



National Health  
Practitioner  
Ombudsman

# Submission

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

1 March 2024

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# Submission

The office of the National Health Practitioner Ombudsman (NHPO) is pleased to provide this submission to the Australian Health Practitioner Regulation Agency (Ahpra) and the National Health Practitioner Boards' (Boards) public consultation on the:

- draft Guidelines for registered health practitioners who perform non-surgical cosmetic procedures (the draft guidelines)
- draft Guidelines for nurses who perform non-surgical cosmetic procedures (the draft nursing guidelines)
- draft Guidelines for registered health practitioners who advertise non-surgical cosmetic procedures (the draft advertising guidelines).

The NHPO welcomes the Boards' commitment to addressing issues related to the regulation of practitioners performing non-surgical cosmetic procedures, including in response to the recommendations made by the independent review of the regulation of medical practitioners who perform cosmetic surgery (the independent review).

The proposed changes are wide-ranging and will assist practitioners performing non-surgical cosmetic procedures to better understand their obligations and the Boards' expectations.

The NHPO's submission focusses on suggesting improvements which could be made to provide further clarity and consistency. In particular, the NHPO has suggested that further consideration should be given to ensuring the guidelines address specific issues arising from the regulation of non-surgical cosmetic procedures.

The NHPO made a submission to Ahpra and the Medical Board's consultation on the proposed changes to the draft guidelines for medical practitioners who perform cosmetic medical and surgical procedures and draft guidelines for registered medical practitioners who advertise cosmetic surgery in 2022 (herein referred to as the NHPO's 'submission to the Medical Board'). The NHPO continues to be concerned that there is not a sufficient evidence base or rationale for some aspects of the guidelines as they relate specifically to non-surgical cosmetic procedures. This is primarily because the guidelines draw from the findings of the independent review which did not consider, nor provide recommendations in relation to, these types of procedures. A number of the NHPO's comments in its submission to the Medical Board therefore continue to be relevant to the new proposed guidelines.

## Draft guidelines and draft nursing guidelines

The following sections outline the NHPO's comments regarding the draft guidelines and draft nursing guidelines due to the similarity of the guidelines' content.

## Defining non-surgical cosmetic procedures

The NHPO suggests there could be greater clarity in how ‘non-surgical cosmetic procedures’ are defined in the draft guidelines and draft nursing guidelines. The non-surgical cosmetic procedures covered by the draft guidelines are broad, and range from laser hair removal to cosmetic injectables. As noted in the NHPO’s submission to the Medical Board, the definition of non-surgical procedures is complex, but there may be opportunities to better articulate its scope. For example, a 2018 NSW Health review outlined:

*Some cosmetic procedures are more akin to beauty procedures [and] would not be, and should not be, seen as a health service, for example hair removal.<sup>1</sup>*

The NHPO suggests that further exploration of the scope of the non-surgical cosmetic procedure section of the draft guidelines is necessary, particularly given certain non-surgical cosmetic procedures may be performed by individuals who are not registered health practitioners.

Further, the NHPO suggests that Ahpra and the Boards better clarify whether intravenous (IV) infusion treatments are captured by the current definition of non-surgical cosmetic procedures across all three draft guidelines. The NHPO notes that this is particularly relevant to the draft advertising guidelines, where the consultation paper states that “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 and the Boards should clarify for health practitioners whether IV infusion treatments fall within the meaning of non-surgical cosmetic procedures, and whether the draft guidelines apply to these treatments.

## Recognising the complexities in the provision of non-surgical cosmetic procedures

It is important to respond to the reality that certain non-surgical cosmetic procedures are often performed by individuals who are not registered health practitioners or who do not work in a regulated profession. For example, skin treatments such as chemical peels could be performed by skin therapists or dermal clinicians. The consultation paper in relation to the guidelines does not specify, however, whether consideration has been given to who is performing non-surgical cosmetic procedures in practice, and whether this varies depending on the type of procedure being performed.

The NHPO acknowledges that regulation of unregistered individuals is outside of Ahpra and the Boards’ scope. However, it is a relevant consideration to community expectations and public safety. For example, both unregistered individuals and registered health practitioners may be performing the same procedures, yet the standard that is ascribed to the individual performing the procedures may vary. This may lead to variation in the quality of the procedures being performed.

