



RACGP

*RACGP Submission to the Australian
Health Practitioner Regulation Agency*

Consultation on common guidelines and code of
conduct

28 May 2013

The Royal Australian College of General Practitioners

Introduction

The Royal Australian College of General Practitioners (RACGP) thanks the Australian Health Practitioner Regulation Agency (AHPRA) for the opportunity to provide comment on the revised:

- *Guidelines for advertising of regulated health services*
- *Social media policy*
- *Guidelines for mandatory notifications.*

The RACGP is the specialty medical college for general practice in Australia, responsible for defining the nature of the discipline, setting and maintaining the curriculum and standards for education, training, quality general practice and for supporting GPs in their pursuit of clinical excellence and community service.

Overall response

Overall, the RACGP believes that the revised *Advertising Guidelines for regulated health services* are more difficult to understand than the original AHPRA guidelines, largely due to seemingly incomplete sections, poor structure, and fewer clear examples of what actions are likely or unlikely to contravene the Law. Hence the RACGP has provided detailed feedback on specific sections where opportunities for improvement were identified.

In relation to the *Social Media Policy*, whilst the College supports the overall approach taken, the policy requires:

- greater clarity regarding the regulatory frameworks applicable to social media
- stronger emphasis on the importance of the professional obligations set out in the National Boards' codes of conduct.

Finally, in relation to the *Guidelines for Mandatory Reporting*, the College has maintained its position made clear in past submissions to the Government, AHPRA, and the Medical Board of Australia regarding the complexity of mandatory reporting, and has called for further discussion and consultation to find a workable solution. The RACGP recommends the adoption of a model similar to the Western Australian model, whereby treating medical practitioners are exempt from mandatory reporting.

1. Revised Guidelines for advertising

Overall, the RACGP believes that the revised *Guidelines for advertising of regulated health services* are more difficult to understand than the original AHPRA guidelines, including incomplete sections, poor structure, and fewer clear examples of what actions are likely or unlikely to contravene the Law.

The following provides feedback on specific sections of the *Guidelines* where opportunities for improvement have been identified.

1.1 Alignment with the National Law

The College notes that alignment between the *Guidelines* and relevant sections of the National Law has improved, particularly throughout Sections 1 – 7. However, beyond this point their association becomes less clear.

1.2 Obligations under the National Law and other legislation (Section 6)

The obligations of health practitioners under other legislation – and their respective codes of professional conduct – are less clear in the revised *Guidelines*. *Section 6* would benefit from:

- a sub-section on “other legislation of relevance” with links to further detail in *Appendices 2, 3 and 4*
- a sub-section on professional obligations under relevant sections of the National Law, professional codes of conduct, and other guidelines published by each National Board
- removal of information regarding *protection of titles*, as this is addressed in *Section 8.2*
- linkage of *Section 6* to *Section 9 – Consequences for breach of advertising requirements*.

The RACGP believes these changes will:

- improve understanding of the distinct but inter-related regulatory instruments that govern advertising of regulated health services
- help convey the message that appropriate advertising practices are apart of a health practitioner’s ethical and professional obligations.

1.3 The advertising provisions under the National Law (Section 7)

The introduction for *Section 7* requires revision to clarify what is permitted under the National Law. Where the National Law does not include specific statements about what is permitted; the guidelines should highlight this prior to referencing the Australian Competition and Consumer Commission’s (ACCC) recommendations.

1.4 Information included in advertisements (Section 7.1)

The title and the contents of this section do not directly specify what is permitted under the National Law. The College recommends that the title and content of *Section 7.1* be reviewed and amended to make the connection with the National Law (or any alternatives that come into play in its absence) clearer.

1.5 Gifts and discounts (Section 7.2.2)

While reference to *Section 133 (1) (b)* of the National Law is an improvement, the subsequent paragraphs do not provide helpful examples of the type of contraventions that may occur. The RACGP recommends that reference to *Section 133 (1) (b)* be supported by specific examples of the type of *gifts, discounts and other inducements* that are likely to contravene the Law.

1.6 Encouraging indiscriminate or unnecessary use of health services (Section 7.2.5)

The previous AHPRA guidelines contained reference to the ‘*use of language that can cause fear and distress to encourage indiscriminate or unnecessary use of health services*’. This is an important reminder of what not to do and should be included in this subsection.

