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| COMPLAINT NUMBER | 18/251 |
| COMPLAINANT | C Atkinson |
| ADVERTISER | BePure |
| ADVERTISEMENT | BePure Digital Marketing |
| DATE OF MEETING | 13 November 2018 |
| OUTCOME | Upheld in part, Settled in part, Not Upheld in part. |

SUMMARY

The website advertisement for BePure Health Ltd, www.bepure.co.nz, promotes health and wellness and offers “Scientific, Holistic Health” by selling multi-vitamins, fish oil, urine tests and nutrition programmes.

The Complainant was concerned the website advertisement contained unsubstantiated claims relating to treating diseases and influencing conception, and unsubstantiated and misleading claims related to testing urine samples.

The Advertiser, BePure, said it does not agree that its advertising includes any therapeutic purpose claims and it does not make any statements that are misleading or unsubstantiated. The Advertiser said it amended some of the statements in its website, after receiving this complaint.

The Complaints Board said sufficient substantiation had not been provided for the claims regarding:

- Comprehensive Stool Parasitology Testing with Analysis,
- IGG/IGA Elisa Testing,
- 15 tips to support fertility including dietary supplement products and techniques to address oestrogen dominance, low progesterone and excess testosterone,
- The accuracy and reliability of the quality (previously “gold standard”) functional health testing.

The Complaints Board agreed these parts of the complaint were Upheld.

The Complaints Board noted the amendments the Advertiser made to the website advertisement regarding: the BePure Programmes, Functional Tests (for Mood, Sleep and Oxidative Stress, Cellular Energy and Nutrients) and the home collection urine tests. The Complaints Board agreed the amendments had addressed the misleading claims issues raised by the Complainant and agreed these parts of the complaint were Settled.

The Complaints Board said a sufficient response had been provided by the Advertiser for the claims regarding the purpose of the functional health Gut and Liver Health Screening, Hormone Balance Test and the Adrenal Function Test and agreed these parts of the complaint were Not Upheld.

In light of the above, the Complaints Board said parts of the advertisement were in breach of Principles 1 and 2 of the Therapeutic and Health Advertising Code.

Accordingly, the Complaints Board ruled the complaint was Upheld in part, Settled in part and Not Upheld in part.

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the complaint with reference to Principles 1 and 2 of the Therapeutic and Health Advertising Code.

Principle 1 required the Complaints Board to consider whether the advertisement observed a high standard of social responsibility, particularly as consumers often rely on such products, devices and services for their health and wellbeing.

Principle 2 required the Complaints Board to consider whether the advertisement contained any statement which was untruthful, unbalanced or misleading or likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

The Complaints Board ruled the complaint was Upheld in part, Settled in part, Not Upheld in part.

The Complaint

The Complainant was concerned the website advertisement contained unsubstantiated claims relating to treating diseases and influencing conception, and unsubstantiated and misleading claims related to testing urine samples.

The Advertiser's response

The Advertiser, BePure, said it does not agree that its advertising includes any therapeutic purpose claims and it does not make any statements that are misleading or unsubstantiated. The Advertiser said its services are not aimed at treatment, it is merely offering support to those affected by certain conditions.

The Advertiser advised it has amended some of the statements in its website, in particular those relating to their programmes for functional testing and tips to support fertility.

The Advertiser said the statements that relate to the BePure Comprehensive Personalised Health Programme are made within the guidance of the ASA document "Guidance Note on Advertising Health Services" and are not in breach of the ASA Codes.

Complaints Board Discussion

The Complaints Board considered the complaint about the website advertisement for BePure Health, the likely consumer takeout and the substantiation provided in the Advertiser's response.

The Complaints Board noted it does not have jurisdiction to consider allegations relating to breaches of the Medicines Act 1981.

The Complaints Board noted the Advertiser had made a number of amendments to its website, as a result of the complaint.

