

SUBSIDIARY LEGISLATION 350.30

REQUIREMENTS AS TO STANDARDS AND PRACTICE ON PROGRAMMES INVOLVING THE PARTICIPATION OF CERTAIN HEALTH PROFESSIONALS IN THE BROADCASTING MEDIA AND REQUIREMENTS AS TO ADVERTISEMENTS, METHODS OF ADVERTISING AND DIRECTIONS APPLICABLE TO MEDICINAL PRODUCTS AND TREATMENTS

29th January, 2008

GOVERNMENT NOTICE 88 of 2008.

The title of these requirements is the Requirements as to Standards and Practice on Programmes Involving the Participation of Certain Health Care Professionals in the Broadcasting Media and Requirements as to Advertisements, Methods of Advertising and Directions Applicable to Medicinal Products and Treatments. Citation.

1. Background

1.1. These requirements as to Standards and Practice have been made by the Broadcasting Authority in virtue of the powers conferred by article 20(3) of the Broadcasting Act. Cap. 350.

1.2. These requirements as to Advertisements, Methods of Advertising and Directions have been made by the Broadcasting Authority in virtue of the powers conferred by article 19(3) and (5) of the Broadcasting Act. Cap. 350.

1.3. Programmes, advertisements, programme sponsorship and teleshopping that are within the scope of these Requirements shall comply with all relevant Maltese legislation.

1.4. These Requirements shall be read in the light of existing laws. For ease of reference such laws are available on the Broadcasting Authority's website at: www.ba-malta.org.

Part One

Advertising of Medicinal Products

2. Medicinal Products and Prescription

2.1. For the purpose of paragraph 16 of the Third Schedule to the Broadcasting Act it is hereby declared that the medicinal products which can be advertised are those medicinal products which have a marketing authorisation and which are not classified as products which require a prescription except in the case of vaccination campaigns carried out by the industry after having obtained the approval of the licensing authority set up under the Medicines Act. Cap. 350.
Cap. 458.

3. Advertising of Medicinal Products Not Supplied on

Prescription

3.1. With regard to those medicinal products which are not supplied on prescription and which have a marketing authorisation, these medicinal products may be advertised on a broadcasting medium only if they comply with the requirements listed in:

- Cap. 350. (a) paragraph 18 of the Third Schedule to the Broadcasting Act;
- S.L. 458.14 (b) the Medicinal Products (Advertising) Regulations;
- (c) the provisions of this Part of the Requirements as to Advertisements, Methods of Advertising and Directions.

Part Two

Advertising for Medical Treatments

4. Definition of "Medical Treatment"

- Cap. 350. 4.1. For the purpose of paragraphs 16 to 18 of the Third Schedule to the Broadcasting Act, "medical treatment" includes any form of advice relating to the treatment or cure of maladies or ailment, or any advice relating to health.

Part Three

Medical Treatments, Medicinal Services
and Cosmetic Treatments and Services

5. General Rules on Medical Treatments, Medicinal Services
and Cosmetic Treatments and Service

- Cap. 31. 5.1. No advertisement of a medical service may be made unless such service is licensed in terms of article 98(1) of the Medical and Kindred Professions Ordinance. Such services are provided by hospitals, clinics, maternity homes, nursing homes, homes for the aged, medical diagnostic laboratories, X-ray departments, chiropody clinics, acupuncture and medical diagnostic labs, tattooists, dental clinics and physiotherapy clinics.

5.2. Advertisements shall not make reference to a service listed in paragraph 5.1 or to any other similar body unless a *bona fide* establishment corresponding to the description used does in fact exist.

5.3. References to a prize, competition or similar scheme are not permitted in advertisements for medical treatment, medicinal services and cosmetic treatments and services.

5.4. No claims may be made in respect of prevention, treatment or cure of a disease unless they are supported by sound scientific evidence.

6. Cosmetic Treatments and Services (surgical and non-surgical)

6.1. Advertisements for surgical and non-surgical cosmetic treatments and services shall comply with legislation in force at the time pertaining to advertisements for medical treatments, medicinal

services and cosmetic treatments and services.

