Submission

Regulation of health practitioners who perform and who advertise non-surgical cosmetic procedures.

Thank you for inviting the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG, the College) to make a submission to Ahpra's consultation on the regulation of health practitioners who perform and who advertise non-surgical cosmetic procedures.

RANZCOG is the lead standards body in women's health in Australia and New Zealand, with responsibility for postgraduate education, accreditation, recertification, and the continuing professional development of practitioners in women's health, including both specialist obstetricians and gynaecologists, and GP obstetricians.

Background

For ease of incorporation of RANZCOG's feedback, we have provided our reply in the format of the survey questions provided by Ahpra, which is copied in the following 'specific feedback' section, with our responses to the specific questions posed as part of the consultation. We trust this format is helpful in extracting our feedback to apply to Ahpra's review of the draft guidelines. We have removed the consultation preamble and begin our feedback in reply to the first specific question posed.

Specific Feedback

Initial questions:

To help us better understand your situation and the context of your feedback, please provide us with some details about you.

Question A

Are you completing this submission on behalf of an organisation or as an individual?

☒ Organisation

Name of organisation: The Royal Australian and New Zealand College of Obstetricians and Gynaecologists

Contact email: [redacted]

☐ Individual

Name: Click or tap here to enter text.

Name of organisation: Click or tap here to enter text.

Contact email: Click or tap here to enter text.

Question B

If you are completing this submission as an individual, are you:

☐ A registered health practitioner?

Profession: Click or tap here to enter text.

☐ A consumer / patient?

☐ Other – please describe: Click or tap here to enter text.

☐ Prefer not to say

Question C

Do you work in the cosmetic surgery/procedures sector?

☐ No

☐ Yes – I perform cosmetic surgery

☐ Yes – I perform cosmetic procedures (e.g. cosmetic injectable such as botulinum toxin and dermal fillers)

☐ Yes – I work in the area but do not perform surgery or procedures (e.g. practice manager, non-clinical employee

☐ Prefer not to say

Question D

Do you give permission for your submission to be published?

☒ Yes, publish my submission **with** my name/organisation name

☐ Yes, publish my submission **without** my name

☐ Yes, publish my submission **without** organisation name

☐ Yes, publish my submission **without** both my name and organisation name

☐ No – **do not** publish my submission

Guidelines for nurses who perform non-surgical cosmetic procedures

Consultation questions:

The Nursing and Midwifery Board of Australia (the NMBA) is developing draft nurses practice guidelines at Attachment A of the consultation paper to enable the terminology in the guidelines to be nuanced for nurses, and to delineate the separate roles and scope of enrolled nurses, registered nurses and nurse practitioners in the non-surgical cosmetic procedures sector.

Question 1:

Is the guidance in the draft nurses practice guidelines appropriate? Why/Why not?

Your answer:
It is appropriate in parts. Other sections – particularly section 2 require re-drafting (as outlined below)

Question 2:

Does the guidance in the draft nurses practice guidelines sufficiently inform **nurses** about the NMBA's expectations of nurses (including enrolled nurses (EN), registered nurses (RN) and nurse practitioners (NP)) who perform non-surgical cosmetic procedures in Australia? If yes, how? If no, what needs to be changed?

Your answer:
Section 2 is inadequate in its guidance for nurses. The intent is understood but the guidelines are too non-specific. This is discussed in the answer to question 8.

Question 3:

Does the guidance in the draft nurses practice guidelines sufficiently inform the **public** about the NMBA's expectations of nurses (including enrolled nurses (ENs), registered nurses (RNs) and nurse practitioners (NPs) who perform non-surgical cosmetic procedures in Australia?

Your answer:
Parts of the guidelines are appropriate in informing the public. Specifically, the guidelines on financial consent and peri and post-surgical care. The sections on complaints, advertising and facilities are also sufficiently clear for the public. The sections on qualifications and titles, and most importantly the assessment of person suitability is not sufficiently clear.

Question 4:

In **section 4.2**, the draft nurses practice guidelines propose that *'the registered nurse and/or the nurse practitioner must consider the clinical appropriateness of the cosmetic procedure for a person who is under the age of 18 years. The NMBA considers that botulinum toxin and dermal fillers should not be prescribed for persons under the age of 18 for cosmetic purposes.'*

Is this information clear? If not, why not?

