

Board News

JULY 2008

President's report

Work to establish a national registration system by July 2010 is now underway following the Council of Australian Governments' decision in March to sign an inter-governmental agreement on the health workforce.

A National Registration and Accreditation Implementation Project Team has been formed in Canberra and plans to host stakeholder forums across Australia this month to outline the plans for the implementation project and seek input in setting priorities for the process.

The NSW Medical Board has consistently backed the principle of national medical registration and looks forward to making a positive contribution to the development of the details of a national scheme.

In the search for registration uniformity and health workforce solutions, the Board will continue to emphasise the need to safeguard public protection and medical standards, and the importance of preserving innovative and constructive schemes, such as the performance and health programs, which have enhanced the effectiveness of medical regulation.

Work is also underway to implement the provisions of the NSW Medical Practice Amendment Act 2008, passed by NSW Parliament last month. Details of some of the key provisions of the Act are outlined in this edition of *Board News* (see pages 2-4) and further information on commencement dates and relevant guidelines will be posted on the Board's website as soon as available.

The legislative reforms strengthen and clarify the Board's powers to protect the public and ensure doctors are fit to practise medicine. Aspects of the new laws have been in development for some time, while others have followed a recent review of matters relating to de-registered doctor Graeme Stephen Reeves. Since the emergence of allegations of serious new complaints against Mr Reeves earlier this year, the Board has actively encouraged any person with new information to come forward so they may be appropriately dealt with. The Board emphasises the importance of due process to ensure these serious allegations are dealt with appropriately for individuals and for the community.

With the new legislative reforms being implemented in NSW and a national registration system now two years away, the Board has taken the opportunity to include a copy of the *Code of Professional Conduct: Good Medical Practice* with this edition of *Board News*. First published in 2005, the Code has been re-published to increase awareness and provide certainty for NSW practitioners regarding their contemporaneous and relevant statutory duties and obligations.

Associate Professor Peter Procopis
President, NSW Medical Board

The public register

The Council of Australian Governments has highlighted the development of a national public register for each health profession - including medical practitioners - as part of the national model to be implemented by 2010.

The NSW Register of Medical Practitioners is currently available online for employers, practitioners and patients to check details of a doctor's registration status, including any conditions or orders placed on their registration to practise medicine.

The NSW Register is available on the Board's website www.nswmb.org.au, as well as a list of de-registered persons and published disciplinary decisions.

In addition, the system of mutual recognition between state and territory medical boards currently ensures that any action taken that affects a doctor's registration in one state is passed on and recognised in another. For example, the de-registration or suspension of a doctor in NSW would be immediately recognised and acted upon in any other Australian jurisdiction in which he or she were registered or seeking registration.

contents

- 1 President's report
- 2 Medical Practice Amendment Act 2008 – mandatory reporting of misconduct

- 3 Medical Practice Amendment Act 2008 – 'critical compliance' and de-registration, emergency powers, restoration applications
- 4 Medical Practice Amendment Act 2008 – expansion of Professional Standards Committees, professional indemnity

- 5 Registration matters – short term visitor registration, international medical graduate pathways
- 6 In the Medical Tribunal
- 8 New Cosmetic Surgery Guidelines

Introduction

New laws to strengthen the powers of the NSW Medical Board so that it is able to more effectively meet its charter of protecting the public and ensuring doctors are fit to practise medicine have recently been passed by NSW Parliament.

The Board considers that the reforms included in the Medical Practice Amendment Act 2008 are appropriate and timely, and expects they will be seen as such by doctors in NSW.

The amendments include provisions for:

- mandatory reporting of flagrant misconduct or incompetence
- the Medical Tribunal and Professional Standards Committees to order 'critical compliance' conditions on registration
- the Board's emergency powers to protect the public
- procedural changes to Professional Standards Committees
- the use of complaints made after a doctor's de-registration
- doctors to include copies of professional indemnity certificates or policies in their annual returns for registration.

This edition of *Board News* outlines key aspects of the Medical Practice Amendment Act 2008 as they relate to Board functions and powers.

A full summary of the reforms is available from the Board's website at www.nswmb.org.au and readers interested in the detail of the legislation can access the Act at <http://www.legislation.nsw.gov.au/> or www.parliament.nsw.gov.au/ > 'Bills'.

