

COMPLAINT NUMBER	18/340
APPEAL NUMBER	18/017
COMPLAINANTS	K Bronlund & 145 others
APPLICANT	WAVES NZ
ADVERTISER	WAVES NZ
ADVERTISEMENT	WAVES NZ Out of Home
DATE OF MEETING	29 November 2018
OUTCOME	Appeal Dismissed, Complaint Upheld

SUMMARY

The majority of the Complaints Board ruled on 9 October 2018 the complaint made by K Bronlund & 145 others about the Out of Home advertising for WAVES NZ was upheld.

The Advertiser appealed the Decision. The Chairperson considered that the Application raised sufficient grounds for the matter to be considered by the Appeal Board de novo.

The Appeal Board agreed with the Complaints Board that the identity of the Advertiser was not clear enough to prompt the more liberal interpretation of the Code of Ethics, which may otherwise have been available under the Advocacy Principles. The Appeal Board ruled the identification requirement of Rule 11 had not been met.

The Appeal Board agreed the Media, Ad-Vantage Media were entitled to remove the advertisement when it did, and there was no breach of the proper procedures.

The Appeal Board considered the medium and audience of the advertisement and said the message received by the consumer was limited and therefore misleading. The Appeal Board said a billboard located by a motorway has an unlimited audience, consisting mostly of those who are travelling by car, at speed. The key impressions obtained by the consumer would be "Baby – vaccine - risk". As WAVES NZ is not a well-known organisation the consumer would have had to see the advertisement, remember the name of the Advertiser, access the website and then read the information contained in the website, in order to become better informed.

The Appeal Board said that while consumers have a right to be informed, the advertisement engendered fear through the use of text and imagery.

The Appeal Board ruled the advertisement was in breach of Basic Principle 4, Rule 2, Rule 6 and Rule 11 of the Code of Ethics.

The Complaint was Upheld and the Appeal was Dismissed.

Decision: Complaint **Upheld**, Appeal **Dismissed**

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

APPEAL BOARD DECISION

The Complaints Board ruled on 9 October 2018 the complaint made by K Bronlund & 145 others about the Out of Home advertising for WAVES NZ was not upheld.

The Advertiser appealed the Decision. The Chairperson considered that the Application raised sufficient grounds for the matter to be considered by the Appeal Board de novo.

The Chairperson directed the Appeal Board to consider the advertisement with reference to Basic Principle 4 and Rules 2, 6 and 11 of the Code of Ethics.

Basic Principle 4 required the Appeal Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Rule 2 required the Appeal Board to consider whether the advertisement contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge.

Rule 6 required the Appeal Board to consider whether the advertisement exploited the superstitious, without justifiable reason, or played on fear.

The Appeal Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 11 of the Code of Ethics. The Appeal Board noted Rule 11 allowed for expression of opinion in advocacy advertising, provided that the expression of opinion is robust and clearly distinguishable from fact. Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

The Appeal Board confirmed the advertisement before it for adjudication was the Out of Home advertisement for WAVES NZ.

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

The Complaints Board Decision

The Complaints Board said the advertisement infers there is something dangerous in vaccines that could harm your baby, and if you vaccinate your baby you are taking a risk. The Complaints Board said the words: "If you knew..." imply a bad outcome from giving a baby a vaccination. The Complaints Board noted the use of the image of a man holding a baby meant that the consumer takeout was likely to relate to vaccinations and young children, not vaccinations in general.

The majority of the Complaints Board said the identity of the Advertiser, WAVES NZ, was not sufficiently clear and ruled the identification requirement of Rule 11 had not been met.

Therefore, the Complaints Board did not consider the rest of the complaints in conjunction with the liberal interpretation available under the application of the Advocacy Principles.

The Complaints Board said the advertisement was misleading as the likely consumer takeout that vaccination is not safe was not sufficiently substantiated by the Advertiser, the advertisement unjustifiably played on fear and was therefore socially irresponsible.

The Complaints Board ruled the advertisement was in breach of Basic Principle 4, Rule 2, Rule 6 and Rule 11 of the Code of Ethics.

The Complaints Board ruled the complaint was Upheld.

Advertiser's Appeal

In their Appeal the Advertiser said:

- The proper procedures were not followed because the billboard was removed prior to the ruling made by the Complaints Board, and after the CEO of the ASA contacted the billboard operator
- Evidence provided to the Complaints Board was misinterpreted to the extent it has affected the decision
- WAVES NZ position as the Advertiser, and a group that advocates for informed choice around vaccination issues, was made clear
- WAVES NZ's intention was to promote informed choice around vaccination and to encourage consumers to access the vaccine manufacturers' datasheets
- Informed consent regarding vaccines is not routine: Ministry of Health/District Health Board leaflets tend to emphasise the benefits and skim over the risks, and do not discuss ingredients
- Datasheets are written for public consumption and the New Zealand government has approved them as appropriate for consumers
- The Ministry of Health Immunisation Handbook refers to the risks of vaccines, and these need to be evaluated by anyone considering any vaccine
- It is not logical to say asking a question plays on fear when there are solid facts behind that question

Complainants' responses to the Appeal

Seven of the 146 complainants provided responses to the appeal. In their responses, the Complainants said:

- The Advertiser says there is a responsibility to provide information, so people can make informed choices. However, the WAVES NZ website contains factually incorrect information and does not provide information on the benefits or risks of not receiving vaccinations
- The WAVES NZ Facebook page suppresses any comments that could be considered to present the benefits or risks of not receiving vaccinations
- The billboard uses techniques designed to generate fear
- The Advertiser referred to two articles but chose to ignore the findings they do not agree with
- The Advertiser relies on inaccurate, misleading information
- The advertisement does not encourage people to stay informed, it is directed at a less-educated audience, directing them to read material they could easily misunderstand
- The ideas in the advertisement are dangerous and potentially very damaging for young and vulnerable members of the community
- The Advertiser was difficult to identify
- Misinformation regarding vaccines constitutes a significant public health risk
- The advertisement preys on misunderstanding

Appeal Board Discussion

The Appeal Board carefully considered all the information provided by the Advertiser, the Complainants, the billboard advertisement and the Complaints Board Decision.

Was the advertisement Advocacy Advertising?

The Appeal Board discussed whether the advertisement before it fell into the category of advocacy advertising.

The Appeal Board agreed that clear identification of the Advertiser and their position is essential to provide context for the consumer.

The Appeal Board referred to the ASA Guidance Note “Advocacy Advertising Principles and the Code of Ethics Rule 11” which states:

Application of Rule 11

“To assist consumers and advertisers and taking into account the advocacy principles and recent precedent decisions, the ASA has agreed, where advertising meets certain conditions, a more liberal interpretation of the Code is appropriate. This allows all sides to advocate their position – clearly identified – and avoid a technical interpretation of potential breaches.”

and

“It must be clear in the advertisement what view the advertiser advocates and ideally this should be clear in their identity...for example: a short advertisement stating ‘Contact the Fluoridation Foundation for information on fluoridation’ would not qualify. On the other hand, the names Pro-Fluoridation Foundation or Anti-Fluoridation Foundation are acceptable along with a clear statement in the advertisement about its purpose – “Stop Fluoridation now” or “Support Fluoridation in the Referendum”.

The Appeal Board agreed care must be taken to ensure the consumer would readily be able to identify the material was an advertisement containing the advertiser’s view.

The Appeal Board noted the advertisement before it included the text: “www.wavesnz.org.nz” in white lettering, at the bottom right of the billboard.

The Appeal Board said WAVES NZ is not a well-known organisation and the purpose of the organisation is not clear from its name.