Your answer:
This section is not clear. It is inadequate in two respects:
First, it is ambivalent regarding the legality and ethics of prescribing botulinum toxin and dermal fillers for minors. The preamble states that the guidelines do not apply to "Surgery and non-surgical cosmetic procedures may be clinically justified if they involve the restoration, correction or improvement in the shape

and appearance of body structures that are defective or damaged at birth or by injury, disease, growth, or development for either functional or psychological reasons". Thus, use of such agents may still be prescribed for persons under the age of 18. However, the guidelines could be more direct as to the inappropriateness of using botulinum toxin and dermal fillers either primarily or exclusively for cosmetic purposes. I would consider the following statement to be more specific: "Prescription and injection of botulinum toxin and dermal fillers in persons under the age of 18, where these agents are being used exclusively or for overwhelmingly cosmetic purposes, is considered inappropriate. Prescription and administration of such agents must be able to be therapeutically justified.

Secondly, the directive for nurses to "consider the clinical appropriateness" of the cosmetic procedure for a person under the age of 18 is not specific. Nurses are not usually the prescribing practitioner and there is no guide as to what constitutes an appropriate decision. The choice of a person under 18 to request a cosmetic non-surgical procedure, in the absence of a "clinical justification", will implicitly involve a decision to alter or improve an aspect of their physical appearance. This is a subjective choice, based on aesthetics, and devoid of clinical justification. Thus, the only basis for the appropriateness of the choice is aesthetic and, therefore, the only relevant factor is the capacity to consent. In a mature "Gillick competent" minor the assessment of the nurse should only relate to the capacity to consent as there is no "clinically appropriate" choice.

Section 4.2 should be revised.

Question 5:

Is there anything further you believe should be included in section **4**?

Your answer:
The use of botulinum toxin and dermal fillers should be specifically prohibited for a nurse to perform for minors in the absence of a clinical indication. If there is a sensible reason to consider such treatment this should be escalated to a more senior practitioner to consider the appropriateness of this treatment, taking into account the entirety of the clinical circumstances.

Question 6:

In **section 8.1**, the draft nurses practice guidelines propose *'the RN/NP is responsible for ensuring that any other person/s participating in the person's care or treatment have appropriate education, training and competence, and is adequately supervised as required'.*

Is this a reasonable requirement? If yes, why? If not, why not?

Your answer:
This is unreasonable. There is no guide as to what appropriate education and training involves. The assessment of competence is subjective. This places too much responsibility on the nurse to be responsible for the conduct of another practitioner. It is only necessary that the nurse assesses a person should be acting within their scope of practice and in accordance with the code of conduct of their governing organisation.

Question 7:

In **section 16.1**, the draft nurses practice guidelines propose *'that RNs first practise for a minimum of one-year full-time equivalent post initial registration, to consolidate the foundational skills and knowledge as an RN in a general or specialist area of nursing practice (not in the area of non-surgical cosmetic procedures). RNs who perform non-surgical cosmetic procedures are required to undertake detailed assessment and planning of care, have complex anatomical and physiology knowledge as well as decision-making relating to pharmacodynamics and pharmacokinetics'.*

Is the guidance proposed a reasonable requirement? If not, why not?

Your answer:

The requirement of a minimum of one-year full-time experience post registration is inadequate. An RN limited clinical experience is not experienced enough to make a detailed assess or have "complex" anatomical and physiological knowledge or pharmacodynamics and pharmacokinetics that can be applied to the provision of cosmetic procedures (albeit non-surgical). As discussed in the proposed guidelines, non-surgical procedures are associated with varying levels of risk and is an emerging area of risk. A junior RN will lack the applied scientific knowledge to make a mature assessment. Further, the area of cosmetic surgery inherently involves a health practitioner "selling" non-clinically unnecessary procedures. A junior nurse is poorly placed to proffer a sophisticated assessment of patient suitability, ensure informed consent and advise of risks and benefits of a particular procedure whilst being under the direct employment or clinical direction of a more experienced and older health professional or NP. It is unreasonable to expect a RN of only one year's experience to be able to advocate for a patient or discourage proceeding with treatment against a supervisor or employer who is essentially selling a non-essential cosmetic procedure.

