

허위·과장 의료광고 예방을 위한 제언

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Solution for Prevention of illegal Medical Advertisement

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illegal medical advertisement have been on the rise, and false and exaggerated medical advertising are increasing the damage to medical consumers. Therefore it is urgent to take countermeasures about this. Thus, this paper try to analyzes the characteristics of general commercial and other medical advertisements and looks for alternatives that can minimize the damage caused by illegal medical advertisements and institutional weaknesses by analyzing the regulatory trends in medical advertising.

키워드: 보건정책(Health Policy), 의료광고(Medical Advertisement), 허위·과장 의료광고(illegal Medical Advertisement)

I. Introduction

In the recent medical market, competition is expected to become more and more intensified in the mainstream of medical institutions' enlargement, specialization, openness, and commercialization. The medical marketing using medical advertisements is continuously increasing as a strategy to survive in this endless competition. The advertising tends to maximize the benefit of advertisers. Therefore, it is very likely that they will highlight the benefits of medical services in medical advertising. Since medical treatment is directly linked to human

life, disadvantages such as side effects rather than the merits of medical services also must be important factors of consumers' judgment. Medical care has strong publicity because it is closely related to the health and life of the people. Therefore, unlike general advertisement emphasizing profitability, medical advertisement is strictly regulated, and medical regulations such as prohibition of medical advertisement and preliminary inspection are being legislated. Generally, if medical institutions want to medical advertise, it is required to pre-screen the suitability

of the medical advertisement to the medical group etc. However, on December 23, 2015, the Constitutional Court banned medical advertising that were not subject to prior deliberation. And to some regulations on the medical law which is violated get the penalties, the Constitutional Court ruled that is unconstitutionality because it was a prior censorship prohibited by the Constitution [1].

According to a recent Consumer Citizen Group, after analyzing the 343 cases of Internet, social network service (SNS) and mobile medical advertisements from February to April, The number of illegal medical advertisements corresponding to 'Consumer Dazzlement' was the highest at 72.9% of 343 cases. In addition, there is a growing awareness that resumption of preliminary deliberation should be resumed [2].

The purpose of this paper is to propose a solution that minimizes the damages of medical consumer due to the false and exaggerated advertising in the constant flood of medical advertisement.

II. Theoretical background

1. Concept of Medical Advertising

There is no clear definition of medical advertisement in medical law. However, in terms of the influence of the advertisement on the general public, the medical advertisement, which should generally consider the publicity, is different from the general commercial advertisement, which is generally aimed at for profit[3].

2. Characteristics of the Medical Service Environment

2.1 A Monopoly of Medical Services

Everyone should be guaranteed freedom of choice the job in the constitution. However, in order to be a medical practitioner, you must complete the prescribed education at the university, and only those who passed the national examination administered by the government can get the special right that opening a medical institution. In this regard, the market for medical services has a monopoly status given only to medical personnel. In addition, the supply of medical personnel is decided by the government in consideration of the medical service markets' environment, and the government decides how to provide medical services.

2.2 Asymmetry of Medical Information

The healthcare market has the following characteristics. First, consumers do not fully understand the information about healthcare services. Unlike general products and services, medical services are very difficult to understand to normal people, because the content is very specialized, also the terms are technical term[4]. As a result, the consumer of the medical service has a characteristic that the choice of the medical service corresponding to him is highly dependent on the information provided by the medical service provider. Since medical care is a professional field, there is a limit to general consumers' understanding of medical information completely, and there are limits to consumers making rational choice due to their limitations.

2.3 Non-Uniformity of Medical Service Quality

The quality of medical care provided by medical personnel cannot be standardized and cannot be equalized. In addition, the services provided by healthcare providers are not uniform in quality of service as standardized products, and the treatment methods and experiences experienced by each healthcare provider are not the same[5]

3. Promotional Characteristic of Medical Advertisement

Demand for health care services is highly influenced by recommendation by acquaintances such as oral reputation and friends. Therefore, it may happen that oral or reputational contents are claimed in the advertisement without objective criteria or scientific basis. In the medical services market, consumers cannot cancel or reverse the selection after a purchase decision. Once consumers receive medical treatment, they cannot return to the previous state. This means that the consumer damage caused by illegal medical advertisements can be very serious[6].

III. Solution for Prevention of illegal Medical Advertisement

1. Strengthening Method the Ethics of Medical Personnel

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[7]. 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.

2. Introduction of Certification System of Medical Advertising Companies

Medical advertising contains the most character of delegation contract among typical contracts in civil law. As a result, advertisers who are in charge of delegation work from the medical practitioner have to keep the Prudent Person Rule to doing this work. Therefore, an advertiser who has the Prudent Person Rule have to perform the delegation work with keeping the Prudent Person Rule following instructions of the medical practitioner. In general, most advertisers complete their tasks by leading all the tasks. Therefore, if the advertiser makes an excessive advertisement to enhance the effectiveness of the advertisement against the intention of the medical person, the legal liability of the Prudent Person Rule in the civil law may be a problem. For these violation of obligations, on Civil code the advertiser liable for tort liability or default of obligation. However, these tort liability or default of obligation are just only the final means of relief. Therefore, prior to this, it is necessary to take preventive measures to prevent illegal advertisements in advance. Therefore, advertisers who want to deal with medical advertisements should be obliged to take basic literacy education and ethics education beforehand, and in this regard, institutionalization of the medical advertiser certification through the government-led Ministry of Health and Welfare or the medical association, it can be an alternative to prevent the damage of medical consumers by securing the professionalism of medical advertisements.

V. Conclusion

As the medical personnel are also professionals, so it is impossible to unconditionally regulate medical advertisements because freedom of expression and profession must be guaranteed. In addition, medical advertising is a necessary marketing means to survive in the competition of survival among growing medical institutions[8]. Now, it is impossible to pre-screen medical advertising, so countermeasures are needed. In addition, there is a limitation in that the government autonomously regulates only medical organizations about medical advertisements. Therefore, government-led post regulation should be strengthened by establishing a special agency about medical advertising under the Ministry of Health and Welfare. In addition, the medical law should be strengthened by a license suspension and correction order so as not to cause damage to the public caused by illegal medical advertisements.

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