



Chinese Medicine Council of New Zealand

Advertising Standard

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Purpose

The purpose of this Standard is to protect members of the public from false, misleading, and deceptive advertising, or the provision of inappropriate or unnecessary services, or the creation of unrealistic expectations and to guide CM (Chinese Medicine) practitioners about the advertising of health-related products and services. This Standard should be read in conjunction with the Council's Advertising Guidance document available on the Council website.

The Council recognises and seeks to give effect to Te Tiriti o Waitangi as the foundational governance document in Aotearoa New Zealand, and affirms the rights of iwi, hapū, and Māori in the shaping and governance of our nation. Te Tiriti o Waitangi also influences our roles and responsibilities as citizens in our community and shapes personal and professional conduct. As such, CM practitioners must embed culturally safe and competent practices into all aspects of clinical practice, including advertising and ensure all advertising demonstrates respect for the cultural beliefs, values, and practices of all tangata whai ora.

The Council recognises the value of providing information to the public about practitioners and the services they provide, and that advertising can provide a means of conveying such information. Any information provided in an advertisement for a service should be reliable and useful in assisting tangata whai ora to make informed decisions about accessing services and health care choices.

The standards set by the Council are minimum standards which are used by the Council, the public of New Zealand, competence review committees, professional conduct committees, the Health and Disability Commissioner, the Health Practitioners Disciplinary Tribunal, and the courts to measure the competence, performance, and conduct of CM practitioners.

Professional Obligations

The following statements apply to all forms of advertising.

The Council's Standards of Professional Conduct states under Principle 1 (Act with integrity and honesty), that CM practitioners will:

- Comply with all legal, professional, and ethical obligations and any other relevant standards, including those in the HPCA Act
- Not exploit the client's vulnerability or lack of knowledge when providing or recommending services
- Comply with national advertising requirements and relevant legislation on consumer protection, fair trading, and therapeutic goods advertising, to ensure ethical promotion of therapeutic products and services, and
- Accurately represent the nature, care and skill of the services or care provided, to comply with legal, professional, ethical, and other relevant standards.

New Zealand Law and Advertising Codes

CM practitioners must be aware of and comply with their obligations regarding therapeutic claims of goods and services under New Zealand legislation and standards relevant to advertising including,

without limitation, the [Fair-trading Act 1986](#), the [Consumer Guarantees Act 1993](#), and the [Code of Health and Disability Services Consumers' Rights](#).

The [Advertising Standards Code](#) and the [Therapeutic and Health Advertising Code](#) published by the Advertising Standards Authority may also be relevant as they provide guidance as to good advertising practice.

Definition of advertising

'Advertising and Advertisement(s)' means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language, and communicated in any medium with the intent to influence the choice, opinion, or behaviour of those to whom it is addressed¹.

'Advertising' therefore means any published information about a CM practitioner's practice, including but not limited to: signage; corporate printing such as business cards, stationery; and social and print media such as websites, blogs, Facebook, Instagram, TikTok, WeChat, LinkedIn; and newspapers.

Advertising and Advertisement(s) are **any message**, the content of which is controlled directly or indirectly by the advertiser, expressed in any language, and **communicated in any medium** with the intent to influence the choice, opinion, or behaviour of those to whom it is addressed.

Advertising may have adverse consequences for the public when it is false, inaccurate, misleading, or deceptive. This may lead to public harm with the provision of inappropriate or unnecessary health services or create unrealistic expectations.

Advertising Principles

Advertising principles relating to CM products and services are defined in the Therapeutic and Health Advertising Code. Restrictions may be applied to any advertisements describing medicines, medical devices, and methods of treatment if they do not abide by these principles.

Definitions of products and services

A therapeutic product is one that is intended to be used by humans for a therapeutic purpose. This includes:

- preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for a disease, ailment, defect, or injury
- testing the susceptibility of humans to a disease or an ailment
- investigating, replacing, modifying, or supporting part of a human's anatomy
- disinfecting medical devices, and
- maintaining health and providing for human nutritional supplementation.

A therapeutic service or method of treatment (such as acupuncture or tuina) is defined as:

- services that offer a method of treatment for a range of medical conditions, OR
- services that offer support for normal healthy body functions.