Question 8:

Is there any further detail that needs to be included in the draft nurses practice guidelines to ensure public safety? If yes, please provide details.

Your answer:

The draft has areas that are appropriate in their scope and direction. An emphasis on informed consent including financial consent is appropriate. Consideration of patient suitability is also appropriate for a nurse to have within their contemplation when advising on the nature, risk and appropriateness of non-surgical cosmetic treatment, however, there are no clear directions as to how that assessment should be made. Where nursing staff are under the direct supervision of a health practitioner or company, or directly employed by that HP or company, more concrete directions should be documented. The non-specific guide to "discuss" and assess the persons reasons for a procedure gives no clear guide. It is self-evident that external reasons and internal reasons for considering a cosmetic procedure will involve concerns as to personal appearance or perception of others. The "discuss and assess" task implies that some judgement should be made as to the reasonableness of this choice. However, there is no guide as to the reasonableness of that choice. Further, it can be construed that a cosmetic procedure (e.g. hair removal) does not require a subjective assessment by a nurse. What *is* important is that the nurse advising or performing the procedure gives regard to potential psychopathology (such as BDD) or external coercion by another person, and the importance of informed consent: specifically, regarding risks and consequences of procedures and financial implications.

The consideration of BDD as a motivating factor is appropriate, but the guidelines give no assistance to nurses. In fact, there is no guide as to what "evidence-based and validated assessment tool" is appropriate. Should it be Australian? A wiser instruction may be to use a validated tool OR if the nurse has reason to believe the person is choosing a procedure and has very unrealistic expectations of the outcomes of that procedure, or is choosing a procedure to alter their appearance in such a way that contradicts common sense or reasonable social opinion and that choice may be in keeping with a distorted body self-image, then a nurse should be cautioned to take heed of that information and refer to a more experienced colleague and/ or refer for formal psychological assessment. For example, a person choosing liposuction despite a very low BMI and a history of anorexia nervosa should be referred before proceeding. Whist the guidelines imply this kind of assessment should be made, reasons and motivations are not relevant where an autonomous individual wishes to make a choice to have a legal procedure, even if their motivations may seem unusual. It is more important the nurse is cautioned to be aware of psychopathology or unrealistic expectations, both of which can be harmful to the patient, and to be clear about the advice to refer for further assessment. The guidelines under section 2 are too "wishy-washy" and do not give clear directions

despite the intention to protect a patient from themselves. Whilst it is appropriate for a nurse to make an assessment regarding suitability, the directions must be clear: the inclusion of specific warning signs should be considered, a specific "tool" should be mentioned (not endorsed and with a caution regarding proprietary or pecuniary interests of the tool developer). Further, the role of a nurse (especially a junior nurse) with only one- or two-years' experience being wedged between a motivated patient, an employer who wants to sell a procedure and a lack of experience in dealing with patients/consent or mental health assessment needs to be acknowledged. As such, the guidelines should provide more robust guidelines to which a nurse can refer. Those guidelines need to be clear, robust and the intention crystal clear: i.e. – make sure there is no psychopathology, be sure there is no abnormal level of external coercion, have a clear line-of-command referral pathway and both allow for informed consent whilst respecting individual autonomy to make a choice for a procedure.

This section should be re-written.

Guidelines for registered health practitioners who perform non-surgical cosmetic procedures

Consultation questions:

The proposed draft shared practice guidelines (at Attachment B of the consultation paper) will apply to all registered health practitioners, except for medical practitioners (who are already subject to the Medical Board of Australia's (the MBA) *Guidelines for registered medical practitioners who perform cosmetic surgery and procedures*) and nurses (who will be required to comply with the draft *Guidelines for nurses who perform non-surgical cosmetic procedures*, if approved).

Question 9:

Is the guidance in the draft shared practice guidelines appropriate? Why/why not?

