

**AUSTRALASIAN COLLEGE  
OF COSMETIC SURGERY**

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ACCS  
ROUNDTABLE  
WHITE PAPER

MARCH

2008

# ACCS ROUNDTABLE WHITE PAPER

## Executive Summary

This White Paper presents the discussions of eleven clinical, insurance industry and regulatory representatives at a roundtable event on 31 March 2008.

The event is part of a continuing series, hosted by the Australasian College of Cosmetic Surgery, to enhance engagement between stakeholders and provide a platform to gain valuable insight from the medical profession on issues of concern to the industry and consumers.

It is hoped that by bringing together stakeholders representing various disciplines – medical associations, government and universities – these discussions ultimately will contribute to raising standards and protecting patients, the College's aim.

The roundtable was divided into three parts. In Part 1, the participants considered the increasing trend of commission or bonus rewarded “sales consultants” or “advisors” to perform the first face to face consultation instead of the doctor. In Part 2, the roundtable participants discussed the need for clarification for the community of titles, qualifications and memberships used in cosmetic surgery advertising. Guidelines from the profession concerning appropriate recruitment of, and informed consent for, patients willing to participate in cosmetic surgical training were considered in Part 3 of the discussions.



## PART 1

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ADDRESSING THE INCREASING TREND OF COMMISSION OR BONUS REWARDED “SALES CONSULTANTS” OR “ADVISORS” TO PERFORM THE FIRST FACE TO FACE CONSULTATION INSTEAD OF THE DOCTOR. PATIENTS ARE RARELY INFORMED THAT THE ADVISOR MAY HAVE A VESTED FINANCIAL INTEREST IN THE PATIENT PROCEEDING TO SURGERY AND IN SOME CASES IS EFFECTIVELY EMPLOYING THE DOCTOR.

The participants noted the emergence of commission based “sales consultants” or “advisors”.

The initial consultation is where the risks, the benefits and the appropriateness of the procedure, specific to that patient's individual circumstances must be explained. The patient's hopes and expectations are formed at this first consultation. All participants expressed concern about the practice and the need to ensure proper controls and, at the very least, disclosure of any commissions.

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*“From the Medical Board's perspective, I think to adopt an approach like this is treading on very dangerous ground. There're two issues from the point of view of the Board. The first one is holding out. It's an offence under the Medical Practice Act for any person to hold themselves out as being qualified to provide any surgical advice, or to perform a consultation with a patient, and, without knowing what is said by these sales consultants, they may be crossing that ground and leaving themselves open to prosecution under the Medical Practice Act ...*

*“The other major concern is there's a definition of unsatisfactory professional conduct in the Medical Practice Act, and that covers offering inducements or rewards for people to accept a treatment or a product or the like ... So I think it's a very dangerous area, and the focus really should be as was said earlier, on providing beneficial treatment to a patient, not on trying to broker a sale.”*

**Anthony Johnson**, Legal Director  
NSW Medical Board

*“As a broad parallel, the ACCC has authorised Medicines Australia's Code of Conduct which requires disclosure by drug companies of certain activities they undertake to promote their products to doctors. Here, too, disclosure is vital - if, for example, a patient believes they are consulting a medical professional when they are not, we would be concerned. From a trade practices perspective, it's important to remember that silence can be misleading (in the context of misleading and deceptive conduct) and the overall impression is what's taken into account.”*

**Sarah Proudfoot**  
Australian Competition and Consumer Commission (ACCC)

*“I don't think the insurer should hold the stick, and you know, be in the position where they exclude cover to the doctor. I think this is something that very much the profession needs to lead. The insurer can't be the solution here, and as a spokesman for MIGA that I would like to see a position where we actually excluded cover to the doctor. It's something that is very important, but it's something that the profession needs to resolve.”*

**Maurie Corsini**, Underwriting Manager  
MIGA

*“The College is against this practice. But it will continue to occur unless insurers refuse to cover those doctors concerned or if the Medical Board prosecute people who act this way. It is imperative that there is clear disclosure of all of the financial arrangements, in the same way that in the financial services context, if you buy a life insurance policy you are told exactly how much that broker will receive.”*

**Dr Daniel Fleming**, President  
The Australasian College of Cosmetic Surgery (ACCS)

*“I'm quite opposed to this sort of thing actually ... The situation is basically that you often have people whose only qualification is that they've had a procedure themselves, setting themselves up in a business situation where they then inform patients about cosmetic surgery.*

*“So they often advertise quite blatantly, often beyond the realms of what a medical practitioner could do or would do, and get a lot of patients interested - very hyped up - and then they can refer onto the doctor. And sometimes they have set up this big business, and they'll often get some quite junior doctors to perform some of these procedures, and because the patients have had the marketing plan and so on, and often the financial plans that go along with it, it's a really big business. But then, almost the bottom tier if you like, is the doctor performing those things.”*

