

From:
Sent: Friday, 7 September 2012 3:54 PM
To: chinesemedicineconsultation
Cc:
Subject: Chinese Medicine Board of Australia - Consultation Paper

Hi

Just had a quick look at this.

www.chinesemedicineboard.gov.au/News/Consultations.aspx

Please see below re the new skin penetration legislation for NSW that came into effect 1/9/12

Regards

graham

The Public Health Act (2010) and the Public Health Regulation (2012) will commence on **1 September 2012**. You can view this legislation online at www.legislation.nsw.gov.au or click on the links below:

- [Public Health Act 2010](#)
- [Public Health Regulation 2012](#)

http://www.health.nsw.gov.au/resources/phact/pdf/is3_skin_penetration.pdf

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Public Health Act 2010 No 127

NSW

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Part 3 » Division 4

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Division 4 Control of skin penetration procedures

38 Operation of skin penetration procedures

(cf Skin Penetration Reg, cl 12)

- (1) The occupier of premises where skin penetration procedures are carried out must comply with the requirements prescribed by the regulations with respect to such premises.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or
 - (b) in the case of a corporation—500 penalty units.
- (2) The occupier of any premises where skin penetration procedures are carried out must cause notice of the carrying out of skin penetration procedures at the premises to be given to the person prescribed by the regulations in the approved form and in the manner prescribed by the regulations.

Maximum penalty: 10 penalty units.

39 Director-General may give training directions relating to skin penetration procedures

- (1) The Director-General may serve on a person found guilty of an offence under this Act or the regulations in relation to the conduct of a skin penetration procedure at premises a notice:
 - (a) directing that the person undertake specified training, and
 - (b) prohibiting the carrying out of specified skin penetration procedures at the premises until the training is completed.
- (2) A person who:
 - (a) is subject to a direction or prohibition under this section, and
 - (b) has notice of the direction or prohibition,must not, without reasonable excuse, fail to comply with the direction or prohibition.



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Public Health Regulation 2012

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Status information

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New South Wales

Status information

Currency of version

Current version for 3 August 2012 to date (accessed 22 October 2012 at 15:13).

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced. See [Historical notes](#)

Staged repeal status

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2017

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 September 2012.

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Public Health Regulation 2012

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Part 4

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Part 4 Control of skin penetration procedures

Division 1 Preliminary

21 Skin penetration procedures

- (1) Colonic lavage is declared to be a skin penetration procedure.
- (2) Laser hair removal is declared not to be a skin penetration procedure.

22 Prescribed requirements for premises where skin penetration procedures are carried out

For the purposes of section 38 (1) of the Act, the requirements set out in Divisions 2 and 3 are prescribed.

Division 2 Requirements for premises where skin penetration procedures are carried out

23 Premises must be properly equipped

- (1) Any premises where skin penetration procedures are carried out must:
 - (a) be clean and hygienic, and
 - (b) have a waste disposal bin, and
 - (c) have a hand basin that has a supply of clean, warm, potable water, and
 - (d) have a separate sink that has a supply of clean, warm water for cleaning equipment (if equipment used in skin penetration procedures at the premises is cleaned at the premises), and
 - (e) have available for use by persons carrying out skin penetration procedures at the premises:
 - (i) liquid soap (or an alcohol-based hand cleaner), and
 - (ii) single-use towels or an automatic hand dryer, and
 - (iii) disposable gloves, clean linen and gowns or aprons that are appropriate for the skin procedures carried out at the premises.

- (2) Any equipment at premises where skin penetration procedures are carried out must be in good working order, be cleaned and dried after use and be kept in a clean and dry condition.

24 Additional requirement for colonic lavage procedures

Premises at which a colonic lavage procedure is carried out must have a toilet, being a toilet that is available for use by clients and not by the general public, that is:

- (a) in the case of a procedure using a closed system—located in close proximity to the room in which the procedure is being carried out, or
- (b) in the case of a procedure using an open system—located in the immediate vicinity of the room in which the procedure is being carried out.

