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Advertising

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

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

9

Definitions

10

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

16

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

20

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

23

Policy

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

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

30

Advertising Content

31 2. Physicians **must** only advertise in a manner which:
32 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 physician's 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

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.

Advice to the Profession: Advertising

Advice to the Profession companion documents are intended to provide physicians with additional information and general advice in order to support their understanding and implementation of the expectations set out in policies. They may also identify some additional best practices regarding specific practice issues.

7 Advertising is used by physicians to attract patients to their practice, or to help inform patients about
8 the services, products or treatments they offer. Currently the General Regulation under the *Medicine*
9 *Act, 1991*¹ (the Regulation) sets out physicians' legal obligations when advertising.

10 The *Advertising* policy aims to help provide clarity around these rules and set out appropriate
11 professional expectations where the rules of the Regulation are ambiguous or open to interpretation.
12 This will assist physicians in advertising their services effectively, while assuring such advertising is
13 appropriate and in the best interests of the public. Importantly, the policy captures *both* physicians'
14 legal obligations as set out the Regulation as well as additional expectations of the College. This is to
15 assist physicians in understanding their obligations, by having all expectations contained in one
16 document.

17 This companion Advice document provides further guidance around how the expectations in the
18 Regulation and policy can be met.

19 *What is considered advertising?*

20 As the policy outlines, advertising means any communication that has as its primary purpose the
21 promotion of a physician, or a clinic, facility or group with which the physician is associated. This can be
22 both paid or unpaid and includes:

- print ads in newspapers, magazines, and brochures;
 - newsletters and mail outs;
 - business cards and stationery;
 - logos and signage;
 - TV or radio ads;
 - websites;
 - blogs and social media posts (e.g., Facebook, Twitter, Instagram);
 - posters and billboards; and
 - other information related to the physician's practice, regardless of the form or the manner of distribution

35 Under the Regulation, posters or pamphlets displayed in a physician's office or clinic waiting area are
36 also considered to be advertising.

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

37

38 ***What is not considered advertising?***

39 While the term “advertising” covers a wide range of materials or activities, there are tools that
40 physicians may use to inform patients that would not be considered “advertising” under the Regulation.
41 Such tools would include materials that physicians use to inform patients about procedures in a clinical
42 setting, for example, showing a patient images or pamphlets when discussing treatment with them
43 during an appointment.

44 Fundraising efforts on behalf of a foundation or an organization are not generally considered
45 advertising, as the primary purpose is to raise funds and not to attract patients to a particular physician
46 or clinic. That said, there may be instances where the nature of the content is such that it is subject to
47 the Regulation and so the requirements set out there and captured in the policy would apply. It will be
48 important that physicians who choose to be associated with such campaigns use their professional
49 judgement to determine whether it would be appropriate, based on the specific circumstances and
50 content of the campaign.

51 ***What kind of advertising content would not be in “good taste”?***

52 The College’s Inquiries, Complaints and Reports Committee (ICRC), has in the past found advertising to
53 be “less tasteful” when done for primarily commercial purposes. Advertising that is overly commercial in
54 tone, as opposed to being educational or informational, is more likely to be in bad taste. The setting and
55 size of the advertisement may also inform whether something is in good taste or not. For example,
56 content that may be considered acceptable on a clinic’s website, could be in bad taste if displayed on a
57 billboard. Advertising content that is displayed for “shock value” may also be in bad taste. Careful
58 consideration will need to be undertaken when using images that depict devices or images of patients.

59 ***What kind of advertising content would be misleading or deceptive?***

60 Content that is false or not based in fact will be in breach of the expectations contained in the policy.
61 However, what would be considered “misleading or deceptive” is broader than this. Thinking carefully
62 about whether the wording of advertisements includes content that may lead the reader to an incorrect
63 conclusion, create a false impression, or that leaves out key information or context, will help physicians
64 meet the expectations contained in the policy.

65 ***What are the rules around testimonials on third party sites?***

66 The Regulation prohibits physicians from using testimonials in their advertising.
67 Internet sites currently exist on which patients and the public can post ratings, reviews and feedback on
68 a particular physician, practice or clinic. These can take the form of testimonials, but there is no
69 prohibition against such sites where the public are freely posting their opinions on a service.
70 Some behaviour by physicians relating to testimonials on third party sites could potentially be
71 considered a breach of the prohibition against testimonials. For example, if a physician was to direct or

72 request patients to post about their practice on such sites, or post on such sites themselves under other
73 names.

