



Aboriginal and Torres Strait  
Islander Health Practice  
Chinese Medicine  
Chiropractic  
Dental  
Medical  
Medical Radiation Practice  
Nursing and Midwifery  
Occupational Therapy  
Optometry  
Osteopathy  
Pharmacy  
Physiotherapy  
Podiatry  
Psychology

Australian Health Practitioner Regulation Agency

**National Board guidelines for registered health practitioners**

# GUIDELINES FOR ADVERTISING REGULATED HEALTH SERVICES

March 2014

# ADVERTISING GUIDELINES

## About the National Boards and AHPRA

The 14 National Boards regulating registered health practitioners in Australia are responsible for registering practitioners and students (except for in psychology, which has provisional psychologists), setting the standards that practitioners must meet, and managing notifications (complaints) about the health, conduct or performance of practitioners.

The Australian Health Practitioner Regulation Agency (AHPRA) works in partnership with the National Boards to implement the National Registration and Accreditation Scheme, under the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

The core role of the National Boards and AHPRA is to protect the public.

## About these guidelines

These *Guidelines for advertising regulated health services* were jointly developed by the National Boards under section 39 of the National Law. The guidelines were developed to help practitioners and others understand their obligations when advertising a regulated health service.

All obligations outlined in this document are those required under the National Law unless stated otherwise.

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# ADVERTISING GUIDELINES

## Preface

The National Law and these guidelines aim to protect the public.<sup>1</sup> The guidelines explain the limits placed on advertising regulated health services imposed by the National Law. They do not explain how to advertise. The wording of section 133 of the National Law is broad and it is not possible to provide an exhaustive list of advertising that will, or will not, contravene it.

Anyone advertising regulated health services, including individual health practitioners, must make sure that their advertisements comply with the National Law and other relevant legislation.

Neither AHPRA nor the National Boards are able to provide advertisers with legal advice about their advertising, or approve advertising, and these guidelines are not a substitute for legal advice.

Section 133 of the National Law regulates advertising of regulated health services. It states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—*
  - a) *is false, misleading or deceptive or is likely to be misleading or deceptive; or*
  - b) *offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer; or*
  - c) *uses testimonials or purported testimonials about the service or business; or*
  - d) *creates an unreasonable expectation of beneficial treatment; or*
  - e) *directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.*

*Maximum penalty—*

- a) *in the case of an individual—\$5,000; or*
  - b) *in the case of a body corporate—\$10,000.*
2. *A person does not commit an offence against subsection (1) merely because the person, as part of the person's business, prints or publishes an advertisement for another person.*
  3. *In proceedings for an offence against this section, a court may have regard to a guideline approved by a National Board about the advertising of regulated health services.*
  4. *In this section — regulated health service means a service provided by, or usually provided by, a health practitioner.*

## 1 What is the purpose of these guidelines?

These *Guidelines for advertising regulated health services* were jointly developed by the National Boards responsible for regulating registered health practitioners in Australia. They:

- explain and provide guidance on the obligations of advertisers (see definition in Appendix 1) under the National Law
- describe advertising that is prohibited
- comment on the use of factual information in advertising
- explain that advertisers of regulated health services (whether registered health practitioners or not) have responsibilities under other legislation administered by other regulators, and
- explain the consequences of a breach of the advertising provisions of the National Law.

<sup>1</sup> Available from the AHPRA website at [www.ahpra.gov.au/Legislation-and-Publications/Legislation.aspx](http://www.ahpra.gov.au/Legislation-and-Publications/Legislation.aspx).

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## 2 What are the principles underpinning these guidelines?

The following principles underpin these guidelines:

- advertising can be a useful way to communicate the services health practitioners offer to the public so that consumers can make informed choices
- advertising that contains false and misleading information may compromise health care choices and is not in the public interest
- the unnecessary and indiscriminate use of regulated health services is not in the public interest and may lead to the public purchasing or undergoing a regulated health service that they do not need or require.

## 3 Do these guidelines apply to me?

These guidelines apply to any person (see definition of 'advertiser' in Appendix 1) who advertises a regulated health service or a business that provides a regulated health service, including:

- registered health practitioners
- non-registered health practitioners
- individuals, and
- bodies corporate.

A court may consider these guidelines when hearing advertising offences against section 133 of the National Law.

## 4 What must I do?

All advertisers of regulated health services must comply with:

- the National Law, including:
  - the advertising requirements under section 133
  - title and practice protection provisions under sections 113–120, and

- all other applicable legislation, such as the Australian Consumer Law.

### 4.1 Other laws regulating advertising

Advertising of regulated health services often involves the advertising of products and/or therapeutic goods and you must take care that you comply with all relevant legislation. Australian regulators such as the Australian Competition and Consumer Commission (ACCC) and the Therapeutic Goods Administration (TGA) have a responsibility for laws governing the advertising of health products and services. More information about this is included in Appendixes 2, 3 and 4.

If a complaint about an advertisement may be of interest to another Australian regulatory authority such as the TGA or ACCC, AHPRA may refer the matter to the most appropriate regulator.

### 4.2 Additional obligations for advertisers who are registered health practitioners

You should read these guidelines with other codes and guidelines published by the National Boards that convey their expected standards of professional conduct for each regulated profession. Each National Board has published a *Code of conduct for registered health practitioners*, or similar document. You have a professional responsibility to be familiar with, and apply, this code. It describes the professional standards expected of practitioners, including when advertising.