Your answer:

The definition of non-surgical cosmetic procedures is too broad and encompasses treatments that cannot be reasonably compared. The indications, implications and risks of procedures such as botulinum toxin and cryolipolysis are vastly different to the same factors in laser hair or dermabrasion. The lack of nuance in this definition renders much of the ensuing guidelines as inappropriate. The assessment for suitability for treatment is, therefore, not directly relevant. For example, the determination of patient suitability for hair removal should be different to the determination for suitability for dermal fillers. Further, laser hair removal may be desirable for a younger teenager, e.g15-year-old old, who has a genetic or racial basis for excessive hair growth. Whatever societal ideals of self-acceptance or encouraging diversity of appearance, a young person who is embarrassed or socially isolated as a result of their self-consciousness regarding their hair growth does not require the same scrutiny as a 15-year-old who is requesting lipolysis and has support from her parents. The guidelines do not stratify these procedures into meaningful tiers and thus the guidelines, theoretically, place the same burden of scrutiny of patient suitability onto a person seeking an injectable such as a dermal filler with a person seeking hair removal. The reasons to have the procedure and the risks associated are vastly different.

The cosmetic procedures should be stratified according to risk, benefits, expectations and indications.

Question 10:

Does the guidance in the draft shared practice guidelines sufficiently inform **registered health practitioners** about National Boards' expectations when performing non-surgical cosmetic procedures in Australia? Yes/No. If no, what needs to be changed?

Your answer:

As outlined above, there is a lack of nuance with regards to the procedures. There is also no guidelines in accordance with the nature of the practitioner. Whilst the guidelines are intended to provide a general guide, there is no guide as to the scope of practice that would be expected according to the nature of the health practitioner. For example, it should be clear that a dentist will not perform procedures outside their scope of practice. Whilst this may be covered in a code of conduct, there can be grey areas. A dentist may provide standard cosmetic dental services for the aesthetic improvement of teeth; however, a dentist may also determine that dermal fillers or botulinum toxin may further improve the cosmetic result of the mouth/face and there appears to be nothing in this guideline to guide this kind of "value-adding" procedure.

As with the nursing guidelines, there is lack of guide to support individual autonomy in choosing legal cosmetic procedures. In accordance with the Medical Treatment Planning and Decisions Act 2016, decision making capacity is presumed and the onus is upon the practitioner to ensure the nature of the intervention, risks and benefits and effects are explained and communicated in such a way for the person to understand. Whilst these cosmetic procedures are not health treatments, they are nevertheless legal and taken by

choice. Setting a higher standard of informed consent to non-essential cosmetic procedures is appropriate, however, that standard must be consonant with respect for autonomy and the standard of informed consent for non-essential but desirable medical treatments or procedures.

Section 2 also indicates the practitioner must assess the reasons and motivations for choosing non-surgical cosmetic procedures. This is inappropriate and does not respect the autonomy of a person to select interventions that they desire. An autonomous individual, in accordance with the Medical Treatment Planning and Decisions Act 2016, has a right to choose interventions and make balanced decisions in accordance with the information furnished to them. Non-surgical cosmetic procedures are no different. Thus, the drafting of section 2 places a burden on the practitioner to assess their reasons. It is submitted that their reasons are irrelevant EXCEPT where those reasons relate to undue pressure or coercion by others, lack of capacity, possible psychological or psychiatric impairment (including BDD), strongly unrealistic expectations or inducement. It is to those factors that the guidelines should speak. Further, the nature of the procedure and the nature of the practitioner should be considered. If the planned procedure is in all the circumstances reasonable and performed within the scope of practice or experience of a practitioner, then there should not be a higher barrier to treatment than there would be for an elective medical procedure.

Question 11:

Is the guidance in the draft shared practice guidelines useful for the **public** to understand National Boards' expectations of registered health practitioners who perform non-surgical cosmetic procedures in Australia? Yes/No. If no, what would be more helpful?

Your answer:
The guidelines are appropriate and useful for the public but for section 2, which should be reconsidered per the comments included in response to question 10.

Of particular note: the effect of the cooling off period should be better emphasised.

Question 12:

Is there anything you believe should be added to or removed from the definition of 'non-surgical cosmetic procedures' as it currently appears in the draft shared practice guidelines?

What changes do you propose and why?

Your answer:
The procedures should be stratified according to risk, benefit, indication and availability of alternatives.

Question 13:

The draft shared practice guidelines propose a set of consistent requirements for practitioners practising in this sector.

Do you think it's appropriate for consistent requirements to apply to all practitioners practising in this sector regardless of their profession? Or do you think there are variations, additions or exclusions required for a particular profession or professions?

What changes do you propose and why?

