MDA National
Support. Protect. Promote.

Level 9 412 St Kilda Road
Melbourne VIC 3004

1800 011 255 mdanational.com.au
peaceofmind@mdanational.com.au

14 April 2022

[redacted]
Mr Andrew Brown
Independent Reviewer
C/- Australian Health Practitioner Regulation Agency
GPO Box 9958
MELBOURNE VIC 3001

By email only: CSReview@ahpra.gov.au

Dear Mr Brown

MDA National Submission to the independent review on cosmetic surgery

Thank you for the opportunity to provide a submission in relation to the independent review on cosmetic surgery

MDA National is a member-owned medical defence organisation that has been supporting doctors since 1925. With over 52,000 Members and policy holders, we protect the best interests of doctors and promote good medical practice. We pride ourselves on offering personalised, compassionate care to each of our Members and working in close partnership with the medical profession on issues which impact medical practice.

MDA National provides the following comments in response to the consultation questions:

Codes and Guidelines

1. The *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures* (the Guidelines), specifically clause 8 and 9 in their current form, are inadequate to effectively contribute to safe practice without objective parameters to define a practitioner's scope, minimum qualification, appropriate training, expertise and experience.

   Training in the area of cosmetic procedures is largely unregulated, courses are often short in duration and without the requirement to complete a clinical component. Course providers are predominantly private entities without formal accreditation and with no requirements for instructors to be surgically trained or hold minimum qualifications. The competitive nature of the industry contributes to a significant amount of sponsorship, with instructors and often attendees also sponsored to attend, this leads to biased teaching methods and promotion of specific products.

   There is an inherent risk of conflict in these circumstances and a direct risk to patient safety where adequate clinical assessment and decision making is overtaken by market influence.

   Ultimately where an industry allows practitioners to practise without a minimum surgical qualification or consistency in levels of training, the public cannot be expected to accurately determine the treatment options most appropriate to their needs.

2. To remove ambiguity with the current Guidelines the following changes should be made:
   - Documented consent (Clause 4) should include explanation of the practitioners' qualifications and experience clarifying formal training and education
     - Clause 4.1 requires review and correction of terminology such as 'rejection of implants' which is clinically inaccurate – suggest 'infection of implant' or 'displacement of implant'
     - Include evidence supporting alternative treatment options have been discussed and requirement for future procedures where required (ie implant replacement)
   - Training and experience should be defined with the inclusion of minimum requirements met
   - All areas of a subjective nature such as '*appropriate training, expertise, and experience to perform the procedure and deal with all routine aspects of care and any likely complications'* (Clause 8) should be quantified
3. There is clear legislative provision under section 41 of *the Health Practitioner National Law Act 2009* reflecting the ability to rely on the Codes and Guidelines to establish '*…what constitutes appropriate professional conduct or practice for the health*

profession.' The Codes and Guidelines should emphasise this provision including how industry professionals such as Medical Indemnity Insurers may rely on the standards within the Codes and Guidelines to inform their expectations of the standards expected of a medical practitioner.

Management of Notifications

4. While the Medical Board and Ahpra's powers are clearly legislated, there is room for greater flexibility and collaboration in the management of cosmetic surgery notifications.

   Notifications should be triaged and assessed by clinically qualified staff focusing on the relevant level of risk. Opinion should be sought from practitioner's who subspecialise in the area of concern and with an adequate level of skills and experience (set by an objective standard related to supporting case load or practical experience duration).

   Given the sensitivity and broader reaching impact of this industry, early collaboration with external bodies responsible for regulating environmental requirements such as the types of operating facilities, procedures being performed, infection control and anaesthetic compliance should also be considered.

   Referral of complaints and concerns for consideration outside of the Medical Board and Ahpra's regulatory remit to other entities may provide more timely consideration to address immediate risks and prevent continuing unsafe practise while further investigation and inquiries are made.

5. A multifaceted approach is required to include a comprehensive understanding of not only the medical practitioner's performance, but their responsibility and control over the operating environment, including any conflicts drawn from their influence and organisational structure of the facility.

