21st October 2014

Dear Marie,

Submission

New Zealand Dental Association Inc
Proposed Standards Framework for oral health practitioners

General concerns regarding the Dental Council’s ‘consultation’ process

The Association, following a lengthy discussion at both Executive and Board level, wishes to advise the Dental Council that given the importance of this ‘Framework’, we are strongly of the view that this method of consultation is insufficient and has placed the Association in an invidious position of needing to relay a number of negative comments because we were excluded from the initial discussions which appear to have been held without major stakeholder engagement.

The Dental Council has created a difficult environment for the Association to positively contribute and the situation is therefore awkward and disappointing.

Providing written feedback around a narrow set of questions regarding principles of ethics and standards is, in the Association’s view, ill-chosen and unsatisfactory.

Practice Standards

Given the Association’s extensive membership, current and long-time role in standards development, resourcing, expertise and delivery, a consultative, fully empowered discussion with the Association is, in our view, essential if such a ‘Framework’ is to practically reflect the standards and expectations required, and if it is to be embraced by the profession in its widest context.

The Association does not support progressing consultation in the format the Dental Council is currently undertaking.

Furthermore, the Association Executive requests the Dental Council records our disappointment at the issuing of such an important document without seeking prior discussion with the Association, and the subsequent refusal of Dental Council to meet with the Association. Clearly, in preference to having in depth discussion, the Dental Council has pursued a very narrow written ‘consultation’ process. It remains very much our view that a broader conversation and discussion would have been a far better starting point than written submissions.

The Association urges the Dental Council to review its consultative process around the development of a ‘Standards Framework’ and looks forward to the opportunity to be active and constructive.
participant in a more appropriate process; one that allows discussion around the fundamental issues that exist.

In the absence of direct discussion and early involvement, the Association reluctantly submits the following.

**General concerns regarding the Framework and combining of ethics with enforceable mandatory standards**

The Association does not believe the draft Standards Framework resolves the described issues/factors for why it has been developed (as listed on page 4 of the preamble).

Specifically the Framework does not:

- better define professional standards supporting ethical principles,
- lessen confusion regarding minimum vs best practice standards,
- assist in clarifying the standing of the Association’s Codes of Practice and those of the Dental Council.

The Association does not agree with the Dental Council that:

- The primary ethical principles have become lost in the detailed prescriptive nature of the Codes of Practice (Dental Council’s reason listed page 4 of the document). It has always been the Association’s aim, and action, to provide educative standards and guidelines. On many recent occasions the Association has presented its opposition to the Dental Council’s expressed direction of generalising Codes of Practice to the extent that they become noneducative, prescriptive documents.

- The proposed Framework is not overly useful in lessening what Dental Council has described as the absence of a strong link between Council’s ethical principles, contained in its ethical statement, and its codes of practice. The Association believes the Dental Council has, through process such as this consultation, produced an environment where it has disaffected significant stakeholders, and this is more likely why the profession disengages with Council documents, whether they be Council prescribed ‘ethics’ or ‘codes of practice’.

It is the Association’s view that a significant difficulty within this Standards Framework arises because of the manner in which it attempts to place ethics and law in one document and, in its current format, it gives inadequate structure to the hierarchy of the principles it espouses.

Even at the most fundamental level - the presentation graphic of the Standards Framework - presenting as a ‘colourful wheel’ - whilst visually attractive is confusing. It does not accurately represent the ‘interrelatedness’ of the ‘ethical principles’ nor does it demonstrate the intended hierarchy of the associated ‘principles’ and ‘standards’. It gives no hint as to exactly where the existing Codes of Practice actually fit. These aspects amongst others are integral to establishing a useful and understood framework.

Notwithstanding these comments, the Association is in broad agreement with the philosophy underpinning the development of a Standards Framework.
General concerns regarding resourcing.

The Association makes the observation that the Dental Council through this Framework is proposing a very detailed operational focus in undertaking its stated ‘statutory’ function of protecting ‘the health and safety of the public’.

It is our belief that the concept of a Standards Framework developed by Dental Council within its governance role is appropriate. However it is also our strong view that this suggested Framework will fail in its operational sense because the Dental Council is not structured or resourced to take such an operational focus.

The Association strongly believes this is likely to render any ‘Standards Framework’ unworkable.

