

Medical Advertisement Policy

A. Introduction

1. The Podiatrists Board of New Zealand (**the Board**) is the statutory authority established under the Health Practitioners Competence Assurance Act 2003 (**HPCAA**) responsible for the registration and regulation of the podiatry profession in New Zealand. The principal purpose of the HPCAA is to protect the health and safety of members of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions.
2. The purpose of this policy is to protect members of the public from medical (including therapeutic) advertising that is false, misleading or deceptive, which leads to the provision of inappropriate or unnecessary health services, or creates unrealistic expectations.
3. This policy provides an explanation of the Board's position on medical advertisements and the use of client testimonials to guide practitioners in making decisions as to advertising their professional services. This will support the appropriate use of health resources and ensure that patients are able to make informed decisions about their healthcare.

B. Medicines Act 1981

4. Medical or therapeutic advertisements are regulated through the Medicines Act 1981 (**the Act**) and the Codes of Practice¹ set out by the Advertising Standard Authority (**ASA**), as well as the Board's Ethical Codes and Standards of Conduct (**the Code**). Both the Act and the Code place strict limits on medical and therapeutic advertisements by all health practitioners.
5. Practitioners registered with the Board must ensure these advertising standards, the Code and the Act are complied with, and should also be aware of their obligations under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, as well as the Health and Disability Commissioner Code of Health and Disability Services Consumers' Rights.
6. The Act contains a number of prohibitions in relation to medical advertisements, including that a person may not publish a medical advertisement that:
 - a. claims or suggests that a treatment, medicine, or device will cure, prevent, alleviate, or reduce particular physiological conditions
 - b. suggests that a medicine or device is infallible
 - c. suggests a medicine or device is used or recommended by another practitioner or researcher

¹ Therapeutic Services Advertising Code; Advertising Code of Ethics; Therapeutic Products Advertising Code.

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- d. claims that the medicine or device has beneficially affected the health of a particular person or group of people (whether real or fictitious)
- e. invites correspondence or sending of samples for diagnosis.

Further detail on these prohibitions is set out in the Act, and some relevant sections have been included in the Appendix to this Policy.

7. It is an offence not to comply with the standards outlined above (point 6).² The Board would regard non-compliance with the Act and/or the ASA and Board Codes as having the potential to attract disciplinary proceedings under the HPCAA.

8. The Act contains a number of definitions relevant to medical advertisements that are set out in the Appendix. Practitioners should be aware the definition of “Advertisement” is very broad and covers a number of forms and media including social media (Refer to the Podiatrists Board Social Media Policy).

D. Guidance on how to comply:

9. All advertising must:

- a. be presented in a manner that is accurate, balanced and not misleading;
- b. use plain language;
- c. facts and statistics must be from a reputable and verifiable source; and
- d. comply with legislative requirements.

10. Practitioners are ultimately responsible for the style and content of all advertising material, and cannot devolve responsibility for the advertising of their services and or products to another party.

11. Practitioners shall not advertise any material which relates to the podiatrist/podiatric surgeon/podiatric radiographic imager’s qualifications, practices, treatment, or the premises where they practice their profession if the material:

- a. potentially breaches the Fair Trading Act 1986;
- b. is vulgar or sensational;
- c. creates an unjustified expectation of beneficial treatment or unrealistic treatment outcomes;
- d. relates to outcomes without stating that individual results may vary;
- e. is unprofessional or likely to bring the profession into disrepute;
- f. uses testimonials whether from patients or any other person.

² It will be a good defence in a prosecution if claims made under section 58(1)(a) and (b) are true.

12. Use of Images in Advertising

- a. Practitioners should use any images in their advertising with caution. Images, particularly “before and after” photos, have a significant potential to mislead or deceive. Such images may convey to a member of the public inappropriately high expectations of successful outcome and encourage the unnecessary use of services or products.
- b. If a practitioner chooses to use images, they must ensure that they:
 - (i) are solely for the purpose of providing accurate and useful information;
 - (ii) are used only when the patient has given his or her fully informed written consent; and
 - (iii) if they are “before and after” images they must also:
 1. have not been altered in any way;
 2. show a realistic portrayal of the outcome that can reasonably and typically be expected;
 3. are consistent with regard to positioning, lighting, camera angle and posture.

13. Promotion by Inducement

- a. Practitioners may offer an inducement or similar to health consumers, only when:
 - i. the terms and conditions of that offer are clearly and understandably set out;
 - ii. the best interests of health consumers are considered when making such an offer;
 - iii. any offer does not contravene the Code of Health and Disability Services Consumers’ Rights;
 - iv. in offering goods or services, the practitioner ensures that the product or service is appropriate for that individual and not based on other considerations;
 - v. although strongly discouraged, if practitioners’ advertise by means of discount coupons or gift certificates, the practitioner must ensure that these do not undermine their relationship with the patient and the informed consent process. In particular, practitioners must ensure that their coupon or certificate is clear that:
 1. purchase of the certificate or coupon does not equate to granting informed consent;
 2. prior to treatment the patient will have an opportunity to discuss treatment with the practitioner, to ask questions and to provide their informed consent;
 3. the patient has the right to opt out of treatment at any time;

4. the practitioner will not provide the requested treatment if your assessment indicates that the patient is not a suitable candidate.

