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## Advertising and Public Endorsement

### 2020

#### 1. Introduction

1.1 While doctors (medical practitioners) may use advertising to promote medical and other health-related products and services (herein 'products and services'), advertising has the potential to harm individuals and the wider community if not undertaken appropriately.

1.2 Doctors should ensure their advertising facilitates, and does not undermine, informed patient choice, appropriate medical referral and care and the community's trust and confidence in the medical profession.

1.3 This position statement refers to a range of advertising legal obligations and professional standards to which doctors must adhere<sup>1</sup> while providing additional ethical guidance to support doctors to advertise in the interests of patients and the wider community.

1.4 Doctors are strongly encouraged to contact their medical defence organisation should they require specific medico-legal advice or support in relation to advertising and public endorsement.

#### 2. Ethical principles to guide doctors' advertising practices

2.1 Doctors' advertising practices should be guided by professional values including honesty, integrity, transparency and accountability with the aim of supporting individuals to make informed decisions regarding their use of products and services.

2.2 Inappropriate advertising can lead some individuals to use products or services indiscriminately or unnecessarily, potentially resulting in physical, psychological or financial harm. Others may even forego medical care altogether should they lose trust and confidence in the integrity of the medical profession due to inappropriate advertising practices.

2.3 While doctors have legitimate professional and financial interests in promoting their services, these interests should always be secondary to the medical profession's primary duty, being the care of their patients, particularly to ensure they receive appropriate medical care.

2.4 Doctors' relationships with medical, health care or other industries must be accountable and transparent and must not compromise, or be perceived to compromise, the doctor's professional judgment, capacity to care for their patients or the community's trust in the integrity of the medical profession.

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<sup>1</sup> For example, the Australian Health Practitioner Regulation Agency's (Ahpra) *Guidelines for Advertising a Regulated Health Service and Social media: How to meet your obligations under the National Law*, the Medical Board of Australia's *Good Medical Practice – A code of conduct for doctors in Australia*, the Australian Consumer Law, the *Therapeutic Goods Act 1989 (Cth)*, and the Therapeutic Goods Advertising Code.

### 3. Advertising of medical services

3.1 Advertising can be undertaken through all forms of print, electronic and social media. The doctor is ultimately responsible for advertising that is under their control, even where advertising is delegated to others, and should carefully review content regularly to make sure that it complies with relevant advertising obligations and standards.<sup>1</sup>

3.2 In accordance with section 133 of the Health Practitioner Regulation National Law, inappropriate advertising of regulated health services includes (but is not limited to) advertising that:<sup>2</sup>

- is false, misleading or deceptive, or likely to be misleading or deceptive;
- offers a gift, discount or other inducement to attract a user of the service without stating the terms and conditions of the offer;
- uses testimonials or purported testimonials;<sup>3</sup>
- creates an unreasonable expectation of beneficial treatment;
- encourages the indiscriminate or unnecessary use of health services, whether directly or indirectly.

3.3 Advertising of regulated health services should:<sup>4</sup>

- be truthful – advertisements should not be false, deceptive or misleading;
- be fair, accurate, accountable and transparent – information should be factual and verifiable;
- not be discriminatory;
- not denigrate other products, procedures or services;
- not create an unwarranted use of a product, procedure or service;
- not unduly induce patients to use a product, procedure or service - eg. advertisements should not attempt to induce fear or undue concern in patients regarding their own health care in order to increase demand for a product, procedure or service;
- not raise unrealistic expectations;
- not exploit patient vulnerability or lack of medical or health-related knowledge;
- not claim one's own services are superior to those provided by another doctor or health professional;

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<sup>2</sup> Refer to the Ahpra website for the *Guidelines for Advertising a Regulated Health Service* along with an extensive range of resources to assist doctors in meeting their regulatory obligations in relation to advertising and complying with the Health Practitioner National Law. <https://www.ahpra.gov.au/Publications/Advertising-resources.aspx>

<sup>3</sup>As defined by Ahpra, testimonials are positive statements, stories and anecdotes about clinical care from patients or clients making a recommendation or positive statement about clinical aspects of a regulated health service. A review is not considered a testimonial as it consists of feedback about healthcare experiences that do not refer to clinical aspects of care. Testimonials often have no scientific or objective basis which can mislead consumers about clinical services or treatment options. They also may not be a balanced source of information. Advertisers are responsible for all testimonials (solicited or unsolicited) that are published within their control, such as those on their website or Facebook.

