



Submission: Regulation of health practitioners who perform and who advertise nonsurgical cosmetic procedures

Who We Are

We are researchers and advocates who have helped expose systemic wage theft (7-Eleven^{1 2}, Domino's Pizza³, etc.), systemic issues in the franchising sector (Retail Food Group [Brumby's Bakery, Crust Pizza, Donut King, Michel's Patisserie]⁴, Mortgage Choice⁵, etc.), fee gouging with Australia's largest toll road operator Transurban^{6 7 8}, and more recently, systemic issues in Australia's cosmetic surgery industry^{9 10}.

For over three years we have been researching the cosmetic surgery and procedures industry in Australia, with a special focus on advertising that involved looking at tens of thousands of posts from hundreds of practitioners on social media.

We appeared in all three Cosmetic Cowboys documentaries in 2021/2022 and led a strategy which successfully pushed for a proactive compliance approach at AHPRA and stronger advertising guidelines for cosmetic surgeons. We also successfully led the strategy to reverse a change that sought to allow testimonials in medical advertising. None of this would have happened without key whistleblowers and surgeons willing to speak up, the many journalists that covered these issues, the politicians that supported the changes and the various groups who all pushed for positive change.

The Current Cosmetic Procedures Advertising Climate in Australia

We advocate strongly for better advertising regulation and this section is included to serve as a reminder why the proposed changes should not be watered down.

It could be argued that advertising for non-surgical procedures has a more negative impact than that for cosmetic surgery. This is due to the large number of practitioners offering these services, the high frequency of posts aimed at attracting patients, the continuously expanding target market, and their massive reach.

¹ <https://www.abc.net.au/4corners/7-eleven-promo/6729716>

² <https://www.smh.com.au/interactive/2015/7-eleven-revealed/>

³ <https://www.smh.com.au/interactive/2017/the-dominos-effect/>

⁴ <https://www.smh.com.au/business/companies/cup-of-sorrow-the-brutal-reality-of-australias-franchise-king-20171207-h00lhl.html>

⁵ <https://www.franchisebusiness.com.au/media-spotlight-shines-on-mortgage-choice-and-its-remuneration-model/>

⁶ <https://www.choice.com.au/transport/cars/fines/articles/road-toll-costs-and-fines>

⁷ <https://www.abc.net.au/news/2018-03-20/how-does-a-road-toll-debt-get-to-200000-dollars/9555960>

⁸ <https://www.9news.com.au/national/tolls-ombudsman-calls-for-better-system-to-deal-with-driver-complaints/5a1a4e9f-547d-498b-a61c-c29e1f09e145>

⁹ <https://www.abc.net.au/4corners/cosmetic-cowboys/13603636>

¹⁰ <https://www.smh.com.au/business/consumer-affairs/how-the-cosmetic-cowboys-ran-free-on-the-wild-west-of-social-media-20211028-p593vc.html>

Of particular concern is the conduct observed daily from many practitioners offering cosmetic procedures, which deviates from their medical training. This behaviour often contradicts the expected codes of conduct, including the handling of patient records, the use of personal electronic devices in medical settings, standards for clinical photography, hand hygiene, and the basic morals and ethics expected of medical professionals.

The choice of language, style of communication and setting clear practitioner/patient boundaries are extremely integral in the medical field. It is our understanding that high standards are taught and expected of the various types of healthcare professionals training in Australia, yet much can be gleaned about how far the standards have drifted when looking through many of their social media accounts.

In our view, practitioners cannot claim ignorance as an excuse, since these standards were part of their training. However, it seems that compliance may not always align with the commercial interests of some.

Let's look at what can be gleaned when looking at content published or controlled by cosmetic practitioners in Australia. Examples below are not one-off or specific to a practitioner or business.

Hand hygiene concerns

It is extremely common to see nurses in clinic posts with nail coverings, Shellac, Gel etc. In some cases, we have observed nails that appeared quite dirty when in the clinic. The guidance seems clear on this: *"Healthcare workers with artificial nails are more likely than those with natural nails to harbour gram-negative pathogens on their fingertips. The consensus recommendations from the World Health Organization are that healthcare workers do not wear artificial fingernails or extenders when having direct contact with patients and natural nails should be kept short (< 0.5cm long)". "Artificial, painted and chipped nails should not be worn in clinical areas as they can harbour microorganisms and are linked with outbreaks of infections".*¹¹

Training in question

Nurses, within a few years of registration teaching others how to inject and do similar procedures. The facilities sometimes seem questionable. The same goes with hygiene, patient consent, use of personal electronic devices, compliance with various guidelines etc.

Marketing agents and misinformation

Many people with beauty and/or marketing backgrounds have been offering content creation and advertising services to practitioners for some time. More have entered the space recently. Since AHPRA and the Medical Board released the new cosmetic surgery advertising guidelines on 1 July 2023, a number have started offering compliance services in combination with content creation.

