Codes Committee Report on the Therapeutic and Health Advertising Code

November 2025

ASA CODES COMMITTEE STATEMENT

The Advertising Standards Authority (ASA) Codes Committee (the Committee) reviews and updates the ASA Codes which set the standards for responsible advertising in New Zealand. The Committee has advertiser, agency, media, and public representatives.

The Committee has considered all the issues raised in submissions, and this report provides a summary of the process. In developing the Code, the Committee recognised the need to set standards that are achievable in the context of the self-regulatory system in New Zealand.

The Code includes references to the breadth of legislation that applies to therapeutic and health advertising. The regulators that administer the various Acts are senior jurisdictions to the ASA.

The Committee intends the Code to provide a robust set of standards to support responsible advertising in 2026 and beyond.

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CODES COMMITTEE RECOMMENDATIONS

1. That the ASA accept this report.
2. That the ASA adopt the new Therapeutic and Health Advertising Code (Appendix 1).
3. That the ASA develop and deliver comprehensive training on the new Codes to support responsible advertising.
4. That the ASA update the Guidance Note on Advertising Health Services to align with the new Code.
5. That advertisers, agencies, and media companies are encouraged to use the established Therapeutic Advertising Pre-Vetting Service (TAPS) for therapeutic and health advertising to minimise the risk of code breaches.

BACKGROUND

Advertising Standards Authority (ASA)

The role of Advertising self-regulation

Self-regulation of advertising in New Zealand is the mandate of the ASA.

The Committee of Advertising Practice was established in 1973 by the advertising industry, and the ASA celebrated its 50-year anniversary in 2023. Its member organisations represent advertisers, agencies, and media companies.

The ASA sets standards and supports compliance in all forms of media, (including the advertiser's own media channels), including but not limited to: Social media channels (including Meta (Facebook, Instagram), Snapchat, Tik Tok, Google (YouTube) and includes user-generated content, influencers, videos, apps, advergaming, out of home (for example, billboards, bus shelters and buses), streaming services (including subscription-based, on-demand television and radio streaming), digital and digital display, television, cinema, radio, print (including newspapers, magazines), native advertising, websites, podcasts, webinars, email, SMS/phone, addressed and unaddressed mail, brochures and point-of-sale material.

Self-regulation encourages the advertising industry to take responsibility to ensure legal, decent, honest and truthful advertising communications to consumers and respect for the principles of fair competition.

The purpose of the Authority is:

To maintain proper and generally acceptable standards in advertising through effective self-regulation via:

a) Advertising Codes of Practice.
b) Industry engagement and funding.
c) Complaints adjudication by the ASA Complaints Board and the ASA Appeal Board and to engage in other related activities from time to time to further this purpose.

To support effective advertising self-regulation, there are several steps.

- Many advertisers and media companies have internal policies on acceptable advertising.

- The ASA Codes of Advertising Practice set out the principles and rules for responsible advertising.
- The ASA has a range of resources and regularly runs training both in-person and via webinars on code compliance and reviews of recent decisions.
- Pre-vetting is available for therapeutic and health advertising, amongst other categories along with additional guidance.
- The Codes are reviewed regularly to ensure they are fit for purpose, reflect changing social norms and recognise changing technology and the increasingly diverse options for advertisers to target consumer audiences.
- ASA decisions are released to the public via our website and regularly reported on in the media. They also provide valuable interpretation guidance on the principles and rules in the Codes.

Complementary to legislation

The ASA process is additional to legislation that restricts advertising in some way. There are many pieces of legislation that apply to advertising, including, for example, the Fair Trading Act 1986, the Medicines Act 1981, the Sale and Supply of Alcohol Act 2012, the Gambling Act 2003, Financial Markets Conduct Act 2013, Credit Contracts and Consumer Finance Act 2003, Credit Contracts and Consumer Finance Regulations 2004, the Electoral Act, the Food Act 2014, the Australia New Zealand Food Standards Code and the Major Events Management Act 2007.

Codes and Complaints

The Advertising Standards Code applies to ads across platforms, and there are currently six sector codes which apply additional restrictions to advertising where there may be a vulnerable audience or where a product could cause harm if misused. A high standard of social responsibility applies in the sector codes. They currently cover advertising to children, food and beverage advertising, advertising therapeutic and health products and services, gambling, financial services and products and alcohol advertising and promotion.

The ASA's definition of advertising and advertisements states:

Advertising and advertisement(s) mean 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 definition does not apply to content not controlled by the advertiser.

Any member of the public can make a complaint about any advertisement free of charge. Complaints are initially assessed by the Chair of the Complaints Board (a public member) and, if accepted, referred to the advertiser and where appropriate, other parties, including the advertising agency and the media organisation, for their response. The complaints and responses are placed before the Complaints Board, which meets twice monthly to consider and adjudicate on Code breaches. If there is disagreement the content subject to complaint is advertising, it is up to the advertiser to provide evidence to support their view.

In determining whether a principle or rule has been breached, the Complaints Board will have regard to all relevant matters, including:

- generally prevailing community standards
- previous decisions
- the consumer takeout from the advertisement
- the context, medium and intended audience
- the product or service being advertised.

If the Complaints Board decides a Code has been breached, the advertiser and media are asked to withdraw the advertisement immediately. There is a high level of compliance (96-99%) with the requirement to remove the advertising and enforcement is supported by ASA media company members. Written decisions are provided to all parties and released to the media.

Complaints Board decisions may be appealed. The Appeal Board has three members and like the Complaints Board, has a public member Chair and public member majority.

The Complaints Board and the Appeal Board are the final arbiters of the interpretation of the Codes.

Codes Committee Code review process

The Committee is responsible for reviewing and updating the ASA Codes to support robust advertising standards. All Codes are subject to regular review. The Committee is responsible for managing these reviews. The Committee includes advertiser, agency, media and public representatives. The Committee is also able to co-opt members to provide specific expertise.

