Frequently Asked Questions: Advertising

March 2013

FAQ: Advertising a regulated health service

Introduction

Under the National Accreditation and Registration Scheme (the National Scheme), registered health practitioners must adhere to the advertising requirements of the *Health Practitioner Regulation National Law Act*, as in force in each state and territory (the National Law).

For many professions and in many jurisdictions, both the legal framework and the standards expected by the National Boards regulating health practitioners in Australia (National Boards) have changed, and it is important that practitioners understand their obligations and follow the relevant National Board's *Guidelines for Advertising Regulated Health Services* (published on their individual websites, accessible at www.ahpra.gov.au).

1. Who must adhere to the requirements of advertising a regulated health service under the National Law?

The advertising provisions of the National Law apply to any person who advertises a regulated health service, including registered health practitioners, non-registered health practitioners, individuals and bodies corporate.

All registered health practitioners currently regulated by the Australian Health Practitioner Regulation Agency (AHPRA) and the 14 National Boards must adhere to the advertising requirements. The regulated professions are:

- 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.

2. What does 'regulated health service' mean?

'Regulated health service' refers to a service provided by, or usually provided by, a health practitioner. The advertising provisions under the National Law cover the advertising of a regulated health service, or a business that provides a regulated health service.

3. In a nutshell, what are advertisers allowed to include in their advertising?

The National Law includes a section on advertising (section 133), which lists what is *not* acceptable, including (but not limited to):

- making misleading claims
- offering an inducement such as a gift or discount (unless the relevant terms and conditions are also included)
- using testimonials
- creating unreasonable expectations of beneficial treatment, or
- encouraging the indiscriminate or unnecessary use of a service. The National Boards have also published advertising guidelines to help practitioners understand the Board's expectations. These are published on the individual National Board websites and are accessible through www.ahpra.gov.au. For more information, please refer to the National Law, the National Boards' advertising

guidelines or the fact sheet on advertising a regulated health service.

4. What are the possible penalties for breaching the National Law's advertising requirements?

A registered health practitioner, or a business providing a regulated health service, whose advertising breaches the National Law, may be liable for a $5,000 penalty (for an individual) or $10,000 (for a body corporate).

A National Board may also decide to address an advertising breach of the National Law through its conduct, health or performance pathways, which may result in placing restrictions on an individual's registration and their ability to practise.

5. How does the Board get involved when there is a suspected breach of the advertising requirements?

In the first year of the National Scheme, the National Boards took a largely educative approach to advertising requirements by educating practitioners about their obligations under the National Law.

Now that the National Scheme is in its second year, the National Boards are taking a more structured approach. This includes sending an escalating series of written warnings to practitioners, initially reminding them of their obligations in relation to advertising. If the practitioner fails to take corrective action, the board may take legal action against them for non-compliance with the board's standards and guidelines.

The boards respond to notifications about advertising and have the power to initiate their own action or investigation without a notification.

6. How does the National Law fit in with the ACCC and TGA?

Australian regulators such as the Australian Competition and Consumer Commission (ACCC) and the Therapeutic Goods Administration (TGA) also have responsibility for laws governing the advertising of health products and services.

Compliance with the National Law's advertising provisions does not excuse advertisers of regulated health services from the need to comply with other applicable laws.

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.

7. Testimonials and social media are commonly used marketing tools. What if someone else publishes a testimonial without my knowledge?

The National Law prohibits the use of testimonials or purported testimonials.

It is the responsibility of individual practitioners to ensure that their advertising (including websites and social media) adheres to the requirements.

Health practitioners must take reasonable steps to remove testimonials when they become aware of them.

The use of social media is not prohibited under the National Law. Practitioners with social networking accounts (e.g. Twitter, LinkedIn, Facebook) should carefully review content regularly to make sure that all material complies with their obligations under the National Law.

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.

8. I may have accidentally broken the advertising requirements, will it affect my registration?

It is the responsibility of individual practitioners to ensure that their advertising (including websites and social media) adheres to the requirements. The best way to do this is to be familiar with the advertising guidelines and have a genuine understanding of the obligations imposed by the National Law.

If a practitioner has inadvertently breached the advertising requirements they can rectify issues after the first warning letter from their National Board. Unless there are other mitigating factors, once a non- compliant advertisement or website has been fixed or removed, no further action is likely to be taken by the National Board.

If a practitioner fails to address the issues, the board may continue to

escalate its response, including by taking legal action against the practitioner.

7. I have seen some advertising that does not seem to be in the public interest or be within the boundaries of the National Law. What should I do?

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

Anyone with concerns about their health practitioner, including advertising which appears to contravene the national law or be inconsistent with these guidelines, should lodge a notification with AHPRA.

The boards rely on the public and members of the professions to bring their concerns to the boards' attention, as advertising, particularly web-based, continues to increase and can be difficult to monitor.

For more information

- The Health Practitioner Regulation National Law, as in force in each state and territory , section 133 relates to advertising
- The National Boards have *Guidelines for Advertising Regulated Health Services*, which are published on their individual websites, accessible through www.ahpra.gov.au
- A fact sheet on advertising is published on the AHPRA website, accessible at www.ahpra.gov.au
- For registration enquiries: 1300 419 495 (within Australia) +61 3 8708 9001 (overseas callers)
- For media enquiries: (03) 8708 9200