Should Doctors Advertise? An Old Debate in a New Context

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At first glance, if a question of this nature is beginning to seem archaic and irrelevant, its because openly or subtly advertisement by doctors is common. Although the form and nature may still largely be discreet there are many new avenues for doctors to advertise. These are different from what we imagine as traditional 'advertisement' billboards on streets or TV commercials. They write sponsored articles in newspapers about disease conditions in their area of expertise. They appear on television shows as specialists purportedly providing information to the public. They discuss their successful cases and achievements on social media. They are willing recipients of sponsored 'best doctor' awards. They also participate in advertisements by healthcare institutions. If the degree of adherence to an ethical principle is a measure of its relevance, the question is settled. However, it hides other stories, and hence, it is worth scratching below the surface.

From a real-world perspective, the more pertinent current questions may be how the form of 'advertising' changed what and what counts as 'advertising'? And what, if at all, should constitute the limits of legitimate public exposure of a doctor? And whether the content or accuracy should now be the focus of debate. A deeper dive into a question like 'Should doctors advertise?' is also a surrogate exercise for examining the fundamental nature of contemporary healthcare and even ethics. However, if you are looking for a binary yes or no answer like in a school debate, please be warned.

We need to take a moment to dwell upon what exactly constitutes 'advertising' in the healthcare context. It could range from just providing information about services to obvious hard sell and big claims to attract a clientele. Whilst this distinction has some basis and has been made in some countries the lines are blurred and not easy to discern. One way to spot the difference is by looking at the intention behind the act and its tone. So for example, if a hospital or a doctor starts an outreach facility in an area and announces it to reduce the burden for patients to travel is different from claiming that a surgical procedure performed is the first in the world before. Thus one parameter for anybody monitoring 'advertising' to use is to look at who has put out the information and for what purpose. However, this is not an easy task.

To understand debates around any issue in the realm of healthcare ethics, it is useful to start with a historical perspective on why and how the idea of ethics-governed practice got embedded in the delivery of healthcare and the doctor–patient relationship. One of the main reasons was to strengthen the idea that the practice of medicine is not a trade or a business but a socially responsible profession. To distinguish themselves from the circus of healthcare providers, physicians not only instituted higher educational standards and licensure but also demanded that their members refrain from advertising to the masses.[1] It was this move towards recognising the 'professionalisation' of medical practice that led to the enunciation of codes which were consensus guidelines on an 'appropriate' way that medicine was to be practiced. This codification was also necessary to develop a social contract wherein society granted a monopoly to a set of trained medical practitioners to be recognised to practise medicine over others who claimed cures and healing powers. Although ethics remains distinct from law many of these codes also got incorporated in legal frameworks. Although there is no single overarching global code. The four basic principles of modern medical practice as enunciated by Childress and Beauchamp are often quoted as the foundation of modern medical ethics.[2] These are broad principles but as medicine expanded, many areas of modern healthcare developed their own sets of guidelines. However, there is nothing sacrosanct about historical guidelines, and many of them have seen modifications and changes as healthcare dynamics have changed. In fact, the debates around some of the established ethics tenets and their relevance to contemporary medical practice are actually surrogates of debates on the changing

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nature of healthcare delivery. With both the socio-political context and mode of healthcare delivery showing huge variations and change across countries any attempt to stick to historical edicts against advertising was doomed to be challenged and even fail. The area of advertising by healthcare professionals is one such area. In this essay, while touching upon some of the global debates and positions, I hope to focus on the current Indian context.

Globally, the question of advertising has seen a lot of ethical debates and major shifts. The United States has banned advertising by doctors for many decades. Advertisement was the most successful strategy of empirical medicine and could also be termed as quacks and traditional healers who claimed cures for everything. Professional licensed doctors in the US developed an aversion to this kind of advertising. Thus, the opposition of professional medicine to advertisement was also about public relations. Abstinence from advertisement became an unchallenged criterion in defining the American medical professional. In the first American Medical Association (AMA) Code of Ethics in 1847, advertising was forbidden.[3]

In 1975, however, the Federal Trade Commission (FTC) of the USA accused the profession of 'restraint of trade' and legally persuaded doctors to permit advertising amongst their clan. Michael B Pertschuk, the FTC chairman during the AMA advertising suit, declared that a 'way to control the seemingly uncontrollable health sector could be to treat it as a business and make it respond to the same marketplace influences as other American business and industries'.[1] This concept was even upheld by the U.S. Supreme Court in a landmark case called Goldfarb v Virginia State Bar.[4] This is a very interesting argument. In the context of many debates on contemporary healthcare, including in India, it is stated that treating it as a market will automatically correct some of its anomalies, including high costs with market mechanisms such as transparency and competition. There is no evidence that this has happened.

