

Frequently asked questions

May 2016

Advertising for chiropractors

Introduction

Section 133 of the Health Practitioner Regulation National Law as in force in each state and territory (the National Law) contains specific provisions about prohibited advertising and penalties for breaches of these provisions. The purpose of the National Law and its related guidelines is to protect the public.

The *Guidelines for advertising of regulated health services* (advertising guidelines) give guidance about how the Chiropractic Board of Australia (the Board) may interpret and apply section 133 of the National Law.

The Board states in the [advertising guidelines](#) that it will take into account all the relevant facts and circumstances for each individual case. Chiropractors have an obligation to be familiar with the guidelines and meet the Board's requirements as set out in the advertising guidelines.

These Frequently asked questions (FAQ) provide information to help chiropractors to understand the advertising requirements under the National Law.

What advertising is regulated by the National Law?

The National Law regulates the advertising of regulated health services, meaning services provided by or usually provided by a registered health practitioner.

What is meant by advertising?

Advertising is the practice of drawing attention to a health practitioner's services. The ways in which this can be achieved are almost limitless and include all forms of printed and electronic media. These include:

- any public communication using television, radio, motion pictures, newspapers, billboards, books, lists, pictorial representations, designs, mobile communications or other displays
- professional websites, the internet or directories, and
- business cards, announcement cards, office signs, letterhead, telephone directory listings, professional lists, professional directory listings and similar professional notices.

Because the focus is on the promotional quality of advertising, it also includes situations in which registered health practitioners give information for media reports, magazine articles or advertorials, including where they make comment or provide information on particular products or services, or about other health practitioners.

What is acceptable advertising?

The Board's advertising guidelines offer details and examples of acceptable advertising. Your advertising must not:

- be false, misleading or deceptive, or likely to be misleading or deceptive
- offer a gift, discount or other inducement, unless the terms and conditions of the offer are also stated
- use testimonials or purported testimonials about the service or business
- create an unreasonable expectation of beneficial treatment, or
- directly or indirectly encourage the indiscriminate or unnecessary use of regulated health services.

See clause 6 of the Board's [Guidelines for advertising of regulated health services](#).

What does false, misleading or deceptive mean?

Advertising that is false, misleading or deceptive, or advertising that is likely to be misleading or deceptive, is prohibited under section 133 of the National Law. Misleading someone may include lying to them, leading them to a wrong conclusion, creating a false impression, leaving out (or hiding) important information, and/or making false or inaccurate claims.

The ways in which advertising can be false, misleading or deceptive are almost limitless. It is the overall impression of the advertising that is to be judged and, as such, it is possible for statements that are technically true to be misleading or deceptive in certain contexts.

See clause 6.2.1 of the Board's [Guidelines for advertising of regulated health services](#).

How can I make sure that my advertising does not contravene section 133?

Given your clinical expertise, education and continuing professional development (CPD) as a registered health practitioner, you are well placed to understand whether your advertising gives a fair and correct impression of the services that you offer.

When preparing or reviewing advertising, you should make sure that you:

- remain mindful that your audience does not have this professional background or expertise
- are honest and sell your services on their merits, and
- look at the overall impression of their advertisements, rather than whether each individual statement is correct.

Claims that particular services or products may help with the treatment of illnesses, diseases or conditions must be factual, honest, correct and verifiable. If called on, you must be able to support the claim and prove that it is true.

As the Board explained in its 7 March 2016 [Statement on advertising](#) (7 March 2016), advertising claims that contradict high level evidence are unacceptable. High level evidence will usually take the form of meta-analyses, systematic reviews or one or more high quality and well respected and acknowledged studies.

If you have a concern that your advertising may be misleading, you should remove it at once and seek guidance from your professional association, insurer or a private legal practitioner.

When does advertising create an unreasonable expectation of beneficial treatment?

Unreasonable claims of beneficial treatment can range from unsupported claims about therapeutic benefit, through to miracle cures. Many misleading claims will also create an unreasonable expectation of beneficial treatment.

See clause 6.2.4 of the Board's [Guidelines for advertising of regulated health services](#).

What is unacceptable advertising?

Advertising of services must not create or be likely to create unwarranted and unrealistic expectations about the effectiveness of the health services advertised. Advertising must not encourage inappropriate, unnecessary or excessive use of health services. It must not exploit a lack of knowledge by patients or clients or contain any information or material that is likely to make them believe their health or wellbeing may suffer from not accessing the health service.

Advertising must not contain any claim or implication that the treatment is infallible, unailing or a certain guaranteed sure cure or that the results of the health service are always effective.

What is a testimonial?

A testimonial is a recommendation or statement about the clinical aspects of a regulated health service. Depending on the context, it may include case studies and anecdotes.

Client testimonials are personal opinions from former clients and have no scientific or objective basis as a recommendation of a health practitioner's services. This is because:

- the client is not an expert and is not in a position to make an objective statement on the clinical aspects of their experience, and
- the outcomes experienced do not necessarily reflect outcomes available to all consumers, and the testimonial is therefore likely to mislead.