Commencement dates of the Act's provisions were still to be confirmed as *Board News* went to press. The Board will provide updates on its website and in future editions of *Board News*.

Medical practitioners should seek legal advice from their medical defence insurer regarding any relevant individual matters.

Mandatory reporting of misconduct

The new laws require registered doctors to report to the Board on misconduct committed by other medical practitioners.

The Board's statutory *Code of Professional Conduct: Good Medical Practice* – which has been in force for more than two years – includes several references to the professional obligations of doctors to report colleagues if they consider that they are engaging in misconduct or poor practice.

The preparedness of doctors to do this has grown significantly over the past 20 years and the introduction of specific statutory requirements relating to mandatory reporting of certain types of misconduct or incompetence will reinforce this change, as well as providing clear guidance to those who may be hesitant to do so at present.

Reportable misconduct

The Medical Practice Amendment Act 2008 defines reportable misconduct as follows:

'A registered medical practitioner commits reportable misconduct in the following circumstances:

- If he or she practises medicine while intoxicated by drugs (whether lawfully or unlawfully administered), or alcohol;
- If he or she practises medicine in a manner that constitutes a flagrant departure from accepted standards of professional practice or competence and risks harm to some other person;
- If he or she engages in sexual misconduct in connection with the practise of medicine.'

Under the Act, a practitioner who believes or who ought reasonably believe that another practitioner has engaged in reportable misconduct must report this to the Medical Board.

Failure to do so will constitute either unsatisfactory professional conduct or professional misconduct.

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and public protection laws

Update: Mandatory reporting guidelines

The legislative provisions for mandatory reporting of misconduct, including the terms 'flagrant' and 'reasonable belief', have raised much discussion. Guidelines to assist with interpretation are being developed jointly by the Board, the AMA, and NSW Health. The guidelines will be made available on the Board's website when finalised, and published in the next edition of *Board News*.

Protection of complainants

The new legislation also provides that if a person makes a complaint in good faith this does not of itself constitute a breach of professional ethics or departure from accepted standards of professional conduct. A complaint made in good faith does not incur liability for defamation or constitute a ground for civil proceedings for malicious prosecution or conspiracy.

Under the provisions it will be a criminal offence for a person to harass or victimise a doctor for making a report.

'Critical compliance' and de-registration

The Medical Tribunal and Professional Standards Committees have been empowered to specify 'critical compliance' orders or conditions on a doctor's registration, any contravention of which would result in the doctor's suspension and, ultimately, de-registration.

Under the new reforms, the Board must suspend a doctor if, after an initial urgent inquiry, it is satisfied he or she breached a 'critical compliance' condition and then refer the matter to the Tribunal as a complaint. The Tribunal must de-register a doctor if it is satisfied in its findings on a complaint that the practitioner contravened a 'critical compliance' order or condition.

About 350 doctors currently have conditions imposed on their registration in NSW and while the great majority of them

are careful to ensure they comply, there is a relatively small number who do not.

The Medical Board has welcomed the legislative provisions, which provide explicit legal powers and processes to what has been a long-standing judicial and professional standards view of compliance with registration conditions.

In a recent de-registration decision relating to breaches of conditions, the Medical Tribunal concluded that without honest dealings by practitioners with registration conditions, *'the entire system developed to benefit both public and practitioner will be imperilled.'*

'Practitioners whose conduct of medicine is called into question must appreciate that this Tribunal may treat dishonest statements and explanations to the Board, to Panels and to experts appointed by the Board and to this Tribunal as justifying suspension or de-registration even where the original conduct may well not have, of itself, lead to such a result' (HCCC v Dr Ian McHue, 2007).

The NSW Court of Appeal has also previously noted that when conditions are imposed they *'must be scrupulously observed'* and non-compliance becomes *'even more serious when dishonesty supervenes'* (Prakash v HCCC, 2006).

Emergency powers

The Board's ability to rapidly suspend or impose conditions on a practitioner in the interests of public safety has been strengthened and clarified.