1.7 Social media (Section 8.1)

The RACGP notes that social media can be used for a range of advertising purposes, which would potentially contravene any of the subclauses in Section 133 – not just 1 (c) relating to the use of testimonials. It is therefore recommended that this section be broadened beyond the use of testimonials, and refer to both the AHPRA social media policy and code of conduct.

1.8 Advertising qualifications and titles (Section 8.2)

The College believes that:

- the title of this section does not reflect the breadth of its content
- the opening section does not provide an appropriate overview of the entire section prior to stating specific issues
- the existing sub-sections need to be re-ordered, eliminating duplicated headings and consolidating content.

1.9 Consequence of a breach of advertising requirements (Section 9)

This section requires:

- a clearer introduction
- a list of regulatory authorities (AHPRA, National Boards, TGA, ACCC)
- reference to the specific consequences under the National Law.

1.10 Appendix 2

The table of associated legislation and agencies in Appendix 2 is helpful, but requires an improved explanation of the transition from provisions of the *Trade Practices Act* and *Fair Trading Acts* to *Australian Consumer Law*.

2. Revised Social media policy

2.1 The approach taken

Consistent with the RACGP's original submission made on 12 September 2012, the College supports the approach taken whereby the *Social media policy*:

- has been kept to a minimum to avoid over-complicating the matter and burdening health professionals with duplicate information
- re-directs health professionals to the key regulatory frameworks that should be used to guide social media use.

However, the re-direction is unclear, and the importance of professional obligations when using social media have been lost.

2.2 Clearer re-direction and emphasis on professional obligations

Within the *context* of the policy, there is insufficient clarity and emphasis on the applicability of professional obligations to social media.

Specifically, the order in which the key regulatory frameworks have been presented suggests that advertising restrictions should be of greatest concern to health practitioners when using social media, instead of emphasising that their ethical and professional obligations toward their patients should be their first priority.

This amendment will also improve alignment with the subsequent section on *Obligations in relation to social media use*.

2.3 Role of national boards and regulatory authorities

It is recommended that the roles of the national boards and other regulatory authorities, in relation to social media, be made clearer.

2.4 Content of supporting documents

The *Guidelines for advertising* (particularly *Section 8.1 Social Media*) does not include an adequate explanation of what *is* and is not permitted when using social media. The RACGP recommends that the social media section of the advertising guidelines be broadened to include examples of permitted and non-permitted advertising in social media.

3. Revised Guidelines for mandatory notifications

While the RACGP strongly believes that patients and the public should be protected from impaired practitioners, it remains disappointing to see that mandatory reporting has been included under section 141 of the *Health Practitioner Regulation National Law Act 2009* despite ongoing and well-considered feedback provided by the health professions.

The RACGP has advised the Government, AHPRA, and the Medical Board of Australia on numerous occasions that mandatory reporting is a multifaceted and complex issue, and has called for further discussion and consultation to find a workable solution.

To reiterate previous submissions, the legislation, as currently written, results in medical and other health practitioners hiding their personal and professional impairment issues from their colleagues. This drives issues underground and exacerbates risk, rather than decreasing the risk, to patients, the public, health practitioners themselves, and their colleagues.

The College believes that AHPRA and the Medical Board of Australia should meet with professional medical bodies to find a workable solution to mandatory reporting. Ultimately, health professionals must be able to seek treatment, advice, and support without fear of being reported by their colleagues.

The RACGP recommends that the Commonwealth Government, in conjunction with the Australian Health Workforce Ministerial Council, review current mandatory notification requirements. As part of the review, the Western Australia model of mandatory reporting should be considered, as recommended by the Senate Finance and Public Administration Reference Committee in its Final Report on the Administration of health practitioner registration by AHPRA released in June 2011.

Past RACGP submissions addressing the issue of mandatory notification

Date	Title
21 / 11 / 08	Response to COAG consultation paper regarding the proposed complaints, performance, health and conduct matters
30 / 04 / 09	RACGP Submission to the Senate Community Affairs Committee – Inquiry into the National Registration and Accreditation Scheme for Doctors and other Health Workers
15 / 5 / 09	Response to the Australian Health Workforce Ministerial Council's Communique of 8 May 2009 regarding the proposed national registration arrangements and the proposed accreditation arrangements
14 / 7 / 09	National Registration and Accreditation Senate Inquiry Hearing
18 / 04 / 11	RACGP submission to the Finance and Public Administration Reference Committee – inquiry into the administration of health practitioner registration by the Australian Health Practitioner Regulation Agency