Your answer:
As above, there should be more specific guidance considering the nature of the health practitioners' practices. These could be grouped around similar types of practice: similar part of body/ similar procedures/ similar patient demographic.

Question 14:

While it is acknowledged that many people who seek non-surgical cosmetic procedures do not have an underlying psychological condition such as body dysmorphic disorder (BDD), the Medical Board of Australia's practice guidelines and the Nursing and Midwifery Board of Australia's proposed guidelines require medical practitioners and nurses who perform the cosmetic procedure or prescribe the cosmetic injectable, to assess their patients for underlying psychological conditions, such as BDD.

Is this a reasonable requirement of other registered health practitioners performing cosmetic procedures as well? If yes, why? If not, why not?

Your answer:
If there is to be an expectation that BDD be screened for, then more specific guidance should be given according to:

- Provision of a specific screening tool with clear lines of referral.
- Provision of specific symptoms/ signs/ history that would suggest an elevated risk of BDD that would trigger a formal psychological or psychiatric assessment prior to progression to treatment.
- Clear lines of referral if BDD is screened positive or suspected on the basis of warning signs or practitioner experience.

The onus on the practitioner should be to be aware of the nature of BDD and be able to justify objectively why BDD was not considered relevant or be able to justify to the patient as to why treatment was refused or refused pending formal assessment. Without specific guidance, a practitioner may refuse appropriate treatment or cause the patient distress by suggesting they have a psychiatric illness. This may have ramifications in itself: a person may suffer psychological injury or be motivated to report the practitioner to AHPRA for discriminatory treatment. This is inappropriate for a practitioner to experience when they have acted in good faith. Even if their conduct is exonerated, the distress to the practitioner unreasonable. More specific guidelines would go some way to protecting both patient/ person and practitioner.

Question 15:

Is there any further detail that needs to be included in the draft shared practice guidelines to ensure public safety? If yes, please provide details.

Your answer:
As above.

Guidelines for registered health practitioners who advertise non-surgical cosmetic procedures

Consultation questions: The proposed draft advertising guidelines (at Attachment C of the consultation paper) will apply to all registered health practitioners who advertise non-surgical cosmetic procedures.
Question 16: Is the guidance in the draft advertising guidelines appropriate? Why/why not?
Your answer:
Question 17: Does the guidance in the draft advertising guidelines sufficiently inform **registered health practitioners** about National Boards' expectations when advertising non-surgical cosmetic procedures? Yes/No. If no, what needs to be changed?
Your answer: The guidance regarding advertising does sufficiently inform registered health practitioners. It should be clear that the advertising relates to products or procedures that are not necessarily treatments. Thus the advertising guidelines requires a nexus to the product and not the professional. However, many of these procedures will be performed by health practitioners and/ or the health practitioner will be the person to ultimately sign off any media relating to the provision of the service. It is appropriate that it be clear that the health professional follows a code of conduct in both the provision or, and the advertising of, non-surgical cosmetic procedures.
Question 18: Is the guidance in the draft advertising guidelines useful for the **public** to understand National Boards' expectations of registered health practitioners who advertise non-surgical cosmetic procedures in Australia? Yes/No. If no, what would be more helpful?
Your answer: Yes, the guidelines are sufficient for the public.
Question 19: Is there any further detail that needs to be included in the draft advertising guidelines to ensure public safety? If yes, please provide details.
Your answer: It is crucial that the public be clear that health practitioners have a duty to respect and follow the guidelines in good faith, that sometimes refusal to provide a service may be consistent with the duty to follow the guidelines, and further, that health practitioners have no duty to provide any service simply because the person demands it. Whether or not the practitioner has followed the guidelines, it should be clear to the person/ public that there is no duty to treat (in general, and specifically for non-essential cosmetic procedures).

The definition of 'non-surgical cosmetic procedures' in the draft advertising guidelines includes examples of what are considered non-surgical cosmetic procedures and includes procedures that are restricted to the practice of registered health practitioners as well as procedures that may be performed by people who are not registered health practitioners. This decision was made to promote consistency between the various guidelines which regulate both the practice and advertising of non-surgical cosmetic procedures and cosmetic surgery.

Question 20:

Is the definition of 'non-surgical cosmetic procedures' in the draft advertising guidelines appropriate when setting standards for the advertising of non-surgical cosmetic procedures by regulated health practitioners? Why/why not?

