



## Statement on advertising

### Introduction

1. The Medical Council believes that clear and accurate information about the services provided by doctors benefits all parties in the healthcare system. The Council also believes that constraints to a doctor's freedom of expression should be minimal and reasonable.
2. However, advertising can have adverse consequences for patients when it is false, misleading or deceptive, leads to the provision of inappropriate or unnecessary health services, or creates unrealistic expectations.
3. This purpose of this statement is to protect the public from advertising that is false, misleading or deceptive<sup>1</sup>, and to provide guidance to doctors about the advertising of health-related products and services. This will support the appropriate use of health resources and ensure that patients are able to make informed decisions about their health care<sup>2</sup>.
4. A number of standards exist which already provide some guidance on the subject of advertising. These standards include legislation which deals with advertising in general and standards for health-related advertising set by the Advertising Standards Authority. This document provides an overview of those standards, and also outlines additional expectations Council has of doctors who advertise. The statement may be used by the Advertising Standards Authority, the Health Practitioners Disciplinary Tribunal, the Council, and the Health and Disability Commissioner as a standard by which a doctor's conduct is measured.

### Definition

5. For the purposes of this statement, advertising includes, but is not limited to, any public communication using television, radio, motion picture, newspaper, billboard, list, display, the internet or directory, and includes business cards, announcement cards, office signs, letterhead, telephone directory listings, professional lists, professional directory listings and similar professional notices, and which is intended to promote health services, health-related products, a doctor or a clinic or group with which a doctor is associated.
6. Importantly this definition excludes material issued to patients during consultations where such material is designed to provide the patient with clinical or technical information about health conditions or procedures and where the patient is afforded sufficient opportunity to discuss and ask questions about the material. Also, this definition is not intended to apply to material issued by a person or organisation for the purpose of public health information or as part of a public health programme.

### Responsibility for content

7. You are expected to take reasonable steps to control the content of any advertisement of your health-related services and products, regardless of authorship.
8. If you are in sole practice or a partnership you cannot delegate responsibility for ensuring compliance with this statement to an administrator, manager, director or any other person. If you hold responsibility for management or governance within a corporate organisation you may reasonably be held responsible for the content of any advertising published by that organisation.
9. You also have some responsibility in situations in which you make yourself available, or provide information to, media reports, magazine articles, "reality" shows or advertorials. In such circumstances, you are responsible for the comments you make and the information you provide.
10. The Council may view failure to take reasonable steps to control content under these circumstances as constituting unprofessional conduct.

<sup>1</sup> False, misleading or deceptive advertising can also give rise to a breach of the Fair Trading Act 1986 which carries penalties in the order of \$60,000 in respect of an individual and \$200,000 in respect of a body corporate.

<sup>2</sup> As required by Right 6 of the Code of Health and Disability Services Consumers' Rights.

## Council's expectations

11. Advertisements must contain truthful and balanced representations and claims must be valid, evidence-based and be substantiated. Although you should always discuss different treatment options with patients<sup>3</sup>, you should not make direct comparisons between the quality of your services and the quality of services your colleagues provide.
12. Advertisements must not encourage, or be likely to encourage, inappropriate or excessive use of health resources. You must not put pressure on people to use a service, for example, by arousing ill-founded fear for their future health.
13. Advertisements must not unduly glamorise products and services or foster unrealistic expectations.
14. You should use any images in your advertising with caution. Images, particularly “before and after” photos, have a significant potential to mislead or deceive, to convey to a member of the public inappropriately high expectations of a successful outcome and to encourage the unnecessary use of services. If you choose to use “before and after” photos you must ensure that they:
  - Are there solely for the purpose of providing accurate and useful information to patients.
  - Show a realistic portrayal of the outcome that can reasonably and typically be expected.
  - Only depict patients who have undergone the advertised procedure while under your (or your services’) care.
  - Have not been altered in any way.
  - Use the same lighting, contrast, background, framing, camera angle, exposure and other photographic techniques in both the “before” and “after” images.
  - Ensure consistency in posture, clothing and make up.
  - Are only used when the patient has given his or her fully informed consent.
15. Advertisements must not prey on the vulnerability of particular audiences, and you should be careful how your advertising represents vulnerable groups.
16. You must not falsely overstate your qualifications. Patients can find medical titles confusing and to reduce confusion you should not use titles such as “specialist” that refer to

an area of expertise, unless you are registered with the Council in an appropriate vocational scope.

