

5 December 2008

Mr Gavin Jones
Director
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Jones

Submission by ASPS to the ACCC

Thank you for your letter of 14 November 2008. The Australian Society of Plastic Surgeons Inc ("**ASPS**") appreciates the opportunity to comment upon the authorisation application which has been made by the Australasian College of Cosmetic Surgeons (**ACCS**) regarding its Code of Practice and certain of its By-laws.

The comments of ASPS are set out below.

1. Introduction

- 1.1 Whilst the Australian Competition & Consumer Commission (**ACCC**) has a comprehensive knowledge in relation to the role played by the Royal Australasian College of Surgeons (**RACS**) and ASPS,¹ it is considered that it may be of assistance to summarise the roles of RACS, ASPS and ACCS before commenting on the authorisation application by the ACCS.
- 1.2 **RACS-** was formed in 1927 as a non-profit organisation training surgeons and maintaining surgical standards in Australia and New Zealand. Approximately 90% of all surgeons practising in Australia and New Zealand are Fellows of the RACS. These surgeons have been trained by the College through its *Surgical Education and Training program*. The College's purpose is to be the unifying force for surgery in Australia and New Zealand with FRACS standing for excellence in surgical care.²

¹ Report to Australian Health Ministers - Review of Australian specialist medical colleges by ACCC and AHWOC - July 2005, Determination by the ACCC in relation to authorisation application by RACS - 30 June 2003, Submission by ASPS to ACCC in response to complaint made about it in relation to advertisement placed by ASPS in the yellow pages - 12 May 2003

² Website of RACS - "*Overview*"

- 1.3 RACS is accredited by the Australian Medical Council (**AMC**) for delivery of specialist medical education and training and professional development programs. RACS complies with the standards that the AMC requires of providers of a specialist medical education and training. These standards can be viewed on the AMC website.³
- 1.4 **ASPS** - was formed in 1971. It is a not for profit membership organisation representing plastic surgery in Australia. Plastic surgery incorporates plastic and reconstructive **and cosmetic surgery**. ASPS promotes, develops and advances the practice of plastic surgery throughout Australia.
- 1.5 ASPS aims to maintain the highest standard of surgical practice and ethics in plastic surgery in Australia in order to provide the highest quality plastic surgery care to all Australians.
- 1.6 All members of ASPS have the following attributes:
- Members are bona fide specialist plastic surgeons who are in full-time plastic surgery practice.
 - Members have undertaken a minimum of 12 years education and training.
 - Members have undertaken at least 7 years of training after the completion of medical school.
 - The *Plastic and Reconstructive Surgery Training Program* requires a minimum of 5 years specialist surgical education and training.
 - Medicare Australia recognises all ASPS members as specialist plastic surgeons.
- 1.7 ASPS is authorised by RACS to administer post graduate surgical training programs for the specialty of plastic and reconstructive surgery. ASPS also plays an important role in organising scientific meetings and seminars about plastic and reconstructive surgery including cosmetic surgical procedures and treatments.
- 1.8 ASPS has been at the forefront of developments in relation to plastic and reconstructive surgery including cosmetic surgery for many years. In 1999 ASPS played a significant role in briefing the *Cosmetic Surgery Committee of Enquiry* established by NSW Minister for Health. In more recent times it has been involved in the following:
- ASPS was represented at the NSW Health Department consultative meeting held in Sydney on 11 December 2007 regarding a review of the regulation of cosmetic surgery advertising in NSW. This consultative process resulted in the recent legislative change to: *Medical Practice Amendment (Advertising) Regulation 2008* which strengthens the advertising regulations around medical advertising for cosmetic surgery. The new regulations also require a 3 month cooling off period for people under the age of 18 years.
 - ASPS was consulted in relation to the *Queensland Health Legislation (Restriction on Use of Cosmetic Surgery for Children and Another Measure) Amendment Bill 2008* and in particular in relation to the list of cosmetic procedures not allowable for under 18s.
 - ASPS participated in a consultative forum in Melbourne in 2007, and on 16 July 2007, ASPS made a submission to Medical Practitioners Board of Victoria regarding: *Advertising Guidelines Review in relation to medical advertising and public benefit*.
- 1.9 **ACCS**- was established around the same time as the Committee of Enquiry into Cosmetic Surgery was established in 1999. Of the list of members **attached** to the ACCS authorisation application (approximately 150) there are believed to be some 12

³ Website of RACS under "Training"

members who are FRACS and 4 members who are Fellows of the The Australasian College of Dermatologists.