Your answer:
The definition is inappropriate and fails to reflect the different types of treatments (as outlined above). It is submitted that there should be tiers of treatments that more accurately reflect the nature of the treatment (e.g. injected vs superficial; chemical vs physical), the indication (e.g. hair removal – given there is a variation in hair growth due to genetics vs dermal fillers – which are generally used to achieve a more youthful look), the potential risks or hazards (e.g. temporary burning or redness due to dermabrasion vs anaphylaxis with injected treatments). The current definition is too blunt to provide nuanced guidelines.

Question 21:

Is there anything you believe should be added to or removed from the definition of 'non-surgical cosmetic procedures' as it currently appears in the draft advertising guidelines?

What changes do you propose?

Your answer:
Hair removal treatments that do not require skin cutting/ piercing should be considered for removal.

About IV infusion treatments:

Ahpra and the National Boards are aware of concerns about the advertising of IV infusion treatments and have issued previous statements in relation to this. IV infusions, like non-surgical cosmetic procedures, are invasive procedures with inherent health and safety risks for patients.

While IV infusion treatments are not strictly a non-surgical cosmetic procedure, many advertisers quote their patients as looking or feeling better after an infusion. Ahpra takes the view that there is little or no accepted evidence to support such generalised claims, and that claims about general improvements in health, wellness, anti-ageing or appearance are therefore misleading and in breach of the National Law. As with any regulated health service claims made about the benefits of IV infusions must be accurate and not misleading. This is because consumers are likely to rely on purported scientific claims and be significantly influenced by such claims, when making health care choices.

While these draft guidelines are focused on the advertising of non-surgical cosmetic procedures, we welcome feedback on whether separate guidelines should be developed in relation to the advertising of IV infusion treatments.

Question 22:

Do you support the development of separate guidelines in relation to the advertising of IV infusion treatments? Why/why not?

Your answer:
Intravenous infusions should require a separate guideline:

- Intravenous cannulation is required. This has its own risks and requires a health practitioner – specifically a trained health professional or RN or NP to insert.
- The risks of IV contamination can potentially be fatal.
- It requires sterile equipment that is appropriately dated and stored.
- Bleeding or neurological injury is possible. Such consequences can lead to serious patient harm.
- Civil legal action is possible and non-health practitioners will have insufficient training or insurance to cover damages to persons having non-essential IV infusions.
- IV access allows for potential intravenous infusion of illicit drugs by people themselves or criminally by others.
- IV infusion of substances is serious, can be associated with allergic reactions, intravenous clotting and infusion of potentially dangerous substances. This can all occur outside a healthcare setting.

Question 23:

If you support the development of separate guidelines in relation to the advertising of IV infusion treatments, what do you believe should be contained within these guidelines?

Your answer:
There should be a specific mention that IV infusions are not contained within this guideline and a link should be provided to the specific guideline for IV infusions.

Question 24:

Do you have any other feedback about the draft practice guidelines and draft advertising guidelines for non-surgical cosmetic procedures?

Your answer:
In summary:

The guidelines are inappropriate mainly with regards to nurse/ practitioner assessment of person suitability. For 'legal' procedures that are not, in fact, related to health, the emphasis should be on the specific substance or procedure. Risks/ benefits etc., should be clear and consistent.
There should be more emphasis on patient autonomy. Nurses and health practitioners have a duty to act in accordance with their professional code of conduct but should not be considered the sole gatekeepers for these procedures.
If nurses and health practitioners are to be considered as gatekeepers, there should be more specific guidelines to be followed. There is no room for uncertainty regarding the conduct of nurses and health practitioners. This is relevant because when acting outside a healthcare setting, professional indemnity insurance may not cover the nurse or practitioner. Guidelines must be clear and specific to protect these professionals from civil or criminal action.
The public should be clear there is no duty to treat and that persons cannot demand treatment.

Summary

To this end, RANZCOG thanks Ahpra for the opportunity to provide advice on the guidelines and looks forward to seeing the effects of its implementation.

RANZCOG acknowledges with thanks, the contribution of Dr Amber Moore for this submission.

Yours sincerely,

[redacted]

Dr Gillian Gibson
President