



# Cremorne

PRIVATE DAY SURGERY

## **Medical By-Laws**

*Approved at MAC Meeting*

*held on 24<sup>th</sup> October, 2023*

### *Definitions*

Interpretation of these by-laws unless the context otherwise requires;

**"The Medical Advisory Committee"** means the Medical Advisory Committee of the Day Surgery. The Medical Advisory Committee shall comprise the Medical Director plus the Director of Nursing and shall include at least one member from each medical specialty operating at the day surgery.

**"The Investigating Committee"** means the Medical Advisory Committee or members of, selected by secret ballot to investigate and determine whether a complaint relating to a Visiting Medical Officer is sustained and what penalty will be imposed.

**"VMO"** means *Visiting Medical Officers*, those practitioners who hold appropriate medical qualifications and registration with AHPRA and who have been accredited by the Medical Advisory Committee who perform surgical operations or anaesthesia at the Day Surgery from time to time.

**"DS"** means the Day Surgery, all its plant & equipment, provision of services and facilities that are provided and maintained for its use as a day surgery from time to time in accordance with the provisions of the Private Health Facilities Act 1999 and its regulations.

**"VTE"** Venous Thromboembolism

### *Notices*

- 1 Any notice which is required to be given under any of the By-Laws may be given to an accredited VMO either personally or by sending it by registered mail to him/her at their address appearing on the Accreditation Register. Where a notice is sent by post, the notice shall be deemed to have been received by him/her three days after the day of posting.

### *Categories of Accreditation*

- 2 The following categories of Accreditation for VMOs apply:
  - Specialist VMO.
  - Anaesthetist VMO.
  - Allied Health Professionals
  - Paediatrics and Adult VMO

### *Accreditation Letters*

- 3 Letters of Accreditation, signed by the Director of Nursing on behalf of the Medical Advisory Committee shall be issued for a maximum period of 3 years. Such issue shall be recorded in a register kept for that purpose.

### *Resignation*

- 4 An accredited VMO who wishes to resign their accreditation status shall forward a written resignation to the chairman of the Medical Advisory Committee, giving 14 days' notice.

### *Powers of the Medical Advisory Committee*

- 5 The Medical Advisory Committee is the governing body of Cremorne Private Day Surgery. Powers and Duties include but are not limited to:
- 5.1 To delegate such powers, duties and responsibilities to such persons or committees it may deem appropriate from time to time.
  - 5.2 The right to grant VMOs the right of access to the Day Surgery facilities and in the event of refusal or withdrawal of such access, the right to review such access every (3) years without the necessity to give reasons for such granted or refusal of right of access and/or require a visiting medical practitioner to reapply for professional privileges if deemed necessary.
  - 5.3 To prescribe the professional privileges of all medical practitioners applying to use the Day Surgery facilities.
  - 5.4 To appoint and establish such committees and sub committees as from time to time and for such purposes as may be required.
  - 5.5 The appointment and removal of members of any committee.
  - 5.6 To dissolve any committee.
  - 5.7 The approval of the election of the chairperson and deputy chairperson of any committee.
  - 5.8 The making and amending of By-laws, Rules and Regulations and Company Delegations for the management of the Day Surgery. The Medical Advisory Committee shall carry out annual reviews of such By-laws, Rules and Regulations and Company Delegations as required.
  - 5.9 The Medical Advisory Committee will have the right to veto any decision of any committee or subcommittee that may be established from time to time.
  - 5.10 The Medical Advisory Committee shall meet at least quarterly.

### *Regulation of Conduct*

- 6 In accordance with the By-Laws and the Accreditation process as they may be from time to time, The Medical Advisory Committee will regulate the professional conduct of accredited VMOs including the establishment of an Investigating Committee in accordance with these By-Laws.

### *Code of Conduct*

- 7 Qualification of a surgeon as a specialist and sub-specialist carries the implication that practice will be conducted within sub-specialty limits.
- 8 Surgeons at the Day Surgery are expected to make continuing efforts to improve their knowledge of surgery.
- 9 Accredited Visiting Medical Officers at the Day Surgery are expected to report any changes to their registration status or any other documents submitted as part of their credentialing to the Director of Nursing and Day Surgery Unit Medical Director .
- 10 Accredited Visiting Medical Officers at the Day Surgery are expected to report knowledge of violations of the By-laws.
- 11 Surgeons should report new methods of, or innovations in, treatment to professional audiences to permit evaluation and authentication before release to public news media.
- 12 Biomedical research must be conducted within ethical and legal guidelines.
- 13 No research can be carried out at the Day Surgery without prior written approval from the Medical Advisory Committee.
- 14 Products, devices and prosthesis must be TGA approved or come to the Medical Advisory Committee for approval. Provisional approval can be given by an appropriate member of the MAC between meetings, but final approval must be sought at the next meeting.
- 15 No VMO shall speak to the media with regards to the Day Surgery or invite the media into the Day Surgery without prior written approval from the Medical Advisory Committee.
- 16 Shareholders in the Day Surgery must disclose their financial interest in the Day Surgery.

