

## **Physician Digital Advertising and Marketing Guidelines**

### **TEXT**

1. Advertising must be truthful.
  - Advertisements, including anything posted online that could be considered advertising, must not be false, fraudulent, misleading, or deceptive.
2. What does the law consider “false,” “fraudulent,” “misleading,” or “deceptive”?
  - Making misrepresentations of fact;
  - A failure to disclose material facts;
  - Making claims of either professional superiority or of performing services in a superior manner with no objective scientific evidence;
  - Making scientific claims that cannot be substantiated by reliable, peer reviewed scientific studies;
  - Making a statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts
    - i.e., disclosing only partial or selective information in order to emphasize benefits and hide drawbacks/potential consequences; and
  - Making a statement, claim, or image for purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which the provider is licensed.
3. What can you advertise? (i.e., *optional* unproblematic elements that can be used in advertisements.)
  - The name of the practitioner;
  - The address and telephone numbers of the offices maintained by the practitioner;
  - Office hours of operation;
  - Languages, other than English, fluently spoken by the practitioner or other person in office;
  - A statement that the practitioner(s) is/are certified by a private or public board or agency or a statement that the licensee limits his or her practice to specific fields – i.e., psychiatry, behavioral health, etc.;
    - The law limits how physicians can advertise their Board certification.
      - Physicians can only claim certification or certification eligibility by a private or public board or parent association if it is legally recognized.
      - E.g., You can write “Board-certified by the American Board of Psychiatry and Neurology” only if you have actually received such Board certification.

- Schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received;
  - Public or private insurance plans or health care plans that are accepted;
  - A statement identifying a practitioner's publications; and
  - A statement of teaching positions currently or formerly held by the practitioner, along with pertinent dates.
4. Pricing and Fees.
- Advertisements must be exact, clear and accurate, avoiding phrases like "as low as," "lowest prices," or other similar wording. Any comparisons of services or costs must be backed by verifiable data. If a price is advertised for a product, it must include any related professional service fees, unless stated otherwise.
  - *Note regarding physician "discounts."* Offering discounts for medical services are often considered kickbacks and may violate both state and federal laws. In California, healthcare providers may give discounts to patients who pay with cash, but only if they have a good reason to believe the patient is not eligible for insurance coverage.
5. Fictitious Name Permit (FNP) (**California-ONLY**).
- **California** law requires that a physician who uses a fictitious name to market/advertise their medical practice must register the name with the Medical Board of California in the form of a Fictitious Name Permit (FNP).
6. Advertising by the Managing Services Organization (MSO).
- Any MSO that operates a website for a physician or a physician's practice must abide by the same rules subject to the physician to advertise the physician's medical practice.
7. Consequences of Violations.
- A medical licensee who violates the law may be subjected to substantial monetary fines and have their license suspended or revoked.

### **DESIGN**

1. In addition to otherwise lawful images of the practitioner, their physical facilities, or of a commodity to be advertised, the practitioner must have the right to use all stock imagery on the website design.
  - If advertising a commodity, the website must include the manufacturer, designer, style, make, trade name, brand name, color, size, or type.
2. Any photograph or other image of a model must be indicated accordingly or include an overlay with the word "model."
3. Before and after photos must not be altered or retouched, except to obscure identifying marks.
4. A prominent link to the provider's HIPAA privacy policy must appear at the bottom of every page, as well as the website Privacy Policy and Terms of Use.

5. Images must have descriptive alternative text for the visually impaired.
6. The website should clearly and prominently state that all services provided will be provided by the licensed physician
  - a. E.g., “Dr. Eric Chaghouri, a California & Florida licensed physician,” or similar words to that effect.

### **FUNCTIONALITY**

1. The website platform should be regularly updated, and reasonable efforts must be made to prevent hacking.
2. Integrated webforms must be HIPAA-compliant and/or securely store confidential patient information in transit and at rest.
  - a. Paid services like Hushmail or Jotform can implement secure webform and email features.
3. An accessibility overlay and formal accessibility statement should be installed, or full manual code conformance efforts completed and audited.
  - Paid services like accessiBe or Userway implement accessibility features onto websites.
  - Manual accessibility conformance must be applied to items not covered by the overlay (e.g., video closed captions, PDF machine-readability, etc.).