

# Guidelines for advertising of regulated health services

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## Introduction

These guidelines for advertising of regulated health services (the guidelines) have been jointly developed by the national boards under s. 39 of the *Health Practitioner Regulation National Law 2009* (the National Law)<sup>1</sup>. The purpose of the guidelines is to provide guidance about the interpretation of the provisions of the National Law that apply to advertising of regulated health services. Under the National Law, a regulated health service means 'a service provided by, or usually provided by a registered health practitioner'.

The relevant sections of the National Law that apply to the regulation of advertising of regulated health services are set out in Attachment 1, 'Extract of relevant provisions from the *Health Practitioner Regulation National Law Act 2009* (Qld)'. In particular, s. 133 of the National Law states that '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 sets out 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.'

These guidelines have been developed to advise registered health practitioners and others who advertise the services provided by such practitioners of:

- the operation of s. 133 of the National Law
- how the boards are likely to interpret and apply these provisions, although boards will take into account all relevant facts and circumstances in each case
- what the boards have determined to be minimum standards of practice in relation to the advertising of regulated health services.

## Who needs to use these guidelines?

These guidelines apply to any person who provides or operates a business that provides regulated health services, including:

- practitioners registered under the National Law
- employers of practitioners
- other persons who provide services through the agency of a registered health practitioner.

Students who are registered under the National Law should also be familiar with these guidelines.

## Summary of guidelines

The national boards recognise the value of providing information to the public about registered health practitioners and the services they provide. Advertising can provide a means of conveying general information on the availability of services and procedures to consumers, helping them obtain a better understanding of services and options available, and enabling them to make informed health care choices.

Any information provided in an advertisement for a regulated health service should be reliable and useful, and assist consumers to make informed decisions about accessing services.

There are risks that false, misleading or deceptive advertising can lead to the indiscriminate or unnecessary provision of health services, or create unrealistic expectations about the benefits, likelihood of success and safety of such services, with possible adverse consequences for consumers. There is potential for inaccurate or misleading advertising of health services to cause harm to consumers, both physically and psychologically. This is particularly relevant in cases in which the consumer may be vulnerable or not sufficiently well informed to make a decision about the suitability of certain types of services.

The guidelines aim to support the provisions of the National Law, to protect the public from advertising that is false, deceptive and misleading, and provide guidance to practitioners about advertising of health services. They include an explanation of the possible consequences of breaching the advertising provisions of the National Law (see Section 8 below). The guidelines are also admissible in proceedings against a registered health practitioner as evidence of what constitutes appropriate professional conduct or practice for the health profession.

<sup>1</sup> The National Law is contained in the schedule to the *Health Practitioner Regulation National Law 2009* (Qld).

## Advertising of regulated health services

### 1 Definition of advertising

The National Law does not contain a definition of 'advertising'. Therefore, for the purposes of these guidelines, advertising includes but is not limited to all forms of printed and electronic media, and includes any public communication using television, radio, motion pictures, newspapers, billboards, books, lists, pictorial representations, designs, mobile communications or other displays, the Internet or directories, and includes business cards, announcement cards, office signs, letterhead, telephone directory listings, professional lists, professional directory listings and similar professional notices.

Advertising also includes situations in which practitioners make themselves available or provide information for media reports, magazine articles or advertorials, including where practitioners make comment or provide information on particular products or services, or particular practitioners.

This definition excludes material issued to persons during consultations where such material is designed to provide the person with clinical or technical information about health conditions or procedures, and where the person is afforded sufficient opportunity to discuss and ask questions about the material. However, 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. Also, this definition is not intended to apply to material 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). The definition does not apply to tenders, tender process, competitive business quotations and proposals, and the use of references about nonhealth services in those processes, provided the relevant material is not made available to the general public or used for promotional purposes (e.g. published on a website).

#### 1.2 Advertising of products

The guidelines only apply to the advertising of products that are therapeutic goods within the meaning of the *Therapeutic Goods Act 1989* (Cwlth) and do not apply to the advertising of other products that are not associated with the provision of professional services.