### *Principles of Patient Care*

- 17 The responsibility of a surgeon includes preoperative diagnosis and care, the selection and performance of the operation and postoperative surgical care.
- It is unethical to mislead a patient as to the identity of the doctor who performs the operation.
- When a patient has received immediate postoperative care and is ready for discharge from the surgeon's care, it may be appropriate to transfer the day-to-day care to another medical professional.

- 18 The responsibility of the anaesthetist is to evaluate the patient with respect to the appropriateness of proceeding with Day Surgery, taking into due respect the patient's medical condition for the type of surgery to be undertaken, and the type of anaesthesia to be performed.

The anaesthetist is to undertake such pre-operative evaluation and investigations as required to maximize the medical safety of the patient under anaesthesia and optimize the setting for the surgical procedure and will examine all patients pre-operatively, close to the time of surgery to assess the patients for any new or acute conditions, which might alter the requirements for the type of anaesthesia or day surgery.

The anaesthetist will speak with the patient about all aspects of the anaesthetic care that is relevant and material to the patient including informed financial consent.

The anaesthetist will provide whatever post-operative care may be considered necessary as a result of the anaesthetic process and if necessary, will assist in determining an appropriate medical strategy for dealing with anaesthetic complications.

- 19 Assessment of a patient's suitability for day surgery.

The Visiting Medical Officer must be responsible for assessing the patient's suitability for day surgery in accordance with the Day Surgery's guidelines for patient suitability for day surgery.

- 20 All patients admitted to the Day Surgery must be admitted under the care of a Visiting Medical Officer, who shall be in charge of the care of that patient.

The surgeon, who carries out the operation, will be considered to be the Visiting Medical Officer. Where a patient is booked in specifically for an operation, the booking should be made in the name of the surgeon who will carry out the operation.

- 21 The Visiting Medical Officer of a patient is responsible for providing continuing care while the patient is in the Day Surgery.

This care should be provided personally by the VMO or by a substitute nominated by the VMO. The substitute practitioner must have appropriate professional privileges from the Day Surgery. Where a substitute practitioner is employed it is the responsibility of the VMO to notify the Day Surgery of the name of the substitute.

- 22 Where the VMO calls in another doctor in consultation, the VMO must advise the Registered Nurse in Charge as to who is to be in charge thereafter for patient care and particularly in respect of first call.

### *Consent*

- 23 Explanation of the nature and risk for an operation to the patient or to the patient's representative is essential and is to be undertaken by the surgeon.

Patients should understand the indications of the operation; the alternatives, the risk involved, and the result that it is hoped to attain. The surgeon must be prepared to answer any questions that a patient may have with respect to the surgery.

- 24 Practitioners admitting patients to the Day Surgery must ensure the patient's consent for any operation or anaesthetic is obtained, documented and signed on the Day Surgery consent form prior to commencement.

Where a surgeon may be required to investigate before deciding what intervention is appropriate, the options must have been explained to the patient prior to admission and their consent obtained.

- 25 Discussion of fees with patients prior to the provision of the services.

When a surgeon agrees to care for a patient, a contract is established (even if it is not written). This relationship implies agreement that the doctor will be compensated for services rendered to the patient. A surgeon and or the surgeon's appointee must discuss the surgical fee and other fees associated with the surgery such as the facility fees, prosthetic fees, anaesthetic fees, pharmacy and pathology prior to surgery.

- 26 Fees charged by surgeons and anaesthetists are to be commensurate with services rendered and with the patient's rights.

Surgeons and anaesthetists have individual bases for their charges, and fees vary in different communities. The Day Surgery has not attempted to establish fee schedules for its VMO's. Instead, VMO's are expected to make charges commensurate with what is considered to be reasonable in this community for this service.

### *Confidentiality*

- 27 Every patient's right to privacy must be respected.

The surgeon should maintain the confidentiality of information from and about the patient, except as such information must be communicated for the patient's proper care or as is required by law.

### *Emergency Situations*

- 28 VMOs must advise the Director of Nursing in writing of any changes in their particulars i.e.

Contact numbers, changes of address, back up practitioner to be contacted in the event of the VMO being unavailable in an urgent situation.

