

**Submission
No 13**

COSMETIC HEALTH SERVICE COMPLAINTS IN NEW SOUTH WALES

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PARLIAMENT OF NSW COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION
INQUIRY INTO COSMETIC HEALTH SERVICE COMPLAINTS IN NEW SOUTH WALES

That the Committee on the Health Care Complaints Commission inquire into and report on the regulatory framework for complaints concerning cosmetic health service providers in New South Wales.

MEDICAL COUNCIL OF NSW RESPONSE

Background

The Medical Council of NSW is responsible for regulating the professional conduct, performance and health of those medical practitioners with general and/or specialist registration with AHPRA who provide medical services in NSW. It performs this role in a co-regulatory relationship with the NSW Health Care Complaints Commission.

Whilst the phrase 'cosmetic health services' is not defined in the terms of reference of this Inquiry, the Council has interpreted cosmetic health services as referring to the wholly elective services provided to individuals for the purpose of altering their appearance with the aim of positively influencing their self-perception and self-confidence. This is to be viewed as distinct from medically-indicated use of plastic and reconstructive surgery to restore physical appearance damaged by trauma or disease

Currently in Australia registered medical practitioners provide cosmetic health services to the public using surgical and nonsurgical techniques including use of injectables, fillers, implants, and surgical augmentation of appearance.

In providing these cosmetic health services in NSW, medical practitioners are subject to the following;

- *'Good Medical Practice; a code of conduct for doctors in Australia'*, issued by the Medical Board of Australia;
- *'Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures'*, issued by the Medical Board of Australia;
- *'Cosmetic Surgery Policy- Guidelines for practitioners'* issued by the Medical Council of NSW which discusses a "cooling off period" for people under 18 years of age seeking cosmetic surgery'

In the past 12 months the HCCC and Medical Council of NSW have considered 32 medical practitioners on the general and specialist register who have been the subject of 61 complaints relating to the provision of cosmetic health services in NSW.

The main concern raised in each of these 61 complaints was as follows:

1. Suboptimal outcome (31) – healing, pain, end appearance and follow up.
2. Concerns about advertising and/or consent for use of images (14)
3. Unsatisfactory premises and/or inadequately trained staff (8)
4. Inadequate consent and/or poor communication (5)
5. Other (2)
6. Billing (1)

The registered medical practitioners have included general practitioners and specialist surgeons undertaking cosmetic augmentation procedures, and anaesthetists providing anaesthesia to enable the performance of a cosmetic procedure by another doctor.

Comments on:

- a) The roles and responsibilities of the Health Care Complaints Commission relative to the roles and responsibilities of Commonwealth and other state regulatory agencies;

The HCCC works in a co-regulatory framework with the Medical Council of NSW (the Medical Council) to assess investigate and, if necessary, prosecute individuals in relation to complaints about medical practitioners and students in NSW.

The HCCC has powers of investigation, a small number of in-house medical advisors and the capacity to commission medical expert opinions.

The Medical Council does not have powers of investigation, but does have the power to undertake 'immediate interim action' by way of imposition of protective conditions on registration or suspension of a practitioner's registration when complaints suggest patient safety is at risk or if satisfied the action is otherwise in the public interest.

The Medical Council also deals with complaints that are assessed (by the HCCC in consultation with the Medical Council) as raising concerns about a practitioner's performance that has departed from the usual standard but has not departed to a degree that warrants prosecution in a Professional Services Committee or the NSW Civil and Administrative Tribunal. The Medical Council works to remediate these practitioners via its Performance Program.

In comparison to the HCCC, the Medical Council has significantly more direct access to medical expertise and advice due to the composition of the Medical Council, in-house medical staff, Committee and Hearing members. These resources assist the Medical Council in assessing the nuances of conduct and performance contained within complaints in providing (i) advice to the Commission about departures from appropriate standards of care, and (ii) working with doctors who are the subject of complaint to improve their conduct and performance.

- b) The adequacy of the powers and functions of the Health Care Complaints Commission to improve outcomes for the public in the cosmetic health services sector.

With regard to registered medical practitioners, the HCCC has powers to investigate, and where appropriate, refer the practitioner to the Medical Council, prosecute a complaint of

unprofessional conduct in a Professional Services Committee, or prosecute a complaint of gross professional misconduct in the NSW Civil and Administrative Tribunal. These processes can result in the practitioner being required to practise under protective conditions that limits their scope of practice. A finding of gross professional misconduct by the NSW Civil and Administrative Tribunal may result in the registration of the medical practitioner being cancelled.

