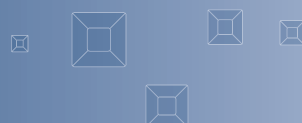
DENTAL COUNCIL OF NEW ZEALAND

Te Kaunihera Tiaki Niho o Aotearoa



DCNZ NEWS

September 2007

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The cost of compliance: HPCAA, DCNZ & APCs

A concern voiced across the health sector is that the Health Practitioners Competence Assurance Act 2003 (HPCAA) has imposed higher compliance costs. This is a direct consequence of the expanded scope of the legislation and its focus on the assurance of practitioner competence.

Self-regulation and self-funding are synonymous so practitioners have undoubtedly had to pay higher statutory compliance and professional development costs. The issue of cost is likely to be considered in the review of the Act which is now under way.

The costs of running a regulatory authority under HPCAA are not insignificant and many authorities have increased their APCs to enable them to discharge their responsibilities. The Nursing Council enjoys significant economies of scale because it has 45,000 practitioners. Nevertheless the APC has doubled in the past year.

Whilst all authorities operate under the one Act, interpretations and policies differ, as do size, degree of complexity and exposure to risk. Reflecting the complex nature of oral health DCNZ maintains one of the most sophisticated operations.

The Dental Council remains committed to ensuring that it operates in a cost-effective manner and strives to maintain a balance between ensuring the efficient discharge of public safety obligations and practitioner affordability. Recent changes to the Council's structure have delivered savings but the harsh reality is that the cost of regulation and working with new legislation is being borne by a comparatively small population of oral health professionals (3,200 practitioners) unevenly spread across the four professions.

That notwithstanding, DCNZ APC fees compare quite favourably with those of other registered health professionals - see table.

Profession	APC $	No of practitioners
Osteopaths	1125	360
Chiropractors	1100	300
Clinical Dental Technicians	750	170*
Dentists	700	1700*
Psychologists	695	1850
Podiatrists	650	280
Dental Therapists	632	630*
Dental Hygienists	610	350*
Midwives	600	2600
Medical Practitioners	540	11000
Occupational Therapists	506	1900
Dental Technicians	450	170*
Pharmacists	495	2800
Nurses	96	45000

** Totals used for 2007/2008 budget*

The HPCAA is modelled on the Medical Practitioners Act (MPA) 1995. APC data from the Medical Council shows that there was a marked increase in Council costs for the first few years of the MPA as the authority adjusted to new competence requirements and responded to a spike in competence notifications and complaints. Over time as things settled down fees stabilised. The same might be expected with HPCAA.

Given the complexity of its operations DCNZ has been reasonably successful in managing costs. As an example the dentist APC has been maintained at the same level of $700 for the past three years. Different circumstances have applied to hygienists and therapists, both much smaller professions. Both were newly regulated and required the development of reserves for operational and strategic purposes, to provide a "buffer" against unforeseen events that might otherwise have caused the organisation to go into deficit and be regarded as "insolvent". Hygienist and Therapist fees have been set with this in mind.

Technicians are different again. Longer established but previously independently serviced from Auckland, under the HPCAA they were merged into the new Dental Council and required to conform to the requirements of the new legislated environment. The secretariat and board workload has been much higher since full integration into the DCNZ. Costs have risen yet the APC has been maintained by drawing on reserves.

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Setting fees and reserve levels

Under HPCAA, DCNZ has faced two major challenges: to adapt to new legislation and also to consolidate the four professions under one legal entity. This has raised significant financial and management challenges.

In February 2007 Council decided to hold fees for 2007/2008 at the existing level by reducing reserves but warned that it cannot continue to operate in that mode. Reserves are prudently managed to ensure APC stability and provide for risk contingency. The reserves situation is comparatively healthy at the consolidated level but there is variation at the professional level.

Each profession must be self-sustaining as Audit Office and Cabinet Office guidelines expressly discourage cross-subsidy. Depending on the level of activity, in any one year one profession may attain a surplus whilst another incurs a deficit. In setting an APC, the Council takes into consideration not only budgeted activity but also whether reserves may be drawn on or need to be augmented.

The size of the practitioner base and exposure to risk affects the level of the APC.

