

29 February 2024

Public Consultation

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

(Ahpra and National Boards, 27 November 2023)

Introduction

Although the Australian Society of Plastic Surgeons is an association of surgeons and is primarily concerned with matters relating to surgery and surgeons, some qualified plastic surgeons supervise nurses or work alongside other health practitioners performing such procedures in their private practice. Furthermore, plastic surgeons not infrequently have to manage the medical complications of cosmetic non-surgical procedures that have been ill-advisedly performed, incompetently performed or performed in inappropriate facilities by outside practitioners. For some members of the public, the harm done in this context is serious and long lasting.

This experience of our members is what informs our feedback on these proposed regulations.

ASPS agrees improved regulation is needed and regards the following four areas as important

1. facilities and non-surgical cosmetic procedures;
2. medicines and injectables;
3. non-registered practitioners; and
4. advertising and promotion.

With the 2023 implementation of *Guidelines for registered medical practitioners who advertise cosmetic surgery* and *Guidelines for registered medical practitioners who perform cosmetic surgery and procedures*, ASPS believes that regulations for health practitioners who perform and who advertise non-surgical cosmetic procedures, should be as stringent, if not more so. ASPS believes that AHPRA should correct the flaws in the Guidelines relating to medical practitioners concomitantly with development of the guidelines for nurses and other health practitioners.

Assessment for underlying psychological conditions

ASPS has previously brought up concerns around the term "assessment" in the context of BDD and other mental illness. Whilst ASPS supports the need for medical practitioners to try to pick up such conditions, within the context of their medical training and using screening tools that have been validated, the term "assessment" usually has specific connotations within the fields of psychology and psychiatry. This concern holds even more so in these non-surgical practitioner guidelines: in essence, AHPRA is suggesting that nurses, dentists and opticians will be capable of "assessing" significant psychiatric disorders. This is unrealistic.

On pages 10 and 11, ASPS suggest an alternative wording, - 'the health/medical practitioner who will perform the surgery/cosmetic procedure/cosmetic injection must evaluate the patient for their suitability for the surgery/procedure, including whether there may be any underlying psychological condition which may make them an unsuitable candidate...etc.' The Medical Board practice Guidelines should also be amended accordingly.

Facilities and non-surgical cosmetic procedures

Any licensing scheme for non-surgical cosmetic procedures must strike a balance between protecting the public and building confidence in the safety of the aesthetic industry, while respecting consumer choice and encouraging innovation. All procedures have some risks and can lead to serious complications if not correctly done. These risks are greater where the person carrying out the procedure is not sufficiently knowledgeable or trained, where they use unregulated products, or when the procedure is carried out at unsuitable facilities.

The draft guidelines are questionable around this area.

Section 13.2 uses the phrase 'encouraged to provide procedures' when stating where health practitioners should be performing non-surgical cosmetic procedures. This is an unsatisfactory clause as it has no power to be enforced.

Medicines and injectables

Medicines, controlled substances and therapeutic goods legislation controls the use, storage, administration, prescription and supply of poisons and scheduled medicines. Botulinum toxin and injectable hyaluronic acid dermal fillers used in cosmetic procedures are Schedule 4 medicines.

The Act and Regulations generally provide that:

- these Schedule 4 medicines must be prescribed by an authorised medical practitioner or dentist;
- a wholesaler can only supply Schedule 4 medicines to an authorised practitioner or other person authorised to possess the medicine; and
- Schedule 4 medicines must be stored in a room or enclosure which is not accessible to the public.

Though not specified in legislation the Medical Board of Australia (MBA) requires that medical practitioners must only prescribe Schedule 4 cosmetic injectables if they have had a consultation with the patient, either in person or by video. When a medical practitioner is assisted by, or assigns an aspect of care to, another registered health practitioner the medical practitioner retains overall responsibility for the patient and should be available to provide professional advice and support if necessary. However, there are concerns about poor knowledge of, and compliance with the MBA requirements, consequently amendments to Schedule 4 regulations that reflect the Board's professional expectations may be warranted.

Non-registered practitioners

Cosmetic procedures are carried out by both registered health practitioners and persons who are not registered health practitioners. Non-registered practitioners are usually subject to regulatory oversight through public health regulations, which typically impose standards and codes of practice on named procedures related to beauty therapy, skin penetration and tattooing and require that services are provided in a safe and ethical manner, using appropriate infection control precautions, and without false or misleading claims being made about the product.

In addition, the health care complaints commissioner in each of the jurisdictions is able to receive, investigate and adjudicate on complaints made about both registered health practitioners and non-registered health practitioners who provide 'health services' as defined.

It is essential however, that all non-registered practitioners, especially with an increasingly ethnically diverse population with varying levels of English-language comprehension, are aware of, and meet their legal obligations. This may require a more sophisticated education and compliance strategy from the relevant regulatory authorities.

Advertising and promotion

The MBA's current *Guidelines for registered medical practitioners who advertise cosmetic surgery* have been in place since 1st July 2023. ASPS believes that any advertising guidelines for health practitioners who perform and who advertise non-surgical cosmetic procedures, should be as stringent, if not more so than those for medical practitioners. The issue of a business such as an optician chain advertising procedures is not clearly covered. In private medical practices, the medical practitioner is responsible for what is advertised. We are not sure whether there is the same chain of responsibility for businesses like opticians. For example, if SpecSavers puts out a national advert about Botox injections around the eyes, who is the responsible health practitioner?

Clearly effective monitoring and enforcement of these requirements is needed to ensure that advertising and promotion of cosmetic procedures does in fact comply with consumer protection laws and MBA guidance to health practitioners.

End.

