

**Blanch, Belinda**

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**From:** Jones, Gavin  
**Sent:** Monday, 16 March 2009 9:29 AM  
**To:** !Adjudication Administration Team  
**Subject:** FW: ACCS APPLICATION FOR AUTHORISATION- AMENDED CODE OF PRACTICE [SEC=UNCLASSIFIED]  
**Importance:** High  
**Categories:** SEC=UNCLASSIFIED  
**Attachments:** acccs code authorised final final.doc  
**ACCC Classification:** SEC=UNCLASSIFIED

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**From:** Hank Spier [mailto:spierconsulting@netspeed.com.au]  
**Sent:** Sunday, 15 March 2009 10:38 PM  
**To:** Chadwick, Richard  
**Cc:** spierconsulting@netspeed.com.au; Jones, Gavin; 'Daniel Fleming'  
**Subject:** ACCS APPLICATION FOR AUTHORISATION- AMENDED CODE OF PRACTICE  
**Importance:** High

Dear Dr Chadwick,

As promised, I attach a re drafted version of the ACCS Code of Practice.

The Code has been amended taking in the Commission's suggestions and comments made in its Draft Determination.

There are two full weeks prior to the pre decision conference. I ask that you please send this document to the interested parties immediately as that will give them reasonable time to assess and comment on the amended version of the Code. I note that two organisations have already raised the issue of the time that may be needed to consider any amended version.

I suggest that interested parties be asked to give any written comments before the pre decision conference so that we can consider any comments before the PDC.

Further, as I have mentioned before, the ACCS would welcome any informal comments by the ACCC on the amended version.

Yours truly,

Hank Spier



## **The Australasian College of Cosmetic Surgery**

***Raising Standards, Protecting Patients***

***[www.accs.org.au](http://www.accs.org.au)***

### **CONSUMER/PATIENT CODE OF PRACTICE**

#### **A. Introduction**

Membership of the Australasian College of Cosmetic Surgery (ACCS) provides patients with an assurance that ACCS Members meet the highest standards. The aim of this Code is to protect the public by making these standards transparent and ensuring that they are met. The Code also establishes transparent complaints and external adjudication processes.

The ACCS is currently the only body in Australia which trains, examines and annually recertifies cosmetic surgeons and physicians.

The ACCS promotes and endorses truthful, ethical and informative advertising, and the provision of appropriate information to patients and potential patients. It also requires a face to face consultation with the Member offering a procedure before any procedure is undertaken. These processes are designed to ensure patients are provided with comprehensive advice allowing them to make fully informed decisions before consenting to undergo a cosmetic procedure.

The ACCS favours national regulation of cosmetic medicine and surgery with recognition by the Australian Medical Council (AMC) of a separate specialty of Cosmetic Medical Practice. Currently there is no such mechanism and the AMC has not assessed the bona fides of the cosmetic training of **any** qualification including those of plastic and reconstructive and other surgeons qualified by the Royal Australasian College of Surgeons.

An application to the AMC by the College for such recognition has been accepted by the AMC for full assessment. The formal recognition of this separate specialty will not automatically recognise any qualification or training body. It will however provide a framework whereby all practitioners of cosmetic procedures will be able to have their training and qualifications properly assessed and accredited by the AMC. In the absence of a national approach the ACCS Code is the sole set of formal standards specifically developed to protect cosmetic surgery and cosmetic medical patients.

Whilst all medical practitioners must adhere to relevant laws and guidelines, which vary from state to state, the Code highlights those responsibilities and sets additional and higher standards for Members of the ACCS.

To assist in compliance with laws and guidelines, the ACCS will provide Members with a guide of their overall responsibilities to consumers and to each other.

## **B. Interpretation**

**“Advertising”** applies to all promotional material and is to be interpreted broadly. It includes websites and all electronic media. It also includes any advertising carried out on behalf of a Member and conduct by a Member’s employees or agents or representatives. Those representatives include any third parties acting on behalf of members.

**“Cosmetic Medical Practice”** is defined by the College as operations, procedures and treatments that revise or change the appearance, colour, texture, structure or position of normal bodily features with the sole intention of improving the patient’s appearance or self-esteem.<sup>1</sup> It includes non-surgical cosmetic medical procedures and cosmetic surgical procedures.