The Appeal Board agreed with the Complaints Board decision that the identity of the Advertiser was not clear enough to prompt the more liberal interpretation of the Code, which may have otherwise been available under the Advocacy Principles.

The Appeal Board ruled the identification requirement of Rule 11 had not been met.

Were the proper procedures followed?

The Appeal Board referred to the Advertiser's view that the proper procedures were not followed because the billboard was removed prior to the ruling made by the Complaints Board, and after the Chief Executive of the ASA had contacted the billboard operator.

The Appeal Board noted the response from the Media, Ad-vantage Media, which said they made the decision to remove the billboard advertisement immediately, to avoid harm to their reputation. They did this after receiving complaints about the billboard, and following comments made by Simon Teagle from Go Media (the Go Media logo is on Ad-Vantage Media billboards).

Ad-Vantage Media said their terms and conditions require the advertiser to comply with the ASA standards, and also allow them to remove an advertisement if they wish.

The ASA Chief Executive confirmed to the Appeal Board she had not requested removal of the billboard.

The Appeal Board agreed that it was clear from the Media's response they had good reasons for removing the advertisement and there was no breach of the proper procedures.

Consumer Takeout

The Appeal Board considered the likely consumer takeout of the advertisement.

The Appeal Board agreed with the Complaints Board that the advertisement infers there is something dangerous in vaccines that could harm your baby, and if you vaccinate your baby you are taking a risk.

The Appeal Board noted the Advertiser's view that the purpose of the advertisement is to encourage consumers to access the data sheets for vaccinations, in order to be fully informed.

The Appeal Board said while this may be the Advertiser's view, the main consumer takeout of the advertisement concerns the risks associated with vaccinations. This impression was enhanced through the use of the wording and the imagery used in the advertisement. Next to the photo of a man holding a baby were the words: "If you knew the ingredients in a vaccine, would you RISK it?" The word "RISK" was written in red capital letters.

Was the advertisement misleading?

The Appeal Board then considered whether the advertisement was likely to mislead or deceive the consumer.

The Appeal Board discussed the medium and audience of the advertisement. The Appeal Board said a billboard located by a motorway has an unlimited audience, consisting mostly of those who are travelling by car, at speed.

The Appeal Board said in these circumstances the message received by the consumer would be limited and the key impressions would be “Baby – vaccine - risk”. As WAVES NZ is not a well-known organisation the consumer, in order to become better informed, would have to see the advertisement, remember the name of the Advertiser, access the website and then read the information contained in the website.

The Appeal Board ruled the advertisement was misleading and in breach of Rule 2 of the Code of Ethics.

Did the advertisement exploit the superstitious, without justifiable reason or play on fear?

The Appeal Board then considered whether the advertisement exploited the superstitious without justifiable reason or played on fear.

The Appeal Board said that while consumers have a right to be informed, in this case the advertisement engenders fear through the use of text and imagery.

The Appeal Board agreed with the decision made by the Complaints Board, and ruled the advertisement played on fear without justifiable reason.

Summary

The Appeal Board said the identity of the Advertiser, WAVES NZ, was not sufficiently clear and ruled the identification requirement of Rule 11 had not been met.

Therefore, the Appeal Board did not consider the rest of the complaint in conjunction with the liberal interpretation available under the application of the Advocacy Principles.

The Appeal Board said the message received by the consumer was limited taking into account context and medium and therefore misleading. The Appeal Board said as the likely consumer takeout was that vaccination is not safe, the advertisement unjustifiably played on fear and was therefore socially irresponsible.

The Appeal Board ruled the advertisement was in breach of Basic Principle 4, Rule 2, Rule 6 and Rule 11 of the Code of Ethics.

The Appeal Board ruled the Complaint was Upheld and the Appeal was Dismissed.

Decision: Complaint **Upheld**, Appeal **Dismissed**

DESCRIPTION OF ADVERTISEMENT

The billboard advertisement for WAVES NZ showed a photo of a man holding a baby. The man had a prominent tattoo on his right arm. Next to the photo were the words: “If you knew the ingredients in a vaccine, would you RISK it?” (The word “Risk” was in red and in capital letters). At the bottom right of the advertisement was “www.wavesnz.org.nz”

APPEAL APPLICATION FROM THE ADVERTISER

A The proper procedures have not been followed. (6.4a)

The billboard was removed prior to the ruling, disregarding the signed formal (legal) contract that WAVESNZ had with Ad-Vantage Media. WAVESNZ understands Hilary Souter, ASA CEO, contacted Duncan Harris, owner/operator of AD-Vantage, within hours of the billboard

being erected. After that phone call, the billboard was taken down; yet, *no ASA ruling had been made* to instruct this action. WAVESNZ asserts this contact by Ms Souter was a breach of proper procedures.

C Evidence provided to the Complaints Board has been misinterpreted to the extent it has affected the decision. (6.4c)

Basic Principle 4 required the Complaints Board to consider whether the advertisement (billboard) had been prepared with a due sense of social responsibility.

It is best medical practice to have full disclosure and to allow informed consent. Consumers have the right to access datasheets for all medicines. Datasheets are routinely provided with other medicines.

WAVESNZ' billboard asked if consumers knew the ingredients of vaccines and provided a URL that takes consumers directly to vaccine datasheets, which lists the ingredients. These are Medsafe – the New Zealand Medicines and Medical Devices Safety Authority – published datasheets. WAVESNZ's intention was to encourage consumers to do their own research into vaccine safety and risks.

Many families are not aware of possible risks, contraindications or side-effects when they choose to vaccinate their children, yet with every other medical intervention/procedure offered in NZ the informed consent process is followed. The Auckland University of Technology sponsored "Immunisation Advising Centre" advocates providing information on the risks of vaccination on their website.

<http://www.immune.org.nz/immunisation/making-informed-decision>

The mainstream perception that vaccination is safe is propagated by pharmaceutical and medical bodies without genuine safety data. WAVESNZ will establish this fact in their appeal and provide evidence.

in New Zealand, parents and caregivers have the right to make informed decisions regarding their children's immunisations. Making informed decisions means being able to find and understand relevant information, be given the opportunity to discuss it, and make the decision that is right for you and your family. It is best if you can make these decisions before your child is due their immunisations, so that should you decide to go ahead, they can benefit from the best possible protection the vaccines can provide.

Why is an informed choice important?

Being informed about the benefits and risks of immunisation will mean you fully understand what advantages immunisation provides your family, as well as understanding the risks associated with any given vaccine or disease. The right to make an informed choice and give your informed consent when using a health service is guaranteed under the Code of Health and Disability Services Consumer Rights.

How do I make an informed choice?

The health professional who will be offering immunisation for your child or you is obliged to provide you with accurate, objective, relevant and understandable information to help make an informed choice. They need to explain:

- that you have a choice
- why you are being offered the vaccine
- what is involved in what you are being offered
- the probable benefits, risks, side effects, failure rates and alternatives,
- and the **risks and benefits** of not receiving the treatment or procedure.

Where do I get information to make an informed choice?

Every parent or caregiver has different information needs when it comes to immunisation. Some are interested in how easy the diseases are to catch, whether they are treatable, and the effectiveness and safety of vaccines. Others want information about the risks of delaying vaccines **and any alternatives**. There are many different places to go to gather information on immunisation and vaccine preventable diseases.

