

**Submission
No 21**

COSMETIC HEALTH SERVICE COMPLAINTS IN NEW SOUTH WALES

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Introduction

The Australian Health Practitioner Regulation Agency (AHPRA) and fifteen National Boards regulate health practitioners in sixteen professional groups through the National Registration and Accreditation Scheme (the National Scheme). Our primary role is public protection and we aim to do this through a risk-based approach to regulation, taking action proportionate to the risks to public health and safety we have identified.

Although there is only a small overlap between our statutory role in health practitioner regulation and the broader scope of this inquiry into cosmetic clinics, this submission provides an overview of the aspects of our work relevant to cosmetic clinics i.e. issues relating to registered health practitioners, and/or the statutory offences in the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

In NSW, complaints about a registered practitioner's performance or conduct are managed and regulated via the NSW Health Care Complaints Commission and the relevant Health Professional Council. In NSW, AHPRA receives and manages statutory offences, including, but not limited to, unlawful claims as to registration and unlawful use of protected titles.

We recognise the importance of effective collaboration across regulators on issues such as illegally operating cosmetic clinics which may involve a number of different national and local regulators. We have worked collaboratively with other co-regulators (and agencies) in NSW to carry out search warrants and ensure that appropriate regulatory force is utilised to address identified serious risk to the public. This submission provides an overview of our work relevant to the inquiry, intersections with other related and involved agencies and some ways in which we collaborate with our partners to protect the public in NSW.

National Board standards, codes and guidelines

Each National Board sets a regulatory framework for the professional groups it regulates in addition to requirements in the National Law. The standards, codes and guidelines set out the respective National Board's requirements and expectations of good practice and articulate the ethical and professional conduct expected of practitioners by the Board, their professional peers and the community. Codes of conduct (or equivalent) generally require registered health practitioners to practise within their scope of practice, based on their education, knowledge, competence, and lawful authority. Codes of conduct also require registered health practitioners to be aware of and comply with, the relevant National Board's standards, guidelines and policies (such as where National Boards have issued additional guidance on cosmetic procedures as outlined below).

The National Boards' standards framework includes:

- accreditation standards to assess whether a program of study and the education provider that provides the program equips those who complete the program with the knowledge, skills and professional attributes necessary to practise the profession
- core registration standards and other eligibility requirements which practitioners must meet to become and stay registered
- professional standards that define the minimum standard of practice/competency of practitioners
- professional standards that define the minimum standard of behaviour such as a code of conduct or equivalent
- additional requirements for practitioners working in advanced areas such as scheduled medicines

National Boards also develop and publish guidelines that provide additional guidance to practitioners in specific areas, with the following published in relation to cosmetic treatments:

- Medical Board of Australia's [Guidelines for Registered Medical Practitioners who perform cosmetic medical and surgical procedures](#)
- Nursing and Midwifery Board's [Position statement on nurses and cosmetic procedures](#); and the
- Dental Board of Australia's Fact sheet: [The use of botulinum toxin and dermal fillers by dentists](#)

1In NSW, a breach of a National Board's code of conduct may lead to the HCCC or the relevant Health Professional Council taking action against a registered health practitioner on the grounds of professional misconduct or unprofessional conduct, whereas in other states and territories, the responsibility lies with the National Boards (except Queensland).

Offences under the National Law

The National Law prescribes a number of offence provisions. Relevant parts of the legislation are:

- unlawful use of a protected titles (sections 113-114)
- use of specialist titles (section 115)
- holding out (claims by individuals or organisations as to registration in a profession or specialty) (sections 116-119)

Protected titles

Sections 113 and 114 of the National Law identify title protections and make it an offence to take or use a protected title unless the person is registered in the profession.