<sup>4</sup> For an extensive list of examples of advertising that comply with the National Law, refer to the Ahpra *Guidelines for Advertising a Regulated Health Service* and Advertising Resources - [www.ahpra.gov.au/Publications/Advertising-resources.aspx](http://www.ahpra.gov.au/Publications/Advertising-resources.aspx)

- not encourage, solicit or use testimonials or purported testimonials about one's own services.

3.4 Doctors should use honest and objective rather than persuasive or coercive advertising practices that focus on providing factual and relevant information to enable patients, colleagues and others to make informed decisions about the appropriateness and availability of those services. Such information should be presented in a way that is easy to understand and may include information such as the doctor's professional qualifications and experience, practice arrangements, office details (eg, office hours, contact details, languages spoken) and fees.

3.5 Inappropriate advertising of medical services can exploit patient vulnerabilities or lack of medical knowledge, leading some patients to make poor choices regarding their use of medical services, potentially resulting in personal harm (including physical, psychological and/or financial harm), undermining public trust and confidence in the medical profession as well as leading to a waste of health care resources.

3.6 It is imperative that regulators commit appropriate resources to investigating advertising complaints and applying strong penalties for clear, intentional breaches. Without appropriate enforcement of advertising obligations and standards, there is no effective deterrent for doctors and other regulated health practitioners to cease inappropriate advertising.<sup>5</sup>

#### 4. Social media<sup>6</sup>

4.1 Advertising via social media provides doctors with the unique opportunity to promote their services and engage directly with patients.<sup>7</sup> The interactive nature of these platforms, however, raises some additional considerations for doctors in relation to advertising.<sup>8</sup>

4.2 If managed appropriately, social media advertising can benefit patients. For example, a doctor can provide up-to-date, 'real time' information on issues such as changes to practice arrangements or raise awareness of particular public health concerns or initiatives relevant to the local community.

4.3 Doctors can also engage directly with patients and others by allowing third parties to post comments directly on doctors' own social media platforms. While this enables two-way interaction between a doctor and their patients (and others), the doctor is ultimately

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<sup>5</sup> Refer to the Ahpra website for the *Guidelines for Advertising a Regulated Health Service* along with an extensive range of resources to assist doctors in meeting their regulatory obligations in relation to advertising and complying with the *Health Practitioner National Law*. <https://www.ahpra.gov.au/Publications/Advertising-resources.aspx>

<sup>6</sup> For further information regarding acceptable social media use by regulated health practitioners, refer to Ahpra's guidance, *Social media: How to meet your obligations under the National Law*. <https://www.ahpra.gov.au/Publications/Advertising-resources/Social-media-guidance.aspx>

<sup>7</sup> As defined by Ahpra, 'social media' describes the online and mobile tools that people use to share opinions, information, experiences, images, and video or audio clips and includes websites and applications used for social networking.

<sup>8</sup> For further AMA guidance on doctors and social media, refer to *A GUIDE TO SOCIAL MEDIA & MEDICAL PROFESSIONALISM: The tips and traps every doctor and medical student should know*, Australian Medical Association, 2020. <https://ama.com.au/article/social-media-and-medical-profession>

responsible for all content on their own social media accounts including content that others may have posted.<sup>ii</sup>

4.4 Doctors should be aware that posts by patients (and others) could be considered a form of advertising by the regulator. For example, a patient's positive comment about the clinical care they received from the doctor may be considered a testimonial which is prohibited under the National Law.<sup>ii</sup>

4.5 When advertising through social media, doctors should review their content regularly to make sure that all material complies with their legal and professional obligations. In particular, doctors should:

- routinely monitor any content posted on their social media accounts such as comments, reviews or other information including images such as photos and videos and remove any that may be considered a form of advertising;
- not selectively edit patient (or other) reviews as to do so could be misleading or inaccurate;
- consider disabling the ability for third parties to post comments on the doctor's own social media accounts.

