

COMPLAINT NUMBER	17/210
APPEAL NUMBER	17/017
APPELLANT	Fluoride Free NZ
ADVERTISER	Fluoride Free NZ
ADVERTISEMENT	Fluoride Free NZ, Out of Home
DATE OF MEETING	18 October 2017
OUTCOME	Accepted

SUMMARY

The Advertising Standards Complaints Board ruled on 12 September 2017 that the complaint was Upheld, in part. The Advertiser appealed the Decision.

This application was considered by the Chairperson of the Appeal Board. The Chairperson noted the Advertiser's view that evidence provided to the Complaints Board had been misinterpreted.

The Chairperson ruled the appeal was Accepted under grounds (iii) and (v) and was referred to the Appeal Board to be considered de novo.

Please note this headnote does not form part of the Decision.

CHAIRPERSON'S RULING

The Chairperson viewed the application for appeal. She noted that there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6(c) of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (i) The proper procedures have not been followed.
- (ii) There is new evidence of sufficient substance to affect the decision.
- (iii) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (iv) The decision is against the weight of evidence.
- (v) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted that in its appeal application, the Advertiser raised concerns with two specific issues which the Complaints Board focused on which were not raised in complaint. Specifically, the Advertiser said the Complaints Board found the Advertiser did not provide any

evidence that dental fluorosis only occurs in childhood, and therefore that the incidence across children and adults does not necessarily reflect the incidence in children and; the inclusion of Level 1 – Questionable Dental Fluorosis in the total percentage was misleading.

In light of this information, the Chairperson held that on balance the appeal application had met the threshold to establish grounds for appeal under grounds (iii) and (v).

Accordingly, the Chairperson ruled that the appeal application be accepted, parties be provided the opportunity to comment and the matter be referred to the Appeal Board to be considered de novo.

Chairperson's Ruling: Appeal application **Accepted**

DESCRIPTION OF ADVERTISEMENT

The billboard advertisement for Fluoride Free New Zealand on the Hutt Road in Petone showed a close up image of teeth stating "17 year old Wellington boy". The billboard read:

"Fluoride poisoning staring you in the face. 41% of NZ children have some form of dental fluorosis according to MoH Oral Health Survey. www.fluoridefree.org.nz"

APPEAL APPLICATION FROM FLUORIDE FREE NZ

We wish to appeal the ruling in part; specifically the two findings that the advertisement was in breach of the Code:

- 1) That we did not provide any evidence that dental fluorosis only occurs in childhood, and therefore that the incidence across children and adults does not necessarily reflect the incidence in children;
- 2) That we included the category Level 1 – Questionable in our total, and should not have.

The rulings are contained in the following paragraph:

The Complaints Board expressed concern with the Advertiser incorrectly quoting the statistic. It also said it was misleading to include "questionable" dental fluorosis in the total number as it was unclear whether there was evidence of dental fluorosis in what was a substantial proportion of the overall statistic. Further, the Complaints Board said the information provided was for "adults and children aged 8-30 years" which did not support the claim that "41% of *children* had some form of dental fluorosis". It said no evidence provided to support the Advertiser's view that dental fluorosis only occurs in children up to the age of eight.

We appeal on the following grounds:

- The proper procedures have not been followed (the ASCB created its own grounds of complaint not raised by the complainant, and in one case the information was accepted by the complainant as correct).
- There is new evidence of sufficient substance to affect the decision (i.e. evidence we were not given the opportunity to present as the ASCB did not forward its own grounds of complaint to us for response).
- The decision is against the weight of evidence.
- It is in the interests of natural justice that the matter be reheard.

Appeal details

1. *That we did not provide any evidence that dental fluorosis only occurs in childhood, and therefore that the incidence across children and adults does not necessarily reflect the incidence in children*

First, the Complainants did not raise this in their complaint, presumably because they, like everyone involved in this issue, understand that dental fluorosis in adults is always the result of dental fluorosis arising during childhood. The ASCB has come up with this ground of complaint on its own.

Further, having invented this ground of complaint, it was not put to us for response. This is a further breach of procedure and natural justice.

We included an explanation purely for clarification, as a result of a discussion with an ASA staff member, who advised she was confused by the apparent anomaly.

Second, we challenge this finding on the following further grounds:

We included two quotations from qualified dentists confirming this fact. On previous ASCB rulings, this alone is sufficient to substantiate our position.

