



Guidelines for advertising counselling & psychotherapy services

1. What is the purpose of these Guidelines?

These Guidelines were developed by AGAPE to guide Practitioners who are advertising counselling or psychotherapy services.

The Guidelines:

- provide guidance on the obligations of Practitioners who are advertising counselling or psychotherapy services
- describe advertising that is prohibited by AGAPE or by the law
- explain that Practitioners have responsibilities under legislation that impact of their advertising
- explain the consequences of breaching these Guidelines.

This document draws on the guidelines for advertising developed by the Australian Health Practitioner Regulation Agency (AHPRA)¹. AGAPE acknowledges AHPRA for their guidelines.

2. To whom do the Guidelines apply?

These Guidelines apply to AGAPE Practitioners. "Practitioners" is defined in the Code of Ethics as Members of AGAPE and AGAPE Registrants who practise as psychotherapists or counsellors or who work in related fields including supervisors, educators, trainers and researchers in counselling and psychotherapy, and student members who see clients in the context of their training. These Guidelines apply where:

- the Practitioner advertises a counselling or psychotherapy service; and
- the Practitioner is an employee, contractor or volunteer of a business or agency that advertises counselling or psychotherapy services which are delivered by the Practitioner.

3. What are the principles underpinning these guidelines?

The following principles underpin these guidelines:

- advertising can be a useful way to communicate to the public about the counselling and psychotherapy services offered by Practitioners so that consumers can make informed choices about the service they access
- advertising that contains false and misleading information may compromise consumers' choices and is not in the public interest
- the unnecessary and indiscriminate use of counselling or psychotherapy services is not in the public interest as it may lead to clients accessing services they do not need or require.

¹ AHPRA, 2014. Guidelines for advertising regulated health services.

4. **What are Practitioners required to do?**

All Practitioners advertising counselling or psychotherapy services must comply with:

- these Guidelines
- provisions in the AGAPÈ Code of Ethics that are relevant to advertising
- provisions in any Government Code of Conduct, in force where the Practitioner practises, that are relevant to advertising
- any applicable legislation, such as the Australian Consumer Law
- any other Guidelines or Ethical Codes that may apply to Practitioners

AGAPÈ Code of Ethics

The AGAPÈ Code of Ethics does not have detailed requirements around the ethics of advertising counselling and psychotherapy services. However, the ethical principles in the Code apply to the way practitioners advertise their services. See the AGAPÈ Code of Ethics: Put clients first (section 1); Work to high professional standards (section 2); Build a relationship of trust (section 3); and Work ethically with colleagues (section 7).

Government Codes of Conduct

Practitioners have a professional responsibility to be familiar with, and apply, all relevant requirements when advertising counselling or psychotherapy services. These are part of the professional standards expected of Practitioners.

The National Code of Conduct for Health Practitioners has been enacted in some States and Territories. Where a Code of Conduct applies, Practitioners are required to comply with the provisions of the Code as they relate to advertising. For information on Government Codes of Conduct, see the AGAPÈ website.

Of relevance to these Guidelines are the following provisions from the National Code of Conduct:

- A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of those illnesses if that claim can be substantiated.
- A health practitioner must not use his or her possession of particular qualifications to mislead or deceive his or her clients as to his or her competence in his or her field of practice or ability to provide treatment.

Legislative requirements

When advertising counselling or psychotherapy services, Practitioners should take care that they comply with all relevant legislation such as the Australian Consumer Law. Australian regulators such as the Australian Competition and Consumer Commission (ACCC) have a responsibility for laws that impact on the advertising of counselling or psychotherapy services. More information about the ACCC and the Australian Consumer Law is included in Appendix 1.

Other Guidelines or Ethical Codes

These Guidelines are to be read with any other Guidelines or Ethical Codes that may apply to Practitioners with other professional roles e.g. psychologists, social workers, nurses, doctors etc. These Guidelines are not intended to take away any additional obligations that apply to Practitioners under other applicable Guidelines or Ethical Codes.

5. Guidelines for advertising counselling or psychotherapy services

This section provides guidance for advertising counselling or psychotherapy services. Failure to follow the Guidelines in this section could constitute a breach of the AGAPÈ Code of Ethics.