The new legislation has introduced a number of reforms to the Board's emergency powers, contained in section 66 of the Medical Practice Act, including that:

- its power to take urgent action must be exercised if such action is appropriate 'in the public interest'. This has extended the application of its s66 powers, which have previously been actions for 'the purposes of protecting the life or physical or mental health of any person'.
- a s66 proceeding must include at least one lay member. Previously, s66 proceedings have involved two Board delegates, one of which can, and has sometimes been, a lay person. This amendment will ensure s66 proceedings

always involve at least one lay member.

- the Board, with agreement of the HCCC, can impose a condition on a practitioner's registration requiring that they participate in an assessment of their professional performance.
- the Board can require any person or body to provide it with information, records or evidence in relation to s66 proceedings.

Reforms to section 66 of the Medical Practice Act have been in development for some time, with some of the recent amendments stemming from a 2006 ministerial review of the adequacy of the Board's powers to act in situations where public safety requires urgent action (*Board News*, December 2006).

Snapshot: Section 66 actions

In 2006-2007, the Board took action under s66 35 times which resulted in 12 doctors being suspended and 19 having conditions imposed on their registration.

When the Board takes urgent action under section 66 of the Act – akin to an injunctive action – it then refers the matter to the Health Care Complaints Commission for investigation, with a view to it being heard in formal disciplinary proceedings as soon as possible.

Restoration applications

Any complaints received by the Medical Board after a doctor has been de-registered must now be taken into account in any restoration application.

This new legislative provision relating to the Board's authority to take into consideration past complaints or adverse findings supports the Board's long-held view that when considering issues of incompetence or poor practice, the whole story must be taken into account.

Just as the first thing a doctor does with a new patient is to take a detailed medical history to place the presenting symptoms

New professional conduct and public protection laws (continued from page 3)

in context, so the Board considers that it can't properly consider the seriousness of a complaint without knowing the full complaint history.

The new statutory requirement that complaints arising after a doctor has been struck off must be taken into consideration when an application is made for re-registration will remove any doubt about the legality of this long-standing Board practice.

Snapshot: *Restoration applications*

A de-registered person must apply to the Medical Tribunal for any review of de-registration orders.

The Medical Board appears as a respondent in re-registration applications. Factors relevant to an application can include the reasons for a de-registered person's absence from practice, continuing professional development during that absence, their health and their insight. Any new complaints against a practitioner can also provide important evidence to the Board's case.

Three separate applications by de-registered persons for re-registration have been refused by the Tribunal in the past 12 months. All three applications were successfully opposed by the Medical Board.

Expansion of Professional Standards Committees

The membership of Professional Standards Committees has been expanded and proceedings made open to the public under the legislative reforms.

Complaints which may lead to a finding of unsatisfactory professional conduct are normally referred to a PSC, and it has the power to caution or reprimand, fine, and/or order registration conditions relating to

a practitioner's medical practice, education, or health. A PSC can also refer a matter to the Medical Tribunal if it determines it could warrant de-registration.

When the current medical disciplinary arrangements were introduced more than 20 years ago, the Professional Standards Committee represented an innovative and far-reaching reform to the disciplinary structure which had preceded it, but the PSC system has in its turn evolved and further change at this time is appropriate. PSCs have always had a lay member, but the specific addition of a legally qualified person as the Chair will complement this, and enhance the ability of the two medical members to focus on the relevant issues of appropriate professional standards and conduct, within a fair and transparent environment.

A default position that hearings be open to the public, and that decisions be published, will also serve to increase public understanding of and confidence in the fairness of the PSC process, while still enabling hearings to be conducted in a relatively informal atmosphere which is more conducive to getting to the bottom of often complex clinical cases.

The Committee will retain the power to direct that hearings be closed or that decisions not be published on the basis that it is desirable to do so in the public interest for reasons connected with the subject matter, the inquiry, or the nature of the evidence to be given.

Snapshot: *Disciplinary hearings*

Complaints against practitioners are prosecuted by the Health Care Complaints Commission in one of two disciplinary hearing bodies – a Professional Standards Committee or the Medical Tribunal.

These disciplinary hearings are independent of the Board.

Both bodies comprise two medical practitioners and a non-medical person and the Tribunal – the only

body in NSW that can order the de-registration of a practitioner – is chaired by a District Court judge. A PSC will now be chaired by a legally qualified person.