¹ [THERAPEUTIC-AND-HEALTH-ADVERTISING-CODE.pdf \(asa.co.nz\)](#)

Principle 1: Social Responsibility

Therapeutic and Health advertisements shall observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

Principle 2: Truthful Presentation

Advertisements should be truthful, balanced and not misleading. Advertisements shall not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on consumer fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

Public safety

CM practitioners must not advertise in a manner that could be considered as an attempt to profit from or take advantage of limited understanding of tangata whai ora. Some tangata whai ora could be particularly vulnerable. They may be inclined to believe claims about certain treatments and to seek out those treatments. You must not take advantage of the vulnerabilities of tangata whai ora when you advertise.

Informed consent

A decision made by someone in response to an advertisement cannot be considered as their informed consent for the practitioner to provide them with the advertised service.

The Council's informed consent practice standard describes informed consent as an interactive and ongoing process which requires effective communication between the practitioner and the patient.

Practitioners must obtain the patient's informed consent before providing care to the public and ensure it remains valid.

Substantiation of claims

When advertising a service, a CM practitioner must be competent by reason of his or her education, training or experience to provide the service advertised or to act in the manner or professional capacity advertised. A practitioner must be certain that any claims made in advertising material can be substantiated by the best available evidence. This is particularly important in the case of claims regarding outcomes of treatment, whether implied or explicit.

Consequences of breach of advertising requirements

Any real or perceived breach of advertising requirements should be notified to the Council. Where advertising breaches a code or law, the Council may refer complaints to another agency, including the Health and Disability Commissioner, the Commerce Commission, or the Advertising Standards Authority.

Acknowledgements

This document incorporates and acknowledges information from Acupuncture New Zealand, the Dental Council of New Zealand, New Zealand Acupuncture Standards Authority, the Osteopathic Council of New Zealand, and the Physiotherapy Board of New Zealand.



Chinese Medicine Council of New Zealand

Advertising Standard – Guidance

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Purpose

The purpose of the Advertising Standard is to protect members of the public from false, misleading, and deceptive advertising, or the provision of inappropriate or unnecessary services, or the creation of unrealistic expectations and to guide CM practitioners about the advertising of health-related products and services. This document supplements and expands on the Advertising Standard available on the Council website.

The Council recognises and seeks to give effect to Te Tiriti o Waitangi as the foundational governance document in Aotearoa New Zealand, and affirms the rights of iwi, hapū, and Māori in the shaping and governance of our nation. Te Tiriti o Waitangi also influences our roles and responsibilities as citizens in our community and shapes personal and professional conduct. As such, CM practitioners must embed culturally safe and competent practices into all aspects of clinical practice, including advertising and ensure all advertising demonstrates respect for the cultural beliefs, values, and practices of all tangata whai ora.

This standards guidance also states the Council's position on medical advertisements and the use of client testimonials. It provides a reference guide for CM practitioners when making decisions about advertising their professional services and supports the appropriate use of health resources so that clients make informed decisions about their healthcare.

The Council recognises the value of providing information to the public about practitioners and the services they provide, and that advertising can provide a means of conveying such information. Any information provided in an advertisement for a service should be reliable and useful in assisting tangata whai ora to make informed decisions about accessing services and health care choices.

The standards set by the Council are minimum standards which are used by the Council, the public of New Zealand, competence review committees, professional conduct committees, the Health and Disability Commissioner, the Health Practitioners Disciplinary Tribunal, and the courts to measure the competence, performance, and conduct of CM practitioners.

How to comply with the Advertising Standard

General guidelines

- Do not use any advertising methods and/or material that brings the CM profession into disrepute
- All advertising must be presented accurately; be balanced and not misleading; use non-technical and easily understood language; provide facts and statistics from a reputable and verifiable source; and comply with all legislative requirements and the Council's Standards of Professional Conduct
- When advertising CM services only list conditions if they align with the usual purposes for CM and have proven effectiveness;
- Never make claims to cure anything or promise specific clinical outcomes;
- Do not offer Guarantees and avoid using exaggerated terms like: Best / Cheapest / The Only / NZ's favourite etc
- Avoid comparisons with other health services or practitioners

- Promote CM services on their own evidence-informed and positive merits
- CM practitioners are solely responsible for the nature and content of any advertising associated with their practice, and
- Choose appropriate language and images for advertisements to avoid unnecessary stereotyping and ensure cultural integrity. Before publication, obtain any necessary copyright licenses, and consents to use with personal images and other personal information.

Testimonials

‘Testimonial’ means a recommendation or positive statement, made by another person. For example, a positive statement about a CM practitioner’s care, skill, expertise, or treatment, that may also include expressions of appreciation or esteem, or a character reference or a statement of the benefits received from the care provided. Testimonials are not limited to comments from tangata whai ora but may also include feedback and endorsements from colleagues, other health care professionals, friends, family, and the wider community-based whanau.

