Consumers Health Forum of Australia

SUBMISSION

ADVERTISING TO THE PUBLIC:

Complying with the Therapeutic Goods Advertising Code 2018

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Introduction

The Consumers Health Forum of Australia (CHF) is the national peak body representing the interests of Australian healthcare consumers and those with regard for healthcare consumer affairs. It works in the public interest to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF welcomed the Review of Medicines and Medical Device Regulation. Whilst we did not support all the recommended approach of removing the required pre-approval of therapeutic goods advertisements to a complaints-based system, we are pleased to work with the Therapeutic Goods Administration (TGA) to ensure that new arrangements will continue to protect consumer interests.

We agree with the opening statement that "*therapeutic goods are not usual items of commerce*" mainly because of their capacity to cause harm or for there to be adverse consequences for consumers who use them. We know there are low levels of health literacy in Australia and this means that many consumers only have limited capacity to assess the merits of therapeutic products, so advertising aimed at consumers can be more influential than for other types of products.

The guidance document is an important part of the process as it sets out in more detail what the Code means in practical terms for sponsors, advertisers and consumers. In the new complaints-based approach it is important that there is this shared understanding of what is and what is not acceptable. For consumers the guidance is useful to let them see what was intended in the Code and they can use it as a basis for future complaints.

Our comments on the consultation draft fall into two broad categories. The first set of comments are more general in nature and cut across the whole document. they highlight ways in which the document could be improved to be more useful for consumers and to provide greater clarification for sponsors and advertisers. The second set of comments deal with specific changes we would like in the detail of the guidance.

The impact of the guidance will only become clear once the new code has been operational for some time and there is some data on the number and nature of complaints about advertising.

General Comments

The first important point is that this guidance document needs to be a living document with a clear process for amending it as they analysis of complaints made and upheld show where there is confusion/lack of clarity and even some loopholes which need to be addressed. There needs as a minimum to be a process for regular review of the document linked to the complaints data with an opportunity for all stakeholders to make suggestions about where the guidance can be clearer, within the framework of the existing Code.

Language

The document is very dense and quite difficult to read. We ran it through a readability program and it came back with a Flesch reading ease score of 29.7 per cent and a Flesch Kincaid reading grade of 14.8 years. Both of these show it would be difficult for many consumers to read and understand. The guidance either needs to be produced in a plain or simple English version which would be helpful to consumers.

The proposed information or fact sheets should all be written in language that meets consumer needs with the aim to get a readability ease score over 50 per cent and a reading grade below 10 years.

Use of Examples

The use of examples of what is and is not acceptable should help to clarify many issues. The examples are particularly helpful to consumers and it would be helpful to have more to illustrate points where something is/is not acceptable.

CHF suggests that there could be greater consistency in how these examples are identified. It was sometimes difficult to ascertain if the example being cited was showing something which would be acceptable or the opposite. A good examples of this is in 10(d) (ii) where there are lists of examples, but it is not clear if they are illustrating good or poor practice.

The examples under (9C) which looks at comparative claims uses a green cross for acceptable/appropriate and a red cross for not acceptable and at 10(d)(i) on side effects make it clear what is being said. This identification could usefully be applied throughout the document to make it clearer to everyone reading it what the examples are doing i.e. saying it is or isn't acceptable. An alternative would be to have clearer statements saying; these are not/are appropriate before the list.

Fact Sheets

CHF welcomes the fact that the guidance will be supplemented by fact sheets on major topics and is hopeful that these fact sheets will have more examples. It would have been useful for the guidance document to include a list of fact sheets, existing and planned, to be able to see if they did address the issues that consumers consider important.

CHF urges the TGA to ensure these fact sheets are developed as consumer facing materials and that they are, as a minimum, put through some consumer testing to ensure the language and content is consumer friendly.

Specific Comments

Below are some comments relating to specific sections of the guidance that we think may be of particular concern to consumers and where we think there needs to be further clarification.

6(5) Who the Code Applies to

Genuine news

CHF accepts that the Code does not apply to genuine news but thinks there should be a more critical discussion of what constitutes *genuine news*. We think there needs to be some more discussion around who initiates a news story and who may be sponsoring a program that discusses such a news item.

We do not agree with the statement on p13 "*Public interest and entertainment programs (including current affairs programs) that are non-promotional and presented in an accurate, factual and balanced way are unlikely to be considered advertising".* There have been many examples over the years of supposed news items being run by which basically just rehashes the industry media release. To make it genuine news there should always be some evidence of critical analysis of any claims or stories about how a therapeutic good has been developed and the claims it makes. This should include a discussion about how who generates the news story can impact on whether or not it is it promotional in intent.

We note there are to be fact sheets developed on the difference between advertising and genuine news and we think these need to be developed with consumers and tested to see if consumers can distinguish between the two.

We question why the guidance separates out SBS from other broadcasters and datacasters in the list of mediums for publication (p13) Surely SBS is a broadcaster and so would be included in that group?

10 Effect

This section deals with some significant issues for consumers around safe use of medicines and what can be claimed in terms of effectiveness. The guidance needs to be very clear.

It is not clear in most of these sections if the examples are appropriate or not appropriate. This needs to be more clearly signalled with the use of the green tick/red cross as is used in 10(d)(i).

An alternative approach would be to clearly state before the examples that they are inappropriate e or appropriate. Putting the examples in the middle of a very long sentence as is done in 10(d)(iii) is very confusing for all readers and does not get the message across.

11 What must advertisements contain

The term *prominently displayed* is used throughout this section, but it is not at all clear what this means to most consumers. It is defined in Attachment A, but it could usefully be defined here along with some other terms just to help the reader.

15 Scientific representations.

CHF does not agree with the statement in the guidance that "*Merely stating the name of the source of funding for the study is unlikely to imply government endorsement of the good" p37* . Consumers are more likely to believe the opposite; that if something is government funded then that puts the government seal of approval on the outcome. Government sponsorship should be treated carefully with perhaps something which states clearly that government support for the research does not imply endorsement of the good.

More generally on this section it seems to assume a greater degree of health literacy and understanding of research methods and outcomes by consumers than is actually the case.

17 Testimonials

In the discussion of verification of testimonials use of statutory declarations should not be viewed as the gold standard but rather as the norm . The way it is written suggest that the gold standard is something to aspire to, but lower levels are totally acceptable. We know testimonials from *'other real consumers'* can be very influential and so we think the highest level of verification should be used to guard against fake testimonials.

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