



New South Wales

Medical Practice Amendment (Advertising) Regulation 2008

under the

Medical Practice Act 1992

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Medical Practice Act 1992*.

REBA MEAGHER, M.P.,
Minister for Health

Explanatory note

Section 114 of the *Medical Practice Act 1992* makes it an offence for a person (including a corporation) to advertise medical services except in accordance with the regulations. The maximum penalty is 250 penalty units (currently \$27,500).

The *Medical Practice Regulation 2003* currently provides that advertising for medical services must not:

- (a) be false, misleading or deceptive, or
- (b) create an unjustified expectation of beneficial treatment, or
- (c) promote the unnecessary or inappropriate use of medical services.

This Regulation, which is to commence on 1 July 2008, further prescribes the manner in which medical services may be advertised and provides as follows:

- (a) scientific and statistical information must be presented in a manner that can be readily understood by persons without any medical or scientific training or experience,
- (b) “before and after” patient photographs must be of a genuine patient of the medical practitioner whose services are being advertised and must be presented in the same or a similar manner (including framing, lighting, and make-up),
- (c) photographs depicting patient results must not be altered or manipulated in a misleading or deceptive manner and must be accompanied by a statement to the effect that individual results may vary and cannot be guaranteed.

This Regulation is made under the *Medical Practice Act 1992*, including sections 114 and 194 (the general regulation-making power).

2008 No 243

Clause 1 Medical Practice Amendment (Advertising) Regulation 2008

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Medical Practice Act 1992

1 Name of Regulation

This Regulation is the *Medical Practice Amendment (Advertising) Regulation 2008*.

2 Commencement

This Regulation commences on 1 July 2008.

3 Amendment of Medical Practice Regulation 2003

The *Medical Practice Regulation 2003* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 3)

Clause 10

Omit the clause. Insert instead:

10 Advertising

- (1) For the purposes of section 114 of the Act, a person (including a corporation) may advertise medical services in any manner, except as otherwise provided by this clause.

Note. Section 114 of the Act makes it an offence for a person (including a corporation) to advertise medical services except in accordance with the regulations.

- (2) Medical services must not be advertised in a manner that:
- (a) is false, misleading or deceptive, or
 - (b) creates an unjustified expectation of beneficial treatment, or
 - (c) promotes the unnecessary or inappropriate use of medical services.
- (3) Any scientific or statistical information used in advertising must be presented in a manner that can be readily understood by persons without any medical or scientific training or experience.
- (4) Any advertising that contains two or more photographs for the purpose of depicting a person before and after the person has received medical services must comply with the following:
- (a) photographs that purport to be of the same person must in fact be of the same person,
 - (b) the person or persons photographed must in fact have received the medical services that are being advertised,
 - (c) the medical services must have been performed by the medical practitioner whose services are being advertised or, in the case of advertising for medical services by a medical corporation, a medical practitioner who is currently employed or otherwise engaged by the medical corporation to perform the medical services,
 - (d) photographs of the same person must be presented in the same or a similar manner (including the same or similar framing, lighting and make-up).

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Schedule 1 Amendment

- (5) Any photograph of a person (or part of a person) used in advertising that depicts, or claims to depict, the results of medical services (including a photograph of a kind referred to in subclause (4)):
 - (a) must not be altered or manipulated in a misleading or deceptive manner, and
 - (b) must be accompanied by a statement, prominently displayed or communicated, to the effect that:
 - (i) the photograph shows the result of the medical service performed on one person, and
 - (ii) there is no guarantee that other persons will experience the same or a similar result.
- (6) In the case of advertising for medical services that contains two or more photographs of a kind referred to in subclause (5), it is sufficient compliance with subclause (5) (b) if the advertising is accompanied by one statement referred to in that subclause.

BY AUTHORITY
