

LIA04.14

21 May 2012

Dr Joanne Katsoris
Executive Officer
Medical
AHPRA
GPO Box 9958
Melbourne 3001
Australia



Level 13, 139 Willis Street, Wellington 6011
P O Box 11649, Manners Street, Wellington 6142
New Zealand
Telephone +64 4 384 7635 or 0800 286 801
Facsimile +64 4 385 8902
Email mcnz@mcnz.org.nz
Website www.mcnz.org.nz

Dear Dr Katsoris

Consultation – Cosmetic medical and surgical procedures

Thank you for asking for the Medical Council of New Zealand to comment on proposed supplementary guidelines on cosmetic medical and surgical procedures.

The Medical Council of New Zealand

The Council is a statutory body instituted with the primary purpose to protect the health and safety of the public. It has the following key functions:

- Registering doctors
- Setting standards and guidelines
- Recertifying and promoting lifelong learning for doctors
- Reviewing practising doctors if there is a concern about performance, professional conduct or health.

Comments

The Medical Council of New Zealand published its own *Statement on Cosmetic Procedures* in 2007. A copy of the most recent edition is attached for your information.

In general the Council believes that your proposed guidelines are useful and appropriate, and we will consider incorporating some of the innovations contained in your draft into our own statement. However, we do have a number of specific comments on how the document might be improved. In particular we suggest that:

- The status of the document be made explicit. In particular, the Council is not sure what the status of a “guideline” is, and whether the requirements outlined are enforceable. We recommend including an introductory statement which makes it clear whether doctors are expected to comply with the requirements, and how the guidelines might be used in the event of a complaint.
- The title and reference to “medical and surgical cosmetic procedures” may create some uncertainty. Certainly in our experience in enforcing the *Statement of cosmetic procedures* we have had doctors challenging our right to consider concerns about their conduct on the grounds that their services are not “medical” and are therefore outside of the scope of Council’s jurisdiction. We suggest that your Board might encounter

similar resistance, particularly when it comes to procedures that are at the periphery of medicine and might also be performed by beauty therapists (such as some laser skin treatments) or by a nurse under the supervision of a doctor (such as use of Botox). Our view is that if a doctor is engaged in the provision of a procedure (even if just in a supervisory role) then the patient should expect that procedure to be performed in accordance with appropriate standards. We recommend that your guidelines refer simply to “cosmetic procedures” for the avoidance of doubt.

- The definition of “cosmetic procedures” should specifically exclude any procedures that improve a patient’s physical health and safety (other than by improving their appearance and self-esteem). There are a number of such treatments (such as plastic surgery for treatment of burns injuries) and it may not be appropriate to subject these procedures to the same requirements as purely elective procedures. For example, under the current wording a patient who suffers a burns injury would not be able to enter into a financial arrangement with a health service to obtain necessary treatment. Adding this exclusion to the definition would also allow the Board to delete terms such as “if the requested surgery/procedure has no medical justification...” from other parts of the guidelines.
- More explicit advice be provided around the Board’s expectations for training and recertification. The Council’s approach to this issue is discussed below.

Training and recertification

One of the key issues in the regulation of cosmetic procedures is the training undertaken by practitioners. While training for some cosmetic procedures is provided by existing Medical Colleges (for example, cosmetic plastic surgery is covered within the general plastics training programme) many cosmetic procedures fall outside of a vocational scope of practice, and therefore are not covered by an accredited training programme. In recent years there has been a proliferation of unaccredited workshops and training programmes that claim to teach doctors how to perform cosmetic procedures. The quality of this training is not subject to accreditation, and some appears to be of questionable value¹.

The Council’s response has been to provide both general guidance (in paragraphs 8-10 of its statement) and procedure specific advice (paragraph 11). In providing procedure specific advice the Council has separated cosmetic procedures into two categories, category 1 (surgical) and category 2 (non-surgical). To perform category 1 procedures a doctor must usually be registered in a relevant surgical scope of practice and have appropriate skills, knowledge and expertise. Dermatologists and general practitioners have some leeway to perform one surgical procedure (tumescent liposuction), but have to meet additional standards. To perform category 2 procedures a doctor must be registered in a vocational scope of practice and have their competence in the procedure assessed by the relevant College – or be in a collegial relationship with such a doctor, who is satisfied that the doctor’s training is appropriate and that he or she is competent to perform the procedure.