What is a purported testimonial?

A purported testimonial is a testimonial that is not, in fact, written by a real client or does not accurately reflect their experiences. A purported testimonial is simply a fake testimonial. The use of fake testimonials is dishonest and is a matter that may be considered by the Board or Council and constitutes a criminal offence.

May I use client testimonials in my advertisements?

No. Section 133 of the National Law prohibits the use of testimonials or purported testimonials in advertising in all cases.

See clause 6.2.3 of the Board's [Guidelines for advertising of regulated health services](#).

Which qualifications and titles can I advertise?

Your professional qualifications should be clearly stated in advertising. Your credentials and experience in a particular field should be accurate and clear to the public.

Section 117 of the National Law prohibits a practitioner from knowingly or recklessly taking or using any title that could be reasonably understood to create a belief that the practitioner is registered in a health profession or a division of a health profession in which the practitioner is not registered.

Use of titles such as 'neurology' and 'paediatrics' to describe the skill set of a chiropractor is likely to breach this provision of the National Law and may also be misleading and deceptive.

If you hold post graduate qualifications, or have specific experience it would be acceptable for you to advertise that in an accurate and factual manner, for example, 'Master of Chiropractic', or 'ten years experience working at clinic XY'.

Can I advertise other qualifications or memberships?

Advertising qualifications or memberships may be useful in providing the public with information about experience and ability to help consumers make informed decisions about accessing chiropractic

services. You must make sure that any information included in advertising is not misleading and does not imply that you are more skilled or have greater experience than is the case.

Who can use the title 'specialist'?

There are no recognised specialties for chiropractors. You must not use the term 'specialist' in any advertising because of the likelihood that such advertising would mislead or deceive the general public about your chiropractic skills, qualifications and experience.

Who can use the term Dr?

If you choose to adopt the title 'Dr' in your advertising and you are not a registered medical practitioner, then (whether or not you hold a Doctorate degree or PhD) you should make it clear that you do not hold registration as a medical practitioner. For example, by including a reference to your health profession whenever the title is used, such as: 'Dr John Citizen (chiropractor)'. This is particularly important where the services offered by chiropractors extend into dietary or lifestyle advice.

Am I able to offer discounts in my advertising?

The use of gifts or discounts in advertising is inappropriate and is not supported by the Board, as potentially such inducements encourage the unnecessary use of regulated health services. If you, or any other person advertising a regulated health service, use a discount, gift or any other inducement to attract patients or clients to a service, the offer must be truthful, and the full terms and conditions of that offer must be set out clearly in the advertisement.

See clause 6.2.2 of the Board's [Guidelines for advertising of regulated health services](#).

What are the consequences if my advertising does not follow the National Law and the Advertising Guidelines?

As a chiropractor you have ethical and legal responsibilities to provide the public with clear and correct information about the availability of health services.

In determining whether an advertisement is misleading, whether it creates an unreasonable expectation of beneficial treatment, or encourages (directly or indirectly) the indiscriminate or unnecessary use of regulated health services or medicines.

The Board and Australian Health Practitioner Regulation Agency (AHPRA) will consider the overall impression of the advertisement. AHPRA considers what conclusions a member of the public could make from the material contained in an advertisement and whether it is likely to mislead or deceive.

In the first instance, you will receive correspondence from AHPRA which will give you the opportunity to amend your advertising. You should review all of your advertising to make sure it complies with the National Law.

A breach of section 133 of the National Law is a criminal offence which may be prosecuted in the magistrates or local court. The court may impose a penalty including a fine of up to \$5,000 per offence in the case of an individual and up to \$10,000 per offence for a corporation. AHPRA may prosecute serious breaches of the advertising requirements of the National Law.

Failure by a chiropractor to follow the advertising guidelines can be investigated by the Board or Council. Breaching advertising guidelines may constitute unprofessional conduct and/or professional misconduct, and be dealt with by the Board through the disciplinary actions available under the National Law.

When a practitioner is advertising regulated health services and is found to have engaged in unprofessional conduct and/or professional misconduct, there are actions that may be made by the Board or Council under the National Law. These include, cautioning or reprimanding the practitioner and imposing conditions on their registration. In cases involving professional misconduct, the matter

will be referred to the relevant tribunal which may also suspend or cancel the practitioner's registration.

What if something is printed with my name attached and I was not aware of its contents?

You are responsible for the advertising that you publish or that is within your control.

Will AHPRA or the Board check advertisements for chiropractors before publication?

No. AHPRA and the Board cannot give advice or an opinion about advertising and cannot 'vet' or pre-approve advertisements for compliance with the National Law and the advertising guidelines. If you are in doubt about whether your advertisement might be in breach of the National Law, you should seek your own advice (e.g. from professional associations, insurers or lawyers) before placing the advertisement.

For more information

- Visit the [Chiropractic Board of Australia](#) website.
- Visit the [AHPRA website](#).