Similarly, a lack of clarity about the types of procedures that are (or are not) being undertaken by registered health practitioners may be confusing for consumers. If both registered health practitioners and unregistered individuals are performing the same procedures, it may be difficult for consumers to make informed choices about where to access procedures, and the required skills and

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<sup>1</sup> NSW Health, Report on the Review of the Regulation of Cosmetic Procedures, April 2018, p10

qualifications of the individual performing procedures. For example, the NHPO received a concern from a consumer who explained that their skin had been severely damaged following microdermabrasion.<sup>2</sup> The procedure, however, was undertaken by an unregistered person. Without clearly defined requirements for the types of procedures that should be performed by registered health practitioners, it is also likely challenging for consumers to know how to raise concerns (when required) about the treatment they have received.

The NHPO notes that concerns regarding the regulation of non-surgical cosmetic procedures is not specific to Australia. For example, a report published in August 2022 by the House of Commons Health and Social Care Committee recommended that the United Kingdom Government introduce a licensing regime for non-surgical cosmetic procedures:

*We are convinced that there is a need for a minimum standard to be met in regards to the education and training of practitioners who perform non-surgical cosmetic procedures. It is essential to ensure patient safety, and thus should be a central pillar of a future licensing regime. The Professional Standards Authority should be given the power to oversee a register of approved training providers.*<sup>3</sup>

The NHPO acknowledges that any system to accredit unregistered individuals to undertake non-surgical cosmetic procedures would fall outside of Ahpra and the Boards' remit. However, the NHPO suggests that this does not preclude Ahpra and the Boards from working collaboratively with relevant stakeholders (including other regulators and government bodies) to ensure a consistent approach and to improve patient safety in the sector more broadly. This should include considering the scope of procedures the Boards' guidelines should encompass. At a minimum, the guidelines should better acknowledge the complexities of current practice in relation to non-surgical cosmetic procedures, particularly in relation to the role of unregistered individuals.

## Ensuring informed and evidence-based guidelines

The NHPO's submission to the Medical Board outlined concerns regarding the evidence base and rationale for some of the changes proposed in the draft guidelines regarding minor (non-surgical) cosmetic procedures. These concerns were raised because the independent review did not consider, nor provide recommendations in relation to, non-surgical cosmetic procedures. The NHPO suggested that the issues which require reform in relation to non-surgical cosmetic procedures are likely to be different to cosmetic surgery procedures (although they may require similar obligations). The NHPO therefore suggested that more in-depth consideration of issues related to non-surgical cosmetic procedures was needed to ensure the draft guidelines were fit-for-purpose.

It does not appear that further review or research has been conducted into issues related to how non-surgical cosmetic procedures are delivered in Australia. The NHPO is therefore concerned that the unique issues related to the provision of non-surgical cosmetic procedures have not been

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<sup>2</sup> Note that this has been described as a 'concern' rather than a 'complaint,' because it was outside the scope of our office's jurisdiction to consider the issues raised. The complainant was referred to another entity to assist with their concerns.

<sup>3</sup> House of Commons Health and Social Care Committee, The impact of body image on mental and physical health, Second Report of Session 2022–23. Accessed February 2024:

[www.publications.parliament.uk/pa/cm5803/cmselect/cmhealth/114/report.html#heading-5](https://www.publications.parliament.uk/pa/cm5803/cmselect/cmhealth/114/report.html#heading-5)

thoroughly considered by the Boards when drafting these guidelines (which largely mirror the Medical Board's guidelines). The NHPO suggests that it is particularly important that the guidelines are informed by robust evidence and information regarding the:

- qualifications required for registered health practitioners to perform non-surgical cosmetic procedures, including in relation to cosmetic injectables
- provision and prescription of schedule 4 cosmetic injectables and anaesthesia, including the provision of cosmetic injectables after a video consult.

### **Qualifications required for health practitioners to perform non-surgical cosmetic procedures**

As outlined in the NHPO's submission to the Medical Board, the NHPO suggests that further evidence and understanding is required about whether there is a need to introduce relevant minimum qualification or training standards for registered practitioners who perform non-surgical cosmetic procedures, including medical, nursing and dental practitioners.