Profession	Title
Aboriginal and Torres Strait Islander health practice	Aboriginal and Torres Strait Islander health practitioner, Aboriginal health practitioner, Torres Strait Islander health practitioner
Chinese medicine	Chinese medicine practitioner, Chinese herbal dispenser, Chinese herbal medicine practitioner, Oriental medicine practitioner, acupuncturist
Chiropractic	Chiropractor
Dental	Dentist, dental therapist, dental hygienist, dental prosthetist, oral health therapist
Medical	Medical practitioner
Medical radiation practice	Medical radiation practitioner, diagnostic radiographer, medical imaging technologist, radiographer, nuclear medicine scientist, nuclear medicine technologist, radiation therapist
Nursing and midwifery	Nurse, registered nurse, nurse practitioner, enrolled nurse, midwife, midwife practitioner
Occupational therapy	Occupational therapist
Optometry	Optometrist, optician
Osteopathy	Osteopath
Pharmacy	Pharmacist, pharmaceutical chemist
Physiotherapy	Physiotherapist, physical therapist
Podiatry	Podiatrist, chiropodist
Psychology	Psychologist

Unlawful claims to registration.

Sections 116-118 of the National Law create offences in relation to claims by persons as to registration as a health practitioner, when they are not (also referred to as 'holding out'). This can include using a title, name, initial, symbol, word or description which could be reasonably understood to indicate that an individual is a health practitioner or qualified to practise in a health profession.

Whilst AHPRA hasn't completed any prosecutions relating to cosmetic clinics in NSW, since 2010 we have undertaken a number of prosecutions in NSW for breaches of the National Law in relation to unlawful use of protected titles, unlawful claims as to registration (holding out) and unlawful advertising (see table A for details).

In recent years, AHPRA has worked closely with the HCCC to ensure that complaints received by the HCCC regarding offences are referred to AHPRA for investigation in a timely manner. Timely referral is critical as section 179 of the Criminal Procedure Act 1986 (NSW) mandates that any prosecution of a summary offence must commence within six months from the date the alleged offence was committed.

Practice protections

Sections 121-123 of the National Law set out practice protections which restrict certain practices (restricted acts). A person must not carry out a restricted act unless they are registered in the relevant profession and qualified to do so. The restricted acts are defined in the National Law. They are:

- Dental acts
- Prescription of optical appliances
- Spinal manipulation.

As described earlier, National Boards have developed standards, codes and guidelines to support health practitioners to provide safe practice.

Advertising

Section 133 of the National Law regulates the advertising of regulated health services, making it an offence to advertise a regulated health service (including cosmetic procedures) in a way that:

- is false, misleading or deceptive
- offers inducements without terms and conditions
- uses testimonials
- creates an unreasonable expectation of beneficial treatment, or
- directly or indirectly encourages the indiscriminate or unnecessary use of the regulated health services.

The Advertising Compliance and Enforcement Strategy for the National Scheme, published in April 2017, explains how a risk-based approach is applied to advertising compliance and enforcement, how we encourage voluntary compliance and deal with non-compliant advertising, and how we plan to evaluate and refine this strategy.

Engagement with other regulators

AHPRA (who works in partnership with 15 National Boards in the National Scheme) participates in the Consumer Health Regulators Group which consists of regulators with an interest in consumer health. Currently chaired by the Australian Competition and Consumer Commission (ACCC), other members include the Private Health Insurance Ombudsman, the Therapeutic Goods Administration and the NSW Health Care Complaints Commission (as the current chair of the state Health Complaints Commissions). The Department of Health participates in the Group as an observer.

Group members come together to exchange information, including about emerging issues of interest or concern, and to ensure responsibilities and functions of each regulator within the consumer health industry are understood and consistently applied.

While Group members have regularly shared information and met on a bilateral or multilateral basis in the past, the Group was formally established in April 2017 to facilitate even greater collaboration in the public interest. The Group meets quarterly, or otherwise as needed.

