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| **COMPLAINT NUMBER** | 21/549 |
| **APPEAL NUMBER** | 22/006 |
| **ADVERTISER** | Ministry of Health |
| **APPLICANT** | The Complainant |
| **ADVERTISEMENT** | Ministry of Health, website |
| **DATE OF MEETING** | 10 March 2022 |
| **OUTCOME** | Appeal Declined<br>Complaint No Grounds to Proceed |

**SUMMARY**
The Chair of the Complaints Board ruled on 29 November 2021 the complaint regarding a web page on the Ministry of Health website providing general information on vaccines in New Zealand had no grounds to proceed.

The Complainant appealed the decision. The appeal application was considered by the Chairperson of the Appeal Board ("the Chairperson"). The Chairperson noted the Complainant's view that their concerns about the advertisement making unsubstantiated claims about the safety and efficacy of the vaccine had not been adequately addressed.

The Chairperson agreed with the Chair of the Complaints Board that "the safety and efficacy of the vaccine itself and the approval process followed by the Government regulator is not a matter the ASA can adjudicate on."

The Chairperson noted the Complainant did not agree with the Chair of the Complaints Board's decision, however, disagreement is not a ground on which an appeal can be accepted.

The Chairperson said none of the grounds for appeal had been met and ruled the appeal application was declined.

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

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**CHAIRPERSON'S RULING**

The Chairperson of the Appeal Board viewed the application for appeal. She noted there are five grounds upon which an appeal is able to proceed. These are listed at Clause 6.4 of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and are as follows:

(a) The proper procedures have not been followed.

(b) There is new evidence of sufficient substance to affect the decision.

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

(d) The decision is against the weight of evidence.

(e) It is in the interests of natural justice that the matter be reheard.

The Complainant appealed the Decision from the Chair of the Complaints Board, which ruled the complaint had No Grounds to Proceed. (A full copy of the Chair's ruling is in Appendix 1).

The Complainant appealed under all five grounds, Grounds (a), (b), (c), (d) and (e). The Complainant said their concerns about the advertisement making unsubstantiated claims about the safety and efficacy of the vaccine had not been adequately addressed. The Complainant provided new information about the Comirnaty (COVID-19 mRNA Vaccine), obtained through Official Information Act requests to Hon Chris Hipkins, Minister for COVID-19 Response. The Complainant also provided information published online by the Canadian Covid Care Alliance, an alliance of Canadian doctors, scientists and health care practitioners. (A copy of the original appeal is in Appendix 2. Additional Information in support of the appeal application is in Appendix 3).

The Chairperson reviewed the complaint, the advertisement, the Ruling from the Chair of the Complaints Board and the Complainant's appeal applications.

The Chairperson confirmed the advertisement, which is part of the New Zealand Government's "NZ Vaccine Facts" series, was advocacy advertising under the Advertising Standards Code. The Chairperson confirmed the Advertiser's identity was clear.

The Chairperson acknowledged the information provided by the Complainant, in support of the appeal of this complaint. She noted the issues raised about the risk/benefit assessments for Comirnaty (COVID-19 mRNA Vaccine) and the longer-term safety data.

***Jurisdiction of the Advertising Standards Authority***
The Chairperson agreed with the Chair of the Complaints Board that the matters raised by the Complainant are outside the jurisdiction of the Advertising Standards Authority.

The Chairperson noted the Chair's reference to the Cameron decision (Electoral Commission v Cameron [1997] 2 NZLR 421,424) which resulted from a judicial review of a Complaints Board decision about an Electoral Commission advertisement.

The Chairperson noted the following excerpt from the Cameron decision:

> …we would expect the Board to tread carefully in relation to such matters as the public education advertisements of the Commission and similar public authorities to ensure that it does not substitute its views for those of an expert body charged with particular responsibilities.

