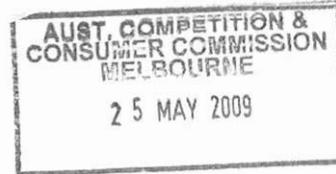




MEDICAL
PRACTITIONERS
BOARD

of Victoria



Our ref: m.pd
Your ref: C2008/1814

20 May 2009

~~Private & Confidential~~ CJ 27/05/09

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

By facsimile: 9663 3699

Dear Mr Jones

**re: Australasian College of Cosmetic Surgery (ACCS) - application for
authorisation A91106 – further revised Code of Practice (further revised
Code)**

I write in response to your letter of 4 May 2009 advising of the Australasian College of Cosmetic Surgery ('ACCS') provision of a further revised Code of Practice ('further revised Code').

You have sought the views of the Medical Practitioners Board of Victoria ('the Board') about the most recent amendments to the further revised Code and I provide the following comments.

The Board, like the New South Wales Health Department, South Australia Health, the Royal Australasian College of Surgeons ('RACS') and the Australian Society of Plastic Surgeons ('ASPS') is of the view that the further revised Code does not need to be placed before the ACCC.

However, the Board acknowledges that the ACCC has engaged in the process of authorisation of the further revised Code and the Board therefore accepts the position of the ACCC with respect to the necessity of this process. The Board therefore wishes to convey to the ACCC that concerns exist about authorisation of the further revised Code for the following reasons:

Although the further revised Code states in the introduction:

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 notes that some of the responsibilities articulated in further revised Code do not reach the standard required by the *Health Professions Registration Act 2005* and the *Advertising Guidelines for Medical Practitioners* (the Guidelines) as approved by the Governor in Council in 2008. Whilst the ACCS submits that this issue is rectified by the abovementioned statement in the Introduction to the further revised Code, I contend that the existence of inconsistent guidelines for medical practitioners, promulgated by two different organisations would create a public detriment.

I have identified the following inconsistencies between the further revised Code and the Guidelines:

- Guideline 7.1 deals with the use of graphic representations (including before and after photographs). It states that if 'before and after' photographs are used, inter alia, the advertisement should acknowledge *that the procedure being referred to is the only change that has occurred for the person being photographed.*

whereas

- 2.6 of the further revised Code states: *if the patient in the before and after photographs has had any treatments other than the procedure being advertised, this must be clearly stated.*

Although the difference is subtle, members of the public may be unqualified (or otherwise unable) to discern the impact that each procedure (as suggested in the ACCS further revised Code) has had on the appearance.

- Guideline 7.3 deals with the use of comparative advertising. It states: *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.*

whereas

- 2.5 of the further revised Code in referring to comparative advertising states: *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.*

This reference in the further revised Code does not require the supportive peer reviewed literature to be cited, nor does it take into account a potential different purpose of the procedure. I believe there remains a danger that the public may be misled by this part of the further revised Code.

- Guideline 7.4 refers to the advertising of qualifications and titles. To avoid misleading the public the Board considers that consumers are best protected when medical practitioners advertise only qualifications that have been awarded by institutions accredited by the Australian Medical Council (AMC).

whereas

- 2.13 and 2.14 of the Code endorse (in varying degrees) use of ACCS logo and ACCS postnominals, even though the ACCS is not accredited by the AMC.

The use of the ACCS logo and postnominals is a clear contradiction of Guideline 7.4. It is unable to be rectified by the statement (as quoted) in the Introduction of the further revised Code. Reliance by members of the public upon qualifications which are awarded by institutions not accredited by the AMC may cause a public detriment by exposing those members of the public to medical treatment of a standard and expertise which is unable to be verified or regulated.

The Board looks forward to the ACCC finalising its determination in this matter.

Please contact me if you have any questions about this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Mullaly', written over a light grey rectangular background.

Richard Mullaly
Chief Executive Officer
Medical Practitioners Board of Victoria