The independent review recommended that the Medical Board introduce an area of practice endorsement for cosmetic surgery. This recommendation was implemented by the Medical Board from 1 July 2023. Endorsement recognises that a person has an extended scope of practice in cosmetic surgery because they have obtained a specific qualification in that area that has been approved by the Medical Board. The independent review outlined that one of the benefits of the endorsement model is that it sets a clear minimum standard of training for practitioners providing cosmetic surgery.<sup>4</sup> The independent review's scope, however, prevented it from considering whether an endorsement was necessary in relation to non-surgical cosmetic procedures, including those performed by nurse practitioners (NPs) and other health practitioners.

The NHPO is not aware that further research or consideration has been given to the qualifications, skills or training required of registered health practitioners to safely provide non-surgical cosmetic procedures.

There also appears to be conflicting publicly available information about whether NPs and dental practitioners are qualified to prescribe and administer cosmetic injectables. The Department of Health's Better Health Channel's website, for example, states:

*To minimise risks, cosmetic injections should be given by a registered health practitioner (such as a nurse) under the instruction of a registered medical practitioner. This medical practitioner should have experience in the field and should have personally consulted the patient.*<sup>5</sup>

The reference to cosmetic injectables requiring oversight by a medical practitioner suggests that there may be differing interpretations of the roles of different registered health practitioners in the delivery of non-surgical cosmetic procedures. In this context, it is likely not clear to consumers

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<sup>4</sup> Andrew Brown, *Independent review of the regulation of medical practitioners who perform cosmetic surgery*, August 2022. Commissioned by Ahpra and the Medical Board.

<sup>5</sup> Better Health Channel, *Cosmetic treatments – injectables*. Accessed February 2024:  
[www.betterhealth.vic.gov.au/health/ConditionsAndTreatments/cosmetic-treatments-injectables](https://www.betterhealth.vic.gov.au/health/ConditionsAndTreatments/cosmetic-treatments-injectables)

whether certain procedures should only be performed by registered health practitioners, and to what extent prescribers should be involved in the delivery of non-surgical cosmetic procedures.

### **Clarifying reference to qualifications required for the nursing profession**

The draft nursing guidelines include more detailed sections at the end of the document outlining requirements for NPs, Registered nurses (RNs) and Enrolled nurses (ENs). This section of the guidelines, for example, outlines expectations regarding qualifications to be completed by ENs to practise non-surgical cosmetic procedures. This includes having:

- practised for a minimum of one-year full-time equivalent post initial registration to consolidate the foundational skills and knowledge as an EN, plus
- two years full-time equivalent experience in a related area of practice (for example, dermatology, general surgery) prior to practising in the area of non-surgical cosmetic procedures
- completed formal education that is relevant to practise in the area of non-surgical cosmetic procedures.

The draft nursing guidelines state that RNs must first practise for a minimum of one year full-time equivalent post initial registration to consolidate their skills (not in the area of non-surgical cosmetic procedures). Further, RNs with a notation stating the practitioner is ‘solely qualified in the area of mental health, paediatric or disability nursing’ are unable to practise in the area of non-surgical cosmetic procedures. However, if these RNs seek to change their context of practice to work in the area of non-surgical cosmetic procedures, they “must complete an NMBA-approved entry to practice program of study leading to general registration in order to have the notation removed.” The draft nursing guidelines further state that all sole qualified RNs, “with or without a notation need to ensure they have the appropriate education and experience to work in a different context of practice.”<sup>6</sup>

The draft nursing guidelines also note that it is not within a midwife’s therapeutic model of care to perform non-surgical cosmetic procedures.<sup>7</sup>

Throughout the draft nursing guidelines, it is specified that only NPs are qualified to prescribe cosmetic injectables.

These various requirements indicate that the NMBA has recognised that specialised training is necessary to perform non-surgical cosmetic procedures. However, the NHPO suggests that if the NMBA believes certain qualifications and skills are required to safely perform these procedures, this must be recognised through appropriate mechanisms, such as the introduction of an endorsement model. The NHPO received a complaint from an EN, for example, who was concerned about the evidence base for the NMBA’s position statement on nurses and cosmetic medical procedures. The complainant disputed the limitations placed on ENs working within the sector and instead expressed support for an endorsement model. Another complainant informed our office that they had

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<sup>6</sup> The NHPO is unaware of circumstances where it is appropriate for an RN with a sole qualification in mental health, disability or paediatric nursing to be registered without a notation.

