

COMPLAINT NUMBER	16/171
COMPLAINANT	D. Ryan
ADVERTISER	Newtown Acupuncture Centre
ADVERTISEMENT	Newtown Acupuncture Centre Website
DATE OF MEETING	28 June 2016
OUTCOME	Upheld, in part

SUMMARY

The website advertisement for Newtown Acupuncture (www.newtownacupuncture.co.nz) promoted the benefits of acupuncture in the treatment of injuries, painful conditions, adverse effects of cancer treatment and other conditions. The advertisement included lists of various conditions.

The Complainant said the claims relating to the treatment of injuries, painful conditions, adverse effects of cancer treatment and other conditions were not factual or able to be proved.

The Complaints Board said the the Advertiser had substantiated the low level claims made in relation to pain and inflammation associated with various conditions. However, the Complaints Board said the word “treat” signaled a strong therapeutic effect and when used in combination with some of the lists of conditions in the advertisement before it, it gave them impression acupuncture could cure the conditions identified. The Complaints Board was particularly concerned about references IBS and arthritis and, as such, ruled the advertisement was likely to mislead consumers.

The Complaints Board ruled the complaint was Upheld, in part.

[Advertisement to be removed]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Principles 2 and 3 and Guideline 3(a) Therapeutic Services Advertising Code. This required the Complaints Board to consider whether the advertisement, by implication, omission,

ambiguity or exaggerated claim was likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear. The Complaints Board were required to consider whether the content was factual and able to be proved and if the advertisement observed a high standard of social responsibility, particularly as consumers rely on therapeutic services for their health and well-being.

The Complaints Board ruled the complaint was Upheld, in part.

The Complaints Board noted the concerns of the Complainant the advertisement made unsubstantiated therapeutic claims about what acupuncture could treat and its benefits. The Complainant said the claims relating to the treatment of injuries, painful conditions, adverse effects of cancer treatment and other conditions were not factual or able to be proved.

The Complaints Board noted the response from the Advertiser, which said, in part: “Much of the copy speaks from our experience as practitioners. Examples include:

“We consider acupuncture to be ideal for treating injuries.”

“Our experience is that acupuncture helps speed up and improve recovery.”

“We find that acupuncture is a powerful medium for restoring balance and improving health.”

...These are subjective statements and reflect our experience. As such they cannot be proved (one way or the other) and are not misleading.”

The Complaints Board then noted the Advertiser had addressed the various concerns raised by the Complainant and the Complaints Board considered these, in turn.

Pain and inflammation related to injury, painful conditions and cancer treatment

In relation to the Complainant’s concern the use of acupuncture for relief of pain and inflammation was misleading, the Advertiser said, in part: “acupuncture can be helpful for inflammation, pain and swelling has been widely researched and there is plenty written on the subject.”

The Complaints Board said the claims relating to pain management associated with injuries, conditions and the side effects of cancer treatment were unlikely to mislead consumer. The Complaints Board noted the substantiation supplied to support the claims that acupuncture may be effective in pain management and noted the advertisement used wording to ensure the claims were not absolute, such as, “Acupuncture *can often be* very effective for the treatment of pain” and “Acupuncture *may offer you relief* from adverse effects [of cancer treatment]”.

The Complaints Board also took account the Advertiser gave further context by prefixing the advertisement with statements which relate to the Advertiser’s view about acupuncture, such as, “*We consider* acupuncture to be ideal for treating injuries”.

The Complaints Board said the Advertiser had substantiated the claims made in relation to pain and inflammation associated with various conditions. The Complaints Board ruled this aspect of the complaint was unlikely to mislead consumers. It said this part of the advertisement had been prepared with a high standard of social responsibility to consumers and society and ruled the claims made in relation to pain were not in breach of Principles 2, 3 or Guideline 3(a) of Therapeutic Services Advertising Code.

Conditions we “treat” include

The Complaints Board noted the Complainant’s concerns about the lists of conditions in the advertisement.

