

**PUBLIC HEALTH BILL**

**SUBMISSION TO HEALTH  
SELECT COMMITTEE**

**BY THE RESEARCHED MEDICINES INDUSTRY  
ASSOCIATION OF NEW ZEALAND**

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## **1. Introduction**

- 1.1 The Researched Medicines Industry Association of New Zealand (RMI) is the professional and trade organisation of New Zealand's research-based pharmaceutical industry. Its member companies are engaged in the research, development, manufacture and marketing of prescription medicines and the ongoing improvement of medical and scientific knowledge about their products.
- 1.2 The RMI is making this submission in respect of Part 3, Subpart 3 – Codes of practice and guidelines, of the Public Health Bill. The RMI believes that industry self-regulation of the promotion of prescription medicines is an effective and responsive form of regulation that should be retained.

## **2. Current regulatory controls for the advertising of medicines**

- 2.1 New Zealand has strong and effective legal and voluntary codes that control the marketing and advertising of prescription medicines in this country, including direct to consumer advertising of prescription medicines.

### *Legislative requirements*

- 2.2 Relevant statutes include the Medicines Act 1981, the Commerce Act 1986, the Fair Trading Act 1986, the Misuse of Drugs Act 1975, the Consumer Guarantees Act 1994, the Privacy Act 1993 and the Health Information Privacy Code 1994.
- 2.3 The Medicines Act 1981 establishes the basic legal guidelines for DTC advertising of therapeutic advertising substances while the Medicines Regulations 1984 lay down more detailed requirements regarding the inclusion of statements about authorised uses, side effects, etc.

### *Industry Self-Regulation*

- 2.4 In New Zealand, the RMI Code of Practice sets out standards of conduct for the activities of companies when engaged in the marketing of prescription medicines to health professionals and in the provision of promotional and non-promotional information to members of the general public. It defines and ensures high standards of conduct, including requirements for DTC advertisements, that exceed those required by law. Acceptance and observance of the Code is a condition of membership and companies must comply with both the letter and the spirit of the Code.
- 2.5 The RMI consults widely within its membership and external stakeholders regarding the Code of Practice and welcomes comments or suggestions that will improve the Code's content and operation. The RMI Code of Practice is in its 14<sup>th</sup> edition and is also amended, as needed, between additions in response to issues that arise. For example, the Code was amended to prohibit internet pop-up advertisements within 3 weeks of advice from TAPS that this form of advertising was being discussed by advertising agencies.
- 2.6 The Advertising Standards Authority's (ASA) Therapeutic Products Advertising Code also requires advertisers to comply with the RMI Code of Practice. Thus, for DTCA of prescription medicines, the RMI Code is an industry-wide Code.
- 2.7 The adoption of the Code by the ASA allows the general public to lay complaints about advertising of prescription medicines, at no cost. Breaches of the Code may also be determined by a Code of Practice Standing Committee (generally company vs. company) who can impose sanctions ranging from the suspension of the advertising or marketing practice to a fine of \$80,000.

2.8 DTC advertisements must also be pre-vetted and approved by a Therapeutic Advertising Pre-vetting System (TAPS) adjudicator contracted to the Association of New Zealand Advertisers Inc (ANZA).

### **3. Public health objectives as justification to limit or ban DTCA**

3.1 The New Zealand Bill of Rights Act 1990 provides for the right of freedom of expression and a move to ban DTCA could constitute a breach of that right. Any justification to limit or remove this form of communication must be rationally connected to a public health objective and the limitation must be proportional to that objective. However, there is not the evidence to support the limiting or banning of DTCA on public health grounds.

3.2 For example, critics contend that DTCA harms the doctor-patient relationship and gives rise to inappropriate prescribing, both of which are potentially harmful to public health.

3.3 However, New Zealanders enjoy one of the best doctor-patient relationships in the Commonwealth<sup>1</sup> and the Hoek and Gendall 2003<sup>2</sup> survey found that the majority of consumers consider that DTCA has no effect on their relationship with their doctor while a good proportion (16%) felt it could improve the relationship.

3.4 There is also no evidence that DTCA gives rise to inappropriate prescribing in New Zealand. The final treatment decision lies with the doctor who is professionally accountable for the prescribing decision. The fact the patient may come away with a prescription for the product they enquired about as a result of DTCA is not evidence of inappropriate prescribing.

3.5 Indeed, it can be argued that DTCA has a positive impact on public health. For example, following a comprehensive survey of New Zealand consumers, Hoek and Gendall<sup>3</sup> found “the majority of respondents (61%) thought DTCA helped people to have more informed discussions with their doctors...”. Further, Hoek and Gendall concluded that “our consumer evidence indicates that members of the public find DTCA useful and informative; while this is the case, the rationale for banning this advertising is questionable”.

### **4. Conclusion**

4.1 The RMI Code of Practice has proven to be an effective industry-led regulatory scheme for the promotion of prescription medicines to health professionals and members of the general public.

4.2 It is the RMI’s view that DTCA, underpinned by principles of social responsibility and balance, provides a positive service to New Zealanders. DTCA encourages people to seek advice for conditions that may otherwise go untreated, reinforces compliance with treatment regimes and raises awareness of choices of treatment that may not otherwise be offered by the prescriber.

4.3 The RMI believes that industry self-regulation of the promotion of prescription medicines is an effective and responsive form of regulation that should be retained.

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<sup>1</sup> Commonwealth Health Fund 2004 International Health Policy Survey

<sup>2</sup> Regulation of Prescription Medicine Advertising in the United States and New Zealand: A Consumer Perspective; Hoek J, Gendall P, WAPOR Conference, Arizona 2004

<sup>3</sup> Direct to Consumer Advertising of Prescription Medicines: A Consumer Survey; Hoek JA, Gendall PJ Massey University, April 2003