

DRAFT CODE FOR THERAPEUTIC AND HEALTH ADVERTISING

July 2015

Introduction

The object of this code is to ensure that advertisers maintain rigorous standards in therapeutic and health advertising.

All advertising shall adhere to the laws of New Zealand and the Principles and Guidelines set out in this Code. The ASA Code of Ethics and the Code for Comparative Advertising should also be consulted, if appropriate. Many sectors in this category have their own code with specific advertising requirements and these codes must also be considered.

This Code covers all words and visual depictions in all advertising for therapeutic and health products, devices and services.

In interpreting the code emphasis will be placed on compliance with both the principles and the spirit and intention of the code. The guidelines are merely examples, by no means exhaustive, of how the principles are to be interpreted and applied. It is also possible for an advertisement to be in breach of the principle without being in breach of a specific guideline. Upon complaint, the ASCB is vested with discretion to ensure a common-sense outcome. It is important to note that in considering a complaint both the likely audience and media placement, that is when and where the advertisement is broadcast, printed, or displayed, are key factors in determining code compliance. Please note there are also guidance notes to assist with interpretation for this code, see *[insert hyperlink 'Guidance Notes for the Code for Therapeutic and Health Advertising']*

For the avoidance of doubt, where relevant legislation that affects this Code has been updated and if a conflict occurs in relation to legislative and code requirements, legislative requirements will prevail.

Definitions for the purposes of this code:

'Therapeutic Product' – Medicines that have a therapeutic purpose and have been evaluated by Medsafe and are registered in New Zealand. Medicines achieve or are likely to achieve the therapeutic purpose by pharmacological, immunological or metabolic means. The medicine(s) advertised may be available on prescription or may be purchased 'over-the-counter'.

'Health product' – Products that are not medicines and that are ingested for a health purpose (see definition below for 'health purpose'). May include (but not limited to), Natural Health Products, Dietary Supplements, Herbal Remedies, Traditional Remedies, Homeopathic Remedies and Sunscreens.

'Therapeutic Device' – Medical Devices that have a therapeutic purpose and are listed on the Medsafe WAND database (Web Assisted Notification Database) in New Zealand. Therapeutic Devices do not achieve a therapeutic purpose by pharmacological, immunological or metabolic means.

'Health Device' – Devices that are not listed on the Medsafe WAND database and are used for a health purpose (see definition below for 'health purpose').

'Therapeutic or Health service' – Services that offer treatment for a range of medical conditions and support for normal healthy body functions. Providers may or may not be registered health professionals (as defined in the NZ Medicines Act). May include (but not limited to), Physiotherapy, Relaxation Massage, Homeopathy, Naturopathy, Chiropractic, Acupuncture, Traditional Chinese Medicine and Ayurvedic Medicine.

'Therapeutic Purpose' – The New Zealand Medicines Act has the following meaning;

- (a) preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for, a disease, ailment, defect, or injury; or
- (b) influencing, inhibiting, or modifying a physiological process; or
- (c) testing the susceptibility of persons to a disease or ailment; or
- (d) influencing, controlling, or preventing conception; or
- (e) testing for pregnancy; or
- (f) investigating, replacing, or modifying parts of the human anatomy.

Only New Zealand registered medicines and listed medical devices can claim to have a therapeutic purpose in advertisements.

'Disease' – The New Zealand Medicines Act has the following meaning;

Disease includes any injury, ailment, deformity, disorder, or adverse condition, whether of body or mind.

Only New Zealand registered medicines and listed medical devices can claim to have a therapeutic effect on any disease in advertisements.

'Health Purpose' – Support for a normal healthy body function. May support a specific part of the body's health or may support overall good health. May include nutritional and supplement support.

'Weight Management Programme' – A programme that may include dietary advice, exercise, and lifestyle changes and includes the sale of a health product or health device as part of the programme. These programmes are subject to compliance with the NZ Medicines Act because they include the sale of a health produce and / or a health device.

'Weight Loss Programme' – A programme that may include dietary advice, exercise, and lifestyle changes and may include the sale of food, meals or meal replacement products and exercise equipment. These programmes are NOT subject to the Medicines Act. See Section **E** of the "Guidance notes for the Code for Therapeutic and Health Advertising" for further information on the advertising of Weight Loss Programmes. [\[hyperlink\]](#)

See Section **A** of the "Guidance notes for the Code for Therapeutic and Health Advertising" for further information on the definition of;

- Therapeutic vs Health Purpose. [\[hyperlink\]](#)
- Weight Management Programmes vs Weight Loss Programmes. [\[hyperlink\]](#)

PRINCIPLE 1

Therapeutic and Health advertisements should observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

Guidelines

1(a) Advertisements shall contain the following mandatory information to encourage responsible

prescribing, recommendation, sale and use. This information shall be set out in a way (legible / audible) that ensures it can be readily understood by the audience to whom it is directed. See Section **B** of the “Guidance notes for the Code for Therapeutic and Health Advertising” for further information on the inclusion of the name and address of the advertiser in advertisements.

i. Medicines

Mandatory information as required by the **Medicines Act**, **Medicines Regulations**, **Medsafe Guideline on Advertising therapeutic products**, **Medicines NZ Code of Practice** and the **Self-Medication Industry Code of Practice**. *[include hyperlinks]*

ii. Health Product

- *Name and address of the advertiser*
- The following statement (or words to this effect);

Always read the label and use as directed.

