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RCMOS
ISSN 2675-9128
DOI 10.51473

# MEDICAL ADVERTISING ON SOCIAL MEDIA: A REALITY POSSIBLE

## *MEDICAL ADVERTISING: A POSSIBLE REALITY*

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**Summary**

**Goals:**This study first evaluates the distinction between the terms advertising and advertising and their application to medical activity, justifying the choice of the term “propaganda” in the title of this article. In a second step, the research addresses the normative framework that allows the Federal and Regional Councils of Medicine to regulate the limits and restrictions on advertising by doctors and adopt the appropriate measures and sanctions in the case of violation of legal and ethical standards in doctor-patient relations. . Subsequently, the normative and deontological diplomas, their respective permissions and prohibitions on the conduct of medical professionals when advertising on social networks are analyzed. Finally, the practices of using social networks by doctors in accordance with medical ethics and the Law are outlined, reaching the conclusion that it is fully possible for doctors to carry out advertising on social media, as long as the parameters are followed. legal and ethical aspects of the profession.**Methodology:**This article analyzes the possibility of medical professionals using advertising tools on social networks, through bibliographical research of texts contained in works on Medical Law and legislative analysis of legal and deontological standards that govern medical activity in Brazil. The Boolean indicators used to search for titles were “and” and “or”, based on the following descriptors: “Advertising”, “Advertising” and “Social Networks” and “Doctor-Patient Relationship”, all extracted from DeSC.
**Key words:**Advertising. Advertising. Social media. Doctor-Patient Relationship.

**Abstract**

**Objectives:**This study evaluates, firstly, the distinction between the terms advertising and propaganda and its application to medical activity, justifying the choice of the term "propaganda" in the title of this article. In a second moment, the research approaches the normative framework that allows the Federal and Regional Medical Councils to regulate the limits and restrictions to advertisement by doctor and to adopt the appropriate measures and sanctions in case of violation of legal and ethical norms in doctor-patient relations. Afterwards, the normative and deontological diplomas, their respective permissions and prohibitions of conduct of the medical professional when advertising on social networks are analyzed. Finally, the practices of use of social networks by doctors are outlined in accordance with medical ethics and the law, reaching the conclusion that it is fully possible for doctors to advertise on social media, provided that the legal and deontological parameters of the profession are followed . **Methods:**This article analyzes the possibility of medical professionals to use advertising tools in social networks, through bibliographic research of texts contained in works on Medical Law

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and legal analysis about the legal and deontological norms that govern medical activity in Brazil. The Boolean indicators used for research of the titles were "and" and "or", from the following descriptors: "Advertising", "Advertising" and "Social Networking" and "Physician-Patient Relations", all extracted from DeSC.
**Keywords:**Advertising. Advertising. Social Networking. Physician-Patient Relations.

**1. Introduction**

The digital era has completely changed the communication paradigms in society and the advertising and publicity standards presented to the public. The growth of the world wide web (*Internet*), with the aim of connecting individuals, sharing information, photos, videos and knowledge, gave rise to social networks such as*Facebook, Instagram, YouTube* and instant communication applications such as*Whatsapp*It is*Telegram*, reaching everyday social life in an impactful way, making people experience great dynamism in the propagation and exchange of information, thus enhancing the communicative capabilities of individuals in the most varied social spheres.

Brazil has approximately 212 million inhabitants and, according to research “Digital in 2020”[two], in January 2020, there were 205.8 million mobile connections in the country and 140 million people using some social network.

Hence, it is observed that with the access of a large part of the population to the internet, through mobile devices such as*tablets*It is*smartphones*, social networks began to play a fundamental role in people's daily lives and the world wide web, especially in times of the Sars-coV-2 (coronavirus) pandemic that has been plaguing the planet for over a year, has become a great showcase of diverse professionals from the most varied fields. Thus, online advertising and advertising demonstrate the potential to reach the public with much more intensity than traditional advertising, broadcast on television, posters, leaflets, *billboards,*etc.

Current means of communication are different from those used by previous societies. As stated above, currently, the information process has become more participatory, mainly with the production of content instantly, which not only delivers information, but also collects current trends and thoughts from the user. Furthermore, the provision of these materials, ideas, videos and photos through social networks allows interaction between those who produce them and those who receive them, facilitating real-time communication between these individuals and the deepening of this virtual relationship. With use in

[two]We are social.**Digital 2020:**global digital yearbook. Available at: https://datareportal.com/reports/digital-2020-brazil. Accessed on: 22 Jan. 2021.



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mass of social networks, we experience the emergence of new technologies, the emergence of new professions and the disappearance of countless others. Those that survive need to adapt new concepts, new trends, methods and media to maintain their continuity. Medicine is no different.

Health professionals, as providers of services related to Medicine and health, have adhered to the *marketing* and advertising, also referred to as advertising, in the digital environment, especially on social networks, thanks to the greater opportunity to connect with their patients and potential patients, keeping them informed about their services (MILDEMBERGER; PEREIRA, 2020, p. 399).

Given this, the search for being on social media brought up a theme that has been following doctors: advertising in structures *online* in which several people are connected to each other, sharing common ideas, objectives, thoughts and values, whether to promote new practices or treatment methods, or to inform and educate patients on a certain subject.

It turns out that, in this context, the greatest challenge arises for health professionals, which is: advertising on social networks in order to remain competitive in the job market and, at the same time, act ethically and legally, respecting the rights of their patients and obeying the legal and ethical standards in force, which govern their profession, as Medicine, as will be explained throughout this research, under no circumstances can it be exercised as a trade.

This research was carried out through the bibliographical analysis of texts contained in works on Medical Law and through the interpretation of the legal and deontological regulations that govern medical activity in Brazil, due to the novelty of the topic.

The methodology used for this article consists of bibliographic and legislative research based on different data sources such as printed books, Resolutions of the Federal Council of Medicine and publications in the *Internet*.

