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nursing federation

Submission to the Australian Health Practitioner Regulation
Agency in response to the Draft Social Media Policy
preliminary consultation

September 2012

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1. Introduction

Established in 1924, the Australian Nursing Federation (ANF) is the largest professional and industrial organisation in Australia for nurses, midwives, and assistants in nursing. The core business for the ANF is the professional and industrial representation of our members and the professions of nursing and midwifery. This representation is undertaken through Branches in each State and Territory of Australia, and the Federal Office.

The ANF participates in the development of policy relating to: nursing and midwifery practice, professionalism, regulation, education, training, workforce, and socio-economic welfare, health and aged care, including reform agendas, community services, veterans' affairs, occupational health and safety, industrial relations, social justice, human rights, immigration and migration, foreign affairs and law reform.

With a membership of over 220,500, our members provide clinical care in all settings where health and aged care is delivered, across all geographical areas. The ANF communicates extensively with our membership through social media platforms and therefore has a genuine interest in the policy on this matter being developed by the Australian Health Practitioner Regulation Agency (AHPRA). We welcome the opportunity to participate in this preliminary consultation phase and offer the comments outlined below to assist in the development of the social media policy. We will undertake further, and more extensive review and consultation within our organisation, during the foreshadowed public consultation process.

2. General Comments

Social media is being used increasingly by health practitioners, both within their professional activities, and in their personal lives as members of the general public. The ANF considers therefore that this is an important policy for the regulator in its public protection role.

Given this importance, the ANF has some concern about intermingling social media and professional obligations, and advertising and testimonials, within the same policy. We suggest this policy be divided into 2 distinct policies, one specific to social media and professional obligations, and the other for advertising and testimonials. We suggest these issues would be strengthened by being separated into two distinct policies, with reference to each other, to demonstrate their interrelationship. This would make it very clear where to find information relating to both very distinct issues, as a social media policy would not easily be identified as the place to look for a policy on advertising and testimonials (this sort of advertising can occur in other media, not solely social media).

The definition of social media used in the policy would appear to support the argument for separation of the two issues, with a focus on social networking.

The draft policy provides a good starting point for discussion on social media use by health practitioners. The following commentary provides suggestions for consideration in a re-draft for public debate on the issue. In submitting these comments the ANF supports the feedback being provided to AHPRA by the NSW Nursing and Midwifery Association (the ANF Branch in NSW).

3. Specific Comments

The draft policy as provided by AHPRA is reproduced in full below.

Our comments for changes are indicated throughout the text: either identifiable in bold or noted as 'ANF comment' against specific sections.

AHPRA DRAFT Policy explaining social media and professional obligations

Introduction

The use of social media is expanding rapidly. Individuals and organisations are embracing user-generated content such as social networking, personal websites, discussion forums and message boards, blogs and microblogs.

Whether an online activity is able to be viewed by the public or is limited to a specific group of people, health professionals need to maintain professional standards and be as careful about what they say online, as they are **in all other conversations**.

Health practitioners must consider their professional obligations, confidentiality and privacy, and the requirements of the National Law relating to advertising.

Context

The primary role of the National Boards is to protect the public. The **Health Practitioner Regulation National Law**, as in force in each state and territory (National Law), and codes and guidelines developed by National Boards, are all relevant when considering social media.

This policy explains how the National Law and the following existing codes and guidelines relate to social media:

- the relevant National Board's code of ethics and professional conduct/practice (the code of conduct), **(NB. relocated to first dot point for emphasis)**
- section 133 of the National Law which **outlines provisions relating to** advertising by registered health practitioners provisions, and
- the **relevant National Board's Guidelines** for the advertising of regulated health services (the Advertising Guidelines).

This policy provides guidance to registered health practitioners on understanding their responsibilities and obligations when using and communicating on/with social media.

Who needs to use this policy?

Registered health practitioners should be aware of the risks and implications of using social media.

A practitioner who contravenes the National Law, the code of conduct or the Advertising Guidelines, may face disciplinary action that could affect their registration.

Social media is a form of publication that is instant and often permanent. Some use of social media by registered health practitioners may contravene the code of conduct, the Advertising Guidelines and other relevant legislation.

Health practitioners should also be aware of and meet their duties of confidentiality and privacy under the law.

***ANF Comment:** is this sentence necessary as it repeats part of the last sentence under 'Context' and is repeated again under its own section - '2. Confidentiality and privacy'?)*

Definition of social media

'Social media' includes websites and applications used for social networking. Common sources of social media include, but are not limited to, social networking sites such as Facebook and LinkedIn, blogs (personal, professional and those published anonymously) and microblogs such as Twitter, content sharing websites such as YouTube and Instagram, and discussion forums and message boards.

*Areas that must be considered by **health** practitioners*

1. Professional obligations

It is almost impossible to separate 'public life' and 'professional life' in a social media environment. If aspects of a **health** practitioner's private life are accessible online in social media, that information may be open to misinterpretation by others.

Health practitioners need to keep in mind that information they post on social media will be in the public domain. It is likely to remain available to public view, even after an attempt to delete **the information**. **Health** practitioners need to seriously consider whether the information they are posting or uploading to social media is appropriate for the public domain.

Once information is published on social media it can be difficult to control further dissemination or publication.

ANF Comment:

Suggest add to this section on professional obligations - "Understand the privacy settings of social media sites, and how to manage them". Issue - Caution should be exercised when placing personal details onto any public social media page that could identify the person as a health practitioner. Such information has the potential to identify their employer, work colleagues and patients/residents/clients. Personal settings for access/protection/viewing should always be limited. Posting information on other peoples walls/sites also immediately identifies the poster with the wider audience of that 'friend'. Individuals have no control over the privacy settings of other people and consequently are not in a position to have a wide knowledge of the scope of other individuals' friends/contacts/followers.

