

**Submission
No 59**

THE PROMOTION OF FALSE OR MISLEADING HEALTH-RELATED INFORMATION OR PRACTICES

Organisation: The Communications Council
Name: Ms Margaret Zabel
Position: Chief Executive Officer
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13th January 2014

Mrs. Leslie Williams MP
Chair
Committee on the Health Care Complaints Commission
Parliament of New South Wales
Australia

Dear Mrs. Leslie Williams,

Submission to the Committee on the Health Care Complaints Commission regarding the promotion of false or misleading health-related information or practices

On behalf of The Communications Council, the peak body for Australia's marketing communications sector, please find enclosed our submission regarding the promotion of false or misleading health-related information or practices.

The Council thanks the Committee for the opportunity to comment, and we welcome any further discussion that may be required.

Yours sincerely,



Margaret Zabel
Chief Executive Officer
The Communications Council

Introduction and credentials

The Communication Council (TCC) welcomes the opportunity to provide a submission on the above as requested by the Committee on the Health Care Complaints Commission.

As the peak representative body for marketing communications agencies in Australia, including advertising agencies in all media - both traditional and digital, promotional marketing companies, commercials producers and public relations companies, TCC is well-credentialed to comment on this issue. Given that this issue is primarily concerned with truth and validity of information, this is particularly apposite given TCC's dedication in its Ethics Charter to 'not stretch the truth'. All TCC members are also obliged to abide by the AANA's Code of Ethics which states all 'Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.'

This submission has been prepared on their behalf by their sub-committee, The Healthcare Communications Council (HCC), which represents those communications companies who specialise in providing the full range of healthcare communications to all targets – both consumer and healthcare professionals (HCPs) of all types, in all media for all healthcare/therapeutic products and services, from government information programs to over-the-counter medicines, from medical devices to the most specialist prescription drugs and everything in between.

Part of HCC's specific charter is to 'undertake to always provide balanced, factual information to healthcare brands' and 'to gain recognition as providers of highly valued, compliant and technically sound healthcare advertising communications.'

We understand that it is precisely the lack of 'balanced, factual and technically sound' information that is at the heart of the Healthcare Complaints Commission's Committee's concerns, specifically but not exclusively related to the information published in the recent Paediatric Vaccination issue, concerning the NSW- based, previously named 'Australian Vaccination Network' (AVN).

Analysis of Issue(s)

In addition to the overarching issue identified above, it would appear that the key issue is that this kind of information is able to get published without any qualification.

This can and does occur in two ways:

- The traditional method of distributing the (misleading) information to the news media direct from the source, in the hope that it will be published because of its controversial nature.
- The second is the source's utilization of social digital media to forward the information to vast numbers of (potentially susceptible) people very quickly - the modern day equivalent of 'word of mouth'.

The former is dependant for publication on the decision of news journalists who can exercise balanced reporting by checking the “facts” as presented for veracity and if they feel necessary, publish opposing views. However as with the recent “Catalyst” programme on ABC 1, this does not always happen in a balanced and timely manner.

The second is dependent on the recipient of the social digital communication in doing their own checking.

In advertising and PR, we in the healthcare communications business have to abide by strict regulatory codes both governmental (TGAC), and industry, Medicines Australia (MA), Australian self-medication industry (ASMI), Complementary Health Care (CHC), and Medical Technology association of Australia (MTAA) and as of January 18th 2013 Food Standards Australia and New Zealand (FSANZ) for health and nutrition claims in food – all of which have both complaints and punishment procedures for those who break them. Similarly, the ‘news’ published by the media is governed by self-governing media regulatory bodies – e.g. The Press Council.

Thus we would confirm that the kind of misleading information identified would not be forwarded for publication by any of TCC’s members either via advertising/promotional material or via an official PR release.

Unfortunately the perpetrators of what can be easily proven as misleading information do not feel bound by any regulation and regard themselves as having the right under ‘freedom of speech’ legislation to voice their opinions, however different they may be from clinically proven opinion. While they have that right in principle under the constitution, there are limitations when such an opinion has the potential to adversely affect ‘the Public Health’, as it does in the case of anti-vaccination opinions with the unvaccinated capable of starting epidemics, apart from the cost on the public purse to have to deal with such epidemics. An extreme example of both what has been achieved by vaccination being the elimination of Polio worldwide but for 2 areas and what has NOT been achieved in the 2 areas as a result of the extremist views of the controlling militant jihadists who refuse vaccination on the imagined grounds of a western plot to control those vaccinated.

