

## Advertising: drawing the line on testimonials

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A change to the AANA Code of Ethics clearly identifies practices that are deemed unacceptable by advertisers—and dentists should take note. Chris Sheedy reports

When the Australian Association of National Advertisers (AANA) released their ‘Clearly Distinguishable Advertising Best Practice Guideline’, the intention was to boost the organisation’s Code of Ethics for advertisers and to bring Australian advertisers into line with those in other territories such as New Zealand, the USA and the UK. The overarching requirement of the guideline is that consumers are not misled. It is a lofty and honourable goal, but ultimately difficult.

“The move follows previous guidance by the AANA on identifiable advertising,” says AANA director of Policy and Regulatory Affairs, Simone Brandon. “These principles aim to ensure that the typical consumer is able to distinguish between marketing communication and editorial online. The change to the Code is further evidence of advertisers’ commitment to be transparent and afford the community an avenue to complain in the event that they believe advertising has been masquerading as editorial.”

The Code provision has not been introduced because of widespread concern about misdeeds within the advertising world, Brandon is quick to point out. It simply sets standards for those who wish to advertise responsibly. The guideline is intended as just that—a guideline. However, the requirement for advertisers is to comply with the code, she says.

## What does this have to do with dental advertising? Quite a lot, actually

“Dentists must comply with the Code when they are advertising their services,” Brandon says. “If they are giving a testimonial to support an advertiser, for example talking about the benefits of a particular brand of toothpaste, then the toothpaste brand is the advertiser and must comply with the Code. The advertiser must make it clear that the material is an ad and not disguise material as, for example, an independent review.”

This same rule applies to patients who may have been encouraged by a dentist to go online and leave a positive review; in doing so, they must reveal any discount they have been offered. In fact, dentists who encourage patients to write a review may be falling foul of various guidelines.

The Australian Dental Association (ADA), in its own policy statement regarding advertising in dentistry, strongly advises against the use of testimonials and similar tools.

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“The use of graphic or visual representations in dental advertising, such as before-and-after photographs of patients, diagrams or cartoons and testimonials have a significant potential to be misleading or deceptive and may convey inappropriately high expectations of treatment outcomes,” says the ADA’s Policy Statement 6.9 – Advertising in Dentistry.

## Control what you can

Of course, it is not possible to control what a patient does online. This is the purpose of the AANA’s new guideline, to outline what responsibility an advertiser has when they do have a reasonable degree of control over the situation. If a dentist is recommending that a patient leave a review, or is indeed actively encouraging it, then they absolutely have a reasonable degree of control, and the review should be marked as such, or not encouraged at all.

A spokesperson from the Australian Health Practitioners Regulation Agency, which is responsible nationally for managing breaches of the national law including cases of misleading advertising, said their Board is publishing an article on this very topic in their next newsletter to highlight some common issues.

Responding to questions from Bite, they wrote: “Section 133 (1)(c) of the National Law, states that a person must not advertise a regulated health service, or a business that provides a

regulated health services [sic] in a way that, uses testimonials or purported testimonials about the service or business.”

They added that there are several reasons why testimonials are likely to mislead consumers and aren't allowed in advertising:

- They are personal opinions from current or former clients and have no scientific or objective basis as a recommendation of a health practitioner's services
- The outcomes experienced by one patient do not necessarily reflect likely outcomes available to all consumers
- They are not usually a balanced source of information, as they typically include a narrow selection of positive comments from patients and therefore don't tell the whole story about a practitioner's services (i.e. they can be misleading).
- Patients may place too much weight on testimonials because they do not have the expert knowledge to accurately assess their validity.

## The case for testimonials

The decision to disallow testimonials in dental advertising has not necessarily been a popular one. Jonathan Harris, managing director of Harris Friedman Lawyers, a business that does a great deal of work with the dental industry, says testimonials and before-and-after photos are typically a vital part of a successful advertising campaign for many industries. Banning their use in health-related fields creates great difficulties, he believes.

“I'm struggling to understand what's wrong with a person getting a legitimate third party person to say what they think,” Harris says. “It's definitely wrong if they are offered a discount or given money back to pay for a testimonial, but I don't think asking for a testimonial and then publishing it, if the patient is doing it willingly, should be prohibited.

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Jonathan Harris, managing director, Harris Friedman Lawyers

“It seems to me that there's a different standard being required, or a different expectation as a health professional to another businessperson. That's part of the issue that troubles me, that they're being restricted in how they promote their businesses.”

There will always be outliers, Harris says, business people who attempt to flout the laws and should be duly punished as a result.

“I have no problem with the Dental Board or somebody appropriate saying, ‘There are clear rules. You've paid for somebody to do this. It's wrong’, and them feeling the full force of reprimand or some sort of fine or penalty for the inappropriate conduct,” he says. “What I have a problem with is the sort of regulation that just blocks out everything, good or bad, that then takes away a means of a business person, a dentist in this case, being able to promote themselves.”

The public and, indeed, the legal world, tends to recognise what's appropriate and what's not, Harris says. They can see when people are being taken advantage of. He argues that severe reprimands should be handed out to businesses that are doing the wrong thing. But making it harder for everybody to promote their business in order to stop the irresponsible few means everybody suffers.

"I think it would be good if AHPRA reconsidered some of these guidelines," Harris says. "They're inhibiting business."