Frequently asked questions

March 2014

Advertising

*Updated on 18 March*

**Revised advertising guidelines take effect on 17 March 2014**

This FAQ is to help people understand what they need to do to comply with the advertising requirements of the National Law. We hope they also help the community understand what the law requires practitioners to do and not do.

We will keep updating this FAQ to answer questions about emerging issues and guide practitioners about their regulatory responsibilities in relation to advertising. New answers will be added progressively at the end of this document.

The Board expects people to make sure that their own advertising, or that done by others on their behalf, meets the requirements of the National Law.

The *Guidelines for advertising regulated health services* (*Advertising guidelines*) are intended to be read as a whole, as there is important context earlier in the guidelines which applies to later sections too. It may be more difficult to interpret small sections of the guidelines when they are read outside this context.

**Advertising and testimonials**

There is a clear difference between advertising – which requires an advertiser’s intent to promote a health service – and unsolicited online comment, which does not involve an advertiser’s intent to promote a health service.

**Social media and testimonials**

1. **How do the advertising guidelines and social media policy apply to online comments about practitioners?**

The National Boards recognise that practitioners are often unable to be aware of and control what is written about them in a public forum.

The advertising guidelines apply only to advertising of regulated health services. They do not apply to unsolicited online comment over which practitioners do not have control.

As a practitioner, National Boards expect you to:

* ensure that your own advertising, or that done by others on your behalf, meets the requirements of the National Law
* take steps to correct your advertising if you are advised by AHPRA that your advertising does not comply with the National Law
* comply with the Boards’ social media policy and code of conduct if you are active on social media, and
* keep a close eye on any form of advertising you control.

The Boards do not expect you to monitor social media except as described above.

1. **What is a testimonial?**

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

Testimonials are statements making a recommendation about a service or its quality.

This means it is not acceptable to use testimonials in your own advertising, such as on your facebook page, in a print ad or on your website.

The National Law does not prohibit the use of social media or comments in social media if they do not involve a practitioner or their representative advertising a regulated health service.

The guidelines do not prohibit unsolicited public discussion and opinion sharing about practitioners outside the context of advertising a regulated health service.

1. **Social media is part of everyday life so why can’t I use it?**

Social media is part of everyday life and these guidelines do not stop people participating in it.

National Boards have a *Social media policy* that applies to all registered health practitioners and provides further guidance about what the National Boards expect in relation to social media.

In relation to advertising - advertisers cannot use testimonials in social media to advertise their regulated health service.

The guidelines do not prohibit unsolicited public discussion and opinion sharing about practitioners.

The National Boards recognise that practitioners are often unable to control what is written about them in a public forum and the law and the guidelines do not require this.

1. **What if someone else publishes a testimonial without my knowledge? How can I be held responsible for what other people say about my services?**

Advertisers are responsible for removing testimonials published on a website or in social media over which they have control.

Practitioners are not responsible for removing (or trying to have removed) unsolicited testimonials published on a website or in social media over which they do NOT have control.

1. **What happens if someone complains that I am using a testimonial?**

AHPRA will review the complaint. If it appears you are using a testimonial in your advertising, AHPRA will write you a letter that asks you to remove the testimonial. You will generally only be penalised if you don’t take any action in response to repeated requests.

1. **Can comments that I don’t control become advertising?**

Testimonials that are not initially made in an advertising context can be used as advertising if you actively draw attention to them, such as by sharing, forwarding, retweeting or otherwise using a comment about your clinical performance to advertise your practice, even if the comment was initially made somewhere other than on a site you control. Promoting your practice using testimonials made in other contexts could breach the ban on using testimonials in advertising.

1. **Does the definition of social media include closed discussion forums and message boards? What about personal social media pages such as my personal Facebook page?**

The advertising guidelines apply to social media only when social media is advertising and intends to promote a regulated health service.

Social media includes personal Facebook pages, closed discussion forums and message boards.

Social media is discussed in section 7.1 of the Advertising guidelines and a separate Social medial policy is published on each National Board’s website. Each Board’s *Code of conduct* or equivalent document also contains guidance about the required standards of professional behaviour, which apply to registered health practitioners whether they are interacting in person or online.

**Advertising a regulated health service**

1. **Who must meet the advertising requirements in the National Law?**

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

1. **What does ‘regulated health service’ mean?**

‘Regulated health service’ means a service provided by, or usually provided by, a health practitioner. The advertising provisions of the National Law cover the advertising of a regulated health service, or a business that provides a regulated health service.

1. **How can I use the term ‘specialist’ or ‘specialising in’ in advertising? The law does not define this. Why do the guidelines say I must take care in using these terms? My profession does not have specialist registration categories.**

The National Law protects *titles* rather than ‘acts’ (with some exceptions: see sections 121-123 which describe restricted dental acts, restriction on prescription of optical appliances and restriction on spinal manipulation). Some professions under the National Law have approved specialties whose titles are protected. Although a practitioner may have years of experience in treating children, for instance, unless they hold specialist qualifications that are recognised under the National Law, giving the impression that they are a specialist, or specialise in a particular field when there is no specialist recognition may lead a person to believe that the practitioner has qualifications different from, or in addition to, other practitioners in the profession with the same category of registration.

Again, the overarching theme throughout the Guidelines for advertising is about taking care to avoid misleading or deceiving potential users of the health service.

Whether or not something misleads an audience depends on the overall impression created.

See sections 7.3 and 7.4 for more detailed information on the use of titles.

1. **What do the guidelines mean about indiscriminate and unnecessary use of health services?**

Practitioners have an obligation to provide care in the best interests of their patients and should not promote services that are not clinically needed. Indiscriminate and unnecessary use of health services which are not clinically warranted can adversely impact on people’s health and is a waste of resources and not in the public interest.

