

CPSO Advertising Policy Review Summary

OMA Section on Plastic Surgery Addendum Statement

This document is intended to serve as an addendum to the Joint Statement from the OMA Section on Plastic Surgery and OMA Section on Otolaryngology - Head & Neck Surgery regarding the CPSO Advertising Policy and Advice to the Profession document. This addendum highlights the viewpoints of the OMA Section on Plastic Surgery in respect to the overarching intent of the CPSO Advertising Policy as well as some specific concerns with the policy as it is currently written.

The rules and regulations for advertising by physicians in the province of Ontario are clearly documented in Part II of Regulation 114/94 under the Medicine Act, 1991. While this document is now clearly outdated, originating in an era prior to the advent of the internet and social media, our Section's larger concern has been in regard to how this document has been interpreted over the years. While the OMA Section on Plastic Surgery appreciates and supports the efforts the College of Physicians and Surgeons of Ontario (CPSO) is making in the development of this Advertising Policy and accompanying Advice to the Profession document, we remain concerned that this policy is too restrictive. We feel that the current Advertising Policy as it stands goes against the mission statement of the CPSO of "serving the people of Ontario through effective regulation of medical doctors" in that the policy does not effectively regulate what it is intending to.

Access to Information When Choosing A Physician

We would like to make it clear, our intention as a Section is not to advocate for complete deregulation of advertising by physicians in Ontario. As medical professionals, we wholeheartedly agree that physicians should be held to a standard of professionalism. We do not want to enter an age where we see an Orthopedic Surgeon on a billboard advertising a specific brand of total knee replacement or a Rheumatologist in a magazine stating that a specific biologic medication is the best treatment for psoriatic arthritis. What we disagree with, however, is restricting patient access to information. According to Section 6(1) of Regulation 114/94, "A member may communicate any factual, accurate, and verifiable information that a reasonable person would consider material in the choice of a physician." In the year 2020, we must acknowledge the fact that the 'information a reasonable person would consider material in the choice of a physician' has changed since 1991. When was the last time that you went to a restaurant without reading the reviews on Yelp®, or went to a movie without checking its ratings on Rotten Tomatoes® or Metacritic®? As physicians, we now hear from our patients time and time again that they have read about us on the internet prior to their first consultation. This is the society that we live in now, there is more information available than ever before, and that information is more readily available than ever before.

Testimonials

In fact, Ontario's physicians are also subject to these reviews. Third-party websites like RateMDs, Google, and RealSelf allow patients to post reviews of physicians that are not curated

by the physician. Much like going to a restaurant, this real-world experiential information has become an integral source of information for patients who are looking to select a physician. Patients making healthcare decisions expect to have access to the reviews and/or comments of others, and this has become an important part of the larger information gathering process. A study published by Wu et al. in the Aesthetic Surgery Journal (2017) found that patients undergoing facelift and breast augmentation valued before/after photos and patient testimonials as the most important factors when selecting a plastic surgeon. Interestingly, photos and testimonials were actually 2-3x more commonly identified as being important in picking a surgeon than either surgeon reputation, procedure price, or surgeon experience.(1) In fact, another study by Galanis et al. (2013) found that advertising was one of the least important factors for patients in choosing a plastic surgeon.(2) So if patients want this information, and it is important to them in selecting a surgeon, why is it that a physician posting a positive review (or even a Thank You card) from a happy patient on his or her website or social media would be considered a violation of the Advertising Policy? This is not misleading the reviewer if it is a factual review provided by an actual patient, and the research demonstrates that this is information that actual patients want. And while we most certainly agree that misleading patients with fake reviews and false claims posted online is inappropriate and unprofessional, this is not an advertising problem, this is an ethics violation. The Advertising Policy from the CPSO should not be designed as a catch-all safety net to regulate issues that are clearly outlined elsewhere in the CPSO mandate.

Brand Names

According to the CPSO advertising policy, a physician “must not advertise in a manner which contains any reference to a specific drug, appliance or equipment”. Again, this makes sense if we consider the fact that we don’t want to see a billboard advertising Dr. X with a claim that “Tylenol® is the best drug for arthritis pain and he/she wouldn’t recommend anything else.” It is very different when trying to “communicate factual, accurate, and verifiable information that a reasonable person would consider material in the choice of a physician.” Again, we feel that the CPSO Advertising Policy is far too broad and overreaching in its regulation.

