

Health insights

DENTAL INSIGHTS

Advertising: A timely reminder

Advertising compliance has been on the Australian Health Practitioner Regulation Agency's radar recently, with Meridian Lawyers assisting a number of health practitioners, including dental practitioners, in relation to notices of concern.



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Advertising restrictions – the legislation

Section 133 of the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law), prohibits advertising that (in connection with a regulated health service):

1. is false, misleading or deceptive or is likely to be so
2. offers a gift, discount or other inducement to attract a user of the health service without stating the terms and conditions of the offer
3. uses testimonials or purported testimonials
4. creates an unreasonable expectation of beneficial treatment, and/or
5. encourages the indiscriminate or unnecessary use of health services (see <http://www.dentalboard.gov.au/Codes-Guidelines/Policies-Codes-Guidelines/Guidelines-for-advertising-regulated-health-services.aspx>).

Examples of compliance issues

Some of the recently identified issues relate to:

- interactions with patients on social media, including reviews left by patients on a dental practice's Facebook page where the content of the review may qualify as a testimonial
- a practitioner who offered a free home whitening kit when the patient underwent a particular course of treatment
- 'two for the price of one' offers for dental services such as implants or crowns, particularly where the patient seeing the advertising has not yet been examined or treatment planned, and where the full terms and conditions of the offer are not fully and not prominently displayed with the offer
- the use of words, terms, or titles, which may indicate or which may be seen to indicate to the public, that a practitioner is a specialist practitioner in circumstances where the practitioner is not so qualified and/or endorsed.

AHPRA's website contains policies and guidelines that every health practitioner and every owner/operator of a registered health service should read and understand.

The advertising rules (and penalties) apply to anyone and any entity that advertises a regulated health service – whether that person or entity is a registered health practitioner or not.

The following AHPRA/Dental Board publications are relevant (see <http://www.dentalboard.gov.au/Codes-Guidelines/Policies-Codes-Guidelines.aspx>):

1. Social media policy
2. Guidelines for advertising regulated health services
3. Dental guidelines – Scope of practice registration standard

A breach of the advertising rules under the National Law is a criminal offence. AHPRA is at liberty to prosecute advertisers for such offences, which carry the risk of a criminal conviction and a penalty of up to \$5,000 for an individual and \$10,000 for a body corporate.

Protected titles – the legislation

Sections 118 and 119 of the National Law prohibit a person who is not a ‘specialist health practitioner’ from using such a title or from taking or using any title, name, symbol, word or description, which in the circumstances indicates or could reasonably be understood to indicate, to the public that the person is a specialist health practitioner or that the person is authorised or qualified to practice in a recognised specialty, or that the person is registered in an area in which he or she is not registered, or that a person holds an endorsement that he or she does not hold.

The above provisions apply equally to practitioners’ own advertising, as they do to other persons (or legal entities) that carry out advertising for registered health practitioners or services offered by registered health practitioners.

A contravention of sections 118 or 119 is considered ‘unprofessional conduct’ under the National Law, for which disciplinary action may be taken by the National Board, and in the case of a prosecution by AHPRA, these offences carry maximum penalties of \$30,000 for an individual and \$60,000 in the case of a body corporate.

Examples of compliance issues

Issues can frequently arise in connection with general dental practices that focus on orthodontic services. General dental practitioners and general dental practices in these circumstances must be very careful not to hold themselves out as specialist orthodontists or to use words, phrases, symbols or descriptions that might indicate this is the case.

AHPRA has taken issue with advertising (mostly on practice websites) containing phrases such as ‘specialising in orthodontics’ or ‘specialising in root canal therapy’. While these phrases do not expressly state that a practitioner is or may be a specialist orthodontist or endodontist (as the case may be), they may give rise to such an inference whether expressly or by implication.

In the case of general dental practices and general dental practitioners, it is recommended that the term specialist and all derivatives of that term (i.e. specialising in...; special focus on; areas of speciality or specialisation etc) be avoided.

Alternative phrases might include ‘focus on...’, ‘experienced in...’, ‘practice dedicated to...’.

In some cases, it will be appropriate for advertising to specifically state that the practice or the practitioner is not a registered specialist in his or her field.

Meridian Lawyers recently assisted a dental clinic practice that set up separate rooms in an old specialist medical centre and where AHPRA subsequently took issue with the words 'specialist centre' remaining on the building's outdoor signage after the specialist centre component of the tenancy had disbanded. The general dental clinic and the specialty medical practice had co-existed at the same premises, operating under different names and different businesses, for many years. But once the specialist medical practice ceased to operate from the premises, the issue arose whether it was appropriate for the front signage (which contained the historically relevant words 'specialist centre') to continue to remain on the building premises. The practitioner changed the signage to accommodate the concerns identified by AHPRA.

The current National Law has been operating for in excess of five years and registered health practitioners and operators of registered health practices are now well expected and required to know their obligations in connection with advertising rules and offences. The Board publishes guidelines and codes of conduct in relation to these matters, which are accessible and easy to read, and can be found at <http://www.dentalboard.gov.au/Codes-Guidelines.aspx>

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