The research is exploratory in nature, in the sense of interpreting, in the context of the technological evolution that society is going through, the possibility of medical professionals using social networks to advertise, based on the standards that govern the profession, as well as analyzing the role of Medical Councils in monitoring and regulating doctors' conduct when advertising on social media and outlining the ethical and legal limits for medical advertising in these structures *online*. Therefore, this article intended to promote the discussion of a topic of great relevance for the improvement of Law



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Doctor today and in the professional and academic spheres, analyzing and explaining the possibility of advertising by medical professionals on social networks, as long as it is done in strict obedience and respect for the Federal Constitution of 1988, the Law and the Resolutions of the Federal Council of Medicine and standards of the Regional Medicine Councils.

The debate is necessary so that there is an expansion of studies on the limits of medical advertising on social networks in light of the evolution of society's behavior and legal and ethical standards regarding the medical profession, as the topic is new, serving as a guide and guidance for the conduct of medical professionals in the face of new technologies that allow the propagation of information and the carrying out of communication through the global computer network and legal operators in the defense and provision of consultancy for medical professionals, whether in the administrative sphere, before the Regional and Federal Councils of Medicine, whether in the judicial sphere.

## 2 THEORETICAL FRAMEWORK

### 2.1 Distinction between the concepts of advertising and propaganda

The doctor-patient relationship is peculiar, because, despite the patrimonial aspect arising from payment for the service provided by the professional to the patient, there is also the need for respect and obedience to various rights and duties related to social values that integrate such a relationship, such as the right the information provided by the doctor to the patient about their health status, the therapy to be used, refusal of treatment by the doctor, duty of secrecy, duty to obtain free and informed consent from the patient by the professional, right to exercise medical activity with freedom and autonomy, among others.

Even though they do not have a direct economic expression, the aforementioned rights and duties are closely linked to the dignity of the human person and the personality of the individual, because, as Minister Carmen Lúcia of the Federal Supreme Court said, health is not a commodity, life is not a business, dignity is not profit (STF, 2021).

In this context, although there is an understanding that the relationship between doctor and patient is a consumer relationship, this discussion is not the subject of this article, in this research, the understanding is adopted that this relationship cannot be consumed, as it will never Medicine can be exercised as a commercial activity, with doctors being prohibited from exercising their profession commercially (CFM, 2019). In this way, considering that the



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medical activity is not commerce, it is necessary to distinguish the concepts of advertising and propaganda, in order to correctly apply the terms to medical activity and justify the use of the propaganda concept in the title of this research.

Well, the terms advertising and medical advertising are often used as synonyms, including by the Federal Council of Medicine, which defines, in Resolution No. 1,974/2011, in its article 1, advertisement, publicity or publicity as communication to the public , by any means of disclosure, of professional activity initiated, participated and/or consented by the doctor (CFM, 2011).

These terms are usually used to define the practice of disseminating texts, advertisements, etc., which aim to influence individuals to consume a certain product or service or to adhere to a certain thought, idea or religion, for example. However, there are distinctions that deserve to be highlighted in order to properly use the concepts in question.

Advertising can be defined as communication carried out by a company to promote objects, artifacts, services and ideas, in order to persuade an audience to wish to buy its products. Its objective is to attract consumers with the hope of selling or contracting goods and services. This conception, therefore, reaches a commercial sphere and consists of a tool at the service of the merchant or service provider.

In this way, advertising is the act of making public, publicizing a fact or an idea with commercial objectives, as it seeks to awaken the desire to purchase and acquire a certain product or service, thus promoting a commercial activity (GONÇALEZ, 2009 , p. 7).

Propaganda, in turn, is communication used by organizations or people to disseminate thoughts and doctrines, generally religious, ideological or political. It seeks adherence to an ideology or change in the public's attitude towards a specific person or specific subject. The sphere is political, ideological or religious. It consists of the placement of an advertisement or persuasive message in a means of communication, aimed at clarifying and informing society. It covers actions of ideological activities that tend to influence man with political, civic or religious objectives (GONÇALEZ, 2009, p. 7). It is the act of propagating ideas, principles and theories without commercial or economic bias. Now, as can be seen, advertising is related to commercial and mercantile activities while propaganda refers to the propagation of information, ideas, thoughts, without a commercial nature, the latter being, therefore, the most appropriate term to be used in the activity medical, which is why the expression propaganda was chosen as a component of the title of this



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article. It is worth, however, warning the reader that, although there are differences noted between the concepts listed here, the expression advertising is used (as a synonym for propaganda) in the normative diplomas of the Medical Councils analyzed throughout this research. Having overcome these distinctions, we move on to analyzing the legal framework that governs the topic.

## 2.2 The legitimacy and legality of medicine regulation by professional councils

In modern times, Medicine continues to be a liberal profession, however, for its practice to be carried out within legal parameters, there are restrictions that, in previous moments in history, did not exist.

Regardless of the doctor's employment status, whether salaried, self-employed or a public servant, he or she is considered a liberal professional and, even though the profession may be subject to current socioeconomic standards, Medicine, as a liberal profession, is characterized by the freedom of the exercise their activities in the broadest autonomy and within compatibility with public and social order. Such freedom, it is evident, is in everything that this order admits as lawful and necessary.

In today's societies, medical ethics complies with legal and infra-legal standards and codes of professional ethics, such as minimum parameters of conduct imposed by the State with the aim of guaranteeing the exercise of the profession within certain limits. Medicine, especially in the last thirty years, has undergone extraordinary and dizzying progress, which has forced medical professionals to face new situations, many of them in sensitive conflict with their training and with the Hippocratic past, in which the doctor was considered superior in doctor-patient relationship, his will being sovereign and his instructions should be followed to the letter, without the patient's interference. There was a certain “paternalism” on the part of the doctor towards the patient.

On this path, it appears that the doctor has always had his conscience and an ancient tradition as guides, however, day by day, the need arises to reconcile this thought and professional interest with the multiple demands of the community, which are constantly changing. (LESSA, 2020, p. 17).