TABLE A								
Defendant	Date of decision	Jurisdiction	Profession	Offences/Charges	Allegations	Plea	Outcome	Media statement
Black, Robert	4 May 2015	New South Wales	ChiroBA and OsteoBA	s 113 x 2 s 123 x 1	Unlawful use of protected title and use of restricted act (spinal manipulation)	Not guilty Not guilty	Conviction \$4,000 for each 113 offence (a total of \$8,000 plus costs of \$6,152.25 Section 123 charge was dismissed	http://www.osteopathyboard.gov.au/News/2015-05-14-media-release.aspx
Marquinez, Orlando	7 July 2016	New South Wales	NMBA	s 113 s 116 (3 charges)	Unlawful use of title and unlawful claims by persons as to registration	Guilty to s 116 offences	Convicted of two charges under s 116 (AHPRA agreed to drop the s 113 charges). Fined \$10,000. Ordered to pay legal costs of \$2,805	http://www.nursingmidwiferyboard.gov.au/News/2016-07-11-unregistered-nurse.aspx
PW	15 Aug 2016	New South Wales	OTBA	s 113 x 1	Unlawful use of title	Guilty but no conviction recorded	Found guilty of the charge with no conviction recorded 18 month good behaviour bond Ordered to pay \$4,000 in costs	
Gachon, Robert	10 Oct 2016	New South Wales	PsyBA	s 113 x 1 s 116 x 1	Unlawful use of title and unlawful claims by persons as to registration	s 113 charge was withdrawn Guilty to s 116 charge	Convicted Fined \$8,000 Ordered to pay \$1,200 in costs	http://www.psychologyboard.gov.au/News/2016-10-28-court-summary.aspx
KK	6 Feb 2017	New South Wales	MBA	s 116(1)(b)(ii)	Unlawful claims by persons as to registration.	Guilty Accused sought no conviction	No conviction recorded. Granted a section 10, 12 month good behaviour bond \$3000 Ordered to pay \$2950 in costs	

				(2 charges)				
Limboro, Hance	15 Feb 2017	New South Wales	CBA	s 133(1)(a) & (c) 13 charges	Unlawful advertising	Guilty Accused sought no conviction.	Convictions recorded on all counts. Fined \$2500 for each (11) s 133(1)(a) charge, totalling \$27,500 Fined \$1000 for each (2) s 133(1)(c) charge, totalling \$2,000 Ordered to pay \$3000 in costs.	http://www.ahpra.gov.au/News/2017-02-15-media-release-chiropractic-board.aspx
Chitale, Sarang (Shyam Acharya)	3 April 2017	New South Wales	MBA	s 116 x 1	Unlawful claims by persons as to registration	No appearance Convicted	Fined maximum penalty of \$30,000 Costs of \$22,000	http://www.ahpra.gov.au/News/2017-04-03-media-statement.aspx
Jangodaz, Reza	11 September 2017	New South Wales	DBA	s 116(1)(c) (2 charges)	Unlawful claims by persons as to registration	Guilty	Convicted of both charges Fined \$3750- Charge 1 Fined \$1000 – Charge 2 Agreed costs \$4000	
Wellness Enterprises Pty Ltd t/a Australian Male Hormone Clinic	3 October 2017	NSW	MBA	s 133(1)(d) x 17 s 133(1)(a) x 17 (in alternative) (34 charges)	Unlawful advertising	No appearance. Convicted	17 charges under section 133(1)(a) withdrawn AMHC was found guilty of 17 under section 133(1)(d) and fined \$7,500 per offence (totalling \$127,500). Court costs of \$3,000 and Professional costs of \$3,000	http://www.ahpra.gov.au/News/2017-08-09-charges.aspx (9 August 2017 - de-identified) http://www.ahpra.gov.au/News/2017-10-04-media-release-advertising.aspx (4 October 2017)
Be, Karren	28 Feb 2018	NSW	PharmBA	s 113(1)(a) x 9 (withdrawn) s116(1)(c) x 9	Unlawful claims by persons as to registration	Guilty to 9 charges under s 116(1)(c) s113 charges withdrawn	Fined \$11,250 total and ordered to pay professional costs of \$6,920 Conviction recorded	