**“FACCS”** means a Fellow of the Australasian College of Cosmetic Surgery.

**“FFMACCS”** means a Fellow of the Faculty of Medicine of the Australasian College of Cosmetic Surgery.

### **C. Code Administration Committee**

There will be a Code Administration Committee, comprised of at least 3 members. There is to be an independent Chair, being someone with experience of developing codes. Another member is to be a consumer representative nominated by an organisation such as the Australian Consumers Association. Further there is to be at least one member representing the College.

The Committee will review the Code tri-annually and report to the College on its review. It is able to make recommendations to the ACCS about the Code and its administration.

In its review the Committee shall consult with relevant regulatory bodies.

In its review the Committee will have access to matters considered by the Complaints Panel and the Appeals Committee.

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<sup>1</sup> Adapted from definition adopted by the UK Department of Health. *Expert group on the regulation of cosmetic surgery: report to the Chief Medical Officer*, January 2005, p. 3. And see e.g. *Provision of cosmetic surgery in England: Report to the Chief Medical Officer Sir Liam Donaldson*, 2004.

The College will adopt the recommendations of the Committee unless it gives written reasons why a recommendation is not accepted.

The review and the ACCS response will be placed on the ACCS Website and will be submitted to the ACCC.

The ACCS must collect and keep data that will assist the Code Administration Committee in its reviews.

## **The Code**

### **1. General Considerations**

Australasian College of Cosmetic Surgery Members have a duty to the public and to each other. That duty is not a duty to legal minima, but one that seeks to constantly improve standards and consumer welfare.

Members must:

- 1.1 practice with integrity and honour, in the best interests of their patients, with the patient's safety and quality of care being paramount;
- 1.2 conduct their professional affairs in accordance with all applicable laws, relevant professional guidelines and ethics, and in a manner that upholds the good reputation of the medical profession;
- 1.3 strive for the advancement of the speciality of cosmetic medical practice through research and development, ensure the maintenance of the highest standards through continued medical education and training, keep themselves up to date on legislative and ethical requirements relevant to being a medical practitioner and specialising in cosmetic procedures and

- 1.4 adhere to the College Constitution, By Laws and Codes.

In addition ACCS members must comply with the following guidelines:

## **2. Advertising and promotion**

- 2.1 Advertising must not contain false, misleading or deceptive statements, or create misleading impressions about the doctor or clinic or the services offered. It should provide balanced information on the procedures or products advertised and should not suggest these are risk free. Critical omissions can also be misleading.
- 2.2 Members must not mislead consumers about the need for any procedure.
- 2.3 Superlatives should not be used in any advertising unless they can be readily proven to be correct and as such are not misleading. For example, to claim that a particular breast implant has the “least” risk of a specific complication would be acceptable if true and supported by the peer reviewed literature. Such information is of value to consumers. To claim a practitioner is the “best” in any way is not permissible as it is a value judgement, not readily proven, which could mislead consumers.
- 2.4 Members must be able to substantiate any claims made in their advertising at the time the claims are made.
- 2.5 Comparative advertising should be used with caution. It can be valuable in conveying information to consumers but it must be correct and readily proven. For example, to claim a type of treatment is safer than another type of treatment is acceptable if true and supported by the peer reviewed literature. Again such information is of benefit to consumers.

- 2.6 Photographs may be used to display the results of treatment and or complications. 'Before and after' photographs should be presented with similar pose, presentation, lighting and exposure. Any uncomplicated results shown should be typical and be likely to be reproduced in a similar patient. Photographs must not be altered in any way other than to protect a patient's identity. 'Before and after' photographs must be of the advertising doctor or clinic's own patients and contain accurate and informative captions.
- 2.7 Testimonials should not be used in advertisements.
- 2.8 Medical or surgical procedures should not be offered as inducements or prizes in competitions or contests, or as a way of generating business.
- 2.9 Offers of gifts or other inducements shall not be used in order to attract potential clients.
- 2.10 Discounts for early payment should not be used as an inducement to commit to a procedure.
- 2.11 No Member will offer finance facilities as part of the services provided, except a credit card facility. In no circumstances should a Member accept any commission from a credit provider.
- 2.12 The College notes that in Victoria advertisements of a surgical (invasive) procedure shall include in a prominent place and in a visible fashion the following statement:

*"Any surgical or invasive procedure carries risks. Before proceeding, you should seek a second medical opinion".*

Whilst this is not mandatory in other States and Territories, Members advertising in other States and Territories are encouraged to use such a statement.