In 2006–2007, the Medical Tribunal heard complaints against 17 doctors which resulted in six doctors being de-registered and 10 having conditions imposed on their registration.

Seventeen doctors were referred to a PSC in 2006–2007, nine had findings made against them and six of those had conditions imposed on their registration.

Professional indemnity

A copy of a certificate or policy of insurance for professional indemnity will now be required with doctors' annual returns for registration.

The Act requires doctors to include a copy of their indemnity certificate or policy, or documents indicating they are exempt, as part of the annual renewal of registration.

When renewing their registration, practitioners have been required to complete an Annual Return advising the Board of a range of matters, including significant ill health, disciplinary action in other jurisdictions, criminal matters, professional indemnity insurance status and continuing professional development activities.

The new legislation will also require doctors to include a copy of the certificate or policy of professional indemnity insurance.

The Board will update its Annual Return documentation to remind doctors of the changes and requirements.

Registration matters

Stringent requirements for short-term visitor registration

If you are intending to sponsor or invite a doctor to visit NSW to demonstrate techniques or procedures on patients, please read the following information about recent amendments to NSW Medical Board registration requirements.

The Board's requirements are based on the principle that patients have the right to expect that appropriate treatment and follow up care will be provided by qualified, registered and competent practitioners.

Registration is required if a visiting practitioner intends to consult with or treat patients in NSW, and can be sought under the 'Temporary Registration in the Public Interest' category.

The Board recently tightened its requirements for this registration category following a number of inappropriate applications for temporary registration, such as a doctor with European basic medical qualifications and no apparent specialist qualifications applying to come to demonstrate 'simple' cosmetic procedures in a hotel environment. The Board's requirements demand that a visiting practitioner be a specialist, or have extensive

experience in their field, demonstrating an appropriate procedure, in a clinically suitable location (see box right).

Historically, applying for registration of visiting practitioners has often been overlooked until the last minute and event organisers and participants are encouraged to make the registration process a priority in their planning.

This will be particularly important from 1 November 2008 when the Board implements the requirement of a Primary Source Verification Report from the Australian Medical Council, verifying the visiting practitioner's qualifications. This can take several months to organise and the requirement will only be waived in exceptional circumstances.

Most visiting practitioners have no automatic entitlement to registration in NSW and the Board will only grant temporary registration if it is in the public interest to do so and all of the requirements are met (see box right).

Visiting practitioners who consult with or treat patients without registration in NSW risk prosecution for holding themselves out to be registered medical practitioners. In these circumstances, registered practitioners who are involved in the organisation of the workshop or seminar also risk disciplinary action being taken against them.

Requirements for temporary registration for demonstration of procedures or participation in seminars or workshops

- The visiting practitioner must be a qualified specialist in the field or have extensive experience in the area to be demonstrated.
- The visiting practitioner must be demonstrating for educative purposes an appropriate procedure in which the practitioner has particular experience and expertise.
- The visiting practitioner must be attending a legitimate event in a clinically suitable location under the auspices of an appropriate organisation (eg, a specialist college or academic department).
- A nominated practitioner, registered in NSW, must take responsibility for the follow up care of patients involved in the demonstration. The nominated practitioner must confirm their agreement with this role.
- Registration must be for a period of less than two weeks and for a total of no more than four weeks in any calendar year.
- The visiting practitioner must provide the Board with an application fee, a detailed CV, evidence of appropriate Professional Indemnity Insurance and a Certificate of Good Standing from the primary jurisdiction in which they are registered.
- From 1 November 2008, the Board will also require a final Primary Source Verification Report from the Australian Medical Council, verifying the visiting practitioner's qualifications. This requirement may be waived in exceptional circumstances.

International medical graduates – national pathways

Employers and overseas-trained prospective registrants are reminded of the introduction of nationally consistent assessment and registration pathways for International Medical Graduates (IMGs).

By national agreement, all states and territories are introducing consistent assessment and registration pathways for IMGs in addition to the existing Australian Medical Council examination pathway. These will include the establishment of the Competent Authority, Standard, and Specialist pathways.

