Royal Australasian College of Surgeons submission to NSW Health concerning the Performance of Podiatric Surgery in New South Wales

Introduction

NSW Health is considering amendment of the Day Procedure Centres Regulation (NSW) 1996 and the Private Hospitals Regulation (NSW) 1996 to provide access to licensed private facilities for podiatric ‘surgeons’. This review has been undertaken with regard to recognition by the Commonwealth of 14 podiatrists who perform surgical podiatric procedures under the Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004 and the Health Insurance (Accreditation of Podiatric Surgeons) Guidelines 2004, allowing patients to claim refunds from private health insurance for services provided by these podiatrists.

The Royal Australasian College of Surgeons (RACS) appreciates the opportunity to provide a submission to this review. The RACS believes that podiatrists perform a valuable role as allied health professionals in the community, particularly in regard to non-operative management of diabetic feet. However, there are substantial public safety concerns in recognising through legislation the services being performed by podiatric proceduralists, without a transparent assessment of the appropriateness of their training, skills or qualifications to perform this level of surgery.

Governments in Australia have invested considerable amounts of public money in medical schools to ensure that medical practitioners are providing high quality services to the Australian public. Policy makers have a responsibility to ensure that all decisions are in the best interests of the individual and society in general.

About RACS

The RACS is an internationally recognised organisation for 5400 surgeons who are based mainly in Australia and New Zealand. Approximately 90 percent of all surgeons practising in Australia and New Zealand are Fellows of the RACS (FRACS). These surgeons were trained by the RACS in nine surgical specialties through its Basic Surgical Training and Specialist Surgical Training and Assessment programs.

The College is also responsible for maintaining surgical standards in Australia and New Zealand through its Division of Fellowship and Standards.

Patient profile

Background documentation to the Commonwealth Health Legislation Amendment (Podiatric Surgery and Other Matters) Bill 2004, which took effect in January 2005, notes that “the majority of work podiatrists do involves older patients experiencing difficulty with mobility as a result of injury, structural problems, or the effects of chronic diseases.”

A large proportion of patients needing podiatric care will be diabetic, with a range of co-morbidities including cardiovascular disease, and with a higher risk of infection increasing the complexity of care and the potential for complications. Operations on the bones, ligaments and tendons of the foot carry significant risk of complications which, at worst, can lead to the loss of a limb or be life-threatening.

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The Australasian Podiatry Council (APODC) has recently argued that “the management of serious foot complications such as ulcers and infections requires a higher, more specialised level of expertise, and is ideally delivered by a multidisciplinary tertiary hospital team”.

Most podiatrists in Australia work in private practice. Others work in hospitals, local government clinics, community health centres and aged care facilities. The vast majority of podiatry services, including various surgical procedures, are performed in podiatrists’ rooms, where there is less nursing and medical support than would otherwise be available in hospitals.

Furthermore, it has been noted in the literature that “the higher rates of complications seen in older surgical patients result in part from existing comorbidity and age-associated changes in organ function. Extensive procedures depending on good bone healing for success should usually not be attempted on older patients. Office surgery for the geriatric patient should involve only the simplest procedures and should be kept to a minimum because of the increased possibility of postoperative complications. In the hospital there is better preoperative evaluation, operating room conditions, and postoperative care.”

Level of training and competency
To become a podiatrist, a person must meet the entry requirements of one of the institutions offering podiatry courses and then complete a three or four year full-time course leading to an appropriate tertiary qualification in podiatry. Podiatric ‘surgeons’ undertake additional academic post-graduate training in surgical procedures, and podiatry item numbers for procedures not related to skin or nail tissues are restricted to Fellows of the Australian College of Podiatric Surgeons (ACPS). They are not required to have medical degrees.

Podiatrists in Australia thus do not receive the same level of undergraduate training as medical practitioners, and the post-graduate surgical training is academically based, with a limited practical skills component. Compare six years and 145 cases of podiatric surgical training with 15 years and an absolute minimum of 2000 supervised cases (usually 3000) for orthopaedic surgeons.

