

Bulletin



June 2020

Are you ok? No. Now what?

The unhappy patient

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True to yourself, and true to your profession?

Midwives

'Likes' and 'Shares' aren't what they used to be

Your renewal

For our doctor members and midwife clients, renewal is upon us again. And while it is hard to believe we are already half way through the year, it is harder to process how quickly our world has become a strange and unfamiliar place!

COVID-19 Updates

As we commence our first tentative steps back to normality, each State is starting to relax their COVID-19 restrictions.

We encourage you to keep up to date with changes that may affect your practice by regularly visiting the Coronavirus page of our website.

On this page, we are regularly updating the answers to frequently asked questions covering matters impacted by COVID-19, along with links to supporting information from government and medical colleges. We hope you find this a valuable resource and a convenient way to stay up to date.

For more information and resources about COVID-19 visit www.miga.com.au/coronavirus

Support through COVID-19

We appreciate that there has been a huge amount of change and uncertainty over the last few months and that many of you will be dealing with changes in your day-to-day practice. We also understand that your income may have been impacted as a result.

We are committed to supporting our members and clients who are suffering financial hardship through the challenges that COVID-19 has brought.

In April 2020, we announced a COVID-19 Premium Relief arrangement to support those impacted during these extraordinary times.

It involves a number of mechanisms to respond to your changing financial circumstances whilst maintaining our financial strength. Eligible clients may include doctors in private practice, Healthcare clients and Midwives.

More details are available via our website, by calling or e-mailing us at COVIDRelief@miga.com.au. Our staff will guide you through your options.

Your renewal

As a member owned mutual helping you and all of our clients through difficult times is very important to us and always front of mind.

Please do not hesitate to call us if you have any questions about your insurance cover with MIGA.

With our heritage, experience and track record of more than 120 years, we look forward to continuing to support you and being there for you now, and when you need us most.

Mandy Anderson

CEO and Managing Director



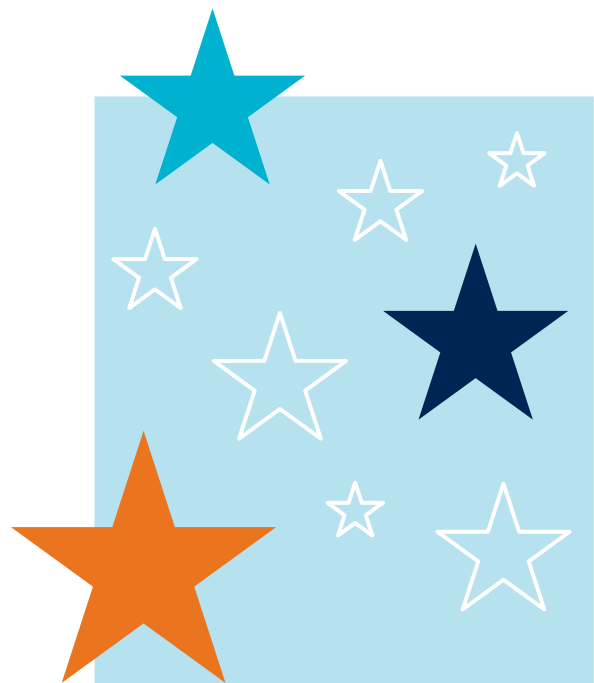
2020 got off to a challenging start with communities across the country dealing with bushfires and ongoing drought followed soon after by the COVID-19 pandemic, which has affected so many people in so many different ways.

We acknowledge the valuable and ongoing role our members and clients play in caring, supporting and nurturing the health of their communities. We understand this can come at a significant personal and professional cost. Above all, we want you to know that we are here to support you.

Under normal circumstances healthcare is a demanding profession. So we appreciate that you likely feel it is currently 'off the charts'. It is important to be proactive in seeking help for yourself, and in offering support to colleagues. We know that it has been a difficult time and that some members and clients have been doing it tough. We encourage you to contact us and make use of our 24/7 medico-legal emergency support service and resources if you need them.

Please keep safe, and I hope you enjoy this issue.

Hannah Potter
Client Services Officer



2020 Member Loyalty Benefit

Exciting news!

If you are eligible (based on years of continuous insurance with MIGA), your renewal includes details of a 2020 Member Loyalty Benefit¹, a reward we are pleased to provide eligible clients as thanks for their ongoing trust and support of MIGA.



Check your renewal information for details!

¹ Eligibility criteria apply, based on years of continuous insurance with MIGA.



