



Regulation of medical practitioners who provide medical and surgical procedures submission

December 2022



About Us

The Health and Disability Services Complaints Office (HaDSCO) is an independent Statutory Authority providing an impartial resolution service for complaints relating to health, disability and mental health services in Western Australia and the Indian Ocean Territories, covering the public, private, not-for-profit sectors and prison health services.

Our vision is to support improvements to health, disability and mental health services through complaint resolution. This is achieved through two key service areas:

Service One: Assessment, negotiated settlement, conciliation and investigation complaints.

Service Two: Education and training in the prevention and resolution of complaints.

HaDSCO is established by the *Health and Disability Services (Complaints) Act 1995* (the HaDSC Act) and also has responsibilities under Part 6 of the *Disability Services Act 1993* and Part 19 of the *Mental Health Act 2014*. The main functions under these Acts are to:

- Deal with complaints by negotiated settlement, conciliation or investigation.
- Review and identify the causes of complaints.
- Provide advice and make recommendations for service improvement.
- Educate the community and service providers about complaint handling.
- Inquire into broader issues of health, disability and mental health care arising from complaints received.
- Work in collaboration with the community and service providers to improve health, disability and mental health services.
- Publish the work of the Office.
- Perform any other function conferred on the Director by the HaDSC Act or another written law.

HaDSCO has previously made a submission in response to the *Consultation Regulation Impact Statement: Use of the title 'surgeon' by medical practitioners*, as well as a submission to the *Independent review of the regulation of health practitioners in cosmetic surgery*.

Our Submission

HaDSCO has reviewed the three draft documents released for consideration by the Medical Board of Australia. Responses are provided below using the template document provided.



Your details

Name: [REDACTED]

Organisation (if applicable): Health and Disability Services Complaints Office

Are you making a submission as?

- An organisation

Do you work in the cosmetic surgery/procedures sector?

- No

For medical practitioners, what type of medical registration do you have?

Not applicable

Do you give permission to publish your submission?

- Permission for the organisation name to be published, not the individual officer.



Feedback on the draft Registration standard

1. Are the requirements for endorsement appropriate?

The requirements for endorsement of registration for cosmetic surgery for registered medical practitioners seem reasonable to address issues that were identified in the independent review of the regulation of medical practitioners who perform cosmetic surgery (the independent review). It seems appropriate that there is a provision that there are no exemptions to the standard to ensure appropriate safeguards are in place to provide patient safety in the provision of cosmetic surgery. It also seems appropriate that provisions cover the possible consequences of not meeting the standard, and that the Board and Ahpra may audit compliance.

2. Are the requirements for endorsement clear?

The requirements seem to clearly set out what is required for endorsement to be obtained, including information on recency of practice, CPD, data collection, safety and quality, and renewal of registration.

However, the intent of point 4 under applying for endorsement seems unclear (practitioner must provide a curriculum vitae, including in relation to the practice of cosmetic surgery, that meets the standard format that has been approved by the Medical Board or Ahpra). Having regard to the section 'Does this standard apply to me' it is noted that the standard does not apply to registered medical students or medical practitioners who hold limited registration, provisional registration or non-practising registration. In this context, it is not clear how a practitioner would meet the criterion at point 4 'in relation to the practice of cosmetic surgery' when applying for endorsement for the first time without cosmetic surgery experience, and it is not immediately evident to the reader how a practitioner obtains the required experience for the endorsement given the restrictions on who can practice cosmetic surgery.

The section titled 'Safety and quality' indicates that a practitioner can only undertake major cosmetic medical and surgical procedures in facilities that have been assessed and accredited by an Australian Commission on Safety and Quality in Health Care (ACSQHC) approved agency to the National Safety and Quality Health Services (NSQHS) Standards. It is not clear how this requirement interfaces with recommendation 15 of the independent review in the context of the review being led by ACSQHC relating to the licensing standards and arrangements of private hospitals, day procedure centres and clinics where cosmetic procedures are performed and development of national standards for the safe delivery of high-quality cosmetic procedures. If necessary, will the timelines align between the work being undertaken by ACSQHC and the release of the endorsement of practice standard.