¹¹<https://www.safetyandquality.gov.au/our-work/infection-prevention-and-control/national-hand-hygiene-initiative/nhhi-frequently-asked-questions>

The issue is, we are seeing more and more examples of very obvious non-compliant content being published on behalf of practitioners by these agents. Practitioners are relying on their expertise and are now at risk of receiving breach notices from AHPRA as a result. This not only impacts practitioners trying to get it right, it also creates mass confusion, as many copy from each other. It also creates additional regulatory burdens for AHPRA.

Practitioner photoshoots

Practitioners are creating mock treatments or treating friends and patients to promote regulated health services they offer using commercial photoshoots and videography. Why is this a problem? Hair, makeup and nails done. Cinematic lighting and camera movement. Slow motion, positive music, smiling or overjoyed patients. These types of posts are not based in reality and are entirely designed to glamourise the entire experience, including to lure in patients. It is also not always apparent to the general public these are sometimes staged, yet we have been able to confirm it happens. Staged or not, it is our view any post of this nature is not appropriate.

Shopfronts and in-store

It is rare to see clinics that would be compliant with current AHPRA and TGA guidelines. These clinics, especially ones in shopping centres, have high foot traffic of vulnerable groups such as young women and children. Many offer discounted injectable packages on the shopfront signage. Concerningly, some stores are primarily beauty spas or hair salons that have a nurse that injects there from time to time, which raises questions about the appropriateness of the facility and also availability of the nurse should complications arise.

Private groups for advertising

We have noticed a rise in private groups being established on social media and mailing lists to have 'more casual' conversations as well as constantly promoting last minute appointments or various other offers.

Discussing how others look

It's common for those offering non-surgical procedures to join in on public commentary about how a celebrity looks after a certain treatment. This messaging can be unprofessional and judgemental. Celebrities have a right to modify their body without practitioners commenting in an attempt to attract business to their clinic. This behaviour is not just restricted to celebrities.

Practitioners will discuss features or amounts of filler in unprofessional tones, again to attract attention to the services they offer. Some of the language can be like the following: "she [celebrity] looks ugly now", "some of my patients come in and they just look weird", "overfilling looks terrible". Practitioners, with the trust and respect they hold in society, should not speak like this. Beauty is in the eye of the beholder and commenting on why a particular feature is "unattractive" could impact the mental health of people with that feature after reading that post.

Patient information nights and grand openings

Apart from the fact that practitioners should not be encouraging the use of injectables or promoting the use of S4 drugs, these events often have entertainment and free alcohol.

Setting aside any non-compliance with AHPRA and TGA guidelines, practitioners may argue these events are educational. It is our view that there should be no setting where a practitioner consumes and provides free alcohol whilst 'educating' patients about procedures that carry risk and/or require prescriptions.

Combining years of experience

Many clinics combine years of experience to give the impression you are in the hands of highly trained and experienced practitioners. Their website and advertising might say: Over 30 years of experience. The reality is that the practice may be made up of two doctors who own the practice and may not even be in the state or visit the clinic often, each with 10 years experience. Yet the remaining 10 years of experience is made up between the 7 nurses carrying out the procedures. Our view is that combining years of experience is misleading and should not be allowed.

Injectables memberships

We are seeing more membership models for injectables popping up, some via sponsored posts on Instagram. It is likely this model does not comply with AHPRA and TGA guidelines. They may offer discounted injectables for members or encourage members to take up special offers. Some membership models have a 12 month minimum term for monthly subscriptions. This type of practice should not be happening at all in our opinion.

Advertising to children

In the last few months, we have grown concerned by practitioners using their young children to promote their non-surgical and injectables business. Some have openly discussed the benefit of using their young children and babies to increase engagement with their business account and gains they have seen as a result. Other practitioners watch, learn and copy this type of behaviour. Our position is there is no occasion where a child should be used to increase sales of products that are only for adults. Using children should be explicitly banned.

Court records

Some clinics and/or their practitioners have a number of cases against them in courts/tribunals and a higher number than others over time. The public are not able to easily access this information and it would be helpful if regulators at the very least monitored the courts for potential indicators that a practitioner may be causing harm to the public.

Radio advertising

At certain times of the day, listening to the radio for 30 minutes means you might hear advertisements of three injectables clinics. This can happen at times when parents are picking up children from school. Not once have we ever heard any mention of risks. They offer discounted injectables. Tout internationally trained nurses and that you are in the safest hands. The ads sometimes include the radio host providing a testimonial. Words to the effect of, "You are in safe hands with [clinic name], which is why I get all my treatments there". Radio advertising, and bus advertising should not be permitted at all. Note: Children are exposed to the advertising on buses, which only ever glamourises injectables and related services.

Podcast to promote clinics

We have seen a rise in clinics creating podcasts to promote their clinic and grow the personal brand of the practitioner who owns the clinic. Podcast messaging can be quite concerning. Often these podcasts purport their content is educational and as health professionals, such as doctors and nurses, the public places a great level of trust in their messaging. Quite often we observe them disseminating incorrect information. Messaging to the effect of: "Are injectables safe. Yes, when you go to a highly experienced practitioner like me they are very safe."