Medicare – Does your dawg bite?

The plenary session to MIGA's half day risk management education conferences was a claims hypothetical moderated by Professor Guy Maddern and supported by a panel of subject experts.

Over 900 doctors attended a MIGA Conference across the 2019/2020 Risk Management year and were informed, challenged and at times entertained by the plenary topic "Medicare - Does your dawg bite?" This hypothetical, based on real claims experiences, has taken doctors through the process of a Medicare audit which begins with the data matching and compliance team at the Department of Health, through the Practitioner Review Program, a referral to the Director of the Professional Service Review and consideration by PSR Committee and subsequently the Determining Authority. At each step of the process the experience with the agency or committee involved becomes less pleasant and the potential consequences from a finding of inappropriate practice in relation to Medicare billing can be more severe. Drawing on the Pink Panther series and Inspector Clouseau's famous line "Does your dawg bite?" we discovered that it depends on who "owns" the dog.

The Department of Health has become more sophisticated in their data matching and has broadened their compliance focus from reviewing total and daily billings by general practitioners to include potential breaches in relation to the use of particular billing items and widened their scrutiny to include the billing practices of specialists. This Hypothetical was well timed to prepare doctors for an increase in audit activity.

The panel

We extend our thanks to the panel members from each state that joined the debate:

- Professor Julie Quinlivan, Director of the PSR
- Dr Caroline Phegan, previously a Medical Advisor with the Department of Health
- Geoff Black, Wallmans Lawyers
- Andrew Saxton, Meridian Lawyers
- John Petts, Kennedys Law
- Sacha Shannon, Minter Ellison
- Members of MIGA Claims and Legal Services Team
- Members of the MBS Review Taskforce or one of its Committees, including:
 - Associate Professor Alex Hunyor
 - Professor Michael Grigg AM
 - Professor Peter Hewett
 - Dr Lawrence Malisano
 - Dr Matthew McConnell
 - Laureate Professor Nicholas Talley AC

What's next?

Our 2020/2021 Conference series is on hold as a result of COVID-19 restrictions, but we encourage you to visit REO (www.reo.miga.com.au) where you can access our online risk education. There are a range of module topics which you can undertake at a time convenient to you and at your own pace.

Keryn Hendrick

Risk Education Manager

Excellent. Good reminders about things we should have been aware of since we went into practice.
Medical Officer

Learnt a lot. Hopefully, thus far have not or likely to be affected.
Orthopaedic Surgery

Thought provoking.
Urology

Very informative. A challenging topic, kept well on track.
Psychiatry

Excellent topic. Good audience interaction. Anaesthesia

Excellent overview of issues pertinent to all medicos' practice. Made me plan to be more proactive - understanding Medicare, MBS Codes and billing.
Ophthalmology

Very entertaining, entirely relevant and important to day to day activities.
General Practice

By far the best Risk Management workshop I have attended.
General Practice



Case Study

Are you ok? No. Now what? Support for our Doctor members

Marie-Clare Elder
Senior Solicitor – Claims and Legal Services



"I haven't gone back to work since the patient died"

"I'm sorry I'm crying, I'm not sure why this is affecting me so much"

"I can't sleep. I can't stop thinking about it. Why would they complain about me? I did everything I could!"

"The hospital has reported me because they think I'm impaired!"

These are phrases the team at MIGA hear from our members as their response to a terrible outcome or a complaint. We understand that often you are calling us because there has been an adverse event that has taken you by surprise. It could be a poor clinical outcome, an unexpected death or a mistake due to human or systems error.

Equally, complaints, claims and aggressive patient interactions can cause enormous stress on you as practitioners. Reports of bullying and harassment are growing, your unpaid hours are increasing, and horrible social media reviews are becoming common in the medico-legal space; not to mention your obligations under Medicare, privacy, child protection and mandatory reporting obligations.

A recently published study in the BMJ¹ found that one in four junior doctors are currently working hours that are associated with a doubling of their risk of common mental health problems and suicidal ideation.

We know from the 2013 Beyond Blue survey² of Australian medical students and doctors, that doctors reported a substantially higher rate of psychological distress and suicidal thoughts compared to both the Australian population and other Australian professionals.

Sometimes it simply becomes . . . too much.

We are by your side

In 2018/2019 the MIGA Claims & Legal Services Team received 5,150 calls for assistance from our members. This is the highest number of contacts we have had in our 120 year history. We have also seen a 100% increase in notifications regarding employment or industrial matters reported to the team.

