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9 April 2009

Mr Gavin Jones
 Director
 Adjudication Branch
 Australian Competition & Consumer Commission
 GPO 520
 Melbourne Vic 3000

FILE No:	
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MARS/PRISM:	

To Fax: 9663 3699

Dear Mr Jones

**Re: Australasian College of Cosmetic Surgery application for authorisation
 A91106 – amended Code of Practice**

I am in receipt of your letter dated 16 March 2009 in relation to the Australasian College of Cosmetic Surgery (ACCS) application for authorisation and an attached amended Code of Practice.

The Medical Practitioners Board of Victoria (the Board) notes that in its draft of determination, the Australian Competition & Consumer Commission's (ACCC) proposes to deny authorisation of ACCS's Code of Practice.

On 16 March 2009 the ACCS provided a revised Code of Practice to the ACCC and is now seeking authorisation for this Code of Practice as amended.

The Board has had an opportunity to review the amended Code and has attached a Submission on this matter. In summary, the Board continues to hold concerns in relation to the ACCS Code of Practice. The Board does not agree that the Code sets additional and higher standards for members of the ACCS and cannot support the adoption of the amended Code in its present form.

Please do not hesitate to contact me if you require any further information in this regard.

Yours sincerely

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 Medical Practitioners Board of Victoria

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SUBMISSION OF THE MEDICAL PRACTITIONERS BOARD OF VICTORIA

In response to

CONSUMER/PATIENT CODE OF CONDUCT OF THE

AUSTRALASIAN COLLEGE OF COSMETIC SURGERY

6 April 2009

This written submission is provided in response to a draft determination of the Australian Competition & Consumer Commission (ACCC) and the subsequent provision of a re-drafted Consumer/Patient Code of Practice (Code) from the Australasian College of Cosmetic Surgery (ACCS). Comment from the Medical Practitioners Board of Victoria (the Board) on the Code has been requested by the ACCC.

Introduction

The *Health Professions Registration Act 2005* (the Act) outlines the responsibilities of the Board in relation to regulation of advertising of medical services.

The *Advertising Guidelines for Registered Medical Practitioners* (the Guidelines) have been developed by the Board to advise medical practitioners:

- Of the provisions of section 94 of the Act
- How the Board interprets section 94; and
- What the Board has determined to be minimum standards of practice in relation to the advertising of medical services.

The Guidelines are to be read in conjunction with existing consumer protection legislation.

The introduction to the Code states:

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.

The Board has reviewed the re-drafted Code and does not agree that the Code sets additional and higher standards for Members of the ACCS.

The Submission of the Board

This submission outlines the areas where the responsibilities articulated in the Code are considered by the Board to be of a lesser standard than those under the Guidelines. The reference at the beginning of each section is the reference provided in the Code.

2.2 *Members must not mislead consumers about the need for any procedure*

As referred to in the Guidelines, s94 of the Act states that a person must not advertise a medical practice or medical services in a manner which directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services or medicines. The Board considers that 2.2 of the Code falls short of this requirement and implies that an indiscriminate or unnecessary procedure may be acceptable if the consumer is not misled about the need for the procedure, ie an unnecessary procedure may be acceptable as long as the consumer knows it is unnecessary.

2.5 *Comparative advertising should be used with caution.*

7.3 of the Guidelines state that:

Since it is difficult to include all required information to avoid a false or inaccurate comparison being made, comparing one medical service with another risks misleading the public.

The Code cautions practitioners but then proceeds to outline circumstances where comparative advertising is of benefit to consumers by referring to peer reviewed literature. The Board would be concerned that such literature should be from a reputable and verifiable source.

2.6 *Photographs may be used to display the results of treatment and or complications.*

The Code describes how 'before and after' photographs should be used. The Guidelines note that the use of 'before and after' photographs has significant potential to be misleading and to convey inappropriately high expectations, and to encourage the unnecessary use of medical services. The Guidelines require that if 'before and after' photographs are used, amongst other requirements, there be an acknowledgment that the procedure being referred to is the only change that has occurred for the person being photographed. Such a requirement is not made of a Member of the ACCS in the Code.

2.10 *Discounts for early payment should not be used as an inducement to commit to a procedure.*

The Board does not encourage the use of discounts (not only those given for early payment) in advertising because of the potential for such an inducement to encourage the unnecessary use of medical services.

2.13 and 2.14 *College Certification logo and post nominals*

The Guidelines deal with the advertising of qualifications and titles. They clearly state that it is an offence under s80 of the Act for a person to hold himself out, either explicitly or implicitly, to be a specialist unless his or her registration is endorsed under s27 of the Act. The Guidelines then proceed to state that:

The Board considers that consumers are best protected when practitioners advertise only qualifications that have been awarded by institutions accredited by the AMC.

The qualifications awarded by the ACCS have not been accredited by the AMC and so the Board would not consider that the ACCS logo or post nominals should be used in advertising and that the use of them risks an implication that the advertiser is a specialist whose registration is endorsed under s27.

3. Guidelines for informed consent

The guidelines for informed consent , as contained in the Code are not consistent with the requirements in the Guidelines. The Code refers to the provision of a *College produced information brochure* which may encourage members of the public to consider that the qualifications held by the Members of the ACCS are AMC accredited. As the Guidelines are not designed to replace the requirement for obtaining informed consent from every patient before the initiation of treatment further comparison of the Code and the Guidelines on this topic is not possible.

