

Dental and medical advertising: comparative analysis of the rules of professional conduct

Publicidade odontológica e médica: análise comparativa das normas profissionais

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ABSTRACT

In health care professional activities, advertising is an issue that raises serious discussions and is the cause of some ethical suits in professional entities, since every advertising should follow the provisions of the Code of Professional Responsibility. Therefore, this research study aimed at analyzing, comparing and discussing articles related to advertising and marketing, considering the current regulations from dental and medical entities. In Dentistry, this subject is ruled by the Code of Professional Conduct, Chapter XVI, 'From advertising and marketing'. In Medicine, information is found in two regulations and in several chapters of the Code of Medical Ethics and in Resolution No. 1.974/2011 of the Federal Council of Medicine, which establishes the guiding criteria for medical advertising. The three regulations present articles that refers to participation in mass media, required information in advertisements, use of sensationalism and self-promotion, and publishing of unproven specialties and titles, highlighting the importance of these topics. The medical regulation also includes participation in publishing ads of manufacturing companies and an exclusive committee to deal with advertising and marketing issues, topics that are not considered in the dental regulation.

Indexing terms: Forensic Medicine. Health care marketing services. Legal Dentistry.

RESUMO

Analisar, comparar e discutir os artigos relacionados ao tópico sobre propaganda e publicidade nas legislações vigentes e emanadas das classes odontológica e médica, a partir da consulta a essas legislações. Na Odontologia, este assunto é regido pelo Código de Ética Odontológica, no Capítulo XVI, "Do anúncio, da propaganda e da publicidade". Na Medicina, encontram-se informações em duas legislações sobre o tema, em diversos capítulos do Código de Ética Médica e na Resolução nº 1.974/2011 do Conselho Federal de Medicina, que estabelece os critérios norteadores da propaganda médica. As três legislações apresentam artigos que dizem respeito à participação em meios de comunicação em massa, informações mínimas presentes em anúncios, utilização de sensacionalismo e autopromoção e anúncio de especialidades e títulos não comprovados, destacando a importância desses tópicos. A legislação médica traz, também, da participação em anúncios de empresas comerciais relacionadas à sua profissão e sobre uma comissão exclusiva para tratar de assuntos de divulgação, tópicos desconsiderados na legislação odontológica.

Termos de indexação: Medicina legal. Marketing de serviços de saúde. Odontologia legal.

INTRODUCTION

The Code of Professional Responsibility is a set of rules and moral principles that regulates the activities of a professional entity and, based on it, professionals should take decisions and adopt conducts to carry out

his/her job¹, guaranteeing the standardization of the professional practice to the society².

In this context, a subject that raises great discussion is advertising made by some health care professionals, who should follow the determinations of the Code of Professional Responsibility and has been

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the cause of some ethical suits by professional bodies³. One of the justifications for this would be the excessive number of professionals in the labor market, with a mercantilist practice⁴, advertising not following the respective regulations and aiming at gaining a larger number of patients, but ignoring the legal implications of it. At the same time, patients are increasingly aware of their rights, which makes it necessary for professionals to comply with the rules when advertising⁵.

Failure to comply with these rules may lead to administrative and/or civil conviction, as well as contributing to the devaluation of the profession, showing lack of respect for the society^{6,7}. Therefore, the goal of this article is, through documentary research, analyzing, comparing and discussing articles related to advertising and marketing based on the current regulations issued by the dental and the medical institutions.

METHODS

A comparative analysis was performed considering the current resolutions issued by the dental and the medical institutions that rule advertising in their professions. In Dentistry, this subject is ruled by the Code of Professional Conduct (CPC)⁸, Chapter XVI – ‘From advertising and marketing’. And, in Medicine, information is found in two regulations and discussed in several chapters in the Code of Medical Ethics (CME)⁹ and in Resolution No. 1974/2011 of the Federal Council of Medicine (FCM)¹⁰, which establishes the guiding criteria for medical advertising.

RESULTS

Table 1 shows the main topics discussed about advertising and in which regulation such topics are addressed by the medical and the dental entities.

Table 1. Additional subjects addressed by the regulations.