Because of their higher numbers dentists enjoy economies of scale that dental technicians do not. At the general operational level, all practitioners benefit from the services of council and the secretariat. In addition, each profession has specific issues and requirements that are addressed by its workforce board and must be paid for by the practitioners of that profession. Thus, it is not possible to have a uniform APC.

At its August meeting Council refined its cost allocation model. The proposed method is considered more transparent, sustainable and open to scrutiny. In future the APC for each practitioner group will comprise of three components:

- DCNZ levy to cover general overheads such as running Council, secretariat and common services such as the newsletter. All practitioners will pay the same amount.
- Board levy to cover each profession's costs, e.g. the costs of administering the workforce Board and matters specific to the profession.
- Discipline levy (if required) to meets costs arising from the investigation by a Professional Conduct Committee or proceedings of the Tribunal (Section 131 HPCAA). This will be a charge on each practicing member of that profession.

It is too early in this financial year to say what the APC fees for 2008/2009 will be. The final APC fee for each profession may be adjusted depending on the anticipated closing reserve levels.

Use of Laser Technology by Dental Hygienists

The Council has reviewed its position on the use of laser technology by dental hygienists. This corrects the advice presented in the January 2007 issue of *DCNZ News*.

The Council has agreed that:

- dental hygienists may only use laser technology in accordance with the Council's policy on advanced and new areas of practice, which requires practitioners to have undertaken appropriate training and be assured of the efficacy of new techniques or procedures before introducing them into their practice
- the use of laser technology falls within the dental hygiene scope for the removal of calculus and bleaching procedures
- the use of laser technology falls outside the dental hygiene scope of practice where the use of that technology removes or alters hard or soft tissue or desensitises teeth.

This means that laser technology cannot be used by dental hygienists to incise, excise or vapourise soft tissues. Dental hygiene practice does not include laser removal of diseased, infected, inflamed and necrosed soft tissue within the periodontal pocket.

When introducing new procedures to their practice, all oral health practitioners need to be aware of their professional responsibilities to:

- formulate an evidence-based treatment plan
- understand current scientific dental related knowledge
- analyse relevant scientific literature and apply their findings to the delivery of appropriate oral care
- objectively assess the effectiveness of oral health strategies.

This means that practitioners should be assured, based on scientific evidence, of the efficacy of new techniques/technologies before introducing them into their practice.

Any training course to equip dental hygienists to use laser technology should have the following components:

Didactic components

- laser physics
- biological effects and tissue interactions
- laser safety, hazard identification, control methods
- laser safety standards/regulations
- operative applications/techniques

Practical components

- simulated techniques
- observation of cases performed by an appropriately trained and practising clinician
- supervised clinical use
- assessment of competence

The course or instructor needs to be accredited by NZDA (or NZDHA) for verifiable continuing professional development purposes. Refer to the Dental Council policy on advanced and new areas of practice on the DCNZ website.

Farewell to Janet Eden

In July Janet Eden left the Dental Council to become the CEO/Registrar of the Veterinary Council. Janet had been with the Dental Council for over 11 years as CEO/Registrar for most of that time.

When Janet joined the Council she had over 15 years experience in executive and policy analysis roles and of particular relevance and value 6 years as Senior Executive Officer (Dental Health) with the former Department of Health.

Janet worked unstintingly with the Council through the tumultuous change the introduction of the Health Practitioners Competence Assurance Act 2003 brought. The inclusion of four oral health professions under one Council and the fact that dental hygiene and dental therapy were regulated for the first time necessitated a very high workload. This entailed not only the development of a raft of new policies and the implementation of new systems but also the creation of a new governance structure.

Everyone involved acknowledged that the successes and integration achieved were largely due to Janet's dynamism, commitment and leadership.

Janet was honoured at a function held after the August Council meeting. Amongst the attendees were current and past Council members, representatives from all the boards, professional associations and the Australian Dental Council as well as many colleagues from other regulatory authorities, the Ministry of Health and key stakeholder groups. Current Chair Dr Mary Livingston commented, amongst other things, on Janet's effectiveness and adaptability. She served three Chairs.

