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Submission by the Cosmetic Physicians Society of Australasia to the Medical Practitioners Board of Victoria

“Review of the *Advertising guidelines for Registered Medical Practitioners* issued September 2004, section 64B of the *Medical Practice Act 1994*”

1. Introduction

The Medical Practitioners Board of Victoria (‘the Board’) has decided to review the *Advertising Guidelines for Registered Medical Practitioners* (‘the Guidelines’).

The Board states the review of Guidelines was ¹prompted by the fact that from July 1, 2007 the *Medical Practice Act 1994* was replaced by the *Health Professions Registration Act 2005*. The Board has circulated an ‘Issues Paper’ to interested parties outlining what it views as some of the key limitations of the current Guidelines and identifying suggested amendments to them.

The Cosmetic Physicians Society of Australasia (‘CPSA’) notes that the particular changes to the Guidelines that the Board has suggested and which are a cause of considerable concern to the CPSA are not necessary to make the Guidelines consistent with the *Health Professions Registration Act 2005*.

The CPSA is a professional organisation formed in 1997 to represent qualified doctors who focus on providing non-invasive cosmetic procedures. Our twin aims are:

- to provide the public with up-to-date information about Cosmetic Medicine and help them locate qualified doctors whose focus is on providing cosmetic procedures;
- to raise standards in the provision of Cosmetic Medicine by providing members with relevant training and information.

The Board states that its main area of concern ²‘relates to the advertising of elective cosmetic procedures’ and says ‘in recent months, the Board has received notifications regarding false, misleading and/or deceptive advertising’³.

¹ The Board’s **Issues Paper – Review of Advertising Guidelines** dated 5 June 2007 and 20/6/07 – **Purpose** page 1

² The Board’s **Issues Paper – Review of Advertising Guidelines** dated 5 June and 20/6/07 – **Background** page 2

³ The Board’s **Issues Paper - Review of Advertising Guidelines** dated 5 June and 20/07/06 – **Background** page 3

The CPSA therefore welcomes the opportunity to comment on the review of the Guidelines. The review provides a timely opportunity for fact-based discussion among all stakeholders.

The CPSA has played a significant role in the development of standards to protect consumers of Cosmetic Medicine services in recent years and is well placed to make a greater contribution in the years ahead.

The CPSA has contributed to the Board's online consultation survey and contributes the following executive summary. We look forward to participating in the stakeholder forum on August 23, 2007.

2. Executive summary

The CPSA agrees with the Board that ⁴'the protection of the public is the paramount consideration in relation to the regulation of medical advertising' but is concerned that some of the proposed changes will weaken, rather than strengthen, consumer protection.

The CPSA disagrees with the Board's assertion that ⁵'further restrictions are necessary to protect the public' and the CPSA notes that the Board offers no specific evidence to support this assertion. The Board's assertion also appears to ignore the fact that the regulation of medical advertising in Australia (particularly and most specifically in relation to the notification of false, misleading and/or deceptive advertising to which the Board refers) is already adequately regulated via:

- the Australian Competition and Consumer Commission's (ACCC) oversight of the Trade Practices Act 1974;
- the Therapeutic Goods Administration's (TGA) oversight of the Therapeutic Goods Act 1989 and the Therapeutic Goods Advertising Code 2005;
- State/Territory 'fair trading/consumer affairs' legislation;
- The Advertising Standards Bureau, and;
- the State/Territory Medical Practitioners Boards' Guidelines.

Indeed, the CPSA believes the focus for a review of medical advertising in Australia should be towards harmonisation of different State/Territory legislation/regulation via the Council of Australian Governments (COAG). Common, national standards for medical advertising will mean that patients will know that wherever the health professional is from, they are bound by the same, high quality standards when it comes to the provision of information about their services.

⁴ The Board's **Issues Paper – Review of Advertising Guidelines** dated 5 June 2007 and 20/6/07 – Key Considerations page 3

⁵ The Board's **Issues Paper – Review of Advertising Guidelines** dated 5 June 2007 and 20/6/07 – Key Considerations page 3

Consumer protection

The CPSA believes that the need for the public to be provided with sufficient accurate and truthful information is crucial to enable them to make informed health care choices and this premise is central to our submission and comments to the Board's online Consultation Survey.

