

Public consultation - Regulation of medical practitioners who provide cosmetic medical and surgical procedures

Submission to the Medical Board of Australia

9 December 2022

Who we are

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

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

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

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

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into this public consultation by the Medical Board of Australia (the Board) on three proposed documents relating to the regulation of medical practitioners who provide cosmetic surgery.
2. The ALA's submission – **enclosed**, on the Board's template – focuses on the draft *Guidelines for medical practitioners who advertise cosmetic surgery* ('draft Advertising Guidelines').
3. Regulations and guidelines have not kept pace with the huge growth in the cosmetic surgery industry, including the prevalence of online advertising of cosmetic procedures. This includes on social media platforms. The ALA has consistently advocated for reform of the legal and regulatory frameworks governing the advertising of cosmetic procedures, with a view to providing greater clarity to practitioners, in order to ultimately protect the general public.
4. The ALA supports the Board's draft Advertising Guidelines, subject to the clarifications and amendments detailed in our submission. The Board's draft Advertising Guidelines are comprehensive and could significantly change the way practitioners approach cosmetic surgery advertising.
5. However, the ALA contends that the success and impact of these draft Advertising Guidelines is dependent on the Board and the Australian Health Practitioner Regulation Agency (Ahpra) allocating sufficient resources to proactively monitor compliance and to respond to any advertising breaches. Extensive auditing of practitioners' advertising is required, especially on social media, to ensure that practitioners are complying with these draft Advertising Guidelines (once finalised and in force), including: providing accurate information to general public, responsibly using 'before' and 'after' photographs, and not using paid influencers.
6. The ALA is available to provide further assistance to the Board on the issues raised in this submission.



Ngaire Watson

Chair, Medical Law Special Interest Group

Australian Lawyers Alliance

Public consultation - Submission

Regulation of medical practitioners who provide cosmetic medical and surgical procedures

14 November 2022

The Medical Board of Australia (the Board) is consulting on three documents aimed at regulating aspects of cosmetic surgery. These documents have been developed following an independent review of the regulation of medical practitioners who perform cosmetic surgery that raised serious concerns about the cosmetic surgery sector.

You are invited to provide feedback on the following documents:

1. Draft *Registration standard: Endorsement of registration for cosmetic surgery for registered medical practitioners*
2. Draft revised *Guidelines for medical practitioners who perform cosmetic medical and surgical procedures*
3. Draft *Guidelines for medical practitioners who advertise cosmetic surgery*

This submission form is intended for **organisations and registered health practitioners**.

Patients and consumers are welcome to provide feedback here however, there is an online submission form with specific questions for consumers available on the Board's [current consultations page](#).

The consultation paper, including the three documents, is available on the [Board's website](#).

Submissions can be emailed to medboardconsultation@ahpra.gov.au.

The closing date for submissions is 11 December 2022.

Definition

Cosmetic medical and surgical procedures (as defined in the Medical Board's *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*) are operations and other procedures that revise or change the appearance, colour, texture, structure or position of normal bodily features with the dominant purpose of achieving what the patient perceives to be a more desirable appearance.

Major cosmetic medical and surgical procedures ('cosmetic surgery') is defined as procedures which involve cutting beneath the skin. Examples include; breast augmentation, abdominoplasty, rhinoplasty, blepharoplasty, surgical face lifts, cosmetic genital surgery, and liposuction and fat transfer.

Publication of submissions

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

Your details

Name: **Ngairé Watson**

Organisation (if applicable): **Australian Lawyers Alliance (ALA)**

Are you making a submission as?

- **An organisation**
- An individual medical practitioner
- An individual nurse
- Other registered health practitioner, please specify:
- Consumer/patient
- Other, please specify:
- Prefer not to say

Do you work in the cosmetic surgery/procedures sector?

- Yes – I perform cosmetic surgery
- Yes – I provide minor cosmetic procedures (e.g. Botox, fillers, etc.)
- Yes – I work in the area but do not provide surgery or procedures (e.g. practice manager, non-clinical employee)
- **No**
- Prefer not to say

For medical practitioners, what type of medical registration do you have? **N/A**

- General and specialist registration – Specialty (optional):
- General registration only
- Specialist registration only – Specialty (optional):
- Provisional registration
- Limited registration
- Non-practising registration
- Prefer not to say

Do you give permission to publish your submission?

- **Yes, with my name**
- Yes, without my name
- No, do not publish my submission

This section asks for feedback on guidelines for advertising cosmetic surgery.

The Board's current *Guidelines for medical practitioners who perform cosmetic medical and surgical procedures* (2016) include a section on 'Advertising and marketing'.