3. Is anything missing?

The Health and Disability Services Complaints Office is not aware that there is anything missing from the proposed standard. It is sometimes difficult to identify or forecast if matters might be missing from standards until they are put into practice. A review undertaken within a reasonable period following implementation might provide an opportunity to identify how the standard is working in practice and whether any provisions need to be updated.



Feedback on the draft revised Cosmetic Guidelines

4. Are the proposed changes to the Cosmetic Guidelines appropriate?

The proposed changes appear to address the issues that were identified in the independent review of the regulation of medical practitioners who perform cosmetic surgery (the independent review). The proposed changes appear to strengthen the procedures and provide more detailed guidance on specific issues identified in the independent review. This is particularly in relation to the amended definitions and examples; patient consultation; informed consent; consent for use of images; additional responsibilities when providing cosmetic medical and surgical procedures for patients under the age of 18; patient psychological screening tool; patient management; provision of patient care by other health practitioners; training and experience; qualifications and titles; and financial arrangements. Reference is also made to the new Guidelines for medical practitioners who advertise cosmetic surgery.

As the Health Complaints Entity in Western Australia, the Health and Disability Services Complaints Office supports the expanded information provided at section 8 covering complaints. There may be value in explicitly noting in the guidelines that a patient has a right to make a complaint about any aspect of a cosmetic procedure, such as informed or financial consent, or the information provided during pre-surgery consultations. The avenues that are available to patients for making a complaint at proposed section 8.1 are appropriate, however it may be beneficial to note that practitioners are required to inform patients about each of the complaint mechanisms available, ensuring that patients are aware that complaints do not necessarily need to be resolved directly with the practitioner in instances where this is inappropriate or impractical. Lastly, the addition of proposed section 8.2 is appropriate given that any non-disclosure agreement should have no bearing on a patient's right to make a complaint about any aspect of a cosmetic procedure to the appropriate authority.

Similar to the Draft Registration standard: Endorsement of registration for cosmetic surgery for registered medical practitioners, the guidelines also inform that all major cosmetic medical and surgical procedures must be performed in facilities that have been assessed and accredited by an Australian Commission on Safety and Quality in Health Care (ACSQHC) approved agency to the National Safety and Quality Health Services (NSQHS) Standards. It is not clear how this requirement interfaces with recommendation 15 of the independent review in the context of the review being led by ACSQHC relating to the licensing standards and arrangements of private hospitals, day procedure centres and clinics where cosmetic procedures are performed and development of national standards for the safe delivery of high-quality cosmetic procedures. If necessary, will the timelines align between the work being undertaken by ACSQHC and the release of the cosmetic guidelines.

5. Does splitting the guidance into sections for major and for minor cosmetic procedures make the guidance clearer?

The splitting of the document does result in duplication and repetition of some provisions. For example, complaints are covered in both. There are also provisions which apply to both major and minor cosmetic procedures, although some of the requirements may be different.

For ease of reference to the reader and to make it easier to interpret the standards for major and minor procedures, splitting the document may not be beneficial, and it is time consuming to read both where duplication occurs. It would also be useful to see how the



provisions vary between the major and minor procedures (perhaps set out in a tabular form) for ease of comparison in one document.

Consumers making enquiries about cosmetic procedures may not be able to fully differentiate between major and minor cosmetic procedures and combining rather than splitting the documents may make the information easier to understand. As an example, both documents include provisions on informed consent, including financial consent, with some provisions being the same for both major and minor procedures and others being different. By combining rather than splitting the documents it may be easier to differentiate what requirements apply to both types of procedures and which ones apply only to major procedures or minor procedures.

6. Are the draft Cosmetic Guidelines and the Board's expectations of medical practitioners clear?

The draft Advertising Guidelines seem to clearly set out the Board's expectations of medical practitioners.

7. Do you support the requirement for a GP referral for all patients seeking major cosmetic surgery?

Three issues are raised in response to the requirement for a GP referral. These are: access to GP services; the cost for GP referral consultations; and a potential unintended consequence that consumers will access services from unregistered health practitioners rather than attend a GP consultation to obtain a referral. The unintended consequence may result in adverse outcomes for consumers as the safeguards that are being strengthened as a result of the recommendations arising from the independent review only apply to registered practitioners.

