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**Re: Advertising Standards Authority (ASA) response to the Nuffield Council on Bioethics consultation 'Medical profiling and online medicine'**

The Advertising Standards Authority (ASA) is the UK self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful.

The ASA administers the UK Advertising Codes, which are written and maintained by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). CAP is responsible for the non-broadcast Code and BCAP is responsible for the TV and radio Codes<sup>1</sup>. A more detailed explanation of the advertising regulatory system is included as an **annex** to this letter.

The ASA understands that this consultation is intended to inform the Nuffield Council's own policy. This response is only intended to clarify the role of the ASA and how advertising regulation operates in the UK.

It is important to note that fundamental questions about consumer access to particular products and services is not something that is, or should be, determined by the advertising regulatory system. That is absolutely a matter for Government. Where a product is legally able to be advertised, then it is the role of the advertising regulatory system to ensure that it is advertised responsibly. Likewise, where significant legal restrictions surround the use of a particular product, advertising policy reflects those restrictions.

The advertising regulatory system should not be used as a substitute for proper product or service regulation.

This response is restricted to three areas:

**1. A partial response to Question 8**

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<sup>1</sup> The Advertising Codes can be found at: <http://www.cap.org.uk/cap/codes/>

2. Clarification of the advertising regulatory system (as described on page 20 of the consultation document)
3. Explanation of the online remit of the advertising regulatory system (as described on page 20 of the consultation document)

**Question 8 – “Do you think it should be permissible to advertise prescription drugs direct to consumers?” (Part of this question also relates to the acceptability of advertising DNA profiling or body imaging services direct to consumers.)**

**i. Clarification of the existing regulatory regime for medicines advertising**

The legal base for the control of medicines advertising is contained in the Medicines (Advertising) Regulations 1994 and The Medicines (Monitoring of Advertising) Regulations 1994 (both as amended). Under these regulations the advertising of prescription only medicines (POMs) to the public is prohibited in the UK. This is reflected in the UK Advertising Codes. The ASA does not regulate legal advertisements for POMs directed at health professionals. These are subject to the ABPI Code of Practice, administered by the Prescription Medicines Code of Practice Authority (PMCPA) and legislation which is enforced by the Medicines and Healthcare products Regulatory Agency (MHRA).

All advertisements for non-prescription medicines are, like all ads, regulated by the UK Advertising Codes, which contain robust provisions that are designed to ensure that all advertisements are legal, decent, honest and truthful. On top of those restrictions, non-prescription medicine ads are subject to specific rules, which reflect the requirements of section 9 of the Medicines (Advertising) Regulations 1994.

**ii. DNA Profiling and Body imaging advertising**

Under the UK Advertising Codes, DNA profiling and body imaging are not classed as medicines and so are not subject to the specific code rules for medicine advertising. However, ads for these services are still subject to the UK Advertising Codes, which contain rules to prevent advertisers from misleading consumers about their products and have strong focus on responsibility in advertising.

As well as this, the CAP and BCAP Codes contain further rules which are designed to ensure that advertisements do not discourage people from seeking professional medical advice or treatment, where such advice should be sought.

Although the ASA is not aware of any specific problems with body imaging ads, we are generally supportive of robust regulation at a sector or practice level for products or services of a medical nature. In our experience, strong regulation of an industry or practice is likely to enhance compliance of advertising by that sector.

The ASA understands that a 2007 report by the Committee on medical aspects of radiation in the environment (COMARE) recommended that regulation of commercial x-ray body imaging services should be reviewed. Indeed, the findings of this report have helped inform a previous ASA adjudication on a body imaging ad.<sup>2</sup>

DNA tests in the UK are regulated by the Medicines and Healthcare products Regulatory Agency (MHRA) and as outlined on page 20 of the consultation document, we do regularly consult with the MHRA when investigating ads, which also fall under their general regulatory remit.

