

# A STUDY ON THE IMPROVEMENT OF RECENT ON-LINE MEDICAL ADVERTISEMENT

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## ABSTRACT

The recent medical advertisement format is gradually expanding online as well as offline. In addition, after the Supreme Court ruling that the pre-censorship of medical advertisement was unconstitutional last year, medical advertisement by on-line are continuously increasing, and medical consumers are expected to suffer from false advertising. Medical advertisements of medical institutions can provide accurate and correct information to medical consumers to make the choice of medical consumers wisely, and there is a net function of improving the quality of medical services through healthy competition among medical institutions. However, the increase in medical advertising has the dysfunctions that can cause infringement of consumer choice right and unfair and excessive competition due to the increase of medical service price, increase of advertising cost, damage of consumers due to false or exaggerated advertisement. Since medical care is closely related to the lives of the people, it requires stronger ethics, compliance and publicity than general advertising. And it is urgent to take measures to minimize the damage of the increasing number of on-line medical advertisements. The purpose of this study is to investigate the status of medical advertisements and compare the regulations of foreign countries with the on-line medical advertisements among the medical advertisements.

**Keywords:** *Health Policy, On-line Medical Advertisement, Medical Institutions, On-line Medical, On-line Advertisement*

## 1. INTRODUCTION

Recently, medical advertising is become larger through the online as well as offline. The ultimate goal of advertising is to provide potential customers, including current customers, with information about their products and persuade them to take a friendly attitude, ultimately leading to the purchase of their products. In addition, the advertisement has a strategy to maximize the profit of the company by enhancing the corporate image through the non-face-to-face expression to product or service and stimulating the desire of the customer[1]. In addition, after the Supreme Court ruling that the pre-censorship of medical advertisement was unconstitutional last year, medical advertisement by on-line are continuously

increasing[2]. Medical consumers are expected to suffer from false advertising. Medical advertisements of medical institutions can provide accurate and correct information to medical consumers to make the choice of medical consumers wisely, and there is a net function of improving the quality of medical services through healthy competition among medical institutions. However, the increase in medical advertising has the dysfunctions that can cause infringement of consumer choice right and unfair and excessive competition due to the increase of medical service price, increase of advertising cost, damage of consumers due to false or exaggerated advertisement. Since medical care is closely related to the lives of the people, it requires stronger ethics, compliance and publicity than general advertising.

And it is urgent to take measures to minimize the damage of the increasing number of on-line medical advertisements. The purpose of this study is to investigate the status of medical advertisements and compare the regulations of foreign countries with the on-line medical advertisements among the medical advertisements.

## 2. THEORETICAL BACKGROUND

### 2.1 Profitability

Medical advertising is a good way to realize the profitability pursued by medical service providers in terms of attracting them to eventually conclude medical contracts. The judicial precedent is said to indicate the intent to deny the profit pursuit characteristic[3]. Therefore, as in other market areas, it should be considered that some competition for medical services for patients should be allowed as long as they do not violate the basic order of the market[4].

However, if the medical advertisement emphasizes profitability, the medical service provider and the medical consumer are also damaged as a result of exaggerated advertisement or defamation advertisement of other medical institutions in order to maximize attractiveness of medical consumers. Also advertisements are often posted on public transportation sites such as subways and bus stops, which can lead to damage to young people and other people who are still poor in judgment. Due to concerns about these dysfunctions, the Medical Law allows medical advertisements in principle, but also makes specific sanctions through individual clauses. In addition, efforts are made to reduce the problems caused by over-hyped advertisements, but it does not have enough effect due to the increase of illegal advertising such as posting advertisement with different contents or photographs.

### 2.2 Typers of Internet Medical Advertisers[5]

#### 2.2.1 Internet Content Provider : CP

It can be said that they produce and provide contents directly through Internet. It can be called 'information provider'.

#### 2.2.2 Internet Content Host : ICH

It is the person who mediates the information(the information provided by the information provider) of the other person. It may be called 'information mediator' or 'information mediation service provider'. For example, here are various portal sites (Naver, Daum, Nate, etc.) and search engines (such as Google). In other words, it means a person who mediates the distribution so that the user can use or provide the information.