### **College and Certification logo and post nominals**

- 2.13 The College logo or relevant Certification logo may only be used by doctors who are currently accredited Fellows, or Fellows of the Faculty of Medicine of the College. Additionally, the Certification logo can only be used if the doctor is currently compliant with the College CME programme, as evidenced by the CME certificate.
- 2.14 If any doctor who holds an FACCS or FFMACCS wishes to perform any invasive surgical procedure for which he or she is not accredited by the College, then that doctor shall not be entitled to use their College post nominals, nor mention the College in any way which might be seen or heard by a patient considering undertaking such a procedure.

### **3. Guidelines for informed consent - applicable to all procedures**

- 3.1 Informed consent is a process, not simply the signing of a consent form. Members should give information about the risks of any intervention, especially those that are likely to influence the patient's decisions. Known risks should be disclosed when an adverse outcome is common even though the detriment is slight, or when an adverse outcome is severe even though its occurrence is rare.
- 3.2 All Members must make available to patients, before any procedure is agreed to, a College produced information brochure about cosmetic procedures. This must include information about what College

qualifications mean and also outline the College's complaints process. The brochure must inform patients how to obtain a full copy of this Code of Conduct. To the extent possible the same information is to be on the College's website and on Members' websites, either directly or via a link to the College's website. The brochure will contain information about other routes for patients to make a complaint; for example Medical Boards and statutory health care complaint bodies. The brochure will also advise patients that a second opinion is advisable before making any decision to have a procedure.

3.3 All Members must, before any procedure is agreed to, provide the patient with full disclosure of the fees and charges, and likely total cost of the procedure. Patients should be made aware that further costs could be incurred in the event of complications occurring.

3.4 Members must, before any procedure is agreed to, provide patients with information about:

- how and where the procedure is performed;
- who will be assisting in the procedure;
- possible complications and side-effects, their frequency and severity;
- any anticipated post operative scarring;
- whether the patient be required to go to a hospital;
- whether the patient will need to take time off work;
- the post-operative course and expected recovery time;
- possible alternative treatments where appropriate including the option of no treatment at all;
- the expected realistic outcome.

3.5 No procedure should take place unless the Member has consulted with the patient beforehand and has fully explained to the patient the procedure

and any associated risks. Patients should be encouraged to ask questions at this consultation.

- 3.6 If a Member offers an invasive procedure to a patient which that Member has performed less than 100 times previously, then the Member must disclose to the patient, at the initial consultation, how many times the Member has performed the procedure before.

**Guidelines for informed consent for more invasive procedures with a significant risk of an adverse long term outcome**

- 3.7 The guidelines described in this section are in addition to the rules concerning Members' conduct described above. These guidelines refer to invasive procedures which have a significant risk of an adverse long term outcome. They are not relevant to temporary fillers or botulinum toxin treatment for example, to which all statutory requirements and the additional requirements for ACCS members as detailed above apply. They would apply, for example, to laser resurfacing, chemical peels with the potential to affect the dermis and to permanent fillers.
- 3.8 The patient must have at least one consultation, with the Member performing the procedure before the day of surgery.
- 3.9 For geographical reasons it is sometimes impractical for patients to meet the doctor face to face for their initial consultation. In these circumstances it is acceptable for the patient to send photographs to the doctor and then for the doctor to have a telephone or video consultation with the patient. This can be considered to be the initial consultation with the doctor performing the procedure. If the patient elects to proceed, the doctor must see the patient face to face before the procedure, preferably at least one day before. It is accepted that there may be instances where, for logistical

reasons, this face-to-face meeting can only occur on the day of surgery, but this should not be considered the norm. If the face-to-face meeting, being the exception, does not occur at least a day before the procedure, the reason for this must be properly documented.

