**Public Relations and Media Communications: Introductory Guidance**

**Background**

In general, advertising activities are regulated by the Federal Communications Commission (“FCC”), which requires, among other things, truth and accuracy in advertising. Other types of public relations and media-related services may also be regulated by state law and sometimes local law.

If a PCA-HCCN is promoting its members, one of the most effective public relations strategies is asking health center patients to provide testimonials on behalf of their health center.[[1]](#footnote-1) If the PCA-HCCN is a covered entity and the content of the testimonial includes patient information that is protected under HIPAA, the PCA-HCCN is required to obtain an authorization from the patient prior to using the protected information. Regardless of the content, the PCA-HCCN should obtain a release prior to using the image or voice of any individual.

If the PCA-HCCN hires a public relations or media consultant who develops materials in the course of the engagement, the consultant will own the copyright on such materials unless the materials are classified as a “work made for hire” under copyright law.[[2]](#footnote-2) The consultant may grant, assign and transfer his/her right, title and interest in the materials (including the right to secure the copyright) to the PCA-HCCN.[[3]](#footnote-3)

**Advice and Recommendations[[4]](#footnote-4)**

While the FCC rules govern truth and accuracy in advertising, more than likely, they do not cover news releases issued by organizations. Regardless, PCAs-HCCNs should follow truth in advertising principles when issuing any information to the public (whether through advertisements, news releases, interviews, etc.), as well as when speaking with the media. This is particularly important if the PCA-HCCN is conducting a “defensive” interview, i.e., defending actions taken by the organization. Any communication with the media and/or the public that is not truthful, misrepresents a situation, or is misleading, can adversely impact the PCA-HCCN’s reputation with the public and with its own membership, regardless of whether the activity also results in legal exposure.

As part of its public relations strategy, the PCA-HCCN may develop community service announcements and ads, videos, and other types of promotional materials, in written, auditory and/or visual form. While this may be an effective tool for “getting the message out,” PCAs-HCCNs should be aware that newspapers, radio and television outlets may not be under any obligation to print and/or air unsolicited announcements or ads. Accordingly, prior to making a large investment in developing written, auditory, and visual promotional materials, the PCA-HCCN should ensure that it has an appropriate medium in which to print and/or air the resulting product.

As discussed above, the use of testimonials or “real life” spokespersons can be very effective; however, before using these tools, it is advisable for the PCA-HCCN to obtain appropriate authorizations and/or releases from the individuals involved.

* [Testimonials of health center patients](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/874): Sample release

With respect to media communications, it is important for the PCA-HCCN to develop a specific procedure regarding the manner in which all media inquiries will be handled (including a provision prohibiting employees and agents from speaking with the media without authorization to do so). Further, all staff should receive training on the media communications policy. An inadvertent “slip of the tongue” could have devastating consequences for the PCA-HCCN.

* [Public relations and media communications](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/873): Sample policy and procedure

Similar to other types of vendor contracts, if the PCA-HCCN intends to hire a public relations or media consultant, it should execute a written agreement that contains a clear and precise description of the services to be provided to the PCA-HCCN and other key contract elements. In particular, the contract should include provisions that:

* Indicate that the PCA-HCCN owns property or materials created in the course of the engagement, such as advertising, videos, etc.
* If the consultant owns the copyright to the materials created during the engagement, indicate that he/she will assign the copyright to the R/SPCA.
* Require the PCA-HCCN’s prior written approval of material published for a public relations/media campaign, e.g., solicitation letters, brochures, graphics, etc.
* Require the consultant to indemnify the PCA-HCCN for any loss that it may incur on account of his or her activity on behalf of the PCA-HCCN.[[5]](#footnote-5)

1. The Authors recommend obtaining testimonial and personal information directly from the patient, as opposed to obtaining such information from the health center on the patient’s behalf. [↑](#footnote-ref-1)
2. 17 U.S.C. §101. [↑](#footnote-ref-2)
3. See [Training and technical assistance](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/867): Introductory guidance. [↑](#footnote-ref-3)
4. The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The advice and recommendations consist of general guidance based on federal law and regulations, and do not necessarily apply to all R/SPCAs under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel. [↑](#footnote-ref-4)
5. See also [Federal procurement procedures](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/836): Introductory guidance and  [Federal Anti-Kickback Law and common contract terms](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/837): Introductory guidance. [↑](#footnote-ref-5)