### 2 Obligations under other legislation

These guidelines relate specifically to advertising of services under s. 133 of the National Law. Persons who advertise regulated health services must also comply with

Commonwealth, State and Territory consumer protection legislation. Compliance with these guidelines does not exempt advertisements for services from the need to comply with these laws.

#### 2.1 Trade Practices Act 1974 (Cwlth)

Under federal law, the *Trade Practices Act 1974* (Cwlth) permits advertising unless it is misleading or deceptive or likely to mislead or deceive.

The Australian Competition and Consumer Commission (ACCC) takes action against persons who make false or misleading claims about their products or services, and profit from the desire of vulnerable people to change their appearance or improve their wellbeing.

Practitioners should become familiar with the *Trade Practices Act 1974* (Cwlth). Practitioners are also referred to the publication *Fair treatment: Guide to the Trade Practices Act for the advertising or promotion of medical and health services* (Commonwealth of Australia, July 2000). This publication can be accessed on the ACCC's website at <http://www.accc.gov.au>.

#### 2.2 Fair trading legislation

As well as becoming familiar with relevant Commonwealth trade practices legislation, practitioners should also become familiar with the provisions of relevant State and Territory fair trading legislation that apply to unincorporated persons. The relevant Acts are:

- *Fair Trading Act 1992* (ACT)
- *Fair Trading Act 1987* (NSW)
- *Consumer Affairs and Fair Trading Act* (NT)
- *Fair Trading Act 1989* (Qld)
- *Fair Trading Act 1987* (SA)
- *Fair Trading Act 1990* (Tas)
- *Fair Trading Act 1999* (Vic)
- *Fair Trading Act 1987* (WA).

The sections most relevant to advertising are those that address:

- unconscionable conduct
- misleading or deceptive conduct and false representations.

These provisions mirror those contained in the *Trade Practices Act 1974* (Cwlth).

The fair trading legislation refers to the substantiation of claims, unconscionable conduct, and misleading and deceptive conduct, including false representation in relation to goods and services.

The relevant consumer affairs departments publish brochures with information regarding the advertising of services and penalties for breaches of the fair trading legislation.

### 2.3 Therapeutic goods legislation

The advertising of therapeutic goods (including medicines and appliances) is regulated by the Commonwealth Therapeutic Goods Administration under the *Therapeutic Goods Act 1989* (Cwlth) and the Therapeutic Goods Regulations 1990 (Cwlth).

Under the *Therapeutic Goods Act 1989* (Cwlth), an 'advertisement in relation to therapeutic goods includes any statement, pictorial representation or design, however made, that is intended, whether directly or indirectly, to promote the use or supply of the goods'.

With respect to the advertising of therapeutic goods, practitioners are expected to comply with the requirements of the *Therapeutic Goods Act 1989* (Cwlth), and regulations and relevant standards, including:

- *Therapeutic Goods Advertising Code 2007*
- *Price Information Code of Practice*.

The full text of the *Therapeutic Goods Advertising Code 2007* may be downloaded from the Therapeutic Goods Advertising Code Council's website at <http://www.tgacc.com.au>.

For specific requirements with respect to the advertising of therapeutic goods, see Section 7, 'Specific requirements of these guidelines'.

There are also restrictions on the advertising of scheduled medicines in each State and Territory's drugs and poisons legislation.

## 3 Professional obligations

Practitioners should always consider their professional ethical obligations and their legal obligations when advertising services. Persons who advertise services should always be aware that consumers of regulated health services may not be in a position to judge the merits of advertised services and products, and that they are more likely to hold a regulated health provider in some esteem, making them more vulnerable to believing the advertising claims.

Practitioners should not advertise in a manner that could be considered as attempting to profit from or take advantage of limited consumer understanding of the properties of medicines, other therapeutic goods or services.

### 3.1 Ensuring competence

When advertising a regulated health service, a practitioner should ensure that he or she is competent by reason of his or her education, training and/or experience to provide the service advertised, or to act in the manner or professional capacity advertised.

