce the likelihood or severity"	• Avant recommends that this section requires clarification about what is meant by a risk register, as well as some practical examples of the type of risk. .Furthermore, clarification of the difference between a "risk register" and the level of identifying detail that may be required in a "near miss" register is required.
• 1.2 B: page 18	• "Our practice reviews each team member's performance" • "the practice can monitor each staff member's performance against their role's requirements …"	• Avant understands that the vast majority of GPs are self employed contractors and not employees. In order to facilitate adherence to this standard, we recommend that the Standards suggest that the contract between doctor and the practice make reference to the need to comply with the RACGP standards.
• 1.4 page 22	• Open disclosure: "contact your medical organization…."	• We are pleased with this advice to seek help from MDOs
• 1.5 page 24	• "our practice team is offered NHMRC recommended immunisations…."	• We appreciate that this is suggested because of the practice's work, health and safety obligations. However, Avant generally advises members not to treat their own staff.

		• It is the practice of many employers to provide vaccinations to their staff and in the non-healthcare context, organisations contract outside healthcare providers to provide vaccinations. • On balance we recommend that vaccinations should be done by the staff member's own doctor rather than the practice that employs them.
• 2.2 page 33	• This flagged indicator relates to the management of telephone and electronic messages from patients. • In the explanatory notes this criterion, the word "must" is used in reference to obtaining three identifiers when communicating by telephone.	• The use of the word "must" implies that this must be done without exception. Avant believes that universal compliance with this in every instance is impractical. Avant recommends the use of the word "should", which gives some flexibility to some practical scenarios, such as where the patient is well known to the staff member he/she is speaking to.
• 2.2 page 34	• In referring to communicating by electronic means, the explanatory note state that it is necessary to "obtain written consent from the patient before communicating health information electronically"	• Although written consent is a good idea, it is not legally required and would impose a higher standard than the law currently requires.
• 3.1 F- page 43-45	• "Our clinical team considers ethical dilemmas"	• Whilst we generally agree with the explanatory notes for this criterion, some of the examples listed (end of life, withdraw treatment, provide treatment against the patient's wishes) raise complex ethical and medico-legal issues. Avant recommends that the Standards should advise the doctor to seek medico-legal advice from their MDO. We recommend that the example "providing treatment against the patient's wishes" be removed as this is unlawful.

• 3.2 – pages 47-48	• Presence of a third party • "Before the consultation commences, patients must be asked to provide consent to have a third party present during the consultation. Third parties can be interpreters, carers, relatives, friends, medical allied health or nursing students on placement, and chaperones."	• There should be a distinction made in the Standards between third parties who accompany the patient at the patient's request, and to other third parties present at the request of the practice. • When the patient brings a third party into the consultation room with them, consent is implied and does not need to be expressly obtained. The presence of the third party should be documented. • For third parties present at the request of the practice, the doctor needs to obtain and document express consent of the patient. As consent may be verbal, the doctor does not need to obtain express written consent from the patient. The presence of the third party and the consent of the patient should be documented. • The documentation requirements should not in our view be in the flagged criteria but in the explanatory notes.
• 4.1 A– page 52	• The flagged indicator states: "Our patients receive information on health promotion, illness prevention, and preventative care." • The explanatory notes state: "if you choose to cease using a reminder system, you must advise patients, so that they can set up their own system for ensuring they have regular screenings and checks"	• There is no legal duty to remind patients to have routine health checks and screening. Whilst it is good quality patient-centred care to do so, advising patients that you are no longer doing so would significantly increase the administrative burden, cost and medico-legal risk to general practice. In these circumstances, the Standards impose a duty which does not currently exist.
• 6.3 page 65	• "Practitioners have the right to discontinue treatment of a patient …"	• Avant suggests adding an explanatory note which suggests that doctor consults their MDO in these circumstances.

• 7.3 pages 75 to 76	• The explanatory notes outline the contents of a privacy policy	• Avant suggests that this section simply refer to the RACGP's own Privacy Policy template as well as the Privacy Act APPs, rather than re-iterating the requirements.
• 7.4 page 80	• Transfer of health information: the explanatory notes state that practices should follow the processes in the APPs and to contact insurers if the doctor or practice have any concerns.	• Whilst we agree with the advice to seek help from MDOs, we recommend that this section refer to the RACGPs "Guide for managing external requests for information" http://www.racgp.org.au/your-practice/ehealth/optimus/managing/
• 7.4 page 81	• Protect mobile devices and the information stored on them: "Maintain a logout register for laptops and mobile phones." • "Maintain a secure area for storage of portable devices"	Avant recommends that neither a log-out register or a properly secured storage area is required for mobile devices and would be impractical. It is more important that the device is protected with a secure password
• 1.2 B page 108	• With respect to patient feedback, the explanatory note states that "you must also seek feedback from patients on an ongoing basis……send an SMS to patients asking for their thoughts on a specific issue"	• The use of the word "must" is also, in our view, too strong and could be replaced by "should". • Seeking feedback by SMS should be done within the context of the practice's Privacy Policy to avoid breaches of privacy and anti-spam legislation.
• 1.5 D page 139-140	• "Our practice initiates and manages patient reminders", with reminders being defined as being used for routine preventative activity	• Whilst it is good quality patient-centred care to have a "routine" reminder system in place, there is no legal requirement to use routine reminders. Having this as a Standard may increase the medico-legal risk to doctors by imposing an obligation that does not currently exist at law.

• 1.6, page 144	• "Referrals sent electronically: Unless the patient has provided their consent (preferably written) to do otherwise, all referrals forwarded by email should be encrypted[33]." • "The practice should comply with standards for the secure transmission of health information to avoid breaching patient confidentiality[32]."	• Consent to use email, encrypted or otherwise, should be sought and documented, but need not be written. It may be in a form of standing consent. The use of emails should also be noted in the practice's Privacy Policy. • We refer you to the current RACGP Guiding Principle on the use of emails, on which we closely collaborated with the College. There is no legal requirement to use encryption. This explanatory note raises the standard expected over and above that which is required by the Privacy Act. The Privacy Act requires the practice or practitioner to take "reasonable steps". Whilst using encryption is "best practice" under the RACGP security matrix , stating this in the Standards makes it a minimum standard by which all actions will be judged and therefore increases practitioners' and practice's medico-legal risk. See http://www.racgp.org.au/your-practice/ehealth/protecting-information/email/ • The use of the words "standards" is unclear – it could refer to these standards, other professional standards or the RACGP security standards. We recommend that this sentence be redrafted to clarify what standards practices need to comply with.