Balancing care and responsibility

The role of the general practitioner in specialist referrals

CPD

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Background
Referrals are a critical component of the Australian healthcare system, with referrals from general practitioners (GPs) to non-GP specialists making up the majority of medical referrals. Given the key role referrals have in primary healthcare, it is important that GPs understand their legal and professional responsibilities when providing a referral and ensure they refer appropriately and effectively to provide the best health outcomes for patients.

Objective
This article explores GP referrals to other health professionals and aims to describe a doctor's medicolegal obligations and responsibilities when making a referral.

Discussion
The responsibility of GPs in the referral process reflects their central coordinating role as providers of primary care, and the reliance patients place upon them to advise and recommend treatment and investigations. Understanding the medicolegal obligations and responsibilities when writing a referral can help GPs find the right balance between respecting patient autonomy and the professional obligation to take reasonable steps to ensure referrals and investigations are acted upon appropriately. The key to an effective referral process is clear communication between practitioners and patients, to help align the expectations of all involved so they can agree and implement a shared treatment plan in the interests of the patient.

THE MOST COMMON REFERRAL PATHWAY is between a general practitioner (GP) and another medical specialist. Referrals originated as a professional courtesy from one health professional seeking advice from another by providing sufficient relevant information about the patient to allow the second health professional to provide appropriate care or advice. Medicare and regulatory requirements have created further obligations and incentives that have increased the use of referrals. Data from the Australian Institute of Health and Welfare indicate that in 2022, there were 28.2 million Medicare Benefits Schedule (MBS)-subsidised referred consultations provided outside the hospital system.[1]

Under the *Health Insurance Act 1973* (Cwlth), a referral is required for a patient to access rebates for Medicare services provided by a 'specialist or consultant'. Referrals by GPs under Medicare are usually valid for 12 months from when the patient consults the referred doctor. Non-GP specialists might also write referrals to other specialists, but these are only valid for three months. These requirements create an incentive for patients to have a GP referral and reinforce the central role GPs play in coordinating patient healthcare.[2] GPs might also provide referrals to allied health providers as part of this role.

For their part in the referral process, GPs have legal and professional responsibilities to refer appropriately and effectively. The process also necessitates effective communication between patient, GP and specialist to ensure patients receive optimum care.

In this article, we explore the multifaceted aspects of GP referrals to specialists and the accompanying medicolegal obligations and responsibilities.

Aim

The aims of this paper are to review legal obligations based on case law and professional standards regarding referrals from GPs to non-GP specialists, to examine key factors that contribute to failures and challenges in the referral process and to provide actionable recommendations for practices and doctors to mitigate this risk.

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When to refer

A doctor's duty to exercise reasonable care and skill requires them to recognise the limits of their expertise and to seek guidance or refer a patient for specialist treatment or investigation when it is reasonably foreseeable a patient might suffer harm without appropriate treatment.[3]

The Medical Board of Australia's *Good medical practice: A code of conduct for doctors in Australia* (Code of Conduct) outlines doctors' professional responsibility to refer patients to another practitioner when referral would be in the patient's best interests.[4] This requires doctors to exercise their clinical judgement to decide whether the skills or knowledge of another practitioner are needed to provide appropriate patient care.

Referral for investigation and diagnosis

Although missing a diagnosis does not necessarily mean that a doctor's care was below standard, failing to refer for assessment or investigation might be considered negligent, particularly where consequences of misdiagnosis are significant (there is no applicable legislation in the Australian Capital Territory and Northern Territory and the common law applies).[5–10] For example, doctors have been found negligent for failing to refer a patient for specialist examination of knife wounds to his hand and failing to diagnose severed tendons, which lead to pain and loss of function in his hand,[3] or failing to refer a presumed lipoma for further investigation and missing a malignant fibrous histiocytoma that required amputation of the patient's leg above the knee.[11]

Statistically, failures to refer have been identified as a significant contributor to missed or delayed diagnosis. For example, one US study[12] of primary care settings found that errors in referrals, including failure to make a referral or contact an appropriate specialist, contributed to 19.5% of missed or delayed diagnoses. Most errors in that study had the potential for moderate-to-severe harm.

