

BAAPS

Definition of Surgery

1 INTRODUCTION:

BAAPS has been contacted a number of agencies recently and asked to provide clarification on the definition of a surgical procedure and who is legally permitted to perform them.

It became apparent to us, in the conduct committee, that there does not seem to be a clear definition of a surgical procedure. The boundary between an unregulated cosmetic treatment and a regulated surgical operation, has not been reasonably defined. Furthermore, people are seeking our expertise in this matter.

It is a reasonable stance for the BAAPS to describe the difference between a cosmetic treatment, not regulated by the CQC and a surgical operation regulated by the CQC (and therefore, necessarily, performed by a licenced practitioner), is surgical if it involves the following four elements:

1. The surgery creates an obligatory harm to the patient caused by the physical destruction of tissue which is of such magnitude that:
2. Anaesthetic is required to prevent distress to the patient whilst that obligatory harm is being created and repaired and
3. The consequences of that physical destruction of the tissue are sufficiently significant that the healing process requires specialist interventional skills, such as suturing or medical supervision of wound care, such as dressings to complete the healing process and may require licenced medical knowledge, such as the ability to prescribe analgesia or antibiotics.
4. An intention to treat is present that justifies the obligatory harm created by this action; that is to diagnose or treat a medical condition or to improve or restore form or function. Having a cosmetic or aesthetic intention behind such a procedure does not make it a non-medical act.

We would like to establish a BAAPS opinion of this which has been agreed by the BAAPS.

2 BACKGROUND

Below are a few of the questions we have been asked and the answers given. They have been given in a personal capacity but with our petition growing it would be sensible to have a view supported by the BAAPS council and possibly in time the membership. The questions we have been asked to clarify (surprisingly) have been:

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Who can perform surgical procedures?

Answer:

It is a requirement for a doctor to be registered with the GMC to perform surgical procedures. The Medical Act 1983 sets out the General Medical Council's role in protecting the public and maintaining confidence in the medical profession. The GMC sets out the conditions doctors need to achieve and adhere to in order to treat the public and that is managed by the GMC Register, a list of all those doctors who have and are, fulfilling those conditions. If you are not registered you cannot treat patients as a doctor.

In addition surgical procedures are also subject to regulation by the Social Care Act 2008, through regulation laid down by the Care Quality Commission (CQC). This means, by law, doctors need to use a premises registered by the CQC when performing surgery.

If the question is asked in a different way: Are all surgical procedures performed by doctors?

Then answer is no. There are some procedures or parts of procedures performed by nurses, such as midwives and Surgical Care Practitioners (SCP). Midwives are licensed to surgically repair damage to the perinium caused by child birth and SCP are specially trained nurses who work in surgical theatres. These nurses still need to be registered with the National Nurses and Midwifery Council. SCPs have procedure competencies set by the Royal College of Surgeons and are supervised by surgeons. All of their activity is supervised by doctors and takes place in CQC regulated environments. Podiatrists are also regulated to perform surgery in defined areas.

What if a non licenced person performs a surgical procedure calling it "cosmetic" or "aesthetic" and therefore claiming that it is not surgery?

Answer:

Doctors perform examinations and surgeries which would ordinarily be subject to criminal prosecution if performed by an unlicensed person. Healthcare acts carried out by licensed medical practitioners (such as cutting a patient) should be viewed from a medical perspective and that, in our opinion, creates the safe medical space, for licensed doctors to practice medicine and to safely perform acts which, if done outside a licensed medical context, would ordinarily be subject to criminal prosecution. Therefore, in my opinion, the threshold for considering a criminal prosecution is different between a licensed doctor and a lay person when performing the same intimate examination or destructive procedures in the name of healthcare. Public confidence in the medical profession is maintained the licencing system fulfilling the aim of the Medical Act 1983. The argument that something is "cosmetic" and



therefore “non medical” is a false one as we argue we are doing these surgeries for medical reasons, ie for the overall welfare of the patient and having a cosmetic or aesthetic intention behind such a procedure does not make it a non-medical act.

