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VIA E-MAIL:

Re: Comments on the College of Physicians and Surgeons of Ontario *Advertising* Policy

Thank you for this opportunity to provide comments on the proposed revisions to the new draft *Advertising* policy (the *Policy*) for The College of Physicians and Surgeons of Ontario (The CPSO).

Ad Standards is the national, not-for-profit, advertising self-regulatory body created by the Canadian advertising industry. By administering the *Canadian Code of Advertising Standards* and offering advertising preclearance services, we ensure the integrity and viability of Canadian advertising for all consumers. Our experience working with all types of advertisers, including those in the natural health product, vaccine, medical device, and prescription and non-prescription drug industries, puts Ad Standards in a unique position to anticipate the questions and challenges that may arise for physicians in the course of creating compliant advertising.

We applaud the efforts of The CPSO in developing this helpful document for the medical profession. Based on our experience, we focus our comments to you on one primary area where we see potential room for improvement to align the *Policy* more closely with applicable law. Specifically, we note the allowance created in section 3(g) concerning naming specific drugs. The current definition for the term "Advertising" in the *Policy* covers communication to promote the physician, his/her services, or a clinic, facility or group with which the physician is associated, but it does not include advertising products. At the same time, section 3(g) of the *Policy* permits physicians to make reference to a specific drug in advertising if the drug is known by its commercial name in a generic sense. This exclusion opens up the possibility that a physician will create advertising for a health product that would trigger the requirements of the *Food and Drugs Act* and its corresponding regulations.

Since the advertising of health products [i.e. drugs (including natural health products) and medical devices] is regulated in Canada, any person who promotes the sale of a specific health product is subject to the legislation, including physicians. For example, one part of the legal framework for advertising health products is section C.01.044 of the *Food and Drug Regulations*, which prohibits prescription drug advertising to the general public beyond the brand name, the proper name, the common name and the price and quantity of the drug. In the context of this prohibition, it is unacceptable to make direct or indirect reference to a prescription drug's therapeutic use and/or benefits in a consumer-directed advertisement. We often see this provision come into play in the course of our preclearance work with physicians who wish to advertise about the drug products they use in the course of providing their services.

If physicians create advertising under the exclusion in section 3(g) without knowledge of the relevant legal framework, the advertisement mighty comply with the *Policy* while contravening the applicable laws and regulations. To help ensure that these advertisements comply with the relevant laws and regulations, Ad Standards suggests two different options.

Option 1 – Add an Explanatory Note:

Create a notation in the *Policy* and/or the *Advice to the Profession: Advertising (Advice)* document that reminds physicians that if they choose to create advertising under the exclusion in section 3(g), then the advertising must meet the additional requirements under the relevant laws and regulations for advertising health products. We also suggest adding a link to Health Canada's website where physicians can find more information about the legislation that governs health product advertising. Specifically, the following guidance document: *Regulation of Health Products Advertising in Canada - Overview for Physicians* (found at: https://www.canada.ca/en/health-canada/services/drugs-health-products/regulatory-requirements-advertising/policies-guidance-documents/regulation-health-product-advertising-canada-physicians.html).

Option 2 – Revise Section 3(g):

The second option is to avoid any confusion by removing the exclusion under section 3(g), so that it reads: "Physicians must not advertise in a manner which contains any reference to a specific drug, appliance, or equipment." With this option, it would still be beneficial to include a note in the *Policy* about the fact that product advertising is not captured by the *Policy* and if physicians would like to advertise specific products, they should review the relevant laws and regulations.

Botox

If the allowance under section 3(g) remains, we also recommend that the "When can I use the name of a specific drug, appliance or equipment in my advertising?" section of the *Advice* document (lines 86-102) be revised for clarity. The example, one of the exclusions under section 3(g) is "botox", which is said to "describe a generic botulism toxin." However, in the context of advertising, even that reference may still be problematic based on the provisions set out in the *Food and Drugs Act* and the *Food and Drug Regulations*, depending upon the context and content of the rest of the message. It is also difficult to know to which drug the generic term 'botox' may apply, as there are two botox brand names, i.e. Botox and Botox Cosmetic, that are authorized by Health Canada for vastly different purposes. In the context of creating advertising that is neither misleading nor deceptive, the distinction between these two types of botox products is critical and consequently, 'botox' cannot be used as a generic term. For that reason, Ad Standards suggests removing all references to botox from this section of the document.

Before and After Photos or Videos

If the allowance under section 3(g) remains, physicians should keep in mind that in the context of advertising, before and after images cannot depict health product results for 'off-label' indications. Any representations of health product performance in advertising must be limited to, and consistent with, the indications authorized by Health Canada. As such, to capture this scenario, we recommend adding under Section 4(b) of the *Policy* something to effect of, "as authorized or consistent with the Health Canada authorized indication for use."

We thank you for this opportunity to identify where, in our experience, greater clarity would be of benefit. As always, Ad Standards would be happy to engage in further discussion, should any questions arise from this submission.