

Ethics of professional advertising

Dr. Pandya makes three basic points in his editorial against professional advertising by physicians in India: Professional advertising is unethical; Dr. Malpani makes unsubstantiated claims in his web site; and unrestricted commercial advertising in India with its lack of effective regulatory oversight will lead to further exploitation of patients.

Ethics of professional advertising

Dr. Pandya's reasons for considering advertising unethical while cogent are based on historical circumstances that have changed and therefore the justifications are no longer valid. Also, he is factually incorrect when he asserts that "Most codes on ethics in medicine prohibit advertising by doctors." Indeed, the British Medical Council, the Australian Medical Association, the Canadian Medical Association and the American Medical Association Guidelines for Physicians permit advertising by physicians. (These are readily available on the web).

In the West, in the 18th and 19th centuries, many practitioners were unlicensed and untrained quacks who often derived their incomes from exaggerated claims of efficacy of their treatments supported by "testimonials" from patients. When organized medicine evolved from guilds into professional societies in the late 19th and early 20th century, most imposed a ban on advertising of professional services as an integral part of professionalism.

As the socio-political scene changed, in the United States, the American Medical Association's ban on advertising by physicians was successfully challenged in the U.S. Supreme Court in 1975. The U.S. Supreme Court held that such a restriction amounted to limiting freedom of (commercial) speech. The AMA subsequently revised its statutes.

Today, so long as the advertisement does not contain any false or deceptive information, an American physician is free to advertise her or himself through any commercial or other form of public communication. However, certain restrictions still apply. To the extent that testimonials regarding a physician's skill or quality of professional services from patients who do not have a comprehensive access to the physician's practice are often misleading, such endorsements are not permitted. Ethical obligations to share medical knowledge and skills make it improbable that a physician is likely to have unique skills or equipment. An advertisement that makes such a claim would be questioned. However, such a claim may be justifiable in a restricted geographic area. Claims regarding competence and quality of care supported by objective data are permissible.

Information about doctors, their qualifications, fees and services they provide is of obvious value to the community. The Australian Medical Association's guidelines

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underscore this point:

The Australian Medical Association (AMA) believes that a doctor's reputation and capacity to increase their practice should be based on good medical practice and appropriate provision of information about the medical services they offer. The AMA believes that all such information should:

- a. be demonstrably true in all respects;
- b. not be misleading, vulgar or sensational;
- c. seek to maintain the decorum and dignity of the profession;
- d. not contain any testimonial or endorsement of clinical skills;
- e. not claim that one doctor is superior to others nor contain endorsements for any particular doctor; and
- f. avoid aggressive forms of competitive persuasion, such as those that prevail in commerce and industry.

In accordance with the general guidelines detailed above, the chief purpose of any advertisement for a doctor's services should be to present information that is reasonably needed by any patient to make an informed decision about the appropriateness and availability of the medical services offered.

The ban on advertising and relying strictly on word-of-mouth referrals or referrals from other physicians that Dr. Pandya advocates has two other implications: (1) It favors the already established doctors, "the gray beards", against the new entrants to the field of medicine. This bias is entirely in keeping with the hierarchical nature of the English society that gave us our system of medicine. (2) Allowing other doctors to be gatekeepers to consultants has promoted fee splitting. A transparent well-publicized schedule of fees and services of a consultant may help put a stop to this practice.

Dr. Malpani's claims in his web site

A visit to Dr. Malpani's web site indicates that the advertisement does violate some of the criteria set forth above (i.e. not contain any testimonial or endorsement of clinical skills, not contend that one doctor is superior to other). Some may argue that Dr. Malpani's offer of shared risk amounts to aggressive competitive persuasion.

Consequences of unrestricted commercial advertising in India

Dr. Pandya's final point regarding undue exploitation of patients has some validity. In India, where there is little professional and legal oversight, unscrupulous practitioners may abuse the right of free speech. However, the remedy is better education not restrictive legislation against advertising. "Word of mouth" is also advertising of a kind. It is not paid for with money but with services rendered. It is often inaccurate and has greater room for hyperbole. Word of mouth dissemination of information provides the physician with the added loophole that he was misunderstood or he never made such claims. One can take a doctor to court for false advertising in the print media or on the web. However, word of mouth dissemination of exaggerated claims of efficacy cannot be litigated easily.