Regulating osteopathy: Challenges for delivering healthcare in a commercial environment

Nikole Grbin, Chair, Osteopathy Board of Australia

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Overview

- Regulating the osteopathy profession
- Commercial environment
- Notifications about osteopaths
- Advertising complaints & strategy for compliance
Osteopathy – role of regulator

- Osteopathy Board of Australia – 9 members
- Title protection under the National Law
- AHPRA and 14 National Health Practitioner Boards:
  - Set professional standards
  - Register practitioners and publish national registers
  - Manage notifications (also called complaints)
  - Accreditation
  - Statutory offences
Commercial environment

- 2,230 registered osteopaths
- Unevenly distributed across Australia – 80% cluster in cities and in city of university where trained
- 96% work in private sector
- 19% in solo practice
- Average weekly hours 33.7 in 2015.

* workforce data from National Health Workforce Dataset in 2015
Notifications/concerns/complaints

• We now have 7 years of notifications data - although previously state and territory regulation from 1970s

• Notifications reflect the commercial environment:
  – Boundary violation
  – Clinical care
  – Documentation, billing
  – Consent, confidentiality

• Advertising complaints have increased dramatically
Source of notifications

- Patient or relative 60%
- Fellow practitioner 12%
- Employer 5%
- Other (insurance, police, self, government) 23%
- Few notifications made about osteopaths’ health perhaps reflecting the small or solo practice environment (or we might be very healthy!)
Healthcare advertising over time

Advertising practices

- Signage at healthcare practice
- Increase in print advertising for some health professions
- Majority of healthcare advertising online, including through social media

1990’s – 2017

- Advertising regulation involves measuring of signage
- Increasing regulation of advertising in health professions
- July 2010 – National Law commences with consistent advertising regulation across professions

Regulation of healthcare advertising
Section 133 of the National Law

Advertising must not:

• **be false, misleading or deceptive**, or likely to be misleading or deceptive
• **offer a gift, discount or other inducement**, unless the terms and conditions of the offer are also stated
• **use testimonials or purported testimonials** about the service or business
• **create an unreasonable expectation of beneficial treatment**, or
• directly or indirectly **encourage the indiscriminate or unnecessary use of regulated health services.**
Advertising complaints

• Osteopaths increasingly advertise their private practice online and through social media
• Advertising complaints have increased across professions – with higher numbers in some professions
• Taking regulatory action and increasing compliance has been a priority for the Osteopathy Board and AHPRA in 2017
Advertising complaints

Advertising Complaints in July 2017

<table>
<thead>
<tr>
<th>Profession</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese Medicine Practitioner</td>
<td>38</td>
</tr>
<tr>
<td>Chiropractor</td>
<td>592</td>
</tr>
<tr>
<td>Dental Practitioner</td>
<td>105</td>
</tr>
<tr>
<td>Medical Practitioner</td>
<td>82</td>
</tr>
<tr>
<td>Nurse</td>
<td>10</td>
</tr>
<tr>
<td>Occupational Therapist</td>
<td>1</td>
</tr>
<tr>
<td>Optometrist</td>
<td>2</td>
</tr>
<tr>
<td>Osteopath</td>
<td>239</td>
</tr>
<tr>
<td>Pharmacist</td>
<td>3</td>
</tr>
<tr>
<td>Physiotherapist</td>
<td>307</td>
</tr>
<tr>
<td>Podiatrist</td>
<td>10</td>
</tr>
<tr>
<td>Psychologist</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1397</strong></td>
</tr>
</tbody>
</table>

- Significant increase in ‘offence’ complaints about lower risk advertising.
- Prosecution under Part 7 is resource intensive. Taking a risk-based approach is not warranted in majority of cases. If we rely on prosecution alone only some individuals are impacted rather than whole profession.
- New strategy of increased education / guidance resources + consequences for non-compliance.
Advertising compliance and enforcement strategy

Principles
➢ Risk-based
➢ Targeted
➢ Proportionate
➢ Transparent
➢ Engaged
Advertising compliance and enforcement strategy

**Attitude to compliance**
- Have decided not to comply: Prosecution or Tribunal
- Disengaged or don’t want to comply: Impose conditions on registration
- Try to comply, but not always successful: Put on notice of non-compliance
- Willing to do the right thing: Educate to support compliance
- Fully compliant: Engage to maintain awareness about obligations

