



ADVERTISING GUIDELINES FOR OPTOMETRISTS & DISPENSING OPTICIANS

Introduction

The Board acknowledges the value of providing information to the public about practitioners and the services they provide and that advertising can provide a means of conveying such information. Any information provided in an advertisement for a service should be reliable and useful in assisting consumers to make informed decisions about accessing services and health care choices.

Advertising can have adverse consequences for patients when it is false, misleading or deceptive, leads to the provision of inappropriate or unnecessary health services, or creates unrealistic expectations.

These guidelines have been developed to help optometrists and dispensing opticians make decisions about advertising their professional services. They are also a key document that may be used by the Board and others¹ in considering complaints received about advertising by optometrists and dispensing opticians.

Definition

For the purposes of this document, advertising includes, but is not limited to, any public communication using television, radio, motion picture, newspaper, billboard, list, display, the internet or directory, and includes business cards, announcement cards, office signs, letterhead, telephone directory listings, professional lists, professional directory listings and similar professional notices, and which is intended to promote health services, health-related products, an optometrist and/or dispensing optician or a clinic, practice or group with which an optometrist and/or dispensing optician is associated.

Importantly, this definition excludes material issued to patients during consultations where such material is designed to provide the patient with clinical or technical information about health conditions or procedures and where the patient is afforded sufficient opportunity to discuss and ask questions about the material. Also, this definition is not intended to apply to material issued by a person or organisation for the purpose of public health information or as part of a public health programme.

¹ The Health and Disability Commissioner, the Advertising Standards Authority, a Professional Conduct Committee and/or the Health Practitioners Disciplinary Tribunal.

Guidelines

1. Optometrists and dispensing opticians must always consider their professional, ethical and legal obligations when advertising services, and how members of the public will perceive their advertising.
2. When advertising a service, an optometrist or dispensing optician must be competent by reason of his or her education, training and/or experience to provide the service advertised or to act in the manner or professional capacity advertised. Similarly, advertising titles, qualifications or memberships may be useful in providing the public with information about experience and expertise, but may be misleading or deceptive if patients can interpret the advertisements readily to imply that an optometrist or dispensing optician is more skilled or has greater experience than is the case.
3. No optometrist or dispensing optician shall advertise, claim or otherwise hold him or herself out as offering optical services, procedures or advice that are not within the practitioner's registered scope of practice.
4. An optometrist or dispensing optician must be certain that any claims made in advertising material can be supported by best available evidence. This refers particularly to claims regarding outcomes of treatment, whether implied or explicitly stated. Making a claim without reasonable grounds is an offence under the Fair Trading Act 1986.
5. It is not always easy for people to differentiate between the quality of different treatment offerings especially when it involves advertising and promoting products and services in a clinical environment. The consequences of poor treatment choices, poor treatment outcomes or a lack of truly informed consent from patients may be severe. Therefore, optometrists and dispensing opticians must not advertise in a manner that could be considered as attempting to profit from, or take advantage of, limited consumer understanding.
6. The main purpose of advertising for services is to present information that is reasonably required by consumers to make decisions about the availability of services offered. Any decision by a consumer in response to an advertised service does not substitute for informed consent nor the obligation on an optometrist or dispensing optician to obtain informed consent before proceeding to provide the service.
7. It is difficult to include all required information to avoid a false or inaccurate comparison when comparing one health service or product with another. Therefore, comparative advertising contains a risk of misleading the public and optometrists and dispensing opticians must not advertise in a way which disparages other practitioners and the services they offer.
8. Advertisements must not encourage, or be likely to encourage, inappropriate or excessive use of health resources. Optometrists and dispensing opticians must not put pressure on people to use a service or product, for example, by arousing ill-founded fear for their future health.
9. Advertisements must not unduly glamorise products and services or foster unrealistic expectations.

10. Advertisements must not prey on the vulnerability of particular audiences, and optometrists and dispensing opticians should be careful how their advertising represents vulnerable groups.

Questions about advertising

If optometrists or dispensing opticians are not sure whether an advertisement meets legal, industry and Board requirements then they should consider making use of the Therapeutic Advertising Pre-Vetting Services (TAPS). TAPS is a commercial service provided under the auspices of the Association of New Zealand Advertisers and is intended to assist advertisers with compliance issues. Contact TAPS at anza@anza.co.nz or on 09 488 7455.

The Board is not able to give legal advice or opinion nor 'vet' or pre-approve advertisements for compliance with these guidelines or related statements or laws (noted below). If an optometrist or dispensing optician is in doubt about whether their advertisement might be in breach of these guidelines or related statements or laws, the optometrist or dispensing optician must seek their own advice.

Social media in advertising

Social media is the collective term used to describe online communication that allows people to connect electronically, to communicate and interact, to share opinions and to exchange information. Twitter, Facebook, Instagram and LinkedIn are examples of social networking platforms.

When using social media to advertise products or services, optometrists and dispensing opticians must adhere to the Board's standards of ethical conduct, ensuring that any information posted:

- complies with professional obligations
- respects confidentiality and privacy obligations (such as refraining from disclosing identifiable information about patients, posting images of procedures, discussing patient-specific case studies, or sensitive material which may enable patients identification without consent)
- is presented in an unbiased, and evidence-based context
- does not make unsubstantiated claims.

Optometrists and dispensing opticians choosing to advertise through social media should carefully review content regularly to ensure compliance with their legal and professional obligations.

Complaints

Due to the fact that advertising by its nature requires that material is in the public domain;

- any member of the public or optometrist/dispensing optician or other profession may make, in writing, a complaint directly to the Board; or
- a complainant may choose to contact the Advertising Standards Authority (ASA) or Broadcasting Standards Authority (BSA) directly to make a complaint.

You can contact the ASA and BSA via their respective websites as listed below:

Potential consequences of a breach of advertising requirements

A failure by an optometrist or dispensing optician to comply with these guidelines or related statements or laws (noted below) may as appropriate, result in:

- a referral to a professional conduct committee (PCC), if one or more questions about the appropriateness of the conduct or safety of the practice of a health practitioner has been raised, pursuant to section 68(3) of the HPCA Act;
- a PCC laying a charge before the Health Practitioners Disciplinary Tribunal;
- a competence review pursuant to section 36(4) of the HPCA Act;
- referral to the Health and Disability Commissioner;
- referral to the Ministry of Health Enforcement Unit pursuant to section 7 of the HPCA Act;
- referral to the Advertising Standards Authority;
- such other action as the Board may deem appropriate in the circumstances.

Related statements/legislation

- the Board's *Standards of Ethical Conduct* for either profession
- The Code of Health and Disability Services Consumers' Rights
- The Fair Trading Act 1986
- The Consumer Guarantees Act 1993
- The Medicines Act 1981
- The Therapeutic and Health Advertising Code.

*Approved by the Board: 12 February 2018
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