We have even seen these podcasts used to promote doctors as esteemed experts who actually have caused deaths in Australia. Podcasts need to be monitored as many practitioners even acknowledge they are using banned language and do it anyway. Risks are rarely discussed, are glossed over or downplayed. AHPRA registration numbers and risk statements are rarely included in the write ups. Sometimes important risk and complication information or other procedure information is withheld for later episodes to encourage more listener engagement. Information that is important should never be withheld for these purposes.

Nurses posing with syringes

There has been a trend of nurses posing with uncapped syringes, presumably filler, for their profile photo on their account used to advertise their services. They also may lay all of their syringes out uncapped and take a photo prior to injecting a patient. These types of photos downplay the seriousness of these procedures and may even inadvertently demonstrate poor hand hygiene standards, including handling of needles.

Self-injecting

We have seen practitioners, including GPs and nurses injecting themselves to promote both the procedure and their services. We are unsure of the ethics of this or if it is allowed, but we know it makes it look easy, downplays the risks and may even lead to someone obtaining blackmarket injectables and self-injecting. This should be banned if it is not already.

Lessons Learned from The New Cosmetic Surgery Guidelines

Since before the Medical Board's Cosmetic Surgery Guidelines came into effect on 1 July 2023, we have paid close attention to the cosmetic surgery advertising from hundreds of practitioners.

From time to time we have observed certain cosmetic doctors or plastic surgeons disable their Instagram accounts. When checking their AHPRA registration, in some cases, we noticed the practitioner had advertising restrictions.

At some point, the restrictions were removed and the practitioner was able to advertise again. Within weeks some began to drift towards their old style of advertising.

Others who had no restrictions cleaned up their advertising to be largely compliant. This was good. However, as time has passed they are starting to get creative again.

It seems clear the drift has begun and therefore we expect to see this happen when the non-surgical rules kick in.

AHPRA has taken a strong stance which is great and we believe the TGA should follow suit to ensure drift does not begin and continue.

Taking Photos and Advertising Consent

We are largely supportive of guidelines detailing how and when practitioners can take and use photos or videos of patients. Through the course of our research, we have identified concerns through the way providers take photos or videos of patients and the way consent is taken from patients to use these.

We have noticed cosmetic injectables practitioners using personal electronic devices (PEDs) to take photos or videos of patients. The use of their personal mobile phone and other PEDs is an issue for a number of reasons and patients may not be expressly aware of them.

These issues are:

- The provider could have access to the patient's photo or video (where sometimes the patient is near nude such as for non-surgical BBLs) in a non-clinical setting.
- Should the provider's PED be lost or stolen, these patient photos are now accessible to others not part of the doctor-patient relationship.
- Any person in the provider's household or who otherwise has access to the PED could then have access to the patient's photos.
- The PED might have app-based or cloud-based storage, which means patient photos could be accessible on other devices and by third-party apps.
- Photos accessible via a PED or storage means there is no log of the patient's photos being viewed, downloaded, edited, or sent to someone else.

These concerns are reiterated if the photos are taken on a practice device which is not properly secured.

In terms of using these photos for advertising, we have seen a number of consent forms used for patient advertising. The consent forms do not go into enough detail and some concerningly involve bundled consent, meaning you consent to the procedure and marketing; there is no ability to consent to just the procedure.

Further, social media advertising is unique in the way services are marketed to audiences. Patients should be made aware in the consent forms of the following:

- The provider has no control if the patient's photo is downloaded, copied, or screenshot (these could then be uploaded to other websites).
- Photos will be used in advertising cosmetic injectables to audiences that might include children and young people.

- Social media users might interact negatively with the photo of the patient, including sexualised, racist, sexist or otherwise offensive and hurtful comments.
- The photo or video could be circulated in perpetuity.

Further, patients should be giving informed consent about how they want their photos used:

- Protecting patient confidentiality: does the patient consent to social media advertising only if their identity is concealed? Do they want tattoos, birthmarks, and other identifying features covered?
- Patients should be told which platform it will be uploaded to and when it will be uploaded. Patients should be provided a copy of the photos, videos and wording used.
- Patients should not be pressured or manipulated into having their photos used in advertising.

We suggest:

1. Standardise advertising consent forms. Social media is entirely different to advertising anywhere else due to its ease of access and wide reach.
2. Standardised consent forms should include a more detailed approach to ensure informed consent is received from patients.
3. The patient must receive a copy of their signed consent form. It should also be uploaded to their patient file.

AHPRA Clinical Photography Guidelines Needed

It could not be more clear that 'clinical' photos published in advertising are often not compatible with clinical photography standards expected of the medical profession. More often than not there are subtle changes in lighting, posture, framing etc. that may mislead patients about expected outcomes. Patient privacy, dignity and consent are not properly considered and patient photos are often stored on more than one personal device from those working in the clinic, such as the injectors and also the social media manager.

Most disturbingly, we have observed many examples - predominantly in the cosmetic surgical space - of practitioners taking photos of patients in highly vulnerable states, including various states of undress when there did not appear to be a medical reason to remove certain articles of clothing.

