

Advertising Your Podiatry Practice

Here's how to legally promote your practice.

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Advertising takes many forms. There are newspaper and magazine advertisements, fliers, radio and television advertisements, and ads on various transportation vehicles. Every state podiatry board has advertising standards. They all require that your ad be truthful. They all have limits concerning what content is and is not allowed.

What Is and What Is Not Allowed

Of course, using false credentials is not allowed. Misleading credentials are not allowed either. For example, most states would consider it deceptive if you used the initials MD after your name when you are not licensed as an MD within the state you are practicing. It is of no mind that you obtained an MD degree. Years back, some podiatrists used the term diplomate after the term National Board of Podiatric Medical Examiners. While it may be true that you passed the exam for that required "board" so you could graduate, it was found to be deceptive in its use. By passing that "board", you did not become board certified. It is against the public interest to deceive people.

Most states would consider it overly flamboyant to advertise in any fashion that also appealed to one's prurient interests. It demeans the profession. That makes it unprofessional and not allowed. An example that comes to mind was a practitioner who used scantily clad people on the street handing out fliers advertising the practice. One practice had actors in gorilla suits handing out fliers.

Advertising that involves intimidation is not allowed. An example would be describing a condition and telling the public that if the specific practitioner

pertise in a certain area of podiatry.

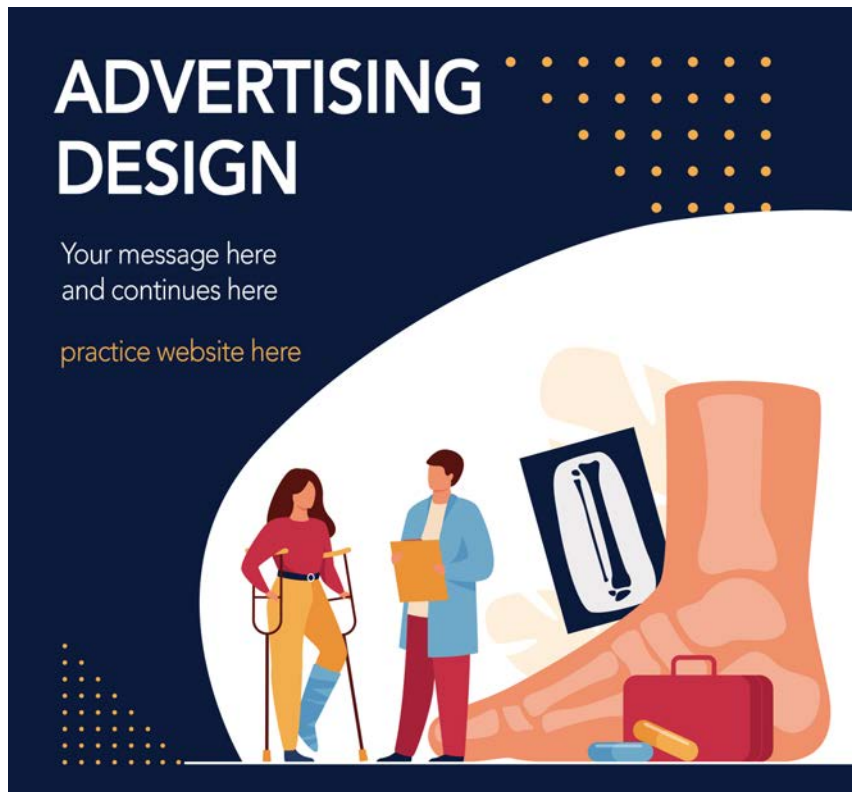
Some states allow factual testimonials and the use of before and after pictures and some do not. We can de-

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does not treat it, they will be permanently hurt, injured, or even die. That is not the same as using legitimate credentials to assert that you have ex-

bate the ethics of such advertising, but it is beyond the scope of this article to go into each state's regulations con-

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cerning testimonials and photographs.

An advertisement may not give any guarantee as to the success of any treatment. Be careful, as some wording, even without the use of the term “guarantee”, is considered to have an equivalent meaning. For example, the use of phrases such as “every patient who ever had this procedure was 100% satisfied with the outcome” or “every hammertoe surgery I ever performed cured the hammertoe” will likely get you in trouble. The trouble may not only be from your state licensing body. If you are sued for podiatric malpractice, your words will come back to bite you in the lawsuit. Juries do not take kindly to such language.

Claims such as you “perform more bunionectomies than any other healthcare provider in your state” must be demonstrably provable. This is not so easy to do. Stating that you personally perform “x” number of bunionectomies per year IS provable and would generally be allowed in your advertising, unless it is done in a way that implies you are therefore a better-quality podiatric surgeon than your colleagues. Advertising can be subjectively analyzed in its totality. It’s best not to take the “low road”.