A representative from the Association of NZ Advertisers Therapeutic Advertising Pre-Vetting Service joined the Committee for this review.

This report includes views from Committee Members as individuals. These views may not reflect the views of the organisations they work for.

Committee members for this review included:

Lachlan Grimwade: **Public Representative**

Abi Skelton: **ASA Governance Board Representative**

Caroline Herbert: **Media Representative**

Chantelle Hurndell: **Advertising Agency Representative** (shared role)

Chrissy Payne: **Advertising Agency Representative** (shared role)

Kate Morrissey: **Advertiser Representative and Chair**

Hilary Souter: **ASA Chief Executive**

Nicola Pearce: **Therapeutic Advertising Pre-Vetting Service Representative**

Professional roles held by Committee members

Abi Skelton	ASA Appeal Board – Industry Member, Board Member, Athletics Wellington
Caroline Herbert	Legal Counsel, TVNZ
Chantelle Hurndell	Client Service Director, PHD Media
Chrissy Payne	Head of Planning, OMD

Kate Morrissey	General Counsel, New Zealand Lotteries Commission
Lachlan Grimwade	Policy Analyst, Ministry for Primary Industries' Economic Intelligence Unit; ASA Complaints Board – Public Member
Nicola Pearce	Adjudicator, Therapeutic Advertising Pre-Vetting Service
Hilary Souter	ASA Chief Executive, Member, Oversight Committee for the Aotearoa Code of Online Safety and Harm

Work Plan

The Code Committee's work plan included a routine review of the standards for therapeutic and health advertising. The current Code is the Therapeutic and Health Advertising Code.

Prior to embarking on a Code review, the Committee considered information such as relevant Complaints Board decisions, changes to legislation since the current standards were developed and the current structure of ASA Codes.

The review process began with a consultation process seeking comments on a revised draft Code in mid-2025.

The Committee then proceeded to work on a second draft of the Code. A second round of consultation took place in October 2025.

The ASA Governance Board is responsible for approving the Committee work plan, the review process, and the final Codes.

The Committee directly sought submissions from the public and invited submissions from a range of government agencies, non-government organisations, organisations within the health, education and sports sectors, advertisers, agencies, media, and other groups.

The Committee considered the feedback received from both consultation rounds and used it to help inform the development of the new draft Code. Other considerations were:

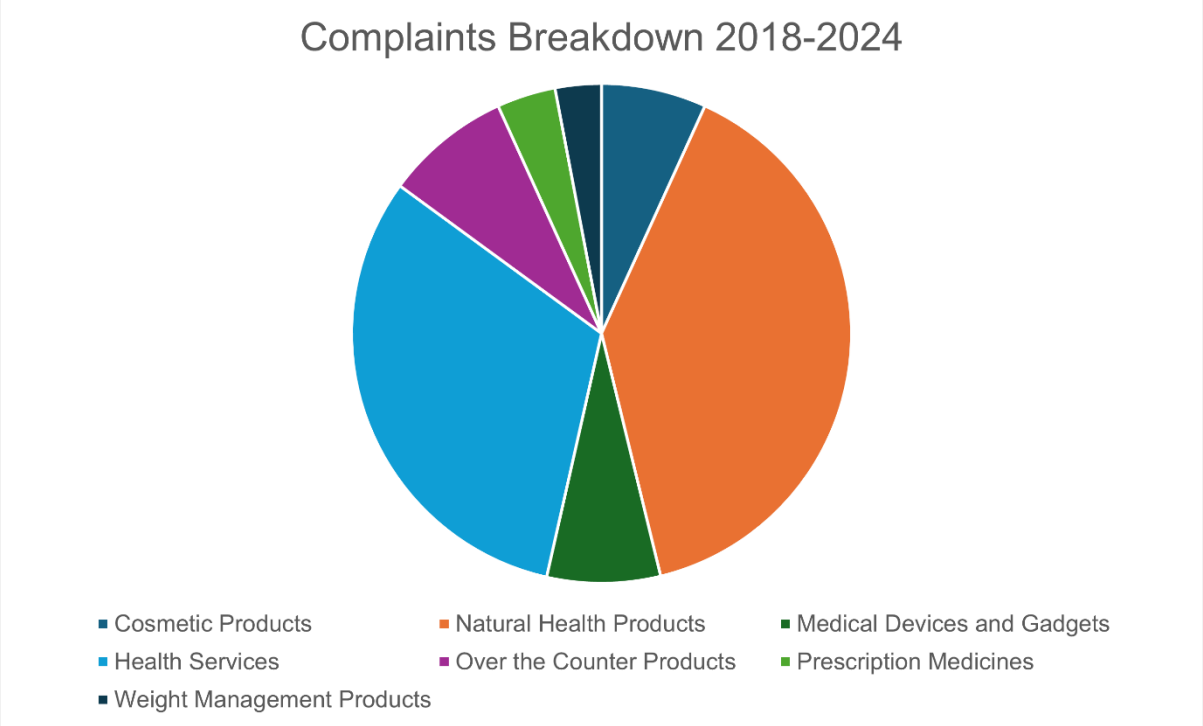
- The primary goal of ensuring the Code will be fit for purpose for use in 2026 and beyond.
- Key issues raised in submissions.
- The Code is in the same format as other recently reviewed ASA Codes.