## 5 What happens if advertising breaches the National Law?

A breach of advertising requirements is a criminal offence. A court may impose a penalty up to \$5,000 for an individual and \$10,000 for a body corporate.

Complaints about possible breaches of the National Law and these guidelines should be reported to AHPRA. Information about how to do this is available on the AHPRA website.<sup>2</sup>

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<sup>2</sup> Go to [www.ahpra.gov.au](http://www.ahpra.gov.au) and follow the *Make a notification* link.

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If you are a current or previously registered health practitioner, you may also be subject to disciplinary action under Part 8 of the National Law (which relates to health, performance and conduct) for unprofessional conduct (described as 'unsatisfactory professional conduct' in NSW) in relation to advertising. One of the grounds for a voluntary notification is that the health practitioner has, or may have, contravened the National Law (see section 144).

The options available to the Boards/AHPRA if advertising breaches the National Law are summarised at Appendix 7.

## 6 What are the advertising provisions of the National Law?

The wording of section 133 is broad and it is not possible to provide an exhaustive list of advertising that will, or will not, breach the National Law. However, this section provides general guidance on the advertising requirements of the National Law.

### 6.1 Use of factual information in advertising

Factual information in advertisements, as described below, may help health consumers to make informed choices.

You should ask yourself whether your advertising is verifiable and meets the requirements of the National Law.

### Information commonly included in health services advertising<sup>3</sup>

- Office details
  - contact details
  - office hours, availability of after-hours services
  - accessibility (such as wheelchair access)
  - languages spoken (this does not affect other guidance provided by the National Board about use of qualified interpreters where appropriate)
  - emergency contact details
- Fees
  - a statement about fees charged (price information must be exact), bulk-billing arrangements, or other insurance plan arrangements and instalment fee plans regularly accepted
- Qualifications and experience
  - a statement of the names of schools and training programs from which the practitioner has graduated and the qualifications received, subject to the advice in Section 6.2 of these guidelines on advertising of qualifications and memberships
  - whether the practitioners have specialist registration or endorsement under the National Law and their area of specialty or endorsement
  - what positions, currently or in the past, the practitioners have held, together with relevant dates
  - whether the practitioner is accredited by a public board or agency, including any affiliations with hospitals or clinics
  - whether the practice is accredited and by whom
- For any surgical and/or invasive procedures, the appropriate warning statement in a clearly visible position<sup>4</sup>
- Photos or drawings of the practitioner or their office
- Any statement providing public health information that helps consumers to improve their health (this information should be based on reputable evidence wherever possible)

<sup>3</sup> The list is not intended to be exhaustive.

<sup>4</sup> Note that some National Boards may provide specific guidance on the use of warning statements for surgical and invasive procedures. See Appendix 6.

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## 6.2 Prohibited advertising under the National Law

Section 133 of the National Law prohibits advertising that:

- is false, misleading or deceptive or is likely to be so
- offers a gift, discount or other inducement to attract a user of the health service without stating the terms and conditions of the offer
- uses testimonials or purported testimonials
- creates an unreasonable expectation of beneficial treatment, and/or
- encourages the indiscriminate or unnecessary use of health services.

The sections below explain each part of section 133.

### 6.2.1 Misleading or deceptive advertising

Section 133 of the National Law states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—*
  - a) *Is false, misleading or deceptive or is likely to be misleading or deceptive*

A common meaning of 'mislead or deceive' is 'lead into error'. The courts have considered the phrase 'mislead or deceive'. People who are misled are almost by definition deceived as well. Misleading someone may include lying to them, leading them to a wrong conclusion, creating a false impression, leaving out (or hiding) important information, and/or making false or inaccurate claims.

As the ACCC explains, 'Patients can be physically, psychologically or financially affected by misleading conduct, and these effects can be long lasting. It is essential that patients be given honest, accurate and complete information in a form they can understand.'<sup>5</sup>

Examples of advertising that may be false or misleading include those that:

- mislead, either directly, or by implication, use of emphasis, comparison, contrast or omission
- only provide partial information which could be misleading
- use phrases like 'as low as' or 'lowest prices', or similar words or phrases when advertising fees for services, prices for products or price information in a way which is misleading or deceptive
- imply that the regulated health services can be a substitute for public health vaccination or immunisation
- use words, letters or titles that may mislead or deceive a health consumer into thinking that the provider of a regulated health service is more qualified or more competent than a holder of the same registration category (e.g. 'specialising in XX' when there is no specialist registration category for that profession)
- advertise the health benefits of a regulated health service when there is no proof that such benefits can be attained<sup>6</sup>, and/or
- compare different regulated health professions or practitioners, in the same profession or across professions, in a way that may mislead or deceive.

Using comparative advertising often risks misleading and/or deceiving the public because it can be difficult to include complete information when comparing one health service with another.