### 3.2 Professional qualifications

Practitioners must state clearly their professional qualifications. Credentials and a practitioner's expertise in a particular field should be clear to the public. A practitioner who does not hold specialist registration or an endorsement must not claim or hold himself or herself out to be a specialist or to hold endorsed registration, either explicitly or by implication, or attempt to convey that perception to the public. See Section 6.4, 'Advertising of qualifications and titles' for further information.

### 3.3 Substantiation of claims

Practitioners must be certain that they can substantiate any claims made in advertising material, particularly in relation to outcomes of treatment, whether implied or explicitly stated. Unless there is accepted scientific evidence that there are no material risks associated with the type of treatment, an advertisement for health services should alert the public to the fact that there are associated health risks.

### 3.4 Authorising the content of advertising

Practitioners are responsible for the style and content of all advertising material associated with the provision of their goods and services. Practitioners may not delegate accountability for ensuring the accuracy of advertising and compliance with these guidelines to an administrator, manager, director, media or advertising agency, or other unregistered person.

An employed practitioner may not have direct control over the content of an advertisement. However, employed practitioners are required to review the content of any advertising of their services and to take reasonable steps to prevent any noncompliance with these guidelines.

Practitioners should not allow the services they provide to be advertised, or make themselves available for 'advertorials', media reports or magazine articles to promote particular health services or therapeutic goods unless they have made specific arrangements to approve and sign off the content, and have had reasonable opportunity to ensure that the published version of the advertorial or promotional article adheres to these guidelines. This requirement only applies to advertising, that is, promotional activities, and comments that are part of independent news reporting where individual practitioners or health services do not derive any benefit are not captured.

### 3.5 No substitute for informed consent

The main purpose of advertising of health services is to present information that is reasonably needed by consumers to make an informed initial decision about the availability and suitability of the services offered. Any initial decision by a consumer in response to an advertised service does not substitute for informed consent and does not remove the obligation on a practitioner to obtain informed consent before proceeding to provide the service.

## 4 What is acceptable advertising?

Advertising used to inform the public of the availability of regulated health services may be considered to comply with these guidelines if it is information published in the public interest, and is factual, honest, accurate, clear, verifiable and not misleading. This section is intended to provide examples of the type of advertising of services that the boards consider to be acceptable. These examples are not intended to be exhaustive. As such, advertising may contain:

- (a) a factual and clear statement of the service(s) and/or any product(s) offered
- (b) contact details of the office of the practitioner, including email or website addresses, and telephone numbers
- (c) the gender of practitioners
- (d) a statement of office hours regularly maintained by the practitioner and the availability of after-hours services
- (e) for any surgical and/or invasive procedures, the appropriate warning statement in a clearly visible position (see Section 6.2, 'Use of warning statements for surgical or invasive procedures')
- (f) non-enhanced photos or drawings of the practitioner or his or her office
- (g) advice on the availability of wheelchair access to any premises to which the advertisements relate
- (h) a statement of any language(s) other than English fluently spoken by the practitioner or another person in his or her office (this does not affect other guidance provided by the national board about use of qualified interpreters where appropriate)
- (i) a statement about fees charged, bulk-billing arrangements, or other insurance plan arrangements and instalment fee plans regularly accepted
- (j) a statement of the names of schools and training programs from which the practitioner has graduated and the qualifications received, subject to Section 6.4, 'Advertising of qualifications and titles'
- (k) reference to any practitioners who hold specialist registration or endorsement under the National Law and their area of speciality or endorsement
- (l) a statement of the teaching positions currently or formerly held by the practitioner in board-approved or accredited institutions, together with relevant dates
- (m) a statement of the accreditation or certification of the practitioner with a public board or agency, including any affiliations with hospitals or clinics
- (n) a statement of safety and quality accreditation of the practice or health care setting
- (o) a list of the practitioner's peer reviewed publications
- (p) any statement providing public health information encouraging preventative or corrective care (public health information should also be evidence based wherever possible).

## 5 What is unacceptable advertising?

This section is intended to provide a clear indication of the type of advertising of services that the boards consider to be unacceptable. Where examples are provided, they are intended to assist practitioners and other persons who advertise regulated health services to comply with the advertising provisions of the National Law. They are not intended to be exhaustive.