By way of example, the Association notes that many of the Dental Council Codes of Practice (COPs) are significantly out-of-date and the Council’s process and ability for revising and updating these is convoluted, and it lacks flexibility and the ability to respond to changes in practice requirements in a timely manner. Additionally the suggested framework does nothing to address the educative requirements associated with the volume of material that lies within the framework. Significant additional resource and focus would need to be applied by Dental Council to remedy these two areas alone, and if applied would duplicate the resources already available and being applied within the Association. In the current format the Dental Council COPs cannot form part of any ‘Standards Framework’ as arguably they do not reflect the current evidence based, patient safe practice, and accordingly the standards expected of health practitioners. In contrast to the Council’s process over the last year, you will have received from the Association, 10 updated or new Codes of Practice *

Comment regarding the Consultation document preamble

3.0 Review of standards

An issue not identified in this section is the relationship between dental practitioners and the Dental Council, and the perception that the Council sets rules and collects APC fees but has not taken an educative role. The Councils ‘brand’ or functions are widely seen as being focused on prescription and punitive action (at times ineffective because of poor prescription, lack of educative support and under resourced process).

Issues requiring clarification / resolution:

Adoption of the Standards by practitioners is best facilitated through education and empowerment and how this is to be active is not described.

• If the ‘Standards’ framework is to be adopted what does the Council intend doing to address the educative requirements?

Note Section 118 of the Act details the responsibilities of the Council and Section 118(i) to promote education and training in the profession.

The Association does not believe this framework resolves the listed factors for why it has been developed.

The framework does not

• better define professional standards supporting ethical principles as it confuses ‘musts’ and ‘shoulds’, and regulation / law and ethics
• lessen confusion regarding minimum vs best practice standards,
assist in the standing of Association’s Codes of Practice and those of the Dental Council as it now adds to the picture another set of described ethics in tandem with the long held Association Code of Ethics

The Association’s Board and Executive believe the Dental Council and this type of consultation process has side-lined the significant and valuable contribution of the Association in its long-time leadership role of producing ‘Practice Standards’, and the Association’s role for over a century in documenting our professions Code of Ethics (a document not even listed as being one the Dental Council has utilised in determining his proposed framework).

The general perception amongst the Association’s Board, Executive and Staff members is that the Dental Council is ignoring a huge and willing resource, particularly with respect to standards development.

The Association believes dentists generally, will better understand, respect and abide by conditions contained within a Council ‘imposed’ framework if the Dental Council enters meaningful consultation with the Association and meaningful involvement of the Association’s staff and volunteer experts when developing not only the framework, but the standards which sit within it.

4.1 Ethical Principles

These seem broadly appropriate, if not overly well expressed. They are broad in scope and encompassing. The framework in some instances expresses matters poorly; for example it does not clearly state, and thus appropriately emphasise, that dentists should aim to establish relationships with patients based on trust, and mutual respect, so that patients can feel confident that their privacy, safety and best interests are being served. This oversight in part leads the Framework to inappropriately not include patient responsibilities.

The language, emphasis and content of the Association’s Code of Ethics, which is the well-established foundation document for the profession, has much to recommend it and yet the Dental Council has not used this fundamental document as a resource, favouring instead to part copy a General Dental Council document without acknowledgment.

It is our view that a significant difficulty within the proposed Standards Framework arises because of the way in which it attempts to place ethics and law in one document and, in its current format, it gives inadequate structure to the hierarchy of the principles it espouses. By describing ethical ‘musts’ alongside, and in conjunction with, measurable practice standard ‘musts’, the document creates difficulties of hierarchy and enforcement.

Ethics are moral principles and the ethics of a particular act are many times determined independently of the legality of the conduct. Combining practice standards of clinical activity, enforceable via objective measurement, with ethical guidance issues stated as regulatory ‘musts’, is in our view likely to confuse matters related to enforceability and meaningful enforcement and consequence.

A more useful consultation would have involved, from the outset, a discussion with the Association as to matters such as:

- whether combining clinical standards and ethical guidelines within one framework is the appropriate action.
• what objective measures would the Dental Council have in place to ascertain compliance with an ethical ‘must’, and what difficulty will be experienced in meaningfully pursuing this?

• how will these ethical activities be monitored, and where will the resource come from for the policing of ethics?

• how will you enforce ‘ethical musts’ in a meaningful way?

• how will you carry the profession with you in this process?

4.2 Professional standards

The Standards Framework requires significant clarification regarding all aspects of the process related to the development and revision of professional standards that are the ‘Framework’, and how these relate in a hierarchical sense to practice standards.

