

Litigation Assistance Informational Packet

Pursuing and Defending Causes of Action on Behalf of Cosmetic Surgeons

Overview:

Comprised of physicians from various disciplines who practice cosmetic surgery and seek to continue and expand their cosmetic surgery education, the American Academy of Cosmetic Surgery (AACS) is dedicated to patient safety and physician education. In this regard, AACS seeks to assure that: (i) physicians performing cosmetic surgery obtain adequate education, training, and experience with respect to the procedures they perform; and (ii) cosmetic surgery patients are educated regarding cosmetic surgery and the physicians who perform it.

Based on information it regularly receives from physicians throughout the country, AACS recognizes that patients' safety is often jeopardized as a result of anti-competitive conduct that: (i) falsely informs cosmetic surgery patients regarding the education, training, and experience necessary for a physician to become competent in cosmetic surgery; and/or (ii) misdirects cosmetic surgery patients away from various qualified cosmetic surgeons. National standards adopted throughout the health care industry and by the Federal Government require an assessment of physicians based on the physicians' education, training, experience, and proven competence. Unfortunately, there are physicians throughout the country who seek to mislead cosmetic surgery patients into choosing their cosmetic surgeon based on incorrect information rather than these nationally recognized standards, which places these patients at risk. AACS has received countless reports from physicians facing anti-competitive conduct who are forced to defend frivolous causes of action, respond to false complaints submitted to state medical boards and other administrative bodies, and counter other challenges to their cosmetic surgery practice initiated by physicians who falsely argue that the cosmetic surgeons are not qualified to perform cosmetic procedures because they are not board certified by the American Board of Plastic Surgery (ABPS). While the methods and forums vary, the bases and allegations follow a similar pattern. *For example:*

- A plastic surgeon submits a complaint to the state medical board (Medical Board) falsely alleging that because the cosmetic surgeon is not certified by the ABPS, he is: (i) not qualified to perform cosmetic surgery; (ii) practicing outside of his area of expertise; (iii) falsely advertising his credentials; (iv) jeopardizing patients' safety; and/or (v) otherwise violating some state interest that the Medical Board is charged to protect. The cosmetic surgeon must respond to the Medical Board in order to avoid sanctions and protect his medical license, which the Medical Board has the power to sanction, suspend, or revoke.
- A plastic surgeon submits a complaint to the professional association or other organization with which the cosmetic surgeon is a member (Association) falsely alleging that because the cosmetic surgeon is not certified by the ABPS, she is: (i) not qualified to perform cosmetic surgery; (ii) practicing outside her area of expertise; (iii) falsely advertising her credentials; (iv) jeopardizing patients' safety; and/or (v) otherwise violating the Association's internal rules. The cosmetic surgeon must respond to the Association in order to avoid being sanctioned, suspended, or losing her membership in the Association.
- A plastic surgeon opposes a cosmetic surgeon's application for privileges to perform cosmetic procedures at a hospital based on the fact that the cosmetic surgeon is not certified by the ABPS. The cosmetic surgeon must respond to the false allegations in order to obtain or maintain privileges to perform the subject cosmetic procedures.

- A plastic surgeon disparages, verbally or in writing, a cosmetic surgeon, falsely alleging that because the cosmetic surgeon is not certified by the ABPS, she is: (i) not qualified to perform cosmetic surgery; (ii) practicing outside her area of expertise; (iii) falsely advertising her credentials; and/or (iv) jeopardizing patients' safety. The disparaging statements: (i) harm the cosmetic surgeon's reputation; (ii) contradict the goodwill developed by the cosmetic surgeon; (iii) deter cosmetic surgery patients from considering the cosmetic surgeon for their procedure; and (iv) otherwise damage the cosmetic surgeon's practice. The cosmetic surgeon must initiate a cause of action against the plastic surgeon to preclude the plastic surgeon from making further disparaging statements and continuing his anti-competitive conduct.

In responding to or pursuing the above and other causes of action arising from anti-competitive conduct, cosmetic surgeons will typically require legal assistance. In furtherance of its exempt purpose, AACS prepared this Packet to arm cosmetic surgeons, and specifically their attorneys, with information to protect the cosmetic surgeons' legal rights and oppose their competitors' improper attempts to preclude them from practicing cosmetic surgery.

