



**Australian
Competition &
Consumer
Commission**

Our Ref: C2008/1814
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11 March 2009

Dear

**Re: Australasian College of Cosmetic Surgery application for authorisation A91106
- PRE-DECISION CONFERENCE**

The Australasian College of Cosmetic Surgery (the College) has requested that the Australian Competition & Consumer Commission (the ACCC) convene a conference in relation to the draft determination, issued by the ACCC on 18 February 2009, proposing to deny authorisation A91106.

The draft determination follows an application by the College for authorisation for its Code of Practice and some provisions of its Bylaws. The ACCC concluded in its draft determination that it was not satisfied that the public benefit flowing from the proposed arrangements would be likely to outweigh any anti-competitive detriment and proposed to deny authorisation to the application. A copy of the draft determination was mailed to you on 20 February 2009. A copy of the application and draft determination can, also, be found on the ACCC's website <www.accc.gov.au>.

A pre-decision conference provides a valuable opportunity for applicants and interested parties to make oral submissions to the ACCC about its draft determination.

The ACCC will hold the conference on **30 March 2009** at the ACCC's Sydney office, level 7, Angel Place, 123 Pitt Street, Sydney.

The conference will commence at 10 am. ACCC Commissioner Ed Willett will chair the conference.

The conference will also be linked by video conferencing to the ACCC's Melbourne office, level 35, 360 Elizabeth Street, Melbourne. People attending the conference at the ACCC's Melbourne office will also have the opportunity to make oral submissions.

Under the *Trade Practices Act 1974* (the Act), the conference may be attended by the applicant and other interested parties. If you wish to attend, you must notify the ACCC of

your intention by **cob on 25 March 2009** and briefly indicate why you or your company or organisation has an interest in the matter. Notifications must be in writing and addressed to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

You can also notify the ACCC by e-mail to adjudication@acc.gov.au or by facsimile on 02 6243 1211.

You should provide details of a contact name, telephone number, mailing address and, if possible, a facsimile number or e-mail address so that you can be notified of any late changes to conference arrangements.

If you represent a company or organisation you should also provide a list of attendees and their position titles, and indicate who will be the chief spokesperson.

Please also indicate whether you will be attending the conference at the ACCC's Sydney or Melbourne office.

I would also note that, while conference participants may bring outside legal or other professional advisers to assist them, the Act prohibits these advisers from participating in conference discussions.

Attached for your information are procedures usually followed at pre-decision conferences.

The College has also advised that it is revising its Code and that it will provide a revised version of the Code to the ACCC by 17 March 2009. The ACCC will circulate the revised Code to interested parties before the conference and interested parties will have an opportunity to comment on it at the conference and through written submissions.

A copy of this letter has been placed on the ACCC's public register. If you require any further information in regard to the conference or wish to clarify whether you may be considered an 'interested person' within the terms of the Act, please do not hesitate to contact John Rouw on (03) 9290 1402.

Yours sincerely


Dr Richard Chadwick
General Manager
Adjudication Branch

**AN OUTLINE OF THE PROCEDURES USUALLY FOLLOWED
AT CONFERENCES IN RELATION TO APPLICATIONS FOR AUTHORISATION**

The Australian Competition and Consumer Commission (ACCC) tries to conduct such conferences as informally, flexibly and speedily as possible.

An interested party attending a conference may have the assistance of outside legal or other professional advisers, however, they are not entitled to participate in the discussion.

The conference will serve a useful purpose in that it gives the ACCC and all interested parties the opportunity to meet face-to-face to discuss the operation and effect of the applicant's conduct and the ACCC's draft determination. The applicant and/or interested persons have the opportunity to persuade the ACCC to accept their view. The ACCC benefits from direct contact with the parties, and its perceptions of public benefits and detriments are tested in a forum of interested parties where points are often quickly and forcefully made.

1. Preliminary procedures

- (a) When you arrive at the conference you should identify yourself to ACCC staff before the conference begins. Further, please complete the attendance book when arriving at the conference. This assists ACCC staff to identify attendees for the purpose of recording the discussion.
- (b) The Chair (a Commissioner) will open the conference by welcoming those present and outlining the requirements of the *Trade Practices Act 1974* and the manner in which the conference will be conducted.
- (c) If you intend to present a written comment (and you are encouraged to do so), it is helpful if the ACCC receives it before the conference date. It can then be copied and distributed at the conference. In this way, both the ACCC and other parties present are assisted, and your submission forms part of the conference record. If you cannot complete the written submission earlier, it is helpful if you come to the conference with extra copies which can be distributed.
- (d) Any document you present without making any request for it to be excluded from the public register will be placed on the ACCC's public register.

If you intend to present a submission at the conference and you wish it (or certain details in it) to be excluded from the public register, you should make your request to the Chair at the time of presenting the document, and you should state in general terms the reason for your request. (See ACCC guidelines on excluding information from the public register.)

2. General procedures

- (a) The conference has been convened to discuss the draft determination, to canvass points of view and to assist the ACCC's weighing of issues and its interpretation of the information given to it.

- (b) The procedure is discretionary. The Chair controls the order of discussion, and may take particular topics separately, so that all the discussion, on any given topic may be heard at the one time.
- (c) The conference is not a court, and there is no right of cross-examination. You may request the Chair to ask questions of other parties present, but the Chair retains the discretion as to whether your questions will be put. The Chair, of course, may also directly question the parties at the conference, and they have discretion whether or not to answer.
- (d) ACCC staff present will make a record of the discussion. This will be in minute form, not a verbatim record. The conference record is placed on the public register, and all who attend the conference will receive a copy.
- (e) When the Chair believes that all present have been given a reasonable opportunity to express their views, he/she may terminate the conference.
- (f) The Chair (and any other Commissioner at the conference) cannot give a final decision at the close of the conference. Each Commissioner is only a representative of the ACCC and is required to report back to the ACCC, which will make the final decision.

3. Other matters

- (a) Following the pre-determination conference, the ACCC will review its draft determination in the light of discussion and further submissions made at the conference (or within a set period of time after the conference), and will publish its final determination as soon as possible thereafter.
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Sent to the following parties

Australian Consumer Association
Australian Medical Association (ACT)
Australian Medical Association (NSW)
Australian Medical Association (NT)
Australian Medical Association (QLD)
Australian Medical Association (SA)
Australian Medical Association (TAS)
Australian Medical Association (VIC)
Australian Medical Association (WA)
SA Health
Department of Health (Western Australia)
Department of Health and Families
Department of Health and Human Services (Tasmania)
Health Complaints Commissioner, Tasmania
Office of the Health Services Commissioner
Queensland Health
Royal Australian College of General Practitioners
ACT Health
Australian General Practice Network
Australian Healthcare & Hospitals Association
Catholic Health Australia
Department of Health and Ageing
Consumer Health Forum
NSW Health
Department of Human Services (Victoria)
Royal Australasian College of Physicians
Royal Australasian College of Surgeons
Consumer Action Law Centre
Cosmetic Physicians Society of Australia
New Zealand College of Appearance Medicine
Skin Cancer Society of Australia
Australasian College of Phlebology
Australasian College of Dermatologists
Medical Practitioner Board of Victoria
New South Wales Medical Board
Medical Board of Queensland
Medical Board of South Australia
Medical Board of Western Australia
Medical Council of Tasmania
Medical Board of the ACT
Australian Medical Association
Australian Medical Council
Australian Society of Plastic Surgeons
Swaab Attorneys