Advertising Medical Services and Solicitation of Patients[1]

ATTY. RODEL V. CAPULE, MD, FPCP[2]

Time and again physicians are reminded that "the practice of medicine is not the equivalent of an ordinary commercial enterprise"[1] and in addition "it would be unrealistic to view the practice of professions as interchangeable with other business activities."[2] Simply put, practice of medicine is not a commercial enterprise or a business activity nor a moneymaking venture.[3] It is not capital that yields profits.[4] Parenthetically, physicians are not merchants.[5] Furthermore, health care services, medical care and professional services are categorized as credence goods. These are type of goods "whose quality is more difficult for a consumer to evaluate"[6] or "an element of trust on the part of the purchaser is required."[7] It is within these parameters that advertising (health care services, medical care and professional services) and solicitation of patients are generally proscribed. To be clear, "advertising" refers to "activities which seek to inform, notify or persuade the public, but without the use of a person-to-person encounter,"[8] whereas "solicitation" refers to "similar activities involving personal contact."[9] The term "solicit" [also] includes "contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient."[10]

Notwithstanding, the Code of Ethics of the Medical Profession[11] (Code) permits limited advertisement and solicitation. It is ethical, albeit with some conditions, for a physician to use professional cards, internet, directories and signboards for the promotion of medical practice. It is also imperative to include personalized prescription sheet when dealing with the issue of advertisement and solicitation. Professional or "business" cards, internet, directories, prescription sheet and signboards should contain only the name of the physician, field of specialty, clinic hours, clinic address and hospital affiliations. Contact numbers (cell phone or landline) or e-mail address are intended to facilitate communications to set an appointment, clarify instructions, request for medical certificates and other documents, etc.

Adopting the limitations of advertisement and solicitations in law practice, a physician "in making known his [medical] services shall use only true, honest, fair, dignified and objective information or statement of facts"[12] and "shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or [medical] services."[13] The act of a physician "in publishing personal superiority, special certificates or diplomas, postgraduate training, specific methods of treatment, operative techniques [are] [also] not allowed."[14] Self-laudatory phrases like "*trained in the USA*," "*the first Filipino specialist*" or "*the only specialist*," and other "come to me" advertisement might mislead unsophisticated patient or even sophisticated ones that indeed the physician possesses superiority over other medical practitioners in the same field. Declaration of "certification" as a specialist, even though truthful,[15] may not be fully understood by less sophisticated patients and inadvertently limit their freedom to choose an attending physician or reject even a competent one.

Signboard, on the one hand, is specifically constrained by size and placement of the advertisement. Thus, it shall not exceed one by two (1 x 2) meters in size and must be placed only within the confines of the clinic or residence.[16] In addition, The Medical Act of 1959 (R.A. 2382) also enjoins physicians not to engage in false or extravagant advertisements.[17] Personal and professional information to be shared with the audience, viewers and readers during media exposure should only include "the name of the physician and membership to a society or institution."[18] It is downright unethical for a physician to "pay or give anything of value to representatives of the mass media in anticipation of, or in return for, publicity to attract [patients].[19] "The absolute prohibition against a [physician] compensating a representative of the mass media in anticipation of professional publicity in a news item is retained under the theory that laymen are unlikely to analyze news references to [physicians] with the same

[1] See related topics in Philippine Journal of Internal Medicine vol. 56 no. 2 & 3 (2018)

[2] Dr. R.V. Capule is an attorney specializing in medical malpractice, physical injuries and food torts. He is a law professor of Legal Medicine and Problem Areas in Legal Ethics at Arellano University School of Law and a consultant in Legal Medicine at Adventist Medical Center Manila and Makati Medical Center.

degree of alertness and skepticism that they would exercise when evaluating normal commercial communications."[20]

Including testimonials from patients or colleagues is also disallowed. A "testimonial" is "[a]n attestation or implied attestation to the competence of a physician's service or treatment" and includes "expressions of appreciation or esteem, a character reference, or a statement of benefits received."[21] Needless to say, "patient testimonials are inherently misleading; they present the successes and never the failures, which promotes the idea that outstanding results are always expected.[22]

Although a physician may ethically advertise and engage in solicitation, one must be reminded that "[t]he most worth and effective advertisement [ ] possible is the establishment of a well-merited reputation for professional capacity. This cannot be forced but must be the outcome of character and conduct."[23]

References

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15 Peel v. Attorney Disc. Comm'n, 496 U.S. 91 (1990)
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