To comply with s. 133 of the National Law and these guidelines, advertising of services must not:

- (a) create or be likely to create unwarranted and unrealistic expectations about the effectiveness of the health services advertised
- (b) encourage (directly or indirectly) inappropriate, indiscriminate, unnecessary or excessive use of health services; for example, references to a person improving their physical appearance and the use of phrases such as 'don't delay', 'achieve the look you want' and 'looking better and feeling more confident' have the potential to create unrealistic expectations about the effectiveness of certain services and encourage unnecessary use of such services
- (c) mislead, either directly, or by implication, use of emphasis, comparison, contrast or omission
- (d) use testimonials or purported testimonials
- (e) compare different regulated health professions where there is no evidence on which to base the comparison and/or in a way that may mislead or deceive
- (f) claim that the services provided by a particular regulated health profession are better, as safe as or safer than others

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- (g) refer to the recovery time following provision of a regulated health service that may lead to unrealistic expectations
- (h) lead to, or be likely to lead to, inappropriate self-diagnosis or self-treatment
- (i) abuse the trust or exploit a lack of knowledge by patients or clients
- (j) fail to disclose that there are health risks associated with a treatment
- (k) omit the necessary warning statement (see Section 6.2, 'Use of warning statements for surgical or invasive procedures')
- (l) contain language that could cause undue fear or distress
- (m) contain any information or material that is likely to make a person believe his or her health or wellbeing may suffer from not taking or undertaking the health service
- (n) contain price information that is inexact, or fails to specify any conditions or variables to an advertised price (see Section 6.5, 'Advertising of price information'), or offers time-limited discounts or inducements
- (o) contain any claim, statement or implication that
  - either expressly, or by omission, that the treatment is infallible, unfailing, magical, miraculous or a certain, guaranteed or sure cure
  - a practitioner has an exclusive or unique skill or remedy, or that a product is 'exclusive' or contains a 'secret ingredient'
  - a practitioner provides superior services to those provided by other registered health practitioners
  - the results of the health service offered are always effective
  - the services can be a substitute for public health vaccination or immunisation
- (p) purport to inform the public fully of the risks of undertaking a health procedure or to replace the process of informed consent
- (q) provide a patient or client with an unsolicited appointment time that has not been requested by the patient or client
- (r) promote tobacco products, smoking, alcohol, or any other addictive substances or products that are known to affect health adversely

- (s) be vulgar, sensational, contrary to accepted standards of propriety or likely to bring a health profession into disrepute, for example, because the advertising is sexist.

## 6 Specific requirements

### 6.1 Use of graphic or visual representations

Practitioners should use any graphic or visual representations in health service advertising with caution. This includes photographs of patients, clients or models, diagrams, cartoons or other images. A 'photograph' in relation to the advertised treatment includes images, graphic, or other visual representations or facsimiles.

If photographs of people are used in advertising of treatments, the photographs must only depict a real patient or client who has actually undergone the advertised treatment by the advertising doctor or practice, and who has provided written consent for publication of the photograph in the circumstances in which the photograph is used. 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.

If 'before and after' photographs are used, care must be taken to ensure the public can trust the truthfulness of the images; for example by:

- providing images that are as similar as possible in content, camera angle, background, framing and exposure
- ensuring consistency in posture, clothing and make up
- ensuring consistency in lighting and contrast
- stating if photographs have been altered in any way
- confirming that the referenced procedure is the only visible change that has occurred for the person being photographed.

The guidelines do not prohibit use of stock photographs and models other than in relation to the advertising of particular treatments, provided that the other requirements of s. 133 and these guidelines are met. However, practitioners should exercise caution due to the potential to mislead consumers.



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### 6.2 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.’*

The text of any warning label must not be in smaller print than the main text of the advertisement or in an obscure position in the advertisement.

For the purposes of this guideline, **invasive procedure** means any operation or other procedure that:

- (a) penetrates or pierces the skin by any instrument other than a needle, other than minor dental or minor podiatric procedures, or
- (b) is an elective procedure requiring more than local anaesthetic or sedation, or
- (c) requires admission to a day procedure centre (DPC) or hospital, or
- (d) involves significant risk associated with surgical and/or anaesthetic complications.

