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# Regulation of Health Practitioners in Cosmetic Surgery

## AMA submission to the Independent Review of Regulation of Health Practitioners in Cosmetic Surgery

**Mr Andrew Brown**
**Independent Reviewer**
**CSReview@ahpra.gov.au**

The AMA supports policy and regulatory settings that deliver the best patient safety and health outcomes, and that foster a landscape of trust in Australia's medical practitioners, who are some of the best trained in the world. This is why we support quality regulation and oversight of medical practice in Australia

Unfortunately, the issue of a small minority of practitioners performing "cosmetic surgery" unsafely has consistently undermined both patient safety and trust in medical practitioners. As such, the AMA is strongly in favour of resolving this issue.

The AMA will submit to the Consultation Regulation Impact Statement (CRIS) *Use of the title 'surgeon' by medical practitioners in the Health Practitioner Regulation National Law* that the title of "surgeon" should be restricted to use by specialist medical practitioners with significant surgical training. This would exclude some, but not all, practitioners currently using the title.

Regardless of the outcome of the CRIS process, the AMA expects that medical practitioners will continue to perform procedures currently undertaken by "cosmetic surgeons", potentially under another title, some without appropriate training and competencies. It is therefore important that two issues are resolved by this review: that Australian patients can understand the level of training a medical practitioner has undertaken from their title prior to undergoing a procedure, and that the practitioner performing the cosmetic procedure is subject to appropriate regulation.

It is the AMA's position that consumers are likely to conclude that all practitioners currently using the title "cosmetic surgeon" will have successfully completed a significant program of post-graduate surgical training. The AMA believes that restricting the title of "surgeon" will go some way towards providing increased understanding of the qualifications that a practitioner conducting any surgery has. However, further change is needed to improve public awareness and understanding and to increase patient safety and health outcomes.

The AMA supports a regulatory approach that provides certainty to patients and practitioners alike. The AMA does not endorse a regulatory approach unless it provides the clarity of scope and standards of practice, such that this role falls by default on others in the sector.

Accordingly, the AMA supports:

- Further exploration of the establishment of an endorsement in cosmetic surgery for medical practitioners who are not plastic surgeons;
- New information being provided to consumers – if Health Ministers decide to restrict the access to the use of the titles of surgeon and cosmetic surgeon; and
- Better collection of data and information about cosmetic surgery in Australia to inform policy, regulation and research.

## Codes and Guidelines

1. **Do the current Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures adequately address issues relevant to the current and expected future practice of cosmetic surgery and contribute to safe practice that is within a practitioner's scope, qualifications, training and experience?**
2. **What changes are necessary and why? What additional areas should the guidelines address to achieve the above purpose?**
3. **Please provide any further comment in relation to the use of codes and guidelines relevant to the practice of cosmetic surgery.**

   The AMA believes that the cosmetic surgery guidance provided to medical practitioners needs to be clear and unequivocal. As we discuss below, we do not believe that the notification and risk assessment processes run by the Australian Health Practitioners Regulation Agency (Ahpra) and the Medical Board of Australia (the Board) need to be changed, but these processes only work where there is clear guidance and clear understanding of the standards medical practitioners must abide by.

   The AMA has supported the processes undertaken by the Board in developing their *Good medical practice: a code of conduct for doctors in Australia* and *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*. Cosmetic surgery fluctuates with changes in medical technology, surgical techniques and consumer demand, so these guidelines need to be kept up to date. This is recognised by the Board which has stated that these guidelines will be reviewed at least every three years. The Guidelines have not been updated since 1 October 2016.

   As to the adequacy or possible changes that could be made to the current guidance material available, the AMA defers to the colleges, associations and societies who have a greater clinical expertise in this area.

## Management of Notifications

4. **Having regard to Ahpra and the Medical Board's powers and remit, what changes do you consider are necessary to the approach of Ahpra and the Medical Board in managing cosmetic surgery notifications, including their risk assessment process, and why?**
5. **Please provide any further relevant comment in relation to the management of notifications about medical practitioners involved in cosmetic surgery.**

Registration and notifications affect every doctor in Australia. The AMA has worked hard to ensure the National Registration and Accreditation Scheme (the National Scheme) is transparent, efficient and fair. We continue to work with all Governments, with Ahpra and the Board to improve the scheme so that it supports good practice, without having an impact on doctors who practise according to acceptable professional standards and does not impact on the mental health of any doctor.

