

29 May 2013

Australian Health Practitioner Regulation Agency
GPO Box 9958
Melbourne VIC 3001

By Email: guidelinesconsultation@ahpra.gov.au

Re: Draft Proposed *Social media policy*

Thank you for your email dated 5 April 2013 inviting comments in relation to the draft proposed *Social media policy* which is common to all National Boards.

MDA National is one of Australia's leading providers of medical defence and medico-legal advocacy services. MDA National works in close partnership with the medical profession on a wide range of issues which impact on medical practice. In addition to its advocacy and advisory services, MDA National's insurance subsidiary (MDA National Insurance) offers insurance policies to MDA National's Members which provide cover for the cost of investigations of professional misconduct and for claims for compensation by third parties. The MDA National insurance policy provides medical practitioners with up to \$20 million of civil liability cover as well as a range of other professional risk covers.

MDA National supports the approach taken in developing a social medical policy which addresses the regulatory issues related to social media but which does not restrict the use of social media that is consistent with good practice or is unrelated to a practitioner's professional life.

MDA National provides the following specific comments in relation to the draft proposed Policy:

- **Health practitioners should be aware of their ethical and regulatory responsibilities when they are interacting online, just as in person. (Paragraph 5)**

The use of the word 'regulatory' is not consistent with the relevant National Board's Code of conduct which refers to ethical and professional obligations. MDA National is concerned that the word 'regulatory' may impose additional obligations on health practitioners when using social media. If the intention is to make reference to health practitioners' legal obligations, MDA National submits that this sentence should be amended to read "ethical, professional and legal obligations...".

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- **In using social media, just as with all aspects of professional behaviour, health practitioners should be aware of their obligations under the National Law, the *Code of conduct* for their profession, the *Guidelines for advertising regulated health services (Advertising guidelines)* and other relevant legislation. (Paragraph 8)**

MDA National suggests that it would be useful to specifically identify privacy legislation as applying to social media. MDA National submits that this sentence should be amended to read “and other relevant legislation, such as privacy legislation.”

- **When using social media, health practitioners should remember that the National Law, the *Code of conduct* and the *Advertising guidelines* apply. (Paragraph 11)**

For consistency, the sentence should refer to “and other relevant legislation” in this section of the Policy.

- **Registered health practitioners should only post information that is not in breach of these obligations by:**
 - **not breaching professional obligations**
 - **not breaching confidentiality and privacy obligations (such as discussing patients or posting pictures of procedures, case studies, patients or sensitive material which may enable patients to be identified and/or without having obtained consent in appropriate situations), and/or (Paragraph 12, point 1 & 2)**

MDA National submits that this paragraph should focus on the positive obligations of health practitioners to comply with these obligations. The use of a double negative may also be confusing, and therefore MDA National suggests that this paragraph should read:

“Registered health practitioners should only post information that is not in breach of these obligations by:

- complying with professional obligations, and/or
 - complying with confidentiality and privacy obligations (such as discussing patients or posting picture of procedures, case studies, patients or sensitive material which may enable patients to be identified and/or without having obtained consent in appropriate situations), and/or ...”.
- **However, the legal obligations that registered health practitioners must adhere to are set out in the National Boards’ respective *Code of Conduct* and *Advertising guidelines*. (Paragraph 13)**

The National Boards’ respective *Code of Conduct* and *Advertising guidelines* set out health practitioners’ ethical, professional and legal obligations. For consistency, MDA National submits that the words ‘ethical’ and ‘professional’ should be added, and that the sentence be amended to read “the ethical, professional and legal obligations that registered health practitioners ...”.

Thank you for the opportunity to provide feedback during this preliminary consultation phase.
If you wish to discuss any of these issues further, please do not hesitate to contact me.

Yours sincerely



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