4.6 Doctors are not responsible for removing (or trying to have removed) unsolicited testimonials published on a website or in social media over which they do not have control.<sup>9</sup>

## 5. Publicly endorsing products and services

5.1 Doctors should be aware their professional status may be sought after by commercial entities to promote products and services directly to the public. This can include both health-related and non-health-related products and services.

5.2 Relationships between doctors and the medical, health care or other industries must not compromise, or be perceived to compromise, a doctor's professional judgment, capacity to care for their patients or the community's trust in the integrity of the medical profession.

5.3 Doctors should not have any public association with products or services that clearly affect public health adversely.

5.4 In accordance with the Therapeutic Goods Administration, doctors are prohibited from endorsing therapeutic goods in advertisements as 'consumers may be unduly influenced to purchase a therapeutic good by the weight they may give to statements made by doctors.' Therapeutic goods include prescription medicines, over the counter medicines, complementary medicines, medical devices and various apps.<sup>10,11</sup>

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<sup>9</sup> As affirmed by Ahpra's *Guidelines for Advertising a Regulated Health Service*.

<sup>10</sup> In accordance with the *Therapeutic Goods Advertising Code (No. 2) 2018* an advertisement for therapeutic goods must not contain an endorsement from or imply that the therapeutic goods are endorsed by: (a) a government authority, hospital or healthcare facility; or (b) an employee or contractor of a government authority, hospital or healthcare facility; or (c) a health practitioner, health professional, medical researcher or a group of such persons.

<sup>11</sup> Therapeutic Goods Administration. *Advertising to the public. Complying with the Therapeutic Goods Advertising Code (No. 2) 2018*. Version 1.4, July 2020.

5.5 Within the doctor-patient relationship, a doctor should only recommend health care related products and services based on the health care needs of the patient. Where a doctor recommends a product or service in which he or she has a financial or other commercial interest, this should be disclosed to the patient at the time the recommendation is made.

## 6. Media reports, magazine articles and advertorials

6.1 Doctors may provide health information for media reports and articles directed at the public such as magazine, newspaper and online comments and articles; however, where the purpose of these activities is to promote or advertise a regulated health service, then they will be considered a form of advertising by the regulator and therefore must comply with the National Law.<sup>ii</sup>

## 7. Pathologising human conditions and experiences

7.1 The AMA is increasingly concerned about advertising practices that pathologise human conditions and experiences. This refers to portraying human conditions and experiences as pathological conditions that require medical treatment.

7.2 The AMA is troubled by medical advertising practices that promote unrealistic body images, particularly where these concerns relate to common features of the human lifecycle such as the development of wrinkles, skin laxity or breast ptosis. Similarly, common human emotions such as grief and day-to-day worries are not necessarily pathological conditions requiring medical treatment.

7.3 Advertising practices that promote consumerism and pathologise the human condition and experiences can exploit vulnerable individuals, lead them to seek treatments that are not medically necessary and contribute to poor mental health.

7.4 This sort of advertising practice may also contravene the advertising laws; for example, by encouraging the indiscriminate or unnecessary use of health services.

7.5 Doctors should not promote products or services in a manner that encourages unnecessary medical consumerism or encourages individuals to view their personal experiences and appearance through a medicalised lens.

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<sup>i</sup> Including the Ahpra's *Guidelines for Advertising a Regulated Health Service and Social media: How to meet your obligations under the National Law*, the Medical Board of Australia's *Good Medical Practice – A code of conduct for doctors in Australia*, the Australian Consumer Law, the *Therapeutic Goods Act 1989 (Cth)* and the *Therapeutic Goods Advertising Code*.

<sup>ii</sup> Ahpra's *Guidelines for Advertising a Regulated Health Service and Social media: How to meet your obligations under the National Law*.

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