

COMPLAINT NUMBER	18/102
APPEAL NUMBER	18/011
APPLICANT	Medical Hypnosis
ADVERTISER	Medical Hypnosis
ADVERTISEMENT	Medical Hypnosis, Brochure
DATE	8 November 2018
OUTCOME	Settled, Appeal Dismissed

SUMMARY

The Complaints Board ruled the complaint made by D Ryan about the brochure advertisement for Medical Hypnosis was Upheld.

The Advertiser appealed the Decision. The appeal application was considered by the Chairperson of the Appeal Board. She noted the Applicant stated they had misunderstood the process required to substantiate the claims made in the advertisement and had now complied and highlighted a range of studies to support the advertising content.

The Chairperson accepted it was in the interests of natural justice that the matter be reheard. The matter was referred to the Appeal Board to be considered de novo.

The Appeal Board acknowledged the Advertiser had provided a range of evidence to support the claims made in the advertisement, however, it noted where a therapeutic purpose outcome claim is made, a robust standard of evidence is required.

The Appeal Board was of the view the evidence provided did not go far enough to support the therapeutic outcome claims listing conditions in response to the question "What medical and psychological issues can be improved with hypnosis".

The Appeal Board then took into account the Advertiser had provided an amended advertisement as part of the appeal application. The amended advertisement removed the therapeutic outcome claims.

The Appeal Board noted that in accordance with the principles of self-regulation, the Advertiser had taken action to amend the material of concern. The Appeal Board ruled the complaint was Settled.

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

APPEAL BOARD DECISION

The Complaints Board ruled the complaint made by D Ryan was Upheld.

The Advertiser appealed the decision to the Chairperson of the Appeal Board, who accepted the appeal application as it was in the interests of natural justice that the matter be reheard and referred it to the Appeal Board.

The Chairperson directed the Appeal Board to consider the advertisement with reference to Principle 1, Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

Principle 1 required the Complaints Board to consider whether the advertisement had been prepared with a high standard of social responsibility to consumers and society.

Principle 2 required the Complaints Board to consider whether the advertisement was truthful, balanced and not misleading 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.

Rule 2(a) required that advertisements are accurate, and any statements or claims shall be valid and able to be substantiated. The Complaints Board noted that Rule 2(a) also requires that substantiation should exist prior to a claim being made.

The Appeal Board confirmed its role was to consider the matter de novo that is, starting from the initial complaint and reviewing all subsequent correspondence, rulings, and submissions, considering the matter afresh.

The Appeal Board confirmed the advertisement before it for adjudication was a brochure advertisement from Medical Hypnosis, promoting its services.

The Appeal Board ruled the complaint was Settled and the Appeal was Dismissed.

The Complaints Board Decision

The Complaints Board noted the summary information provided by the Advertiser could be sufficient to support some of the claims, however the information provided did not give enough detail to demonstrate to the Complaints Board the accuracy or robustness of the substantiation. The Complaints Board noted that for advertisements making therapeutic claims, particularly of the nature in the advertisement before it, claims should be supported by sound, relevant, clear and robust evidence. The Complaints Board said it was up to the Advertiser to provide full copies of relevant scientific studies to substantiate the claims made.

The Complaints Board said the Advertiser had not provided the level of information required to support the therapeutic claims and the advertisement was likely to mislead consumers.

The Complaints Board ruled the complaint was Upheld.

Advertiser's Appeal

In their appeal the Advertiser confirmed they had "misunderstood the nature of the response that you required from me regarding the efficacy of hypnosis as a vehicle to deliver effective therapy. I supplied you with 94 references with very brief summaries. Now that I have seen the decision I realise that I could have and should have provided better and more detailed information to the board."

The Advertiser provided 95 studies with information highlighted relating to some of the claims made in the advertisement.

The Advertiser stated: "Hypnosis is not considered to be a specific form of therapy, rather it is instead a method of delivering therapy that allows almost any 'talking' therapy to be enhanced.

If counselling works for anything it works better when the same advice is delivered via hypnosis

Further, in line with your suggestion, I have amended my brochure and attach the content of my new brochure which is currently being reprinted.”

Complainant’s response to the Appeal

The Complainant noted that “Like acupuncture, there are a lot of low-quality studies and systematic reviews which when cherry-picked can look like there are strong positive effects for hypnosis. There is little evidence from the Cochrane reviews that show it works effectively.”

The Complainant included links in their response challenging the efficacy of hypnosis treatment.