#### 2.2.3 Internet Service Provider :ISP

It means a person who provides a service (Internet carriage service) so as to access information provided by an information provider, rather than

mediating information of another person (information provided by the information provider). It may be called an 'Internet access service provider' or an 'information communication network access service provider'. Today, operators such as SK Broadband and KT Olleh Internet service providers which provide broadband service companies can be example.

### 2.3 Concept of On-line Medical Advertising

As shown in the below table, on-line medical advertisements are being refreshed and subdivided by field of advertisement such as internet portal. The definition of medical advertisement is not prescribed in the medical law, and definition of on-line medical advertisement is not easy. However, as shown in the below table, the form of medical advertisement can be seen as an advertisement using On-line medical communication such as internet, On-line medical advertisement rather than Off-line. Therefore, if we define the On-line medical advertising, it can be defined as "It guarantees citizens' right to health and knowing about health care and the right of self-determination of good quality health care service should be guaranteed and this On-line medical advertising utilizes the wire and wireless information communication technology".

Table 1 : Types of Medical Advertisements[6]

Division		Contents
On-line	Keyword	CPC (weighted formulation), CPM (quantitative formulation)
On-line	Banner	Portal site, Cafe, Partners
On-line	Virile	Blog, Cafe, Jisik-In, SNS, Twitter
Off-line	Public	Subway, Taxi, Bus
Off-line	Magazine	Newspapers, Magazines, Catalogs, etc.

### 2.4 Characteristics of On-line Medical Service

#### Public Interest

As medical advertising is intended to conclude medical contracts concurrently with general product advertisements unlike general product advertisements, medical advertisements serve as a means of providing information on medical services in terms of promoting medical services purely. Through this, it is possible to realize the public interest to protect [7]. Medical advertisements

provide information about health and medical care, which enables medical consumers to use health care rationally and effectively respond to their own health problems, thereby exercising health education effects. In general, advertising is an activity that notifies information about a product or service through a medium, and it has the function that provides information about a product or service to a consumer, thereby inducing a purchase to the consumer [8]. Therefore, from the standpoint of medical consumers, medical advertisements are not limited to simply informing about medical institutions to medical consumers who lack expertise in medical care, but also provide information on medical technology. In other words, even if there is only a reference to the inconvenience of the patient's body, the medical advertisement will provide information that informs that such inconvenience can be solved through aggressive treatment rather than simply enduring it. As a broad sense, it can fulfill the patient's right to know, and ultimately becomes an opportunity to guarantee the patient's right to self-determination. Therefore, the following re-check the public interest of medical advertising through the reviewing the Constitutional status and Civil law status. And it will be used as a review criterion for the medical advertisement provision under the medical law.

#### **Profitability**

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However, if the medical advertisement emphasizes profitability, the medical service provider and the medical consumer are also damaged as a result of exaggerated advertisement or defamation advertisement of other medical institutions in order to maximize attractiveness of medical consumers. Also advertisements are often posted on public transportation sites such as subways and bus stops, which can lead to damage to young people and other people who are still poor in judgment. Due to concerns about these dysfunctions, the Medical Law allows medical advertisements in principle, but also makes specific sanctions through individual clauses. In addition, efforts are made to reduce the problems caused by over-hyped

advertisements, but it does not have enough effect due to the increase of illegal advertising such as posting advertisement with different contents or photographs.

### **Types of On-line Medical Advertising[11]**

#### **Website Advertising**

A Web site is a collection of information stored on a Web server so that users can be provided it whenever they need it. It is a gateway to the Internet and is simply called a site, and it is usually composed of homepage addresses. These advertisements which using the website can be divided into its contents such as brochureware that in the form of direct introduction of companies or products, or the show biz, which encourages the audience to visit again by including the entertainment contents or specific information contents that can attract the users, and utilitarian, which includes content such as recruitment of prospective subscribers, acceptance of customer complaints, and promotional campaigns according to a specific marketing strategy.

However, in medical advertising, the classification by type is more effective than contents. Therefore, according to the format, it seems to be realistic to divide the advertisement of the website into homepage, blog, cafe and mini-home pages such as cyworld.

#### **Display Advertising**

Following is the most classical form of advertisement. The advertising automatically pops up on the website regardless of the intention of the consumer, but if consumer feels interesting about this, they will click, then automatically connected to the website which is targeted advertising. These advertisement type can be divided into static banner, animated banner, and interactive banner etc.

