

COMPLAINT NUMBER	19/436
COMPLAINANT	D Ryan, on behalf of The Society for Science Based Healthcare
ADVERTISER	Acupuncture Studio
ADVERTISEMENT	Acupuncture Studio website
DATE OF MEETING	10 March 2020
OUTCOME	Upheld in part Settled in part Not Upheld in part Advertisement to be changed

Summary of the Complaints Board Decision

The Complaints Board agreed a complaint about the website for Acupuncture Studio was upheld in part, settled in part and not upheld in part. The Board said the Advertiser had made therapeutic claims in the advertisement which had not been substantiated.

Description of Advertisement

The website advertisement for Acupuncture Studio made a number of claims about Chinese medicine being used to support Western cancer treatment.

Summary of the Complaint

The Complainant was concerned the advertisement made claims which could not be substantiated and were scaremongering about Western cancer medicine treatments.

Issues Raised:

- Social Responsibility
- Truthful Presentation

Summary of the Advertiser's Response

The Advertiser removed some of the claims made in the advertisement and amended others. The Advertiser also provided some substantiation for the claims which remained.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

THERAPEUTIC AND HEALTH ADVERTISING CODE

Principle 1: Social Responsibility: 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: Truthful Presentation: 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.

Rule 2 (a) Truthful presentation: Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. Substantiation should exist prior to a claim being made. For medicines and medical devices, therapeutic claims must be consistent with the approved indication(s) (for medicines) or the listed intended purpose (for medical devices).

Complaints Board Discussion

As in all cases, the Complaints Board said where a claim in an advertisement is challenged by a Complainant, the onus falls on the Advertiser to provide the substantiation for that claim.

The Complaints Board must consider the likely consumer takeout of an advertisement and decide whether the claims made in the advertisement have been adequately substantiated by the Advertiser. The Complaints Board is not an arbiter of scientific fact nor does it have jurisdiction to verify the efficacy of a method of treatment.

The Complaints Board said that Guideline 2(a) of the Therapeutic and Health Advertising Code states that claims made in an advertisement must be able to be substantiated. Only medicines with consent to distribute in New Zealand and medical devices can claim to have a therapeutic purpose in advertisements.

Consumer Takeout

The Complaints Board agreed the consumer takeout of the advertisement was Chinese medicine and complementary treatments can help with cancer.

Did the advertisement make any therapeutic claims?

The Complaints Board agreed the advertisement made six therapeutic claims. These claims are as follows:

Chinese medicine has a great deal to offer in the support of cancer...

1. It can be used effectively in conjunction with Western treatments to maximise effectiveness
2. It can be used to alleviate the side effects of chemotherapy and radiotherapy
3. It sheds light, from a TCM perspective, on the cause and prevention of cancer
4. It has an essential role to play in restoring the body's balance
5. It strengthens the immune system
6. Studies show that acupuncture can act against carcinogens (factors attributable to cancer development) through its ability to reduce stress and enhance immune function

Were the therapeutic claims able to be substantiated?

The Complaints Board considered each of the therapeutic claims in turn:

It can be used effectively in conjunction with Western treatments to maximise effectiveness

The Complaints Board noted the Advertiser had amended the website since receiving this complaint and this claim has been removed.

The Board agreed this part of the complaint was **Settled**.

It can be used to alleviate the side effects of chemotherapy and radiotherapy

The Complaints Board noted the Advertiser had provided sufficient substantiation to support this claim. The Board agreed this part of the complaint was **Not Upheld**.

It sheds light, from a TCM perspective, on the cause and prevention of cancer

The Complaints Board noted the Advertiser had amended the website since receiving this complaint and this claim has been removed.

The Board agreed this part of the complaint was **Settled**.

It has an essential role to play in restoring the body's balance

The Complaints Board noted the Advertiser had amended the website since receiving this complaint and this claim has been removed.

The Board agreed this part of the complaint was **Settled**.

It strengthens the immune system

The Complaints Board noted the Advertiser had provided some substantiation in support of this claim. The Board agreed the substantiation provided was not sufficient to support the claim being made. The Board agreed this part of the complaint was **Upheld**.

Studies show that acupuncture can act against carcinogens (factors attributable to cancer development) through its ability to reduce stress and enhance immune function

The Complaints Board said that while the Advertiser had provided some substantiation regarding this claim, the reference provided was not sufficient to support the therapeutic outcome claims made in the advertisement. The reference was a literature review commissioned by the Australian Acupuncture & Chinese Medicine Association and one of its authors was a co-author of three of the reviewed papers. The Board agreed this part of the complaint was **Upheld**.

In Summary

The Complaints Board agreed the advertisement made six therapeutic claims. Two of these claims were **Upheld**, three of these claims were **Settled** and one of these claims was **Not Upheld**.

Is the advertisement misleading?

The Complaints Board agreed the advertisement was misleading. This is because it made two therapeutic claims which were not adequately substantiated.

Is the advertisement socially responsible?

The Complaints Board said the advertisement was not socially responsible, taking into account context, medium, audience and product and was in breach of Principles 1 and 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

Outcome

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

Advertisement to be changed.

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 calendar days of receipt of this decision.

APPENDICES

- 1. Complaint**
 - 2. Response from Advertiser**
 - 3. Response from Media**
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Appendix 1

COMPLAINT FROM D RYAN

Acupuncture Studio is making claims about preventing cancer on their website that go against science and they are scaremongering about Western cancer medicine treatments. Acupuncture Studio is likely in breach of Therapeutic and Health Advertising Code, Principle 2, Rule 2 (b) Truthful presentation.