<sup>7</sup> Note that the draft guidelines also do not apply to midwives.

undertaken training at the graduate diploma level in relation to cosmetic injectables. However, due to a notation on their registration, Ahpra had advised that they could not perform non-surgical cosmetic procedures as it was outside the terms of the notation. While these examples represent snapshots of concerns raised with the NHPO, they point to the challenges associated with determining how the NMBA recognises appropriate skills and qualifications in non-surgical cosmetic procedures.

In addition, it appears unclear from the draft nursing guidelines how Ahpra and the NMBA would verify the required training of nurses working in this area. There is likely to be variations in perceptions of what constitutes “appropriate education and experience” in this area.

The NHPO therefore suggests that the NMBA further considers the most appropriate way to determine the appropriate skills and qualifications required for nurses to perform non-surgical cosmetic procedures.

### **Clarifying qualifications required to perform non-surgical cosmetic procedures for other professions**

The consultation paper states that the draft guidelines apply to registered health practitioners from all professions, except the nursing and medical professions (as they have their own profession-specific guidelines). However, the section in the draft guidelines on ‘Who do these guidelines apply to?’ does not include the midwifery or medical radiation professions.

As noted above, the draft nursing guidelines outline that it is not within the midwife’s therapeutic model of care to perform non-surgical cosmetic procedures. The draft guidelines, however, have not excluded any other professions on this basis. This appears counter-intuitive given certain professions’ practice appear to be less related to cosmetic procedures. It would be unlikely, for example, that a psychologist would perform laser hair removal or chemical peels as part of their practice. The NHPO is therefore concerned that insufficient consideration has been given to whether practitioners in some professions have the appropriate qualifications and training to perform non-surgical cosmetic procedures.

In comparison to the draft nursing guidelines, the draft guidelines do not explicitly mention any requirements regarding qualifications or skills required of registered health practitioners to perform non-surgical cosmetic procedures. The guidelines also do not recognise that certain practitioners are more likely to perform non-surgical cosmetic procedures and prescribe cosmetic injectables, such as dental practitioners.

Instead, the guidelines state that “a registered health practitioner who is changing their scope of practice to include cosmetic procedures is expected to undertake the necessary training before providing cosmetic procedures or prescribing cosmetic injectables.” The ‘necessary training’ is not described. Further, it is unclear whether the ‘necessary training’ varies depending on the type of procedure being performed.

The proposed guidelines further state that cosmetic procedures or cosmetic injectables must only be provided by registered health practitioners with the “appropriate knowledge, training, and competence in the specific cosmetic procedures being offered.” However, these terms are not



defined, and do not set clear expectations of the standard required to perform these types of procedures.

There is also no specific guidance in the draft guidelines about which health practitioners can prescribe and administer cosmetic injectables, though it appears that this is within the accepted scope of some dentists.<sup>8</sup>

The NHPO notes that other concerns related to the provision of non-surgical cosmetic procedures by dental practitioners may require further examination. For example, consideration should be given to how practitioners are required to negotiate informed consent processes when distinguishing between treatments which are clinically justified and treatments which are cosmetic (but not clinically indicated) in nature. For example, in *Dean v Phung* [2012] NSW CA 223, it was determined that extensive treatments provided by a dental practitioner were unnecessary based on medical evidence. This led to a finding that the dental practitioner did not receive consent from the patient to perform the proposed treatments, because they were not necessary for their condition. The potential co-existence of clinically indicated procedures, alongside non-surgical cosmetic procedures which are not clinically indicated, inevitably requires more nuanced approaches to gaining informed consent. These issues, however, are not addressed in the draft guidelines.

### **Provision and prescription of cosmetic injectables**

Following on from the above, the NHPO suggests that further consideration is given in the draft guidelines and draft nursing guidelines to the provision and prescription of medicines used in non-surgical cosmetic procedures such as botulinum toxin and injectable hyaluronic acid dermal fillers. In particular, the NHPO suggests there are professions relevant to the draft guidelines which require more specific guidance regarding their obligations, such as dental practitioners.

The NHPO notes, for example, that the Dental Board of Australia has published a factsheet on the use of botulinum toxin and dermal fillers by dentists.<sup>9</sup> This factsheet includes information not directly referred to in the current guidelines, including in relation to:

- scope of practice
- the approved indications for use of the scheduled medicines botulinum toxin and dermal fillers
- use of a scheduled medicine that is 'off-label'
- the prohibition from on-supplying restricted medicines for therapeutic use to others including dental hygienists, dental therapists, oral health therapists, registered nurses and other unauthorised persons without direct supervision by the dentist.

