

Guidance Note on Advertising Health Services

This Guidance Note is effective from 1 February 2018

Background

This guidance note has been developed by the Advertising Standards Authority (ASA) to provide advertisers of Health Services with information to help them comply with the ASA's Therapeutic and Health Advertising Code (the Code) when making claims about their service in their advertisements. Please see the Code for information on the advertising of therapeutic or health products.

The Code, along with the Fair Trading Act 1986 and the Medicines Act 1981, requires advertisers to advertise responsibly and in accordance with the provisions of the Code and relevant legislation. Principle 1 of the Code states that "*Therapeutic and Health advertisements shall observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing*".

What is an advertisement?

The ASA's definition of an advertisement is;

"Advertising and Advertisement(s)" are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

This is a broad definition and any messaging that is controlled (directly or indirectly) by an advertiser will likely be considered advertising. This includes website and social media content controlled by the advertiser and flyers, brochures, sandwich boards, etc.

What is a 'Health Service'?

The ASA's Therapeutic and Health Advertising Code provides the following definition:

'Health Services' – Services that offer a method of treatment (see definition below for method of treatment) for a range of medical conditions OR services that offer support for normal healthy body functions (see page 3 for definition). Providers may or may not be registered health practitioners under the Health Practitioners Competence Assurance Act 2003. May include (but not limited to), services for Medicine, Surgery, Physiotherapy, Nursing, Rehabilitation, Diagnostics, Psychotherapy, Counselling, Fertility, Sterilisation, Relaxation Massage, Homeopathy, Naturopathy, Chiropractic, Acupuncture, Traditional Chinese medicine, and Ayurvedic medicine.

What is a Health Service that provides a ‘Method of Treatment’?

The Code uses the same definitions for ‘Method of Treatment’, ‘Therapeutic Purpose’ and ‘Disease’ as provided in the Medicines Act 1981, which are:

‘Method of Treatment’ – *Any method of treatment for reward undertaken, or represented to be undertaken, for a therapeutic purpose.*

Therapeutic Purpose –

1. *preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for, a disease, ailment, defect, or injury; or*
2. *influencing, inhibiting, or modifying a physiological process; or*
3. *testing the susceptibility of persons to a disease or ailment; or*
4. *influencing, controlling, or preventing conception; or*
5. *testing for pregnancy; or*
6. *investigating, replacing, or modifying parts of the human anatomy.*

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

It is important to note that there is no Regulatory body that gives approval for a ‘Method of Treatment’ or decides which Health Services are, or are not, a ‘Method of Treatment’. This is determined by what the service provides and by how the service is advertised.

A Therapeutic Purpose claim is likely to be accompanied by words, phrases or images that suggest (i) a likely change to the disease, ailment, defect or injury; or (ii) a change to a physiological process; or (iii) a result from a test. The claim may include words, phrases or images consistent with the definition of a ‘Therapeutic Purpose’, or those with a similar meaning. Consumers are likely to interpret the advertisement as claiming that they can expect to be treated by, or have a treatment outcome from, the Health Service when words and phrases that suggest this are included in the advertisement.

Any actual or implied therapeutic purpose claim (words or images) made in an advertisement for a Health Service makes it an advertisement for a ‘Method of Treatment’. Examples include (but are not limited to);

- Provides treatment for and relief from allergies / skin problems
- Provides testing to determine if you’re suffering from a disease or ailment
- Treats injuries that are the result of accidents.
- Treats painful conditions
- Provides surgical treatment of skin conditions like varicose veins
- Treatment for childhood eczema and asthma
- We treat the following conditions
- The treatment is suitable for the following conditions
- May help / will help / suitable / treat / treatment to relieve, reduce, increase, prevent, speed up, slow down, lessen, improve, change, alter a disease, ailment, defect or injury

- May be helpful in / Will be helpful in / May be suitable for / Will treat / Provides Treatment for Relieving, Reducing, Increasing, Preventing, Speeding Up, Slowing Down, Lessening, Improving, Changing, Altering a disease, ailment, defect or injury
- May help / will help get back to work quicker, on your feet faster, faster recovery, less pain, relieves the pain, prevents the symptoms of, helps prevent pain, treats the underlying cause, alters the course of, reduces the impact on, relieves symptoms of, reduces the occurrence of, a disease, ailment, defect or injury

What is a Health Service that provides 'support for normal healthy body functions'?