Although these powers are significant, in practice there are limits to the HCCC enacting these powers in cosmetic health related complaints due to:

1. The time required to investigate matters - which can be prolonged, in part due to limited HCCC resources;
 2. Lack of agreed professional standards - with no clarity about what is 'acceptable' or 'satisfactory' practice in the cosmetic health sector;
 3. The complexity of these complaints - which may involve a number of practitioners registered under different health professional councils (e.g. medical and nursing and midwifery), the use of agents not approved by the TGA, undisclosed commercial relationships between practitioners and those other involved parties, and services provided inside complicated company structures;
 4. That some practitioners providing cosmetic health services are not registered health practitioners and are therefore less easily identified for the purpose of investigation; and
 5. That some practitioners providing cosmetic health services are not resident in Australia and are therefore less easily identified able to be investigated.
- c) The opportunities for collaboration with other agencies, organisations and levels of Government to improve outcomes for the public in the cosmetic health services sector;

When dealing with complaints related to the cosmetic health sector it is important to have clear and generally agreed standards of what is acceptable training and practice.

Organizations and agencies that could help the HCCC and Medical Council establish these standards and improve outcomes for the public in the cosmetic health services sector include:

1. The Australasian College of Aesthetic Medicine
2. The Cosmetic Physicians College of Australasia
3. The Australian Society of Plastic Surgeons
4. The Australian Private Hospital's Association
5. Day Hospitals Australia
6. Australian Commission on Safety and Quality in Health Care
7. Royal Australian College of Surgeons
8. Royal Australian College of General Practitioners
9. Therapeutic Goods Administration

The activities of the HCCC are currently both informed and enhanced by involvement in the NSW Health Regulators Forum, which brings together the principals of relevant NSW

healthcare regulatory bodies on a quarterly basis for the purpose of discussion, identification of emerging issues and improved cooperation.

The Medical Council is a participant in this Forum, and it is the view of the Council that the effectiveness of the existing powers of the HCCC would be significantly enhanced by expanding the level of cooperation between relevant regulators and agencies, not only at a state level but also at a federal level.

d) Other related matters

1. Informed consent

Failure by cosmetic practitioners to adhere to the requirements for informed consent is a major contributor to difficulties within the sector. The Medical Council is keen to ensure that all patients considering a cosmetic procedure are able to provide fully informed consent.

Cosmetic procedures are usually elective with no requirement to proceed for health reasons. In these circumstances informed consent means any unrealistic expectations of patients must be addressed through the provision of clear, preferably written information designed to ensure potential patients are made aware of and acknowledge:

- a) the nature and level of training their practitioner has received and whether or not they are registered to practise as a health practitioner in Australia;
- b) the proposed procedures, including the nature and extent of anaesthetics;
- c) the range of potential outcomes of the procedures; and
- d) an accurate description of the potential risks involved, having regard to any particular circumstances of the patient which might affect the risk for that patient.

It is considered that a mandatory comprehensive consent process, covering all the above and consistent across all practitioners working in this field of practice, is desirable.

2. Emerging trends

The cosmetic industry is subject to rapid change. Individual practitioners are quick to embrace emerging procedures, interventions and technologies often to gain a competitive advantage. The use of injectable human stem cells to achieve cosmetic outcomes is an example of one such emerging trend.

The rapidity of change in this sector creates a challenge for regulators. Often procedures may be without an evidence base and may not have previously been performed in Australia. There is often a limited peer group of individuals using the same technique, procedure or technology.

Collaboration amongst regulators is required to enable a rapid response to these emerging trends in order to ensure that patient safety is considered and that

practitioners can be held accountable for failing to comply with safety or professional standards.

3. Pharmaceutical management

Recent complaints to the Medical Council have raised concerns related to pharmaceutical suppliers filling orders for registered pharmaceuticals without adequate oversight of who was operating the account and receiving the goods. In one case a registered nurse in a cosmetic health practice opened an account with a medical supplier under the name of a doctor working in the practice and ordered without his knowledge S4D and S8 medications which she stole and abused.

Although this issue arose in the context of a cosmetic medicine practice, this issue raises more general concerns about the oversight of ordering of pharmaceutical products.

4. Breadth and complexity of the industry

The Medical Council sees its role as ensuring registered medical practitioners deliver health services – be it cosmetic or otherwise – in a manner that demonstrates an appropriate standard of competence and performance, and compliance with the Medical Board of Australia *"Good medical practice: a code of conduct for doctors in Australia"*.

Whilst medical practitioners are subject to the rigour of regulatory oversight by the Medical Council in New South Wales and the Medical Board of Australia in other states, woven through many of the complaints regarding cosmetic health service delivery by a medical practitioner is the commercialisation and marketing of appearance services. Consequently, a response primarily based on health regulation is unlikely to satisfactorily address the complexity of these issues and will continue to fall short of the desired public protection in this setting.

It is the Medical Council's view that effective protection of the public in their receipt of cosmetic healthcare service requires additional and co-ordinated activity at both a state and federal level across education of the public and the professions, business regulation, import surveillance, and the supply and management of medicines and other agents.

5. Management of expectations

The cosmetic industry is here to stay and the complexities in this setting are rapidly evolving. It is the Medical Council's view that a body of work needs to be done to embed appropriate expectations within the community, and particularly consumers of cosmetic health services, as to the limitations of health regulation and consequently the limitations of activity by healthcare regulators in the setting of cosmetic health service delivery and complaint management.