

<b>COMPLAINT NUMBER</b>	19/446
<b>COMPLAINT ON BEHALF OF</b>	The Society for Science Based Healthcare
<b>ADVERTISER</b>	Flavell Homeopathy
<b>ADVERTISEMENT</b>	Flavell Homeopathy website
<b>DATE OF MEETING</b>	24 March 2020
<b>OUTCOME</b>	Settled in part, Not Upheld in part Advertisement amended

### **Summary of the Complaints Board Decision**

The Complaints Board ruled to settle in part and not uphold in part a complaint about the website for Flavell Homeopathy.

#### **Description of Advertisement**

The website advertisement for Flavell Homeopathy said homeopathic products "have been working effectively in clinical practice...homeopathic remedies are highly effective... a system of medicine ... that is...extremely effective".

The website also contained a link to an article by Rachael Gleeson "Vaccination – Making an Informed Decision". This article contains the following statements: "...Since vaccination was introduced, there has been increasing evidence outlining the lack of effectiveness of vaccinating children, while at the same time highlighting the possible dangerous consequences of doing so...", "...Most Homeopaths believe that germs are not enemies of your body..." and "...HP preparations copy the process found in nature, having a similar effect by changing and lowering the susceptibility to infectious diseases..." .

#### **Summary of the Complaint**

The Complainant was concerned the advertisement made therapeutic claims which could not be substantiated.

#### **Issues Raised:**

- Social Responsibility
- Safety and Effectiveness
- Truthful Presentation

#### **Summary of the Advertiser's Response**

The Advertiser amended some parts of the website and removed others. The Advertiser removed the statements about homeopathic remedies being highly effective. The Advertiser removed the excerpts from the Rachael Gleeson article but retained the link to the full article.

## 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.

**Rule 1 (b) Safety and effectiveness:** Advertisements shall not contain any claim, statement or implication that the products, devices or services advertised:

- are safe or that their use cannot cause harm or that they have no side effects or risks.
- are effective in all cases
- are infallible, unfailing, magical, miraculous, or that it is a certain, guaranteed or sure cure
- are likely to lead persons to believe that;
  - they are suffering from a serious ailment, or
  - harmful consequences may result from the therapeutic or health product, device or service not being used.

**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).

Under the [Therapeutic and Health Advertising Code](#) the definition of a Therapeutic Purpose is:

- (a) preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for, a disease, ailment, defect, or injury; or
- (b) influencing, inhibiting, or modifying a physiological process; or
- (c) testing the susceptibility of persons to a disease or ailment; or
- (d) influencing, controlling, or preventing conception; or
- (e) testing for pregnancy; or
- (f) investigating, replacing, or modifying parts of the human anatomy.

Only medicines with consent to distribute in New Zealand and medical devices can claim to have a therapeutic purpose in advertisements. The Therapeutic and Health Advertising Code states that a product can be a medicine in three ways. That is; it is, or contains, a

scheduled ingredient or, a therapeutic claim is made on the label or in an advertisement or, it is a product with consent to distribute.

The minimum substantiation expected to support a therapeutic claim made about a medicine in an advertisement would be the product Data Sheet, Consumer Medicine Information (CMI) and/or the approved label. This may also be accompanied by supporting research.

### **Complaints Board Discussion**

The Complaints Board noted its role was to consider the advertisement from the perspective of its likely audience and decide whether the claims made in the advertisement were able to be substantiated. The Complaints Board confirmed the Secretariat had provided information to the Advertiser on the complaints process and how to substantiate claims in advertising. In particular the Secretariat had provided the [Guidance Note on Advertising Health Services](#).

The Complaints Board said the onus falls on the Advertiser to support the claims made in their advertisement and substantiation should exist prior to any claims being made.

The Complaints Board then considered each aspect of the complaint in turn, firstly the statements that homeopathic remedies “have been working effectively in clinical practice...homeopathic remedies are highly effective... a system of medicine ... that is...extremely effective” and secondly the excerpts from an article by Rachael Gleeson “Vaccination – Making an Informed Decision”, as well as a link to the full article:

**Homeopathic remedies “have been working effectively in clinical practice...homeopathic remedies are highly effective... a system of medicine ... that is...extremely effective”**

#### *Consumer Takeout*

The Complaints Board agreed the consumer takeout of the above statements is that homeopathic remedies are highly effective and homeopathy will work.