After this judgment, the AMA removed all prohibitions to advertising, retaining only a weak restriction against false or misleading advertising. Although the court allowed advertising, several medical societies in the USA have created recommendations to encourage ethical advertising behaviour amongst their specialists. For example, the AMA Code of Medical Ethics now clearly states that there are 'no restrictions on advertising by physicians except those that can be specifically justified to protect the public from 'deceptive' practices.[5] A physician may publicise him or herself as a physician through any commercial publicity or other forms of public communication (including any newspaper, magazine, telephone directory, radio, television, direct mail or other advertising) provided that the communication shall not be misleading because of the omission of necessary material information, shall not contain any false or misleading statement, or shall not otherwise operate to deceive. Aggressive, high-pressure advertising and publicity should be avoided if they create unjustified medical expectations or are accompanied by deceptive claims'.[5]

The British General Medical Council has guidance on 'Public professional communication, including using social media, advertising, promotion and endorsement',[6] which is as follows. 'You must be honest and trustworthy, and maintain patient confidentiality in all your professional written, verbal and digital communications. You must make sure any information you communicate as a medical professional is accurate, not false or misleading. This means: you must take reasonable steps to check the information is accurate; you must not deliberately leave out relevant information; you must not minimise or trivialise risks of harm; you must not present opinion as established fact. When communicating publicly as a medical professional, including using social media, advertising your services and promoting or endorsing any services or products: (a) you must declare any conflicts of interest, (b) you must not exploit people's vulnerability or lack of medical knowledge, (c) you must make sure what you communicate is in line with your duty to promote and protect the health of patients and the public'.

It also provides guidance in specific new areas which are tuned to the needs of that area, for example, it has the following guidelines for cosmetic procedures in an increasingly expanding field of medicine.[7] (1) You must make sure the information you publish is factual and can be checked and does not exploit patients' vulnerability or lack of medical knowledge. (2) Your marketing must be responsible. (3) It must not minimise or trivialise the risks of interventions and must not exploit patients' vulnerability. (4) You must not claim that interventions are risk-free. (5) If patients will need to have a medical assessment before you can carry out an intervention, your marketing must make this clear. (6) You must not mislead about the results you are likely to achieve. (7) You must not falsely claim or imply that certain results are guaranteed from an intervention. (8) You must not use promotional tactics in ways that could encourage people to make an ill-considered decision. (9) You must not provide your services as a prize. (10) You must not knowingly allow others to misrepresent you or offer your services in ways that would conflict with this guidance.

The Medical Council of India's latest Code of Ethics 2002[8] point 6.1 takes a clear stand against advertising by doctors. It states, 'Soliciting of patients directly or indirectly, by a physician, by a group of physicians or by institutions or organisations is unethical. A physician shall not make use of him/her (or his/her name) as a subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or his professional position, skill, qualification, achievements, attainments, specialities, appointments, associations, affiliations or honours and/or of such character as would ordinarily result in his self-aggrandisement. A physician shall not give to any person, whether for compensation or

otherwise, any approval, recommendation, endorsement, certificate, report or statement with respect to any drug, medicine, nostrum remedy, surgical or therapeutic article, apparatus, appliance or any commercial product or article with respect to any property, quality or use thereof or any test, demonstration or trial thereof, for use in connection with his name, signature or photograph in any form or manner of advertising through any mode nor shall he boast of cases, operations, cures or remedies or permit the publication of report thereof through any mode'.

The code makes the exception of allowing a formal announcement in press regarding the following: on starting practice; on change of type of practice; on changing address; on temporary absence from duty; on resumption of another practice; on succeeding to another practice and public declaration of charges.

This code was focussed on individual practitioners but did not explicitly cover hospitals and institutions. This created an uneven playing field, which was exploited by the private hospital industry. Aniruddha Malpani, a Mumbai-based gynaecologist, challenged this in the Supreme Court.[9] Although this case is yet to be decided the newly for the newly formulated guidelines of the National Medical Council, which had to be hastily withdrawn last year due to opposition to the advice on prescribing drugs with generic drugs continued the same recommendations but also covered hospitals. The draft (currently withdrawn) mentions that 'A RMP or any other person including corporate hospitals, running a maternity home, nursing home, private hospital, rehabilitation centre or any type of medical training institution may place announcements in the lay press, but these should not contain anything more than the name of the institution, type of patients admitted, kind of training and other facilities offered and the fees. A RMP is allowed to do public education through media without soliciting patients for himself or the institution'.