- 1.10 The vast majority of the 150 members of the ACCS are general practitioners who practise in the area of cosmetic surgery.
- 1.11 At present, membership of the ACCS is not recognised by Medicare. Any accreditation which the ACCS currently provides its members does not have any significance as far as medicare rebates are concerned.
- 1.12 The ACCS has applied to the AMC for cosmetic surgery to be considered a specialty in its own right. As to whether that it is appropriate and in the public interest is an issue for discussion for another day, but the ACCS authorisation application should be seen in the context of these facts.

2 **Comments in relation to the ACCS authorisation application (No. A91106)**

- 2.1 It is noted that views of ASPS are sought on the likely public benefits and effect on competition, or any public detriment from the proposed arrangements.
- 2.2 At the outset, ASPS states that it does not consider that the authorisation application in question is likely to have an adverse effect on competition or any particular public detriment.
- 2.3 Unlike the RACS, the training and accreditation role said to be performed by the ACCS is not currently formally acknowledged or recognised by the AMC. Whether or not a specialist or other medical practitioner is a member of the ACCS is not presently regarded by ASPS as of financial or professional significance, and ASPS therefore does not see any serious scope for competition issues or public detriment arising from the matters the subject of the authorisation application.
- 2.4 Notwithstanding the above, ASPS considers that certain statements made in the authorisation application itself are inaccurate and should be corrected as a matter of public record. It also has some comments which may be helpful to the ACCS in developing its By-laws. These are dealt with under separate headings below.

ACCC (sic) ethical commitments and actions in meeting its Objects

- 2.5 The ACCS states on page 2 of the attachment to its authorisation application under the above heading , the following:

"ACCS has implemented recommendations of the 1999 NSW Enquiry into Cosmetic Surgery specifically:

- (i) *Developed a standard for recognition of skill and competence in cosmetic surgery.*
- (ii) *Established standards of training and practice benchmarks."*

- 2.6 **Recommendation 1** of the Cosmetic Surgery Report - October 1999 (**the Report**) stated the following:

"1(a) A Cosmetic Surgery Credentialing Council (CSCC) be established for all registered providers of cosmetic surgery procedures to provide independent and accountable verification of qualifications and training. The Council would have the following features:

- *Provision of reliable information for consumers;*
- *Peer review, but independent of any particular guild or registration body;*
- *Industry funding, based on membership fees or subscriptions or levies;*
- *Voluntary membership, not affecting practitioners' rights to practice;*

- *Effective sanctions for members who fail to comply with credentialling requirements, including loss of credentials and publishing the provider's name where appropriate.*

"1(b) The CSCC expand membership to include unregistered providers of cosmetic surgery procedures within 2 years.

2.7 Recommendation 2 (a) of the Report was as follows:

"2(a) The CSCC establish credentialling committees of peers to make credentialling decisions. The credentialling process would be based upon the following principles:

- *Peer responsibility for credentialing on a non-discriminatory basis that requires the same standards for all providers, regardless of background training or specialty;*
- *Publish requirements for credentialling;*
- *Procedural fairness, including an appeal process for review of unfavourable decisions and a procedure for resolving conflicts of interests.*

2.8 Recommendation 11 of the Report was as follows:

"11 (a) The Cosmetic Surgery Credentialling Council provide the following information to the public about credentialled providers to address consumer uncertainty about the level of skill and qualifications of cosmetic surgery providers:

- *The provider's relevant qualifications, experience and whether or not credentialled with the Council;*
- *The provider's relevant training (as assessed by the Council);*
- *The extent of the provider's experience and clinical outcomes;*

The information should be made publicly available by the Council by telephone, website and any other appropriate methods.

11(b) Cosmetic surgery providers should give consumers the following information:

- *Their qualifications, credentials and training.*
- *Their experience in performing the procedure(s);*
- *The number of times they have performed the procedure recently;*
- *Their clinical outcomes and number of adverse events.*

2.9 Recommendation 6 of the Report was as follows::

"6. Medical practitioners performing invasive cosmetic surgical procedures should have adequate surgical training, being that required for Fellows of the Royal Australasian College of Surgeons or equivalent (majority view)".