The ACCC has provided tips on how to avoid being misleading and deceptive when advertising. They may be useful for advertisers considering the requirements of the National Law:

- *Sell your professional services on their merits.*
- *Be honest about what you say and do commercially.*
- *Look at the overall impression of your advertisement. Ask yourself who the audience is and what the advertisement is likely to say or mean to them.*

<sup>5</sup> [www.accc.gov.au/business/professional-services/medical-professionals](http://www.accc.gov.au/business/professional-services/medical-professionals)

<sup>6</sup> Australian Competition and Consumer Commission, *Misleading and deceptive conduct*, [www.accc.gov.au/consumers/misleading-claims-advertising/false-or-misleading-claims](http://www.accc.gov.au/consumers/misleading-claims-advertising/false-or-misleading-claims)

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- Remember, at a minimum, that it is the viewpoint of a layperson with little or no knowledge of the professional service you are selling that should be considered.<sup>7</sup>

More information about the meaning of 'mislead or deceive' is available on the ACCC website.<sup>8</sup>

## 6.2.2 Gifts and discounts

Section 133 of the National Law states:

1. A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—
  - a) Offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer

Any advertisement that offers gifts, prizes or free items must state the terms and conditions of the offer. The use of unclear, unreadable or misleading terms and conditions attached to gifts, discounts and other inducements would not meet this requirement.

Consumers generally consider the word 'free' to mean absolutely free. When the costs of a 'free offer' are recouped through a price rise elsewhere, the offer is not actually free.

An example is an advertisement which offers 'make one consultation appointment, get one free', but raises the price of the first consultation to largely cover the cost of the second (free) appointment. This type of advertising could also be misleading or deceptive.

The terms and conditions should be in plain English, readily understandable, accurate and not in themselves misleading about the conditions and limitations of the offered service.

Advertising may contravene the National Law when it:

- contains price information that is inexact
- contains price information that does not specify any

terms and conditions or variables to an advertised price, or that could be considered misleading or deceptive

- states an instalment amount without stating the total cost (which is a condition of the offer), and/or
- does not state the terms and conditions of offers of gifts, discounts or other inducements.

## 6.2.3 Testimonials

Section 133 of the National Law states:

1. A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—
  - a) Uses testimonials or purported testimonials about the service or business

The National Law does not define 'testimonial', so the word has its ordinary meaning of a positive statement about a person or thing. In the context of the National Law, a testimonial includes recommendations, or statements about the quality of a regulated health service including clinical care, personal experiences of a regulated health service or about the benefits of a particular practitioner or regulated health service by someone who received the service.

Testimonials can distort a person's judgement in their choice of health practitioner. They may misrepresent the skills and or expertise of practitioners and create unrealistic expectations of the benefits such practitioners may offer health consumers. Testimonials in advertising include:

1. using or quoting testimonials on a website, such as patients posting comments about a practitioner on the practitioner's business website, particularly when the website encourages patients to post comments and/or selectively publishes patient comments, and/or
2. the use of patient stories to promote a practitioner or regulated health service.

There are a number of independent websites that invite public feedback/reviews about a patient's experience of a regulated health practitioner, business

<sup>7</sup> Australian Competition and Consumer Commission, *Professions and the Competition and Consumer Act, 2011*, [www.accc.gov.au/content/index.phtml/tag/professions](http://www.accc.gov.au/content/index.phtml/tag/professions)

<sup>8</sup> [www.accc.gov.au/business/advertising-promoting-your-business/false-or-misleading-claims](http://www.accc.gov.au/business/advertising-promoting-your-business/false-or-misleading-claims)



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and/or service. These websites are designed to help consumers make more informed decisions and increase transparency of interactions.

A review is not considered to be a testimonial or purported testimonial, in breach of section 133 (1)(c) of the National Law when it only comments on non-clinical issues, regardless of whether it is positive, negative or neutral.

Reviews must not contain statements about the quality of clinical care received from the regulated health practitioner, business and/or service.

A practitioner must take reasonable steps to have any testimonials associated with their health service or business removed when they become aware of them, even if they appear on a website that is not directly associated and/or under the direct control or administration of that health practitioner and/or their business or service. This includes unsolicited testimonials.

'Reasonable steps' include taking action in the practitioner's power, such as directly removing, or requesting removal, of the testimonials. For example, a review on a social media site that states 'Appointment ran very late and magazines were old', is not considered a testimonial as it makes no reference to the clinical care provided by a regulated health practitioner, business or service. However, a review on the same social media site that states 'Practitioner was quick to diagnose my illness and gave excellent treatment', is a testimonial which references clinical care and is considered in breach of the National Law.

Once the practitioner becomes aware of the testimonial, they must take reasonable steps to have the testimonial removed (also refer to Section 7.1 on social media).

## 6.2.4 Unreasonable expectation of beneficial treatment

Section 133 of the National Law states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—*
  - d) *Creates an unreasonable expectation of beneficial treatment*

This can arise when advertisers take advantage of the vulnerability of health consumers in their search for a cure or remedy. The claims of beneficial treatment can range from unsubstantiated scientific claims, through to miracle cures. Advertising of treatments or services must not encourage or promote unreasonable expectations.

For example, advertising may contravene the National Law when it:

- creates an unreasonable expectation (such as by exaggerating or by providing incomplete or biased information) of recovery time after providing a regulated health service
- fails to disclose the health risks associated with a treatment
- omits the necessary warning statement about a surgical or invasive procedure<sup>9</sup>
- contains any inappropriate or unnecessary information or material that is likely to make a person believe their health or wellbeing may suffer from not taking or undertaking the health service, and/or
- contains a claim, statement or implication that is likely to create an unreasonable expectation of beneficial treatment by:
  - either expressly, or by omission, indicating that the treatment is infallible, unfailing, magical, miraculous or a certain, guaranteed or sure cure, and/or

<sup>9</sup> Note that some National Boards may provide specific guidance on the use of warning statements for surgical and invasive procedures. See Appendix 6.

