

21 September 2016

Dr Ken Harvey  
35a Mary Street  
Hawthorn,  
Victoria 3122

Also by email:  
k.harvey@medreach.com.au

Dear Sir

### The Medical Weightloss Institute

We act for GTC Medical Pty Limited trading as The Medical Weightloss Institute (*MWI*).

We write to you in connection with various posts attributed to you, which appear on a website operated by Medreach Pty Limited. We note you describe yourself as a public health and consumer activist and that the website contains articles and posts concerning various health issues.

There are numerous articles and posts on the website which attack MWI, its services and its products. They also damage the professional reputations of persons associated with MWI including the reputation of a medical practitioner.

The purpose of this letter is to draw your attention to these matters, to provide you with our client's responses to certain of them and to demand that you immediately cease and desist from further damaging our client's business and further damaging the reputations of persons associated with our client. Also that you remove the offending publications.

The publications about which our client complains include those published under the following headings:

*Yet Another Weight Loss Scam (Dr Thomas Goyer, Geoff Jowett) posted on 14 June 2016. (Article 1)*

*Australian Male Hormone Clinic (AMHC) posted on 2 August 2016. (Article 2)*

*More on MWI; prescribing dangerous drugs withdrawn from Australian Market – posted on 12 September 2016. (Article 3)*

*AMI Begat MWI Begat AMHC Begat ACTIVATE. (Article 4)*

*A Compounding Pharmacy has been criticised for dispensing a withdrawn substance...but is the reproof warranted? - posted on 17 September 2016. (Article 5)*

Set out below, is the accusation or imputation which is apparent from the relevant article (with a reference to it) followed by our client's response.



SWAAB

SWAAB Attorneys

ABN 71 028 846 652

Level 1, 20 Hunter Street  
SYDNEY NSW 2000

DX 522 SYDNEY NSW

T +61 2 9233 5544  
F +61 2 9233 5400

www.swaab.com.au

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**Partner**

Richard Ottley

**Contact**

Richard Ottley  
Partner

rbo@swaab.com.au

Our ref  
140008

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**1 The risks and benefits of prescribing diethylpropion (prescribed by certain of MWI's clients) has been called into question (reference Article 5).**

MWI's response is as follows:

- (a) Australian Compounding Pharmacy (**ACP**) a compounding pharmacist utilised by MWI, dispenses diethylpropion to patients only upon a registered medical practitioner's prescription.
- (b) It is understood that the raw ingredients required to compound diethylpropion are imported under strict requirements under a TGA import permit.
- (c) Diethylpropion appears under Schedule 4 on the TGA SUSMP.
- (d) Diethylpropion is not a banned substance. It is understood that it was introduced in around 1958 and has been used by nearly 30 million patients worldwide. It is also understood that in its time in Australia the TGA database has recorded only 36 adverse events where diethylpropion has been suspected (but not proven) to be responsible, but with no deaths reported.
- (e) Like other Schedule 4 medications diethylpropion has a well documented safety and adverse reaction profile.
- (f) ACP advises that no adverse reactions to diethylpropion have been reported to it.

**2 MWI recruits vulnerable patients by placing prominent advertisements and making extravagant claims (Article 5).**

MWI's response is as follows:

- (a) MWI does not nor does it seek to, recruit vulnerable persons whether through its advertisements or otherwise.
- (b) MWI's advertising is consistent with the space in which it operates.
- (c) Persons will only be accepted into the weight loss program operated by MWI in accordance with and subject to strict criteria set down by MWI.

**3 MWI orders a large number of pathology tests of dubious relevance to give an appearance of authenticity (Article 5).**

- (a) Pathology tests are conducted in order to pick up underlying pathology which may be relevant to a person's health and which may impact upon any weight loss program which may be considered.
- (b) Pathology tests support medical practitioners in their teleconsultation with the patients and assist the medical practitioner to identify underlying medical issues. They also assist the medical practitioner in determining a prescription if that is deemed the best option for the patient to achieve weight loss.
- (c) Pathology tests play an important role in understanding a person's health and are not conducted in order to give the appearance of authenticity.

**4 Doctors write scripts for a cocktail of complementary and prescription drugs without seeing or examining the patients. (Article 5).**

MWI's response is as follows:

- (a) The medical practitioners associated with MWI who conduct telephone consultations with patients, are subject to guidelines on technology-based consultations developed by the Medical Board of Australia pursuant to Section 39 of the *Health Practitioner Regulation National Law Act*. Those guidelines provide specific guidance for technology-based consultations. Technology-based consultations are defined as:

*"technology-based patient consultations are patient consultations that use any form of technology, including, but not restricted to video conferencing, internet and telephone, as an alternative to face to face consultations",*

- (b) No MWI clients receive medication without having received a consultation (by telephone) with the medical practitioner, or without the patient named prescription being sent to a compounding pharmacy.

**5 MWI is closely related to Australian Compounding Pharmacy. (Article 5)**

MWI's response is as follows:

- (a) ACP is MWI's supplier of choice but otherwise has no closer link to ACP than to any other pharmacy or compounding pharmacy.
- (b) ACP is not an "associated entity" of MWI.

**6 ACP fails to provide patients with information expected by the Pharmacy Board's compounding guidelines. (Article 5)**

MWI's response is as follows:

- (a) To the best of MWI's knowledge ACP takes appropriate steps to ensure that patients receive adequate information in relation to any prescription to be filled by ACP.
- (b) Initially the patients will receive (usually by email) a document setting out various things including what medications are being prescribed, the dosage and the intended outcome of taking the medications.
- (c) The medications themselves will have the dosage printed on the bottle.

