

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

Submission to the Australian Health Practitioner
Regulation Agency and the Medical Board of Australia

30 January 2024

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Enclosed: The Australian Lawyers Alliance’s submission on Ahpra and the Medical Board’s template.

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

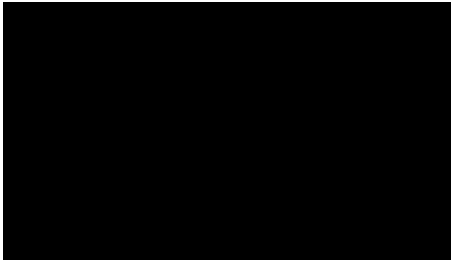
¹ www.lawyersalliance.com.au.

Introduction

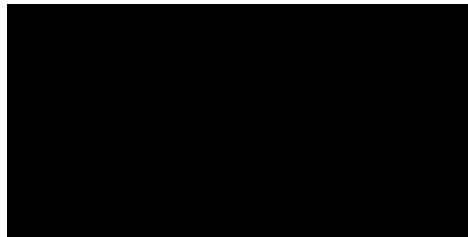
1. The ALA welcomes the opportunity to have input to the Australian Health Practitioner Regulation Agency (Ahpra) and the Medical Board of Australia (the Medical Board) on the regulation of health practitioners who perform and who advertise non-surgical cosmetic procedures.
2. Regulations and guidelines have not yet kept pace with the huge growth in the cosmetic surgery and procedures industry, including the prevalence of online advertising of non-surgical cosmetic procedures. This includes on social media platforms.
3. The ALA has consistently advocated for reform of the legal and regulatory frameworks governing the performance and advertising of non-surgical cosmetic procedures, with a view to providing greater clarity to health practitioners, in order to ultimately protect the health and safety of the general public.
4. The ALA's submission – **enclosed**, on the template provided by Ahpra and the Medical Board – provides feedback from ALA members on two of the draft guidelines, namely the:
 - draft *Guidelines for nurses who perform non-surgical cosmetic procedures* ('draft nurses practice guidelines'); and
 - draft *Guidelines for registered health practitioners who advertise non-surgical cosmetic procedures* ('draft advertising guidelines').
5. We note here, however, feedback on all three guidelines in relation to when these guidelines will be reviewed after they are finalised and issued.
 - a. It is proposed that all three guidelines will be reviewed "from time to time as required" and that this will "generally be at least every five years".²
 - b. In order to determine the ongoing effectiveness of all three guidelines and to make adjustments to continually improve the protection of the general public, it is essential that all three guidelines are regularly reviewed and evaluated.

² Australian Health Practitioner Regulation Agency and the Medical Board of Australia, *Public consultation: Regulation of health practitioners who perform and who advertise non-surgical cosmetic procedures* (Consultation Paper, 27 November 2023) 26, 35 and 48.

- c. **The ALA thus recommends that Ahpra, the Medical Board and the Nursing and Midwifery Board of Australia commit to reviewing and updating all three guidelines on a pre-determined, regular basis to ensure they are working to improve performance and advertising compliance.**
6. The ALA is available to provide further assistance to the Australian Health Practitioner Regulation Agency and the Medical Board of Australia on the issues raised in this submission.



Shaun Marcus
National President,
Australian Lawyers Alliance



Ngaire Watson
Chair, Medical Law Special Interest Group
Australian Lawyers Alliance

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

The Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards are reforming the regulation of registered health practitioners who work in the non-surgical cosmetic procedures sector in Australia to improve practice and standards, public safety, and provide opportunities for more informed consumer choice. Ahpra and the National Boards are consulting on three documents related to the regulation of registered health practitioners who provide and who advertise non-surgical cosmetic procedures:

1. Guidelines for nurses who perform non-surgical cosmetic procedures (nurses practice guidelines—applies to nurses only)
2. Guidelines for registered health practitioners who perform non-surgical cosmetic procedures (shared practice guidelines – excluding medical practitioners and nurses), and
3. Guidelines for registered health practitioners who advertise non-surgical cosmetic procedures (advertising guidelines – applies to all registered health practitioners).

The three proposed draft guidelines are intended to set out what National Boards expect of registered health practitioners working and advertising in this sector and provide clarity for consumers considering non-surgical cosmetic procedures about the standards expected of practitioners.