Within professional standards:

• who determines what is a ‘should’ and what is a ‘must’?

• how is the threshold to be defined?

• where is this process to be described?

4.3 Practice standards

The document confuses matters by inter-relating ‘musts’ and ‘shoulds’ and ethics and enforceable regulations / mandatory standards within the same clause.

For example 1.6, 3.6, 4.2, 4.3, 4.4 all exhibit this difficulty, where one part or more of the guidance states ‘should’ but the core value statement remains as a ‘must’.

When ‘musts’ are watered down in the same clause by the use of examples that state ‘should’, it is reasonable to expect at the very least confusion will arise.

Questions that could have been discussed prior to release of the consultation document:

• Is there to be consultation on the Councils ‘risk assessment’ priority review of Codes?

• Why is the Dental Council duplicating the Association’s work in this area when clearly the Association is better resourced and more proficient in reviewing and writing practice standards?

• How does the combining of practice standards with professional ethics in one document (as stated on page 4 of the consultation document)

  o ensure that the primary ethical principles do not become lost in the detailed prescriptive nature of the codes of practice?

  o lessen confusion regarding minimum vs best practice standards?
assist in clarifying the standing of the Association’s Codes of Practice and those of the Dental Council? (Where is the Association’s Code of Ethics – the foundation document of our Profession now positioned?) The picture, in our view is indeed now more confused.

5.0 Implications for practitioners

Paragraph 1 “…. All standards set by the Council are mandatory.”

Paragraph 3 “Compliance with the Standards Framework requires practitioners to use their professional judgement and demonstrate insight at all times; and be able to justify any decision contrary to the standards”

These statements appear to be contradictory. In law mandatory refers to something that is required, and not optional or subject to discretion, yet variation from the ‘standards’ appears to be just fine if justification can be provided. The current situation regarding the Association’s COP’s and Dental Councils Standards illustrate the point. Practitioners will be able to use their discretion to follow the Association’s COP as our COP’s are evidence based and more up to date than those of the Dental Council.

Comments regarding the Standards Framework for oral health practitioners (draft document) - page 5

The presentation graphic of the Standards Framework as a ‘wheel’ is confusing in that it does not accurately represent the ‘interrelatedness’ of the ‘Ethical Principles’ nor does it demonstrate the intended hierarchy of the associated ‘principles’ and ‘standards’. Detail is lacking as to exactly where the existing Codes of Practice actually fit and if the existing COP’s are appropriate.

Ethical Principle 1 - Put patients’ interests first (page 6)

1.1 You must consider the health and safety of your patients to be your first priority of care.

This standard (labelled 1.1) describing ‘health and safety’ would be better included under the Ethical Principle 2 - ‘Ensuring safe practice’. Furthermore to state – ‘you should consider’ lacks substance in that this should be more than ‘consideration’ - it should involve ‘action’. It would be better to state, ‘the health and safety of your patient must be a priority’. In the context of ‘health and safety’, the reference to ‘care’ may be interpreted to meaning only when the practitioner is doing something. Health and safety impacts and includes many of the processes, procedures, infrastructure etc. that underpin dental practice.

We would contend that in fact the opening statement, as a first priority under Ethical Principle 1, should be:

You must ensure the welfare of your patient through the competent delivery of care to be your first priority.

 Guidance notes

In our view this guidance section is too focused on the delivery of services. Health and safety is wider than this.

1.1. If you believe that patients might be at risk because of your health, behaviour or professional competence or that of a colleague, or because of
any aspect of the clinical environment, you must take prompt and appropriate action.

Is an appropriate action to do nothing?

Who determines what is ‘appropriate’ to me?

Peer review, CAO’s, and DPL personal all assist in complaint resolution ... the statement (1.1) implies dentists involved in those systems are obliged (must) take other action beyond their prescribed complaint resolution role.

Where does complaint resolution services fit into the framework?

1.2 You must put the interests of your patients before your own or those of....

Guidance example:

When referring patients to another member of the dental team, the referral must be made in the patients’ best interests and not for your own financial gain or benefit, or that of another team member, colleague, business or organisation.

Does this mean it is unethical for a dentist to refer his/ her patients to the hygienist in his/her practice or to others who work for him/ her?

Does this mean that it is unethical (and not allowed) for group practices to refer internally or to visiting specialists within the same practice?

Does this mean specialists in hospitals cannot then see the same patient privately?