Man has been forced, throughout the history of humanity, to live socially and this life in common requires forms of conduct that guide the path of good. As Medicine advances in its achievements and investigations, the greater the risk of this



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development. Far from diluting or attenuating the significance of Ethics, it is now more important than ever (FRANÇA, 2021).

For Genival Veloso França, it is assumed that from the middle of the last century the medical profession began to lose ties with classical ethics and its "paternalism". *(superiority of judgment)*was losing strength, as its domain of action gave way to other professions in the health sector and in the 1980s of the last century, it was seen that the doctor-patient-society relationship should be based on principles, with each case being treated in its own way (FRANCE, 2021).

In this way, it appears that contemporary medical ethics has been gradually adjusting to society's desires, because, like other professions and areas of knowledge, Medicine has been experiencing a dizzying pace of growth in technological innovations and priorities, novelties and commodification therapeutics create a Medicine that evolves to be increasingly difficult to sustain, especially in a context in which there is a serious picture of social inequalities, in particular, with regard to access to technological innovations in this field by the majority of the population, which is still discarded in certain situations (HOLANDA; MATOS, 2021).

Therefore, when analyzing ethics in the field of health, the aim is to reduce the distance between it and knowledge and the ways in which it and various sources of information are propagated in the face of technological innovations that emerge daily in modern society.

The methods, procedures and guidelines used in the past end up not providing effective security in decision-making by professionals, because moral conduct and doctors' responsibility towards their patients also experience constant evolution and modification in society. Thus, Medicine, as a science, needs technical development and an instrument to guide its behavior, which is expressed through medical deontology.

In this scenario, the medical profession experiences regulation in legal and infra-legal provisions, with the aim of guaranteeing the practice of Medicine within minimum parameters, since, nowadays, doctors face new situations, using technologies that did not exist in the past, as is the case of social networks, increasingly present in the daily lives of individuals, and need to guide their conduct in order to ensure the perfect ethical performance of Medicine, as well as the prestige and good concept of the profession. From this moment on, considering that there was a need to create standards to guide the behavior of medical professionals in accordance with moral, ethical and



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RCMOS
ISSN 2675-9128
DOI 10.51473

legal relations in their relationships with patients, with society and with their co-workers, the regulations that govern the medical profession will be analyzed. Firstly, it is worth highlighting that article 5, item XIII, of the 1988 Federal Constitution guarantees the free exercise of any profession, as long as the legal requirements are met, as per the transcription below:

> Art. 5 Everyone is equal before the Law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, under the following terms:
> XIII - the exercise of any work, craft or profession is free, subject to the professional qualifications established by Law;

Indeed, the exercise of professions is free, however, this freedom must be interpreted within the limits of Federal Law, in accordance with article 22, item XVI, of the Magna Carta, *in words:*

> Art. 22. The Union is exclusively responsible for legislating on:
> XVI - organization of the national employment system and conditions for exercising professions.

From the analysis of the constitutional provisions listed above, it can be seen that doctors submit themselves to constitutional regulation, as well as legal and infralegal regulations in the exercise of their profession, that is, in order for them to be able to freely carry out their activities, they must comply with the aforementioned norms.

Decree No. 20,931/1932, in force to this day, is one of the first regulations applicable to doctors. It regulates and supervises the practice of medicine, dentistry, veterinary medicine and the professions of pharmacist, midwife and nurse in Brazil.

Said decree ruled, in its articles 1 and 2, that the exercise of Medicine, dentistry, veterinary medicine and the professions of pharmacist, midwife and nurse, was subject to supervision in the manner established therein, with only the exercise of the professions listed here being permitted. , anywhere in the national territory, to anyone who is qualified in them in accordance with federal laws and has a title registered in accordance with art. 5th of mentioned standard.

In a more recent period, Law No. 12,842/2013 was published, which deals with the practice of Medicine and, in its 2nd article, it states that the object of the doctor's activity is the health of human beings and human communities, for the benefit of which You must act with the utmost care, to the best of your professional ability and without discrimination of any kind. In turn, Law No. 3,268/1957 was the legal diploma that created the Medical Councils, which are autarchies, which is why they are endowed with legal personality under public law, with financial and administrative autonomy and, in its article 2, provided for that the Regional Councils



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of Medicine are supervisory and sanctioning bodies, in addition to being responsible for verifying the ethical performance of Medicine. Check it out:

Art. 2nd The Federal Council and the Regional Councils of Medicine are the supervisory bodies of professional ethics throughout the Republic and at the same time, judges and disciplinerers of the medical profession, being responsible for ensuring and working by all means within their reach, for perfect performance. ethics of medicine and the prestige and good reputation of the profession and those who practice it legally.

Article 5, paragraph *d*, of the aforementioned Law, also gives the Federal Council of Medicine the possibility of voting and changing the code of medical ethics, after consulting the Regional Councils of Medicine, thus guaranteeing the full capacity of local authorities to regulate medical activity.

Furthermore, article 20 of the Law referenced above also provides that anyone who, through advertisements, signs, cards or any other means, proposes to practice medicine, in any of the branches or specialties, is subject to the penalties applicable to the illegal exercise of the profession, if not properly registered.

From the analysis of these legal provisions, it is easy to see that the Law gave the Federal Council of Medicine and the Regional Councils of Medicine the power to establish standards that regulate medical conduct, through resolutions, which constitute one of the means of giving effect to the laws, also forming part of the legislative process, in accordance with the provisions of article 59, item VII of the 1988 Carta Maior.

Furthermore, the Federal and Regional Councils of Medicine, when they issue standards, apply sanctions and carry out the necessary steps, are nothing more than the Public Administration itself acting in society, since, as stated above, they are agencies created by Law, the which carry out and hold typical Administration activities, in accordance with article 37, item XIX, of the 1988 Federal Constitution, *in verbs*:

> Art. 37. The direct and indirect public administration of any of the Powers of the Union, the States, the Federal District and the Municipalities will comply with the principles of legality, impersonality, morality, publicity and efficiency, and also the following:
> XIX - only by specific Law can an autarchy be created and the institution of a public company, mixed capital company and foundation authorized, with the complementary Law, in the latter case, being responsible for defining the areas of its activity (Wording given by Constitutional Amendment nº 19 , 1998).

