

# Advertising Practice Standard

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Dental Council  
Te Kaunihera Tiaki Niho

## Foreword

### Standards framework

The Dental Council (the Council) is legally required to set standards of clinical competence, cultural competence and ethical conduct to be observed by all registered oral health practitioners (practitioners).<sup>a</sup> This means that compliance to the Council's standards by practitioners is mandatory.

The Council has established the *Standards Framework for Oral Health Practitioners* which defines the ethical principles, professional standards, and practice standards that all practitioners must meet.

There are five ethical principles that practitioners must adhere to at all times.

Practitioners must:

- put patients' interests first
- ensure safe practice
- communicate effectively
- provide good care
- maintain public trust and confidence.

Each of the five ethical principles is supported by a number of professional standards which articulate what a practitioner must do to ensure they achieve the ethical principles. The professional standards are, in turn, supported by practice standards which relate to specific areas of practice that require more detailed standards to enable practitioners to meet the professional standards and ethical principles.

A copy of the Standards Framework is available on the [Council's website](#).

### Compliance

The standards set by the Council are minimum standards which are used by the Council, the public of New Zealand, competence review committees, professional conduct committees, the Health and Disability Commissioner, the Health Practitioners Disciplinary Tribunal, and the courts to measure the competence, performance, and conduct of practitioners.

A failure to meet the Council's standards and adhere to the ethical principles could result in Dental Council involvement and may impact on the practitioner's practice.

Sometimes factors outside practitioners' control may affect whether or not, or how, they can meet the standards. In such circumstances, practitioners are expected to adhere to the ethical principles, demonstrate insight and use their professional judgement to determine appropriate behaviour.

Practitioners must be able to justify their behaviour when this is contrary to the standards and document their reasons.

<sup>a</sup> Oral health practitioners include dentists, dental specialists, dental hygienists, dental therapists, oral health therapists, clinical dental technicians, dental technicians, and orthodontic auxiliaries.

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## Introduction

This introduction provides commentary on the advertising practice standard and context for the standards and guidance within it.

The advertising practice standard contains:

- The Council *standards* (the standards) for advertising that all registered oral health practitioners (practitioners) **must** meet. These are presented in the numbered coloured boxes -



The standards that practitioners must meet.

and

- *Guidance* which describes the actions and behaviour that enable practitioners to meet the minimum standards. If a practitioner does not follow the guidance, they must be able to demonstrate to the Council that they meet the standards.

This is presented in the grey-shaded boxes directly following the relevant standard -

### Guidance

- The actions and behaviour that enable practitioners to meet the minimum standards.

For convenience, the standards are listed at the beginning of the practice standard; the standards with guidance follow.

## Purpose

The purpose of the advertising practice standard ('practice standard') is to set minimum standards for oral health practitioners when advertising to ensure the public is protected from advertising that is false, deceptive, or misleading.

## Definition of advertising

*Advertisement* means any form of communication made to the public or a section of the public for promoting the supply of goods or services and *Advertising* has a corresponding meaning<sup>1</sup>.

## Public safety

The main reason practitioners advertise is to inform the public about themselves and the oral health services they offer. The information provided in an advertisement should be reliable and useful in assisting the public to make informed decisions about accessing services and oral health care choices.

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

Inaccurate or misleading advertising can lead to misunderstandings about the benefits, likelihood of success, and safety of the advertised services. It can also lead to services being provided indiscriminately and when not needed.

Advertising by oral health practitioners therefore carries with it a considerable risk of harm to the patient, especially when the patient may be vulnerable or not sufficiently well informed to make a decision about the suitability of certain types of services.

### Practitioners' obligations

The *HDC Code of Health and Disability Services Consumers' Rights* provides that every consumer has the right to services provided with reasonable care and skill<sup>2</sup>, and that comply with legal, professional, ethical, and other relevant standards.<sup>3</sup>

The *Standards Framework for Oral Health Practitioners* requires practitioners to put their patients' interests first; ensure safe practice; communicate effectively; provide good care; and maintain public trust and confidence. These requirements encompass all practitioner activities, including advertising and the services that may be provided as a result of advertising.

The following professional standards are especially relevant to advertising.

