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7 April 2022

Mr Andrew Brown
Independent Reviewer
Regulation of health practitioners in cosmetic surgery

Via email – CSReview@ahpra.gov.au

Dear Mr Brown

MIGA Submission - Independent review into the regulation of health practitioners in cosmetic surgery

As a medical defence organisation and healthcare professional indemnity insurer MIGA welcomes the opportunity to provide the enclosed submission to the consultation paper on the regulation of health practitioners in cosmetic surgery.

This submission draws on its experience of advising, assisting, educating and advocating for doctors, medical students, healthcare organisations and privately practising midwives throughout Australia.

With over 36,000 members across the country, MIGA has represented doctors for over 122 years and the broader healthcare profession more than for 19 years.

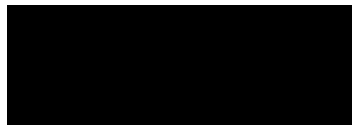
MIGA has also recently contributed to Health Ministers' Regulation Impact Statement on use of the title 'surgeon' by medical practitioners. Key positions it took in that consultation are set out in its submission.

You can contact Timothy Bowen, [REDACTED] or [REDACTED], if you have any questions about MIGA's Submission.

Yours sincerely



Timothy Bowen
Manager - Advocacy & Legal Services



Mandy Anderson
CEO & Managing Director



MIGA Submission

Independent review of the regulation of health practitioners in cosmetic surgery

April 2022

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MIGA Submission

Independent review of the regulation of health practitioners in cosmetic surgery

Executive Summary – MIGA’s position

1. MIGA recommends

- Strengthening processes of regulation, training and accreditation of doctors undertaking cosmetic surgery to protect patients and support good practice
- Cosmetic surgery be formally recognised and regulated as a separate area of practice under the National Law and the Medical Board should regulate cosmetic surgery scope of practice through its endorsement mechanism, on advice from peak professional bodies
- A nationally consistent approach for the use of sedation including when procedures need to be undertaken in accredited, licensed and / or registered facilities - whilst there is a national system of accreditation of facilities, there is inconsistency across jurisdictions regarding which procedures must be performed in what type of facilities
- Restricting use of the title ‘surgeon’ to doctors who have undertaken surgical training that meets the standards set out under an approved framework, developed on advice from peak professional bodies.

2. In addition MIGA supports

- Enhancing Medical Board / Ahpra guidance on cosmetic surgery, mandatory reporting and advertising
- Appropriate information sharing and co-operation between National Boards / Ahpra, the TGA and state / territory health departments on cosmetic surgery issues
- Increasing Board / Ahpra expertise in handling cosmetic surgery matters
- Major public information campaigns on cosmetic surgery
- A mandatory disclosure framework for doctors unable to use the title ‘surgeon’, but undertaking cosmetic surgery, to transparently disclose to patients their training, qualifications and experience.

3. MIGA opposes

- Changes to mandatory reporting obligations for either cosmetic surgery or more broadly
- Further information being added to the Ahpra public register
- Broader changes to health practitioner regulation that could have unintended impacts beyond cosmetic surgery.

MIGA’s interest

4. MIGA is a medical defence organisation and healthcare professional indemnity insurer advising, assisting educating and advocating for doctors, medical students, healthcare organisations and privately practising midwives. This includes doctors with a range of training, qualifications and experience who undertake cosmetic surgery and cosmetic medicine. With over 36,000 members across the country, MIGA has represented doctors for over 122 years and the broader healthcare profession for more than 19 years.
5. MIGA’s lawyers regularly provide advice and assistance to its members and clients around cosmetic surgery and healthcare more broadly. Through its Risk Management Program it educates medical practitioners on a range of medico-legal and risk management issues.
6. MIGA’s advocacy and policy work covers a broad range of issues around cosmetic surgery, title protection and health practitioner regulation. It has been involved in the staged reviews of the *Health Practitioner Regulation National Law*, Senate inquiries into Ahpra and the National Boards, the development of Medical Board / Ahpra codes and guidelines, internal / external reviews of Ahpra and National Board processes, and state / territory consultations on cosmetic surgery and healthcare facilities regulation, and health complaints processes.
7. Most recently MIGA has contributed to Health Ministers’ consultation on use of the title ‘surgeon’ by medical practitioners under the National Law.

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.

MIGA response

A detailed review of the Medical Board's cosmetic procedure guidelines is necessary as in MIGA's view they do not adequately address issues relevant to the current and expected future practice of cosmetic surgery, nor are requirements clear in terms of scope of practice and the required qualifications, training and experience.