We don't intend to argue that a practitioner should not be able to ask a patient to remove necessary items of clothing to provide care, yet respect for the patient should be paramount when taking photos. Many take no care in providing the patient the ability to have dignity by providing disposable underwear to cover up prior to photos being taken. Photos of a nude or semi-nude patient may then be sent to a person not involved in the patient's care within the practice, or worse, an external marketing company to sensor and publish to promote the business.

A patient seeking breast implants does not need to be photographed head to toe wearing only underpants. And should that practitioner argue it was medically necessary for patient records, there is absolutely no reason it should be published on social media to showcase implants.

We understand it may be hard for regulators to regulate some of the above mentioned behaviour if no enforceable clinical photography guidelines exist, hence the need to introduce them.

Both the Australian Medical Association (AMA)¹² and The Royal Australian College of General Practitioners (RACGP)¹³ provide some helpful guidance, which may be useful for practitioners trying to do the right thing and for regulators to consider in drafting guidelines.

Probably the most important line in the RACGP's clinical photo guidance is this: Capture only what is required.

It also offers an important note about these kinds of images: *"Broadly, clinical photos taken for the purposes of patient management are part of that person's health record, even if they only exist in an electronic format. As such, they should be treated like any other personal health data and are subject to the same conditions for collection, disclosure and storage specified in state/territory and federal laws and regulations. They may be accessed for legal proceedings or in situations where a complaint is raised against a health practitioner. Fines may apply for breaches of privacy as a result of unauthorised disclosure."*

A recent study¹⁴ published in August of 2022 evaluating before and after photos revealed concerning patterns of misleading images. A before and after image standard has been proposed, called: Standards for the Evaluation of Photographs In Aesthetics (SEPIA) Photograph scoring system¹⁵.

"A total of 510 posts encompassing 2020 clinical photographs published by 102 practitioner accounts on Instagram were audited for photographic quality. The average score was 4 out of 9 (medium quality), with approximately 40% of posts scoring in the low-quality range. Zoom, lighting, timing, and presentation of multiple views were the standards most-commonly disregarded. Plastic and Reconstructive Surgery specialty and subspecialty (PRSS) practitioners scored higher (4.5/9 versus 3.1/9, $P = 0.002$) and had fewer low-quality posts (22% versus 54%, $P = 0.001$) than non-PRSS providers. Low-quality photographs were most often seen with rhinoplasty (30% versus 7%, $P < 0.00001$) and lip filler (60% versus 33%, $P = 0.0001$) compared with surgical and nonsurgical treatments, respectively, due to a higher incidence of immediate photographs and selfies."

¹² https://ama.com.au/sites/default/files/documents/FINAL_AMA_Clinical_Images_Guide.pdf

¹³ <https://www.racgp.org.au/FSEDEV/media/documents/Running%20a%20practice/Practice%20resources/Using-personal-mobile-devices-for-clinical-photos.pdf>

¹⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9390810/>

¹⁵ https://cdn-links.lww.com/permalink/prsgo/c/prsgo_10_8_2022_06_23_soares_gox-d-22-00377r2_sdc1.pdf

Finally, we argue that photos should only ever be taken for clinical reasons and only those clinical photos should be permissible in advertising. In our opinion, any other type of photo is created solely to promote and even glamourise procedures. Our view is this conflicts with the National Law's prohibition on advertising encouraging the indiscriminate or unnecessary use of regulated health services.

Non-Disclosure Agreements (NDA)

NDAs are especially problematic in the cosmetic procedure space because they pose a risk to the public. Patients who feel disfigured, misled, or were critically harmed, may be asked to sign an NDA by the provider. We have heard multiple instances of this occurring at clinics in Australia. The effect this has on the public is that patients who have had bad experiences are essentially silenced. Breaching their NDA could lead to court action. They have no way to inform the public of what has happened to them. They will normally sign an NDA if it means they will receive a refund, or if the doctor agrees to do revision surgery. If they choose not to sign an NDA, the doctor may refuse to do revision surgery or refuse a refund.

The use of NDAs in cosmetic procedure businesses need to be carefully considered going forward, including how these should be managed to ensure the public is protected from rogue operators who are covering their tracks through NDAs.

We suggest:

1. Requiring providers to include the number of NDAs they have asked patients to sign on the Ahpra public register.

Consultation questions for Advertising Guidelines

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

4 Testimonials

We support enforcement on the prohibition of testimonials being used in advertising cosmetic injectables. Unfortunately despite media and regulator interest, cosmetic injectors continue to use testimonials in their advertising, especially on social media. We believe it is appropriate to outline that re-sharing a patient's testimonial to an injector's social media is not allowed. We have identified providers using the 'Stories' feature (expiring content) to re-share stories by their patients where they express a positive statement about their procedure. This, to us, is already a clear breach of the existing guidelines.

5. Social media influencers and ambassadors

Our stance on social media influencers is that they should not be used in advertising regulated health services.

The consumer, and likely the regulator, would not necessarily be aware that they are being advertised to as the influencer does not always disclose they received a procedure for free or discounted in exchange for social media posts promoting the provider. Under current ACCC requirements, these partnerships should be disclosed.