WAVESNZ is an organisation that promotes true informed consent. The ASA Complaints Board was provided with forty-seven links to NZ vaccine datasheets, which provide information on vaccine ingredients, contraindications and side-effects from the product manufacturers. Please read a selection of them as even the US Supreme Court has ruled that vaccines are "unavoidably unsafe" ([09-152 Bruesewitz v. Wyeth LLC 2011](#)).

A large proportion of WAVESNZ supporters once vaccinated but changed their stance after poor health outcomes, sometimes life-long and/or serious, were identified, usually by health professionals. These families understand the true meaning of social responsibility.

WAVESNZ promotes vaccine transparency so consumers can make educated decisions on whether to vaccinate or not.

WAVESNZ appeals the ruling upholding the complaints against their billboard, on the following grounds.

1. The ruling asserts the identity of the advertiser was not made clear enough

The complainants had no trouble identifying our identity, neither did the ASA committee. The advertisement comprised blank space, an image, a sentence and WAVESNZ's address featuring prominently at the bottom, with our organisation's name. The intention of the billboard was to encourage consumers to consider what **ingredients** vaccines contain and to direct them to WAVESNZ's website, where visitors can click on a prominent banner image of the billboard, which leads to the Medsafe datasheets.

Visually, the billboard had clarity, which it would not have had if WAVESNZ had utilised its full logo (with many colours) as this would have used up much of the black space. If the grounds of the ruling are that the organisation is not well-known, then use of the logo would have made no difference as it would be equally unrecognisable. To include extra words underneath the question would not only have meant visual impact was lost, but would have resulted in too many words to be read safely by road users in a motorway setting.

WAVESNZ's position, as a group that advocates for informed choice around vaccination issues, was made clear from the question posed, as the ASA board minority recognised.

2. Consumer takeout

The suggestion that the location was chosen for its proximity to South Auckland and Middlemore Hospital, or that it targets Māori, is untrue and misleading: a red herring. The billboard location was chosen based on Ad-Vantage Media's estimated traffic counts for available locations, not its socio-economic location or its proximity to a hospital. The billboard models are both Pākehā and the writing on the tattoo is in English. Vaccination is a choice in New Zealand, regardless of ethnicity, and thus race-based complaints should not be relevant.

The words "If you knew" were chosen because the many families who have contacted WAVESNZ over the past 30 years have said they did not know what was in a vaccine prior to allowing their child to be vaccinated. Under the Bill of Rights Act 1990 and the Health and Disability Commissioner Act 1994, patients have the right to informed consent and choice with regard to all medical procedures: this includes vaccination. However, informed consent regarding vaccines is not routine, as evidenced by numerous Ministry of Health/District Health Board leaflets given to families, prior to vaccinating. These tend to emphasise the perceived benefits, skim over risks and do not discuss ingredients. The WAVESNZ billboard highlighted that vaccination is a choice in New Zealand, that consumers should ask about risks and they are entitled to fully informed consent. WAVESNZ's URL was included to help consumers find the relevant datasheets easily.

3. Was the advertisement misleading?

The ASA ruling states that the average consumer is unlikely to understand datasheets, because they lack the technical knowledge to make a valid risk assessment and that WAVESNZ did not provide sufficient evidence to back the claim of risk. Manufacturers write datasheets for public consumption and the New Zealand government has approved them as appropriate for consumers. Legally, consumers are entitled to the information on those datasheets, which are with the vaccine vials; however, vaccinators usually throw datasheets away, despite some datasheets instructing health practitioners to share this information with patients.

WAVESNZ strongly disputes the opinion that NZ people cannot understand datasheets or make valid risk assessments – that is exactly what datasheets are for. The WAVESNZ committee comprises average people, who are all capable of reading and comprehending datasheets and making risk assessments. Access to the datasheets is a consumer right, again under the Health and Disability Commissioner Act 1994 and the Bill of Rights Act 1990. The ruling found that WAVESNZ did not provide proof that vaccines have safety risks, yet the datasheets discuss those risks clearly. The Infanrix URL provided to the committee showed this. See Appendix A: the URLs provided to the committee, for each vaccine, have similar sections with similar warnings.

The Cartwright Enquiry into an "[unfortunate experiment](#)" at National Women's Hospital led to the current legislation implementing patients' rights to access all the information required to make an informed choice about any medical procedure, and to decline procedures if preferred.

It is condescending to suggest that the public is not sufficiently well-educated to be entitled to read datasheets or medical information in order to make choices about their own (or their children's) wellbeing.

Section 2.1.2 of the 2017 Ministry of Health Immunisation Handbook – used by health professionals who deal with vaccination, i.e., general practitioners, practice nurses, hospital staff etc., covers the obligation to ensure informed consent is provided to consumers and notes the legal provisions under the aforementioned Bill of Rights Act, Health and Disability Commissioner Act, Code of Health and Disability Services Consumers' Rights 1996, Health Information Privacy Code 1994 etc). The handbook states, amongst other things, that

“Regardless of age, an individual and/or their parent/guardian must be able to understand:

- ***That they have a choice***
- ***Why they are being offered the treatment/procedure***
- ***What is involved in what they are being offered***
- ***The probable benefits, risks, side-effects, failure rates and alternatives, and the risks of not receiving the treatment or procedure.***

“... The essential elements of the informed consent process are effective communication, full information and freely given competent consent.” (WAVESNZ's emphases)

Section 1.6 of the same handbook is titled, Safety monitoring of vaccines in New Zealand, and covers the risks of vaccination and reporting of adverse reactions.

This section would not exist, and neither would the Adverse Events Following Immunisation section of the Centre for Adverse Reactions Monitoring exist, were there no risks inherent in the process of vaccination or the composition of vaccines. The SMARS database on the Medsafe website also exists to document Suspect Medicine Adverse Reactions; SMARS, too, exists because risk is inherent in every medical procedure and from every medication in existence – including vaccines.

Furthermore, the datasheets linked on WAVESNZ's website all contain extensive information on both the ingredients and risks of each vaccine, which are clearly laid out under the relevant headings. The average person is completely capable of reading the sheets that accompany vaccines, or viewing them on Medsafe and understanding what those risks are. Datasheets are provided to inform consumers and professionals and the language in each datasheet is straightforward and easy to follow. If parents want to know more, these ingredients are described on both the CDC and FDA websites.

Many people have ethical objections to the injection of aborted human foetal cell lines such as MRC-5 and WI-38. Many people are aware of the risks of metals and heavy metals and the use of aluminium adjuvants is of increasing public concern. Animal DNA and derivatives, industrial chemicals, preservatives, eggs and other potentially allergenic substances and antibiotics are other things the average person may reasonably disapprove of injecting into themselves or their children. These are listed in the CDC excipient document provided in WAVESNZ's original submission.

The principle of informed consent, in the legislation, gives every person the legal right to refuse vaccination on the basis of vaccine constituents.

WAVESNZ's URL on the billboard allowed consumers—to access official New Zealand Government information, which supports the suggestion that there are risks involved in vaccinations and these need to be evaluated by anyone considering any vaccine.

4. Did the advertisement play on fear?

The question WAVESNZ asked was a genuine question. If consumers vaccinated their children, after exercising their right to truly informed choice and being presented with correct information on risks and benefits, they would, of course, read the billboard and answer 'Yes'. If a consumer's right to informed choice was not upheld and they did not know what the ingredients are, then the WAVESNZ website address provides the answer.

WAVESNZ's question was not intended to play on fear. WAVESNZ promotes the rights given in legislation: all parents should be given datasheet information in order to make informed choices. This process should be upheld by every health professional in this country. Anyone who is looking at vaccination, for themselves or their child, is entitled to know what the vaccine ingredients are and the risks.