MIGA would like to see greater clarity around issues such as

- Actions which are and are not acceptable (e.g. conflicts of interest, providing information about third party financing arrangements)
- When certain actions may be required (e.g. referral to a psychologist, psychiatrist or GP)
- Discretionary considerations (e.g. how to assess the best interests of the patient)
- Circumstances in which a doctor should decline to offer surgery
- What a well informed consent process looks like
- How doctors meet expectations for staffing, facilities and equipment to deal with emergencies
- Appropriate conduct of video consultations for cosmetic injectables
- Necessary components of a good post-procedure care arrangement
- How material can glamorise or minimise the complexity of cosmetic surgery, overstate results or create unrealistic expectations (e.g. use of before and after pictures irrelevant for the patient in question).

There is greater scope for the use of examples and scenarios in updated guidelines.

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.

MIGA response

MIGA supports increasing Board / Ahpra's expertise in handling cosmetic surgery matters.

This could be achieved through

- Use of dedicated Ahpra staff for all cosmetic surgery notifications
- A dedicated Board committee to assess cosmetic surgery notifications
- Internal education on the cosmetic surgery environment, key risks and emerging trends
- Earlier involvement of appropriate experts
- Closer, ongoing engagement with peak surgical bodies
- Mechanisms to obtain for advice from leading specialists to assist Board / committee decisions on complex notifications or in considering broader, systemic issues.

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.*

MIGA response

MIGA sees no need for change to the existing advertising provisions under the National Law. The challenge is in ensuring they are well-known and understood.

There is considerable professional uncertainty about how National Law advertising provisions operate across cosmetic surgery contexts.

It is clear from the advertising seen in a cosmetic surgery context, particularly from third parties, that greater specificity is required on what is and is not acceptable.

MIGA sees a need for detailed, bespoke cosmetic surgery advertising guidelines.

Existing guidelines, revised over 2019 to 2020, address healthcare generally and cannot address cosmetic surgery specifically.

Bespoke guidelines may be best done as part of updated Board cosmetic procedure guidelines. They could go into more detail around what is acceptable and unacceptable involving treatment expectations, encouraging use of health services and offering gifts, discounts and inducements.

Helpful inclusions in bespoke cosmetic surgery advertising guidelines would include

- A range of scenarios and examples, particularly around what is and is not misleading or deceptive conduct (such as comparing cosmetic providers) and the indiscriminate or unnecessary use of healthcare services
- Specific, detailed guidance on acceptable and unacceptable social media use
- Acceptable use of before and after pictures, particularly where what is being shown is likely to be unrealistic for most patients
- A cosmetic surgery specific self-assessment tool and specific cosmetic surgery 'check and correct' advertising examples, building on existing frameworks on Ahpra's advertising hub
- Appropriate use of titles
- More detailed explanations of how the national therapeutic goods regime and Australian Consumer Law apply to cosmetic surgery advertising.

Release of new cosmetic surgery advertising guidelines should be followed by a concerted public information campaign, with key messages on what is and is not acceptable, using a range of platforms and communication methods.

As indicated in consultations on proposed National Law amendments, MIGA holds concerns about the unintended effects posed by removal of the prohibition on clinical testimonials.

It foresees challenges in a cosmetic surgery context around assessing whether testimonials meet National Law advertising requirements.

Doctors and healthcare facilities are likely to face significant obligations to 'vet' testimonials provided by patients for potential National Law breaches. This will often be a challenging task, technically and practically.

Much work will need to be done to provide clear, detailed guidance to the professions and public on acceptable and unacceptable testimonials before the new regime commences.

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?
13. What programs of study (existing or new) would provide appropriate qualifications?
14. Please provide any further relevant comment in relation to specialist title protection and endorsement for approved areas of practice relevant to cosmetic surgery.

MIGA response

Lack of protection for the area of practice of 'cosmetic surgery' is a significant issue and should be addressed.

Cosmetic surgery should be recognised and regulated as an area of practice under the National Law, on advice from peak surgical bodies.

It is particularly important that the community and profession have a clear understanding of which doctors are considered to have the necessary training, qualifications and expertise to call themselves cosmetic surgeons.

Although MIGA supports restricting use of the title 'surgeon' to doctors who have undertaken surgical training which meets the standards set out under an approved framework, this is insufficient to ensure there are appropriate representations around cosmetic surgery expertise.

