

Message from the Chair

The Osteopathy Board of Australia (the Board), in conjunction with the other National Boards, has released four new or updated documents. These documents set out more clearly what osteopaths need to do to comply with the National Law¹ in their practice and when they communicate with the public through **advertising** and **social media**. They are:

- updated *Guidelines for advertising regulated health services (Advertising guidelines)*
- revised *Guidelines for mandatory notifications*
- revised *Code of conduct*, and
- new *Social media policy*.

Please read these documents on the Board's [website](#). They will help you comply with the National Law. Reading and understanding this information can count towards your continuing professional development (CPD) as one of the mandatory topics – see the [CPD guidelines](#) for further details.

After questions were raised by practitioners and members of the community, the National Boards recently updated the *Advertising guidelines* to make the wording on testimonials clearer. In short:

- the National Law ban on testimonials only applies when a regulated health service is being advertised
- practitioners are only held accountable for advertising they control, and are not responsible for removing (or trying to have removed) testimonials published on a website or in social media over which they do not have control, and
- the National Law does not interfere with consumers' rights to discuss health treatments or share their stories on information-sharing websites that are not used to advertise a regulated health service.

This newsletter covers some, but not all, aspects of the guidelines as well as some of the terms that it is important to be familiar with, and explains how they are linked. We also encourage you to read the *Advertising FAQ* for further explanation. As new information is published, we will update you.

Complaints and how to avoid them

From time to time complaints are made about practitioners' advertising and conduct. Complaints can come from other

health professionals, consumers or stakeholder groups, or the Board (on its own motion).

The Board recognises that the fast-changing social media landscape and the current advertising laws may be complex for a busy practice.

It is against the law to mislead the public about what osteopaths can competently do and the benefits of osteopathic treatment – so it's important that you read the guidelines and understand your obligations under the National Law.

We urge you to check that you comply with the National Law and consider this when you are advertising, including advertising via social media.

Robert Fendall

Chair, Osteopathy Board of Australia

Advertising under the National Law: new guidelines now in effect

On May 20, the Board (along with the other National Boards) published an update to the *Advertising guidelines* (originally published in March) in response to feedback received. Boards reviewed the guidelines to make them clearer, particularly about the use of testimonials in advertising.

The guidelines published in May did **not** add new obligations.

The National Law expressly prohibits certain sorts of advertising, including:

- false or misleading advertising
- offering gifts, discounts or inducements without disclosure of terms and conditions
- using testimonials
- creating an unreasonable expectation of beneficial treatment, and
- encouraging the indiscriminate or unnecessary use of health services.

For example, the guidelines set out that advertising by you or on your behalf may contravene the National Law when it:

- creates an unreasonable expectation (such as by exaggerating or by providing incomplete or biased information) of recovery time
- fails to disclose the health risks associated with a treatment

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

- contains any inappropriate or unnecessary information or material that is likely to make a person believe their health or wellbeing may suffer from not taking or undertaking the health service, and/or
- contains a claim, statement or implication that is likely to create an unreasonable expectation of beneficial treatment by:
 - > either expressly, or by omission, indicating that the treatment is infallible, unfailing, magical, miraculous or a certain, guaranteed or sure cure, and/or
 - > a practitioner has an exclusive or unique skill or remedy, or that a product is 'exclusive' or contains a 'secret ingredient' that will benefit the patient.

When a practitioner has been advised by the Australian Health Practitioner Regulation Agency (AHPRA) that it considers any advertising to contravene the National Law (on behalf of the Board), the Board expects the practitioner to take reasonable steps to ensure the advertising is changed to comply with the law.

Use of social media and advertising and testimonials

Use of testimonials in advertising by practitioners is prohibited by the National Law. A testimonial involves recommendations or positive statements about clinical care. There is a clear difference between advertising, which requires an advertiser's **intent to promote** a health service, and unsolicited online comment which does not involve the same intent.

Questions which commonly come up about social media and advertising include:

'What if a patient or client posts a comment about my practice/services on my social media page?' or 'If a member of the community wishes to discuss their experiences about me as their health practitioner online, am I in breach of the guidelines?'

If you are using social media to **advertise** regulated health services, then you need to remove any testimonial that is part of your advertising.

If you are not using social media to advertise, then comments made by others are not advertising and therefore are not regulated by the National Law.