Doctors might also be negligent if they provide unnecessary treatment after failing to refer or seek specialist guidance. In a case involving a suspected malignancy, the court considered that exercising reasonable care and skill required the doctor to recognise the limits of expertise and gaps in their knowledge, and to seek specialist guidance before recommending or conducting a procedure that might have been totally unnecessary and that carried inherent known risks.[13]

Referral for specialist treatment

Doctors who fail to recognise when patients need treatment beyond their skills or qualifications to provide might also find themselves guilty of negligence or unprofessional conduct.

For example, the New South Wales Civil and Administrative Tribunal[14] was highly critical of a doctor's 'reluctance to refer patients to specialist treatment where that is clearly what they need', when one patient died after sustaining a blood clot and several more were put at risk in procedures that were not clinically warranted. The tribunal considered this continued to pose a risk to patient safety, suspending the doctor's registration and imposing conditions.

Failing to appropriately explain the risks of a procedure and provide patients with the option to see a specialist where appropriate might also constitute a failure to obtain informed consent and lead to a finding of negligence.[14,15]

Specific legal obligations to refer

Not only is it important for doctors to recognise the extent of their own abilities, but it is also essential they are aware of specific legal and professional requirements to refer.

A doctor might be required by legislation and professional obligations to refer the patient to another practitioner;[4] for example, where they conscientiously object to providing particular treatment, such as abortion services,[16] or where there are constraints on prescribing certain medications, such as under the Authorised Prescriber Scheme.[17]

Is the referral appropriate?

When making a referral, doctors must consider the need for referral[18] and ensure all referrals are clinically appropriate and justified. The need and justification for referrals are relevant to both telehealth and in-person consultations. Doctors should keep in mind that the standard of care provided in a telehealth consultation must be safe and, as far as possible, meet the same standards of care as provided in an in-person consultation.[19]

Doctors who refer a patient for treatment should exercise their clinical judgement to determine whether that treatment is appropriate and clinically indicated. That would generally mean taking a history, conducting an examination and/or consulting the patient's medical records as appropriate. For example, where a GP referred a patient with a neck injury for chiropractic treatment without an examination or appropriately consulting the patient's records, the GP was also found to be liable for a proportion of the resulting harm to the patient.[20] Although the GP was not responsible for the negligent treatment provided by the chiropractor, the court accepted expert evidence that the patient's condition was not appropriate for chiropractic treatment and the referral itself was negligent.[14]

It might also be appropriate to delay referral and to take a 'wait and see' approach,[21] but this needs to be communicated clearly to the patient and agreement reached about the planned approach. This includes the patient understanding what symptoms to look out for and when they should return.

Specialist selection

The Code of Conduct states that referring practitioners are expected to take reasonable steps to ensure the practitioner to whom a referral is made has the qualifications, experience, knowledge and skills to provide the care required.[22]

The Code of Conduct does not outline what steps are reasonable to ensure this.

GPs are likely to have developed a list of specialists to whom they regularly refer and in whose skills they are confident. But this will not always be the case, with patients sometimes asking doctors to refer them to a specialist they do not know, or for a procedure with which they are unfamiliar.

In these situations, although there is no obligation to do so, it can be helpful to

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check the Australian Health Practitioner Regulation Agency (Ahpra) public register[23] to see whether the practitioner is currently registered and to check their speciality or specialist endorsement if relevant.

Alternatively, other options to consider are:

- using a specialist directory to identify appropriate specialists
- seeking input from a supervisor or colleague with knowledge of practitioners with relevant skills and experience.

The duty to follow up

Doctors' duties in relation to referrals reflect the fact that patients will not usually know when their condition requires specialist investigation or treatment. Doctors need to ensure patients appreciate the nature of their condition and understand that they need to have their condition properly investigated at an appropriate level of expertise.[24] However, patients also have a right to make their own decisions. Having been advised of the options for specialist care or investigation and implications of declining recommended treatments, it is up to patients to decide how to proceed.[25] They might decline to pursue a specialist referral if they choose.[26]

In the case of referrals, as well as other clinical investigations, doctors are expected to take reasonable steps to make sure referrals and investigations are acted upon appropriately and results communicated in a timely manner.[27]

Determining how far this requires doctors to go in following up on specialist investigation might involve a degree of clinical judgement. If a patient advises they were unable to attend one specialist appointment, leaving the matter there is unlikely to be appropriate.[24] However, courts have accepted there is only so much doctors can achieve when caring for patients who have a history of failing to follow up referrals,[28] and doctors are not required to engage in 'an exercise in futility'[29] in continuing to recommend specialist treatment for such patients.

