

COMPLAINT NUMBER	20/469
ADVERTISER	Vote No to the End of Life Act
ADVERTISEMENT	Vote No to the End of Life Act Television
DATE OF MEETING	2 October 2020
OUTCOME	Upheld Advertisement not to be used again in its current form.

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about the Vote No to the End of Life Act video advertisement. This is because the reference to “most doctors” in the statement “Should we ignore the advice of most doctors” had not been substantiated by the Advertiser.

Description of Advertisement

The 30 second video advertisement for Vote No to End of Life Act has Dr John Thwaites expressing concern about the End of Life Choice Act. Dr Thwaites says in part: “The End of Life Act has insufficient medical and legal safeguards. It’s dangerous.” The advertisement ends with a statement on-screen: “Vote no to the End of Life Choice Act” and a voiceover that says: “Should we ignore the advice of most doctors.” The advertisement has a promoter’s statement.

Summary of the Complaint:

The Complainant said the statement ‘should we ignore the advice of most doctors’ is a claim that is incorrect and cannot be substantiated due to the word ‘most’ - it implies most NZ doctors would say they are against this bill.

Issues Raised:

- Truthful Presentation
- Advocacy Advertising

Summary of Advertiser’s response:

The Advertiser says the word “most” in common usage means a reasonable majority and they consider the weight of evidence shows that a reasonable majority of New Zealand doctors would say they are against this Act. The evidence included the position of the NZ Medical Association against the Act, an analysis of the submission on the Bill to the Justice Select Committee and information from the Royal College of GPs.

Relevant ASA Codes of Practice

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

Advertising Standards Code

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Rule 2(e) Advocacy advertising: Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the Advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under rule 11 of the Code of Ethics remain relevant. They say:

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.

Role of the ASA when considering an advocacy advertisement

The Complaints Board noted its role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Board will consider whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. The Complaints Board noted that a fact is something that is objectively true and can be verified as such whereas an opinion is a personal belief. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Some statements contain both fact and opinion. The Board referred to the ASA Guidance Note on Advocacy which says:

“Evidence may be cited in support of the opinion, but it should be clear it supports an opinion rather than being the full factual position. Evidence in support of an opinion

should be clearly cited and readily obtainable. Academic studies are often cited as evidence. Such studies are treated as expert opinion rather than the full factual situation...the Board will not determine which of competing academic studies or other evidence is correct. The Complaints Board's only role is to determine whether there has been a breach of the ASA Codes, taking into account the Advocacy Principles."

The Complaints Board observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

Under Rule 2(e) Advocacy advertising of the Advertising Standards Code:

- The identity of the advertiser must be clear
- Opinion must be clearly distinguishable from factual information, and
- Factual information must be able to be substantiated.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 20/358 which was Upheld in part

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 20/358 concerned a brochure advertisement from the New Conservative Party. The two-sided brochure poses the question "Did you know?" and lists a number of statements, including "Babies can be lawfully and easily aborted up to full term", "Every New Zealander owes \$32,000 in Government debt" and "Drugged drivers already cause more deaths than drunk drivers." The Complaints Board upheld in part a complaint about a flyer for the New Conservative Party. The Board said the statement "Drugged drivers already cause more deaths than drunk drivers" was a factual statement, not an opinion, and it had not been adequately substantiated.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout was the advertisement Vote No to the End of Life Act is from an advocacy group opposed to the End of Life Choice Act, which most doctors are against too.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had met the identity requirements of Rule 2(e) and was an advocacy advertisement. The Board said the identity of the Advertiser, Vote No to the End of Life Act, a registered promoter, was clear through the promoter's statement as was its position on the End of Life Choice referendum.

Is the statement in the advertisement likely to mislead?

The Board confirmed the statement subject to complaint said: "Should we ignore the advice of most doctors."

The Complainant did not consider the statement could be substantiated.

The Complaints Board said the claim was a factual claim and required substantiation.

The Complaints Board considered the substantiation provided by the Advertiser. This included a link to a fact sheet against the proposed Act from the New Zealand Medical Association which has “over 5000 members”, the number of signatures of an open Doctors Say No letter, an analysis of the submissions to the Justice Select Committee on the Bill and an extract from the submission of the Royal College of General Practitioners to the Justice Select Committee.

The Complaints Board noted that publicly available information showed the number of registered active doctors was 13,383 in 2010¹. The Complaints Board also considered the Advertiser’s response about the use of the word ‘most’ which said in part: “The word “most” in common usage means a reasonable majority. In our opinion the weight of evidence provided below clearly shows that a reasonable majority of New Zealand doctors would say that they are against this Act.”

The Complaints Board said consumers would consider the word ‘most’ to mean the majority of doctors, that is more than 50% of doctors. The Complaints Board agreed the substantiation provided by the Advertiser did not support the statement “Should we ignore the advice of most doctors”. The Board said based on the number of active doctors in 2010, the evidence provided by the Advertiser was not sufficient to support the reference to “most”. It agreed that no one piece of evidence in the Advertiser’s response substantiated the claim. It also agreed that it is likely that some doctors would be represented more than once in the evidence provided, so when considered together it did not substantiate the claim either.

The Board agreed the End of Life Choice Referendum is a significant social issue and it is important the New Zealand public has context for the differing views on it, in order to be able to take an active part in the debate. However, under the ASA complaints process, the onus is on the Advertiser to support factual statements made in advertisements, if challenged.

The Board confirmed the reference to “most doctors” had not be adequately substantiated.

The Complaints Board unanimously ruled the advertisement was in breach of Principle 2 and Rules 2(b) and 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement not to be used again in its current form.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. **NOTE:** Under the fast track process one month prior to the Election, appeals must be made in writing via email or letter within three (3) calendar days of receipt of this decision.

¹ www.parliament.nz/en/pb/research-papers/document/00PlibCIP021/medical-workforce-issues

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

The advertisement has a man speaking direct to camera with his title shown as a doctor. He's stating some fact, same opinion. But then the ad ends with the voiceover 'should we ignore the advice of most doctors'. I would argue this is a claim that is incorrect and cannot be substantiated due to the word 'most' - it implies most NZ doctors would say they are against this bill.

Appendix 2

RESPONSE FROM ADVERTISER, VOTE NO TO THE END OF LIFE ACT

Complaint 20/469

It has a man speaking direct to camera with his title shown as a doctor. He's stating some fact, same opinion. But then the ad ends with the voiceover 'should we ignore the advice of most doctors'.

I would argue this is a claim that is incorrect and cannot be substantiated due to the word 'most' - it implies most NZ doctors would say they are against this bill.

Response

The word "most" in common usage means a reasonable majority. In our opinion the weight of evidence provided below clearly shows that a reasonable majority of New Zealand doctors would say that they are against this Act.

Evidence

1. The NZMA, with over 5000 member doctors in New Zealand, has published an unequivocal [fact sheet against the EOLC Act](#) (see page 8 of the document).
2. 1,751 NZ [doctors have signed an open Doctors Say No letter](#) in opposition to the Act. An equivalent open [Doctors Say Yes letter](#) has garnered just 17 signatures, including some doctors who are no longer practicing.
3. An [analysis of 38,707 submissions to the Justice Select Committee](#) reveals that, of over 600 submissions received from medical doctors in New Zealand, 93.3% were opposed.
4. The [Royal New Zealand College of General Practitioners](#) is the professional body and postgraduate educational institute for general practitioners (GPs) and rural hospital doctors. In its [submission to the Justice Select Committee](#) it concluded (page 18) that: "From our own analysis of the Bill and our members' feedback, it is clear there is strong apprehension about legalising physician-assisted suicide and euthanasia."