

Clinical Perspective

Legal Considerations When Advertising a Medical Practice

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Although initially discouraged, advertising medical practices is now a common endeavor for hospitals, clinics, and individual health care practitioners. Fundamental to advertising a medical practice is the need for promotional material to remain truthful, free of misrepresentation and deception, and be supported by empirical evidence. When these tenets are not met, the possibility of liability for false advertising exists, the consequences of which can vary. Liability for false advertising in medicine is distinct from medical malpractice claims in that it does not concern medical decision making or the quality of care. Instead, the information used to market a practice is alleged to be false or deceptive, influencing a patient's decision making and resulting in injury. Common areas in which liability in advertising exists include the use of misleading success claims, guaranteeing outcomes, deceptively marketing to vulnerable patients, inaccurately representing services offered, promoting products or services lacking empirical support, and misleading advertising of billing practices. Entities that choose to use patients in their promotional materials should adhere to guidelines in the Health Insurance Portability and Accountability Act while also presenting a fair representation of patient reviews and experiences. Given the prevalence of advertising medical practices, health care professionals should be familiar with potential legal liability risks when marketing their services.

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