

# Commercial Insights

## Pitfalls of promoting health services on social media

Recently, we published an article [outlining the dos and don'ts of COVID-19 vaccine promotion](#). Our Insight summarises how vaccine providers and other parties can lawfully provide information about and promote COVID-19 vaccines. The promotion of vaccines and health services generally, across a variety of communication mediums, is regulated by advertising laws. Social media in particular, is a treacherous terrain for this kind of promotion. In this article we explain the common pitfalls of using social media to promote health services, and how best to navigate this space.

### National Law

The *Health Practitioner Regulation National Law Act 2009* ('**National Law**') and AHPRA's Guidelines for advertising a regulated health service apply to the promotion of health services on social media. All advertising of regulated health services must comply with the National Law regardless of whether the advertising is procured by a registered health practitioner, individuals who are not registered as health practitioners or companies. These requirements are in place to ensure that the public receives accurate and honest information about healthcare services.

Section 133 of the National Law provides that a person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –

- **is false, misleading or deceptive** or is likely to be misleading or deceptive; or
- **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
- **uses testimonials or purported testimonials** about the service or business; or
- **creates an unreasonable expectation of beneficial treatment**; or
- directly or indirectly **encourages the indiscriminate or unnecessary use of regulated health services**.

Social media is not a casual platform. Section 133 of the National Law applies to social media as much as it applies to promoting a health service in a printed catalogue, on a billboard or on a website.

### Pitfall 1: False claims

Health care providers should be careful not to make false claims in their advertising. For example, making claims about the effectiveness of a treatment on a social media page that advertises a health service can be deemed misleading or deceptive where there is no valid basis for those claims. Avoiding this kind of breach will involve an earnest effort to promote health services on their true merits and ensuring that the overall impression of a social media post is accurate.

## **Pitfall 2: Testimonials**

A testimonial that appears on a health care provider's social media page may seem harmless on the surface. However, a review touting that "my pharmacist is the best pharmacist in Australia" is a biased and unsubstantiated statement, and for that reason, the National Law and AHPRA prohibit health care providers from advertising their services using testimonials. While patients may post testimonials on independent review sites, health care providers should ensure that such testimonials are not posted on social media pages that promote or even link to their business.

## **Pitfall 3: Breaching confidentiality**

Health care providers should take care not to inadvertently disclose patient information when promoting a health service on social media. We recommend carefully checking, for example, what is visible in the background of a photo before sharing it – does it contain an identifiable person? Or does it contain identifiable products which could be taken to be a product endorsement – whether intentional or not? It is also important to make sure that information shared does not unintentionally disclose personal information about individuals.

Social media is undoubtedly a powerful tool to promote health services. However, it must be used in a way that meets the requirements of the National Law and AHPRA. Similarly, health care providers should also be familiar with the obligations of their relevant profession's code of conduct when advertising their health service on social media and generally.

**This article was written by Special Counsel, Hayley Bowman and Solicitor, Yashila de Silva. If you have any questions about the potential risks of using social media to promote health services, please contact Hayley.**



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