Each felt very well supported. Janet was also very effective in stakeholder management and her ability in managing a myriad of relationships ensured a high level of success in the development of the "new" Dental Council. As a result Janet is very highly regarded in the oral health sector.

The Council wishes Janet well in her new position.

Welcome to David Dunbar

David Dunbar has been appointed to the role of Registrar. In his previous role he was a Senior Analyst at the Ministry of Health and was involved with the proposed Australia New Zealand Therapeutic Products Authority.

In the past, David was heavily involved with the development and implementation of HPCAA 2003 and subsequent to its introduction was the principal relationship manager with the Medical Council, Nursing Council and Physiotherapy Board. He therefore knows the legislation and the sector well. He is also a qualified lawyer with a current practising certificate.

Prior to this David was an Advisor on Regulatory Services with the Business Improvement Group at Wellington City Council and before that worked for 12 years in the House of Representatives in a number of capacities: Senior Parliamentary Officer with activities including legislative drafting and Clerk of the Committee on the Intelligence and Security Agencies Bill and State Enterprises Committee, advising the Speaker of the House and MPs on parliamentary practice and procedure and as Advisory Officer to the Regulations Review Committee.

David brings a wealth of relevant experience to the role and it is hoped that he will be especially effective during the review of HPCAA which is currently under way. Knowing the legislative process and the legislation itself as well as he does should benefit both Council and the professions in trying to ensure that regulatory best practice is achieved.

David started working at the Dental Council on 3 September.

Specialist Scope of Oral Surgery Practice

Earlier this year the Dental Council advised the sector that, in order to register oral surgeons via TTMR, it had decided to re-open the oral surgery scope of practice but would not implement this decision (through publication in the *Gazette)* until finalisation of the contents of the scope of practice and decisions on the training requirements.

Acknowledging concerns raised about the initial consultation process, the Council has decided to undertake further consultation on the proposal to re-open oral surgery and to reconsider this issue.

The Accident Compensation Corporation (ACC)

About ACC

ACC is a Crown entity that manages the Government's accident compensation scheme. The Injury Prevention, Rehabilitation and Compensation Act 2001 (IPRC) is the current legislation that ACC applies to operate the scheme.

ACC's key role is to prevent injury, treat it where it occurs, and rehabilitate people back to work and independence as soon as practicable.

The scheme began in 1974 and is unique in the world. It provides comprehensive, 24-hour, no fault personal injury and entitlements for everyone in New Zealand whether they are a citizen, a resident or a temporary visitor. In exchange for this comprehensive cover, people do not have the right to sue for personal injury, other than for exemplary damages.

How to get started as a dental provider for ACC

To receive payment for services from ACC, a dentist must first register with ACC to receive an individual provider number. A vendor number is also required for the Dental Practice for payment to be paid into the correct account.

Patients claim help from ACC by seeing the dentist who will register the dental injury by completing an ACC42 Injury Claim Form. It is very important that the information provided on the ACC42 is accurate and complete. The ACC2099 form is a guide for dentists and outlines how to correctly complete ACC42 form.

Dentists' Costs of Treatment Regulations 2006 (ACC1522) is the treatment list with the descriptors and cost contribution ACC pays for general dental treatment.

There are other forms you will need to use, for re-registering an old dental injury for continuing care (ACC1345) and treatment planning and assessment for dental implants (ACC899 and ACC737). For invoicing the ACC form 37 is required.

All of these forms can be requested from Wickliffe Press following registration with ACC. Refer to the ACC website http://www.acc.co.nz/for-providers/WCM2_020594 also.

Dentists' Responsibilities as an ACC Provider

ACC legislation requires dental treatment to be necessary and appropriate (the generally accepted means of treatment in New Zealand). Providers also need to understand the impact of pre-existing dental disease on definitive treatment options following injury. In some cases dental disease is wholly or substantially present at the time of injury and therefore ACC does not provide entitlement to treat disease.

When registering a dental claim ACC requires diagnostic information such as x-rays and photos. These can be sent by email to the Hamilton or Dunedin ACC Customer Service Centres where the dental entitlement decisions are made. The email addresses are hndental@acc.co.nz or dndental@acc.co.nz. These addresses can be used for any inquiries for any additional information you may need.