Ahpra and the National Boards prioritise the management of matters that raise significant concerns – including allegations that could constitute professional misconduct. This covers boundary violations, criminal and unethical behaviour, and significant departure from acceptable standards.

The AMA does not believe there needs to be any changes made to the notification process to cover specific issues for medical professionals practising cosmetic surgery. If a medical professional's practice does not meet acceptable professional standards this would be a notifiable issue. If necessary, the guidance on cosmetic surgery could be reviewed regularly so that all practitioners are clear about what are the acceptable standards.

The AMA has supported the recent work of Ahpra to enhance the notification process through speaking directly with the notifier and the practitioner, gathering more information about the practitioner's practice setting and context, working with the practitioner and their employer to determine what measures have already been put in place to manage any risk to the public. These changes will improve the notification process, and the AMA is committed to continue working with Ahpra and the Board to improve the process.

## Advertising Restrictions

6. **Is Ahpra and the Medical Board's current approach to regulating advertising in cosmetic surgery sufficient?**
7. **What should be improved and why and how?**
8. **Do the current Guidelines for advertising a regulated health service adequately address risks in relation to advertising of cosmetic surgery, or is a more specific regulatory response required?**
9. **Does the promotion of cosmetic surgery via social media raise any issues that are not adequately addressed by the advertising guidelines, or that require any specific regulatory response?**
10. **Please provide any further relevant comment in relation to the regulation of advertising.**

As outlined in the AMA's Position Statement on Advertising and Public Endorsement 2020,[1] doctors should ensure their advertising facilitates informed patient choice, appropriate medical referral and care, and the community's trust and confidence in the medical profession. We have particular concerns in relation to advertising practices, some of which may be used in relation to cosmetic surgery, that portray common human conditions (such as regular age-related wrinkles or skin laxity) as 'pathological' conditions that require medical treatment. Advertising practices that promote consumerism and pathologise the human condition and experiences can exploit vulnerable individuals, and lead them to seek treatments that are not medically necessary and contribute to poor mental health.

As highlighted in the AMA's submission on Ahpra's revised Guidelines for Advertising Regulated Health Services (November 2019), advertising via social media is increasingly used by doctors to market their 'brands' and attract potential 'customers' in new and innovative ways, some of which may blur the lines of what can be considered advertising. We recommend that Ahpra review their own advertising guidelines regularly to ensure they remain relevant and responsive to new and innovative ways of advertising, much of which will likely occur via social media. If the guidelines can be easily undermined by doctors or other health practitioners, or the guidelines are simply not relevant to changing advertising practices, then they are failing to protect the public. Further, Ahpra and the National Boards must dedicate sufficient time and resources to appropriately monitor and enforce compliance with the advertising provisions.

The AMA believes it is important that health practitioners are not held liable for unsolicited testimonials on social media sites out of their control. The AMA does believe that the area of testimonials and the use of social media is an area that should be monitored more vigilantly, as changes in technology and use are likely to continue to impact in this area. The AMA would like to see more work done by Ahpra to address the issues regarding 'third party' website testimonials.

## Title protection and endorsement for approved areas of practice

**11. To what extent would establishing an endorsement in relation to the practice of cosmetic surgery address relevant issues of concern in the sector (including patient safety issues)?**

**12. Would establishing an endorsement in relation to cosmetic surgery provide more clarity about the specific skills and qualifications of practitioners holding the endorsement?**

The AMA supports the establishment of an endorsement for cosmetic surgery in principle, however this will require further work and more consultation with the medical profession. Requiring an endorsement to provide cosmetic surgery will ensure that medical practitioners operating in this area of practice will have the necessary surgical skills, but also be fully aware of the standards that they must conform to.

At present, the AMA's position is that an endorsement should be restricted to Fellow of the Royal Australasian College of Surgeons (RACS). This would provide the highest level of

[1] Australian Medical Association, *Position Statement on Advertising and Public Endorsement 2020*

protection to patients. This would mean that even an orthopaedic or general surgeon would require endorsement; while such surgeons have received significant training, they do not receive training in high-risk cosmetic procedures.