The Complaints Board noted the Advertiser said, in part, “the website lists conditions that we treat. These lists are simply statements of fact. We do treat these conditions - many of them very regularly. The copy on the website does not claim that we cure, or even necessarily help these conditions. Just that we treat them.”

The Complaints Board noted an earlier Complaints Board Decision (14/646) about a similar advertisement for acupuncture where it said, in part “the use of the word ‘treat’ in the advertisement was a strong therapeutic claim and implied a cure. Further, the Complaints Board noted the Advertiser provided no substantiation to the Complaints Board to support the efficacy of acupuncture in the treatment of the varied list of conditions indicated.”

The Complaints Board said, the use of the word “treat” signalled a strong therapeutic effect and caution needed to be exercised in relation to its use. The Complaints Board said “treat” used in combination with the lists of conditions in the advertisement before it gave the impression acupuncture could cure the conditions listed. However, the Complaints Board noted where the substantiation provided only supported the alleviation of associated pain and inflammation in most of those conditions.

The Complaints Board also raised concerns about the list of conditions under “Painful conditions we treat include” and was of the view that while the Advertiser had substantiated that acupuncture could treat associated pain, it was not supported as a treatment for the conditions identified in that list. The Complaints Board said it could have been made clearer in the advertisement acupuncture could help with the discomfort associated with IBS and arthritis for example, and those listed under “Painful conditions we treat include” rather than the treatment of the conditions themselves.

The Complaints Board said listing “conditions we treat” was not ideal and the focus of the advertising should be improving wellbeing and pain management for consumers for which it provided substantiation of.

The Complaints Board ruled this aspect of the complaint was likely to mislead consumers and had not been prepared with a high standard of social responsibility to consumers and society. As such, the Complaints Board ruled the advertisement was in breach of Principles 2, 3 or Guideline 3(a) of Therapeutic Services Advertising Code.

Accordingly, the Complaints Board ruled to Uphold the complaint, in part.

Finally, the Complaints Board noted that the Therapeutic Advertising Pre-Vetting Service (TAPS) is a user-pays service available to all advertisers making therapeutic claims to help minimise the risk of breaching the ASA Codes of Practice as well as other industry codes and relevant legislation. Information about TAPS is available at www.anza.co.nz. It recommended that advertisers of therapeutic products use the TAPS process to help with code compliance.

DESCRIPTION OF ADVERTISEMENT

The website advertisement for Newtown Acupuncture (www.newtownacupuncture.co.nz) promoted the benefits of acupuncture in the treatment of injuries, painful conditions, adverse effects of cancer treatment and other conditions. The advertisement included lists of various conditions.

COMPLAINT FROM D. RYAN

Newtown Acupuncture Centre breaks Therapeutic Services Advertising Code Principle 3 a) - therapeutic claims should be factual and able to be proved.

Under it's "learn more" sections (<http://www.newtownacupuncture.co.nz>):

"We consider acupuncture to be ideal for treating injuries. It can be helpful for inflammation, pain, and swelling. Our experience is that acupuncture helps speed up and improve recovery.

Examples of injuries we treat include:

Rotator cuff injuries
 Low back pain
 Prolapsed disc
 Sprains and strains
 Overuse injuries
 Tennis elbow
 Knee injuries
 Ankle sprain
 Post surgical pain"

"Injured? Get up and running again"

"In pain? Maybe you don't have to be"

"Acupuncture can often be very effective for the treatment of pain from a wide variety of causes. In many cases it will be possible to address the pain and its underlying cause as well.

Painful conditions we treat include:

Arthritis
 Gout
 Headaches
 Neck pain
 Shoulder pain
 Back pain
 Sinusitis
 Menstrual pain
 Chronic pain"

"Cancer treatment? Acupuncture may offer you relief from adverse effects"

"Cancer treatment is often accompanied by a wide range of adverse effects that reduce quality of life. Stress and anxiety related to the life changes taking place are also important. Acupuncture is widely used alongside other treatments.