1.1 Professional Boundaries

Registered health practitioners should be aware that online relationships or relationships through social media are no different to more direct forms of relationships. Disclosing personal information on social media to current or former patients may breach professional boundaries. **Health** practitioners should avoid non-therapeutic online relationships with current or former patients. For this reason, **health** practitioners should be wary of accepting friend requests from individuals or organisations unknown to them.

1.2 Professional behaviour

As in any other context, registered health practitioners should act in a professional manner when using social media. While respect and good communication with colleagues and other practitioners enhances good care, critiquing or comparing and contrasting other health services does not.

ANF Comment: *The last sentence is problematic because the ANF is aware that there are government websites which compare health services (for example, the Australian Government hosted 'Myhospital' site: <http://www.myhospitals.gov.au/>) . The statement assumes that all critique, comparison and contrasting is unfounded. However, this information may be alerting people to actual problems that are occurring, or just stating facts. The draft policy statement seems to suggest that positive comments of comparison are also not allowed. It is often the case that in the development of 'best practise', associated research is premised on a review of actual workplace practice, identifying deficits, and determining how such practice can be improved.*

Critiquing/contrasting/comparing may be also used in a social media forum to determine if an issue is widespread. While we acknowledge that social media may not necessarily be the most appropriate place for these sorts of discussion, the example used of 'critiquing, comparing and contrasting' may not be the most appropriate examples to demonstrate 'professional behaviour'.

The ANF suggests that it may be better to use examples which refer specifically to individual behavior (as this section is about 'professional behaviour'), such as communicating information which has no proven validity (that is, gossip), or discussing specific situations of a clinical nature, which, even though the health practitioner tries to maintain anonymity, may not be achievable in a small community.

Other examples could include posting photographs which may be deemed inappropriate by the health practitioner's employer, their profession, or the public; inviting patients to become "your friend" or a "follower" or accepting their invites to become friends/follower with them (acknowledging the point made in the NSWNMA submission regarding the unique difficulties this may present in small rural or remote communities).

An additional issue to raise under the 'professional obligations' section is that the policy should also make reference to the need for health practitioners to abide by the policies of their employing health service, including those relating to personal use of workplace information technology (IT) and internet facilities.

2. Confidentiality and privacy

Registered health practitioners have an ethical and legal responsibility to maintain patient privacy and confidentiality. **Health** practitioners should not make comments about patients on social media, even in a de-identified way, as it may breach the patients' privacy and confidentiality.

3. Advertising & Testimonials

3.1 Advertising

The definition of advertising under the Advertising Guidelines is broad. It includes use of social media such as posting an online message or group comment on a health practitioner's Facebook page or LinkedIn connection.

ANF Comment: *we have made comment previously that the advertising section should be created into a separate but linked policy, for clarity. Whether or not it remains in this current form, the definition of advertising needs to be strengthened to state that "for the purposes of this policy advertising using social media includes posting an online message". This provides rationale and clarity for linking advertising with a social media policy. Given comments received by the ANF in the course of this review, that clarity is currently lacking.*

The National Law provisions on advertising apply to:

- **health** practitioners registered under the National Law
- employers of **health** practitioners, and
- other persons who provide services through the agency of a registered health practitioner.

A person advertising a regulated health service may contravene the National Law even if they are not themselves a registered health practitioner. As a result, a person may be found to have 'advertised' a health service even though they did not intend to advertise or promote their health service.

The Advertising Guidelines clearly set out the consequences of breaches of advertising requirements by registered health practitioners (at 8.1, page 9) and people who are not registered (at 8.2, page 10). The Advertising Guidelines provide further details and examples relevant to social media.

3.2 Use of Testimonials

The National Law prohibits advertising in any way that uses testimonials or purported testimonials. Testimonials, or comments that may amount to testimonials, made on social media sites by patients or other people, may contravene the National Law and expose the registered health practitioner and/or the holder of the social networking account to liability.

A person is responsible for content on their social networking pages even if they were not responsible for the initial publication of the information or testimonial. This is because a person responsible for a social networking account accepts responsibility for any comment published on it, once alerted to the comment. **Health** practitioners with social networking accounts are therefore advised to carefully review any content regularly to make sure that material complies with their obligations under the National Law.

Summary

When using social media, health practitioners should remember that the National Law, Advertising Guidelines and the code of conduct apply. 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)
- presenting information in an unbiased, evidence informed context and not making unsubstantiated claims and
- not using testimonials or purported testimonials in any capacity on any medium.

10. Conclusion

In concluding, we include a comment made by the President of the Australian Council of Trade Unions, Ged Kearney, in an article on social media in the most recent edition of the *Australian Nursing Journal* (September 2012, 20(3), p. 22-25). She says

...employers seeking access to current or prospective personal Facebook sites is an excessive and breach of individuals' privacy and their rights. Employees are entitled to have a life outside of work and away from their boss and they have a right to control who sees their personal information. There is little difference between forced access to someone else's Facebook site and intruding on their home. If an employee is not performing their duties correctly, or does not seem the right applicant for the job then employers have existing ways to deal with this and do not need to take excessive and over-the-top measures simply because technology has advanced.

The ANF has welcomed the opportunity to participate in the preliminary consultation process for the Social media policy being developed by AHPRA. Given the extent to which our members use social media, professionally and personally, it will be important that the policy be framed to provide protection for the public and evidence-based guidance for health practitioners, without imposing unnecessary or unrealistic restrictions on their use of social media.

We look forward to learning the outcome of the consultation process and to being able to provide further assistance through the upcoming public consultation phase.