ACC has best practice guidelines for Dento-Alveolar Trauma and Dental Implants. All providers are expected to comply with these guidelines.

It is advisable that prior approval is sought for definitive treatment plans that involve high cost items such as crowns and bridges to ensure that ACC will pay for them according to the Dentists' Costs of Treatment Regulations. Please note that ACC has imposed prior approval for all dental crowns while evidenced based guidelines are being developed.

ACC wants to work with its providers in a positive and constructive manner so that New Zealanders get fair entitlement to evidenced based dental rehabilitative treatment.

[Article provided by ACC]

Do you want to subscribe to the Pharmaceutical Schedule?

For many years the Dental Council of New Zealand has sent a yearly copy of the Pharmaceutical Schedule to its members. The Dental Council will not be posting these copies any more.

If you would like to continue to receive a regular copy of the Pharmaceutical Schedule and monthly Updates, then PHARMAC would like to hear from you. The Pharmaceutical Schedule is the list of medicines that are publicly funded.

The Schedule and its Updates are available as books, and also on the PHARMAC website. The PHARMAC website offers you two options; an interactive site where you can search for a medicine or a class of medicines, or as a PDF of the latest editions. (www.pharmac.govt.nz/schedule.asp).

The Schedule is published three times a year (April, August and December), and changes to the contents are published monthly as Updates to the Pharmaceutical Schedule. Updates are automatically sent out to subscribers of the Schedule.

The Schedule is distributed free of charge to health professionals.

If you would like to receive notifications of recent publications of the Schedule and its Updates via email, you can join PHARMAC'S electronic mailing list at www.pharmac.govt.nz/mailing_list.asp. If you would like to receive the Schedule and its Updates as books please email your name, contact details and DCNZ registration number to resources@pharmac.govt.nz. Please put Schedule subscription in the subject line.

[Article provided by Pharmac]

Compliance with codes of practice – who is legally responsible?

The Health Practitioners Competence Assurance Act 2003 (HPCAA) provides a framework for the regulation of health practitioners. The objective is to protect the health and safety of the public by providing mechanisms to ensure health practitioners are competent and fit to practice.

The Dental Council has established requirements for ongoing registration:

- continuing professional development (CPD)
- peer contact
- compliance with codes of practice.

Compliance with the DCNZ and the joint NZDA/DCNZ codes of practice is audited each year. The Council has received requests for advice from oral health practitioners who are concerned about their inability to comply with aspects of the new codes of practice within the set timeframe, due to circumstances beyond their control.

Although registration is specific to an individual practitioner the ability to comply with codes of practice may depend on circumstances largely controlled by others. Some examples:

- Dentists employed by other dentists, dental technicians, corporations, District Health Boards, etc
- Hygienists employed by dentists, specialists and DHBs
- Therapists employed by DHBs or other oral health practitioners where facilities at those clinics may hinder them from complying with the codes of practice
- Clinical Dental Technicians employed by corporations, other technicians, dentists and specialists.

These and other circumstances may also affect a practitioner's ability to perform in a clinically competent manner. For example:

- treatment choices determined or influenced by the employer
- availability of equipment and materials
- availability of surgery time to allow adequate treatment or follow up care
- having to work after hours when facilities become available and without optimum support.

The first principle is that all oral health practitioners must comply with legal, professional and ethical standards. This includes the standards promulgated in the Dental Council's codes of practice. 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.

Despite the comments in the paragraph above, practitioners will have met their legal obligations where they have taken all **reasonable steps** in the circumstances to comply with the standards. If the failure to comply is outside the practitioner's control, and the practitioner has done everything reasonable in the circumstances, the oral health practitioner will not be able to be criticised, and will not be in breach of his or her obligations.

Depending on the circumstances, reasonable steps might include notifying the practitioner's employer, or other responsible party, of the inability to meet the standards required in the codes of practice.

