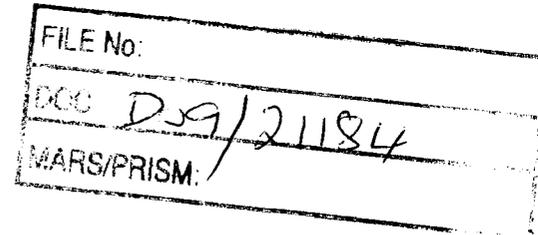
Your Ref
Our Ref MWG 159576Contact
Michael Gorton
Tel 61 3 9609 1625
Fax 61 3 9609 6825
mgorton@rk.com.au

3 March 2009

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

Dear Sir

**Australasian College of Cosmetic Surgery ('ACCS') - Application for Authorisation
Royal Australasian College of Surgeons ('RACS')**

On behalf of the RACS we acknowledge receipt of your correspondence to the President of 20 February 2009 enclosing a draft determination in respect of the application for Authorisation lodged by the ACCS.

The RACS fully supports the draft determination and the proposed decision by the ACCC to deny Authorisation to the application. The RACS supports the conclusion by the ACCC that it is not satisfied with the conduct for which Authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the arrangements.

The RACS also notes the proposal by the applicant to submit a substantially amended Code, in an attempt to take into account the issues that have been raised by the ACCC. We note the conclusion by the ACCC that:

"However, even if only those changes which the College has indicated it is willing to consider were adopted, this would require a substantial rewrite of the Code. While the ACCC is able to grant authorisation subject to the conditions, the authorisation process is not the appropriate forum for significant revising of Codes of Conduct to be undertaken through the ACCC imposing conditions on the authorisation."

The RACS also supports this conclusion. The proposal by the ACCS amounts to an attempted negotiation "on the run" with the ACCC, seeking to determine the most minimum changes to the Code which may be acceptable to the ACCC in order to secure an Authorisation, for which a conclusion has already been reached that it does not contain the necessary public benefits.

As already concluded by the ACCC, a substantial revision of the Code should be not undertaken through this process.

Additionally, given the publicly announced decision by the ACCS to provide a new Code, with substantial revisions, we note that the current process would not allow sufficient time for all interested parties to consider, comment, and make submissions in relation to it. This application has already undergone substantial public consideration. A substantially revised Code, taking into account all of the issues that have been raised through this process, would in effect be a new application. Accordingly, we believe that the ACCC should reject any suggestion that the ACCS can simply

provide a substantial revision of its Code, and expect consideration by the ACCC through this current process. The ACCS should, to the extent that it wishes consideration of an application in relation to a substantially revised Code, make a new application. Then, the appropriate public comment and consideration can take place in the usual manner, and the ACCC can undertake its usual public consultation processes, given that it is a substantially different application from that already lodged.

In the event that the ACCC proposes to continue with its current process, in relation to the substantially revised Code, then we believe that there should be a further substantial period of time to enable public consultation, and the making of submissions by all interested parties, similar to the timeframes originally allowed for the original application. Otherwise, the ACCC would be subject to accusations that it has failed to allow sufficient transparency and fairness in relation to the handling of any amended Code.

We look forward to the ACCC's further decision in this regard in due course.

Yours faithfully
RUSSELL KENNEDY



Michael Gorton
Principal

Cc: David Hillis, RACS