If a patient posts something about your practice/services that could be seen to be promoting you and your services on a page you don't control, you should not share or re-tweet the comment to promote a regulated health service on your own page, as this could be considered advertising. But you are not responsible for other people's use of social media that you don't control.

A person can discuss their experiences, including on social media. The *Advertising guidelines* and *Social media policy* are

not intended to interfere with individuals' rights to express themselves outside advertising.

However, testimonials about a regulated health service published by a practitioner as part of advertising on their website or on their or their business's Facebook page would breach the National Law. The person making the testimonial would not be in breach of the National Law, but the practitioner or health service who publishes the testimonials is likely to be.

Breaches of the Advertising guidelines

Anyone who advertises a regulated health service is responsible for ensuring that their advertising (including websites and social media) meets the requirements in the National Law.

The guidelines do not require practitioners to try to remove unsolicited testimonials on websites or in social media over which they have **no control**.

If you have inadvertently breached the advertising requirements, you should address the problem as soon as possible, especially if you have received a first warning letter from AHPRA or the Board. After a non-compliant advertisement or website has been fixed or removed, the Board is unlikely to take further action. If you do not address the issues, the Board or AHPRA may remain involved, including by taking action against you.

The role of the National Boards and AHPRA is to protect the public. Anyone with concerns about a health practitioner, including advertising that appears to contravene the National Law, should raise their concern with AHPRA. AHPRA will act on apparent breaches of advertising requirements and will refer matters to the relevant National Board when necessary.

Having a personal presence and a professional presence online

There is clearly a line between a personal presence in social media and a professional one. It is important to remember that:

- all aspects of a health practitioner's presence online must conform with the *Code of conduct*. So if any comments or aspects of your practice are mentioned in your personal websites, you must take care that they also comply with the National Law and the code, and
- once laid down, a digital footprint is hard to erase and may be there forever. All registered health professionals are expected to comply with high standards of behaviour and decorum which protect the public and reflect their responsibilities given the high level of trust placed in them. Therefore, even in your *personal* online presence, you should be aware and conscious of the standards you need to maintain.

Code of conduct

As a registered osteopath, you have a duty to make the care of patients or clients your first concern and to practise safely, competently and effectively. Maintaining a high level of professional competence and conduct is essential for good care. Underpinning the *Code of conduct* is the assumption that you will exercise your professional judgement to deliver the best possible outcome for your patients.

The revised code states that you should:

- provide treatment options based on the best available evidence
- practise in accordance with the current and accepted evidence base of the health profession, including clinical outcomes
- ensure that you maintain adequate knowledge and skills to provide safe and effective care
- when moving into any area of practice, ensure that you have undertaken sufficient training and/or qualifications to achieve competency in that area
- practise patient/client-centred care
- consider the balance of benefit and harm in all clinical management decisions, and
- keep your skills and knowledge up to date, and refine and develop your clinical judgment as you gain experience.

Some of the associated topics referred to in the *Code of conduct* are outlined further in the sections below.

Title protection

Under the National Law, all osteopaths must be registered if they are to use the title 'osteopath'. This is regardless of the techniques that they use, and it extends to those working in academia or domains which are explicitly non-clinical. 'Title protection' is different from a 'practice protection' or restricted practice such as spinal manipulation.² All National Boards have provided advice to practitioners on '[Who needs to be registered](#)'.

In Australia, the professional associations may have a role in developing special interest groups relating to practice, and you may be aware of these ongoing discussions within an osteopathy association. However, registered osteopaths cannot call themselves 'specialists' or state that they 'specialise' in a treatment or type of clientele as this is a breach of the National Law. Osteopathy does not have specialist registration.

For example, although a practitioner may have years of experience in a particular field of practice, unless they

hold specialist qualifications that are recognised under the National Law they cannot give the impression that they are a specialist in a particular field where there is no specialist recognition. Words such as 'experienced in' or 'working primarily in' are less likely to be misunderstood as a reference to endorsement or specialist registration.

The law allows for penalties for falsely using protected titles or holding yourself out to be a registered practitioner when you are not. The first prosecution of an offence under the National Law has resulted in a [guilty verdict](#) and the accused person ordered to pay fines totalling \$20,000.