Under the HPCAA, the Dental Council is entitled to set standards of practice. There is a prima facie duty on health practitioners to whom the standards apply to comply with the standards. This duty is set out in the Code of Health and Disability Services Consumer's 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 provides that a health provider (for example, an oral health practitioner) will not be in breach of the Code 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 (clause 3). The "circumstances" include, but are not limited to, the resource constraints within which a practitioner practices. Therefore, provided that a practitioner has taken all reasonable steps to comply with the standards set by the Council, it is unlikely that, by reason only of a failure to comply with the Council's standards, he or she would be found to have breached the Code of Rights (or breached his or her legal or ethical obligations).

This of course raises the question as to what an oral health practitioner should reasonably do if compliance is impossible. Each case will be fact specific. However, the following may provide some guidance:

- Where compliance is not possible, it may well be 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.
- An oral health practioner must not compromise the health or safety of a patient by being unable to comply with a code. It is important to delay treatment until the issue is resolved. In these circumstances it may be appropriate to seek guidance from the DCNZ secretariat or a DCNZ professional advisor.
- In some circumstances where compliance is not possible an oral health practitioner may well have a duty to inform the patient of the situation, explain alternative options to the patient, and gain the patient's informed consent before proceeding with any services or treatment. Again specific advice should be taken from the DCNZ secretariat or a DCNZ professional advisor before proceeding in this way.

Where a practitioner is aware that he or she is not providing services that comply with the Dental Council's Code of Practice, he or she has a duty to provide the best care possible in the particular circumstances.

Restricted Procedures under HPCAA

The Dental Council has recently issued an interpretative policy statement on restricted activities in response to queries from the sector as to which tasks unregistered dental and orthodontic assistants may undertake.

This is available on the Dental Council's website - http://www.dcnz.org.nz/Documents/Policy/DCNZPolicy_RestrictedProcedures.pdf.

Restricted procedures

In developing its interpretation on which procedures fall within the category of a restricted activity the Council:

- considered whether or not the procedure clearly poses a risk of serious or permanent harm to the public if performed by persons other than registered health practitioners
- noted that the legislation does not address whether or not the activity is undertaken under the supervision of a registered health practitioner.

The Council considers that the following procedures fall within the definition of a restricted activity and as such may only be carried out by registered health practitioners:

- scaling involving gingival contact
- applying bands
- applying fissure sealants involving etching
- taking impressions using other than an irreversible hydrocolloid material (alginate)
- placing and removing separators (other than elastomeric separators)
- placing brackets and retainers, including etching and bonding of tooth surfaces
- de-bonding/de-banding fixed appliances, including brackets
- indirect bonding of brackets
- placing and removing wire ligatures
- final fitting and/or activation of removable retainers and appliances
- adjusting removable retainers/appliances.

Other procedures

The Council recognises that unregistered dental assistants and orthodontic assistants aid dentists[1] in providing a range of clinical services to patients. Council considers this appropriate provided:

- the unregistered assistant providing clinical services to patients is suitably trained
- the dentist provides onsite clinical direction and monitoring of the assistant in relation to all clinical procedures undertaken by the unregistered assistant
- the dentist is responsible for the patient's clinical care outcomes
- patients are not given the impression that assistants who undertake some of the procedures contained in the dental auxiliary and orthodontic auxiliary scopes of practice are doing so in a registered capacity.

These other procedures include:

- removal of supragingival stains and deposits, providing this does not involve gingival contact or the use of a dental torque handpiece, ultrasonic scaler or air abrasion
- oral hygiene instruction and advice
- taking impressions using an irreversible hydrocolloid material (alginate)
- placing and removing elastomeric separators
- taking radiographs under the onsite supervision of a dentist holding a licence to use irradiating apparatus for the purpose of dental radiographic diagnosis (and in accordance with NRL guidelines)
- developing radiographs
- taking clinical photographs
- recording medical histories, occlusal relationships
- placing elastomeric ligatures after the dentist/orthodontist has inserted the archwires
- removing elastomeric ligatures
- removing archwires associated with elastomeric ligatures and self ligating brackets
- engaging self ligating brackets when the archwires are in place
- tracing cephalometric x-rays
- trial fitting of removable retainers and appliances
- making retainers.

