

March 9, 2017: Judicial Advocacy Update

Appeals court OKs salt-shaker sodium warnings at chain restaurants

An Empire State appeals court has upheld the New York City health-department rule requiring chain restaurants to warn customers about menu items exceeding the 2,300 mg daily recommended sodium limit. The decision allows the regulation that took effect in 2015 to stay in place, offering critical information to the nearly 2 million New Yorkers diagnosed with hypertension.

The Appellate Division of the Supreme Court of the State of New York ruled 5 – 0 to uphold the New York City Department of Health and Mental Hygiene rule, which requires that chain restaurants that disclose nutritional information and offer standardized menu items display a salt-shaker icon next to menu items that surpass the recommended daily limit of sodium.

The National Restaurant Association sued the department, arguing that the regulation was arbitrary and capricious, preempted by federal law on food labeling, and violated the principle of separation of powers and the First Amendment. The Appellate Division rejected each of these arguments. In the unanimous opinion, Associate Justice Ellen Gesmer opened by noting, "Salt is both an essential ingredient of our diet and, when consumed in excess, a significant health hazard."

The restaurant trade group had challenged that notion, citing methodologically suspect research published in recent years. In an amicus brief (PDF) filed with the court, the AMA, the American Heart Association (AHA) and 12 other organizations supported the widely held view that the federal government recommended daily limit on sodium is appropriate.

"There exists no medical or scientific controversy about the content of the warning," the brief says. "The 'total daily recommended limit' of sodium intake is in fact 2,300 mg, and 'high sodium intake' in fact 'can increase blood pressure and risk of heart disease and stroke.'"

The brief filed by the AMA Litigation Center and others cited data showing that excess sodium consumption poses a high risk to people older than 51 and those who have hypertension, diabetes or kidney disease. A majority of New York City's population falls into one or more of these "vulnerable groups who are in particular need of the warnings" about sodium intake.

"The sodium rule is a necessary, scientifically sound, and legally well-grounded measure, carefully designed to work within the boundaries of New York law and the federal Constitution, as well as to coordinate with the city's larger effort to reduce hypertension among its residents," the brief says.

Gesmer cited the medical organizations' brief in her decision upholding the New York City sodium-warning rule, which she said can be justified by health considerations such as the fact that Americans get nearly one-third of their sodium from restaurant meals. Twenty percent of meals in fast-food restaurants, she noted, contain more than 2,300 mg of sodium. The unanimous ruling added that the regulation does not violate the First Amendment because, while it compels commercial speech, the content of that speech "is factual, accurate and uncontroversial."

The National Restaurant Association could appeal to the state's highest court, the New York Court of Appeals.

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