25 Premises must have sharps containers and supply of sterile disposable needles

- (1) If skin penetration procedures that involve the use of sharps are carried out at the premises, there must be an appropriate sharps container at the premises.
- (2) If skin penetration procedures that involve the use of needles are carried out at the premises, there must be an adequate supply of sterile disposable needles at the premises.
- (3) In this clause, *appropriate sharps container* means:
 - (a) if skin penetration procedures that involve the use of reusable sharps are carried out at the premises—a sharps container that complies with AS/NZS 4261:1994 *Reusable containers for the collection of sharp items used in human and animal medical applications*, or
 - (b) if skin penetration procedures that involve the use of non-reusable sharps are carried out at the premises—a sharps container that complies with AS 4031-1992 *Non-reusable containers for the collection of sharp medical items used in health care areas*.

26 Reusable articles must be sterilised

- (1) All reusable articles used to penetrate a person's skin for skin penetration procedures must be sterilised, whether at the premises or off-site.
- (2) If reusable articles are sterilised at the premises:
 - (a) a bench top autoclave, maintained in accordance with AS 2182-1998 *Sterilizers—Steam—Benchtop*, must be used, and
 - (b) there must be at least one person present at the time the autoclave is used who is adequately trained in the operation of the autoclave, and
 - (c) the sterilisation must be carried out in accordance with AS/NZS 4815:2006 *Office-based health care facilities—Reprocessing of reusable medical and surgical instruments and equipment, and maintenance of the associated environment*.
- (3) If reusable articles are sterilised at the premises, the occupier of the premises must make, and keep for at least 12 months, a record of:
 - (a) the time and date when each article was sterilised, and

- (b) the length of time that the article was autoclaved and the temperature and pressure levels of the autoclave.
- (4) If reusable articles are sterilised off-site, the occupier of the premises must make, and keep for at least 12 months, a record of:
 - (a) the date on which each article was sent off-site for sterilisation, and
 - (b) the name and address of the person who sterilised the article.

Division 3 Requirements for carrying out skin penetration procedures

27 Use of needles, sharps and other articles

- (1) A person who carries out a skin penetration procedure must not use a needle that has previously been used in a skin penetration procedure.
- (2) A person who uses a needle in a skin penetration procedure must dispose of the needle in the appropriate sharps container immediately after completing the procedure.
- (3) A person who uses any article in a skin penetration procedure that is manufactured for a single use only must dispose of the article immediately after completing the procedure.
- (4) A person who uses a non-reusable sharp in a skin penetration procedure must dispose of the sharp in the appropriate sharps container immediately after completing the procedure.
- (5) A person must not use an article that may penetrate the skin of a person in a skin penetration procedure unless it is clean and has been sterilised and kept in a sterile environment.
- (6) A person must not use an article in a skin penetration procedure if the article has previously been used in a skin penetration procedure but did not penetrate the skin of the person undergoing the previous procedure unless the article has been cleaned and kept in a clean condition.
- (7) In this clause, *appropriate sharps container* means a sharps container that complies with AS 4031-1992 *Non-reusable containers for the collection of sharp medical items used in health care areas*.

Maximum penalty: 20 penalty units.

28 Protective equipment to be worn

- (1) A person who carries out a skin penetration procedure must:
 - (a) wear gloves that have never been used before, and
 - (b) appropriately dispose of the gloves immediately after completing the procedure.
- (2) A person who carries out a skin penetration procedure (other than colonic lavage) must wear a clean gown or apron during the procedure.
- (3) A person who carries out colonic lavage must wear a clean gown made of impermeable material during the procedure.
- (4) This clause does not apply to a person carrying out a skin penetration procedure that involves the use of wax for the purposes of hair removal unless the person reasonably

suspects that he or she will be exposed to human bodily substances during the procedure.

Maximum penalty: 20 penalty units.

29 Use of inks and pigments

- (1) A person who carries out a skin penetration procedure that involves the use of ink, pigment or other liquid must decant the liquid into a single use container, and use a single use applicator, for each person undergoing the procedure.

