

# TAPS | therapeutic advertising pre-vetting service

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| <b>GUIDELINE 5</b><br><b>General</b>        | <b>Guideline for Advertising of e-Cigarettes</b>  |
| Last Updated                                | May 2015  |
| What kind of product is this guideline for? | Electronic, or e-cigarettes, are battery powered devices which heat a liquid in them to produce a vapour, simulating smoke. Some contain nicotine, whilst others do not. They may or may not be supplied with cartridges. |
| What is the purpose of this guideline?      | To provide guidance on the advertising compliance requirements for a range of products that are classed as e-Cigarettes.  |

**BACKGROUND:** The compliance requirements for the advertising of e-cigarettes are governed by the Medicines Act 1981, the Medicines Regulations 1984 (updated August 2011), the Medsafe Guideline on the Categorisation of Electronic Cigarettes (“The Medsafe Guideline”) and the Advertising Standards Authority (ASA) Therapeutic and Health Advertising Code & the Code of Ethics.

Before an e-cigarette is advertised, the advertiser should consult the Medsafe Guideline on the Categorisation of Electronic Cigarettes. This will ensure that the advertiser can determine if the e-cigarette can be advertised or sold and the kinds of claims the advertisement may contain. Please see appendix I of this document for the Medsafe Guideline

A smoking cessation claim (or similar) in an advertisement for an e-cigarette is a therapeutic claim as defined in the Medicines Act. Only Medicines that have consent for distribution from the Minister of Health or Medical Devices that are listed on the Medsafe WAND (Wed Assisted Notification Database) can claim a therapeutic purpose in advertisements. The following are examples from the Medsafe Guideline of therapeutic purpose claims that relate to e-Cigarettes;

- Supports or aids smoking cessation
- Remedy against/ helps alleviate nicotine addiction or the symptoms of nicotine addiction
- Helps you quit smoking/ smoke less
- Reduces your nicotine intake

## Advertising Guidance for e-Cigarettes by PRODUCT TYPE

*This Guideline is structured so that you can first determine which of the categories (A – D) your product fits into and then you can follow the guidance in the category for advertising your product.*

**Product Type A:** E-cigarettes supplied for use as an aid to smoking cessation and one or more cartridges are supplied with the e-cigarette.

OR;

**Product Type B:** E-cigarettes supplied with one or more cartridges containing nicotine even if they are not represented as aids to smoking cessation.

### THESE PRODUCTS ARE **MEDICINES**

*You cannot sell, give away or advertise this product unless it has been evaluated by Medsafe and consent for distribution has been granted by the Minister of Health (via the NZ gazette). You would breach section 20 (2) of the Medicines Act if you were to do so.*

*Once consent for distribution has been obtained, you must comply with the advertising requirements of the Medicines Act, the Medicines Regulations, the Medsafe Guideline on the Regulation of Therapeutic Products in New Zealand, Part 7: Advertising of Therapeutic Products and the ASA Therapeutic and Health Advertising Code.*

*The following TAPS Guidelines provide guidance on advertising compliance for medicines;*

*Checklist for Advertising OTC Medicines Directly to the Consumer*

*Checklists (A) and (B) for Advertising Prescription Medicines to Healthcare Professionals*

*Checklist for Advertising Prescription Medicines Directly to the Consumer*

*Checklist (A) and (B) for Advertising OTC Medicines to Healthcare Practitioners*

**Product Type C:** E-cigarettes supplied for use as an aid to smoking cessation and without cartridges

### THIS PRODUCT IS A **MEDICAL DEVICE**

*You cannot sell, give away or advertise this product unless it has been listed on the Medsafe WAND database (Web Assisted Notification Database). To find out more about WAND go to the [Medsafe website](#) .*

*Once the product is listed on the WAND database, you must comply with the advertising requirements of the Medicines Act, the Medicines Regulations, the Medsafe Guideline on the Regulation of Therapeutic Products in New Zealand, Part 7: Advertising of Therapeutic Products and the ASA Therapeutic and Health Advertising Code. The Medsafe [Guideline Page 10](#) provides easy to understand language on the legislated requirements for advertising a Medical Device.*

Claims in an advertisement for an e-cigarette that is listed on the WAND must be consistent with the 'intended purpose' noted on the WAND form. Please Note: TAPS Adjudicators (or members of the public) are not able to access the WAND database. In order for TAPS to review an advertisement for an e-cigarette that is a Medical Device, the WAND listing form should be forwarded to the Adjudicator along with the proposed advertisement.