Furthermore, Law No. 3,268/1957, in its article 15 and paragraphs, also gives the Regional Councils of Medicine the responsibilities of supervising the exercise of the medical profession, knowing, appreciating and deciding matters relating to professional ethics, imposing the



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appropriate penalties, as well as promoting, by all means and within their reach, the perfect technical and moral performance of Medicine and the prestige and good concept of this, the profession and those who practice it, also exercising the acts of jurisdiction that by Law are committed.

Therefore, it became clear that, in the exercise of regulatory power, it is up to the Federal Council of Medicine to establish and define the ethical standards that govern the profession of doctors, with the Regional Councils of Medicine being responsible for exercising police power to supervise the conduct of professionals. and the application of possible sanctions when there is a violation of the applicable rules. Therefore, the regulations issued by the Councils and applied to medical professionals are fully legal and valid, including those relating to medical advertising and which will be the subject of analysis below.

**2.3 The legal and deontological standardization of ethical advertising with a focus on social networks**

Well, the topic under analysis is extremely important, as it relates to the legal nature of the doctor-patient relationship and, as it is a very controversial and complex matter, many professionals do not know the rules that govern their actions and, consequently, , are unaware of the limits of exercising their profession, especially when carried out using social media.

In addition to changing paradigms in relationships between doctors and patients, current means of communication are quite different from those used by societies in the past. Currently, a large part of the world's population is connected to the world wide web, the*Internet*, and with the emergence of social networks, with Brazil being one of the countries with the most users of such tools, healthcare professionals now have wide visibility, whether to disseminate new practices or methods of medical treatment, or to disseminate information to patients.

It turns out that doctors must pay attention to the content they produce and publish, so that they can carry out their activities based on the standards that govern the profession, because medical advertising affects an extremely delicate relationship between the medical professional and the patient, or patient. potential, since the relationship between the two subjects generally occurs in moments of great physical and emotional fragility for those who are receiving or seek to receive medical care. In this sense, the relationship between doctor and patient is, as a rule,



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contractual, but predominantly existential and there is the active participation of both agents, with the emergence of non-patrimonial rights and duties, such as the duties of secrecy, confidentiality, care, information, which is why the exchange of information is essential and knowledge based on applicable standards (MILDEMBERGER; PEREIRA, 2020, p. 201). Therefore, the advertising carried out by the doctor must occur in a different way, as the service provided by this professional is not merely patrimonial in nature, as it involves health, human life and, as already mentioned elsewhere, despite there being remuneration due to of its provision, the relationship between doctor and patient is predominantly existential in nature.

In this way, the regulation of medical advertising is necessary, as the object of the service provided by the doctor is not an exclusively financial activity, having, firstly, the aim of protecting and maintaining an asset and right directly protected by the Magna Carta 1988: health.

Because it is a professional activity regulated by Law that regulates the requirements, conditions and limits for its exercise and because it is a profession intrinsically focused on caring for people's health, the concern of the legislator, including the criminal law, in protecting the public health towards those who exercise this profession without being qualified or duly authorized to do so.

As stated above, with the advent of*Internet*and social media, medical issues are increasingly being reported in the media. There is great interest among the population in these subjects, especially during this period of pandemic that has been ravaging the planet for more than a year. However, this interest awakened in people deserves to be treated with the greatest care. The need to inform society, patients and potential patients about scientific and technological advances, about treatment for a certain disease, such as Covid-19, as well as to publicize the qualifications and training of medical professionals cannot exceed legal and ethical limits .

In the society we live in, there is a great appeal for consumption, and as a result, there is often a dilution of social values, including in the professional sphere. In this way, medicine must act as a guarantor of the principles and values of the doctor-patient relationship, preventing excesses and conduct that distort its real objective, as the commodification of the medical act compromises the existence of Medicine, the doctor and the patient himself. Now, it is not contrary to ethics to publicize and advertise the doctor's work. What violates ethics is the commodification of the profession. Therefore, the medical profession in Brazil and, therefore,



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Therefore, advertising carried out by medical professionals is regulated by legal and ethical standards, through strong control by supervisory councils which, as stated above, have regulatory and disciplinary responsibilities supported by the Federal Constitution of 1988 and various legal diplomas already referenced. in this research. In this scenario, the Federal Council of Medicine is, at the same time, judge and discipliner of the medical profession, being responsible for ensuring and working, by all means within its reach, for the perfect ethical performance of Medicine, for the prestige and good concept of the profession. and those who exercise it legally. In this way, this authority establishes guiding criteria for medical advertising, with the aim of achieving the objectives listed here, avoiding sensationalist, self-promotional practices that express unfair competition.

Well, when making the medical announcement, which can be understood as the communication to the public of professional activities through the initiative, participation or consent of the doctor, obtaining certificates, warnings, bulletins, declarations, records, forms, prescription books, etc., by any means of dissemination, the professional should limit himself to revealing the necessary knowledge to the public, helping them in the fight against diseases, in what is in the interest of public health (FRANÇA, 2017, p. 198).

Doctor advertising, in this sense, must be carried out in a sober manner, through simple disclosure and without exaggerated language; it must be discreet, and there cannot be sensationalism or exhibitionism on the part of the doctor; it must be based on scientific veracity and legality, and must respect, as already repeated in this research, the norms that govern the profession (FRANÇA, 2017, p. 199).