You can state that you operate in AAA-certified OR if true, or any other recognized credentialing body. However, you cannot state that “our ORs are cleaner than anyone else’s OR.” You can state that your office follows all CDC COVID-19 guidelines, if so. You cannot state that you guarantee that your patients will not catch COVID-19 in your office. For that matter, there are podiatrists who advertise house-calls. They can certainly advertise that they use sterile instruments sealed in an appropriate pack for each patient treatment, if true. They cannot guarantee that their patients will not get an infection.

You cannot advertise financial inducements to be treated by your practice if they refer other patients. You cannot, in most states, use Group-like inducements if the advertising entity is getting a percentage of what you make from that patient. That is deemed fee splitting and not allowed.

You can advertise your prices for a service that is standard, such as de-

bridement of corns and calluses, orthotics, and dozens of other services you might think of. Put an expiration date concerning how long the prices are good for.

You cannot advertise “resident trained” if you did not complete the residency. Additionally, it must be a residency recognized by a generally acknowledged certifying body, such as the Council on Podiatric Medical Education (CPME). You cannot advertise yourself as an expert in a certain area of treatment without appropriate credentials. You can list articles that

would have to have permission or a license, from whoever composed it, as opposed to just copy and pasting somebody else’s copyrighted work.

Looking at several state laws, Alaska does not want before and after photographs without indicating that results vary on actual patients. In Alabama, you cannot show models on an advertisement without clearly indicating that these were not your actual patients. In California, you may not alter before and after photos. They must be cropped to hide identities, including unusual tattoos. In Connecticut, you cannot claim

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you have published in reputable journals on certain topics.

You cannot use copyrighted materials in your advertising without written authorization. For example, let us say you practice in Houston, Texas. You cannot use a Houston Astros baseball insignia without the permission of the Astros and probably MLB.

Examples

Let us look at several podiatry advertisements throughout the country. One advertisement in the southeast part of Florida states that the podiatrist is bilingual in English and Spanish, practicing in Miami for more than 30 years and is double board certified in foot and ankle surgery. All assertions are fine except the last one. Nowhere in the ad does the podiatrist list the two boards in which s(he) is board certified.

In an ad from Arizona, the podiatrist chose to give a detailed account of his training and work history. It was all factual in nature, designed to allow the public to evaluate the person that was going to treat them. All claims were specific and demonstrably true. Where this practitioner might have a problem in some states are with his claims concerning the efficacy and usefulness of amniotic and stem cell products.

An Internet website by a podiatrist in Oregon includes a large section on patient education. The podiatrist

you are board certified without naming the board. In Maine, while you can show before and after photographs, you must indicate that the photos do not mean that you are guaranteeing a successful outcome. In Texas, you may not compare yourself to another practitioner unless you can factually prove the accuracy of your claim. In South Dakota, you cannot make “improbable” statements or claims.

Miscellaneous

Do not trust an advertising agency, or someone attempting to sell you advertising, to know your state law as to what is and is not allowed for you as a podiatrist to do. They know how to advertise or sell you advertising opportunities. They are not attorneys.

Many states, including New York, make it mandatory that you maintain an exact copy of your advertising, videotape, audiotape, etc. for inspection by the appropriate state authority. If it makes you feel any better, many states require attorneys to do that too!

Now that you have a better idea what is allowed as content in your advertising, you still must decide where and when to advertise. With enough repetition, radio can be effective. However, if potential patients are listening while driving, they will generally not be able to remember your phone number. Television has that same weakness. People must be close

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enough to a pad and pen to write your contact information down. If you have an easily remembered phone number, it is less of an issue. Additionally, television and radio can be very expensive during highly watched hours.

You can advertise in newspapers or magazines while being part of their online edition at the same time. Use the written media that gets to your market. If you have an office in Utica, New York, the *New York Times* is probably not where you want to spend your advertising dollar. Very often, a church bulletin is very effective and less costly. Local weekly newspapers can be quite effective.

Placement of your advertisement is crucial. You do not want your advertisement sandwiched between advertising that one might consider “inappropriate”. It is embarrassing and demeaning to the honorable profession of podiatry.

Conclusion

Review the advertisement. Have office staff and a few patients look at it. Get their opinions as to why they like it or not. Pay attention to their reactions to the ads. Make suitable changes if needed. It is a good idea to rotate your ads. Let them differ somewhat in content. Do not try to list every single service your office provides. Too much information is distracting. One advertisement can concentrate on heel pain and another on hammertoes or nail problems, perhaps still another on diabetic patients. Concentrate on how you can help.

Is there anything unique about your practice? Perhaps you or your staff speak a language that is common in the neighborhood where you practice. For example, if you are the only podiatry practice in a neighborhood that can speak to recent Albanian immigrants, get that out there. Advertising in the ethnic media can be a very

cost-effective and targeted option.

You are limited only by your imagination. Keep it understandable. Keep it relatively simple. Keep it tasteful, something you are proud to show. Let the public know what you do, and they will come. **PM**



Dr. Kobak is Senior Counsel in Frier Levitt’s Healthcare Department in the Uniondale, New York. Larry has extensive experience representing physicians in connection with licensure issues, as well as successfully defending physicians before Medical Boards, OPMC, OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Health Care Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.