Further information on advertising therapeutic claims

04 October 2016

Introduction

The National Boards and AHPRA have developed additional information to help practitioners and others understand their obligations when advertising a regulated health service. This information does not replace the National Boards' *Guidelines for advertising regulated health services* which should be your first point of reference to understand your obligations.

This latest information aims to help practitioners and advertisers understand key things they need to know about advertising regulated health services, and how AHPRA and the National Boards assess whether there is acceptable evidence to support therapeutic claims.

Some additional information is provided about the use of scientific information and specific words in advertising, and examples of advertising cases heard by tribunals and advertising content which is unacceptable.

Advertising and the National Law

Section 133 of the National Law[1] regulates the advertising of regulated health services (a service provided by, or usually provided by, a health practitioner as defined in the National Law).

Section 133 provides that a person must not advertise regulated health services in a way that:

a. is false, misleading or deceptive or is likely to be misleading or 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.

Key things you need to know

- **The burden is on you** to substantiate any claim you make that your treatments benefit patients.
- **If you do not understand your advertising obligations**, then please refer to the information below and other explanatory information published by the Board. You may also wish to seek appropriate advice, for example, from your legal advisor.
- **AHPRA is responsible for prosecuting breaches** of the advertising requirements in the National Law. This means that AHPRA with National Boards needs to decide whether there has been a breach of your advertising obligations. As part of this process, we will use objective criteria to assess whether there is acceptable evidence to substantiate therapeutic claims in advertising. We will use appropriate experts to help us evaluate evidence where needed.
- **If you do not understand** whether the claims you have made can be substantiated based on acceptable evidence, then remove them from your advertising. These are serious matters that can have serious consequences for your professional standing and your criminal record: **if in doubt about a claim, leave it out of your advertising.**

[1] The Health Practitioner Regulation National Law, as in force in each state and territory.

Inappropriate claims of benefit

Registered practitioners must not advertise health benefits of their services when there is not acceptable evidence (see explanation below) that these benefits can be achieved.

Under the National Law, the evidence required for therapeutic claims in advertising and the evidence to be used in clinical decision-making about particular treatments is different. A higher standard of evidence is required to support claims made in advertising regulated health services. This is because in advertising, a statement may be easily misinterpreted or taken out of context and then become misleading. It is the overall impression created by the advertising that will be judged and, as such, it is possible for statements that are technically true to be misleading or deceptive in certain contexts.

The National Law bans advertising that creates an unreasonable expectation of beneficial treatment. The claims of beneficial treatment can range from unsubstantiated scientific claims through to miracle cures.

Advertising claims that are contrary to high level evidence are unacceptable.

You should make sure that any information you publish about your services is factual and verifiable.

1. You should only make justifiable claims about the quality or outcomes of your services in any information you provide to patients.
2. You should not make claims either directly to clients or in advertising or promotional materials about the efficacy of treatment or services you provide if those claims cannot be substantiated with acceptable evidence.
3. You must not use your possession of a particular qualification or membership to mislead or deceive clients or the public as to your competence in a field of practice or ability to provide treatment.

What is acceptable evidence?

AHPRA is responsible for prosecuting breaches of the advertising requirements in the National Law. This means that AHPRA, with National Boards, needs to decide objectively whether there has been a breach that should be prosecuted.

There are many aspects that are taken into consideration when evidence is reviewed and each claim is assessed on its merits alongside the evidence presented to support it.

Relevant issues we consider when assessing whether there is acceptable evidence for therapeutic claims include:

- Is the evidence relied on objective and based on accepted principles of good research? Is the evidence from a reputable source? E.g. a peer reviewed journal
- Do the studies used provide clear evidence for the therapeutic claims made or are they one of a number of possible explanations for treatment outcomes?
- Have the results of the study been replicated? Results consistent across multiple studies, replicated on independent populations, are more likely to be sound.
- Has the evidence been contradicted by more objective, higher quality studies? This type of evidence is not acceptable.

When considering whether advertising claims are misleading or deceptive or create an unreasonable expectation of beneficial treatment, we will consider the advertising as a whole from the perspective of a member of the public.

The following types of studies will generally not be considered acceptable evidence for advertising claims:

- studies involving no human subjects
- before and after studies with little or no control or reference group
- self-assessment studies
- anecdotal evidence based on observations in practice
- outcome studies or audits, unless bias or other factors that may influence the results are carefully controlled, and/or
- studies that are not generalisable to the advertising audience.

The evidence base for clinical practice is constantly developing so it is important to make sure that the evidence you rely on is current.

Scientific information in advertising

Practitioners must take care to not mislead or create false impressions when using scientific information in advertising. Practitioners who include scientific information in advertising must ensure that the information is presented in a manner that is accurate, balanced and not misleading and use wording that is understood readily by the target audience.

The advertising must clearly identify the relevant researchers, sponsors and the academic publication in which the source scientific information or results appear, and be from a reputable (e.g. peer reviewed) and verifiable source.

Use of specific words in advertising

Some words have more potential to mislead or deceive when used in advertising, so it is important to consider their use very carefully.