In practice, finding the balance might be challenging. There is some evidence patients are falling into the 'referrals black hole' as one recent UK study put it.[30] Recent figures from the Australian Bureau of Statistics indicate that 21.9% of people delayed or did not use medical specialist services when needed.[31] This did not always reflect a decision not to seek further treatment. Reasons for the failure or delay included cost, lack of time, long waiting times or unavailability of the service when required.[31]

Doctors and practices should have effective processes in place so that they are aware of whether referrals have been pursued and can follow these up with patients.[32,33] However they are not expected to be able to manipulate public waiting lists to promote non-urgent cases,[34] or solve the delays inherent in the 'normal operation of a significantly overstretched public health system'.[35]

Cosmetic surgery: A special case

With the introduction of updated cosmetic surgery guidelines that came into effect on 1 July 2023, patients seeking to undergo cosmetic surgery are now required to obtain a referral.[36] This has raised concerns regarding how far GPs are expected to go to verify the specialist's skills and qualifications. The Medical Board has encouraged doctors referring a patient for cosmetic surgery to check the Ahpra public register of practitioners.[37]

In line with the general obligations to ensure appropriate referral, the Medical Board has clarified that if a patient requests a referral to a particular cosmetic specialist, doctors may decline to provide that referral.[37]

Beyond these checks, however, the Medical Board has also clarified that the practitioner providing cosmetic surgery or treatment is responsible for the care they provide and that the referring GP will not be responsible if the patient is dissatisfied or has a poor outcome.[37] This clarification appears different from the usual legal position, outlined above, where doctors referring a patient for treatment should exercise their clinical judgement to determine whether that treatment is appropriate and clinically indicated.

The Medical Board has also provided guidance on the information that should be included in a referral for a cosmetic surgery or procedure under the new cosmetic surgery guidelines.[37]

Conclusion

The referral process between GPs and other specialists is an important aspect of the Australian healthcare system. It carries legal and ethical responsibilities, and it is important for GPs to understand these and refer appropriately.

The responsibility of GPs in the referral process reflects their central coordinating role as providers of primary care and the reliance patients place upon them to advise and recommend specialist treatment and investigations. This role might involve finding a balance between respecting patient autonomy and the professional obligation to take reasonable steps to ensure referrals and investigations are acted upon appropriately.

Fundamentally, however, the key to an effective referral process is clear communication between practitioners and patients so that all involved have shared expectations and can agree and implement a shared treatment plan in the best interests of the patient. Additional information regarding tips for writing and managing referrals can be found in Box 1 (overleaf).

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Box 1. Tips for writing and managing referrals

When it comes to managing referrals, there are various factors to consider to ensure a smooth and effective process. Below are several points to consider when managing referrals.

- Communicate clearly with patients. This includes explaining the reason for the referral, urgency and what the patient should do if they cannot get an appointment in that time frame. It also includes consulting with patients about the specialist and their preferences.
- Ensure patients are aware that referrals are valid for 12 months from the date they see the specialist, not the date you provide the referral (three months for specialist-to-specialist referrals).
- Communicate sufficient information about the patient and their treatment requirements to enable their continuing care.[38] Refer to guidance from The Royal Australian College of General Practitioners[39] and Services Australia[40] about the information that should be included in a referral.
- Avoid including patient information that is irrelevant to the reason for the specialist consultation, particularly if that information is particularly sensitive. If sensitive information is clinically relevant, discuss with the patient the reasons for including the information.
- Use secure messaging systems when sending referrals electronically to protect the privacy of patient information and to comply with cybersecurity requirements.
- Be particularly wary of using artificial intelligence technologies to draft referral letters, because including patient names or information in these tools is likely to breach patient privacy.[41]
- Comply with Medicare requirements for referrals:
  - The referral should be in writing, dated and signed by the referring practitioner. It should contain the reasons for referral and information the referring practitioner considers necessary to give the specialist or consultant physician.[42]
  - Although there is no legal requirement for a referral letter to be addressed to a named specialist,[40] named referrals might be required for the patient to access Medicare funding as a private patient at a public outpatient clinic. This is a matter of funding, not the validity of the referral.[43]
- Never backdate a referral – this might amount to making a false or misleading statement or lead to disciplinary action.[44,45]

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