Practitioners must:

- put the interests of their patients ahead of their own personal, financial, or other gain<sup>4</sup>
- communicate honestly, factually and without exaggeration<sup>5</sup>
- give patients the information they need or request, in a way they can understand, so they can make informed decisions<sup>6</sup>
- ensure their professional and personal conduct justifies trust in them and their profession<sup>7</sup>
- act with honesty and integrity at all times with patients, colleagues, and the public.<sup>8</sup>

### Informed consent

A decision made by someone in response to an advertisement, cannot be considered as their informed consent for the practitioner to provide them with the advertised service.

The Council's informed consent practice standard describes informed consent as an interactive and ongoing process which requires effective communication between the practitioner and the patient.

Practitioners are required to obtain the patient's informed consent before providing care and to ensure it remains valid at all times.

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<sup>2</sup> Right 4(1) Health and Disability Commissioner Code of Health and Disability Services Consumers' Rights Regulation 1996

<sup>3</sup> Right 4(2) Health and Disability Commissioner Code of Health and Disability Services Consumers' Rights Regulation 1996

<sup>4</sup> Professional standard 2, Dental Council Standards Framework for Oral Health Practitioners

<sup>5</sup> Professional standard 13

<sup>6</sup> Professional standard 15

<sup>7</sup> Professional standard 23

<sup>8</sup> Professional standard 25

## New Zealand law and standards

All advertising must be legal. Practitioners have a responsibility to be aware of and comply with all aspects of advertising regulation.

The standards and guidance in this practice standard are principally based on practitioners' legal and professional obligations described in legislation and codes related to advertising and the resulting provision of goods and services, including the:

- Health Practitioners Competence Assurance Act 2003
- Fair Trading Act 1986
- Consumer Guarantees Act 1993
- HDC Code of Health and Disability Services Consumers' Rights Regulation 1996
- Advertising Standards Authority codes (*Advertising Standards Code 2018* and *Therapeutic and Health Advertising Code*)
- Medicines Act 1981.

Practitioners are advised to familiarise themselves with these documents.

## Acknowledgements

The advertising practice standard is founded on a number of different sources, including those listed above.

# Advertising practice standard

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## List of standards

There are six standards in the advertising practice standard, listed below. The standards with associated guidance follow.

1	You must not advertise in a way that will or is likely to mislead, deceive, or confuse the public.
2	You must ensure the accuracy of your messaging when advertising and not withhold important information.
3	You must be certain that any claims you make in your advertising, either implied or explicitly stated, are supported by the best available evidence; particularly those regarding outcomes of treatment.
4	You must not advertise in a way which directly or by implication, criticises other practitioners and the services they offer.
5	You must be competent to provide the services you advertise.
6	You must not advertise, claim, or otherwise give the impression you are: <ul style="list-style-type: none"><li>• a particular kind of oral health practitioner if you are not registered in the corresponding scope of practice</li><li>• able to offer oral health services, procedures or advice that fall outside your registered scope/s of practice.</li></ul>

1

You must not advertise in a way that will or is likely to mislead, deceive, or confuse the public.

### Guidance

- Make it clear to the public that they are engaging with an advertisement, regardless of the form the advertisement takes or the platform where it appears.
- Take care to place your advertisement where it is relevant and appropriate, and not likely to mislead or confuse the public.
- Communicate honestly, factually and without exaggeration.
- Avoid emotive language.
- Be careful not to unduly glamorise or portray unrealistic treatment outcomes. If using 'before' and 'after' images be sure that they represent the treatment outcome honestly, that they are representative of the typical not the exceptional, and that consent has been obtained in writing for use of the images in your advertising.
- Keep the use of technical terms and jargon to a minimum as this may exploit a lack of knowledge or understanding with the potential to mislead or confuse the public.
- When including scientific language in an advertisement, make sure it is appropriate to, and easily understood by, the intended audience.
- Be able to meet any reasonable demand created by your advertising.
- The Medicines Act 1981 does not permit registered health practitioners to endorse a medicine or medical device in advertisements to consumers.

2

You must ensure the accuracy of your messaging when advertising and not withhold important information.