**Compliance and enforcement responses aim to support full voluntary compliance**
Examples of compliance action

**New enforcement approach**
- Educative letter indicating breach of requirements
- Follow up audit of compliance

**New materials to support compliance**
- Summary of requirements
- Examples of compliant and non-compliant advertising
Check your advertising:
Examples of osteopathy advertising claims that are not compliant

June 2017

This document outlines examples of advertising claims that don’t meet the legal requirements and how to make them compliant. The Australian Health Practitioners’ Regulation Agency (AHPRA) and the Osteopathy Board of Australia are sharing these examples to help you check your own advertising to ensure you comply with your obligations under the National Law.

Why the advertising is non-compliant and how the specific examples could be corrected is based on our assessment of advertising complaints we have received for the osteopathy profession. So to do this we apply the National Law and any further guidance that National Boards and AHPRA publish, including the Advertising guidelines and resources on our websites.

The examples below are specific to osteopaths and are some of the most common mistakes we see. We have also published common examples on our website, which highlight advertising from various regulated health professions but are still important to help you make your advertising compliant.

Important information
Check if your advertising complies with legal requirements

There are many ways advertising can be false, misleading, or deceptive. Always be clear about the level of evidence to support a claim. You should not make claims about the effectiveness of the treatment or services if you provide if those claims cannot be substantiated with acceptable evidence.

We have published a Summary of advertising obligations on our website to help explain the legal requirements for advertising regulated health services.

You should also refer to the Full Guidelines for advertising regulated health services.

If your advertising is about non-musculoskeletal conditions, be particularly careful

There is no general agreement among osteopaths and other regulated health professions that osteopathy can effectively treat a range of non-musculoskeletal conditions.

There is no extensive research evidence about the effectiveness of osteopathy treatment generally or the limited research evidence across manual therapies more broadly does not support osteopathy making claims they can effectively treat non-musculoskeletal conditions.

If advertising refers to a specific condition, it should be clear that the practitioner is treating the aspects of the condition relevant to their practice of osteopathy (e.g., for osteopaths, there should be a reference to treating the musculoskeletal aspects of the condition) and the role of the treatment should not be overstated.

New resources
Examples of non-compliant advertising and how to correct it

These examples highlight more compliant advertising by osteopaths and other osteopathy regulated health professionals on social media and on websites, print advertising and/or advertising by osteopaths or osteopathy clinics on third-party websites.

Key

To help you assess whether your advertising claims are compliant, please refer to the examples of non-compliant advertising and compare your claims to the examples. Your advertising should:

- Be easy to understand
- Be clear
- Be true
- Be non-compliance
- Be compliant

Advertising content

Examples of compliant advertising

This advertising is compliant and acceptable.

Examples of non-compliant advertising

This advertising is considered misleading and deceptive.

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Changes that would help this advertising to comply

Osteopathy may be able to help manage symptoms often associated with arthritis (e.g., muscular tension) rather than treating the condition itself. It is not made clear in your advertising that this is the case and you will be unlikely to mislead consumers.

Behaviour and learning disorders are non-musculoskeletal conditions and therefore clear musculoskeletal conditions. That does not justify a reference to these conditions in advertising by an osteopath.

This statement could be corrected to read:

- Behavioural/learning disorders can help with:
  - Ankle pain
  - Neck pain
  - Migraine
  - Managing conditions such as muscle tension often associated with arthritis.

- Be clear about the list of health conditions in advertising as this is often misleading, and:
- Claims by osteopaths about treating non-musculoskeletal conditions are more likely to be misleading.
- It is often non-appropriate to include these in your advertising.

In this advertising there are no clear links between osteopathy treatment and the causes or the non-musculoskeletal conditions labeled.

There is no clear evidence provided that osteopathy could effectively treat these conditions listed, and therefore it is not appropriate to make claims about them in advertising.

This statement could be corrected to read:

- Ankylosing spondylitis/osteoarthritis are not helped by osteopathy treatment and are likely to be misleading.
  - Other conditions labeled are non-musculoskeletal conditions.

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1 The Health Practitioners’ Regulation National Law, as in force in each state and territory (the National Law).
• **More information**

• **Contact**

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