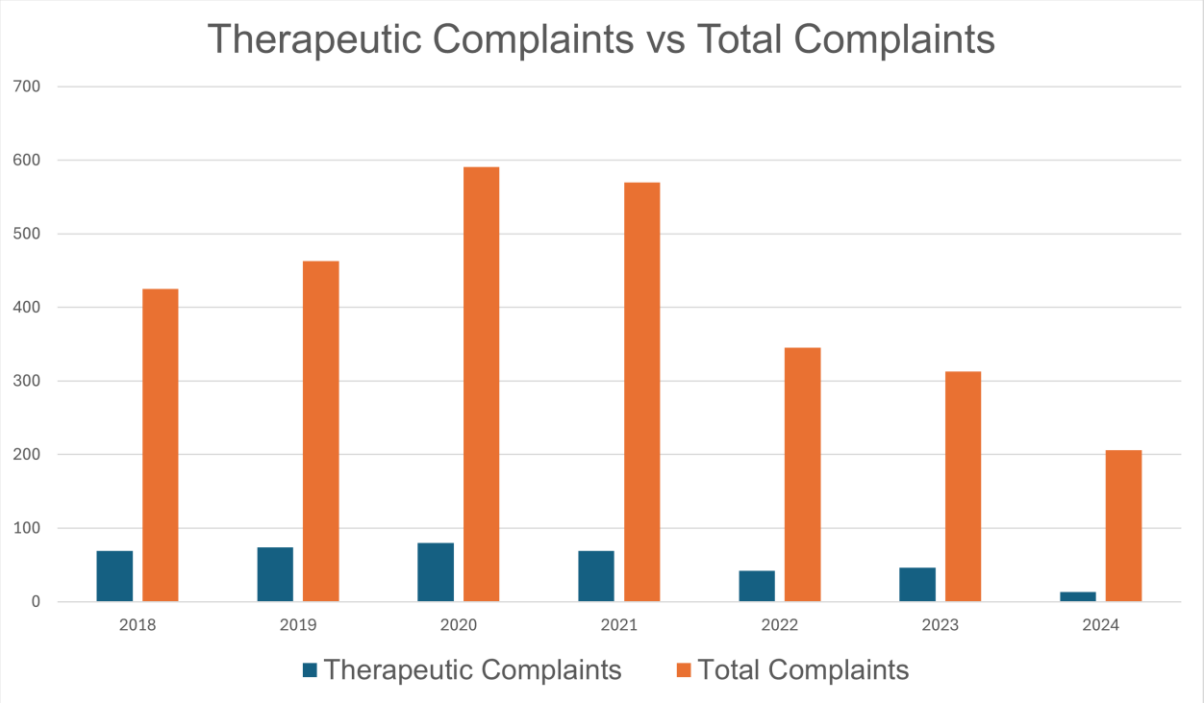
Summary of Complaints

In a review of the complaints in the therapeutic category from 2018 to 2024, most are accepted by the Chair to be considered by the Complaints Board and the majority of those are upheld or settled – the advertisements are removed or changed.

The two key drivers of this are most complaints are about misleading claims, and often advertisers either do not hold the substantiation to support the claims or the evidence provided to the Board is not sufficient.

The following graphs show a breakdown of the complaints by category over the period from 2018 to 2024, and the share of therapeutic complaints compared to the overall complaints received in each year.




Therapeutic Complaints vs Total Complaints
700
600
500
400
300
200
100
0
2018
2019
2020
2021
2022
2023
2024
Therapeutic Complaints
Total Complaints

Submissions

A total of 31 submissions were received over two rounds of consultation. A list of submissions is included in Appendix 3 of this report, with links to each submission where consent was given to publish.

In summary, most submissions were from health professional bodies, such as the Medical Council of New Zealand, the New Zealand Association of Professional Hypnotherapists and the New Zealand Chiropractors Association. Industry organisations, the Association of New Zealand Advertisers and the New Zealand Food and Grocery Council made submissions along with individual health practitioners and government agencies.

The Committee wishes to record its sincere appreciation for the time and effort individuals, organisations and businesses put into providing submissions. Many of the submissions were comprehensive and provided clear guidance and understanding of the issues involved.

Issues considered in depth by the Codes Committee

The Committee considered two issues in depth, which were sourced from the objectives for the Code review, and submitters were invited to comment on any other aspects of the Code.

Testimonials and endorsements are often raised in complaints to the ASA and can be a challenging area for advertisers and consumers to navigate, given the restrictions in current legislation.

The likely consumer takeout and the targeted audience are key considerations for the Complaints Board and there are often vulnerable consumers accessing products and services in the therapeutic and health sectors.

The following sections summarise the issues, comments provided by submitters and any amendments agreed by the Codes Committee.

1. Testimonials and Endorsements
2. Vulnerable Audiences
3. Other Aspects of the Code
4. Current regulatory framework and proposed changes

1. Testimonials and Endorsements

Current rules

The current Code has Rules on Endorsements (2 (e)) and Testimonials and Healthcare Professional Endorsements (2 (f)):

Rule 2 (e) Endorsements

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.

Rule 2 (f) Testimonials and healthcare professional endorsements

Patient testimonials and healthcare professional endorsements in advertisements, where not prohibited by law, shall comply with the Code, be authenticated, genuine, current, and typical and acknowledge any valuable consideration. Exceptional cases shall be represented as such.

***Current Guidelines*:**

- The Medicines Act Section 58 (1) (c) (iii) prevents the use of patient testimonials in advertisements **to consumers** for medicines or medical devices or methods of treatment where a therapeutic benefit is obtained (Note: Section 60 of the Medicines Act exempts advertisements that are circulated solely or principally to healthcare professionals). This means that an advertisement to consumers cannot include (or imply) a patient (or group of patients / class of people) with a medical condition or disease, taking a medicine, using a medical device or having accessed a method of treatment and showing in some way that they have benefited from it.

Testimonials for natural health products and dietary supplements, and health services to support a normal bodily function are permitted. However, these testimonials should not include any information that implies the product is a medicine or medical device or that the service has a therapeutic benefit. This is likely to breach the Medicines Act. The content of testimonials must be consistent with the claims allowed in the advertisement for these products and services.

Submitter Feedback – Rules 2(e) and (f)

Submitters emphasised the need for the Code to align with the Medicines Act while providing plain-language guidance and practical examples to aid compliance, especially for small businesses and complementary practitioners. There was support for including definitions and calls for guidance on digital platforms and influencer marketing. Suggestions included decision trees and clearer, user-friendly language to clarify testimonial boundaries and reduce advertiser confusion.