Testimonials for natural health products and health services are permitted under the [Therapeutic and Health Advertising Code](#) in some instances, however **CM practitioners must take care to ensure they do not contain any information that implies the product or service has a therapeutic benefit.** Testimonials also **should not claim or imply that the product or service has beneficially affected the health of a person** as they may create an unrealistic expectation of outcomes for other tangata whai ora.

Not all reviews or positive comments made about a regulated health service are considered testimonials. For example, comments about customer service or communication style that do not include a reference to clinical aspects are not considered testimonials for the purposes of the legislation.

A clinical aspect exists if one of the following is expressed:

- Symptom – the specific symptom or the reason for seeking treatment
- Diagnosis or treatment – the specific diagnosis or treatment provided by the practitioner
- Outcome – the specific outcome or the skills or experience of the practitioner either directly or via comparison.

When testimonials are published by tangata whai ora about their own care, CM practitioners, or their practice, those practitioners named in the statements must ensure that they comply with relevant legislation and Codes or promptly take all steps available to remove such content once they become aware of it.

The Use of Titles in Advertising

- Claim only those titles and qualifications to which you are entitled, to avoid any perceived or actual misperceptions about qualifications
- The term Dr or Doctor by practitioners that are not a registered medical practitioner could be misleading to the public as it may infer the status of a current medical qualification/registration. Unless you are a Medical Doctor registered with the Medical Council of New Zealand, do not use the title ‘Doctor’ or ‘Dr’ without clearly specifying for example ‘Doctor of Chinese Medicine (Beijing)’, ‘Dr of Chinese Medicine’ or placing ‘PhD’ after your name (if applicable) to indicate your qualification.

Responsibility for the content of advertisements

CM practitioners are responsible for the form and content of the advertising associated with their practice, even if a third party wrote the advertisement on their behalf.

If you practise on your own or in a partnership, you cannot delegate the responsibility for complying with this statement to an administrator, manager, director, or any other person. If you are in a management or governance role, you may be responsible for the content of any advertising that your organisation publishes

Use of Images in Advertising

CM practitioners should exercise caution when using images in their advertising. Images, particularly “before and after” photos, have a significant potential to mislead or deceive, to convey to a member of the public inappropriately high expectations of a successful outcome and to encourage the unnecessary use of services or products.

If a CM practitioner chooses to use images, they must ensure that they:

- Are solely for the purpose of providing accurate and useful information.
- Are used only when the patient has given his or her fully informed written consent; and
- If they are ‘before and after’ images they must also:
 - Have not been altered in any way
 - Show a realistic portrayal of the outcome that can reasonably and typically be expected
 - Are consistent with regard to positioning, lighting, camera angle and posture.

Insurers and third-party funders

CM practitioners must understand and comply with the requirements of insurers or third-party funders, including Accident Compensation Corporation, regarding advertising of services they fund, this includes use of the insurer or third-party funders logos and trademarks. If those policies or recommendations are unclear, approval should be obtained from the party funding those services before any advertising is undertaken.

Social Media

The use of social media is expanding rapidly. Individuals and organisations are embracing user-generated content, such as social networking, personal websites, discussion forums and message boards, blogs, and microblogs. Practitioners are also increasingly participating in online social media, and this may be perceived as a form of advertising. When an online activity can be viewed by the public or limited to a specific group of people, CM practitioners must maintain professional standards and be aware of the implications of their actions under current legislation, as in all professional matters.

Information circulated on social media may end up in the public domain and remain there, regardless of the practitioner's intent at the time of posting. This form of media may breach a person's rights and may therefore pose the potential risk of disciplinary action for practitioners.

Practitioners must maintain the confidentiality of tangata whai ora, to avoid the potential for allegations of defamation and the need to maintain appropriate professional boundaries.

CM Practitioners must:

- Routinely monitor their own social media presence to ensure that the personal and professional information is accurate and appropriate
- Maintain appropriate boundaries in on-line tangata whai ora-practitioner interactions and relationships, and ensure privacy and confidentiality is maintained
- Always separate personal and professional content online
- Recognise and understand that actions and content posted on-line can negatively affect a practitioner's reputations among the public and colleagues, and may even have consequences for their CM careers
- Ensure no online testimonials are posted on their social media sites, and
- Obtain approval in writing for the use on a practitioners' social media sites of any personal images or information related to their tangata whai ora.