- 29 In the event of a situation arising, where in the opinion of the Registered Nurse in charge of the Day Surgery at the time constitutes an emergency, the following procedures will be adopted by the Registered Nurse:

29.1 Every endeavour will be made to ensure that the VMO of the patient is contacted.

29.2 If the VMO were not contactable, the next person to be immediately contacted would be the patient's anaesthetist or one of the advised back up visiting medical practitioners.

29.3 If in the opinion of the Registered Nurse in charge of the Day Surgery at that time, the problem is an anaesthetic matter then the anaesthetist may be contacted first, in this case the VMO may also be contacted.

29.4 However, if in the opinion of the Registered Nurse in charge of the Day Surgery at that time, an emergency is such as to warrant the attention of the nearest available doctor, then the Day

Surgery reserves the right to summon such help. In this case a full report will be made to the VMO as soon as practicable. In addition, the doctor summoned in such an emergency situation will be requested to subsequently contact personally the VMO of the patient.

- 30 If the Registered Nurse in charge of the Day Surgery at the time is concerned in regard to the post-operative anaesthetic related condition of the patient, then it is expected that:-

- 30.1 The anaesthetist will remain at the Day Surgery or;
- 30.2 Make such arrangements for substitute care as is acceptable to the Registered Nurse in charge of the Day Surgery at that time;

### *Pathology*

- 31 The patient's attending VMO must ensure that copies of pathology reports relating to a patient are supplied to the Day Surgery for its records as soon as practicable after receipt. In the case of cancer, it is mandatory that the patient's attending VMO notify the Day Surgery of the diagnosis, so that the Day Surgery may perform its statutory requirements as soon as practicable after surgery.

### *Post Operative Infection*

- 32 Visiting Medical Officers must agree that all cases of post-operative infection in a patient treated at the Day Surgery shall be subjected to a bacteriological examination.
- 33 Visiting Medical Officers must notify the Registered Nurse in Charge within one business day of making a diagnosis of post-operative infection in a patient treated at the Day Surgery.

### *Post Operative Events*

- 34 Visiting Medical Officers must notify the Director of Nursing within one business day of becoming aware of a post-operative Adverse Event in a patient treated at the Day Surgery within the previous 28 days. Adverse Events include:
- 34.1 death of a patient,
  - 34.2 admission to another hospital directly related to the procedure performed at the Day Surgery
  - 34.3 post operative infection.

### *Clinical Indicators*

- 35 All Visiting Medical Officers agree to participate in the timely collection of data pertaining to Clinical Indicators which are deemed relevant from time to time.

### *Accreditation*

- 36 All Visiting Medical Officers agree to participate in the Quality Management System at the Day Surgery as well as any activities required for the NSQHS Standards and any Victorian Health licensing requirements.

### *Open Disclosure*

- 37 All Visiting Medical Officers agree that open disclosure is good professional practice. The Medical Board of Australia's Good medical practice: a code of conduct for doctors in Australia states that: When adverse events occur, you have a responsibility to be open and honest in your communication with your patient, to review what has occurred and to report appropriately. All Visiting Medical Officers agree to participate in Open Disclosure activities from time to time and remain compliant to Statutory Duty of Candour Guidelines.

### *Medication*

- 38 Attending VMOs or Registered Medical Officers must write all medication orders on the patient's treatment sheets as well as completing any necessary prescription forms.
- 39 Where medication is ordered by telephone
- 39.1 The order is to be given to a Registered Nurse, who shall have another nurse present.
  - 39.2 The Registered Nurse is to repeat the order in the presence of the second nurse, so that the second nurse can verify the repeated order.
  - 39.3 Both nurses are to note on the patient's record, the order thus given.
  - 39.4 Subsequently the order is to be confirmed by the attending VMO on the patient's treatment sheet, on the occasion of the next visit to the day surgery by the attending VMO or by fax. (And in any case not later than 24 hours after ordering.)

### *Infection Control*

- 40 The VMOs must complete the online hand hygiene module annually.
- 41 All VMOs must comply with the requirements for infection control management.

### *Antimicrobial Stewardship*

- 42 All VMOs must comply with the Antimicrobial Stewardship policy to improve the safe and appropriate use of antimicrobials, reduce patient harm and decrease the incidence of antimicrobial resistance.



### *VTE or VTE Prophylaxis*

- 43 All VMOs must apply the appropriate measures for VTE or VTE prophylaxis where patients are at risk of developing VTE.

