

**Submission on COMMON GUIDELINES AND CODE OF CONDUCT**

**LUXOTTICA**

The Luxottica Group is one of Australia’s largest providers of optical services and eyewear. Luxottica’s retail brands include OPSM, Budget Eyewear, Laubman & Pank, Bright Eyes and Sunglass Hut. We represent around 700 registered optometrists in corporate stores and franchises across Australia.

Luxottica supports the introduction of a common set of guidelines for all health services regulated by the Health Practitioner Regulation National Law (“**National Law**”) and welcomes the opportunity to make submissions and collaborate with AHPRA on the important issues raised by the Draft Guidelines (“**Guidelines**”).

As set out below, Luxottica proposes that a number of clarifications and improvements be made to the Guidelines (Part I) and the Code of Conduct of Registered Health Practitioners (Part II). To assist AHPRA, Annex 1 contains Luxottica’s recommended amendments in mark-up to both the Guidelines and Code of Conduct.

**PART I - SUBMISSIONS ON GUIDELINES FOR ADVERTISING REGULATED HEALTH SERVICES**

**Introductory Points**

**Promotion of Objects and Guiding Principles of National Law**

1. It is important to consider the Guidelines for Advertising Regulated Health Services (the “**Advertising Guidelines**”) in their proper legislative context. The Advertising Guidelines are not law, but are intended to provide detail about activities that may breach section 133 of the National Law for all 14 regulated health services. Luxottica **recommends** that a clarifying statement be introduced:

“*This document is not law and in cases of discrepancy, the National Law will prevail. It is not intended to be a comprehensive statement of the law or a substitute for the National Law. Failure to follow these guidelines will not necessarily constitute a breach of the National Law, but the Guidelines will assist practitioners in complying with what APHRA considers to be acceptable conduct under the National Law.*”[[1]](#footnote-1)

1. Section 3 of the National Law provides objectives including the “*continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners”*. This recognises the benefits of competition to the provision of health services.
2. It is important for AHPRA to balance the regulation of advertising for services and its potential impact on competition. Whilst regulation plays an important role in protecting the interests of consumers, it can restrict competition, innovation and efficiency, and result in higher costs and a lack of consumer knowledge. This is contrary to the objectives of the National Law.

For instance, prior to the introduction of the National Law, the South Australian Government[[2]](#footnote-2) undertook its own efficiency review of advertising controls on optometry and found that:

*“…the Panel believes that the Trade Practices Act restrictions on false, misleading or deceptive advertising are generally sufficient, as long as they are explicitly repeated in the* [Optometry] *Act, giving the Board the power to take immediate action when necessary. The prohibition of discounts, testimonials and detailed descriptions of services available may well be requirements for membership of professional associations, but it is difficult to see how they relate to the protection of the public, and therefore they do not belong in legislation…”[[3]](#footnote-3)*

1. The “one size fits all” approach creates significant limitations on the efficacy of the Advertising Guidelines, given the differences between the various regulated health services. Where statements in the Advertising Guidelines targets or has particular relevance to a certain regulated health service, Luxottica **recommends** that such guidelines be clarified.

**Scope – Interaction with Unregulated Activities**

1. The practice of optometry does not comprehensively cover the provision of all eye care needs. Optometrists work with both ophthalmologists and optical appliance retailers to provide a complete eye care service to the public. The Guidelines must differentiate between and accommodate the interaction of regulated and unregulated activities in the provision of eye care.
2. **Optometrists** provide clinical services such as routine eye examinations and tend to be the first point of contact for a patient’s eye care needs. Optometrists are also involved in the management of more complex eye health cases, such as people with glaucoma or macular degeneration. Optometrists may, if appropriately endorsed, also administer, prescribe and supply Schedule 2, 3 or 4 medicines for treatment of conditions of the eye. There have also been technological advancements in the practice of optometry and today optometrists often use medical devices such as digital retina scanners and optical coherence tomography scanners when conducting clinical examinations. Many of these devices are defined as therapeutic devices, the use of which is governed by the Therapeutic Goods Act, rather than the National Law.
3. **Ophthalmologists** are referred to by optometrists where more specialised care and treatment is necessary, including surgery to the eye. Ophthalmologists, as medical practitioners, are regulated health service providers.
4. **Optical retailers** supply optical appliances to correct eye sight difficulties (to the prescription of an ophthalmologist or optometrist). Optical appliances range from contact lenses of a multitude of types to glasses and prescription sunglasses. Consumers currently have access to an enormous selection of optical appliances which can be differentiated based on functionality, as well as on style or fashion.
5. **Retailers** of optical appliances educate consumers on developments in optical appliances ranging from lens materials, multifocal lens design, improved treatments and lens coatings to improve resistance to scratching, photo chromatic qualities that protect from UV rays when outdoors and other performance enhancements. Today, the retail sale of optical appliances is also as much about fashion, style and personal preference as it is about correction of a medical condition. Consumers replace optical appliances more frequently for reasons of fashion rather than medical needs.
6. **Retail dispensing** of optical appliances is not a regulated health service under the National Law. Using New South Wales as an example, optical dispensers are not registered under the National Law, but are subject to a Code of Conduct[[4]](#footnote-4) which requires dispensers to obtain certain tertiary qualifications and imposes a number of professional and ethical responsibilities.
7. The Guidelines must differentiate between clinical activities regulated by the National Law and retail activities that are not. In addition, clear lines of demarcation are needed so that the guidelines do not appear to govern the use or supply of optical appliances or devices that fall within the definition of therapeutic goods and as such are governed by the requirements in the Therapeutic Goods Act.
8. As a general overview, this distinction is set out in the table below:

|  |  |
| --- | --- |
| **Subject of Advertisement** | **Applicable Law** |
| Optometrists, Ophthalmologists and professional services they provide | National Health Law and Guidelines |
| Medicines, Optical Appliances and Optical Devices and their capabilities | Therapeutic Goods Act 1989 (Cth) and Therapeutic Goods Advertising Code 2007 |
| Optical Dispensers, Retailers, Retail Dispensing, Eyewear, Frames, Lenses | Competition and Consumer Act 2010 (Cth) and Schedule 2, Australian Consumer Law |

**Prohibited Advertising under the National Law**

**Testimonials – section 133(1)(c)**

**Meaning of “Testimonial” for the Purposes of section 133(1)(c)**

1. At the outset, Luxottica considers that the prohibition on testimonial advertising in section 133(1)(c) of the National Law is out of step with world’s best practice.
* **United States**: the Federal Trade Commission permits the use of testimonials provided that they reflect the honest opinions of the patient, are not deceptive and disclose whether there is any financial or other connection between the person and the business.[[5]](#footnote-5)
* **United Kingdom**: optometry services may be advertised by testimonials provided they are genuine, not misleading and authorised by the person giving the testimonial.[[6]](#footnote-6)
1. Luxottica acknowledges that legislation is a matter for Government. However, APHRA provides guidance in the interpretation of the National Health Law. As “testimonial” is not defined in the National Law, there is some confusion within the industry as to what kinds of representations are subject to section 133(1)(c). Given that the international community adopts a more liberal approach, Luxottica recommends that APHRA interpret the word “testimonial” narrowly.
2. As AHPRA notes, “testimonial” is to be given its ordinary meaning as provided by the Macquarie Dictionary:

“*a writing certifying to a person’s character, conduct or qualifications, or to a thing’s value, excellence, etc.; a letter or written statement of recommendation…*”

1. The Concise Oxford Dictionary defines “testimonial” to include:

“*a writing testifying to one’s qualifications and character…a letter of recommendation of a person or thing.”*

1. The Advertising Guidelines should contain practical guidance that can be used to determine not only what conduct will constitute a “testimonial”, but also the type of advertising that is permissible. While the current draft sets out examples of behaviour that is prohibited, it does not contain any affirmative guidance. See for instance, the comprehensive guidance provided by the US Federal Trade Commission which includes example scenarios and the regulator’s view.