Regulation Subject	Code of Professional Conduct (CPC)	Code of Medical Ethics (CME)	Resolution n° 1.974/2011 FCM
Advertising services such as awards for contests or being involved in contests with a promotional purpose	Art. 44, subsection X	Art. 71	Art. 12
Publishing titles that cannot be proven or specialties not registered in the Council	Art. 43, subsections I, II and III		
Art. 44, subsections II and III	Art. 115	Art. 3 rd , item “a”	
Presenting, as his/her own, findings or scientific work that are not his/hers	Art. 49, subsection II	Art. 117	---
Professional social media shall follow the regulations as well	---	---	Art. 13*
Exclusive committee to address disclosure issues	---	---	Art. 14 Art. 15
Advertising courses related to his/her specialty registered in the Council	---	---	Art. 4 th , Sole Paragraph
Advertising in non-scientific media method not approved/recognized	Art. 44, subsection III Art. 49	Art. 113	Art. 3 rd , item “f”*
Disclosing any information allowing patient identification	Art. 14, subsection III Art. 44, subsection VI	Art. 75	Art. 3 ^o , item “g” Art. 10
Inducing working areas	Art. 44, subsection VIII	---	Art. 3 rd , item “b” e “h”
Required information in advertising	Art. 43	Art. 118	Art. 2 nd Art. 5 th
Offering free of charge service	Art. 44, subsection IX	---	---
Participating in advertising made by manufacturing companies	---	Art. 116	Art. 3 rd , item “c”*
Participating in mass media	Art. 44, subsection V	Art. 111 Art. 114	Art. 8 th
Participating in discount card programs, collective buying programs and similar actions	Art. 32, subsection XIII Art. 44, subsection XIII	Art. 72	Art. 3 rd , item “i”
Prohibition of selfies	---	---	Art. 13, Paragraph 2 nd *
Joint responsibility among the beneficiaries of illegal advertising	Art. 45 Art. 46	---	---
Use of sensationalism or self-promotion	Art. 47	Art. 112	Art. 9 th , Paragraph 1 st and 2 nd
Use of illegal advertising tools that characterize unfair competition	Art. 44, subsection VII	Art. 51	Art. 9 th , item “b” Art. 13, Paragraph 2 nd *
Publishing misleading and abusive advertising with expressions or images ‘before and after’, prices, free of charge services and payment methods	Art. 44, subsection I	Art. 112	Art. 3 ^o , items “d”, “g” and “k” Art. 13, Paragraph 4 th *

*According to the working changed by Resolution n° 2.126/2015¹¹ of the FCM.

DISCUSSION

Advertising, as explained by Silva¹² is one of the most important symbols of the capitalism and the current world. Whenever we turn on the TV, listen to the radio or simply look around, we are faced with advertising. Thus, there is no denying its great influence on the creation of consumers desire. Hence, the need for advertising to be regulated by law.

Medical and dental marketing is part of a relatively recent reality that requires the adjustment of the professional's ethical behaviour¹³. This new reality can be easily seen after verifying the literature, which showed that in 2005 the two most popular media used in dentistry were direct mail and telephone directory¹⁴. Also, just over five years ago, marketing was still an issue unknown to most medical students¹³.

Between 2000 and 2011, approximately 40% of the ethical suits instituted against dentists by the Regional Council of Dentistry (RCD) of Espírito Santo¹⁵ were driven by illegal advertising. In 2012, only 5% of the open lawsuits referred to illegal medical advertisement in the Regional Council of Medicine (RCM) of São Paulo. This low number occurs because most of the accusations do not progress, because physicians can adjust their conduct and sign a commitment term not to incur the offense¹³ again. In most cases, there are two reasons motivating the conduct, which are the ignorance of the rules or the feeling of impunity.

Professionals are responsible for everything that is informed to others about himself/herself¹⁶. At this point, it is important to emphasize the need for attention to advertising made by third parties that, direct or indirectly, is relate to the professional, such as practices/offices or health insurance companies to which this professional is accredited. This is because professionals who corroborates with illegal advertising and benefits from it, even if the advertising was not made by him/her, may also incur ethical infraction, as found in several articles of the regulations analysed⁸⁻¹⁰.

Analysing the mentioned ethical rules, it was verified that some basic information should be included in any advertising related to the practice of medical and dental activities. For physicians, it is mandatory to include the name and the registration number in the RCM. And, for dentists, besides the name and the registration number in the RCD, the name of the profession (dental surgeon) should also be in it. In case of advertising of medical legal entities, it shall bear the name of the legal entity, as well

as the name and the number of registration in the RCM of the technical manager of the medical legal entity. For dental legal entities, ethical rules require the name of the legal entity, the registration number of the legal entity in the RCD, and the technical manager name and registration number in the RCD. However, in a survey carried out in Maranhão¹⁷, only 2% of advertising ads in billboards, signs and banners presented all the required terms.

As in many areas, including health care, the internet has become a revolutionary tool². From a given perspective, we have more informed and critical patients, aware of treatment possibilities, risks, benefits and their rights¹⁶. And, from another perspective, we have health care professionals, who saw in this tool an additional possibility to approach and gain new patients.

Social networks, due to their great popularity and reach, are among the most used tools in marketing tactics by health care professionals. Lima et al.¹⁸ investigated the occurrence of ethical infractions in advertising made by dental surgeons and dental practices in professional social networking sites, founding out that more than 85% of advertisements presented something in disagreement with the CPC⁸. Another survey carried out with medical students showed that a significant number of them believe that they should not worry about the appropriateness of their publications¹. Thus, it is possible to say that this media is being used improperly, going against what is established by the rules of professional conduct. In an era of technological development, dissemination and sharing of professional information through electronic media should be cautious.