The Chairperson said the advertisement was part of the Government's Unite Against COVID-19 series of advertisements. The Unite Against COVID-19 strategy is co-ordinated by the Department for the Prime Minister and Cabinet, with the support of other agencies, including the Ministry of Health and Medsafe. In order to ensure the "ongoing response to COVID-19 is informed by the best available expert advice" the Minister for COVID-19 Response has also established several groups: the COVID-19 Independent Continuous Review, Improvement

and Advice Group, the Strategic COVID-19 Public Health Advisory Group and the Community Panel.

The Chairperson noted the following excerpt from the Chair's decision:

> the safety and efficacy of the vaccine itself and the approval process followed by the Government regulator is not a matter the ASA can adjudicate on. She noted the Datasheet, which provides relevant information about the vaccine, was available on the Medsafe website, in addition to information about Medsafe's approval process and approval of COVID-19 vaccines.

The Chairperson said the Complainant's detailed appeal submissions restated their initial position about wider issues, which fall outside the remit of the Advertising Standards Authority.

The Chairperson ruled there were no grounds on which the appeal could proceed, and the application was declined.

**Chairperson's Ruling:** Appeal application **Declined** Complaint **No Grounds to Proceed**

**APPENDICES**

1. **Chair of the Complaints Board Decision - No Grounds to Proceed**
2. **Appeal Application**
3. **Additional information provided by Complainant**

**Appendix 1**

**Chair of the Complaints Board Decision - No Grounds to Proceed**

**Advertisement:** The web page on the Ministry of Health website provides general information on vaccines in New Zealand. The page aims to answer "common questions" regarding development, monitoring, vaccine ingredients, storage and who can administer them.

**The Chair ruled there were no grounds for the complaint to proceed.**

**Complaint:** "New Zealand Ministry of Health's "Vaccine safety" web page - https://www.health.govt.nz/yourhealth/healthy-living/immunisation/vaccine-safety – states that "*All vaccines approved for use in New Zealand have a good safety record*". In relation to COVID-19 inoculations, this is false, as safety records for these products are unknown, as explicitly stated by manufacturers. That web page goes on to state, "*Before a vaccine can be approved for use it goes through a long testing process by international scientists to check that it is safe, and that it works. This process usually takes several years and includes trials on people who volunteer to use it. […] Phase 3: Large, randomised trial(s) to test the effect of a new vaccine against a control group. This phase tests safety and efficacy*". Again, these standards have not yet been met with COVID-19 inoculations. That web page further states, "*Vaccines include antigens (weakened or killed germs, or parts of germs) which help your body recognise and fight off disease*." Again, this is not an accurate description of COVID-19 inoculations, which do not contain antigens as described by Ministry of Health, or any conventional vaccines. Terms such as "vaccine", "vaccinated", "vaccination" are misleading, when used to describe COVID-19 inoculations…".

**The relevant provisions were Advertising Standards Code – Principle 1, Principle 2, Rule 2(b), Rule 2(e).**

> **Principle 1: Social Responsibility:** Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.
>
> **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.

**About Advocacy Advertising under the Advertising Standards Code**
The Chair confirmed the advertisement from the New Zealand Government on matters relating to the COVID-19 vaccination programme was advocacy advertising under the Advertising Standards Code.

Complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

In assessing whether an advocacy advertisement complies with the Advertising Standards Code, the freedom of expression provisions under the Bill of Rights Act 1990 must also be considered.

Section 14 of the Act says: "Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form." This freedom of expression supports robust debate on current issues in a democracy.

The Chair observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Advertising Standards Authority (ASA), and it should not unduly restrict the Government's role in communicating public health information to the public.

Complainants sometimes ask the ASA to in effect decide which side in an advocacy debate is correct, but the Advertising Standards Complaints Board has consistently declined to have a view. The ASA is not an arbiter of scientific fact. 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. In the first instance the Chair's role is to decide if there are any grounds for the complaint to proceed.

Under Rule 2(e) Advocacy advertising in 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.