*Statements of Fact*

1. To constitute a “testimonial”, a statement must be something more than a customer recounting a personal experience, but must also include a recommendation of the relevant practitioner or the regulated health service. By way of example, the statement, *“I attended OPSM Bourke Street for an eye test and was prescribed with reading glasses,”* or, *“The staff at OPSM Bourke Street were very friendly and provided great customer service”* are statements of fact and do not contain the necessary recommendation for them to be properly categorised as “testimonials” for regulated health services.
2. Similarly, if a customer was to “like” an optometrist on Facebook or “share” an optometrist’s website using social media, this would not satisfy any of the elements of a “testimonial” as it does not amount to either a direct statement or a recommendation.
3. Luxottica **recommends** that the Guidelines clarify that statements of fact in advertising concerning a genuine patient’s diagnosis or treatment, of itself, is not a “testimonial”.

*Use of Patients in Advertising*

1. It is unclear whether use of a patient in advertising amounts to a “testimonial” by consenting to use of their image in association with a provider of a regulated health service.
2. Indeed, the use of patients to describe treatments is recommended by AHPRA in Appendix 6 of the Advertising Guidelines which provides that, in respect of advertising, the “*use of a real patient or client who has actually undergone the advertised treatment...is less likely to be misleading*”.
3. Luxottica **recommends** that the Guidelines clarify that the use of a patient’s image in advertising (including in the demonstration a particular treatment) in circumstances where they do not provide a verbal or written recommendation of the service, does not amount to a “testimonial” for regulated health services.

*Endorsements*

1. A testimonial is different to an ‘endorsement’ or sponsorship, being the association of a person with particular goods or services, such as a celebrity wearing a pair of Ray-Ban sunglasses, or sporting team wearing a logo of a provider of optometry services.
2. The distinction between endorsements and testimonials was previously recognised in some of the State and Territory Optometry Acts that were replaced by the National Law, which contained separate prohibitions on testimonials and endorsements. Despite this historical distinction, when the National Law was drafted, only testimonials (and not endorsements) were prohibited and Luxottica therefore considers that endorsements (provided they do not also constitute testimonials) are not regulated by s133(1)(c).
3. Luxottica **recommends** that the Guidelines clarify that endorsements and sponsorship arrangements are not considered “testimonials”.

*Testimonials Relating to Non-Regulated Aspects of Business*

1. Most retail stores with an onsite registered optometrist provide additional goods and services that are not regulated by the National Law. For instance, optical dispensers provide prescription lenses, or unregistered assistants perform visual screening and retail sales assistants help customers select and purchase glasses, contact lenses, sunglasses and other optical accessories.
2. The National Law and Guidelines do not prohibit “testimonials” that are solely related to aspects of eye care which are not “health services” for the purposes of the National Law. Such areas of eye care include:
	1. optical dispensing, which was expressly deregulated and removed as a health profession in all states and territories and was purposely not included in the National Law. Accordingly, optical dispensing services are not “health services” for the purposes of the National Law;
	2. customer service provided by optometrists and non-regulated staff;
	3. visual screening, (i.e. the performance of qualitative tests to detect the presence of an abnormality of sight) which has always been excluded from the definition of optometry in the former State and Territory Optometry Acts[[7]](#footnote-7) and from the ambit of optometry activities as defined by Medicare;
	4. the retail sale of goods in the store in which the optometrist is based; and
	5. medical goods, where testimonials are permitted by the *Therapeutic Goods Advertising Code 2007*, which expressly permits testimonials for therapeutic goods (including contact lenses).
3. Luxottica **recommends** that the clarifications noted above be captured in the Advertising Guidelines and has provided drafting suggestions at Annexure 1.

**Prohibition on “Self-Testimonials” is unclear**

1. Luxottica is of the view that a “self-testimonial”, by its terms, is contradictory and unclear. Luxottica **recommends** that this provision be deleted from the Guidelines.
2. A “testimonial”, as set out above, is a written recommendation about a third party. It is unclear whether APHRA intends to prevent self-promotion or recommendation of one’s own services in advertising. This inclusion is ambiguous and at its broadest, may be seen to limit the ability of an optometrist to promote their qualifications, their optometry practice and the types of treatment available.

**Testimonials and Social Media**

1. Luxottica is aware that the Federal Court of Australia and Advertising Standards Board have held that advertisers are responsible for third party content posted on their websites and other social media platforms, over which they have control. A person may become the “publisher” of material posted by a third party on that person’s Facebook or web page, if they fail to remove the material after becoming aware of it.
2. Luxottica assumes that, by paragraph 7.2.3, AHPRA is an attempting to apply the principle in that case more generally to all forms of social media:

“*an advertisement on a social media site eg a Facebook page that includes a recommendation from a patient, or statement from a person about the benefits of the regulated health service or business they received from a registered health practitioner, may contravene the National Law. Once the practitioner is aware of the testimonials, he or she must take reasonable steps to have the testimonial removed.*”

1. There are several significant issues posed by AHPRA’s intention to apply this principle to all social media platforms:
	1. “Reasonable steps” – APHRA must consider the circumstances of the particular optometrist and resources available to them when determining whether “reasonable steps” were taken to remove prohibited content.
	2. “Control” – in an online environment, the concept of “control” is fundamental to attribution of responsibility. It may be appropriate for a practitioner to become responsible for third party comments for websites and some social media platforms, such as Facebook or a practitioner’s personal blog, where they have a high degree of “control” over the content.

However, there are a number of social media platforms, such as Twitter, where a person has no power to edit or remove content. In these circumstances, it is not practical or reasonable for the practitioner to be under any obligation.

For example, on Twitter, a person can “tag” an optometrist in a tweet. If tagged, the optometrist may be alerted to the tweet, but will have no power to delete or edit the tweet. It is unreasonable, and shows a fundamental lack of understanding of Twitter, to require the optometrist to send a tweet in response or request from Twitter that the offending tweet be deleted in the absence of a court order.

The nature and purpose of Twitter is that it is constantly updated. On average, approximately 58 million tweets are sent per day[[8]](#footnote-8) (or 670 every second). If a practitioner logged on to Twitter only 2 days after the offending tweet was sent, it is highly unlikely that the tweet would still appear on their “feed” or the feeds of their ‘followers’ or the followers of the person who sent the offending tweet.

These concerns are relevant not only for Twitter, but for a number of other social media platforms and a distinction must be drawn in the Advertising Guidelines between social media which is controlled by a practitioner and that which is not.

* 1. Social media, at its core, is intended to facilitate interaction between people, including health service providers and consumers. One of the key features and strengths of social media is that it allows interaction in “real time” which is more authentic and transparent than traditional interactions between businesses and consumers. Social media empowers consumers by giving them an additional voice and greater power than ever before to influence the actions of businesses. It also allows consumers to easily obtain the views of other customers about a product or business and publish their own reviews and opinions. Inevitably, this means that there will be a high volume of comments and posts by consumers relating to Luxottica products and services. While most of these are positive comments, some are negative.

Arguably, the requirement to remove testimonials which are voluntarily posted by satisfied customers of optometry services, where the testimonial is true and is not misleading or deceptive, is detrimental to consumers.

Luxottica’s social media policy is designed to promote transparency and customer rights by responding to customer feedback, both positively and negatively, quickly and constructively. If the Advertising Guidelines are not drafted with sufficient clarity as to the definition of a testimonial, practitioners may feel obliged to delete all positive comments for fear they are testimonials, even where they may not constitute an advertisement for regulated health services. The corollary is that only negative comments may remain, creating a false picture of overwhelming customer dissatisfaction when this is not the case.

**Unreasonable Expectation of Beneficial Treatment – section 133(1)(d)**

1. Luxottica supports the prohibition on advertising that creates an unreasonable expectation of beneficial treatment.
2. However, Luxottica **recommends** amendments to the example in bullet point 4 (emphasis added):

*“…advertising may contravene the National Law when it… contains any information or material that is likely to make a person believe his or her health or wellbeing may suffer from not taking or undertaking the health service* ***if such treatment is not reasonably necessary for prevention or treatment of a medical condition****…”*

1. Optometrists owe a duty of care to their patients to ensure they are educated about good eye health and risks to their sight posed by eye conditions.
2. The Guidelines must not constrain a practitioner from informing patients about the important and legitimate benefits of eye healthcare. Whilst Luxottica agrees with the general principle contained in the fourth bullet point, the statement appears to be drafted too broadly so that it would restrict legitimate educational messages which are designed to ensure that consumers consider their eye health and the possible risks that may result if eye health is not maintained.
3. The Guidelines must not restrict educational communication in relation to holistic healthcare. With respect to eye care, it is now acknowledged that the benefits of regular eye tests include identification of other health problems such as hypertension or diabetes and that patients in certain risk groups, such as those over 40 years of age, will benefit from undergoing an eye test once per year. Early detection is an important benefit that should be communicated to patients.
4. The focus of modern medicine has shifted from treatment to prevention and the Guidelines must be drafted in line with the modern thinking as so as to ensure that a practitioner’s duty of care, and important educational health messages, are not impeded by consumer protection provisions.