Another key issue is that with the leading Australian anti-vaccination group – (AVN) - there was also deliberate deception in naming the group so that it appeared to be a pro-vaccination group at first glance.

(Whether this could be proven as a ‘criminal’ attempt to deceive would be for ACCC’s lawyers to decide. However, despite the Supreme Court’s original ruling, new legislation in NSW has enabled the HCCC to force them to change their name – see below.)

This issue of misleading brand-naming has been around for some time both in the delivery of medical services – e.g. ‘24 Hour Medical Centres’ which are closed between 10pm and 8am and in the naming of therapeutic products – especially in the weight-loss and vitamin/energy supplement areas - neither of which have been properly addressed by their relevant regulatory bodies.

Towards some Solutions

1.0 Policing and deterrence:

Although HCCC has demonstrated its ability to do this in NSW, there is no dedicated Federal system.

ACCC legislation, as guardians of consumer protection against unsafe products and services should cover anything promoted that can be identified and proven as misleading with the potential to lead to detrimental

public health issues as against the clinically proven alternative of paediatric vaccination. The potential for epidemics should provide sufficient proof.

2.0 Articles published by the media based on misleading PR releases:

Here the onus remains with the media publishers to check anything they suspect as controversial as they would any controversial major news story.

It is strongly recommended that the Media Publishers are approached as a group to provide submissions on how the pre-publishing scrutiny of procedure of articles that might affect The Public Health, might be improved, so that without impinging on 'the freedom of the press', a more balanced opinion could be presented as clearly did not happen with ABC1's 'Catalyst' programme on statins, which is already leading to considerable alarm amongst relevant HCPs.

3.0 Social Media:

While relevant communications associations and industry groups have well-publicised Codes of Practice for the use of social digital media, these codes of practice are only binding on their members.

Outside that membership, there is the problem that material – often highly misleading – can be 'published' almost instantly from anywhere in the world by any individual or group which is impossible to police effectively.

All that can be suggested is that all relevant regulatory bodies and industry associations and their members as well as the NSW Health Care Complaints Commission are encouraged to exercise constant vigilance for such breaches and in NSW, report them to NSW HCCC so they can, if proven, be refuted as soon as possible, in the strongest possible terms in all mass media. And where practicable, punished as a future deterrent.

4.0 Longer Term:

This implies the need for ideally a centralised National Federal monitoring body who will be responsible for both assessing the validity of such complaints and enforcing action. Logic suggests this should be under the aegis of the federal DOH, either via TGA or a separate specially constituted body. At the same time other national bodies such as 'Choice' and consumer health associations should be encouraged to give support, if only the need to publicise for all to exercise vigilance for potential misleading information.

While this may smack of 'Big Brother', it has the potential to help avoid major public health catastrophes on a national scale.

5.0 HCCC's adequacy of powers to investigate and capacity to take enforcement action against perpetrators of misleading treatment information (ref points (d) & (e) in Terms of Reference):

It is beyond TCC's competence and experience to comment officially on the above. However, reading of HCCC's complaints process, the recent legislation brought in by the NSW health minister and the subsequent success against AVN's name, strongly suggests that it should be able to investigate similar complaints as have been levelled at the anti-vaccination group, provided they are regarded as a health organization in NSW. Although not necessarily an officially recognised health organisation or containing AHPRA registered health specialists, it could be argued that HCCC's terms of reference also cover anyone or anybody purporting to be or who could be reasonably believed by the 'man/woman in the street' to be posing as a bona fide health organisation or HCP.

Conclusion

There are no easy answers on this one. While HCCC would appear to have demonstrated its powers to deal with such problems in NSW, longer term it requires action Federally. Similarly in order to ensure that such problems are brought to the relevant bodies for investigation requires concerted action.

It requires agreement amongst a wide variety of organisations that a serious problem exists and needs to be addressed and that while there are no simple answers to address it, the optimum solution lies in the need for co-operation in policing, identifying and taking such action as the ACCC allows for.

Should legal opinion decide that ACCC's terms of reference do not cover this then there is a case for considering enacting an amendment which does.