

Check your advertising:

Examples of common advertising claims that are not compliant

February 2018



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

This document outlines examples of advertising claims that don't meet the legal requirements and how to make them compliant. The Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards are sharing these examples to help you check your own advertising to ensure you comply with your obligations under the National Law¹.

Why the advertising is non-compliant and how the specific examples could be corrected is based on our assessment of advertising complaints we have received across the 14 regulated health professions. To do this we apply the National Law and any further guidance that National Boards and AHPRA publish, including the *Advertising guidelines* and resources on our websites.

We have also published examples on our website that may be relevant to your specific profession.

Important information

Check if your advertising complies with legal requirements

There are many ways advertisements can be false, misleading or deceptive.

Always be clear about the level of evidence to support a claim. You should not make claims about the effectiveness of the treatment or services you provide if those claims cannot be substantiated with acceptable evidence.

We have published a *Summary of advertising obligations* on our website to help explain the legal requirements for advertising a regulated health service.

You should also refer to the full *Guidelines for advertising regulated health services* on our website.

¹ The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

Examples of non-compliant advertising and how to correct it

These examples highlight non-compliant advertising about regulated health services offered at profession specific or multi-disciplinary clinics on websites, social media sites such as Facebook, print advertisements and/or advertising on third party websites.

Key

● **Text in green** means this content is okay and is unlikely to mislead consumers.

● **Text in orange** means it can depend. If you have provided the appropriate context and clarification in your advertising, it is unlikely to be misleading to consumers.

● **Text in red** means this advertising is in breach of the legal requirements, and you should remove it from your advertising.

Advertising content

Our treatment can cure cancer.

Why it is non-compliant

This advertising is considered misleading and deceptive, and may create an unreasonable expectation of beneficial treatment.

This statement is not supported by acceptable evidence and therefore may mislead consumers.

Changes that would help this advertising to comply

This statement is not acceptable in advertising, so it will need to be removed.

Pay particular attention to:

- how language is used in your advertising as consumers could be misled, and
- words such as 'cure' should be used carefully, as it is often not possible to establish a causal connection between providing a health service and subsequent patient improvement.

Our treatment can help with:

- **Back pain**
- **Neck pain**
- **Asthma**
- **Depression**
- **Behavioural disorders.**

This advertising is considered misleading and deceptive.

This advertising lists a broad range of conditions, and it's not clear how the treatment being advertised will help with each condition listed.

This advertising is unqualified and/or is not supported by acceptable evidence and therefore may mislead consumers.

What is acceptable to include in a list of conditions depends on the regulated health service advertised and whether there is evidence to support the claim being made.

The treatment advertised may be able to help manage symptoms often associated with a condition (e.g. muscular tension associated with asthma) rather than treating the condition itself.

If this is made clear in your advertising then you will be unlikely to mislead consumers.

For example, if the regulated health service being advertised is a manual therapy, this statement could be corrected to read:

Our treatment can help with:

- **Back pain**
- **Neck pain**
- **Managing symptoms such as muscular tension often associated with asthma**

Pay particular attention to:

- listing health conditions in your advertising as this is often misleading.

And now it can't be disputed. Our care works and now we know why it's better than pain-killing drugs with side effects.

This advertising is considered misleading and deceptive.

This claim may mislead consumers as it does not include complete information and/or is not substantiated with acceptable evidence.

This statement is not acceptable in advertising, so it will need to be removed.

Pay particular attention to:

- use of comparisons in advertising often risks misleading and/or deceiving the public
- make sure to include complete information, it can be difficult to include substantiating information when comparing one health service with another, and
- check out 6.2.1 of the *Advertising guidelines*, available on our website.

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Advertising content

Our long experience of successfully treating patients with mental health issues shows that we can effectively treat depression, anxiety and many other mental health conditions.

Why it is non-compliant

This advertising is considered misleading and deceptive.

This claim may mislead consumers as it is not substantiated with acceptable evidence.

Changes that would help this advertising to comply

This statement is not acceptable in advertising, so it will need to be removed.

