HEALTH SERVICES COMMISSIONER

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Consultation: Registered medical practitioners who provide cosmetic medical and surgical procedures

Response by the Office of the Health Services Commissioner

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The Office of the Health Services Commissioner (OHSC) is pleased to respond to the consultation paper on *Registered medical practitioners who provide cosmetic medical and surgical procedures*. As an organisation established to receive and resolve complaints from health service consumers in Victoria, we have a keen interest in the development of regulatory tools that help to clarify obligations and set reasonable expectations about the care that medical practitioners provide.

The OHSC was established to support and assist with the resolution of complaints and to subsequently contribute to improvements in the quality of health care delivery. Our role is to work impartially with both health service providers and consumers (or their representative) to resolve complaints. We work with parties to achieve acceptable outcomes using alternative dispute resolution (ADR) approaches to promote agreement and goodwill. In doing so, we use facilitative and advisory approaches using a variety of methods to assist parties to identify the issues and reach an agreement about the dispute or actively advise the parties about the issues and range of possible outcomes. We do not use determinative processes to resolve disputes. Complaints that raise significant issues of public health and safety related to systemic issues or non-registered practitioners may require investigation to determine if concerns are founded and if (and what) corrective actions should be taken.

Preferred Option: Benefits of Option 3 for complaints resolution relating to medical practitioners

Where agreed, complaints about registered practitioners that raise concerns about professional conduct or performance are referred to the boards for investigation. Decisions about who should deal with a complaint (boards or OHSC) are made and agreed to using a shared decision-making framework that considers a range of criteria including risk to the public and severity of the impact of the incident. While the *Code of conduct for doctors in Australia* (the Code) is useful in helping to assess whether the incident might represent a breach of the Code (and therefore more suitably be dealt with by the boards), it does not provide guidance that is specific to a medical specialty or area of practice. This limits its utility as a tool by the OHSC to guide decision-making about which organisation should deal with a complaint. Practice specific guidelines that clearly articulate the Board's expectations of medical practitioners could be used by the OHSC to assist in the preliminary assessment of a complaint and in the decision-making process about who should deal with the complaint.

Accurate triaging of who should deal with a complaint (OHSC or boards) is important as the decision has implications for effective complaints resolution. Timeliness is critical to effective complaints resolution. While a referral to a board may be justified where a breach of professional conduct is in question, consideration by a board can delay or even deny

complainants the opportunity to conciliate their complaint through the OHSC. Where complaints are referred to a board and the board determines it will take no further action (NFA), practitioners tend to be reluctant to engage in (voluntary) conciliation as they consider themselves to have been 'cleared' of any wrong-doing (board determination of NFA only confirms that unprofessional conduct, misconduct or performance issues were not identified—grounds for conciliation may still exist). I understand that changes to the content of letters from the boards to practitioners now include more detail about the reason why the board will not be taking further action. This should enable the OHSC to more effectively engage with providers post the NFA decision, but the perception that practitioners have 'no more to answer for' post an NFA decision persists, and hampers our capacity to conciliate post NFA decision.

It is therefore critical that the decision to refer to the board is only made where there is a strong likelihood that standards of care are being compromised. Specific guidelines will assist in preliminary assessment as they define good practice and therefore provide greater clarity in the assessment process. Option 3— Practice specific guidelines—is therefore supported by the OHSC as the preferred regulatory option for medical practitioners who provide cosmetic and surgical procedures.

Additional benefits of Options 3: Broader applicability of Guidelines
The definition of cosmetic and surgical procedures in the discussion paper includes minor procedures such as laser skin treatment and hair removal, injections and chemical peels. These are undertaken by a range of other registered and non-registered practitioners including nurses and beauticians. Over 2011-2013, almost 30% of all complaints about unregistered providers (70) received by OHSC related to beauty treatments or therapies that have led to physical or psychological harm. The Draft Guidelines presented in Option 3 are largely practice and process–based and could broadly be applied to any practitioner or individual performing cosmetic procedures (some elements specifically refer to medical practitioners).

The Guidelines therefore provide a useful guide for the OHSC to refer to for complaints about cosmetic procedures undertaken by both registered and non-registered practitioners. They set out reasonable expectations and obligations to patients and clients when providing cosmetic procedures that have a higher risk to consumers. The explicit guidance could help to reduce the incidence of harm from a practitioner (registered or not) who have poor management procedures. The guidelines could complement the anticipated National Code of Conduct for Health Care Workers.

Thank you for the opportunity to comment. Please contact me on should you wish to discuss any aspect of this submission further on [redacted]

Dr Grant Davies
Health Services Commissioner

29 May 2015