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<sup>8</sup> Dental Board of Australia's 'Fact sheet: The use of botulinum toxin and dermal fillers by dentists'. Accessed February 2024: [www.dentalboard.gov.au/Codes-Guidelines/FAQ/botulinum-toxin-and-dermal-fillers.aspx](http://www.dentalboard.gov.au/Codes-Guidelines/FAQ/botulinum-toxin-and-dermal-fillers.aspx)

<sup>9</sup> Ibid.

The NMBA similarly has published a position statement on nurses and cosmetic medical procedures which includes information relevant to, but not included in, the draft nursing guidelines.<sup>10</sup> For example, the position statement outlines that:

- administering cosmetic injections is within the scope of appropriately educated RNs
- the person receiving cosmetic injections must have a consultation and assessment with a medical practitioner or NP.

The NHPO suggests that the obligations for registered health practitioners administering and prescribing cosmetic injectables should therefore be more thoroughly articulated in the relevant guidelines.

As previously noted, the draft nursing guidelines more clearly describe that it is solely within the scope of NPs to prescribe cosmetic injectables due to the high-level of associated risks and expertise necessary. This enhanced scope of practice is underpinned by the NMBA's *Registration standard: endorsement as a nurse practitioner*. It is similarly important that the remaining Boards specify which practitioners are qualified to prescribe cosmetic injectables. Currently, there is no section in the guidelines mirroring the prescribing sections in both the draft nursing guidelines and Medical Board guidelines.

In addition, the NHPO suggests the Boards should consider whether there are further obligations for NPs and other registered health practitioners to provide information about substances they prescribe, such as cosmetic injectables. The Therapeutic Goods Administration's (the TGA) website suggests that patients can research cosmetic injectable products and avoid counterfeit products by searching the Australian Register of Therapeutic Goods (ARTG) list of products to ensure a product is registered.<sup>11</sup> The NHPO suggests that further consideration could be given to whether the draft guidelines and draft nursing guidelines should outline that practitioners are required to only prescribe ARTG registered products for non-surgical cosmetic procedures, and what information should be provided to patients about prescribed products.

The NHPO also notes that a patient's first consultation about cosmetic injectables can be face-to-face or by video. As previously noted, the independent review did not specifically consider non-surgical cosmetic procedures, but recommended that for cosmetic surgery, the first consultation should be in person and with a registered health practitioner. The NHPO is not aware of evidence to indicate whether the same risks that led to these recommendations also apply to cosmetic injectables. Further consideration should therefore be given to whether informed consent for cosmetic injectables should be required following a face-to-face consultation with the practitioner who will perform the procedure, who must also be a registered health practitioner.

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<sup>10</sup> Nursing and Midwifery Board of Australia, Position statement on nurses and cosmetic medical procedures. Accessed February 2024: [www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Position-Statements/nurses-and-cosmetic-procedures.aspx](http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Position-Statements/nurses-and-cosmetic-procedures.aspx)

<sup>11</sup> TGA website, Cosmetic injections checklist, 22 August 2019. Accessed February 2024: [www.tga.gov.au/news/news/cosmetic-injections-checklist](http://www.tga.gov.au/news/news/cosmetic-injections-checklist)

The NHPO suggests that it may be prudent for additional clarifications to be made, or a new section consolidated, in the draft guidelines and draft nursing guidelines to specify obligations regarding the administration and prescription of cosmetic injectables.

#### **Better clarifying practice requirements for ENs performing non-surgical cosmetic procedures**

The draft nursing guidelines state that ENs should not undertake the administration of dermal filler injectables to “very high-risk areas” including the glabella, nose and forehead. It similarly outlines that the administration of injectables to “high-risk areas” including temples, nasolabial folds, peri-orbital and medial cheek should only be undertaken in a clinical setting with immediate access to a medical practitioner, NP or RN. This inclusion mirrors the NMBA’s position statement on nurses and cosmetic medical procedures. The NHPO is concerned, however, that the distinction between “very high-risk” and “high-risk” in this document is not clear. Namely, it is not apparent what evidence base this information was drawn from and why these specific areas are associated with increased risk compared to other areas.