- 3.10 It must be clearly stated to the patient that, if either the doctor or the patient decides at that meeting not go ahead for any reason, then a full refund of any monies paid will be provided. If a cancellation fee from the anaesthetist and/or the hospital might be incurred, the patient must be advised of this prior to paying any monies.
- 3.11 If there is a consultation with someone other than the Member performing the procedure, this is not an acceptable substitute for the process described in 3.8, 3.9 and 3.10 above, which must still occur.
- 3.12 If the doctor is inexperienced in the specific procedure contemplated, either because the doctor is new to the procedure or because the procedure itself is new, this should be disclosed to the patient at the first consultation, as per the 100 case rule indicated above.
- 3.13 At the end of the initial consultation the patient should be provided with a procedure-specific consent form to consider at home.
- 3.14 The patient should be told, and it should be stated on the consent form, to contact the doctor, by telephone or at another consultation, if they have any questions or need clarification of the consent form.
- 3.15 If there is doubt about which procedure would be most appropriate for a patient, or if the patient is unsure about having the procedure, the desirability of a second opinion should be emphasised, reinforcing the advice in this respect contained in the information brochure.

3.16 Generally there should be a 'cooling off' period of at least five days between the initial consultation with the doctor performing the procedure and the procedure itself. It is accepted that there may be circumstances where, for practical reasons, this period may need to be shorter but it should never be less than one night. If the 'cooling off' period is less than 5 days the reasons for this must be properly documented and acknowledged by both the Member's and patient's signature.

#### **4. Post-Operative Care**

4.1 Each Member must:

- provide full and adequate post-operative care for their patients, including provision for emergency after-hours care. The post-operative surveillance should be appropriate for the magnitude of the surgery performed and to allow for early detection of and intervention in adverse outcomes; and
- provide adequate and appropriate on-going care, either by his or her own assessment and treatment, or by appropriate referral.

#### **5. Complaints Processes**

##### **5.1 Preamble**

The Rules dealing with the Complaints regime and disciplinary process adopt the concepts of natural justice. In this context ***natural justice***, also known as procedural fairness, has three main principles:

1. The Member complained of is provided with:

- a fair hearing;
  - all information within a reasonable timeframe required to answer the allegations made against him/her; and
  - an opportunity to respond to all allegations or decisions affecting him/her and;
  - their response is genuinely considered.
2. The decision maker is impartial; and
  3. The Complainant must be kept properly informed at all times.

## **Complaints**

- 5.2 All complaints must be in writing.
- 5.3 If a complaint is made to the College in writing that a Member has allegedly breached any part of the Code of Practice, the complaint will be handled in accordance with the procedures set out in the Code.
- 5.4 Upon the receipt of a written complaint the College will refer the complaint to the Chairman of the Complaints Panel.
- 5.5 On receipt of a written complaint, the College shall advise the Complainant and the Member involved in writing within 7 days that the matter has been referred to the Chairman of the Complaints Panel
- 5.6 The Chairman of the Complaints Panel shall not refer the matter to the Panel if:
  - (a) the Complainant does not agree, in writing, that their identity can be revealed to the Member complained of, unless that their identity is not necessary for the Panel to investigate the matter;

(b) the information provided by the Complainant does not allege nor disclose a breach of the Code;

(c) it is more appropriate that the complaint be dealt with by a Court or an external complaints, disciplinary, conciliation, or arbitration body or procedure;

(d) the Complainant is seeking compensation or reimbursement only and is not alleging that a Member has been in breach;

(e) the act or omission giving rise to the complaint occurred before the date of commencement of the relevant ACCS Rules;

(f) the subject matter of the particular complaint was comprised in a same complaint by the same person (or any one or more of them) previously considered by the Complaints Panel and finalised;

(g) the complaint is against a non ACCS Member;

(h) the matter is being handled by a medical insurer; or

(i) the Chair of the Panel is of the view that the matter is frivolous or vexatious.

5.7 If, in the view of the Chair of the Panel, the breach is of minor nature and can be dealt with by advice to the Member the complaint will not be referred to the Panel. The Chair will inform the Complainant in writing of this decision and advise the Complainant that if he or she is not satisfied with this outcome the Complainant can insist the complaint be referred to the Complaints Panel and this then must occur.

5.8 Any complaints resolved under the process described in 5.7 above are to be included by the Chairman of the Complaints Panel in the annual report described in Section 8 below.

