



Advertising and the National Law

Michael Gorton AM, Chair

8 September 2017

Healthcare advertising over time

Advertising practices

Signage at healthcare practice

Increase in print advertising for some health professions

Majority of healthcare advertising online, including through social media

1990's



2017

Advertising regulation involves measuring of signage

Increasing regulation of advertising in health professions

July 2010 – National Law commences with consistent advertising regulation across professions

Regulation of healthcare advertising



Section 133 of the National Law

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 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 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.

Guidelines for advertising regulated health services

- Revised guidelines developed in 2014 by all National Boards – further clarity about requirements
- Guidelines due for review
- Perspectives from today and evaluation of strategy will inform review of guidelines



Responsible advertising in healthcare:
Keeping people safe



Aboriginal and Torres Strait Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optimetry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

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Advertising compliance and enforcement strategy

Principles of strategy

- Risk-based
- Targeted
- Proportionate
- Transparent
- Engaged



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Our approach to compliance and enforcement

Attitude to compliance

Have decided not to comply

Disengaged or don't want to comply

Try to comply, but not always successful

Willing to do the right thing

Fully compliant

Compliance and enforcement responses aim to support full voluntary compliance

Compliance and enforcement action we will take

Prosecution or Tribunal

Impose conditions on registration

Put on notice of non-compliance

Educate to support compliance

Engage to maintain awareness about obligations

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Examples of compliance action

Attitude to compliance

Have decided not to comply

Disengaged or don't want to comply

Try to comply, but not always successful

Willing to do the right thing

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New enforcement approach

- Educative letter indicating breach of requirements
- Follow up audit of compliance

→

New materials to support compliance

- Summary of requirements
- Examples of compliant and non-compliant advertising

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New online resources


Advertising resources

Publications and resources ▾


- Corporate publications +
- Advertising resources -**
- > The legislation, strategy and guidelines +
- > What consumers need to know +
- > What health practitioners and healthcare providers need to know +
- > Further information
- AHPRA FAQ and Fact Sheets
- Health Profession Agreements +
- Accreditation publications
- AHPRA newsletter +
- Procedures
- Legal Practice Notes
- Panel Decisions
- Court and Tribunal Decisions

Advertising


How can we help you?




Find out about the legislation and guidelines



What consumers need to know



What health practitioners and healthcare providers need to know



Further information on advertising and the National Law

Supporting the public to make informed choices

The National Registration and Accreditation Scheme (the National Scheme) has public safety at its heart.

To help the National Scheme protect the public the Health Practitioner Regulation National Law (the National Law) includes provisions about advertising regulated health services.


Supporting the public to make informed healthcare choices with the right information at the right time is extremely important and advertising can heavily influence a patient's decision-making around their healthcare needs.



Summary of advertising guidelines

1. Advertising must not be false, misleading or deceptive, or likely to be misleading or deceptive. Any claims made in advertising must be able to be substantiated.
2. When advertising offers a gift, discount or other inducement, it must be accompanied by the terms and conditions of the offer.
3. Advertising must not include testimonials about a service or business.
4. Advertising must not create an unreasonable expectation of beneficial treatment.
5. Advertising must not directly or indirectly encourage the indiscriminate or unnecessary use of regulated health services.
6. Advertising should not say a practitioner is a registered specialist if they are not or claim that they 'specialise' in treating a health condition.





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National Law: Summary of advertising obligations

The Australian public is entitled to receive good quality information about their healthcare services. Health practitioners, as trusted professionals, have regulatory obligations when advertising a regulated health service. These requirements are summarised below and do not replace the Guidelines for advertising regulated health services which should be read in full.

