

TAPS | therapeutic advertising pre-vetting service

GUIDELINE 2 General	Testimonial and Healthcare Professional Endorsement
Last Updated	July 2016
What kind of product is this guideline for?	This guideline is intended for advertisers of Therapeutic Products (medicines and medical devices), Natural Health Products and Dietary Supplements, Health Services and Methods of Treatment .
What is the purpose of this guideline?	This guideline provides background information to help advertisers to understand the legislation as it applies to Patient Stories (Testimonials) and Healthcare Professional Recommendation (Endorsement)

BACKGROUND

The relevant sections of the Medicines Act 1981 for this guideline are below, particularly sections 58 (1) (c) (ii) and (iii)

Section 58. Further restrictions on advertisements

(1) Subject to [section 60](#) of this Act, 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-

(i) Is a panacea or infallible; or

(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.

This means that where a product is classified as a "medicine" or "medical device" or a "method of treatment" then either testimonials (iii) or professional endorsement (ii) in advertisements are essentially in breach of section 58 of the Medicines Act. Both are therefore prohibited.

Medicines, Medical Devices and Methods of Treatment – Testimonial

A “testimonial” as defined by Section 58 (1) (c) (iii) of the Medicines Act is essentially an uncontrolled anecdotal report of the beneficial therapeutic effect of a product or treatment or service of one individual or of a class of persons. The reasoning behind this section of the legislation is that testimonials may be anecdotal without professional observation and without the relevant objective scientific indicators. They may also not necessarily be translatable to the population as a whole. ‘Beneficially affecting the health of a class of persons’ may also be anecdotal and / or not representative of the general population. A testimonial in an advertisement such as described in this section for a medicine, a medical device or a method of treatment could unduly influence a consumer hence section 58 (1) (c) (iii) of the Medicines Act.

Medicines, Medical Devices and Methods of Treatment – Healthcare Professional Endorsement

Healthcare professional endorsement covers medical practitioners, nurses, pharmacists, physiotherapists or any person qualified to provide therapeutic treatment in the course of a profession or occupation and registered under any enactment as a person so qualified. Endorsement by any health professional i.e. a person qualified to provide treatment in the health area, is a breach of section 58 (1) (c) (ii) of the Medicines Act for any product classified as a "medicine" or “medical device” or any service classified as a “method of treatment”. This precludes doctors, pharmacists or other health professionals endorsing or promoting a "medicine" or “medical device” or “method of treatment”. Particular care is needed to avoid even the perception of this when people in "white coats" are included in advertisements. This can give the perception of the authority of professional endorsement. The reasoning is that it tends to give "undue authority" to support for a particular product or service. Care is therefore needed regarding shots of pharmacies or surgeries where there is the perception of healthcare professional endorsement if a pharmacist or doctor in a white coat is portrayed recommending or giving a medicine or medical device to a consumer or recommending a “method of treatment”. As noted above, a consumer may be unduly influenced by HCPs endorsing a medicine, medical device or method of treatment in an advertisement, hence section 58 (1) (c) (ii) of the Medicines Act.

Natural Health Products and Dietary Supplements – Testimonials

For Natural Health Products and Dietary Supplements that are not classified as medicines, testimonials are possible but with some very important provisos. **First a testimonial for this group of products would be in breach of the Medicines Act if a therapeutic claim were made in the testimonial. These types of testimonials are therefore prohibited for these products.** A testimonial for this type of product should not make a therapeutic claim, and should not therefore either directly or by implication suggest that the product has beneficially affected the health of a person through having a therapeutic benefit. Testimonials often stretch the credibility of a product and may be best avoided if the advertiser is uncertain about a possible breach of section 58 (1) (c) (iii) of the Medicines Act.

Principle 2, Guideline 2 (f) of the ASA Therapeutic and Health Advertising Code also covers the issue of testimonials with the useful summary that "**Testimonials, in advertisements, where not prohibited by law, shall comply with the Code, be authenticated, genuine, current, typical and acknowledge any valuable contribution. Exceptional cases should be represented as such.**" It is important to have written consent of the person giving the testimonial to support this section of the code.

A conservative approach regarding testimonials should be taken because of the very broad wording of section 58 of the Medicines Act. Because of this it is wise to avoid any implication/suggestion of a testimonial as this is likely to be in breach of section 58 of the Medicines Act and in the event of a court judgement it would be difficult for a court not to find an advert in breach of this section of the Medicines Act.

Natural Health Products and Dietary Supplements – Healthcare Professional Endorsement

The ASA Therapeutic and Health Advertising Code prevents the use of HCP Endorsements for these products, for the same reasons as outlined above with Medicines and Medical Devices.

Endorsement by Government Agency, Professional Body or Independent Agency

Principle 2, Guideline 2 (e) of the ASA Therapeutic and Health Advertising Code also includes reference to endorsement by government and professional bodies. Essentially the Medicines Act does not allow the endorsement by Medsafe or the government for an advertisement of a product classified as a medicine or medical device. Endorsement by professional bodies for medicines would need the prior written consent of the particular body. A similar approach would be necessary for the Natural Health Products and Dietary Supplements so that it is clear that written consent exists for any such endorsement.

PLEASE NOTE: Advertisements Directed Solely or Principally to HCPs

Section 60 of the Medicines Act exempts advertisements from the requirements in Section 58 for Medicines and Medical Devices when the advertisements are circulated solely or principally to healthcare professionals. These advertisements may include patient testimonials and endorsements / recommendations by other HCPs.