Imagine if you wanted to buy a car, and in fact you were hoping to buy a BMW 340. You know that you have a local car dealership, but when you go to their website, they simply state that they sell cars, but they can’t tell you what cars they sell. Now as a consumer you are frustrated, and one would argue that in 2020 you would be far more likely to try and find another dealership instead of calling or visiting that dealership. This is an outlandish example, but this is precisely what the CPSO Advertising Policy is doing when it comes to healthcare in Ontario; it is making it more difficult for patients to get the information that they seek on specific medical treatments.

And while that example may seem benign enough, this goes beyond the inconvenience of patients having to call or visit physicians and the potential waste of time that can be caused by not being allowed to use brand names online. In fact, there actually is the potential for patient harm or dissatisfaction as a result of this policy. Imagine a patient sees Dr. A post a result online of an actual surgical patient treated with ‘a facelift and a laser treatment’. The patient sees this great result on a website and goes to see their local surgeon, Dr. B, requesting a facelift and laser treatment. The patient undergoes the procedure and develops hypopigmentation from the ablative CO2 laser treatment they underwent and is displeased. They contact Dr. A online and find out that the original patient result that got them interested in the procedure was an Intense

Pulsed Light (IPL) treatment and not an ablative laser treatment. By preventing physicians from using trade names of medications/drugs and medical devices, you are actually limiting patient access to “factual, accurate, and verifiable information that a reasonable person would consider material in the choice of a physician.”

This is why we are of the belief that it should be a requirement of the CPSO Advertising Policy that any physician must acknowledge the use of any specific product used in a treatment to ensure that patients are not misled. A full disclosure of all products and devices that have been used to create the outcomes shown in before / after images would provide patients with critical information that they would deem important in selecting a physician. When we prescribe an antibiotic to a patient, we do not simply tell them we are giving them an “antibiotic”, we say that we are giving them “Cephalexin” because they may be allergic or intolerant to the medication. This is important information to be aware of before carrying out a treatment. Not all lasers are created equally, and if we prohibit the use of brand names, patients will not be able to find the information they seek. Patients don’t search your website to see if you offer cryolipolysis, they search for CoolSculpting®; they don’t ask if you have a radiofrequency skin tightening device, they ask about Evolve®; they don’t enter ultrasonic liposuction into Google, they type in Vaser®. Patients having breast implants placed for cosmetic or reconstructive surgery now even want to know the specific brand and style given certain product recalls. Our patients are smart, we must respect that they know what they want, and allow them to have access to that information that they require to make informed decisions about their healthcare.

Why should the fact that Dr. [REDACTED] or Dr. [REDACTED], from the [REDACTED] at the [REDACTED], are pictured with a medical dissection stent from Ascyrus Medical® be a violation of the CPSO Advertising Policy? [REDACTED]

[REDACTED]. Why does the fact that Drs. [REDACTED], [REDACTED], [REDACTED], and [REDACTED], from the [REDACTED] at [REDACTED], have their names listed on a webpage with the names of several brands of cochlear implants and hearing aids have to be a violation of the CPSO Advertising Policy? [REDACTED]

[REDACTED] The fact is that they should not. Physicians in Ontario must be allowed to inform patients of the devices that they are using, for patient informed decision making and for patient safety. Patients have a right to know what treatments, medications and devices are available to them in the Ontario healthcare system and should be able to find this information easily. Physicians, as gatekeepers to the Ontario healthcare system, have a duty as experts and leaders to make this information readily accessible to our patients through the various media that our patients use to source information before, during, and after their direct interaction with us.

Verifiable Information

Regulation of experts holds them to a high standard. Over-regulation of experts, however, is potentially much more harmful. As the current CPSO Advertising Policy stands, it makes information from local experts more difficult to obtain. Instead of promoting patient access to “factual, accurate, and verifiable information that a reasonable person would consider material in the choice of a physician”, it is creating an information void that will invariably be filled by individuals from other regions or unregulated non-experts. Why should a patient in Ontario searching for a surgical or non-surgical treatment be forced to get that information from a healthcare provider in Miami, Colombia, or the Dominican Republic? Medical tourism is real, and as plastic surgeons we are seeing more and more patients who have travelled to the