As the three proposed draft guidelines are all related to non-surgical cosmetic procedures, Ahpra and the National Boards are consulting on all three guidelines together. Feedback is welcome on any or all of the three draft guidelines.

We welcome feedback from organisations, registered health practitioners and the public.

There are some initial demographic questions and then questions on each of the guidelines we are consulting on. All questions are optional, and you are welcome to respond to any you find relevant, or that you have a view on.

The consultation questions are different in some sections as National Boards are intentionally consulting on the questions most relevant to the professions they regulate.

Your feedback will help us to understand your views and help National Boards set clear standards for registered health practitioners in the non-surgical cosmetic procedures sector, for the protection of the public.

Please email your submission to AhpraConsultation@ahpra.gov.au

Consultation is open for 10 weeks. The submission deadline is close of business **2 February 2024**.

How do we use the information you provide?

Australian Health Practitioner Regulation Agency
National Boards

GPO Box 9958 Melbourne VIC 3001 Ahpra.gov.au 1300 419 495

Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.

The survey is voluntary. All survey information collected will be treated confidentially and anonymously. Data collected will only be used for the purposes described above.

We may publish data from this survey in all internal documents and any published reports. When we do this, we ensure that any personal or identifiable information is removed.

We do not share your personal information associated with our surveys with any party outside of Ahpra except as required by law.

The information you provide will be handled in accordance with [Ahpra's privacy policy](#).

If you have any questions, you can contact AhpraConsultation@ahpra.gov.au or telephone us on 1300 419 495.

Publication of submissions

We publish submissions at our discretion. We generally [publish submissions on our website](#) to encourage discussion and inform the community and stakeholders about consultation responses. Please let us know if you do not want your submission published.

We will not publish on our website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the subject of the consultation. Before publication, we may remove personally identifying information from submissions, including contact details.

We can accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. A request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Cth), which has provisions designed to protect personal information and information given in confidence. Please let us know if you do not want us to publish your submission or if you want us to treat all or part of it as confidential.

Published submissions will include the names of the individuals and/or the organisations that made the submission unless confidentiality is expressly requested.

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: **Australian Lawyers Alliance**

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 – N/A

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:

The Australian Lawyers Alliance (ALA) supports the development of guidelines for nurses who perform non-surgical cosmetic procedures by the Nursing and Midwifery Board of Australia (NMBA). We submit that existing regulatory tools and position statements are not at all sufficient for promoting the safe performance of non-surgical cosmetic procedures and for ensuring the general public's safety.

The ALA thus agrees with Ahpra and the NMBA that publishing a form of these draft nurses practice guidelines is the preferred option moving forward (as opposed to the status quo) "to ensure public safety and public protection through a regulatory framework that enables the public to make informed and safe choices when undergoing procedures that have the potential to cause serious injury or harm".³

However, the ALA does propose amendments to the current form of the draft nurses practice guideline, which will be detailed in the remainder of this section.

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:

The ALA submits that members of the general public may find parts of the guidelines challenging to comprehend in their current form, which will compromise how sufficiently informed the general public can be from these guidelines.

For example, the ALA contends that the guidance under 3.1 in the draft nurses practice guideline would be unclear and inaccessible in its current form to members of the general public. Terms like "asynchronous prescribing" should either be explained in the body of the guidelines (without relying on footnotes, which can easily be overlooked or missed), or clear and plain English phrases should be used instead to explain these processes and guidelines.

³ Australian Health Practitioner Regulation Agency and the Medical Board of Australia, *Public consultation: Regulation of health practitioners who perform and who advertise non-surgical cosmetic procedures* (Consultation Paper, 27 November 2023) 8.

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:

The ALA submits that registered nurses and nurse practitioners must advise people about the risks and complications associated with botulinum toxin and dermal fillers, no matter what the age of the prospective client – however, this is especially important for those under the age of 18 years.

Additionally, registered nurses and nurse practitioners should manage patient expectations about the intended cosmetic procedure and must clearly outline, particularly if a registered nurse and/or nurse practitioner knows that it is likely that the 'treatment' might need to be repeated to maintain a 'desired effect'.

