

Department of Health

Consultation on private and voluntary healthcare: the Care Standards Act 2000



A response by the Association of Personal Injury Lawyers

June 2008

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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Executive summary

APIL does not agree with the deregulation of lasers and intense pulsed light sources for cosmetic use. Our reasons are threefold: firstly, we believe that the Government should be doing all it can to prevent unnecessary injuries; secondly, we do not believe that the proposals to deregulate the sector are in line with the Government's policy with regard to better regulation; and thirdly, deregulation would legitimise those businesses currently operating unregulated. In addition, we believe the proposals to mitigate the effect of deregulation are unrealistic.

Introduction

APIL members represent clients who have been injured as a result of other people's negligence and they have reported a number of cases to us in which their clients have been injured as a result of negligent use of lasers for cosmetic purposes. Our response to this consultation is therefore limited to answering question 3.3 of the consultation paper, which is concerned with the deregulation of the non-surgical use of lasers and intense pulsed light sources.

APIL does not agree that this sector should be de-regulated. Laser and intense light treatments that are used to remove hair, the appearance of fine veins and marks on the skin are potentially dangerous treatments.

The Department of Health proposes to de-regulate such services when they are used for non-surgical treatments. The reasoning for this is that such treatments are cosmetic rather than health related and that they are undergone voluntarily and privately. It is suggested that people who seek such cosmetic treatments should take extra steps to ensure that their treatments will be safe.

We understand that the Department of Health's reasoning: it wants to concentrate its resources on what it sees as more genuine healthcare needs and simply does not see cosmetic treatments as an area that it should be concerned with. We do not however believe that this makes the proposal right.

Prevention is better than cure

We believe that the Healthcare Commission should continue to regulate lasers and intense light sources for cosmetic purposes because it is the right thing to do. The consultation paper recognises that an additional 1700 to 3400 people will get hurt as a result of deregulation and that this will have an increased cost for the NHS. We believe it is better to prevent these people being needlessly injured in the first place rather than attempting to deal with the problem through allowing extra room within the NHS budget.

Better regulation

The Department for Business, Enterprise and Regulatory Reform says "the Government's better regulation agenda aims to eliminate obsolete and inefficient regulation, create user-friendly new guidelines and tackle inconsistencies in the regulatory system."¹

The five principles of good regulation, BERR says, are that any regulation should be:

- transparent
- accountable
- proportionate
- consistent and
- targeted – only at cases where action is needed².

¹ <http://www.berr.gov.uk/bre/policy/page44059.html> as at 3 June 2008

² <http://www.berr.gov.uk/bre/index.html> as at 3 June 2008

We submit that adherence to these principles would mean that the Healthcare Commission (for the time being, and the Care Quality Commission, once this replaces the former) should continue to regulate laser and intense pulsed light treatments for non-surgical treatments. The reasons for this are set out below.

Regulation is needed

The use of lasers and intense light treatments is potentially dangerous. The consultation paper itself recognises this. It states some lasers and intense pulsed lights *“are powerful devices which, if faulty or used incorrectly, have the potential to cause serious injury to those operating them, recipients of the treatment and persons in the vicinity, and to ignite flammable materials”* (page 31 of the consultation paper).

The fact that a laser is used for cosmetic rather than surgical purposes does not make it any less dangerous. Laser use can cause burns and other damage to the skin, leaving people scarred or with mottled skin. This risk is not theoretical, it is real. APIL members have told us of several cases in which their clients have suffered injuries as a result of cosmetic laser treatments that have gone wrong, and the consultation paper itself estimates that the 850 businesses it regulates have an adverse incident rate of 1 per cent, meaning that 3,400 people are year are currently injured as a result of laser or intense light treatments.

We therefore believe that there is a very strong case for the use of laser and intense pulsed light treatments to be regulated by statute.

Regulation would be consistent

The Department of Health has taken the view that as the use of the treatment for non-surgical purposes is cosmetic and voluntary, the Healthcare Commission does not need regulate it and regulation of the industry will cease.