### 6.3 Use of comparative advertising

It is difficult to include all required information to avoid a false or inaccurate comparison when comparing one health service or product with another. Therefore, comparative advertising is at risk of misleading the public. If practitioners use any form of comparative advertising, practitioners must not:

- make unsubstantiated claims, or
- deride or otherwise criticise the services or products offered by another practitioner, or
- make sensational statements that cannot be corroborated.

### 6.4 Advertising of qualifications and titles

A practitioner should state clearly his or her professional qualifications. Credentials and a practitioner’s expertise in a particular field should be clear to the public.

#### 6.4.1 Use of titles in advertising

Section 117 of the National Law prohibits a practitioner from knowingly or recklessly taking or using any title that could be reasonably understood to induce a belief that the practitioner is registered in a health profession or a division of a health profession in which the practitioner is not registered.

Section 116 of the National Law prohibits a person who is not a practitioner from knowingly or recklessly taking or using a title that, having regard to the circumstances, indicates or could be reasonably understood to indicate the person is a registered health practitioner, or authorised or qualified to practise in a health profession.

Practitioners should avoid developing abbreviations of protected titles as these may be confusing.

There is no provision in the National Law that prohibits a practitioner from using titles such as ‘doctor’ or ‘professor’.

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 make it clear that they do not hold registration as medical practitioners; for example, by including a reference to their health profession whenever the title is used, such as:

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

The Psychology Board of Australia has developed specific advice for its profession. It advises registered psychologists that use of the title ‘doctor’ in their practice has the potential to mislead members of the public. Specifically, patients or clients may be misled 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 as listed in Part 2-1 Division 16 of the *Higher Education Support Act 2003* (Cwlth) or an overseas institution with an equivalent accreditation status. Where a registered psychologist holds a doctoral qualification that meets the above standard, 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)
- Dr Ivan Hassam (Doctor of Psychology).

#### 6.4.2 Advertising of specialties and endorsements

Section 116 of the National Law prohibits an unregistered person from claiming to be registered under the National Law or holding himself or herself out as being registered under the National Law in any of the regulated health professions.

Section 115 of the National Law prohibits a person from knowingly or recklessly taking or using a specialist title for a recognised specialty unless the person is registered under the National Law in the specialty.

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Section 118 of the National Law prohibits a person who is not a specialist health practitioner from taking or using a title, name, initial, symbol, word or description that, having regard to the circumstances indicates, or could be reasonably understood to indicate, that the person is a specialist health practitioner or is authorised or qualified to practise in a recognised specialty.

A list of health professions with recognised specialties and the approved specialist titles for each recognised specialty is available on the websites of the relevant national boards. A registered practitioner who does not hold specialist registration under the National Law 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.

Section 119 of the National Law prohibits a registered health practitioner from claiming:

- to hold a type of registration, or endorsement of registration that they do not hold, or
- to be qualified to hold an endorsement they do not hold.

A list of health professions with approved area of practice endorsements is available on the websites of the relevant national boards. The websites also explain the titles that a practitioner with an area of practice endorsement may use. A registered practitioner who does not hold an endorsement under the National Law may not, through advertising or other means, present themselves to the public as holding such an endorsement (e.g. using professional titles that are associated with an approved area of practice endorsement).

### 6.4.3 Other qualifications or memberships

Advertising qualifications or memberships may be useful in providing the public with information about experience and expertise but may be misleading or deceptive if patients or clients can interpret the advertisements readily to imply that the practitioner is more skilled or has greater experience than is the case.

Patients or clients are best protected when practitioners advertise only those qualifications that are:

- approved for the purposes of registration or endorsement of registration, or
- conferred by approved higher education providers (within the meaning of the *Higher Education Support Act 2003* [Cwlth]), or
- conferred by an education provider that has been accredited by a government accreditation authority such as a government department.

A list of accreditation authorities and approved qualifications for each health profession is available at the website of the relevant national board.