### Guidance

- You are responsible for the form and content of your advertising. You cannot delegate this responsibility.
- Know what is being advertised about you and how your services are being promoted, and make sure it is accurate.
- When employing the technical expertise of others, take care to understand what your 'expert' is doing on your behalf, and that it does not result in inaccurate or misleading advertising. For example, when using forms of digital marketing to advertise your services.  
  
The doctrine of vicarious liability will be applied. This means you are responsible for the action or non-action of your advertising agent.
- Present scientific information accurately. Use scientific terminology that is appropriate and able to be readily understood by the public.
- Make sure if your advertisement claims or implies an endorsement, that you have gained the prior consent of the endorser (an individual, government agency, professional body, or independent agency). Clearly name the endorser and make sure the endorsement is current and can be verified.
- Make sure if your advertisement contains or refers to any personal testimonial, that written permission to use the testimonial has been obtained and it can be verified as being genuine, current, and representative of the typical not the exceptional. Make sure that testimonials do not contain inaccurate or misleading information about the legitimate nature of your practice and services provided.

3

You must be certain that any claims you make in your advertising, either implied or explicitly stated, are supported by the best available evidence; particularly those regarding outcomes of treatment.

### Guidance

- Be able to support any claims you make in an advertisement using valid and reliable evidence. It is an offence under the Fair Trading Act to make a claim in an advertisement that cannot be substantiated.
- You are responsible for evaluating the available evidence to support all claims made in your advertising. This includes claims sourced from a dental supplier or manufacturer's promotional material. Dental suppliers and manufacturers are not regulated by the Dental Council or held to our standards.

4

You must not advertise in a way which directly or by implication, criticises other practitioners and the services they offer.

#### Guidance

- Take care if using comparative advertising (where one health service, treatment outcome or product is compared with another) to provide factual information which is unambiguous and clearly understandable.
- Do not discredit, disparage, or attack competitors, competing products, or services.
- Make sure a comparative advertisement compares 'like-for-like' and is fair and accurate in that comparison.

5

You must be competent to provide the services you advertise.

#### Guidance

- Make sure you have the knowledge, skills, and necessary experience to carry out your advertised task or type of treatment competently within your scope of practice. This is particularly important when advertising services based on newly acquired knowledge and skills, or that you do not perform regularly.
- Make sure, when advertising a non-clinical service you intend to offer within your scope of practice (for example, presentations or workshops for other practitioners or the public), that you are competent to provide the advertised service.

6

You must not advertise, claim, or otherwise give the impression you are:

- a particular kind of oral health practitioner if you are not registered in the corresponding scope of practice
- able to offer oral health services, procedures or advice that fall outside your registered scope/s of practice.

### Guidance

- Use only names, words, titles, initials, abbreviations, or descriptions stating or implying that you are a particular kind of practitioner if you are registered as a health practitioner of that kind. It is an offence under the Health Practitioners Competence Assurance Act to claim (explicitly or implicitly) to be a health practitioner of a particular kind if you are not registered as such in New Zealand.
- Be clear and accurate when describing your registered oral health practitioner status. For example, if you are registered in the 'general dental scope of practice' describe yourself as a 'dentist' or 'general dentist'.
- Do not claim or otherwise give the impression that you are a dental specialist when using any terms or descriptors that indicate or imply a particular interest or skill in areas of practice. For example, if you are a registered general dentist, do not suggest you are an orthodontist when advertising your special interest or services in orthodontics.
- Avoid using the terms 'specialist', 'specialist in', or 'specialising in' for oral health practitioners who work in an area where there is no recognised specialist scope of practice. For example, implantology, cosmetic dentistry.
- Consider the value of advertising your professional qualifications, i.e. qualifications gained through examination or formal assessment. This information may be useful for patients and the public to understand your expertise and experience. However, take care not to mislead the public as to your registered scope of practice and the services you can perform. For example, if you are a registered general dentist with a postgraduate qualification in a specialty area, take care that your advertising does not convey a specialist status if you are not registered as one in New Zealand.
- If you advertise your honorary titles, civic and military honours, honorary qualifications, or memberships of professional bodies, make sure there is no possibility that patients or the public will be misled by this information. Make sure the information is accurately described and current.