

Health insights

Landmark advertising fine warns that the tiger has teeth

The Australian Health Practitioner Regulation Agency (AHPRA) celebrated an enforcement win in October this year, with the successful prosecution of a corporation for breaches of the advertising provisions under the Health Practitioner National Law 2009 (the 'National Law').

Wellness Enterprises Pty Limited was found guilty in respect of 17 charges relating to unlawful advertising, and fined \$127,500 in total by the Downing Centre Local Court in Sydney on 3 October 2017.

The impugned advertising promoted treatment for testosterone deficiency and was published by the corporation in newspapers between February and August 2017. It claimed that the benefits of treatment included "increased energy, focus, masculinity and strength, and ability to satisfy sexual partners"¹. AHPRA disputed these claims, "citing best available evidence"². The total penalty ordered by the court comprised fines of \$7,500 for each of the 17 separate charges and the corporation was ordered to pay costs, amounting to \$6,000.

Section 133 of the National Law prohibits persons from advertising a regulated health service in a manner that is false, misleading or deceptive, or likely to be so (among other things). The section specifically uses the word "person" in the subject line (as opposed to the phrase "a regulated health practitioner") and therefore applies to both natural persons and corporations alike, however this is the first time that AHPRA has actually successfully prosecuted a corporation for a breach of the provisions.

The legal win comes off the back of a significant push by the Agency to improve advertising compliance across the 14 health profession groups regulated by the National Law, and follows the publication of its "Advertising compliance and enforcement strategy for the National Scheme" document which was released in April this year. It sets out AHPRA's approach for achieving advertising compliance, including the intended framework for responding to issues and initiating enforcement action.



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While AHPRA has made it clear that advertiser attitude towards compliance will be a significant factor in determining what, if any, enforcement action is appropriate in the circumstances, the conviction of Wellness Enterprises Pty Limited ought to serve as a warning that it is not a toothless tiger. Prosecutions in this area may be relatively infrequent, but when they are pursued, the advertising provisions can have a nasty bite indeed.

MERIDIAN LAWYERS REGULARLY ASSISTS PRACTITIONERS REGARDING ADVERTISING COMPLIANCE ISSUES. THIS ARTICLE WAS WRITTEN BY PRINCIPAL KELLIE DELL'ORO AND ASSOCIATE ANNA MARTIN. PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS OR WOULD LIKE MORE INFORMATION.

¹ AHPRA media release “Australian-first with corporation fined \$127,500 for unlawful advertising”, dated 4 October 2017.

² Ibid.