The AMA supports the development of a list of high-risk cosmetic procedures that can only be undertaken with appropriate training. Any Fellow of RACS would then need to demonstrate appropriate Australian Medical Council (AMC) College accredited training.

An adequate timeframe would need to be provided to work through all the issues to ensure that an endorsement is appropriately structured. As with other endorsements applied through the National Scheme, there would need to be an adequate period allowed for current practitioners to gain this new requirement.

**13. What programs of study (existing or new) would provide appropriate qualifications?**

The AMA believes that this needs to be the subject of further work and requires extensive consultation with the medical profession – especially the relevant expert colleges, associations, and societies. At present, the AMA would expect the title to be restricted to Fellows of the RACS as an Australian Medical Council accredited college with specific training and competencies in surgery.

AMC accreditation is an essential baseline for any current or future programs. Non-AMC accredited colleges, academies and societies should not be involved or considered in the assessment of programs of study or appropriate qualification. It is not in the interest of safety to the general population. Non-AMC accredited colleges, academies and societies can be made up groups that may be attempting to appear to have legitimate expertise. For example, a group of doctors could start the Australasian College of Facial Cosmetic Surgeons (ACFCS) and award themselves FACFCS tomorrow.

**14. Please provide any further relevant comment in relation to specialist title protection and endorsement for approved areas of practice relevant to cosmetic surgery.**

Should an endorsement for cosmetic surgery be established, the AMA does not support it being applied to Plastic Surgeons. Specialist Plastic Surgeons are accredited through the Australian Medical Council, to perform all reconstructive and aesthetic plastic surgery. They have 5 years of specialist postgraduate training in plastic and reconstructive surgery.

***Holding Out as a Cosmetic Surgeon***

One of the key issues highlighted in the Consultation Regulation Impact Statement (CRIS) *Use of the title 'surgeon' by medical practitioners in the Health Practitioner Regulation National Law*[2] was that many of the proceedings conducted against persons related to cosmetic surgery were for holding out to be a medical or registered medical practitioner when they were not. The initiatives outlined in both the CRIS and this review will not

[2] The Office of Best Practice Regulation, *Medical practitioners' use of the title surgeon under the National Law*. Appendix 1: Identifying and remedying poor cosmetic surgical practice.

prevent this situation from arising again in the future. The AMA however believes the current provisions of the National Law, which aim to prevent individuals who are not registered health practitioners, or who are not qualified in a particular area of practice from 'holding out' as having qualifications and skills that they do not have, are already adequate.

Greater consumer awareness regarding unqualified practitioners will help minimise the occurrence of such instances and/or result in a higher level of notifications of practitioners 'holding out' in relation to cosmetic surgery.

## Cooperation with other regulators

**15. Are there barriers to effective information flow and referral of matters between Ahpra and the Medical Board and other regulators?**

The AMA supports a National System – in our experience it works better than a co-regulatory environment. Whilst the regulatory space in relation to medical practice is somewhat congested, we have noticed improvements over the last few years in terms of communication and information flows. The AMA maintains the view that regulation of medical practitioners could be made more consistent across Australia, but wholesale changes like that are outside the remit of this review.

**16. If yes, what are the barriers, and what could be improved?**

The health practice regulation and complaints landscape is difficult to navigate for patient and practitioner alike. The AMA supports having clear websites, preferably with a single-entry point that then diverts to appropriate authority or organisation relevant to the inquiry.

**17. Do roles and responsibilities require clarification?**

The AMA agrees with the observation set out in the CRIS[3] that consumers are likely to conclude that all practitioners currently using the title "surgeon" will have successfully completed a significant program of post-graduate surgical training, when that may not be the case.

It is the AMA's position that consumers are likely to conclude that all practitioners currently using the title "cosmetic surgeon" will have successfully completed a significant program of post-graduate surgical training which focuses on reconstructive and aesthetic plastic surgery. As with restricting the title of "surgeon", the AMA believes that restricting the title of "cosmetic surgeon" will assist consumers in their understanding of the range of qualifications that a practitioner conducting cosmetic surgery has.

**18. Please provide any further relevant comment about cooperating with other regulators.**

[3] *Ibid.* p9

The AMA has no further comments to make.