The provision of sufficient accurate and truthful information is also necessary to help address the ⁶'knowledge imbalance between a medical practitioner and a patient' referred to by the Board.

The CPSA agrees also with the Board when it asserts ⁷'that the effect on consumers of misleading advertising of medical services can be severe and long lasting, and it is imperative that information provided to consumers in advertising is accurate and reliable.'

The CPSA therefore asserts that the review of the Guidelines should seek as far as possible to advance the protection of the public, in relation to the regulation of medical advertising, by facilitating the provision of sufficient accurate and reliable information from medical practitioners to consumers to enable the public to make informed choices - not by seeking to further limit the flow of accurate and reliable information from medical practitioners to the public.

The current Guidelines definition of unacceptable advertising states (inter alia) that advertising of Medical Services should not ⁸'encourage inappropriate or excessive use of Medical Services. The CPSA agrees with this Guideline.

However, the Board proposes a change to the Guidelines which moves beyond the encouragement of 'inappropriate or 'excessive' use of Medical Services to rule out ⁹'the use of language in advertising that encourages unnecessary use of medical services or refers to a person improving their appearance'.

Such a change to the Guidelines, prejudices the use of Medical Services to improve a patient's appearance as 'unnecessary', when in fact there is ample evidence that consumers may view the medical service as 'necessary' to improve their self-esteem and confidence.

In any event, The CPSA believes that it is consumers who are best placed to judge whether a cosmetic procedure is 'necessary' or 'unnecessary' (not the Board's), based on the consumer's ability to consider as much accurate and reliable information as

⁶The Board's **Issues Paper – Review of Advertising Guidelines** dated 5 June 2007 and 20/6/07 – Key Considerations page 3

⁷The Board's **Issues Paper – Review of Advertising Guidelines** dated 5 June 2007 and 20/6/07 – Key Considerations page 3

⁸The Board's **Advertising Guidelines for Registered Medical Practitioners**, 5.2 What is unacceptable Advertising: b)

⁹The Board's media statement **Board Consults on New Advertising Guidelines** 5 June 2007

medical practitioners can make available and in consultation with their chosen medical practitioner(s).

Furthermore, restricting a medical practitioner's ability to make available all accurate and reliable information restricts unnecessarily the consumer's right to make an informed choice and increases the risk of a decision being made on the basis of inaccurate and/or unreliable information from sources other than qualified medical practitioners.

The CPSA is therefore opposed to this proposed amendment to the Guidelines.

Visual representation

In the area of Cosmetic Medicine, the consumer's right to make an informed choice is virtually impossible without 'graphic or visual representations'. In the main, cosmetic procedures are undertaken by patients precisely to achieve an improvement in appearance and consumers will therefore, almost invariably, seek accurate graphic or visual representations to guide their decisions. If such images are not available through medical practitioners, then consumers will rely on images sourced through other parties, such as beauty therapists, newspapers, magazines and internet sites to assist in their decision making.

The Board's proposed change to the Guidelines has the potential to undermine the protection of the public because it will force consumers to search for (what they regard as) vital information from sources other than medical practitioners, thereby increasing the likelihood of patients seeking treatments from less qualified, or non-medical personnel in Australia or overseas and consequently of placing the public at greater risk of harm.

The CPSA asserts therefore that it is in the consumer's interest that the current Guideline 6.6 'Use of Graphic or Visual Representations' remain and be reviewed and strengthened so that graphic and visual representations (including before and after photos) can continue to be used by medical practitioners to provide consumers with accurate and reliable information.

Consumer protection and competition

The Board also states that ¹⁰ "experience over the last three years with the current guidelines suggests the public benefit of stricter control of medical advertising outweighs considerations of competition. We have revised the Guidelines on that basis."

The CPSA agrees that better consumer protection is the paramount consideration in relation to advertising of Medical Services.

¹⁰ The Board's media statement **Board consults on New Advertising Guidelines** 5 June 2007

As stated earlier, we contend that two of the Board's proposed amendments to the Guidelines weaken consumer protection. The Board admits that they diminish competition. We think that it is incumbent on the Board to produce specific evidence to support its assertion that it is necessary to diminish competition to improve consumer protection and welcomes the perspective of the ACCC on this point.