Their cancer page is making these claims:

"Chinese medicine has a great deal to offer in the support of cancer in three major ways:
 i) It can be used effectively in conjunction with Western treatments to maximise effectiveness
 ...
 iii) It sheds light, from a TCM perspective, on the cause and prevention of cancer and potentially helping to prevent recurrence"

<http://acupuncturestudio.co.nz/cancer/>

A 2018 cohort study of 1,901,815 patients shows that there is no prevention of cancer using alternative medicines (including Chinese medicines).

"We found that, among patients who were receiving at least 1 CCT modality, patients who chose CM were more likely to refuse at least 1 component of CCT and had a higher risk of death than patients who did not use CM. After adjusting for delays and refusal of CCT, CM was not associated with an increased risk of death"

<https://jamanetwork.com/journals/jamaoncology/fullarticle/2687972>

Their cancer page is scaremongering against Western medicine to try to push their customers to use Chinese medicine instead:

"However Western treatments of cancer are frequently harsh, toxic and have adverse side effects. These side-effects can be devastating and profoundly damaging to Qi, Blood and Essence: quite often, the "cure" literally seems to be worse than the disease itself. This is where Chinese medicine comes into its own: when used in conjunction with Western medicine, it has an essential role to play in restoring the body's balance, strengthening the immune system, reducing the side-effects of these more drastic treatment methods and enabling the courses of chemotherapy and radiotherapy to be completed."

<http://acupuncturestudio.co.nz/cancer/>

Appendix 2

RESPONSE FROM ADVERTISER, ACUPUNCTURE STUDIO

I have made the following changes below and have updated my website with this version (<http://acupuncturestudio.co.nz/cancer/>) . Please advise if any further changes are needed.

Date advertisement began	May 2011
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website	Website only
Is the advertisement still accessible – where and until when?	It has been changed on my website already to the updated text
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	N/a
Who is the product / brand target audience?	Acupuncture is a treatment that clients can self select.
Clear substantiation on claims that are challenged by the complainant.	References have been added and any claims with no references have been deleted

Original text on website:

"Chinese medicine has a great deal to offer in the support of cancer in three major ways: i) It can be used effectively in conjunction with Western treatments to maximise effectiveness ... iii) It sheds light, from a TCM perspective, on the cause and prevention of cancer and potentially helping to prevent recurrence"

"However Western treatments of cancer are frequently harsh, toxic and have adverse side-effects. These side-effects can be devastating and profoundly damaging to Qi, Blood and Essence: quite often, the "cure" literally seems to be worse than the disease itself. This is where Chinese medicine comes into its own: when used in conjunction with Western medicine, it has an essential role to play in restoring the body's balance, strengthening the immune system, reducing the side-effects of these more drastic treatment methods and enabling the courses of chemotherapy and radiotherapy to be completed."

The updated text:

Cancer is the second leading cause of death globally, and is responsible for an estimated 9.6 million deaths in 2018. Globally, about 1 in 6 deaths is due to cancer. (<https://www.who.int/news-room/fact-sheets/detail/cancer>)

Chinese medicine has been used as a complementary therapy to reduce nausea and vomiting and to reduce cancer related pain:

- i) Studies are ongoing but there is clinical evidence that Acupuncture can be used as a complementary therapy when nausea and vomiting associated with chemotherapy are not well controlled (Cassileth BR, et al. American College of Chest Physicians. Chest 2007;132(3 Suppl):340S–354S.

Other studies:

Ling Ma (2009) Acupuncture as a Complementary Therapy in Chemotherapy-Induced Nausea and Vomiting, Baylor University Medical Center Proceedings, 22:2, 138-141, DOI: 10.1080/08998280.2009.11928494

To link to this article: <https://doi.org/10.1080/08998280.2009.11928494>

National Institutes of Health. Acupuncture. Consensus Development Conference Statement, November 3–5, 1997. Available at <http://consensus.nih.gov>.

- ii) There is clinical evidence to indicate it can be used to reduce cancer related pain (<https://www.evidencebasedacupuncture.org/acupuncture-cancer-pain/>)

Pain in cancer patients and survivors is very common and can be caused by the cancer itself invading organs, soft tissues (nerves and blood vessels) or bones, or the treatments for cancer, which include chemotherapy, radiotherapy, hormones and surgery. (<https://www.evidencebasedacupuncture.org/acupuncture-cancer-pain/>)

Moderate to severe pain is experienced by 40% of individuals with early or intermediate stage cancer and 90% of individuals with advanced cancer. Up to 70% of all patients with cancer pain do not receive adequate pain relief, diminishing their quality of life in terms of both physical and psychological well-being. (Paley, C.A., Johnson, M.I., Tashani, O.A. and Bagnall, A.M., 2011. Acupuncture for cancer pain in adults. *Cochrane Database Syst Rev*, 1(10).)

Studies show that acupuncture can act against carcinogens (factors attributable to cancer development) through its ability to reduce stress and enhance immune function. (Acupuncture Evidence Project(McDonald J, and Janz S 2017)

Full references:

Cassileth BR, Deng GE, Gomez JE, Johnstone PA, Kumar N, Vickers AJ; American College of Chest Physicians. Complementary therapies and integrative oncology in lung cancer: ACCP evidence-based clinical practice guidelines (2nd edition). *Chest* 2007;132(3 Suppl):340S–354S.