**Encouraging Indiscriminate or Unnecessary Use of Health Services – section 133(1)(e)**

1. Whilst Luxottica supports the prohibition on the encouragement of indiscriminate or unnecessary health services, some of the examples contained in paragraph 7.2.5 appear to go further than is permitted by 133(1)(e) and may capture conduct which is not prohibited by the National Law. In particular:
	1. **“*looking better and feeling more confident*”** (bullet point 1): Luxottica acknowledges that the common guidelines must apply across a number of disparate health services, but some tailoring for specific health services should be incorporated where necessary. The phrase “*looking better and feeling more confident*”, if made in the context of optometry, would be benign and it is difficult to see how it could be alleged to encourage the use of unnecessary health optometry services.

Luxottica **recommends** that if AHPRA has included this statement because of concerns directed at a particular health service (such as cosmetic procedure providers), this should be made clear in the Advertising Guidelines;

* 1. “***uses promotional techniques…such as offers and discounts, online/internet deals, vouchers, and/or coupons***…” (bullet point 4): Section 133(1)(b) expressly provides that advertisements may include offers, gifts, discounts or other inducements provided that the terms and conditions of the offer are also stated. Any guidelines issued by AHPRA must be consistent with the National Law and are invalid to the extent that they are not consistent.

Luxottica **recommends** that deletion of the fourth bullet point on the basis that it contradicts section 133(1)(b); and

* 1. “**advertises time limited offers**…” (fifth bullet point):

Luxottica **recommends** deletion of the fourth bullet point on the basis that it contradicts section 133(1)(b) and also the Australian Consumer Law provisions on misleading and deceptive conduct on pricing.

At law, all promotional offers are, by definition, ‘time limited’ in that the price or service offered is not a standard price offered year-round. A discount or offer, if genuine, will be a reduction in price or a particular deal which is offered for a certain period of time.

**Social Media**

1. The draft definition of ‘social media’ in paragraph 8.1 includes personal social media pages. It is clear that section 133 of the National Law applies only to advertisements of regulated health services and therefore a personal social media page is not subject to the National Law or Advertising Guidelines where it does not advertise regulated health services. Likewise, a personal social media page will not become an advertisement where only one post or comment is made which could constitute an advertisement. Luxottica **recommends** that this clarification be included in the Advertising Guidelines.

**Transparency in APHRA’s monitoring of section 133**

1. As the National Law and Guidelines are relatively new developments, there is little guidance available to practitioners by way of case law, or public information about action taken by APHRA, either on its own or in response to third party complaints, about advertising potentially in breach of section 133.
2. For instance, the Advertising Standards Board which administers various advertising codes, adopts a highly transparent system for the reporting of complaints, responses submitted by advertisers and publication of the ASB panel’s decisions.
3. Where action is taken by APHRA in response to section 133, such information should be also made publically available for the purposes of transparency and education of health service providers. Naturally, this transparency should be subject to any requests for confidentiality made by a complainant, any overriding obligations of privacy, or other unusual circumstances such as where legal proceedings have been commenced.

**Part II - SUBMISSIONS ON CODE OF CONDUCT FOR REGISTERED HEALTH PRACTITIONERS**

**Scope of Practice**

1. Luxottica believes that Australians have the opportunity to benefit enormously from advances in technology in the field of optometry. For many years, Luxottica has been a leading provider of cutting edge of optometric practice and Luxottica optometrists use state of the art imaging equipment, diagnostic procedures and methods of treatment. Luxottica recently invested heavily in new equipment which has been rolled out across Australia, including the OPTOS ultra-wide digital retina scanner which takes 200 degree retinal photographs and the Accufit system which allow glasses to be fitted by Luxottica more accurately than ever before. The scope of practice of optometrists must make corresponding advances to keep pace with these technological and research improvements.
2. Practitioners also have a duty to complete mandatory education each year and to keep up to date on advances in the field. Accordingly, Luxottica submits that specific provisions are inserted into the Draft Code of Conduct for Registered Health Practitioners (“**the Code of Conduct**”) to acknowledge this continual improvement and to support practitioners extending their scope of practice.
3. Luxottica is concerned that the reference to “scope of practice” in paragraphs 1.2 and 2.2(a) of the Code of Conduct may be interpreted as restrictive and may discourage the adoption of new techniques, equipment, skills or practices. Luxottica believes that a provision which acknowledges that the scope of any health practitioner’s practice may change over time will be a positive indicator for practitioners to embrace the use of new technologies.
4. While the Code of Conduct acknowledges the changing scope of an optometrist’s practice at paragraph 2.2(c), Luxottica suggests that this be acknowledged in all references to “scope of practice” in the Code.
5. Luxottica **recommends** the marked-up draft of the Code of Conduct is provided at Annexure 1; and Luxottica requests that AHPRA make the following amendments to the areas of the Code of Conduct that relate to scope of practice:
	1. include a paragraph in paragraph 1.2 to acknowledge the potential for change of a scope of practice in the context of a practitioner’s professional obligations;
	2. extend paragraph 2.2(a) to acknowledge that a practitioner’s scope of practice may change from time to time; and
	3. include such an acknowledgement in the context of Continuing Professional Development at paragraph 7.2.

**Risk of Patient Harm and Reporting Requirements**

1. Across Australia, practitioners have mandatory reporting requirements in relation to children or young people who may be, or are at a risk of harm. However, those people whom mandated to report and the abuse types that they must report vary across the states and territories. While it is acknowledged that these guidelines are not intended to detail such “general” obligations, Luxottica is concerned that the Code of Conduct, as currently drafted, is insufficient in its description of this general obligation at paragraph 3.6(c).
2. Many health practitioners may not have undertaken detailed training in assessment for children and young people who may be at risk of harm. For this reason, Luxottica suggests that this point be expanded to refer the health practitioner to their relevant state department for further information. Luxottica is committed to its practitioners adhering to their mandatory reporting requirements and believes that health practitioners would benefit from having more explicit terms of reference in the Code of Conduct. Luxottica **recommends** a revised draft of paragraph 3.6 as proposed in Annexure 1.

**Delegation**

1. Luxottica **recommends** that paragraph 4.3 of the Code of Conduct be expanded to support the practice of delegation of appropriate tasks to unregistered assistants who have the requisite skills and expertise (referred to as “assistants” for ease of reference).
2. As part of the practice of optometry, certain ancillary services are often performed by assistants rather than a registered optometrist. These ancillary services are tasks which do not require the application of professional skill and judgment, such as vision screening tests designed to detect eye abnormalities prior to determining if a full eye test is required. The assistants who perform these tasks are given the necessary training and are overseen by the registered practitioner while the delegated tasks do not fall within the ambit of what is considered to be “optometry”.
3. This practice is recognised by Medicare which states on its website:

*“During a patient’s consultation, certain eye examination procedures can be delegated to a suitably trained assistant in the practice. These procedures can include:*

* *the initial measurement of vision*
* *intraocular pressure measurement*
* *retinal photography*
* *corneal mapping*
* *certain aspects of computerised perimetry*

*These tests should be performed under the supervision of the optometrist”*

1. Some of the National Boards, such as the Nursing and Midwifery Board, have issued guidelines on the practice of delegation. Luxottica considers that all health services would benefit from guidance in this area and proposes that the Code of Conduct be expanded to provide advice on when delegation is appropriate. This advice should be based upon professional best practice, and should include the following considerations:
	1. the assistant should possess the requisite skill and experience necessary to perform the task;
	2. the complexity of the task should be appropriate for delegation and should not require the application of professional skills and judgment;
	3. the registered practitioner should be reasonably available to supervise, provide advice to the assistant or assume the task if required;
	4. the registered practitioner will retain ultimate responsibility for the patient’s care;
	5. where appropriate, patients should be informed that an assistant will perform the delegated task; and
	6. delegation should not occur where there is any restriction imposed by the National Law or any other applicable legislation.
2. Luxottica has considered guidelines published by the College of Optometrists in the United Kingdom and Canada[[9]](#footnote-9), as well as delegation guidelines published by the Australian Nursing and Midwifery Council. Luxottica **recommends** specific amendments proposed to the Code of Conduct on this issue as set out in Annexure 1.