Disclosing and showing treatment images raise some concerns that should be analyzed, such as a potential breach of confidentiality ensured by the regulations. A study showed that it was possible to directly identify patients²⁰ in more than 10% of the images published by dentists and physicians in social network. And, a fact that many professionals are unaware of is that, even if the patient authorizes the use of the image, it can only be used for educational and scientific purposes. It cannot be used as an advertising mean.

In 2015, through Resolution 2.126¹¹ of the FCM, there was an amendment to the wording of some articles of Resolution 1.974/2011 and, since then, social networking sites of physicians and medical care facilities should also comply with the regulations. A new topic brought by this resolution was the prohibition to publish selfies or self-portraits, a term that does not exist in other regulations. This

photographic mode, although not mentioned previously, easily fits into other articles of the regulation, primarily due to the prohibition of the disclosure of images that allow the identification of the patient, just as it occurs in selfies. The specific implementation of the term is very positive, as it ceases possible differences in the interpretation of the law. Such confusion is not uncommon, and it can be exemplified by a fact that occurred in the journal of the Regional Council of Dentistry of São Paulo²¹, that published an article saying that dental surgeons could publish selfies.

Another issue in publishing images containing the popular saying 'before and after' is the obligation to achieve similar results in those who have receive the information. Such images call the attention to a result achieved by the professional in another patient, encouraging the individual to seek for similar results, which is not always possible. Such practice is prohibited by the rules of both professional categories^{8,10}.

Similarly, the Consumer Protection Code²², through Article 30, states that 'any information or advertising, sufficiently precise, conveyed by any means of communication in relation to products and services offered or presented, obliges the supplier who makes it available or uses it and integrates the contract that will be celebrated'. Therefore, supported by the law, any information disclosed in advertising establishes a contract between the publisher and the recipient. Thus, publishing clinical cases and images with treatment results, such as 'before and after, make the professional to take legal commitment to achieve the same result as the image published, since such advertising can make patients to believe that any treatment performed by such professional presents an end result similar to the one advertised^{7,8,23}.

Among the buying modalities that arose with the evolution of consumers behavior, we have the group buying sites. However, such a channel should not be used when it involves health care procedures, mainly because it offers treatment without a previous clinical diagnosis. It was seen that only the CPC⁸ has specific articles about this type of communication. In a survey analyzing 246 group buying sites, it was found that the most frequently offered dental procedures on these sites were dental whitening, cleaning, dental evaluation and fluoride application²⁵. Another important observation to this type of commercialization is that it was also incorporated by Article 53, subsection XII of the CPC⁸, as a severe issue, when it is possible to immediately apply a more severe penalty.

An interesting point verified in Resolution

1974/2011¹⁰ of the FCM are the articles that keep the Medical Affairs Disclosure Committee in the RCM. A specific internal committee aiming at, among other things, assisting professionals with regards to marketing and advertising, explaining and informing the need for adjustments of irregularities, and establishing inquiries¹⁰. There is not such committee in the dental institutions. As reported by Fernandes et al.³, the recurrence of ethical infractions related to advertising is not uncommon. Such behavior clearly exemplifies the fearlessness of professionals towards the belief of impunity over such acts. The establishment of a specialized committee to deal with this issue, responsible for most of the ethical suits in Dentistry, sounds interesting for the professional class, contributing to the effective punishment and correction of the problem, as well as its prevention.

The increasing number of health care professionals entering the labor market and, consequently, the high competitiveness, made professionals to look for ways to attract patients to their offices. However, due to the lack of knowledge or, even, the bad faith of some professionals, fearless of the penalties that this may incur, makes many advertising, in disagreement with the rules, to be shared with the public. This fact can be easily verified by a simple search in the internet, showing several irregular advertising cases²⁰.

Health care professionals need to be aware that they do not sell a product. They need to be aware that they work with the health and the well-being of patients, who are unique, with unique need and approach²⁴. In addition, the CME, in its fundamental principles, states that Medicine cannot be practiced as a business, thus, the advertising of medical services should be carried out with due respect to the patient's right²⁶. Therefore, honest advertising is the gateway to a good relationship between the parties, besides cooperating with the appreciation of the profession²⁷.

Finally, it is suggested that a dialogue is established between the two professional entities, through their professional councils, to promote the specific adjustments, standardization and distinctions considering advertising in Dentistry and Medicine.

CONCLUSION

Thus, by means of this research study, it was possible to analyze, compare and discuss advertising as it is addressed by the current regulations issued

by dental and medical entities. Comparing both regulations, it was verified that some positive points of a professional entity could be incorporated by the other, aiming at standardizing and reinforcing the trust of the population in both professions, at a time in which there is an increasing number of health care professionals in the market. It is necessary that qualified and ethical professionals are differentiated from those who promote

unfair competition in an increasingly contested labor market.

Collaborators

LV MAGALHÃES, TSF RECALDE, MV COLTRI, HF BARBOSA, MA GUIMARÃES and RHA SILVA participated in all stages of the preparation of the article.

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