As these changes are implemented in NSW over the coming months, readers are encouraged to keep up to date with information available from the Board's website www.nswmb.org.au, including the latest 'News and Updates' and full information sheets on the national pathways to registration for IMGs in the 'Registration' section.

In the Medical Tribunal

The Medical Tribunal is responsible for hearing serious complaints against doctors. The Tribunal has the power to de-register, suspend, fine and place conditions on a doctor's registration. The Tribunal is made up of a District Court judge, two doctors and a person who is not a doctor. The Health Care Complaints Commission prosecutes complaints before the Tribunal and the doctor is generally assisted by a medical defence organisation. The Medical Board appears as the opponent/respondent in Tribunal matters involving a person seeking restoration to the Register, and in matters where a practitioner is appealing a Board decision.

Appeal against Performance Assessment process

Details

The Medical Tribunal heard an appeal by Dr Robert Darlow Smith (University of Sydney, 1952), an Edgecliff medico-legal practitioner, against a decision of a Performance Review Panel (PRP), which considered issues related to his medico-legal practice.

This was the first appeal brought by a practitioner against a PRP decision.

The Tribunal considered that the evidence presented to both it and the PRP established that Dr Smith's method of dealing with patients 'falls short of the standard of a competent medico-legal expert', that he had 'poor communication skills', and that there was a basis for concerns that his diagnostic skills may no longer be sufficient.

Finding/orders

The Tribunal re-imposed similar registration conditions to those imposed by the PRP, including that his practice be limited to medico-legal work, his practice be supervised, he complete a communication program, and that his professional practice be assessed through the Board's Performance Program.

Date of Tribunal decision: 11 December 2007

Breach of conditions

Complaint

It was alleged Dr Ian Alex McHue (University of Newcastle, 1984), a Griffith anaesthetist, was guilty of unsatisfactory professional conduct and/or professional misconduct in relation to multiple breaches of registration conditions and deliberate attempts to mislead the Board and the Tribunal about his alcohol consumption.

Dr McHue reported his alcohol dependence to the Board in 2001 and a number of health conditions were placed on his

registration, which were revised on three occasions over the next few years.

Findings/orders

The Tribunal concluded the practitioner had breached his registration conditions many times by consuming alcohol and failing to attend treatment and testing, had not been truthful about the extent of his drinking, and that he had been given considerable opportunity to deal with the problem of his alcohol dependency.

It noted that without honest dealings by practitioners with registration conditions, 'the entire system developed to benefit both public and practitioner will be imperilled.'

Regarding the issue of dishonesty, it also stated that: 'Practitioners whose conduct of medicine is called into question must appreciate that this Tribunal may treat dishonest statements and explanations to the Board, to Panels and to experts appointed by the Board and to this Tribunal as justifying suspension or de-registration even where the original conduct may well not have, of itself, lead to such a result.'

The Tribunal found the doctor guilty of professional misconduct and ordered he be de-registered for a minimum period of two years.

Date of Tribunal decision: 14 December 2007

Inappropriate prescribing

Complaint

It was alleged Dr Andrzej Kazmierczak (Gdansk Medical Academy, 1973; AMC Certificate, 1984), an Emerton GP, was guilty of unsatisfactory professional conduct and/or professional misconduct in relation to his prescribing of Schedule 8 and Schedule 4D drugs to nine patients.

It was alleged he prescribed Schedule 8 and 4D drugs without exercising responsible medical judgement, in quantities and for periods in excess of the recognised therapeutic standards, and in circumstances where he knew or ought to have known the drugs were being or likely to be

abused. It was also alleged that in relation to some patients the doctor prescribed for a period in excess of two months without obtaining the relevant authority from the NSW Health Department, and when the continued prescription had been advised against by a pain clinic.

Findings/orders

The Tribunal was satisfied that the conduct amounted to a failure to exercise the skill, judgement and care expected of a medical practitioner. 'It is serious misconduct exacerbated by the respondent's persistence in it over a significant period.'

The Tribunal concluded that: 'Overall, the flavour of the respondent's evidence was that he was the slave to the patients' requests for drugs, he could counsel and advise them to reduce but in the end he submitted to their demands. The Tribunal finds this demonstrates both a lack of insight but also a failure to exercise his responsibilities as a medical practitioner.'