Caribbean or South America to undergo surgical treatments. We continue to see more and more returning patients engaging the Ontario healthcare system with complications that could have been prevented if they had received care locally. While this practice cannot be prevented, we should not be promoting or forcing patients to turn to this option where they have access to some of the highest quality medical care in the province of Ontario. Additionally, there have been several criminal cases in Ontario, where patients have unknowingly gone to providers who are unlicensed as a regulated health professional in Ontario (<https://www.ctvnews.ca/health/ontario-woman-guilty-of-giving-illegal-buttock-injections-1.2184311#:~:text=An%20Ontario%20woman%20pleaded%20guilty%20to%20aggravated%20assault,on%20Monday%20after%20giving%20clients%20illegal%20buttock%20injections.>) or providing services outside of regulations set out in the Regulated Health Professions Act (<https://www.cbc.ca/news/canada/toronto/vaughan-nurse-clinic-1.4696154>). These providers have dishonestly advertised their services without being subjected to the same policies that have been in place (or are currently being proposed) that will restrict physicians from being able to provide “factual, accurate, and verifiable information” to the public. If we, as physicians, lose our voice, patients will continue to be exposed to poor quality or inaccurate information which will ultimately lead them to making ill-informed decisions about their healthcare as highlighted by the cases above.

And yet this is what the CPSO Advertising Policy stands to achieve by limiting the ability of physicians to promote their services online. The reality of the situation is that when it comes to patients searching for information online, search engine optimization is an integral tool for many physicians. If physicians are not permitted to pay to display their websites, they will be overwhelmed by non-local providers. Not only does this interfere with the business of the physician, it also unduly restricts patients by making it harder for them to find physicians who are close to them and offering the services that they are seeking. If the first several pages of results of a patients' Google search are all paid content from out-of-province or out-of-country providers, there is no way to either regulate or ensure the accuracy of information that patients in Ontario are receiving. Patients who are seeking information through a search engine do not want to have to go through hundreds or even thousands of search results just to find accurate information from a nearby physician offering the service they desire. The same is true for paid content on Facebook, Google, Instagram and other platforms. Furthermore, if you severely limit the terminology that physicians are able to use on their websites, non-regulated providers like estheticians in Medispas will become the de-facto experts because their information is the only local information that appears in an online search.

We believe the medical profession has an obligation to make people aware of medical services and advances that can improve their health and well-being. This is supported by the CPSO Professional Obligations and Human Rights Policy - Ensuring Access to Care (<https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Professional-Obligations-and-Human-Rights>). Ads are simply one method of giving patients information about physicians close to them who are offering the services they seek. Once they become aware of those physicians, they are free to research and contact all of them to discuss their needs. “Pushing out” does not extinguish the free will of patients, it enhances it. This is now common practice and the public is very familiar with it. We believe prohibiting physicians from accessing paid online services is an unnecessary and unreasonable limitation on both free speech and the right to earn a living. It is what is said that should be regulated, not the right to say it.

A Return to Paternalism in Medicine

In recent years, there has been a movement for increased patient autonomy, and ensuring that patients are provided with sufficient information to guide their medical care. We have striven, as a profession, to move away from the paternalistic approach to medicine in which we, as physicians, define what is best for a patient. Instead, the concept of shared decision-making has risen to the forefront. However, with the proposed Advertising Policy and accompanying Advice to the Profession document, the CPSO is seemingly returning to the paternalistic approach wherein the College tells patients what information they can and cannot have access to. We cannot assume that patients have no free will. Simply seeing an advertisement does not mean a patient must act on that. In fact, unlike online advertisements for commercial goods whereby a consumer can order a product with a couple of mouse clicks, patients must actually take the time to consult with a physician for a discussion about a treatment and their suitability for that procedure before they can actually make that purchase. This is a critical distinction when we discuss physician 'advertising'.

Furthermore, we need to understand and remember that there is a difference between advertising and manipulation. A physician stating that they offer a service online is not predatory or manipulative, while a physician photoshopping an image to misrepresent a surgical result is. A physician posting a comment made by an actual patient about a treatment they received is not the same as a physician's employee posting a fabricated comment online. The goal of the CPSO advertising policy should not be to suppress patient access to information, the goal should be to ensure that the information patients are receiving is "factual, accurate, and verifiable" so as to promote and ensure truth in advertising, for which federal legislation is already in existence (<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04255.html>).

