

To whom it may concern,

Please accept my written submission on the proposed recertification changes. I have been informed my views are in agreement with those of the NZDA and certainly that of my professional colleagues.

The issues, as you have cited them, are:

“The draft proposals also address three known areas of risk by introducing new ways to support new registrants, address health-related competence decline and address recurring non-compliant behaviours.”¹

Your proposed solutions to address these concerns seem to stem from the following section of the Health Practitioners Competence Assurance Act 2003 (the Act)²

41 Recertification programmes

- (1) For the purpose of ensuring that health practitioners are competent to practise within the scopes of practice in respect of which they are registered, each authority may from time to time set or recognise recertification programmes for practitioners who are registered with the authority.
- (2) A recertification programme *may be made to apply generally* in respect of all health practitioners, *or in respect of a specified health practitioner*, or in respect of a specified class or classes of health practitioner.
- (3) A recertification programme *may* require a practitioner to do any 1 or more of the following at intervals (if any) prescribed in the programme:
 - (a) pass any examinations or assessments, or both:
 - (b) complete a period of practical training:
 - (c) undertake a course of instruction:
 - (d) permit a health practitioner specified by the authority to examine—
 - (i) any or all of his or her clinical and other practices:
 - (ii) any or all of his or her relations with other health practitioners:
 - (iii) any or all of the clinical records of the practitioner in relation to his or her patients or clients:
 - (e) undergo an inspection:
 - (f) adopt and undertake a systematic process for ensuring that the services provided by the practitioner meet the required standard of competence.

¹ DCNZ “A discussion document on recertifying our oral health practitioners: considering the draft proposals” (13 August 2018) <www.dcnz.org.nz/assets/Uploads/Recertification-phase-2/FINAL-phase-two-discussion-document.pdf> at 5

² DCNZ “A literature review: Recertifying our oral health practitioners” (March 2018) <<https://www.dcnz.org.nz/assets/Uploads/Recertification-review/Dental-Council-literature-review-recertification-March-2017.pdf>> at 5 and 6

Your paraphrasing of the Act's provision is somewhat misleading as it strongly indicates everything you propose is mandatory under the Act. I have italicised where in the relevant provisions this is certainly not the case. It is also implied it must apply to all practitioners equally and that your research results objectively and scientifically justify your desire to introduce harsher registration requirements when the reality is:

"The research presents a contradictory picture on the question of whether CPD contributes to the maintenance and improvement of a practitioner's competence and fitness to practise."³

The views of the NZDA as I understand them, and agree with, are the new proposals are completely upside down in their priorities.

It could be argued they are not in keeping with the most important provision of the Act.

3 Purpose of Act

(1) The principal purpose of this Act is to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions.

As you have further noted in your material:⁴

"Only a small group face competence allegations

The evidence suggests that only a small percentage of health practitioners are not practising at an acceptable level and will face competence and/or fitness to practise allegations over the course of their career. It is a point that may reassure regulators whose core function is to assess and assure the relative safety of the public."

It is contended you are attempting to protect the public from the large percentage of competent practitioners while placing the least effort on the "small percentage".

Unfortunately, the DCNZ is far from the only administrative body who focus on the compliant members.

I shall provide two examples of quite recent DCNZ cases in the Courts to demonstrate my point.

³ DCNZ "A literature review: Recertifying our oral health practitioners" (March 2018) <<https://www.dcnz.org.nz/assets/Uploads/Recertification-review/Dental-Council-literature-review-recertification-March-2017.pdf>> at 27

⁴ DCNZ "A literature review: Recertifying our oral health practitioners" (March 2018) <<https://www.dcnz.org.nz/assets/Uploads/Recertification-review/Dental-Council-literature-review-recertification-March-2017.pdf>> at 14

*KEWENE v PROFESSIONAL CONDUCT COMMITTEE OF THE DENTAL COUNCIL
CONSTITUTED UNDER THE HEALTH PRACTITIONERS COMPETENCE ASSURANCE
ACT 2003 [2013] NZHC 933*

In this case as I am sure you are aware, but unfortunately almost no dentist reading this will be, the dentist was appealing a decision by the DCNZ disciplinary committee reprimanding him for being approximately 1 month late in paying his registration fees.

This dentist had given many years of service to the community working for a Maori community dental service.