Interestingly, the National Medical Commission (NMC) draft incorporates a separate set of guidelines for 'social media conduct' and goes into great detail on this issue. The key principles were, (1) The broader principle of medical ethics should guide the use of social media by RMPs, (2) RMPs need to distinguish between telemedicine consultation and social media and (3) All written and visual communication should be truthful, respectful and professional.

In general, since the 2002 MCI code remains prevalent, advertising by doctors in India is currently deemed unethical. However, though advertising is rampant state medical councils in India have very rarely punished anyone. Recently, the Maharashtra Medical Council issued a show cause notice to two doctors on this account, but to my knowledge, the case is yet to be decided.[10] But, these are very isolated examples.

Historically there are argument both for and against allowing advertising by doctors. One argument in favour of allowing doctors to advertise is the idea that it can improve access to information for patients. In today's digital age, where individuals often turn to the internet to find healthcare providers, advertising can help patients become aware of the services offered by different doctors and make informed decisions about their care. This presumes that the information is accurate and scientific. It is difficult to monitor this.

Advertising is a way for individual doctors to reach out directly to citizens or patients bypassing established thearchies and cartels. This can level the playing field, especially those in competitive markets. By allowing doctors to promote their expertise and unique services, advertising can help smaller practices or individual practitioners compete with larger healthcare institutions that may have greater resources for marketing and outreach in other ways. In a healthcare system like India, where referrals are largely dependent on commissions (popularly termed 'cuts') direct communication with patients through public information may allow those who don't wish to be part of this practice to bypass the commission system. Direct advertising to the public, therefore, may be a way around a patently non-transparent cartelisation, which potentially also harms patients.

Needless to say, there are drawbacks of advertising by doctors. One general concern is that advertising somehow compromises the trust and integrity of the patient–doctor relationship. More specifically, critics argue that by engaging in promotional activities, doctors may prioritise attracting patients over providing the best possible care, potentially leading to unnecessary treatments or procedures. Moreover, doctors advertising their own drugs, products or hospitals are a classic case of conflict of interest.

Furthermore, there are concerns about the impact of advertising on vulnerable populations, such as those seeking mental health services or expensive medical procedures. Aggressive marketing tactics could fears and vulnerabilities, leading them to make medical decisions based on persuasive advertisements rather than sound, neutral medical advice. Finally, advertising may increase healthcare costs of issuing the ad is likely to be factored into the cost.

The biggest contradiction though in the discussion around historical the act of advertising by doctors is the reality that everything in the modern practise of medicine has changed towards business practices and this has been largely acceptable. Medicine in many countries certainly in India has become market-based. India's health sector for example is marked by the rise of private medicine, cutthroat competition, the entry of large corporate hospitals, huge investments and global capital.

There is yet another contemporary challenge to banning advertising. We live in a digital age. The internet and social media are vast terrains where it is impossible to control the flow of information including direct or surrogate advertising. And to distinguish between information, promotion and advertising.

Against this background, the ethics principle that doctors should not advertise their services seems almost irrelevant

if not inappropriate. It is akin to clutching at a straw. The goalposts may need to change. From rejecting the very idea of any form of advertising to monitoring, its accuracy and stopping misinformation and falsehoods. In other words, the focus could shift to accuracy, confidentiality, social responsibility and mutual respect as ethical requirements.

What then, is my answer to the question 'Should doctors advertise'? It is contextual and I must confess open-ended. Advertising by doctors is a sign of the trajectory of modern medicine losing its social moorings to become a business. Doctors in a state-run universal healthcare system which serves all citizens free of cost don't need to advertise. It is largely private systems which need to generate what economists call supplier-induced demands that need advertising to bolster its business. The larger issue is the unbridled privatisation of healthcare and market medicine.

But health systems have changed. So has the world around us. Instead of grandstanding by banning advertising in all its forms, which is an impossible task it may be prudent and practical to focus on the accuracy and appropriateness of what is being put out in the public space. This way, we may also be fairer to individual practitioners and small establishments whose means of reaching ordinary citizens may be shut out by big business in healthcare. It is not advertising that needs to be curbed but a health system that depends on it to attract patients. Or else we may be missing the woods for the trees.

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