Equal Regulation of All Physicians

In considering the CPSO Advertising Policy, amongst discussion with our colleagues there appears to be a sense that this policy applies only to aesthetic (cosmetic) treatments outside of the scope of the publicly funded provincial healthcare system. However, with the CPSO mission statement of "serving the people of Ontario through effective regulation of medical doctors", it is important to remember that the CPSO regulates all physicians in the province of Ontario, regardless of their subspecialty or the setting in which they practice.

As the CPSO Advertising Policy currently stands, physicians are responsible for ensuring that any time their name and likeness is used in a publication that could be considered advertising, that document must adhere to the advertising rules and regulations of the CPSO.

Why does an article [REDACTED] in which patients offer testimonials about a cutting-edge treatment in burn care serve as a violation of the advertising policy for Dr. [REDACTED] ? [REDACTED]

[REDACTED]. Similarly, why should all of the physicians who are shown or mentioned in an article [REDACTED] be cited with a violation of the advertising policy for the testimonial wherein a patient discusses how their life was saved by a novel approach to transplant medicine?

[REDACTED] And where it is clear that an article [REDACTED] from [REDACTED] serves as a source of education for patients on the importance of [REDACTED]

early recognition and treatment of stroke symptoms, the testimonials contained within are nevertheless a violation of the CPSO Advertising Policy for Dr. [REDACTED]

[REDACTED] Even the CPSO Annual Report (<https://view.joomag.com/annual-report-2018/0076106001559747788?short&>) contains a violation of the Advertising Policy on Pages 12 and 13, where a photo of Dr. S.L. is juxtaposed to a testimonial from "Ontario Doctor" promoting a product or service, the CPSO itself (page 21 of the publication provides a clear notation that the CPSO ran a \$5.9 million profit in 2018). A quick internet search revealed hundreds of examples of material promoting healthcare and providing useful information benefiting the public that would be in contravention of the proposed Advertising Policy.

We do not point these examples out because we believe that they should stand in contravention of the CPSO Advertising Policy, instead we use these as examples of how the Advertising Policy stands to over-regulate physicians in Ontario. Recently, the CPSO under Dr. Nancy Whitmore has spoken about the idea of 'right-touch regulation'. In fact, Dr. Whitmore herself is quoted on the CPSO website saying "We need to change our mindset and work to identify the regulatory force needed to achieve a desired effect. Right-touch does not mean light-touch nor does it mean heavy handed. It means achieving the right balance. Too little is ineffective; too much is a waste of effort" (<https://www.cpso.on.ca/About/Council/Council-Updates/2018/December-6-7,-2018>). The question that we ask is, how many complaints related to advertising has the CPSO received from patients or members of the public? Not complaints having to do with issues of informed consent, consent to publish photographs, and patient privacy, but true complaints from patients or members of the public about physician advertising. And we are not talking about complaints that are socially or politically motivated, such as the member of our section who received an advertising complaint from a 'de-transitioning' group opposed to gender affirming surgery, a service that is insured by the Ministry of Health, for posting educational and informative content about these procedures online. Nor are we talking about the many physicians we know who have received complaints about the content of their websites from other physicians who have been disciplined by the CPSO, creating a cycle of predatory and vexatious complaints that we are hoping to stop. As physicians and those who regulate the profession, we need to take a step back and critically examine whether any policy currently in place or being developed really serves to enhance patient care and the public's experience with physicians or does it unintentionally undermine this by restricting the public's access to "factual, accurate, and verifiable" information that will help patients to make informed decisions about their healthcare

Conclusion

The CPSO Advertising Policy needs to be revised and updated. The current policy stands to further restrict information that a reasonable person would consider important in the choice of a physician. By overregulating 'advertising', our Section is of the opinion that the CPSO is creating a potential increase in vexatious complaints at the CPSO level, increased frustration at the physician level, and increased misinformation and disinformation at the patient level. Our section would like to work with the CPSO, and also encourage input from patients and the public, to ensure that an effective new Advertising Policy is established. This Advertising Policy will set standards across new mediums and platforms, those in existence now and those yet to be developed, and we need to ensure that this policy will protect the public while still providing patients with access to the factual, accurate, and verifiable information they require to make informed decisions about their healthcare.

References

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