We believe influencer partnerships with those who provide and advertise a regulated health service should be prohibited, especially in cosmetic procedures, because:

- It adds to the commercialised aspect of the cosmetic surgery and procedures industry.
- It provides an unrealistic expectation of outcomes, as influencers control their image in many ways, not just through cosmetic procedures.
- It encourages the indiscriminate use of cosmetic procedures (influencing decisions of target markets).
- If the influencer has a bad experience or a poor outcome, they might feel obligated to mislead the public about this as their contract comes with stipulations.
- Influencers post their 'patient journey' start to finish, meaning sometimes their outcomes aren't even clear yet. Cosmetic procedures are promoted by influencers as a fun and exciting experience (not a serious medical procedure) and we don't think we have ever seen an influencer include disclaimers around how risky these procedures are.
- Influencers tend to have a lot of trust with their audiences, and without a) disclosing there is a partnership and b) outlining negative experiences or risks gives rise to potentially misleading or unrealistic expectations.

We do not agree that having influencers involved as influencers (ie, receiving a discount or free procedures in exchange for promotion) in the advertising of cosmetic surgery is appropriate.

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

2.7 Advertising of non-surgical cosmetic procedures must not use terms (including in taglines, hashtags and similar) that advertise the registered health practitioner or their abilities in a manner that may be misleading or create unrealistic expectations. Examples of inappropriate terms include, but are not limited to, 'doll-maker', 'magic hands', 'sculptor', 'god', 'king', 'queen', 'master', 'world's best', 'world renowned'.

Another inappropriate term which we frequently observe being used in cosmetic procedures advertising is ‘artist’. We have included a longer list of terms we think should be prohibited at the end of this section.

6.8 Photographs, videos, or any other imagery used in advertising of non-surgical cosmetic procedures must be used responsibly, for the purposes of information and/or education about the non-surgical cosmetic procedures only. Some examples of features that are more likely to be considered to be focused on entertainment and to trivialise non-surgical cosmetic procedures include, but are not limited to: a. imagery that includes music, dancing, singing, or comedic comments, b. editing that is not directed at presenting information (such as a montage of cosmetic procedures or outcomes, and/or bodies), c. imagery with a voice-over where the voice-over is not educative or informative

We suggest also prohibiting the use of memes, trends, and pop culture to advertise injectables.

We have numerous examples of practitioners using the Barbie movie to advertise ‘Barbie Botox’. One Australian practitioner also posted about how successful the advertising of Barbie Botox had been for their business. While the word ‘Barbie’ has been addressed in section 7.6, there needs to be a more general point around the use of pop culture and memes (as Barbie is the reference of today, but what is tomorrow?).

We also observed practitioners using the meme ‘girl math’ to promote cosmetic injectables. An example of ‘girl math’ being used is: You get Botox 4 times a year. Each treatment costs \$500. Divide \$2,000 by 365 and it is about \$5 per day, so basically free.

Practitioners also use Instagram and TikTok trends to promote their business. We argue that this trivialises, minimises, and sometimes glamorises cosmetic procedures. These types of videos are designed to gain attention, make the practitioners seem fun and drive business through the door. They may argue the videos are just fun, yet the hashtags will say #cosmeticinjectables #cosmeticdoctor[location].

6.9e The use and descriptions of photographs, videos and images in non-surgical cosmetic procedures advertising must not: be accompanied by captions or descriptions that idealise non-surgical cosmetic procedures or minimise the risk of procedures. Examples include, but are not limited to, ‘more natural’, ‘ideal’, ‘perfect’, ‘instant’, and similar.

We suggest that the following words be included as prohibited words or phrasing: ‘more youthful’, ‘magic’, and ‘life-changing’. We also think statements like ‘If you’re over X age, this is where you need anti-wrinkle treatments’, “Come in for an injection of self-esteem”, and “we’re safer than other clinics” should be prohibited.

7.3 Advertising of non-surgical cosmetic procedures must be clear that undergoing a procedure is a serious decision. For example, health practitioners must not offer non-surgical cosmetic procedures as a competition prize, as this is not reflective of the thought, careful consideration and planning that should go into a decision to have a procedure.

Prizes and competitions are used from time to time, especially around special events like Valentine's Day and Mother's Day in order to entice people to enter. We believe regulated health services should never be used as a prize in a competition, and should be prohibited in all cases.

We strongly support this section, but believe there may need to be clarification. In some cases, cosmetic procedure clinics also offer other services. When they run competitions, they are not always clear if the prize (often a gift card to the clinic) is just for these other services (facials, skincare products, light therapy, etc).

Where gift cards for the clinic are used as a prize, we believe there needs to be consideration as to how providers might try to get around this guideline by saying the gift card is for other services, when perhaps it is not.

Further, we are aware of pilates studios and other businesses outside of regulated health services which have run competitions or challenges and involve prizes for completing these challenges. Such prizes have included gift cards for injectable clinics. We believe there needs to be consideration where clinics have provided gift cards to be used in external competitions.