Pay particular attention to:

- personal experience and anecdotes are not acceptable evidence and do not justify making claims in advertising, and
- if there is not acceptable evidence that justifies making the claim in advertising, leave it out.

Our practice includes Dr Joe Smith, who specialises in paediatric osteopathy.

This advertisement is considered misleading and deceptive as it includes claims about specialising.

If there are no recognised specialist categories for your profession, you cannot use the term 'specialist' when referring to your practice or registration in your advertising or any other materials.

Unless you have specialist registration under the National Law, you cannot use the term 'specialist' when referring to your practice or registration in your advertising.

Even if you have extra training and experience, you cannot give the impression or advertise that you specialise or are a registered specialist in paediatrics and/or treating neonates, infants and young children.

As osteopaths can only apply for general registration, this advertising would need to be corrected by removing the reference to specialising in paediatrics.

Instead, Dr Smith could say:

I have a particular interest in musculoskeletal issues in children.

Ms Jennifer Jones, Specialist Sports Physiotherapist.

This advertisement is considered misleading and deceptive as it includes claims about specialising.

If there are no recognised specialist categories for your profession, you cannot use the term 'specialist' when referring to your practice or registration in your advertising or any other materials.

There is no specialist registration category for physiotherapists. However, in recognition of historical arrangements before the National Registration and Accreditation Scheme (the National Scheme), the Physiotherapy Board of Australia recognises specialised physiotherapy practice achieved through higher education completed at the Australian College of Physiotherapy (see Appendix 5 of the *Advertising guidelines*).

As such, the Board considers the appropriate use of qualifications in advertising as acceptable when accompanied by wording that establishes those credentials.

This advertising would need to be corrected to clarify the specialist title does not relate to the physiotherapist's registration. Instead, Ms Jones could say:

Ms Jennifer Jones, Specialist Sports Physiotherapist (as awarded by the Australian College of Physiotherapists in 2010).

This example is only relevant for the physiotherapy profession.

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Advertising content

Dr Lucy Brown (Psychology), BS, MS, PsyD, Clinical Psychologist **and behavioural disorder specialist.**

Why it is non-compliant

This advertisement is considered misleading and deceptive as it include claims about specialising.

If there are no recognised specialist categories for your profession, you cannot use the term 'specialist' when referring to your practice or registration in your advertising or any other materials.

Dr Thomas Jeffries, **Specialist Dentist.**

This advertisement is considered misleading and deceptive as it include claims about specialising.

If there are no recognised specialist categories for your profession, you cannot use the term 'specialist' when referring to your practice or registration in your advertising or any other materials.

Changes that would help this advertising to comply

There are no recognised specialist categories in psychology, although there are areas of practice endorsements. If Dr Brown holds an area of practice endorsement for clinical psychology, she is appropriately identifying herself as a clinical psychologist.

However, the reference to being a 'behavioural disorder specialist' in this context may be misleading as it implies specialist registration or a higher level of qualification in the psychology profession.

This advertising would need to be corrected by removing the reference to 'behavioural disorder specialist'.

If you claim to be a specialist health practitioner you must identify the recognised specialist category that you are registered in.

This advertisement could be corrected by this further information:

Dr Thomas Jeffries (Dentist) Specialist Endodontics

Pay particular attention to:

- the fact that specialist registration applies to only three health professions, and
- use of the word 'specialist' is restricted under the National Law.

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Advertising content

At the Rose Street Clinic we offer gentle and affordable dentistry with same day crowns, teeth whitening, general check-ups, preventive dentistry, fillings, dentures and root canal therapy.

Why it is non-compliant

This does not require a warning because the procedure is not invasive

Changes that would help this advertising to comply

No warning required

At the Rose Street Clinic we remove teeth, including wisdom teeth and provide implant placement using sedation techniques.

This advertising is considered to create an unreasonable expectation of beneficial treatment because it does not include a clearly visible warning about the risk the procedure carries.

Where a surgical (or 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.

If this advertising was corrected to include the above warning, then it is unlikely to create an unreasonable expectation of beneficial treatment.