Maximum penalty: 20 penalty units.

- (2) This clause does not apply to skin penetration procedures involving the use of wax for the purposes of hair removal.

30 Use of wax for hair removal

A person who carries out a skin penetration procedure using wax for the purposes of hair removal must dispose of that wax, and any instrument used to apply the wax (such as a spatula), immediately after completing the procedure.

Maximum penalty: 20 penalty units

Division 4 Miscellaneous

31 Notification of carrying out of skin penetration procedures

- (1) For the purposes of section 38 (2) of the Act, the local government authority for the area in which the premises are located is prescribed and the notice is to be in writing and is to be accompanied by the fee (not exceeding \$100) determined by the local government authority.
- (2) In the case of skin penetration procedures carried out in mobile premises, the local government authority for the area in which the occupier resides is prescribed.
- (3) The occupier of premises where skin penetration procedures are carried out must notify the local government authority for the area in which the premises are located within 7 days of any change in the particulars provided to the authority in the approved form under section 38 (2) of the Act. No fee is payable for such a notification.

Maximum penalty: 10 penalty units.

32 Register of premises where skin penetration procedures are carried out

- (1) Each local government authority must keep a register of premises in its area where skin penetration procedures are carried out.
- (2) The following details must be entered in the register in relation to each premises:
 - (a) the address and telephone number of the premises,
 - (b) the name and contact details of the occupier of the premises (including residential address and home, business and mobile telephone numbers),
 - (c) the Australian Business Number (ABN) or Australian Company Number (ACN) (if any) of the occupier,

- (d) the type of skin penetration procedures carried out at the premises,
 - (e) details of any inspections of the premises carried out by the local government authority,
 - (f) in the case of skin penetration procedures that are carried out in mobile premises, the local government areas in which the occupier of the premises intends to carry out the procedures.
- (3) A local government authority must on request make its register available for inspection without charge by the Director-General, a public health officer or an officer of the Ministry of Health authorised by the Director-General.

33 Display of prohibition orders

The occupier of premises where skin penetration procedures are carried out who has been served with a prohibition order must display a copy of the order in a conspicuous place at or near each entrance to the premises concerned.

Maximum penalty: 10 penalty units.

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Public Health Regulation 2012

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Schedule 3

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Schedule 3 Code of conduct

(Clause 99)

1 Definitions

In this code of conduct:

health practitioner and *health service* have the same meanings as they have in the Health Care Complaints Act 1993.

Note.

The Health Care Complaints Act 1993 defines those terms as follows:

health practitioner means a natural person who provides a health service (whether or not the person is registered under the Health Practitioner Regulation National Law).

health service includes the following services, whether provided as public or private services:

- (a) medical, hospital and nursing services,
- (b) dental services,
- (c) mental health services,
- (d) pharmaceutical services,
- (e) ambulance services,
- (f) community health services,
- (g) health education services,
- (h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),
- (i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists and psychologists,
- (j) services provided by optical dispensers, dietitians, massage therapists, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers,
- (k) services provided in other alternative health care fields,
- (l) forensic pathology services,
- (m) a service prescribed by the regulations as a health service for the purposes of the Health Care Complaints Act 1993.

2 Application of code of conduct

This code of conduct applies to the provision of health services by:

- (a) health practitioners who are not subject to the scheme for registration under the Health Practitioner Regulation National Law (including de-registered health practitioners), and
- (b) health practitioners who are registered under the Health Practitioner Regulation National Law for the provision of health services and who provide health services that are unrelated to their registration.

Note. Health practitioners may be subject to other requirements relating to the provision of health services to which this Code applies, including, for example, requirements imposed by Divisions 1 and 3 of Part 7 of the Act and by Part 4 of this Regulation.