   There are additional sensitivities to be considered with the management of cosmetic related notifications, particularly the subset of the population which my experience greater risk of underlying psychological characteristics. Additionally, the commercial nature of the transaction between care provider and 'customer' leads to a different level of expectation than that of the general patient population and tends to convert a medical procedure to the provision of a service or goods.

   Results and outcomes may differ between patients and proceduralists, the standards of care are variable increasing the potential for complaints should expectations not be clearly defined and understood prior to a procedure being performed.

   The current regulatory approach relies on a reactive approach after receipt of a notification. There is a limited proactive approach which relies largely on issuing documentary guidance. Broader consideration to auditing and identifying at risk Practitioners and early intervention is required to address the current risk.

Advertising

6. The current Ahpra approach relies on the submission of a notification to act. In an environment largely influenced through social media platforms and associated timed posting the current approach does not adequately address the breadth of available advertising capabilities.

7. Misleading commentary and glamorisation of cosmetic surgery may trivialise the seriousness of surgical procedures and lead to unrealistic expectations. Greater surveillance and enforcement are required with further education for practitioners regarding their responsibility for publicly available information when using third party marketing entities for website creation.

   Random auditing of social media and websites is required with the following focus:

   - Requirement for pre and post photos to include a declaration of the responsible practitioner (or removal altogether)
   - Explanation of qualifications included in the biography of the practitioner
     - limit to that which is relevant to the actual procedures, ie primary and secondary qualifications
     - clarify rotations as a junior doctor as opposed to actual further qualifications and experience
   - Requirement for inclusion of TGA statements when advertising complementary treatments

8. There needs to be greater enforcement of the current Advertising Guidelines with a stricter approach to industries that are reliant on marketing as their predominant source of patient recruitment.

9. Social media encourages greater interaction and exposure to the cosmetic industry. It has been primarily responsible for creating celebrity status and glamorisation of some practitioners. There is an almost casual attitude associated with holding registration as a medical practitioner in promoting a social status which encourages adulatory comments and creates a greater imbalance in the doctor patient relationship.

Title Protection and endorsement for approved areas of practice

11. If an endorsement were to be considered in relation to the practice of cosmetic surgery, it is imperative that an adequate level of training and/or qualification is established to facilitate any potential endorsements and relates to establishing clear definitions related to minimum qualifications, training and experience (as indicated in Question 1).

12. An endorsement to provide clarity about specific skills and qualifications should be relevant to clarifying the use of the title 'Surgeon' particularly with regard to the relevant training and qualifications obtained.

Cooperation with other regulators

15. The current barriers to effective information sharing appear to flow from the lack of a coordinated response. Timely assessment and consideration of disclosures to other entities, including recognition of the arrangements to share information require strengthening and practical implementation.

    It is difficult to find any publicly available information to demonstrate how Ahpra currently works with other regulatory bodies, including when it will be appropriate to engage directly with them and how those impacts on the management of a notification. While disclosures are permitted by the National Law in certain circumstances it is not apparent how this plays out in a practical sense and who is informed at that time.

16. When multiple parties are involved in a process, there is an increased risk of confusion regarding joined or conflicting outcomes. There is significant potential for error or missed opportunity in circumstances where a disjointed process may require multiple responses and points of contact. A specific task force or organisation should take the lead and coordinate a course of action.

Further comment or suggestions

31. While it is understood that the Medical Board and Ahpra's role is in the regulation of health practitioners, its role in ensuring public safety should extend to public campaigns and public education. Enhancing public awareness of regulations and requirements, provides a greater opportunity to reduce non-compliance with expectations and standards.

Thank you for the opportunity to provide input during this review. Should you have any questions in relation to this submission, please do not hesitate to contact me.