1. The word ‘cure’. The unqualified use of the word ‘cure’ could breach section 133 unless there is acceptable evidence that a health service cures a condition. It is often not possible to establish a causal connection between providing a health service and subsequent patient improvement. This is because not all improvement in a condition can necessarily be attributed to treatment, there are many intervening factors, relapses frequently occur and the response to treatment varies considerably from individual to individual. Wording about the potential to reduce the severity of symptoms is often safer, such as ‘I cannot cure arthritis but I may be able to reduce the severity of the symptoms’.
2. The words ‘can help/ improve/treat’ or ‘effectively treats’. When there is acceptable evidence that a health service can help certain conditions, it may be reasonable to state something like ‘x treatment or x approach can help/improve these conditions’. When there is limited or inconclusive evidence that treatment can help certain conditions, it is unacceptable to claim or suggest that it can help/ improve or treat those conditions. In these cases, it can still be misleading to state that treatment or a particular approach may/might help or improve certain conditions unless the advertisement is clear about the limited or inconclusive evidence.
3. The word ‘safe’. When a treatment is generally considered safe based on acceptable evidence, it may be reasonable to use wording like ‘x treatment is generally considered to be safe but occasionally may be associated with possible adverse reactions in individual cases’. It is potentially misleading to state that treatment or a particular approach is safe without also acknowledging that all forms of treatment have the potential for adverse reactions.
4. The word ‘effective’. When there is acceptable evidence that a health service can help certain conditions, it is acceptable to state something like ‘x treatment or approach has been shown to be effective for the treatment of these conditions’. When there is limited or inconclusive evidence that treatment has been shown to be effective in the management of certain conditions, it may be reasonable to state something like ‘there is mixed and/or inconclusive evidence about whether x treatment or approach may be effective in the management of certain conditions’.

Examples of advertising cases heard by tribunals

A number of registered health practitioners have been the subject of tribunal findings about breaches of advertising requirements.

Examples include:

In Medical Board of Australia v Lai [2011] VCAT 1754, the Victorian Civil and Administrative Tribunal found that Dr Lai had engaged in unprofessional conduct in his advertising of chelation therapy, by creating an unreasonable expectation of beneficial treatment by making unqualified claims about the benefits of chelation therapy and by failing to state in the advertisement that the effectiveness of chelation therapy has not been established by peer-reviewed scientific research to have the benefits claimed.

In Chiropractic Board of Australia v Hooper [2013] VCAT 878, the Victorian Civil and Administrative Tribunal found that Dr Hooper’s claims on his website about hyperbaric oxygen treatment were misleading and deceptive because he did not present a balanced view about the effectiveness of hyperbaric oxygen treatment for specified conditions, including that such treatment was not conventionally used in Australia

and in western countries with a comparable health service culture and was not supported by medical and scientific evidence.

In Chiropractors Registration Board v Yil Yildirim [VR86 of 2007], the State Administrative Tribunal (SAT) in Western Australia found (by consent) that Mr Yildirim was guilty of misconduct for, among other things, misleading advertising material provided to the patient stating that chiropractic services offered by him 'saved lives', which were unnecessary and capable of being misinterpreted.

In Medical Board of Australia v William Barnes [VR107 of 2013] the SAT in Western Australia found, by consent, that Mr Barnes had advertised and promoted medical services or caused or permitted medical services to be advertised on a website maintained on the internet that stated, represented or implied that the treatment could cure cancer; there was no sound scientific basis upon which Mr Barnes could truthfully represent to patients the claim that the treatment could cure cancer; and the advertisement caused his patients, prospective patients and members of the public to be misled by the false representations, giving risk that patients may delay effective treatment of cancer, refuse to undergo or receive effective treatment of cancer, and/or incur expense, discomfort and inconvenience in order to obtain the treatment. Mr Barnes was fined $25,000 and conditions imposed on his registration.

In Psychologists Board of Western Australia v Gregory Damato [VR79 of 2010] the SAT in Western Australia found, by consent, the practitioner guilty of improper conduct in relation to advertised services on the website www.quantumenergywellness.com on which he advertised his services as a psychologist: - (a) an advertisement involving the use of SCIO machine or Ultrahealth Pty Ltd - Biofeedback System in connection with mental health conditions; and (b) advertised that his specialty areas included '... depression, ... ADHD and autism'. The SAT found that claims (a) and (b) were likely to bring the profession into disrepute and claim (b) was misleading in that the practitioner did not have training sufficient to claim that those areas were specialty areas. Mr Damato was reprimanded and had conditions imposed on his registration.

Examples of unacceptable advertising of regulated health services

Section of the National Law	Examples of unacceptable statements in advertising	Why are the statements unacceptable
s133(1)(a) - misleading and deceptive advertising	Research shows that our care helps to relieve back pain for up to 85% of pregnant women. And now it can't be disputed. Our care works and now we know why it's better than pain-killing drugs with side effects.	This statement is not supported by acceptable evidence and may mislead consumers to believe that a health service is more effective than stated. This is a comparative advertising statement. Advertising services must not mislead, either directly, or by implication, or by use of emphasis, comparison, contrast or omission.
s133(1)(b) – offers and gift, discounts or inducement without terms and conditions	As an incentive to my existing patients to introduce their friends and family to our work, I am offering a $20 discount on the first visit! Just fill in forms on our new website, present forms to reception and get a $20 discount!	The offer is not accompanied by any terms and conditions and does not contain information about all costs involved and out of pocket expenses or variables to the advertised price.
s133(1)(c) uses testimonials or purported testimonials	Best health practitioner south of the Dividing Range. I'm more comfortable in a few months of my health practitioner's treatment than any others in the last four years.	Testimonials or purported testimonials are prohibited under the National Law when advertising regulated health services.

s133(1)(d) - creates an unreasonable expectation of beneficial treatment	Our care can cure cancer.	There is no acceptable evidence that supports this statement. It is both misleading and deceptive and may create an unreasonable expectation of beneficial treatment to a consumer.
s133(1)(e) - directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services	For optimal results prevention of recurrence is the key. These sessions are referred to as Tune-up sessions... Tune ups - Every 4th Appointment is Half Price. Our care is one of the things you can do to ensure you are as healthy and as active for as long as you can be.	These offers may lead people to buy or undergo a regulated health service that they do not need.

Further information

- Guidelines for advertising regulated health services.