### *Medical Records Documentation*

- 44 The Surgeon and the Anaesthetists must complete all patient medical records in accordance with the Day Surgery guidelines and the guidelines from their respective college.
- 45 With the introduction of the My Health Record there will be additional requirements for the discharge of patients which must be completed by VMOs.

### *Disciplinary procedure*

- 46 Any complaint against an accredited VMO shall be lodged in writing with the Chairman of the Medical Advisory Committee.
- 47 The Medical Advisory Committee may itself lay any charge against or raise in relation to any accredited VMO any matter or circumstance which shall come or be brought under its notice and which in the opinion of the Medical Advisory Committee may need investigation.
- 48 In any case where a complaint against an accredited VMO is received by the Chairman of the Medical Advisory Committee, it may:
- 48.1 write to that accredited VMO a letter requesting him to provide within the time specified in the said letter a sufficient and satisfactory explanation in writing of the matters referred to in the complaint;
  - 48.2 write to the accredited VMO further or other letters for the purpose of obtaining such explanation.
- 49 An accredited VMO shall after being called upon pursuant to by-law 42 to provide a sufficient and satisfactory explanation of any matter relating to his conduct, provide said explanation in writing; or at an attendance before the Medical Advisory Committee at a time and place appointed.
- 50 An accredited VMO shall after being called upon by notice in writing (in the manner specified in such notice) provide a sufficient and satisfactory explanation of any matter about which he has been requested to furnish such explanation.
- 51 Where any VMO fails to furnish a sufficient and satisfactory reply in writing or fails if requested by the Medical Advisory Committee to attend before the Medical Advisory Committee and provide such explanation and/or to produce material as required, the Medical Advisory Committee may notify the member in writing that if such failure continues for a period of fourteen days from the date of his receiving such notification he will be liable to be dealt with for a breach of By-law 44.

# Policy

## Medical By-Laws

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- 52 If failure to reply continues for a period of fourteen days from the date of his receiving the notification referred to in By-law 42
- 52.1 Such failure shall be deemed to be professional misconduct with the VMO having a case to answer within the terms of the by-laws in respect to this matter and the VMO shall be liable to be dealt with by the Medical Advisory Committee.
- 52.2 On any such proceedings before the Medical Advisory Committee the tendering of a communication or request from the Medical Advisory Committee to which the VMO has failed to furnish a sufficient and satisfactory reply in writing or to attend before the Medical Advisory Committee, together with proof of the due service of such communication, shall be prima facie evidence of the truth of the matters contained in any such communication.
- 53 Where the complaint cannot be resolved by the Medical Advisory Committee without further investigation it will be referred to an Investigating Committee.
- 54 The Investigating Committee to which a complaint has been referred shall have power to interview the VMO concerned and to obtain information from any source it deems necessary.
- 55 The Investigating Committee shall arrange to meet for the purpose of considering the matter.
- 55.1 The VMO in question shall be informed in writing of the time and place of the meeting and of the matter or matters to be considered, at least fourteen days before the meeting.
- 55.2 Fourteen days prior to the meeting members of the Investigating Committee shall be provided with copies of the letter to the VMO in question (outlined in By-law 53), together with such documents as the Investigating Committee considers relevant to the case, and all of which are to be available for inspection by the VMO in question.
- 56 After consideration of the complaint by the Investigating Committee, it shall determine:
- 56.1 whether or not the complaint has been sustained, and
- 56.2 in the event of its deciding that the complaint had been sustained, the penalty, if any, to be imposed on the VMO in question.
- 57 The Investigating Committee shall report its decision to the Medical Advisory Committee at the next scheduled meeting.
- 58 The Medical Advisory Committee will notify the VMO of the Investigating Committee's decision in writing within 14 days by registered post. The VMO shall be deemed to have received the notice three days after the day of posting.

### *Investigating Committee*

- 59 The role of the Investigating Committee is to:
- 59.1 investigate a complaint against a VMO

- 59.2 hold a meeting with the complainant and the VMO to:
  - 59.2.1 determine whether the complaint has been sustained; and
  - 59.2.2 recommend the penalty, if any, to be imposed on the VMO in question
  - 59.2.3 report the facts, findings and decisions, in writing, to the Medical Advisory Committee.

- 60 The committee shall consist of (3) three members one of who may not be a Director of the Day Surgery.
- 61 The Medical Advisory Committee shall conduct a secret ballot to select the members of the Investigating Committee. Directors who are either the complainant or the defendant cannot be part of the ballot.
- 62 Appointments shall be valid until a decision has been reported to the Medical Advisory Committee and any subsequent appeal finalized.
- 63 The Medical Advisory Committee appointing of the before mentioned Committee shall have the power at any time and from time to time to reconstitute the same either by removing members of the Committee from office and appointing others in their stead or by appointing additional persons to fill casual vacancies.
- 64 The quorum for each meeting of the Investigating Committee shall be three.