Despite using similar titles, Australian podiatric ‘surgeons’ are not remotely comparable to those in the United States, which has a long history of podiatric surgical training with a medical component equivalent to that required of a medical graduate. Graduates of accredited US podiatric medical schools are prepared to function competently as house officers in general hospitals during their postgraduate training, and it is now commonplace for first-year residents in foot and ankle surgery to function as completely integrated interns on medical and surgical services. In fact, it is a requirement of the US Council on Podiatric Medical Education that all podiatric residencies provide this experience. Australian podiatric ‘surgeons’ have been refused accreditation in the US because of this gap in training requirements.

There is growing concern among foot and ankle specialists, including doctors of podiatric medicine in the USA, that Australian podiatrists are performing increasingly complex surgery, such as hallux valgus correction and ankle fusion.

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2 Australasian Podiatry Council (APODC) (2005), Submission to the Productivity Commission Health Workforce Study on Podiatry in the Australian Healthcare Setting. Collingwood: APODC.
5 APODC (2005) op cit.
for which they are not adequately qualified. The Australian Orthopaedic Foot and Ankle Society (AOFAS) has stated that “Australian-trained podiatrists do not have the adequate training or expertise to perform surgical procedures involving tendon, bone, ligaments, blood vessels, nerves or joints”.

The APODC itself has recently argued against “unqualified persons providing invasive footcare services” being allowed to practice without proper regulation.6

Limited research is available on the safety or efficacy of surgery performed by podiatrists, particularly comparing it to that performed by surgical specialists. In one systematic review of podiatric evidence, 322 articles in podiatric medical journals were reviewed to determine their level of evidence. The authors found that only 1% of the articles involved randomised controlled trials. They concluded that “if the podiatric medical profession wishes to become a participant in evidence-based medicine, greater emphasis must be placed on studies that assess hypotheses.”

The Commonwealth legislative review regarding podiatric surgery heard there was “evidence to suggest that the treatment outcomes of foot conditions treated by podiatrists and podiatric surgeons are as good, and in many cases, better, than when the same conditions are treated by orthopaedic surgeons and other registered physicians”.9 However, only one reference was cited to back this claim, and it did not compare podiatric surgical outcomes with those of other practitioners.9 A web search of Medline, PubMed, the Cochrane database, the British Medical Journal, Australian Medical Journal, and the Journal of the Australasian College of Podiatric Surgery (ACPS) did not turn up any additional supporting evidence. It would seem appropriate, if patients are to be increasingly exposed to surgical procedures performed by podiatrists, that an independent assessment of these evidentiary claims be undertaken by a body such as the National Health and Medical Research Council (NHMRC).

Much of the podiatry documentation infers that podiatrists are practicing in the medical model. The APODC has also recommended that “all people providing footcare be subject to the same level of scrutiny via a formal registration process.”10 The RACS therefore believes that if podiatrists desire recognition as medical practitioners, including using recognised medical titles such as ‘surgeon’, they must be answerable to their respective State Medical Boards.

In addition, accreditation of the podiatric surgical training program must be equivalent to that for medical training i.e. transparently and independently assessed by the Australian Medical Council (AMC), with competencies for College Fellowship equivalent to that for surgical specialists.

The federal Government considers the RACS to be the appropriate supervisory body for accreditation of those wishing to provide surgery. The recent publicity of substandard care and even dangerous practice of practitioners who were neither assessed nor trained by the RACS highlights that issues of public safety are at the forefront of the community’s mind.

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6 APODC op cit.
8 Department of Parliamentary Services (2004), op cit. p. 3.
10 APODC op cit.
Use of specialist title
Despite the recommendation of the AMC that each State and Territory have a specialist registration scheme, only Queensland and South Australia have enacted legislation to restrict the title of ‘surgeon’ to recognised medical practitioners who have a qualification and sufficient experience in the specialty (being fellowship of the relevant Medical College).