The Council has also considered whether cosmetic medicine should form a separate vocational scope of practice. The Council has rejected this option for the moment, because cosmetic medicine does not appear to meet the criteria for recognition of a vocational scope of practice (in particular, it does not address “a recognised health need”).

¹ A flier promoting training that is unlikely to be very robust has recently been forwarded to the Council. The provider operates in both New Zealand and Australia, and included amongst a variety of courses offered are one day courses, open to all medical doctors, claiming to teach procedures such as facial sculpturing and fat grafting.

The Medical Board of Australia's proposed *Guidelines* do not address this issue except to state that:

Treatment should only be provided if you have the appropriate training, expertise and experience in the particular cosmetic procedure being performed to deal with all routine aspects of care and any likely complications.

You are responsible for ensuring that you have the necessary training, expertise and experience to perform a particular cosmetic procedure with reasonable care and skill.

If you do not comply with this requirement, you may be subject to a performance assessment required by the Board if there is reason to believe that your competence may be deficient.

Because of the importance of training and recertification, the Council recommends that the guidelines include more advice on this subject. This advice should include both the broad principles already outlined, and also specific guidance for doctors performing specific procedures.

We note that in its 2011 report the Australian Health Minister's Advisory Council (HMAC) recommended that the Board implement the standards above, and that "the Medical Board of Australia, in collaboration with medical colleges and professional associations, undertake a review of the minimum training and accreditation standards for medical practitioners performing cosmetic medical and surgical procedures. The review process could be informed by the Australian Medical Council processes. Further, the review should encompass the need for processes to be in place to ensure that where medical practitioners undertake cosmetic medical and surgical procedures, they are part of a program of peer review and ongoing audit." The Council would support this development. We appreciate that incorporating the recommendations of this project into the current guidelines would likely necessitate a considerable delay in the release of the resource. It may therefore be useful to release the guidelines in their current form, but with a clearly signalled review date and with a clearly articulated expectation that more explicit guidance on training and recertification will be included in the revised edition.

Thank you again for providing the Council with an opportunity to comment. I hope you find these comments useful. If you have any questions please do not hesitate to contact the Council's senior policy adviser and researcher, Michael Thorn, on [REDACTED]
[REDACTED]@mcnz.org [REDACTED]

Yours sincerely,


Philip Pigou
Chief Executive



Statement on cosmetic procedures

Purpose of this statement

01 This statement outlines the standards expected of doctors who perform cosmetic procedures.¹ The statement may be used by the Health Practitioners Disciplinary Tribunal, the Council and the Health and Disability Commissioner as a standard by which your conduct is measured.

Definition

02 Council has defined "cosmetic procedures" as follows:

*"Operations and other procedures that revise or change the appearance, colour, texture, structure or position of normal bodily features with the sole intention of improving the patient's appearance or self esteem."*²

Potential for conflicts

- 03 Providing a cosmetic procedure does not improve a patient's physical health and it may be difficult to determine whether the procedure is in the patient's best interests.
- 04 You must therefore take great care to ensure that patients who wish to undergo a cosmetic procedure receive the appropriate information, make an informed choice, give their consent and are free from exploitation.
- 05 The clinical relationship between a doctor performing a cosmetic procedure and a patient may also be complicated by the consumer's heightened expectations of the results that can be achieved and the provider's opportunities for commercial advantage. You must recognise these conflicts and have a duty not to allow them to cloud your professional judgement.

06 Do not abuse your patient's trust. The investigations or procedure you provide or arrange must be made on the assessment you and the patient make of their needs and priorities, and on your clinical judgement about the likely effectiveness of the intervention.

07 Do not make a patient feel ashamed or self-conscious because of their physical appearance. Your first concern must always be the patient, and that may require advising him or her that the requested intervention is not appropriate.

Expectation of training, skill and expertise

- 08 *Good medical practice* outlines the duties and responsibilities of a doctor registered with the Medical Council. This states that "In providing care you must recognise and work within the limits of your competence."³
- 09 A cosmetic procedure must therefore only be provided if you have the necessary training, expertise and experience in the particular procedure being performed and to deal with all routine aspects of care and any likely complications.
- 10 You are responsible for ensuring that you have the necessary training, expertise and experience to perform a particular cosmetic procedure with reasonable care and skill.⁴

¹ Patients are advised that this statement only addresses the standard of care expected of doctors. If you seek care from a health practitioner who is not a doctor then you should obtain advice from the relevant regulatory or professional body.