**Harmonisation of Terminology for “Over-Servicing”**

1. The terminology used in the National Law, the Code of Conduct and the Advertising Guidelines in relation to the concept of “unnecessary use of health care resources” is not uniform and should be harmonised.
2. The various phrasings currently used in each document include:
* **The National Law:**
* s.133: “*the indiscriminate or unnecessary use of regulated health services*”;
* **Code of Conduct:**
* cl.2.4(d): “*not providing unnecessary services*”;
* cl.5.2(a): “*ensuring that the services provided... are not excessive, unnecessary or not reasonably required*”;
* **Advertising Guidelines:**
* cl.7.2(e): “*the indiscriminate or unnecessary use of health services*”; Appendix 6 “*the unnecessary use of health services*” .
1. It is important that health practitioners encourage the appropriate use of health services, particularly in light of the obligations of practitioners in providing “good care” to their patients as set out at paragraph 2 of the Code of Conduct. In particular, paragraph 2.2(d) requires practitioners to encourage their patients to be interested in their health, to manage their health and take responsibility for their health care decisions.
2. Luxottica’s preference is for the heading of paragraph 5.2, “Wise use of health care resources” to remain as expressed positively, rather than in a negative and restricting sense. However, Luxottica **recommends** the above references in both the Code of Conduct and Advertising Guidelines be harmonised with the wording adopted in the National Law as set out in Annexure 1.

**Promotion of Access to Health Services – Health Advocacy and benefits of Mobile Optometry**

1. All Australians should have convenient access to health services. Luxottica has observed that, for a number of reasons, a large part of the Australian population does not enjoy convenient access to an optometrist. This is due to many factors, particularly geographical location, socio-economic and the pressures of modern working conditions.
2. Luxottica supports the provision of optometry health services from non-standard locations, such as temporary rooms set up close by to office workers, or mobile refracting units which can be driven to remote locations.
3. Luxottica **recommends** that the new paragraph 5.3 “Health advocacy” should be expanded as set out in Annexure 1 to acknowledge the many benefits for consumers offered by mobile health services, and to encourage practitioners to offer such services to the community.

*Remote Communities and Indigenous Communities*

1. Eye health is a known problem for Indigenous Australians who suffer from eye conditions disproportionately to other Australians. Without restating all of the facts, blindness rates for Indigenous Australians are up to 6 times higher than other Australians while 30% of all long term health conditions suffered by Indigenous persons involve eyesight problems.[[10]](#footnote-10)  Despite a higher incidence of vision impairment, almost half of all Indigenous Australians reported that they have never had an eye examination.[[11]](#footnote-11) Other remote communities have similar problems caused by the difficulty in accessing eye care.

*Rural and Regional Centres*

1. As at June 2012, 30% of Australia’s population lived outside a major city in Australia.[[12]](#footnote-12) In our experience, people living in remote and rural areas find it difficult to access eye care services. A principal contributing factor is the chronic shortage of optometrists currently practising in regional Australia. For regional Australians, a trip to an optometrist may involve a long journey, significant inconvenience and increased costs. These difficulties contribute to the failure of many regional Australians to undergo a regular eye test.

*Time-poor Modern Workers*

1. Luxottica has observed an emerging trend of workers failing to undergo a regular eye test, even where symptoms of poor eye function are present. Often, the explanation given is that the patients perceive themselves to be “time poor” such that they are unable to attend an appointment with an optometrist.
2. A study undertaken by the National Centre for Social and Economic Modeling[[13]](#footnote-13) found that longer working hours directly contribute to the failure of workers to obtain medical services and that “…*of the paid workforce, those working 40 hours or more a week used significantly fewer doctor services than any other group*”, despite there being no difference in the health of those persons when compared with those who worked fewer hours per week. It also found that “*those working long hours found it more difficult to take the time to visit the doctor even when they are ill.”[[14]](#footnote-14)* This pattern was found to be consistent across all states and territories.
3. The problems posed by long working hours are only set to increase in coming years. Survey data from the Australian Bureau of Statistics[[15]](#footnote-15) reveals that very long hours of work (being 50 or more per week) have become more common since 1985. Now 30% of men and 16% of women fall within this category, and these numbers continue to rise.
4. For the reasons stated above, mobile optometry can significantly address these concerns. Luxottica also considers that express reference to gaining an understanding of a patient’s lifestyle needs, and acting upon that information should be expressly referenced in the Code of Conduct.

**Prevention of Disease and Optometry – Recall Times**

1. Luxottica wishes to draw AHPRA’s attention to an area of the Code of Conduct that Optometrists are hindered from promoting fully due to Medicare rules. Clause 5.4 “Public health” states that:

*“Practitioners have a responsibility to promote the health of the community through* ***disease prevention and control****, education* ***and, where relevant, screening****.”* (emphasis added)

1. Healthy eyesight is something all Australians should have. Fundamental to maintaining healthy eyesight is regular eye examinations. An eye test detects disorders of the eyes, allowing correction or management of any disorder by optical appliance, medication or surgical treatment. As with many medical problems, early detection of many serious eye disorders is critical to successful treatment. The Federal Government recognises this by allocating Medicare funding for regular eye tests. However, the Medicare rules on the frequency of eye tests have remained unchanged for over 35 years and, in Luxottica’s view, no longer reflect what is clinically appropriate for all patients.
2. The Medicare rules are predicated on the assumption that a comprehensive eye test once every 2 years is appropriate. There is a growing body of evidence that this 2 year “one-size-fits-all” is no longer appropriate for certain risk groups, such as people over 40[[16]](#footnote-16) and people who are overweight or obese.
3. One of the major developments in optometry in recent years has been the use of eye examinations to detect a range of other non-eye related medical conditions. With the advent of improved technology and greater learning on how the eyes can be source of information about a patient’s general medical health, the value of regular eye examinations has moved beyond just when a patient should get new glasses. Following are some examples of how regular eye examinations can aid in preventative medicine by detecting serious medical conditions:
* hypertension and stroke;
* diabetes; and
* high cholesterol.
1. At the time the Medicare rules governing the frequency of eye examinations were developed, eye examinations were primarily used to determine if glasses were needed to correct a patient’s vision and the recommended frequency of eye tests was based largely on how often a patient should get new glasses.
2. Luxottica has made direct submissions to the Minister for Health on this issue but wishes to raise awareness of this issue with AHPRA, as the body who oversees the National Law and the Optometry Board of Australia.

**Shared Decision Making**

1. Eye conditions do not always occur in isolation and often the proper treatment of patients requires co-treatment by other health professionals. To ensure that the best possible care can be provided to patients, and in light of the advancements which are occurring in electronic record keeping and data storage, Luxottica **recommends** that paragraphs 2.3 (Shared decision making) and 3.2 (Partnership) should be broadened to encourage all health practitioners who are co-treating a patient to share relevant information where this would benefit the patient. Obviously, any sharing of data would be subject to all applicable privacy and health records laws, and this should be reflected in paragraph 3.4 (Confidentiality and privacy).

**Health and Technology**

1. As AHPRA would be aware, technology is constantly evolving. Part of a practitioner’s continuing education and service delivery to patients is to become familiar with such innovations in treatment and forms of access to optometry services. For instance, in 2010, measures were implemented by the Federal Government to facilitate “Telehealth” a scheme whereby patients in remote or regional locations use video link and other technology to “attend” certain medical consultations. The aim of Telehealth is to provide greater equality of access to health services across Australia and remove the barriers that would otherwise be faced by regional and remote communities in Australia.
2. Luxottica **recommends** that AHPRA consider the following amendments to the proposed Code of Conduct:
	1. inclusion of a reference to technology and its potential role in decisions about access to health care at paragraph 2.4; and
	2. inclusion of references to technology and its potential role in extending access to health care to regional and remote patients at paragraphs 5.2 and 5.3.