8.2 Advertising of non-surgical cosmetic procedures must not use automated apps, websites, tools or programs that predict an individual's appearance post-procedure. The use of these tools in advertising can create unreasonable expectations of outcomes as advertising does not have the benefit of a consultation with a registered health practitioner, at which relevant information about the predicted outcome can be discussed.

We support this guideline but believe it needs to extend to predicting what an individual might have looked like if they **did not** get cosmetic procedures (or if they do not get procedures). Unfortunately we have seen imagery used or shared by Australian practitioners where prediction tools have been used to determine how a patient might have looked if they did not have injectables and other treatments.

These images depict the patient looking considerably older, more tired and drained, and less bright and happy. This imagery is accompanied with messaging with words to the effect of, "How this patient might have looked if not for decades of cosmetic treatments". This suggests young people need to start considering cosmetic procedures even if they do not feel they want them or need them.

While tools being used to depict how a patient could look with cosmetic procedures are deeply problematic, the inverse of this is just as problematic. This is because the digitally-altered (fake) imagery depicts someone without cosmetic procedures as uglier, visibly older, visibly tired, and less bright and happy as the exact same person who did have cosmetic procedures. These often exaggerated features (with no factual basis) have the ability to frighten, manipulate, or influence people into considering procedures who might otherwise not want them.

8.3 Advertising of non-surgical cosmetic procedures must not: a. use language or statements that are exploitative, disapproving or imply that a normal change (for example, the natural ageing process), body shape or facial or bodily feature is abnormal or undesirable or is not aesthetically pleasing.

We suggest adding 'asymmetry' into this section. Natural asymmetry in facial anatomies are being advertised frequently by Australian injectors as unappealing or abnormal and something that needs to be fixed. We also suggest adding "gummy smile", "crow's feet", and "weak chin".

9.1 Non-surgical cosmetic procedures must not be advertised in a way that creates unrealistic expectations of outcomes. Claims within advertising as to what can be achieved through these procedures must be objective, demonstrable, or provable in order for patients to have reasonable expectations of outcomes. Advertising must: a. not use statements or marketing techniques that imply any desired outcomes can be obtained. For example, phrases such as 'perfect pout', 'glow from within', 'doll-like', 'the face you have dreamed of', 'bikini body' and similar are all unacceptable

Further terms which should be explicitly prohibited when advertising cosmetic procedures (whether it is in this section or another one) include:

Smile design, kissable lips, nothing should get in between you and your treatment, smile with confidence, makeover, transformation, glow up, amazing results, beautiful smile, improve your smile naturally, beauty enhancement, booty goals, body goals, lip goals, steal her or his look, facial balancing, profile balancing, healthy, facial art, hollow skin, asymmetry, symmetry, glowing, lip hydration, lip plumper, excessive gums, wellness, sexy, hot, award-winning, stab, xoxo, self-love, self care, body positivity, prevention is key, natural beauty, glam, 5 minute nose job, correct asymmetries, women's health, men's health.

The problem with terms like these include:

- Using words like, 'enhance/improve your lips/smile/ naturally' when advertising cosmetic procedures is misleading as injectables are Schedule 4 prescription medications. Further, 'natural' is a subjective term, and can also be loaded to imply 'safe' or 'effective'.

Just because something is natural does not mean it is safe or risk-free.

- Words like design, smile design, art, and facial art minimise the risks and complexities associated with risky medical procedures like cosmetic injectables.
- Insinuating that it is not normal for gum to show when you smile, saying it is “excessive”.
- Using phrases like ‘smile with confidence’ as if you need a medical procedure to have a confident smile, ‘amazing results’, ‘gorgeous’, ‘kissable lips’, ‘beautiful smile’, “glowing”, all describe an outcome which could lead to expectations of beneficial treatment.
- Words like “makeover”, “glow up”, “transformation” implies that cosmetic procedures are no more risky than traditional beauty services involving facials, make-up or haircuts, when they are actually medical procedures involving administering medicine.
- “Goals” such as body goals, lip goals, smile goals, booty goals, when describing post-procedure bodies all suggest that one patient’s outcome is achievable for another patient, when this is not necessarily the case.
- “Healthy” when describing a post-procedure body suggests that the pre-procedure body did not look healthy or was not healthy, when in fact it was. Using hashtags like women’s health or men’s health suggest that injectables improve health.
- Practitioners commenting on the attractiveness of their patients. “She is hot”, “check out our sexy patient”, “look at her kissable lips”. Example: A practitioner commented on their patient's other 'glow-ups', which seemed to be breast implants, based on the surgeon tagged in the practitioner's post.
- Award-winning is often in reference to awards that have nothing to do with patient outcomes. The ones that do are likely to be judged based on a selection of before and after images handpicked and provided by the clinic. In one example and after additional research, the ‘award-winning’ clinic actually had won best social media. On inspection of that account, we observed that it was highly likely the account was not even in compliance with the various AHPRA and TGA guidelines.
- Posting that they enjoy “stabbing” their patients, which might be said as a joke but could be seen as minimising cosmetic procedures or making light of prescription medication. We question the appropriateness of practitioners filming and publishing injecting at all. At the very least, this content should have a 5 second warning before showing injecting.
- Signing off posts with ‘xoxo’, addressing prospective and existing patients online as “hi babes”, etc could demonstrate poor patient boundaries. Practitioners sign off in videos, posts and direct comments to patients with this language and emojis.