1. Advertising must not be false, misleading or deceptive, or likely to be misleading or deceptive. There are many ways advertisements can be false, misleading or deceptive. Common misleading advertising includes:
 - advertising that makes therapeutic claims that are not supported by acceptable evidence
 - advertising that lists health conditions a practitioner can 'assist with' or 'treat' but does not clearly specify what aspect of the health condition or associated symptoms the treatment will focus on or help (unqualified claims)
 - statements about the effectiveness of the treatment that are not supported by acceptable evidence and offer the treatment as an alternative to other treatment options (comparative statements), and/or
 - the misleading use of titles, in particular when specialist titles are used or words that imply a practitioner is a registered specialist when they are not.
2. Any claims made in advertising must be able to be substantiated. A practitioner must have acceptable evidence to support any claim made that their treatments benefit patients. What can be said in advertising is different to what might be said to a patient in practice. In practice a practitioner is able to give context so there is less risk of being misleading.
3. When advertising offers a gift, discount or other inducement, it must be accompanied by the terms and conditions of the offer.
4. Advertising must not include testimonials about a service or business. Testimonials are prohibited because they are personal opinions from former patients or clients recommending a health service or business. Testimonials often have no scientific or objective basis which can mislead consumers about clinical services or treatment options. They also may not be a balanced source of information. Advertisers are responsible for all testimonials (solicited or unsolicited) that are published within their control, such as those on their website.
5. Advertising must not create an unreasonable expectation of beneficial treatment. Advertising must not state or imply a treatment can help consumers in a way that may not be realistic or possible. Practitioners should be careful about using words such as 'cure', 'safe', 'effective' and 'treats'. Where a surgical (or an invasive) procedure is advertised directly to the public, an advertisement should include a clearly visible warning.
6. Advertising must not directly or indirectly encourage the indiscriminate or unnecessary use of regulated health services. Advertising must not encourage consumers to seek a treatment they do not need, such as saying for 'injured' consumers, need regular appointments just to stay healthy.
7. Advertising should not say a practitioner is a registered specialist if they are not or claim that they 'specialise' in treating a health condition. If a practitioner does not hold specialist registration (or endorsement) they may not use the title 'specialist', or through advertising or other means, present themselves to the public as holding specialist registration (or endorsement) in a health profession.

Check your advertising:

Examples of osteopathy advertising claims that are not compliant

June 2017

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 Osteopathy Board of Australia are sharing these examples to help you check your own advertising to ensure you comply with your obligations under the National Law.

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 for the osteopathy profession. 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.

The examples below are specific to osteopaths and are some of the most common mistakes we see. We have also published common examples on our website, which highlight advertising from various regulated health professions but are still important to help you make your advertising compliant.

Important information

Check if your advertising complies with legal requirements

There are many ways advertising 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](#).

If your advertising is about non-musculoskeletal conditions, be particularly careful!

There is no general agreement among osteopaths and other regulated health professions that osteopathy can effectively treat a range of non-musculoskeletal conditions.

While there is no extensive research evidence about the effectiveness of osteopathy treatment generally, the limited research evidence across manual therapies more broadly does not support osteopaths making claims they can effectively treat non-musculoskeletal conditions.

If advertising refers to a specific condition, it should be clear that the practitioner is treating the aspects of the condition relevant to their practice of osteopathy (e.g. for osteopaths, there should be a reference to treating the musculoskeletal aspects of the condition) and the role of the treatment should not be overstated.

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



Check your advertising examples

Examples of non-compliant advertising and how to correct it

These examples highlight non-compliant advertising by osteopaths and/or osteopathy related websites, social media sites such as Facebook, print advertisements and/or advertising by osteopaths or osteopathy clinics 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 content 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	Why it is non-compliant	Changes that would help this advertising to comply
<p>Osteopathy treatment can help with:</p> <ul style="list-style-type: none"> Back pain Neck pain Asthma Ear infections Behaviour disorders 	<p>This advertising is considered misleading and deceptive.</p> <p>Parts of this advertising are unqualified and/or are not supported by acceptable evidence and therefore may mislead consumers.</p>	<p>Osteopathy may be able to help manage symptoms often associated with asthma (e.g. muscular tension) rather than treating the condition itself. If this is made clear in your advertising that this is the case then you will be unlikely to mislead consumers.</p> <p>Behaviour and learning disorders are non-musculoskeletal conditions and have no clear musculoskeletal symptoms. They do not justify a reference to these conditions in advertising by an osteopath. This statement could be corrected to read:</p> <p>Osteopathic treatment can help with:</p> <ul style="list-style-type: none"> Back pain Neck pain Managing symptoms such as muscular tension often associated with asthma <p>Pay particular attention to:</p> <ul style="list-style-type: none"> the use of a list of health conditions in advertising as this is often misleading, and claims by osteopaths about treating non-musculoskeletal conditions are more likely to be misleading. It is often not appropriate to include them in your advertising.
<p>Are you pregnant?</p> <p>Osteopathy treatment can help with:</p> <ul style="list-style-type: none"> back pain other pregnancy related musculoskeletal pains morning sickness managing pain during labour and shorter labour times. 	<p>This advertising is considered misleading and deceptive.</p> <p>Parts of this advertising are not supported by acceptable evidence and therefore may mislead consumers.</p>	<p>In this advertising there are no clear links between osteopathy treatment and the causes of the non-musculoskeletal conditions listed.</p> <p>There is no clear evidence provided that osteopathy could effectively treat the conditions listed in red, therefore it's not appropriate to make claims about them in advertising. This statement could be corrected to read:</p> <p>Are you pregnant? Osteopathy treatment can help pregnant women with:</p> <ul style="list-style-type: none"> Back pain Other pregnancy related musculoskeletal pains <p>Pay particular attention to:</p> <ul style="list-style-type: none"> the use of a list of health conditions in advertising as this is often misleading, and claims by osteopaths about treating non-musculoskeletal conditions are more likely to be misleading. It is often not appropriate to include them in your advertising.

