

# Sydney Seminar, March 17, 2016

## Advertising of Therapeutic Goods and Services (and its Regulation)

### Background

The aim of this seminar was to outline current concerns that consumer (and health professional) organisations have with the advertising of therapeutic goods and services and explore ways in which the system(s) might be improved.

Civil society organisations that had expressed concern about these matters included the Consumers Health Forum, Choice (Australian Consumers' Association), Friends of Science in Medicine, Australian Skeptics, the Doctors Reform Society and Stop the Australian (Anti) Vaccination Network. All were represented at this seminar.

The seminar was organised and supported by Choice, the Foundation for Effective Markets and Governance (FEMAG), University of Sydney (Health Law Centre), Monash University (School of Public Health and Preventative Medicine) and the Australian Competition and Consumer Commission (ACCC).

The following recommendations have been endorsed by the civil society organisations listed above. They are grouped under the headings of the topics discussed. The two background papers provide more information about the problems the recommendations address.

### Draft recommendations (to be finalised when the new government takes office)

#### 1. *The promotion of therapeutic goods to consumers*

- 1.1. Substitute "claims" for "goods" in the name of the Therapeutic Goods Advertising Code, the Therapeutic Goods Advertising Complaint Resolution Panel and the Therapeutic Goods Advertising Code Council and broaden their charter and legislative base to encompass all therapeutic advertising claims made about all consumer products: medicines, medical devices and food.
- 1.2. Reconstitute an expanded and better resourced Therapeutic Advertising Claims Complaint Resolution Panel (CRP) under the auspices of the ACCC (Australian Consumer Law) as well as the TGA (Therapeutic Goods Act);
- 1.3. Make it a genuine one-stop-shop for all complaints about therapeutic claims made about all consumer products: medicines, medical devices and food;
- 1.4. Let it triage complaints as appropriate, sending those requiring urgent action (for consumer protection) to the ACCC which has a much more comprehensive tool-kit to deal with such matters than the TGA. Most complaints would be handled by the CRP (as currently occurs) but non-compliance with determinations would be sent immediately to the ACCC. Complaints best dealt with by the TGA (such as products not on the ARTG) would be sent to the TGA, while products at the food-medicine interface would be sent to the TGA or State Food Authorities as appropriate;
- 1.5. Make the CRP responsible for maintaining a master complaint register. All complaints submitted would be logged, tracked and, if upheld, their compliance status and final outcome published, regardless of whether this was "negotiated" or enforced.
- 1.6. The CRP would also be responsible for distilling key educational messages and commissioning occasional monitoring of advertising (as complaints are just the tip of the iceberg).

#### 2. *The promotion of therapeutic goods to health professionals: Industry self-regulatory codes*

- 2.1. The Federal government to resurrect the Therapeutic Goods (Codes of Conduct) Implementation Advisory Group<sup>1</sup> in order to achieve uniform self-regulatory Codes of Conduct and make compliance with them a condition of marketing authorisation by the TGA by legislation or regulation (to achieve a level playing field).

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<sup>1</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/RPGD-Promotion-of-Therapeutic-Goods-Codes-of-Conduct-ToR>

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**3. *Promotion of therapeutic services by registered health professionals (AHPRA)***

- 3.1. AHPRA to publish specific complaint determinations about what advertising claims of practitioners were, or were not, judged to breach the National Law as an educative measure.
- 3.2. AHPRA to use Part 7, subdivision 4, s.133 of the National Law to prosecute advertising offenders in the Magistrates Court; maximum penalties available for this statutory offence are \$5 000 for an individual and \$10 000 for a body corporate.
- 3.3. Use Part 8 of the National Law to sanction recalcitrant practitioners for repeated advertising offences. Penalties available include cautions, accepting undertakings, placing conditions of the practitioner's registration or, for professional misconduct, referral to a tribunal with the power to impose additional penalties, including a fine of up to \$30 000.
- 3.4. Court and Tribunal Decisions about individual practitioners published on the AHPRA web site (as at present) along with media releases.
- 3.5. Consider limiting scope of practice in certain areas that lack an evidence base, are exploitative, and harm consumers either directly or by delaying more evidence-based treatment and/or causing unnecessary financial outlays. The case is even stronger if these practices have not responded to many years of Board education, communiques and guidelines.

**4. *Promotion of therapeutic services by unregistered health professionals***

- 4.1. COAG Health Council to nominate a lead jurisdiction to administer a national register of prohibition orders; develop and maintain explanatory materials and establish a common framework for data collection and performance reporting.
- 4.2. States and Territories encouraged to institute uniform legislation to implement the National Code of Conduct for (unregistered) health care workers.

**5. *Additional suggestions***

- 5.1. Therapeutic claims to be made an enforcement priority for regulators (e.g. TGA, ACCC, etc.) with closer liaison between them.
- 5.2. Prohibition orders to be enforced upon 'health services', and not just on individual 'health practitioners' as it is currently.
- 5.3. The ACCC to hold a therapeutic goods and services claims website scan day (ACCC already conducts scam watch days) and which also includes relevant organisations and people.
- 5.4. The ACCC to provide capacity building leadership by including therapeutic regulatory bodies, including self-regulatory bodies, in its investigators course
- 5.5. Review progress in 2017 at a follow-up seminar.

Choice (Australian Consumers' Association)  
Consumers Health Forum  
Friends of Science in Medicine  
Australian Skeptics  
Doctors Reform Society  
Stop the Australian (Anti) Vaccination Network

14 April 2016