

## Policy on Compliance with Codes of Practice and Council Statements

Approved by Council: October 2006

### Introduction

Oral health practitioners must comply with legal, professional and ethical standards. This includes the standards promulgated in Dental Council Codes of Practice and Council Statements. These standards must be met unless there is a good reason for not doing so. Failure to meet the standards set by the Council, without good reason, will on the face of it be a breach of a practitioner's professional duties, and may breach a particular patient's rights.

### Legislation

Under s118(i) of the Health Practitioners Competence Assurance (HPCA) Act 2003, the Dental Council is entitled to set standards of practice. There is a *prima facie* duty on oral health practitioners to whom the standards apply to comply with the standards. This duty is set out in the Code of Health and Disability Service Consumers Rights ("Code of Rights"). Right 4 includes "the right to have services provided that comply with legal, professional, ethical, and other relevant standards".

However, the Code of Rights recognises that it is not always possible to comply with accepted standards. The Code of Rights provides that a health provider will not be in breach of the Code of Rights if the health provider has taken reasonable action in the circumstances to give effect to the rights, and comply with the duties, in the Code of Rights (clause 3). The "*circumstances*" include, but are not limited to, resource constraints within which a practitioner practises. The onus is on the provider to prove that he or she took reasonable actions in not complying.

### Compliance Requirements

Where compliance is outside the oral health practitioner's control, the oral health practitioner must take all reasonable steps to comply. What is required to "take all reasonable steps" will depend on the circumstances of each case. However, to give some general guidance Council notes the following points:

- where compliance is not possible and is associated with provider resource constraints, it is appropriate to bring the aspects of non-compliance to the attention of someone (such as the employer) who is in a position to do something about the non-compliance;
- where an oral health practitioner is aware that he or she is providing services which do not comply fully with the Dental Council Codes of Practice or Council Statements, he or she has a duty to provide the best care possible; and
- Notwithstanding the statement in the paragraph above, oral health practitioners must recognise that the point may come where the "best possible care" that can be provided in the particular circumstances represents such a deviation from the Code of Practice or Council Statement, and from accepted standards that it poses a risk to patient safety. At this point it is inappropriate to provide the particular services to the patient. This will be a question of clinical judgement for the oral health practitioner. Where there is any doubt, the oral health practitioner should seek advice from a senior colleague, their employer, professional association or the Dental Council. The patient will also need to be involved in the decision in a way that is consistent with the informed consent process