**SUBMISSIONS ON SOCIAL MEDIA POLICY**

Luxottica supports the introduction of a guideline on the use of social media and applauds AHPRA for bringing the potential pitfalls of this technology to the attention of industry. Luxottica does not consider any amendments to the draft Social Media Policy are required, but repeats its comments made in above.

**ANNEXURE 1 PROPOSED CHANGES**

**Advertising GUIDELINES**

Public consultation draft

April 2013

*Guidelines for advertising regulated health services*

1. **Authority**

The *Guidelines for advertising regulated health services* were jointly developed by the National Boards under section 39 of the HealthPractitioner Regulation National Law,as in force in each state and territory (the National Law).

All obligations outlined in this document are those required under the National Law unless stated otherwise.

1. **Definitions**

A list of definitions is included in **appendix 1**.

Restrictions on advertising are included in other legislation. Practitioners should note that definitions in that legislation may be different and should refer to the relevant definitions to ensure compliance with that legislation.

1. **Purpose**

This document provides guidance on what constitutes acceptable professional practice when advertising services that are provided by, or usually provided by, a health practitioner (‘regulated health services’ or ‘services’). Section 133 of the National Law regulates advertising by health practitioners. This document is not law and in cases of discrepancy, the National Law will prevail. It is not intended to be a comprehensive statement of the law or a substitute for the National Law. Failure to follow these guidelines will not necessarily constitute a breach of the National Law, but the Guidelines will assist practitioners in complying with what APHRA considers to be acceptable conduct under the National Law.

**Section 133 of the National Law provides:**

(*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.*

*Maximum penalty—*

*(a)  in the case of an individual—$5,000; or*

*(b)  in the case of a body corporate—$10,000.*

*(2)   A person does not commit an offence against subsection (1) 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 this section, a court may have regard to a guideline approved by a National Board about the advertising of regulated health services.*

*In this section —* ***regulated health service*** *means a service provided by, or usually provided by, a health practitioner.*

These guidelines:

* set out the obligations of advertisers (see definition in **appendix 1**)
* explain advertising that is prohibited
* describe information commonly found in advertising, and
* clarify that advertisers of regulated health services also have responsibilities under other legislation administered by other regulators.

The National Law and these guidelines focus on consumer protection. The role of these guidelines is to explain the limits placed on regulated health services advertising under the National Law, not to explain to practitioners how to advertise. The wording of s. 133 is broad and it is not possible to provide an exhaustive list of advertising that will, or will not, contravene the National Law.

Those advertising regulated health services, including individual practitioners, are responsible for ensuring that their advertisements comply with the law. Neither AHPRA nor the National Boards are able to provide legal advice to health practitioners about advertising and these guidelines are not a substitute for legal advice.

1. **Who these guidelines apply to**

These guidelines apply to any person who advertises a regulated health service (as defined in **appendix 1**), including registered health practitioners, non-registered health practitioners, individuals and bodies corporate (advertisers).

A breach of advertising requirements is a criminal offence. The National Law imposes a penalty up to $5,000 for an individual and $10,000 for a body corporate.

A court may consider these guidelines when hearing advertising offences against section 133 of the National Law.

1. **The basis for these guidelines**

The following principles apply to these guidelines:

* The continuous development of a flexible, responsive and sustainable Australian health workforce and enabling innovation in the education of, and service delivery by, health practitioners are objectives of the National Law
* advertising may be a valuable tool in educating consumers about the services health practitioners offer to the public to enable health consumers to make informed choices
* advertising which contains false and misleading information undermines the integrity of our health system as well as the trust of the public in the health profession being advertised
* the public should be protected from false and misleading advertisements, and
* the indiscriminate or unnecessary use of health services should be discouraged.
1. **Obligations under the National Law and other legislation**

Advertisers of regulated health services must comply with the National Law, available at [www.ahpra.gov.au](http://www.ahpra.gov.au).

Australian regulators such as the Australian Competition and Consumer Commission (ACCC) and the Therapeutics Goods Administration (TGA) also have responsibility for laws governing the advertising of health products and services. More information about this is included in **appendices 3 and 4**.

A registered health practitioner (and those who have previously been registered health practitioners) may also be subject to disciplinary action under Part 8 of the National Law (which relates to health, performance and conduct) for unprofessional conduct (this is described as ‘unsatisfactory professional conduct’ in NSW) in relation to advertising. One of the grounds for a voluntary notification is that the health practitioner has, or may have, contravened the National Law (see section 144).

These guidelines should also be read in conjunction with codes and guidelines published by National Boards that convey the Board’s expected standards of professional conduct. Each National Board has published a *Code of conduct for registered health practitioners,* or similar document. Practitioners have a professional responsibility to be familiar with, and apply, this code. The code describes the professional standards expected of practitioners, including when advertising.

In some circumstances, advertiser may also breach the title and practice protection provisions of the National Law, whether or not they have been prosecuted under the advertising provisions.

Compliance with these guidelines does not excuse advertisers of regulated health services from the need to comply with other applicable laws. Advertising of regulated health services often involves the advertising of products and/or therapeutic goods and care must be taken to ensure compliance with all relevant legislation.

If a complaint about an advertisement may be of interest to another Australian regulatory authority such as the TGA or ACCC, AHPRA may refer the matter to the most appropriate regulator.

Other laws and authorities that regulate advertising are described in **appendix 2.**

1. **The advertising provisions of the National Law**

The following sections explain advertising which may contravene or are not likely to contravene the advertising requirements of the National Law.

The ACCC has provided the following information on how to avoid being misleading and deceptive when advertising, which may be useful guidance for advertisers considering the requirements of the National Law:

* *Sell your professional services on their merits.*
* *Be honest about what you say and do commercially.*
* *Look at the overall impression of your advertisement. Ask yourself who the audience is and what the advertisement is likely to say or mean to them.*
* *Remember, at a minimum, that it is the viewpoint of a layperson with little or no knowledge of the professional service you are selling that should be considered.[[17]](#footnote-17)*

7.1 Information included in advertisements. The following factual information is commonly included in health services advertisements, and may assist advertisers. The list below is not intended to be exhaustive.

|  |
| --- |
| *Information commonly included in health services advertising** Office details
	+ contact details
	+ office hours, availability of after-hours services
	+ accessibility (e.g. wheelchair access)
	+ languages spoken (this does not affect other guidance provided by the national board about use of qualified interpreters where appropriate)
	+ emergency contact details
* Fees
	+ a statement about fees charged, bulk-billing arrangements, or other insurance plan arrangements and installment fee plans regularly accepted
* Qualifications
	+ a statement of the names of schools and training programs from which the practitioner has graduated and the qualifications received, subject to the specific information in these guidelines on, ‘advertising of qualifications and titles’
	+ reference to any practitioners who hold specialist registration or endorsement under the national law and their area of specialty or endorsement
	+ a statement of the teaching positions currently or formerly held by the practitioner in board-approved or accredited institutions, together with relevant dates
	+ a statement of the accreditation or certification of the practitioner with a public board or agency, including any affiliations with hospitals or clinics
	+ a statement of safety and quality accreditation of the practice or health care setting
* For any surgical and/or invasive procedures, the appropriate warning statement in a clearly visible position[[18]](#footnote-18)
* Non-enhanced photos or drawings of the practitioner or his or her office
* Any statement providing public health information encouraging preventive, restorative or corrective care (public health information should also be evidence based wherever possible)
 |

**7.2 Prohibited advertising under the National Law**

Section 133 of the National Law covers five key aspects of advertising. These relate to advertising that:

1. is false, misleading or deceptive or is likely to be so
2. offers a gift, discount or other inducement to attract a user of the health service without stating the terms and conditions of the offer
3. uses testimonials or purported testimonials
4. creates an unreasonable expectation of beneficial treatment, and/or
5. encourages the indiscriminate or unnecessary use of health services.

The section below explains what may constitute a breach of the National Law and what could generally be considered inconsistent with the National Law.

*7.2.1 Misleading or deceptive advertising*

Section 133 of the National Law states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –*
	1. *Is false, misleading or deceptive or is likely to be misleading or deceptive*

A common meaning of ‘mislead or deceive’ is ‘lead into error’. The Courts have considered the phrase ‘mislead or deceive’ and those that are misled are almost by definition deceived as well. Misleading someone may include lying to them, leading them to a wrong conclusion, creating a false impression, leaving out (or hiding) important information, making false or inaccurate claims.

