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Federal Trade Commission New Rules On Testimonial Advertising November 1, 2009

Effective November 1, 2009, the FTC has issued new rules on testimonial advertising. Under the new rules endorsements are treated the same as testimonials and require significantly more in the way of accuracy, reasonableness, and verification.

Here are a few recommendations on testimonial advertising for doctors and health care facilities based upon the FTC's new rules:

1. Use real patients. Don't use models or actors pretending to be patients, and don't use other doctors' patients to make what appear to be recommendations about your services. If the testimonial is solely about a product, the rules do allow for the use of another person's patient, but the person must have used the product, and there must be a clear and obvious disclaimer that this person is not a patient of your office or clinic. Note that many states also regulate the use of testimonials, and in most instances, require that you use real patients.
2. If the person claims that they use a certain product or service, the person's use must be current. The advertiser may continue to run the advertisement only so long as it has good reason to believe that the endorser remains a bona fide user of the product.
3. The testimonial statement must be accurate and cannot be taken out of context.
4. Claims of results must reflect what an average person can reasonably expect in the way of results.
5. Claims of results must also be supported by reliable scientific evidence.
6. The ad must disclose the relationship between the person giving the testimonial and the advertiser.
7. You must have a release and authorization to publish signed by the individual giving the endorsement.

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8. For print ads, you should also have the exact content of the testimonial statement approved and signed by the individual.

The new rules also contain provisions relating to endorsements by experts and endorsements by organizations (such as when a chiropractic organization endorses a particular mattress).

The complete rules can be found at:

<http://www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf>

The rules also contain numerous examples which are helpful.

THIS MEMORANDUM CONTAINS A GENERAL DISCUSSION OF LEGAL PRINCIPLES APPLICABLE AS OF NOVEMBER 1, 2009. IT IS A GENERAL DISCUSSION AND SHOULD NOT BE TAKEN AS SPECIFIC LEGAL ADVICE. WE URGE EACH DOCTOR TO CONSULT WITH A COMPETENT HEALTH CARE ATTORNEY ON THESE AND OTHER ISSUES AFFECTING THE PRACTICE OF THE HEALTH PROFESSIONS.