3 Health practitioners to provide services in safe and ethical manner

- (1) A health practitioner must provide health services in a safe and ethical manner.
- (2) Without limiting subclause (1), health practitioners must comply with the following principles:
 - (a) a health practitioner must maintain the necessary competence in his or her field of practice,
 - (b) a health practitioner must not provide health care of a type that is outside his or her experience or training,
 - (c) a health practitioner must not provide services that he or she is not qualified to provide,
 - (d) a health practitioner must not use his or her possession of particular qualifications to mislead or deceive his or her clients as to his or her competence in his or her field of practice or ability to provide treatment,
 - (e) a health practitioner must prescribe only treatments or appliances that serve the needs of the client,
 - (f) a health practitioner must recognise the limitations of the treatment he or she can provide and refer clients to other competent health practitioners in appropriate circumstances,
 - (g) a health practitioner must recommend to his or her clients that additional opinions and services be sought, where appropriate,
 - (h) a health practitioner must assist his or her clients to find other appropriate health care professionals, if required and practicable,
 - (i) a health practitioner must encourage his or her clients to inform their treating medical practitioner (if any) of the treatments they are receiving,
 - (j) a health practitioner must have a sound understanding of any adverse interactions between the therapies and treatments he or she provides or prescribes and any other medications or treatments, whether prescribed or not, that the health practitioner is aware the client is taking or receiving,
 - (k) a health practitioner must ensure that appropriate first aid is available to deal with any misadventure during a client consultation,

- (1) a health practitioner must obtain appropriate emergency assistance (for example, from the Ambulance Service) in the event of any serious misadventure during a client consultation.

4 Health practitioners diagnosed with infectious medical condition

- (1) A health practitioner who has been diagnosed with a medical condition that can be passed on to clients must ensure that he or she practises in a manner that does not put clients at risk.
- (2) Without limiting subclause (1), a health practitioner who has been diagnosed with a medical condition that can be passed on to clients should take and follow advice from an appropriate medical practitioner on the steps to be taken to modify his or her practice to avoid the possibility of transmitting that condition to clients.

5 Health practitioners not to make claims to cure certain serious illnesses

- (1) A health practitioner must not hold himself or herself out as qualified, able or willing to cure cancer or other terminal illnesses.
- (2) A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of those illnesses if that claim can be substantiated.

6 Health practitioners to adopt standard precautions for infection control

- (1) A health practitioner must adopt standard precautions for the control of infection in his or her practice.
- (2) Without limiting subclause (1), a health practitioner who carries out a skin penetration procedure must comply with the relevant provisions of this Regulation in relation to the carrying out of the procedure.

Note. The Act defines *skin penetration procedure* as any procedure (whether medical or not) that involves skin penetration (such as acupuncture, tattooing, ear piercing or hair removal), and includes any procedure declared by the regulations to be a skin penetration procedure, but does not include:

- (a) any procedure carried out by a health practitioner registered under the Health Practitioner Regulation National Law, or by a person acting under the direction or supervision of a registered health practitioner, in the course of providing a health service, or
- (b) any procedure declared by the regulations not to be a skin penetration procedure.

7 Appropriate conduct in relation to treatment advice

- (1) A health practitioner must not attempt to dissuade clients from seeking or continuing with treatment by a registered medical practitioner.
- (2) A health practitioner must accept the right of his or her clients to make informed choices in relation to their health care.
- (3) A health practitioner should communicate and co-operate with colleagues and other health care practitioners and agencies in the best interests of their clients.
- (4) A health practitioner who has serious concerns about the treatment provided to any of his or her clients by another health practitioner must refer the matter to the Health Care Complaints Commission.

8 Health practitioners not to practise under influence of alcohol or drugs

- (1) A health practitioner must not practise under the influence of alcohol or unlawful drugs.
- (2) A health practitioner who is taking prescribed medication must obtain advice from the prescribing health practitioner on the impact of the medication on his or her ability to practice and must refrain from treating clients in circumstances where his or her ability is or may be impaired.

9 Health practitioners not to practise with certain physical or mental conditions

A health practitioner must not practise while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that detrimentally affects, or is likely to detrimentally affect, his or her ability to practise or that places clients at risk of harm.