What is the definition of a “surgical procedure”.

Answer:

The Royal College of Surgeons of England (RCS) does not provide a definition of surgery in specific terms, neither does the GMC. The RCS does define the types of surgery and separates elective surgery from emergency surgery.

The American National Institute of Health defined surgery as:

“A procedure to remove or repair a part of the body or to find out whether disease is present. Also called operation”

The American Medical Association (AMA) adopts the following definition of 'surgery' from American College of Surgeons Statement ST-11:

“Surgery is performed for the purpose of structurally altering the human body by the incision or destruction of tissues and is part of the practice of medicine. Surgery also is the diagnostic or therapeutic treatment of conditions or disease processes by any instruments causing localized alteration or transposition of live human tissue which include lasers, ultrasound, ionizing radiation, scalpels, probes, and needles. The tissue can be cut, burned, vaporized, frozen, sutured, probed, or manipulated by closed reductions for major dislocations or fractures, or otherwise altered by mechanical, thermal, light-based, electromagnetic, or chemical means. Injection of diagnostic or therapeutic substances into body cavities, internal organs, joints, sensory organs, and the central nervous system also is considered to be surgery (this does not include the administration by nursing personnel of some injections, subcutaneous, intramuscular, and intravenous, when ordered by a physician). All of these surgical procedures are invasive, including those that are performed with lasers, and the risks of any surgical procedure are not eliminated by using a light knife or laser in place of a metal knife, or scalpel.

Patient safety and quality of care are paramount and, therefore, patients should be assured that individuals who perform these types of surgery are licensed physicians (defined as doctors of medicine or osteopathy) who meet appropriate professional standards.”

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In our opinion, the UK's current regulatory framework for surgery is also provided by the CQC because they have defined those procedures which have to be performed in a CQC registered premises and those which do not. This, we believe, becomes a de facto definition of surgical versus non-surgical treatments. The definition revolves around the obligatory harm caused by certain procedures or techniques, rather than the indication for them.

Treatments given for purely cosmetic reasons are not regulated by the CQC. Crucially however any activity which involves the use of *“equipment or instruments which are inserted into the body or when there is a cut to the body”* is required to be regulated by them, irrespective of the indication.

Procedures which result in removal or destruction of tissue but are not regulated by the CQC are: Nail surgery, curettage (or scraping), burning or freezing of warts or other skin lesions and laser hair removal. All of these procedures (not regulated by the CQC) cause an “obligatory harm” that is very minor, such that they can be done without any anaesthetic and do not require the obligatory harm to be repaired or treated in a specialised medical way, hence why they are not regulated by the CQC and do not need a doctor to perform them.

Also not regulated by the CQC are: Piercing, tattooing, subcutaneous injections to enhance appearance or removal of hair or minor skin blemishes by heat or electric current. Botulinum toxin, chemical peels and dermal fillers are also not regulated by the CQC. Some of these procedures, not regulated by the CQC, can be provided by beauty therapists, though some injectables need a prescription provided from a doctor or potentially a prescribing nurse. There is a voluntary code of conduct for beauty therapists and a large number of different training diplomas are available.

It follows, therefore, that treatments of magnitude greater than the “laser hair removal” or “minor skin blemishes” which the CQC describe as not needing regulation by them should be carried out in a CQC registered environment.

3 SUMMARY

In the absence of any other test is it a reasonable stance for the BAAPS to describe the difference between a cosmetic treatment, not regulated by the CQC and a surgical operation regulated by the CQC and therefore, necessarily, performed by a licenced practitioner, if it involves the following four elements:?

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1. The surgery creates an obligatory harm to the patient caused by the physical destruction of tissue which is of such magnitude that:
2. Anaesthetic is required to prevent distress to the patient whilst that obligatory harm is being created and repaired and
3. The consequences of that physical destruction of the tissue are sufficiently significant that the healing process requires specialist interventional skills, such as suturing or medical supervision of wound care, such as dressings to complete the healing process and may require licenced medical knowledge, such as the ability to prescribe analgesia or antibiotics.
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Sources

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