

August 20, 2020

College of Physicians and Surgeons of Ontario,  
80 College Street,  
Toronto, Ontario M5G 2E2

**To:** Advertising Advisory Committee

**RE:** CPSO Draft Advertising Policy

The Eye Physicians and Surgeons of Ontario (EPSO) appreciates the opportunity to provide comments on the CPSO's draft Advertising Policy. The EPSO, a section of the Ontario Medical Association, represents more than 400 ophthalmologists in the province. The EPSO's Executive is comprised of comprehensive and subspecialty members, practicing in both academic and community settings (including urban and rural centres), from across the province.

The EPSO supports the CPSO's direction to develop more concise policies that clearly state the College's expectations. Our feedback has been listed below referencing sections within the policy.

**Definitions:**

**Advertising**

**The EPSO recommends that 'promotion' be more clearly defined in the policy.**

The draft policy indicates that Advertising is communication 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. Information is included in the Advice to the Profession document ('Advisory document'), however it would be helpful to have this information in the policy or as a footnote to help avoid confusion about other instances where communication would not be considered advertising, such as materials the physician would use to inform patients about procedures in a clinical setting during an appointment, select fundraising activities, educational activities such as presentations at industry conferences, university lectures, guest speaker opportunities, etc., where the primary purpose of the communication is not to attract patients to the physician, clinic, service, etc.

**Incentives**

**The EPSO recommends that the term 'incentive' be clearly defined in the policy and includes an explanation about what constitutes an incentive.**

**Testimonials**

The Advertising Content section of the policy indicates that physicians must not advertise in a manner that contains a testimonial. **The EPSO would support the CPSO's request to the government to update its regulation (114/94 General) to permit physicians to use verifiable, unpaid, testimonials from their own patients in their advertising, following the completion of treatment.** This regulation is out of date and out of step with current communication technology available to members of the public. Prospective patients have access to many sources of information to help them select a physician, including websites that permit the posting of unedited and uncontrolled reviews about physicians. We ask the CPSO to request the government to update its regulation to permit physicians to use verifiable, unpaid, testimonials from their own patients in their advertising, following the completion of treatment.

**Before and After Photos or Videos**

The policy outlines the conditions for which Before and After photos and videos of patients can be used in advertising, including to provide accurate and educational information, and to portray an outcome that can reasonably and typically be expected (lines 57-58). To achieve these goals, it would be helpful for the CPSO to



permit the use of photos and videos of patients during the process as well. This will help to provide prospective patients with a more comprehensive and accurate depiction of the process to achieve a particular result and help to manage patient expectations. For example, a 'during' photo may show a patient result following surgery where the incision, stitches, swelling, etc. are evident, while an 'after photo' would show the patient result after healing has taken place, stitches have dissolved, the swelling has dissipated, etc. As well, many patients are interested to see intra-operative photos or videos that show what their medical procedure would look like, how it is done, etc., to gain a better understanding of the process from start to finish. The same patient consent provisions would apply to 'during' photos as apply to before and after photos and videos.

#### **Association with Products or Services**

Beginning on line 88, the policy indicates that physicians must not permit their name or likeness to be used in, or associated with, advertising (a) for any commercial product or service other than their own medical services, or (b) for facilities where medical services are not provided by the physician. With respect to (b), many physicians deliver speeches at conferences or to businesses, teach at universities, hold guest faculty positions at professional educational institutions, etc. These organizations may use a physician's name and/or image to advertise or inform the audience about the speaker, his/her credentials, the topics of discussion, etc. These activities are generally for educational purposes, and the advertising is designed to draw the public to an organization's event, rather than to draw patients to the physician's practice. We recommend that this type of advertising be permitted and clarified in the policy or the Advice to the Profession document.

Thank you for allowing the EPSO to comment on the proposed amendments to the Act. Please do not hesitate to contact us if you have any questions or would like clarification.