### **Complaints Panel**

5.9 The College Council will appoint a Complaints Panel. The role of the Panel is to consider complaints against an ACCS member alleging breaches of the ACCS Code.

5.10 The Panel shall have a minimum of three members at least one of whom shall have legal qualifications and at least two of whom shall not be a Member of the ACCS. The Chair of the Panel will be independent of the ACCS and shall have legal qualifications. At least one of the members shall be an ACCS Member.

5.11 No Member who is in any way concerned with the matter in question, or who is connected in any business entity, firm, corporation, or department with the Member accused or the party who originated the complaint, shall be a member of the Panel.

5.12 Panel processes must be conducted in private.

5.13 The Member complained of may be legally represented before the Panel, provided that:

(a) the Panel is advised not less than 5 days prior to the date set down for any hearing of the intention of the particular party to have legal representation, and the name and contact details of each such legal representative, and

- (b) the Panel may, if it is satisfied that legal representation has served or may continue to serve to delay the hearing of the matter, terminate the right of the party to have legal representation in which event the legal representative or representatives must depart the hearing and take no further part in it and the hearing must proceed in the absence of that legal representation.
- 5.14 No party may be compelled to appear at a hearing of the Panel, but any party to a hearing may provide written submissions and evidence to the Chair of the Panel at least 3 days before the hearing.
- 5.15 The Panel may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence.
- 5.16 The Panel may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it. However the Panel shall hold a hearing if the Member complained of asks that there be a hearing.
- 5.17 The laws and rules of evidence do not apply to proceedings before the Panel.
- 5.18 The Panel may obtain legal advice and have legal advisers in attendance at a hearing.
- 5.19 The Panel may conduct hearings or other meetings of the Panel in person or by other means, provided that all members of the Panel are able to hear and speak to each other.
- 5.20 All determinations and decisions of the Panel are to be made by a majority of the members of the Panel.

5.21 The Member complained of in any matter shall be informed, at least 14 days prior to any hearing, of:

- (a) the name of the Panel Chair and members of the Panel;
- (b) the exact nature of the complaint and the disciplinary charge that the Member will be required to address;
- (c) the time, date and place for the hearing;
- (d) the right of the Member concerned to be heard in regard to the allegations;
- (e) whether or not the person instigating the complaint may be called to give evidence and/or provide a written submission in statutory declaration form;
- (f) whether or not other witnesses may be called to give evidence and/or provide a written submission in statutory declaration form;
- (g) what material the Member should bring to the hearing.

5.22 The Complainant shall, at least 7 days prior to any hearing, be informed of the time, date and place of the hearing and whether or not they will be required to give evidence at the hearing.

### **Admission of Evidence**

5.23 No documents will be admitted into evidence that have not been made available to the Member complained of within a reasonable time prior to

the hearing. This timeframe will be at the discretion of the Chair of the Panel. If any party wishes to introduce additional documentary evidence, the Chair may, if necessary, adjourn the hearing to allow the other party sufficient time to consider the evidence.

### **Hearing Procedure**

5.24 The procedures for the hearing shall be at the discretion of the Chair of the Panel.

5.25 A transcript of a hearing is to be kept and a copy given to the Member complained of and the person who instigated the complaint, if that person was asked by the Panel to be involved in the hearing. A fee may be charged by the College for the transcript.

### **Panel's Decision**

5.26 The Chair of the Panel shall furnish in writing to the ACCS Council, the Panel's decision, the reasons for the decision and details of any sanction to be imposed.

### **Sanctions**

5.27 Where the Panel determines that a Member has not been involved in a breach, the Panel shall make a determination to dismiss the matter.

5.28 Where the Panel determines that a Member has been involved in a breach, the Panel shall make a determination of breach against the Member complained of, and may impose one or more of the following sanctions:

- (a) reprimand the Member;
- (b) admonish the Member publicly;
- (c) counsel the Member;
- (d) suspend the Member from membership of the ACCS, for such period and on such terms or conditions as the Panel thinks fit;
- (e) where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Panel thinks fit;
- (f) require the Member to take such steps as the Panel may determine to correct the effects of any breach found to have been engaged in;
- (g) require a payment to the ACCS to be used as the Panel recommends, such penalty to be no more than \$10,000.00 for the first instance and no more than \$20,000.00 for any subsequent breach;
- (h) require the Member to undertake such education or compliance program as the Panel thinks fit, provided that the purpose of such program is to reduce the likelihood of future breaches by the Member;
- (i) expel the Member from membership of the College;
- (j) adjourn the proceeding subject to compliance with such conditions as to sanctions as the Panel may otherwise impose in accordance with the ACCS Rules;
- (l) order the Member to reimburse a patient; or
- (m) impose any other Order that the Panel thinks fit.