As in all cases, the Complaints Board said that where a claim in an advertisement was challenged by a Complainant, the onus fell on the Advertiser to provide the substantiation for that claim. The Appeal Board also reiterated its stance that it was not an arbiter of scientific fact nor was it within its jurisdiction to verify the efficacy of an advertised health service. Instead, its focus was to consider the likely consumer takeout of an advertisement rather than the absolute scientific legitimacy of a claim.

The Complaints Board considered each alleged misleading claim raised by the Complainant and the response provided by the Advertiser.

Upheld complaints

The Complaints Board said sufficient substantiation had not been provided for the claims regarding:

- Comprehensive Stool Parasitology Testing with Analysis,
- IGG/IGA Elisa Testing,
- 15 tips to support fertility including dietary supplement products and techniques to address oestrogen dominance, low progesterone and excess testosterone,
- The accuracy and reliability of the quality (previously “gold standard”) functional health testing.

The Complaints Board agreed these parts of the complaint were Upheld.

The Comprehensive Stool Parasitology and IGG/IGA Elisa Testing were both upheld because they are making therapeutic purpose claims that were not substantiated.

The Tips to Support Fertility part of the advertisement was upheld as this made therapeutic purpose claims for oestrogen dominance, low progesterone and excess testosterone and these claims were not substantiated.

The ‘quality’ or ‘gold standard’ claims for the urine testing was upheld as the Advertiser did not substantiate the claim of ‘quality’. They did not provide evidence as to the accuracy and reliability of the tests, regardless that the tests are for ‘functional health’ and not testing for a therapeutic purpose (based on settled changes referred to below).

Settled complaints

The Complaints Board noted the amendments the Advertiser made to the website advertisement regarding the BePure Programmes, Functional Tests (for Mood, Sleep and Oxidative Stress, Cellular Energy and Nutrients), and the home collection Urine tests had addressed the misleading claims issues raised by the complainant. The Complaints Board agreed these parts of the complaint were Settled.

The Advertiser made changes to the Clinic Programmes (both the standard and comprehensive programmes) wording to settle the misleading therapeutic purpose claims raised by the advertiser. This wording is now in line with the Guidance Note on Advertising Health Services.

The Advertiser made changes to the description of the Cellular Energy and Nutrients Test and the Mood, Sleep and Oxidative Stress Test to remove therapeutic claims, so this part of the complaint settled.

The Advertiser amended the advertisement to make it clearer that the urine tests were at-home urine collection and removing the implication that the tests themselves were done at home.

Not Upheld complaints

The Complaints Board said a sufficient response had been provided by the Advertiser for the claims regarding the purpose of the functional health Gut and Liver Health Screen, Hormone Balance Test and the Adrenal Function Test and agreed these parts of the complaint were Not Upheld.

The Complaints Board accepted that these tests did not imply a test for a therapeutic purpose.

In light of the above, the Complaints Board said parts of the advertisement were in breach of Principles 1 and 2 of the Therapeutic and Health Advertising Code.

Accordingly, the Complaints Board ruled the complaint was Upheld in part, Settled in part and Not Upheld in part.

DESCRIPTION OF ADVERTISEMENT

The website advertisement for BePure Health Ltd, www.bepure.co.nz, promotes health and wellness and offers “Scientific, Holistic Health” by selling multi-vitamins, fish oil, urine tests and nutrition programmes.

COMPLAINT FROM C ATKINSON

This complaint involves BePure Health Ltd, a business that claims to offer “Scientific, Holistic Health” by selling multi-vitamins, fish oil, urine tests and nutrition programmes (<https://www.bepure.co.nz/>).

This complaint is directed at BePure’s ‘Clinic Programme’ ads found here; (<https://www.bepure.co.nz/pages/clinic-programmes>). I believe BePure have not applied rigorous standards to their therapeutic and health advertising because these ads contain;

- Unsubstantiated claims related to treating diseases.
- Claims related to influencing conception (fertility)
- Unsubstantiated and misleading claims related to testing urine samples.