NSW Health’s own 1999 Inquiry into Cosmetic Surgery found that “medical practitioners who perform invasive... surgical procedures should have adequate surgical training” and that “training programs for practitioners should continue to be provided by specialist colleges and associations”.11

ACCC and the Trade Practices Act
The Australian Competition and Consumer Commission (ACCC) has released guidelines regarding patients’ and doctors’ rights and responsibilities under the Trade Practices Act (TPA). The brochure entitled “Straight talking with your patients”12 stipulates that in order to avoid misleading patients, practitioners must give current and correction information, avoid ambiguous statements and use clear language that patients understand. It states further that the TPA prohibits doctors from making false representations, including ”leading them to a wrong conclusion”, ”creating a false impression”, or ”making false or inaccurate claims”, and ”falsely representing that services... are of a particular standard, quality, value, grade, composition, style or model...”

This also supports the now commonly held doctrine of informed consent in health care, wherein patients can only make an informed decision if they are aware of the skills and qualifications of their chosen practitioner. Caveat emptor cannot be applied where there is marked information asymmetry between consumers and providers.

There is strong indication in Section 52 of the TPA that the ACCC does not intend non-medical practitioners to be exempt from such considerations.

Legal advice obtained by the RACS advised that “use of the term ‘surgeon’ by those who have not completed surgical training is potentially harmful in so far as: (a) members of the public are deceived about the distinction between... orthopaedic surgeons and podiatric ‘surgeons’; and (b) members of the public cannot readily discern who is a qualified surgeon and the scope of procedures that should only be undertaken by a qualified surgeon.”

This position is also supported by the ACCC brochure, which states that “for example, patients may assume that a person who uses the title ‘surgeon’ has undertaken a particular level of training in surgical procedures. Doctors wishing to promote themselves as surgeons should ensure they are not using the term in a way that may mislead patients about their skills or qualifications.”

A practitioner who is not even a medical graduate using the title of ‘surgeon’ would appear to be in contravention of the ACCC guidelines.

Yet in a survey of consumers and medical practitioners undertaken by Klein and Associates on behalf of the Australasian Society of Plastic Surgeons (ASPS) and

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the RACS,\textsuperscript{13} it was clear that consumers knew little about the qualifications of practitioners and their relative education and training levels. The survey also found that consumers expected practitioners using the title ‘surgeon’ to have the same level of training and qualifications as surgical specialists. The consumers involved were quite concerned that non-surgeons were using the title, making comments such as:

"It’s dreadfully misleading and should not be allowed."

"There should be a law against non-qualified surgeons calling themselves surgeons."

Patients generally want the best possible outcomes and the best and most highly qualified person there to provide those outcomes.

For these reasons the RACS does not believe it is appropriate for podiatrists who perform surgical procedures to use the term ‘surgeon’. Amendment of the Day Procedure Centres Regulation (NSW) 1996 and the Private Hospitals Regulation (NSW) 1996 to allow procedures to be carried out by accredited podiatrists would, by implication, validate the use of the title ‘podiatric surgeon’ by non-surgeons and undermine the safeguards built into the regulatory requirements, namely that complex surgical procedures must be carried out by medical practitioners.

**RACS recommends that:**

- As podiatric procedures are being delivered within the medical model an independent assessment (and potentially accreditation) of the podiatric post-graduate procedural training program should be undertaken by the AMC.

- From a safety perspective, training in surgical procedures for podiatrists should be at least equivalent to that undertaken by orthopaedic surgeons specialising in foot and lower leg conditions.

- Until accreditation and an appropriately accredited training program has been developed, surgical procedures undertaken in private facilities by podiatrists with post-graduate qualifications should be limited to conditions of the skin and nails.

- Use of the title ‘surgeon’ should be limited to Fellows of the Royal Australasian College of Surgeons, to avoid misleading the public regarding the skills, training and qualifications of practitioners and podiatrists who perform minor surgical procedures should be known as ‘podiatric proceduralists’.