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### **Review of the Medical Council's statement on advertising**

Dear Michael

The New Zealand Medical Association (NZMA) welcomes the opportunity to provide feedback to the Medical Council on the review of its statement on advertising.

As you know, the NZMA is the country's largest voluntary pan-professional medical organisation with approximately 5,000 members. Our members come from all disciplines within the medical profession and include general practitioners, doctors-in-training, specialists, and medical students. The NZMA aims to provide leadership of the medical profession, and promote professional unity and values, and the health of New Zealanders. Our comments have been informed by feedback from our Advisory Councils, Ethics Committee, members and the Board.

We note that the proposed updated statement on advertising retains the relevant paragraph from the NZMA Code of Ethics (paragraph 43 in the existing Code of Ethics). We believe that this paragraph (which has remained unchanged during our most recent review) encapsulates the key principles pertinent to this area. Essentially, doctors must always act in the best interests of patients and in a transparent fashion. Any advertising that is designed to steer patient decision making towards any particular treatment based on economic interests - and that is not wholly in the best interests of the patient - would contravene the Code of Ethics.

We are generally supportive of the proposed revisions to the statement and believe these add clarity and strengthen the standards on advertising. Our responses to the specific questions posed in the consultation document are provided below.

**Question 1:** *How do you think the use of titles should be regulated? Do you think the wording proposed above would be helpful?*

The NZMA agrees that while titles can be useful in terms of providing patients with information about a doctor's expertise and experience, some titles are effectively meaningless and could mislead patients into believing a doctor is more qualified or experienced than a colleague with the same background and training. We note that by regulating the use of titles, the Council is aiming to ensure that these provide patients with the clearest and most accurate possible guidance about a doctor's experience.

The NZMA believes that the wording proposed by the Council relating to the advertising of qualifications is indeed helpful. We agree that the only qualifications that should be able to be advertised are those that have been: i) approved for the purposes of registration and relate to a doctor's vocational scope of practice; ii) conferred or approved by a doctor's College, or another training organisation that has been accredited by the Council, or another New Zealand responsible authority.

For the purposes of clarity, we suggest the addition of a statement making it clear that advertising should not allow for the confusion of professional qualifications with organisational affiliations. Such a statement could be along the following lines provided by the College of Physicians and Surgeons of Nova Scotia: *“Advertising of public communications by physicians must not confuse bona fide professional qualifications such as RCPSC fellowship or equivalent specialist qualification recognized by the College of Physicians and Surgeons of Nova Scotia with organizational affiliations. (Examples include the Canadian Academy of Cosmetic Surgery, the American Academy of Cosmetic Surgery and the American Academy of Aesthetic Medicine.)”*

**Question 2:** *If titles conferred or approved by a College are to be recognised, should these also be published on the Medical Register?*

The NZMA takes the view that if titles conferred or approved by a College are to be recognised in advertising material, then there is value in ensuring these are published on the Medical Register. Many patients use the Medical Council website to seek out or confirm information about a particular doctor's qualifications. The information they are seeking may not always be available on College websites. We feel that it is a legitimate expectation that if the Council believes that a doctor can call themselves a “cosmetic physician” or a “paediatric psychiatrist” then that information should be reflected on the Medical Register. We recognise that this is likely to entail a level of cost.

**Question 3:** *Do you think that it would be helpful to patients to require doctors to use their full titles in advertising and promotional material, rather than abbreviations? For example, to use “Fellow of the Royal Australasian College of Surgeons” rather than “FRACS”?*

The NZMA has varying views on the merits of requiring doctors to use their full titles in advertising and promotional material, rather than abbreviations. While there is one view that the use of full titles may indeed be helpful for patients, there is a countervailing view that requiring **all** titles to be given in full may add to patient confusion rather than reduce it. This may be particularly the case when a doctor has multiple qualifications and titles. There are also concerns about the feasibility of requiring full titles when it comes to material such as business cards and

letter heads. If the Council does decide to make this a requirement, we suggest consideration of the practice of using full title at first mention followed by the abbreviation, with all subsequent reference of titles using the abbreviation.