Symptoms that we treat include:

Pain

Dry mouth
 Lymphoedema
 Nausea
 Hot flushes
 Anxiety and depression
 Loss of appetite
 Fatigue
 Constipation"

"Whether the cause of illness is poor lifestyle, stress, diet, illness, or simply ageing the secret to improving health is to assist the body to regain balance. We find that acupuncture is a powerful medium for restoring balance and improving health.

Conditions we treat include:

Migraines
 Menopause symptoms
 Menstrual problems
 Bladder problems
 Reflux
 Anxiety and depression
 Loss of appetite
 Fatigue
 Constipation
 Hayfever
 Sinus problems
 IBS"

"We are particularly focussed on the treatment of injuries and pain, including arthritis and cancer related pain, because pain has such a huge impact on people's lives and acupuncture can be very effective, where other solutions may not be."

There is a lot of research on acupuncture and it is easy to cherry pick a review. Sticking with the best evidence - systematic reviews of reviews show no evidence of it being consistently effective for anything. The results for acupuncture are variable and inconsistent, even for single conditions and it lacks a plausible mechanism. Links to the full studies are included.
 Acupuncture: Does it alleviate pain and are there serious risks? A review of reviews

"In conclusion, numerous systematic reviews have generated little truly convincing evidence that acupuncture is effective in reducing pain. Serious adverse effects continue to be reported. Numerous reviews have produced little convincing evidence that acupuncture is effective in reducing pain. Serious adverse events, including deaths, continue to be reported."

<http://www.dscience.net/Ernst-2011-AcupunctAlleviatePainRiskReview.pdf>
<http://www.ncbi.nlm.nih.gov/pubmed/21440191>

Systematic review of systematic reviews of acupuncture published 1996-2005.

"Six reviews with more than 200 patients in randomised, double blind studies had good evidence of no benefit. Systematic reviews of acupuncture have overstated effectiveness by including studies likely to be biased. They provide no robust evidence that acupuncture works for any indication."

<http://www.clinmed.rcpjournals.org/content/6/4/381.long>

<http://www.ncbi.nlm.nih.gov/pubmed/16956145>

A systematic review of reviews of systematic reviews of acupuncture

“Only two reviews of reviews allowed definitive conclusions to be drawn; that is, there is insufficient evidence to make positive recommendations. Further reviews, or reviews of reviews, are unlikely to break this impasse, owing to the combination of new and existing reviews or primary studies upon which they can draw. We therefore recommend that high-quality RCTs should be conducted in the areas where most promise has already been shown.”

<http://sci-hub.cc/10.1111/fct.12004>

<http://onlinelibrary.wiley.com/doi/10.1111/fct.12004/abstract>

Acupuncture for depression?: A systematic review of systematic reviews.

“In conclusion, the effectiveness of acupuncture as a treatment of depression remains unproven and the authors' findings are consistent with acupuncture effects in depression being indistinguishable from placebo effects.”

<http://sci-hub.cc/10.1177/0163278710386109>

<http://www.ncbi.nlm.nih.gov/pubmed/21138913>

Systematic reviews of complementary therapies - an annotated bibliography. Part 1: Acupuncture

“A large number of systematic reviews on acupuncture exists. What is most obvious from these reviews is the need for (the funding of) well-designed, larger clinical trials.”

<http://bmccomplementalternmed.biomedcentral.com/articles/10.1186/1472-6882-1-3>

<http://www.ncbi.nlm.nih.gov/pubmed/11513758>

The best-controlled studies show a clear pattern, with acupuncture the outcome does not depend on needle location or even needle insertion. Acupuncture is no better than a placebo or lacks clinical relevance and cannot be clearly distinguished from bias.

THERAPEUTIC SERVICES ADVERTISING CODE

Principle 2 - Advertisements should observe a high standard of social responsibility particularly as consumers rely on therapeutic services for their health and well-being.

Principle 3 - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guideline 3(a) - Therapeutic claims should be factual and able to be proved.

