Health Canada Is Cracking The Whip On Advertising Violations

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On January 21, 2016, various hospitals, natural health product manufacturers, physicians and pharmaceutical companies found themselves specifically named by Health Canada in a published list of health product advertising complaints. Health Canada provided details of over 152 advertising infractions investigated between October, 2014 and September, 2015.

The list provides the name of the company, the product involved, and a terse description of the complaint. The list of infractions included complaints regarding:

1. Advertising of unauthorized products.
2. Advertising of unauthorized claims (off-label marketing).
3. Direct-to-consumer advertising of prescription products.

Whether this is an effort to increase transparency or a signal that Health Canada intends to treat these types of violations more seriously remains to be seen. It is also possible that the intended purpose for publishing the list is to obtain from advertisers voluntary compliance with advertising laws. In any case, the negative publicity associated with being included in the list should be the impetus to carefully review all product claims being made.

One step that may be taken is to submit all advertising materials to pre-clearance agencies. In addition, it may be prudent to implement an SOP that can assist in drafting compliant promotional materials. Elements of the SOP could include:

- Confirming that your product is approved and/or has the appropriate licenses required to be sold in Canada. While this may appear to be obvious, we have included this point because of the types of complaints included on Health Canada's list. This is particularly relevant to natural health products and foods that make health claims.
- Reciting therapeutic claims exactly as approved by regulators in current product labelling.
- Avoiding the use of adjectives in the description of your products, whether they are cosmetics, food, natural health products, medical devices or pharmaceutical products.
- Avoiding the use of comparative language, in any form unless you have unequivocal quantitative data. This means, not only avoiding references to other products, but also suggesting that the product is better than currently used therapies.
- Creating an internal advertising committee consisting of members of your regulatory group, marketing group and your inside and outside legal advisors. Alternatively, you

may consider appointing and training an individual to act as the advertising compliance officer who has access to counsel (both internal or external as needed) to review materials before they are released.