**Application of the identity requirements of the Advertising Standards Code**
The Chair confirmed the Advertiser's identity was clear. The advertisement included a logo for the Ministry of Health at the top of the page and the page was part of the Ministry of Health website. The position of the Advertiser was also clear. The advertisement promotes the vaccine rollout by providing information on the benefits of the vaccine. The Chair said the advertisement complied with the identity requirements of Rule 2(e) of the Advertising Standards Code.

The Chair noted the advertisement was from the New Zealand Government. The Chair confirmed the agencies supporting the Government's COVID-19 approach included the Department for the Prime Minister and Cabinet. The role and jurisdiction of the ASA in advertising from expert bodies was addressed in *Electoral Commission v Cameron* [1997] 2 NZLR 421. In accordance with the findings of the Court of Appeal, the Advertising Standards

Authority was required to "tread carefully" and ensure that it did not substitute its opinion for that of the expert body.

**Application of the Advertising Standards Code to this advocacy advertisement**
In reviewing the complaint about this advertisement, the Chair took into account the role of advocacy advertising, the liberal interpretation of the Codes required by the Advocacy Principles, the application of *Cameron*, the likely consumer takeout, and the context for the advertising; the New Zealand Government's response to the COVID-19 pandemic with an audience of all New Zealanders. The Chair also noted the large amount of information available from a variety of sources about COVID-19, including the Government, the science community, news media and interest groups.

**The Chair** acknowledged that the Complainant's concern that the advertisement contained false statements regarding the safety, development, and ingredients of the Pfizer vaccine.

She examined the particular statements identified by the Complainant:

- "All vaccines approved for use in New Zealand have a good safety record";
- "Before a vaccine can be approved for use it goes through a long testing process by international scientists to check that it is safe, and that it works. This process usually takes several years and includes trials on people who volunteer to use it. […] Phase 3: Large, randomised trial(s) to test the effect of a new vaccine against a control group. This phase tests safety and efficacy";
- "Vaccines include antigens (weakened or killed germs, or parts of germs) which help your body recognise and fight off disease".

The Chair noted that the web page was intended to provide general information about vaccines in New Zealand. It did not directly refer to COVID-19 vaccines. Given also that information specific to the COVID-19 vaccines was available elsewhere on the website, she said the advertisement was not misleading.

The Chair reiterated that the safety and efficacy of the vaccine itself and the approval process followed by Medsafe is not a matter the ASA can adjudicate on. She noted the Datasheet, which provides relevant information about the vaccine, including ingredients, was available on the Medsafe website, in addition to information about Medsafe's approval process and approval of COVID-19 vaccines.

The Chair said the advocacy advertisement was not misleading, had been prepared with the due sense of social responsibility and was not in breach of Principle 1, Principle 2, Rule 2(b) or Rule 2(e) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaint to proceed.

**Chair's Ruling:** Complaint **No Grounds to Proceed**

**Appendix 2**

**APPEAL APPLICATION FROM COMPLAINANT**
I am writing to request appeal of these decisions, 21/532, 21/546, 21/547, 21/548, 21/549. The fact remains that the manufacturer explicitly disclaims safety, by clearly stating that there is no long-term safety data for these treatments. This is not a matter of scientific debate, but rather a clear and explicit safety disclaimer directly from the product manufacturer, which is the opposite of the safety message being advertised. Whether or not these advertisements are considered to be "advocacy advertisements" should have no bearing on the fact that safety claims being advertised about medical treatments are the exact opposite of safety claims being made by the manufacturers. This is not a matter of scientific dispute. This issue seems to have not been sufficiently addressed in these cases, and on this basis I am requesting that these cases be appealed.

**Appendix 3**

**ADDITIONAL INFORMATION FROM COMPLAINANT**
It seems that the following grounds apply to request an appeal:

- The proper procedures have not been followed.
- Evidence provided to the Complaints Board has been misinterpreted to the extent it has affected the decision.
- The decision is against the weight of evidence.
- It is in the interests of natural justice that the matter be reheard.

