



10 February 2010

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Dear Philip

**Review of Medical Council's *Statement on Cosmetic Procedures***

The New Zealand Law Society (Society) welcomes the opportunity to comment on the Medical Council's review of its *Statement on Cosmetic Procedures*.

The Society's comments on the proposed changes are set out below.

**"You should not contribute to the "medicalisation of the normal ..."**

It is proposed that the following new paragraph will be added to the Statement:

"You should not contribute to the medicalisation of the normal by fulfilling the aesthetic desires of patients who will not benefit from treatment. Your first concern should always be the patient, and that may require persuading him or her that treatment is not the answer."

The Society's view is that this requirement may be problematic for the following reasons.

- (a) Defining what is "normal" would be difficult.
- (b) For those medical practitioners who perform cosmetic procedures it would be difficult to comply with an obligation not to fulfill the aesthetic desires of patients, given that this is the intended purpose of many such procedures.
- (c) The clause proposes to prevent cosmetic procedures on patients "who will not benefit from treatment". But "benefit" does not lend itself easily to definition. For example, it could readily be considered that the improvement of a patient's appearance or self-esteem (the first of which is part of the definition of a cosmetic procedure) is in itself a benefit.
- (d) The proposed clause can be seen to undermine patient autonomy and the right for a patient to make a decision to have a cosmetic procedure on the basis of full information. In this regard the Society notes that practitioners would already be able to refuse to provide treatment that was not considered appropriate or reasonable, which should be a sufficient safeguard.
- (e) The clause proposes to restrict cosmetic procedures that simply fulfill the aesthetic desires of patients. However, an intervention that may not be indicated from a physical point of view

may nevertheless improve mental health and wellbeing. (For example, a breast reconstruction after a mastectomy may be considered not to be a physical health need but may contribute to psychological wellbeing). Such interventions should not be considered to amount to a “medicalisation of the normal”.

### **Definition of Cosmetic Procedures**

While it is appreciated that this definition has not been amended, it is noted that it defines cosmetic procedures as procedures that revise or change the appearance “of normal bodily features”. Given that the definition is linked to a change of the normal this seems to conflict with the proposed new clause that practitioners should “not contribute to the medicalisation of the normal”.

Again, it is the Society’s view that the new clause would be difficult to comply with because it appears to run counter to much of the expected practice of practitioners in this area.

### **Footnote 5**

Footnote 5 is sufficiently substantive that it may be better to incorporate it into the body of the document.

It is also noted that the words “in a collegial relationship” may require clarification if not already defined in other Medical Council statements.

### **Advertising and Promotion**

The Society notes that the advertising of products and services needs to comply with an existing regulatory framework notably the Medicines Act 1981 and Medicines Regulations 1984. There is also an already established service – The Therapeutic Advertising Pre-Vetting Service (TAPS) administered through the Advertising Standards Authority – that requires advertisements for products and services to be submitted for “TAPS” approval. This pre-vetting service is a mechanism for ensuring that current advertising standards are met and, in the area of therapeutic advertising, that all of the regulatory framework applicable to medicines and the services of health professionals are complied with.

To this extent clause 11 may suggest (by the absence of any other required standards) that the only requirement on advertising and promotional material is that it “must not unduly glamorize products and services”, whereas, in fact there are a significant number of additional requirements on such advertising and promotional material.

It is also noted with regard to clause 13 that the wording “must not falsely overstate your qualifications” should more appropriately read “must not overstate your qualifications”.

### **Obtaining Consent**

The Society notes that clause 14 states that “obtaining the patient’s informed consent is particularly important”. It is the Society’s view that to be consistent with current legal requirements this provision should be amended to state that “obtaining the patient’s informed consent is essential”.

It is also noted that in elective procedures it would be appropriate to consider that the obligation to disclose risks of adverse events is such as to require a particularly high level of transparency and disclosure.

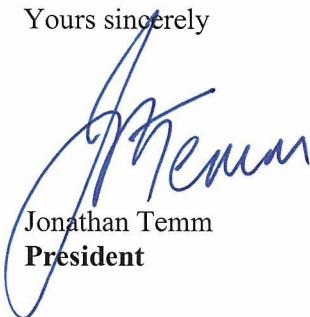
Clause 14 states that the informed consent process should result “in the patient feeling confident that they have enough information”. It is the Society’s view that this statement needs to be considered in light of the requirements of the Health & Disability Commissioner’s Code of Health and Disability Services Consumers’ Rights that would require more than the patient “feeling” that they have enough information. The patient would be required to have sufficient information to assess whether to agree to the procedure. Indeed there has been recent case law that supports a requirement for the practitioner to also assess the patient’s understanding of the information provided.

With regard to clause 15, the Society understands the reasoning behind the proposed requirement to be “very cautious” before agreeing to treat patients with psychiatric illness. It notes that practitioners in this field would also need to be aware of the prohibition (in the Human Rights Act 1993) on discriminating against people on the basis of “disability” (which includes mental illness).

Thank you again for the opportunity to comment on the review of the Medical Council’s Statement. The Society would also welcome the opportunity to comment on the further modifications to the Statement that the Council is proposing to undertake in 2012.

This submission has been prepared with assistance from the Society’s Health Law Committee. If you have any queries regarding this submission please contact Vicky Stanbridge, the Committee Secretary, by telephone (04) 463 2912 or email ([vicky.stanbridge@lawsociety.org.nz](mailto:vicky.stanbridge@lawsociety.org.nz)).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jonathan Temm', is written over the typed name and title.

Jonathan Temm  
**President**