

Russell Kennedy IVF Webinar: Clinics Making Public Statements

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Webinar housekeeping

- All attendees will be on mute and their cameras turned off for the entire webinar.
- We have BD tech support live to assist with any technical issues.
- Use the chat function for any comments/technical issues.
- Use the Q&A function for specific questions related to the webinar content - Questions will be addressed at the end of the webinar.
- There will be a post webinar survey link sent at the end of the webinar, we value attendee feedback, presentation slides will also be sent to all attendees.
- We will also have a QR code linking to our feedback survey towards the end of the presentation so you can provide instant feedback.

Disclaimer

The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed please contact the presenter directly.

Introduction



False or misleading statements

- Any statement representing your products or services should be true, accurate and able to be substantiated



What claims are illegal?

- It is illegal for a business to make statements that are incorrect or likely to create a false impression.
- For example, your business must not make false or misleading claims about the quality, value, price, age or benefits of goods or services, or any associated guarantee or warranty. Using false testimonials or “passing off” (impersonating another business) is also illegal.

Comparative advertising

- Comparative advertising may be used to promote the superiority of your products or services over competitors as long as it is accurate. The comparison may relate to factors such as price, quality, range or volume.



What you should do in advertising

When presenting information about products or services to customers, be sure to:

- Give current and correct information
- Use simple language
- Check that the overall impression is accurate
- Back up claims with facts and documented evidence where appropriate
- Note important limitations or exemptions
- Correct any misunderstandings
- Be prepared to substantiate

What you should not do in advertising

Do not:

- Guess the facts
- Omit relevant information
- Make ambiguous or contradictory statements or use unnecessary jargon
- Make promises you cannot keep, or make predictions without reasonable basis
- Offer goods or services without a reasonable basis for believing you can deliver them

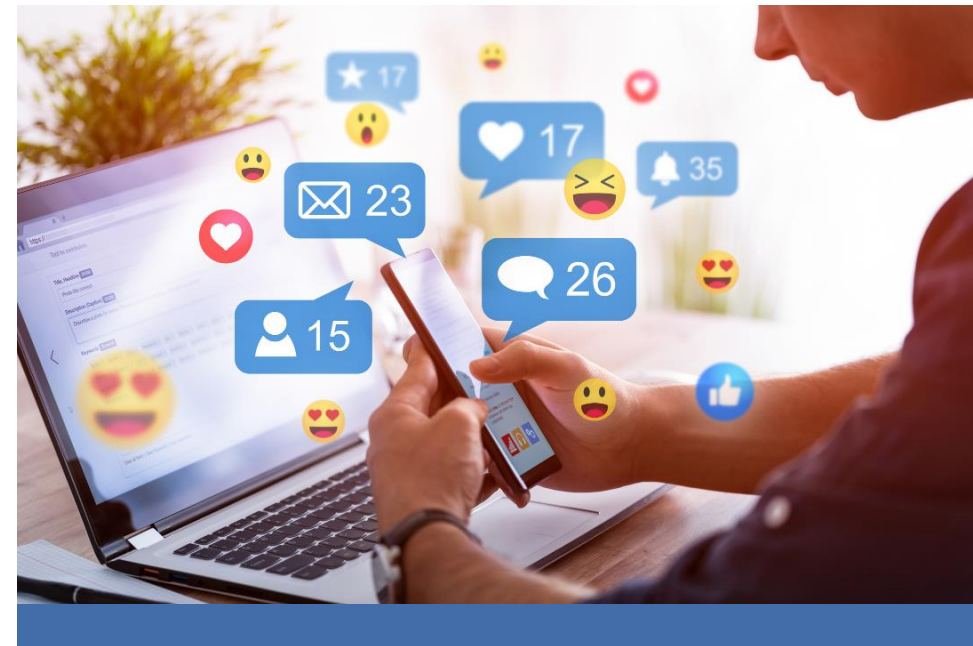
Social media

- Social media gives large and small businesses a direct way to interact with existing and potential customers, and promote their products and services. Businesses using social media channels like Facebook, Twitter and YouTube have a responsibility to ensure content on their pages is accurate, irrespective of who put it there.



Don't allow others to make misleading claims in comments

- You can also be held responsible for posts or public comments made by others on social media pages which are false or likely to mislead or deceive consumers.
- In 2011, a court case concluded that a company accepted responsibility for fan posts and testimonials on its social media pages when it knew about them and decided not to remove them.



Minimise your risk

- Don't make statements on your Facebook or social media pages that you wouldn't make in any other type of advertising. If you're unsure about what you can or can't say, seek legal advice.