The Tribunal found the doctor guilty of professional misconduct and ordered he be de-registered for a minimum period of one year.

Date of Tribunal decision: 14 December 2007

Re-registration application

Details

In 1992, the Medical Tribunal de-registered Mr John Herbert Bannister following its consideration of a patient treatment complaint as well as his establishment of a billing system through which he charged for services he had not provided over a period of five years.

The Tribunal concluded the system of billing comprised a 'deliberate deceit... perpetrated for the motive of financial gain'.

Findings/orders

In considering this, his fourth, application for re-registration, the Tribunal was unconvinced that Mr Bannister was a 'different person of reformed character'.

Apart from the issues of character, the Tribunal determined re-registration would not be appropriate given the lengthy time Mr Bannister had been away from surgery and general medicine.

The majority of the Tribunal was *'not persuaded that he is a changed man who has now demonstrated he is of sufficient good character to now be permitted to practise medicine or that he is now competent to be re-admitted to the register, even with conditions'*.

The application for reinstatement to the Register of Medical Practitioners was refused.

Date of Tribunal decision: 19 December 2007

Inappropriate prescribing

Complaint

It was alleged Dr Peter Keith (University of NSW, 1967), a Wagga Wagga GP, was guilty of unsatisfactory professional conduct and/or professional misconduct in relation to his prescribing of Schedule 4, 4D and 8 drugs to seven patients.

The allegations included that he provided prescriptions for Schedule 4, 4D and 8 drugs without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions, in quantities and for periods in excess of recognised therapeutic standards, when he ought to have known the drugs were or would be likely to be abused, and when such prescribing was contraindicated as the patient had a history of drug dependency.

It was also alleged the doctor failed to make proper records of his treatment of certain patients.

Findings/orders

Noting that its findings could justify suspension or de-registration, the Tribunal considered a number of factors including Dr Keith's admissions and degree of remorse, that there were no previous unprofessional conduct findings, his general contribution to local medical services, and the support of colleagues.

The Tribunal found the doctor guilty of professional misconduct and ordered he be fined \$20,000, banned from prescribing benzodiazepines and Schedule 8 drugs for two years, and have conditions imposed on his registration relating to education, counselling, supervision and auditing of his practice.

Date of Tribunal decision: 19 December 2007

Re-registration application

Details

Mr Karanalu Prakash was de-registered by order of the Medical Tribunal in 2004 and banned from applying for re-registration until December 2006.

The Tribunal had found him guilty of professional misconduct in relation to his breach of registration conditions that required him to be supervised in medical practice, breaches of prescribing regulations, and making false statements to the then Health Insurance Commission.

Findings/orders

The Tribunal considered Mr Prakash seemed incapable of acknowledging the dishonesty that led to his de-registration and was concerned by his continuing dishonesty.

'We are not persuaded he has overcome the relevant defect in his character. We are not persuaded he is a fit and proper person to practise medicine.'

The application for reinstatement to the register of Medical Practitioners was refused.

Date of Tribunal decision: 11 April 2008

In the Courts

Bhatia v New South Wales Medical Board [2007] NSWSC 1316

The NSW Supreme Court dismissed an application by Dr Satya Pal Bhatia, a Bankstown cosmetic surgeon, for an interlocutory order restraining the Medical Board and its delegates from taking action under section 66, which was to determine whether the doctor's registration should be suspended or have conditions placed upon it.

The decision to take section 66 action followed the receipt of complaints that raised concerns about the doctor's removal and re-implantation of a breast implant, infection control standards, treatment of a known infection, and the adequacy of the doctor's response to the Board.

Before the Supreme Court, Dr Bhatia alleged errors of law including that the Board's delegation decision was invalid in relation to the appointment of two delegates to consider action under section 66.

Justice Harrison determined that the challenge to the Board's appointment of the delegates was 'without merit'.

