



The Australasian College of Cosmetic Surgery **Raising Standards, Protecting Patients**

14 June 2013

Australian Health Practitioner Regulation Agency

VIA EMAIL

Re: Consultation on common guidelines

The Australasian College of Cosmetic Surgery welcomes the opportunity to provide comment on the Australian Health Practitioner Regulation Agency's consultation on common guidelines.

Established in 1999, the Australasian College of Cosmetic Surgery (ACCS) is a not-for-profit, multi-disciplinary fellowship based body of general surgeons, cosmetic surgeons, plastic surgeons, maxillofacial surgeons, cosmetic physicians, dermatologists, ear nose and throat surgeons, ophthalmologists, general practitioners and other doctors who practice in cosmetic medicine and surgery – Cosmetic Medical Practice.

The primary goal of the ACCS is to ensure the safe provision of cosmetic medicine and cosmetic surgical procedures to the Australian general community through the supply of appropriately trained and certified health care practitioners.

The ACCS is the only medical college which provides education and training leading to fellowship specifically in cosmetic medicine and surgery. Fellows of the College are medical doctors who have completed post-graduate education and training and demonstrated competency specifically in cosmetic medicine and surgery. To become an ACCS Fellow, doctors must typically complete a minimum of 12 years of medical and surgical education and training.

The College also seeks to work cooperatively with government and other stakeholders to improve standards and safety and to educate health care consumers. Its Fellows and spokespeople are regularly quoted in the media and consulted by federal and state health and consumer regulators.



Revised *Guidelines for advertising*

The College believes that any national advertising regulatory framework for regulated health services should ensure that clear and accurate information about the services provided by health practitioners is accurate and appropriate. Advertising and other promotional activities can have adverse consequences for patients when it is false, misleading or deceptive, leads to the provision of inappropriate or unnecessary health services or creates unrealistic expectations.

Well regulated advertising, however, can play a useful role to promote competition and to inform patients so that they have additional necessary information to make decisions about their own health care. As the Australian Competition and Consumer Commission has noted:

“There is a public benefit in each medical practitioner being permitted to distinguish his or her services from another’s to the fullest extent. This benefit takes the form of consumers receiving accurate, relevant information and so being better placed to make more informed decisions in their dealings with medical professionals.”¹

Although section 133 of the National Law and the advertising guidelines apply to all regulated health services, due to the elective and largely self-referral nature of cosmetic medical and surgical procedures, there is a far greater need, and ethical threshold, to ensure that patients seeking such services have the correct and necessary information in order to make informed decisions.

This is very relevant in the case of elective procedures such as cosmetic medicine or surgery, where the harm caused to a patient may be that their expectations have not been realised as result of the procedure they have had. Advertising informs but may also mislead and interfere with informed consent.

In this respect, the College has put a very strong emphasis on the importance of appropriate advertising, patient communication and informed consent. In 2009, the College developed a Code of Practice, which was the first medical practitioner code to be authorised by the ACCC. The Code, which was authorised after extensive public stakeholder consultation, covers among other things, advertising and other promotional conduct, informed consent guidelines, monitoring of the code and an extensive governance regime.

The College’s Code provides patients with an additional layer of protection and it requires all College members to meet strict standards – stricter in some areas than that required by the National Law. The Code prescribes and prohibits a range of

¹ ACCC comments on proposed revision of advertising guidelines, Commonwealth of Australia 2007.



communications to improve patient communication and informed consent and provides an additional pathway for patient redress afterward should they have concerns or feel that they have been harmed due to poor communication.

The College's Code of Practice may be found on the College's website, at: http://www.accs.org.au/pdf/accs_code.pdf

The College believes that the Guidelines serve a valuable purpose to provide practical assistance to health practitioners in understanding how to apply the National Law, and the College supports the Medical Board's promulgation of them.

However, the College has found that one unfortunate consequence has been that some practitioners mistakenly believe that the Guidelines themselves have no force of law. The College suggests that this misapprehension should be addressed more clearly in the Guidelines.

The College notes that it observes a significant amount of advertising in the area of cosmetic medical practice which appears to breach the National Law. And while the College supports the Guidelines, it is difficult to assess fully how they are working based on the information provided in the National Boards Annual Report. The College notes that AHPRA received a total 459 advertising related complaints during 2001-12, that 56 of these involved medical practitioners, and that there were no prosecutions. It would be helpful to stakeholders such as the College to have more information about the nature of the complaints, how they are distributed proportionately among different medical practitioners as well as how they were resolved.

The College finds that the draft Guidelines are clear and relevant. However, there are several areas where the College believes improvements could be made.

1. Making misleading claims

The use of qualifications and titles is an area where the College has encountered instances where health consumers may be misled.

There is a misperception among some in the general community that practitioners who may have other, recognised, specialist qualifications are specifically trained in and therefore a "specialist" in cosmetic medicine or surgery.