#### *Is the advertisement misleading?*

The Complaints Board noted the Advertiser had removed these statements from the website since receiving this complaint. The Complaints Board agreed this part of the complaint was Settled.

The Complaints Board agreed the statements do make a therapeutic claim and the Therapeutic and Health Advertising Code did apply. The Complaints Board said the therapeutic claim made in the statements had not been substantiated. The Complaints Board said the Advertiser had not provided any clinical studies that have been published in peer reviewed journals to support the claim that homeopathic remedies are highly effective.

#### **Link to Rachael Gleeson article: “Vaccination – Making an Informed Decision”**

This article contains the following statements: “...Since vaccination was introduced, there has been increasing evidence outlining the lack of effectiveness of vaccinating children, while at the same time highlighting the possible dangerous consequences of doing so...”, “...Most Homeopaths believe that germs are not enemies of your body...” and “...HP preparations copy the process found in nature, having a similar effect by changing and lowering the susceptibility to infectious diseases...”.

The Complaints Board noted the article referred to in the complaint was written by Rachael Gleeson, not Dr Isaac Golden.

*Consumer Takeout*

The Complaints Board agreed the consumer takeout of this article by Rachael Gleeson was the decision to vaccinate their children relies on parental choice. The article encourages parents to be well-informed and provides information about conventional vaccination as well as some alternatives.

*Is the advertisement misleading?*

The Complaints Board said the inclusion of the link to the Rachael Gleeson article was not misleading.

The Complaints Board noted the Advertiser had amended the website since receiving this complaint. The Advertiser had removed the excerpts from the Rachael Gleeson article but had retained the link to the full article. The Advertiser had also added a new disclaimer on the page headed "Vaccination/Immunisation/Homeoprophylaxis". Any visitor to this webpage is now required to click on this disclaimer in order to access further information about this topic. This page has been re-written and now includes the following statement: "This web page is intended to be neither pro nor against conventional or alternative treatments."

The Complaints Board noted the Advertiser encourages the consumer to do their own research and to make their own decision about whether to vaccinate their child. The Complaints Board said the Advertiser had provided some balance by providing links to information about conventional vaccination as well as homeopathic alternatives. The information provided includes a link to the Ministry of Health website.

The Complaints Board said the placement of the advertisement was relevant. Consumers can choose whether to visit this homeopathy website and read its detailed content and links to associated articles. In contrast to this, consumers have less choice with regard to seeing messaging in paid digital advertising, on billboards or on television, .

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

*Does the advertisement make any claims that homeopathy is safe and effective in all cases?*  
 The Complaints Board agreed the article by Rachael Gleeson did not claim that homeopathy is safe and effective in all cases. The Complaints Board ruled the advertisement was not in breach of Rule 1(b) of the Therapeutic and Health Advertising Code. The Complaints Board agreed this part of the complaint was Not Upheld.

*Does the advertisement observe a high standard of social responsibility?*

The Complaints Board was unanimous in its view that parts of the advertisement were likely to mislead consumers and had not been prepared with the requisite sense of social responsibility. The Complaints Board ruled the advertisement was in breach of Principle 1, Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

The Complaints Board took into account the Advertiser's action in amending the advertisement, in response to this complaint. In light of this self-regulatory action by the Advertiser, the Complaints Board ruled the complaint was Settled in part and Not Upheld in part.

**Outcome**

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

Advertisement amended

No further action required.

**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](http://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**
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### Appendix 1

#### COMPLAINT FROM THE SOCIETY FOR SCIENCE BASED HEALTHCARE

Donna Flavell has run the Flavell Homeopathic & Healing Centre in Northland since 1994, apparently on her own. In 1998 she registered as a homeopath. Since she has been "mastering many modes of healing...reflexology...Past Life Regression Therapy..." In the website section titled About Homeopathy Flavell claims homeopathic products... "have been working effectively in clinical practice... homeopathic remedies are highly effective.... a system of medicine ...that is...extremely effective." These are all strong claims for efficacy of homeopathy. Given the constant failure of homeopathy in properly conducted clinical trials, this is far from proven.