Health professional bodies proposed allowing testimonials that are authentic, verified, and responsibly presented without promising cures or universal outcomes. For example, permitting subjective experience testimonials with disclaimers like "Individual results vary. This therapy is not a substitute for medical care".

Some submitters considered ambiguity persists around what constitutes permissible testimonials, particularly distinguishing support for normal bodily function from therapeutic purpose claims. Concern was expressed about when user-generated reviews become advertising.

There were calls for clearer rules on implied endorsements through imagery and suggestions for checklists or decision trees to assess testimonial risk. Recommendations included distinguishing regulated from unregulated health practitioners in testimonial rules, tailored guidance for small businesses and specific professions, and expanding terminology from "patient testimonials" to "patient or consumer testimonials" to ensure inclusivity of dietary supplements and natural health products.

In the second consultation round, this aspect of the code received detailed feedback. Submitters were concerned that the Code relies on the definitions in the Medicines Act 1981 which they considered is out-dated and does not reflect the developments with modern, evidence-based behavioural and psychological therapies. Some submitters were also concerned the rules in the Code conflicted with the Code of Health and Disability Services Consumers' Rights (1996), issued under the Health and Disability Commissioner Act 1994.

Committee discussion

The Committee was advised that some submitters' suggested changes to allow testimonials were not feasible. The ASA self-regulatory process operates under the current regulatory framework and the primary Act regulating therapeutic advertising is the Medicines Act 1981.

Section 58 of this Act prohibits testimonials that imply a therapeutic benefit for medicines, medical devices and methods of treatment.

Considering the legal restrictions for testimonials and endorsements, the relevant rules in the Code have been clarified. The restriction on endorsements from government agencies, professional bodies and independent agencies is now consistent with healthcare professionals and health service providers. It was noted that there were very few examples of legal advertising that included agency or professional body endorsements.

The Committee agreed additional resources in this area would be valuable and noted it will be a focus of the training programme following the Code launch.

The Committee confirmed that if an advertiser has control over the user-generated content, it is deemed to be part of the advertisement. It noted this does not apply to third-party review platforms where the advertiser does not control the content (negative or positive). The ASA has previously confirmed this type of review is not considered advertising for the purpose of the ASA Codes.

Further guidance has been added to the Code to clarify the approach for dietary supplement or natural health products under the current legislation.

The Committee has agreed to wording changes in Rule 2(f) to remove an inconsistency and has updated definitions for testimonial and endorsement.

2. Vulnerable Audiences

Current Rule

Rule 1 (c) Vulnerable audiences

Advertisements should not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences (e.g. sick, elderly, pregnant women, overweight people).

Submitter Feedback on Rule 1(c)

There was general agreement on the importance of protecting vulnerable audiences. However, some stakeholders cautioned against language that may be perceived as overly broad or paternalistic, potentially restricting ethical advertising practices. Submitters considered advertising to vulnerable groups should be permissible when conducted responsibly and ethically. For example, therapeutic services should not be entirely prohibited for individuals experiencing mental distress.

Recommendations included:

- Broadening the language beyond references to "fear" to encompass emotional exploitation.
- Avoiding messaging that promotes unrealistic outcomes.

Feedback on defining "vulnerable audiences" was mixed. Some stakeholders oppose formal definitions due to the complexity and variability of context. Others supported the use of contextual or illustrative definitions to guide interpretation. The Committee agreed that illustrative examples are preferable to strict definitions, as they help avoid overly literal interpretations and allow for flexibility in application.

There was strong emphasis on recognising situational vulnerability, particularly in areas such as mental health and body image pressures. This is especially relevant in cosmetic and aesthetic advertising that could reach children and young people.

Concerns were raised that prohibiting urgency in advertising could hinder important public health messaging, such as vaccine campaigns. A recommendation was "appropriate urgency" be allowed and to broaden the scope of emotional exploitation beyond fear. Additionally, references to "body image" should be expanded to include mental wellbeing and emotional vulnerability.

In the second round of consultation, a submitter recommended adding guidance to the rule to provide context to help identify vulnerable people.

Committee discussion

The feedback on Rule 1(c) highlights the need for a balanced approach that protects vulnerable audiences without unnecessarily restricting ethical advertising. The proposed changes aim to clarify definitions, support responsible messaging, and ensure the Code remains practical and adaptable to various contexts.

The Committee agreed a formal definition of the term 'vulnerable audience' was not required. It did agree to amend the wording of the rule to better express the concerns about advertising to this audience.

The Committee agreed to add examples to the rule to provide additional guidance on issues that could create an issue and in response to round two submissions, included language to help identify audiences that may be considered vulnerable in certain circumstances.

The Committee noted the concerns raised in the submissions about the use of urgency for purchase and it has amended the example to refer to 'inappropriate urgency'. The Committee agreed the rule was not intended to restrict messaging on urgency if there was a material need (for example a measles outbreak).

Other Aspects of the Code

Submitters raised several issues about other aspects of the Code. These included:

- Clearer distinctions between therapeutic claims and health benefit claims and a call for recognition of evidence-informed practices.
- Allowing scientific studies that mention therapeutic claims as substantiation in advertisements if the claims are not explicitly included.
- Updated wording and guidance for comparative advertising.
- Clearer guidance for sponsorship advertising in the context of implied endorsements from public institutions.
- Clarity on the overlap between the Code and the Food Standards Code.
- Additional guidance for digital and social media advertising, particularly in the aesthetic and cosmetic sectors.
- Therapeutic claims made in editorial or programme content.
- Issues with incomplete language relating to weight management.
- Guidance on the use of the term 'implication' in the context of Rule 1(b).

Committee discussion

The Committee noted that some requests from submitters sought a distinction between therapeutic claims and health benefit claims not supported by the Medicines Act. The Committee agreed to changes to clarify the definitions and to provide examples of therapeutic and health benefit claims.

The Committee agreed to minor amendments in Rule 2(a) relating to the use of scientific studies in advertisements.