RESPONSE FROM ADVERTISER, NEWTOWN ACUPUNCTURE CENTRE

I am writing in response to complaint 16/171, lodged by the Complainant concerning the content on the website of the Newtown Acupuncture Centre, of which I am the Managing Director.¹

As background, the Newtown Acupuncture Centre is an eight bed clinic, with three full time practitioners. All three practitioners have a four year Bachelor of Health Science specialising in Acupuncture and are registered with Acupuncture New Zealand. One of our practitioners is also a Registered Nurse and has a Postgraduate Certificate in Mental Health.

Our focus is making acupuncture and Traditional Chinese Medicine as accessible as possible, charging as little as possible, including offering special rates for low income patients. We are highly motivated to improve the quality of life of Wellington residents. Given our location across from Wellington Hospital, we treat large numbers of hospital patients and staff, from nurses to consultant doctors. We receive referrals from other medical practitioners, including local GPs.

In your letter you say that the relevant section in the Advertising Codes of Practice that is in question appears to be:

Therapeutic Services Advertising Code - Guideline 3 (a), Principle 2, and Principle 3

These clauses from the Code are as follows:

3 (a). Therapeutic claims should be factual and able to be proved.

Principle 2 – Advertisements should observe a high standard of social responsibility particularly as consumers rely on therapeutic services for their health and well-being.

Principle 3 – Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

In practice, it seems clear that if the marketing material on the Newtown Acupuncture Centre's website can be shown to have abided by Guideline 3 (a), then the requirements of Principles 2 and 3 will also be addressed. For that reason, I will now focus on the verity of the claims made on the Newtown Acupuncture Centre website.

Much of the copy speaks from our experience as practitioners. Examples include:

***"We consider** acupuncture to be ideal for treating injuries."*

***"Our experience** is that acupuncture helps speed up and improve recovery."*

***"We find that** acupuncture is a powerful medium for restoring balance and improving health."*

[emphases added]

These are subjective statements and reflect our experience. As such they cannot be proved (one way or the other) and are not misleading.

Other statements could be seen as claims, but are qualified, and we believe reasonable considering available literature. Examples of these include:

"It [acupuncture] can be helpful for inflammation, pain, and swelling."

“Acupuncture can often be very effective for the treatment of pain from a wide variety of causes.”

“Acupuncture is widely used alongside other [cancer] treatments.”

These need to be addressed one at a time.

That acupuncture can be helpful for inflammation, pain and swelling has been widely researched and there is plenty written on the subject. One review article,² published in 2013 in the *International review of neurobiology*, discusses acupuncture's effect on neuroendocrine regulation and sums up saying that acupuncture:

“... can induce the releases [sic] of hormones, neurotransmitters, and neuromodulators in both central and peripheral nervous systems. Cumulative evidence suggests that acupuncture-induced neuroendocrine modulation affects many conditions, like analgesia, reproduction-related symptoms, drug addiction, and psychological disorders.”²

Another review article,³ published in 2012 in the *Journal of Acupuncture and Meridian Studies* investigates the neurophysiological basis of acupuncture's effect on pain and says:

“The insertion of needles into acupuncture points ... triggers mechanical stimuli that are transduced as neural signals ... These signals ascend the dorsolateral tracts of the spinal cord and activate the supraspinal and higher centres involved in pain processing ... From here, a few things happen, either in isolation or concurrently: modulation of the noradrenaline and 5-HT signaling system, the production of endogenous neuropeptides acting upon the m-opioid and N/OPQ receptors, and the production of somatostatin and other related neurotrophins that together enhance the descending inhibition of nociception on the spinal afferents. At the same time, inflammatory mediators produced by local microtrauma at the site of needle insertion will stimulate the unmyelinated C fibers, which ascend the anterolateral columns of the spinal cord and activate the DNIC, which both augments the general descending inhibitory control of nociception, and also perturbs the anti-correlated networks in the brain anchored on the insula to modulate the higher processing of pain. Last but not least, with repeated acupuncture treatments, neural plasticity develops in the spinal dorsal horn via the interplay of the LTP/LTD of C-fiber potentials, alleviating nociceptive signals from the target site of treatment on a long-term basis.”³

In short: acupuncture stimulates the body to release neurotransmitters that downregulate pain and inflammation.