He also concluded that: *'...the plaintiff has not pointed to any specific (procedural) prejudice to him. There is no certainty that any of the powers conferred upon the third defendants [the delegates] by s66(1) will be exercised to the detriment of the plaintiff and there are good reasons to permit the inquiry to proceed having regard to the protective function which it is both intended and designed to serve.'*

Date of NSW Supreme Court decision: 8 November 2007

Lindsay v New South Wales Medical Board [2008] NSWSC 40

The NSW Supreme Court dismissed a challenge by Dr David Charles Lindsay, a Sydney doctor working in skin cancer medicine, against a decision and order made by the Board's delegates in December 2007 to suspend him for a period of eight weeks.

When ordering his suspension, the delegates considered a number of issues of concern including complaints made against the practitioner in relation to his communication and behaviour, his lack of insight into the complaints and disciplinary processes, his impairment, and inadequate history taking and medical record keeping.

The doctor argued the order under section 66 was void and of no effect and sought a judicial review of the lawfulness of the action taken by the Board pursuant to s66, including a wide-ranging attack on procedural fairness and delegation powers.

Justice Hall rejected all of the doctor's claims for relief from the Board's orders and supported the processes and functions by which the Board exercised its s66 powers.

Date of NSW Supreme Court decision: 7 February 2008

Every effort is made to ensure accuracy and balance in these summaries, but readers are also advised to access the Board's website to read full Tribunal and court decisions and to check the Register of Medical Practitioners to ascertain the current status of any doctor (www.nswmb.org.au). The summaries are based on decisions handed down between December 2007 and April 2008. These decisions provide valuable information to the profession and the community about standards and disciplinary processes.

New Cosmetic Surgery Guidelines

New Cosmetic Surgery Guidelines have been developed by the NSW Medical Board, supplementing the general standards of medical practice and conduct expected of all registered doctors.

On 21 April 2008, the Minister for Health, Reba Meagher, announced that she had asked the Medical Board to develop guidelines relating to a 'cooling off period' for people under 18 years of age seeking cosmetic surgery.

The Board endorsed the following guidelines at a meeting last month. A copy of the guidelines will also be published on the Board's website at www.nswmb.org.au > 'Publications and Policies'.

'Cosmetic surgery' is defined in the guideline as 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. [1]

Cosmetic Surgery Guidelines

Standard 1.1 of the NSW Medical Board's *Code of Professional Conduct: Good Medical Practice* states that:

'Good clinical care includes an adequate assessment of the patient's condition, based on the history and clinical signs and appropriate examination.'

The following guidelines supplement Standard 1.1 and apply to persons seeking cosmetic surgery.

1. Assessment should include:
 - 1.1 an exploration of why the surgery/procedure is requested. Both external reasons (eg, a perceived need to please others) and internal reasons (eg, strong feelings about appearance) should be explored.
 - 1.2 an exploration of the person's expectations of the requested surgery/procedure.
2. If there are indications that the person has self esteem or mental health problems, the person should be referred to a clinical psychologist or psychiatrist for review.
3. In relation to persons under 18 years of age:
 - 3.1 if the requested surgery/procedure has no medical justification[2] there must be a 'cooling off' period of 3 months, followed by a further consultation during which the request is further explored. The requested

surgery/procedure should not be scheduled at the initial consultation.

- 3.2 the person should be encouraged to discuss their desire for cosmetic surgery and any concerns with their general practitioner during the cooling off period.
4. At the initial consultation, the person must be provided with written information in easily understood language about:
 - a) what the surgery/procedure involves
 - b) the range of possible outcomes of the surgery/procedure
 - c) the risks associated with the surgery/procedure
 - d) recovery times and specific requirements during the recovery period
 - e) total cost
 - f) other options for addressing the person's concerns.

Advertising regulations

The Health Minister also announced in April that the Government would introduce new regulations relating to cosmetic surgery advertising. These new regulations have been gazetted and came into effect on 1 July 2008. They prescribe the manner in which medical services can be advertised including the use of scientific and statistical information, 'before and after' patient photographs, and any accompanying statements. A link to the amended medical practice advertising regulations is available on the Board's website.

[1] *Medical Council of New Zealand, Statement on Cosmetic Procedures, October 2007*

[2] *Surgery or a procedure may be medically justified if it involves the restoration, correction or improvement in the shape and appearance of the body structures that are defective or damaged at birth or by injury, disease, growth or development for either functional or psychological reasons.*

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