We are hearing that the regulatory frameworks in each State and Territory frustrate you. We know that you feel patient expectations are frequently unrealistic and that many of you feel you work in a culture of blame. We understand that when a peer disagrees with your approach it can cause great angst and sometimes anger.

Talking to someone independent of the situation can be really helpful (see the services listed at the bottom of this article). Where personal or emotional issues arise as a result of an incident or claim MIGA offers a Practitioners' Support Service providing both peer and professional support to help you regain and maintain your perspective on the situation. Your team member at MIGA will discuss your individual needs and agree the best support framework we can provide. Please just ask us.

I'm worried about a colleague

Our team also receives calls from concerned practitioners who have noticed a peer deteriorating mentally, behaving erratically or their usual excellent clinical care is off-course.

We assist by working through the context (i.e. private practice, hospital employed or network peer), what precisely the MIGA member has observed and provide support as to various options for initiating discussions that will hopefully lead to a healthy, caring approach as opposed to triggering a mandatory notification that is not in line with the guidance under the National Law. Mandatory notification is a last resort and the threshold is high.

We urge those of you in this position to call us. It could be the first step in you making a real difference to your peer's career or life.

I'm worried about me! - What can I do?

Positive change is occurring to assist you. As Timothy Bowen, Senior Solicitor reported in our February bulletin³, treating practitioner mandatory reporting reforms have commenced in all States and Territories (except Western Australia). The reforms are positive for doctors and are intended to encourage practitioners to seek help without the fear of an unnecessary mandatory report to the regulator.

We encourage you to:

- Ensure you have an independent general practitioner, see them regularly and in particular if you feel your stress levels are increasing
- Seeing a counsellor or psychologist can be a pro-active approach to your wellbeing – not just a reactive one
- Debrief clinical incidents or episodes with colleagues
- Check in with peers who may be struggling, if you feel comfortable doing so
- Talk to senior colleagues or administrators if you have concerns you think they can assist with
- Engage with the Employee Assistance Program if that is available as an employee (it is confidential and independent of your employer), or remind colleagues of its availability
- Take your vacations – don't leave it too long between breaks
- Sleep, hobbies, time with friends and family and eating well are important
- Don't forget your MIGA team is here to help. We are by your side if you need assistance – please call our 24 hour medico-legal support service for emergencies.

Please remember, your role is challenging and complex, the work you do is extremely important. That brings many different pressures. As with life generally, there will be ups and downs. So when you need help, please seek it, we want you to succeed and enjoy your career.

1 <https://bmjopen.bmj.com/content/10/1/e033525>
 2 https://www.beyondblue.org.au/docs/default-source/research-project-files/bl1132-report---nmhdmss-full-report_web.pdf?sfvrsn=4
 3 <http://www.migabulletin.com.au/>

Support services

Lifeline 13 11 14
Kids Helpline 1800 551 800
MensLine Australia 1300 789 978
Suicide Call Back Service 1300 659 467
Beyond Blue 1300 22 46 36
Headspace 1800 650 890
Your employer's Employee Assistance Program

Benefit from our experience

As a member of MIGA you have access to our dedicated and expert staff providing a range of services designed to support you in practice

Broad insurance cover



Risk education



Medico-legal support



Advocacy





Case Study

The unhappy patient

Belinda Cullinan
Solicitor – Claims & Legal Services



With ever increasing pressure on health practitioners to provide efficient and effective healthcare, it is not surprising that we get hundreds of calls every year from doctors, midwives and health practices who have received a complaint about a healthcare service they have provided.

No matter how upsetting, distasteful or frivolous the complaint may be, the most important step is notifying the circumstances of the complaint to MIGA's medico-legal team so we can assist you formulate the best response.

Most health practitioners and providers understand the importance of calling us when a complaint has been made to a Complaints Commissioner or AHPRA, given the potential ramifications for a practitioner's registration. However even a verbal or written complaint made to you or your medical practice should not be overlooked or dismissed.

If a patient has taken the time to voice their concerns, regardless of how unfounded or inaccurate those concerns may be, it is important that consideration is given to a measured and appropriate response.

We assist our members on a daily basis with complaints both minor and complex in nature and we frequently experience first-hand how beneficial a timely and well-considered response is for both the practitioner and patient. It has the potential to renew the patient's trust or assist in bringing the relationship to an end on mutually satisfactory terms. It can avoid escalation of the complaint to a regulator or even a claim being pursued.