Yours sincerely,

Luke Thomson
Executive Manager, Underwriting and Insurance Risk Services
MDA National Insurance Pty Ltd
Direct: [redacted]
Email: [redacted]

Attachment - Response template for submissions to the *independent review of the regulation of medical practitioners who perform cosmetic surgery*

Response template for submissions to the *Independent review of the regulation of medical practitioners who perform cosmetic surgery*

You are invited to have your say about the regulation of medical practitioners (doctors) who perform cosmetic surgery by making a submission to this independent review.

The consultation questions from the consultation paper are outlined below. Submissions can address some or all of these questions, and you can include any evidence or examples that you think are relevant.

Submissions can be emailed to:

Mr Andrew Brown, Independent Reviewer
marked '*Submission to the independent review on cosmetic surgery*' at CSReview@ahpra.gov.au.

The closing date for submissions is 5.00pm AEST 14 April 2022.

Your details

Name	[redacted]
Organisation (if applicable)	MDA National Insurance
Email address	[redacted]

Your responses to the consultation questions

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?

The *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures* (the Guidelines), specifically clause 8 and 9 in their current form, are inadequate to effectively contribute to safe practice without objective parameters to define a practitioner's scope, minimum qualification, appropriate training, expertise and experience.

Training in the area of cosmetic procedures is largely unregulated, courses are often short in duration and without the requirement to complete a clinical component. Course providers are predominantly private entities without formal accreditation and with no requirements for instructors to be surgically trained or hold minimum qualifications. The competitive nature of the industry contributes to a significant amount of sponsorship, with instructors and often attendees also sponsored to attend, this leads to biased teaching methods and promotion of specific products.

There is an inherent risk of conflict in these circumstances and a direct risk to patient safety where adequate clinical assessment and decision making is overtaken by market influence.

Ultimately where an industry allows practitioners to practise without a minimum surgical qualification or consistency in levels of training, the public cannot be expected to accurately determine the treatment options most appropriate to their needs.

2. What changes are necessary and why? What additional areas should the guidelines address to achieve the above purpose?

To remove ambiguity with the current Guidelines the following changes should be made:

- Documented consent (Clause 4) should include explanation of the practitioners' qualifications and experience clarifying formal training and education
    - Clause 4.1 requires review and correction of terminology such as 'rejection of implants' which is clinically inaccurate – suggest 'infection of implant' or 'displacement of implant'
    - Include evidence supporting alternative treatment options have been discussed and requirement for future procedures where required (ie implant replacement)
- Training and experience should be defined with the inclusion of minimum requirements met
- All areas of a subjective nature such as '*appropriate training, expertise, and experience to perform the procedure and deal with all routine aspects of care and any likely complications'* (Clause 8) should be quantified

3. Please provide any further comment in relation to the use of codes and guidelines relevant to the practice of cosmetic surgery.

There is clear legislative provision under section 41 of the Health Practitioner National Law Act 2009 reflecting the ability to rely on the Codes and Guidelines to establish '…what constitutes appropriate professional conduct or practice for the health profession.' The Codes and Guidelines should emphasise this provision including how industry professionals such as Medical Indemnity Insurers may rely on the standards within the Codes and Guidelines to inform their expectations of the standards expected of a medical practitioner.

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?

While the Medical Board and Ahpra's powers are clearly legislated, there is room for greater flexibility and collaboration in the management of cosmetic surgery notifications.

Notifications should be triaged and assessed by clinically qualified staff focusing on the relevant level of risk. Opinion should be sought from practitioner's who subspecialise in the area of concern and with an adequate level of skills and experience (set by an objective standard related to supporting case load or practical experience duration).

Given the sensitivity and broader reaching impact of this industry, early collaboration with external bodies responsible for regulating environmental requirements such as the types of operating facilities, procedures being performed, infection control and anaesthetic compliance should also be considered.

Referral of complaints and concerns for consideration outside of the Medical Board and Ahpra's regulatory remit to other entities may provide more timely consideration to address immediate risks and prevent continuing unsafe practise while further investigation and inquiries are made.

5. Please provide any further relevant comment in relation to the management of notifications about medical practitioners involved in cosmetic surgery.

