

Limitations on Doctors' Advertising in Turkey: An Inconsistent Framework, Ripe for Reform

24 Oct 2017

The Turkish legislative regime for doctors' advertising involves contradictions between provisions in primary and secondary legislation. The uncertainty and legislative gaps mean that in practice, government enforcement and interpretation of advertising limitations are inconsistent.

The legislative regime should be updated, to ensure predictability of government enforcement, encourage innovation by private enterprises, as well as keep pace with wider technological developments (particularly online).

An improved legislative framework will stimulate and encourage financial investment in the area. It will also serve public interests because increased consistency and reliability of information about doctors will ensure prospective patients can more confidently identify the most appropriate medical specialist for their personal ailment.

General advertising rules

Advertising commercial products or services is permitted in Turkey, provided the advertising contents are not false, misleading, deceptive, or manipulate the consumer's will. Advertisements containing exaggeration, which are very encouraging and prideful, are not necessarily unlawful.

As in other countries though, Turkish legislation restricts advertisements for certain sensitive industries and subjects. Such restrictions apply to Turkey's health sector, prohibiting promotion of many health-related products and services.

Advertisements can generally be categorized as either deceptive (always forbidden) or non-deceptive. Non-deceptive advertisements include two sub-categories: "promotional" and "attractive" advertisements.

Contradictory rules

Restrictions on health-related advertising in Turkey are not clear though. In fact, provisions found in separate pieces of legislation and ethical rules arguably contradict each other. Viewed as a whole, the primary legislation's wording seems to be narrower than the scope of information which secondary legislation considers acceptable.

- Doctors are permitted to announce their clinic, working hours and specialties, but cannot make advertisements and announcements (Article 24, Law No. 1219; Primary legislation).
- Doctors and dentists are permitted to write their name, surname, address, specialty, academic title and examination times/days in newspapers, as well as other platforms and on prescription papers (Article 9, Medical Deontology Statement; Secondary legislation).
- Doctors and dentists are prohibited from publishing thank you messages in newspapers, or via other means (Article 8, Medical Deontology Statement; Secondary legislation).
- Healthcare organizations cannot make promotions (Article 29(1), Regulation on Private Healthcare Organizations which Provide Outpatient Diagnosis and Treatment; Secondary legislation)
- Private hospitals can make promotions and provide information which improves and protects healthcare, as well as inform the community about the scope of their current/future services. However, information which is misleading, exaggerated and not scientifically proven cannot be used for promotion and providing information (Article 60(1), Regulation on Private Hospitals; Secondary legislation).

- Private hospital websites can contain information about the services offered by health professionals, who have the relevant knowledge and experience. However, websites cannot include treatment information of any kind. (Article 60(2), Regulation on Private Hospitals; Secondary legislation).
- Ethical rules say doctors should not (Article 11, Turkish Medical Association's Medical Ethics Rules):
 - Advertise while practicing their profession.
 - Use advertisements for commercial means.
 - Give a commercial appearance to their work.
 - Act in a misleading way.
 - Cause panic among patients and create unfair competition among colleagues.

According to legislative hierarchy principles, provisions contained in secondary legislation carry less weight than provisions in primary legislation. Therefore, reconciling the contradiction would appear to be easy in practice. However, to ensure clarity, the overall regime needs to be revised to ensure consistency.

Permitted advertisements for doctors

Doctors in Turkey are subject to the general advertising rules (above). A further restriction arises from the Turkish Medical Association's Medical Ethics Rules, which prohibits doctors from undertaking "attractive" advertisements for healthcare services.

The key difference between promotional and attractive advertisement is that the information contained in promotional advertisements represents the only method of informing potential consumers about the product or service. Promotional advertisement falls short of containing exaggerated, overly ambitious, incentives and appealing elements.

- *Promotional Advertisements* - Permitted advertisements, involving promotion of a specific product or service, via general information, but avoiding exaggeration. For example, a doctor's statement that she "carried out the first operation in the country using this technique", provided she actually did perform the operation for the first time in Turkey using that technique and this fact is verifiable.
- *Attractive Advertisements* - Prohibited advertisements, involving exaggerated praise or encouragement, as well as seductive elements of the product or service, although fall short of being deemed to manipulate the consumer's will. For example, a doctor's statement that she is "the country's" or "the world's" leading specialist in a specific medical field, even if disproving such claim is impossible.

Applying the Restrictions in Practice

Developments in medical science have led to a wide variety and depth of sub-specialties emerging, at ever smaller degrees of distinction.

Under the current regime, doctors in Turkey are permitted to publish their qualifications, medical specialties, and contact information. Such information makes it easier for potential patients to identify the most appropriate doctor for their illness.

However, under a strict interpretation of provisions in secondary legislation (as is usually adopted by Medical Chambers in cities across Turkey, as well as by the Turkish Medical Association), any information going beyond these limited items is technically prohibited in Turkey.

Primary legislation clearly states that doctors can make declarations about their expertise, but cannot make advertisements and announcements (Article 24, Law No. 1219). However, modern life's ubiquitous electronic and mass media combine to mean that consumers receive a constant flow of information. Therefore, perhaps a more realistic interpretation of this legislative provision is that doctors can make "promotional" advertisements, provided the advertisements do not stray into the "attractive" classification.

Under current practices, regulators in Turkey have adopted inconsistent approaches to interpreting and applying the various provisions. The overall result is that the collective bans on certain types of advertising for doctors are not always implemented in practice by local Medical Chambers or the Turkish Medical Association.

From a commercial point of view, the uncertain legislative framework and inconsistent enforcement have a dampening effect for innovation by private enterprises. These businesses become less willing to develop alternative business models or technology, since their efforts and investments may later be deemed to violate the legislative framework.

The way forward

Turkey's approach to regulating health-related advertising has clearly not kept pace with developments in the industry, other legal systems, nor with wider technological and media advancements.

Prospective patients demand tools to simplify their search for appropriate medical specialists. Counter intuitively though, the trend towards simplification requires prospective patients to have access to an increased volume and complexity of information about candidate medical professionals. Detailed information allows prospective patients to assess and compare medical professionals, to ultimately identify the most appropriate person for their purposes, based on whatever indicator the patient deems most appropriate.

For example, when comparing and selecting a doctor for a given procedure, a prospective patient might wish to know all of the candidate doctors' patient volumes, track records with that procedure, surgery mortality rate, average recovery times, or even review references from past patients.

However, making such detailed information about health professionals publicly available in Turkey involves a range of logistical and regulatory compliance difficulties. Logistical difficulties will immediately arise in ensuring the information is accurate and up to date.

More notably though, complying with unclear and arguably contradictory advertising restrictions will complicate such a project and discourage investments. Without doubt, publicly disclosing detailed information about medical professionals will attract close attention from local regulators.

As a result, it seems that regulatory bodies should actively consider Turkey's legislative regime for doctors' advertisements, in order to update, clarify and realign the substantive provisions to ensure they achieve their practical effects. Until this occurs, health consumers in Turkey will face challenges in consistently and reliably accessing the level of information they seek in this respect.