## Facilitating mandatory and voluntary notifications

**19. Do the Medical Board's current mandatory notifications guidelines adequately explain the mandatory reporting obligations?**

The AMA has not supported the current mandatory reporting laws for doctors treating other medical professionals. The unintended consequences from the operation of the current National Law are far reaching. Doctors are avoiding seeking treatment for their own health concerns, particularly mental health concerns, out of fear of the consequences and they and their families are suffering as a result. Ironically, the current mandatory reporting law put in place to protect the public is actually more likely to expose it to untreated, unwell doctors. For the treating practitioner, it has also had a detrimental impact on the confidentiality of the doctor-patient relationship, impairing the ability of the practitioner to deliver an appropriate level of care.

The AMA supported the amendments to the Health Practitioner Regulation National Law (National Law) requirements on mandatory notifications that came into effect on 1 March 2020 which raised the threshold for reporting a concern about impairment, intoxication and practise outside of professional standards.

The AMA did support the work undertaken by Ahpra and the Board in developing the information and communication to the medical profession about the 2020 changes. Doctors were a key part of that consultation and the products created went some way towards addressing the fear medical practitioners have with the current mandatory reporting system. That AMA believes that the current level of information about mandatory obligations under the National Scheme are appropriate.

**20. Are there things that prevent health practitioners from making notifications? If so, what?**

**21. What could be improved to enhance the reporting of safety concerns in the cosmetic surgery sector?**

**22. Please provide any further relevant comment about facilitating notifications.**

The AMA agrees that the protection of the public is a critical role of the National Scheme, however the impacts on the lives and mental health of so many of our members through the fear and anxiety the notification process creates has engendered poor sentiments towards the scheme in many parts of our profession. Many doctors describe the notification process as overly bureaucratic and at times counterintuitive – this fear and lack of belief in that that the system is fair is itself a deterrent.

We acknowledge the amount of engagement that has been offered by Ahpra and the Board. Whilst we have not always agreed with each outcome, this level of consultation is indeed welcome and appreciated. However, we are not happy with the lack of engagement from and rigour of the health ministers. We do not believe they undertake an appropriate level of

evidence-based evaluation which is reflected in the arbitrary nature of the decisions they make.

The AMA has been very clear in communicating its views on mandatory reporting, the notification process and the impact of the new policy direction. In relation to notifications, AMA members often report just how hard they find the notifications process. Every year the Board, Ahpra and the AMA look at this issue at an annual workshop – things are improving, but not by enough.

The introduction of the new guiding principle that provides that the paramount considerations for administering the law is public protection and public confidence in the safety of health services – without giving proper weight to conformance with accepted standards of profession practice – has only served to undermine doctors' confidence in this system and increase the belief that the system is weighted against them.

## Information to consumers

**23. Do the Medical Board's current codes and guidelines adequately describe the obligations of practitioners who perform cosmetic surgery to provide sufficient information to consumers and obtain informed consent?**
**24. If not, what improvements could be made?**
**25. Should codes or guidelines include a requirement for practitioners to explain to patients how to make a complaint if dissatisfied?**
**26. In the context of cosmetic surgery, does the Ahpra website and public register of practitioners provide sufficient information about medical practitioners to inform consumer choices?**
**27. If not, what more could/should Ahpra and the Medical Board do to inform consumer choices?**

The AMA supports the provision of quality information to patients about cosmetic surgery including the impact appropriate qualifications and experience have on outcomes. However, this information needs to ensure that a balance is maintained and does not give rise to unrealistic expectations in regard to the outcomes achievable through surgery of this type.

The AMA believes that balanced information should be produced by Aphra and the Board as trusted and reliable sources of information.

**28. Is the notification and complaints process understood by consumers?**
**29. If not, what more could/should Ahpra and the Medical Board do to improve consumer understanding?**

The AMA defers to consumers and their advocacy organisations to answer these questions.

**30. Please provide any further relevant comment about the provision of information to consumers.**

The AMA has no further comments to make.

## Further comment or suggestions

**31. If you have any further comment relevant to Ahpra's and the Medical Board's regulation of cosmetic surgery including and/or suggestions for enhancements not mentioned in response to the above questions, please provide it here.**

The AMA has no further comments to make.

**APRIL 2022**

**Contact**

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