

## Health Insights

# New and expanded AHPRA Advertising Guidelines: a welcome aid to compliance

Meridian Lawyers has published several Health Insights in the past about the importance of understanding and adhering to the advertising obligations set out under section 133 of the National Law. However, claims concerning advertising continue to be a recurring theme in our Health Law practice, indicating some persisting confusion about the boundaries of what is permitted.

At the end of last year, AHPRA and the National Boards published a revised set of advertising guidelines titled the 'Guidelines for Advertising a Regulated Health Service' (the 2020 Guidelines). The 2020 Guidelines aim to assist health practitioners and other relevant persons to better understand the way in which the National Law advertising provisions operate in practice, by expanding on guidance previously issued and equipping practitioners with concrete examples of real life advertising scenarios. Changes to the guidelines include:

- more content about testimonials, protected titles and claims about registration, competence and qualifications
- new content about the evidence required for claims about the effectiveness of a regulated health service and what is acceptable evidence
- re-structuring of content so that information is easier to find, and
- new flowcharts to help assess when advertising needs to be supported by acceptable evidence and whether a review is considered a testimonial<sup>1</sup>.

Meridian Lawyers actively encourages all health practitioners to take the time to review the new 2020 Guidelines which can be found [here](#). The injection of depth and breadth into the guidelines, represents the welcome evolution of an area of regulation which has been a notorious source of inadvertent non-compliance to date. Although a number of advertising compliance tools have been published by AHPRA over the past few years, the 2020 Guidelines consolidate the guidance into one resource and elaborate further on some of the more pervasive issues.

Of particular note is the addition of two new sub-headings directed specifically to the manner in which scientific evidence may or may not be used to substantiate claims about the effectiveness of a regulated health service.

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<sup>1</sup> <https://www.ahpra.gov.au/News/2020-11-17-Advertising-guidelines-and-strategy.aspx>, 17 November 2020.

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It has long been the case that persons who advertise a regulated health service must not advertise in a way that creates an unreasonable expectation of beneficial treatment by making claims which cannot be scientifically substantiated.<sup>2</sup> However, misunderstandings about the type and quality of scientific evidence required to sufficiently substantiate a claim about treatment have generated a string of AHPRA complaints and investigations in the past. The 2020 Guidelines provide much needed guidance on this issue, including statements such as the following:

- *Acceptable evidence mostly includes empirical data from formal research or systematic studies in the form of peer-reviewed publications<sup>3</sup>*
- *Primary sources of evidence should be used wherever possible. Advertisers should consult the AHPRA and National Boards' framework for assessing acceptable evidence for any claims made in their advertising. The framework is available on the [AHPRA website](#)<sup>4</sup>*
- *The evidence required to support a therapeutic claim will depend on the specific claim made in the advertisement. A well-conducted systematic review of relevant randomised controlled trials represents the highest level of evidence where it includes and identifies all studies on a given topic and the review is systematic, reproducible and representative of the totality of evidence. Where a systematic review is unavailable, it is important that all relevant sources of evidence are considered (i.e. the research is not 'cherry picked').<sup>5</sup>*

The 2020 Guidelines provide examples of evidence which generally will not be considered acceptable evidence for advertising claims, including studies involving no human subjects, before and after studies with few or no controls or anecdotal evidence based on observations in practice.<sup>6</sup>

By way of a reminder, a breach of the advertising obligations under section 133 of the National Law is an offence. Anyone advertising a regulated health service in contravention of the section may be prosecuted and ordered to pay fines ranging from \$5,000 penalty per offence (for an individual) or \$10,000 penalty per offence (for a body corporate). The availability of these severe penalties compounds the need for clear regulatory guidance in this area, to help health practitioners comply with their obligations. Hopefully, the 2020 Guidelines will go some way to achieving this.

**This article was written by Principal Kellie Dell'Oro and Associate Anna Martin. Please contact us if you have any questions or require further information.**

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<sup>2</sup> Section 133 (1)(d) of the National Law specifies that "a person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that creates an unreasonable expectation of beneficial treatment."

<sup>3</sup> Guidelines for advertising a regulated health service dated December 2020, paragraph 4.1.1.

<sup>4</sup> Ibid, paragraph 4.1.2.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

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