

29 May 2015



Dr Joanna Flynn  
Chair  
Medical Board of Australia  
GPO Box 9958  
Melbourne 3001  
Australia

Level 6, 80 The Terrace, Wellington 6011  
PO Box 10509, The Terrace, Wellington 6143  
New Zealand  
Telephone: +64 4 384 7635 or 0800 286 801  
Email: [mcnz@mcnz.org.nz](mailto:mcnz@mcnz.org.nz)  
Website: [www.mcnz.org.nz](http://www.mcnz.org.nz)

Dear Dr Flynn

**Consultation – Registered medical practitioners who provide cosmetic medical and surgical procedures**

Thank you for asking the Medical Council of New Zealand (the Council) to comment on the Medical Board of Australia's consultation paper on registered medical practitioners who provide cosmetic medical and surgical procedures to consumers in Australia.

I have circulated your consultation paper to our Council members and senior staff. As part of our response, we have discussed our preferred option for regulating medical practitioners who provide cosmetic medical and surgical procedures in Australia as well as our recently updated *Statement on Advertising* which I hope will assist the Medical Board of Australia (the Board) in its deliberations.

**Preferred option for regulating medical practitioners who provide cosmetic medical and surgical procedures in Australia**

Your consultation paper identified four options for regulating medical practitioners who provide cosmetic medical and surgical procedures in Australia:

- Option 1: Retain the status quo of providing general guidance about the Board's expectations of practitioners providing cosmetic and surgical procedures via the Board's approved code of conduct;
- Option 2: Provide consumer education material about the provision of cosmetic medical and surgical procedures by medical practitioners;
- Option 3: Strengthen current guidance for medical practitioners providing cosmetic and surgical procedures through new, practice-specific guidelines that clearly articulate the Board's expectations;
- Option 4: Strengthen current guidance per option 3 but guidelines to contain less explicit guidance.

The Council endorses Option 3 as the preferred option for encouraging safe medical practice and for promoting patient safety in cosmetic medical and surgical procedures. We agree that developing national guidelines that outline in detail what is expected of all doctors who provide cosmetic medical and surgical procedure would go some way in ensuring greater consistency amongst doctors practising in this area and in encouraging them to comply with

the Board's expectations. In cases where doctors are not practising in a way that meets the Board's expectations, having national guidelines in place would compel them to get their practice "up to scratch". All of this would in turn improve the quality of services provided to consumers who should be protected from poor and unsafe practice especially given that they are spending large sums of money for the procedures they undergo.

Another benefit of developing a set of national guidelines is that the same standards would apply irrespective of where in the country the doctor is practising. Invariably, some doctors providing cosmetic medical and surgical procedures will move from one state to another. Having one set of guidelines in place means that doctors would not need to familiarise themselves with a new set of guidelines each time they move to another state to practise. It would also provide a degree of assurance for consumers to know that whichever state they choose to have their cosmetic procedure in, that doctor is required to adhere to the same set of guidelines as all other doctors in Australia who are practising cosmetic medicine and surgery. In addition, should there be any complication or adverse outcome following a cosmetic procedure, consumers across Australia will be protected by the same set of guidelines regardless of which state they live in.

#### **Medical Council of New Zealand's Statement on advertising**

Question 4 of your consultation paper asks whether there is any evidence that medical practitioners' inappropriate use of qualifications and titles may be misleading for consumers, while question 5 asks whether offers of finance for these procedures could act as an inducement for consumers to commit to a procedure before they have had adequate time to consider the risks.

The Council's *Statement on advertising* (enclosed) may assist you in deliberating questions 4 and 5. Updated in February 2015, the purpose of that statement is to protect the public from advertising that is false, misleading or deceptive, and to provide guidance to doctors about the advertising of health-related products and services. More specifically, our updated statement outlines Council's expectations on advertisements in that they must contain truthful and balanced representations, and that any claims or scientific information used should be valid, evidence-based and substantiated, and be readily understood by the audience to whom the advertisement is directed. In addition, it is important that the advertisement is from a reputable and verifiable source and does not unduly glamourise products or foster unrealistic expectations amongst patients.

Our updated statement includes specific guidance on the following areas:

##### *1. The use of 'before and after' photos*

The use of 'before and after' photos has significant potential to mislead and deceive, to convey to members of the public inappropriately high expectations of a successful outcome and to encourage the unnecessary use of medical services. For this reason, clause 14 of our statement sets out Council's requirements should doctors decide to use 'before and after' photos in their advertisements. They include doctors ensuring that the patient has given his or her full informed consent for the patient's photo to be used, that the photos only depict patients who have undergone the advertised procedure while the patient was under that doctor (or practice)'s care, and that photos have not been altered in any way. It is also important that such photos are consistent in terms of the patient's posture, clothing and make-up, and that the same lighting, contrast, background, framing, camera angle, exposure and other photographic techniques are used in any 'before' and 'after' photographs taken.

## 2. *The use of titles*

Titles can be useful in terms of providing patients with information about a doctor's expertise and experience but they could also be misleading and deceptive if patients interpret the advertisement in a way that implies that the doctor is more skilled or experienced than is the case. To reduce the risk of misinterpretation, Council requires that doctors advertise only titles, qualifications and memberships that have been:

- approved for the purposes of registration with the Council and that relate to the doctor's vocational scope of practice; or
- conferred or approved by the College the doctor belongs to, or another training organisation that has been accredited by Council or by another New Zealand responsible authority.

In addition, our statement acknowledges that medicine is full of acronyms which have the potential to confuse rather than inform patients. For this reason, we discourage doctors from using abbreviations of their qualifications the first time that appears in an advertisement. For example, 'Fellow of the Royal Australasian College of Surgeons' should be used instead of 'FRACS' the first time it is referred to in any promotional material.

## 3. *Gift certificates and discount coupons*

One of the more contentious areas of advertising medical services is the use of gift certificates and discount coupons as they are time-sensitive and that could force a patient into making a decision without providing reasonable time to reflect and consider the treatment or clinical procedure they are seeking to undergo. In instances where a doctor chooses to advertise by using discount coupons or gift certificates, doctors must ensure that these do not undermine their relationship with the patient and the informed consent process. Our statement sets out several points that should be made clear in the coupon or certificate including that purchase of the certificate or coupon does not amount to the patient granting their informed consent, and that the patient has the right to opt out of the treatment at any time.

Furthermore, Council's view is that it is inappropriate for doctors to offer medical treatments as prizes or gifts where this is done to promote a commercial service or for financial gain.

I hope that the information we have provided is useful for your consultation. If you have any questions, you are welcome to contact the Council's Senior Policy Adviser and Researcher, Kanny Ooi, on + 64 4 381 6793 or at [kooi@mcnz.org.nz](mailto:kooi@mcnz.org.nz)

Yours sincerely



Philip Pigou  
**Chief Executive**