Packet Content:

The Packet contains:

- **Introduction.** Section I introduces the *Litigation Assistance Informational Packet*, and outlines its contents.
- **Packet Road Map.** Section II outlines, summarizes, and provides a road map regarding the manner in which to utilize the information contained in the Packet.
- **National Standards Applicable to Evaluating Physicians.** Section III summarizes and discusses standards applicable to evaluating physicians maintained by various nationally recognized health care organizations and accrediting bodies, which consistently require an assessment of a physician based on the physician's education, training, experience, and proven competence.
- **What is Cosmetic Surgery and Who is Qualified to Perform It?** Section IV discusses: (i) the difference between cosmetic surgery and plastic surgery; (ii) the commonly accepted misconception that board certification in plastic surgery evidences competence in cosmetic surgery; and (iii) the manner in which cosmetic surgery patients' safety is jeopardized by this misapprehension.
- **Specialty Board Recognition.** Section V discusses specialty board recognition and is provided to assist cosmetic surgeons' attorneys to correct certain misapprehensions regarding the American Board of Medical Specialties (ABMS).
- **Organizations.** Section VI provides a review of several organizations that may be relevant to, or discussed as part of, a cosmetic surgeon's cause of action.
- **Plastic Surgery Residencies Lack Cosmetic Surgery Training.** Section VII discusses the lack of cosmetic surgery training in plastic surgery residencies, and reviews certain Accreditation Council for Graduate Medical Education (ACGME) recognized plastic surgery residency programs in the U.S. whose published curricula do not require substantial cosmetic surgery training. This Section is intended to further evidence that while certification by the ABPS evidences education, training, and experience in plastic surgery, it does not evidence education, training, and experience in cosmetic surgery.

- **Cosmetic Surgery Patient Safety: Relevant Studies.** Section VIII summarizes various studies evidencing significantly higher rates of morbidity, mortality, and malpractice claims among board certified plastic surgeons over all other medical specialties performing certain cosmetic procedures. This information is provided to support the argument that cosmetic surgery patients are harmed when they choose their physician based solely on his underlying board certification.
- **Contributors to the Development of Cosmetic Surgery Procedures.** Section IX refutes the false claim that cosmetic surgery procedures are exclusively encompassed in the plastic surgery specialty, and provides information evidencing that cosmetic surgery was developed by, and evolved from the efforts of, physicians from a variety of disciplines.
- **Representing Cosmetic Surgeons in Administrative Proceedings – Legal Review.** Representing cosmetic surgeons in causes of action can range from opposing a proposed administrative rule change, to applying for a license or permission to advertise board certification, to defending a cosmetic surgeon against a baseless disciplinary complaint. These proceedings involve a complex mix of state and federal constitutional issues, a state’s administrative procedure act and regulations, a state’s medical practice act and regulations, and related case law. Section X discusses the constitutional, administrative, and medical practice issues involved in these causes of action.
- **Legal Challenges to Adverse Decisions – Legal Review.** Section XI provides a comprehensive discussion regarding legal issues (state and federal) applicable to the improper denial of cosmetic surgeons’ requests for cosmetic surgery privileges.
- **Pursuing Other Causes of Action – Legal Review.** Section XII discusses some of the causes of action a cosmetic surgeon might pursue to recover damages resulting from federal and state unconstitutional activities, defamation, tortious interference, federal and state antitrust violations, and other causes of action based on the false premise that: (i) physicians who are not board certified by the ABPS are not competent to perform cosmetic surgery; and/or (ii) all physicians who are board certified by the ABPS are competent to perform cosmetic surgery.
- **Example Responses to Common False Allegations.** Section XIII provides example responses to certain false allegations frequently encountered in connection with causes of action.
- **Evidentiary Issues- Legal Review.** Section XIV discusses some of the common venues for the subject causes of action, the applicable rules of procedure and evidence, and possible methods for introducing into evidence the factual information contained in the Packet.