5.1. Use of factual information in advertising

Factual information in advertisements, as described below, may help health consumers to make informed choices. Practitioners should consider whether their advertising is factual and verifiable and ensure that it does not breach the requirements of the AGAPÈ Code of Ethics.

Information commonly included in advertising, which should be presented accurately and factually:

- Services offered
 - the counselling or psychotherapy modalities offered and the Practitioner's way of working
 - the presenting issues the Practitioner works with
- Fees
 - a statement about fees charged (price information must be exact)
 - information about private health insurance or other rebates that may be available to clients
 - instalment fee plans
- Office details
 - contact details
 - office hours, availability of after-hours services
 - accessibility (such as wheelchair access)
 - languages spoken
- Qualifications and experience
 - the institutions from which the Practitioner has graduated and the qualifications received
 - whether the Practitioner has specialist registration with AGAPÈ or any other body
 - what positions, currently or past, the Practitioner has held, together with relevant dates
 - details of publications by the Practitioner
- Photos or drawings of the practitioner or their office

For further guidance, please refer to the AGAPÈ Code of Ethics:

3. Build a relationship of trust

- a. Practitioners inform clients about the nature of the counselling and psychotherapy services being offered and avoid making unjustifiable claims about their services. Practitioners provide information about their way of working or therapeutic modality and respond transparently to a client's request for information about their model of practice and assessment.
- b. Practitioners are responsible for clarifying with clients the terms on which their services are being offered, including fees payable and other reasonably foreseeable costs or liabilities, the process to cancel a session and arrangements for out of session support.
- c. Practitioners take care to accurately present their qualifications, professional accreditations and professional standing to clients.

5.2. Prohibited advertising

Practitioners should not make any advertising claim that:

- is false, misleading or deceptive or is likely to be so

- offers a gift, discount or other inducement to attract a user of the counselling or psychotherapy service without stating the terms and conditions of the offer
- creates an unreasonable expectation of beneficial treatment, and/or
- encourages the indiscriminate or unnecessary use of counselling or psychotherapy services.

If students advertise their counselling or psychotherapy services for client work being undertaken in the context of their training, they are required to disclose that they are student counsellors or student psychotherapists in their advertising.

False, misleading or deceptive advertising

A common meaning of 'mislead or deceive' is 'lead into error'. People who 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, and/or making false or inaccurate claims.

Clients 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 that clients can understand.

This principle clearly comes under the AGAPÈ Code of Ethics:

- 1b. Practitioners build a relationship with their clients based on trust and avoid all actions that may undermine their clients' trust in them and the services provided.

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
- only provide partial information which could be misleading
- use phrases like 'as low as' or 'lowest prices', or similar words or phrases when advertising fees or other price information in a way which is misleading or deceptive
- use words, letters or titles that may mislead or deceive a consumer into thinking that the Practitioner is more qualified or more competent than they actually are
- claiming to hold a AGAPÈ specialist registration that they don't hold
- advertise the benefits of particular intervention when there is no proof the benefits can be attained, and/or
- compare different health professions or practitioners, in the same profession or across professions, in a way that may mislead or deceive.

The ACCC has provided tips on how to avoid being misleading and deceptive when advertising. They may be useful for advertisers considering the requirements of these Guidelines:

- 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.²

More information about the meaning of 'mislead or deceive' is available on the ACCC website.³

² Australian Competition and Consumer Commission, Professions and the Competition and Consumer Act, 2011

³ Australian Competition and Consumer Commission, Misleading and deceptive conduct, www.accc.gov.au/consumers/misleading-claims-advertising/false-or-misleading-claims

Gifts, discounts and inducements

Practitioners should not advertise a counselling or psychotherapy service, or a business that provides counselling or psychotherapy services, in a way that offers a gift, discount or other inducement to attract a person to use the service, unless the advertisement also states 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 actually 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.

Advertising may breach these Guidelines if it does not state the terms and conditions of offers, gifts, discounts or other inducements.

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.

