



## Advertising by Nurses and Midwives

The following information is provided for the benefit of Australian Nursing and Midwifery Federation members in relation to advertising by nurses and midwives. It is not legal advice, but rather guidance for members on how they can comply with their regulatory obligations. The *Health Practitioner Regulation National Law Act 2009* (the National Law) regulates health professions, including nursing and midwifery. Section 133 of the National Law sets out the following list of prohibitions for the advertising of a regulated health service.<sup>1</sup>

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.

The maximum penalty for breaching s133 of the National Law is:

- a) In the case of an individual - \$5,000; or
  - b) In the case of a body corporate - \$10,000.<sup>2</sup>
2. A person does not commit an offence against subsection (1) of s133 merely because the person, as part of the person's business, prints or publishes an advertisement for another person.
  3. In proceedings for an offence against a court may have regard to a guideline approved by a National Board about the advertising of regulated health services.
  4. In this section – '*regulated health service*' means a service provided by, or usually provided by, a health practitioner.

The Australian Health Practitioner Regulation Agency (AHPRA) has developed *Guidelines for advertising regulated health services* and an accompanying set of publications to guide and explain how s133 of the National Law applies to regulated health practitioners in Australia.<sup>3,4</sup> The Nursing and Midwifery Board of Australia (NMBA) has a set of complementary publications which provide advice about how s133 of the National Law applies specifically to nurses and midwives.<sup>5</sup> The ANMF recommends nurses and midwives familiarise themselves with, and comply with the information in these documents.

### Misleading or Deceptive Advertising

Nurses and midwives must ensure that they do not intentionally or unintentionally advertise a health service in a way which misleads or has the potential to mislead consumers.

There are many ways in which advertising can mislead consumers. Some examples of misleading or deceptive advertising include:

- representations as to health benefits of a service that is not evidence based;
- inaccurate representations as to the qualifications, registration status or experience of a health practitioner providing a health service;



- inaccurate or unclear representations as to pricing of the health service; or
- the promotion of therapeutic goods unapproved for human use.<sup>6</sup>

Nurses and midwives should be aware that s113 of the National Law restricts the use of protected titles (i.e. “nurse”, “registered nurse”, “nurse practitioner”, “enrolled nurse”, “midwife” and “midwife practitioner”). These titles must only be used for those people who are registered as such under the National Law. Significant penalties exist for those who knowingly or recklessly use these titles in a way that could lead someone to believe that a person holds a particular registration when they do not.

#### Gifts, discounts or inducements

Nurses and midwives must take care to ensure that they fully disclose the terms and conditions of any offer for a service where a gift, discount or other inducement is advertised. It is important to ensure accuracy and transparency in advertising of the pricing of a health service.<sup>6</sup>

#### Testimonials

In relation to testimonials, the National Law expressly states:

*A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that... uses testimonials or purported testimonials about the service or business<sup>7</sup>*

AHPRA’s Advertising FAQ defines a testimonial as:

*Statements making a recommendation about a service or its quality*

AHPRA defines a purported testimonial as:

*A statement or representation that appears to be a testimonial<sup>8</sup>*

Nurses and midwives should avoid soliciting and/or reproducing, in any form, testimonials made about any health service or health professional. This includes testimonials about oneself or the services one offers as a health professional or health service. This is particularly important if you are self-employed as a nurse or midwife. Nurses and midwives should also avoid writing, or otherwise making (for example, by post on social networks, blogging, emails or through images including cartoons) testimonials about health services and health practitioners.

#### Creating unreasonable expectations of beneficial treatment

Nurses and midwives must not make any unsubstantiated claims as to the benefits of a health service. Care must be taken to ensure that any information advertised about a health service is accurate and well balanced, i.e. purported benefits of a health service should not be advertised without the potential risks of warnings related to the service also being advertised.

#### Encouraging indiscriminate or unnecessary use of a health services

Nurses and midwives should not advertise a health service in such a manner that it could reasonably encourage a consumer to use a health service that they do not need. This includes advertising that provides incentives by way of discounts and/or other promotional offers which involved the additional and unnecessary use of a health service.

Care must be taken to ensure that consumers do not feel pressured into purchasing a health service.<sup>9</sup>



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#### References

1. *Health Practitioner Regulation National Law Act 2009*, s 133. Available at <https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-2009-045>
2. *ibid.* s 133 (1) *Maximum penalty.*
3. Australian Health Practitioner Regulation Agency (2014). *Guidelines for advertising regulated health services.* Available at <https://www.ahpra.gov.au/Publications/Advertising-resources/Legislation-guidelines/Advertising-guidelines.aspx>
4. Australian Health Practitioner Regulation Agency (2017). *Further information on advertising and the National Law.* Available at <https://www.ahpra.gov.au/Publications/Advertising-resources/Further-information.aspx>
5. Nursing and Midwifery Board of Australia (2019). *Advertising a regulated health service.* Available at <https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines/Advertising-a-regulated-health-service.aspx>
6. *Therapeutic Goods Act 1989*, Available at <https://www.legislation.gov.au/Details/C2019C00066>
7. *Op cit.* Australian Health Practitioner Regulation Agency (2014). p 8
8. *Ibid*
9. *Ibid.* p 15
10. *Ibid.* p 10