The Committee agreed to additional wording confirming that food and beverage advertisements are subject to the Food Standards Code.

The Committee agreed to changes to the sponsorship rule to add clarity and reduce the risk of implied endorsements.

The Committee amended Rule 1(b) to target exaggerated or unsubstantiated fear.

Guidance will be provided on implication via tone and imagery and for company behaviour during programme appearances, if deemed to be advertising.

The Committee agreed to confirm in the Code that direct to consumer advertising comparisons of prescription medicines is not permitted and updated the guidelines for comparative advertising.

Following discussion, the Committee agreed to remove the wording relating to weight management under the definition of 'therapeutic purpose". The Committee agreed that such advertising is clearly captured under the main definition.

Current regulatory framework and proposed changes

The ASA process operates under the current regulatory framework for therapeutic and health advertising. The Therapeutic and Health Advertising Code recognises the following:

- the Medicines Act 1981
- the Dietary Supplements Regulations 1985
- the Health Practitioners Competence Assurance Act 2003
- the Australia New Zealand Food Standards Code (particularly 1.2.7 Nutrition, health and related claims)
- the New Zealand Food (Supplemented Food) Standard 2016

The Government has recently announced progress on the proposed Medical Products Bill.

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

Issues outside the scope of this review

From time to time, submitters may raise issues that are outside the scope of the ASA and its Codes during a Code review process. Where possible, these issues will be referred to the relevant government and non-government organisations. However, to assist submitters, it is noted that this review cannot assist in the following areas.

1. Direct to consumer advertising of prescription medicines

   The ASA does not have jurisdiction over whether direct to consumer advertising of prescription medicines is permitted.

2. Product names, packaging, and labels

   The Therapeutic and Heath Advertising Code does not have jurisdiction over the naming, packaging, and labelling of therapeutic and health products. However, when a name, label or packaging appears in an ad, it forms part of the ad, and therefore, any visible aspects are covered by the Code. The Code applies to advertising and advertisements.

   The ASA definition is:

   "Advertising and Advertisement(s)" means 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.

   The Code does not apply to content not controlled by the advertiser.

3. Events

   The ASA does not have jurisdiction over events and other marketing activities undertaken by advertisers that do not meet the definition of advertising. However, the Code applies to any advertising relating to the event or activity.

4. Editorial/programme content

   The ASA does not have jurisdiction over editorial content or programme content where there is no advertiser control. The Broadcasting Standards Authority and the New Zealand Media Council have jurisdiction for editorial and programme content in certain media.

5. Sponsorship agreements

The ASA does not have jurisdiction over commercial sponsorship agreements between organisations and advertisers.

6. Legislation

The ASA Codes reflect and support current legislation that relates to advertising. Requests for government regulation of therapeutic and health advertising are not within the scope of the ASA Codes or the ASA Code review process.

THE PROCESS GOING FORWARD

The Committee was appointed by the ASA Governance Board:

1. to undertake a routine review of the current Therapeutic and Health Advertising Code to ensure the standards are fit for purpose in 2025 and beyond.
2. to receive and review submissions on the current Code and on a new draft Code.
3. to take into account:

    a) legislative changes since the release of the current Code
    b) complaints under the Therapeutic and Health Advertising Code to the ASA
    c) international standards and best practice
    d) the structure of other recently updated ASA Codes

4. to consult on the new draft Therapeutic and Health Advertising Code with a view to make any amendments so that the Codes are forwarded to the ASA Governance Board with a view to approve and release the final Codes.

The Committee is required to report to the ASA Governance Board. This report, the new final draft Code and related recommendations will be provided to the Governance Board.

Appendix 1 – Therapeutic and Health Advertising Code

Effective 1st April 2026 for new ads
Effective 1st July 2026 for all ads

Therapeutic and Health Advertising Code

Advertising Standards Code

The Principles and Rules set out in the Advertising Standards Code apply to advertising in all media. When applying the Advertising Standards Code to therapeutic and health advertising, a high standard of social responsibility is required.

Therapeutic and Health Advertising Code Introduction

Therapeutic and health advertising must adhere to the Principles and Rules set out in this Code and comply with the Advertising Standards Code where applicable.

This Code is part of the regulatory framework governing therapeutic and health advertising.

Attention is drawn to:

- the Medicines Act 1981
- the Dietary Supplements Regulations 1985
- the Health Practitioners Competence Assurance Act 2003
- the Australia New Zealand Food Standards Code (particularly 1.2.7 Nutrition, health and related claims)
- the New Zealand Food (Supplemented Food) Standard 2016.

Note: Many therapeutic and health industry sectors have their own codes with specific advertising requirements, and these should also be referred to by advertisers to ensure their activity is compliant.

Purpose of the Code

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

Application of the Code

The Code, along with the Advertising Standards Code, applies to health and therapeutic advertising placed in any media (including the advertiser's own media channels), including but not limited to social media channels (including Meta [Facebook, Instagram], Snapchat, TikTok, Google [YouTube] and X [formerly Twitter]) and includes user-generated content, content via influencers and content creators, videos, apps, advergaming, out of home (for example, billboards, street posters, bus shelters and buses), streaming services (including subscription-based, on-demand television and radio streaming), digital and digital display, television, connected TV, cinema, radio, print (including newspapers and magazines), native advertising, websites, podcasts, webinars,

email, SMS/phone, addressed and unaddressed mail, brochures and point-of-sale material. Visit the ASA website for an up-to-date list of current media.

Ultimately, the responsibility for complying with all aspects of advertising regulation is shared among all the parties to an advertisement, including the advertiser, agencies and media organisations.

ASA Codes are made up of three parts:

- Principles: the standards expected in advertising and promotion
- Rules: how the principles are to be interpreted and applied
- Guidelines: information and examples to explain a rule.

This Code covers **all words, visual depictions and conveyed context** in advertising:

- for therapeutic products – medicines and medical devices
- health products – natural health products and complementary health care products, including herbal products, dietary supplements and homeopathic products
- health services.