As the ACCC explains, ’Patients can be physically, psychologically or financially affected by misleading conduct, and these effects can be long lasting. It is essential that patients be given honest, accurate and complete information in a form they can understand.’[[19]](#footnote-19)

More information about the meaning of ‘mislead or deceive’ is available on the ACCC website.[[20]](#footnote-20)

Examples of advertising that may be false or misleading include those that:

* mislead, either directly, or by implication, use of emphasis, comparison, contrast or omission
* compare different regulated health professions or practitioners, in the same profession or across professions, in a way that may mislead or deceive
* only provide partial information which could be misleading
* uses phrases like ‘as low as’ or ‘lowest prices’, or similar words or phrases when advertising fees for services, prices for products or price information in a way which is misleading or deceptive
* imply that the regulated health services can be a substitute for public health vaccination or immunisation, and/or
* use words, letters or titles that may mislead or deceive a health consumer into thinking that the provider of a regulated health service is more qualified or more competent than a holder of the same registration category (e.g. ‘specialising in XX’ when there is no specialist registration category for that profession).

For example, the ACCC comments that it would be misleading or deceptive for a business to advertise the health benefits of a therapeutic device or health product but have no proof that such benefits can be attained.[[21]](#footnote-21)

*7.2.2 Gifts and discounts*

Section 133 of the National Law states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –*
	1. *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*

Any advertisement that offers gifts, prizes or free items must state the terms and conditions of the offer. The use of unclear, unreadable or misleading terms and conditions attached to gifts, discounts and other inducements would not meet this requirement.

Consumers generally consider the word ‘free’ to mean absolutely free. When the costs of a ‘free offer’ are recouped through a price rise elsewhere, the offer is not truly free. An example is an advertisement which offers ‘make one consultation appointment, get one free’, but raises the price of the first consultation to largely cover the cost of the second (free) appointment. This type of advertising could also be misleading or deceptive.

The terms and conditions should be in plain English, readily understandable, accurate and not in themselves misleading about the conditions and limitations of the offered service.

Advertising may contravene the National Law when it:

* contains price information that is inexact
* contains price information that fails to specify any terms and conditions or variables to an advertised price, or that could be considered misleading or deceptive
* states an instalment amount without stating the total cost (which is a condition of the offer), and/or
* does not state the terms and conditions of offers of gifts, discounts or other inducements.

*7.2.3 Testimonials*

Section 133 of the National Law states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –*
2. *Uses testimonials or purported testimonials about the service or business*

The National Law does not define testimonial, so the word has its ordinary meaning, which includes a recommendation about a service or its quality. The ordinary meaning, as provided by the Macquarie Dictionary, is “*a writing certifying to a person’s character, conduct or qualifications, or to a thing’s value, excellence, etc.; a letter or written statement of recommendation*…” The Concise Oxford Dictionary defines “testimonial” to include “…*A writing testifying to one’s qualifications and character…a letter of recommendation of a person or thing.*”

A testimonial includes recommendations made by an individual about a particular regulated health service or practitioner Testimonials can distort a person’s judgment in his or her choice of health practitioner, may misrepresent the skills and or expertise of practitioners and create unrealistic expectations of the benefits such practitioners may offer health consumers.

Testimonials in advertising include:

1. using or quoting testimonials on a website, such as patients posting comments about a practitioner which recommend that practitioner or encourage others to use the services of the practitioner on the practitioner’s business website, particularly where the website encourages patients to post comments and/or selectively publishes patient comments
2. ***[Luxottica notes it is unclear what “self testimonials” means – if a practitioner writes about their own skills, this is not a “testimonial”]***the use of patient stories in which the patient recommends a particular practitioner or health service provided by that practitioner.

The following examples of advertising will not usually constitute a testimonial and will not usually be prohibited:

1. an endorsement, such as a celebrity endorsement of a service or product;
2. a statement of the fact where no recommendation is made, such as a statement that a person has attended a practitioner, or undergone certain health services, or was given a particular diagnosis;
3. use of a patient’s image in advertising (including in the demonstration a particular treatment) in circumstances where they do not provide a verbal or written recommendation of the service, does not amount to a testimonial;
4. testimonials that relate solely to services or goods that are not regulated by the National Law, such as goods sold by the practitioner, customer service provided by a practitioner (as distinct from health services provided by that practitioner) or, in the case of optometry, dispensing of optical appliances or visual screening.

The above list is an example of the kinds of advertising that are unlikely to constitute a testimonial only. Practitioners must consider all advertising separately and if in doubt, it is preferable to exercise caution or obtain legal advice.

A practitioner must take reasonable steps to have any unsolicited testimonials associated with their advertising which are published on social media sites over which they have control removed within a reasonable period after they become aware of them. Reasonable steps include taking action within the practitioner’s power, such as directly removing the testimonials.

For example, an advertisement on a social media site eg a Facebook page controlled by a practitioner that includes a recommendation from a patient, or statement from a person about the benefits of the regulated health service or business they received from a registered health practitioner, may contravene the National Law. Within 7 days or such other reasonable period after the practitioner is aware of the testimonials, he or she must take reasonable steps to remove the testimonial (where possible to do so) (also refer to section 8.1 on social media).

*7.2.4 Unreasonable expectation of beneficial treatment*

Section 133 of the National Law states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –*
2. *Creates an unreasonable expectation of beneficial treatment*

This often arises when advertisers take advantage of the vulnerability of health consumers in their search for a cure or remedy. The claims of beneficial treatment can range from miracle cures to unsubstantiated scientific claims. The expectation has to be reasonable from an objective point of view.

For example, advertising may contravene the National Law when it:

* creates an unreasonable expectation (such as by exaggerating or by providing incomplete or biased information) of recovery time following provision of a regulated health service
* fails to disclose the health risks associated with a treatment
* omits the necessary warning statement for a surgical or invasive procedure[[22]](#footnote-22)
* contains any information or material that is likely to make a person believe his or her health or wellbeing may suffer from not taking or undertaking the health service, if such treatment is not reasonably necessary for prevention or treatment of a medical condition, and/or
* contains a claim, statement or implication that is likely to create an unreasonable expectation of beneficial treatment by:
	+ either expressly or by omission, indicating that the treatment is infallible, unfailing, magical, miraculous or a certain, guaranteed or sure cure, and/or
	+ a practitioner has an exclusive or unique skill or remedy, or that a product is ‘exclusive’ or contains a ‘secret ingredient’ that will benefit the patient.

*7.2.5 Encouraging indiscriminate or unnecessary use of health services*

Section 133 of the National Law states:

*(1) A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –*

1. *Directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services*

The unnecessary use of health services is not in the public interest.

Advertising may contravene the National Law when it:

* encourages a person to improve their physical appearance together with the use of phrases such as ‘don’t delay’, ‘achieve the look you want’ and ‘looking better and feeling more confident’, if such treatment is not reasonably necessary for prevention or treatment of a medical condition (in particular, use of cosmetic surgery solely for aesthetic reasons)
* provides a patient or client with an unsolicited appointment time
* uses prizes, bonuses, bulk purchases, bulk discounts or other endorsements to encourage the unnecessary consumption of health services that are unrelated to clinical need or therapeutic benefit
* uses promotional techniques that are likely to encourage consumers to use health services regardless of clinical need or therapeutic benefit
1. **Further information about specific types of advertising**

These guidelines cover all types of advertising, including social media, blogs and websites. The following sections discuss some aspects of advertising in more detail, to provide further guidance to practitioners.

**8.1 Social media**

The National Law prohibits advertising in any way that uses testimonials or purported testimonials. Testimonials, or comments that may amount to testimonials, made on social media sites by patients or other people may contravene the National Law.

Social media includes work related and personal pages on social networks such as Facebook, LinkedIn and Twitter.

A person is responsible for content on their social networking pages and for comments made on social networking pages over which they have the ability to remove or edit comments, even if they were not responsible for the initial publication of the information or testimonial. This is because a person responsible for a social networking account accepts responsibility for any comment published on it, once alerted to the comment. Practitioners with social networking accounts should carefully review content regularly to make sure that all material complies with their obligations under the National Law and ensure that they respond to any offending material within 7 days or such other reasonable period of time.