In New Zealand we are encouraged to investigate the ingredients of foods, drinks and all other consumer health and household products: asking a simple question about something routinely injected into roughly 90-95% of the country's children should not provoke such ire. The fact that a valid question can trigger 146 complaints implies that there is something wrong with the process of informed consent in New Zealand because there are risks inherent in vaccination and that information should be widely known and acknowledged.

Please note: district health boards routinely use fear-based advertising to encourage families into vaccinating – from signwritten cars with phrases such as "kids need hugs not bugs" (Waitematā DHB) to pop-up adverts on websites suggesting children will become sick if parents do not vaccinate and large billboards near hospitals such as Palmerston North (Mid-Central DHB) telling people to get flu vaccinations.



Yet, these do not provide links to any information showing that vaccines are also potentially unsafe, destroy herd immunity and have such a low efficacy (see [Yan et al 2017](#) and [Haywood 2015](#)).



Nationwide, Ministry of Health campaigns such as "Don't let the flu get you" (which is a false statement, as the ESR-led SHIVERS data shows vaccinated people can and do get the flu type that the vaccine was supposed to prevent) play on fear of winter contagions.

The campaigns usually involve dark, atmospheric imagery of contagious 'germ clouds' of deadly viruses being coughed at unsuspecting passersby by unvaccinated individuals. This is rather ironic, considering two recent medical articles show flu-vaccinated individuals actually spread six times the amount of flu virus than the unvaccinated ([Yan et al 2017](#)), and that it's unvaccinated people who provide herd immunity to the vaccinated ([Hayward 2015](#)).

Why is it acceptable for the Ministry of Health to use false advertising and fear to push vaccination on people, but it is not acceptable for WAVESNZ to simply ask a legitimate question that 90-95% of the population, who give consent to vaccines, should be able to answer with a confident "Yes"?

Why is it regarded as socially irresponsible to encourage families to learn what ingredients are in a vaccine and exercise their legal right to informed consent?

If vaccination is the correct and appropriate route to good health choices, then the ASA cannot find fault in WAVESNZ directing consumers to the ingredients or risks contained in Medsafe's datasheets.

Summary

WAVESNZ was clearly defined as the group responsible for the billboard. The website name is identical to the organisation's name and if the basis of our position was considered unclear (other than to the complainants), then the use of our logo would not have remedied this. That WAVESNZ's intention was to promote informed choice around vaccination was obvious. Any further explanation on the billboard would have risked distracting road users as they tried to read the full text.

The billboard banner on WAVESNZ's home page clearly encourages consumers to click and access the vaccine manufacturers' datasheets. Because the datasheets we provide are direct from the official sources, this information cannot be described as biased.

The takeout message should have been that there are risks to vaccination and every consumer has the right to make an informed choice.

To suggest that asking a question plays on fear is not logical when there are solid facts behind that question. No person, or organisation, should be censured for asking consumers if they know about the ingredients in vaccines, nor should asking such a simple question cause such an uproar. The datasheets show vaccines do come with risks.

Consumers have a right to informed choice, and that includes access to vaccine datasheets in order to make a confident, educated decision to whether to vaccinate, or not. WAVESNZ will continue to advocate for consumers' rights to be upheld.

Appendices

Appendix A

Screenshot of the risks of *Infanrix-penta*.

Appendix B

Assorted billboards from international sources.

Appendix C

Three newspaper articles.

CODES OF PRACTICE

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 6: Fear - Advertisements should not exploit the superstitious, nor without justifiable reason, play on fear.

Rule 11: Advocacy Advertising - Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

RESPONSES TO THE APPEAL APPLICATION FROM SEVEN COMPLAINANTS

RESPONSE FROM A MOORE

I am writing in response to your notification that WAVES NZ have appealed the ruling in regards to Complaint 18340. I wish to comment on several parts of their appeal that I feel support the original ruling.

In section 3 ("Was the advertisement misleading?"), WAVES NZ uses a quotation from the Ministry of Health Immunisation Handbook:

"Regardless of age, an individual and/or their parent/guardian must be able to understand:

- That they have a choice
- Why they are being offered the treatment/procedure
- What is involved in what they are being offered
- The probable benefits, risks, side-effects, failure rates and alternatives, and the risks of not receiving the treatment or procedure.

"... The essential elements of the informed consent process are effective communication, full information and freely given competent consent."

Its argument is that there is a responsibility to provide all available information on vaccination to individuals and parents/caregivers so that they can make informed choices about their health. However, the WAVES NZ website (the URL of which was on the billboard). does not provide information on the benefits or the risks of not receiving vaccinations. Further more, many of the links on the WAVES NZ are to sites that contain factual incorrect information (eg. "In reality, childhood infections such as measles, whooping cough, chicken pox etc, are not caused by germs, but by the toxic conditions of the body, a condition known as Toxaemia." from <http://www.vaclib.org/sites/debate/web4.html>) or focus on fear as a technique to discourage vaccination (eg. "Immunization (the act of injecting vaccines) depresses and disables brain and immune function. Honest, unbiased scientific investigation has shown vaccinations to be a causative factor in many illnesses including: ...immune deficiency (i.e. AIDS...)." from <http://www.vaclib.org/basic/basicfct.htm>, the conclusions here not only being inaccurate (I know of no studies that suggest vaccines are a cause of HIV/AIDS) but also relying on the psychological effect of the term AIDS (typically associated with a fatal disease).). Additionally, WAVES NZ Facebook page deliberately and openly suppresses any comments that could be considered to present the benefits or risks of not receiving vaccinations. This is part of the general rules for their page: " We will not allow the pro-vaccine group to dominate the discussion. Individuals who want to express a positive opinion about vaccination are limited to one post per thread. People who violate this rule will be banned" (from https://www.facebook.com/pg/IASNZ/about/?ref=page_internal). Reducing these comments to a single post per thread effectively eliminates any chance of a rational discussion being formed. A link to this Facebook page appears on the WAVES NZ website, the URL of which (as has already been mentioned) appears on the billboard.

For WAVES NZ to use the above quotation from the Ministry of Health Immunisation Handbook to support its billboard when itself fails to fulfil the bulk of the quotation (in addition to failing to mention benefits or risks of not receiving vaccines I can find no information on their website which suggest as to why vaccines are offered or what is involved in the process of vaccination) is not only ironic but also reinforces that their information they present is misleading.

In section 4 ("Did the advertisement play on fear?"), WAVES NZ again returns to the actions of the Ministry of Health and additionally this time the DHBs. Its argument is that the Ministry of Health and DHB advertisements also relies on fear. However, in the photographic examples presented, we see techniques such as pastel coloured text, a smiling baby, brightly coloured backgrounds and an smiling, anthropomorphised syringe. All of these techniques have the effect of putting the viewer at ease and have been deliberately chosen to present the information in such a way not to cause upset or fear. In contrast, the WAVES NZ billboard uses techniques such as a faceless male, a baby with a neutral facial expression, a black background, striking contrast between the background and text and the use of red for emphasis. All of these have also been deliberately chosen for their psychological effect but in this case the effect generated is that of fear. WAVES NZ claims that the Ministry of Health uses similar "dark, atmospheric imagery of contagious 'germ clouds' of deadly viruses being

coughed at unsuspecting passersby by unvaccinated individuals" but evidence of these advertisements is notably absent. In short, in arguing that it's unfair that it is "acceptable for the Ministry of Health to use..fear to push vaccination on people, but it is not acceptable for WAVESNZ...", WAVES NZ have effectively reinforced the original ruling of the ASA.