5.29 Where the Panel considers the matter to involve a serious risk to public safety and patient welfare it must refer the matter to the relevant regulatory authorities in the relevant State or Territory.

5.30 Where the Panel is of the view that a Member has unreasonably failed or refused to co operate with the Panel then that non-cooperation can be

- held to be a breach of the Code and the Panel can impose an appropriate sanction until such time as the Member cooperates.
- 5.31 The Panel can award reasonable costs at its discretion against an ACCS Member involved in the matter before it.
- 5.32 The Panel shall have a pre-sentence process, to relay likely sanctions to the Member complained of, and give that Member an opportunity to state any objections to likely sanctions.
- 5.33 When determining any sanction, the Panel may take into consideration any penalty imposed on the Member as a result of external legal proceedings brought against that Member in relation to the same matter.
- 5.34 A suspended Member must comply with the ACCS CME requirements and provide a return for each year as normally required.
- 5.35 If a suspended Member breaches the conditions of suspension, then the penalty shall be expulsion from Membership.
- 5.36 The Panel shall have the power to stay any sanction pending an appeal. The member involved in an appeal must apply to the Panel for a stay and provide reasons for a stay or partial stay.

### **Notification of Decision**

- 5.37 The Member complained of and the party who instigated the complaint shall be informed in writing of the Panel's decision, the reasons for the decision, and any rights of appeal against the decision.
- 5.38 The Panel will issue a written determination within 30 days of its decision.

5.39 The Member concerned shall be provided with a copy of the Panel's written determination.

### **Appeals Committee**

5.40 The Appeals Committee, shall be a three-member appeal body, including the Chair, appointed from time to time by ACCS Council. The Chair, who must possess legal qualifications, shall be appointed by Council. The Committee is not to be a standing Committee, but established when there is an appeal.

5.41 The Chair will recommend the other two members to the Council. The Council will accept the recommendations unless any appointments raise issues of conflict of interest. One member recommended by the Chair shall be an ACCS member with relevant experience in the matter before the Committee.

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### **Appeal Process**

5.42 The Member complained of may, within 21 days of being notified of the Panel's decision, appeal against that decision by notice in writing to the Chair of the Appeals Committee.

5.43 The College can also appeal a Panel decision and must do so within 21 days of the decision.

5.44 The Chair of the Appeals Committee shall notify the Chair of the Complaints Panel when an appeal has been lodged and shall request copies of the relevant correspondence and records of proceedings held by that Panel. This documentation may include:

- (a) the original complaint;
- (b) the charge formulated from this complaint;
- (c) all correspondence and written evidence in relation to the matter and;
- (d) the record of the Panel's hearing, if any.

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- 5.45 This material will be provided to the Appellant.
- 5.46 The Chair of the Committee will also advise the original Complainant of an appeal being lodged.
- 5.47 The Appellant is to notify in writing the basis of the appeal including all documentation within 21 days of lodging the appeal. If the Appellant considers more time is necessary to prepare the appeal, the Appellant may submit a request in writing to the Chair of the Appeals Committee for an extension of time.
- 5.48 Parties to the appeal, other than the Appellant, shall provide written responses to the Appellant's submission within timeframes determined by the Chair of the Appeals Committee.
- 5.49 If the Appellant does not comply with the timeframe determined by the Appeals Committee Chair and an approval for extension of time has not been granted by the Chair of the Appeals Committee, the appeal shall be deemed to be abandoned and the parties informed accordingly in writing.
- 5.50 Where the Chair of the Appeals Committee is of the view that the material submitted by the Appellant does not support a valid appeal, the Chair can dismiss the appeal and inform the parties in writing,

### **Withdrawal of Appeal**

5.51 An Appellant may withdraw an appeal by giving notice in writing to the Chair of the Appeals Committee.

5.52 A withdrawal must be received no later than seven days before the day scheduled for any hearing. After this time the Appellant will be responsible for any costs incurred by the Appeals Committee.

