



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

Response template: Public consultation - revised *Guidelines for advertising regulated health services*

National Boards and the Australian Health Practitioner Regulation Agency (AHPRA) are seeking feedback about the revised *Guidelines for advertising regulated health services*.

This response template is an alternative to providing your response through the online platform available on the consultation [website](#).

IMPORTANT INFORMATION

Privacy

Your response will be anonymous unless you choose to provide your name and/or the name of your organisation.

The information collected will be used by AHPRA to evaluate the revised guidelines. The information will be handled in accordance with AHPRA's privacy policy available [here](#).

Publication of responses

Published responses will include the name (if provided) of the individual and/or the organisation that made the response.

You must let us know if you do **not** want us to publish your response.

Please see the [public consultation papers](#) for more information about publication of responses.

Submitting your response

Please send your response to: AHPRA.consultation@ahpra.gov.au

Please use the subject line: Feedback on guidelines for advertising regulated health services

Responses are due by: **26 November 2019**

General information about your response

Are you responding on behalf of an organisation?	
Yes	What is the name of your organisation? Monash IVF Group
No	Are you a registered health practitioner? Yes /No If yes, which profession(s)? Are you a student? Yes /No If yes, which profession?
We may need to contact you about your response. Please write your name and contact details below. (Skip if you wish to remain anonymous)	
Name (optional)	██████████
Contact details (optional)	████████████████████

Public consultation questions

Please ensure you have read the [public consultation papers](#) before providing feedback as the questions are specific to the revised Guidelines for advertising regulated health services.

Use the corresponding text boxes to provide your responses. You do not need to answer every question if you have no comment.

1. How clear are the revised guidelines?
Clearer, more detailed and more comprehensive than the previous versions – the examples and 'Take care' messages are helpful
2. How relevant is the content of the revised guidelines?
Very relevant for most aspects, but seems to still lack somewhat with regard to use of social media and the regulation / response times for this fast moving platform.
3. Please describe any content that needs to be changed or deleted in the revised guidelines.
<p>The guidance on the use of testimonials does not match Monash IVF's experience of AHPRA's views on whether content is deemed a breach and therefore we would suggest that further information may be helpful.</p> <p>For example, in recent communication with AHPRA, they have taken the position that ANYTHING on the company website counts as advertising, because the site is intended as advertising. " ... is published on the Monash IVF website, where a regulated health service is advertised"</p> <p>Specifically, this was raised in regard to patients' lived experience stories, with no mention of a positive statement about a person or thing (and in our opinion do not therefore constitute a testimonial) have been deemed to be a breach.</p> <p>If it is the case that any patient story, irrespective of the inclusion or absence of a positive statement published on the website or social media platforms of an organisation will be counted as a testimonial, this should be more clearly stated in the Guidelines.</p> <p>Further, whether an advertisement creates an unreasonable expectation of beneficial treatment could be expanded.</p> <p>Again, our experience with AHPRA has been that a patient story where the patient describes the need for 3 full cycles and 10 embryo transfers as well as highlighting the stress of treatment. There is no point at which a positive experience of treatment is expressed, indeed there is no mention of Monash IVF. While we accept that the patient's story includes a live birth outcome that would not be achieved by all patients, we would argue that [REDACTED] statement that she underwent three full</p>

cycles and 10 embryo transfers does not set an unreasonable expectation of beneficial treatment nor does it really 'advertise' Monash IVF's services at all. IVF is often a gruelling treatment and [REDACTED] story reflects this reality. Our legal advice supported this view but AHPRA disagreed.

4. Should some of the content be moved out of the revised guidelines to be published in the advertising resources section of the AHPRA website instead?

If yes, please describe what should be moved and your reasons why.

No. The fewer documents that an organisation or Medical practitioner have to consult to check compliance, the more likely it is that they will be able to comply.

Further, on the resources section, Monash IVF have not found the documents to be user friendly. Specifically, the published [self-audit tool](#) is not very helpful, so we have developed our own tool.

This may in part come down to a fundamental difference of interpretation about the 'testimonials' and 'unreasonable expectation of beneficial treatment' described above.

5. How helpful is the structure of the revised guidelines?

Easy to follow and clear

6. Are the flow charts and diagrams helpful?

Please explain your answer.

Yes, but as explained above, they rely on basic questions where Monash IVF have experienced an interpretation by AHPRA that does not appear to match the way the guidelines are currently worded.

For example:

Figure 1 – starts with the question "Is the claim used in advertising?" As previously described, AHPRA have advised that " ... is published on the Monash IVF website, where a regulated health service is advertised"

This means that AHPRA believe that the answer to this question is YES for anything on the website (and presumably social media platforms)

Similarly, Figure 2 starts with the question “Is the review used in advertising?” Again, it should be clear in the guidelines that anything on a company website counts as advertising, if AHPRA’s interpretation is correct.

In these examples, Monash IVF had published a story describing a patient’s experience of the IVF treatment journey, but included no positive statement about a person or a thing, did not even mention Monash IVF. The story was simply a personal description of their emotions and thoughts as they went through treatment does not appear to meet the definition of a testimonial provided.

Until this is absolutely clear in the guidelines, there is a potential for organisations and individuals to reach a different conclusion to the first question, potentially rendering the rest of the diagram ineffective.

7. Is there anything that needs to be added to the revised guidelines?

While we understand that AHPRA cannot provide advice and instruct organisations to seek their own legal advice, when the AHPRA opinion differs from that of our lawyers, there is no mechanism for discussion or consultation. Monash IVF submitted a response to a notification of potential breach, based on legal advice, in March 2019 and heard nothing back until a further notice of breach in September. We are yet to hear about the September response.

We want to comply, but the current mechanism makes it difficult where there are differences between our legal advice and AHPRA’s views – and the threat of fines hanging over us but no mechanism to openly discuss.

More information about the process for raising concerns and addressing concerns raised against an organisation would be helpful.

8. It is proposed that the guidelines will be reviewed every five years, or earlier if required.

Is this reasonable?

Please explain your answer.

With the pace of change in the digital world, there is a risk that a 5 year timeframe may be too long to effectively consider all methods and types of advertising and ensure that regulations keep up. A 3 year review period may be more relevant.

9. Please describe anything else the National Boards should consider in the review of the guidelines.

Monash IVF do not feel that the current guidelines or Advertising compliance and enforcement strategy for the National Scheme goes far enough to address the use of social media in Health service advertising. Often in social media, the 'life' of the post can be as little as a number of hours before it is either removed or superseded by newer content.

In the Assisted Reproductive Treatment area, there are a number of examples of prolific posts that contravene the current guidelines (and even more clearly so in the new version of the guidelines), but **asking for them to be removed days or weeks after the post appeared does nothing to control the risk to the patient, the damage is already done.**

Unless repeated offences are used to determine where the advertiser sits on the "attitude to compliance" pyramid, they will have little effect in deterring offenders.



Our experience is not that AHPRA are trying to educate us to support compliance. They have disagreed with our legal advice but have not engaged in any education to explain why or how we can improve.

We acknowledge that it is impossible for a regulator to be across all social media activity but believe that consideration could be given to simplifying the process for reporting concerns that organisations have about competitor activity or that of associated healthcare providers.

10. Please add any other comments or suggestions for the revised guidelines.

Thank you!

Thank you for participating in the consultation.

Your answers will be used by the National Boards and AHPRA to improve the Guidelines for advertising regulated health services.