



Human Rights
Commission
Te Kāhui Tika Tangata

20 January 2011

Philip Pigou
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Dear Mr Pigou

REVIEW OF THE MEDICAL COUNCIL'S STATEMENT ON COSMETIC PROCEDURES

1. Background

- 1.1 Thank you for the opportunity to provide comments on the Medical Council's *Statement on Cosmetic Procedures*. The Human Rights Commission acknowledges the importance of the Statement and welcomes its focus on informed consent, competence, advertising and promotion, good clinical care, and audit and review.
- 1.2 The Commission has a particular interest in the Statement because its Transgender Inquiry identified major gaps in the availability, accessibility, acceptability and quality of medical services required by trans people seeking to transition.¹ The comments below focus primarily on whether and how the Statement might apply to trans people seeking gender reassignment health services.
- 1.3 As a result of the Transgender Inquiry recommendations, Counties Manukau District Health Board (CMDHB) has been leading a project to develop guidance for health professionals on gender reassignment health services for trans people in New Zealand.² The project's terms of reference set out the breadth of such services, including a number that are listed in the Statement such as breast augmentation and laser hair removal.

¹ Human Rights Commission (2008) *To Be Who I Am: Kia noho au ki tōku anō ao. Report of the Inquiry into discrimination experienced by transgender people* (Auckland: Human Rights Commission). Available from www.hrc.co.nz/transgenderinquiry

² Information about this project is available on the Healthpoint website at: <http://www.healthpoint.co.nz/default,180057.sm>

- 1.4 The Commission sits on the Reference Group advising the CMDHB project. The project's draft resource will be available for public consultation shortly and comments from the Medical Council would be welcomed. The final guidance should be available in March and could usefully be referenced in the Statement.

2. Gender reassignment health services

- 2.1 It is unclear whether gender reassignment health services are covered under the Council's definition of cosmetic procedures, set out in paragraph 6, namely:

"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."

The footnoted reference then specifies:

The statement does not cover procedures which improve a patient's physical health and safety other than improving their appearance and self-esteem.

- 2.2 In relation to gender reassignment health services, the relevant international best practice guidance is the World Professional Association of Transgender Health's (WPATH) Standards of Care for Gender Identity Disorders. These are also known by their previous name, the Harry Benjamin Standards of Care.³ This guidance states that gender reassignment procedures are medically necessary and are not cosmetic in any meaningful sense.⁴
- 2.3 In June 2008 the WPATH Board issued the following statement further clarifying the medical necessity of such treatment. The WPATH statement is of particular relevance as it mentions a number of cosmetic procedures referred to in the Statement. While these would often be described as cosmetic procedures, that description is deemed inappropriate when the procedures are required as part of someone's sex / gender reassignment.⁵

"Non-genital surgical procedures are routinely performed ... notably, subcutaneous mastectomy in female-to-male transsexuals, and facial feminization surgery, and/or breast augmentation in male-to-female transsexuals. These surgical interventions are often of

³ The full title is the Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders. While the title uses the term 'standards of care', the document is more accurately described as a consensus statement of best practice guidance.

⁴ The World Professional Association for Transgender Health (2001) *The World Professional Association for Transgender Health's Standards of Care for Gender Identity Disorders*, 6th version, p 18. Accessed 19 January 2011 at <http://www.wpath.org/documents2/socv6.pdf>

⁵ Accessed 19 January 2011 at http://www.wpath.org/medical_necessity_statement.cfm

greater practical significance in the patient's daily life than reconstruction of the genitals."

"The medical procedures attendant to sex reassignment are not 'cosmetic' or 'elective' or for the mere convenience of the patient. These reconstructive procedures are not optional in any meaningful sense, but are understood to be medically necessary for the treatment of the diagnosed condition."