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:

- Why do I wish to use this title, qualification, membership, words or letters in advertising material?
- Am I well qualified in the areas of practice that I offer and promote with these words?
- Is the basis for my use of title, qualification, membership, or other words or letters
  - > relevant to my area of health practice?
  - > current?
  - > verifiable?
  - > credible?
- If I display or promote my qualifications in advertising materials, is it easy to understand?
- Is there any risk of people misunderstanding or misinterpreting the words, letters or titles that I use?

### 6.5 Advertising of price information

Information in advertising of regulated health services about the price of procedures must be clear and not misleading. If the advertising is for goods or equipment that fall within the definition of a therapeutic good under the *Therapeutic Goods Act 1989* (Cwlth), then the advertising must comply with the *Therapeutic Goods Advertising Code 2007* and the *Price Information Code of Practice* as updated from time to time.

It is generally difficult to provide an accurate price of a health service in an advertisement due to the personal nature of such services and the number of variables involved in the treatment of each person. Any person advertising regulated health services should be very careful when including price information in health service advertising due to the significant potential for such information to mislead or encourage the unnecessary use of health services.

If fees and price information are to be advertised, then price information should be exact, with all fees for services clearly identifiable, and any conditions or other variables to an advertised price or fee disclosed.

Practitioners or other persons who advertise services:

- must not 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, or stating an instalment amount without stating the total cost

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- should not compensate or give anything of value to a representative of the press, radio, television or other communication medium for professional publicity unless the fact of compensation is made known publicly
- must not advertise time-limited and special offers.

### 6.6 Use of gifts or discounts in advertising

The use of gifts or discounts in advertising is inappropriate, due to the potential for such inducements to encourage the unnecessary use of regulated health services.

If a practitioner or a person advertising a regulated health service does use a discount, gift or any other inducement to attract patients or clients to a service, the offer must be truthful, and the terms and conditions of that offer must be set out clearly in the advertisement.

Discounts, gifts or other inducements must not be used in advertising of medicines that have potential for abuse or misuse due to the greater potential for harm. In relation to other medicines and therapeutic goods, the boards strongly discourage the use of prizes, bonuses, bulk purchases or other endorsements that may encourage the unnecessary consumption of medicines or other therapeutic goods.

### 6.7 Use of scientific information in advertising

The boards encourage caution when using scientific information in advertising of regulated health services. When a practitioner chooses to use scientific information in advertising, it should:

- be presented in a manner that is accurate, balanced and not misleading
- use terminology that is understood readily by the audience to whom it is directed
- identify clearly the relevant researchers, sponsors and the academic publication in which the results appear
- be from a reputable and verifiable source.

## 7 Advertising of therapeutic goods

### 7.1 Therapeutic Goods Advertising Code 2007

Under the *Therapeutic Goods Advertising Code 2007*:

- there are general prohibitions on advertisements for therapeutic products that
  - > appeal to fear
  - > are misleading

- > raise unrealistic expectation on claims to efficacy
- > claim to have miraculous properties, etc
- advertising must not be directed to minors, with certain exceptions (e.g. sunscreen and condoms)
- representations about abortifacient action, neoplastic disease (except in relation to the use of sunscreens), sexually transmitted diseases (except in relation to contraceptive devices), HIV/AIDS or mental illness are prohibited
- approval must be obtained from the Therapeutic Goods Administration to advertise therapeutic goods for 'serious diseases' that are listed in the Code.

Advertisements must contain:

- the trade name of the product
- a reference to its permitted indications only
- (where applicable) a list of the ingredients
- the following statements prominently displayed
  - > always read the label
  - > use only as directed
  - > if symptoms persist, see your doctor/health care professional.

### 7.2 Advertising of scheduled medicines

Almost all State and Territory drugs and poisons laws prohibit the advertising to the public of substances in Schedule 4 (prescription only medicines), Schedule 8 (controlled drugs) and Schedule 9 (prohibited substances) of the current Poisons Standard (the *Standard for Uniform Scheduling of Drugs and Poisons*). The same restriction applies to the advertising of substances in Schedule 3 (pharmacist only medicines), with the exception of those substances listed in Appendix H of the current Poisons Standard.

A list that states only the names, strengths, pack sizes and prices of medicines in the above categories is a price list rather than an advertisement. Other words, and pictorial representations and photographs are not permitted in price lists.

