

2 August 2012

Dear Stakeholder,

Second Consultation on Proposed Code of Practice on Advertising

The Dental Council recently consulted on a proposed Code of Practice on Advertising.

In response, a substantial number of submissions were received, all of which were initially reviewed by a Working Group of Council members comprised of a general dentist, a dental specialist and a lay person. The submissions, together with provisional recommendations made by the Working Group, have been considered by Council, and Council has now approved a revised draft Code of Practice on Advertising for consultation. The revised draft Code of Practice on Advertising is contained in the attached consultation document.

Council has determined to adopt a principles based Code of Practice as opposed to adopting a rigid prescriptive approach. Accordingly the standards contained in the revised draft Code of Practice are expressed as principles to guide practitioners.

Consultation points

The Dental Council invites all stakeholders to comment on the revised draft Code of Practice on Advertising, in the attached consultation document, by responding to the following questions:

1. Do you agree with the wording of the revised Code of Practice on Advertising?
2. Do you have any other comments on the revised wording of the proposed Code of Practice on Advertising?

In accordance with section 14 of the Health Practitioners Competence Assurance Act 2003, this consultation document has been sent to all practitioners, relevant associations and societies, the Ministry of Health, District Health Boards and other organisations with an interest in this area. This consultation document will also be published on the Council's website, with a similar invitation to comment.

The objective of the consultation is to gather views from the sector to inform Council's final decision on the proposed Code of Practice on Advertising.

The Dental Council seeks any comments on the proposal by the close of business on **27 September 2012**.

Responses should be sent to:

Dental Council
PO Box 10-448
Wellington 6143

Fax: 04 499 1668

Email: consultations@dcnz.org.nz

I look forward to receiving your submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marie Warner', written in a cursive style.

Marie Warner
Chief Executive

Consultation Document

Revised Draft Code of Practice on Advertising

RELEASED 2 AUGUST 2012

SUBMISSIONS DUE 27 SEPTEMBER 2012

1. INTRODUCTION

- 1.1 The Dental Council recognises the value of providing information to the public about practitioners and the services they provide and that advertising can provide a means of conveying such information. Any information provided in an advertisement for a service should be reliable and useful in assisting consumers to make informed decisions about accessing services and health care choices.
- 1.2 There are risks that advertising which is inaccurate or misleading can lead to the indiscriminate or unnecessary provision of services. Inaccurate or misleading advertising can also create unrealistic expectations about the benefits, likelihood of success and safety of such services, with possible adverse consequences for consumers. This is particularly relevant in cases where the consumer may be vulnerable or not sufficiently well informed to make a decision about the suitability of certain types of services.
- 1.3 The objectives of this Code of Practice are to:
- (a) support the principle purpose of the Health Practitioners Competence Assurance Act (2003) which is to protect the health and safety of members of the public by providing for mechanisms to ensure health practitioners are competent and fit to practise their professions;
 - (b) protect the public from advertising that is false, deceptive or misleading;
 - (c) provide guidance on interpretation of the relevant sections of the Act;
 - (d) establish minimum standards for advertising by registered oral health practitioners;
 - (e) support the principles of professional conduct as set out in the Dental Council's Statement on Principles of Ethical Conduct for Oral Health Practitioners; and
 - (f) inform oral health practitioners of the standards of practice that are expected of them when advertising oral health services.
- 1.4 The relevant sections of the Act are:

Section 7: Unqualified person must not claim to be a health practitioner

- (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 practising certificate as a health practitioner of that kind.*
- (5) *Every person commits an offence punishable on summary conviction by a fine not exceeding \$10,000 who contravenes this section.*

Section 8: Health practitioners must not practise outside their scope of practice

- (1) *Every health practitioner who practises the profession in respect of which he or she is registered must have a current practising certificate issued by the responsible authority.*
- (2) *No health practitioner may perform a health service that forms part of a scope of practice of the profession in respect of which he or she is registered unless he or she -*
- (a) *is permitted to perform that service by his or her scope of practice; and*
 - (b) *performs that service in accordance with any conditions stated in his or her scope of practice.*

Section 138(1) Information to be registered

- (1) *The information to be entered in the register of each authority in respect of a health practitioner is –*
- (b) *particulars of the qualifications by virtue of which the health practitioner is registered;*
 - (f) *any other matters...the authority thinks appropriate.*

- 1.5 Practitioners must also be aware of other legislation and standards relating to advertising including, but not limited to, the Fair Trading Act 1986, Consumer Guarantees Act 1993, Code of Health and Disability Services Consumers' Rights, and the Advertising Standards Authority's Codes.

2. DEFINITION OF ADVERTISING

Advertisement means any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services and

Advertising has a corresponding meaning¹.

¹ Definition taken so far as relevant, from the definition of 'Advertisement' in the Fair Trading Act 1986.

