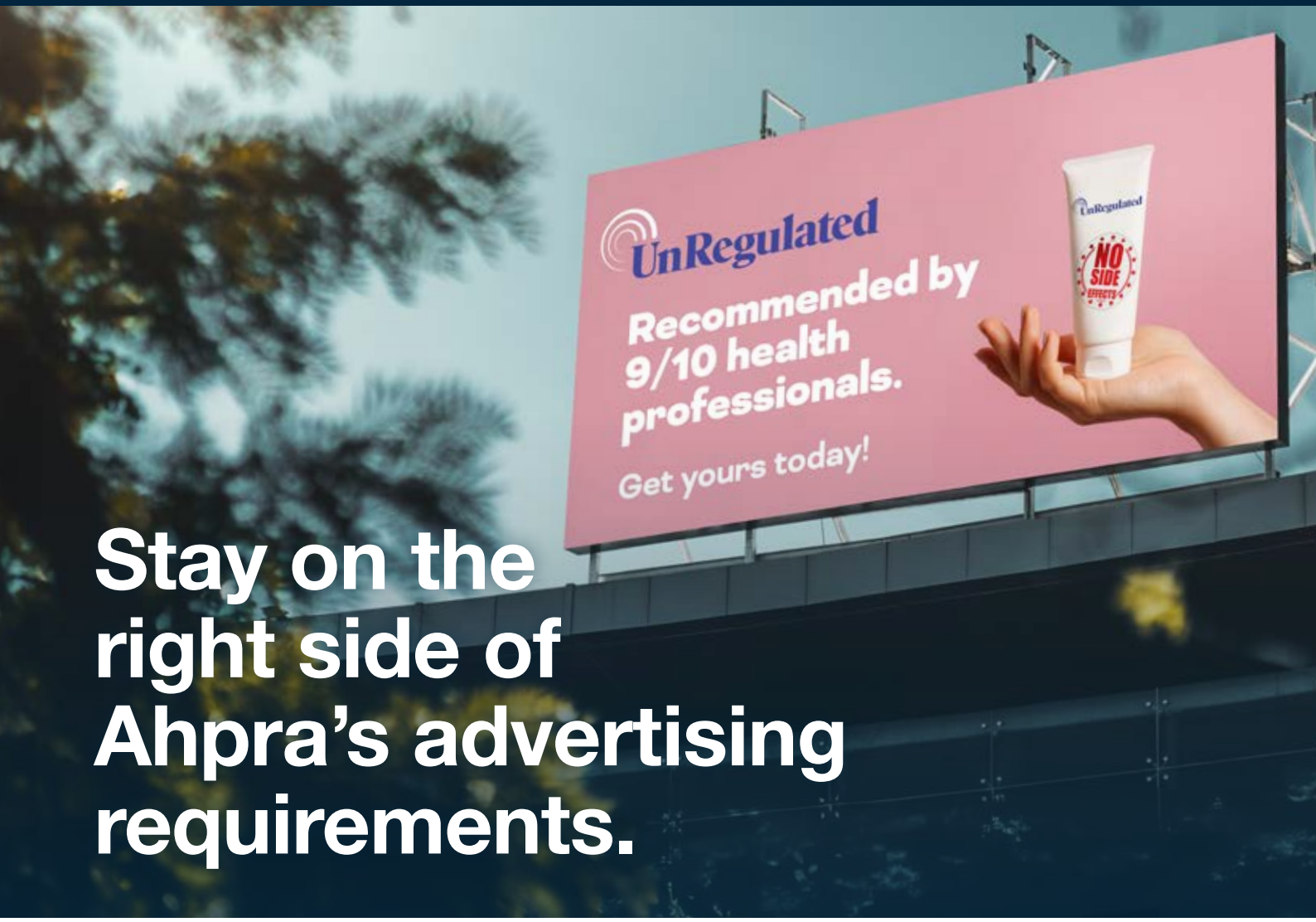

Stay on the right side of Ahpra's advertising requirements.

While there are laws for advertising any business in Australia, The Australian Health Practitioner Regulation Agency (Ahpra) has specific requirements for anyone advertising a regulated health service. And these requirements apply equally to all types of health professionals regulated by Ahpra.