### 7.3 Advertising of vitamin supplements

Advertisements for vitamin supplements must be accompanied by the words '*Vitamin supplements may be of assistance if dietary intake is inadequate*'. These words must be placed as close as possible to the item being advertised. Placement of these words in a footnote is not acceptable.

### 7.4 Advertisements for analgesics for internal use

Subject to Section 7.2, 'Advertising of scheduled medicines', any advertisements for analgesics for internal use are to be accompanied by the words '*Use only as directed. Incorrect use could be harmful. Consult your health care practitioner if pain or symptoms persist*'. These words must be placed as close as possible to the item being advertised. Placement of these words in a footnote is not acceptable.

An analgesic for internal use consists of one or more of the following:

- salicylic acid and its derivatives and their salts
- codeine
- other nonsteroidal anti-inflammatory drugs
- paracetamol, except when formulated in combination with other ingredients for symptomatic and episodic use in the treatment of colds.

### 7.5 Advertisements for Schedule 3 medicines listed in Appendix H of the current Poisons Standard

Advertisements for Schedule 3 medicines listed in Appendix H of the current Poisons Standard (the *Standard for Uniform Scheduling of Drugs and Poisons*) are to be accompanied by the words '*Your pharmacist's advice is required*'. These words must be placed as close as possible to the item being advertised. Placement of these words in a footnote is not acceptable.

### 7.6 Use of Repeat Authorisation Forms for advertising

The tear-off strip on the right-hand side of Repeat Authorisation Forms for prescription medicines must not be used for advertising, other than a statement, if considered necessary, of the name, address and telephone number of the pharmacy that issued the repeat authorisation and their hours of business.

### 7.7 Other board-specific requirements

The Pharmacy Board of Australia also requires that advertising of medicines must not:

- offer any personal incentives to pharmacy assistants or employed pharmacists to recommend or supply therapeutic products
- include an offer of a sample.

Advertising of other therapeutic goods must state '*Your (practitioner) will advise you whether this preparation (product name) is suitable for you/your condition*'.

## 8 Consequences of breach of advertising requirements

The national boards remind all practitioners of their legal and ethical responsibilities in providing the public with clear and accurate information about the availability of health services. Practitioners are also reminded that members of the public may have limited understanding of many aspects of these services and may be vulnerable as a result.

In determining whether an advertisement is misleading, whether it creates an unreasonable expectation of beneficial treatment, or encourages (directly or indirectly) the indiscriminate or unnecessary use of regulated health services or medicines, the boards will consider the overall impression of the advertisement and the likely impact the advertisement may have on a member of the public. Specifically, a national board will consider what conclusions a member of the public can reasonably infer from material contained within an advertisement and whether the material is likely to mislead or deceive, either directly or by omission. Qualifiers or disclaimers should be displayed obviously rather than contained in fine print.

National boards cannot give legal advice or opinion, and cannot 'vet' or pre-approve advertisements for compliance with these guidelines. If a person is in doubt about whether his or her advertisement might be in breach of the National Law, that person should seek his or her own advice (e.g. from professional indemnity insurers or lawyers) before placing the advertisement.

### 8.1 Registered health practitioners

Failure to adhere to the guidelines may be investigated by a national board (either in response to a notification or on its own motion). A breach of the guidelines may constitute unprofessional conduct and/or professional misconduct, and as such, may be dealt with by the boards through the disciplinary mechanisms available under the National Law.

When a practitioner is found by a national board's performance and professional standards panel, or a State or Territory tribunal to have engaged in unprofessional conduct and/or professional misconduct in relation to advertising of regulated health services, the determinations that may be made under the National Law include, but are not limited to, one or more of the following:

- requiring the practitioner to undergo counselling
- cautioning the practitioner
- reprimanding the practitioner
- requiring the practitioner to undertake further education
- imposing conditions on the registration of the practitioner (e.g. requiring the practitioner to publish a retraction or correction)

- imposing a fine on the practitioner
- suspending or cancelling the practitioner's registration.

Breach of consumer legislation independent of these guidelines may be dealt with under relevant Commonwealth, State or Territory laws.