The website also claims that a homeopathic "vaccine" works. This is irresponsible in light of the poor rates of vaccinations in New Zealand, and such misinformation could contribute to some of the deaths we have seen from diseases like measles in unvaccinated individuals. Flavell says, "I am happy to discuss the Homeopathic prophylaxis program from Dr Isaac Golden and can supply you with the Programme and Homeopathic Remedy kit should you choose to follow this path." The website contains this statement from Golden, "Since vaccination was introduced, there has been increasing evidence outlining the lack of effectiveness of vaccinating children, while at the same time highlighting the possible dangerous consequences of doing so... Most Homeopaths believe that germs are not enemies of your body." Homeopathic "nosodes" are said here to have the effect of "lowering the susceptibility to infectious diseases:..."

These claims are also extremely unlikely and unsupported by evidence and so are socially irresponsible. The whole section is rife with disinformation and it might be best for Flavell to remove the entire article.

The claims amount to multiple breaches of principle 2 of the therapeutic code in that she is unlikely to be able to produce evidence that the homeopathic products are efficacious. There are also multiple breaches of principle 1, as to describe normal vaccinations as dangerous and ineffective is grossly irresponsible and unconscionable.

**DOES HOMEOPATHY WORK?** Medical science has consistently found homeopathy wanting as a medicine. In 2015 the Australian National Health and Medical Research Council reviewed 176 studies. They concluded, "Based on all the evidence considered, there were no health conditions for which there was reliable evidence that homeopathy was effective. No good-quality, welldesigned studies with enough participants for a meaningful result reported either that homeopathy caused greater health improvements than placebo, or caused health improvements equal to those of another treatment." In 2017, the UK's Specialist Pharmacy Service updated the above review, searching for systematic reviews published since the review. It concluded: "the quality of the trials included within most of the reviews are variable thus this new data does not change the conclusion of the NHMRC review conducted in 2015". The Chief Executive of England's National Health Service was reported recently as describing homeopathy as "...bogus treatments which at best do nothing, and at worst can be potentially dangerous. [homeopathy is] "no replacement for rigorously tried and tested medical

treatments, delivered or prescribed by properly-qualified professionals". (BBC Oct 29 2019) Science managed to discover then prove that antibiotics, stem cell therapies, vaccines, and many more treatments work. There is usually a good theoretical basis then double-blind trials. For an understanding of why the trials are so important, and why our intuitions usually fool us in medicine, see the Winchester Hospital Health Library online essay titled, Why does This Database Depend on Double-blind Studies? Unfortunately, even when a drug has a small effect, this effect is often exaggerated, because trials that show no effect have not been published. For more on that just google "AllTrials".

## **Appendix 2**

### **RESPONSE FROM ADVERTISER, FLAVELL HOMEOPATHY**

#### **Complaint:**

Donna Flavell has run the Flavell Homeopathic & Healing Centre in Northland since 1994, apparently on her own. In 1998 she registered as a homeopath. Since she has been "mastering many modes of healing...reflexology...Past Life Regression Therapy..."

#### **Response:**

*I am not sure what is offensive about this statement. It is who I am and what I do.*

#### **Complaint:**

In the website section titled About Homeopathy Flavell claims homeopathic products... "have been working effectively in clinical practice... homeopathic remedies are highly effective.... a system of medicine ...that is...extremely effective." These are all strong claims for efficacy of homeopathy. Given the constant failure of homeopathy in properly conducted clinical trials, this is far from proven.

#### **Response:**

*For the sake of compliance I have either rewritten or deleted all points*

#### **Complaint:**

The website also claims that a homeopathic "vaccine" works. This is irresponsible in light of the poor rates of vaccinations in New Zealand, and such misinformation could contribute to some of the deaths we have seen from diseases like measles in unvaccinated individuals.

#### **Response:**

*This is not a claim being made by my website. It clearly states that this information is an excerpt from ... "an article by Rachel Gleeson" ... with a link to her full article.*

*For the sake of compliance I have just provided a link to her article and deleted the excerpts from it apart from the general topic headings that she discusses.*

#### **Complaint:**

Flavell says, "I am happy to discuss the Homeopathic prophylaxis program from Dr Isaac Golden and can supply you with the Programme and Homeopathic Remedy kit should you choose to follow this path."

