

Advertising Reminders

written by Richard Leslie | May 24, 2016

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...It is not uncommon for those who advertise their services, credentials, or expertise to “toot their horns” a bit in order to attract more business. There is nothing wrong with this – provided that the practitioner understands that the advertisement can have a negative impact upon his or her professional career if one is not careful or mindful about the many ways advertising can have an impact. I have written about advertising before, but a few reminders and cautions cannot hurt! As you likely already know, advertisements must not be false, misleading, fraudulent, or deceptive. This general rule seems simple and perhaps self-evident, but there are many ways that the rule (the law in most, if not all, states) may be violated.

Links to more detailed bulletins expanding on these reminders have been included.

I have spoken with therapists who may have misstated or misrepresented something that they thought was not very important, like stating that they were a member of a professional organization, when in fact they had dropped their membership (e.g., non-payment of dues) at an earlier time. I have also talked with therapists who have been cross-examined at a deposition or at trial about misrepresentations appearing in their curriculum vitae or in an advertisement. The opposing lawyer would of course argue that if the therapist would misrepresent something as inconsequential as membership in a professional organization, he or she might misrepresent pertinent facts in the case being litigated.

[Advertising “expertise”](#) or a specialization can have an impact upon one’s liability, since if you hold yourself out as an expert or as having special knowledge in a given area, you may be held to a higher standard of care than the usually applicable reasonable practitioner test- that is, you may be held to the standard of care of a specialist or expert. The use of testimonials can be problematic as well – especially if the indication is that the success you have had with a former patient will be duplicated with future patients.

[Advertising by pre-licensed persons](#) can be problematic when the pre-licensed person does not make the disclosures necessary as per state law, regulation, or ethical standards. My experience has been that the most common problem with advertising by pre-licensed persons is that they all too often do not make sufficient disclosures indicating that they are not licensed, that they work under supervision, or that they are employed by another person or entity. My experience has also been that the employer of the pre-licensed person, whether a private practitioner or a non-profit corporation, often does not exert enough control over the content of such advertising.

[Use of the word "Doctor"](#) or the abbreviation "Dr." can be problematic, depending upon state law and the manner in which such references are made. This particular issue usually arises with respect to those who have a Ph.D. or other doctorate degree, and who may refer to themselves as "doctor" without use of the Ph.D. Additionally, there may be other words or phrases that present problems under state law - especially with respect to fees. In most states, false or misleading advertising is not only grounds for disciplinary action by the licensing authority, but it is a misdemeanor (crime). I have previously written about these issues on several other occasions, and I refer you to review these articles in the archives section (advertising) of the Avoiding Liability Bulletin at the CPH Insurance's website.