² The statement does not cover procedures which improve a patient's physical health and safety other than by improving their appearance and self-esteem. This includes gender reassignment procedures, which the World Professional Association of Transgender's Health Standards of Care for Gender Identity Disorders note are "medically necessary and are not cosmetic in any meaningful sense". Doctors providing care to transgender patients should refer to the Ministry of Health's guidelines on *Gender reassignment health services for Trans people in New Zealand*.

³ Page 6. *Good medical practice*. Medical Council of New Zealand. October 2008.

⁴ If you do not comply with this requirement you may be subject to a competence review by the Council if there is reason to believe that your competence may be deficient.

The categorisation system

11 Cosmetic procedures vary in the level of risk and complexity associated with them. To assist it in setting standards the Council has classified different procedures in accordance with the types of providers involved, the type of facility in which they are performed and the level of risk to the consumer:

Category 1

A surgical procedure that involves cutting beneath the skin, such as breast augmentation, breast reduction, rhinoplasty, surgical face lifts, liposuction and otoplasty.

Most commonly performed in a day procedure centre or hospital, with an anaesthetist present.

May be performed by a doctor registered in a relevant surgical scope of practice⁵, who has the necessary training, expertise and experience in the procedure being performed; and whose competence in the procedure has been independently accredited.⁶

Category 1 procedures which involve cutting the skin and into subcutaneous fat may also be performed by a dermatologist whose competence in the procedure has been accredited by the New Zealand Dermatological Society; and who has the necessary training, expertise and experience in the procedure being performed.

A doctor registered in a vocational scope of general practice may perform tumescent liposuction if he or she has met the requirements of the Council's *Interim policy for doctors registered in a general scope or a vocational scope of general practice who wish to perform tumescent liposuction*.

A doctor who is not registered in a vocational scope of practice may only perform category 1 procedures if he or she is enrolled in a relevant vocational training programme.⁷ A doctor who is not registered in a vocational scope of practice and who wishes to perform tumescent liposuction must also meet the requirements of the Council's *Interim policy for doctors registered in a general scope or a vocational scope of general practice who wish to perform tumescent liposuction*.

Category 2

A non-surgical procedure (although in some cases it may involve piercing the skin), such as non-surgical cosmetic varicose vein treatment, laser skin treatments, use of CO2 lasers to cut the skin, mole removal for purposes of appearance, laser hair removal, dermabrasion, chemical peels, injections, microsclerotherapy and hair replacement therapy.

Most commonly performed in day procedure centres or doctors' clinics with or without an anaesthetist.

May be performed by a doctor registered in a vocational scope of practice; whose competence in the procedure has been accredited by the Royal New Zealand College of General Practitioners (via the New Zealand College of Appearance Medicine), the New Zealand Dermatological Society or the Royal Australasian College of Surgeons; and who has the necessary training, expertise and experience in the procedure being performed.

A doctor who is not registered in an appropriate vocational scope of practice and/or whose training has not been accredited by an appropriate body may also perform a category 2 procedure if he or she is in a collegial relationship with a vocationally registered doctor whose training has been accredited and that colleague is satisfied that the doctor's training is appropriate and he or she is competent to perform the procedure.

Advertising and promotion⁸

12 Advertising and promotional material must not glamorise products and services or foster unrealistic expectations.

13 Advertisements must contain truthful and balanced representations and claims must be valid, evidence-based and substantiated. You should not make direct comparisons between the quality of your services and the quality of services your colleagues provide.

14 You must not overstate your qualifications. Patients can find medical titles misleading and to reduce confusion you should avoid using titles such as "specialist" that refer to an area of expertise, unless you are registered with the Council in an appropriate vocational scope.⁹

⁵ For this purpose, the doctor must hold a postgraduate surgical qualification recognised by the Council as allowing registration within a relevant surgical vocational scope of practice.

⁶ Independent accreditation may occur through a branch advisory body training programme or through a credentialing process.

⁷ For the purpose of performing tumescent liposuction, this includes the vocational training programme for general practice.

⁸ This section contains extracts from the Council's *Statement on advertising*. Refer to that document for more comprehensive advice on Council's expectations.

⁹ Vocationally registered general practitioners who are also Fellows of the New Zealand College of Appearance Medicine should use a title such as "general practitioner with a special interest in appearance medicine".

