

26 November 2019

By email: AHPRA.consultation@ahpra.gov.au

Avant Mutual Group Limited
ABN 58 123 154 898

Registered office
Level 6, Darling Park 3
201 Sussex Street, Sydney NSW 2000

Postal address
PO Box 746 Queen Victoria Building
Sydney NSW 1230

DX 11583 Sydney Downtown
avant.org.au

Telephone 02 9260 9000 **Fax** 02 9261 2921
Freecall 1800 128 268 **Freefax** 1800 228 268

Consultation - Guidelines for advertising a regulated health service

Avant is Australia's largest medical defence organisation, providing professional indemnity insurance and legal advice and assistance to more than 76,500 healthcare practitioners and students around Australia. This includes legal and risk management advice regarding the advertising of regulated health services.

Thank you for the opportunity to provide input into AHPRA's consultation on the revised guidelines for advertising a regulated health service.

1. How clear are the revised guidelines?

Overall, the revised guidelines are adequately clear and are more user-friendly than the current guidelines. The use of tables and flowcharts makes the information easier to understand. We have made suggestions below where we believe our members and the medical profession would benefit from revisions to the proposed draft.

2. How relevant is the content of the revised guidelines?

The content is relevant. Advertising is constantly and rapidly evolving, particularly given its inextricable link with social media. Therefore, health practitioners require workable guides to be able to fulfil their obligations and reach current and potential patients to ensure access to health care.

3. Please describe any content that needs to be changed or deleted in the revised guidelines.

- In the Summary or Introduction, consider adding a short paragraph about health practitioners' obligations other than those under the National Law when advertising a regulated health service, such as under Australian Consumer Law and Therapeutic Goods legislation. We acknowledge that there is an appendix at the back of the document, but it would be helpful to alert practitioners to these obligations from the start. A short sentence or redirection to that appendix would also be useful in the green boxes on pages 9 and 14.

- Page 5 – item 1 – consider adding a footnote or reference to the first bullet point to AHPRA’s *Advertising resources*, specifically *Acceptable evidence in health advertising*. Some practitioners do not know that these resources are available and that the acceptable evidence is defined. Although there is a reference to the definition on page 6 and paragraph in section 4, we believe that it would be helpful for practitioners for this reference to come much earlier in the document. Reference to the resources should be made from the start.
- Page 5 – Summary, item 1 – consider replacing the second bullet point with the fourth bullet point from page 8 as that bullet point is much clearer.
- Page 5 – Summary, item 3 – consider expanding on the general reference to “such as those on social media”, by either directing the reader to section 4.3 or including the words ‘your own’ so it is clear in the summary, e.g., “...such as those on your own social media.”
- Page 7 – section 3.1 – consider amending the first sentence so it reads ‘...attract a person to a health service provider and/or to attract a person to acquire the regulated health service’ as this more typically reflects the purpose of the advertisement.
- Page 7 – section 3.2 – we recommend moving the information from footnote 3, defining ‘control’, into the body of the guidelines as it is critical information to determine who is an advertiser.
- Page 7 – footnote 4 – consider adding a definition of ‘therapeutic goods’ to highlight how this is different to what the National Law regulates and acknowledge the crossover between health services and therapeutic goods.
- Page 10 – section 4.1.3 – consider warning health practitioners about the misleading effects that the word ‘specialist’ (or variations of the word) could have in business/practice-entity names.
- Page 12 – section 4.3 – consider moving the comment in footnote 8 into the body of the guidelines. These are realistic examples that will resonate with health practitioners and they may be overlooked in the footnote.
- Page 12 – section 4.3.1 – consider moving the comment in footnote 9 into the body of the guidelines. This is a critical point and partly what these guidelines are predicated on.

- Page 13 – section 4.3.2 – consider adding a link to AHPRA’s *Advertising resources*, particularly *Acceptable evidence in health advertising* which expands on the uses of testimonials/awards based on patient reviews.
- Page 14 – section 4.4.1 – consider adding a link or reference, perhaps by way of footnote, that these guidelines are to be used in conjunction with Medical Board of Australia’s *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*.
- Page 15 – section 4.5 – health practitioners would benefit from clarity around the interaction between ‘Gifts, discounts or inducements’ (section 4.2) and ‘encouraging indiscriminate use of health services’ (section 4.5). Our members have found it difficult to navigate the rules of making an offer with clear terms and conditions because such an offer could be seen to create the indiscriminate use of a health service.
- Page 15 – section 4.5 – health practitioners would benefit from clarity about how the section on ‘unnecessary use of health services’ applies to elective treatments and procedures and what constitutes ‘clinical indication’.
- Page 16 – definition of ‘Advertising’ – this definition is key information to the entire guidelines. Consider moving it to the front of the guidelines rather than in an appendix at the end.
- Page 16 – definition of ‘Advertising’ – it is unclear how AHPRA will determine whether a book promotes a health service provider. We assume a book is considered advertising, but reviews of the book itself would not be considered testimonials. Examples of cases that AHPRA have investigated would be useful for this situation and reference should be made to the available examples on the AHPRA website.
- Page 16 – definition of ‘any other similar professional notice (e.g. patient recall notices)’ – it is unclear what AHPRA’s intention is and we suggest that the meaning should be further explained. The purpose of a recall letter is to attract a person back to a health service provider. Is this only for services that are not clinically indicated?

5. How helpful is the structure of the revised guidelines?

The structure is very helpful.

**6. Are the flow charts and diagrams helpful?
Please explain your answer.**

The table on page 13 is particularly helpful. The information is clear and relevant.

**8. It is proposed that the guidelines will be reviewed every five years, or earlier if required.
Is this reasonable?
Please explain your answer.**

Advertising practices rapidly evolve, especially through the internet and different engagement/advertising platforms (e.g. mobile applications and telehealth). We would recommend revising the guidelines every 3 years, and longer if reasonable (with a maximum of 5 years).



Georgie Haysom
Head of Advocacy, Research and Education

Direct: (02) 9260 9185

Email: georgie.haysom@avant.org.au