#### **E-mail Advertising**

It means that the form of sending advertising by e-mail to e-mail accounts which collected by various reasons such as a list of secured customers etc. under the condition of using e-mail by many internet users, it can be effective and advertising means, and the cost of making and shipping is not much compared to other internet advertisements. Email advertising is largely divided into spam, opt-in mail, and opt-out mail.

If spam is a mass mailing without bulk mail, the opt-in mail is only sent to specific recipients who have agreed to receive the mail, whereas the opt-out mail is sent at random in the same manner as spam

mail, however, it serves the function that receiver can unsubscribe.

#### Search Advertising

A search advertising refers to a method of advertising through an Internet search site, that is, a paid advertisement service in which a related site is exposed at the top of a page when an Internet user searches for a specific word in the search window. Internet users are able to easily access the information they want, so from the standpoint of a company it can be a good way to meet potential customers who are interested in their products or services.

There are two types of advertising methods: Cost Per Mill and Cost Per Click. As search advertising getting evolved, the cross-media advertising which proceed the branding and search advertising along with other media such as television through the keyword are becoming a new trend. And by adding more intelligent features, it helping to maximize the investment earnings rate of advertising effectiveness.

#### Types of On-line Medical Advertisers[12]

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### 3. STATUS OF ON-LINE MEDICAL ADVERTISEMENT

#### 3.1 Status of On-line Medical Advertisement

Looking at the advertising expenditure about recent advertising industry, Pharmaceuticals and medical advertising accounted for a total of KRW 400 billion, ranking sixth in the overall industry, In particular, according to the Research-Ad data, pharmaceuticals and medical advertisements ranked first among all advertisements based on the number of on-line advertisements. Also, based on the On-line advertising costs, the on-line advertising expenditure in the pharmaceutical and medical advertising sector was 4.27 billion won, which is one step higher than last month and ranked fifth in total on-line advertising.

Table 2: On-line Advertising Expenditure by Category[13]

Rank	Category	Change	9	10	Rate of change
1	Computer and Information Communication	-	107.5	111.1	3%
2	Service	-	77.4	98.4	27%
3	Finance, Insurance & Securities	-	70.2	69.2	-1%
4	Circulation	-	65.2	57.7	-12%
5	Pharmaceutical and Medical	▲1	42.7	44.0	3%
6	Government offices and Organizations	▲1	28.5	41.7	46%
7	Fashion Clothing /	▲2	26.3	36.2	38%
8	Cosmetics & Healthcare Supplies	▼3	45.6	32.1	-30%
9	Household electronics	N	20.9	28.8	38%
10	Education and Welfare	▼2	26.6	19.4	-27%
Total			511.0	538.6	5%

(Unit : Billion KRW)

Thus medical advertising is gradually being expanded. In particular, in December 2015, the Constitutional Court made an unconstitutional decision on medical advertising preliminary review. Therefore, since 2007, the Ministry of Health and Welfare commissioned the preliminary deliberations made by medical associations such as

the Korean Medical Association and the Korean Oriental Medicine Association, which were converted into self-deliberation according to the above unconstitutional decision[14]. As a result, the number of false and exaggerated advertisements for medical advertising has increased recently. According to the Consumer Civic Association from February to April 2016, including Internet, social network service (SNS) and mobile medical advertisement etc. 343 cases were analyzed, and the most illegal medical advertisements that mislead consumers were 72.9% of 343 cases.

In fact, it is a violation of the prohibition of medical advertisement in the medical law to post treatment experiences of patients without restriction procedures such as login in open space on the internet. As a result of investigation of these violations, 174 (26.5%) medical institutions violated the medical law by advertising in the method of posting the patients' medical treatment experiences on the homepage, cafe.

Especially at the plastic surgery, among the 427 establishments 140(32.8%) breached medical laws, and the dermatology, among the 184 establishments 22(12%) breached, also at the obesity clinics, among the 46 establishments 12(26.1%) breached medical laws.[15]

### 3.2 Status of Foreign On-line Medical Advertising

#### America

In the United States, until the late 1970s, the American Medical Association (AMA) and the American Hospital Association (AHA) banned medical advertising for each member through their internal regulations. However, in 1982, following the Federal Trade Commission(FTC)'s ruling in a federal Supreme Court ruled that medical advertising could be treated like any other commercial business and that antitrust laws could be applied to commercial advertisements [16]. As a result, the United States regulates medical advertising through the Federal Trade Commission Act, the Lanham Act, Trademark Registration Law, and Copyright Laws, and prohibits unfair trade practices such as false and exaggerated advertising. However, there are no restrictions on advertising media such as on-line Internet. [17]

