

Advertising

Policies of the College of Physicians and Surgeons of Ontario (the “College”) set out expectations for the professional conduct of physicians practising in Ontario. Together with the *Practice Guide* and relevant legislation and case law, they will be used by the College and its Committees when considering physician practice or conduct.

Within policies, the terms ‘must’ and ‘advised’ are used to articulate the College’s expectations. When ‘advised’ is used, it indicates that physicians can use reasonable discretion when applying this expectation to practice.

Definitions

Advertising: any communication made in print, through electronic media or via the internet by or on behalf of a physician (i.e., by a third party) that has as its primary purpose the promotion of the physician, a service they provide, or a clinic, facility or group with which they are associated. For the purposes of this policy, advertising also includes the communication of the availability of professional services.

Testimonial: a statement endorsing the quality of a service, product or professional. A before and after photo or video that complies with the requirements of this policy will not be considered a testimonial.

Before and After Photo or Video: images of a patient taken before and after a medical service, and used to document the process or demonstrate the result.

Policy

This policy sets out expectations for physician advertising and includes both expectations that are set out in the General Regulation under the *Medicine Act, 1991*¹, and expectations that have been set by the College of Physicians and Surgeons of Ontario.

1. Physicians **must** ensure that any advertisement prepared by them, or on their behalf by a third party, complies with the expectations contained in this policy and the General Regulation under the *Medicine Act, 1991*.

Advertising Content

2. Physicians **must** only advertise in a manner which:
 - a. is readily comprehensible;

¹ O. Reg. 114/94: GENERAL under *Medicine Act, 1991*, S.O. 1991, c. 30.

- 33 b. is dignified;
34 c. is in good taste;²
35 d. is accurate and factual;
36 e. is verifiable and supported by available evidence and science, if making statistical,
37 scientific or clinical claims;
38 f. is respectful and balanced in tone; and
39 g. upholds the reputation of the profession.
40
41 3. Physicians **must not** advertise in a manner which:
42 a. is false, misleading or deceptive (for example, by the inclusion or omission of any
43 information);
44 b. is sensationalised, exaggerated, or provocative;
45 c. contains any statement that is discrediting, disparaging, or attacking in nature;
46 d. contains any statement comparing themselves to other physicians or health
47 professionals;
48 e. contains any statement that promises or suggests a better or more effective service
49 than any other physician or health professional;
50 f. contains a testimonial;
51 g. contains any reference to a specific drug, appliance or equipment, unless the drug,
52 appliance, or equipment is known by its commercial name in a generic sense³; or
53 h. offers incentives to the public to seek a medical service.⁴

54 **Before and After Photos or Videos**

- 55 4. In addition to complying with the expectations set out in provisions 2 and 3, physicians
56 **must not** use before and after photos or videos in advertising unless the photos or videos:
57 a. are for the purpose of providing accurate and educational information;
58 b. portray an outcome that can reasonably and typically be expected;
59 c. depict an actual patient who received the advertised medical service from the
60 physician associated with the advertisement;
61 d. are not manipulated;⁵
62 e. have used consistent lighting, photographic techniques, and setting; and

² Advertising that is overly commercial in tone, as opposed to being educational or informational, will be more likely to be in bad taste. For more information on what constitutes “good taste”, please see the *Advice to the Profession* document.

³ For example, “botox” is commonly used to describe a generic botulism toxin rather than the specific brand. For more information on the circumstances when it may be acceptable to reference a specific drug, appliance or equipment, please see the *Advice to the Profession* document.

⁴ This provision does not preclude physicians from discussing potential payment options and discounts with prospective patients in their office setting. For more information on what may constitute an incentive, please see the *Advice to the Profession* document.

⁵ Changes that aim to misrepresent the results of the medical service would constitute manipulation. Cropping or resizing of images for display would not be considered manipulation provided that consistent techniques are applied to any before and after images.

