

Chapter 24 Physician Advertising

Scope

- 100 The following rule on physician advertising applies to all individuals licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.

Definitions

- 200 For the purpose of Chapter 24 only, the following terms have the meanings indicated:
1. “Board” means the Mississippi State Board of Medical Licensure.
 2. “Physician” means any individual licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.
 3. “Advertisement” or “Advertising” means any form of public communication, such as newspaper, magazine, telephone directory, medical directory, radio, television, direct mail, billboard, sign, computer, business card, billing statement, letterhead or any other means by which physicians may communicate with the public or patients.

Requirements

- 300 Subject to the requirements set forth herein below, any advertisement by a physician may include:
1. The educational background or specialty of the physician.
 2. The basis on which fees are determined, including charges for specific services.
 3. Available credit or other methods of payment.
 4. Any other non-deceptive information.
- 301 A physician may publicize himself or herself as a physician through any form of advertisement, provided the communication, (i) shall not be misleading because of the omission of necessary information, (ii) shall not contain any false or misleading statement, or (iii) shall not otherwise operate to deceive.
- 302 Because the public can sometimes be deceived by the use of medical terms or illustrations that are difficult to understand, physicians should design the advertisement to communicate the information contained therein to the public in a readily comprehensible manner.
- 303 It is unethical to advertise in such a manner as to create unjustified medical expectations by the public. The key issue is whether advertising or publicity, regardless of format or content, is true and not materially misleading.
- 304 In addition to the above general requirements, any advertisement or other form of public communication shall comply with the following specific requirements:
1. All advertisements and written communications pursuant to these rules shall include the name of at least one (1) physician responsible for its content.

2. Whenever a physician is identified in an advertisement or other written communication, the physician should not be identified solely as “Doctor” or “Dr.” but shall be identified as M.D. for medical doctors, D.O. for osteopathic physicians and D.P.M. for podiatric physicians.
3. A physician who advertises a specific fee for a particular service or procedure shall honor the advertised fee for at least ninety (90) days unless the advertisement specifies a longer period; provided that for advertisements in the yellow pages of a telephone directory or other media not published more frequently than annually, the advertised fee shall be honored for no less than one (1) year following publication.
4. A physician shall not make statements which are merely self-laudatory or statements describing or characterizing the quality of the physician's services.
5. No physician shall advertise or otherwise hold himself or herself out to the public as being “Board Certified” without, (i) a complete disclosure in the advertisement of the specialty board by which the physician was certified, and (ii) can submit proof of current certification by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association. The term “Board Certified” frequently appears in conjunction with a list of services that the physician or clinic provides. The general public could easily be misled into thinking that the physician is certified in all of those services.
6. No physician shall hold himself or herself out as a specialist in a particular field unless that physician has either, (i) completed a “board approved” residency program, which provides specific training in the specialized field and can submit proof that such training was completed, or (ii) can submit proof that while not completing a residency, was “grandfathered” into a specialty by successful completion of board examinations followed by board certification by the American Board of Medical Specialties or the American Osteopathic Association. A “board approved” residency program shall be limited to residency programs recognized by the American Medical Association for medical doctors (M.D.), by the American Osteopathic Association for osteopathic physicians (D.O.), and by the American Podiatric Medical Association for doctors of podiatric medicine (D.P.M.).
7. No physician shall compare his or her service with other physicians' services, unless the comparison can be factually substantiated; this precludes the use of terms such as “the best,” “one of the best,” or “one of the most experienced” or the like.
8. Where an advertisement includes a consumer-endorser's experience (i.e., patient testimonials), the advertisement must contain an appropriately worded, clear and prominent disclosure of (a) what the generally expected performance would be in the depicted circumstances, and (b) the limited applicability of the endorser's experience. Although testimonials and endorsements are authorized under this rule, compliance will be strictly monitored as endorsements and testimonials are inherently misleading to the lay public and to those untrained in medicine.
9. Any claims of success, efficacy or result (i.e., cure) must have scientific evidence in substantiation of such claims.
10. Any claims that purport to represent “typical” results (results that consumers will

generally achieve) must be based on a study of a sample of all patients who entered the program, or, if the claim refers to a subset of those patients, a sample of that subset.

11. Any claim made regarding the safety of a medical procedure or drug must also disclose the risk of adverse medical complications.
 12. No physician shall claim to have any new drug or medication or new use of a drug or medication for a specific ailment or condition unless such drug or medication has an F.D.A. approved indication for such purpose.
 13. Any claim that improvements can be achieved through surgery in a specified time period must also include disclosure of the typical recovery time.
- 305 Consistent with federal regulatory standards which apply to commercial advertising, a physician who is considering the placement of an advertisement or publicity release, whether in print, radio or television, should determine in advance that the communication or message is explicitly and implicitly truthful and not misleading. These standards require the advertiser to have a reasonable basis for claims before they are used in advertising. The reasonable basis must be established by those facts known to the advertiser, and those which a reasonable, prudent advertiser should have discovered.
- 306 The above rules do not prohibit physicians or clinics from authorizing the use of the physician's name or clinic name in medical directories, HMO directories, preferred provider agreements or other communications intended primarily for referral purposes.

Violation of Rules

- 400 The above rules on physician advertising shall not be interpreted to alter or amend that which is otherwise provided by Mississippi statutory law or the rules on advertising adopted by the Federal Trade Commission.
- 401 If any physician subject to this rule advertises or enters into any communication in violation of the above rules and regulations, such act shall constitute unprofessional conduct, which includes dishonorable or unethical conduct likely to deceive, defraud or harm the public, in violation of Mississippi Code, Sections 73-25-29(8)(d) and 73-27-13(h)(iv).

Effective Date of Regulations

- 500 The above rules and regulations pertaining to physician advertising shall become effective November 2, 1995.