Does this mean corporate practices cannot refer to others within the corporate entity?

This statement neglects to relate to / state the fundamental reason for referral – the proactive realisation of one’s own limitation and the patient’s best interest.

1.3 You must treat patients with dignity and respect at all times.

The above statement neglects to mention patient responsibilities and their relationship to the consequences that flow through activities within the Framework – a Standards Framework is a partnership between provider and patient., respect and dignity flow both ways.

Confusion exists within the document as written.

How do the following statements reconcile? They can be mutually exclusive and therefore. prescribing them as ‘musts’ seems to be unworkable, confusing and inappropriate.

Guidance 1.3 : You must be sensitive to patients’ preferences, needs and values
Guidance 4.5 : You must respond to individual patient health needs as part of patient care
Guidance 4.1 : You must provide patients with treatment that is in their best interests
Guidance 4.4 : You should be reasonable and fair in your allocation of healthcare resources
1.4 You must treat patients fairly and without discrimination respecting cultural values, personal disabilities and individual differences.

1.4 Guidance note:

You must recognise the unique place Maori hold….honour treaty principles of partnership, participation and protection in the delivery and promotion of oral healthcare

The intent of this is understood. However in some situations ‘discrimination’ is justified; for example it is recommended that additional infection prevention and control measures are undertaken for a person with an active TMVI, by treating them at the end of the day or referring them to a hospital dental department.

What does this mean in the context of a framework which is stating all patients must be protected?

What specifically is the difference between any individual patient being treated by a dentist as it relates to health and safety of an individual patient whether that patient is Maori or not?

If there is a difference, why have children or disabled patients not also been recognised as requiring special mention as well?

Suggested rewording for discussion: You must treat patients fairly, respecting cultural values, personal disabilities and individual differences.

1.5 You must respect the autonomy and freedom of choice of the patient

This clause omits ethical comment regarding dentist’s rights to freedom of choice and declination of provision of treatment when the dentist is not in agreement with the patient’s position on desired treatment.

1.6 You must protect the patients’ right to complain and seek redress

There is no mention of the dentist’s obligation to be fully conversant with consumer complaint processes.

The ‘must’ within the ethics statement conflicts with the ‘should’ within the guidance note.

Ethical Principle 2 Ensure safe practice (page10)

2.1 You must practise within your professional knowledge, skills and competence.

Guidance notes

You must only carry out a task or a type of treatment if you are appropriately trained, competent and confident.

How do dentists ever carry out a procedure for the first time?

Does Dental Council hold the belief that all recent graduates are confident to provide all the procedures they are expected to provide? How will Dental Council enforce this ‘must’ regarding confidence levels?

2.3 Guidance note
You must find out about the laws and regulations which apply...

Does Dental Council have an obligation to communicate effectively what the laws and regulations are? Is sending an email (not headed as being from the Dental Council) alerting practitioners to matters pertaining to clinical or professional regulation, sufficient to meet any obligation Council (or other entities involved in regulating) might have.

**Ethical Principle 3**  Communicate effectively (Page 14)

3.6 You must always behave respectfully in communication...

The ‘must’ within the ethics statement conflicts with the ‘should’ within the guidance note.

**Ethical Principle 4**  Provide good care (Page 18)

4.1 You must provide patients with treatment that is in their best interests

What if they want something else that conflicts with this, and what if they don’t have the resources or you don’t have the resources to do so?

4.2 You must provide care that is clinically justified and based on the best available evidence.

The dilemma for practitioners will be that the Council’s Standards documents now lag behind the Association’s. The best available evidence is likely to be that of revised Association Codes rather than the Practice Standard documents within this framework. As stated previously the Association is most willing to provide the Standards Documents for the framework.

The ‘must’ within the ethics statement conflicts with the ‘should’ within the guidance note.

4.3 You must respect the contribution of all team members involved in patient care

What if the contribution is poor or inappropriate?

The ‘must’ within the ethics statement conflicts with the ‘should’ within the guidance note.

4.4 You must recognise the importance of just allocation....

The ‘must’ within the ethics statement conflicts with the ‘should’ within the guidance note.

**Ethical Principle 5**  Maintain public trust and confidence (page 22)

Guidance note

5.1 You must not make malicious or unfounded criticisms of colleagues...

This is not consistent with -

3.6 You should not make comments....a colleague.
kind regards

David Crum  CEO,  
NZDA.