

# TAPS | therapeutic advertising pre-vetting service

<b>GUIDELINE 1</b> <b>Cosmetic</b>	<b>Advertising Cosmetic Products, Devices and Procedures which make a direct comparison to Medicines, Medical Devices and Methods of Treatment</b>
Last Updated	August 2016
What kind of product is this guideline for?	Cosmetic products and cosmetic devices / procedures
What is the purpose of this guideline?	To provide background and guidance on advertising cosmetic products, devices and procedures where there is a comparison with a medicine, medical device or method of treatment.

## **BACKGROUND**

While certain puffery is allowed for cosmetic advertisements, care is needed not to compare the cosmetic product / device / procedure with prescription medicines like Botulinum injections, medical devices like the Dermal Fillers and Methods of Treatment like Liposuction. Medicines, medical devices and methods of treatment all have a therapeutic purpose so it is a breach of the Medicines Act to compare with them unless the comparison is also with another medicine, medical device or method of treatment. Any comparison with the approved / listed therapeutic purpose would by implication suggest that the cosmetic product / device / procedure advertised could be used for this therapeutic purpose also. Or, it may imply a therapeutic outcome similar to the approved medicine, listed medical device or method of treatment (for a therapeutic purpose).

For example, injectable Collagen Products (Dermal Fillers) are listed Medical Devices for appearance medicine treatment. Any therapeutic purpose product comparison (either generally or specifically) with the injectable collagen products would also make the product a medical device by association and the product should therefore also be a listed Medical Device.

Similarly, Botulinum injections are medicines with the approved use for the treatment of frown lines and crow's feet around the eyes. A product comparison that by implication claims these effects and mentions these products (generally or specifically) would also require Ministerial consent.

For this reason all reference to Collagen Products (Dermal Fillers), Botulinum Injections and Surgical Cosmetic Procedures should be omitted from cosmetic advertising, otherwise the products advertised will be claiming a therapeutic purpose by implication, and the advertising would breach Sec 20 of the Medicines Act 1981. Imagery that includes things like hypodermic syringes could further strengthen the association and the implied claim.

## **Advertising Standards Authority**

The following Codes should be read and understood in conjunction with this Guideline.

### [Advertising Standards Code](#)

### [Code for Comparative Advertising](#)

### [Therapeutic and Health Advertising Code](#)

The ASA Codes are quite strict about misleading claims and social responsibility, and it would be wise to avoid comparing a cosmetic product / device / procedure with a medicine / medical device / method of treatment and implying the same result. Such an advert would be open to complaint at the ASCB and would have a strong chance of being upheld.

## **Legislation**

### **MEANING OF 'THERAPEUTIC PURPOSE'**

The definition of "therapeutic purpose" is quite comprehensive in the Medicines Act and covers some key aspects of therapeutic products and their use.

#### **Medicines Act 1981**

#### **Section 4: Meaning of Therapeutic Purpose**

**In this Act, unless the context otherwise requires, *therapeutic purpose* means any of the following purposes, or a purpose in connection with any of the following purposes:**

- 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.**

It can be seen from the above definition that it is quite comprehensive and therefore quite limiting on the claims that can be made about a product that is not a medicine, medical device or method of treatment.

## **MEANING OF 'DISEASE'**

### **Medicines Act 1981**

#### **2. Interpretation**

(1) In this Act, unless the context otherwise requires,—

**disease** includes any injury, ailment, deformity, disorder, or adverse condition, whether of body or mind

Like the Medicines Act definition for "therapeutic purpose" this is a comprehensive definition of "disease" and embraces essentially any "abnormal functioning" or "abnormal physiological function" or "any disorder of both the body and the mind". Both physical and mental disorders are therefore covered as well as any situation where there is infection of bacterial, viral, parasitical or protozoan type. It covers even the simple things like "sore throats" and more generalised non-specific conditions like "pain".

## **MEANING OF 'METHOD OF TREATMENT'**

### **Medicines Act 1981**

#### **Part 4**

#### **Medical advertisements**

#### **Section 56 Interpretation**

In this Part, unless the context otherwise requires,—

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