In this context, let us now analyze the regulations regarding medical advertising in Brazil. Decree-Law No. 4,113, of February 14, 1942, which is in force in the national legal system and was approved by the Federal Constitution of 1988, regulates medical advertising, hereinafter referred to as medical advertising. This Law establishes the control criteria over the information to be provided by doctors when disclosing the treatment of organs or systems, or even specific diseases. Furthermore, the regulations require that this type of advertising delimit the link between the professional and his specialty, as well as the advertising material of his presentation as a doctor. In this context, the aforementioned legal diploma, in its article 1, provides for the prohibitions imposed on doctors when making advertisements, and its transcription below is important, check it out:

> Art. 1 Doctors are prohibited from advertising:
> I - Curing certain diseases for which there is no specific treatment, according to current scientific knowledge;



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> II - Treatment to prevent pregnancy, or terminate pregnancy, clearly or in terms that induce these purposes;
> III - exercising more than two specialties, with the possibility of listing the diseases, organs or systems included in the specialization;
> IV - Consultations through correspondence, the press, mailbox, radio or similar processes;
> V - Specialty not yet accepted by medical education, or which has not been sanctioned by medical societies;
> VI - Provision of free services in private practices;
> VII - systematically, thanks expressed by clients that violate medical ethics;
>
> VIII - with detracting allusions to medical schools and therapeutic processes permitted by the country's legislation;
> IX - With references to treatment and diagnosis methods not established in current practice or that have not been sanctioned by medical societies;
> X - Certificates of cure for certain diseases, for which there is no established treatment, using pharmaceutical preparations. (not highlighted in the original).
> § 1 The prohibitions in this article extend, where applicable, to dental surgeons.
> § 2 The prohibitions in this article do not include advertising to the doctor or dental surgeon their scientific titles, the price of the consultation, generic references to equipment (X-rays, radio, medical electricity devices, physiotherapy devices and other similar devices); or disseminate, through the press or radio, hygiene advice and medical or doctrinal matters, without the character of individual therapy.

It appears, therefore, that the objective of these limitations is to prevent the publication of untrue advertisements, with promises of cures for incurable illnesses and treatments not approved by the competent bodies, the doctor's self-promotion, limiting the advertisement of only two medical specialties and prohibiting the systematic publication of thanks from patients, all of this, as a way of avoiding the commodification of Medicine and of guiding medical professionals in their work, including on social networks.

Furthermore, the aforementioned decree establishes that in advertisements for health homes, medical establishments and the like, the responsible medical management must be mentioned. If an irregularity or illegality is found in the advertisement, the responsible health authority will order the advertiser to comply with the rules within thirty days, which reflects the educational purpose of this decree. It is in this spirit, demonstrating concern about the possible occurrence of the commodification of Medicine, with guidance to medical professionals and with the preservation of the doctor-patient relationship that the Federal Council of Medicine (CFM) published, on August 19, 2011, the Resolution 1,974/11 (with changes from resolution nº 2,126/2015), which is considered the true medical advertising manual in the country. When it was published, the aforementioned Resolution expressed the concern about carrying out medical advertising published in magazines, *websites* and television programs. With the emergence and growth of social networks, this concern also extended to the conduct of medical professionals when using social networks. *online,* such as networks and social media. This diploma, while



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RCMOS
ISSN 2675-9128
DOI 10.51473

general and abstract normative act, establishes the guiding criteria for advertising in Medicine, conceptualizing advertisements, the dissemination of medical matters, sensationalism, self-promotion, as well as defining the prohibitions relating to the matter. In this way, it can be said that such a Resolution is unlikely to harm the law, as its purpose is to protect the technical and moral exercise of the medical profession, as well as to ensure the public interest, as well as to regulate ethics in medical advertising, in other words, it is based on two pillars: on the one hand, care with sensationalism and self-promotion and on the other with the informative and scientific nature of medical advertising (HOLANDA; MATOS, 2021).

Therefore, advertising disseminated by medical professionals must comply exclusively with ethical principles of educational guidance and cannot be compared to advertising for purely commercial products and practices. In this sense, the Code of Medical Ethics (Resolution No. 2,217/2018) establishes:

> Chapter V
>
> The doctor is prohibited from:
>
> Art. 37. Prescribing treatment and other procedures without direct examination of the patient, except in cases of urgency or emergency and proven impossibility of carrying it out, in which case, doing so immediately after the impediment has ceased, as well as consulting, diagnosing or prescribing by any means of mass communication.
>
> § 1 Remote medical care, in the form of telemedicine or another method, will be provided under regulation by the Federal Council of Medicine.
>
> § 2**When using social media and related instruments, the doctor must respect the standards developed by the Federal Council of Medicine** . (not highlighted in the original).
>
> Chapter XIII
>
> The doctor is prohibited from:
>
> Art. 111. Allow your participation in the dissemination of medical matters, in any mass media, to no longer be exclusively for the purpose of enlightening and educating society.
>
> Art. 112. Disseminate information on medical matters in a sensationalist, promotional or untrue manner.
>
> Art. 113. Disseminate, outside the scientific community, a treatment process or discovery whose value has not yet been expressly recognized scientifically by a competent body.
>
> Art. 114. Announce scientific titles that you cannot prove and specialty or area of activity for which you are not qualified and registered with the Regional Council of Medicine.
>
> Art. 115. Participate in advertisements for commercial companies, whatever their nature, using your profession.
>
> Art. 116. Present as original any ideas, discoveries or illustrations that in reality are not original.
>
> Art. 117. Fail to include, in professional advertisements of any order, your name, your number at the Regional Council of Medicine, with the state of the Federation in which you were registered and the Specialist Qualification Register (RQE) when announcing the specialty.
>
> Single paragraph. In advertisements for health establishments, the name and registration number, with the Regional Council of Medicine, of the technical director must appear.



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In this line of understanding, the doctor's participation in the dissemination and propagation of medical matters, in any means of communication, including social networks, must be based on the exclusive nature of clarification and education of society, and there cannot be the encouragement of sensationalism, self-promotion or the promotion of other people, patients or professionals, unfair competition, exposure of patients, always ensuring the dissemination of scientifically proven, valid, pertinent content and of public interest.

