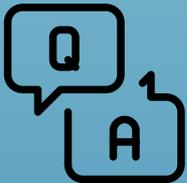




What are the Advertising Code requirements for health professionals regarding endorsements and testimonials?

Clause 24(6) of the 2021 Advertising Code states that an endorsement about therapeutic goods must not be given, whether expressly or by implication, by a current or former health practitioner, health professional or medical researcher or a person who represents themselves as being qualified or trained to diagnose, treat or prevent disease, ailment, defect or injury in persons;



What is a “health professional”?

Therapeutic Goods Advertising Code (No.2) states that a health professional means a person mentioned in section 42AA of the Act which includes a health practitioner, health professional, medical researcher or a group of such persons.

Section 3 of the Therapeutic Goods Act 1989 defines a health practitioner as a person who, under a law of a State or internal Territory, is registered or licensed to practice in any of the following health professions:

- Aboriginal and Torres Strait Islander health practice
- dental (not including the professions of dental therapist, dental hygienist, dental prosthetist or oral health therapist)
- medical
- medical radiation practice
- nursing
- midwifery
- occupational therapy
- optometry
- pharmacy
- physiotherapy
- podiatry
- psychology



Question

I am a former health professional who is now running a direct selling business and wish to conduct product training for a TGA listed product at a private event / company event / virtual event.

Can I do this if I do not endorse the products or make a testimonial but am merely presenting facts about the product, it's permitted indications, ingredients.

Answer

If your product training is 'merely presenting facts about the product' and its permitted indications and ingredients it would not be considered advertising. You need to satisfy yourself as to whether the training would meet the Therapeutic Goods Act 1989 (the Act) definition of advertise. You should note however that even if you do not intend for the training material to promote the use or supply of therapeutic goods, if the audience would reasonably consider that to be the intention of the material then the material would be considered advertising.

If the material is properly considered advertising in relation to therapeutic goods, as you (a former health professional) are personally conducting the training it is likely your audience would consider you endorse (recommend, support, or approve of) the therapeutic goods you are presenting about. This could be the case even in the absence of an express statement regarding your positive opinion of the products, noting an endorsement can be express or implied. Put another way, if the material is an advertisement, and if you, in delivering the training about therapeutic goods, would reasonably be seen to recommend, support, or approve of the goods about which you are presenting (i.e., you would be taken to endorse the goods) then this is likely to contravene s.24(6)(d) of the Advertising Code. That however is something you would need make a judgement on, as the person knowing the content and the nature of the material.

The TGA encourages all stakeholders who require advice about the application of the therapeutic goods legislation to specific circumstances to obtain independent advice tailored to those circumstances.

Question

I am a subsidiary of a global direct selling company who has a scientific advisory board that may include health professionals and Former Health Professionals.

Can the advisory board provide training on a TGA listed product to local direct sellers both physically and virtually? These events may have consumers present.

Answer

The answer to this question can be extrapolated from the answer above. Without knowing the exact nature of the training on the ARTG product, it is impossible to make an assessment if the training material would be considered advertising of a therapeutic good. If the material was advertising, you would need to be satisfied that the audience would not be led to the view or impression that the scientific advisory board members endorse the advertised goods as some members of the scientific advisory board are current or former health professionals.