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- a practitioner has an exclusive or unique skill or remedy, or that a product is 'exclusive' or contains a 'secret ingredient' that will benefit the patient.

## 6.2.5 Encouraging indiscriminate or unnecessary use of health services

Section 133 of the National Law states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—*
  - e) *Directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services*

The unnecessary and indiscriminate use of regulated health services is not in the public interest and may lead to the public purchasing or undergoing a regulated health service that they do not need or require.

Advertising may contravene the National Law when it:

- encourages a person to improve their physical appearance together with the use of phrases such as 'don't delay', 'achieve the look you want' and 'looking better and feeling more confident'
- provides a patient or client with an unsolicited appointment time
- uses prizes, bonuses, bulk purchases, bulk discounts or other endorsements to encourage the unnecessary consumption of health services that are unrelated to clinical need or therapeutic benefit
- uses promotional techniques that are likely to encourage consumers to use health services regardless of clinical need or therapeutic benefit, such as offers or discounts, online/internet deals, vouchers, and/or coupons, and/or
- makes use of time-limited offers which influence a consumer to make decisions under the pressure of time and money rather than about their health care needs. An offer is considered time-limited if it is made to purchase for a limited or specific period of

time, or available for use within a limited period of time or by a specific date, without an option to exit the arrangement.

## 7 Further information about specific types of advertising

These guidelines cover all types of advertising, including social media, blogs and websites. The following sections discuss some aspects of advertising in more detail, to provide further guidance to practitioners.

### 7.1 Social media

The National Law prohibits advertising in any way that uses testimonials or purported testimonials. Testimonials, or comments that may amount to testimonials, made on social media sites by patients or other people may contravene the National Law (refer to Section 6.2.3 of these guidelines for more information on testimonials).

Social media includes work-related and personal pages on social networks such as Facebook, LinkedIn and Twitter.

A person is responsible for content on their social networking pages even if they were not responsible for the initial publication of the information or testimonial. This is because a person responsible for a social networking account accepts responsibility for any comment published on it, once alerted to the comment. Practitioners with social networking accounts should carefully review content regularly to make sure that all material complies with their obligations under the National Law.

These guidelines should be read in conjunction with the *Social media policy*, published on National Boards' websites.

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## 7.2 Advertising qualifications or memberships

Advertising qualifications or memberships may be a useful way to provide the public with information about the experience and expertise of health practitioners. However, it may be misleading or deceptive if the advertisement implies that the practitioner has more skill or experience than is the case.

Including professional qualifications in an advertisement that also promotes the use or supply of therapeutic goods may be interpreted as a professional endorsement. Professional endorsements of therapeutic goods are prohibited under the *Therapeutic goods advertising code 2007*.

Patients or clients are best protected when advertisers promote practitioners' qualifications that are:

- approved for the purposes of registration, including specialist registration and endorsement of registration
- conferred by approved higher education providers<sup>10</sup>, or
- conferred by an education provider that has been accredited by an accreditation authority.

A list of accreditation authorities and approved qualifications for each health profession is available on the relevant National Board's website.

## Helpful questions to consider

Practitioners who are considering the use of titles, words or letters to identify and distinguish themselves in advertising, other than those professional titles protected under the National Law for their profession, are encouraged to ask themselves the following questions:

- Is it appropriate for me to use this title, qualification, membership, words or letters in advertising material?
- Am I skilled in the services I am advertising?
- If I display or promote my qualifications in advertising materials, is it easy to understand?
- Is there any risk of people being misled or deceived by the words, letters or titles that I use?
- Is the basis for my use of title, qualification, membership, or other words or letters:
  - relevant to my practice
  - current
  - verifiable, and
  - credible?

## 7.3 Use of titles in advertising

The National Law regulates the use of certain titles. Misuse of a protected title is an offence under the National Law. The misuse of titles in advertising may also contravene other sections of the National Law related to title protection (please refer to Appendix 5(a)). For specific guidance on use of titles in the psychology and physiotherapy professions, please refer to Appendix 5(b).

Advertisers should be aware of the protected titles for the profession that they are advertising.<sup>11</sup>

There is no provision in the National Law that prohibits

<sup>10</sup> Within the meaning of the *Higher Education Support Act 2003* (Cth).

<sup>11</sup> Refer to the relevant National Board website for a list of the endorsements and recognised specialties for that profession.

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a practitioner from using titles such as 'doctor' but there is potential to mislead or deceive if the title is not applied clearly. If practitioners choose to adopt the title 'Dr' in their advertising and they are not registered medical practitioners, then (whether or not they hold a Doctorate degree or PhD) they should clearly state their profession.

Advertisers should avoid developing abbreviations of protected titles as these may mislead the public (e.g. 'pod', 'psych', 'RN'). It may also be misleading to use symbols, words or descriptions associated with titles.

Clarity may be achieved by including a reference to their health profession whenever the title is used, such as:

- Dr Isobel Jones (Dentist), and
- Dr Walter Lin (Chiropractor).

## 7.4 Advertising specialties and endorsements

The National Law allows for and protects specialist titles and endorsements (an endorsement on a practitioner's registration indicates that the practitioner is qualified to engage, for example, in a wider scope of practice than other registrants).

A registered health practitioner who does not hold specialist registration may not use the title 'specialist', or through advertising or other means, present themselves to the public as holding specialist registration in a health profession.