74 ***What should I do with comments on social media posts?***

75 Many physicians choose to maintain a social media presence for themselves or their practice. Social
76 media is a rapidly evolving space and is being used by physicians in a range of ways.

77 It may be that members of the public post comments on the social media accounts of physicians or their
78 practices. When considering such comments and how they should be handled, physicians will need to
79 use their professional judgement and act in compliance with the College's *Social Media – Appropriate*
80 *Use by Physicians* statement.

81 While social media comments by third parties may not on their own be considered advertising, a
82 physician taking an active role in managing social media comments could change the way such
83 comments are perceived. For example, if a physician was to delete negative comments and not positive
84 comments, this could be viewed as a breach of the Regulation and the *Advertising* policy as it relates to
85 testimonials.

86 ***When can I use the name of a specific drug, appliance or equipment in my advertising?***

87 Consistent with the intention of the Regulation, the policy notes that physicians cannot use the
88 commercial brand name of a product unless the commercial name has come to be used to describe the
89 product more generally. For example, the use of the word "botox" to describe a generic botulism toxin.
90 This is a narrow exception and would not apply when:

- 91 • the name appears in a list of brand name cosmetic surgery products; or
92 • the name appears with wording promoting the benefits of the brand name product.

93
94 For example, this exception does not permit physicians to use the term "botox" in advertising where
95 they are promoting the benefits of the brand Botox in comparison to other similar products. The
96 underlying purpose of the prohibition in the Regulation is to prevent physicians from endorsing specific
97 drugs, and whether a brand name is being used to describe the generic product or the brand name
98 product will depend on the exact wording of the advertisement.

99 Physicians can of course discuss the specific products and brands they use in conversation with
100 prospective patients. Advertising could note that a physician provides a certain type of treatment and
101 encourage interested parties to contact the physician or clinic for more information on the specific
102 brands and products used.

103 ***What kind of things are "incentives to the public to seek a medical service"?***

104 With respect to advertising, incentives mean offerings that attempt to motivate or encourage patients
105 to consider or undertake a particular procedure or treatment, and are often financial, in the form of
106 discounts or special prices. Examples include:

- 107 • time-limited prices for a service;
108 • discount coupons or gift certificates for a service;
109 • offering treatments or procedures as prizes in a contest;
110 • offering free products, vouchers or gift certificates not related to the medical service when a patient
111 books or undertakes a medical service.

112
113 The prohibition on incentives does not preclude physicians from discussing pricing options and discounts
114 with patients or prospective patients seeking more information about a procedure or treatment. For
115 example, some physicians offer discounts for patients who wish to undertake multiple procedures or
116 treatments at the same time. It would be permissible for physicians to offer such discounts within their
117 practice, but not to promote them in their advertising.

118 ***When can I use before and after photos or videos in my advertising?***

119 As stated in the policy, before and after photos or videos cannot be used where content is being
120 “pushed out” to the public. For example, advertising that is published in magazines or newspapers, tv
121 advertisements, or sponsored or promoted posts on social media that appear in the feeds of users who
122 do not follow that physician or practice on social media.

123 Physicians are permitted to use before and after photos and videos in formats where prospective
124 patients may seek them out, for example on their websites or on their social media pages generally
125 (with no paid targeting or promotion of the posts), provided of course those photos or videos comply
126 with the requirements of the policy.

127 Careful consideration will need to be given before posting photos or videos to social media, as the terms
128 of use for social media sites can change and evolve, with potentially unforeseen consequences.

129 ***What constitutes “permitting” myself to be associated with an advertisement?***

130 All advertising produced by a clinic or practice where a physician provides services, could be associated
131 with that physician. It is important that physicians maintain awareness of any advertising or promotional
132 material published or put out by an organization with which they have a direct connection, and whether
133 that advertising is in compliance with advertising obligations.

134 Permitting advertising from other businesses, for example business cards or flyers, in the office of a
135 physician’s practice could be considered to be an endorsement of the advertised service or product by
136 the physician and would not be permitted by the Regulation.

137
138 ***What constitutes “an organized or co-ordinated effort in which another person directs someone to a
139 particular physician for medical services”?***

140 The Regulation prohibits physicians from participating in a system in which someone else (e.g., a person
141 or a company), directs patients towards them for professional services.

142 This would not prohibit a physician from recommending another particular physician, practice or clinic, if
143 asked by a patient to do so, or making referrals as part of their normal course of practice.

144 Physicians offering services through group discount companies have previously been found by the ICRC
145 to be participating in a system in which another person steered patients to a physician for professional
146 services. Offering discounted prices through such sites could also be in breach of the prohibition against
147 offering incentives to the public to seek a medical service.