1) Treating Diseases

BePure Clinic programmes claim to ‘support’ customers with ‘health concerns’, yet much of what they say can be categorised as therapeutic purposes (<https://www.bepure.co.nz/pages/clinic-programmes>).

Many of the health concerns listed are considered diseases for the purposes of the Medicines Act 1981;

Auto Immune conditions, diabetes, mood disorders, depression, Anxiety, Behavioural disorders, ADHD, sleep dysregulation, allergies, inflammation and arthritis (musculoskeletal pain).

Astonishingly, BePure caters to a vast number of diseases and psychological conditions by boasting their list is “by no means exhaustive”, inviting consumers to contact them if their disease or psychological condition is not listed.

This invitation to treat a large number of unidentified diseases and psychological conditions suggest the BePure programmes have an omnipotent quality and are successful in all cases, therefore likely to breach Rule 1(b).

BePure attempt to disclaim providing 'methods of treatment' by footnoting a brief disclaimer stating their programmes are "not intended to diagnose, treat or cure". This disclaimer is repeated in greater detail on their FAQ page, a page unlikely to be viewed by many consumers (<https://www.bepure.co.nz/pages/personalised-health-programmes-terms-conditions>).

DISCLAIMER

The information contained on our website has been prepared for the purpose of providing information, including about our products and services, and is not intended to provide medical advice or designed to rectify, treat or cure any specific medical conditions or diseases. Nothing stated or posted on our website is intended to be and must not be taken to be, medical advice. Please seek the advice of professionals, as appropriate, regarding the evaluation of any specific information, opinion, advice or content contained on our website.

Yet their advertising material makes it clear they *are in the business* of providing methods of treatment as defined under the s56 Medicines Act 1981. Not only an ineffective nod at legal compliance, these disclaimers directly contradict much of BePure's advertising material.

The following statements demonstrate that BePure advertise methods of treatment as defined under s56 Medicines Act 1981.

- BePure state that their programmes will "Provide you with a treatment plan" and "Provide you with recommendations";
- <https://www.bepure.co.nz/pages/personalised-health-programmes-terms-conditions>
- BePure goes further to say their consultations provide an "Investigation into the cause of specific health conditions with individualised plans to correct/modulate as required."
- (<https://www.bepure.co.nz/pages/faq#clinicandprogrammes>)
- "The BePure Comprehensive Personalised Health Programme provides you with a deeper look into what might be driving your health concerns..."
(<https://www.bepure.co.nz/pages/clinic-programmes>)
- Also, there are several statements that BePure publish, related to urine, stool and blood Testing (either directly or via 3rd party providers);
(<https://www.bepure.co.nz/pages/clinic-testing>)

"..., checking for any deficiencies that may affect these processes and the efficiency of your energy production."

"Our BePure Comprehensive Personalised Health Programme has been designed for people experiencing more persistent or challenging health concerns. More specifically this includes autoimmunity and severe gut health issues."

"...and when these micro-organisms become imbalanced it can lead to an overgrowth of unfriendly bacteria and yeasts."

"...poor sleep hygiene can lead to elevated levels of 8-OHdg, a key marker of cellular stress. Normal levels of melatonin and 8-OHdg are measured in this test to provide information on the quality of sleep and extent of cellular stress on your body."

- BePure use third parties to carry out testing services that directly relate to testing the susceptibility of persons to a disease or ailment. These are standard pathology tests and 'Comprehensive Stool Parasitology'. Although these tests are not performed by BePure, they analyse test results for the purpose of incorporating into their treatment plans. (<https://www.bepure.co.nz/pages/clinic-testing>)

“The Comprehensive Stool Parasitology Test looks for pathogens and dysbiosis biota in your digestive system to find exactly what is driving people’s gut problems and other immune-related issues.”

“The test also provides specific information on how to remove these unhealthy pathogens from our system to promote healthy flora for optimal gut and digestive health.”