1 The generic title "dentist" has been used in this policy statement and includes those registered in the gener.al dental practice scope of practice and specialist scopes eg orthodontists

Use of Penthrox for sedation

Recently the Dental Council was asked to provide its views on the use of Penthrox by dentists as a technique of conscious sedation. The Council's view is that Penthrox is a procedure that falls within the DCNZ/NZDA code of practice on conscious sedation for dental procedures. The Council also noted that, although the drug is being used for its analgesic properties in dentistry, it clearly has the potential for sedation, even in the self-administered situation. As such it should be subject to the sedation guidelines including requiring monitoring by a suitably trained health practitioner, and instructing patients not to drive for 24 hours.

Clinical excellence prize

The 2006 Dental Council of New Zealand Prize for clinical excellence in undergraduate dentistry studies has been awarded to Guy Farland. Guy is participating in the BDS programme at the University of Otago. The Dental Council congratulates Guy on this great achievement and wishes him well as he continues his studies.

Adult Care in the Dental Therapy Scope of Practice

Recently, the press carried a news item about a dental therapist who had been registered in the adult care scope of practice. This caused a bit of a stir as did the editorial on the adult care scope of practice in a recent newsletter of the Wellington Branch of the NZDA. The purpose of this article is to set the record straight on a number of issues raised.

Under the Dental Act 1988, there were about 15 dental therapists who had been authorised by the Ministry of Health to provide dental therapy care to adults under supervision in hospital dental service and other DHB and iwi settings. To accommodate those working in this area the Dental Council prescribed, under the Health Practitioners Competence Assurance Act 2003 (HPCAA), the additional scope of adult care in dental therapy practice. The scope requires the dental therapist to practise under the clinical guidance of a dentist who must maintain general oversight of the clinical care outcomes of the adult patient group. Registration in the adult care scope of practice extends the patient group the dental therapist can treat but **does not** extend the range of clinical procedures the therapist can undertake.

In May this year the Council considered the adult care in dental therapy scope of practice. Discussion was of a general nature and centred on whether or not the conditions under which a dental therapist could provide adult care should be altered to enable them to provide dental therapy care to patients over 18 years old under the written prescription of a dentist who had examined the patient and developed the treatment plan. This was a preliminary discussion and no decision was made. The consensus was that consultation should be undertaken before any change to the adult care in dental therapy scope of practice was contemplated.

When the HPCAA came into effect, registration in the adult care in dental therapy scope of practice was on the basis of experience. This provision was withdrawn after the initial round of registration was completed. Subsequent to this, dental therapists could only be registered in this scope if they had completed a DCNZ approved course or an equivalent course overseas.

Since September 2004 two further dental therapists have been registered in the adult care scope of practice This includes Janelle Larby, whose recent registration in this scope made her the first New Zealand-trained dental therapist to be registered in this scope since the initial registration period. (Janelle is not the first ever as was incorrectly reported in the media.) She was registered in this scope of practice on the basis of her participation in a project with the Royal Melbourne Dental Hospital that investigated "The Capacity of Dental Therapists to Provide Restorative Care to Adults".

The other dental therapist was registered in the adult care scope of practice on the basis of her UK dental therapy training and experience in the provision of dental therapy care to adults.

The issue of dental therapists providing dental therapy care to adults has been contentious and the Dental Council will not make any changes to the current scope of practice without first consulting all stakeholders.

Registration in additional scopes of practice for Dental Therapists

Have you recently completed an approved training programme for registration in an additional scope of practice?

If so, your registration in the scope must be approved before you can legally practice in the additional scope. Do not leave this until the next APC round as this slows down the issue of your APC and delays the date you can commence practice in the scope.

Download an additional scope application form (DT003) from the Council's website and submit it, together with a certified copy of your certificate of completion and fee. The form is located under the Registration (as a Dental Therapist) section – applying for registration in additional dental therapy scopes of practice. See web address below.

http://www.dcnz.org.nz/dcRegistrationTherapistAdditional

For details on scopes of practice for dental therapists, visit the DCNZ website.

http://www.dcnz.org.nz/Documents/Scopes/ScopesOfPractice_Therapists.pdf

The individual practitioner is responsible for ensuring they are registered in all scopes of practice they are trained for and wish to practice in. Do not assume your employer will do this for you.

