



The Australasian College of Cosmetic Surgery
Raising Standards, Protecting Patients

Dr Richard Chadwick
General Manager
Adjudication
ACCC
GPO Box 3131
Canberra City ACT 2601

8 July 2011

Dear Dr Chadwick

**Australasian College of Cosmetic Surgery Code of Practice, Authorisation
A1106, report of periodic audit checks**

The purpose of this letter is to report on the findings of periodic audit checks pursuant to Condition 6 of the Conditions of Authorisation of the Code of Practice by the ACCC, 18 June 2009.

Since its last report to the ACCC, the College has undertaken a number of periodic ad hoc audits of member practice websites to measure compliance with the Code.

The College has also monitored member advertising and begun spot checks of member clinics to ensure compliance with provisions of the Code which pertain to providing information to consumers in the clinical setting.

The College has also followed up on notifications and show cause letters given to members for possible breaches identified as a result of audits.

The results are discussed below.

Additionally, the College has continued to communicate with members through a variety of ways including email, letters and newsletters (a recent article is attached). And each year, the College has invited relevant speakers to address its members at its annual Cosmetex Conference. In the past, the Commission's Peter Kell and a representative from the TGA have presented. This year, the College was pleased to have Consumers Health Forum CEO Carol Bennett address members about the importance of the Code of Practice and the requirements of health consumer protection more generally.



Member Compliance

The College has continued to undertake audits of member websites, which have shown marked improvement from the previous year. There continues to be substantial compliance and significant improvement with the key areas of testimonials, inducements, before and after photographs and superlatives. No members were found to be providing finance facilities or credit or receiving a commission for such services.

Rather than perform random audits, the College has continued to focus on member websites where previously potential code breaches were identified. Although, as previously noted, the majority of members whose practice websites were found to be in breach of the Code are now in compliance or had made efforts to comply with the Code, there remain a small number of members whose practice websites or other communication materials were identified as potentially in breach.

Thirty-five breach notices were sent to members. Fourteen required a follow-up show-cause letter. Of those, two members resigned their membership of the College and two others have been referred by the College to the complaints panel – one for promoting finance (though not offering it), the other for using testimonials and superlatives. Another member's advertising has been referred to the panel after a complaint was filed with the College.

The College also performed a random audit of peer group – i.e. members of other surgical colleges or associations to gauge compliance. Examples of that audit are attached for your review. They show that despite the College's more limited resources compared to its peers, a considerable number of peer group members – e.g. the Royal Australasian College of Surgeons and the Australian Society of Plastic Surgeons – maintain websites which would likely be in breach of the College's Code, were they covered by it, or other regulations or guidelines.

The College welcomes any question you may have concerning the periodic audits or any of the other information presented above.

Yours truly

Dr Russell Knudsen
President

CC: Gavin Jones

Attachments

College Code of Practice

As all members will be aware, the College developed a Code of Practice which was authorised by the Australian Competition Commission. It was the first such medical college code to receive authorisation since the ACCC began authorising voluntary codes of conduct in 2003.

In her address to the Cosmetex 2011 Conference, Consumer Health Forum CEO Carol Bennet praised the College for implementing the Code. ACCC Deputy Commissioner Peter Kell also welcomed the Code's development and implementation at last year's conference.

The process to achieve authorisation was not an easy one and was won only after the College ran a gauntlet of lengthy public consultation and predictable strenuous opposition from ASPS and RACS.

Despite the strong opposition, the College was pleased to see provisions of the Code adopted and included in the new national health regulation law's Guidelines for Advertising Regulated Health Services, which came into force in July of last year. So College members who were in compliance with the College's Code would be in a relatively advantageous position.

However, though it is important that members comply with the new national guidelines and the College's Code shares many provisions with the national guidelines, they still differ in many respects. The Code as a whole is designed specifically to address our specialty.

Some of the Code's provisions, such as those related to the use of superlatives, are not very different from the national guidelines. Others, such as those covering "before-and-after" pictures, are more prescriptive.

Compliance with the Code is the ultimate test of its value, and it is for that reason that the College has worked to inform members of their responsibility and assist them in achieving compliance.

Though the College has focused on encouraging and assisting members to familiarise themselves with the code and become compliant, breaches must be referred to the complaints panel.

"Members have a duty beyond legal minima to constantly improve standards. Ultimately, that duty may only be fulfilled through a philosophy of care which does not seek merely to tick all the right boxes but strives always to achieve the highest standards."

The College reported to the ACCC that it had undertaken a number of ad hoc and comprehensive audits of member websites. Based on those audits, the College was satisfied that there has been substantial compliance with the Code and significant improvement over the audited period since the Code came into force.

There is substantial compliance and significant improvement within the key areas of testimonials, inducements, before and after photographs and superlatives. No members were found to be providing finance facilities or credit or receiving a commission for such services.

Although the College is pleased to see that its members are either in compliance or are taking measures to comply, there are several key areas that everyone should be alert to. In particular, members are reminded that the Code prohibits:

- offering finance facilities as part of the services provided and accepting commissions from credit providers
- the use of testimonials, offers of gifts or other inducements, such as time sensitive discounts periods
- the use of superlatives, unless they can be readily proven to be correct
- the use of medical or surgical procedures as inducements or prizes or as a way of generating business

Members should also note that “before and after” photographs should be of the members’ patients, have similar poses, lighting and exposure, and bear a clear statement that the procedure in question is the only change which has occurred to the person being photographed. Additionally, members should ensure that their practice websites link back to the Code and Patient Brochure, which can be found on the College’s website home page.

It is also important that members have and display in their offices copies of the College’s patient information brochure and their CV. As part of its ACCC audit requirements, the College from time to time has and will stop by members’ offices or clinics to ensure these provisions also observed.

During these visits, the College welcomes the opportunity to hear your feedback or answer any regulatory questions or concerns, for example with the new national law and guidelines, which may be downloaded from the Medical Board’s website: <http://www.ahpra.gov.au/Health-Professions/Medical/Codes-and-Guidelines.aspx>

As the Code states, members have a duty beyond legal minima to constantly improve standards. Ultimately, that duty may only be fulfilled through a philosophy of care which does not seek merely to tick all the right boxes but strives always to achieve the highest standards.

“Effective codes potentially deliver increased consumer protection and reduced regulatory burdens.” -- ACCC

When looking at your websites and other promotional material members might also consider whether they conform to the spirit, as well as the letter of the new Code – particularly the Code’s requirement that members must not

mislead consumers about the need for any procedure or create misleading impressions about the services offered.

For example, members should ask themselves whether or not the pictures of men and women on their websites give patients or consumers a realistic expectation about the results of the particular procedure(s) they are offering.

Finally, if you have any questions about the Code or its interpretation, you are encouraged to contact the College's office for guidance.

Implementing new codes and guidelines may seem f a burden. However, adherence to them will mean less regulatory burden from government and enhanced specialty reputation, which in turn will be a benefit to your practice.

The College must make an annual report to the ACCC in July and strongly encourages all members to familiarise themselves with the Code and new national guidelines. If you have any questions, please don't hesitate to call Alan Jones directly, 0420 757 009.