14. Media Contact

- a. Practitioners may be interviewed by name or prepare articles for the lay press on issues of general interest provided that:
 - i. it is made clear that the opinion voiced is that of the practitioner only if this is the case. If the opinion is that of the profession or part of the profession, this should be stated;
 - ii. they do not allow the name, address or phone number of their practice to be used in an unreasonable manner or be the primary focus of the media contact;
 - iii. they do not make any self-laudatory, misleading or sensational statements or deprecate the achievements of others;
 - iv. they do not use their involvement solely to attract or gain new patients;
 - v. testimonials of their patients or other persons are not used.

E. Questions about advertising

If practitioners are unsure whether an advertisement meets legal, industry and Board requirements then they should consider making use of the Therapeutic Advertising Pre-Vetting Services (**TAPS**). TAPS is a commercial service provided under the auspices of the Association of New Zealand Advertisers and is intended to assist advertisers with compliance issues. Contact TAPS at anza@anza.co.nz or on 09 488 7455.

F. Complaints in respect of medical advertisements

Due to the fact that advertising by its nature, requires that material is in the public domain: any member of the public or profession may make, in writing, a complaint directly to the Board; or a complainant may choose to contact the ASA (www.asa.co.nz) or Broadcasting Standards Authority (www.bsa.govt.nz) directly to make a complaint.

APPENDIX

Section 58 of the Act prohibits a person from publishing (or causing or permitting to be published) any medical advertisement that:

1. *“directly or by implication claims, indicates, or suggests that medicines of the description, or medical devices of the kind, or the method of treatment, advertised 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](#) of Schedule 1”*
2. *“directly or by implication claims, indicates, or suggests that medicines of the description, or medical devices of the kind, or the method of treatment, advertised will prevent or cure any disease, or prevent or terminate any physiological condition specified, or belonging to a class of disease or physiological condition specified, in [Part 2](#) of Schedule 1”*
3. *“directly or by implication claims, indicates, or suggests that a medicine of the description, or a medical device of the kind, or the method of treatment, advertised—*
 - a. *is a panacea or infallible; or*
 - b. *is or 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 under any enactment 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 employed therein; or*
 - c. *has beneficially affected the health of a particular person or class of persons, whether named or unnamed, and whether real or fictitious, referred to in the advertisement; or*
 - d. *invites correspondence or the sending of hair, blood, urine, or other bodily specimens or photographs for the purposes of diagnosis or treatment concerning any disease or physiological condition.”*

Definitions

15. *“Advertisement” means any words, whether written, printed, or spoken, and any pictorial representation or design, used or appearing to be used to promote the sale of medicines or medical devices or the use of any method of treatment; and includes any trade circular, any label, and any advertisement in a trade journal; and **advertising** and **advertised** have corresponding meanings.*
16. *Further to the above, advertising includes but is not limited to the following:*
 - a. All forms of printed, electronic, social and digital media such as online advertising, websites, emails and SMS messaging that are selling or promoting a product or service;
 - b. Public communication using television, radio, motion pictures, newspapers, billboards, books, lists, pictorial representations, designs, mobile communications or displays, the internet or directories and includes business cards, announcement cards, office signs, letterhead, telephone directory listings, professional lists, professional directory listings, and similar professional notices. This would include where practitioners make comment or provide information on particular products or services such as in media reports, magazine articles or advertorials;
 - c. Material not considered advertising is that which is issued to patients during consultations where such material is designed to provide the patient with clinical or technical information about health conditions or procedures and where the person is afforded sufficient opportunity to discuss and ask questions about the material.

17. “*Medical advertisement*” means an advertisement relating, or likely to cause any person to believe that it relates, to any medicine or medical device or any ingredient or component thereof, or to any method of treatment.
18. “*Method of treatment*” means any method of treatment for reward undertaken, or represented to be undertaken, for a therapeutic purpose.
19. “*Publish*” means -
- i. insert in any newspaper or other periodical publication printed or published in New Zealand; or
 - ii. send to any person through the Post Office or otherwise; or
 - iii. deliver to any person or leave upon premises in the occupation of any person; or
 - iv. broadcast within the meaning of the [Broadcasting Act 1989](#); or
 - v. bring to the notice of the public in New Zealand in any other manner.
20. Section 3A of the Act provides a definition of “*Medical device*” as follows:
- a. means any device, instrument, apparatus, appliance, or other article that—
 - i. is intended to be used in, on, or for human beings for a therapeutic purpose; and
 - ii. does not achieve its principal intended action in or on the human body by pharmacological, immunological, or metabolic means (but may be assisted in its function by such means); and
 - b. includes a material that—
 - i. is intended to be used in or on human beings for a therapeutic purpose; and
 - c. does not achieve its principal intended action in or on the human body by pharmacological, immunological, or metabolic means (but may be assisted in its function by such means); and
 - d. also includes—
 - i. anything that is intended to be used with a device, instrument, apparatus, appliance, article, or material referred to in paragraph (a) or (b) to enable the device, instrument, apparatus, appliance, article, or material to be used as its manufacturer intends; and
 - ii any device, instrument, apparatus, appliance, article, or material of a kind or belonging to a class that is declared by regulations to be a medical device for the purposes of this Act; but
 - e. does not include a device, instrument, apparatus, appliance, article, or material of a kind or belonging to a class that is declared by regulations not to be a medical device for the purposes of this Act.

The Board thanks the Chiropractic Board for their Advertising Policy from which sections of this document have been adapted, as well as the Osteopathic Council of New Zealand