

## CNHC Guidance on The Cancer Act 1939

**(Please note this does not constitute legal advice)**

### 1. Introduction

- 1.1. In November 2012 CNHC produced Advertising Guidance to support CNHC registered practitioners in complying with CNHC's Code of Conduct, Performance and Ethics, and the Committee of Advertising Practice (CAP) Advertising Codes.
- 1.2. However, in addition to the CNHC Code of Conduct and the CAP Advertising Codes, practitioners need to ensure they are also complying with the Cancer Act 1939.
- 1.3. As a significant number of CNHC registrants practise therapies which are used by those receiving treatment for cancer, and as the Act lies outside of the Advertising Rules which are administered by the Advertising Standards Authority (ASA), CNHC has produced this Guidance Sheet.
- 1.4. This Guidance Sheet should be read in conjunction with Section C4 of the Code of Conduct, Ethics and Performance and CNHC's [Advertising Guidance](#) which can be accessed on CNHC's website [www.cnhc.org.uk](http://www.cnhc.org.uk) under Publications/Guidance Sheets.
- 1.5. **It is highly recommended that legal advice is sought on individual adverts if there is any doubt as to the lawfulness of the content of a relevant advertisement.**

### 2 Background: The Legislation

- 2.1 The Cancer Act 1939 was originally designed
  - to ensure local authorities made available adequate facilities for the treatment of cancer
  - to authorise the Minister of Health to lend money to the National Radium Trust
  - to prohibit in England, Wales and Scotland certain advertisements relating to the treatment of cancer.
- 2.2 **Although most sections of the Act have now been repealed by subsequent laws, Section 4, which relates to advertising, remains in force.**
- 2.3 **Section 4(1) prohibits the publication of any advertisement:**

***“(a) containing an offer to treat any person for cancer, or to prescribe any remedy therefor, or to give any advice in connection with the treatment thereof”.***

So caution must be exercised when advertising any therapies to those who suffer from, or are suspected to suffer from<sup>1</sup>, cancer.

- 2.4 It is important to note that the Act<sup>2</sup> defines the expression ‘advertisement’ as ***“any notice, circular, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting sounds”.***

Any advertiser who is considered to have breached the Act is liable to prosecution under section 4(2) as having committed a summary offence - in other words, an offence not requiring a trial by jury.

- 2.5 There are a number of defences which can be made as set out at section 4(4) of the Act.
- It is a defence if a person can prove that the advertisement was published only so far as it was necessary to bring it to the attention of a member of parliament; local authority; governing body of a voluntary hospital; registered medical practitioner; registered nurse; registered pharmacist; or persons undergoing training with a view to becoming any of the registered medical professionals in these categories.
  - It is also a defence if the advert was published in a publication of a technical character intended for registered medical professionals.
  - Finally, it is a defence if the person accused of making the advert had no knowledge or reason to believe that s/he was taking part in the publication of the advert.
- 2.6 The Act permits County Councils and London Borough Councils or similar to institute proceedings in relation to section 4<sup>3</sup>. The Act is enforced by Trading Standards.

### **3. Specific guidance in relation to the Cancer Act 1939**

#### **3.1. What can I include in written adverts?**

- 3.1.1. Under the Cancer Act 1939, it is a criminal offence to take any part in the publication of an advertisement (which is likely to include electronic publications, such as websites, emails and social media) containing any offer to

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<sup>1</sup> Section 5(2) Cancer Act 1939

<sup>2</sup> Section 4(8) Cancer Act 1939

<sup>3</sup> Section 4(7) Cancer Act 1939 as substituted by Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008/2840 art.2(b) (October 30, 2008)

treat any person for cancer, or to prescribe any remedy for it, or to give any advice in connection with the treatment of cancer.

3.1.2. Any advert designed to target cancer patients should be approached very cautiously and with the Act in mind.

3.1.3. As a CNHC registrant you may advertise complementary therapies to cancer patients provided that you do not, under any circumstances, advertise an offer to treat any person for cancer, prescribe any remedy for cancer or give any advice in connection with the treatment of cancer.

3.1.4. Use of the words 'treat', 'treatment' or 'remedy' could be considered as implying that you are treating the cancer itself and so should not be used.

3.1.5. It is advisable that if you are advertising a complementary therapy to cancer patients, you should include a sentence setting out that the therapy is intended to relieve the symptoms of cancer or the side-effects of the treatment prescribed by the client's consultant and that the therapy is not a treatment or a remedy for the cancer itself. The advert should always make plain the distinction between a complementary therapy and a treatment or remedy.

3.1.6. It is also recommended that complementary therapists advise that any cancer patients speak to the clinician responsible for their care and treatment before embarking on therapy to manage the symptoms of cancer.

### 3.2. **What can I include in adverts if I work in hospices and palliative care centres?**

3.2.1. Wording such as the phrases set out below are likely to be acceptable:

***“Within the UK a number of cancer care centres, palliative care centres and hospices provide access to a range of complementary therapies”***

***“[Name of centre / hospice] has agreed that I can provide [type of therapy] to patients in their care”***

### 3.3. **What can I say if I have completed specialist training to work with cancer patients?**

3.3.1. If you have completed a formal or accredited training course that includes 'cancer' in the title you should be able to simply state the fact that you attended the relevant course, providing the advert does not contain an offer to treat any person for cancer or to prescribe any remedy for the treatment of cancer or imply that attendance on the course enables you to do so.

However, if the title of the course could be taken to have this meaning (taking as a crude example “Complementary and Natural Treatment for Cancer”), then that could be problematic.

### 3.4. What can I say to people in person or over the telephone?

- 3.4.1. Section 4(8) of the Act sets out that the expression ‘**advertisement**’ includes **any announcement ‘made orally or by any means of producing or transmitting sounds’**.
- 3.4.2. This means that any offer to treat a person for cancer, prescribe any remedy or give any advice in connection with the treatment of the cancer, must not be made over the telephone or in person.
- 3.4.3. If an individual who has been diagnosed with cancer self-refers to you for complementary therapy, you can set out the types of therapies you offer but you should always explain that the therapies are not a substitute for the treatments provided by a hospital or for the course of treatment prescribed by their consultant.
- 3.4.4. You must state that the therapies are designed to be used in conjunction with conventional treatments and are used to seek to relieve the symptoms of cancer or the side effects of conventional treatments.
- 3.4.5. You should express clearly that the therapies you offer will not treat and / or remedy the cancer itself and should not be used as a substitute for the treatment recommended for them by their treating medical practitioners.

## 4. General advice

- 4.1. As a general principal it will be helpful to bear in mind the CAP code which states that the ‘**central principle for all marketing communication is that they should be legal, decent, honest and truthful...and should be prepared with a sense of responsibility to consumers and society**’.<sup>4</sup> This sentiment is clearly echoed in the purpose of the Act and should be borne in mind when advertising complementary therapies to cancer patients.

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<sup>4</sup> The CAP Code – The UK Code of Non-broadcast Advertising, Sales and Promotion and Direct Marketing. Edition 12. Rule 1.1 and 1.3

- 4.2. It is important that, when advertising complementary therapies to cancer patients, you have the Act at the forefront of your mind and ensure that you set out clearly that the therapies you are marketing are not treatments and / or remedies for cancer.

**ENDS**

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