

CHAPTER 23

Advertising

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Patients are not consumers in search of a commodity. There is a unique vulnerability that comes for want of relief from disability and disease, and patients are unlikely therefore to be capable of defending themselves with the incredulity they may normally bring to other forms of advertising.¹

Introduction

Medicine has had a difficult and tense relationship with advertising. There have been a significant number of formal complaints upheld against doctors in New Zealand over advertising in recent years. This suggests a poor understanding of advertising in a medical context as well as a degree of naivety over the consequences of advertising that breaches guidelines.

Perceived problems with advertising led to American physicians being prohibited from advertising for 130 years, change occurring only in 1975. The change was brought about by positioning health care as a business no different from any other and therefore a prohibition on advertising was seen as a restraint of trade. The contrary view is that good decision making in medicine represents a very different interaction from the majority of consumer decisions.

There are convincing ethical views that support tight control on advertising. The ethical considerations centre around three themes: the vulnerability of those with illness and disease, the power implications of an imbalance in knowledge and the commitment of health practitioners to use limited health resources wisely. Mark Yarborough cautions that advertising may transform the doctor/patient relationship “primarily into a means of making money rather than a means of serving and promoting the best interests of the patient as determined by the patient”.²

Those who perceive themselves as ill may be frightened, vulnerable and powerless. They seek health care professionals who profess to have specialised knowledge and who profess to act only in the patient’s best interest. The purpose of advertising is to generate income. It does so by providing limited but alluring information about a product or service that will meet a real, perceived or generated need. There is an assumption in such a transaction that the consumer is a free agent. This is, of course, incorrect concerning medical treatment. Aside from the vulnerability that goes hand in hand with many illnesses, there is an imbalance of knowledge between doctor and patient. The limited and potentially biased information given in advertising may give rise to unrealistic expectations in those considering treatment. These expectations may have adverse consequences in subsequent interactions between doctor and patient.

“Statement on advertising”

The Medical Council has produced several publications that act as guidelines for those wishing to advertise their medical services and these are available from the Council website. The most important of these is the *Statement on advertising*. The statement covers legislation for health related advertising set by the Advertising Standards Authority but also describes additional requirements the Council has described regarding advertising. Some principles from that statement are:

Responsibility — you are responsible for the content even if you delegate the task to another person. Responsibility exists for advertorials in media such as TV and radio as well as more traditional newspapers and magazines.

Content — the key words are truthful and balanced content. Should complaint occur, the claims made in an advertisement may well be examined with a close eye on the medical and research evidence to substantiate those claims. The use of images must also be balanced and fair. This especially applies to “before and after” photos.

Qualifications — the term “specialist” has special meaning under Council’s guidelines and refers to a doctor who has vocational registration. If advertising, you should not claim to have specialist knowledge or be a specialist in a particular area of medicine unless you hold vocational registration in that area.

Discounting — advertisements that offer discounts are not acceptable. Such incentives are aimed at inducing “reflex” decisions about buying a product or service. Decisions regarding medical care are not served well by promoting quick decisions. In particular, advertising that promotes limited time offers runs contrary to many of the principles of informed consent and good decision making. Offering medical services as prizes or gifts is inappropriate when this is done to promote a commercial service or for financial gain.

Endorsing products — the Medicines Act prohibits the endorsement of medical products, treatments or medicines. Any other endorsements need to be evidence based.

More comprehensive descriptions of these principles are available from the Statement on Advertising and this information is not intended to be a replacement for the statement. The Advertising Standards Authority also provides useful information on standards relevant to therapeutic products or therapeutic services. Doctors responsible for poorly considered advertising can be investigated by a number of bodies including the Health and Disability Commissioner, the Medical Council and the Commerce Commission.

Legislation relevant to advertising includes:

- The Code of Health and Disability Services Consumers’ Rights
- The Fair Trading Act 1986
- The Consumer Guarantees Act 1993
- The Medicines Act 1981
- The Therapeutic Services Advertising Code
- The Therapeutic Products Advertising Code.

References

1. Tomycz ND2006. A profession selling out: lamenting the paradigm shift in physician advertising. *J Med Ethics*; 32 (1): 26—28.
2. Yarborough M 1989. Physician advertising: some reasons for caution. *South Med J*; 82 (12): 1538—44.