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To clarify, my complaint should be considered to apply to advocacy advertising just the same as it may apply to a product and/or service. In any case, advertising, marketing, or any other promotion of a medical treatment must accurately account for safety and efficacy data. Without diving into scientific dispute, manufacturers' statements that there is no long-term safety or efficacy data should be considered accurate.

Also, I would like to submit new information, as revealed by a response to an Official Information Act Request. That response is dated 23 Dec, and provided by Chris Hipkins, Minister for COVID-19 Response.

That OIA request and responses can be found here - https://fyi.org.nz/request/17133-overseas-trends

Of note, Chris Hipkins refers to the risk/benefit assessment for these inoculations, and the assessment he refers to states: "Summary - The benefit risk balance of Comirnaty (COVID-19 mRNA Vaccine) for active immunisation to prevent coronavirus disease 2019 (COVID-19) caused by SARS-CoV-2, in individuals 16 years of age and older, is not clear. At this stage, there is evidence only for short-term protection, and longer-term safety data are lacking. However, experience with the vaccine is accumulating rapidly." That document further states "Safety and efficacy have not been established in children under 16 years of age."

Based on the context of that OIA Request, this appears to be the extent of the government's risk/benefit assessment, and it substantiates my previous assertions that there is no basis for claiming that these inoculations are "safe" or "effective". Any claims of these vaccinations being "safe" or "effective" (not to mention "protecting others") is not supported by

manufacturers' claims, not supported by any data that's been disclosed by the government, and at best, only supported by claims that are subject to scientific dispute.

I would also like to request that the ASA consider the PDF and/or video presentation by the Canadian Covid Care Alliance, which are the most objective and unbiased presentations of these inoculations' safety and efficacy data that I've found:

- PDF - https://www.canadiancovidcarealliance.org/wp-content/uploads/2021/12/The-COVID-19- Inoculations-More-Harm-Than-Good-REV-Dec-16-2021.pdf
- Video - https://rumble.com/vqx3kb-the-pfizer-inoculations-do-more-harm-than-good.html

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I would like to submit new information, as revealed by a response to an Official Information Act Requests.

While my own Official Information Act Requests are being delayed, I have found a previous Official Information Act Request that appears relevant to the issues raised in this ASA complaint/appeal.

In response to questions about these COVID inoculations being safe and effective, The Ministry of Health refused to answer these questions, deferring to section 18(g)(i) of the Official Information Act, and articulated that The Ministry of Health does not hold the relevant information. ie, The Ministry of Health does not hold information that these COVID inoculations are safe or effective. The Ministry of Health further deferred to section 18(g)(i) of the Official Information Act in refusing to explain how these inoculations meet the definitions of "vaccines". ie, The Ministry of Health does not hold information that these COVID inoculations are "vaccines".

Request for further information regarding SARS CoV 2 vaccination program https://fyi.org.nz/request/15147-request-for-further-information-regarding-sars-cov-2-vaccination-program

Again, I believe these points are relevant to the pending ASA complaint/appeal being considered, regardless of whether the complaint is interpreted as applying to a product, service, advocacy advertising, or any other form of advertising, marketing, or promotion. Safety and efficacy claims of medical treatments must be presented accurately, without embellishment. It is clear that even The Ministry of Health is unable to substantiate claims that these treatments are "safe" or "effective". It is clear that such claims are not made by manufacturers of these treatments. Despite the ubiquity of such claims, they can not be substantiated. On this basis, it can not serve public health interests to advertise, market, or otherwise promote these treatments as "safe" or "effective", and any such advertising, marketing, or other promotion must immediately be stopped, ideally with statements issued to clarify that prior advertising, marketing, or other promotion on the basis of "safe" and "effective" was not warranted.