Further, the NHPO is concerned that there is a lack of clarity about the circumstances in which it would be suitable for ENs to administer injectables without direct oversight from, or immediate access to, a medical practitioner, NP or RN. This is because ENs are required to work under the direct or indirect supervision of an RN. The NHPO suggests that the draft nursing guidelines should provide further clarification about what is meant by the terms ‘high risk’ and ‘very high-risk’ areas, and the appropriate supervision requirements for ENs administering injectables.

#### **Better clarifying obligations for the use of anaesthesia**

The NHPO understands that some non-surgical cosmetic procedures involve the use of anaesthesia or other forms of pain management. Both the draft guidelines and the draft nursing guidelines describe the requirement for practitioners to inform patients about the cosmetic procedure, including, if applicable, details about the type of anaesthesia and pain management being used. This information must then be included in written instructions to the patient following the procedure. There is, however, no specific guidance outlining which practitioners are qualified to prescribe and administer anaesthesia. Given that the use of anaesthesia may pose its own risks and complications, it is important that the Boards specify which practitioners are qualified to prescribe anaesthesia, and how their qualifications have been recognised by the Board. The NHPO therefore suggests that the obligations for those administering and prescribing anaesthesia in the context of non-surgical cosmetic procedures should be clearly articulated in the relevant guidelines.

Further, it may be useful for the guidelines to reference a fact sheet or guidelines about the appropriate use of anaesthesia. The NHPO notes, for example, that the Australian and New Zealand College of Anaesthetists recognise that “health practitioners with diverse qualifications and training are administering local anaesthesia” and has published guidelines to support health practitioners to provide safe and high-quality local anaesthesia.<sup>12</sup>

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<sup>12</sup> ANZCA, ‘PG37(A) Guideline for health practitioners administering local anaesthesia,’ 2013. Accessed February 2024: [www.anzca.edu.au/getattachment/a45a95e9-d2af-4dc5-bcd4-fbc15ee8e7c7/PS37-Guideline-for-health-practitioners-](http://www.anzca.edu.au/getattachment/a45a95e9-d2af-4dc5-bcd4-fbc15ee8e7c7/PS37-Guideline-for-health-practitioners-)

## Clarity regarding psychological assessment requirements

In its submission to the Medical Board, the NHPO supported changes regarding the assessment of patients seeking to undergo cosmetic surgery for underlying psychological conditions such as body dysmorphic disorder (BDD). As outlined in the independent review, ensuring patients are assessed and referred to appropriate services where necessary for psychological support and assessment will help ensure better patient outcomes.

The draft guidelines and draft nursing guidelines require that practitioners “must undertake an evidence-based assessment of the patient, including for underlying psychological issues” such as BDD. While the NHPO understands the intention of this section, it is concerned that the consultation paper does not outline a clear evidence base for this requirement. For example, it is not clearly outlined why psychological assessment is required for minor non-surgical cosmetic procedures. As noted earlier, the scope of procedures covered by the guidelines includes a broad range of procedures ranging from laser hair removal to cosmetic injectables. It is important that consideration is given to why psychological assessment is needed, and in what circumstances it is appropriate. Some individuals, for example, may think it unnecessary (or even offensive) to be the subject of a psychological screening when seeking certain treatments such as laser hair removal. It is important that the Boards balance the risks posed by the procedure being sought, and the individual’s ability to exercise autonomy in seeking minor non-surgical cosmetic procedures. It may be unnecessarily invasive for practitioners to conduct psychological assessments in relation to treatments with comparatively minimal risks. Considering these factors is particularly important given the guidelines’ requirements are likely to require additional resourcing which could affect the healthcare system more broadly. It is therefore necessary for any additional requirements to have a clear and evidence-based rationale.

The NHPO suggests there is also an opportunity for the Boards to better clarify the types of screening tools that should be used to undertake a psychological assessment. The NHPO found that despite imposing an obligation on practitioners to undertake an ‘evidence-based assessment’ there is limited guidance about what this entails. Further, the draft nursing guidelines impose an additional requirement on RNs and NPs to conduct an evidence-based assessment using a ‘validated assessment tool.’ There is, however, no direction from the NMBA about what is considered a validated assessment tool and whether the NMBA has approved certain assessment tools.

The draft guidelines include the following statement that is similar to the medical non-surgical procedures guidelines:

*If there are indications that the person has significant underlying psychological issues that may make them an unsuitable candidate for the cosmetic procedure or prescribed cosmetic injectable, they must be referred for evaluation to a psychologist, psychiatrist, nurse practitioner or medical practitioner,*

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administering-local-  
anaesthesia#:~:text=The%20Australian%20and%20New%20Zealand,medical%2C%20dental%20and%20surgical%20procedures.