## 8.2 Persons who are not registered

A breach of s. 133 of the National Law by a person who is not a registered health practitioner or a body corporate may result in the person (or body corporate) being prosecuted in the relevant State or Territory Magistrates' Court, and a financial penalty may be imposed.

## 9 How a notification or complaint may be made

Under s. 146 of the National Law, if a person reasonably believes that a registered practitioner or an unregistered person has breached s. 133 of the National Law with respect to the advertising of a regulated health service, the person may make a notification to the Australian Health Practitioner Regulation Agency (AHPRA). A notification or complaint must include the basis for making the notification; that is, it must specify what the notification is about.

A complaint may be made verbally, by phoning 1300 419 495 or at any of the State and Territory offices of AHPRA:

ACT	11 Torrens Street, Braddon, ACT 2612
New South Wales	Level 51, 680 George Street, Sydney, NSW 2000
Northern Territory	Level 2, Cnr McMinn and Bennett Streets, Darwin, NT 0800
Queensland	Level 18, 179 Turbot Street, Brisbane, Qld 4000
South Australia	Level 8, 121 King William Street, Adelaide, SA 5000
Tasmania	Level 12, 86 Collins Street, Hobart, Tas 7000
Victoria	Level 8, 111 Bourke Street, Melbourne, Vic 3000

To make a notification in writing:

- post your notification to AHPRA, GPO Box 9958 in your capital city, or
- use the online enquiry form on the AHPRA website (see the 'Contact Us' page), or
- fax 03 8708 9003.

## 10 Definitions

For the purposes of this guideline, **invasive procedure** means any operation or other procedure that:

- penetrates or pierces the skin by any instrument other than a needle, other than minor dental or minor podiatric procedures, or
- is an elective procedure requiring more than local anaesthetic or sedation, or
- requires admission to a day procedure centre (DPC) or hospital, or
- involves significant risk associated with surgical and/or anaesthetic complications.

Date of issue: 1 July 2010

Date of review: This guideline will be reviewed at least every three years

Last reviewed:

## Attachment 1

### Extract of relevant provisions from the *Health Practitioner Regulation National Law Act 2009 (Qld)*

#### Part 5, Division 3 Registration standards and codes and guidelines

##### 39 Codes and guidelines

A National Board may develop and approve codes and guidelines —

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

**Example.** A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

##### 40 Consultation about registration standards, codes and guidelines

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.
- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website —
  - (a) a registration standard developed by the Board and approved by the Ministerial Council;
  - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect —
  - (a) on the day it is published on the National Board's website; or
  - (b) if a later day is stated in the registration standard, code or guideline, on that day.

##### 41 Use of registration standards, codes or guidelines in disciplinary proceedings

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a

co-regulatory jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.

##### 133 Advertising

- (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 advertising 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.

##### 5 Definitions

'Health practitioner' means an individual who practises a health profession.

'Health profession' means the following professions, and includes a recognised specialty in any of the following professions —

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) Chinese medicine;

- (c) chiropractic;
- (d) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
- (e) medical;
- (f) medical radiation practice;
- (g) nursing and midwifery;
- (h) occupational therapy;
- (i) optometry;
- (j) osteopathy;
- (k) pharmacy;
- (l) physiotherapy;
- (m) podiatry;
- (n) psychology.

**Part 11** of the National Law provides powers for inspectors to conduct investigations to enforce compliance with the National Law. Schedule 6 sets out the powers of inspectors, including power to obtain information, enter places, obtain a warrant, and seize evidence etc.

**Section 243** states that if a persons behaviour constitutes an offence against this Law and constitutes professional misconduct, unsatisfactory professional performance or unprofessional conduct, the fact that proceedings for an offence have been taken in relation to the behaviour does not prevent proceedings being taken before an adjudication body (a panel, tribunal, Court or entity declared in a co-regulatory jurisdiction to be an adjudication body) for the same behaviour. This means that where a registered health practitioner engages in behaviour that may breach section 133, the Board may choose to prosecute the practitioner through the courts or deal with the matter as a conduct or performance matter, depending on the circumstances.