Some tips to remember:

1. When you receive a complaint, don't sweep it under the carpet

Pick up the phone and call our team to seek advice. We are always here to help and our members frequently report feeling better about their course of action having had the opportunity to discuss the complaint with an independent person in a professional and confidential setting.

2. Talk to a trusted colleague

It is easy to become clouded by emotion when we receive a negative communication, so talking it through with a colleague who might have faced similar patient interactions could be very valuable support and insightful to your handling of the complaint.

3. Let the patient know that the complaint has been received

If you anticipate the response taking more than 7 days, let the patient know their complaint has been received and provide a reasonable timeframe for providing a response. Many complaints will escalate if the patient feels they have been ignored.

4. The complaint doesn't directly involve you

If the complaint involves practice staff, you and/or the practice manager will need to investigate the basis of the complaint with those who were directly involved. It might ultimately be that advice needs to be sought from another party's insurer. If in doubt contact MIGA to discuss the circumstances of the complaint. We can help.

5. The complaint has been made by a patient's family member or friend

You cannot release any health information to a third party in the absence of the patient's consent, therefore you will need to confirm that the patient consents to the release of

any information to the complainant. If the complainant is a substitute decision-maker and has authority to make health care decisions for the patient, then health information can be released in those circumstances.

6. The complaint is completely baseless, inaccurate and offensive

Don't provide an emotive or defensive response. The best responses are those which chronologically set out the facts and provide an explanation addressing each component of the complaint. What makes a good response great, is one which strikes the balance between clearly addressing the complaint while appropriately acknowledging the patient's concerns. Often it is important to demonstrate insight. Letting the patient know their concerns have been 'heard' is essential to diffusing a difficult patient interaction.

7. You are losing sleep over the complaint

If you are finding that the complaint has impacted your mental and emotional well-being you should talk to your GP. Being on the receiving end of a complaint can evoke many varied emotions and can be incredibly stressful so seeking support when needed should be made a priority.

The following support services are available:

Support services

For practitioners

**Doctors Health advisory and referral service www.dr4drs.com.au
Nurse & Midwife support 1800 667 877**

General support

**Your GP
Lifeline 13 11 14
Beyond Blue 1300 22 46 36
Headspace 1800 650 890**

MIGA Resources

MIGA has a number of resources available to help doctors better manage their health, including a doctor's health assessment and health e-book and details concerning our practitioner support service:

www.miga.com.au/education/doctors-health

Finally, please remember if a patient interaction is concerning you it is worth asking for assistance. It is likely we have dealt with it before and we'll be well-placed to assist you. We are only a phone call away!

Claims management



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Personal and practice cover



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True to yourself, and true to your profession?

Can you ever see yourself being in the situation of asking yourself how you can be both true to who you are as a person and who you are as a doctor? Is there potential for conflict? What do you do if there is one?

These situations don't happen every day, but can be hard to work through and intensely personal for both doctors and their patients. They can evoke great debate and take a significant toll on those involved.

Debates about these issues have been going on for some time, but have been brought into sharper focus in recent times by the:

- Proposed Commonwealth Religious Discrimination Bill, which makes reform proposals around conscientious objection and 'conduct rules' – these are rules a 'qualifying body' like the Medical Board or a college, or an employer / other organisation may impose on a doctor outside the workplace
- Expectations of doctors in their professional and personal lives as part of the review of the Medical Board's *Good Medical Practice Code*
- Voluntary assisted dying regimes now in force in Victoria, and expected to be implemented in Western Australia from mid 2021
- NSW Abortion Reform Act imposes obligations on doctors when approached by a woman seeking abortion even if they hold views of conscience opposed to abortion.

How can the profession ensure appropriate access to healthcare, respect for personal beliefs and ethics, and preserve medicine's professionalism? How can a doctor exercise a conscientious objection or express a personal view in a public forum?

MIGA is conscious our members have a broad range of personal and ethical beliefs. We take no position on what a doctor should or should not do. Instead we engage in consultation and debate to work out ways forward which are sensible, practical and fair for all doctors, their patients and healthcare more broadly.

Most recently, MIGA contributed to the Commonwealth Attorney-General's consultation on the proposed Religious Discrimination Bills¹. Key issues raised included:

- Conscientious objection proposals are likely to displace a range of existing provisions in professional codes and standards, leaving considerable uncertainty around the scope for conscientious objection
- Conduct rule proposals add new complexities to professional codes and standards, causing considerable uncertainty around issues such as the divide between healthcare and the private sphere, and scope for personal comment

We argued for further, detailed work with the profession before any proposals come into effect, particularly development of consensus guidelines for the profession.