Medical Devices are not evaluated by a regulatory body prior to listing on the WAND nor is consent required prior to distribution. This means that the onus for proof / substantiation of claims made about a medical device lies with the advertiser. This is covered in the 'evidence of conformity assessment' on the WAND application form. If the advertiser's claims to 'aid in smoking cessation' for an e-cigarette that is a Medical Device listed on WAND, then the advertiser must have evidence to support this claim. The evidence must be readily available should the advertiser be required to substantiate a claim.

**Product Type D:** E-cigarettes are a "gadget" when supplied to consumers who may choose to use them as a social prop or as an item which is to be used interchangeably with cigarettes. These gadgets must not contain nicotine or have cartridges that contain nicotine. Claims in advertisement must not be for a therapeutic purpose (e.g. to aid smoking cessation). Under the Smoke Free Legislation, these gadgets may only be sold to persons over the age of 18.

**THESE PRODUCTS ARE NOT MEDICINES OR MEDICAL DEVICES. THEY ARE CONSIDERED TO BE 'GADGETS'.**

The advertising of these products should be socially responsible. The ASA [Advertising Standards Code](#) will be the main bench-mark for the compliance of advertisements for these products. In order for advertisers of e-cigarettes in this category to meet the 'due standard' of social responsibility in the development of such advertisements, TAPS recommends the following;

- Advertisements should be targeted at current cigarette smokers and not encourage non-smokers to try the e-cigarettes.
- Advertisements should include the e-cigarette ingredients so that consumers are able to determine what they will be inhaling.
- Advertisements should make it clear that these products are e-cigarettes and cannot be mistaken for cigarettes (e.g. use of images or logos that make the products appear to be cigarettes or to be like a cigarette brand). Advertisements for e-cigarettes must not invoke tobacco brand identity.
- Advertisements should not have particular appeal to persons under the age of 18. Ideally, advertisements should not feature people who are, or who appear to be, under the age of 25.
- Advertisements for e-cigarettes should not claim that the product has health benefits or claim that it is safer or healthier than smoking tobacco.
- Advertisements should not glamorise smoking by showing people, for example, enjoying the e-cigarette or people being socially successful because they are using the e-cigarette.
- Advertisements should not attempt in any way to align with smoking cessation campaigns.

The following are examples of the kinds of claims that may be suitable in advertisements for these products;

- *An alternative to cigarettes / alternative to tobacco / alternative to smoking*
- *Try this alternative way to smoke*

- *Keep yourself and your hands busy with this e-cigarette*
- *Inhale the flavoured vapour*
- *Enjoy the vapour flavours*
- *Reduce the cost of smoking cigarettes by using this product (only if the e-cigarette gadget costs less than the usual retail price of a cigarette)*

*There should be a statement on all advertisements for these products, words to the effect;*

*May only be sold to persons 18 years of age and over.*

# APPENDIX I

The following guidance is provided by Medsafe and can be found on the [Medsafe website](#) at. This guidance should be read and followed prior to the advertising of any e-cigarette products or devices.