6.2. Advertisements for surgical cosmetic treatments and services may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed an encouragement to use the surgical treatment or service. Information detailing special offers, discounts, references to credit facilities available or any other promotional offers intended to encourage the use of cosmetic treatments or services of this nature are not permitted.

7. Hypnosis, Hypnotherapy, Psychology or Psychoanalysis

7.1. Advertisements for hypnosis, hypnotherapy, psychology or psychoanalysis shall comply with the general rules pertaining to advertisements for medical treatments, medicinal services and cosmetic treatments and services.

7.2. Advertisements of this nature may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed an encouragement to use the service. Information detailing special offers, discounts or any other promotional offers intended to encourage the use of services of this nature are not permitted.

8. Advertising of Cessation of Smoking Products or Services (other than Medicinal Products)

8.1. Advertisements for products (other than medicinal products) or services purporting to assist people to quit smoking shall state that:

- (a) such product or service does not address pharmacological dependence;
- (b) no clinical tests have been performed on this product (other than medicinal products) to prove the effectiveness of treatment in helping people give up smoking;
- (c) the smoking aid can give positive results only in conjunction with the consumer's will power.

8.2. The advertising of smoking on the broadcasting media is prohibited in terms of the Tobacco (Smoking Control) Act, and the Ban on Advertising and Promotion of Tobacco Products Regulations.

Cap. 315.
S.L. 315.06

9. Slimming Treatments and Services

9.1. Advertisements shall not contain any offer of a treatment or service for slimming (i.e. weight reduction, limitation or control) which:

- (a) in itself can lead to harmful effects, and
- (b) does not follow a varied, balanced and health diet, and
- (c) does not clearly state in a scientific manner how slimming will be achieved.

9.2. Advertisements for dietary supplements, including

vitamins or minerals, shall not state or imply that they are necessary to avoid dietary deficiency or that they can enhance normal good health.

9.3. Subject to qualified advice from a health care professional, claims for vitamins or minerals, may be accepted where they relate to:

- (a) restricted, unsupplemented or low-food-energy diets;
- (b) women who are planning to become pregnant, or are pregnant or lactating;
- (c) growing children; and
- (d) some people over fifty years old.

10. Sanitary Towels and Tampons

10.1. Particular care is required when scheduling advertisements for sanitary protection products.

10.2. The advertisement shall not contain anything likely to embarrass or undermine an individual's confidence in her own personal hygiene standards.

10.3. Care shall be taken to ensure that any detailed description of the product avoids anything which might offend or embarrass listeners or viewers.

10.4. No implication of, or appeal to, sexual or social insecurity is acceptable.

11. Advertising of Health Promotion Campaigns

11.1. Advertising of campaigns aimed at reducing/stopping sexual risk taking behavior and/or drug misuse shall be allowed if the material to be used is approved by the competent public health authority and such campaigns abide by ethical standards set out by the said authority and in any relevant applicable legislation.

12. Nutrition and Health Claims made on Food

12.1. Nutrition and health claims made on foods in advertisements may only be allowed if they comply with the provisions of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods.

Part Four

Programmes involving Participation of Certain Health Care Professionals

13. Programme Participation by Certain Health Care Professionals

13.1. It is contrary to the public interest and discreditable to certain health care professionals to advertise or canvass, directly or indirectly, for the purpose of obtaining patients or promoting his or her own professional advantage.

13.2. Careful consideration must be given to the ethical and legal

implications of endorsements by certain health care professionals of a commercial product or service as happens for instance when new services are introduced which patients are not well informed about.

13.3. Certain health care professionals must never overtly and publicly endorse advertisements for health-related services, such as nursing homes and private clinics.

13.4. Certain health care professionals may participate in any programme on the broadcasting media which involves medical, semi-medical, dental or veterinary topics; listeners and viewers are entitled to be given information as to the professional academic qualifications of a practitioner who writes a book or article or gives a talk and/or participates on radio and television; no information shall be however given which implies any unique or outstanding qualities or any greater experience in a particular field. However, it shall be permissible to bring the name of the health care professional by way of a caption at the beginning of his or her intervention.