Many studies, including high quality systematic reviews, have investigated acupuncture's effect on a wide variety of painful conditions, including migraines,⁴ tension headaches,⁵ dysmenorrhoea^{6,7,8} neck pain,⁹ low back pain,^{10,11} chronic pain,¹² cancer treatment pain,¹³ osteoarthritis,^{14,15} gout,¹⁶ and prostatitis.¹⁷ There are plenty more.

Finally, acupuncture is widely used alongside oncology treatments in hospitals the world over including, but not limited to, the US,¹⁸ UK,¹⁹ France,²⁰ Germany,²¹ Taiwan²² and, of course, China.²³ In addition, many patients around the world choose to use acupuncture alongside their conventional treatments with community-based practitioners too, including at our clinic.

In addition to the statements above, the website lists conditions that we treat. These lists are simply statements of fact. We do treat these conditions - many of them very regularly. The

copy on the website does not claim that we cure, or even necessarily help these conditions. Just that we treat them.

From the point of view of demonstrating that the Newtown Acupuncture Centre website only makes claims that are factual and can be proved, I believe what I have written above should suffice. However, the complainant makes a number of claims of his own in his complaint that I believe require proper rebuttal.

Firstly, the Complainant writes that:

“... systematic reviews of reviews show that no evidence of it [acupuncture] being consistently effective for anything.”

He then goes on to provide five studies as his evidence of this. I note that three of them list retired professor Dr Edzard Ernst, an internationally known skeptic, as an author.^{24, 25, 26} The most recent article referenced is particularly interesting in that it also has Dr Andrew Gilbey, another active skeptic,²⁷ as an author.

This study,²⁵ *A systematic review of reviews of systematic reviews of acupuncture*, was published in 2013, in *Focus on Alternative and Complementary Therapies*, which has as its editor in chief, none other than Dr Ernst himself.²⁸ Interestingly the article doesn't come up on a PubMed search, meaning it isn't included in the 'more than 26 million citations for biomedical literature' on the site.²⁹

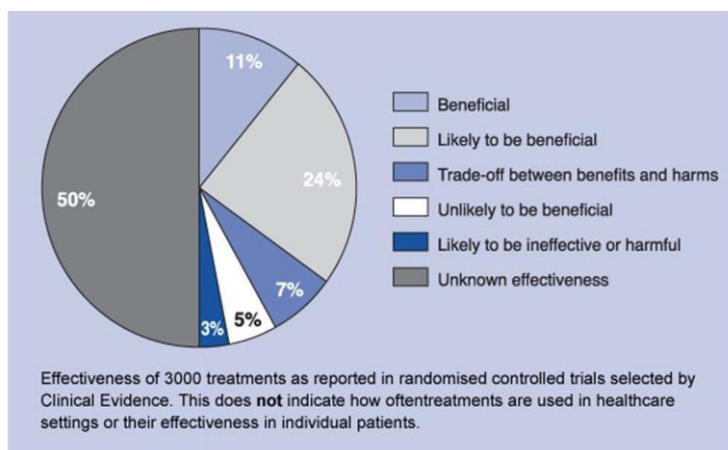
The other two studies are quite old, dating back to 2001³⁰ and 2006.³¹ Their conclusions have been refuted by more recent studies.

As a practicing acupuncturist, I follow developments in acupuncture research closely, and more quality research is being published all the time. Of particular note Cochrane, which as their website says, “... *is recognized as representing an international gold standard for high quality, trusted information*”,³² has recently published a number of systematic reviews that confirm that acupuncture is clinically effective for certain conditions and even performs as well, or better, than other available treatments. Specifically referred to are migraines (2015),⁴ tension headaches (2016),⁵ neck pain (2016),⁹ and pregnancy related pelvic pain (2015).¹⁰

Of course, acupuncture's effectiveness in the treatment of many conditions has not been researched to Cochrane's satisfaction yet (something not unique to acupuncture or complementary medicine) and I believe it is significant that Cochrane accepts that acupuncture can sometimes be clinically effective, including over and above other treatments.