Therefore, to avoid subjective concepts, Resolution No. 1,974/2011 contains the definitions of sensationalism and self-promotion and the prohibitions relating to the matter, as listed below.

Sensationalism is defined as the presentation of scientific techniques and means that may cause unrest, panic or fear in society, as well as the use of abusive, misleading and seductive visual representations that may induce promises of results. Not respecting ethical concepts, disclosing methods that do not have scientific recognition, adulterating statistical data in order to benefit individually or the institution they represent, presenting scientific techniques and methods that should be limited to the medical environment, disclosing procedures, even if established, in a manner exaggerated and avoiding technical concepts to individualize and prioritize their performance or the institution in which they work or have a personal interest and also using the media to publicize methods that do not have scientific recognition.

In turn, self-promotion consists of using the media to attract customers; engage in unfair competition; claim exclusivity for diagnostic and therapeutic methods; earning profits of any kind and disclosing the address and telephone number of the office, clinic or service.

Therefore, it appears that medical advertising should never be restricted to the pursuit of profit. It must be carried out as a way of publicizing the work offered by the medical professional. Furthermore, all medical action must aim to benefit the patient. This is the application of the principle of beneficence, which, in this specific case, takes place through advertising that leads the patient to obtain only the good and the best that Medicine can offer them (CODAME, 2021).

In addition to the prohibitions regarding sensationalist, self-promotional and unfair conduct, article 3 of this resolution also prohibits the doctor from exposing, mainly on social media, the figure of his patient, even if there is authorization from the patient, except in the case of cases for the presentation of scientific work, with due authorization from that person, as per



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provided for in article 10 of this resolution. Hence, it is observed that the conduct practiced by doctors today, with the display of photos, videos and “before” and “after” images of medical procedures and surgeries performed on patients, in medical advertisements, is completely prohibited.

The prohibition referred to above is provided for in article 3, paragraph g of the resolution 1,974/2011 of the Federal Council of Medicine and does not require a specific Law because it does not deal with conditions or qualifications for the exercise of the doctor's profession. On the contrary, it aims to preserve professional ethics for the practice of Medicine. Violation of ethical precepts provided for by the legally competent professional body is not subject to judicial control of legality.

The harm and discomfort caused by the dissemination of images and procedures carried out on patients by their doctors on social media is well known, as, in addition to exposing people in moments of extreme fragility and in intimate procedures, which can harm the rights image and human dignity, the professional's conduct can also constitute attracting clientele, as, with the dissemination of a result in a given individual, this publication can lead one to believe that another person, with different conditions and a different organism, will be able to achieve the same result published on social media.

Furthermore, it is not possible to know whether the result disclosed by the professional actually came from the surgery and medical procedure or from the manipulation of images and videos using computer programs.

The prohibition contained in the resolution in question prohibits messages that could mislead the patient when presenting demonstrations or guarantees of cure or results without adverse or secondary effects. It is also clear that the use of the patient's image, even with authorization, is illegal, as what is sought is medical confidentiality and patient privacy, preventing the patient's identification from being used to attract clientele due to possible influence, especially because the commercialization of the profession is prohibited. Therefore, it is easy to see that this undue advertising of “before and after” brings negative consequences for both: doctor and patient. Transforms the result obtained into a commodity. The doctor is committed to guaranteeing the results of the procedure. It misleads the patient, distorts the medical obligation, as if it were a result, however, it is a means obligation.

The professional who acts in this way, acts outside the ethical and deontological standards that govern the profession and also distorts the objective of his activity, which cannot be commodified and also starts to link his activity to the result offered and not just a means to achieve it. achieve the patient's wishes, subjecting themselves to the applicable legal penalties in case of verification



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of harmful conduct. In addition to the prohibition listed above, doctors are prohibited from advertising specializations not recognized by the Federal Council of Medicine or non-existent specializations. Now, the professional duly registered with the Regional Council of Medicine is able to legally practice Medicine, in any of its branches; however, it is only legal to advertise a medical specialty to those who have registered their specialist title with the council, as the announcement of multiple specialties may constitute the doctor's self-promotion.

When publishing medical advertisements, professionals cannot also disclose their telephone number on social media or indicate another activity other than Medicine. For example, on his page on a social network, the doctor cannot present himself as a medical professional and *coach*, investor, etc., because, again, self-promotion and sensationalism constitute reckless practices.

Depending on the regulations analyzed, when using social networks, the doctor cannot "repost" photos, images and publications from patients about procedures performed by him, nor recurring thanks or famous*selfies,*because, once again, these practices can express a way of attracting clients on social networks, of self-promotion by the doctor and even of sensationalism, which, as has already been extensively explained in this article, is expressly prohibited by the rules that govern Medicine.

In addition to Resolution 1,974/2011 discussed above regarding medical advertising, the Federal Council of Medicine had already issued other diplomas on the subject. For information purposes, Resolution 788/1977 determines the Regional Medicine Councils that, in the event of advertising by an organization or legal entity that does not comply with CFM resolutions, ethical-professional proceedings must be initiated against the respective medical director and main person responsible. .

Resolution 1,595/2000 prohibits the linking of medical prescriptions to the receipt of material advantages offered by economic agents interested in the production or commercialization of pharmaceutical products or equipment in the medical field. In turn, Resolution 1,633/2002 provides for the prohibition of advertising materials linked to the medical-hospital area and the like, in newspapers and/or magazines published by medical councils.

In turn, Resolution 1,836/2008 prohibits doctors from treating patients referred by companies that advertise and/or sell financing plans or consortiums for medical procedures. Finally, the annex to resolution 097/2001 of the Regional Council of Medicine of the State of São Paulo (CREMESP) lists the ethical principles for*websites*of medicine and health in*Internet*, namely: transparency, honesty, quality,



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free and informed consent, privacy, medical ethics, responsibility and origin. Therefore, it is possible to verify the extensive regulation on medical advertising by the Federal Council of Medicine, the authority responsible for supervising the medical profession and applying the applicable sanctions in the case of infringement of the aforementioned standards.