In addition, this fact is accepted by both sides of this debate, including the Ministry of Health.

If the ASCB now requires more evidence than it has under precedent, we should have been advised of this. We attach the most up to date research confirming this fact beyond any reasonable doubt – the most important years are up to age 4 (Hong and Levy, 2006).

The Ministry of Health states the following on its website at <http://www.health.govt.nz/our-work/preventative-health-wellness/fluoride-and-oral-health/fluoride-and-health/infant-formula-and-fluoridated-water> (emphasis added):

A recent report of the United States National Research Council (NRC) called 'Fluoride in Drinking Water: A Scientific Review of EPA's Standards', raised the possibility that infants could receive a greater than optimal amount of fluoride through liquid concentrate or powdered baby formula that has been mixed with water containing fluoride during a time that their developing teeth may be susceptible to enamel fluorosis."

and

"The Ministry of Health believes current New Zealand information indicates that appropriate steps are being taken to control fluoride intake in New Zealand. New Zealand information does not indicate that children are developing inappropriate levels of enamel fluorosis."

In discussing infant formula the Ministry states:

"Labels on packages of infant formula product that contain the above levels of

fluoride must indicate that consumption of the formula has the potential to cause dental fluorosis.

In relation to fluoridated toothpaste:

“Excessive toothpaste consumption by young children can be associated with higher levels of enamel fluorosis.”

“Enamel fluorosis

The following photos provide examples of normal teeth and the types of mild to moderate diffuse enamel fluorosis that is most commonly associated with water fluoridation. The most recent New Zealand information indicates that about 29% of 9-year-old children in Southland who had always received fluoridated water had these changes to the tooth enamel. This level had not changed since several earlier studies undertaken in the 1980s.

The Ministry’s web page then refers and links to a paper by ESR (Institute of Environmental Science and Research), *Estimated Dietary Fluoride Intake for New Zealanders*, July 2009, attached, which states at page 3 (emphasis added):

1.2 Health Effects of High Fluoride Intakes

Exposure to elevated levels of fluoride can cause fluorosis of teeth and bones (World Health Organization, 2002) and has been shown in some studies to cause an increase in bone fractures in elderly people (as reviewed in ATSDR, 2003). Consuming elevated concentrations of fluoride during tooth development can cause dental fluorosis (between the ages of 1–8 years) (Agency for Toxic Substances & Disease Registry, 2003). A dose response relationship exists between fluoride intake during tooth development and severity of fluorosis (National Research Council, 1993; World Health Organization, 2002), with the duration of exposure also being important (Agency for Toxic Substances & Disease Registry, 2003; Aoba and Fejerskov, 2002). Dental fluorosis ranges from mild cosmetic defects in the enamel (diffuse or demarcated opacities), to more severe pitting, discolouration and brittleness (hypoplasia) (National Research Council, 1993).

The Statistics were from 8 – 35 year olds. As at 2009, a 35 year old would have been born in 1974. The majority of fluoridation schemes in NZ were commissioned between 1972 and 1974. So 35 year olds would have been exposed to fluoridated water from birth. They would have turned 8 in 1982. As noted by the Ministry of Health, the 1980s studies showed the same rate of fluorosis as today. So 35 year olds reflect the same fluorosis rates as today’s 8 year old children, having been damaged in the same way and to the same extent as children.

2. *That we included the category Level 1 – Questionable in our total, and should not have.*

The Complainants did not raise this in their complaint – they accepted that Level 1 was correctly included in the total fluorosis rate at the third bullet point of their complaint:

3. 41% of NZ children suffer from some form of dental fluorosis according to the Ministry of Health Oral Health Survey

This statement is misleading on its own and when used in conjunction with the image breaches Advertising Code of Ethics Rule 3.

- The use of the image suggests that fluorosis always presents in a form as severe as the image portrays. This is misleading.
- Moderate and severe fluorosis are not common in New Zealand. In the 2009 Oral Health Survey, the prevalence of severe fluorosis for 8-30 year olds was 0.0%. Moderate fluorosis was observed among 2.0% of 8- 30 year olds (Ministry of Health, 2010). The difference was not significant. Moderate fluorosis is considered a cosmetic rather than a functional adverse effect, is rare in New Zealand, and is not a sign of 'poisoning'.
- The use of the word 'suffer', once again, invokes the false view that all dental fluorosis is considered to be a harm. In the 2009 Oral Health Survey the prevalence 'questionable fluorosis' for 8-30 year olds was 27.2%, 'very mild fluorosis' was 10.2%, and 'mild fluorosis' was 5.1%. Almost all dental fluorosis in New Zealand would not be considered to be a harm.

