

Healthcare facilities: Approvals required for printed healthcare advertisements across the GCC

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The underlying goal is, in all cases, protection of the consumer. In this article, we consider the UAE position and provide a short summary of the authorities which control the advertising of healthcare facilities in other GCC countries.

The UAE Advertising Regulation

In most countries, the first thing to undertake when considering the advertising of medical services is that the practice itself must be properly registered with the authorities in question. In the UAE, registration must be undertaken with the relevant healthcare authority for example, the Dubai Health Authority or the Health Authority of Abu Dhabi.

Once the entity is properly registered, then that healthcare facility can apply for approval of the healthcare related advertisement through the UAE Ministry of Health ("MoH"). All advertising must comply with the MoH health advertisements regulation and implementing resolution which detail the permissible and prohibited content of healthcare advertisements (the "Healthcare Advertising Regulation").

It is extremely important, when considering healthcare advertising, to understand the scope of the definition of advertising under the Healthcare Advertising Regulation. A health advertisement, as defined by the MoH, means "advertisement and publicity made for the sale of a product or service relating to or that may possibly make any person believe that such advertisement or publicity relates to any medical product or service, whether for treatment or prevention purposes". Note that this definition does not make any distinction between the media that might be used. Thus, even social media marketing should be compliant with the Healthcare Advertising Regulation and approved by the MoH before it is used. Figures that came from the MoH this year indicate that a staggering 20 percent of the prosecutions that they have undertaken in 2015 to date, in relation to Healthcare Advertising Regulation, have been against claims that were made by way of Instagram. It is clear that the authorities view online advertising as part of their remit and will be watching such materials closely.

The Healthcare Advertising Regulation contains a comprehensive list of matters that are relevant to healthcare advertising. In particular, there are 26 individual matters that the MoH will consider when reviewing the healthcare advertisement. Some of the more interesting, and sometimes challenging, points raised within this part of the Healthcare Advertising Regulation include the requirement that the "advertisement shall avoid exaggerated wording such as 'Unique', 'Incomparable', 'Best Quality', 'Beware of Counterfeiting', etc." As these words are commonly used in jurisdictions outside of the GCC, such a prohibition means that foreign advertisements will not be able to be used in the UAE without amendment if such terms are used.

Another interesting, and often difficult, point is that “advertisements may refer to the sponsorship of any party provided that such party is practicing a medical activity and provided the advertiser produces the explicit approval of such sponsoring party”. Consequently, any person that is paid to endorse a service or product must be a medical professional. Kim Kardashian’s recent sponsorship of a pregnancy formula would, in the UAE, be a problem on the basis of this part of the Healthcare Advertising Regulation.

Further, there are two similar points. The Healthcare Advertising Regulation states that an “advertisement shall not contain non guaranteed forecasts about the efficiency of the product” and an “advertisement shall not contain any claim, statement or indication that the effect of the product is certain, or is trustworthy, magic or miraculous”. This part of the regulation leaves a few questions open: What is a “non guaranteed forecast”? Would the phrase “...will relieve back pain...” be too much of a forecast when used by, for example, an osteopathic practice? If this cannot be used, then what can a practice say about its results? Ultimately, it is at the MoH’s discretion regarding where this line is drawn.

There is certainly some ambiguity about the scope of some of the Healthcare Advertising Regulation but, it is extremely important to note that the MoH has complete discretion as to whether it accepts advertising for a medical practice or a medical product. The Healthcare Advertising Regulation provides a basis but the MoH may interpret such regulation broadly or narrowly as it sees fit.

Advertising Medical Devices

A medical device is defined by the UAE MoH to include most instruments or machines that are used by medical practitioners in the provision of healthcare services to patients. The MoH requires that medical devices be registered. Once registered, they also become subject to the Healthcare Advertising Regulation.

It is important to note that a healthcare practitioner cannot advertise for the purchase of a medical device. The practitioner can only make mention that a particular medical device may be used in the care provided by the healthcare practice. For example, an orthopedic surgeon might say “We use X Brand joint replacements in our practice” but should not say “We recommend Acme Crutches for post-op care”. Whilst in most cases, this may not be problematic for a medical practice, it does mean that care must be taken with wording in the advertising itself. In all matters of course, the MoH will ensure that the final advertising does comply with this, and all other restrictions.

General Advertising

It is important to also note that, in addition to these regulations, advertising must still comply with the general rules regarding advertising in the relevant country. For example, “advertisement shall not include images that are falsified or imitated”. This would not mean that an advertiser could not use the usual methods of creating advertisements, for example, altering the lighting of an image using editing software. However, it does mean that an advertiser cannot do so in a way that makes the results seem better than they actually are by, for example, using that same editing software to enhance the colour of a patient’s teeth after using whitening services.

Conclusion

Healthcare advertising is an area that the authorities take very seriously in the GCC. The material is clearly being monitored as infringements are common and the fines from some of these infringements are high. Healthcare operators would be wise to ensure that all of their advertising is properly authorised in all media. In this regard it pays to note that foreign advertisements may not always meet the exacting standards required of healthcare advertising in the region.