It is unlikely Parliament envisaged this as their idea of protecting the public good when they penned the Act.

At the other end of the scale a case that has been ongoing since 2008 from events of 2001.

Z v Dental Council of New Zealand HC Wellington CIV-2010-485-002249, 2 December 2011

In this case it is not the outcome that is of concern, but the lack of care on behalf of the Dental Council to ensure due process was observed. If basic principles of criminal standards of proof and avoidance of *autrofois acquit* (double jeopardy) were adhered to in the first place it could have avoided protracted, stressful and costly court proceedings for all parties.

It is alarming how none of my dental colleagues whom I ask know of these cases and how you as our governing body are not bringing them to our attention with the same gusto as proposed recertification changes.

It is observed Parliament has empowered you with an ouster clause in the Act

62 Exclusion of liability

(1) No civil or disciplinary proceedings lie against any person in respect of conduct engaged in in good faith in connection with a protected quality assurance activity.

Ouster clauses have been viewed as unconstitutional by New Zealand Courts in the past.

Ministry of Health v Atkinson [2012] 3 NZLR 456

It is sincerely hoped you do not see such protection as a right to ignore what the profession is trying to tell you. Their views are from a profession that currently provides a largely trouble free service with, as you have commented, as many complaints from other dentists as the public. Being from the private sector of the profession myself I am aware, as I am sure you are, many are the result of petty professional rivalries and therefore harmless to the public.

You may view this submission as not fit for publication simply because it does not endorse your views as made clear with your statement:

“We also reserve the right not to publish any derogatory or inflammatory submissions”⁵

It is contended the proposed changes by Council project the notion all dentists are inter alia dishonest and incompetent until proven otherwise or “guilty until proven innocent”.

Please consider we are overwhelmingly honest folk with the same trials and tribulations as the rest of the public you are trying to protect. We are not dentists 24/7 but ordinary people who have rights under the New Zealand Bill of Rights Act 1990 just as they do. These include:

13 Freedom of thought, conscience, and religion

- Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.

14 Freedom of expression

- Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

It is quite upsetting to have double standards applied. The young men and woman trying so hard to get into dental school are blissfully unaware this is how they will be treated upon graduating.

It is noteworthy my colleagues, one an ophthalmologist and the other an optometrist, do not require an eye test to register. In their expert opinion, without strong evidence of (dental) performance decline with age, it is not a precedent that should be set by a profession with no expertise of eyes.

Striking a balance between protecting rights of a specialist group and protecting the public is well demonstrated in the words of Paula Bennett MP in her response to the select committee on increased gun legislation in New Zealand, surely a far bigger threat to the public good than dentists: ⁶

“We needed to strike the right balance between public safety and the rights of legal firearms owners. Although the report was well intended, I believe many of the recommendations would not decrease the flow of firearms to criminals and gangs but would unduly impact on legally licenced firearms users.”

In conclusion, please leave the current recertification requirements alone. Alterations as proposed will do little, if anything, to protect the public from incompetent dentists but will burden the competent ones immensely. Instead focus your energies and resources on the

⁵ DCNZ “Phase two consultation on recertification”

<www.surveymonkey.com/r/yourfeedbackondraftproposals>

⁶ <https://www.beehive.govt.nz/release/government-response-firearms-select-committee-report>

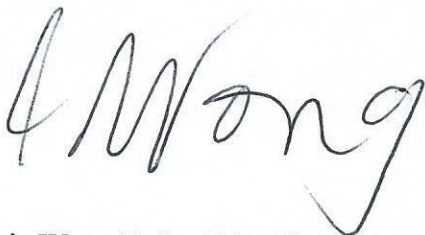
practitioners perceived by the public, not you, as the problem. After all it is supposedly their interests you are protecting.

New Zealand dentistry is almost completely private. This differs from almost every other health profession except optometry that I am aware.

Therefore ever increasing costs of compliance are able to be, and will be passed onto the public who are, with very, very few exceptions happy with the competence of the profession. Short of legislating prices there is nothing to stop this happening.

We all know if the public has a complaint about dentistry it is cost. Do you as the public watch dog want to be responsible for further decreasing access?

Yours sincerely,

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

Chris Wong B.Sc., Dip. Pharm., B.D.S (Otago)

