

13 April 2011

**DENTAL COUNCIL**  
*Te Kaunihera Tiaki Nihō*

Dear Stakeholder,

**Consultation on Proposed Code of Practice on Advertising**

The Dental Council is now consulting on a proposal to publish a Code of Practice on Advertising. A number of professional standard cases highlighted the need for an articulated standard on advertising and the draft code of practice aims to achieve a balance between recognising the value of providing information to the public through advertising and ensuring that the public can make clear informed decisions without being misled.

A consultation document has been prepared in conjunction with the New Zealand Dental Association and is attached for your information. The objective of the consultation is to gather views from the sector in order for Council to make a final decision on the proposal.

The Dental Council therefore seeks any comments on the proposal by the close of business on **20 June 2011**.

In accordance with section 14 of the Health Practitioners Competence Assurance Act 2003, this letter and the attached consultation document have 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. They will also be published on the Council's website, with a similar invitation to comment.

Responses should be sent to:

Dental Council  
PO Box 10-448  
Wellington 6043

Fax: 04 499 1668

Email: [marie.warner@dcnz.org.nz](mailto:marie.warner@dcnz.org.nz)

I look forward to receiving your submission.

Yours sincerely



Marie Warner  
Chief Executive

# Consultation Document

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## Proposed Code of Practice on Advertising

RELEASED 13 APRIL 2011

SUBMISSIONS DUE 20 JUNE 2011

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### 1. INTRODUCTION

- 1.1 Dental Council recognises the value of providing information to the public about practitioners and the services they provide and advertising can provide a means of conveying such information. Any information provided in an advertisement for a service should be reliable and useful and assist 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 or 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 in which 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 provisions of the Health Practitioners Competence Assurance Act (2003) ('the Act');
  - (b) protect the public from advertising that is false, deceptive or misleading;
  - (c) provide guidance on interpretation of the relevant sections of the Act; and
  - (d) establish minimum standards for advertising by registered oral health practitioners.
- 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.*
- (3) *.....*
- (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 –*
  - (a) *.....*
  - (b) *particulars of the qualifications by virtue of which the health practitioner is registered;*
  - (c) *.....*
  - (f) *any other matters...the authority thinks appropriate.*

1.5 Practitioners must also be aware of other legislation and standards relating to advertising including the Fair Trading Act 1986, Consumer Guarantees Act 1993 and the Advertising Standards Authority Therapeutic Services Advertising Code .

## 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 meaning<sup>1</sup>.

## 3. PROFESSIONAL OBLIGATIONS

- 3.1 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.
- 3.2 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 Practitioners must not advertise in a manner which overtly, or otherwise, disparages other practitioners and their services offered.
- 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) A practitioner must be certain that any claims made in advertising material can be supported by evidence-based literature. This refers particularly to claims regarding outcomes of treatment, whether implied or explicitly stated.
  - (b) A practitioner must ensure that any advertisement for services alerts the public to the fact that there are associated health risks, unless there is accepted scientific evidence that there are no material risks associated with a type of treatment.
- 3.6 ***Authorising the Content of Advertising***
  - (a) Practitioners are responsible for the style and content of all advertising material associated with their practice and the provision of their goods and services.
  - (b) Practitioners must not delegate accountability for ensuring the accuracy of advertising and compliance with this Code. The Dental Council will apply the doctrine of vicarious liability.
  - (c) It will not be considered a defence in relation to an alleged breach of this Code that the practitioner did not have control over the content of an advertisement.

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

- (d) Council may view failure to take reasonable steps to control the content of advertising as reason to instigate an investigation by a Professional Conduct Committee.<sup>2</sup>
- (e) Council will not 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.

### 3.7 ***Informed Consent***

The main purpose of advertising of services is to present information that is reasonably needed by consumers to make an informed initial decision about the availability and suitability of services offered. Any initial decision by a consumer in response to an advertised service does not substitute informed consent and does not remove the obligation on a practitioner to obtain informed consent before proceeding to provide the service.

## 4. **ADVERTISING OF QUALIFICATIONS AND TITLES**

### 4.1 ***Professional Qualifications***

- (a) A practitioner must state clearly and unambiguously his or her professional qualifications as prescribed and in the manner set out in this Code.
- (b) The Dental Council is of the opinion that patients or clients are best protected when practitioners advertise only those qualifications that are gained by examination and recognised by the Council as qualifications for inclusion on the New Zealand Dental Council Register.

