



Marketing in Podiatry: The Legalities

Know your do's and don'ts.

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It was not until 1982 that “modern” healthcare professionals could legally advertise! That was the year the United States Supreme Court held that the AMA’s prohibition on advertising violated anti-trust laws. After the decision, the floodgates opened. However, there were and are restrictions, both federally and from the individual states.

The FTC (Federal Trade Commission) ruled that a medical advertisement must be both truthful and not misleading, meaning any claim must be “empirically supported”. State consumer protection laws and medical boards can add their own rules and regulations regarding advertising and marketing restrictions.

Don'ts

It can be daunting to review and digest the individual state restrictions on advertising. Each state has its own laws passed by its legislatures and its own medical boards that promulgate their own rules and regulations. In general, your advertisements should not run afoul of the following restrictions:

- *Advertising false or misleading success claims.* An example of this might be an advertisement claiming that you have a 90% success rate on a particular type of foot surgery. Much depends upon the definition of “success” used, and most ads do not bother to define that word.
- *Any type of guarantee concerning a result is usually not allowed.* You cannot create unjustified

expectations on the part of the patient. While a practitioner may tout themselves, their credentials, and their efforts for their patients, they should not guarantee an outcome. At the very least, a plaintiff’s malpractice attorney will jump on that guarantee, real or implied, in front of a jury. Most state boards will find a guaranteed result as being unprofessional conduct and act on it.

- *Advertising unproven therapies, such as therapy not approved*

- *Deceptive billing procedures that might involve “accepting insurances” and not collecting deductibles or co-pays.* “Creating” a diagnosis that is covered by insurance is not allowed. “Covering” a patient’s deductible is not allowed.

- *Ignoring HIPAA considerations and using unauthorized patient information as part of their advertising.* Examples of this include treating a famous professional sports figure and using their name without their permission. You could say you

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by the FDA. Of course, not all treatments come under the rubric of the FDA.

- *Distorting the services your practice offers to mislead or fool potential patients.* An example of this is advertising a “new” type of bunionectomy, not available anywhere else in the state, except from you.
- *Composing phony patient reviews on social media is fraud.* Do not do this.
- *Endorsing a treatment or product, without evidence that it works.* An example of that would be claiming to have a cure for treating fungal nails with no actual scientific evidence/studies to back up the claim. “Snake oil” sales are not permitted.

are a particular team’s podiatrist, if true. But violating patient privacy while using social media can lead to serious consequences. Be especially careful with your content on social media.

- *Falsifying or exaggerating your credentials so that they are misleading.* For example, if you attended a weekend lecture at Harvard University, you cannot imply that you graduated from Harvard University.

- *Be very cautious about attempting to convince your patients to adopt your religious beliefs.* More than one state board found that attempted religious conversion of patients was unprofessional. As there

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is a doctor/patient relationship, it has been found that such an attempted conversion involves undue influence on the patient.

- *You cannot target at-risk patient populations such as the disabled, or victims of pandemics, with unsubstantiated promises.* An example of this would be advertising that your practice has a higher rate of healing ulcerations on the lower extremity. Patient testimonials alluding to this are usually held as unprofessional. Some states even prohibit before and after pictures.

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- *Many state medical/podiatry boards have an “unprofessional conduct” prohibition that covers many unethical practices.* An example of that would be salacious advertising or having people running around in bear suits. These are two actual examples of advertising that were ruled unprofessional by a state board.

Do (or Do Carefully)

Okay, now that you have seen what you *cannot* do when it comes to advertising or marketing your practice, let's look at what is allowed:

- *Accurately list your professional credentials.* Certainly, include any board certifications, residencies, hospital privileges and professional schools that you graduated from.

- *List your address(es), business hours, social media presence, phone numbers, and email address.*

- *Participate in presentations to local church or senior groups.* Health fairs also provide a forum for marketing your practice in a professional fashion. However, there cannot be a quid pro quo concerning obtaining patient referrals from the local Knights of Pythias in exchange for your financial support for the group.

- *Let people know what you do!* Remember that patient who missed their appointment because they went to another doctor to treat their sprained ankle or fractured metatarsal? That patient may not have been aware that you treat those conditions. It is a good idea to have reading material in your waiting room that alerts your patients of the range of care your practice provides. Internally market!

- *Please do be involved in community improvement projects, but from a business perspective.* Promoting controversial political opinions risks alienating a large part of your potential patient base.

- *When deciding where and how to spend your marketing budget, you should use your internal data.* Each patient should be asked how they first came to your office. Try to promote in a way that has already

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been successful for you. Advertising in the local Yellow Pages these days may not be as valuable as it once was. However, go by your own experience and instincts.

- *Advertise, but be aware of certain restrictions as to where you can advertise.* If you recently left another practice and are governed by various restrictive covenants, you may not be permitted to “target” a particular patient population. Let’s play that out. For example, you will not be allowed to advertise in the church bulletin that is across the street from your former practice, but you will be allowed to advertise in the city-wide newspaper that also includes readers from that same church—you just cannot target that area. If you practiced in a more rural area and the restriction involves an entire county, then you might not be able to advertise in a newspaper that targets that county. Consult your healthcare attorney for specific legal advice.

- *You will be inundated with offers to “participate” in various Best Doctors awards.* Often, it involves paying money to obtain a Best Doctor rating. While sitting on a plane, we have all read the Best Doctor ads in various magazines, but we know that the “award” requires nothing more than writing a check to the advertiser. While

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there may not be any professional discipline for such ads, the ethics of obtaining this “credential” is dubious at best.

- *Another point: Pennysaver and coupon deals that involve sharing a percentage of what is derived from the advertising can be considered illegal fee splitting.* If the advertising medium gets paid a set amount for the ad, and not a percentage, it should be alright.

- *Your webpage and social media presence should be informative and dignified.* It is of the utmost importance that it has updated content that might contain copies of articles you have authored, lectures you are giving, and any accomplishments of yours and your staff’s. The colors should be distinctive. The amount of content per page should not be overwhelming. (This is a common mistake.) The same is true for your PowerPoint presentations; have your screenshot make a point, but it should not be book length.

- *If you are advertising on television or radio, make sure that your presenter speaks slowly and clearly, so your message is easily understood.* This is particularly important when you choose to be your own presenter. While little ditties can be distinctive when applied to your telephone number, avoid demeaning songs and presentations; think of obnoxious lawyer billboards or the ever-present ads with attorneys fighting, rehearsing their case closings in their underwear, etc. You are a

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professional. If you want to be respected as a professional, act like one. The same advice goes for your business card.

boss who employees want to work for. Make them feel part of the success of your practice. While you cannot give them a percentage of the office gross, you can reward them for a job well done. Let's call

or emails ahead for a reservation.

There you have it. When it comes to your advertising and marketing, nothing works for everyone, so try various things and see what works for you. If you make sure you are comfortable with the things that you try, chances are your patients will be, too. **PM**

If you want to be respected as a professional, act like a professional.

- *When patients are polled, one of the best ways to obtain and keep new patients is through your accessibility. Consider using an online appointment system, and/or consider having a certain time every day for patients to reach you via the phone or text message.*

- *Patients are usually impressed when their staff talks well about their boss: you. It must be sincere and not sound forced. You will achieve that by being the type of*

this internal marketing. It can be something as simple as pizza every Wednesday.

- *Some podiatrists have advertised an evening hour of patient talk. Have the ad invite your patients and interested future patients to your office for various topics that interest you. The public loves the intimacy of such gatherings. Have some light refreshments on hand. As your seating can be very limited in your waiting room, make sure that anyone coming calls*



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