I also find it interesting to note that the two articles cited by WAVES NZ in their appeal (Yan et al 2017 and Haywood 2015) are typical of their behaviour in that they chose to focus on only small parts of either study in order to validate their points whilst choosing to ignore other findings or general conclusions that they do not agree with. (In Yan et al 2017 BMI, gender and age are all also cited as factors in viral shredding but these are not mentioned by WAVES NZ and Hayward 2015's final conclusion is that "Vaccines stimulating T cells may provide important cross-protective immunity", another point they fail to mention.) This "cherry picking" approach to WAVES NZ scientific evidence may help to persuade the uninformed but displays a disregard for basic scientific method and reinforces the point that WAVES NZ relies on misleading information to support its argument.

I hope the points I have made will be considered when the Appeal Board makes its decision

RESPONSE FROM B McDONALD

My two cents on the appeal:

I agree if action was taken by the ASA to remove the sign, prior to the complaint being resolved, this would be a breach of process.

I disagree however, with the argument that the ad instructs people to check the fact sheets and other available information to stay informed. While it is true that this information is available and that there is downsides to immunisation (primarily the immediate effect after being injected), the way in which it is worded highly suggests a negative connotation and those who choose to check further would be influenced heavily by this. The intended audience of this ad (those less educated, especially regarding health terminology) are directed to read material which they could easily misunderstand. As an example. there are many claims around Mercury in vaccines being harmful. Those without a knowledge of basic chemistry, without speaking to a medical professional, may assume there is "pure" mercury in these vaccines, when that is simply not the case.

Regarding the counter-argument that this is used elsewhere, this is simply "whataboutism" and does not excuse their own ad purely because others have done similarly.

RESPONSE FROM K GIVEN

I would like to maintain my position strongly against allowing this type of advertising in New Zealand. The ideas conveyed are dangerous and potentially very damaging for young and vulnerable members of our communities. Some of the messages conveyed are completely inaccurate and not reflective of the evidence available. As someone who works in healthcare and therefore is an advocate for the health of all New Zealanders, I strongly oppose allowing advertising such as this.

RESPONSE FROM M SHEPHERD

I feel that wavesNZ has raised some valid points that the New Zealand ministry of health should address and this board should also consider looking into "pro-vaccine" billboards and advertising to make sure they do indeed conform to regulations. Informed consent is important. But if one party broke the rules it is not a valid reason for wavesNZ to do so as well.

In regards to the early removal, I believe that your speedy process likely saved lives. But if it was removed too early that is certainly not grounds for reinstatement or dismissal. Maybe reimbursement.

I find it laughable that wavesNZ claims its billboard is not fear mongering and I stand by my original complaint. Looking at the image the red and white on black "Would you risk it" alongside a baby in shadows is not designed to encourage critical thinking its designed to provoke a primal fear response in parents driving past and encourage them to not get their children vaccinated. WavesNZ knows full well that not only are vulnerable members of the public not going to google the ingredients, the ones that do also are not going to understand what a list of ingredients means and will likely just be intimidated by it. They don't have a background in chemistry and will not understand what the ingredients are, how they interact with the body and how dosage works. Unfortunately, the general public, to some extent, has to rely on the knowledge of experts, scientists and doctors. "doing your research" doesn't mean doing your research, it usually means the opposite ie visiting websites like wavesNZ.

In regards to data sheets being appropriate for consumers, the government's approval could be for different reasons such as identifying allergens and as such would not suit wavesNZ personal definitions. I would also argue there is no way to make a data sheet that is appropriate to the general public in a way that would be easily read and understood, not be several 100 pages and simultaneously appease wavesNZ.

Waves as a website make a lot of false claims and exaggeration. A website devoted to the truth would list benefits alongside risks so people can make a side by side analysis. It would not spin everything in a way to discredit vaccines using old, outdated or non-peer reviewed sources or taking quotes from scientific journals out of context in order to make a point.

I understand and agree that there are risks, that there are cases where people react to vaccines badly and that everyone has the right to informed consent. But wavesNZ is not interested in providing said information. As a citizen of New Zealand I feel their entire argument can and should be thrown out just due to the misinformation on their website and its contrast with their appeal as it exposes them for liars and that I cannot tolerate when lives are on the line.

RESPONSE FROM P GREY

The quote below, my emphasis, is the key reason WAVES is going to lose this appeal, for the simple reason that they don't understand what published and peer reviewed data means in a medical context, clearly haven't weighed the CARM (University of Otago) data against successful vaccinations, and seek to promote fear in the populace about chemicals in vaccines that are completely safe at those dosage levels.

"The mainstream perception that vaccination is safe is propagated by pharmaceutical and medical bodies **without genuine safety data**. WAVESNZ will establish this fact in their appeal and provide evidence."

The advertisement is not so much misrepresenting WAVES as the scientific community as a whole, along with the implication that vaccine data/advice given by GP's and OB/GYNs is either falsified or incomplete, which is close to slander or even libel.

That they took the advertisement down without waiting for the ruling from the ASA simply shows that they knew they were going to lose, and wanted to save face instead of suffer the indignity of such a public loss.

NB: I don't have specific section standards to refer to this time, but the ire I hold on behalf of the scientifically literate community of NZ forces me to respond in plain English instead of advertising legalese.

RESPONSE FROM S MORPETH

6a) I disagree with the statement "the Complainants had no difficulty in identifying it". When I first read the advertisement I had no idea who the Advertiser was and felt confused. After

studying a photo of the billboard I noticed the website printed there – the website did not mean anything to me and I didn't know whether that was the Advertiser's website or something to do with the billboard company. Only after searching online for the website did I realise that it must be the website of an anti-vaccine campaigner. As a physician, I am a fairly well-educated person and it took me some research to figure this out. Certainly if I was a general member of the public viewing the billboard briefly while driving past on the motorway I would never have realised who the advertiser was.

6c) Certainly the advertisement was playing on fear. I think that is patently obvious. Not only that, but it was also preying on the most vulnerable members of society. The health literacy of patients at Middlemore Hospital is generally low and to pretend to expect that the emotive picture and language used in the advertisement would be ignored and the small font website would be noticed, remembered, looked up online later after having driven past on the motorway, and information in datasheets would be studied is simply filibustering.

RESPONSE FROM M TAYLOR

Please find below my comments relating to appeal number 18/017.

A The proper procedures have not been followed. (6.4a)

The billboard was removed prior to the ruling, disregarding the signed formal (legal) contract that WAVESNZ had with Ad-Vantage Media. WAVESNZ understands Hilary Souter, ASA CEO, contacted Duncan Harris, owner/operator of AD-Vantage, within hours of the billboard being erected. After that phone call, the billboard was taken down; yet, no ASA ruling had been made to instruct this action. WAVESNZ asserts this contact by Ms Souter was a breach of proper procedures.

Regarding 6.4a:

I would assert that in light of the seriousness of the breach of the code, the public reaction, the volume of people being advertised to, and the risk to public health - immediate action was justified. With 146 complainants, it was the ASA's duty to inform the billboard operator with all haste. As reported in a Stuff.co.nz article dated 02 Oct, the media director of advantage media(Duncan Harries)said: 'the company was "a bit naïve" about the issue and would "tread a bit carefully" in the future'. Clearly, the ASA was doing its due diligence in informing a naive operator of the level of public concern - the ongoing display of the advertisement could potentially have had serious repercussions for the reputation of the billboard operator, and it would have been irresponsible for the ASA not to inform them of the large degree of public backlash. It was at the operators sole discretion to remove the advertisement, and once informed of the issue, they obviously perceived it to be serious enough to remove the advertisement despite any contract they may have had in place with WAVESNZ. In practical terms, this issue comes down to a phone call made in good faith which eventuated in voluntary action by the operator of the billboard, most likely saving the operator what can only be described as 'a massive headache'.***

Under normal ASA process, when a complaint is lodged and an apparent breach is identified, the advertiser is contacted - which means, the ASA was already going to have to contact the facilitator of the billboard. That this happened expediently is simply a reflection of the gravity of the situation as identified by the numerous complainants, and clearly the ASA themselves. There are a great many institutions which will favour swift action, potentially forgoing time consuming processes, when expediency is required for a good reason.