### *Investigative Committee Hearing*

- 64.1 A member of the Investigating Committee shall present the case stating all material facts both favourable and unfavourable to the VMO in question as they appear to the committee. The member of the Investigating Committee may continue to take part in proceedings after his initial presentation.
- 64.2 The VMO in question shall be given an opportunity of being heard and of calling evidence in their defense.
- 64.3 Members of Investigating Committee shall be given an opportunity of questioning any of the parties to the complaint.
- 64.4 When in the opinion of the Chairman of the meeting, all relevant matters have been considered the parties to the complaint shall retire, and the Investigating Committee shall determine:
  - 64.4.1 whether or not the complaint has been sustained, and
  - 64.4.2 in the event of its deciding that the complaint had been sustained, the penalty, if any, to be imposed on the VMO in question.
- 65 The Investigating Committee has the right to adjourn any hearing at any time if it considers it advisable to do so in order to clarify any facts in dispute.

- 66 All findings and decisions of the Investigating Committee together with a statement of summary (but not in detail) of the facts placed before the Investigating Committee shall be duly recorded and reported to the Medical Advisory Committee.

### *Disciplinary action by Medical Advisory Committee*

- 67 If in the opinion of the Medical Advisory Committee, an accredited VMO has:
- 67.1 Been guilty of a breach of the By-laws; or
  - 67.2 Obtained accreditation by improper means; or
  - 67.3 Ceased to be a Medical Specialist for the purposes of the Australian Health Practitioner Regulation Agency; or
  - 67.4 Been the subject of an adverse finding in relation to his conduct, competence or recognition by any court of law, professional body, statutory or other regulatory authority in any jurisdiction in Australia or elsewhere and such finding has not been set aside on appeal; or
  - 67.5 If he has, before any court of law in any jurisdiction in Australia or elsewhere, pleaded guilty to, or been found guilty of, any criminal offence which has been set aside on appeal.
- 68 One or more of the following penalties may be imposed by the Medical Advisory Committee:
- 68.1 Forfeiture of accreditation:
  - 68.2 Suspension of accreditation for any period not exceeding five (5) years and on such terms and conditions as to resumption of accreditation as the Medical Advisory Committee may prescribe.
  - 68.3 A direction that a notice be made on the accredited VMO's file that no further penalty was awarded:
  - 68.4 The limiting of an accredited VMO's file that no further penalty was awarded:
  - 68.5 The limiting of an accredited VMO's clinical privileges:
  - 68.6 Such other penalty as the Medical Advisory Committee deems appropriate in the circumstances.
- 69 The Medical Advisory Committee cannot issue a pecuniary penalty.
- 70 Where an accredited VMO has had accreditation suspended or forfeited by the Medical Advisory Committee, that body may impose such terms and conditions on the lifting of the suspension or a re-instatement of accreditation as it deems appropriate in the circumstances.
- 71 When a VMO ceases to be accredited his name shall be removed from the register.

- 72 If the Medical Advisory Committee rejects an application for reinstatement, it shall give notice of its decision in writing by personal service upon or by registered post to the applicant.

### *Appeals*

- 73 The VMO may appeal the finding and penalty within 30 days after notice of the finding is deemed to have been received by him.
- 74 The appeal shall be in writing and addressed to the Chairman of the Medical Advisory Committee and shall state the grounds of appeal.
- 75 Every appeal shall be heard by the Medical Advisory Committee. Members of the Investigating Committee that dealt with the case shall not sit in judgement on an appeal.
- 76 The Medical Advisory Committee shall notify the VMO and the Investigating Committee in writing of the time and place of the Appeal Hearing.

### *Appeal Hearing*

- 77 A member of the Investigating Committee shall present the findings from the Investigating Committee Hearing.
- 78 The VMO in question shall be given an opportunity of being heard and of calling evidence in thier defense.
- 79 When in the opinion of the Chairman of the meeting, all relevant matters have been considered the Investigating Committee and VMO shall retire.
- 80 The Medical Advisory Committee shall determine whether or not the findings have been upheld and notify the VMO and the Investigating Committee.
- 81 The Medical Advisory Committee has the right to adjourn any hearing at any time if it considers it advisable to do so in order to clarify any facts in dispute.
- 82 All decisions of the Medical Advisory Committee together with a statement of summary (but not in detail) of the facts placed before the Medical Advisory Committee shall be duly recorded.
-