The National Law prohibits claims of:

- holding a type of registration, including specialist registration, or endorsement of registration not held, and/or
- being qualified to hold an endorsement they do not hold.

While the National Law protects specific titles, use of some words (such as 'specialises in') may be misleading or deceptive as patients or clients can interpret the advertisements as implying that the practitioner is more skilled or has greater experience than is the case.

These words should be used with caution and need to be supported by fact. Words such as 'substantial experience in' or 'working primarily in' are less likely to be misunderstood as a reference to endorsement or specialist registration.

A registered health practitioner who does not hold an endorsement may not, through advertising or other means, present themselves to the public as holding such an endorsement (such as using professional titles that are associated with an approved area of practice endorsement).

A list of health professions with approved specialties, endorsements, including endorsements for scheduled medicines and area of practice endorsements, is available on the websites of the relevant National Board. These websites also explain the titles that a registered health practitioner with an area of practice endorsement may use.

## 7.5 Advertising price information

Any information about the price of procedures in advertising of regulated health services must be clear and not misleading.

It is often difficult to provide an accurate price for a regulated health service in an advertisement due to the individual nature of services and the number of variables involved in the treatment. If fees and price information are to be advertised, then price information should be clear, with all costs involved and out of pocket expenses clearly identifiable, and any conditions or other variables to an advertised price or fee disclosed. This is to avoid misleading consumers and ensure they are fully informed and able to provide their full consent about health services.

Use of phrases like 'as low as' or 'lowest prices', or similar words, phrases or questions when advertising fees for services, prices for products or price information, or stating an instalment amount without stating the total cost may be misleading and could contravene the advertising provisions of the National Law.

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## 7.6 Use of scientific information in advertising

To not mislead or create false impressions, caution should be taken when using scientific information in advertising.

When a practitioner chooses to include scientific information in advertising, the information should:

- be presented in a manner that is accurate, balanced and not misleading
- use terminology that is understood readily by the target audience
- identify clearly the relevant researchers, sponsors and the academic publication in which the results appear, and
- be from a reputable (e.g. peer reviewed) and verifiable source.

## 7.7 Advertising therapeutic goods

The Therapeutic Goods Administration (TGA) is responsible for regulating therapeutic goods including medicines, medical devices, biologicals, blood and blood products.

If the advertising only comprises pricing for prescription-only (Schedule 4 and 8) and certain pharmacist-only (Schedule 3 of the Poisons Standard) medicines, then the advertisement must comply with the *Therapeutic Goods Act 1989*, Therapeutic Goods Regulations 1990, the *Therapeutic goods advertising code 2007* and the *Price information code of practice*. A list of practitioners permitted to advertise price information for certain Schedule 3, Schedule 4 and Schedule 8 medicines is included in the *Price information code of practice*, available via the TGA website: [www.tga.gov.au](http://www.tga.gov.au).

If the advertising promotes one or more therapeutic goods (under the *Therapeutic Goods Act 1989*), then the advertising must comply with the *Therapeutic Goods Act 1989*, Therapeutic Goods Regulations 1990, the *Therapeutic goods advertising code 2007* and, where relevant, the *Price information code of practice*.

Advertisers should note the definition of 'advertisement' in the *Therapeutic Goods Act 1989*.

See Appendix 4 for more information about advertising therapeutic goods.

## 8 Definitions

A list of definitions is included in Appendix 1.

Restrictions on advertising are included in other legislation. Advertisers should note that definitions in other legislation may be different to the definitions in these guidelines and should refer to the relevant definitions to ensure they comply with all relevant legislation.

Associated legislation and agencies are listed at Appendix 2.

## 9 Associated documents

These guidelines should be read in conjunction with codes and guidelines published by National Boards that describe the standards of professional practice expected by National Boards.

## Review

**Date of issue:** 17 March 2014

**Date of review:** These guidelines will be reviewed from time to time as required. This will generally be at least every three years.

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## Appendix 1 Definitions

### Advertiser

Any person or business that advertises a regulated health service.

### Advertising

For the purpose of the guidelines, advertising includes but is not limited to all forms of printed and electronic media that promotes a regulated health service and includes any public communication using:

- television
- radio
- motion pictures
- newspapers
- billboards
- books
- public and professional lists
- pictorial representations
- designs
- mobile communications or other displays
- internet
- social media
- all electronic media that promote a regulated health service
- business cards, announcement cards
- office signs
- letterhead
- public and professional directory listings, and
- any other similar professional notice (e.g. patient recall notices).

Advertising also includes situations in which practitioners make themselves available or provide

information for media reports, magazine articles or advertorials, including when practitioners make comment or provide information about particular products or services, or particular practitioners for the purposes of promoting or advertising a regulated health service.

This definition *excludes* material:

- issued to patients or clients during consultations when this material is designed to provide the person with clinical or technical information about health conditions or procedures, and when the person is given adequate opportunity to discuss and ask questions about the material. The information should not refer to services by the practitioner that could be interpreted as promoting that practitioner's services, as opposed to providing general information to the patient or client about a procedure or practice
- issued by a person or organisation for the purpose of public health information, or as part of a public health program or to health promotion activities (e.g. free diabetes screening, which confer no promotional benefits on the practitioners involved), and
- tenders, tender process, competitive business quotations and proposals, and the use of references about non-health services in those processes, provided the relevant material is not made available to the general public or used for promotional purposes (such as being published on a website).