This Code may also apply when therapeutic or health claims are made in advertisements for other products or services not explicitly referred to in this Code.

This Code does not apply to labels or packaging. However, when a label or packaging appears in an advertisement, it forms part of the advertisement and therefore any visible aspects of the label and/or packaging are covered by this Code. Visit Our Jurisdiction on the ASA website for more information.

Interpreting the Code

Social responsibility in advertising is embodied in the Principles and Rules of the ASA Codes. In interpreting the Codes, emphasis must be placed on compliance with their spirit and intention.

It is possible for advertising to be in breach of one or more of the Principles in the Codes without being in breach of a specific rule.

In determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters, including:

- generally prevailing community standards
- previous decisions
- the consumer takeout from the advertisement
- the context, medium and intended audience
- the product or service being advertised.

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

Definitions for the purposes of this Code

Advertising and Advertisement(s) means 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.

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

Endorsement (which could be expressed directly or indirectly or implied) means a form of support, approval, or sanction of a product, person or service. It is different to a Testimonial, which involves a person(s) claiming to have personally used the good or service.

Health Product means products often referred to as natural health products or complementary health care products. Health Products include:

- herbal products
- dietary supplements
- homeopathic products.

A Health Product has the primary purpose of providing support for an individual's normal and natural health.

Health Service means a service that offers:

- a method of treatment for one or more medical conditions or
- support for normal healthy body functions.

Providers may or may not be registered health professionals (as defined in the Medicines Act) and may include (but not limited to) services for medicines, surgery, physiotherapy, nursing, rehabilitation, diagnostics, psychotherapy, counselling, fertility, sterilisation, relaxation massage, homeopathy, hypnotherapy, naturopathy, chiropractic, acupuncture, traditional Chinese medicine and ayurvedic medicine.

Health Service Provider means anyone offering a Health Service who is not regulated by the Health Practitioners Competence Assurance Act.

Health Support Claim means any one of the following:

- a statement that is in support of the normal and natural physiological structure and function of the body
- nutritional support
- vitamin or mineral supplementation support
- supporting the normal structure or natural function of the body.

Health Support Claims in advertisements for a Health Product must be supported by scientific or traditional substantiation. Only products that meet the definition of a Health Product in this Code may make a health support claim in advertisements.

Note: There is a different definition of a health claim in relation to food products. More information is available in the ANZ Food Standards Code.

Healthcare Professional (HCP) in this Code has the same meaning and interpretation as the Medicines Act; i.e., a health practitioner who is, or is deemed to be, registered with an authority established or continued by the Health Practitioners Competence Assurance Act 2003 as a practitioner of a particular health profession. HCP includes members of the medical, dental,

pharmacy or nursing professions and any other persons who, in the course of their professional activities, may prescribe, supply, recommend or administer a medicine. See Schedule 2 of the Health Practitioners Competence Assurance Act 2003 for the named professions.

Mandatory information is the required legislative and/or industry Code information that must be included in advertising in whatever format or platform such advertising may appear. It provides the consumer with additional information that promotes the safe and effective use of the product and helps the advertising be socially responsible.

Medicine means any substance or article or active ingredient that is manufactured, imported, sold, or supplied wholly or principally for administering to one or more human beings for a therapeutic purpose (see definition below for therapeutic purpose). A medicine achieves, or is likely to achieve, the principal intended action in or on the human body by pharmacological, immunological or metabolic means.

Only medicines that have been evaluated by Medsafe and have consent to distribute may be advertised in New Zealand. The advertised medicine(s) may be available on prescription or may be purchased over the counter.

A product can be a medicine in several ways:

- It is or contains a scheduled ingredient.
- Its label or advertisement implies or suggests a therapeutic purpose.
- It is intended for a therapeutic purpose.
- It is a product with consent to distribute.

Medical Device means a device that has a Therapeutic Purpose (see definition below for Therapeutic Purpose). A product can appear to be a Medical Device based on how it works or the claims made on the label or in advertisements. See Section 3(a) of the Medicines Act 1981 (Meaning of Medical Device).

Method of Treatment means any method of treatment for reward undertaken, or represented to be undertaken, for a therapeutic purpose.

Substantiation is the requirement for verification, confirmation, evidence or proof that a claim made by an advertiser is true. Consumers need to have confidence that the advertiser has a reasonable basis for making the claim. Therefore, claims should be supported by sound, relevant, clear and robust evidence. When making a claim, advertisers should ensure they have the evidence to prove it. The level of evidence will depend on the type of product or service and the claim being made.

Testimonial means a statement about a product or service made by a person or group of persons who claim to have used that product or service personally or while caring for someone else. It represents one or a very limited number of people's opinions or experiences, is anecdotal and is not representative of the market.

Therapeutic Purpose – The Medicines Act provides the following definition:

(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 medicines with consent to distribute in New Zealand and medical devices can claim to have a therapeutic purpose in advertisements.

Therapeutic Purpose Claim in an advertisement will likely refer to a medicine(s) or medical device that has a therapeutic effect on an actual or implied medical condition, disease or physiological process.

A therapeutic purpose claim may be accompanied by words such as enhance, improve, prevent, interfere with, terminate, reduce, increase, accelerate, inhibit, boost, treat, relieve, diagnose and stimulate (this is not an exhaustive list). For medicines, the therapeutic claim(s) must be consistent with the indication(s) that have been registered for the product. For medical devices, any therapeutic purpose claims must be in line with the product's intended purpose as detailed in WAND (Web Assisted Notification of Devices).

Additional Guidance

In New Zealand, the Association of New Zealand Advertisers (ANZA) facilitates a service from independent adjudicators called the Therapeutic Advertising Pre-Vetting Service (TAPS). TAPS is a user-pays pre-vetting process for advertisers. To access the formal TAPS service for the review of individual advertising materials, an advertiser must first register with ANZA, which is free of charge.

