

21 March 2014

Medical Council of New Zealand
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Medical Council review of *Statement on Advertising*

Thank you for the opportunity to comment on the updated Medical Council Statement on Advertising (the Statement). As a general comment, given that the proposed amendments to the Statement relate specifically to the provision of information, I consider the Statement should specifically refer to Right 6 of the Code of Health and Disability Services Consumers' Rights (the Code).

Scientific information in advertising

I endorse the proposed amendment to paragraph 11 of the Statement in relation to including scientific information in advertising. Last year, I considered a situation where similar issues arose.¹ In that case a consumer underwent a dermal filler procedure with an unapproved medicine. In that case, I noted that, under Right 6 of the Code, a reasonable consumer, in that consumer's circumstances, would have expected to have been informed that the dermal filler was an unapproved medicine in New Zealand, the extent to which it was safe to use in light of independent clinical literature, and the degree and standard of clinical support for the use of that medicine.

Use of titles

In relation to the use of titles referred to in paragraph 16 of the Statement, I also suggest referring specifically to the requirements of Right 6 of the Code. The information that is required to be given under Right 6 may include information about a provider's qualifications, depending on the circumstances. In addition, Right 6(3)(a) provides that a consumer is entitled to honest and accurate answers to questions about services including the qualifications of the provider.

Period of reflection – gift certificates and coupons

The amendment to paragraph 19 of the Statement in relation to the use of gift certificates and discount coupons appropriately recognises the issues around informed consent. Currently, the Statement allows a "period of reflection" of at least seven days between the purchase of the certificate and the provision of treatment. However, I consider that consumers also need to be given time to consider any information provided about the proposed treatment, such as the options available, expected risks, side effects and costs, prior to the provision of treatment (Right 6(1)(b)). Accordingly, I suggest that, in some circumstances, the period of reflection should be after an initial consultation, rather than after the purchase of the certificate. The issue of allowing patients adequate time to reflect on information provided to them prior to treatment has been highlighted in various investigations by my Office.² I consider that the

¹ Opinion 10HDC00986

² Opinions 10HDC00671 (26 June 2012), 09HDC01691 (6 April 2011), 08HDC20258 (11 November 2009).

nature of the treatment being provided will dictate the length of time required for such reflection.

Non-medical products

I note that you ask for comments on the issue of doctors advertising non-medical products. I consider that if a doctor wishes to endorse non-medical products, then the doctor should be up-front about any connection that the doctor has with the product, including any financial or other benefit the doctor will derive from its use/purchase. In my view, Right 6 of the Code will generally require such disclosure.

Conclusion

Thank you for the opportunity to comment on the Statement. I trust that you find my comments helpful.