These guidelines should be read in conjunction with the *Social media policy*, to be published on National Boards’ websites.

**Code of Conduct**

1.2 Professional values and qualities

While individual practitioners have their own personal beliefs and values, there are certain professional values on which all practitioners are expected to base their practice. These professional values apply to the practitioner’s conduct regardless of the setting, including in person and electronically e.g. social media, e-health etc.

Practitioners have a duty to make the care of patients or clients their first concern and to practise safely and effectively. They must be ethical and trustworthy. Patients or clients trust practitioners because they believe that, in addition to being competent, practitioners will not take advantage of them and will display qualities such as integrity, truthfulness, dependability and compassion. Patients or clients also rely on practitioners to protect their confidentiality.

Practitioners have a responsibility to protect and promote the health of individuals and the community.

Good practice is centred on patients or clients. It involves practitioners understanding that each patient or client is unique and working in partnership with patients or clients, adapting what they do to address the needs and reasonable expectations of each person. This includes cultural awareness: being aware of their own culture and beliefs and respectful of the beliefs and cultures of others, and recognising that these cultural differences may impact on the practitioner–patient/client relationship and on the delivery of services. Good practice also includes being aware that differences such as gender, sexuality, age and belief systems may influence care needs, and avoiding discrimination on the basis of these differences.

Effective communication in all forms underpins every aspect of good practice.

Professionalism embodies all the qualities described here and includes self-awareness and self-reflection. Practitioners are expected to reflect regularly on whether they are practising effectively, on what is happening in their relationships with patients or clients and colleagues, and on their own health and wellbeing. They have a duty to keep their skills and knowledge up-to-date (including in relation to advancements in technology), refine and develop their clinical judgement as they gain experience, and contribute to their profession.

Practitioners have a responsibility to recognise and work within the limits of their competence and scope of practice. Scopes of practice vary according to different roles; for example, practitioners, researchers and managers will all have quite different competence and scopes of practice. To illustrate, in relation to working within their scope of practice, practitioners may need to consider whether they have the appropriate qualifications and experience to provide advice on over the counter and scheduled medicines, herbal remedies, vitamin supplements, etc. It is acknowledged that a practitioner’s scope of practice may change over time as their skills broaden to include new technologies, equipment and advancements in research which occur.

Practitioners should be committed to safety and quality in health care (the Australian Commission on Safety and Quality in Health Care is at [www.safetyandquality.gov.au](http://www.safetyandquality.gov.au)).

2.2 Good care

Maintaining a high level of professional competence and conduct is essential for good care. Good practice involves:

1. recognising and working within the limits of a practitioner’s competence and scope of practice, which may expand or otherwise change over time in accordance with advancements in the field of practice
2. ensuring that practitioners maintain adequate knowledge and skills to provide safe and effective care
3. when moving into a new area of practice, ensuring that a practitioner has undertaken sufficient training and/or qualifications to achieve competency in that area
4. practising patient/client-centred care, including encouraging patients or clients to take interest in, and responsibility for the management of their health and supporting them in this
5. maintaining adequate records (see Section 8.4 Health records)
6. considering the balance of benefit and harm in all clinical management decisions
7. communicating effectively with patients or clients (see Section 3.3 Effective communication)
8. providing treatment options based on the best available information and not influenced by financial gain or incentives
9. taking steps to alleviate the symptoms and distress of patients or clients, whether or not a cure is possible
10. supporting the right of the patient or client to seek a second opinion
11. consulting and taking advice from colleagues when appropriate
12. making responsible and effective use of the resources available to practitioners (see Section 5.2 Wise use of health care resources)
13. ensuring that the personal views of a practitioner do not affect the care of a patient or client adversely
14. practising in accordance with the current and accepted evidence base of the health profession, including clinical outcomes
15. evaluating practice and the decisions and actions in providing good care.

2.4 Decisions about access to care

Practitioner decisions about access to care need to be free from bias and discrimination. Good practice involves:

1. treating patients or clients with respect at all times
2. not prejudicing the care of a patient or client because a practitioner believes that the behaviour of the patient or client has contributed to his or her condition
3. upholding the duty to the patient or client and not discriminating on grounds irrelevant to health care, including race, religion, sex, disability or other grounds specified in antidiscrimination legislation
4. investigating and treating patients or clients on the basis of clinical need and the effectiveness of the proposed investigations or treatment, and not encouraging the indiscriminate or unnecessary use of health services
5. considering whether new or advances in technology may assist a patient in their access to care;
6. keeping practitioners and their staff safe when caring for patients or clients; while action should be taken to protect practitioners and their staff if a patient or client poses a risk to health or safety, the patient or client should not be denied care, if reasonable steps can be taken to keep practitioners and their staff safe
7. being aware of a practitioner’s right to not provide or participate directly in treatments to which the practitioner objects conscientiously, informing patients or clients and, if relevant, colleagues of the objection, and not using that objection to impede access to treatments that are legal
8. not allowing moral or religious views to deny patients or clients access to health care, recognising that practitioners are free to decline to provide or participate in that care personally.

3.4 Confidentiality and privacy

Practitioners have ethical and legal obligations to protect the privacy of people requiring and receiving care. Patients or clients have a right to expect that practitioners and their staff will hold information about them in confidence, unless release of information is required by law or public interest considerations. Good practice involves:

1. treating information about patients or clients as confidential and applying appropriate security to electronic and hard copy information
2. seeking consent from patients or clients before disclosing information where practicable
3. being aware of the requirements of the privacy and/or health records legislation that operates in relevant States and Territories and applying these requirements to information held in all formats, including electronic information;
4. sharing information appropriately about patients or clients for their health care while remaining consistent with privacy legislation and professional guidelines about confidentiality
5. where relevant, being aware that there are complex issues relating to genetic information and seeking appropriate advice about disclosure of such information
6. providing appropriate surroundings to enable private and confidential consultations and discussions to take place
7. ensuring that all staff are aware of the need to respect the confidentiality and privacy of patients or clients and refrain from discussing patients or clients in a non-professional context
8. complying with relevant legislation, policies and procedures relating to consent
9. using consent processes, including formal documentation if required, for the release and exchange of health and medical information
10. ensuring that use of social media and e-health is consistent with the practitioner’s ethical and legal obligations to protect privacy.
	1. Children and young people

Caring for children and young people brings additional responsibilities for practitioners. Importantly, mandatory reporting of child abuse and neglect is legislated in all states and territories in Australia. However, the categories of health professionals whom are mandated to report, the type of abuse that is mandated to be reported and notification to be made varies between jurisdictions. It is the practitioner’s responsibility to be aware of their mandatory reporting requirements for their state or territory.

Good practice involves:

1. placing the interests and wellbeing of the child or young person first
2. considering the young person’s capacity for decision making and consent; in general, where a practitioner judges that a person is of a sufficient age and of sufficient mental and emotional capacity to give consent to a service, then that person should be able to request and provide informed consent to receive services without the consent of a parent, guardian or other legal representative
3. ensuring that, when communicating with a child or young person, practitioners:
* treat the child or young person with respect and listen to his or her views
* encourage questions and answer those questions to the best of the practitioner’s ability
* provide information in a way the child or young person can understand
* recognise the role of parents or guardians and, when appropriate, encourage the child or young person to involve his or her parents or guardians in decisions about care
1. remaining alert to children and young people who may be at risk of harm and notifying appropriate child protection authorities as required by the law, having reference to the responsible authority in the practitioner’s jurisdiction for guidance. This may include where a parent or guardian is refusing treatment for his or her child or young person and this decision may not be in the best interests of the child or young person.
	1. Delegation, referral and handover

‘Delegation’ involves one practitioner asking another practitioner or member of staff (“the delegate”) to provide care or undertake a specific task on behalf of the delegating practitioner while he or she retains overall responsibility for the care of the patient or client. ‘Referral’ involves one practitioner sending a patient or client to obtain an opinion or treatment from another practitioner. Referral usually involves the transfer (in part) of responsibility for the care of the patient or client, usually for a defined time and a particular purpose, such as care that is outside the referring practitioner’s expertise or scope of practice. ‘Handover’ is the process of transferring all responsibility to another practitioner.