TAPS has also developed guidance documents on a range of matters for therapeutic and health products and services to support responsible advertising. These documents are available free of charge on the TAPS website.

PRINCIPLE 1: SOCIAL RESPONSIBILITY

Therapeutic and health advertisements must observe a high standard of social responsibility, particularly as consumers often rely on such products, devices and services for their health and well-being.

Rule 1(a) Mandatory information
Advertisements must contain the mandatory information relevant to the product or service being advertised.

Guidelines

The required information must be legible and/or audible, with care taken to ensure the following:

- Written text must be large enough, clear enough and present long enough to be easily read.
- Spoken language must be clear and at a speed able to be understood by consumers.

Advertisers must be aware that mandatory information that is illegible, inaudible or not easily understood by the chosen audience may be deemed not present within the advertising.

Specific information on the mandatories required for each classification of medicine, medical device, health product and health service can be found in the Medsafe guidelines and on the TAPS website.

Rule 1(b) Safety and effectiveness
Advertisements must 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 consumers to believe that;
    - they are suffering from a serious ailment, or
    - harmful consequences may result if the therapeutic or health product, device or service is not used

Rule 1(c) Vulnerable audiences
Advertisements must not portray unrealistic outcomes, take advantage of consumers, cause distress or misrepresent vulnerable audiences.

For example:

- Advertisements must not promote inappropriate urgency for purchase that could result in irresponsible consumption.
- Advertisements must not promote an unrealistic sense of body image or mental well-being or an unhealthy lifestyle.
- Advertisements must not create undue pressure to conform or exploit emotional vulnerability.

Guidelines
Note: Factors that may increase audience vulnerability could include mental or physical health issues, age (very young or elderly), limited health literacy and ability to access healthcare, social isolation or challenging circumstances like bereavement or financial issues.

PRINCIPLE 2: TRUTHFUL PRESENTATION

Advertisements must be truthful, balanced and not misleading.

Rule 2(a) Truthful presentation
Advertisements must not mislead or 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
Advertisements must be accurate, and statements and claims must be valid and able to be substantiated.

Substantiation must exist prior to a claim being made.

For medicines and medical devices, therapeutic purpose claims must be consistent with the registered indication(s) (for medicines) or the WAND* listed intended purpose (for medical devices).

Health Product advertisements must not reference studies that make therapeutic purpose claims. However, advertisers may hold such studies as internal substantiation, provided the advertisement itself does not imply a therapeutic purpose claim. Health Products are not permitted to make therapeutic purpose claims under the Medicines Act.

*** Note:** WAND = Web Assisted Notification of Devices. The WAND database is not accessible to members of the public or any other party, except Medsafe and the New Zealand sponsor.

Rule 2(b) Inappropriate or excessive use
Advertisements must not encourage, or be likely to encourage, inappropriate or excessive purchase, use or requests for a prescription.

Rule 2(c) Scientific language and use of data
Where permitted, the use of scientific language in advertisements is acceptable, provided that it is appropriate to, and readily understood by, the audience to whom it is directed.

Guidelines
Advertisements must not use results from tests and surveys, research, or quotations or references from scientific literature in a manner that is misleading or deceptive.

Any scientific research referred to in Health Product advertisements must not contain therapeutic purpose claims.

Rule 2(d) Comparative advertising
Comparative advertisements, or advertising that identifies a competing product or service, must be factual, accurate, make clear the nature of the comparison, must not denigrate competitors and must be of “like” products or services available in the same market.

Guidelines
Comparative advertisements must be factual, not disparaging, able to be substantiated, referenced to the source and reflective of the body of available evidence.

Comparative advertisements must compare “like with like”.

Comparative advertisements must not discourage consumers from following the advice of their healthcare professional.

Product comparisons in direct-to-consumer medicine advertising are prohibited.

Advertisements for Health Products must not include comparisons (either direct or implied) with medicines or medical devices, either specifically or generally.

Where appropriate, comparative advertising claims must be supported by documentary evidence which is easily understood. When referring to a comparative test, such tests should have been conducted by an independent and objective body so that there will be no doubt as to the veracity of the test. In all cases, the test must be supportive of all relevant claims made in the advertising. Comparative advertising claims must not use partial results or stress insignificant differences to cause the consumer to draw an improper conclusion.

Rule 2(e) Endorsements
Advertisements must not claim or imply endorsement of the product, device or service from Healthcare Professionals or Health Service Providers.

Advertisements from any organisation must not claim or imply endorsement of the product, device or service by any government agency, professional body or independent agency.

Guidelines
Note: Section 58 of the Medicines Act states no person shall publish any medical advertisement that directly or by implication claims, indicates, or suggests that a medicine or a medical device or the method of treatment, has been used or recommended by a practitioner, nurse, or pharmacist, or by any other person qualified to provide therapeutic treatment in the course of a profession or occupation and registered as a person so qualified, or by a person who is engaged in study or research in relation to any of those professions or occupations or the work performed by persons.

Rule 2(f) Testimonials
Patient or consumer testimonials in advertisements, where not prohibited by law, must comply with the Code, be authenticated, genuine, current and typical. Any payment received (money or another exchange of value, products or services) must also be acknowledged.

Guidelines
In complying with this rule, you must also ensure advertising complies with Section 58 of the Medicines Act.

Testimonials in advertisements for health products, medicines*, medical devices or health services must not make a therapeutic purpose claim and must not suggest, either directly or by implication, that the health products, medicines, medical devices or health services have beneficially affected the health of an individual.

*** Note:** Testimonials by patients or consumers are not permitted in the direct-to-consumer advertising of prescription medicines.

Under current legislation, testimony that does not directly or indirectly imply a therapeutic purpose nor reference personal use and/or benefit is permitted. Such testimony should, however, be very carefully considered. It could include customer feedback on “how quickly an order was

received" or "how helpful the customer service team were" (without going into specifics on any health condition or product).