WAVES NZ, having been subject to an ASA complaint before(when called the "Immunization Awareness Society" - Complaint 13/169, though deemed out of jurisdiction), would likely have been aware that A: The advertisement they placed would be the subject of at least one ASA complaint and B: That the turnaround time for an ASA complaint would leave the billboard up

long enough for it to be viewed by a large number of people. In fact, WAVESNZ has discussed the ASA Code of Ethics on its website(<https://wavesnz.org.nz/does-imac-breach-advertising-standards-and-promote-medical-fraud/>), so were no doubt aware of it. It is my view that the ASA acted in the public interest by taking swift mediatory action, and that the process was justifiably sped up rather than not followed.

Fast, informal contact of advertisers by the ASA should be encouraged, rather than condemned, for cases where there is significant public interest, public health risks, and possible misunderstandings or naivete on behalf of those facilitating advertisements - it would be a dangerous precedent indeed to rule they acted with improper haste, as it would have the potential to impact future cases where the risk to the public is even greater.

Basic Principle 4 required the Complaints Board to consider whether the advertisement (billboard) had been prepared with a due sense of social responsibility. It is best medical practice to have full disclosure and to allow informed consent. Consumers have the right to access datasheets for all medicines. Datasheets are routinely provided with other medicines. WAVESNZ' billboard asked if consumers knew the ingredients of vaccines and provided a URL that takes consumers directly to vaccine datasheets, which lists the ingredients.

The URL on the billboard, wavesnz.org.nz does not 'take consumers directly to vaccine datasheets' as the advertiser claims. The URL takes you to the advertisers website, where all manner of common myths about vaccinations, and conspiracy theories can be found (this is a small sample of the 340 pages available directly from wavesnz.org.nz):

<https://wavesnz.org.nz/101-reasons-to-not-vaccinate-part-1/>
<https://wavesnz.org.nz/101-reasons-not-to-vaccinate-part-2/>
<https://wavesnz.org.nz/101-reasons-not-to-vaccinate-part-3/>
<https://wavesnz.org.nz/101-reasons-not-to-vaccinate-part-4/>
<https://wavesnz.org.nz/vaccination-destroys-lives/>
<https://wavesnz.org.nz/vaccination-sacrifices-part-1/>
<https://wavesnz.org.nz/vaccination-sacrifices-part-2/>
<https://wavesnz.org.nz/autism-after-vaccination/>
<https://wavesnz.org.nz/autism-and-vaccines-a-plausible-link/>
<https://wavesnz.org.nz/children-vaccinated-with-mmr-can-spread-the-diseases/>
<https://wavesnz.org.nz/the-polio-merry-go-round/>
<https://wavesnz.org.nz/vaccination/natural-exposure-to-disease/>
<https://wavesnz.org.nz/100-natural-baby-no-additives-added/>
<https://wavesnz.org.nz/the-bare-necessities-does-not-include-vaccines-part-1/>
<https://wavesnz.org.nz/lethal-injection-the-story-of-vaccination/>
<https://wavesnz.org.nz/unvaccinated-children-are-healthier/>
<https://wavesnz.org.nz/immunity/do-vaccines-prevent-disease/>
<https://wavesnz.org.nz/challenging-the-medical-patriarchy/>
<https://wavesnz.org.nz/lies-vaccines-and-the-new-zealand-media/>
<https://wavesnz.org.nz/when-vaccine-induced-antibodies-go-against-your-body/>
<https://wavesnz.org.nz/childhood-vaccines-contaminated-with-glyphosate/>
<https://wavesnz.org.nz/homeopathy-as-a-complementary-treatment-option-for-vaccine-preventable-illnesses/>
<https://wavesnz.org.nz/thomson-reuters-npr-health-poll-finds-one-in-four-americans-believe-vaccines-are-unsafe/>
<https://wavesnz.org.nz/so-how-does-a-mother-feel-when-her-baby-is-dead-from-vaccines-and-all-she-hears-from-doctors-the-government-and-media-is-that-vaccines-are-safe-and-effective/>
<https://wavesnz.org.nz/one-mothers-journey-to-becoming-anti-vaccine/>

That the website also includes LINKS to actual datasheets on vaccines does not mitigate the wealth of misinformation available there. The stated goal “to encourage consumers to do their own research into vaccine safety and risks” is a misrepresentation of the goals of WAVESNZ which has been vocally opposed to vaccination since its inception as the Immunisation Awareness Society in 1988. That they are ‘an organization that promotes true informed consent’ is entirely false, in that the information they provide is clearly intended to oppose vaccination, not to inform consumers of both sides of the issue. A question regarding ingredients, which in turn lures consumers to the WAVESNZ website, plants seeds of fear of often well-meaning people - fears which will be confirmed by the contents of the website, but not by mainstream medical science in which the full context of the “RISK” is available.

Vaccine Data Sheets contain a wealth of technical information, precautions and guidelines focussed on a specific vaccine - what they do not provide is an in-depth analysis of the effects and risks associated with the diseases that they are designed and proven to defend against. Someone who is not medically or scientifically literate visiting wavesnz.org.nz can find a wealth of information questioning vaccine safety, efficacy, and ingredients(as well as many long debunked theories such as the vaccine autism link, and polio vaccine being responsible for AIDS, to name just two of many) - all very daunting to a concerned parent(the targets of the billboard) however what they cannot find is counterbalancing information regarding the heavily substantiated risks that are inherent in not taking medically recommended vaccines. Instead, the wonders of natural immunity are promoted far beyond what could be considered socially responsible.

WAVESNZ says their “intention was to encourage consumers to do their own research into vaccine safety and risks.”, however, their own website is concrete evidence of the perils of ‘doing your own research’, as conclusions reached in this manner are not remotely comparable to those reached by the scientific consensus. Medical research is an incredibly complicated field of study, and it is not particularly accessible for a layperson. Experts in complex scientific disciplines are far more qualified to reach meaningful conclusions in their areas - which is why conclusions arrived at via scientific consensus and via systemic reviews of a multitude of studies are immeasurably more useful than what your average person can discern from the internet - let alone websites like wavesnz.org.nz.

The mainstream perception that vaccination is safe is propagated by pharmaceutical and medical bodies without genuine safety data.

This is a good illustration of WAVESNZ’s level of conspiratorial thinking and consistent disregard for the wealth of evidence in support of vaccines.

Even in the appeal, the deception is rife. They state that ‘Even as the Supreme Court has ruled that vaccines are “unavoidably unsafe” citing *Bruesewitz v. Wyeth* - what they fail to mention, is that the term “unavoidably unsafe” is a legal term, not a medical one - and the judgement was focussed on manufacturer liability rather than the comparative safety of all vaccines. Basically, it means that there is nothing that can be done to make the product safer without compromising the function of the product. The term comes from the legal document, “Restatement (Second) of Torts, Section 402A,” and it is about protecting manufacturers from frivolous lawsuits, not about providing consumers with health information

The use of this phrase and reference is symptomatic of WAVESNZs tactics of obfuscating data to confuse the consumer. By oversimplifying an issue, inflating fear, and citing overwhelming technical documents they create an illusion to artificially support an unsupported position. The suggestion of ‘informed consent’ implies balance, which is not present.