Appeal Board Discussion

The Appeal Board carefully considered all the information provided by the Advertiser, the Complainant, the original and amended advertisements and the Complaints Board Decision.

The Appeal Board confirmed its role is to consider whether an advertisement complies with the Advertising Codes of Practice. It does not consider the efficacy of products or services.

The Appeal Board said while it is not an arbiter of scientific fact, it was able to make an assessment as to whether evidence provided applied to and supported the advertised claims.

It confirmed the onus fell on the Advertiser to support the claims made in their advertisement and that substantiation should exist prior to the claims being made.

The Appeal Board considered the likely consumer takeout of the advertisement and agreed it promoted a service described as ‘medical hypnosis’. The advertisement included a list of conditions that the Advertiser claimed can be improved with hypnosis. Some of these conditions are more serious than others, and included Irritable Bowel Syndrome, fertility issues, anxiety, addictions and skin problems like warts, psoriasis, eczema.

The Appeal Board noted the ASA Guidance Note on Advertising Health Services states in part:

“Any therapeutic purpose claim made in an advertisement for a Health Service makes it an advertisement for a ‘Method of Treatment’. The Medicines Act 1981 [section 58 \(1\) \(a\) & \(b\) and \(3\)](#) prevents medical advertisements from directly claiming or implying that a method of treatment will prevent, alleviate, or cure any disease, or prevent, reduce, or terminate any physiological condition specified or belonging to a class of disease or physiological condition specified’ in Part 1 or Part 2 of [Schedule 1](#), unless the advertiser can prove that it is true.”

The Appeal Board then considered the substantiation provided by the Advertiser in support of the therapeutic outcome claims in the advertisement referring to a list of conditions headed “What medical and psychological issues can be improved with hypnosis?”

The Board noted the evidence provided by the Advertiser was made up of:

- 63 Abstracts provided without the full published peer reviewed papers
- 3 Case Studies on individuals
- 4 Articles / Opinion Pieces / Guest Editorials

- 6 Published reviews with some relevance to five of the conditions listed in the advertisement
- 15 Published trials with some relevance to seven of the conditions listed in the advertisement
- 4 General literature reviews

The Appeal Board acknowledged the Advertiser had provided a range of evidence to support the claims made in the advertisement. The Board noted where a therapeutic purpose outcome claim is made, a robust standard of evidence is required. The Guidance Note for Advertising Health Services states that:

Substantiation provided to the ASA by the advertisers will be assessed by the Complaints Board or Appeal Board for the quality of the evidence and may include (but is not limited to) assessment of systematic reviews of randomised-controlled trials (RCTs), individual RCTs, systematic reviews of cohort studies, individual cohort studies and outcomes research. Results extrapolated from studies conducted in animals or patient / client testimonials are not an acceptable means for substantiating a therapeutic purpose claim. Advertisers should be confident that the studies they select to substantiate their claim are reflective of the body of available evidence. The Complaints Board or Appeal Board will also consider the likely level of risk to consumers associated with the claim made in the advertisement.

The Board said some of the papers provided described the potential effectiveness of hypnosis in some of the conditions listed. The published trials for some of the conditions generally summarise that more research and larger studies are needed to confirm the possible effects of hypnosis. It noted the Complainant had challenged 15 of the 25 conditions listed.

The Appeal Board considered the original advertisement contained therapeutic outcome claims as it referred to improvement alongside a list of conditions, giving the consumer the impression that hypnotherapy can improve many conditions.

The Appeal Board agreed the evidence provided in the Appeal application was variable in quality and overall did not support the strength of the therapeutic outcome claims for all the listed conditions in response to the question “What medical and psychological issues can be improved with hypnosis”.

Amended Advertisement

The Appeal Board then took into account the Advertiser had provided an amended advertisement as part of the Appeal application. The amended advertisement removed the therapeutic outcome claims.

The Appeal Board noted that in accordance with the principles of self-regulation, the Advertiser had amended the material of concern. The Appeal Board ruled the complaint was Settled.

Decision: Complaint **Settled, Appeal Dismissed.**

DESCRIPTION OF ADVERTISEMENT

The brochure advertisement for Medical Hypnosis by Dr Patrick McCarthy stated, in part:

What medical and psychological issues can be improved with hypnosis?