The Board is proposing standalone *Guidelines for medical practitioners who advertise cosmetic surgery* because of the influential role of advertising in the cosmetic surgery sector.

The details of the advertising guidance are in the [draft Advertising Guidelines](#).

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

The ALA welcomes this public consultation by the Medical Board of Australia (the Board) on the Board's proposed *Guidelines for medical practitioners who advertise cosmetic surgery* ('draft Advertising Guidelines').

The ALA has long supported the creation of industry-specific, detailed advertising guidelines that are tailored specifically to practitioners engaged in cosmetic surgeries/procedures. The ALA thus welcomes these draft Advertising Guidelines that address several concerning trends and practices common in cosmetic surgery/procedure advertising, such as the use of paid social media 'influencers';² practitioners posting videos of cosmetic procedures online for entertainment;³ emoji use;⁴ the use of colloquial, non-clinical or minimising words or phrases, including in hashtags on social media platforms;⁵ as well as the targeting of advertising at children and young people.⁶

This tailored approach to advertising guidelines will provide practitioners with greater clarity, and most importantly will help protect the general public from dishonest and irresponsible advertising practices.

Further, the ALA appreciates the Board's acknowledgment in these draft Advertising Guidelines of the serious impact of cosmetic surgery, the power of cosmetic surgery advertising, and the vulnerability of the people who undergo or who would even consider cosmetic surgery surgeries/procedures.⁷ It is imperative that all advertising details the nature and risks of the surgeries/procedures being advertised, and the ALA welcomes statements to that effect in these draft Advertising Guidelines.⁸

Additionally, these draft Advertising Guidelines appropriately make it clear that practitioners bear an important responsibility regarding cosmetic surgery advertising.⁹ The ALA supports the Board's directive that practitioners must "put their patients first when advertising cosmetic surgery", including the potential harm to patient's mental health.¹⁰

² Medical Board of Australia, *Guidelines for medical practitioners who advertise cosmetic surgery* ('draft Advertising Guidelines', 14 November 2022) 5, [3.1].

³ *Ibid* 6, [5.6].

⁴ *Ibid* 6, [5.7][c].

⁵ *Ibid* 6, [5.7][d]–[f]; 7, [6.3][e].

⁶ *Ibid* 7, [8.1]–[8.3].

⁷ *Ibid* 2; 7, [8.1].

⁸ *Ibid* 3: "Advertising that does not accurately represent the health service provided, risks, or the nature and scope of the service is unacceptable. It can mislead the public and create unrealistic expectations, unnecessary use of health services and lead to poor health decisions."

⁹ *Ibid* 4, [1.1] and [1.2].

¹⁰ *Ibid* 4, [1.3].

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

Overall, the ALA contends that these draft Advertising Guidelines are clear.

However, the ALA has identified the following aspects of the draft Advertising Guidelines which will benefit from clarification or amendment:

1. Surgery and procedures that have a medical justification

The following paragraph appears on page 3 of the draft Advertising Guidelines:

Surgery or a procedure may be medically justified if it involves the restoration, correction or improvement in the shape and appearance of body structures that are defective or damaged at birth or by injury, disease, growth, or development for either functional or psychological reasons. Surgery and procedures that have a medical justification and which may also lead to improvement in appearance are excluded from the definition.

The ALA recommends that the Board clarify the intent of the above paragraph, given the categories within the exemption are remarkably broad, and the seriousness of the surgeries/procedures in question.

Does the Board intend that any practitioner performing medically justified surgeries/procedures which do not improve the patient's appearance is exempt from adhering to these draft Advertising Guidelines (once finalised and in force), while a practitioner performing surgeries/procedures that have a medical justification *and* which may also improve the patient's appearance is required to adhere to these draft Advertising Guidelines (once finalised and in force)?

The ALA contends that clarification and further definition are needed to avoid a situation where a practitioner frames the surgeries/procedures they offer around medical justifications, in order to avoid being subject to these specific advertising guidelines.

The ALA recommends that the Board also makes it clear that the Board and Ahpra will ultimately determine, for the purposes of reviewing practitioner advertising and responding to any advertising breaches, whether a practitioner performs medically justified surgeries/procedures and how those surgeries/procedures affect the appearance of patients. How a practitioner perceives the surgeries/procedures they offer and whether a practitioner believes the draft Advertising Guidelines (once finalised and in force) apply to the way they advertising must be neither determinative nor relevant considerations.

2. Removing discretion

Given the aforementioned significant impact of cosmetic surgery advertising and the risks to public safety, the ALA contends that there must not be discretion offered to practitioners in their adherence to the provisions in these draft Advertising Guidelines.