A large proportion of WAVESNZ supporters once vaccinated but changed their stance after poor health outcomes, sometimes life-long and/or serious, were identified, usually by health

professionals. These families understand the true meaning of social responsibility.

Anecdotal evidence is notoriously unreliable, and in ideologically isolated groups like WAVESNZ, confirmation bias is rampant. That they would use this as an argument is indicative of the standard of evidence they require to come to a conclusion.

WAVESNZ promotes vaccine transparency so consumers can make educated decisions on whether to vaccinate or not.

This has no basis in reality. One needs to only browse the links above to determine that they are well and truly opposed to vaccination. The mistruths, convulsions and scientific misrepresentations contained at the WAVESNZ website, as well as on their facebook page, demystifies any illusion of transparency.

*1. The ruling asserts the identity of the advertiser was not made clear enough
The complainants had no trouble identifying our identity, neither did the ASA committee. The advertisement comprised blank space, an image, a sentence and WAVESNZ's address featuring prominently at the bottom, with our organisation's name. The intention of the billboard was to encourage consumers to consider what ingredients vaccines contain and to direct them to WAVESNZ's website, where visitors can click on a prominent banner image of the billboard, which leads to the Medsafe datasheets.*

While personally I had no trouble identifying the advertiser, it is not immediately clear by the name on the billboard, nor the landing page of the website, that they are opposed to vaccination. Their stance is deliberately obfuscated to those not familiar with anti-vaccination rhetoric. The intention of the billboard was to promote the website, which pushes anti-vaccination myths and conspiracy theories. This would not be abundantly clear to the average consumer.

*2. Consumer takeout
The suggestion that the location was chosen for its proximity to South Auckland and Middlemore Hospital, or that it targets Māori, is untrue and misleading: a red herring. The billboard location was chosen based on Ad-Vantage Media's estimated traffic counts for available locations, not its socio-economic location or its proximity to a hospital. The billboard models are both Pākehā and the writing on the tattoo is in English. Vaccination is a choice in New Zealand, regardless of ethnicity, and thus race-based complaints should not be relevant.*

Clearly, the tattoo is a Maori design, featuring abundant koru patterns - once of the most immediately recognisable symbols of Maori. That there was illegible cursive english writing does not detract from this fact, I had no idea there was even any writing on it until I read this - it is not immediately obvious. Also, the fact that WAVESNZ sought out to target as many people as possible is more of an aggravating factor than a mitigating one.

The words "If you knew" were chosen because the many families who have contacted WAVESNZ over the past 30 years have said they did not know what was in a vaccine prior to allowing their child to be vaccinated. Under the Bill of Rights Act 1990 and the Health and Disability Commissioner Act 1994, patients have the right to informed consent and choice with regard to all medical procedures: this includes vaccination. However, informed consent regarding vaccines is not routine, as evidenced by numerous Ministry of Health/District Health Board leaflets given to families, prior to vaccinating. These tend to emphasise the perceived benefits, skim over risks and do not discuss ingredients. The WAVESNZ billboard highlighted that vaccination is a choice in New Zealand, that consumers should ask about risks and they are entitled to fully informed consent. WAVESNZ's URL was included to help consumers find the relevant datasheets easily.

The heresay regarding informed consent is just that, and is not a reliable representation of reality. Ironical for WAVESNZ to level charges that equate to false balance towards the ministry of health and district health boards, when they themselves require a far lower threshold of evidence to make a health claim on their website. That informed consent is commonplace in the medical field is evidenced by the wealth of guidelines available for them - in fact WAVESNZ links to many of these documents. There are rigorous standards in place in the medical profession to ensure that patients are safe - However, WAVES is promoting 'doing your own research' as opposed to 'talking to a medical professional' as if the two are comparable. They are not.

3. Was the advertisement misleading?

The ASA ruling states that the average consumer is unlikely to understand datasheets, because they lack the technical knowledge to make a valid risk assessment and that WAVESNZ did not provide sufficient evidence to back the claim of risk. Manufacturers write datasheets for public consumption and the New Zealand government has approved them as appropriate for consumers. Legally, consumers are entitled to the information on those datasheets, which are with the vaccine vials; however, vaccinators usually throw datasheets away, despite some datasheets instructing health practitioners to share this information with patients.

WAVESNZ strongly disputes the opinion that NZ people cannot understand datasheets or make valid risk assessments – that is exactly what datasheets are for. The WAVESNZ committee comprises average people, who are all capable of reading and comprehending datasheets and making risk assessments. Access to the datasheets is a consumer right, again under the Health and Disability Commissioner Act 1994 and the Bill of Rights Act 1990. The ruling found that WAVESNZ did not provide proof that vaccines have safety risks, yet the datasheets discuss those risks clearly. The Infanrix URL provided to the committee showed this. See Appendix A: the URLs provided to the committee, for each vaccine, have similar sections with similar warnings.

The issue is one of false balance and misleading intent. A datasheet, in the absence of medical advice, context regarding the risk of vaccine preventable diseases, and couched in a website full of vaccination myths is not a place for consumers to make valid risk assessments. The fact that vaccines have risks is not disputed, the issue is that the risk of vaccine preventable diseases (to wider society, not just an individual) outweighs these risks exponentially. It is prudent and necessary for manufacturers to publish information to assist its consumers to mitigate these risks, however vaccine preventable diseases do not have data sheets - thus it is harder for people to compare the two. The likelihood of people independently researching disease is low, which is why most people outsource their decision making to the professionals. What WAVESNZ is doing is providing a false authority and preying upon consumers fears of the medical science they do not understand and large government structure.

The Cartwright Enquiry into an “unfortunate experiment” at National Women's Hospital led to the current legislation implementing patients' rights to access all the information required to make an informed choice about any medical procedure, and to decline procedures if preferred. It is condescending to suggest that the public is not sufficiently well-educated to be entitled to read datasheets or medical information in order to make choices about their own (or their children's) wellbeing.

It is vital that independent choices regarding public health and the risks therein are not unduly influenced by advocacy groups under the guise of 'informed consent' - a website such as WAVESNZ is undoubtedly one promoting an anti-vaccination agenda, and to try say this issue is about access to datasheets is misleading. What they are attempting to accomplish is becoming a substitute for expert medical advice via the 'do your own research' slogan - one

that is incredibly dangerous. We do not encourage consumers to 'do their own research' when it comes to other specialized, dangerous fields such as gas-fitting, as one would generally acknowledge that your average person would not be able to adequately grasp the risks and concepts involved. Instead, we defer to specialists and their consensus.

My response to the intermediary paragraphs regarding the facts that vaccines have risks, are covered by what I have stated earlier regarding the balance of risks.

Furthermore, the datasheets linked on WAVESNZ's website all contain extensive information on both the ingredients and risks of each vaccine, which are clearly laid out under the relevant headings. The average person is completely capable of reading the sheets that accompany vaccines, or viewing them on Medsafe and understanding what those risks are. Datasheets are provided to inform consumers and professionals and the language in each datasheet is straightforward and easy to follow. If parents want to know more, these ingredients are described on both the CDC and FDA websites.