In terms of access to GP services, there is already information available about waiting times and delays in accessing GP services. This is supported by HaDSCO's own complaints data. In the 2021-22 financial year, 251 complaints concerning GPs were closed by HaDSCO; 60 of these complaints raised a service access issue. While a GP might be able to add to the assessment process for patient suitability through access to a patient's medical history, which might include underlying psychological conditions such as body dysmorphic disorder, the requirement for a GP referral may potentially add to GP access pressures for patients requiring diagnosis and/or treatment for medical conditions. It will also be necessary to ensure that a GP service is independent of a cosmetic procedure practitioner to ensure independence in the referral process.

There may also be a cost incurred by the patient for a cosmetic procedure referral consult with a GP which adds to the overall cost consumers pay to access cosmetic services. As noted under the proposed guidelines for providing both major and minor cosmetic procedures (under informed consent including informed financial consent), cosmetic procedures are not covered by Medicare, and it is not clear if a referral consult with a GP would be covered by Medicare.

If potential consumers of cosmetic surgery and procedures do not wish to obtain a GP referral or they are not supported by a GP to obtain a referral, the unintended consequence may be that consumers obtain cosmetic procedures from unregistered health practitioners. The strengthened regulatory framework being proposed following the independent review includes consideration of the protection of the title surgeon; the endorsement of practice standard; and amended guidelines, including for advertising, all of which go towards protecting patient safety and provision of quality services. It is a



framework which sets out the standards up-front before a consumer accesses the services and covers their patient journey. The same safeguards may not be in place for consumers who access services from unregistered practitioners. In the unregistered practitioner environment, patient safety issues might only become apparent once a complaint has been lodged under the National Code of Conduct for health care workers administered by the Health Complaints Entities (HCEs) operating in the various States across Australia (New South Wales, Queensland, Victoria, South Australia and in 2023 in Western Australia), and the complaint highlights that a service has been delivered in an unethical or unsafe manner or an adverse event has occurred.

8. Do you support the requirement for major cosmetic surgery to be undertaken in an accredited facility?

The stronger the safeguards that can be put in place to ensure patient safety in accessing cosmetic services the greater the protections that are likely to apply for those accessing services. The requirement for major cosmetic surgery to be undertaken in an accredited facility further strengthens the safeguards in place for the delivery of safe and high-quality services.

The Health and Disability Services Complaints Office is supportive of this requirement given certain instances in states outside of Western Australia where unregistered practitioners have performed cosmetic procedures in facilities that are unlikely to be considered appropriate. While the guidelines in question are applicable only to registered practitioners, the requirement to perform such procedures in accredited and appropriate facilities sets clear expectations about where such surgical procedures should be performed (and by whom).

Further consideration may be given to a public information campaign in support of the guidelines, which should make consumers aware that facilities must be accredited and that practitioners must hold the appropriate registration and endorsements to perform the procedure the patient is requesting.

9. Is anything missing?

The Health and Disability Services Complaints Office is not aware that there is anything missing from the proposed guidelines. It is sometimes difficult to identify or forecast if matters might be missing from guidelines until they are put into practice. A review undertaken within a reasonable period following implementation might provide an opportunity to identify how the guidelines are working in practice and whether any provisions need to be updated.

Feedback on the draft Advertising Guidelines

10. Is the guidance in the draft Advertising Guidelines appropriate?

The guidance in the draft Advertising Guidelines seem reasonable to address issues that were identified in the independent review of the regulation of medical practitioners who perform cosmetic surgery.

11. Are the draft Advertising Guidelines and the Board's expectations of medical practitioners clear?

The draft Advertising Guidelines seem to clearly set out the Board's expectations of medical practitioners.

12. Is anything missing?

The Health and Disability Services Complaints Office is not aware that there is anything missing from the proposed guidelines. It is sometimes difficult to identify or forecast if matters might be missing from guidelines until they are put into practice. A review undertaken within a reasonable period following implementation might provide an opportunity to identify how the guidelines are working in practice and whether any provisions need to be updated.

Additional comments

13. Do you have any other comments about cosmetic surgery regulation?

The Health and Disability Services Complaints Office does not have any additional comments to provide.



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