After studying the Resolutions of the Federal Council of Medicine on medical advertising, it is worth making brief comments regarding Law No. 13,874/19.

Well, with the entry into force of the Economic Freedom Law, Law 13,874/19, the question was raised as to whether this legal diploma would affect the rules issued by the Medical Councils to regulate medical advertising and marketing, as freedom must be guaranteed and less state intervention in economic activities, whereby article 4, VIII of the aforementioned Law establishes that it is the duty of the Public Administration and other entities to avoid abuse of regulatory power in order to restrict the use and exercise of advertising in an economic sector , except in cases expressly prohibited by federal law.

It turns out that the Law of economic freedom cannot be applied to medical professionals, as the legal diploma itself sets aside cases in which there is an express Law regulating a certain professional sector, as is what happens with medical activity, whether by Law in strict sense, either by deontological standards that have normative force and are published with support from the Federal Constitution itself, which grants police power to the professional council (article 5, XIII).

In this way, the Resolutions of the Federal Council of Medicine are based on ethical principles that aim to avoid unfair competition, self-promotion, sensationalism and the commercialization of Medicine, avoiding advertising and abusive advertisements, thus removing the incidence of said Law on doctors. Furthermore, the Federal Council of Medicine, in a note to doctors and society, published on September 25, 2019, has already stated that the Economic Freedom Law will not apply to medical advertising, as the object of the doctor's action is the health of human beings and human communities, for the benefit of which they must act with the utmost care, to the best of their professional capacity and without discrimination of any kind, as well,medical activity should not be considered in a finalistic way as an economic/financial activity.

In this way, it understood that, in the case of ethical standards, including those dealing with medical advertising and other matters, the regulation exercised by the Medical Councils is not undue, nor does it seek to restrict the job market and economic freedom, having main objective is to protect the health of the population and the perfect



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ethical performance of Medicine, as expressed by law. Therefore, all CFM regulations in relation to ethical matters, especially regarding medical advertising, remain valid, with an express basis, and endorsed by the Judiciary (CFM, 2019).

As explained throughout this article, doctors must base their conduct on the rules that regulate their profession, refraining from carrying out practices prohibited by legal documents. Therefore, if the aforementioned prohibitions are violated, an investigation may be initiated to investigate the fact, which may be initiated ex officio or through a written or verbal complaint, with the professional being called to provide clarifications before the Medical Council to which he/she is linked. In this case, a request may be made for a Conduct Adjustment Term to be signed or an administrative proceeding may be initiated against the professional, which may culminate in the application of the sanctions provided for in the rules, including the revocation of the professional registration due to of repeated conduct.

In the judicial, civil and criminal spheres, undue publicity (propaganda) by doctors who promise cures, results, etc., can lead to their liability, with the consequent application of penalties and the recognition of responsibility and duty to compensate in cases of failure in the Medical procedures.

Therefore, the violation of legal norms relating to professional advertising, in its civil, criminal, administrative-disciplinary and professional ethical configuration, has the following legal consequences: the obligation to repair civil, material and moral damage, a sanction applied by the judge of law ; criminal sanction with prison sentences and fines applied by the criminal judge; the administrative disciplinary sanction applied by the competent authority; the ethical-disciplinary sanction applied by the competent regional medical council with recourse to the Federal Council of Medicine. After considering the regulations on medical advertising, the practices for using social networks by doctors in accordance with medical ethics and the Law will be outlined.

### 2.4 The possibility of carrying out medical advertising on social networks within legal and ethical limits

The global computer network is one of the most agile means of mass communication with the capacity to disseminate information on a large scale. Due to the ease and wide access to*Internet*, any individual can create a website and make available the



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most varied types of information to anyone, including in real time, through videos, live broadcasts (*lives)*, etc. In this way, information, nowadays, is fundamental for any professional activity, including for the performance of doctors' work, as the global computer network is also changing the way health information is exchanged. However, as already demonstrated in this research, there are limits to this information being propaganda by medical professionals.

As mentioned in this article, advertising related to the practice of Medicine integrates the concept of professional freedom, guaranteed within the legal terms and limits and those established by the rules published by the Medical Councils, as provided for in art. 5th, XIII, of the Federal Constitution.

Therefore, the doctor has the right to advertise his professional qualifications, as long as he observes the legal and deontological dictates that govern his profession, which reflect permissive and prohibitive norms, which limit advertising in its form, content and purpose, because the medical activity can never be commodified.

Flamínio Fávero, in his work Notions of Medical Deontology and Professional Medicine, declares that the doctor has, naturally, the right to advertise, but must be sober, measured, modest, modest in these claims, whether in titles, specialty, or dimensions, whether in the form, in the promises, or in the place where the advertisement is placed, always remembering that it is the representative of an extremely dignified, honest and respectable profession (FAVERO, nd, p. 162).

In this way, medical communication and advertising must be socially responsible, transmitting accurate and ethical information, as society expects medical professionals to express honest communication and not the interest in conquering the market through media strategies and, by improving the quality of medical advertising, within ethical standards, medical professionals will become stronger and respected by society (CFM, 2019).

Now, there is no doubt that the dissemination of new diagnostic and therapeutic techniques, new medical procedures, new treatments for illnesses to patients and the population in general, is one of the most important aspects of medical propaganda, as it can and should have an effect educational for those who receive the information, always being positive advertising and not merely promotional from the advertiser. For this to happen, it is essential that propaganda does not deviate from the truth, that is, only what is scientifically correct and accepted as good medical practice must be disclosed (CFM, 2019). For the doctor, the



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Advertising can be an instrument for professionals to become known by society, as, following the profession's regulations, they can make themselves known and offer their services to the community and potential patients.