### **Conduct of Appeal Hearing**

5.53 The procedure and conduct of the appeal hearing will be at the discretion of the Chair of the Appeals Committee, including the involvement of the original Complainant.

5.54 The Appeals Committee will not, except where the Committee requests additional material, accept any additional material once the hearing has commenced.

5.55 Appellants may be represented by legal counsel or other person on terms and conditions set by the Appeals Committee.

### **Consequences of Appeal**

5.56 The Appeals Committee may uphold the appeal, dismiss the appeal or may vary the sanction imposed by the Panel.

5.57 The Appeals Committee must give written reasons for its decision.

5.58 The ACCS Council must be informed of the Appeals Committee's decision.

### **Action by Council**

5.59 The ACCS Council cannot overrule or vary the decision of the Appeals Committee.

### **Costs Awarded by the Appeals Committee**

5.60 Reasonable costs of the appeal may be awarded by the Appeals Committee, either in favour of the Appellants or against the Appellants;

### **Notification to Parties**

5.61 The Chair of the Committee shall advise the parties of the Appeals Committee's decision in writing. The original Complainant is also to be advised of the outcome of any appeal.

### **Quorums**

5.62 A decision of the Appeals Committee shall not be invalidated in consequence of a vacancy in its membership or the absence of any member provided that the decision is made by at least two Members, including the Chair of that Committee.

### **Keeping Complainants informed**

5.63 The College may keep a person instigating a complaint informed of progress in handling the complaint, provided always that the College must not provide any information to a Complainant in relation to the progress of the complaint where:

(a) to do so may expose the College or the Complaints Panel or Appeals Committee to liability for civil damages;

(b) to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint or;

(c) to do so would deny procedural fairness to the Member, the subject of the complaint.

## **6. Publication of decisions**

6.1 The College must maintain a Register of all determinations made by the Complaints Panel and the Appeals Committee and make the Register available for inspection by Members and relevant regulatory authorities. otherwise make available

6.2 The College may, publish to Members, any other persons or the public generally the content of, or an extract from, or précis of, any determinations by the Complaints Panel and the Appeals Committee and the register maintained by the College.

6.3 The College shall publish regular information about the outcome of disciplinary matters including an annual overview of the operation of the Colleges disciplinary regime.

6.4 Where a Member has been suspended or expelled the College shall advise relevant State and Territory Medical Boards.

## **7. Indemnities**

7.1 The College will indemnify each member of the Panel and Appeal Committee against any claim, action or proceeding brought against that

person by any other person arising out of or in connection with, a proceeding before the Panel or Committee, or any order, determination or decision made by the Panel or Committee, and this indemnity will extend to the conduct of the defence of any proceedings and the payment of any costs thereof.

- 7.2 The indemnity does not extend to actions brought by the College against any person.

## **8. Annual Report**

- 8.1 The Complaints Panel and Appeals Committee shall submit an Annual Report to the ACCS.
- 8.2 Those Annual Reports will also be submitted to the ACCC.
- 8.3 Those Reports will be provided to the Code Administration Committee.

## **9. Assistance to the Complaints Panel and Committees**

- 9.1 The College will provide appropriate resources to the Complaints Panel and Appeals and Code Administration Committees in order for them to undertake their tasks.

## **10. Compliance Audits**

- 10.1 The College will engage an independent person to undertake periodic audit checks in relation to compliance with the Code, in particular, issues relating to informed consent, information provided to potential customers and claims made about procedures and need for procedures.

- 10.2 Such audit checks will include random checks on Members.
- 10.3 Apparent breaches of the Code so discovered are to be referred to the Complaints Panel as if they were complaints.
- 10.4 The results of such audits are to be provided to the Code Administration Committee.

## **11. Enforcement**

- 11.1 The College Council will enforce any Orders of either the Panel or the Appeals Committee.
- 11.2 Where a Member fails or refuses to comply with an Order of the Panel or the Appeals Committee, the Council will either suspend or expel the Member, as the Council deems appropriate.