13.5. Health care professionals including also health care professionals complementary to medicine as listed in the Third Schedule to the Health Care Professions Act shall refrain from discussing a medicinal product on the broadcasting media. However, such professionals shall, when discussing a therapeutic modality, refer also to its side effects and when discussing a medical treatment refer to the need for the viewer or listener to call at a registered health care professional, prior to receiving such treatment for advice. The ill effects of such treatment are to be stated as well.

Cap. 464.

13.6. For the purposes of these Requirements, the expression "certain health care professionals" means medical practitioners, dental surgeons, pharmacists, pharmacy technicians, nurses and midwives but does not include professions complementary to medicine as listed in the Third Schedule to the Health Care Professions Act.

Cap. 464.

Part Five

Programmes involving or concerning Medical Matters

14. Programmes involving Medical Matters

14.1. Programmes involving medical matters should be guided by the following:

- (a) the purpose of such programme should not be advertorial, whether implicit or explicit, but should be informative, educational or entertaining;
- (b) uniforms or logos of hospitals or clinics should not be allowed as they are considered to constitute surreptitious advertising;
- (c) it is allowed to refer to a medical treatment provided its positive and negative aspects are mentioned but it will not be acceptable to mention only the positive

aspects of such treatments. The producer must also ensure that the programme is balanced when dealing with such positive and negative features;

- (d) a representative of the hospital or clinic which sponsors or advertises in that programme shall not administer a particular treatment.

14.2. Health care professionals and programme producers should consult the websites of the Medical Council, the Pharmacy Council and the Council for Professions Complementary to Medicine as to the laws which these Councils administer and as to any codes and guidelines which may be issued from time to time. Such persons should also consult the websites of the Medicines Authority and of the Health Division and any related websites for relevant applicable legislation.

14.3. By way of guidelines, before a health care professional participates in a programme, s/he should consider the following:

- (a) the context of the programme - is it sponsored by a commercial medical entity, clinic or hospital?
- (b) is the programme aimed at publicizing the services provided by any medical entity, clinic or hospital?
- (c) can the programme be considered as an advertisement for the medical entity, clinic or hospital sponsoring the programme?
- (d) can the presence of the medical practitioner, dental practitioner or pharmacist be perceived or interpreted as an endorsement of the facilities or services provided by the medical entity, clinic or hospital?
- (e) is the role of the health care professional an educational one or is s/he using such appearance to publicise his or her skills in a specific area?
- (f) is the information given by the practitioner on the medical topic s/he discusses adequate for a lay person to take an informed decision?

14.4. Persons who are not registered or warranted by the Medical Council, the Pharmacy Council, the Council for Nurses and Midwives, or the Council for Professions Complementary to Medicine may not provide advice on the broadcasting media on those subjects which fall within the remit of the registered or warranted professionals by the said Councils.

15. Giving of Details of a Transplant Donor

15.1. It shall be permissible to provide the details which identify a transplant donor during a news bulletin or any other programme only when the donor or the donor's family consent thereto. The same applies to a recipient of such an organ.

Part Six

Sponsorship by undertaking involved in manufacturing
or sale of medicinal products and medical treatment

16. Sponsorship of Programmes

16.1. Sponsorship of programmes by undertakings whose activities include the manufacturing or sale of medicinal products and medical treatment shall comply with the provisions of paragraph 22 of the Third Schedule of the Broadcasting Act.

Cap. 350.

Part VII - Teleshopping for Medicinal Products
and Medical Treatments

17. Teleshopping of Medicinal Products and Medical Treatments

17.1. Teleshopping for medicinal products and teleshopping for medical treatments are prohibited in terms of paragraph 17 of the Third Schedule to the Broadcasting Act.

Cap. 350.

Part Eight
Health Warning

18. Health Warning

18.1. All advertisements of medicinal products or medicinal treatments shall contain wording to the effect that prior to purchasing the medicinal product or taking the medicinal treatment in question, the advice of the health care professional is sought as such medicine or treatment might have ill effects on one's health and well-being.

18.2. This health warning applies to all medicinal products which do not need a prescription and which may be bought over the counter as well as to any type of medicinal treatment.

Part Nine
Guidelines

19. Non-Enforceability of Paragraph 14.3 of these Requirements

19.1. Paragraph 14.3 of these Requirements is not enforceable as it is by way of guidelines addressed to health care professionals.