The definition of 'advertising' and 'advertisement' may be different in other legislation. These definitions should be taken into account when considering compliance with that legislation. In particular the definition of 'advertisement' in the *Therapeutic Goods Act 1989* should be noted.

### AHPRA

AHPRA is the abbreviation for the Australian Health Practitioner Regulation Agency. AHPRA's operations are governed by the National Law (defined below), which came into effect on 1 July 2010. AHPRA supports the 14 National Boards that are responsible for regulating the health professions. The primary role of

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the National Boards is to protect the public and they set standards and policies that all registered health practitioners must meet.

## Health practitioner

A health practitioner means an individual who practises a health profession.

## Health service

A health service includes the following services, whether provided as public or private services:

1. services provided by registered health practitioners
2. hospital services
3. mental health services
4. pharmaceutical services
5. ambulance services
6. community health services
7. health education services
8. welfare services necessary to implement any services referred to in 1 to 7 above
9. services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists, and
10. pathology services.

Also refer to the definition of regulated health service.

## Invasive procedure

For the purposes of these guidelines, invasive procedure means any operation or other procedure that:

1. penetrates or pierces the skin by any instrument other than a needle, other than minor dental or minor podiatric procedures, or
2. is an elective procedure requiring more than local anaesthetic or sedation, or
3. requires admission to a day procedure centre (DPC) or hospital, or

4. involves significant risk associated with surgical and/or anaesthetic complications.

## National Board

National Board means a National Health Practitioner Board established by section 31 of the National Law.

## National Law

The 'National Law' means the Health Practitioner Regulation National Law, as in force in each state and territory.

## Person

A person includes an individual or a body politic or corporate.

## Purported testimonial

A purported testimonial is a statement or representation that appears to be a testimonial.

## Product

For the purpose of these guidelines, a 'product' is a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* (Cth) and does not apply to the advertising of other products that are not associated with the provision of regulated health services.

## Regulated health service

Means a service provided by, or usually provided by, a health practitioner (as defined in the National Law).

## Social media

'Social media' describes the online and mobile tools that people use to share opinions, information, experiences, images, and video or audio clips and includes websites and applications used for social networking. Common sources of social media include, but are not limited to, social networking sites such as Facebook and LinkedIn, blogs (personal, professional and those published anonymously), WOMO, True Local and microblogs such as Twitter, content sharing websites such as YouTube and Instagram, and discussion forums and message boards.

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## Appendix 2 Associated legislation and agencies

Legislation	Responsible agency	Further information
Australian Consumer Law	Australian Competition and Consumer Commission (ACCC) and relevant state and territory consumer protection departments and agencies	<a href="http://www.accc.gov.au">www.accc.gov.au</a>
<ul style="list-style-type: none"><li>• <i>Therapeutic Goods Act 1989</i> (Cth)</li><li>• Therapeutic Goods Regulations 1990</li><li>• <i>Therapeutic goods advertising code 2007</i></li><li>• <i>Price information code of practice</i></li></ul>	Department of Health and Ageing–Therapeutic Goods Administration	<a href="http://www.tga.gov.au">www.tga.gov.au</a>
Poisons Standard (Standard for the Uniform Scheduling of Medicines and Poisons)	Department of Health and Ageing–Therapeutic Goods Administration	<a href="http://www.tga.gov.au">www.tga.gov.au</a>



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Legislation	Responsible agency	Further information
Drugs and poisons legislation	Agencies in each Australian state and territory	<p><b>Queensland:</b> Health (Drugs and Poisons) Regulation 1996, <a href="http://www.legislation.qld.gov.au/OQPChome.htm">www.legislation.qld.gov.au/OQPChome.htm</a></p> <p><b>New South Wales:</b> <i>Poisons and Therapeutic Goods Act 1966</i>, Poisons and Therapeutic Goods Regulation 2008, <a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a></p> <p><b>Victoria:</b> <i>Drugs, Poisons and Controlled Substances Act 1981</i>, Drugs, Poisons and Controlled Substances Regulations 2006, <a href="http://www.legislation.vic.gov.au/">www.legislation.vic.gov.au/</a></p> <p><b>Tasmania:</b> <i>Poisons Act 1971</i>, <a href="http://www.thelaw.tas.gov.au">www.thelaw.tas.gov.au</a></p> <p><b>ACT:</b> <i>Medicines, Poisons and Therapeutic Goods Act 2008</i>, Medicines, Poisons and Therapeutic Goods Regulation 2008, <a href="http://www.legislation.act.gov.au">www.legislation.act.gov.au</a></p> <p><b>South Australia:</b> <i>Controlled Substances Act 1984</i>, Controlled Substances (Poisons) Regulations 2011, <a href="http://www.legislation.sa.gov.au">www.legislation.sa.gov.au</a></p> <p><b>Western Australia:</b> <i>Poisons Act 1964</i>, Poisons Regulations 1965 <a href="http://www.slp.wa.gov.au/legislation/statutes.nsf/default.html">www.slp.wa.gov.au/legislation/statutes.nsf/default.html</a></p> <p><b>Northern Territory:</b> <i>Poisons &amp; Dangerous Drugs Act</i>, <a href="http://www.dcm.nt.gov.au/strong_service_delivery/supporting_government/current_northern_territory_legislation_database">www.dcm.nt.gov.au/strong_service_delivery/supporting_government/current_northern_territory_legislation_database</a></p>
<i>Privacy Act 1988</i>	National Health Practitioner Ombudsman and Privacy Commissioner	<a href="http://www.nhpopc.gov.au/">www.nhpopc.gov.au/</a>

# ADVERTISING GUIDELINES

## Appendix 3 The Australian Consumer Law

In addition to complying with these guidelines, regulated health services need to comply with the Australian Consumer Law (ACL) which commenced on 1 January 2011. The ACL harmonised the consumer protection provisions in the *Trade Practices Act 1974* (TPA) and in state and territory fair trading laws, and replaced consumer protection provisions in at least 20 different Commonwealth, state and territory laws with one law.

