

TAPS | therapeutic advertising pre-vetting service

GUIDELINE 2 Cosmetic	Use of patient experiences and testimonials when advertising Medicines and Medical Devices for cosmetic treatments.
Last Updated	August 2016
What kind of product is this guideline for?	Injectable medicines e.g. Botox®, Dysport® and Injectable Medical Devices e.g. Juvederm®, Restylane®
What is the purpose of this guideline?	To provide background and guidance on advertising these products to consumers in order to comply with section 58 of the Medicines Act and the NZ Medical Association Code regarding testimonials and healthcare professional endorsement.

BACKGROUND

It is important to avoid patients talking of the post-treatment phase where they have benefited from treatments using these medicines or devices as they are therapeutic products and use of them is also a 'method of treatment'. This would be a breach of the Medicines Act Section 58 (1) (c) (iii).

Section 58 (1) of the Medicines Act states that no person shall publish, or cause or permit to be published, any medical advertisement that –

- (c) 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—
 - (ii) 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
 - (iii) 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;

Helpful Hint: Avoid using the past tense where patients have been treated as this will imply a benefit from the treatment and therefore be likely to breach section 58 (1) (c) (iii) of the Medicines Act.

The following points provide detailed guidance on this issue

- 1) Patient experiences can be used when they are describing the present situation and having to put up with or live with such things as frown lines and a sagging complexion i.e. this is the present tense. This can describe the problems/irritations of living with frown lines and a sagging complexion and the social reasons that they would like to have this fixed.
- 2) Patient experiences that are talking about aspirations in the future would also be OK and this is essentially what they would like to happen. In other words use of the future tense is a safeguard and OK.
- 3) When using someone to describe the experiences/professional service/ and treatment at the clinic then it is recommended that you should use a professional presenter that is not in any way qualified as a health professional to provide therapeutic treatment or use a staff member who is a manager and likewise not qualified as a health professional to provide therapeutic treatment. In this way you will avoid any implication of healthcare professional endorsement.
- 4) If patient videos are proposed then it is important and prudent to get TAPS to review the scripts in advance of shooting. This will avoid editing and cutting after the event and will also avoid waste of time and cost. To try and edit videos after production will generally mean that the video cannot be used in total and will essentially limit its use to snippets or fragments only.
- 5) The use of patient videos is reasonable for appearance medicine. However particular care is needed to follow these guidelines to avoid a possible breach of the Medicines Act and the NZ Medical Association code.
- 6) Larger players in the provision of appearance medicine services are likely to be watched closely by both Medsafe and competitors. It will therefore be important to try and ensure compliance from the outset. If a complaint is lodged with Medsafe it will be required to follow up with a letter of possible prosecution and a request to remove any non-compliant advertising.
- 7) Before and after photos are allowed for advertising purposes. However these must follow the key guidelines of the Medical Council Advertising Guidelines under section 14. These guidelines are based on the interests of the consumer being paramount so that consumers are unlikely to be misled. Medsafe also has the important guideline that only the section of the face being treated should be shown and not the whole face in order to preserve patient confidentiality e.g. for Botox treatment the glabellar lines on the forehead and the crow's feet part of the face only should be shown.
- 8) If there is any doubt about issues outlined in this guideline regarding patient experiences or before and after photos then it is prudent to get advice from either TAPS, Medsafe or the Medical Council so that there is a greater confidence of proceeding with the advertising and so that it should be compliant with the legislation and the codes/guidelines.