***Question 4:*** *Do you agree that Council should permit the use of gift certificates and discount coupons when they meet the requirements listed above?*

The NZMA has significant concerns around the use of gift certificates and discount coupons, even when the proposed requirements relating to their use are met. We are not confident that it is possible to completely mitigate against the undermining of informed consent whenever these tools are used. Accordingly, we suggest that if the Council decides to permit the use of gift certificates and discount vouchers, these tools should be restricted towards assessment and/or initial consultation only, and not used towards treatment. Furthermore, we have reservations regarding their use even in these areas and believe that gift certificates or discount coupons may not be appropriate when used to provide “well person checks”, for example. While well person checks are of value if the appropriate follow up (including relevant investigations) is in place, we believe they are best done by the patient’s usual doctor. At the very least, the information obtained during such consultations should be sent to the patient’s usual doctor. We believe that it is important not to disrupt a patient-doctor relationship without compelling reasons. Accordingly, we believe that it may be prudent for the Council to re-examine its revised position on the use of discount coupons and gift certificates.

***Question 5:*** *Do you agree that there should be a period of reflection between the purchase of a coupon and treatment? Do you think it may be better to require this period of reflection to take place after an initial consultation? If so, should this be in all cases or just in the case of some procedures (such as surgical procedures)?*

Notwithstanding the concerns outlined above, if the Council does decide to permit the use of gift certificates and discount coupons, the NZMA agrees that there should be a period of reflection between the purchase of coupon and any treatment. We recognise that this may not always be practical but we believe this should be encouraged wherever possible. For very minor and/or non-invasive procedures, however, this stand down period is probably not necessary.

***Question 6:*** *Paragraph 6.2 of the Australian Guidelines requires advertising for surgical and invasive procedures to include a visible warning about risk. Would including such a clause in the New Zealand standard assist in ensuring that patients are fully informed about their treatment options and help to protect patient safety?*

The NZMA is generally of the view that including warnings about risk whenever a surgical or invasive procedure is advertised is a reasonable and sensible proposition. However, given that informed consent cannot be regarded as satisfied by any advertisement, no matter how detailed, we question whether mandatory visible risk warnings are absolutely necessary in all advertising related to surgical or invasive procedures. We suggest that the strength of the recommendation for a warning about risk that is being proposed could probably take the level of ‘should’ rather than ‘must’.

***Question 7:*** *The Council has dealt with several complaints in recent years about the way innovative treatments have been promoted. In particular, concerns have been expressed about the way scientific information has been presented in promotional material, and the quality of that information. Would it be useful to insert a clause into the statement such as that outlined in paragraph 6.7 of the Australian Guidelines?*

We support the Council's intention to ensure that scientific information presented in promotional material is accurate and readily understood by the audience to whom it is directed. To this end, we believe that the insertion of a clause such as that outlined in paragraph 6.7 of the Australian Guidelines is useful. There are some concerns that the requirement in paragraph 6.7 to "identify clearly the relevant researchers, sponsors and the academic publication in which the results appear" may be overly difficult to comply with in all forms of advertising, with a suggestion that the Council explore an alternative phrase that ensures the desired objective of transparency but is not as onerous to implement.

**Question 8:** *How do you feel about doctors advertising non-medical products such as skin care treatments and gluten-free bread? Do the current requirements of the Statement on advertising address this issue appropriately, or are specific standards needed? If so, what should those standards require?*

We believe that the following paragraph from the Code of Ethics that is reproduced in the Council's existing statement includes the key principles that apply to this area.

*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.*

As such, we believe that the Council's current statement is sufficient and do not feel that further specific standards are needed. It is felt that the above clause probably would allow the endorsement of non-medical products such as sun screens but would not extend to the endorsement of products that are beyond a doctor's specific area of medical expertise and knowledge.

### **Other comments**

We note that one of the proposed clarifications around advertising is the requirement to "be in plain English". There is some ambiguity around what this phrase actually means. Furthermore, this requirement could be perceived as culturally insensitive. New Zealand is a multi-cultural country with many groups of people for whom English is a second language. At times, a target audience for advertising could be a Pacific, Māori or Asian audience. We suggest that there should be no stipulation as to what language is used. Possible alternative wording could be the requirement to "be readily understood by the audience to whom it is directed."

We hope our feedback on this consultation has been helpful and we look forward to seeing the finalised updated statement on advertising.

Yours sincerely



Dr Mark Peterson  
NZMA Chair