



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0271/10</b>
<b>2</b>	<b>Advertiser</b>	<b>PPA Day Surgeries</b>
<b>3</b>	<b>Product</b>	<b>Professional services</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Radio</b>
<b>5</b>	<b>Date of Determination</b>	<b>14/07/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

A female voice states "A message to the men of Newcastle from your wives and partners..." The voice then goes on to say that if men want fantastic, worry-free sex then rather than gestures such as putting the kids to bed early or giving backrubs, they should get a vasectomy at the Lambton Road Surgery.

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*The way in which this advertisement trivialises an invasive medical procedure by the use of suggestive tone and the outright insinuation that if one is to undergo one of these procedures they will in fact get more sex is unprofessional and sordid. Salacious and frivolous advertising of a procedure which alters the reproductive organs of a person is not only inappropriate it contravenes the AANA's Code of Ethics on Advertising 2.2 a. which states practitioners should: "Confine advertising of professional services to the presentation of information reasonably needed by patients or colleagues to make an informed decision about the availability and appropriateness of your medical services."*

*Advertising a serious medical procedure by openly presenting it as a way to get more sex is not an example of "information reasonably needed by patients" and is completely irresponsible and unethical. Undergoing a permanent alteration of one's sexual organs is not a decision that should be trivialised and a potential patient's decision to submit to one of*

*these procedures should not be clouded by sensationalised claims of more sex, increased sexual desire from their partner, or a more sexually responsive partner.*

*The advertisement is disrespectful to men in that it assumes that the only consideration in undergoing such a serious and permanent operation is how much sexual intercourse they will get as compensation. Such an operation deserves proper consideration by a patient and should not be portrayed as inconsequential or as a way to increase their partner's sexual interest.*

*As an illustration of this disrespect if you would consider that an hysterectomy (the female equivalent of vasectomy) were to be advertised using a suggestive male voice over addressing women directly stating that if one of these procedures was completed their partner would be grateful and even more giving in the bedroom (as the ad states) there would be public outrage and offense. Such an advertisement would be considered highly distasteful and disrespectful as it implies that the decision to undergo such a procedure is petty and insignificant. Women would be angry that the ad states openly that they should submit to the procedure to obtain or retain the respect of their partner and to engage in more sex.*

*This advertisement cannot be considered to be a professional and ethical promotion of a medical procedure which is virtually permanent and involves surgery on the healthy reproductive organs of a person. Please consider that if a cosmetic surgeon were to advertise a breast augmentation publically with the tag line that their partner would have an increased sexual desire and be more responsive to them the surgeon would be acting completely unethically and the advertisement would be publically condemned.*

*The NSW Medical Practice Act 1992 specifically prohibits advertising of medical services which:*

- (a) is false misleading or deceptive or*
- (b) creates an unjustified expectation of beneficial treatment or*
- (c) promotes the unnecessary or inappropriate use of medical services.*

*In the advertisement as previously mentioned the female character states that if a vasectomy is performed on you "Your partner will be very grateful" (that is more sexually responsive) and you will be able to engage in "Worry free sex". This claim made by the advertisement is misleading and deceptive and most definitely "Creates an unjustified expectation" of the benefits of the treatment. Furthermore by advertising medical procedures as a way to inspire more sexual activity and higher sexual response in one's partner the surgery is promoting the potential inappropriate and unnecessary use of the service.*

*The undignified disrespectful and unprofessional way that these services are advertised are disgusting and offensive and should be removed from broadcast. Proper and socially correct advertising of such services would make no reference to increases in a partner's libido, would respectfully acknowledge that this operation is a serious and virtually permanent change to a man's otherwise healthy sexual organs, and would not promise more sexual activity or "Worry free sex" as a way to trivialise a serious medical decision.*

*I have contacted the advertiser (Lambton Road Day Surgery) to present my concerns regarding their advertisement.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*The advertisement reflects a conversation by a “wife” or “partner” for “worry free sex”. This is not a suggestion that having a vasectomy will result in “more” sex which is constantly and repeatedly suggested throughout the letter.*

