

Colorado Board of Medical Examiners Rules and Regulations Regarding Misleading, Deceptive or False Advertising: Clarification of 12-36-117(1)(hh), C.R.S.

BASIS: The general authority for promulgation of these rules by the State Board of Medical Examiners is set forth in §§ 12-36-104(1)(a), C.R.S. and 24-4-103, C.R.S.

PURPOSE: To provide guidance to physicians and physician assistants regarding the Board's position with respect to misleading, deceptive or false advertising, which is unprofessional conduct pursuant to § 12-36-117 (1)(hh), C.R.S. This rule applies to advertising in all types of media including, but not limited to, print, radio, television and the Internet.

RULES: Physicians should take special care to advertise truthfully and avoid exploitation of their position of trust. Because of the potential consequences of misinformation regarding health care and the importance of the interests affected by the choice of a physician, physicians must avoid misleading the public. Physicians are responsible for the contents of their own advertisements and should review such advertisements to assure adherence to ethical standards.

Therefore, physicians shall avoid the following types of advertising:

- a.) Claims that the services performed, personnel employed, and/or materials or office equipment used are professionally superior to that which is ordinarily performed, employed, and/or used, or that convey the message that one licensee is better than another unless superiority of services, personnel, materials or equipment can be substantiated;
- b.) The misleading use of a claim regarding board certification, or of an unearned or non-health degree in any advertisement that is likely to cause confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;
- c.) Advertising that has the effect of intimidating or exerting undue pressure;
- d.) Advertising that uses unsubstantiated testimonials;
- e.) Advertising that creates an unjustified expectation or guarantees satisfaction or a cure;
- f.) Advertising that offers gratuitous services or discounts, the purpose of which is to deceive the public, or
- g.) Advertising that is otherwise misleading, deceptive or false.

At the time any type of advertisement is placed, the physician must possess and rely upon information that, when produced, would substantiate the truthfulness of any assertion, omission or claim set forth in the advertisement. When using a subjective testimonial whose truthfulness cannot be substantiated, the advertisement should also include disclaimers or warnings as to the credentials of the person making the testimonial.

Adopted: MAY 13, 2004, EFFECTIVE AUGUST 1, 2004