“A food allergy and food intolerance pinprick blood test to measure whether your body is making immune molecules ...We use this to detect which foods are causing inflammation and gut problems to completely take the guesswork out of people’s diets”.

BePure clearly offer services that go beyond supporting normal healthy body functions, yet fail to provide any substantiation how their programmes achieve this.

Section 58 Medicines Act 1981 prohibits advertisements of medical advertisements that do not provide any substantiation for their claims.

Mr Ben Warren, BePure’s Clinical Director appears passionate helping people die, of old age and in perfect health (<https://www.bepure.co.nz/pages/clinic-programmes>).

“The benefits of a healthy lifestyle are not short term. There’s prevention, then performance and lastly longevity. How do we keep our energy and passion for life as we age? I believe people should die of old age in perfect health and that’s what I help people do.”

- Ben Warren

Although it’s unclear how he expects perfectly healthy customers will die, it’s clear that part of BePure’s marketing strategy claims to help customers attain perfect health.

Not only is this unrealistic, targeting people who are ill, preys upon the vulnerable. This type of advertising displays a lack of social responsibility and breaches Principle 1, Rule 1(c).

2) Fertility and Conception.

Section 4 of the Medicines Act 1981 *deems* influencing conception or any other purpose connected to conception to be a therapeutic purpose. If a customer is concerned about fertility and pre-conception, the BePure Clinic Programme offers help (<https://www.bepure.co.nz/pages/clinic-programmes>). They provide interesting tips for conceiving, for example ‘belly breathing with legs up the wall’, purchasing their supplements and avoiding plastic bottles, yet they don’t provide any scientific substantiation for these remedies, despite insisting they use evidence based practices in “all they do”.

Although BePure states that their programmes ‘support’ fertility and pre-conception, it’s apparent they wish their customers to believe their programmes improve chances of conception when they say “If you are interested or struggling to fall pregnant give one of our BePure Clinics a call” (<https://www.bepure.co.nz/blogs/news/15-tips-support-fertility>).

3) BePure offers five urine tests, which they maintain are ‘home’ tests. (<https://www.bepure.co.nz/pages/clinic-testing>). Stating these are home tests is misleading. Customers are sent a specimen kit and although customers provide urine samples from home, these are sent to BePure for testing and analysis.

ASA guidance notes state that *testing the susceptibility of persons to a disease or ailment is deemed to be a method of treatment*. Also, section 58 Medicines Act 1981 prohibits advertising that invites correspondence or the sending of blood, urine, or other bodily specimens for the purposes of diagnosis or treatment concerning any disease or physiological condition.

The five tests BePure offers are;

- 1) Gold standard scientific testing to measure normal nutrient levels and cellular energy production
- 2) Gold Standard scientific test to measure normal hormone balance and function
- 3) Scientific screening for normal liver function and balanced gut health
- 4) Gold standard test to measure normal adrenal function
- 5) Gold standard test to measure normal mood, sleep and oxidative stress levels

Given that these 'tests' are offered in the context of treating diseases and ailments as detailed above in 1) , it appears that the word 'normal' has simply been inserted for compliance reasons. As you can see, BePure make many bold claims about measuring hormone, adrenal and liver function, nutrient levels, mood and gut health etc from simple urine tests. Yet BePure are not funded by ACC or private insurance, nor do they reference or publish any scientific literature on how these tests support their claims, despite pretending their organisation is science based.

In addition, including the words 'Gold Standard' in conjunction with testing implies that the tests are considered the best available. Is a simple 'liver function' urine test superior to a liver panel available from a GP? Again, without any substantiation, BePure appear to be making misleading claims about the quality and standard of products they provide.

Conclusion

BePure's marketing approach emulates a medical model – even going so far to call their programmes 'Clinic' Programmes. They make many statements that extend beyond simply providing health services; much of their advertising material discusses how their services cater for diseases and abnormal body functions. Compounding this, overt statements are made that specifically or implicitly claim to treat, test or otherwise influence these conditions without providing substantiation, illustrating their disclaimers are wholly inadequate.