If these proposals lead to significant changes for the profession, we will let you know.

Timothy Bowen

Senior Solicitor – Advocacy, Claims & Education

¹ MIGA's submission to the review is available at [www.ag.gov.au/Consultations/Documents/religious-freedom-bills-second-draft/submissions/MedicalInsuranceGroupAustralia\(MIGA\)](http://www.ag.gov.au/Consultations/Documents/religious-freedom-bills-second-draft/submissions/MedicalInsuranceGroupAustralia(MIGA))



Insuring your healthcare business

Are you at risk?

It is as important as insuring yourself!

At MIGA, we have a wealth of experience in serving the needs of the healthcare sector and are passionate about protecting our clients and helping them manage the ever-changing challenges of working in the healthcare sector.

MIGA's Professional Indemnity Insurance for Healthcare Companies covers your business and its employees for legal liability for claims arising out of any act, error or omission in the provision of healthcare treatment, advice or service¹.

The cover we provide is tailored to meet the needs of businesses providing healthcare services. We believe it is competitively priced and provides true value for money. MIGA also provides some benefits that may not be provided by other insurers:



One automatic reinstatement of the limit of cover selected, at no additional cost



24 hours a day, 7 days per week emergency claims and legal support across Australia, provided by our own expert staff



Risk management education sessions, including practice reviews provided by our in house risk management team



Payment by direct debit (annual or monthly) at no additional cost



Qantas Points on payment to MIGA.

Most importantly, MIGA offers a unique ability to minimise gaps between the insurance cover arranged by the doctors who work in a business and the company.

Call us to get a competitive quote and see how MIGA can help you with indemnity insurance for your healthcare business.

Maurie Corsini

National Manager – Underwriting

¹ Subject to the Terms and Conditions of the Policy



Doctors behaving badly on social media

It is understandable to think that a medical practitioner's private life should be kept separate from their professional life. Even more so, where that private conduct occurs on social media on an overseas platform.

Such beliefs cannot be further from the truth as a very recent Medical Tribunal decision highlights.

In the case of *The Medical Board of Australia v Christopher Kwan Chen Lee* [2019] TASHPT 3, the Health Practitioners Tribunal in Tasmania found Dr Lee guilty of professional misconduct and issued a reprimand and suspension from medical practice for six weeks. Dr Lee was also required to undertake education on ethical behaviour and communication.

The conduct: inappropriate online comments

While Dr Lee was employed as a registrar at major teaching hospitals in Tasmania and Victoria, he made inappropriate statements and comments on online internet forums and chat sites, some of which were based in Singapore. The posts were extremely offensive, socially unacceptable, and particularly disrespectful of women and commented on violence towards, or sexual abuse of women. Dr Lee was readily identifiable from his own words and photographs on the chat site as an Australian medical practitioner.

At the time Dr Lee posted the online comments he says he did not appreciate that posting comments on a Singaporean online forum would have consequences on his practice of medicine in Australia.

Even though Dr Lee's personal opinions were quite offensive and socially unacceptable, he says that he never allowed his personal views to influence his medical practice and in fact he was supported in that regard by his clinical supervisors.

The Tribunal's findings

The Tribunal found that, as Dr Lee was a registered medical practitioner at the time that he posted the comments online, the Medical Board's Code of Conduct was relevant as was the National Board's social media policy published in March 2014. The social media policy states:

'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 aware of the implications of their actions, as in all professional circumstances. Health professionals need to be aware that information circulated on social media may end up in the public domain, and remain there, irrespective of the intent at the time of posting.'

When all Dr Lee's posts were taken together, the Tribunal found his conduct constituted several instances of unprofessional conduct which together amounted to professional misconduct.

Even though the online posts were not made in the course of practising medicine and were posted after-hours, there was a clear nexus between the posts and the respondent's profession as he identified himself as a medical practitioner and his assertion that he is a medical practitioner was supported by several photographs that he posted on the online forum.

The Tribunal found that it was clearly arguable that the nature of the posts and the number of them might demonstrate conduct that was inconsistent with Dr Lee being a fit and proper person to hold registration in the medical profession.