### 4.2 ***Use of Titles in Advertising***

Practitioners must not contravene section 7 of the Act which 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 practising certificate as a health practitioner of that kind.*

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<sup>2</sup> Section 68(3) of the Health Practitioners Competence Assurance Act, 2003

- 4.3 A practitioner who does not hold specialist registration must not:
- (a) 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) use the terms “*practice limited to*” or “*with an interest in*” or any other such term or phrase which when used in conjunction with a term or descriptor could imply the practitioner holds specialist registration;
  - (c) use terms or descriptors such as “*orthodontics*” or “*oral surgery*” which resemble specialist scopes of practice, whether currently existing or not, and which could mislead, deceive or otherwise cause a member of the public to believe that a practitioner was a registered specialist or possessed of a specialist skill.
- 4.4 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.
- 4.5 A practitioner who is not a doctor of medicine or otherwise holds a doctorate may not use the courtesy title doctor or an abbreviation of that term in advertising. The right to use the title doctor is restricted to medical practitioners and to those who hold a doctorate. Dentists and dental specialists currently use the title doctor as a courtesy title. Council considers the use of the courtesy title doctor by dentists and dental specialists in their advertising has both the potential to mislead the public and to contravene section 7 of the Act.

#### ***Qualifications and Memberships***

- 4.6 Advertising qualifications or memberships may be useful in providing the public with information about experience and expertise but may be misleading or deceptive if the public may readily interpret the advertisements to imply that the practitioner is more skilled or has greater experience than is the case.
- 4.7 A practitioner may advertise as of right:
- (a) those qualifications, gained by examination, by virtue of which he or she has been registered to practise in New Zealand; and
  - (b) any other qualification(s) which the practitioner has had subsequently recognised and approved on an individual basis by the Dental Council for inclusion on the Dental Register pursuant to section 138(1)(f) of the Act; and<sup>3</sup>
  - (c) any gazetted civil and military decorations awarded to a practitioner.

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<sup>3</sup> The Dental Council only recognises qualifications that have been awarded following the successful completion of a recognised course of training or study which includes examination. Only qualifications which have relevance to competence in dentistry or a branch of dentistry (which includes dentists, dental therapists, dental hygienists, orthodontic auxiliaries, dental technicians and clinical dental technicians) will be considered for approval for inclusion on the register.

- 4.8 If a practitioner uses other qualifications, honorary titles or memberships of professional bodies in advertising these must be clearly and physically separated from the practitioner's name and registered qualifications e.g. by placing at the bottom of the document.
- 4.9 Where practitioners display or use memberships or honorary titles the full description of any such membership or honorary title should be expressed in full without abbreviation.

## **5. CONSEQUENCES OF BREACH OF ADVERTISING REQUIREMENTS**

- 5.1 A failure by a practitioner to comply with this Code may as appropriate, result in:
- (a) disciplinary proceedings being initiated pursuant to section 68(3) of the Act;
  - (b) referral to the Ministry of Health Enforcement Unit pursuant to section 7 of the Act;
  - (c) a competence review pursuant to section 36(4) of the Act;
  - (d) referral to the Advertising Standards Authority;
  - (e) such other action as the Dental Council may deem appropriate in the circumstances.
- 5.2 It would be considered a breach of this code if the practitioner's conduct posed a risk of harm to the public.

## **Consultation**

The Dental Council is now consulting on the proposal to publish a Code of Practice on Advertising.

The Dental Council seeks any comments on the proposal by the close of business on **20 June 2011**.

In accordance with section 14 of the Health Practitioners Competence Assurance Act 2003, this consultation document and the attached letter have 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 and the attached letter 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 in order for Council to make a final decision on the proposal.

## **Consultation points**

The Council invites all stakeholders to comment on this consultation document by responding to the following questions:

1. Do you agree/disagree with the proposal to issue a Code of Practice on Advertising?
2. Do you agree with the wording of the proposed Code of Practice on Advertising?
3. Any additional comments regarding the proposed Code of Practice on Advertising?

## **Address for responses**

Responses should be sent to:

Dental Council  
PO Box 10-448  
Wellington 6043

Fax: 04 499 1668

Email: [marie.warner@dcnz.org.nz](mailto:marie.warner@dcnz.org.nz)

**to arrive no later than the close of business on 20 June 2011.**