Scope of practice – as used by the Board

The Board's *Code of conduct* states that 'practitioners have a responsibility to recognise and work within the limits of their competence and scope of practice'. All osteopaths should work within their scope of practice which is 'the professional role and services that an individual health practitioner is educated and competent to perform'.

You should always consider carefully whether you have the appropriate qualifications and experience to provide specific types of care.

You should also ensure that you maintain adequate knowledge and skills to provide low risk and effective care and have completed sufficient relevant training and/or qualifications to be competent when moving into **any** area of practice. The Board expects you to reflect on your training and experience and decide whether or not you are qualified to make a diagnosis. If you consider that you may not be competent, you are placing the public at risk, and should not undertake that activity until you have done appropriate training or reskilling in relation to that activity.

If you include information about your scope of practice in your advertising, you should take care that the statements are accurate and evidence-based.

Evidence-based practice

All health practice by a registered health professional should have a sound, evidence-based clinical rationale.

The use of an evidence-based approach is universally agreed as the most appropriate model for the contemporary practice of a health profession. Evidence-based practice (EBP) is also known as evidence-informed practice, evidence-based treatment, evidence-based healthcare, and even evidence-influenced practice. Regardless of the name, the term is important for clinical decision-making by osteopaths. EBP integrates three elements:

1. the best available research evidence
2. the clinical experience and expertise of the practitioner, and
3. the patient's values and expectations.

² In Australia, there are only three restricted practices in the National Law, including manipulation of the cervical spine, restricted dental acts and prescription of optical appliances.

Not all evidence is equal, and some types of evidence are considered more reliable than others. The most reliable form of evidence is considered to be up to date, high quality, and peer reviewed in reputable journals. Individual studies may be misleading, and insufficient evidence to justify a clinical practice.

You should not advertise treatments or make claims for treatments unless there is an evidence base to justify what you say.

The Board provides clear guidance throughout its codes and guidelines by directing practitioners towards an evidence-based approach. Non-compliance could result in a complaint against you for advertising offences. Under section 133 of the National Law, you 'must not advertise a health service in a way that is false, misleading or deceptive or creates an unreasonable expectation of beneficial treatment'.

You also need to amend statements in your advertising that could give the impression that your clinical practice is more effective or safer than treatments by other health professionals. Claims to be able to cure or relieve conditions will always be open to challenge in the absence of strong evidence. Check that evidence used in advertisements is the best available and is not misleading and/or complex to the lay person.

Advertising checklist

The Board expects you to check your websites and leaflets to ensure that they comply with the National Law, *Code of conduct*, *Advertising guidelines* and *Social media policy*, and ask:

- Are any claims I make factual and verifiable?
- Is there any content in my advertising that could be misleading?
- Am I well qualified in the areas of practice that I offer and promote?
- Do I only claim treatment capacity for techniques that I am trained and competent to perform?
- Do I only make claims for effective treatment where this can be verified by good quality research evidence?
- Do I exercise caution when providing scientific information because members of the public may have a limited understanding of that information? If I provide this information, is it clear and easy to understand?
- Do I make appropriate claims and uphold these standards whether in a clinical setting, in my advertising or online?

What if I'm still not sure?

If you are not sure whether your advertising content complies with the National Law and the Board's guidelines, you may want to talk to a lawyer who is experienced in this field. Consulting with colleagues or professional associations may also be helpful. The Board or AHPRA are unable to provide advice or approval of specific advertisements.

The Board will release guidelines and fact sheets from time to time, and you should check the Board's website regularly to keep informed of developments and your advertising obligations.

Contact the Board

- Visit www.osteopathyboard.gov.au for the mandatory registration standards, codes, guidelines and FAQ. Visiting the website regularly is the best way to stay in touch with news and updates from the Board.
- Lodge an enquiry form via the website by following the [Enquiries](#) link on every web page under *Contact us*.
- For registration enquiries, call the Australian Health Practitioner Regulation Agency (AHPRA) on 1300 419 495 (from within Australia) or +61 3 8708 9001 (for overseas callers).
- To update your contact details for important registration renewal emails and other Board updates, go to the AHPRA website: [Update contact details](#).
- Address mail correspondence to: Robert Fendall, Chair, Osteopathy Board of Australia, GPO Box 9958, Melbourne, VIC 3001.