Anxiety and panic

Sleep problems
Chronic pain not responding to medication or surgery (e.g headaches, migraine, phantom limb pain, prolonged unexplained pain),
Fears and phobias (e.g fear of flying),
Skin problems (e.g eczema, psoriasis, warts)
Depression and pessimistic thinking
Sexual problems
Fertility problems in females
Irritable bowel syndrome
Nail biting
Addictions (eg Smoking, Alcohol)
Self Esteem
Self-confidence
Preparation for Childbirth
Examination worries
Public speaking fears
Bedwetting (over age 8)
Obsessive Compulsive Disorder
Sports/Music/Academic/Performance enhancement
Post Traumatic Stress Disorder
Tinnitus worsened by stress and hyperacusis,
Hyperacusis
Trichotillomania (hair pulling)
General stress and burnout"

APPEAL APPLICATION FROM ADVERTISER, MEDICAL HYPNOSIS

Preliminary notification of Appeal

I acknowledge your email below and formally inform you that I intend to appeal the decision. I misunderstood the nature of the response that you required from me regarding the efficacy of hypnosis as a vehicle to deliver effective therapy. I supplied you with 94 references with very brief summaries. Now that I have seen the decision I realise that I could have and should have provided better and more detailed information to the board.

Detailed Appeal Application

Please find enclosed copies of randomised controlled clinical peer reviewed clinical trials as suggested and also some review papers that summarise the huge volume of research to attest to the value of hypnosis in a wide range of conditions. Hypnosis has been used medically for centuries.

The complainant first alleged that there was no evidence for the efficacy of hypnosis for Post-Traumatic Stress disorder yet the history of the medical interest in hypnosis can be charted by its efficacy and rise in popularity with psychiatrists after every significant conflict of the 20th and 21st centuries.

I enclose two award winning studies for research excellence that clearly point out the efficacy of hypnosis for Combat Stress Injury, PTSD and Acute Stress Disorder.

These two papers were both published in the International Journal of Clinical and Experimental Hypnosis 61(1) 1-19, 2013 and 61(1) 20-37 2013. This is a peer-reviewed academic journal in the field of psychology. I enclose the papers in full. They describe the significant short and long-term benefits obtained only by the hypnosis participants and with just a single session of hypnosis when compared with controls.

I do not believe that it is possible to read these seminal papers on the value of hypnosis for PTSD and then possibly uphold the complaint that hypnosis has not been proven to help PTSD.

The complainant also claimed that there was no evidence to support the use of hypnosis in Irritable Bowel Syndrome (IBS). This was most the most surprising claim to me and one that would be easily refuted by my colleague, Professor Peter Whorwell, Professor of Medicine and Gastroenterology at Manchester University, who has had many studies on hypnosis for IBS published in The Lancet, a prominent medical peer-reviewed journal in the UK. This well-known research on the ample efficacy of hypnosis in IBS research explains why I receive so many referrals from gastroenterologists to help them alleviate IBS in their refractory patients.

I enclose several papers detailing the efficacy of hypnosis in IBSI also include in full a paper by Dr. D Corydon Hammond PhD Professor Emeritus, Physical Medicine and Rehabilitation, University of Utah School of Medicine, Salt Lake City, Utah. This paper confirms the weight of scientific evidence that clearly indicates that a wide variety of medical and psychological issues can be improved by hypnosis. I have provided what I assume should be sufficient evidence.

The complaint alleges no evidence for any benefit from hypnosis for insomnia or for smoking so I include papers showing there is indeed ample evidence.

Hypnosis is not considered to be a specific form of therapy, rather it is instead a method of delivering therapy that allows almost any 'talking' therapy to be enhanced. If counselling works for anything it works better when the same advice is delivered via hypnosis

Further, in line with your suggestion, I have amended my brochure and attach the content of my new brochure which is currently being reprinted.

I am happy to answer any further questions you may have and await your decision.

The Advertiser provided copies of 95 papers to support the claims made in the advertisement. The range of evidence provided is detailed in the Decision.

RESPONSE TO THE APPEAL APPLICATION FROM THE COMPLAINAN, D RYAN

Like acupuncture, there are a lot of low-quality studies and systematic reviews which when cherry-picked can look like there are strong positive effects for hypnosis. There is little evidence from the Cochrane reviews that show it works effectively <https://www.cochrane.org/search/site/hypnosis?f%5B0%5D=bundle%3Areview>

I would trust Cochranes systematic reviews over reviews posted in hypnosis journals where they have something to prove. What reviews I quoted earlier still stand, so it seems, at best there is mixed evidence of effectiveness.