Consultation questions for Nurses Practice Guidelines

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

4.7 The person should be encouraged to talk to their general medical practitioner, nurse practitioner or other relevant registered health practitioner during the cooling-off period about why they want to have the cosmetic procedure.

Either before or during this cooling-off period, it should be compulsory (not simply encouraged) for an under 18 to attend an appointment with a GP or other relevant health practitioner. There could be less risky and more appropriate treatments available to a child's needs that a nurse injector is not able to provide or is outside their training, knowledge, or remit.

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.

3.1 Nurses must ensure that the medical practitioner or NP who has prescribed the cosmetic injectable has a consultation with the person, either in person or by video, each time they prescribe them a Schedule 4 (prescription only) cosmetic injectable or where otherwise required. Remote (bulk) asynchronous prescribing of cosmetic injections by phone or email (or equivalent) is not acceptable practice.

We support disallowing remote asynchronous prescribing of cosmetic injections by phone or email. However, we encourage this to extend further to ensure all telehealth consultations last at least 10 minutes. We have heard numerous instances of patients receiving prescriptions for cosmetic injections via telehealth appointments (including video appointments) with a doctor who spent less than 3 minutes with them. We argue this is not sufficient time to understand a patient's medical history and their suitability for a Schedule 4 medication.

We have received contact from concerned members of the public and health professionals about what really happens when injectable businesses are enabled via telehealth providers. The following is anecdotal from a number of unrelated concerned individuals:

- Consultations in less than 30 seconds and/or fabricated consultation records.
- Nurses speaking for the patient for the entire consultation and directing the doctor on the units they require on the prescription.
- Nurses not recording patient conditions or making the doctor aware of their circumstances, such as pregnancy, or health conditions that may impact care.

Concerned practitioners that have raised their concerns to us say the reason for the above is all about money. Fast consults equals high turnover for the telehealth business and doctors. Ignoring health conditions and directing unit amounts enables maximum profits for the nurse.

We also recommend that AHPRA and the TGA get advice on the powers they have to inspect the consultation records of the telehealth providers and cross reference them with a sample of nurse records. This is a problem that is yet to surface and we do not believe the current telehealth model for injectables is fit for purpose without significant change to protect the public.

5.5 Consent must be requested for any photographs or videos the nurse, or any other practitioner, proposes to take of a person in a consultation or during the cosmetic procedure.

We strongly encourage the implementation of these guidelines around consent to take and use images. We believe these guidelines should make clear that consent information must be in a similar size and style font as all other information, to ensure it isn't buried or missed by patients.

Bundled consent should also be explicitly prohibited in these guidelines. The Information Commissioner used a medical practice as an example in their bundled consent information:

If a medical practice issues a bundled request for consent to use your personal information for medical research purposes and direct marketing, and to disclose it to a third-party marketing company. In this case, you would not be able to agree to the use of your personal information for medical research without agreeing to receiving marketing materials.¹⁶

14. Financial arrangements

There could be a loophole possible with the wording throughout Section 14, where a practice manager, business manager, or marketing person - who is not a nurse and therefore not covered by these guidelines - is the one providing or offering to provide a financial inducement.

14.1 Nurses must not provide or offer to provide financial inducements (such as a commission) to agents for recruitment of people.

This needs to clarify that this is not talking about recruiting workers, for example, "for recruitment of people to receive care".

¹⁶ <https://www.oaic.gov.au/privacy/your-privacy-rights/your-personal-information/consent-to-the-handling-of-personal-information>

In the Shared Practice Guidelines, this section is worded to clarify it is for patients: “14.1 The registered health practitioner must not provide or offer to provide financial inducements (such as a commission) to agents for recruitment of patients.”

14.2 Nurses must not provide or offer to provide free or discounted procedures to prospective or existing people receiving care, including social media influencers or users, for promotion of cosmetic procedures or services.

We are also witnessing a number of providers who offer and advertise free or heavily discounted injections to be a “training model” for new injectors. We see regular posts online from clinics asking for models for filler. The purpose of the model often appears to be two-fold: to train staff, and to use in advertising. This is problematic for a number of reasons. Firstly, these clinics don’t appear to declare a model was used in the advertising. The posts that appear to contain models based on our research are often glamourised, cinematic, and depict positive reactions from the patient/model. The power imbalance increases when a patient receives prescription services for free.

Finally, when a patient agrees to go on camera in exchange for free treatment or in general, they may feel pressure to act pleased with the results, even if unhappy or in pain. We have observed occurrences of this when listening in to court hearings and other means.

Consultation questions for Shared Practice Guidelines

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.

3.1 In addition to the requirement to assess the patient (see section 2), registered health practitioners must have a consultation with the patient, either in person or by video, each time they prescribe them Schedule 4 (prescription only) cosmetic injectables (see section 6). Remote (bulk) asynchronous¹⁹ prescribing of cosmetic injectables by phone or email (or equivalent) is not an acceptable practice.