Examples of user-generated content in the form of testimonials that could cause issues may include:

- customer comments on platforms controlled by the advertiser
- user-generated comments in response to advertiser-controlled social media posts
- advertiser's use of emojis or similar badges in response to a comment or post if they imply agreement with an unsubstantiated claim from a consumer.

User-generated content:

- If user-generated content is included in advertisements, advertisers and their representatives, including influencers and content creators, are primarily responsible for ensuring that user-generated comments and reviews comply with the Principles and Rules of this Code and relevant legislation.
- User-generated content that tags a brand and appears on a brand's profile is subject to the Code. If any tagged content does not comply with the Code, advertisers must untag their brand or remove the content.

Rule 2(g) Sponsorship

Advertisements, unless otherwise prohibited by legislation or other relevant industry code, may include reference to the advertiser's sponsorship, if the sponsorship is explicitly acknowledged and cannot be misconstrued as an endorsement of the product, device or service being advertised, nor be a therapeutic claim by implication.

Guidelines

Sponsorship advertising must only mention or portray the advertiser's name briefly and in a subordinate manner and, as a guide, no more than 15% of the space or time available. It may not always be possible to apply the 15% guide, and consideration will be given to the overall look and feel of the advertising.

Focus on the clear association between the advertiser and the sponsored party. Examples of words that may appear in sponsorship advertising that indicate a sponsorship agreement include, but are not limited to:

- Company X are proud sponsors/supporters of ...
- Company X are an official partner of ...

Appendix 2 – Summary of key differences between current and new Code

Current Code	New Code
Applies to all advertising for therapeutic products, natural health products, dietary supplements, health services, and methods of treatment.	Applies to all advertising for therapeutic products, natural health products, dietary supplements, health services, and methods of treatment. Explicitly covers wide range of media platforms media including social, digital, influencer, advergaming, streaming, and user-generated content.
Refers to the ASA Advertising Standards Code and sector-specific codes.	Stronger emphasis on compliance with the Advertising Standards Code and high standard of social responsibility.
Definitions include “medicine”, “medical device”, “therapeutic purpose”, “disease”, “health benefit”, “health services”, “method of treatment”, “healthcare professional”.	Expanded definitions: Adds “endorsement”, “health product”, “health support claim”, “health service provider”, “substantiation”, “testimonial”. More detail for “health product” and “endorsement”.
Principles and Rules, with guidelines.	Principles, Rules, and Guidelines, with more examples and explanatory notes.
Mandatory information requirements for medicines, devices, supplements, health services.	More explicit requirements for legibility/audibility and platform-specific guidance. Greater emphasis on clarity and accessibility of mandatory info.
Social responsibility principle, especially for vulnerable audiences.	More detailed guidance: Includes urgency, body image, emotional vulnerability, unhealthy lifestyle.
Truthful presentation: Claims must be accurate, valid, substantiated.	Stronger requirements for substantiation prior to claims, more detail on scientific language and use of data.

Comparative advertising must be balanced. Comparative advertising for Natural Health Products and Dietary Supplements must not include comparisons with medicines or medical devices.	Replaced requirement for "balanced" advertising with a focus on being "factual" and "accurate," and rephrased restrictions against misleading claims and disparagement for clarity. Explicit prohibition on product comparisons in direct-to-consumer medicine advertising and any comparisons (direct or implied) between Health Products (product category broadened from "Natural Health Products and Dietary Supplements") and medicines/medical devices. Also requires documentary evidence which is easily understood for claims, independent testing for competitive tests, and must not use partial or insignificant results to mislead consumers.
Endorsements by government/agency require consent	Updated rule: More explicit on endorsements by organisations and healthcare professionals.
Testimonials must be genuine.	More clarity on testimonials for health products and services.
No specific mention of digital media or user-generated content.	Added information on breadth of platforms covered. Advertisers responsible for compliance of user-generated content on their channels.
Sponsorship may be referenced if it is explicitly acknowledged and cannot be misconstrued as an endorsement of the product, device, or service.	Applies to the broader category of “Health Products,” which includes what was previously called “Natural Health Products and Dietary Supplements”. Provides more explicit guidance that sponsorship mentions must be brief, subordinate, and not imply endorsement or therapeutic benefit.
Guidance on weight management programmes included.	Weight management products and programmes now covered by definition of therapeutic purpose.

Additional guidance refers to TAPS pre-vetting service and sector codes.	Adds more links to external standards, clarifies jurisdiction, and references to TAPS guidance.

Appendix 3 – List of submissions

Please note: Consistent with ASA's Privacy Policy, submitter names and other personal information have been removed from submissions received from organisations. Only those submissions that provided consent for publication are able to be accessed.

Submissions on Round 1 of the review of the Therapeutic and Health Advertising Code	
1	Insight NZ Limited
2	Teresa Saunders Clinical Hypnotherapist
3	Meredith McCarthy Hypnotherapist
4	New Zealand College of Public Health Medicine
5	New Zealand Association of Professional Hypnotherapists
6	Pharmaco
7	Food Standards Australia New Zealand
8	Medical Council of New Zealand
9	Association of New Zealand Advertisers (ANZA)
10	Endeavour Consumer Health | EBOS Group Ltd
11	Chinese Medicine Council
12	Occupational Therapy Board of New Zealand
13	Osteopaths New Zealand
14	Association of Dispensing Opticians of NZ
15	Anonymous member of Royal Australian College of Physicians
16	New Zealand Chiropractors Association

17	Pharmacy Council of NZ
18	Swisse Wellness
19	Medicines NZ
20	Natural Health Products NZ
21	New Zealand Food Safety (MPI)
22	NZ Food and Grocery Council
23	Nestle Health Science NZ
24	Acupuncture NZ
25	Good Health NZ
26	Medsafe

Submissions on Round 2 of the review of the Therapeutic and Health Advertising Code	
1	Teresa Saunders Clinical Hypnotherapist
2	Meredith McCarthy Hypnotherapist
3	New Zealand Association of Professional Hypnotherapists
4	Acupuncture NZ
5	Medicines NZ