Quality research is vital and it needs to be considered that insufficient evidence does not mean a treatment is ineffective - simply that it hasn't been proven yet.

BMJ Clinical Evidence reviews current medical practice to establish what percentage of medical treatments are supported by clinical evidence.³³ I include a pie graph from their website illustrating their results below:



As you can see, only 11% of treatments were shown to be beneficial, as determined by available evidence, with 50% of unknown effectiveness. The human body and medicine are complex and randomised controlled trials (RCTs) are too limited in number and often simply not practical or ethical (e.g. surgery, wound care, public health).

For much of acupuncture's practice to not be underpinned by gold standard systematic reviews, based on RCTs, is not remarkable or unusual.

The Complainant also says:

"... and it [acupuncture] lacks a plausible mechanism"

I have already quoted from two reviews from the International review of *neurobiology*² and *Journal of Acupuncture and Meridian Studies*³ that illustrate that this is patently false. While there are aspects of acupuncture's mechanism that remain unclear, for The Complainant to say there is no plausible mechanism shows he simply doesn't know what he is talking about.

The Complainant signs off with another assertion:

"The best controlled studies show a clear pattern, with acupuncture the outcome does not depend on needle location or even needle insertion. Acupuncture is no better than a placebo or lacks clinical relevance and cannot be clearly distinguished from bias."

As a starting point, this statement is simply wrong. Recent, good quality studies show that verum acupuncture is superior to sham acupuncture.^{9,17,34} Nonetheless there are many studies that show a small difference between verum and sham acupuncture, often with both treatment arms showing clinical benefit over and above other treatments.^{4,5,35}

This is another big subject but in essence it is a simple one. If clinicians are able to trick the patient into believing they have had a 'real' treatment, inevitably by stimulating the skin (and therefore the nervous system) then the treatment is not inert. It may not be a treatment one would expect to be effective, but it isn't a sugar pill either. I've read many studies where it was entirely unsurprising to me that the 'placebo' had a measureable effect. This subject is widely discussed in the literature.³⁵

In my opinion, from the point of view of establishing the value of acupuncture as a useful treatment method, it is far more relevant and interesting to run comparative studies, comparing and/or combining pragmatic acupuncture with usual care, e.g. physiotherapy, pharmaceuticals and/or waiting list (no treatment).

I would now like to address the elephant in the room. This complaint was laid by the Complainant as a representative of *The Society for Science Based Healthcare*. This organisation's raison d'être is to harass practitioners they don't agree with.³⁶ They say they are science-based but by their comment and actions it would seem they accept only *evidence that supports their preconceptions and beliefs*, which isn't really very scientific at all. The complaint I am currently responding to is a good example of this.

What I would like to add is that this particular, NZ based, society's habit of lodging regular complaints with your organisation against acupuncturists, who are working hard to improve people's quality of life, wastes a lot of time and energy that would be better focussed on their patients. I suggest the society's members find a better use for their time. I note from the Complainant's LinkedIn profile that he is a software developer with no medical training at all.³⁷ It intrigues me that he feels qualified to even begin to evaluate the body of evidence around acupuncture, or any other medical intervention. I studied for years before I felt I had a grasp of the available evidence. It seems ignorance and arrogance have no bounds.

In conclusion, the complaint 16/171, laid by computer programmer the Complainant, concerning the marketing material on the website of the Newtown Acupuncture Centre, is completely without basis. The content on the website makes no untrue statements and is not misleading. Meanwhile, the Complainant's own assertions in his complaint are themselves simply wrong; based on a small selection of partisan and outdated literature, simple ignorance and personal negative bias. the Complainant demonstrates a weak understanding of acupuncture, medicine and the complexity of medical research.

Please feel free to contact me should you require any further information.

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