

Frequently asked questions

20 May 2014

Advertising

Updated advertising guidelines take effect on 20 May 2014

This FAQ aims to give more information to anyone advertising a regulated health service about their obligations under the Health Practitioner Regulation National Law (National Law), as in force in each state and territory. This FAQ also provides further guidance on the *Guidelines for advertising regulated health services (Advertising guidelines)* and the *Social media policy*, which are available on each National Board's website.

Anyone who advertises a regulated health service must meet the requirements of the National Law. This includes registered health practitioners, individuals who are not health practitioners and businesses.

National Boards expect health practitioners to make sure that their own advertising, or that done by others on their behalf, meets the requirements of the National Law. The National Boards cannot change the advertising requirements of the National Law.

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

- a. makes misleading claims
- b. offers an inducement such as a gift or discount (unless the relevant terms and conditions are also included)
- c. uses testimonials, and/or
- d. 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.

About the updated advertising guidelines (effective from 20 May 2014)

The *Advertising guidelines* that come in to effect from 20 May 2014 have been updated by National Boards to make them clearer, particularly about the use of testimonials in advertising.

No requirements have been added from the previous version.

The updated guidelines were edited to make them clearer, particularly that:

- under the National Law, testimonials are not allowed when advertising a regulated health service
- the obligations of the National Law about advertising **only** apply when a regulated health service is being advertised, and
- the National Law is not intended to stop members of the community and patients from discussing their experiences online or in person.

Frequently asked questions

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.

2. What is a 'testimonial' and what is 'advertising'?

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

Advertising is something that intends to promote or encourage the use of a regulated health service. Social media used to promote a business, such as a business Facebook page, is considered advertising and must therefore not include testimonials. A patient social media page, such as a bulletin board or Facebook group, where patients discuss their personal experiences, is not considered advertising.

3. 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.

4. Why can't I use testimonials in my advertising?

The National Law bans the use of testimonials or purported testimonials in advertising a regulated health service. National Boards cannot change this legal requirement. 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 ban 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 ban unsolicited public discussion and opinion sharing about practitioners outside the context of advertising a regulated health service.

5. Is publishing a symbol of an award based on patient reviews using testimonials in advertising?

Information-sharing or rating websites may give awards on the basis of customer reviews. The National Law does not apply to awards published on third party websites which do not involve advertising a regulated health service.

Publishing an award symbol or rating on a website advertising a regulated health service will not breach the ban on using testimonials in the National Law, unless it involves republishing the testimonials on which the award or rating is based.

This is because a symbol, rating or title of an award from an information sharing or rating website does not fit the ordinary meaning of a testimonial, which is a statement of recommendation, implying a narrative or descriptive quality.

6. Am I responsible for what other people say about me on the internet?

The *Advertising guidelines* apply only to the advertising of regulated health services. 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.

The Boards do not expect you to monitor social media for things that may be written about you in forums you don't control.

If you are a registered health practitioner, the National Boards **do** 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.

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

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

If you are not using your personal social media page to advertise a regulated health service, then comments made are not advertising and therefore are not subject to 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 website or in social media 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.

8. Are there restrictions on how health practitioners can use social media?

Social media is part of everyday life and these guidelines do not stop people engaging online or via social media. 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. Anyone using social media to advertise a regulated health service needs to meet the advertising requirements of the National Law.

9. 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 a particular area, they may only call themselves a 'specialist', or give the impression they are a specialist, if they are registered in a recognised specialist category by the relevant National Board.

The overarching theme throughout the *Advertising guidelines* 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.

10. 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 advertising may also encourage indiscriminate and unnecessary use of health services, which is banned under the National Law. Section 6.2.5 of the *Advertising guidelines* provides more information about this area of advertising.

11. Birth stories

There are a few factors that affect whether or not a story about a birth is considered a testimonial that is captured by the National Law's ban on testimonials to advertise a regulated health service.

There is no restriction on consumers sharing their birth stories if they are not being used to advertise a regulated health service. Consumers can share their birth stories in many ways, including on their Facebook pages and patient information sharing websites.

The ban on using testimonials to advertise a regulated health service means that practitioners or health services shouldn't provide an opportunity for testimonials on their websites or Facebook pages that advertise regulated health services.

Accordingly, a birth story on a patient or consumer group's blog/site/Facebook page is not a testimonial used in advertising. It only becomes one if the practitioner/business shares/retweets or otherwise re-publishes or promotes the story to advertise a regulated health service.

12. What happens if there is an advertising breach?

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.

13. 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 their 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.

14. I have seen some advertising that does not seem to be within the boundaries of the National Law. What should I do?

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 by following the *Make a notification* link on the AHPRA website at www.ahpra.gov.au.

Not all sections of the Notifications form are relevant to advertising-related notifications. At a minimum, please complete:

- Section A, questions 1-5 (Your Details)
- Question 6 if the advertiser is a health practitioner or student
- Question 21 (details about the apparent breach)
- Question 22 – 24 (if relevant)
- Section E (Authorisation)

Sections B, C and any other questions are not required.

15. 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 **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.

16. I work for an organisation that provides regulated health services. How do the advertising guidelines apply to us?

The requirements of the National Law about advertising apply to anyone advertising a regulated health service. This means that your organisation has an obligation to not use testimonials (comments about clinical care) when it is advertising a regulated health service.

The organisation is not expected to proactively monitor sites that it does not control for comments other people have made about its clinical services. Unsolicited comments/reviews about anything other than clinical care and/or which are not used to advertise a regulated health service are not covered in the National Law, and need not be a concern for the organisation, regardless of where they are published.

17. Are patient stories used in hospital fundraising testimonials used in advertising a regulated health service?

The key issue is whether the fundraising involves advertising a regulated health service. This may vary in individual cases.

Fundraising and advertising have different purposes, but there is a potential overlap. Advertising involves promoting a product or service to increase sales or use. Fundraising involves seeking donations or financial support for a charity, cause or other enterprise. If the overriding purpose of fundraising is to raise money, then the fundraising material is unlikely to be advertising and the National Law ban on using testimonials in advertising a regulated health service is unlikely to apply.

18. How does the National Law fit in with the ACCC and TGA?

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). 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.

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 *Advertising guidelines* explains how the National Law relates to other laws that apply to advertising.

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