Their only complaint is that most fluorosis is at the lower level and moderate to severe is almost unknown in NZ (As an aside this latter claim is false, as McKay and Thompson, 2005, in research on dental fluorosis in Southland identified 5% of fluorosis as severe). Consequently, the ASCB has invented its own ground for complaint.

We put the question to Dr Hardy Limeback DDS, Professor Emeritus and former Head of Preventive Dentistry, University of Toronto, as to what this categorization actually means, and whether it should or should not, according to international norms, be included in the total.

The scale used is the Dean Index, as noted by the complainants. Level 1 (Questionable) is described as follows:

Questionable: "The enamel discloses slight aberrations from the translucency of normal enamel, ranging from a few white flecks to occasional white spots. This classification is utilized in those instances where a definite diagnosis of the mildest form of fluorosis is not warranted and a classification of 'normal' is not justified."

Dr Limeback replied as follows.

[The key point is that] " ' Normal not justified' ... depends on the 'calibration' (training) of the examiners (usually dental hygienists) using pictures.

The best researchers will test the examiners on real patients and report the 'agreement' stats (kappa value).

So if the government reports that 44.5% of kids have 'abnormal' teeth, then that's what their examiners found."

In terms of how this category is treated according to international norms:

"when TOTAL fluorosis levels are reported, they include the 'questionable' category....after all they aren't normal."

"So the Advertising Complaints Board could rule that the NZ 2009 Oral health Survey is incorrect, overestimating the total level of total fluorosis." (of course it cannot, as the Oral Health Survey is not an advertisement, but Dr Limeback could not be expected to know that.)

The point is that we have quoted, correctly, the findings of the 2009 Oral Health Survey, which has reported dental fluorosis rates according to international norms (i.e. including Level 1 - Questionable). If the ASA has an issue with this norm it needs to take that up with the international scientific and dental community. But it cannot find us in breach of the Code because we have complied with those international norms for reporting dental fluorosis rates. If we deviated from them no one would be able to compare "apples with apples". Moreover, we would be misrepresenting the Oral Health Survey, which in itself would be a breach of the Code.

SUMMARY OF COMPLAINTS BOARD DECISION

The billboard advertisement from Fluoride Free showed an image of discoloured teeth with the qualifier "Photo: 17 year old Wellington boy" and stated: "Fluoride poisoning staring you in the face. 41% of NZ children have some form of dental fluorosis according to MoH 2009 Oral Health Survey. www.fluoridefree.org.nz."

The Complainants raised concerns the Advertiser and their position was not clear in the advertisement. The Complainants also said the advertisement was misleading because the image used did not show evidence of dental fluorosis, the reference to "fluoride poisoning" suggests all fluorosis is harmful and played on fear and the statistic quoted relating to 41% of children having some form of fluorosis was unable to be substantiated.

The Advertiser said the advertisement was not misleading and it had received advice the image shown did depict dental fluorosis. It was of the view dental fluorosis was a symptom of fluoride poisoning and provided information from the Key Summary of the 2009 Oral Health Survey to support the statistic quoted in the billboard.

The Complaints Board said the Advertiser and their position were clear in the advertisement and met the identification provision of Rule 11 of the Code of Ethics. The majority said the image in advertisement was unlikely to mislead people as image was illustrative of dental fluorosis in the context of an advocacy advertisement from an anti-fluoridation group. The Complaints Board said the reference to 'dental fluorosis' as symptom of 'fluoride poisoning' in the context of an advocacy advertisement from an anti-fluoridation group was unlikely to

mislead consumers. While it acknowledged a level of fear, this did not reach the threshold to breach Rule 6 in the context of an advocacy advertisement.

With reference to the specific claim in the advertisement that “41% of NZ children have some form of dental fluorosis” the Complaints Board said this was likely to mislead consumers and presented research results in a manner that was deceptive.

The Complaints Board said this aspect of the advertisement was in breach of Rule 2, Rule 3 and Rule 11 of the Code of Ethics and the advertisement had not been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics. The Complaints Board ruled the complaint relating to the claim was Upheld.

The Complaints Board ruled the complaint was Upheld, in part.