The above Guideline is supported by Clause 7g. of the AGAPÈ Code of Ethics which states:

7g. Practitioners do not offer or accept inducements for referrals or enter into arrangements that could be perceived as inducements, subject to normal commercial business arrangements for marketing of services.

Creating unreasonable expectation of beneficial treatment

This can arise when advertisers take advantage of the vulnerability of consumers in their search for a cure or remedy. The claims of beneficial treatment can range from unsubstantiated scientific claims, through to miracle cures. Advertising of treatments or services must not encourage or promote unreasonable expectations. See clause 3a. of the AGAPÈ Code of Ethics for details.

Advertising may breach the AGAPÈ Code of Ethics if it:

- creates an unreasonable expectation (such as by exaggerating or by providing incomplete or biased information) of expected outcomes from the counselling or psychotherapy service
- contains any inappropriate or unnecessary information or material that is likely to make a person believe their health or wellbeing may suffer from not taking or undertaking the service, 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, unailing, magical, miraculous or a certain, guaranteed or sure cure, and/or
 - a practitioner has an exclusive or unique skill or intervention.

Encouraging indiscriminate or unnecessary counselling or psychotherapy services

Practitioners should not advertise counselling or psychotherapy service, or a business that provides a counselling or psychotherapy service, in a way that directly or indirectly encourages the indiscriminate or unnecessary use of counselling or psychotherapy services. The unnecessary and indiscriminate use of counselling or psychotherapy services is not in the public interest as it may lead to clients using services that they do not need or require.

Advertising may contravene these Guidelines when it:

- encourages a person to improve their physical appearance together with phrases such as 'don't delay', 'achieve the look you want' and 'looking better and feeling more confident'
- provides a client with an unsolicited appointment time
- uses prizes, bonuses, bulk purchases, bulk discounts or other endorsements to encourage the unnecessary consumption of counselling or psychotherapy services that are unrelated to clinical need or therapeutic benefit
- makes use of time-limited offers which influence consumers to make decisions under the pressure of time and money rather than based on health care needs. An offer is considered time-limited if it is made for a limited or specific period of time, or available for use within a limited period of time or by a specific date, without an option to exit the arrangement.

5.3. Testimonials

Where a Practitioner uses testimonials in their advertising for counselling or psychotherapy services, these must be truthful and factual. If they are not truthful and factual, this would constitute misleading and deceptive conduct. Testimonials should include clear permission statements so as not to breach the Practitioner's confidentiality obligations. Practitioners are therefore advised to pay careful attention to this Guideline.

A testimonial has the ordinary meaning of a positive statement about a Practitioner or their services. A testimonial includes recommendations, or opinions about the clinical effectiveness of a counselling or psychotherapy service.

Other guidelines in relation to testimonials may apply to Practitioners with other professional roles e.g. psychologists, social workers, nurses, doctors etc.

6. Guidelines on specific types of advertising

The following sections discuss some aspects of advertising in more detail, to provide further guidance to practitioners.

6.1. Social media

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

A person is responsible for content on their social media accounts even if they were not responsible for the initial posting of the information or testimonial. This is because a person responsible for a social media account accepts responsibility for any comment published on it, once alerted to the comment. Practitioners advertising through social media should carefully review content regularly to make sure that all material complies with these Guidelines and with the AGAPÈ Code of Ethics.

6.2. Advertising qualifications or memberships

Advertising qualifications or memberships may be a useful way to provide the public with information about the experience and expertise of the Practitioner. However, it may be misleading or deceptive if the advertisement implies that the practitioner has more skill or experience than is the case. See clause 3c. of the AGAPÈ Code of Ethics for details.

Clients are protected when Practitioners only advertise qualifications that are:

- approved for AGAPÈ registration, including AGAPÈ specialist registration and accreditation
- conferred by approved education providers or accredited by AGAPÈ or by government accreditation authorities.

6.3. Use of titles in advertising

Advertisers should be aware that titles for some professions are protected. There is no prohibition on a suitably qualified Practitioner from using titles such as 'Dr' but there is potential to mislead or deceive if the title is not applied clearly. If practitioners choose to advertise the title 'Dr' and they are not registered medical practitioners or do not hold a doctorate in counselling or psychotherapy, then they should clearly state their profession.