#### Japan

Late 1999, Japan change its trend by expanding the permissible range of advertisement. Before the amendment of the Fifth Medical Law in 2007, the details of the advertisement were listed individually, but the Fifth Amendment Act was

changed to a comprehensive regulation regulated by a group of certain qualities. However, the Japanese medical law has such a comprehensive regulation system, but the regulation of advertisement is severe because the basic regulation system is the positive system [18][19]. On the other hand, the Japanese Medical Law is characterized by the fact that there is no specific regulation for advertising on broadcast media as well as outdoor advertisement.

#### Germany

In Germany, the legal regulations of advertising are defined by the Unfair Competition Prevention Act (UWG: Gesetz gegen den unlauteren Wettbewerb), the Treatment Advertising Act (HWG: Gesetz uber die Werbung auf dem Gebiete des Heilwesens) and the Doctoral Occupational Rules (MBO: Gesetz gegen den unlauteren Wettbewerb), etc. According to the treatment advertising law HWG, it is prohibited to promote certain expectations about treatment or not to advertise the side effects that must be mentioned when advertising medicines. In addition, the Doctors' Occupation Rule, which is a rule of best practice for doctors, has virtually legally binding. And the content of this prohibits the advertising of doctor, but it is not prohibited to disclose information through the Internet, such as on-line. [20]

#### France

France is regulating medical advertising through the Doctor Ethics Law(Code de Déontologie Médicale). In this context, in principle doctors cannot conduct commercial medical activities, and direct and indirect advertising are prohibited. However, there are some exceptions to the basic contents such as signs and telephone books. The characteristic of France is that when placing advertisements in newspapers or mass media, must obtain prior permission for advertising content from local communities. And On-line Internet advertising is much freer, but some sites regulate advertising through permission. [21]

## 4. SOLUTION FOR METHOD ON-LINE MEDICAL ADVERTISEMENT IN KOREA

Certification System of On-line Medical Advertising Companies

On-line medical advertisement is excluded from the pre-screening, it is highly likely that illegal false advertisements will increase, and as mentioned in the introduction, according to recent Consumer Citizen Group, from February to April this year,

343 cases including Internet, social network service (SNS) and mobile medical advertisement were analyzed. As a result, the number of illegal medical advertisements corresponding to 'deceptive consumers' was the highest at 72.9% of the total 343, and with the spread of indiscriminate advertisements containing false medical information, there is a growing concern that just doing the post-monitoring has limitation and the preliminary deliberation should be resurrected. Therefore, in order to prevent the damage of the on-line medical advertisement, the public service ethics consciousness of the Internet Content Provider (ICP), Internet Content Host (ICH), and Internet Service Provider (ISP) must be the basis. In order to effectively regulate this, it is necessary to build on-line advertising autonomy consultation group(a tentative name) and have to strengthen self-regulation of on-line medical advertisement and public interest of industry itself through authentication system.

#### **4.1 The Method of On-line Medical Advertisement Regulation**

So far, the pre-screening of medical advertisements have been conducted and led by the doctors' association. However, after the Constitutional Court ruling on unconstitutionality, it has become impossible for government-led pre-screening of medical advertisements. Therefore, it is already mentioned in this paper that illegal on-line false and exaggerated medical adverts are steadily increasing and damage also increasing. An active way to prevent these damages is the government-led. In other words, by organizing an illegal on-line medical advertisement monitoring group under the Ministry of Health and Welfare, set the established a special agency under the Ministry of Health and Welfare to find advertisement containing illegal elements or accept damages cases and actively respond to them on the Internet homepage. In this way, the post-regulation of on-line medical advertising should be led and strengthened by the government.

#### **4.2 Revision and Establishment of Medical Law**

The laws on fairness of the current display advertisement, when the advertiser make an illegal display advertisement and do not respond to the correction, the penalties are a fine is more than 150 million won and jail for less than two years. However, according to the current Medical Law, the penalty for illegal medical advertisements are

subject to imprisonment of up to one year or a fine of 5 million won. Therefore, there are some argue that the level of punishment have to be raised. However, there is a limit to preventing the increasing on-line medical advertising by just increasing the penalties and charges. Therefore, the author want to say that insert the part about illegal on-line medical advertisement for the reason of qualification suspension and license revocation of medical personnel into the provision and subdividing the damage of victim as light or heavy. And it is believed that a strong penalty clause should be established to ensure effectiveness. For example, depending on the number of illegal on-line medical advertisements, if advertiser was caught by three or more illegal on-line medical advertisements, license revocation can be possible.