As well as these datasheets, the website also provides a large amount of unsubstantiated opinion, personal anecdote, and conspiracy theories - as per the links above. There is no amount of wrangling about 'informing consumers' that gets around the fact that WAVESNZ are out to cause people not to vaccinate, plain and simple. One needs only to peruse the links above... you will not find any honest appraisals of vaccine preventable diseases and the risks - on the contrary you will find articles dismissing the impact of these diseases, or explained by conspiracies, and books such as 'melanies marvellous measles' (<https://wavesnz.org.nz/melanies-marvellous-measles/>) promoted which encourages children to seek out and actively contract disease. This is not about informed consent.

Many people have ethical objections to the injection of aborted human foetal cell lines such as MRC-5 and WI-38. Many people are aware of the risks of metals and heavy metals and the use of aluminium adjuvants is of increasing public concern. Animal DNA and derivatives, industrial chemicals, preservatives, eggs and other potentially allergenic substances and antibiotics are other things the average person may reasonably disapprove of injecting into themselves or their children. These are listed in the CDC excipient document provided in WAVESNZ's original submission.

The principle of informed consent, in the legislation, gives every person the legal right to refuse vaccination on the basis of vaccine constituents.

When someone lists the isolated ingredients of many day to day items we consume, they certainly sound daunting, and quite often many of these ingredients are present in much higher volumes in the food we consume than in vaccines. This is further proof that WAVESNZ is more interested in promoting fear than providing honest, impartial access to information.

The question WAVESNZ asked was a genuine question. If consumers vaccinated their children, after exercising their right to truly informed choice and being presented with correct information on risks and benefits, they would, of course, read the billboard and answer 'Yes'. If a consumer's right to informed choice was not upheld and they did not know what the ingredients are, then the WAVESNZ website address provides the answer.

If your average consumer was asked what ingredients were in an apple pie, they most likely wouldn't know - and if you listed each chemical, it would sound positively terrifying. The entire response from waves makes it sound like they are but a mere repository for official datasheets, however as above, this is far from the case.

In New Zealand we are encouraged to investigate the ingredients of foods, drinks and all other consumer health and household products

Generally, this is not the case - we outsource the vast majority of our food safety information to the NZ Food Safety Authority and the MPI. Much like your average consumer defers to the Ministry of health when it comes to vaccine information.

asking a simple question about something routinely injected into roughly 90-95% of the country's children should not provoke such ire. The fact that a valid question can trigger 146 complaints implies that there is something wrong with the process of informed consent in New Zealand because there are risks inherent in vaccination and that information should be widely known and acknowledged.

It is far from 'a simple question', it is a complex question and the results are due to decades of medical science, it is not something you can just grasp in its entirety by doing a few google searches or going to an anti vaccination website. The fact that it did promote such ire is because many people could see the insidious intent behind what they say is a 'simple question'. By pushing it as a simple issue, they are attempting to remove the many layers of nuance and years of dedicated science supporting vaccination efficacy.

Please note: district health boards routinely use fear-based advertising to encourage families into vaccinating – from signwritten cars with phrases such as "kids need hugs not bugs" (Waitematā DHB) to pop-up adverts on websites suggesting children will become sick if parents do not vaccinate and large billboards near hospitals such as Palmerston North (Mid-Central DHB) telling people to get flu vaccinations.

DHBs jobs are to prevent people getting sick as much as possible. That they have identified vaccine preventable diseases as a large enough risk vector to spend precious funding on awareness is a testament to how dangerous they perceive these diseases to be. Otherwise, why would they do this? WAVESNZ would have consumers believe that this is because they are paid by vaccination manufacturers, and use phrases on their website such as "Remember, once you vaccinate, there is no going back" <https://wavesnz.org.nz/making-an-informed-decision/>

Yet, these do not provide links to any information showing that vaccines are also potentially unsafe, destroy herd immunity and have such a low efficacy

These are long disproven vaccination myths that are at the core of what WAVESNZ tries to push to vulnerable consumers.

If vaccination is the correct and appropriate route to good health choices, then the ASA cannot find fault in WAVESNZ directing consumers to the ingredients or risks contained in Medsafe's datasheets.

This is a flagrant misrepresentation of the intent of WAVESNZs website.

Summary:

Misinformation regarding vaccines constitutes a significant public health risk, and parental hesitation to vaccinate their children has contributed to a resurgence of vaccine preventable diseases(<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5007135/>). The availability of websites such as WAVESNZ is dangerous enough, let alone giving them a platform such as a giant billboard directing people there.

They assert that they are an impartial provider of information, failing to mention or explicitly acknowledge that their website in reality contains a massive amount of misinformation and anti-vaccine advocacy. They play up the risks of vaccines without paying any heed to vaccine

preventable diseases, which is incredibly socially irresponsible. If this type of advertising were allowed to go unchecked, we could see people freely advertising other notions and miracle cures that are harmful to the health of the general public, and prey upon misunderstanding.

I urge the ASA to side with medical science, with the protection of vulnerable consumers, and to uphold the initial ruling.

RESPONSES TO THE APPEAL APPLICATION FROM THE MEDIA, AD-VANTAGE MEDIA

With regard to the issues raised by Waves below I would like clarify the process in deciding to take down the billboard.

The morning the billboards was first up we were advised by a media company we work with about the comments online regarding the billboard. That morning while in a meeting we missed a number of phone calls and emails complaining about the creative. I then spoke to Simon Teagle from Go Media who has considerable media experience. Go Media have their logo on our billboards and they also had received several complaints and they had concerns over the creative.

Based on the complaints and Simons comments we decided that unless we took the skin down immediately our reputation would be harmed. Our terms and conditions require the advertiser to comply with the ASA standards and also allow us to remove the skin should we wish. As there was considerable doubt it would comply we decided to remove it immediately and wait until the ASA could assess the creative.

SUMMARY OF COMPLAINTS BOARD RULING

The billboard advertisement for WAVES NZ showed a photo of a man holding a baby. The man had a prominent tattoo on his right arm, with a Māori inspired design. Next to the photo were the words: "If you knew the ingredients in a vaccine, would you RISK it?" The word "Risk" was in red capital letters. At the bottom right of the advertisement was the text "www.wavesnz.org.nz"

The ASA received 146 complaints about the billboard advertisement for WAVES NZ. The Complainants were generally concerned the advertisement was not socially responsible because it implied that vaccines are not safe, and convincing people not to vaccinate may not only prove harmful to them and their children, but also to wider society. The Complainants also said the advertisement exploited fear in people who do not understand the underlying science behind vaccinations.

The Advertiser, WAVES NZ, said it can see no reason why the advertisement breaches the ASA's Code of Ethics. The Advertiser said the intention behind the advertisement was to promote informed consent and to encourage parents to research the ingredients of vaccines by visiting the WAVES NZ website to access the MedSafe datasheets.

The majority of the Complaints Board said the identity of the Advertiser, WAVES NZ, was not sufficiently clear and ruled the identification requirement of Rule 11, Advocacy Advertising, had not been met.

A minority disagreed. It said most consumers would be able to identify that the advertiser was anti-vaccination, taking into account the overall context of the advertisement, and the impact of the image and the text combined.

In accordance with the majority, the Complaints Board did not consider the rest of the complaints in conjunction with the liberal interpretation available for advocacy advertisements under the application of the Advocacy Principles.

The Complaints Board said the advertisement was misleading as the likely consumer takeout that vaccination is not safe was not sufficiently substantiated by the Advertiser, the advertisement unjustifiably played on fear and was socially irresponsible.

The Complaints Board ruled the advertisement was in breach of Basic Principle 4, Rule 2, Rule 6 and Rule 11 of the Code of Ethics.

The Complaints Board ruled the complaint was Upheld.