Discounts, promotions, and gift certificates

Advertisements offering discounts, promotions or gift certificates must not undermine the CM practitioner's relationship with tangata whai ora and the informed consent process. In particular, the practitioner providing the service must ensure that:

- The tangata whai ora understands that the purchase of the promotion or coupon does not amount to granting informed consent for any services that may be provided
- the assessment and treatment are necessary and appropriate
- any offer does not contravene the Code of Health and Disability Services Consumers' Rights or the Council's Standards of Professional Conduct
- before treatment, the client understands the treatment options and gives informed consent in writing
- the client has the right to opt out of treatment at any time, and
- the offered treatment is not provided if a proper assessment indicates that it is not suitable for the person.

Media contact

CM practitioners may be interviewed by name or prepare articles for the lay press on issues of general interest provided that:

- The interviewer understands that the opinion voiced is that of the practitioner alone and does not represent the profession or part of the profession. This must be stated
- they do not allow the name, address, or phone number of their practice to be used in as the primary focus of the media contact
- they do not make any self-laudatory, misleading, or sensational statements or deprecate other types of treatments or the achievements of others
- they do not use their involvement solely to attract or gain new clientele, and
- testimonials from tangata whai ora or other persons are not used.

How to comply with Advertising Principles

Advertising principles relating to CM products and services are defined in the Therapeutic and Health Advertising Code. Restrictions may be applied to any advertisements describing medicines, medical devices, and methods of treatment if they do not abide by these principles.

Principle 1: Social Responsibility

Therapeutic and Health advertisements will observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

Mandatory information

Advertisements must contain the mandatory information as detailed in the Therapeutic and Health Advertising Code to encourage responsible prescribing, recommendation, sale, and use.

This information must be set out in a way (legible / audible) that ensures it can be readily understood by the audience to whom it is directed.

Safety and Effectiveness

Advertisements must not contain any claim, statement, or implication that the products, devices or services advertised:

- are safe or that their use cannot cause harm or that they have no side effects or risks
- are effective in all cases
- are infallible, unfailing, magical, miraculous, or that it is a certain, guaranteed, or sure cure
- are likely to lead persons to believe that
- they are suffering from a serious ailment, or
- harmful consequences may result from the therapeutic or health product, device or service not being used.

Vulnerable Audiences

Advertisements should not portray unrealistic outcomes, prey on, or misrepresent information to vulnerable audiences (e.g., sick, elderly, pregnant women, overweight people).

Scientific language

The use of scientific language in advertisements is acceptable providing that it is appropriate to, and readily understood by, the audience to whom it is directed.

Principle 2: Truthful Presentation

Advertisements should be truthful, balanced and not misleading. Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on consumer fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

Truthful presentation

Advertisements must be accurate. Statements and claims must be valid and able to be substantiated. Substantiation should exist prior to a claim being made. For medicines and medical devices, therapeutic claims must be consistent with the approved indication/ for medicines or the listed intended purpose for medical devices.

Inappropriate or excessive use

Advertisements must not encourage, or be likely to encourage, inappropriate or excessive purchase or use. Advertisements for prescription medicines must not encourage, or be likely to encourage, inappropriate or excessive prescriptions or requests for a prescription.

Comparative advertising

Comparative advertising must be balanced and not be misleading, or likely to be misleading, either about the product, device or service advertised or classes of products, devices, or services, with which the comparison is made:

- Comparative advertisements must not be disparaging and must be factual, fair and able to be substantiated, referenced to the source and reflective of the body of available evidence
- Comparative advertisements must not discourage consumers from following the advice of their healthcare practitioner
- Comparative advertisements must compare 'like with like'. Advertisements for Natural Health Products and Dietary Supplements will not include comparisons with medicines or medical devices either specifically or generally.

Questions about CM advertising

If CM practitioners are not sure whether an advertisement meets legal, industry and Council requirements then they could consider making use of the [Therapeutic Advertising Pre-Vetting Services \(TAPS\)](#). TAPS is a commercial service provided under the auspices of the Association of New Zealand Advertisers and is intended to assist advertisers with compliance issues. The Council is not responsible for pre-vetting advertising for practitioners.

Resources

The following links are to useful resources which provide further information:

- [ASA \(Advertising Standards Authority\), Short and Sweet video on the Therapeutic & Health Advertising Code](#)
- [Commerce Commission FACT sheet on Unsubstantiated representation and the Fair-Trading Act.](#)
- [Australian Health Practitioner Regulation Agency. Guidelines for advertising a regulated health service](#)

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