#### **Response:**

*I am not sure what is offensive about this statement. It is what I do.*

*Within the full context of the paragraph it states:*

*"...Again, it cannot be stressed enough that you must make an informed decision about all of the options available to you and choose the method/s that you feel most comfortable with and feel is best for your child.*

*As a Homeopath I will honour the informed decision you have made for you and your child and support you homoeopathically through the following process. I am happy to discuss the Homeopathic prophylaxis program from Dr Isaac Golden and can supply you with the Programme and Homeopathic Remedy kit should you choose to follow this path...."*

**Complaint:**

The website contains this statement from Golden, "Since vaccination was introduced, there has been increasing evidence outlining the lack of effectiveness of vaccinating children, while at the same time highlighting the possible dangerous consequences of doing so... Most Homeopaths believe that germs are not enemies of your body." Homeopathic "nosodes" are said here to have the effect of "lowering the susceptibility to infectious diseases:..."

These claims are also extremely unlikely and unsupported by evidence and so are socially irresponsible. The whole section is rife with disinformation and it might be best for Flavell to remove the entire article.

**Response:**

*Again, It clearly states that this information is an excerpt from ...an article by Rachel Gleeson" ... with a link to her full article.*

*For the sake of compliance I have just provided a link to her article and deleted the excerpts from it apart from the general topic headings that she discusses.*

The claims amount to multiple breaches of principle 2 of the therapeutic code in that she is unlikely to be able to produce evidence that the homeopathic products are efficacious. There are also multiple breaches of principle 1, as to describe normal vaccinations as dangerous and ineffective is grossly irresponsible and unconscionable.

**Response:**

*All points covered as above*

**Complaint:**

DOES HOMEOPATHY WORK? Medical science has consistently found homeopathy wanting as a medicine. In 2015 the Australian National Health and Medical Research Council reviewed 176 studies. They concluded, "Based on all the evidence considered, there were no health conditions for which there was reliable evidence that homeopathy was effective. No good-quality, well-designed studies with enough participants for a meaningful result reported either that homeopathy caused greater health improvements than placebo, or caused health improvements equal to those of another treatment." In 2017, the UK's Specialist Pharmacy Service updated the above review, searching for systematic reviews published since the review. It concluded: "the quality of the trials included within most of the reviews are variable thus this new data does not change the conclusion of the NHMRC review conducted in 2015". The Chief Executive of England's National Health Service was reported recently as describing homeopathy as "...bogus treatments which at best do nothing, and at worst can be potentially dangerous. [homeopathy is] "no replacement for rigorously tried and tested medical treatments, delivered or prescribed by properly-qualified professionals". (BBC Oct 29 2019) Science managed to discover then prove that antibiotics, stem cell therapies, vaccines, and many more treatments work. There is usually a good theoretical basis then double-blind trials. For an understanding of why the trials are so important, and why our intuitions usually fool us in medicine, see the Winchester Hospital Health Library online essay titled, Why does This Database Depend on Double-blind Studies? Unfortunately, even when a drug has a small

effect, this effect is often exaggerated, because trials that show no effect have not been published. For more on that just google "AllTrials".

*Response:*

*I am not sure if this a complaint or merely an opinion of J Harper? This does not come from my website, therefore, have nothing to remedy or address, and I have no formal response to it.*

In addition:

*When creating my website I had a Lawyer in consultation who subsequently drew up 2 disclaimers to cover any possible issues that may arise from any content. On the Website page discussing Vaccination and Homeoprophylaxis is a clear Disclaimer as part of the page, which also links to the general website disclaimer.*

*Both are copied below and if they had been read by the complainant, it may (or may not) have eliminated the necessity of this complaints process in the first place:*

#### **Disclaimer**

*Just as conventional vaccination programmes cannot guarantee the prevention of childhood illness or disease, we do not claim or guarantee that the completion of Dr Isaac Golden's Homeopathic Prophylaxis immunisation programme and any accompanying homeopathic remedies ("Dr Golden's Programme") will prevent your child from acquiring a childhood illness or disease.*