These advertising requirements are set under Section 133 of the Health Practitioner Regulation National Law. Therefore, breaching an advertising requirement is a criminal offence for which prosecution and financial penalties can apply. For an individual, there may be a penalty of up to $60,000 per offence and $120,000 for a body corporate.

Where to get the facts

It's incredibly important that all health practitioners and health practices who advertise a regulated health service make themselves fully aware of these requirements and what they need to do to comply.

The information in this article summarises the key requirements, yet it's important to refer to the information provided by Ahpra to be fully informed, which can be found at **ahpra.gov.au/Resources/Advertising-hub**. Within the hub, you'll find the document titled *Guidelines for advertising a regulated health service*, published December 2020, which provides a wealth of information and guidance.

What's advertising?

Ahpra defines advertising as 'all forms of verbal, printed or electronic public communication that promotes a regulated health service provider to attract a person to the provider (practitioner or business).' This includes all forms of advertising such as websites, social media, flyers, billboards, signage and business cards.

What's not allowed?

There are five advertising requirements regarding what's not allowed in advertising according to the National Law (listed below as (a) through to (e)).

Section 133 of the National Law states that *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that:*

(a) *is false, misleading or deceptive or is likely to be misleading or deceptive*

This requires advertising to be honest and factual, with consideration for the audience and their level of understanding. The information should be detailed as partial information has the potential to be misleading. The information also needs to be based on "acceptable evidence"; an explanation of this can be found in the Guidelines document.

(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.

The terms and conditions need to be clear, not misleading and in language that can be understood by the intended audience. Details of price, and the services to be provided, must be easily understood.

(c) uses testimonials or purported testimonials about the service or business;

A testimonial, in this instance, refers to a positive statement about the clinical aspects of a regulated health service. Testimonials aren't allowed as they're often biased, subjective and misleading and won't apply to all patients and their unique clinical situations.

(d) creates an unreasonable expectation of beneficial treatment;

Patients need to have realistic expectations regarding treatment outcomes. This means not making unsubstantiated scientific claims or overstating the potential benefit of treatment. It's also important to not minimise the risk of harm by declaring treatment to be safe or risk-free, as all healthcare treatment carries some level of risk.

(e) directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

Advertising shouldn't encourage the public to buy or use a regulated health service they don't need or is of no benefit. It's important to not create a sense of urgency or encourage regular appointments when not clinically indicated

Use of titles

Accuracy and detail in titles when advertising is important to be sure the public understand the qualifications and registration type of a health professional. And this information doesn't have to be false to be misleading.

All registered health professions regulated by Ahpra are protected titles under the National Law. Therefore, those titles can only be used in advertising by professionals qualified and registered under that profession. The use of protected titles extends to specialist registration. It's considered that if a practitioner doesn't hold specialist registration, using words such as 'specialist', 'specialises in', 'specialty' or 'specialised' may be misleading or deceptive and therefore in breach of the guidelines.

"Doctor" (or "Dr") isn't a protected title and can be used by various types of health professionals. However, as the public have historically used this term to refer to medical practitioners, it could be misleading in advertising. Therefore, if the use of "Dr" doesn't refer to a medical practitioner, it must be made clear the type of health professional it's referring to.

What you're responsible for

Health practitioners are responsible for compliance with advertising requirements when they have control over that advertising. This means that, for example, if a testimonial is posted on a practitioner's social media page, they're able to remove it and must do so; to leave it would be in breach. However, if that testimonial is posted on a public review site, the practitioner isn't expected to remove it or try to have it removed. Yet they are expected to not promote, through 'likes' or 'shares', those testimonials they can't remove.

Anyone who advertises a regulated health service is considered an advertiser and is responsible for ensuring their advertising complies. Therefore, advertising created by others, such as a marketing or advertising professional, needs to be checked by the responsible advertiser to be sure it isn't in breach.

Guild Insurance encourages health practitioners regulated by Ahpra to review all of their advertising and make any necessary changes immediately to be sure they're not in breach. Remember, these advertising requirements are the law!

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Don't go it alone

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