A Health Service that offers support for normal healthy body functions may provide a health benefit by supporting specific parts of the body, specific functions in the body and/or by providing a holistic approach to overall good health. A Health Service which provides a health benefit will not claim to provide any therapeutic purpose benefits in an advertisement.

The definition of a health benefit in the Code is as follows:

'Health Benefit' – Means any one of the following benefits:

1. *the maintenance or promotion of health or wellness*
2. *nutritional support*
3. *vitamin or mineral supplementation*
4. *maintaining the normal structure or function of the body*

Examples of a Health Benefit claim in an advertisement that would make the Health Service one that provides 'support for normal healthy body functions' include (but are not limited to):

- Provides massage in a calm environment to help the body to relax
- Helps you to relax, and helps to calm and soothe muscles and joints
- Provides a warm and calm space to help you relax your mind and body
- Provides support for healthy blood cholesterol levels and normal blood pressure
- A holistic approach to good health
- Provides support for healthy skin and normal airways
- A whole body approach to healthy glowing skin and a well-functioning digestive system

What are the rules for substantiating claims in advertisements for a Health Service?

Any claim made in an advertisement must be able to be substantiated. Advertisers should hold the substantiation for their claims prior to placing the advertisement. Advertisers are expected to be able to provide this substantiation when responding to a complaint about misleading claims.

This requirement is contained in Rule 2 (a) of the Code, which states:

Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. Substantiation should exist prior to a claim being made. For medicines and medical devices, therapeutic claims must be consistent with the approved indication(s) (for medicines) or the listed intended purpose (for medical devices).

It is also important to note that it is an offence under the Fair Trading Act 1986 to make a claim in an advertisement that cannot be substantiated, and advertisers must be able to prove a claim is true before that claim is made. This Commerce Commission Fact Sheet provides an overview of the substantiation provisions of the Fair Trading Act 1986.

What kind of substantiation would be sufficient to support a claim that a Health Service provides a ‘Method of Treatment’ (i.e. claims relating to a therapeutic purpose)?

Any therapeutic purpose claim made in an advertisement for a Health Service makes it an advertisement for a ‘Method of Treatment’. The Medicines Act 1981 section 58 (1) (a) & (b) and (3) prevents medical advertisements from directly claiming or implying that a method of treatment will prevent, alleviate, or cure any disease, or prevent, reduce, or terminate any physiological condition specified or belonging to a class of disease or physiological condition specified’ in Part 1 or Part 2 of Schedule 1, unless the advertiser can prove that it is true.

This means advertisers must hold sufficiently robust substantiation for their claims prior to advertising them.

The ‘gold standard’ for substantiating therapeutic purpose claims are Randomised Controlled Clinical Trials, conducted with humans and published in peer reviewed journals. However, the ASA acknowledges that there are a number of difficulties in designing and undertaking clinical trials to demonstrate the efficacy of some Health Services. Study or clinical trial quality and results can vary widely. **It is also important to note that the ASA is not in a position to critically evaluate clinical trials.** The ASA will not seek out evidence to support an advertiser’s claims – the burden of proof lies with the advertiser.

Advertisers making therapeutic purpose claims for a method of treatment must provide substantiation if they wish to defend a complaint that the claim is misleading.

The ASA currently accepts two means for substantiating a therapeutic purpose claim for a Method of Treatment.