Section 6.2.5 of the *Advertising guidelines* provides more information about indiscriminate and unnecessary use of health services.

1. **Time-limited offers are a normal part of business and can provide patients with an opportunity to use their health dollar on their health needs in a cost-effective way. Why should they be banned?**

Time-limited offers are not specifically prohibited by the National Law. However, Boards are concerned that time limited offers may place people under pressure to make a decision about their health care which may not be in their best interest. This may also encourage indiscriminate and unnecessary use of health services, which is prohibited under the National Law.

Section 6.2.5 of the Advertising guidelines provides more information about this area of advertising.

1. **What can I include in my advertising? The advertising guidelines only provide general information. How will I know if my advertising complies with the law?**

These guidelines and the *Social media policy* aim to explain the advertising requirements in the National Law and help practitioners and others understand and meet these requirements. It is impossible for the Guidelines to describe every type of advertisement that might or might not breach the National Law. Instead the guidelines provide general advice about approaches you can take to comply with the law.

The National Law bans specific types of advertising, including (but not limited to) advertising in a way that:

* 1. makes misleading claims
  2. offers an inducement such as a gift or discount (unless the relevant terms and conditions are also included)
  3. uses testimonials, and/or
  4. creates unreasonable expectations of beneficial treatment, or encourages the indiscriminate or unnecessary use of a service.

If you are not sure whether your advertising meets the requirements in the National Law, you should seek legal advice. The National Boards and AHPRA are not able to provide you with advice about whether or not your advertising breaches the National Law.

Section 6 of the Advertising guidelines provides information on this area.

**Who does what in managing advertising complaints**

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

AHPRA reviews complaints about possible breaches of the advertising requirements of the National Law. As needed, AHPRA writes to the advertiser (who may be a registered health practitioner) identifying the breach and advising them to address the problem. If the breach continues after the initial warning, AHPRA will send a further written warning to the advertiser. If the advertiser fails to take corrective action, AHPRA may take legal action against them for non-compliance with the National Law.

The National Boards also become involved in advertising matters, when AHPRA refers possible issues of unprofessional conduct by a practitioner, or when a criminal prosecution is involved. AHPRA can also refer an advertising complaint to other agencies such as the Australian Competition and Consumer Commission for action.

1. **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 administer laws about the advertising of health products and services.

Anyone who advertises a regulated health service must meet the National Law’s advertising provisions and other applicable laws, including the Australian Consumer Law (ACL).

If a complaint about an advertisement may be relevant to another Australian regulatory authority such as the TGA or ACCC, AHPRA may refer the matter to the most appropriate regulator.

Section 4.1 of the *guidelines* explains how the National Law relates to other laws that apply to advertising.

**Breaches of the *Advertising guidelines***

1. **I may have accidentally broken the advertising requirements. Will it affect my registration?**

Anyone who advertises a regulated health service is responsible for ensuring that their advertising (including websites and social media) meets the requirements in the National Law.

The best way to do this is to be familiar with the National Law and advertising guidelines and understand your legal obligations.

If you have inadvertently breached the advertising requirements, you should address the problem as soon as possible, especially if you have received a first warning letter from AHPRA or your National Board. Unless there are other aggravating factors involved, after a non- compliant advertisement or website has been fixed or removed, the National Board is unlikely to take further action.

If you do not address the issues, the National Board or AHPRA may remain concerned, including by taking action against you.

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

The National Law regulates certain types of advertising. It does not ban all advertising by health practitioners. The *Advertising guidelines* explain what kinds of advertising the National Law prohibits. For example, the National Law does not ban all testimonials – only testimonials used to advertise a regulated health service. The guidelines do not require practitioners to try to remove unsolicited testimonials on websites or in social media over which they have no control.

The role of the National Boards and AHPRA is to protect the public. Anyone with concerns about their health practitioner, including advertising that appears to contravene the National Law, should raise their concern with AHPRA. AHPRA will act on apparent breaches of advertising requirements and will refer matters to the relevant National Board when necessary.

You can make a complaint (known as a *notification* under the National Law) by following the *Make a notification* link on the AHPRA website at [www.ahpra.gov.au](http://www.ahpra.gov.au).

**Additional answers added in response to queries**

1. **What if a patient or client posts a comment about my practice/services on my social media page?**

The National Law bans using testimonials in advertising.

If you are using your social media page to advertise regulated health services you provide or to promote your business, then you need to remove any testimonial that is part of your advertising.

If you are not using your social media page to advertise, then comments made are not advertising and therefore are not regulated by the National Law.

If a patient posts something about your practice/services that could be seen to be promoting you and your services on a page you don’t control, you should not share or re-tweet the comment to promote a regulated health service on your own page, as this could be considered advertising.

1. **I am a member of the community and I wish to discuss my experiences about a health practitioner online – am I in breach of the guidelines?**

You can absolutely discuss your experiences, even on social media. The *Advertising guidelines* and *Social media policy* are not intended to in any way interfere with an individual’s right to express themselves.

While testimonials are not allowed under the National Law, this requirement ONLY applies in relation to advertising a regulated health service. If your comments are not part of a practitioner or health service’s intent to promote or advertise their services, your comments are fine.

However, if your comments about a health service are published by a practitioner as part of advertising on their website or on their facebook page, for example, this action would breach the National Law*.* The person making the testimonial would not be in breach of the National Law, however the practitioner or health service who publishes the testimonials is likely to be.

**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](http://www.ahpra.gov.au)
* A fact sheet on advertising is published on the AHPRA website, accessible at [www.ahpra.gov.au](http://www.ahpra.gov.au)
* For registration enquiries: 1300 419 495 (within Australia) +61 3 8708 9001 (overseas callers)
* For media enquiries: (03) 8708 9200