*who works independently of the nurse performing the procedure or the NP prescribing the cosmetic injectable.*

The NHPO is concerned that the term ‘significant underlying psychological issue’ is not well-defined in the guidelines, despite its centrality to practitioners’ obligations regarding the assessment and referral process. ‘Significant’ is a subjective term, which could be used for a range of different mental health concerns. In addition, some patients may have a serious underlying psychological issue that may not directly affect or relate to their desire to have a non-surgical cosmetic procedure. Further consideration of this wording may therefore assist in clarifying practitioner obligations.

## Provision of patient care by other health practitioners

The independent review focussed on the issue of other registered health practitioners’ involvement in cosmetic surgery procedures, including in relation to appropriate postoperative care. In this context, concerns were raised by patients that multiple registered health practitioners appeared to be involved in their ongoing care.

The draft guidelines and draft nursing guidelines specify the responsibilities of the practitioner performing or prescribing the non-surgical cosmetic procedure, including that if another registered health practitioner is assigned an aspect of a procedure or patient care, the practitioner retains overall responsibility for the patient (except when formally referred).

The NHPO supports the inclusion of this information but suggests that further consideration should be given to how it would operate in practice, and what evidence the Boards would rely on to determine whether overall responsibility for the patient had been retained or referred to another practitioner. For example, to what extent would practitioners be obliged to monitor whether other practitioners who have been assigned an aspect of a procedure provide a reasonable standard of care to their patient? The NHPO suggests that providing further clarity about these requirements would help ensure practitioners are aware of the Boards’ expectations.

## Best interests of the patient

The draft guidelines, similarly to the Medical Board’s guidelines, state that a registered health practitioner “must decline to perform a cosmetic procedure or prescribe a cosmetic injectable if they believe that it is not in the best interests of the patient.” The draft nursing guidelines by comparison, are less stringent. It states the RN or NP “should not recommend a cosmetic procedure proceeding if they believe that it is not in the best interests of the person.” Arguably, this wording could support RNs and NPs performing a cosmetic procedure, even if it was not recommended. The NHPO suggests that a consistent approach is necessary to reduce ambiguity and ensure that all registered health practitioners performing non-surgical cosmetic procedures are aware of their responsibilities and obligations.

The draft guidelines and draft nursing guidelines provide a thorough outline of the different elements essential to patient care. They cover areas such as recognising potential conflicts of interest, informed consent (including informed financial consent), patient management and financial arrangements. It is unclear, however, how practitioners should assess what is in the ‘best interests of

the patient.’ The NHPO suggests it would be reasonable for practitioners to assume that following the guidelines would sufficiently demonstrate they are acting in the best interests of the patient. For example, the guidelines outline that the practitioner who will perform the non-surgical cosmetic procedure must obtain informed consent from the patient. Further clarifying how practitioners are required to determine what is in the best interests of the patient would likely assist in removing any uncertainty regarding this requirement.

## **Clarifying references to the Australian Commission on Safety and Quality in Health Care (ACSQHC)**

The NHPO observed that there are inconsistent references to ACSQHC resources across the draft guidelines and draft nursing guidelines. This is despite a substantial overlap in the content being discussed. When outlining the requirements for informed consent, the draft nursing guidelines, for example, refer practitioners to the ACSQHC Fact sheet for clinicians: Informed Consent in Healthcare. Informed consent is also a relevant consideration in the draft guidelines; however, no reference is made to the ACSQHC Fact sheet.

The ACSQHC standards are relevant to all registered health practitioners performing non-surgical cosmetic procedures (and is not limited to nurses). Accordingly, the NHPO suggests that the draft guidelines be updated to include this information.

### **Provision of procedures in an accredited facility**

Both the draft guidelines and draft nursing guidelines encourage nurses and registered health practitioners “who provide or prescribe cosmetic injectables or any non-surgical cosmetic procedures that include injecting, piercing the skin or incisions” to provide procedures in a facility that is accredited by an ACSQHC approved agency. This in turn, means the facility has been assessed against the National Safety and Quality Health Service Standards or the National Safety and Quality Primary and Community Healthcare Standards respectively. This is largely consistent with the Medical Board’s guidelines for non-surgical cosmetic procedures.