CODES OF PRACTICE

Principle 1: Therapeutic and Health advertisements shall observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

Principle 2: Advertisements shall be truthful, balanced and not misleading. Advertisements shall not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

RESPONSE FROM ADVERTISER, BEPURE

1. We are responding to the complaints sent to you from Mr Christopher Atkinson dated 20th August 2018, and your subsequent letter asking us for a written response by 27th August 2018.
2. BePure Health Limited (BePure) is responding on its own behalf and does not represent any other parties.
3. C Atkinson has not referenced any Advertising Standards Codes in the complaint. The details of the complaint, are as follows:
 - Medicines Act 1981, and Section 56 of the Medicines Act 1981 (suggestion that BePure claims that its clinic services intend to provide therapeutic purpose or methods of treatment for health conditions that are considered diseases for the purposes of the Medicines Act). This shall be addressed as the **Treating Diseases complaint, part 1**.
 - Section 58 of the Medicines Act 1981 (implication that BePure promotes medical advertisements for testing services with no substantiation for claims). This shall be addressed in this response as the **Treating Diseases complaint, part 2**.
 - Section 4 of the Medicines Act 1981 (suggestion that BePure attempts to influence conception, or provide therapeutic purpose connected to conception). The response shall address this as the **Fertility and Conception complaint**.
 - Section 58 of the Medicines Act 1981 (proposal that BePure invites the correspondence or sending of urine for the purposes of diagnosis or treatment via medical advertisement). This shall be addressed as the **Urine Testing complaint**.
4. The ASA's letter identifies the following sections of the ASA Codes as being relevant:
 - 4.1 Therapeutic and Health Advertising Code: Principles 1 and 2.
 - 4.2 Within the Therapeutic and Health Advertising Code: Principles 1 and 2, BePure acknowledges that the relevant sub-principles appear to be Principle 1: Rule 1(b); and Principle 2: Rule 2(a).
5. BePure will respond to both the Medicines Act Sections and the ASA Principles and Rules referenced in the above points in its response.

Scope of Appeal and Complaint

Treating Diseases Complaint, part 1

6. BePure does not agree that its advertising of its clinic services include a therapeutic purpose claim.
 - 6.1 As outlined in the ASA document '*Guidance Note on Advertising Health Services*' currently live on the ASA website, under the subheading '*How can an advertisement tell*

consumers who a Health Service is available for without making a therapeutic purpose claim?’, advertisers may state the health conditions that their service is intended for, provided no therapeutic purpose outcome from the service is claimed or implied.

6.2 In accordance with this guidance, BePure has outlined health conditions that our service is intended to support. BePure believes that it does in no way claim to provide methods of treatment, it is merely offering support to those who are affected by these conditions.

6.3 BePure disagrees that it is “inviting treatment of a large number of unidentified diseases” or that it is suggesting “omnipotent quality”. BePure takes a holistic approach to good health and its messaging promotes good health and wellness, not successful treatment of disease. Therefore BePure believes that no violation of Rule 1(b) of the Therapeutic and Health Advertising Code has taken place.

6.4 BePure disputes C Atkinson’s claim that its business aims to provide methods of treatment. On all pages of the website relating to BePure’s products and services, at the end of all blog posts and described in detail throughout the ‘How we Support Health’ webpage, BePure clearly states that its services are not aimed at treatment. It is highly important to BePure to make this clear, in order to not mislead any consumers regarding services or expected outcomes.