3. PROFESSIONAL OBLIGATIONS

3.1 *Ethical Standards*

- (a) Under section 118(i) of the Health Practitioners Competence Assurance Act one of the functions of the Dental Council is to:

set standards of clinical competence, cultural competence, and ethical conducts to be observed by health practitioners of the profession.

- (b) Oral health practitioners must always consider their professional, ethical and legal obligations when advertising services, and how members of the public will perceive their advertising.
- (c) Practitioners should be mindful of the principles of ethical conduct as set out in the Dental Council's Statement on Principles of Ethical Conduct for Oral Health Practitioners.

3.2 *Public safety*

- (a) In many market places people are able to assess the relevance of information about the quality of products and services available. In many situations the services or products have a low risk of causing medical harm to a person. However, this is not the case with health services, including oral health services.
- (b) It can be relatively difficult for people to differentiate between the quality of different treatment offerings especially when it involves advertising and promoting products and services in a clinical environment. The consequences of poor treatment choices, poor treatment outcomes or a lack of truly informed consent from patients may be severe.
- (c) Practitioners must not advertise in a manner that could be considered as attempting to profit from, or take advantage of, limited consumer understanding.

3.3 *Informed Consent*

- (a) The main purpose for advertising of services is to present information that is reasonably required by consumers to make decisions about the availability and suitability of services offered.
- (b) Any decision by a consumer in response to an advertised service does not substitute for informed consent, nor the obligation on a practitioner to obtain informed consent before proceeding to provide the service as set out in the Dental Council's Code of Practice on Informed Consent.

3.4 *Ensuring Competence*

When advertising a service, a practitioner must be competent by reason of his or her education, training and/or experience to provide the service advertised or to act in the manner or professional capacity advertised.

3.5 *Substantiation of Claims*

A practitioner must be certain that any claims made in advertising material can be supported by a balance of evidence-based literature. This refers particularly to claims regarding outcomes of treatment, whether implied or explicitly stated.

3.6 *Comparative Advertising*

It is difficult to include all required information to avoid a false or inaccurate comparison when comparing one health service or product with another. Therefore, comparative advertising is at risk of misleading the public and practitioners must not advertise in a manner which overtly, or otherwise, disparages other practitioners and the services they offer.

3.7 *Authorising the Content of Advertising*

- (a) Practitioners are responsible for the form and content of the advertising of health-related services and products associated with their practice. Practitioners must not delegate this function.
- (b) Practitioners must ensure the accuracy of advertising their health-related services and products and must ensure compliance with this Code. The Dental Council will apply the doctrine of vicarious liability².
- (c) Council is not able to give legal advice or opinion nor ‘vet’ or pre-approve advertisements for compliance with this Code. If a practitioner is in doubt about whether his or her advertisement might be in breach of the Code of Practice, the practitioner must seek his or her own advice.

4. **ADVERTISING NATURE OF PRACTICE**

4.1 A general dentist who does not hold specialist registration must:

- (a) not claim or otherwise hold him or herself out to be a specialist, either explicitly or by implication, or convey that perception to the public;
- (b) describe him or herself, unambiguously, as a “general dentist” when using any terms or descriptors that indicate or imply a particular interest or skill in areas of practice.

4.2 No practitioner shall advertise, claim or otherwise hold him or herself out as offering oral health services, procedures or advice that are not within the practitioner’s registered scope of practice.

5. **ADVERTISING OF PROFESSIONAL QUALIFICATIONS AND MEMBERSHIPS**

5.1 Advertising professional qualifications may be useful in providing the public with information about experience and expertise. Professional qualifications are those qualifications obtained by examination or formal assessment.

² A “vicarious liability” can be defined as the liability created by an action or non action by a person, working on behalf of him/her when he/she is responsible for all the action or inaction of such person within the limits of their association.

- 5.2 If a practitioner chooses to advertise honorary titles, honorary qualifications or memberships of professional bodies the practitioner must ensure that there is no possibility that the public will be misled. Where an honorary qualification is similar to a professional qualification, practitioners must explicitly state that the qualification is honorary.

6. CONSEQUENCES OF BREACH OF ADVERTISING REQUIREMENTS

- 6.1 This Code may be used by the Health Practitioners Disciplinary Tribunal, the Dental Council, and the Health and Disability Commissioner as a standard by which an oral health practitioner's conduct is measured.
- 6.2 A failure by a practitioner to comply with this Code may as appropriate, result in:
- (a) a referral to a professional conduct committee, if one or more questions about the appropriateness of the conduct or safety of the practice of a health practitioner has been raised, pursuant to section 68(3) of the Act;
 - (b) a professional conduct committee laying a charge before the Health Practitioners Disciplinary Tribunal;
 - (c) a competence review pursuant to section 36(4) of the Act;
 - (d) referral to the Health and Disability Commissioner;
 - (e) referral to the Ministry of Health Enforcement Unit pursuant to section 7 of the Act;
 - (f) referral to the Advertising Standards Authority;
 - (g) such other action as the Dental Council may deem appropriate in the circumstances.