- 2.4 Based on this guidance, surgical and other health procedures undertaken for the purposes of gender reassignment would supposedly fall outside the Council's definition of cosmetic procedures. Paragraph six would suggest they are excluded as the intention of gender reassignment procedures is broader than simply improving the patient's appearance or self-esteem. Furthermore in paragraph 2 the Council states that a cosmetic procedure, by definition, "does not improve a patient's physical health and safety and it is often difficult to determine whether the treatment is in the patient's best interest".
- 2.5 However, if surgical and medical procedures required by trans people are excluded from the Statement, it is confusing that paragraph 20 makes a specific reference to the Harry Benjamin guidelines. The term 'body dysmorphic disorder' in paragraph 16 may also be mistakenly inferred as a reference to trans people and gender identity disorder.
- 2.6 The Commission considers that the Statement would benefit from adding some examples to footnote 2 clarifying procedures that are outside its scope, including medical procedures required by trans people who seek gender reassignment health services in order to transition.
- 2.7 At the same time it would be useful to direct clinicians providing services to trans people to relevant best practice including the WPATH resources and the guidance currently being finalised by Counties Manukau DHB. This is perhaps best done by adding a paragraph explaining why trans people are outside the Statement's scope, and those specific sections of the Statement which should not be applied to trans patients. For example, paragraph 15(b) recommends that a doctor should be very cautious before agreeing to treat patients with a history of psychiatric illness. Most trans people are currently required to obtain a mental health diagnosis of Gender Identity Disorder before accessing any gender reassignment surgeries.
- 2.8 The WPATH standards clearly state that "the designation of gender identity disorders as mental disorders is not a license for stigmatization, or for the deprivation of gender patients' civil rights".⁶ Accordingly, paragraph 15 should clarify that a mental health diagnosis or history of psychiatric illness *per se* should not be grounds for denying a trans person or any other patient access to either medically necessary or cosmetic surgeries. Any blanket refusal to provide such services based on someone's experience of

⁶ Ibid, p. 6

mental illness could be challenged as unlawful discrimination on the ground of disability under the Human Rights Act 1993.

- 2.9 Instead, as paragraph 16 outlines, a doctor should make a referral for a psychological evaluation if they have concerns about a patient's motivation for cosmetic procedures. Typically trans people are already required to have such an evaluation before undergoing irreversible medical or surgical procedures.

3. Intersex people / people with intersex medical conditions

- 3.1 During its Transgender Inquiry the Commission received submissions from intersex people detailing the negative impact of surgeries performed on them as infants, children or young people. Past practice favoured the use of surgery to alter indeterminate physical characteristics and reinforce the child's initial gender assignment as either male or female. Emerging best practice recommends that any such elective surgeries should be delayed until the patients themselves can participate in decision-making.⁷
- 3.2 The Commission assumes such procedures would not fit within the Council's definition of cosmetic procedures and therefore are not covered by the Statement. If so, it would be useful to make this explicit in footnote 2. Given the limited information available in New Zealand for health professionals working with intersex children, it would also be useful to add a reference to the overseas clinical guidelines cited above and to Intersex Awareness New Zealand (<http://www.ianz.org.nz>).

4. Importance of Language

- 4.1 Many trans and intersex people, including some trans people who have physically transitioned, have bodies that differ from an 'average' male or female body. Understanding that such bodies are part of the rich diversity of humanity can be a valuable way to reduce the stigma attached to being different from the norm. It is also consistent with a patient-centred approach.
- 4.2 The Commission appreciates that the word 'defect' has been placed in inverted commas in paragraph 15(e). However this undermines the Statement's welcome caution about 'medicalisation of the normal'. The Commission suggests this word can be deleted without losing the relevant point. One possible rewording is:

⁷ For example, Consortium on the Management of Disorders of Sexual Development (2006) *Clinical Guidelines on the Management of Disorders of Sex Development in Childhood* (California: Intersex Society of North America) p 28. Accessed 19 January 2010 at <http://dsguidelines.org/files/clinical.pdf> .

You should be very cautious before agreeing to treat . . .

- e. Patients who believe that a cosmetic procedure is the solution to all of their problems.

5. Recommendations

In summary, the Commission considers that the Medical Council's Statement would benefit from:

- adding some examples to footnote 2 clarifying procedures that are outside its scope, including medical procedures required by trans people who are transitioning from their biological sex
- adding a paragraph explaining why trans people seeking gender reassignment services are outside the Statement's scope, citing relevant best practice including the WPATH resources and the New Zealand guidance currently being finalised by Counties Manukau DHB
- clarifying that procedures to treat childhood intersex medical conditions are outside the scope of the Statement and providing a reference to the *Clinical Guidelines for the Management of Disorders of Sex Development in Childhood* and to Intersex Awareness NZ
- noting in paragraph 15 that a mental health diagnosis or history of psychiatric illness *per se* should not be grounds for denying a trans person or any other patient access to either medically necessary, elective or cosmetic surgeries.

Once again thank you for the opportunity to make comments on this Statement.

If it would be helpful to you, the Commission is happy to meet to discuss the points raised above. Any questions can be directed initially to Senior Policy Analyst Jack Byrne on jackb@hrc.co.nz or (09) 3758647.

Yours sincerely



Rosslyn Noonan
Chief Commissioner
Te Amokapua