What's the Council been up to lately?

Want to know what decisions have been made by the Dental Council recently? Check out the Summaries of Council Decisions on the DCNZ website under the "About Us" section http://www.dcnz.org.nz/dcAboutDecisions.

Dentists Disciplinary Tribunal

Suresh Kanji Patel

On 14 February 2007, Dr Patel pleaded guilty, before the Dentists Disciplinary Tribunal, to charges under the Dental Act 1988 relating to his treatment of three patients. The Tribunal found Dr Patel guilty of professional misconduct and ordered that his name be removed from the Dental Register commencing 1 July 2007. In addition he was ordered to be censured and to pay 20% of hearing costs.

On 10 August 2007 the High Court allowed an appeal against the penalty imposed by the Tribunal. Lang J imposed the following penalty upon Dr Patel:

- Dr Patel is censured
- Dr Patel is suspended from practising as a dentist for 7 months, from 1 November 2007
- Between 10 August 2007 and 31 October 2007, and from 1 June 2008, Dr Patel is to practise in accordance with the conditions imposed by the Dental Council in effect as at 8 August 2007, together with any additional or alternative conditions that the Council may subsequently impose.

Lang J noted the gravity of the offending and its impact on the three patients. However, in his decision, the Judge took account of Dr Patel's early guilty plea and Dr Patel's acknowledgement of responsibility for the conduct that led to the charges. Lang J also placed considerable emphasis on the complaints dating from some years earlier and took into account the progress that Dr Patel had made since 2002 in rectifying the deficiencies in his practice.

The earlier decision of the Tribunal may be viewed at http://www.dcnz.org.nz/dcStandardsDDT on the DCNZ website. The High Court decision (*Patel v The Complaints Assessment Committee*) can be found at http://jdo.justice.govt.nz/jdo/Search.jsp (entering CIV-2007-404-1818 in the search field).

Misleading advertising and the use of appropriate titles

The Council continues to receive queries and complaints about advertising by oral health practitioners.

For example:

- advertisements implying that dentists are registered as specialists when this is not the case
- advertisements implying that technicians can provide clinical procedures when they cannot
- practitioners using qualifications that have not been approved by the Council for entry onto the Dental Register.

Section 7 of the Health Practitioners Competence Assurance Act (HPCAA) 2003 states that:

"(1) A person may only use names, words, titles, initials, abbreviations, or descriptions stating or implying that the person is a health practitioner of a particular kind if the person is registered, and is qualified to be registered, as a health practitioner of that kind.

(2) No person may claim to be practising a profession as a health practitioner of a particular kind or state or do anything that is calculated to suggest that the person practises or is willing to practise a profession as a health practitioner of that kind unless the person –

(a) is a health practitioner of that kind; and

(b) holds a current annual practising certificate as a health practitioner of that kind.

(3) No person may make an express or implied statement about another person that the other person is prohibited by subsection (1) or subsection (2) from making about himself or herself.

(4) …

(5) Every person commits an offence punishable on summary conviction by a fine not exceeding $10,000 who contravenes this section."

Ambiguous advertising has the potential to bring discredit to the oral health professions which is a ground on which a health practitioner may be disciplined. Possible consequences of actions like this can include referral to a Professional Conduct Committee for investigation under s.68(3) of the HPCAA and subsequent disciplinary proceedings.

Ambiguous advertising that implies a higher level of skill contravenes the requirement of a practitioner to be specific about his or her scope of practice and skills. Whilst a dentist is entitled to practise orthodontics, for example, within the general dental scope of practice, the use of misleading titles and advertising can imply to the public that the practitioner is registered in a specialist scope.

Even if the advertisement or listing has been placed by someone else, e.g. a practice manager, the practitioner is responsible for the placement and all content.

One should not therefore use the word(s) specialist, expert or similar in advertising, titles or practice names unless registered in a specialist scope. It is important to use the approved Dental Council gazetted titles in advertising, titles or practice names and to ensure that any qualifications used in advertising have been approved by the Dental Council for entry on the Dental Register.

Council staff are available to provide advice and guidance to practitioners in this area.