We support disallowing asynchronous prescribing of cosmetic injections by phone or email. However, we encourage this to extend further to ensure all telehealth consultations last at least 10 minutes. We have heard numerous instances of patients receiving prescriptions for cosmetic injections via telehealth appointments (including video appointments) with a doctor who spent less than 3 minutes with them. We argue this is not sufficient time to understand a patient’s medical history and their suitability for a Schedule 4 medication.

We have received contact from concerned members of the public and health professionals about what really happens when injectable businesses are enabled via telehealth providers. The following is anecdotal from a number of unrelated concerned individuals:

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5.2 Consent must be requested for any photographs or videos a practitioner proposes to take of a patient in a consultation or during a cosmetic procedure.

We encourage the implementation of these guidelines around consent to take and use images. We believe these guidelines should make clear that consent information must be in a similar size and style font as all other information, to ensure it isn't buried or missed by patients.

Bundled consent should also be prohibited in these guidelines. The Information Commissioner used a medical practice as an example in their bundled consent information:

If a medical practice issues a bundled request for consent to use your personal information for medical research purposes and direct marketing, and to disclose it to a third-party marketing company. In this case, you would not be able to agree to the use of your personal information for medical research without agreeing to receiving marketing materials.¹⁷

¹⁷ <https://www.oaic.gov.au/privacy/your-privacy-rights/your-personal-information/consent-to-the-handling-of-personal-information>

What the Research Is Showing

AHPRA, the TGA and similar regulators have a clear role in protecting the public. In relation to cosmetic surgery and procedures, harm to the public can happen in ways that are clearly observable, such as a patient having a poor surgical outcome as a result of medical negligence. However, studies are now demonstrating the harm that can be done through social media imagery and use of language. Vulnerable groups such as young women are at high risk of being affected, but the impact has the ability to reach all of us.

Cosmetic procedure advertising not only capitalises on these vulnerabilities, it actually seeks to drive them as an industry. It is no accident when beauty magazines and news outlets cover the 'latest filler trends'. Practitioners engage public relations companies to issue releases on the latest trends with provided comments from the practitioner and included headshots.

Despite the fact this approach is likely in breach of numerous AHPRA and TGA guidelines, the public is not aware the story is essentially a paid promotion to drive business to the practitioner.

Now is the time to protect current and future generations by relying on the research that demonstrates much of the advertising distributed by cosmetic procedure providers is not acceptable and potentially harmful to many of those exposed to it.

Studies

1. November 2023 - Health professionals' and beauty therapists' perspectives on female genital cosmetic surgery: an interview study¹⁸

Maggie Kirkman, Amy Dobson, Karalyn McDonald, Amy Webster, Pramasari Wijaya & Jane Fisher

"Healthcare professionals' use of pathologising language, such as 'excess', 'abnormal', and 'unnecessary', indicated that, despite the acknowledged diversity, 'normal' tended to be applied to a vulva without visible labia minora or clitoris, indicating a pervasive discourse of vulvar diversity as pathological. The medicalised term 'hypertrophic' was frequently reported or adopted. Labia minora were also described as 'enlarged', 'giant', 'huge', and 'asymmetric', with 'massive localised gigantism' or 'gross asymmetry', despite the normal asymmetry of all parts of the human body..."

2. August 2023 - Social Networking Site Use, Self-Compassion, and Attitudes Towards Cosmetic Surgery in Young Australian Women¹⁹

Lauren Conboy & John Mingoia

¹⁸ <https://bmcfwomenshealth.biomedcentral.com/articles/10.1186/s12905-023-02744-y>

¹⁹ <https://link.springer.com/article/10.1007/s41347-023-00334-1>

3. March 2023 - The impact of #beauty and #self-compassion tiktok videos on young women's appearance shame and anxiety, self-compassion, mood, and comparison processes²⁰

Veya Seekis, Richelle Kennedy

4. June 2017 - "Big eye" surgery: the ethics of medicalizing Asian features²¹

Yves Saint James Aquino

It seems clear the science and research is making it incumbent on the powers that be to stop the harmful marketing and crack down on the drift away from best practice and patient care to KPIs, marketing and profit, driving the industry into an irreversible position that increases the risk of patient harm.

A large drug company is on a campaign to convince the public that injectables boost confidence and are no different than getting your hair done.

The CEO of AHPRA, Martin Fletcher has said the opposite. *"Getting these services is not like getting a haircut - these procedures come with risk"*.

A strong stance from AHPRA, the TGA and the ACCC working in unison to proactively crack down on poor practice will surely boost public confidence in Australia's commitment to world leading standards and hopefully that results in better protections for the public.

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Disclosure: An entity we are employed by is engaged by AHPRA to provide Consulting around social media.

²⁰ <https://www.sciencedirect.com/science/article/pii/S1740144523000268?via%3Dihub>

²¹ <https://researchers.mq.edu.au/en/publications/big-eye-surgery-the-ethics-of-medicalizing-asian-features>