Good practice involves:

1. Adopting a rational decision-making and risk-assessment approach when considering whether to delegate a task, having regard to the complexity of the task, the relevant experience of the delegate, the delegate’s ability and willingness to perform the task and evaluating the measures in place for the delegate to consult with the delegating practitioner;
2. Considering whether the task requires the consent of the patient to the delegation and, if so, what level of information is reasonable to be provided to the patient to properly consider consent;
3. taking reasonable steps to ensure that any person to whom a practitioner delegates, refers or hands over has the qualifications or the requisite training, experience, knowledge and skills to perform the care and task required, which may include teaching the delegate the relevant skills, testing and maintaining competency and evaluating outcomes
4. presenting a sufficient level of information to the delegate to enable the task to be carried out and to ensure that the delegate is aware that the delegating practitioner is available for consultation if there is any uncertainty in relation to the task
5. understanding and communicating that there is no expectation for the delegate to interpret any findings of the task
6. understanding that, although a delegating practitioner will not be accountable for the decisions and actions of those to whom he or she delegates, the delegating practitioner remains responsible for the overall management of the patient or client and for the decision to delegate
7. always communicating sufficient information about the patient or client and the treatment needed to enable the continuing care of the patient or client.
	1. Teamwork

Many practitioners work closely with a wide range of other practitioners and staff with benefits for patient care. In addition, practitioners who are employers are vicariously liable for the actions of their employees. Those practitioners also have obligations to their employees under employment and OH&S laws.

Effective collaboration is a fundamental aspect of good practice when working in a team. The care of patients or clients is improved when there is mutual respect and clear communication as well as an understanding of the responsibilities, capacities, constraints and ethical codes of each other’s health professions. Working in a team does not alter a practitioner’s personal accountability for professional conduct and the care provided. When working in a team, good practice involves:

1. understanding the particular role in the team and attending to the responsibilities associated with that role
2. advocating for a clear delineation of roles and responsibilities, including that there is a recognised team leader or coordinator although care within the team may be provided by different practitioners from different health professions within different models of care
3. communicating effectively with other team members
4. informing patients or clients about the roles of team members
5. acting as a positive role model for team members
6. understanding the nature and consequences of bullying and harassment and seeking to avoid or eliminate such behaviour in the workplace
7. understanding the importance of safe practices in the workplace in accordance with occupational health and safety requirements
8. supporting students and practitioners receiving supervision and others within the team.
	1. Wise use of health care resources

It is important to use health care resources wisely. Good practice involves:

1. ensuring that the services provided are appropriate for the assessed needs of the patient or client and are not are not indiscriminate or unnecessary upholding the right of patients or clients to gain access to the necessary level of health care, and, whenever possible, helping them to do so including promoting and educating patients on the role of new technologies and the use of technology to improve access to health care resources
2. supporting the transparent and equitable allocation of health care resources
3. understanding that the use of resources can affect the access other patients or clients have to health care resources.
	1. Health advocacy

There are significant disparities in the health status of different groups in the Australian community. These disparities result from social, cultural, geographic, health-related and other factors. In particular, Indigenous Australians bear the burden of gross social, cultural and health inequity.

Other groups may experience health disparities including people with intellectual or physical disabilities, those from culturally and linguistically diverse backgrounds and refugees.

One group often overlooked when considering health disparities is that portion of the workforce that cannot access health services due to long working hours and the inability to access such services during opening hours.

Good practice involves:

1. using expertise and influence to protect and advance the health and wellbeing of individual patients or clients, communities and populations
2. acknowledging and promoting the benefits of mobile health services to:
	* regional and remote communities;
	* indigenous communities ; and
	* workplaces throughout Australia.
3. using new technologies or services that may improve access to health services for disadvantaged groups in the Australian community, particularly the indigenous and regional communities.
	1. Risk management

Good practice in relation to risk management involves:

1. being aware of the principles of open disclosure and a non-punitive approach to incident management; a useful reference is the Australian Commission on Safety and Quality in Health Care’s *National Open Disclosure Standard* available at [www.safetyandquality.gov.au](file:///C%3A%5CUsers%5Chelen%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLLROZHLU%5CEarly%20and%20multiple%20versions%5Cwww.safetyandquality.gov.au)
2. participating in systems of quality assurance and improvement
3. participating in systems for surveillance and monitoring of adverse events and ‘near misses’, including reporting such events to the relevant authority
4. if a practitioner has management responsibilities, making sure that systems are in place for raising concerns about risks to patients or clients
5. working in practice and within systems to reduce error and improve the safety of patients or clients and supporting colleagues who raise concerns about the safety of patients or clients
6. taking all reasonable steps to address the issue if there is reason to think that the safety of patients or clients may be compromised
7. adhering to occupational health and safety legislation and implementing a safe working environment
	1. Continuing professional development

Development of knowledge, skills and professional behaviour must continue throughout a practitioner’s working life. Good practice involves keeping knowledge and skills up-to-date to ensure that practitioners continue to work within their competence and scope of practice. Additionally, good practice involves adopting developments within the profession from time to time which may have the effect of changing the scope of practice. Any such change should appropriately be accompanied by the requisite training, self-reflection and consultation with colleagues.

The National Law requires practitioners to undertake CPD. Practitioners should refer to the board’s Registration Standard and guideline regarding CPD for details of these requirements.

1. See for instance, the Medicare Benefits Schedule Book, which provides, “… This book is not a legal document, and, in cases of discrepancy, the legislation will be the source document for payment of Medicare benefits.” [↑](#footnote-ref-1)
2. Competition Policy Review Team, Department of Human Resources, South Australia, “Legislation Review: Optometry Act 1920: Report of the Review Panel”, March 1999. [↑](#footnote-ref-2)
3. *ibid*., page 18. [↑](#footnote-ref-3)
4. Under the *Public Health Regulation 2012*. [↑](#footnote-ref-4)
5. Federal Trade Commission (United States), 16 CFR Part 255. [↑](#footnote-ref-5)
6. The CAP Code: The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing, Edition 12. [↑](#footnote-ref-6)
7. See, for example, section 4, *Optometrists Act 1930* (NSW) (repealed) which was replaced by the National Law. [↑](#footnote-ref-7)
8. http://www.statisticbrain.com/twitter-statistics. Sources: Twitter, Huffington Post, eMarketer. [↑](#footnote-ref-8)
9. College of Optometrists of British Columbia and College of Optometrists of Ontario. [↑](#footnote-ref-9)
10. Australian Institute of Health and Welfare, “Eye health in Aboriginal and Torres Strait Islander people.” (2011) Cat. no. IHW 49 [↑](#footnote-ref-10)
11. *Ibid.* page vii [↑](#footnote-ref-11)
12. Australian Bureau of Statistics, 3218.0 – Regional Population Growth Australia 2011- 2012 [↑](#footnote-ref-12)
13. A joint initiative between the University of Canberra and the Federal Health Department (then the Department of Health, Housing, Local Government and Community Services). [↑](#footnote-ref-13)
14. Schofield, D. (1996), ‘The Impact of Employment and Hours of Work on Health Status and Health Service Use’, Discussion paper No. 11, The National Centre for Social and Economic Modelling, page 18. [↑](#footnote-ref-14)
15. Australian Bureau of Statistics, 4102.0 – Australian Social Trends, 2006, ‘Trends in Hours Worked’. Statistics relate to full-time workers. [↑](#footnote-ref-15)
16. Access Economics, “Investing in Sight” (2006), page 14. [↑](#footnote-ref-16)
17. Australian Competition and Consumer Commission, *Professions and the Competition and Consumer Act*, 2011, www.accc.gov.au/content/index.phtml/tag/professions [↑](#footnote-ref-17)
18. Note that some Boards may provide specific guidance on the use of warning statements for surgical and invasive procedures. See appendix 6. [↑](#footnote-ref-18)
19. www.accc.gov.au/business/professional-services/medical-professionals [↑](#footnote-ref-19)
20. www.accc.gov.au/business/advertising-promoting-your-business/false-or-misleading-claims [↑](#footnote-ref-20)
21. Australian Competition and Consumer Commission, Misleading and deceptive conduct, http://www.accc.gov.au/consumers/misleading-claims-advertising/false-or-misleading-claims [↑](#footnote-ref-21)
22. Note that some Boards may provide specific guidance on the use of warning statements for surgical and invasive procedures. See **appendix 6**. [↑](#footnote-ref-22)