ACCC role in enforcement of social media

- The ACCC can require companies to substantiate any claims on their social media pages, and can take court action where it identifies a breach of the law (or issue an infringement notice in certain circumstances)



AHPRA – Good Medical Practice Code

Advertising

- Advertisements for medical services can be useful in providing information for patients. All advertisements must conform to relevant consumer protection legislation, the advertising provisions in the National Law and *Guidelines for advertising regulated health services* issued by the Medical Board of Australia
- Good medical practice involves:
 - Making sure that any information you publish about your medical services is factual and verifiable
 - Making only justifiable claims about the quality or outcomes of your services in any information you provide to patients
 - Not guaranteeing cures, exploiting patients' vulnerability or fears about their future health, or raising unrealistic expectations
 - Not offering inducements or using testimonials
 - Not making unfair or inaccurate comparisons between your services and those of colleagues

Conflicts of interest

- Patients rely on the independence and trustworthiness of doctors for any advice or treatment offered. A conflict of interest in medical practice arises when a doctor, entrusted with acting in the interests of a patient, also has financial, professional or personal interests, or relationships with third parties, which may affect their care of the patient. Multiple interests are common. They require identification, careful consideration, appropriate disclosure and accountability. When these interests compromise, or might reasonably be perceived by an independent observer to compromise, the doctor's primary duty to the patient, doctors must recognise and resolve this conflict in the best interests of the patient.

AHPRA - FAQ about advertising

Advertising is actions by people or businesses to draw attention to their services. The ways people and businesses can promote services are almost limitless and include all forms of printed and electronic media.

These include:

- Any public communication using television, radio, motion pictures, newspapers, billboards, books, lists, pictorial representations, designs, mobile communications or other displays;
- Professional websites, the internet or directories, and
- Business cards, announcement cards, office signs, letterhead, telephone directory listings, professional lists, professional directory listings and similar professional notices.

The focus is on the promotional quality of advertising, it also includes situations in which registered health practitioners give information for media reports, magazine articles or advertorials, including where they make comment or provide information on particular products or services, or about other health practitioners.

Who must meet the advertising requirements of the National Law?

- The advertising provisions of the National Law apply to anyone who advertises a regulated health service, including registered health practitioners, non-registered health practitioners, individuals and bodies corporate.

I work for an organisation that provides regulated health services.

How do the advertising guidelines apply to us?

- The requirements of the National Law about advertising apply to anyone advertising a regulated health service. This includes that your organisation has an obligation to not use testimonials (comments about clinical care) when it is advertising a regulated health service.

What type of advertising is not allowed?

What does false, misleading or deceptive mean?

- Advertising that is false, misleading or deceptive, or advertising that is likely to be misleading or deceptive, is prohibited under section 133 of the National Law. 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.

What is a testimonial?

- Testimonials are statements, stories and anecdotes about clinical care from past patients or clients making a recommendation about a health service or its quality.
- Many businesses use testimonials or purported testimonials on their websites as a means of attracting new customers. However, the National Law prohibits the use of testimonials or purported testimonials in the advertising of regulated health services as it is considered inappropriate and they have the potential to wrongly influence the buying decisions of consumer.

What type of advertising is not allowed? (cntd.)

Why can't I use testimonials in my advertising?

There are several reasons why testimonials are likely to mislead consumers and aren't allowed in advertising, including because:

- They are personal opinions from former clients and have no scientific or objective basis as a recommendation of a health practitioner's services.
- The outcomes experienced by one patient do not necessarily reflect outcomes available to all consumers or the likely outcomes.
- They are not usually a balanced source of information, as they typically include a narrow selection of positive comments from patients, and therefore don't tell the whole story about a practitioner's services (ie they can be misleading).
- Patients may place too much weight on testimonials because they do not have the expert knowledge to accurately assess their validity.

Factors for assessing of evidence is acceptable

To avoid misleading the public, claims made in advertising about regulated health services must be supported by acceptable evidence:

1. *Source the evidence – is your evidence from a publicly accessible and reliable source?*
2. *Relevance of the evidence – can the evidence be applied to your advertising claim?*
 - Is the research question stated in the study directly relevant to your advertising claim?
 - Can the findings be applied to the patient population targeted by your advertising claim?
3. *Inclusion of the evidence – have you considered the relevant evidence equally?*
 - Have the relevant source of evidence been identified and considered equally? Is it possible that any important evidence was missed?
 - Did more than one study show the same thing?

Factors for assessing of evidence is acceptable (cntd.)

4. *Quality of the evidence – did your evidence use appropriate research methods?*
- Was the selection criteria used appropriate?
 - Was the study conducted reliably?
 - Is the sample size sufficient to support the research findings with confidence?
 - Were all sources of potential bias and confounding factors discussed?