### **A comprehensive regulatory system**

The ASA notes that on page 20, the consultation document incorrectly states that “The ASA only responds to complaints, and does not generally carry out investigations on its own initiative”. In fact, the ASA/ CAP/ BCAP approach is a comprehensive regulatory model, with nearly all aspects of advertising regulation under one roof. The system offers:

- A compliance and monitoring team that proactively monitors ads across media on a daily basis to check for compliance with the Codes. The team also undertakes surveys in high profile areas (e.g. sensitive areas such as gambling or alcohol) or amongst sectors with lower compliance records.
- A large and experienced complaints & investigations department which deals with issues relating to advertising in all media. The ASA is an organisation of over 100 people and deals with around 25,000 complaints each year.
- A free Copy Advice service for advertisers, agencies and media who want to check prospective non-broadcast ads or creative ideas against the CAP Code. The team deals with around 6000 enquiries each year.

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<sup>2</sup> ASA adjudication, November 2008 – Lifescan Ltd  
[http://www.asa.org.uk/asa/adjudications/Public/TF\\_ADJ\\_45273.htm](http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_45273.htm)

- Guidance and training for the industry, including regular seminars, presentations and visits by our Code experts to companies and agencies.
- Open and transparent performance evaluation, through key performance indicators, which are published every year in the ASA annual statement. These show, for example, the number of complaints received and resolved and the average time taken to deal with different classes of complaints.
- Consumer information through the ASA website, including published adjudications, information on how to complain and information about how the system works.
- Established sanctions, including prohibiting ads or advertising techniques, and requiring advertisers to seek advice before publishing future ads. In extreme cases the ASA can refer advertisers to the OFT for unfair or misleading ads and broadcasters to Ofcom for persistently airing ads that break the rules.

### **Online Regulation**

As mentioned on page 20 of the consultation document, the CAP Code covers online sales promotions and online ads in paid-for space, but does not currently cover marketing on companies' own websites, which are classified as editorial content.

The ASA and the advertising industry are aware of the need to future-proof advertising self-regulation so that online marketing material is regulated with the same sense of social responsibility as in traditional media.

Any extension to the ASA's remit is a decision for the advertising industry, not the ASA. The advertising industry, led by the Advertising Association, is presently considering whether and how the scope of the CAP Code might extend to promotional material on websites. The ASA, CAP and BCAP await the outcome of that work.

If the Nuffield Council on Bioethics would like to discuss any aspect of this response, please do not hesitate to get in touch.

Yours sincerely,



**Michael Todd**  
**Public Affairs and Policy Officer**

#### **ANNEX – About the ASA one-stop shop**

1. The ASA has been responsible for policing non-broadcast advertising standards since 1962, when the industry established the ASA as an independent complaints body to administer the new CAP Code.
2. The self-regulatory system is based on a concordat between advertisers, agencies and the media that each will act in support of the highest standards in advertising. It is not a voluntary system.
3. The success of the self-regulatory system led to the contracting-out of broadcast regulation (TV and radio) by Ofcom in 2004. Approved by Parliament, it created a 'one-stop shop' for all advertising complaints<sup>3</sup>.
4. Two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are responsible for writing and maintaining the Advertising Codes. CAP maintains the non-broadcast Code and BCAP is responsible for the TV and radio Codes.<sup>4</sup>
5. The system is entirely funded by industry, through a levy of 0.1% on display advertising space and airtime and 0.2% on Royal Mail Mailsort contracts. The levies are collected by two arm-length funding bodies, the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof)<sup>5</sup>. Last year the ASA was awarded £8m to run the system.

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<sup>3</sup> Agreed through a formal Memorandum of Understanding (MOU), with the Deregulation and Contracting Out Act 1994 (DCOA) as the legal function that enables the partnership

<sup>4</sup> The Advertising Codes can be found at: <http://www.cap.org.uk/cap/codes/>

<sup>5</sup> [www.asbof.co.uk](http://www.asbof.co.uk)

6. The ASA 'one-stop shop' advertising regulatory system brings great benefits for consumers and for business:

- **Easier for consumers** – The establishment of a single complaints body has made it easier for consumers to complain
- **Free to the taxpayer** – Because it is funded by industry
- **Simpler regulatory structure for advertisers** – and cheaper for business than seeking resolution through the courts.
- **Harmonious decision making** – Cross media adjudications are made by a single organisation.
- **Corporate Social Responsibility** – Effective self-regulation works because the advertising industry has a strong interest in maintaining a level playing field for business and consumer trust in advertising.

7. Further information about the ASA and the work we do can be found at [www.asa.org.uk](http://www.asa.org.uk). The website also contains a searchable database of all our adjudications from the past five years.