The NHPO notes that a discretionary approach to facility accreditation may reduce resourcing issues that may otherwise be seen in response to an influx of facilities seeking accreditation. However, it is unclear how the recommendation to undertake procedures in accredited facilities links to patient safety and risk if it is not a mandatory requirement. Arguably, certain procedures either do or do not pose a certain level of risk to patients such that a facility requires accreditation to mitigate that risk and improve patient safety.

Further, it appears that the recommendation to perform procedures in an accredited facility varies depending on the type of procedure being performed. The proposed guidelines, for example, limit the scope of the recommendation to procedures that include “injecting, piercing the skin or incisions.” This is not entirely consistent with the current broad definition of non-surgical cosmetic procedures, creating issues with the appropriateness of the guidance.

The NHPO suggests that further consideration is given to whether nurses and registered health practitioners should be ‘encouraged’ to perform procedures in an accredited facility and the

complexities that may arise from this. At a minimum, it is suggested that clarity is provided about the types of procedures that should be performed in an accredited facility in the interest of patient safety.

## Draft advertising guidelines

The NHPO welcomes the Boards' commitment to clarifying health practitioner obligations regarding the advertising of non-surgical cosmetic procedures. The NHPO recognises the benefit of the draft advertising guidelines for all professions aligning with the existing medical practitioner obligations.

As highlighted in the NHPO's submission to the Medical Board regarding its guidelines, the draft advertising guidelines will assist in:

- ensuring advertising does not trivialise or downplay potential risks associated with non-surgical cosmetic procedures
- preventing the use of paid social media influencers
- strengthening guidance regarding the use of photos
- preventing targeted advertising to those under 18, including on social media.

However, the NHPO submits that further improvements could be made in relation to clarifying consent for the use of images, photos or videos, and complying with TGA standards.

## Clarifying consent for use of images, photos or videos

The draft guidelines and draft nursing guidelines clearly state that registered health practitioners cannot use financial or other incentives to gain patient consent for a procedure. The guidelines similarly outline that "consent for the use of images in advertising must be separate from consent to the procedure." The NHPO is supportive of this inclusion, however, further clarification should be provided about obtaining consent for the use of patient photos in advertising.

The NHPO suggests that it is important to clarify and reinforce that registered practitioners should not use financial or other incentives (such as providing a free procedure) to gain consent for the use of patient photos in advertising.

## Ensuring draft advertising guidelines comply with TGA standards

The TGA sets standards in relation to the advertising of therapeutic goods. This includes advertising in relation to prescription medicines, such as botulinum toxin and extends to IV drips and related therapies.

The NHPO is aware that the TGA recently issued updated guidance on advertising Schedule 4 substances, including cosmetic injectables and the terms used to describe them.<sup>13</sup> Media reports advise that the TGA clarified that terms such as 'anti-wrinkle' and 'dermal fillers' cannot be used to

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<sup>13</sup> See, for example, news articles published in February 2024: [www.abc.net.au/news/2024-02-01/new-rules-to-how-cosmetic-procedures-are-advertised/103414982](http://www.abc.net.au/news/2024-02-01/new-rules-to-how-cosmetic-procedures-are-advertised/103414982) and [www.aestheticmedicalpractitioner.com.au/news-events/tga-announces-further-restrictions-to-cosmetic-injectables-advertising/](http://www.aestheticmedicalpractitioner.com.au/news-events/tga-announces-further-restrictions-to-cosmetic-injectables-advertising/).

advertise schedule 4 substances. It appears that these changes came into effect in late December 2023, and it was anticipated that the TGA would publish revised guidance in mid to late January 2024, though it appears this information is not yet publicly available.

The TGA also publishes advertising guidance for businesses involved with IV vitamin and related therapies, which is publicly available on the TGA's website. This may be a relevant consideration should Ahpra and the Boards determine that IV infusion treatments fall within the scope of 'non-surgical cosmetic procedures' for the purpose of the draft advertising guidelines.

The draft advertising guidelines may benefit from referring to the relevant TGA standards and guidelines, including in relation to the advertising of schedule 4 medicines and IV infusion treatments, to ensure practitioners are aware of their obligations.

## Contact details

The Ombudsman and Commissioner thanks Ahpra and the Boards for the opportunity to provide this submission.

Please feel free to contact the office's Policy and communications manager, Lara Beissbarth, for further information about this submission.

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