**7 Geoff Jowett is now spruiking another weight loss scam (Activate) (Article 4)**

MWI's response is as follows:

- (a) Geoff Jowett is the public face of MWI.
- (b) Mr Jowett is not involved in, nor is MWI involved in, the promotion of a weight loss "scam".
- (c) The weight loss program and individual treatment plans undertaken by MWI and its health professionals, have had a proven track record of success.

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- (d) "Activate" is not purely a weight loss program but a coaching/motivational product which includes a weight loss component.

**8 A patient was prescribed a cocktail of drugs including diethylpropion a drug withdrawn from the Australian market because of serious adverse side effects including irregular heart beat, high blood pressure, seizures, nervousness and reports of people becoming psychologically dependent on this medicine. (Article 3)**

MWI's response is as follows:

- (a) Diethylpropion is only prescribed in line with the requirements set out by the TGA SAS.
- (b) Diethylpropion is currently prescribed to a small percentage of MWI patients, being those patients who meet the strict criteria for prescription of diethylpropion under weight loss programmes tailored to their needs.

**9 Dr Jacqui Forrester is in breach of the Medical Board of Australia's Code of Conduct. (Article 3)**

MWI's response is as follows:

- (a) MWI makes the following comments without in any way seeking to predict or limit any action which Dr Forrester may choose to take of her own accord.
- (b) Dr Forrester is a medical practitioner engaged by MWI who treats clients referred under MWI's weight loss program and who may prescribe medication depending upon the patient's health status.
- (c) The allegations against Dr Forrester are serious and carry a number of defamatory imputations including imputations as to her professional conduct and competence. Dr Forrester has denied to MWI that there is any basis for the making of such allegations.

**10 Registered pharmacist Darryl Knowles is in breach of section 5 and 6 of the Pharmacy Board of Australia's Guidelines on compounding of medicines. (Article 3)**

MWI's response is as follows:

- (a) MWI makes the following comments without in any way seeking to predict or limit any action which Mr Knowles may choose to take of his own accord.
- (b) Section 5 relates to veterinary medicines and is not relevant.
- (c) From the perspective of MWI, it vigorously denies any knowledge that any pharmacist it engages has failed to act in accordance with appropriate regulatory guidelines.
- (d) MWI is aware of regular in-house testing by ACP to support quality, efficacy and stability of formulations.

**11 Victims of these scams are not just being ripped off financially but are also likely to also have direct and indirect detriment to their health. Direct detriment can come from the adverse effects and drug interactions of the "hundreds of different medications" they tailor-make for an individual. Indirect health detriment can result from failure to diagnose underlying conditions and a delay in seeking more evidence-based treatment" (Article 2)**

MWI's response is as follows:

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- (a) MWI makes the following comments without in any way seeking to predict or limit any action which AMI or AMHC may choose to take of their own accord.
  - (b) Clients of MWI are not victims and persons dealing with MWI are offered a professional service tailored to their needs.
  - (c) MWI connects clients to medical practitioners who exercise their own independent professional judgement as to what if any is the appropriate treatment plan for the patient. Any treatment plan including prescriptions by the medical practitioner would occur within the ethical, professional and statutory framework which regulates their conduct.

12 **Mr Geoff Jowett should be permanently prevented from providing weight loss services. (Article 2)**

MWI's response is as follows:

- (a) MWI makes the following comments without in any way seeking to predict or limit any action which Mr Geoff Jowett may choose to take of his own accord.
- (b) Mr Geoff Jowett is the public face of MWI. He has over 20 years' experience in weight loss treatments, and has co-founded organisations and created programmes which have helped over 1 million Australians lose weight.
- (c) There is no basis to support any such action by regulatory authorities to prevent Mr Jowett from providing weight loss services.

It is self-evident from the above, that articles attributed to you contain a number of highly damaging allegations and imputations which attack our client, its business, products and services and which attack the professional reputations of persons and organisations associated with it.

The extravagant and unsupported claims by you against MWI and others have the ability to and have in practice damaged the business of MWI. Evidence to this effect can be provided should our client choose to embark upon legal action against you.

You have also attacked the professional reputations of various individuals including Mr Geoff Jowett, Dr Jacqueline Forrester and Mr Daryll Knowles. It will obviously be a matter for them as to what action they wish to take in relation to your publications.

For present purposes, our client demands that you immediately cease your posting of articles which are damaging to our client and its business and the reputations of those persons defamed and remove the offending publications.

As is apparent from the above responses in this letter, the assertions and allegations you make concerning our client and its business, do not have a proper basis to support them. They are false and calculated to induce others not to deal with our client and are otherwise likely to damage our client. It is therefore submitted that you have engaged in the tort of injurious falsehood and are liable to our client in damages.

Our client reserves all its rights against you in relation to the above cause of action and in relation to any other cause of action available to it. We recommend that you seek independent legal advice in relation to this letter.

Our client seeks your written response to this letter by 26 September 2016 and in particular confirmation that you will immediately remove the postings complained of and will not further damage our client and its business.

Please be aware that this letter may be relied upon in any court proceedings that may become necessary.

Yours faithfully



**Richard Ottley**  
**Partner**