6.5 While BePure disagrees with C Atkinson’s claims that statements by BePure promote methods of treatment, BePure has taken action to amend the statements highlighted. Specifically:

6.5.1 Amended wording in response to the first statement highlighted by the Complainant to provide further clarify that BePure does not provide treatment of any sort. The changes have been made to the information under the heading ‘...We may use the information we collect from you to...’ heading: <https://www.bepure.co.nz/pages/personalised-health-programmes-terms-conditions>

6.5.2 Statement removed from ‘ *What’s Involved in a Consultation* ’ section. <https://www.bepure.co.nz/pages/faq#clinicandprogrammes>

6.5.3 Wording altered under heading ‘ *BePure Comprehensive Personalised Health Programme*’. <https://www.bepure.co.nz/pages/clinic-programmes>

6.5.3 The remaining points shall be addressed under the Treating Diseases Complaint, Part 2.

Treating Diseases Complaint, Part 2

In addendum to the main body of the Treating Diseases complaint, C Atkinson raises statements made regarding BePure’s services, specifically those related to testing and providing methods of treatment based on testing services.

7.1 BePure’s response to the phrases highlighted by the Complainant are as follows:

7.1.1 While BePure does not believe that it is inferring any therapeutic purposes with these statements, it has amended a statement highlighted by the Complainant

made on the following page to read 'checking to assess the normal process and efficiency of your energy production'. <https://www.bepure.co.nz/pages/clinic-testing>

7.1.2 The second statement highlighted that relates to the BePure Comprehensive Personalised Health Programme is made within the guidance of the ASA document 'Guidance Note on Advertising Health Services' as outlined above.

7.1.3 The statement relating to 'overgrowth of unfriendly bacteria and yeasts' is merely describing a biological process. BePure is able to substantiate this statement. It is not linked to any implied methods of treatment; it is a standalone statement made to explain why BePure offers the type of testing that it does.

7.1.4 As with the other statements described here, BePure does not believe that it has been inferring therapeutic or diagnostic intent, however the final statement C Atkinson highlighted relating to 'poor sleep hygiene' has been amended.

7.1.5 BePure strives to represent its services as accurately and clearly as possible at all times. Therefore, outside of the statements that the Complainant has highlighted, BePure

has amended several other statements on the 'Clinic Testing' page of the website.

7.2 C Atkinson also claims that BePure's testing services go beyond supporting normal body functions, breaching Section 58 of the Medicines Act 1981, relating to medical advertisements without substantiation for claims.

7.3 BePure's services include various testing services. The testing services offered by BePure are not restricted activities under the Health Practitioners Competence Assurance (Restricted Activities) Order 2005, nor prohibited by the Health Practitioners Competence Assurance Act 2003. BePure's testing services are not offered for therapeutic purposes and it is not a medical advertisement for the purposes of the Medicines Act 1981:

7.3.1 the services are of a kind that offer support for normal healthy body functions;

7.3.2 a "medical advertisement" is an advertisement relating, or which is likely to cause any person to believe that it relates, to any medicine or medical device or to any method of treatment (s56, Medicines Act 1981). A "method of treatment" is one represented to be undertaken for a therapeutic purpose.

7.4 The website's advertising of testing services are not in breach of New Zealand law. The representations on the BePure website are made in the context of explaining why BePure offers the sorts of tests it does. BePure's representations are entirely consistent with BePure's products and services not being therapeutic – these tests are not attempting to diagnose a disease or a condition.

7.5 With regards to substantiation, BePure takes an evidence based approach to the business and does not make unsubstantiated claims. It would therefore be happy to substantiate claims with evidence and/or science. Therefore no breach of ASA Principle 2, Rule 2(a) applies.

Fertility and Conception Complaint

8. BePure finds C Atkinson's claim that it intends to influence conception or provide therapeutic purpose connected with conception, and therefore breaching Section 4 of the Medicines Act 1981, unfounded.

8.1 BePure's holistic approach to health and wellness seeks to support normal bodily functions. Clearly BePure does not suggest that actions such as 'belly breathing with legs up the wall' will induce conception.

8.2 Any recommendations made by BePure relating to fertility are simply to promote normal healthy body functions, and are in no way violating the law. However, to ensure there is no margin for error around understanding of BePure's services, the statement C Atkinson has highlighted "if you are interested or struggling to fall pregnant give one of our BePure Clinics a call" has been amended. <https://www.bepure.co.nz/blogs/news/15-tips-support-fertility>

Urine Tests Complaint

9.C Atkinson's final complaint is regarding BePure's testing services, and their advertisements' claimed breach of Section 58 of the Medicines Act 1981.

