



LEGAL FLASH | HEALTH LAW

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LEGAL FRAMEWORK ON HEALTH ADVERTISING PRACTICES

It was published yesterday, and will enter into force on November 1, 2015, the Decree-Law No. 238/2015, which establishes the legal regime on health advertising practices.

This new legal framework aims to govern the advertising practices on interventions related to the protection and maintenance of health and the prevention and treatment of diseases, including offering diagnosis and any treatments or therapies, being also applicable to unconventional therapies.

Note that is expressly excluded from the scope of this regime the advertising practices of medicinal products and medical devices, which are already subject to specific regulations.

With this new legal regime appears, for the first time, in our legal system, the concept of health advertising practice. These practices consists on any commercial communication, telemarketing, telepromotion, practice, product placement, as well as, the information that has the purpose or effect of promoting among users: (i) any action and services aimed at the protection and maintenance of health and the prevention and treatment of diseases, with the aim of marketing, as well as (ii) any ideas, principles, initiatives or institutions aimed at protection or maintenance of health or the prevention and treatment of diseases.

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The legal document establishes a set of prohibited health advertising practices, but it also foresees the general principles that these practices shall comply with, namely transparency, reliability and legality, objectivity and scientific rigor, being also applicable the legal principles established in the Advertising Code which stills governs, on a subsidiary basis, health advertising practices.

This law applies to all stakeholders, whether public or private, that benefit from or participate in the conception or diffusion of a health advertising practice. The user, for purposes of this law, is also defined as any natural person acting in the context of health practices without being in the exercise of a professional activity, commercial, industrial or craft, or as receiver or receiver potential.

CONTACT

CUATRECASAS, GONÇALVES PEREIRA & ASSOCIADOS, RL

Sociedade de Advogados de Responsabilidade Limitada

LISBOA

Praça Marquês de Pombal, 2 (e 1-8º) | 1250-160 Lisboa | Portugal

Tel. (351) 21 355 3800 | Fax (351) 21 353 2362

cuatrecasasportugal@cuatrecasas.com | www.cuatrecasas.com

PORTO

Avenida da Boavista, 3265 – 5.1 | 4100-137 Porto | Portugal

Tel. (351) 22 616 6920 | Fax (351) 22 616 6949

cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

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