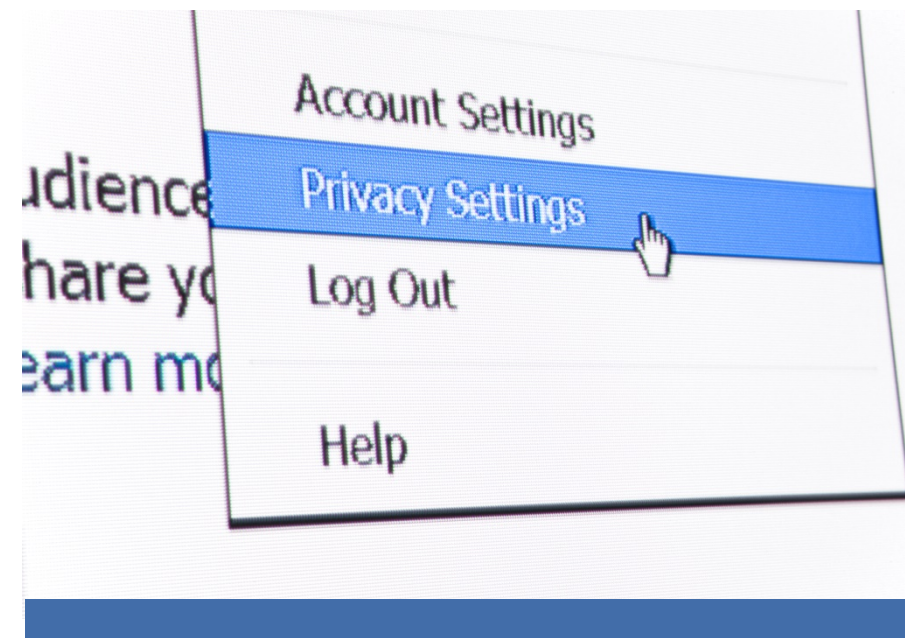


Why are testimonials in advertising prohibited?

- ‘Testimonial’ means a statement, review, view or feedback about a service received or provided. In the context of the National Law, a testimonial involves recommendations or positive statements about clinical aspects of a regulated health service.
- The National Law does not stop consumers providing feedback or reviews in social or other media. Consumers are free to share their views and experiences online and elsewhere, for example, by posting a review.

How is use of social media relevant to my practice?

- Inappropriate use of social media can result in harm to patients and the profession, particularly given the changing nature of privacy and the capacity for material to be posted by others. Harm may include breaches of confidentiality, defamation of colleagues or employers, violation of practitioner-patient boundaries or an unintended exposure of personal information to the public, employers, consumers and others.



What are the common pitfalls when using social media?

- Privacy legislation.
- National Boards may consider social media use in your private life if it raises concerns about your fitness to hold registration.
- While you may think you are engaging in social media in a private capacity because you do not state you are a registered practitioner, it is relatively easy and simple for anyone to check your status through the register, or make connections using available pieces of information.

Patient confidentiality

- Take care when sharing information, including comments or photos, that you do not inadvertently disclose patient information. Check what is in the background of a photo before sharing it and make sure that information you share does not unintentionally disclose personal information.



Cultural awareness, safety and practitioner and patient beliefs – social and clinical

- As a registered health practitioner, your views on clinical issues are influential. Comments in social media that reflect or promote personal views about social and clinical issues might impact on someone's sense of cultural safety or could lead to a patient/client feeling judged, intimidated or embarrassed.

Professionalism

- The Codes of Conduct emphasises that practitioners must always treat patients with respect and communicate effectively, courteously, professionally and respectfully with and about other health care professionals. This applies to any comments made in social medial context. Grievances with work colleagues or patients are best resolved privately.



Maintain professional boundaries

- Language and tone used on social media that does not reflect a professional relationship, ie is overly personal and familiar or includes suggestive comments, could breach professional boundaries and the Code of conduct.



Public health messages

- While you may hold personal beliefs about the efficacy or safety of some public health initiatives, you must make sure that any comments you make on social media are consistent with the codes, standards and guidelines of your profession and do not contradict or counter public health campaigns or messaging.

Example

- ‘Susan’s story’ is a testimonial or purported testimonial as outlined in section 133(1)(c) of the National Law. It contains a recommendation and/or positive statements about clinical aspects of a regulated health service and is published on the clinic website, where a regulated health service is advertised.
- While the article was originally published in The Daily Mail, by posting the article on the clinic website, the clinic is adopting its contents and utilising the article in its advertising. It amounts to a breach of the National Law because it may create an unreasonable expectation of beneficial treatment as it does not contain any information about the fact that the outcomes experienced by one patient do not necessarily reflect outcomes available to all consumers or the likely outcomes.

Example (cntd.)

- Claims about “new” equipment and techniques
- Claims about “biggest”, “best”, “better”, “new, “different”
- Success rates / claims

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Feedback

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