10 Health practitioners not to financially exploit clients

- (1) A health practitioner must not accept financial inducements or gifts for referring clients to other health practitioners or to the suppliers of medications or therapeutic goods or devices.
- (2) A health practitioner must not offer financial inducements or gifts in return for client referrals from other health practitioners.
- (3) A health practitioner must not provide services and treatments to clients unless they are designed to maintain or improve the clients' health or wellbeing.

11 Health practitioners required to have clinical basis for treatments

A health practitioner must not diagnose or treat an illness or condition without an adequate clinical basis.

12 Health practitioners not to misinform their clients

- (1) A health practitioner must not engage in any form of misinformation or misrepresentation in relation to the products or services he or she provides or as to his or her qualifications, training or professional affiliations.
- (2) A health practitioner must provide truthful information as to his or her qualifications, training or professional affiliations if asked for information about those matters by a client.
- (3) A health practitioner must not make claims, either directly or in advertising or promotional material, about the efficacy of treatment or services provided if those claims cannot be substantiated.

13 Health practitioners not to engage in sexual or improper personal relationship with clients

- (1) A health practitioner must not engage in a sexual or other close personal relationship with a client.
- (2) Before engaging in a sexual or other close personal relationship with a former client, a health practitioner must ensure that a suitable period of time has elapsed since the conclusion of their therapeutic relationship.

14 Health practitioners to comply with relevant privacy laws

A health practitioner must comply with the relevant legislation of the State or the Commonwealth relating to his or her clients' health information, including the Privacy Act 1988 of the Commonwealth and the Health Records and Information Privacy Act 2002.

15 Health practitioners to keep appropriate records

A health practitioner must maintain accurate, legible and contemporaneous clinical records for each client consultation.

16 Health practitioners to keep appropriate insurance

A health practitioner should ensure that appropriate indemnity insurance arrangements are in place in relation to his or her practice.

17 Certain health practitioners to display code and other information

- (1) A health practitioner must display a copy of each of the following documents at all premises where the health practitioner carries on his or her practice:
 - (a) this code of conduct,
 - (b) a document that gives information about the way in which clients may make a complaint to the Health Care Complaints Commission, being a document in a form approved by the Director-General.
- (2) Copies of those documents must be displayed in a position and manner that makes them easily visible to clients entering the relevant premises:
- (3) This clause does not apply to any of the following premises:
 - (a) the premises of any body within the public health system (as defined in section 6 of the Health Services Act 1997),
 - (b) private health facilities (as defined in the Private Health Facilities Act 2007),
 - (c) premises of the Ambulance Service of NSW (as defined in the Health Services Act 1997),
 - (d) premises of approved providers (within the meaning of the Aged Care Act 1997 of the Commonwealth).

18 Sale and supply of optical appliances

- (1) A health practitioner must not sell or supply an optical appliance (other than cosmetic contact lenses) to a person unless he or she does so in accordance with a prescription from a person authorised to prescribe the optical appliance under section 122 of the Health Practitioner Regulation National Law.
- (2) A health practitioner must not sell or supply contact lenses to a person unless the health practitioner:
 - (a) was licensed under the Optical Dispensers Act 1963 immediately before its repeal, or
 - (b) has a Certificate IV in optical dispensing or an equivalent qualification.

- (3) A health practitioner who sells or supplies contact lenses to a person must provide the person with written information about the care, handling and wearing of contact lenses, including advice about possible adverse reactions to wearing contact lenses.
- (4) This clause does not apply to the sale or supply of the following:
- (a) hand-held magnifiers,
 - (b) corrective lenses designed for use only in diving masks or swimming goggles,
 - (c) ready made spectacles that:
 - (i) are designed to alleviate the effects of presbyopia only, and
 - (ii) comprise 2 lenses of equal power, being a power of plus one dioptré or more but not exceeding plus 3.5 dioptrés.

- (5) In this clause:

cosmetic contact lenses means contact lenses that are not designed to correct, remedy or relieve any refractive abnormality or defect of sight.

optical appliance has the same meaning as it has in section 122 of the Health Practitioner Regulation National Law.

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