While Dr Lee was contrite and fully cooperated with the investigation, he received a formal reprimand (which is recorded on the register of medical practitioners) and a 6 week suspension. A condition was also imposed on his registration requiring him to undertake education on ethical behaviour and communications, particularly in the use of social media.

Maintaining professional standards online

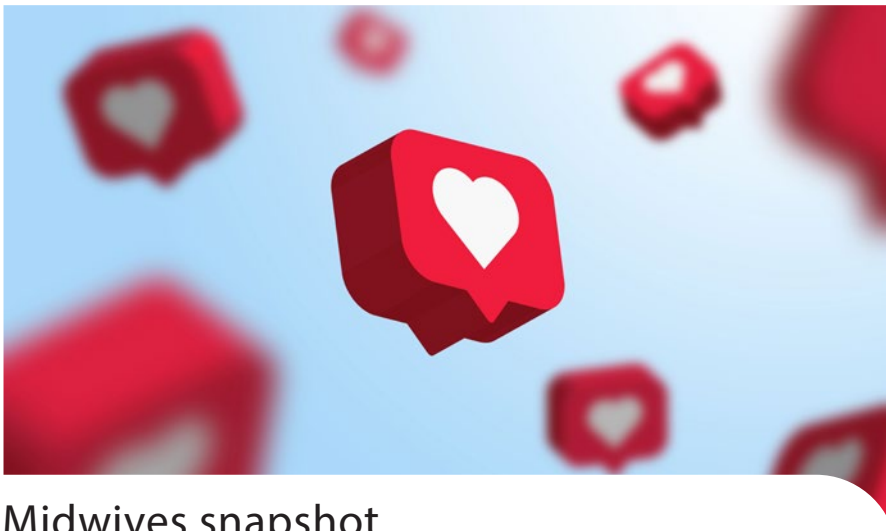
The seriousness of Dr Lee's conduct cannot be understated and serves as a clear warning to all practitioners about conduct in private life and how it can have ramifications on their ability to practise medicine.

For all the benefits that social media brings, it is also fraught with danger when used inappropriately. It should be assumed that any post on social media, whether intended for private or public display, might be disseminated more widely than intended. Practitioners need to think very carefully about a post and its potential consequences **before** it is posted.

Practitioners should make every effort to maintain separate social media accounts for their private life and professional life. The ease in which the boundaries between those accounts can become blurred are evident, for example, patients seeking to become online 'friends'. Any such request should be declined.

Anthony Mennillo

Manager – Claims and Legal Services



Midwives snapshot 'Likes' and 'Shares' aren't what they used to be

Whether it's a tweet, a blog, a post on Facebook or posting to a photo-sharing site, social media is a tool commonly used by midwives in their practice.

Late last year the NMBA published a new guide to help midwives understand their obligations around social media use. The guide provides advice on ensuring you act as ethically and professionally when it comes to posting, responding and sharing, as you do in your face to face dealings.

Though there are many benefits for both you and your patients to be gained from using social media in your business¹, there are also potential pitfalls. From breaches of confidentiality and advertising breaches to defamation of colleagues or employers and code violations, harm to both clients and your livelihood can occur if you are not mindful about ensuring your social media use is appropriate.

When using social media, you should be aware of your obligations under the National Law, your Code of Professional Conduct and Ethics, the Advertising guidelines and other relevant legislation, such as Privacy legislation.

✓ Tips to help yourself stay out of trouble when using social media

Remember what is private can easily become professional.

- It is relatively easy to check someone's registration status or make connections using available pieces of information.
- Likes or shares may imply your professional endorsement or support of that point of view.

Dot the 'i's and cross your 't's before you press enter.

- Accidents happen, so take a bit of extra time to make sure comments or posts you make from a personal perspective are only personal.
- Make sure you know and understand the relevant security and privacy settings.

Know your limits and responsibilities when it comes to public health education

- Avoid discussing anything that does not fall within your scope of practice.
- Avoid making general comments that could be considered inconsistent with NMBA and public health messaging.

If you have any queries about your social media use, the friendly staff in the MIGA risk management department are happy to help you work through them. In the meantime, completing the Advertising Practice Review through REO should allay any concerns about the gaps you may have that pose a risk of a complaint or a claim.

Liz Fitzgerald

National Manager - Risk Services

¹ Fedele, R. (2019, November) 8 reasons why nurses and midwives should embrace social media. ANMJ. Retrieved from <https://anmj.org.au/8-reasons-why-nurses-and-midwives-should-embrace-social-media/>



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