What's next? Delivering our strategy

- More work with consumers
- Approach to corporate entities
- Evaluation – qualitative and quantitative



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Our starting point

Transitioning Complaints

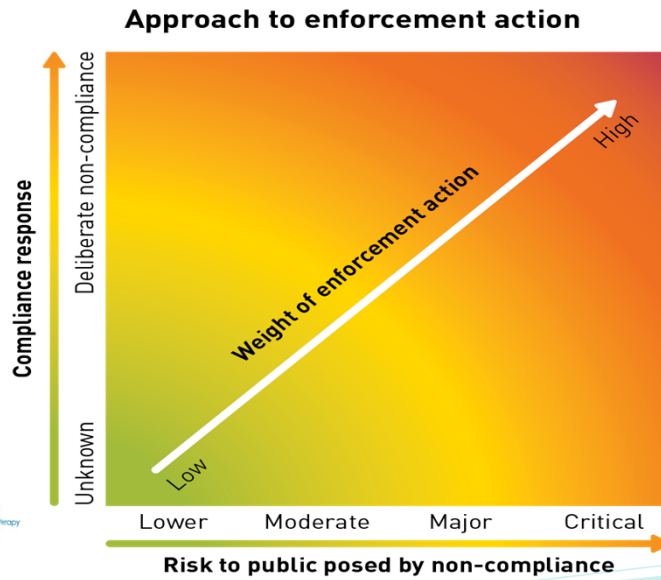
Profession	Count
Chinese Medicine Practitioner	38
Chiropractor	592
Dental Practitioner	106
Medical Practitioner	82
Nurse	10
Occupational Therapist	1
Optometrist	2
Osteopath	239
Pharmacist	3
Physiotherapist	307
Podiatrist	10
Psychologist	7
Total	1397

- Significant increase in ‘offence’ complaints about lower risk advertising
- Prosecution under Part 7 is resource intensive and - taking a risk-based approach - is not warranted in majority of cases. If we rely on prosecution alone only some individuals are impacted rather than whole profession
- New strategy of increased education / guidance resources + consequences for non-compliance

Range of enforcement tools we can use

- Investigate practitioner’s conduct
- Impose advertising conditions
- Take disciplinary action before panel or tribunal
- Prosecute advertiser