Rather, the ALA recommends that the Board be consistently prescriptive throughout the guidelines. As such, **the ALA recommends that any provision containing “should” be changed to “must”**.¹¹

3. The distinction between ‘major cosmetic medical and surgical procedures’ and ‘minor (non-surgical) cosmetic medical procedures’

On the final page of the draft Advertising Guidelines, the Board has noted that these guidelines “are focused on major cosmetic medical and surgical procedures (cosmetic surgery)”; although, practitioners offering minor (non-surgical) cosmetic medical procedures must comply with the 2016 *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*, “until such time as more detailed consideration and consultation occurs in relation to advertising these procedure”.¹²

Thus, the ALA rejects this distinction between ‘major’ and ‘minor’ cosmetic surgeries/procedures, especially since any cosmetic surgery or procedure involves risks (including irreversible damage) and costs to patients.

One minor (non-surgical) cosmetic medical procedure identified by the Board is “cosmetic injectables”.¹³ Ahpra’s Nursing and Midwifery Board, in defining this phrase, has articulated the serious risks of these procedures:

Cosmetic injections are serious medical procedures that involve injecting a substance under the skin to change an aspect of appearance. For example, reducing the appearance of wrinkles or lines on the face, or putting filler into the lips to make them fuller. If used incorrectly, the substances in these injections could cause skin damage, blindness or even death (Therapeutic Goods Administration).¹⁴

So-called ‘minor’ cosmetic procedures like injectables are no doubt popular in Australia – in 2021, Grand View Research valued the facial injectables industry in Australia at \$4.3

¹¹ See: 4, [1.4]; 4, [2.3]; 5, [2.4]; 5, [5.1]; 5, [5.2]; 6, [5.6]; 6, [5.7][f]; 6, [6.3][a]; 7, [6.3][e]; 7, [8.2]; 8, “Advertising content and patient information material *should* not glamorise procedures...” [emphasis added].

¹² Ibid 8.

¹³ Ibid 3.

¹⁴ Nursing and Midwifery Board, *Position statement on nurses and cosmetic medical procedures* (Position Statement, 24 June 2022 <<https://www.nursingmidwiferyboard.gov.au/codes-guidelines-statements/position-statements/nurses-and-cosmetic-procedures.aspx>>.

billion, with a projected growth of more than 25 per cent every year until 2030.¹⁵ Very worryingly, these popular procedures pose significant risks to patient safety (both physical and mental health),¹⁶ including irreversible damage.¹⁷

The ALA has, therefore, consistently made recommendations in our advocacy on increasing regulation of this industry with both major and minor cosmetic surgeries/procedures in mind. The ALA is aware that other stakeholders, who all contributed to the Board's and Ahpra's *Independent review of the regulation of medical practitioners who perform cosmetic surgery*, have also approached their advocacy on this matter in the same way.

The ALA recommends that the Board requires medical practitioners offering minor (non-surgical) cosmetic medical procedures to also comply with these draft Advertising Guidelines, given the serious risks these so-called 'minor' cosmetic procedures pose to patient safety, health and wellbeing.

3. Is anything missing?

In order to determine the effectiveness of the draft Advertising Guidelines, once they are finalised and in force, and to make adjustments to continually improve the protection of the public, it is essential that they are regularly reviewed and evaluated.

At present, however, the review timelines are not clearly specified. The review period is stated as being "from time to time as required", which "will generally be at least every five years".¹⁸

The ALA recommends that the Board commit to reviewing and updating these guidelines on a pre-determined, regular basis to ensure they are working to improve advertising compliance.

¹⁵ Tamsin Rose, "Like a dystopian world': inside the booming demand for cosmetic injectables', *The Guardian* (online, 25 September 2022) <<https://www.theguardian.com/australia-news/2022/sep/25/like-a-dystopian-world-inside-the-booming-demand-for-cosmetic-injectables>>.

¹⁶ Sarah Berry, 'The long-term health impacts of beauty fillers?', *The Sydney Morning Herald* (online, 16 October 2018) <<https://www.smh.com.au/lifestyle/beauty/the-long-term-health-impacts-of-beauty-fillers-20181009-p508m1.html>>.

¹⁷ Tamsin Rose, "Life changed forever': Australians speak of side-effects and pain after having cosmetic fillers dissolved', *The Guardian* (online, 6 September 2022) <<https://www.theguardian.com/australia-news/2022/sep/06/cosmetic-fillers-facial-dermal-dissolve-hyaluronidase-australian-patients-bone-crushing-pain-side-effects>>.

¹⁸ Medical Board of Australia, *Guidelines for medical practitioners who advertise cosmetic surgery* ('draft Advertising Guidelines', 14 November 2022) 8.