It is clearer to specify to the health profession whenever the title is used, for example:

- Dr Mary Smith (Psychotherapist) – for a doctorate in psychotherapy
- Dr John Lin (Dentist) – for a qualification in a different profession

6.4. Use of specialisations in advertising

A Practitioner who does not hold a AGAPÈ specialist registration or accreditation may not, through advertising or other means, present themselves to the public as holding such AGAPÈ specialist registration or accreditation. This includes not claiming that they:

- hold a AGAPÈ specialist registration or accreditation that they do not hold, and/or
- are qualified to hold a AGAPÈ specialist registration or accreditation that they do not hold.

Use of some words in advertising such as 'specialises in' may be misleading or deceptive as clients may interpret the advertisements as implying that the practitioner is more skilled or has greater experience than is the case. These words should be used with caution and need to be supported by fact. Words such as 'substantial experience in' or 'working primarily in' are less likely to be misunderstood as a reference to specialist registration or accreditation.

6.5. Advertising price information

Any information in advertising about the price of counselling or psychotherapy services must be clear and not misleading. See clause 3b. of the AGAPÈ Code of Ethics for details.

Advertising may breach these Guidelines if it:

- contains price information that is inexact;
- contains price information that does not specify any terms and conditions or variables to an advertised price, or that could be considered misleading or deceptive; and/or
- states an instalment amount without stating the total cost.

It may be difficult to provide an accurate price for a counselling or psychotherapy service in an advertisement due to the individual nature of services and the number of variables involved in the service. If fees and price information are to be advertised, then price information should be clear, with all costs involved and out of pocket expenses clearly identifiable, and any conditions or other variables to an advertised price or fee disclosed. This is to avoid misleading consumers and ensure they are fully informed and able to provide their full consent to the services.

Use of phrases like 'as low as' or 'lowest prices', or similar words, phrases or questions when advertising fees for services, prices for products or price information, or stating an instalment amount without stating the total cost may be misleading and could be considered misleading.

6.6. Use of scientific information in advertising

To not mislead or create false impressions, caution should be taken when using scientific information in advertising.

When a practitioner chooses to include scientific information in advertising, the information should:

- be presented in a manner that is accurate, balanced and not misleading
- use terminology that is understood readily by the target audience
- identify clearly the relevant researchers, sponsors and the academic publication in which the results appear, and
- be from a reputable (e.g. peer reviewed) and verifiable source.

7. **Consequences of breaches of expected standards for advertising**

Practitioners may be subject to complaints under the AGAPÈ Code of Ethics if they advertise counselling or psychotherapy services in any way that constitutes a breach of the Code of Ethics.

Practitioners may also be subject to complaints to the Health Care Complaint Entity in the State or Territory where they practice.

There may be legal consequences under the Australian Consumer Law for breaches of legal requirements relating to advertising.

The Australian Consumer Law

Legislation: Australian Consumer Law

Responsible agency: Australian Competition and Consumer Commission (ACCC) and relevant state and territory consumer protection departments and agencies

Website: www.accc.gov.au

All Practitioners are required to comply with the Australian Consumer Law (ACL) which commenced on 1 January 2011. The ACL harmonised the consumer protection provisions in the Trade Practices Act 1974 (TPA) and in state and territory fair trading laws, and replaced consumer protection provisions in at least 20 different Commonwealth, state and territory laws with one law.

The ACL is a national law that applies in the same way to all sectors and in all Australian jurisdictions. This means that all consumers in Australia enjoy the same rights and all businesses have the same obligations, irrespective of which state or territory they engaged in transactions.

The ACL covers general standards of business conduct, prohibits unfair trading practices, regulates specific types of business-to-consumer transactions, provides basic consumer guarantees for goods and services and regulates the safety of consumer products and product-related services.

The ACL is located in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

The ACL includes:

- a national unfair contract terms law covering standard form consumer contracts
- a national law guaranteeing consumer rights when buying goods and services
- a national product safety law and enforcement system
- a national law for unsolicited consumer agreements covering door-to-door sales and telephone sales
- simple national rules for lay-by agreements, and
- new penalties, enforcement powers and consumer redress options.