

Ref: FTMIN14/2410

Mr Jason Arditi
Inquiry Manager
Committee on the Health Care Complaints Commission
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Arditi

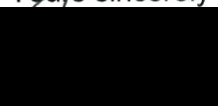
Thank you for your correspondence regarding the Inquiry into the Promotion of False or Misleading Health-related Information or Practices.

As you are aware, during my appearance before the Committee, the following questions were taken on notice:

1. How many times has NSW Fair Trading and the Health Care Complaints Commission (HCCC) entered into arrangements to share information jointly and investigate matters?
2. How many complaints have been received about common drugs such as paracetamol being marketed as targeting specific areas:
 - a. during the past two years; and
 - b. are any of these complaints in the Fair Trading remit;
 - c. how many were referred to Fair Trading from the HCCC; and
 - d. how many were referred to Fair Trading from the Australian Competition and Consumer Commission (ACCC)?
3. Has Fair Trading received any complaints about inappropriate or highly expensive stem cell therapy?
4. How many cases has Fair Trading investigated that relate to the promotion of a health-related product or service that is misleading or deceptive:
 - a. during the past two years; and
 - b. would any or all of these cases have been better investigated by the HCCC given its exclusive focus on healthcare complaints;
 - c. how many were referred to Fair Trading from the HCCC; and
 - d. how many were referred to Fair Trading from the ACCC?
5. Can you tell the Committee about Fair Trading involvement in the prosecution of the company advertising that it could ensure longer-lasting sex?

My responses to the above questions are set out in the attached document. I trust this information is of assistance to the Committee. Should the Committee require any further assistance, I invite them to contact [REDACTED] on [REDACTED].

Yours sincerely



Rod Stowe
Commissioner

Encl. 29/1/14.

**COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION
INQUIRY INTO THE PROMOTION OF MISLEADING HEALTH-RELATED INFORMATION
OR PRACTICES
HEARING ON 2 SEPTEMBER 2014
QUESTIONS TAKEN ON NOTICE**

- 1. *How many times has NSW Fair Trading and the Health Care Complaints Commission (HCCC) entered into arrangements to share information jointly and investigate matters?***

During financial years 2012-13 and 2013-14, there has only been one joint investigation undertaken in relation to a matter received late in the previous financial year 2013-14 and discussions have commenced with the HCCC.

- 2. *How many complaints have been received about common drugs such as paracetamol being marketed as targeting specific areas:***
- a. during the past two years; and***
 - b. are any of these complaints in the Fair Trading remit;***
 - c. how many were referred to Fair Trading from the HCCC; and***
 - d. how many were referred to Fair Trading from the Australian Competition and Consumer Commission (ACCC)?***

2(a) A search of the Fair Trading complaints database for the 2012-13 and 2013-14 financial years relating to the keywords 'Panadol' and 'Paracetamol' has determined no complaints or enquiries were received relating to the compounds of the products or price anomalies.

2(b) Consumers with concerns relating to alleged misleading or misrepresentation of products can contact Fair Trading. Fair Trading will action these complaints where the consumer is seeking redress, such as a refund, and will undertake trader monitoring. However, Fair Trading does not have the expertise to analyse the legitimacy of pharmaceutical products and such complaints may also be referred to the Therapeutic Goods Administration (TGA).

2(c) None.

2(d) None.

- 3. *Has Fair Trading received any complaints about inappropriate or highly expensive stem cell therapy?***

A search of the Fair Trading complaints database for the 2012-13 and 2013-14 has not located any complaints or enquiries referring to stem cell therapy.

- 4. *How many cases has Fair Trading investigated that relate to the promotion of a health-related product or service that is misleading or deceptive:***
- a. during the past two years; and***
 - b. would any or all of these cases have been better investigated by the HCCC given its exclusive focus on healthcare complaints;***
 - c. how many were referred to Fair Trading from the HCCC; and***
 - d. how many were referred to Fair Trading from the ACCC?***

Fair Trading received 89 complaints in the 2012-13 financial year and 104 complaints in 2013-14 financial year relating to Medical Health Care services. Of these, 17 were recorded as being for misleading or misrepresented services, mostly relating to fees and charges. Although Fair Trading is known to receive complaints referred from the HCCC, these referrals, including those from other agencies, are not recorded for statistical purposes.

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In regard to complaints received by Fair Trading that are assessed for a direct referral without Fair Trading intervention, these are recorded as enquiries rather than complaints in the Fair Trading complaints database. During the same periods, Fair Trading received a total of 613 enquiries in relation to Medical Health Care Services where appropriate information or referral was provided. A manual review of the Fair Trading database shows 38 enquiries have been identified as being referred specifically to HCCC during the 2012-13 and 2013-14 financial years.

4(a) During financial year 2012-13, Fair Trading investigated one matter. During financial year 2013-14, six matters were investigated.

4(b) No, however standard practice is that if during an investigation it is identified that there are components that may be better addressed by the HCCC, they are referred.

4(c) None

4(d) None

5. Can you tell the Committee about Fair Trading involvement in the prosecution of the company advertising that it could ensure longer-lasting sex?

Advanced Medical Institute is a business purporting to offer medical treatments for various men's and women's health issues.

The activities of Advanced Medical Institute Pty Ltd (AMI) first came to the attention of NSW Fair Trading when consumer complaints were received in 1993. The main concerns in relation to AMI's conduct are:

- false and misleading representations regarding the effectiveness of the medications prescribed and dispensed to consumers; and
- unconscionable conduct in the representations and business practices of AMI.

In 2003 and 2006, the Australian Competition and Consumer Commission (ACCC) was successful in separate actions against AMI in relation to misleading or deceptive conduct.

In December 2010, the ACCC instituted proceedings in the Federal Court against Advanced Medical Institute Pty Ltd and AMI Australia Holdings Pty Ltd, Mr Jacov Vaisman and two doctors. The ACCC alleged, AMI engaged in unconscionable conduct in contravention of section 51AB of the *Trade Practices Act 1974*. Fair Trading assisted the Commission in this action by providing consumer affidavits.

AMI went into liquidation the day after the court action commenced and continued to trade during its voluntary administration.

The ACCC instituted new proceedings against AMI in June 2011 and made a request to join the new company, NRM Pty Ltd as a party to the current proceedings. The ACCC further alleges that NRM is in breach of the Australian Consumer Law by entering into long term agreements for the treatment of male sexual dysfunction which contain unfair contract terms in relation to the termination of a contract.

In March 2012, NSW Fair Trading provided the ACCC with additional details of five complainants to assist with the new prosecution.