- For products that contain vitamins and / or minerals, the following additional statement (or words to this effect).

Vitamins and minerals are supplementary to and not a replacement for a balanced diet.

- For products that may be used for a short time, after which the consumer should seek medical advice, the following additional statement (or words to this effect).

If symptoms persist, see your healthcare professional.

- Advertisements shall contain appropriate warning statements for products that contain ingredients that have known risks.

iii. Medical Devices –

Mandatory information as required by the **Medicines Act**, **Medicines Regulations** and **Medsafe Guideline on Advertising therapeutic** *[include hyperlinks]* and where appropriate the following statement (or words to this effect);

Always read the label and follow the instructions.

iv. Health Devices

- *Name and address of the advertiser.*
- The following statement (or words to this effect);

Always read the label and follow the instructions.

- Advertisements shall contain appropriate warning statements for devices that have known risks.

v. Therapeutic or Health services

- *Name and address of the advertiser.*

vi. Weight management programmes (with health product)

- The requirements of 1 (a) (ii) (where a health product is sold with the programme) or 1 (a) (iv) (where a health device is sold with the programme).
- The following statements (or words to the effect).

This product / device should be taken / used as part of a weight management programme and should not be taken / used without a suitable dietary and exercise programme. Weight management programmes take some time and personal commitment to get results. Ask your health professional for advice. Individual results may vary.

- *Name and address of the advertiser.*

vii. Weight loss programmes

- *Weight loss programmes take time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes.*
- *Individual results may vary.*
- Where food, meals or low calorie meal replacement products are sold in addition to any programme membership fees it shall be clear to the consumer that the cost of these items is additional to any cost for membership. For example, where meals or food are sold, these statements shall appear; 'Food additional' or 'Plus the cost of food'
- *Name and address of the advertiser.*

1(b) Advertisements shall not contain any claim, statement or implication that the products, devices or services advertised;

- are safe or that their use cannot cause harm or that they have no side effects or risks.
- are effective in all cases
- are infallible, unfailing, magical, miraculous, or that it is a certain, guaranteed or sure cure
- are likely to lead persons to believe that; - they
 - are suffering from a serious ailment, or
 - harmful consequences may result from the therapeutic or health product, device or service not being used

1(c) Advertisements should not portray unrealistic outcomes or prey on vulnerable audiences.

1(d) The use of scientific language in advertisements is acceptable providing that it is

appropriate to, and readily understood by, the audience to whom it is directed.

PRINCIPLE 2

Advertisements shall be truthful, balanced and not misleading. Advertisements should not or should not be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

Guidelines

2(a) Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. See Section **C** of the “Guidance notes for the Code for Therapeutic and Health Advertising” [\[hyperlink\]](#) and “Guidance note on responding to a complaint about misleading claims” [\[hyperlink\]](#).

2(b) Advertisements shall not encourage, or be likely to encourage, inappropriate or excessive purchase or use. Advertisements for prescriptions medicines shall not encourage, or be likely to encourage, inappropriate or excessive prescriptions or requests for a prescription.

2(c) Comparative advertising shall be balanced and shall not be misleading, or likely to be misleading, either about the product, device or service advertised or classes of products, devices or services, with which the comparison is made.

- i. Comparative advertisements shall not be disparaging and shall be factual, fair and able to be substantiated, referenced to the source and reflective of the body of available evidence.
- ii. Comparative advertisements shall not discourage consumers from following the advice of their healthcare practitioner.
- iii. Comparative advertisements shall compare ‘like with like’. Advertisements for health products shall not include comparisons with medicines. Advertisements for health devices shall not include comparisons with medical devices.

2(d) Advertisements may include reference to the advertiser’s sponsorship of any government agency, hospital or other facility providing healthcare services, provided that sponsorship is explicitly acknowledged and cannot be misconstrued as an endorsement of the product, device or service being advertised.

2(e) Advertisements shall not claim or imply endorsement of the product, device or service by any government agency, professional body or independent agency unless there is prior consent, the endorsement is current, verifiable and the agency or body is named.

2(f) Patient testimonials and healthcare professional endorsements in advertisements, where not prohibited by law, shall comply with the Code, be authenticated, genuine, current, typical (not exceptional) and acknowledge any valuable consideration. See Section **D** of the “Guidance notes for the Code for Therapeutic and Health Advertising” [\[hyperlink\]](#).