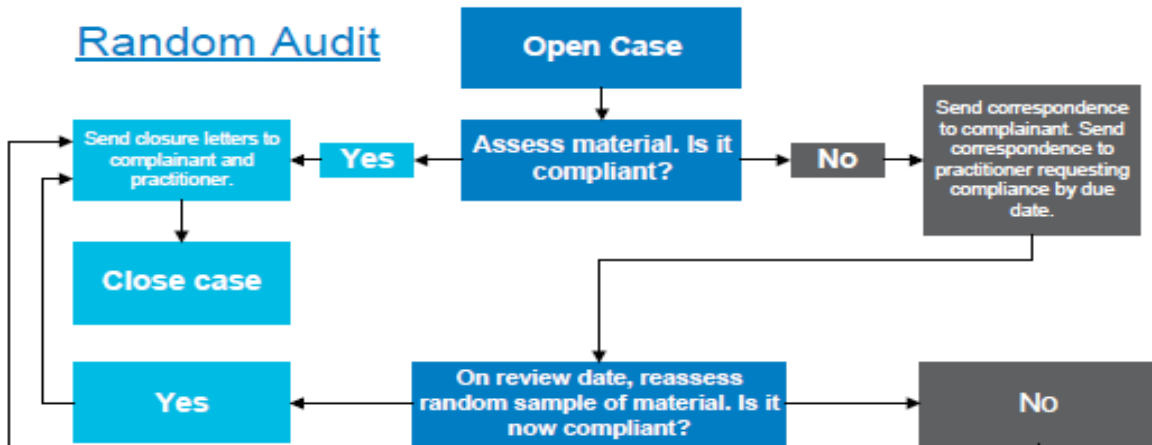
Escalating enforcement approach



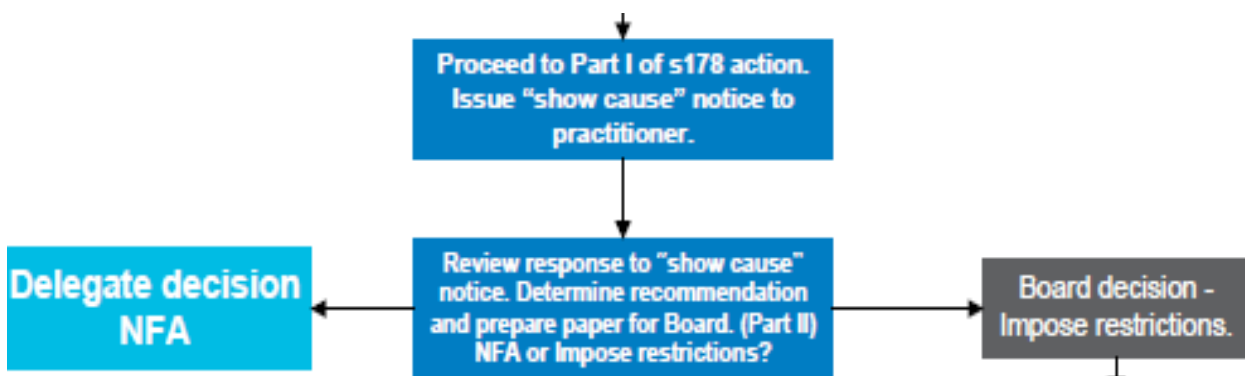
Implementation of strategy

- New dedicated Advertising Compliance Team
- Developed new correspondence
- Correspondence supported by new resources for advertisers and consumers

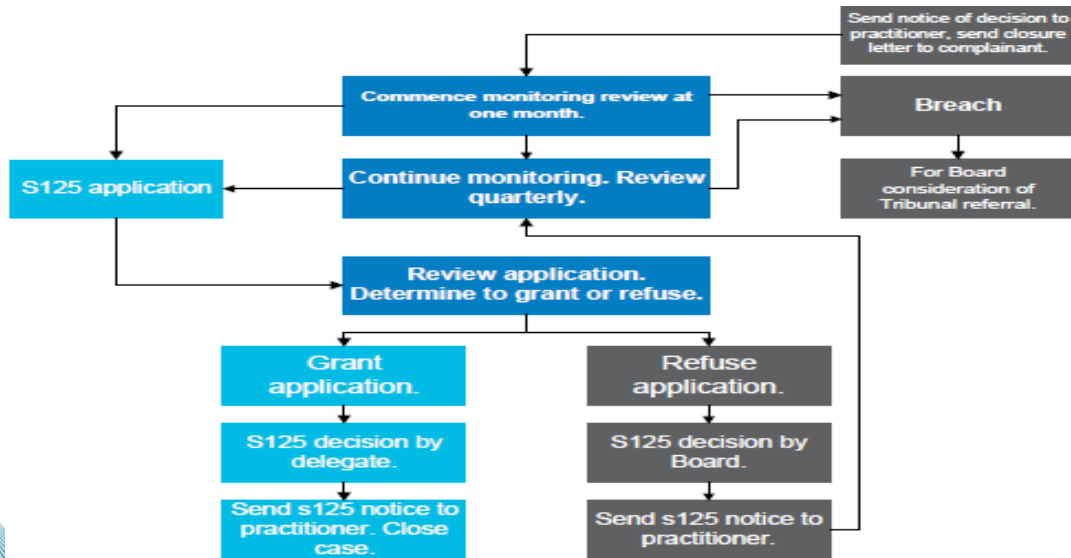
The strategy in action - assessment



The strategy in action – move to further action



The strategy in action - monitoring



Implementation of strategy – initial work

Total complaints	Complaints assessed	Letters sent	Compliant at assessment	Compliant at assessment (%)
1397	808	461	308	38.12

Evaluation of strategy

- Initial audits of advertising scheduled for mid-August
- Report on compliance rates and enforcement outcomes
- Data will allow analysis of how approach working, whether profession-specific differences