- 63 f. only depict a patient who has been de-identified, unless the patient has consented
64 to being identified.
65
- 66 5. Physicians **must not** use before and after photos or videos in advertising where the
67 physician or practice is paying to have that content reach the public and prospective
68 patients, who are otherwise not seeking out that information.⁶
69
- 70 6. In addition to the requirements set out in the *Personal Health Information Protection Act*,
71 *2004* regarding the collection, use and disclosure of personal health information⁷,
72 physicians **must** obtain express consent to the specific use of before and after photos or
73 videos before using them in their advertising. As part of this physicians **must**:
- 74 a. wait until after the medical service is provided to discuss and obtain consent to the
75 use of the before and after photos or videos in their advertising;
76 b. inform the patient that they can withdraw their consent to the use of before and
77 after photos and videos at any point;
78 c. inform the patient about the risks of consenting to the use of before and after
79 photos and videos (for example, that once posted on social media they may be
80 unable to be completely withdrawn);
81 d. engage in a dialogue with the patient about the use of the photos or videos,
82 regardless of whether supporting documents (such as consent forms, patient
83 education materials or pamphlets) are used;
84 e. consider how the power imbalance inherent in the physician-patient relationship
85 could cause patients to feel pressured to consent to the use of photos or videos and
86 take reasonable steps to mitigate this potential effect; and
87 f. **not** offer incentives to consent to the use of before and after photos or videos.

88 **Association with Products or Services Other than their own Medical Services**

89

- 90 7. Physicians **must not** permit their name or likeness⁸ to be used in or associated with
91 advertising:
92 a. for any commercial product or service other than their own medical services, or
93 b. for facilities where medical services are not provided by the physician.
94
- 95 8. Notwithstanding provision 7, physicians who are part of a multi disciplinary practice are
96 permitted to be associated with that practice's advertising, however they **must** ensure that
97 advertising for the practice meets the following conditions:

⁶ As opposed to displaying before and after photos or videos in places where a prospective patient may seek them out. For example, before and after photos and videos can be displayed on a physicians website, but cannot be used in print advertisements in magazines or newspapers, as this would constitute content being "pushed out" to the public. For more information on the use of before and after photos or videos, please see the *Advice to the Profession* document.

⁷ *Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A.*

⁸ For example, a representation, picture or image of the physician.

- 98 a. the advertisement does not provide or appear to provide any physician's
99 endorsement of services at the practice not provided by the physician; and
100 b. the advertisement does not state or imply that a physician provides all of the
101 services offered at the practice, or that a physician provides any services that they
102 do not in fact provide.

103

104 **Directing and Targeting Prospective Patients**

105 9. Physicians **must not** participate in an organized or co-ordinated effort in which another
106 person directs someone to a particular physician for medical services.⁹

107

108 10. Physicians **must not** proactively target and contact, or attempt to contact, any person
109 known to need medical services to solicit them to use their medical services.¹⁰

110

111 **Use of Title**

112 11. In any communication that advertises, promotes or relates to the provision of medical
113 services, physicians **must** only reference titles, designations or medical specialties in
114 accordance with the General Regulation under the *Medicine Act, 1991*.¹¹

115

⁹ This does not preclude physicians from undertaking a referral or transfer of a patient's sample, in good faith and in compliance with the conflict of interest provisions in Part IV of O. Reg. 114/94: GENERAL under *Medicine Act, 1991*, S.O. 1991, c. 30. For further information please see the *Advice to the Profession* document.

¹⁰ This does not preclude physicians from contacting patients who have been referred to them, reminding a person who has made an appointment of the appointment or from communicating with regular patients to inform them of health maintenance procedures due to be carried out, health issues, preventative medicine and recent developments in medicine, or of a possible benefit from a change in therapy.

¹¹ O. Reg. 114/94: GENERAL under *Medicine Act, 1991*, S.O. 1991, c. 30. For more information on how a physician can refer to themselves in advertising please see the *Advice to the Profession* document.