If hypnotherapy was effective, we would see it in NZ hospitals and we would see it regulated. A reduction in pain without anesthesia in a hospital would be a massive benefit. But the evidence for pain is poor and mixed: <https://sciencebasedmedicine.org/hypnotherapy-for-pain-and-other-conditions/>

National Health Services (NHS) says hypnotherapy is a type of complementary and alternative medicine. This alone shows hypnosis isn't effective to be classed as a medicine. <https://www.healthcareers.nhs.uk/explore-roles/wider-healthcare-team/roles-wider-healthcare-team/clinical-support-staff/complementary-and-alternative-medicine-cam>

They (NHS) also say:

"Hypnosis is widely promoted as a treatment for various long-term conditions and for breaking certain habits. This is despite the fact there's no strong evidence to support these uses.

However, hypnosis does seem to have an effect, though scientists disagree about how it works. Some experts see it as a relaxation technique that uses the power of suggestion or relies on the placebo effect."

"Some research studies have suggested that hypnotherapy may help with the symptoms of irritable bowel syndrome (IBS), such as abdominal pain.

These studies don't provide any strong evidence for its effectiveness, but the National Institute for Health and Care Excellence (NICE) has nevertheless recognised hypnotherapy as a possible treatment for IBS in those who haven't responded to other treatments."

"Hypnotherapy is widely promoted as a treatment for anxiety, although a systematic review of the effectiveness of hypnosis for the treatment of anxiety found there wasn't enough good evidence to support this."

"Bottom line

Overall, the evidence supporting the use of hypnotherapy as a treatment in these situations isn't strong enough to make any recommendations for clinical practice.

No firm conclusions can be made, because the studies are generally only small and of poor quality."

<http://www.nhsdirect.wales.nhs.uk/encyclopaedia/h/article/hypnotherapy/>

They also released a press release showing that there is no evidence for hypnosis to stop smoking. This position doesn't seem to have changed.

<http://www.prnewswire.co.uk/news-releases/no-place-for-hypnotherapy-and-acupuncture-in-an-evidence-based-nhs-stop-smoking-service-155187795.html>

Ministry of Health does not recommend it for smoking and they say "Hypnotherapy – there are insufficient data to recommend this intervention to help people stop smoking."

<https://www.health.govt.nz/system/files/documents/publications/background-recommendations-new-zealand-guidelines-for-helping-stop-smoking-mar15-v2.pdf>

While the The British Medical Association and the American Medical Association has supported hypnosis in the past, they no longer do (not one mention on their website).

https://en.wikipedia.org/wiki/History_of_hypnosis#American_Medical_Association,_1958

One could even question hypnosis itself. This Certified Clinical Hypnotherapist changed careers after seeing it as "the skill set of a con man.":

<http://skeptdic.com/skeptimedia/skeptimedia88.html>

The Amazing Kreskin began a stage career as a magician and hypnotist when he was 11. Now 59, insists: "Nobody on stage has ever been hypnotised in the history of the world" and has offered a \$100,000 reward.

<https://www.independent.co.uk/news/uk/hypnotism-does-not-exist-say-the-experts-1389968.html>

SUMMARY OF COMPLAINTS BOARD DECISION

The brochure advertisement for Medical Hypnosis by Dr Patrick McCarthy stated, in part: “What medical and psychological issues can be improved with hypnosis?” and provided a list which included several serious health conditions.

The Complainant said the advertisement contained misleading therapeutic claims that were not supported by evidence.

The Advertiser said the advertisement did not imply the conditions “will” be improved and provided a large list of website links to support the claims.

The Complaints Board said the onus was on the Advertiser to support the claims made in the advertisement including providing a sample of full relevant scientific studies and highlighting the relevant sections. The Complaints Board noted that most of the information supplied did not provide enough detail to demonstrate to the Complaints Board the accuracy of the claims made and for some claims no information was provided. Therefore, it ruled the advertisement was misleading.

The Complaints Board ruled the brochure advertisement was in breach of Principle 1, Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code and had not been prepared with the high standard of social responsibility required of advertisements making therapeutic claims.

The Complaints Board ruled the complaint was Upheld.

SUMMARY OF CHAIRPERSON’S RULING

The Complaints Board ruled on 12 June 2018 the complaint made by D Ryan about the brochure advertisement for Medical Hypnosis was Upheld.

The Advertiser appealed the Decision. The appeal application was considered by the Chairperson of the Appeal Board. She noted the Applicant stated they had misunderstood the process required to substantiate the claims made in the advertisement and had now complied and highlighted a range of studies to support the advertising content.

In light of this, the Chairperson ruled the appeal was Accepted under Ground (v) it is in the interests of natural justice that the matter be reheard. The matter was referred to the Appeal Board to be considered de novo.