For example, the Australian Society of Plastic Surgeons (ASPS) states that its members "are accredited" by the federal government "through the Australian Medical Council (AMC)... to perform all aspects of cosmetic and reconstructive surgery". However, there is no such accreditation in cosmetic medicine or surgery. The AMC's accreditation of the RACS-ASPS training program simply quoted the Board [of plastic and reconstructive surgery, which stated it was "endeavouring to



maintain trainee exposure to cosmetic and maxillofacial surgery [the latter itself a separate specialty] ... principally via training in the private sector. It is estimated that 20 to 30 per cent of positions currently have some time spent in a private consulting or theatre environment. Trainees and supervisors were very positive about this initiative.”²

The College also notes that the UK, the Department of Health has cautioned that a practitioner’s qualifications in plastic and reconstructive surgery “may not indicate that they have received any special training in cosmetic surgery, or that they have experience in doing cosmetic surgery or [in a] particular procedure”.³ The recently released UK National Confidential Enquiry into Patient Outcome and Death likewise warned that a specialist qualification “does not give any assurance that a surgeon has received adequate training in cosmetic surgery”.⁴

The College suggests that the guidelines make it clearer that practitioners holding a specialist title should be careful to avoid stating or implying that the specialist title and qualification they hold in one area of medicine or surgery is recognition or accreditation of “specialist” status in an area in which their training may not be to a specialist level, whether it is a recognised area or not.

2. Offering an inducement such as a gift or discount (unless the relevant terms and conditions are also included)

The College notes that the current Guidelines state that “the use of gifts or discounts in advertising is inappropriate, due to the potential for such inducements to encourage the unnecessary use of regulated health services” (6.6) but then, consistent with Sec 133 (1) (b) of the National Law, prescribes how such inducements may be offered.

Although the admonishment against gift-giving appears to be inconsistent with Sec 133 (1) (b), and is perhaps the reason why it has been removed from the draft Guidelines, it does appear to be consistent with Sec 133 (1) (e). In other words, there appears to be some inconsistency in the National Law, which the Guidelines may be able to better address.

The College supports the current admonishment against inducements such as gifts to induce procurement of regulated health services, and is proscribed by the College’s Code of Practice.

² “Accreditation Report: Review of the education and training programs of the Royal Australasian College of Surgeons”, Specialist Education Accreditation Committee, Australian Medical Council, 2002, p 21. Emphasis added.

³ (UK) Department of Health, 2008 www.dh.gov.uk/en/PublicHealth/CosmeticSurgery/DH_4124199 (Accessed August 2010).

⁴ “On the face of it: a review of the organisational structures surrounding the practice of cosmetic surgery”, National Confidential Enquiry into Patient Outcome and Death (2010).



3. Using testimonials

The College's Code of Practice prohibits the use of testimonials. The College welcomes the draft Guidelines discussion about this area of the National Law, which was not explained sufficiently in the current Guidelines.

The problem of testimonials has been compounded by the rapid uptake of social media such as Facebook, which allow or encourage health consumers to post messages and discuss or compare treatment, practitioners or medicines.

The College agrees that practitioners must take responsibility for advertising which is on their behalf, whether or not it is produced by them.

The College welcomes the noting of purported testimonials, but suggests that this type of testimonial be discussed further, perhaps with examples, for greater clarity. The College understands the reluctance of the Board to provide examples because they cannot be comprehensive. However, the use of examples by other regulatory agencies such as the ATO, ASIC and the TGA demonstrate that they can be instructive when included with a discussion of the principles and rationale as well as a warning that they are not intended to be exhaustive.

The College has found through its experience in implementing its Code of Practice that practitioners are often not aware of their responsibility to ensure that third-party advertising does not breach the National Law when potential breaches are encountered. Guidance with respect to clinics which advertise on behalf of visiting practitioners, for example, would help to address this misunderstanding.

Creating unreasonable expectations of beneficial treatment

Relative to other areas of medicine, patient expectations play a significantly larger role in determining cosmetic treatment success. Typically, those expectations begin to be formed very early in the patient's decision-making process or even before they have started consciously considering whether or not to have a cosmetic procedure. Advertising, of course, may play a role in shaping those early expectations which may be or become unrealistic, and which may be difficult to alter even with the best advice of a well-trained, responsible practitioner.

Before & after photographs can play an important role in helping to inform. Misused, they can also contribute to creating unrealistic expectations. The College supports of the draft Guidelines with respect to before & after photography. However, the College considers the advice on the use of stock photography could be expressed more clearly and should state that they are not permitted to be used to advertise particular treatments and practitioners may only use photographs of their own patients.



4. Encouraging the indiscriminate or unnecessary use of a service.

The College supports of the draft Guidelines with respect to this section of the National Law, though notes its concerns in “2” above.

The College has been particularly concerned about the use of time-limited coupons to promote the use of regulated health services and suggests –that the guidelines specifically note this form of inappropriate advertising.

Proposed Social Media Policy and Draft Revised Guidelines for Mandatory Notifications.

The College endorses the proposed social media policy and draft revised guidelines for mandatory notifications.

Once again on behalf of the ACCS, I extend our appreciation to the Medical Board of Australia its sister boards and AHPRA for their efforts to produce the common guidelines consultation. Should you have any questions or require additional information from the College, please do no hesitate to contact me or Alan Jones, our director of regulatory affairs and government relations.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Colin Moore', is written over a faint, light-colored watermark or background graphic.

Dr Colin Moore MBBS FRCS FRACS FACCS
President