At the Rose Street Clinic we provide advanced surgical services including mandibular osteotomy.

This procedure involves significant risk associated with surgical and/or anaesthetic complications and without a warning to seek a second opinion, could create an unreasonable expectation of beneficial treatment.

Where a surgical (or 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 this advertising was corrected to include the above warning, then it is unlikely to create an unreasonable expectation of beneficial treatment.

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Advertising content

As an incentive to my existing patients to introduce their friends and family to our work, I am offering a \$20 discount on their first visit! Just fill in the forms on our new website, present them to reception and get a \$20 discount!

Why it is non-compliant

This advertising offers a gift, discount or other inducement to attract a person to use the service or the business, without also stating the terms and conditions of the offer.

Changes that would help this advertising to comply

This advertising needs to be corrected to include terms and conditions. For example, if the below terms and conditions were included the offer is unlikely to be misleading.

As an incentive to my existing patients to introduce their friends and family to our work, I am offering a \$20 discount on their first visit! Just fill in the forms on our new website, present them to reception and get a \$20 discount! *Terms and conditions: this offer is only available to new clients.*

Most patients find that periodic check-ups with us prevent illness and help keep them in tip-top health.

This advertising directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

This advertising claim is not linked to management of a particular condition or relief of a specific symptom. It links regular check-ups to a therapeutic benefit for which there is no acceptable evidence – being actual prevention of disease.

This statement is not acceptable in advertising, so it will need to be removed.

Pay particular attention to:

- advertising that encourages consumers to use a regulated health service when there is no clinical indication to do so and is likely to encourage the unnecessary use of health services.

If you often suffer from neck pain **we recommend that you come in for more regular check-ups, ideally every month, to help you manage your condition and stay active.**

This advertisement directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

This advertising claim is not supported by acceptable evidence. It is not linked to management of a particular condition or patient, so there is no basis for the recommendation of monthly check-ups.

This advertisement could be corrected to say:

If you often suffer from neck pain **we recommend that you come in for more regular check-ups as soon as symptoms arise. We can also provide you with exercise and lifestyle advice to help you manage your condition and stay active.**

Pay particular attention to:

- whether it's acceptable to encourage regular check-ups in advertising as it will depend on the context of the advertising and language used, and evidence to support the claim, and
- claims that are specific about the frequency of check-ups (e.g. recommending monthly check-ups) or claims about the check-up/treatment preventing particular conditions or symptoms which the evidence indicates are not prevented by this type of check-up.

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Advertising content

When I was first diagnosed, I felt there was no hope for me to survive. I had constant pain and was unable to care for myself. But then I saw Dr Smith at Wonders Day Surgery. Dr Smith agreed with my diagnosis but was able to provide treatment which saved my life. Dr Smith cured me and I have no more pain.

Jane, 35, is just one of many satisfied patients who says: 'As a patient who has received this treatment, I confirm that it really does work and my back pain disappeared after three sessions'.

Peter, 46, says: 'The practice is really lovely and I have been going there for years. Parking is great and there are lots of magazines in the waiting area.'

Why it is non-compliant

These advertisements are clearly testimonials.

Testimonials or purported testimonials about clinical services are prohibited under the National Law when advertising regulated health services.

Changes that would help this advertising to comply

You can't use feedback from patients about your clinical services in your advertising. Testimonials can be misleading for consumers, particularly about clinical services.

The testimonials in **red** are about clinical services and are prohibited in advertising, so they will need to be removed. The statement in **green** can be used because it doesn't refer to clinical services.

Pay particular attention:

- if you're unsure about whether or not the feedback relates to clinical services, it's best to seek legal advice, or leave it out.

Disclaimer: The information used in these examples is for guidance only. If, after reviewing the examples listed, you are still unsure if your advertising complies with the National Law we recommend you seek advice from your professional association, insurer and/or independent legal adviser.

Take steps now to check and correct your advertising so you comply.

Helpful resources are on our website at www.ahpra.gov.au/advertising.