This proposal is inconsistent with other Government policies on the issue. The HSE, for example, currently proposes to regulate the use of sun beds, the use of which is also voluntary and cosmetic. In addition, Lord Hunt of Kings Heath, the then Health Minister, announced in April 2007 that the cosmetic surgery industry had been asked to regulate the use of botulinum toxin (botox) and dermal fillers, but that he would not rule out statutory regulation of this area if it became necessary in the future³.

To be considering deregulating one area of cosmetic treatments whilst introducing regulation for others is wholly inconsistent. The Department of Health may feel it is not the Healthcare Commission's responsibility to regulate such an area, but to simply deregulate rather than passing the responsibility to another more suitable Government department is not acceptable.

Regulation would be proportionate

The Department of Health calculates that the cost of regulation for the Healthcare Commission is cost neutral (the £1.33 million in administrative costs being met by fees) but the cost to those applying for regulation is £9.6 million. Therefore deregulation will not save the Commission any money, but will save those applying for regulation £9.6 million.

In addition, deregulation would cost the NHS an estimated additional amount of between £900,000 and £1.8million. Even on these figures, deregulation would cost the taxpayer significantly more than regulation does. We believe, however, that the figures for the additional cost to the NHS may be too low.

The figures given for the estimated increase in adverse incidents arising from deregulation are, based on an assumption, but there is no reasoning behind this.

³ Department of Health press release, 25 April 2007

In addition, the assumed increase in the number of adverse incidents is calculated with reference to the current number of regulated establishments. It does not consider the effect of new providers entering the market, which is likely to happen in a growing industry which suddenly becomes easier to enter as a result of deregulation.

These providers are likely to increase the numbers of adverse incidents for two reasons: firstly, the sheer number of treatments given will rise, and secondly, they are less likely to adhere to the safety standards and minimum requirements which were required whilst the industry was regulated.

Regulation is therefore more proportionate for the tax payer than deregulation, as it will cost the tax payer less.

The cost of regulation will fall on the providers and ultimately the end user. Surely it is much more proportionate to require recipients of these voluntary, cosmetic treatments to pay a small sum to ensure their own safety?

Regulation would be transparent and accountable

The general structure of the Healthcare Commission would mean that the continued regulation of lasers and intense light sources for cosmetic purposes would be transparent and accountable.

Legitimising unregulated practices

In 2007, the consumer group Which? said there were around 3,000 unlicensed and unregulated providers of laser hair removal in the UK⁴. The deregulation of the industry would legitimise all these practices immediately.

⁴ Which? Press release "Don't mix sun and laser hair removal" 24 August 2007

The very fact that these businesses are currently operating demonstrates that those operating them either do not know about the requirement to be regulated or do not care that they are breaching this. This approach to client safety is not likely to improve once the industry is deregulated and clients will be put at risk as a result.

The Department of Health's proposals to mitigate the effects of deregulation

The Department of Health proposes that its website will make clear that the use of lasers and intense light sources for cosmetic purposes is no longer regulated, and that people seeking these treatments will therefore need to take extra steps to satisfy themselves about the quality and appropriateness of the treatment they will receive. This is expected to mitigate the effects of deregulation.

We believe that this is an unrealistic expectation for three reasons. Firstly, people proposing to undertake cosmetic treatment would be unlikely to check the Department of Health website for advice as they would have no reason to do so, particularly if they knew the sector was unregulated. Secondly, the general public's view may be that if the Government has chosen not to regulate something, it is not dangerous. Finally, even the most responsible and well resourced individual will surely not be able to carry out the checks on their provider that the Healthcare Commission is currently able to do.

The consequences of deregulation

We believe then that the proposals to deregulate the use of lasers and intense pulsed light sources for cosmetic use will be dangerous for consumers. The consultation paper itself identifies that this equipment is potentially dangerous and there is a risk of injury if used incorrectly. There is no other suitable Government body which regulates the use of such equipment for cosmetic use, nor is there an active voluntary organisation which the majority of providers of this treatment are members of. APIL believes that the proposed deregulation is therefore unacceptable and urges the Department of Health to reconsider its position on this issue.