A multifaceted approach is required to include a comprehensive understanding of not only the medical practitioner's performance, but their responsibility and control over the operating environment, including any conflicts drawn from their influence and organisational structure of the facility.

There are additional sensitivities to be considered with the management of cosmetic related notifications, particularly the subset of the population which my experience greater risk of underlying psychological characteristics. Additionally, the commercial nature of the transaction between care provider and 'customer' leads to a different level of expectation than that of the general patient population and tends to convert a medical procedure to the provision of a service or goods.

Results and outcomes may differ between patients and proceduralists, the standards of care are variable increasing the potential for complaints should expectations not be clearly defined and understood prior to a procedure being performed.

The current regulatory approach relies on a reactive approach after receipt of a notification. There is a limited proactive approach which relies largely on issuing documentary guidance. Broader consideration to auditing and identifying at risk Practitioners and early intervention is required to address the current risk.

Advertising restrictions

6. Is Ahpra and the Medical Board's current approach to regulating advertising in cosmetic surgery sufficient?

The current Ahpra approach relies on the submission of a notification to act. In an environment largely influenced through social media platforms and associated timed posting the current approach does not adequately address the breadth of available advertising capabilities

7. What should be improved and why and how?

Misleading commentary and glamorisation of cosmetic surgery may trivialise the seriousness of surgical procedures and lead to unrealistic expectations. Greater surveillance and enforcement are required with further education for practitioners regarding their responsibility for publicly available information when using third party marketing entities for website creation.

Random auditing of social media and websites is required with the following focus:

- Requirement for pre and post photos to include a declaration of the responsible practitioner (or removal altogether)
- Explanation of qualifications included in the biography of the practitioner
    - limit to that which is relevant to the actual procedures, ie primary and secondary qualifications

- clarify rotations as a junior doctor as opposed to actual further qualifications and experience

- Requirement for inclusion of TGA statements when advertising complementary treatments

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?

There needs to be greater enforcement of the current Advertising Guidelines with a stricter approach to industries that are reliant on marketing as their predominant source of patient recruitment.

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?

Social media encourages greater interaction and exposure to the cosmetic industry. It has been primarily responsible for creating celebrity status and glamorisation of some practitioners. There is an almost casual attitude associated with holding registration as a medical practitioner in promoting a social status which encourages adulatory comments and creates a greater imbalance in the doctor patient relationship.

10. Please provide any further relevant comment in relation to the regulation of advertising.

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)?

If an endorsement were to be considered in relation to the practice of cosmetic surgery, it is imperative that an adequate level of training and/or qualification is established to facilitate any potential endorsements and relates to establishing clear definitions related to minimum qualifications, training and experience (as indicated in Question 1).

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

An endorsement to provide clarity about specific skills and qualifications should be relevant to clarifying the use of the title 'Surgeon' particularly with regard to the relevant training and qualifications obtained.

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.

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 current barriers to effective information sharing appear to flow from the lack of a coordinated response. Timely assessment and consideration of disclosures to other entities, including recognition of the arrangements to share information require strengthening and practical implementation. It is difficult to find any publicly available information to demonstrate how Ahpra currently works with other regulatory bodies, including when it will be appropriate to engage directly with them and how those impacts on the management of a notification. While disclosures are permitted by the National Law in certain circumstances it is not apparent how this plays out in a practical sense and who is informed at that time.
16. If yes, what are the barriers, and what could be improved?
When multiple parties are involved in a process, there is an increased risk of confusion regarding joined or conflicting outcomes. There is significant potential for error or missed opportunity in circumstances where a disjointed process may require multiple responses and points of contact. A specific task force or organisation should take the lead and coordinate a course of action.
17. Do roles and responsibilities require clarification?
18. Please provide any further relevant comment about cooperating with other regulators.

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

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.

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.
While it is understood that the Medical Board and Ahpra's role is in the regulation of health practitioners, its role in ensuring public safety should extend to public campaigns and public education. Enhancing public awareness of regulations and requirements, provides a greater opportunity to reduce non-compliance with expectations and standards.