To whom it may concern,

I wish to comment on DCNZ's (the Council's) naming policy. I agree with appropriate naming of practitioners to "ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so"[1]

However, I have difficulty with the Council's ability to act responsibly and maintain fairness over time. Historically they have become more heavy-handed, likely culminating in the legally dubious practices adopted by the GDC in the UK.

Checks and balances have effectively been removed by conferring qualified privilege to the Council under the Defamation Act 1992, s16. My concern is the political narrative of NZ will predicate a shift toward the UK model.

The Australian system is cast in a bad light, but the right to sue is not statute barred by ACC, so the naming role is effectively passed to the courts which is likely fairer. As a medical practitioner, Dr Craig's comments in the "Discussion Paper" display a good understanding of the legal conundrum faced:-[2]

> "So what the bill requires is that responsible authorities develop policies that outline what their decision making is around releasing the names of practitioners that they have reviewed in terms of their competence or fitness to practice [sic] (our emphasis). It's important that what they're doing there is balancing that need for, basically, the public interest—so naming a practitioner if they have failed to meet expected standards—against the rights of a practitioner to have privacy and natural justice, and getting that balance right. But there is greater transparency around that." (Dr Liz Craig, MP)

The "scenarios" and "relevant cases" described in the "Discussion Paper" are clear cut, so easily understood and justified by any reasonable health practitioner. The difficulty arises in those that are not, late payment of fees for example[3]. It is my concern natural justice will be overlooked, if not abandoned by the Council over time.

I would like to see the Council overseen to ensure the "Good regulatory practice" guidelines in the "Discussion Paper" are understood and adhered to.[4] Legal aid should be provided for any dentist who requests it and who is unfortunate enough to face the disciplinary process. This ensures on its face, that fairness and due process have been observed. Though potentially expensive, "cost no object" funding seems freely available when formulating ab initio legislation, with no evidence of effectiveness, but objectionable when dealing with ex post facto situations that will genuinely protect the public.

In conclusion, though naming is of undoubted value to public good, giving Council unfettered discretion to determine naming criteria is highly likely to lead to injustice and goes against "The assessment whether the departure from the standard of care satisfies this test is one for the court to make, not the [medical] experts." [5]

Chris Wong

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[1] Health Practitioners Competence Assurance Act 2003 s 157B(2)(b)

[2] Claro "Naming Policy under the Health Practitioners Competence Assurance Act
A discussion paper for the Dental Council of New Zealand and the Pharmacy Council of New Zealand"
(31 July 2019) at 14

[3] *Kewene v Professional Conduct Committee of the Dental Council Constituted Under the Health Practitioners Competence Assurance Act 2003* [2013] NZHC 933; BC201363474

[4] Ciaro, above n 2, at 30

[5] P Skegg and R Paterson *Health Law in New Zealand* (Thomson Reuters, Wellington, 2015) at 97