*The information provided by Donna Flavell and Flavell Homeopathic & Healing Centre (together "Flavell Homeopathy") via our website ([www.flavellhomeopathy.co.nz](http://www.flavellhomeopathy.co.nz)), emails and consultations is provided without any representations, warranties or guarantees, express or implied. We make no representations or warranties in supplying you with Dr Golden's Programme. By placing an order for Dr Golden's Programme you agree to the terms of the disclaimer [posted on our website](#) and you acknowledge and agree that you have considered orthodox medical alternatives and have made an informed decision in deciding to use Dr Golden's Programme and you agree to indemnify Flavell Homeopathy in respect of all claims relating to the supply of Dr Golden's Programme.*

#### **Website Disclaimer**

By using this website and / or Donna Flavell and Flavell Homeopathic and Healing Centre's (together referred to as "Flavell Homeopathy") homeopathic remedies, essences, programs and / or consultation services, you acknowledge and agree as follows:

1. The material and content contained on the Flavell Homeopathy website ([www.flavellhomeopathy.co.nz](http://www.flavellhomeopathy.co.nz)) is provided 'as is' for general information only and is not intended to be a substitute for professional medical advice, diagnosis or treatment for any health or medical problem.
2. The material in this website could include technical inaccuracies or typographical errors.
3. You assume all responsibility and risk for the use of this website and the Internet generally.
4. Donna Flavell is a registered professional homeopath.
5. Flavell Homeopathy (including all its employees, contractors and agents) are not and do not claim to be registered doctors, nurses or pharmacists.
6. Homeopathic remedies are not a substitute for medical advice or treatment. You should always initially consult your doctor for any health or medical problem.

7. Flavell Homeopathic strongly recommends that you consult a doctor, pharmacist or other health care professional prior to commencing any new homeopathic remedy or program.
8. Flavell Homeopathy makes no warranties, representations or guarantees of any kind, and to the maximum extent permitted by law expressly disclaims any and all warranties of any kind or nature, whether express, implied, or statutory regarding any goods or services provided by or through Flavell Homeopathy, including but not limited to:
  1. the accuracy, completeness, correctness, timeliness or usefulness of any information, opinions, advice, results, assessments, programs or other information / material provided by or through Flavell Homeopathy;
  2. the reliability, non-infringement, merchantability or fitness for a particular purpose of any goods or services provided by or through Flavell Homeopathy; or
  3. the diagnosis, treatment, cure or prevention of any disease or condition.
9. You release, indemnify, defend, save and hold harmless Flavell Homeopathy, its affiliates, and its and their respective officers, directors, employees, contractors and agents from all claims arising out of or related to your access or your use of, or your inability to use, the Flavell Homeopathy any goods and services provided to you by or through Flavell Homeopathy. In no event will Flavell Homeopathy or its affiliates, and its and their officers, directors, employees, contractors and agents be liable to you, anyone claiming by through or under you, or anyone else for (i) any decision or action taken, or not taken, in reliance upon the information, advice or assessments contained or provided by or through Flavell Homeopathy and the website, (ii) claims arising out of or related to any goods and services provided to you by or through Flavell Homeopathy, (iii) your use of any goods and services provided to you by or through Flavell Homeopathy, or (v) any incidental, indirect, special, consequential or punitive damages, including but not limited to, possible health side effects, loss of revenues, profits or savings, even if Flavell Homeopathy knew or should have known of the possibility of such damages, claims, demands or actions. The foregoing release, indemnity, and limitation of liability shall be as broad and inclusive as is permitted by applicable laws.
10. You have considered orthodox medical alternatives and have made an informed decision in deciding to use Flavell Homeopathy's homeopathic remedies, essences, programs and / or consultation services.
11. If any part of this Disclaimer is unlawful, void, or unenforceable, that part will be deemed severable and will not affect the validity and enforceability of any remaining provisions.
12. This disclaimer and your use and access to goods and services provided by or through Flavell Homeopathy are governed by the laws of New Zealand.

Here is the unpublished link to my new website. It is not yet live, and minor changes are still being made.

<https://kelly4803.wixsite.com/flavell-homeopathy>

Please let me know the next stage in the process, or if this response is sufficient and I can make the website live.