

Healthcare advertising in the UAE

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Many changes are afoot in respect of healthcare and pharmaceuticals in the UAE. There is a real push to improve standards relating to health and medicine across the board.

Examples of significant developments include Abu Dhabi's introduction of compulsory health insurance for all residents, and the development of Dubai Healthcare City, which will serve as home to world class health facilities, and research and education facilities. This article sets out the background to the regulation of medical advertising in the UAE.

Article 83 of Federal Law No. 15 of 1980 Regarding Printed Matters and Publications prohibits the publication of advertisements about medicines or pharmaceutical products except with special permission from the Ministry of Health. Cabinet Resolution No. 7 of 2007 Regarding Health Advertisements Regulation (the "Cabinet Resolution") provides more specific detail. A related Ministerial Resolution sets out further detailed controls and mechanisms relating to the implementation of the regulations set out in the Cabinet Resolution.

The licensing conditions set out in the Cabinet Resolution may be broadly categorized as prohibitions on advertisements in poor taste, prohibitions on misleading statements of a medical nature, prohibitions on misleading statements of a comparative nature, and prohibitions on misleading statements of a general nature, as well as prohibitions on sales incentives directed to certain persons.

The prohibitions of advertisements that breach good taste are basically couched in terms of prejudice to public morals, and violation of the customs and traditions of UAE society or Islamic values. In a related vein, there is also a prohibition on healthcare advertising that targets minors.

With regard to misleading statements of a medical nature, the licensing conditions prohibit advertisements likely to result in self-diagnosis or the improper treatment of potentially serious diseases. Advertisements must not be likely to mislead consumers to believe that they have a serious medical condition, or (with limited exceptions) that grave consequences may result if they do not use the advertised products. Advertisements which basically guarantee the effectiveness of a medication, or which indicate that the use of a product is safe or has no side-effects, are also prohibited.

Statements of a comparative nature, which have a tendency to mislead consumers, are prohibited. This prohibition relates to advertisements which mislead directly, or indirectly, including by incomplete comparisons and contrasts with other products. Language which includes false facts are specifically prohibited, as are advertisements which are ambiguous to the extent that more than one construction or interpretation could be drawn with regard to the factual content of the advertisement.

General puffery in the context of health advertisements is prohibited. Terms such as "unique", "incomparable", "beware of imitation", etc., are to be avoided. Similarly, language such as "limited quantity", "don't miss it" are also to be avoided. Advertisements are to contain correct and sound statements only, and must not make untrue claims about the effectiveness of the product.

Sales incentives to certain healthcare workers are not permitted in any healthcare advertisement. The type of worker is specifically identified as pharmacy assistant and other retail sales persons with no specialty in healthcare. The prohibition relates to advertisements that state, or imply, a personal incentive to recommend or sell a particular pharmaceutical product. This provision is not clearly aimed at preventing incentives to medical professionals, such as pharmacists and doctors, although provisions of law such as the Federal Law No. 6 of 1983 on the Pharmaceutical Profession and Institutions prohibit pharmacists from entering into secret deals with third parties that encourage certain types of sale.

There is a specific approval regime for advertisements relating to healthcare, and anyone planning to market healthcare products, including pharmaceuticals, in the UAE would be well-advised to familiarize themselves with the process, and penalties, before committing to any marketing activity.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises clients in respect of advertising in the UAE, for more information, please contact Nick O'Connell n.oconnell@tamimi.com.