The ACL is a national law that applies in the same way to all sectors and in all Australian jurisdictions. This means that all consumers in Australia enjoy the same rights and all businesses have the same obligations, irrespective of which state or territory they engaged in transactions.

The ACL covers general standards of business conduct, prohibits unfair trading practices, regulates specific types of business-to-consumer transactions, provides basic consumer guarantees for goods and services and regulates the safety of consumer products and product-related services.

The ACL is located in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

The ACL includes:

- a national unfair contract terms law covering standard form consumer contracts
- a national law guaranteeing consumer rights when buying goods and services
- a national product safety law and enforcement system
- a national law for unsolicited consumer agreements covering door-to-door sales and telephone sales
- simple national rules for lay-by agreements, and
- new penalties, enforcement powers and consumer redress options.

The ACL applies nationally and in all states and territories, and to all Australian businesses. For transactions that occurred before 1 January 2011, the previous national, state and territory consumer laws continue to apply.

The ACL is administered and enforced jointly by the Australian Competition and Consumer Commission and the state and territory consumer protection agencies, with the involvement of the Australian Securities and Investments Commission for financial services matters.

Advertisements must comply with all requirements of the ACL in addition to compliance with these guidelines.

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## Appendix 4 Advertising therapeutic goods

As stated, compliance with these guidelines does not exempt advertisements for regulated health services from the need to comply with other applicable laws. This includes legislation administered by the [Therapeutic Goods Administration \(TGA\)](#).

The TGA is part of the Australian Government Department of Health and Ageing, and is responsible for regulating therapeutic goods including medicines, medical devices, biological, blood and blood products.

Certain advertisements directed at consumers require approval before broadcast or publication.

The advertising of therapeutic goods to consumers and health practitioners is controlled respectively by statutory measures administered by the TGA and self-regulation through codes of practice administered by the relevant therapeutic goods industry associations. Certain advertisements directed to consumers require approval before being broadcast or published.

Advertisements for therapeutic goods in Australia are subject to the requirements of the *Therapeutic Goods Act 1989*, *Therapeutic Goods Regulations 1990*, the *Therapeutic goods advertising code* and the *Price information code of practice* (collectively the 'therapeutic goods legislation') and other relevant laws including the *Competition and Consumer Act 2010*.

Health practitioners should note the definition of 'advertisement' in the *Therapeutic Goods Act 1989* when considering their compliance with the therapeutic goods legislation. Implicit and explicit references to specific therapeutic products as well as more generic references may fall within the meaning of 'advertisement'.

In general, the advertising to the public of 'prescription medicines' (Schedule 4) or 'controlled drugs' (Schedule 8) and certain 'pharmacist-only medicines' (Schedule 3 of the Poisons Standard) is prohibited by the therapeutic goods legislation. Exceptions to this are set out in the therapeutic goods legislation.

The purpose of these requirements is to protect public health by promoting the safe use of therapeutic goods and ensuring that they are honestly promoted as to their benefits, uses and effects. Controls are placed on the advertising of therapeutic goods (medicines and medical devices) to ensure advertisements are socially responsible, truthful, appropriate and not misleading.

Further information on Australia's advertising regulation for therapeutic goods, including details of the Complaints Resolution Panel (TGACRP) and the Complaints register, may be obtained from the [TGACC website](#) and the TGACRP website.

This includes:

- advertising to consumers
- advertising prescription medications to health practitioners (including *Best practice guideline on prescription medicine labelling*)
- advertising medical services that include Schedule 4 (prescription) substances
- *Price information code of practice*, and
- the application and approval process for advertising of therapeutic goods.

Those intending to advertise therapeutic goods are advised to familiarise themselves with the requirements of the therapeutic goods legislation in addition to any requirements under the National Law and in these guidelines.

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## Appendix 5 Title protection

### A5(a) Summary of relevant sections of the National Law

Sections 113–119 describe the title and practice protections under the National Law including the penalties for offences by individuals and bodies corporate.

Section 113 provides that a person cannot knowingly or recklessly take or use a protected title found in the table of that section or a prescribed title for a health profession which would induce a belief that the person is registered in that profession.

Section 115 provides that a person cannot knowingly or recklessly take or use the titles, 'dental specialist', 'medical specialist' or 'a specialist title for a recognised specialty' unless the person is registered under that specialty.

Section 116 provides that a person who is not a registered health practitioner must not knowingly or recklessly (i) take or use the title 'registered health practitioner' or claim to be so registered or (ii) take or use a title, name, initial, symbol, word or description to indicate the person is a health practitioner or claim to be a health practitioner or (iii) indicate the person is authorised or qualified to practise as a health practitioner.