MIGA sees title protection of 'surgeon' and use of the endorsement mechanism for cosmetic surgery as part of a broader framework involving

- Major public information campaigns
- Regulation, training and accreditation for doctors undertaking cosmetic surgery
- A nationally consistent approach for facilities where cosmetic surgery may be performed, including minimum standards
- A mandatory disclosure framework for doctors who cannot use the title 'surgeon', but are undertaking cosmetic surgery, to transparently disclose to patients their training, qualifications and experience.

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?
16. If yes, what are the barriers, and what could be improved?
17. Do roles and responsibilities require clarification?
18. Please provide any further relevant comment about cooperating with other regulators.

MIGA response

MIGA supports appropriate information sharing and co-operation between National Boards / Ahpra, the TGA and state / territory health departments around cosmetic surgery risks and investigations.

It has previously proposed drugs and poisons regulators being able to share information informally with National Boards / Ahpra where they believe there is a serious risk of harm. These regulators already refer matters to Boards where they consider there are potential risks to the public, even without or before any charge or conviction.

It is important to ensure there are clear, mutual understandings of the respective roles of National Boards / Ahpra, TGA and state / territory health departments, particularly around information appropriate to share, thresholds for raising concerns and which entity should take the 'lead' on particular issues.

Facilitating mandatory and voluntary notifications

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

MIGA response

The recent work by Ahpra and the National Boards on revised mandatory notification guidelines was a critical step in ensuring better professional understanding of thresholds for notification, particularly around impairment.

MIGA considers further specific guidance in relation to cosmetic surgery, particularly what requires a mandatory notification and which individuals have an obligation to notify, should be pursued.

Like as for proposed bespoke advertising guidance, it may be that further mandatory notification guidance in the cosmetic surgery context would be best placed within enhanced Medical Board cosmetic surgery guidelines, covering professional obligations, advertising and mandatory notifications.

In addition expanded use of scenarios / examples of what requires a mandatory notification and what does not in this context would be a critical part of such guidance.

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

MIGA response

Enhancing Board guidelines

As set out above MIGA supports the Board's cosmetic surgery guidelines being enhanced to provide additional information on what constitutes well informed consent, particularly to provide examples / scenarios.

MIGA opposes codes or guidelines requiring practitioners explain to patients how to make a complaint if dissatisfied. This would encourage greater use of regulatory mechanisms for 'mere' dissatisfaction or misunderstandings, which is inappropriate.

It is important to ensure Ahpra / National Boards do not face significant increases in notifications where what they are already dealing with, particularly around 'low risk' issues, poses a significant challenge.

The better approach is to use the learnings from Ahpra's ongoing consumer health complaints project to ensure both patients and the community understand when and how it is appropriate to make a notification to

a National Board / Ahpra, a complaint to a state / territory health complaints entity or liaise directly to their doctor / healthcare provider.

How to best give patients information about their doctor undertaking cosmetic surgery

Concerns about the ability of the public to understand a doctor's training, qualifications and experience to undertake cosmetic surgery would be dealt with through

- Restriction of the title 'surgeon' to those doctors who have undertaken sufficient surgical training within an approved framework
- Endorsement for the area of practice of cosmetic surgery
- A mandatory disclosure framework for non-surgeons (i.e. those who cannot use the title 'surgeon') undertaking cosmetic surgery
- A concerted public information campaign.

It would then be clear on the Ahpra public register whether a person was a 'surgeon' and if they had an endorsement to perform cosmetic surgery. That would provide sufficient information on the register.

A mandatory patient disclosure framework would involve non-surgeons being required to give prospective patients key information about their training, qualifications and experience to help them to decide whether to undergo surgery with that doctor, or to seek further options or alternative opinions.

This goes beyond existing requirements in the Medical Board's cosmetic surgery guidelines. It makes patient disclosure a clearly enforceable, mandatory requirement. It would provide much greater clarity about the content of disclosure. Existing guideline-based requirements to provide information about the doctor's qualifications and experience, stipulating doctors should not make claims that could mislead patients, do not require a doctor to put this information into a context which patients can understand.

A patient disclosure framework would complement a public information campaign. Although a campaign could only run for a limited time, such a continuing framework provides the necessary information and context for prospective patients and the broader community.

Ahpra and the National Boards could also continue to maintain detailed, independent information for prospective patients and the broader community on cosmetic surgery which would complement the mandatory disclosure framework.

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.

MIGA response

It is important that reform initiatives addressing issues in cosmetic surgery do not unintentionally lead to broader changes to healthcare regulation, obligations and processes.

Reforms should remain focused on cosmetic surgery issues.