#### **4.3 Reinforcement of Ethics**

Medical professionals need strong ethical and accountability other than general occupations in terms of protecting the lives and health of the people. Unlike other occupations, medical personnel have a different status from other occupations in that they only have to complete the required education at university and only those who have obtained the national license test qualify. At is, this job requires good faith, ethics, and public accountability are more important than other jobs. Of course, it is a matter of course that medical staff should have at least a sense of profitability[22]. For this purpose, commercial activities through medical advertisements should be guaranteed. However, for the purpose of profit only and if the focus is on the incentive of the patient without the precise explanation of the side effects of medical treatment, the advertisement is highly likely to be an unfair advertisement or exaggerated advertisement. Since patients have an asymmetric basic structure that lacks expertise in medicine compared to medical practitioners, medical advertisements aimed solely for the benefit of a medical person are highly likely to infringe the choice and choice right of the medical consumer. Therefore, medical ethics courses should be designated as essential courses at health universities and medical schools so that ethics of medical practitioners can be strengthened. In addition, the regulations of each medical treatment association (medical association, etc.) should be strengthened by establishing a regulation that can prohibit unethical activities including false and exaggerated advertisement so that there is no damage caused by medical advertisement [23].

## 5. CONCLUSION

The development of brilliant scientific civilization has made it possible to improve the quality of our lives and to live a convenient and enriching life. In the medical service environment, state-of-the-art medical systems such as EMR, PASS system, and remote robot operation utilizing IT and state-of-the-art technologies have been constructed and utilized [24]. However, despite the fact that medical treatment is applied to the most advanced medical care, medical accidents continue to increase. In particular, various medical advertisements through on-line have some merit to provide medical service information to medical consumers. However, it is a disincentive to medical consumers' wise choice. However, the general public is less informed and informed about medical care than medical specialists, and it is not easy to judge and select medical information. Also, if someone damaged by illegal medical advertising, it cannot be recovered to the original. Also, it is not possible to treat the commercial advertisement with the strong commercial nature and the medical advertisement with the strong public interest equally. Therefore, it is necessary to regulate the medical advertisement so as not to damage the publicity while guaranteeing medical advertisement[25].

Advertising is generally a means of facilitating a company to advertise its products to its customers and to encourage its customers to purchase their products. And it is a kind of important marketing technique that is directly connected with the survival of the enterprise. The ultimate goal of advertising is to provide potential customers, including current customers, with information about their products and persuade them to take a friendly attitude, ultimately leading to the purchase of their products. In addition, the advertisement has a strategy to maximize the profit of the company by enhancing the corporate image through the non-face-to-face expression to product or service and stimulating the desire of the customer. Therefore, it is expected that on-line medical advertisements will continue to increase as pre-screening of medical ads becomes impossible, and damage will increase due to illegal exaggerated and false advertising. In order to guarantee effective on-line medical advertisement, First, the on-line medical advertisement certification system should be implemented autonomously and the system should be strengthened to enable public advertisement between advertisers. Second, through the

government-led continuous follow-up monitoring the special measures of government is needed which can minimize the damage caused by illegal false and exaggerated on-line medical advertisements. Third, let's newly establishing the provision in medical law that if the advertiser caught by illegal on-line medical advertisement, license can be suspended. And then, if a regularly illegal on-line medical advertisement is caught, a strong disposition, such as a license revocation, can be effective.

On-line medical advertising should be guaranteed surely in terms of providing various information about medical services to the public. However, if an exaggerated or false advertisement adversely affects a patient's self-determination, it can be a deceptive act and obvious violation of the patient's right to self-determination. Medical care has the public characteristic which secured health and life of the people rather than profitability. In addition, if someone are injured by on-line exaggerated or false advertising, they will have a health problem that cannot be recovered. Therefore, it is important to bear in mind that strong regulatory policies can protect the lives and health of the people to prevent illegal exaggerations or false on-line medical advertisements.

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