

16 June 2011

Chief Executive
Dental Council of New Zealand
PO Box 10-448
WELLINGTON 6143

Thank you for your letter of 13 April 2011, enclosing the New Zealand Dental Council's (the Council) proposed code of practice on advertising (Code of practice).

I have discussed the proposed code of practice with the Commissioner, and provide his comments as follows. The Commissioner commends the Council on its work to address this area which has clear implications for the rights of health and disability consumers, as identified by recent complaints to this Office.¹

The Commissioner's comments are set out under the headings suggested in the consultation document.

Do you agree/disagree with the proposal to issue a Code of Practice on Advertising?

The Commissioner agrees with the proposal to issue a code of practice on advertising, and supports the Council's work in this area.

Do you agree with the wording of the proposed Code of Practice on Advertising?

The Commissioner suggests that you include reference to the Code of Health and Disability Services Consumers' Rights (the Code) in paragraph 1.5, where the code of practice lists other legislation and standards relating to advertising. The rights to be fully informed (Right 6) and give informed consent (Right 7), and the right to be free from discrimination, coercion, harassment and exploitation (Right 2), are particularly relevant to the advertising of services. When finalized, the code of practice may be used by the Commissioner as a standard by which an oral health practitioner's conduct is measured.

Subsection 3.6 states that practitioners must not delegate accountability for ensuring the accuracy of advertising and compliance with the code of practice, and the Dental Council will apply the doctrine of vicarious liability. "Vicarious liability" is a legal term the meaning of which may not be well known to all oral health practitioners. You should consider alternative wording that more simply clarifies the meaning and intent of this subsection.

¹ For example, case 09HDC02164.

Any additional comments regarding the proposed Code of Practice on Advertising

The Commissioner suggests you consider whether Council has a position on the use of images in advertising, in particular, the use of “before and after” photos. Using pictures in advertising has a significant potential to mislead and unnecessarily raise expectations of a successful outcome with consumers. I draw your attention to the statement used by the Medical Council of New Zealand in paragraph 14 of their comparative Statement on Advertising.²

² The Medical Council of New Zealand Statement on Advertising (August 2010) available on the Medical Council’s website at: <http://www.mcnz.org.nz/Resources/Standardsandguidelines/tabid/293/Default.aspx>.