Obtaining consent

- 15 Because performing elective procedures may involve a conflict of interest, obtaining the patient's informed consent is essential. The informed consent process should start at the initial consultation and must involve a two way communication process which results in the patient having sufficient information to make a fully informed choice about whether to undergo the procedure.
- 16 Selection of patients for category 1 cosmetic procedures must start with an effective assessment of the patient's motivation for seeking treatment. Steps should also be taken to ensure that the patient has realistic expectations and that any preconceived ideas based on advertising and media sources have been ascertained and addressed. You should be very cautious before agreeing to perform a procedure on:
- A patient experiencing a current episode of mental illness or who has a long-standing persistent body dysmorphic or personality disorder.
 - A patient who has had multiple cosmetic procedures and is dissatisfied each time.
 - A patient who appears indecisive.
 - A patient who believes a cosmetic procedure is the solution to all of their problems.
 - A patient who has not carefully and thoroughly considered the implications of undergoing the procedure.
- 17 There must be an opportunity for a patient to be referred for psychological evaluation if you have concerns about their motivation. Such doubts might arise, for example, if you suspect the patient has a body dysmorphic disorder or a personality disorder. Onsite counselling services are not necessarily required, but you must know how to access such services. This requirement is especially relevant when category 1 procedures are being provided.
- 18 If you are asked to perform a cosmetic procedure on a minor you should act with great caution. In such circumstances you must first assess the child's competency and form an opinion on whether he or she is able to make an informed choice and give informed consent. Generally, a competent child is one who is able to understand the nature, purpose and possible consequences of the proposed procedure, as well as the consequences of not undergoing the procedure.¹⁰
- 19 A patient's informed written consent should be obtained at a pre-procedure consultation within a reasonable time period before the day of the procedure and consent must be reconfirmed on the day the procedure occurs. Obtaining informed consent is the responsibility of the doctor treating the patient.
- 20 There must be a period of reflection of at least seven days between any initial consultation and the performance of a category 1 cosmetic procedure.
- 21 At the time of the initial consultation for a category 1 procedure, provide patients with written information in lay language which includes:
- Realistic information about what is involved with the procedure.
 - The range of possible outcomes (including worst case scenarios).
 - The risks associated with the procedure.
 - Recovery times and requirements.
 - Other options for addressing their concerns, including clinically appropriate treatments that you do not provide but which are offered by other practitioners and non-treatment.
 - The patient's rights as a consumer.
 - How to make a complaint if something goes wrong.
 - Information about your qualifications and experience.
- 22 Where specific and recognised ethical standards for obtaining informed consent exist, you must follow these.

¹⁰ Section 36 of the Care of Children Act 2004 states that children over the age of 16 years can give consent as if they are adults. Section 36 does not automatically prohibit persons under 16 years from consenting to medical procedures. In the absence of clear legislative direction it is likely that the principles set out in Gillick, namely that parental consent is not always necessary for medical procedures for persons under 16 years, will be followed by NZ courts. Such an approach is also consistent with the requirements of the Code of Health and Disability Services Consumers' Rights. Refer to the Council's statement on *Information, choice of treatment and informed consent* for more information.

23 Following any category 1 procedure, provide patients with written information in lay language which tells them:

- How to contact you if complications arise.
- Details of who they can contact if you are not available.
- The usual range of post-operative symptoms.
- Where to go if they experience unusual pain or symptoms.
- Appropriate instructions for medication and self care.
- Details of the dates for follow up visits.

Providing care

24 Good clinical care includes fully assessing the patient's condition, taking account of the patient's history and his or her views and examining the patient as appropriate.¹¹

25 The operating doctor is responsible for all aspects of preoperative, operative and post operative care. Delegation of care must be appropriate and arranged in advance of any procedure.

26 Carry out all surgical procedures in facilities where there are adequate and appropriate backup services available to address any foreseeable operative complications.

27 You should seek the patient's permission to keep their general practitioner informed.

28 Provide appropriate follow up. At a minimum follow up for a category 1 procedure requires that you be available personally for at least two weeks post procedure, or to have a formal arrangement with another suitably qualified practitioner who has full access to the patient's history. Inform patients if you intend to hand over care to another practitioner.

Audit and review

29 If you perform cosmetic procedures you must participate in clinical audit or reporting on a number of clinical indicators. Ideally this should occur annually and should contribute towards the mandatory requirements for continuing professional development and recertification.

Related Council statements and resources

- Information, choice of treatment and informed consent (March 2011).
- Statement on advertising (August 2010).
- Interim policy for doctors registered in a vocational scope of general practice who wish to perform tumescent liposuction (October 2011).

October 2011

This statement is scheduled for review by October 2016. Legislative changes may make the statement obsolete before this review date.

¹¹ Paragraph 2. *Good medical practice*.