9.1 While BePure does not agree that it is misleading in stating that tests are 'home' tests the consumer does not need to leave their home in order to access the testing services, this wording has been amended to say 'home collection urine test'.

9.2 As explained in relation to the Treating Diseases complaint, part 2, BePure's services include various testing services. The testing services offered by BePure are not restricted activities under the Health Practitioners Competence Assurance (Restricted Activities) Order 2005 nor prohibited by the Health Practitioners Competence Assurance Act 2003. BePure's testing services are not offered for therapeutic purposes and it is not a medical advertisement for the purposes of the Medicines Act 1981:

9.2.1 the services are of a kind that offer support for normal healthy body functions;

9.2.2 a "medical advertisement" is an advertisement relating, or which is likely to cause any person to believe that it relates, to any medicine or medical device or to any method of treatment (s56, Medicines Act 1981). A "method of treatment" is a one represented to be undertaken for a therapeutic purpose.

9.3 The Website's advertising of testing services are not in breach of New Zealand law. The representations on the BePure website are made in the context of explaining why BePure offers the sorts of tests it does. BePure's representations are entirely consistent with BePure's products and services not being therapeutic – these tests are not attempting to diagnose a disease or a condition.

9.4 The website text does not "invite" the sending of hair, blood, urine or other bodily specimens or photographs for the purposes of diagnosis or treatment concerning any

disease or physiological condition. The website is simply outlining the services that BePure offers.

9.5 The claim made by C Atkinson that BePure's testing services "are offered in the context of treating disease and ailment" is entirely refuted by BePure. As is clearly stated on the website, the services are offered to measure normal bodily functions. No diseases or ailments are referred to or implied in correlation with the testing services available. The allegation that the use of the word 'normal' is used purely for compliance reasons is notional and unfounded. The representations of BePure's testing services, and use of this word, are appropriate and accurate due to the nature of the testing services offered and the focus on good health and wellbeing, and not on diagnosis or treatment of disease or illness. The testing services provided aim to establish what 'normal' is for that customer. BePure's representations are entirely consistent with BePure's products and services not being therapeutic.

9.6 BePure disagrees with C Atkinson's complaint that it is claiming its testing services are superior to those offered by a GP. It merely states that we provide a testing services and outlines that it is different to other types of testing due to BePure's holistic approach to health. BePure's testing services are at no point compared to testing offered by a GP

9.7 BePure believes that it has fairly and reasonably represented its testing services within the guidance of New Zealand law. However, BePure has removed the words 'Gold Standard' from its test descriptions in response to C Atkinson's concerns.

Conclusion

10.The ASA's letter identifies the following sections of the ASA Codes as being relevant:

10.1 Therapeutic and Health Advertising Code: Principles 1 and 2.

10.2 Within the Therapeutic and Health Advertising Code: Principles 1 and 2, BePure recognises that the relevant sub-principles appear to be Principle 1: Rule 1(b); and Principle 2: Rule 2(a).

11.In addition to responding to the ASA Codes in question, BePure has responded to the Medicines Act 1981 Sections raised by the Complainant.

11.1 BePure has responded to four primary complaints made by C Atkinson, addressing the points concerned and amending copy on the website where relevant.

12.For the reasons set out in this letter BePure does not believe that it:

12.1 fails to comply with New Zealand laws;

12.2 makes statements that imply its services are effective in all cases, infallible or guaranteed;

12.3 makes statements that are misleading or deceptive or are not substantiated;

12.4 makes prohibited statements in terms of Rule 1(b) or 2(a) of the Therapeutic and Health Advertising Code.

13.We look forward to liaising with the ASA in order to resolve this complaint. Please contact us if are able to provide any further assistance in investigating and considering this response.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.