*A vasectomy is not an “invasive medical procedure”; in fact there are no sutures only a dry dressing which can be removed within a day or two.*

*Lastly, a hysterectomy is not the “female equivalent of a vasectomy”. A tubal ligation carries more risk and requires a longer length of stay and therefore a vasectomy is a safer and simpler alternative.*

*Once a client has decided to have a vasectomy, there are procedures which are followed to ensure an informed and safe admission.*

*The client is posted a Pre Operative Information Form and a Vasectomy Information Brochure before any appointment is made. Once a decision is made to proceed a deposit is paid and an appointment is given. At this time a medical/medication history is taken to determine risk and suitability and any discrepancies are referred to the anaesthetist or operating doctor. Once approved, Preadmission Information is sent to be completed and brought to the appointment. A Privacy Consent is completed at admission and the patient is given written Post Operative Information with a 24 hour contact phone number in case of an emergency at discharge. Consents are signed and risks are informed.*

*The following is the response from Radio Newcastle:*

*The Lambton Road Day Surgery commercial did not air on NXFM on the afternoon of the 6th at all as suggested by the complainant. The broadcast that would most likely have been heard by the complainant was at 5:45pm on our other station, KOFM.*

*KOFM is an adult music station targeted to the 35 to 49 year age group. This would seem relevant to the ASB’s deliberations as to whether the commercial was marketed to children under Section 2.4 of the AANA Codes.*

*As the creators of the script I know our intention was to acknowledge the right of couples to have enjoyable sex without the worries of conception or side effects of the female ‘pill’. It is my belief that the main aim of the commercial is to advise of a possible solution to those worries. The emphasis is on “worry free sex”, it is not to promote “more sex” as the complainant perceives. I believe this would conform to Section 2.3 of the AANA Code’s requirement of “sensitivity to the relevant audience and where appropriate the relevant programme and time zone.”*

*I confirm that the scheduling of Lambton Road Day Surgery commercials on both KOFM and NXFM are restricted within our traffic system to exclude broadcast between the hours of 7:00am to 9:10am and 2:30pm to 4:00pm each day to minimize any possible exposure to children. I believe this also strengthens compliance with Section 2.3 of the AANA Code’s requirement of “sensitivity to the relevant audience and where appropriate the relevant programme and time zone.”*

*I hope all highlighted issues have been addressed.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant's concerns that the advertisement trivializes an invasive medical procedure, and makes sensationalised claims about sex and breaches the NSW Medical Practice Act 1992.

The Board reviewed the advertisement and noted the advertiser's response.

The Board noted that it is not its role to determine whether an advertisement breaches other legislation and noted that the complainant should refer concerns about the Medical Practice Act 1992 to the relevant NSW Authority.

The Board noted that the advertisement encourages vasectomies and makes statements suggesting that a man will have an improved sex life by having a vasectomy. The Board considered section 2.6 of the Code and whether the advertisement depicted material contrary to prevailing community standards on health and safety. The Board considered that the advertisement makes claims and has content that is likely to be considered exaggerated and not necessarily putting forward the rationale that would make a man or couple decide to opt for a vasectomy. Although advertising the service in an exaggerated manner, the Board considered that the advertisement did not present the material in a manner that is contrary to prevailing community standards on health and safety. The Board considered that the advertisement did not breach section 2.6 of the Code.

The Board considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone". The Board noted that the advertisement is broadcast on an adult targeted radio and that the advertiser has restricted advertisements so that they do not include broadcast between 7 a.m. – 9.10 a.m. and 2.30 – 4 p.m. each day. The Board considered that the restricted scheduling was appropriate for the type of content of this advertisement and that the advertisement does treat sex and sexuality with sensitivity to the relevant audience. The Board determined that the advertisement did not breach section 2.3 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.