2.10 The statement by the ACCS that it has implemented the recommendations of the 1999 NSW Enquiry into Cosmetic Surgery in the abovementioned respects is misleading to the extent that it could be thought by the reader that the recommendations in question had been and were capable of being, implemented by the ACCS. Any such inference is of course, inaccurate as the recommendations as set out above were for **an entirely independent body** namely the *Cosmetic Surgery Credentialling Council* which was recommended be established and sponsored by the NSW Department of Health. It should be emphasised that the membership structure of the CSCC was to be

representative and accountable to **all stakeholders** in the industry. Regrettably to date, Government has not implemented the key recommendations of the Report.

- 2.11 On page 3 of the attachment to the authorisation application, the ACCS states that the ACCS:

"Is recognised in legislation in Queensland as the appropriate peer group to be consulted when any doctor applies for hospital operating rights in cosmetic surgery".

- 2.12 ASPS is interested in this representation. It is unable to locate any legislation in Queensland which recognises the ACCS as the appropriate peer group to be consulted in relation to hospital operating rights in cosmetic surgery.

- 2.13 It would appreciate having the reference to the legislation or delegated legislation to which the ACCS refers.

- 2.14 It is noted that in Queensland there is a set of **policy guidelines** which provide for all members of credentials and clinical privileges committees to be comprised of medical practitioners. Further that such members should be chosen so as to ensure that recommendations are based upon adequate knowledge of the requirements of the position and are free from bias in relation to any applicant. The composition of the committee should also include a representative from a nominated College where appropriate. The Colleges listed in the 2002 guidelines include RACS, RACGP and the RACP. The ACCS is not listed in the 2002 guidelines.⁴

- 2.15 On page 6 of the attachment to the authorisation application, the ACCS states:-

"It is noted that ASPS has a limited code of ethics and limited sanctions for unprofessional conduct".

- 2.16 To the extent to which the reader would draw an inference that ASPS does not have a comprehensive code of ethics and does not have the power to impose a wide range of sanctions on its members, any such suggestion is misleading. ASPS has for decades had a Code of Ethics and a mechanism for imposing a range of sanctions upon its members who infringe its Code of Ethics or otherwise act in a manner requiring disciplinary action. Sanctions that may be imposed against members of ASPS include amongst other things: caution, reprimand, suspension or removal from ASPS. This disciplinary framework has operated successfully for many years.

3 **Comments in relation to the ACCS Code of Practice and By-law clauses 2, 6.6 and 10**

- 3.1 In Clause 6.6 of the By-laws it is stated that no qualified member shall conduct any advertising which:-

*"(a) **improperly** denigrates the business work or reputation of any other member or members". [our emphasis]*

- 3.2 The implication from this advertising rule is that there may be some circumstances in which it would be proper to denigrate the work or reputation of other members of the ACCS. The ACCS may wish to review this clause.

- 3.3 In clause 10 which deals with complaints and appeals, clause 10(b)(iii) refers to a matter being referred for consideration to:-

*"any other committee of two or more convened by a council for the **purpose**".*

⁴ Queensland Government - Credentials and Clinical Privileges - Guidelines for Medical Practitioners - July 2002 (see paras 5.1 to 5.3). These guidelines are commented upon in the Queensland Public Hospital's Commission of Inquiry Report Nov 2005 - see in particular paragraphs 6.176 and 6.180 to 6.182.

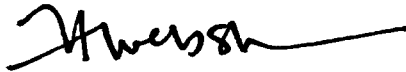
The ACCS may wish to consider qualifying what the purpose is.

- 3.4 Clause 10 provides for an appeal from a decision of the Council. The mechanism provides that the Council will establish a relevant committee to provide recommendations in relation to the Council's earlier decision and the Council will then review its decision in light of the report from the review committee. In essence the Council will be the final arbiter of any appeal made against it.
- 3.5 It is suggested that such an appeal mechanism is flawed, as the body making the decision and determining the appeal from the decision, is one and the same. It may reasonably give rise to an apprehension by members, that the Council is conflicted in reviewing its own decisions. It is suggested that the ACCS may wish to give consideration to reviewing this appeal mechanism.
- 3.6 The ACCS may also wish to consider including in its constitution, a provision which provides its governing body with a discretion to refer a complaint to a medical registration board in the event that a complaint is of a sufficient nature to constitute "*professional misconduct*" (under state legislation) against the practitioner concerned. This may be of assistance in relation to serious complaints.

4 **Conclusion**

- 4.1 ASPS appreciates the opportunity extended by the ACCC to comment upon the ACCS authorisation application and would be happy to provide any further input to the ACCC if requested.

Yours sincerely



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President