**Dr Mary Dingley**, President  
Cosmetic Physicians Society of Australasia (CPSA)

*“I strongly believe that doctors need to disclose all their sort of financial interest, so should those people, because otherwise that person can't make an informed decision. I think it's like if you go to an investment advisor, I mean, the law is that they need to disclose if they have any financial interests, or if they're paid by any institutions. And I think that really the role of the cosmetic advisor shouldn't be to sell a treatment, but it really should be to act in the patient's best interest.”*

**Michelle Kearney**, Editor-in-Chief  
Australian Cosmetic Surgery Magazine

*“I think we would have preferred that the initial consultation starts from the premise that it is a doctor that's dealing with that patient straight off. It might just be unrealistic to think that a burgeoning cosmetic industry that this sort of thing is not going to occur, so the question really is how best to manage it, and it surely must get back to the robustness of the disclosure. I mean, it's such a shocking word, isn't it, 'sales consultant' when you're dealing with medicine.”*

**Maurie Corsini**, Underwriting Manager, MIGA

Avant believes that there are serious potential ethical and legal issues that arise from the use of sales consultants and lay advisors that have a financial interest in the patient electing cosmetic surgery. In cosmetic surgery practice a usual referral from a GP to a treating surgeon is often not present, and as a result a patient may not have had a proper medical consultation prior to deciding to have the procedure ...

Avant believes that the first face to face consultation should be a with a medical practitioner, and that a history of the patient, medical examination, relevant investigations and assessment be undertaken before cosmetic treatment is offered. Avant also believes that given the elective nature of cosmetic procedures that the College recommend by way of guideline that a cooling off period be adopted between the first consultation and the treatment being offered.”

**Andrew Took**, National Manager  
Medico-legal Advisory Service, Avant

*“One of my current roles is the chairman of the mortgage industry tribunal, which disciplines mortgage brokers. This is putting mortgage brokers in charge of cosmetic surgery. It is so dangerous, and it seems to me all the things that are said are true. But as Daniel said, it's not easy to control.*

*“But I would have thought with a mix of cottage rules and insurance concerns, there should be a way of controlling some of this, particularly the commissions and the other incentives. Because at the end of the day, if there're doctors who are involved in this, it's not just the sales people, it's the doctors who are a part of the deal. And surely those doctors can do something about it. And the insurance industry also needs to say 'This is high risk stuff.'”*

**Hank Spier**, Spier Consulting; Former-CEO (ACCC)

# Moderator

Ann-Maree Moodie, Managing Director  
Boardroom Consulting Group

# Participants

Dr Daniel Fleming, President  
The Australasian College  
of Cosmetic Surgery (ACCS)

Pamela Lee, Risk Services Manager  
MIGA

Maurie Corsini, Underwriting Manager  
MIGA

Michelle Kearney, Editor-in-Chief  
Australian Cosmetic Surgery Magazine

Andrew Took, National Manager  
Medico-legal Advisory Service, Avant

Dr George Marcells  
Australasian Academy  
of Facial Plastic Surgery (AAFPS)

Hank Spier  
Spier Consulting; Former-CEO (ACCC)

Professor Paddy Phillips, Acting Chief Medical Officer  
SA Health

Dr Mary Dingley, President  
Cosmetic Physicians Society  
of Australasia (CPSA)

Anthony Johnson, Legal Director  
NSW Medical Board

Marilyn Cassetta, RN

# Observers

Dr John Flynn, CEO  
The Australasian College  
of Cosmetic Surgery (ACCS)

Dr Philippa McCaffery  
Cosmetic Physicians Society  
of Australasia (CPSA)

Sarah Proudfoot, Assistant Director  
Compliance Strategies Branch  
Australian Competition and  
Consumer Commission (ACCC)

# Venue

Park Hyatt Sydney

## PART 2

CLARIFICATION FOR THE COMMUNITY OF TITLES,  
QUALIFICATIONS AND MEMBERSHIPS USED IN COSMETIC  
SURGERY ADVERTISING.

Despite the strong regulation which exists already, the growth in the marketing and advertising of cosmetic surgical and medical procedures has created considerable confusion in the community.

The participants agreed that it is necessary to clear up the confusion, and for some people, the misinformation about the different titles, memberships and qualifications.

