

ATMS POLICY

Advertising

Advertising is essential if you want to be able to grow your clinic clientele. In constructing and transmitting your advertising, the most important consideration with all advertisements for the products or services that you provide is that they comply with all relevant government legislation.

What is Advertising?

In this context, advertising refers to your clinic name, anything contained on or in your website, signage, business cards, brochures, print, radio or television advertising, audio-visual media such as YouTube videos, social media such as Facebook, direct marketing such as email or SMS marketing, or anything else that you may be using to communicate anything about you or your clinic to the public.

Which Government Legislation is Relevant?

The government legislation that you need to comply with includes but is not limited to:

1. State and Territory Public Health Acts such as the NSW Public Health Act

Most States and Territories have their own Public Health Acts that regulate the advertising for healthcare services, and you need to be aware of the requirements under these Acts. For example, the NSW Public Health Act, Section 10AN states that action may be taken against a health service provider who promotes their services in a manner that:

- Is false, misleading or deceptive;
- Is likely to mislead or deceive; or
- Creates or is likely to create an unjustified expectation of beneficial treatment.

2. Spam Act

The Spam Act defines spam as unsolicited email or SMS marketing and it sets out the terms of compliance for advertising via these media. These include but are not limited to the following:

- An email or SMS must not be sent without the express or implied consent of the recipient.
- The email or SMS must identify the sender.
- The email or SMS must contain a facility for unsubscribing from any further such transmissions from the same sender.

For more on this see http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/sa200366/

3. Therapeutic Goods Advertising Code

The Therapeutic Goods Advertising Code exists within the Therapeutic Goods Act, and defines the prohibitions on the advertising of therapeutic goods and devices. It says in part that:

- Advertisements must contain correct and balanced statements only.
- They must not arouse unwarranted and unrealistic expectations of product effectiveness.
- They must not mislead, or be likely to mislead, directly or by implication or through emphasis, comparisons, contrasts or omissions or abuse the trust or exploit the lack of knowledge of consumers or contain language which could bring about fear or distress.

- Advertisements must not contain any matter which is likely to lead persons to believe that they are suffering from a serious ailment; or that harmful consequences may result from the therapeutic good or device being advertised not being used.
- Advertisements must not encourage, or be likely to encourage, inappropriate or excessive use of a product or device, contain any claim, statement or implication that a product or device that you are advertising is infallible, unailing, magical, miraculous, or that it is a certain, guaranteed or sure cure, contain any claim, statement or implication that it is effective in all cases of a condition, or contain any claim, statement or implication that the product or device is safe or that its use cannot cause harm or that they have no side-effects.
- Any scientific information in an advertisement should be presented in a manner that is accurate, balanced and not misleading. Scientific terminology must be appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed.
- Where an advertisement compares the advertised product with a competitor product (comparative advertising) the advertisement must be balanced and must not be misleading or likely to be misleading, either about the therapeutic goods advertised or the therapeutic goods, or classes of therapeutic goods, with which it is compared. Points of comparison should be factual and reflect the body of scientific evidence. Comparisons should not imply that the therapeutic goods, or classes of therapeutic goods, with which comparison is made, are harmful or ineffectual.

For more on this see <https://www.legislation.gov.au/Details/F2015L01787>

4. Competition and Consumer Act

This Act governs the advertising of both therapeutic goods and services. In part it says that it is an offence to:

- Falsely represent that goods are of a particular standard, quality or value.
- Falsely claim that goods or services have the sponsorship or endorsement of an individual or organisation.
- Falsely represent the price of goods or services.
- Falsely represent the origin of goods.
- Falsely represent the need for any services or goods.
- Falsely represent any warranty or guarantee relating to goods or services.
- Charge the higher price when more than one price appears on an item held out for sale. The item must be sold for the lowest price shown.
- Claim that you can cure terminal illnesses.
- Use methods that are exclusive to you.
- Use advertising that favourably compares something that you do with something done by a competitor (competitive advertising).

For more on this see http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/caca2010265/

5. Health Practitioner Regulation National Law

If you are a registered healthcare practitioner, you need to be aware of any prohibitions referred to in the National Law. For example, Section 133 of this Law states that:

(1) 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; or
- (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; or
- (c) uses testimonials or purported testimonials about the service or business; or
- (d) creates an unreasonable expectation of beneficial treatment; or
- (e) directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

For more on this see http://www.austlii.edu.au/au/legis/nsw/consol_act/hprnl460/



6. Fair Trading Acts

Every State and Territory has its own legislation covering fair and equitable dealing with clients. Fair trading legislation covers areas such as misleading or deceptive commercial behaviour, claims and representations that cannot be made regarding your products and/or services, and other trading-related prohibitions concerning your conduct towards clients. For more on this, please refer to your local version of the Act.

Specific Issues To Be Aware Of

1. Claims to Cure

Avoid stating or implying that you can cure an illness or that you have the capacity to cure a terminal illness. While you may be able to claim the capacity to aid recovery, no guarantees in regard to cures should ever be given. As mentioned above, it is an offence to claim that you can cure serious illness, and if you do make these types of assurances about any illness and you do not cure it, you may be subject to a legal claim of liability in contract. In some States, NSW for example, it is an offence to create or act in a way that is likely to create an unjustified expectation (in your advertising or in any other manner) of beneficial treatment.

2. Pricing

If you list prices for products or services in your advertising, you cannot charge any more than what these prices state.

3. Holding Out

Your advertising must not create the perception in the mind of another that you have some form of authority that you are unqualified to have, for example that you are a medical practitioner where you are not registered as such. This perception could arise because of your appearance (such as the wearing of a white lab coat in your clinic with a stethoscope in your pocket), an act or acts that you perform (such as the use of a sphygmomanometer or reflex hammer), statements you make (referring to diagnosis, treatment, healing, cure or technical medical terms), referring to yourself as a doctor, or anything else that is capable of creating a false impression of authority.

4. Protected Titles

The registration Acts that underpin the practice and requirements of most registered healthcare modalities (medicine, chiropractic, acupuncture, etc) prohibit the use of certain titles such as Chinese herbal dispenser, medical practitioner, osteopath, chiropractor, accredited practising dietician or doctor, by anyone other than those who are entitled to do so, and unless you are a registered member of one of these professions, you cannot use any of these titles to refer to yourself in your advertising. If you are not a registered medical practitioner but your registration Act allows you to use the term Dr, the title should be qualified by your registration status, for example, Dr Jane Smith, Chiropractor.

5. Treatment of Serious Illness

If you advertise that you can treat serious illness, you should be aware of the following. The various State government Codes of Conduct for unregistered healthcare practitioners hold that while it is not a breach of these Codes for non-medical healthcare practitioners to treat or alleviate the symptoms of a serious illness, such as cancer or another terminal illness, any treatment or assistance that is provided in these instances must be able to be substantiated, with the inference that what is required for this substantiation is peer-reviewed and published systematic reviews, randomised controlled trials, and other medically acceptable evidence.

