

New Zealand



ANALYSIS

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1942, No. 11

AN ACT to make Provision for the Regulation of Medical Advertisements. Title.
[26th October, 1942

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Medical Advertisements Act, 1942, and shall come into force on the first day of January, nineteen hundred and forty-three.

Short Title
and
commencement.

2. In this Act, unless the context otherwise requires,—

Interpretation.

“Advertisement” means any words, whether written or spoken, or any picture, drawing, or figure—

(a) Inserted in any newspaper or other periodical publication printed and published in New Zealand; or

(b) Brought to the notice of members of the public in New Zealand in any other manner whatsoever,—

and “to advertise” has a corresponding meaning:

“Board” means the Medical Advertisements Board established under this Act:

“Cosmetic” includes any substance or preparation (not being a drug) manufactured, advertised, or sold for cleansing, beautifying, improving, or altering the hair, skin, or complexion of human beings:

“Dentifrice” includes any substance or preparation (not being a drug) manufactured, advertised, or sold for cleansing the mouth or teeth (natural or artificial) of human beings:

“Drug” has the same meaning as in the Sale of Food and Drugs Act, 1908:

“Manufacture” includes packing in receptacles for sale; and “manufactured” and “manufacturer” have corresponding meanings:

“Medical advertisement” means an advertisement—

(a) Relating to any drug, cosmetic, or dentifrice; or

(b) Relating to any article, substance, preparation, instrument, apparatus, or method of treatment, manufactured, prepared, or advertised for diagnosing, preventing, alleviating, treating, or curing any ailment, disorder, deformity, or defect of the human body, or for altering the nutrition or structure or any function of the human body; or

(c) Claiming ability to diagnose, prevent, alleviate, treat, or cure any ailment, disorder, deformity, or defect of the human body, or to alter the nutrition or structure or any function of the human body:

“Proprietor”, in respect of any drug, cosmetic, dentifrice, article, substance, preparation, instrument, or apparatus manufactured in New Zealand, means the manufacturer thereof,

See Reprint of Statutes, Vol. III, p. 406

and in respect of any drug, cosmetic, dentifrice, article, substance, preparation, instrument, or apparatus not manufactured in New Zealand, means the importer thereof:

“ Testimonial ” means a statement, whether oral or written, recounting the effect in any particular case of any drug, cosmetic, dentifrice, article, substance, preparation, instrument, apparatus, or method of treatment or the effect in any particular case of treatment by any specified person.

3. (1) There is hereby established for the purposes of this Act a Board, to be known as the Medical Advertisements Board.

Medical
Advertisements
Board
established.

(2) The Board shall consist of—

(a) The Director-General of Health, who shall be the Chairman of the Board:

(b) An analyst under the Sale of Food and Drugs Act, 1908, to be appointed by the Governor-General:

(c) A medical practitioner registered under the Medical Practitioners Act, 1914, to be appointed by the Governor-General:

See Reprint of
Statutes,
Vol. V, p. 669

(d) Two other persons to be appointed by the Governor-General.

(3) The persons appointed as members of the Board by the Governor-General shall hold office as such during his pleasure.

(4) In the absence from any meeting of the Board of the Director-General of Health and also of his Deputy, any registered medical practitioner being an officer of the Department of Health may be appointed by the Director-General to act in his stead and while so acting shall have all the powers of the Director-General on the Board. In the absence from any meeting of the Board of any other member who is an officer of any Department of the Public Service, he may authorize any other officer of that Department to attend the meeting in his stead. The fact that any officer so acts shall be sufficient evidence of his authority so to do, and while he is attending any meeting of the Board pursuant to this subsection he shall be deemed for all purposes to be a member of the Board.

(5) At all meetings of the Board three members shall constitute a quorum.

(6) The Chairman shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(7) The powers of the Board shall not be affected by any vacancy in the membership thereof.

(8) Subject to the provisions of this Act and of any regulations made thereunder, the Board may regulate its procedure in such manner as it thinks fit.

Seal of Board.

4. The Board shall have an official seal for the authentication of documents executed or issued by the Board, and all Courts shall take judicial notice of the seal.

Travelling allowances and expenses.

5. There shall be paid out of moneys appropriated by Parliament for the purpose to the members of the Board who are not officers of the Public Service such remuneration by way of fees or allowances, and such travelling allowances and expenses, as may from time to time be prescribed by regulations under this Act.

Advertiser may be required to prove claims.

6. (1) The Board may serve on the proprietor of any drug, cosmetic, dentifrice, article, substance, preparation, instrument, or apparatus to which any medical advertisement relates, or on any other person for whom or on whose behalf a medical advertisement has been published, a notice requiring the proprietor or other person aforesaid to prove to the satisfaction of the Board any claim or statement which is contained in the advertisement or which in the opinion of the Board is implied in the advertisement.

(2) The notice shall set out the claim or statement which is required to be proved.

(3) Any person on whom a notice has been served under this section shall be entitled to appear before the Board and to produce evidence in support of the claim or statement which he has been required to prove, and upon a written request being made to it the Board shall fix a time and place for hearing the evidence:

Provided that if the evidence is not oral evidence it may be forwarded to the Board for its consideration.

(4) The Board shall consider the evidence produced in support of the claim or statement and shall decide whether or not the claim or statement has been proved, and shall give notice of its decision to the person called upon to prove the claim or statement.

7. (1) In any case where the Board has served a notice on any person under subsection one of the last preceding section, that person shall not make the claim or statement referred to in the notice, or cause or permit it to be made, either expressly or by implication, in any advertisement published for him or on his behalf at any time after the expiration of seven days from the service of the notice and before the Board has given notice to him of its decision:

Claim or statement not to be repeated unless proved.

