

AHPRA and breaches of section 133 of the National Law

Registered Osteopaths have certain obligations with respect to the way they advertise their services under the National Law. In our experience, complaints regarding potential breaches of section 133 of the National Law result in three main types of correspondence from AHPRA.

1. a generic warning with no specific reference to potential breaches,
2. a notification of a complaint and potential breach of the National Law that requires a response, and;
3. a follow up by AHPRA after the initial complaint indicating a potential ongoing breach that requires a response.

One commonality between each piece of correspondence is the recommendation to immediately review all advertising material. In relation to scenarios 2 and 3, practitioners are cautioned as to their responsibilities under section 133 of the National Law and advised that the specific examples raised were in no way exhaustive.

Osteopaths should note that if AHPRA find areas of concern with your advertising at any stage, they may take any or all of the following courses of action:

- > Write to you requesting that the concerns be addressed.
- > If AHPRA forms the view that you lack insight into your professional obligations when it comes to advertising regulated health services, it may notify the Osteopathy Board, resulting in potential disciplinary action being taken.
- > Commence a prosecution against you for a breach of section 133 of the National Law.

If further items are identified by AHPRA upon a secondary audit of your advertising, the likelihood of AHPRA commencing a prosecution could increase. Guild Insurance encourages Osteopathy Australia members to actively review all of their advertising, not just the specific items raised in correspondence received by AHPRA. We remind you that;

- > **It is Your obligation to ensure that Your advertising materials are compliant with section 133 of the National Law, and**
- > **A failure to ensure that your advertising materials are compliant with section 133 of the National Law may result in the reduction or refusal of any claim You make may under the Policy**

Examples of Advertising that Breaches section 133 of the National Law

Below are some examples of the types of advertising concerns that AHPRA have been raising. *They are not exhaustive and if you are in any way in doubt as to whether your advertising may breach the National Law you should remove it.*

Osteopathic treatment on Children:

Refrain from broad statements that use words that link Osteopathic treatment on children to improvements in general health, wellbeing, the child's potential or words to that effect. AHPRA have identified these types of statements as potentially misleading and deceptive as they do not have a sufficient evidence base to back them.



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The use of the word “Safe”:

AHPRA are concerned with the use of the word “Safe” without also acknowledging that all forms of Osteopathic treatment have the potential for adverse outcomes.

Testimonials:

Please ensure that all forms of testimonials are avoided at all times. This can even include comments left by customers on your Facebook page.

Scientific statements:

Whilst it is not prohibited to use scientific statements in the advertising of regulated health services, it is required to be done in accordance with the Advertising Guidelines. Each piece of scientific information you choose to use in advertising needs to:

- > Be presented in a manner that is accurate, balanced and not misleading
- > Use terminology that is understood readily by the target audience
- > Identify clearly the relevant researchers, sponsors and academic publication in which the results appear
- > Be from a reputable source (one off research that has not been subject to peer review is unlikely to be considered reputable)

The less obvious:

The above four examples are of the more obvious kind of potential advertising breaches, some of the more obscure examples of potential advertising breaches are statements such as:

“It is better to grow healthy kids than fix injured adults”.

AHPRA considered that a statement like this may encourage the indiscriminate or unnecessary use of chiropractic services and as such, may contravene section 133 of the National Law.

“Dr Xyz is an expert in the Osteopathic field with a genuine passion for restoring the health and wellness of all patients.”

AHPRA considered that this statement may mislead or deceive a health consumer into thinking that this osteopath, as a provider of a regulated health service is more qualified or more competent than other osteopaths who hold the same registration and may therefore be a breach of section 133 of the National Law.

The above examples are provided to give you a useful starting point for casting an analytical eye over your websites and social media pages. If you have specific questions about how the law applies to your advertising or seek specific advice with respect to actual or proposed amendments to your advertising then you should obtain legal advice. Meridian Lawyers is a specialist legal firm used exclusively by Guild Insurance to defend Osteopaths against alleged advertising or other alleged professional misconduct breaches. If you wish to speak to one of the team at Meridian Lawyers about how they could assist you, including any commercial matter you may have, you can call:

Sydney: (02) 9810 9999

Melbourne: (03) 9810 6777

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