In this way, considering that the information conveyed about health, medical procedures, new techniques, new treatments for illnesses, among other services, can guarantee the improvement of the health of individuals or even cause harm to those, professionals who disseminate information on the global network of computers, especially on social networks, has the duty to convey true, quality content, as well as following the regulations applied to the profession, respecting medical confidentiality, patient privacy and image, etc.

Medical information published on websites*online*, as well as on social networks, must be strictly educational and with the aim of providing clarifications to society. Doctors, therefore, are obliged to follow legal regulations regarding medical advertising.

Sanctions may be applied to the professional by the Medical Council if the doctor uses social networks to carry out self-promotion, seeking to attract clientele, if he engages in unfair competition, advertising, for example, promotions worth consultations and procedures, claims exclusivity of diagnostic or therapeutic methods, advertise a certain product, equipment or medicine, in exchange for an economic advantage offered by companies or the pharmaceutical industry, encourage sensationalism, promising cures for diseases for which medicine does not yet have the resources, publicize methods, experimental or alternative means and practices that do not have scientific recognition, expose the patient through photographs, videos or the famous “before and after”.

Given all these restrictions, the question arises: is it possible for doctors to advertise on social media? The answer is clearly affirmative. Now, as stated above, the doctor, as a professional, has the right to disclose information to society, as long as he does so within legal and ethical dictates.

Therefore, for medical advertising to be carried out, ethical principles must be preserved, respected and complied with, and the doctor must disseminate ideas and information with discretion, truth, care and respect for the patient and their rights. Professionals cannot commercialize medical activity. He must, however, carry out propaganda with the aim of following the bioethical principle of beneficence. Therefore, medical advertising can be carried out as long as there is no excess, no sensationalism, no



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self-promotion, there is no commercialization of the medical act, there is no commodification of medicine. Provided that, as already mentioned extensively in this research, ethical and legal principles are observed with the aim of clarifying, elucidating and educating the community.

The doctor must inform the population about new developments in Medicine, but this dissemination cannot have the nature of self-promotion or commodification of medical activity.

The medical professional may give an interview on television and radio, with the aim of providing information to society with public utility information and may publish, including on his social media page, his full name, his specialty, indicating his registration number. specialization qualification (RQE) and CRM number accompanied in the federation unit where you are registered. However, it is prohibited to provide the office's telephone number or address.

Doctors cannot use the media and social networks to promote methods and treatments that are not scientifically recognized, such as the miraculous serum to treat Covid-19, for example.

Doctors are prohibited from publishing a photo during the medical procedure reporting what will be performed or what they have just performed, with identifiable people such as celebrities, linking their name or that of the clinic, as such an attitude constitutes self-promotion. It is also prohibited to display a photo of the patient to publicize before and after techniques, as the act is considered a breach of professional secrecy, self-promotion, unfair competition and promise of results. Photos, videos and images of medical procedures can only be presented at scientific meetings (congresses) and after obtaining the patient's consent. A doctor duly registered with the Regional Council of Medicine is able to practice his profession in any medical field, however, it is prohibited to advertise in the media and social networks the exercise of more than two specialties, and the enumeration of diseases, organs or systems covered in the specialization.

Likewise, doctors who do not have a specialist title in a certain area cannot advertise specialties in their advertisements that they do not have. Prices, payment methods, discounts cannot be disclosed as a way of establishing a difference in the services provided in relation to other medical professionals. The disclosure of prices and installments cannot be used as a way of attracting customers, because it constitutes unfair competition and can express the commodification of Medicine.

Comments about the brand of products and treatments must be avoided, and medical professionals cannot participate in advertising and commercial advertisements of any nature,



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especially products, equipment or medicines in exchange for economic advantages offered by companies or the pharmaceutical industry. On social media, as already mentioned, doctors are prohibited from exposing their patients, however, professionals can use drawings, animations, dolls, infinite digital images that are not patient-related to illustrate techniques and procedures, for example.

In this sense of understanding, the publication of *selfies* of the professional and the professional accompanied by their patients, as well as the use of "reposting" of photos and recurring compliments published by patients on social networks is prohibited, as it constitutes self-promotion and attracting clientele by the doctor, two behaviors that go in accordance with legal and ethical regulations on the subject.

Therefore, doctors will be allowed to publish information, interviews, videos and posts about articles on medical subjects on social networks, using short texts accompanied by illustrative images, always with educational purposes, publicizing courses and updates carried out, as long as they are related to specialties. or areas of activity, always with the requirements established by the Medical Councils and in compliance with the legal and ethical standards that govern the profession. It is recommended that the doctor separates the professional profile from the personal one on social networks, so that the rules that govern the profession are followed.

## 3 Final considerations

Today's society is considered an information society, essentially computer and communicational. Due to the emergence of new technologies, there is a time of intense exchange of information on the most varied subjects between individuals, mainly through the world wide web and this trend encompasses all professionals who are part of the community.

The relationship between doctor and patient also follows this technological and informational evolution. Therefore, when exercising their profession and carrying out medical advertising, it is essential that the doctor is aware of ethical regulations, as well as the legal dictates that govern the profession must be obeyed, so that deontological, bioethical and legal principles are preserved, such as the scope of always carrying out the practice of Medicine in a healthy, current, ethical way and compatible with digital evolution and modern times. The medical professional must always base his actions on existing regulations, being able to publicize his achievements in an informative, educational and enlightening way, having the



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awareness that the public interest is paramount and whenever this is achieved by an individual act there will be the corresponding sanction by the State or by those who have the competence to do so, as is the case of Professional Councils, thus not allowing sensationalism in the doctor's actions. , self-promotion and unfair competition.

All advertising and advertising carried out by the doctor must be based on quality information for the general public, disseminated with commitment, sobriety, veracity and clarity, so that the professional can place himself in the competitive market in an appropriate manner, without separating himself from the main objective of medicine: human health and life.

Therefore, by carrying out their activities within the established legal and ethical limits, the doctor fulfills his role as an important professional in the community, preserving and caring for Medicine and society in general, with advertising on social networks being a fully possible reality.

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