Although explaining to patients about "the possibility of the need for further treatment" is addressed in 5.1 of the draft nurses practice guidelines, the ALA submits that it would be appropriate to include guidance for registered nurses and nurse practitioners on managing patient expectations about both current and future procedures in this section of the guidelines.

Question 5:

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

Your answer:

Please see the ALA's response to Question 4, 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:

The ALA submits that the draft advertising guidelines are appropriate. The ALA has long supported the creation of industry-specific, detailed advertising guidelines that are tailored specifically to practitioners engaged in non-surgical cosmetic procedures.

Additionally, these draft advertising guidelines appropriately make it clear that registered health practitioners bear an important responsibility regarding non-surgical cosmetic procedures advertising, even when someone else is producing content on their behalf.⁴

Moreover, we submit that the guidelines are essential for the protection of public safety. The draft advertising guidelines in their current form are comprehensive and contemporary, particularly as they relate to advertising through the ever-growing forum of social media and the platforms used therein to advertise both cosmetic surgeries and cosmetic procedures.

The draft advertising guidelines also appropriately note the vulnerability of those seeking non-surgical cosmetic procedures,⁵ an element which registered health practitioners should never overlook or underplay.

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 ALA submits that the draft advertising guidelines does sufficiently and comprehensively communicate the National Boards' expectations on registered health practitioners in relation to advertising non-surgical cosmetic procedures.

⁴ Ibid 38.

⁵ Ibid 36.

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:

The ALA submits that the draft advertising guidelines would be useful to the public in understanding the National Boards' expectations of registered health practitioners in relation to advertising non-surgical cosmetic procedures, as the language used is clear.

Further, the draft advertising guidelines encourage registered health practitioners to use clear and accurate language when communicating with the public through advertising. This will promote public safety and education concerning non-surgical cosmetic procedures.

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:

With regards to the use of 'before and after' images, it is suggested that any 'after' images include detail as to how many non-surgical treatments were used to attain the result depicted in the image.

It is further suggested that the images include information in relation to the nature of the non-surgical procedure and the level of treatment, for example "Botox 3 units".

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 ALA submits that the definition is comprehensive, yet not prescriptive, which is appropriate in order to account for other forms or examples of non-surgical cosmetic procedures.

The ALA notes that the definition appears to have taken examples of non-surgical cosmetic procedures from the Australian Society of Plastic Surgeons, which indicates that there has been consultation with other sectors of the industry.

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:

The ALA supports the development of separate guidelines in relation to advertising IV infusion treatments.

Beauty and cosmetic medical clinics currently exist that offer IV vitamin infusions with claims that are unrealistic and misleading, such as 'boosting the immune system'. To offer the treatments that "may" offer benefits is also misleading and there are very few circumstances where IV infusions are warranted outside of an acute health care facility.

Therefore, separate guidelines are needed to ensure safe and appropriate advertising and use of IV infusion treatments.

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:

The ALA submits that those separate guidelines in relation to the advertising of IV infusion treatments should reflect that there is no place for IV infusions in a cosmetic medicine setting beyond to be administered during surgery or when there is a medical indication for IV fluids.

Question 24:

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

Your answer:

The ALA is of the view that there must not be discretion offered to health practitioners in their adherence to the provisions in these draft guidelines. Rather, the ALA recommends that the guidelines should be consistently prescriptive throughout the guidelines. As such, the ALA recommends that any provision containing “should” be changed to “must”.

Compliance, and monitoring compliance with the practice guidelines and advertising guidelines remains a key issue for Ahpra and the Medical Board. The ALA supports that health practitioners should be required to certify compliance with the guidelines when renewing their registration. Furthermore, the ALA supports frequent and robust auditing of all practitioners to ensure compliance.

Difficulty arises, however, in relation to enforcing the advertising guidelines against unregistered healthcare practitioners performing non-surgical cosmetic procedures. Examples of such practitioners include “dermal therapists” or “therapists.” The ALA submits that the advertising guidelines should apply to unregistered healthcare practitioners advertising non-surgical cosmetic procedures; though, the ALA acknowledges that enforcement of the guidelines against such practitioners is not uniform and depends upon whether the state in which the conduct has occurred has adopted the *National Code of Conduct for Health Care Workers*.