*"The key here is that people do not understand the meaning or significance of the different titles, memberships and qualifications. While some may mean a great deal, other memberships and grandiose titles may, in fact, mean nothing more than a paid subscription fee. In many cases, the public doesn't have the ability to distinguish between those things."*

**Dr Daniel Fleming, President**  
The Australasian College of Cosmetic Surgery (ACCS)

*"The [NSW Medical] Board's role in all of this is - our mandate - is to protect the public. And we have a role in policing and enforcing the advertising guidelines contained in the Medical Practice Regulation ... Our view on this issue is that it really needs a wider educative campaign out there to inform the public as to who these people are, and what the titles mean."*

**Anthony Johnson, Legal Director**  
NSW Medical Board

*"It's fair to say that the community does not understand titles, it does not understand qualifications and it does not understand memberships. And if the Australasian College of Cosmetic Surgery can improve that understanding, that would be a very good thing."*

**Professor Paddy Phillips, Acting Chief Medical Officer**  
SA Health

*"I have a lot of contact with readers and obviously patients, not only don't they understand titles and memberships, they don't ... understand such basic things as the difference between a plastic surgeon, a cosmetic surgeon [or] a cosmetic physician. So I absolutely agree that clarification is necessary."*

**Michelle Kearney, Editor-in-Chief**  
Australian Cosmetic Surgery Magazine

*"It's Avant's view that it is important for consumers to have information regarding the qualifications, relevant training, experience and clinical outcomes of the cosmetic practitioner in order to make an informed decision."*

**Andrew Took, National Manager**  
Medico-legal Advisory Service, Avant

## PART 3

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### GUIDELINES FROM THE PROFESSION CONCERNING APPROPRIATE RECRUITMENT OF, AND INFORMED CONSENT FOR, PATIENTS WILLING TO PARTICIPATE IN COSMETIC SURGICAL TRAINING.

The development of medical skills has always depended upon the willingness of patients to allow trainees to assist fully qualified practitioners. This remains a fact today in all medical and surgical specialties.

There was strong agreement about the need for proper consent guidelines. There was some difference of views over whether or not offering a patient a discount for a procedure in which training was to take place amounted to an improper inducement.

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*“This is where the public and private sectors do actually differ slightly; in the public sector ... the patients can not choose their provider. They can choose not to have the service or to delay the service if a consultant can't provide it; but they can't actually specify that they have to have that person. And that is a difference.”*

**Professor Paddy Phillips**, Acting Chief Medical Officer  
SA Health

*“Generally speaking, the way financial incentives work is that as the trainee nears the end of their training they are ready to assume responsibility, in a supervised environment, to perform a procedure.*

*“Patients will be recruited by various means. Often it will be somebody who is known to the trainee, a relative or a friend, and there's obviously complete disclosure. Other times patients may ask, 'Look, I want to have this procedure done and I can't afford it, is there a training scheme where I can have some kind of discount?' In this instance, I do not see that there's anything wrong with that, providing there is full and complete disclosure.”*

**Dr Daniel Fleming**, President  
The Australasian College of Cosmetic Surgery (ACCS)

*“From an insurer's perspective, our defence of a doctor often rests on the quality of their medical notes, and as part of their medical notes that consent form and any disclosures associated with that. If there're ... two doctors operating and one happens to be in training, it's really important that that be disclosed, and ... it be documented in medical notes - which side the trainee is operating on, what part of the operation they actually did, so that there's no confusion when we need to go back and actually defend a doctor if there happened to be a complaint.”*

**Pamela Lee**, Risk Services Manager  
MIGA

*“Now there's an argument at law that if you provide a financial inducement in those circumstances, you risk vitiating the effect of disclosing that the proceduralist is a trainee. The assertion, providing full disclosure that the proceduralist is a trainee, and that there is a higher risk of complications, but we're going to do it cheaply for you, is not in my respectful view going to meet the onus on a practitioner at law in meeting that duty.”*

**Andrew Took**, National Manager  
Medico-legal Advisory Service, Avant

*“As a college that provides training in cosmetic surgery, this is something that we have had to wrestle with. At one level is where the trainee is in an advanced stage of training and is the responsible doctor performing the procedure – even though they will be supervised and assisted by an experienced, fully qualified practitioner.*

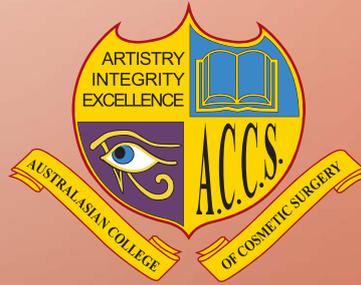
*At that level it is relatively easy to achieve informed consent, and indeed there may well be a financial inducement. I don't object to that as long as everybody is clear with the situation from day one. We have specialised consent forms for that purpose.*

*The difficulty is when trainees are in an earlier stage of their evolution to fully qualified cosmetic surgeons. They will act as an assistant to a doctor in charge of a procedure, and the trainee will complete variable tasks during the operation.”*

**Dr Daniel Fleming**, President  
The Australasian College of Cosmetic Surgery (ACCS)

*“Our concern is that there is a robust consent process, irrespective of whether the doctor is in training, or fully qualified ... And also the indemnity level that that doctor ought to have. The robust consent needs to cover all the things that a fully experienced doctor in this field would do, such as general assessment, medical assessment, psychological assessment. So just as thorough as the doctor that was not in training, is fully qualified in the area.”*

**Pamela Lee**, Risk Services Manager  
MIGA



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