Section 117 provides that a person must not knowingly or recklessly claim or hold him or herself out to be registered or qualified to practise in a health profession or a division of a health profession if the person is not so registered. Section 117 also provides that a person cannot use or take a title which would induce a belief that such a person is so registered.

Section 118 provides that a person who is not a specialist health practitioner must not knowingly or recklessly take or use the title 'specialist health practitioner'. Further a person must not use a title, name, symbol, word or description that would induce a belief that a person is or is authorised or qualified as a specialist health practitioner. Further the person must

not claim or hold out to be registered in a recognised specialty or claim to be qualified to practise as a specialist health practitioner.

Section 119 provides that a person must not knowingly or recklessly make claims about a type of registration, endorsement, or registration in a recognised specialty, that the person does not have. Further, a person must not knowingly or recklessly make claims about another person having a type of registration, endorsement, or registration in a specialty that the person does not have. These are called 'holding out' provisions.

*Note: the above is a summary only – please consult the National Law for more detail.*

### A5(b) Board-specific advice on the use of titles in advertising

Some Boards have developed statements to assist in the use of titles by the practitioners of the specific profession.

#### Psychology Board of Australia

The Psychology Board of Australia advises registered psychologists that use of the title 'doctor' in their practice has the potential to mislead members of the public.

Specifically, the use of titles may be misleading into believing that the practitioner is a psychiatrist when they are not. Therefore, registered psychologists may not use such a title unless they hold a doctoral qualification from an approved higher education provider or an overseas institution with an equivalent accreditation status.

Where a registered psychologist holds a doctoral qualification that meets the above, if they advertise their services to the public, they should make it clear when using the title 'doctor' that they are not a registered medical practitioner or psychiatrist, for example:

- Dr Vanessa Singh (Psychologist), and
- Dr Ivan Hassam (Doctor of Psychology).

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## Physiotherapy Board of Australia

The Physiotherapy Board of Australia recognises the established history of specialised physiotherapy practice achieved through recognised higher education through the Australian College of Physiotherapy. As such the Board considers that appropriate use of qualifications in advertising is acceptable when accompanied by wording that establishes those credentials.

For example: 'Mr P Smith, Specialist Musculoskeletal Physiotherapist (as awarded by the Australian College of Physiotherapists in 2008)'.

## Appendix 6 Use of graphic or visual representations and warning statements for surgical or invasive procedures

### A6(a) Use of graphic or visual representations

If a practitioner chooses to use any graphic or visual representations in health service advertising (including photographs of patients, clients or models; diagram; cartoons; or other images), they should be used with caution.

If photographs of people are used in advertising of treatments, use of a real patient or client who has actually undergone the advertised treatment by the advertising practitioner or practice, and who has provided written consent for publication of the photograph in the circumstances in which the photograph is used, is less likely to be misleading.

Practitioners should not use photographs of actual patients or clients if the patient or client is vulnerable as a result of the type of treatment involved, or if their ability to consent may be otherwise impaired.

Use of 'before and after' photographs in advertising of regulated health services has a significant potential to be misleading or deceptive, to convey to a member of the public inappropriately high expectations of a successful outcome and to encourage the unnecessary use of health services.

Use of 'before and after' photographs is less likely to be misleading if:

- the images are as similar as possible in content, camera angle, background, framing and exposure
- there is consistency in posture, clothing and make-up
- there is consistency in lighting and contrast
- there is an explanation if photographs have been altered in any way, and

- the referenced procedure is the only visible change that has occurred for the person being photographed.

The guidelines do not limit use of stock photographs and models other than in relation to the advertising of particular treatments, provided that the provisions of the National Law and these guidelines are otherwise met. However, practitioners should exercise caution due to the potential to mislead consumers.

### A6(b) Use of warning statements for surgical or invasive procedures

Where a surgical (or 'an invasive') procedure is advertised directly to the public, the advertisement should include a clearly visible warning, with text along the following lines:

'Any surgical or invasive procedure carries risks. Before proceeding, you should seek a second opinion from an appropriately qualified health practitioner.'

If the text of any warning label is in smaller print than the main text or placed in an obscure position of an advertisement, the advertisement may contravene the National Law.

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## Appendix 7 Options available to the National Boards/AHPRA if advertising breaches the National Law

Who breached the National Law or guidelines	Options available to the Boards/AHPRA
<ul style="list-style-type: none"><li>Registered health practitioners</li><li>Persons who are not currently registered but who have previously been registered as health practitioners</li></ul>	<ul style="list-style-type: none"><li>Prosecute under the advertising provisions of the National Law in the relevant state or territory magistrates court, which may lead to a financial penalty</li><li>Take action under the National Law for unprofessional conduct (described as 'unsatisfactory professional conduct' in NSW)</li><li>Take action under the title protection provisions of the National Law, as relevant</li><li>Refer the matter to another regulator for investigation of a potential breach of other legislation</li><li>A person (see definition in Appendix 1) may also be disciplined under the National Law as a result of action taken under other legislation. This can occur regardless of whether or not they are prosecuted under the National Law or any other legislation</li></ul>
<ul style="list-style-type: none"><li>Persons who are not registered health practitioners</li><li>Bodies corporate</li></ul>	<ul style="list-style-type: none"><li>Prosecute under the advertising provisions of the National Law in the relevant state or territory magistrates court, which may lead to a financial penalty</li><li>Take action under the National Law regarding the use of protected titles</li><li>Refer the matter to another regulator for investigation of a potential breach of other legislation</li></ul>