1. Where a Method of Treatment is funded by ACC or a private insurer, the advertiser may claim to treat or provide treatment for the funded condition in their advertisement. The description of the funded treatment in the advertisement should accurately reflect the funding criteria.
2. Published scientific studies must be available to support any therapeutic purpose claims not captured by 1 above.

Substantiation provided to the ASA by the advertisers will be assessed by the Complaints Board or Appeal Board for the quality of the evidence and may include (but is not limited to) assessment of systematic reviews of randomised-controlled trials (RCTs), individual RCTs, systematic reviews of cohort studies, individual cohort studies and outcomes research. Results extrapolated from studies conducted in animals or patient / client testimonials are not an acceptable means for substantiating a therapeutic purpose claim. Advertisers should be confident that the studies they select to substantiate their claim are reflective of the body of available evidence. The Complaints Board or Appeal Board will also consider the likely level of risk to consumers associated with the claim made in the advertisement.

Advertisers responding to a complaint alleging misleading claims for a therapeutic purpose must provide the ASA with the full paper(s), printed or scanned and ‘marked up’ *i.e. the advertiser must highlight the exact part(s) of the study(s) that they believe substantiates their therapeutic purpose claim.*

In light of the principle that advertisers should hold the substantiation for their claims prior to placing advertisements, it should not take the advertiser long to produce evidence when asked to substantiate a claim. The evidence should be immediately available and should not need to be assembled in order to respond to a complaint. If advertisers require time to produce their evidence, it should not be a long period (i.e. a matter of days rather than weeks).

How can an advertisement tell consumers who a Health Service is available for without making a therapeutic purpose claim?

Advertisers may state in their advertisement the medical or health conditions that their service is intended for, provided no therapeutic purpose outcome from the service is claimed or implied.

Examples of wording that may be appropriate include:

- [Health Service] Therapy is provided / offered / available for people who have [list the condition or range of conditions the service would usually be suitable for]
- I provide / offer [named health service] to people with the following conditions
- My [named health service] is available / provided for [named conditions]
- I specialise in providing [name health service] to children with / people with [named conditions]

Avoid using the words 'treat' or 'treatment' unless the implied or express therapeutic purpose benefit is able to be adequately substantiated.

Health Practitioner Endorsements and Patient Testimonials

Health Service advertisements must not contain Health Practitioner Endorsements or Patient Testimonials which outline therapeutic purpose claims. This would be a breach of the Medicines Act 1981, section 58 (1) (c) (ii) and (iii).

Where permitted by the relevant professional bodies, service providers and patients may provide endorsements / testimonials about the experiences of the service that do not relate to a therapeutic treatment outcome. Examples include:

- On time, efficient, professional, polite, kind, knew their stuff, relaxing, soothing, calming, I feel great, would go back, nice rooms, clean and tidy premises, friendly.

Please note, the following professional organisations do not allow members to include any form of testimonial and / or health practitioner endorsement in their advertising.

- Medical Council of New Zealand Statement on Advertising
- New Zealand Chiropractic Board Advertising Policy

Disclaimer Statement

The ASA supports advertisers' ability to encourage consumers to safely seek out and use their services. This could be in the form of a statement in advertisements such as

- [Insert name of Health Service] should not replace advice or treatment from your registered Health Practitioner*, nor should it delay or postpone you seeing your Health Practitioner about a health problem.

* Registered Health Practitioner includes all the groups covered by the Health Practitioners Competence Assurance Act 2003.

Please note that the footnote provided in the example above is for the purposes of this guidance document only and is not expected to be included in advertisements.

TAPS (Therapeutic Advertising Pre-Vetting Service)

The Therapeutic Advertising Pre-Vetting Service (TAPS) is a user-pays service available to all advertisers making therapeutic claims in advertisements to help minimise the risk of breaching the ASA Codes, as well as other industry codes and relevant legislation. Information about TAPS is available at www.anza.co.nz including a range of useful [advertising guidelines](#).