148

149 ***How should I refer to myself in advertising?***

150 The Regulation contains specific rules for the way physicians can refer to themselves and their areas of
151 practice in advertising. There are a number of terms that are protected and can only be used where
152 physicians have, for example, appropriate certification.

153 According to the Regulation, when a physician is referred to in any advertising, the physician's name
154 must² be followed by either:

- 155 a. the term, title, or designation that the physician may use with respect to the specialty or
156 subspecialty of the profession in which the member has been certified by the Royal College of
157 Physicians and Surgeons of Canada (RCPSC) or the College of Family Physicians of Canada (CFPC)
158 or formally recognized in writing by the CPSO, or
159 b. the title "General Practitioner."

160 Physicians can also have their designatory letters (indicating academic degrees, professional certification
161 from the RCPSC, CFPC or formal recognition from the CPSO) follow their name.

162 *Examples of Proper usage*

- 163 • Dr. Joan Clark, Family Medicine
164 • Joan Clark, MD, CCFP, Family Medicine
165 • Dr. B. Ali, MBA, General Practitioner
166 • L. Rousseau, MD, CPSO Recognized Specialist (Anesthesia)

167 Focused Practice

168 Physicians who have a focused practice, for example, a family physician with a focus on pediatrics, may
169 have completed additional training in specific practice areas but are not certified specialists in those
170 disciplines. In keeping with their professional obligations, physicians must ensure they have the suitable
171 knowledge, skills and judgment to practise in the areas that they describe. If physicians wish to describe
172 other areas of their practice, they may do so, provided physicians comply with certain requirements:

- 173 • The physician must still state their specialty or subspecialty or designation as a general
174 practitioner as explained above; and

² According to O. Reg. 114/94: GENERAL under *Medicine Act, 1991*, S.O. 1991, c. 30.

- 175 • The phrase “practising in” must precede any descriptive terms that are used.

176 This is intended to ensure consistency in advertising and promotional materials, and that descriptive
177 terms are not mistaken for formal specialization or sub-specialization.

178 *Examples of Proper usage*

- 179 • Charles Gauthier, MD, CCFP, Family Medicine, practising in pediatrics
180 • J.B. Rodrigues, MD, General Practitioner, practising in psychotherapy

181 Other Credentials

182 Physicians can also include their other credentials in their advertising, if they wish, but that information
183 cannot come before the required speciality designation and practice descriptor, if any.

184 *Example of Proper usage*

- 185 • F. Stevens, MD, General Practitioner, practising in sleep medicine, Diplomate of the American
186 Board of Sleep Medicine

187 Restricted Practice Description Terms

188 Some practice description terms are restricted. Physicians cannot use the terms ‘surgeon,’ ‘surgery,’
189 ‘plastic,’ ‘facial plastic,’ ‘oculoplastic’ and ‘ophthalmic plastic’ unless they satisfy the conditions in the
190 regulation. Specifically:

- 191 • No physician can use the title “surgery” or the term “surgeon,” or a variation or abbreviation to
192 describe their practice unless he/she is certified by the RCPSC in a surgical specialty or
193 subspecialty or formally recognized in writing by the CPSO as a surgical specialist or
194 subspecialist.
- 195 • No physician can use “plastic” to describe his or her practice unless the physician is certified by
196 the RCPSC in plastic surgery or formally recognized in writing as a plastic surgeon by the CPSO.
- 197 • No physician can use “facial plastic” to describe his or her practice unless the physician is
198 certified by the RCPSC as an otolaryngologist – head and neck surgeon or is formally recognized
199 in writing by the CPSO as an otolaryngologist – head and neck surgeon. In keeping with the
200 other requirements of the regulation, otolaryngologists – head and neck surgeons can only use
201 “facial plastic” as a practice descriptor; it can’t replace the full name of their specialty.
- 202 • No physician can use “oculoplastic” or “ophthalmic plastic” to describe his or her practice
203 unless he/she has been certified by the RCPSC as an ophthalmologist or is formally recognized
204 in writing by the CPSO as an ophthalmologist. Ophthalmologists must only use these terms as a
205 practice descriptor; they cannot use them instead of the full name of their specialty.

206 *Examples of Proper usage*

- 207 • M. Liu, MD, FRCSC, Otolaryngology-Head and Neck Surgery, practising in facial plastic surgery
208 • Bonnie Smith-Fox, MD, CCFP, Family Medicine, practising in cosmetic procedures