## Medicines

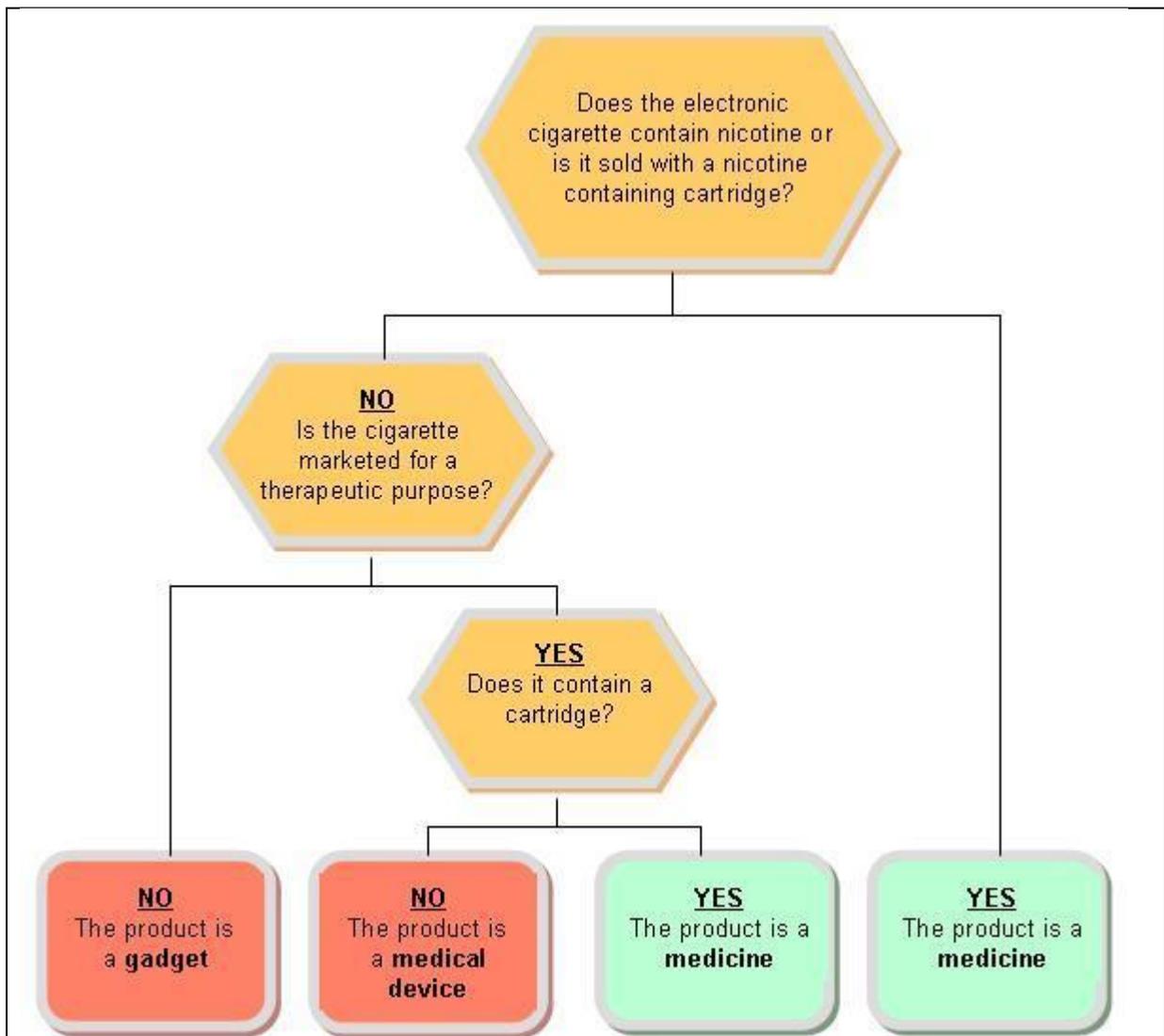
*Revised: 5 November 2010*

### Categorisation of Electronic Cigarettes

An electronic cigarette (e-cig) comprises a battery powered cigarette-shaped body with a mouthpiece or "cartridge" holding an absorbent material that is saturated with a flavoured liquid solution that may contain nicotine. E-cigs are commonly sold with a fitted cartridge but are also supplied as a battery powered vapourising unit to which a cartridge of choice can be fitted at a later time.

The categorisation of an e-cig product depends on how it is presented for sale, including the intended use claimed for the product by the supplier and whether this use has a therapeutic purpose as defined in the Medicines Act 1981.

- Electronic cigarettes are **medicines** when they are supplied for use as an aid to smoking cessation and with one or more cartridges.
- Electronic cigarettes are **medicines** when supplied with one or more cartridges containing nicotine even if they are not represented as aids to smoking cessation.
- Electronic cigarettes are **medical devices** when they are supplied for use as an aid to smoking cessation and without cartridges.
- Electronic cigarettes are **not** therapeutic products when they are supplied as a "gadget" which consumers may choose to use as a social prop or as an item which is to be used interchangeably with cigarettes.



The following table provides further guidance on "intended purpose" language or claims that will be regarded as suggestive of a therapeutic purpose.

| Therapeutic purpose  |
|--|
| Supports or aids smoking cessation   |
| Remedy against/ helps alleviate nicotine addiction or the symptoms of nicotine addiction |
| Helps you quit smoking/ smoke less   |
| Reduce your nicotine intake  |