Provided that if the claim or statement is made on a label affixed to a package or container, then with the consent of the Board the claim or statement may be made on labels in the same form for such period as the Board may determine.

(2) In any case where the Board has given notice to any person under the last preceding section that it has decided that a claim or statement which that person has been required to prove has not been proved, that person shall not at any time thereafter without the prior consent of the Board make that claim or statement, or cause or permit it to be made, either expressly or by implication, in any advertisement published for him or on his behalf.

8. No person shall publish, or cause or permit to be published, any medical advertisement which states, either expressly or by implication, that the Board or any member thereof or any officer in the service of the Government has approved, or has refrained from disapproving, the advertisement or any of the claims or statements made therein.

Medical advertisements not to infer approval by Board.

9. (1) With the prior authority of the Board, the Chairman of the Board may, for the purpose of protecting the public, publish statements relating to any matter contained or implied in medical advertisements, either generally or in any particular advertisement or class or classes of advertisements.

Statements on behalf of Board as to medical advertisements.

(2) Every statement published under this section shall be privileged.

Medical advertisements to contain true name of advertiser.

10. (1) No person shall publish, or cause or permit to be published, any medical advertisement unless the advertisement contains a statement setting forth the true name of the person for whom or on whose behalf the advertisement is published and the address of his place of residence or business.

(2) Any statement which is contained in a medical advertisement and purports to set forth the name and address of the person for whom or on whose behalf the advertisement is published shall, until the contrary is proved, be sufficient evidence of the name and address of the person for whom or on whose behalf the advertisement has been published.

(3) Nothing in this section shall apply with respect to any label which complies with such provisions of the Sale of Food and Drugs Act, 1908, and of any regulations made thereunder as relate to the disclosure or otherwise of the name and address of the manufacturer or seller or agent of either of them.

See Reprint of Statutes, Vol. III, p. 406

Offences as to testimonials.

11. (1) No person shall offer, give, or receive any payment or other consideration for a testimonial which is published as a medical advertisement or as part of a medical advertisement.

(2) No person shall knowingly publish or cause or permit to be published as a medical advertisement or as part of a medical advertisement any fictitious testimonial, or any copy of a testimonial which is not a true copy in every material particular, or any copy of a testimonial given by a person who has died more than three months before the publication of the advertisement.

(3) The Board may at any time, by notice served on any person for whom or on whose behalf a copy of a testimonial has been published as a medical advertisement or as part of a medical advertisement, require that person to produce the original testimonial to the Board, and every such person commits an offence against this Act if he fails to produce the original testimonial to the Board within twenty-eight days after the service of the notice.

(4) The Board may at any time, by notice served on any person for whom or on whose behalf a copy of a testimonial has been published as a medical advertisement or as part of a medical advertisement,

require that person to cease publishing copies of the testimonial in any medical advertisement, and every such person commits an offence against this Act if he publishes, or causes or permits to be published, in any medical advertisement any copy of the testimonial or any reference to the testimonial.

12. (1) Any notice under this Act may be served on any person by causing it to be delivered to that person or to be left at his usual or last known place of residence or business or to be posted in a letter addressed to him at that address. Service of notices.

(2) If the notice is sent to any person by registered letter, it shall be deemed to have been served when it would have been delivered in the ordinary course of post, and in proving service it shall be sufficient to prove that the letter was properly addressed and posted.

13. (1) All information as to any formula given by the proprietor thereof to the Board or to any member thereof or to any other person in the course of the administration of this Act shall be treated as confidential, and no such information shall be disclosed by the Board or by any member thereof or by any other person as aforesaid except for purposes connected with the administration of this Act. Secrecy of information obtained for purposes of Act.

(2) The disclosure of any information relating to any formula to the Board or to any member thereof or to any other person for purposes connected with the administration of this Act shall not prejudice any application subsequently made for a patent.

14. The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes, that is to say:— Regulations.

- (a) Specifying diseases or disorders or classes of diseases or disorders in respect of which claims to be able to diagnose, prevent, alleviate, treat, or cure may not be published:
- (b) Specifying drugs or classes of drugs which may not be mentioned in any medical advertisement:
- (c) Specifying other matters which must not be mentioned in any medical advertisement:
- (d) Specifying matters which must be mentioned in medical advertisements:

- (e) Empowering the Board to grant exemptions, either unconditionally or upon or subject to conditions, from compliance with regulations made under paragraph (c) or paragraph (d) hereof:
- (f) Specifying drugs or classes of drugs the presence and proportion of which in any preparation must be declared on any label or otherwise, and specifying in respect of any drug the name by which the drug shall be described:
- (g) Generally for the purpose of giving full effect to the intent and purposes of this Act.

General
penalty.

15. (1) Every person commits an offence against this Act who acts in contravention of or fails to comply in any respect with any provision of this Act or of any regulations made under this Act.

(2) Every person who commits an offence against this Act in respect of which no other penalty is prescribed shall be liable on summary conviction—

- (a) In the case of an individual, to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds, and (if the offence is a continuing one) to a further fine not exceeding five pounds for every day during which the offence continues:
- (b) In the case of a body corporate, to a fine not exceeding two hundred pounds and (if the offence is a continuing one) to a further fine not exceeding twenty pounds for every day during which the offence continues.

Act not to
apply to
certain
advertisements.

16. Nothing in this Act shall apply to any advertisement or scientific matter which is distributed only to members of the medical or pharmaceutical professions, or of any other profession concerned with the health of the human body, or which is published only in a publication which in the ordinary course circulates only among or is distributed only to such persons.

Repeal.
See Reprint of
Statutes,
Vol. V, p. 734

17. The Quackery Prevention Act, 1908, is hereby repealed.