17. You must not advertise your services by visiting, emailing or telephoning prospective patients, either in person or through an agent<sup>4</sup>.
18. Doctors are not permitted to endorse medicines, medical products or medical treatments under s.58(1) of the Medicines Act. The New Zealand Medical Association (NZMA) Code of Ethics also states that doctors should not allow their standing as medical practitioners to be used inappropriately in the endorsement of commercial products. When doctors are acting as agents for, or have a financial or other interest in, commercial organisations or products, their interest should be declared. If endorsing a product, doctors should use only the proper chemical name for drugs, vaccines and specific ingredients, rather than the trade or commercial name. Any endorsement should be based on specific independent scientific evidence, and that evidence should be clearly outlined. The Council agrees with this view.
19. It is not appropriate to offer, manufacture, promote or distribute discount coupons or gift certificates for medical treatments.
20. It is not appropriate to offer medical treatments as prizes or gifts where this is done to promote a commercial service or for financial gain.

## Complaints about advertising

21. If you have a concern about advertising you should contact the Council. Where advertising appears to breach a code or law the Council may refer complaints to another agency, such as the Advertising Standards Complaints Board or the Commerce Commission.
22. At the conclusion of an investigation by another agency the Council may initiate a conduct review which could result in additional sanctions.

<sup>3</sup> As required by Right 6(1)(b) of the Code of Health and Disability Services Consumers' Rights.

<sup>4</sup> It is permitted to contact former patients if this is for the purpose of re-enrolling them into a PHO.

## Related statements

- *Good medical practice* (July 2008)
- *Responsibilities in any relationships between doctors and health-related commercial organisations* (December 2003)
- *Information and consent* (April 2002)

## Other relevant standards

- The NZMA Code of Ethics
- The Code of Health and Disability Services Consumers' Rights
- the Fair Trading Act 1986
- The Consumer Guarantees Act 1993
- The Medicines Act 1981
- The Therapeutic Services Advertising Code
- The Therapeutic Products Advertising Code

All advertising of health-related goods and services must comply with the above standards. Some of the requirements of the Medicines Act 1981 and the *Therapeutic Services Advertising Code* are outlined below<sup>5</sup>.

### Requirements of the Medicines Act 1981

Part 4 of the Medicines Act 1981 sets out legal requirements specific to medical advertisements. Section 58 specifically prohibits the publication of medical advertisements that:

- Claim, indicate or suggest that a medicine, medical device or treatment will prevent, alleviate, or cure a range of diseases, or prevent, reduce, or terminate a range of physiological conditions<sup>6</sup>. However, the Act also states that "it shall be a good defence in a prosecution [for a breach of section 58] if the defendant proves that the matter claimed, indicated or suggested in the advertisement is true."
- Claim, indicate or suggest a medicine, medical device, or method of treatment:
  - Is a panacea or infallible; or
  - Is or has been used or recommended by a practitioner, nurse, pharmacist, or person engaged in study or research in relation to any of those professions or the work they perform; or

- Has beneficially affected the health of a particular person or class of persons, whether named or unnamed, and whether real or fictitious, referred to in the advertisement; or
- Invites correspondence or the sending of hair, blood, urine, or other bodily specimens or photographs for the purposes of diagnosis or treatment concerning any disease or physiological condition.

### Requirements of the Therapeutic Services

#### Advertising Code

The *Therapeutic Services Advertising Code* covers all advertisements of therapeutic services, including medical services. It includes the following principles:

- Advertisements should comply with the laws of New Zealand and the appropriate industry code of ethics.
- Advertisements should observe a high standard of social responsibility particularly as consumers rely on therapeutic services for their health and well-being.
- Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.
- Any scientific information in an advertisement should be presented in an accurate manner. Scientific terminology should be appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed.
- Advertisements should not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent, the endorsement is verifiable and the agency or the body is named.

***This statement is scheduled for review by August 2015. Legislative changes may make this statement obsolete before this review date.***

<sup>5</sup> Legislation, regulations and standards may be updated from time to time, and doctors should refer to the most recent edition.

<sup>6</sup> Refer to Schedules 1 and 2 of the Medicines Act 1981 for the list of conditions. A copy of the Act can be found at <http://legislation.govt.nz>