

Advertising: Consultation Report

Introduction

CPSO has developed a new draft [Advertising](#) policy capturing expectations for physician advertising that are contained in the [General Regulation](#) under the [Medicine Act, 1991](#), and additional expectations of CPSO. A draft *Advice to the Profession* document has also been developed to support the policy.

As part of the review process, an external consultation was undertaken from June to August 2020. Invitations to participate in the consultation were sent via email to a broad range of stakeholders, including all Ontario physicians. In addition, a general invitation to provide feedback was posted on CPSO's website and social media platforms. Feedback was collected via email, an [online discussion forum](#), and an [online survey](#).

This report summarizes only the stakeholder feedback that was received through the online survey.

Caveats

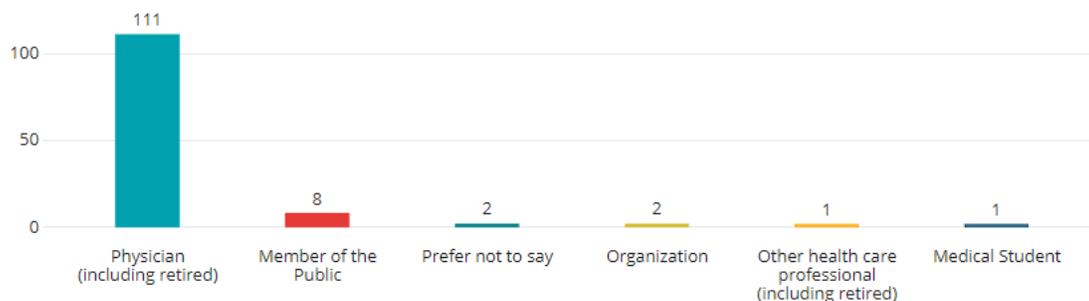
Participation in this survey was voluntary. As such, no attempt has been made to ensure that the sample of participants is representative of any sub-population.

In the interest of space, stakeholder feedback to open-ended questions has been summarized to capture key themes and ideas.

Who we heard from:

A total of 125 surveys were received in response to this consultation. The vast majority of respondents were from Ontario (94%) and were physicians (89%).

Respondent Demographics:



Organisational respondents included:

- College of Physicians and Surgeons of Alberta (CPSA)
- Kirsten Foss Coaching

The following questions were posed to all survey respondents:

Q1. The current rules for physician advertising are contained in the [General Regulation](#) under the [Medicine Act, 1991](#).

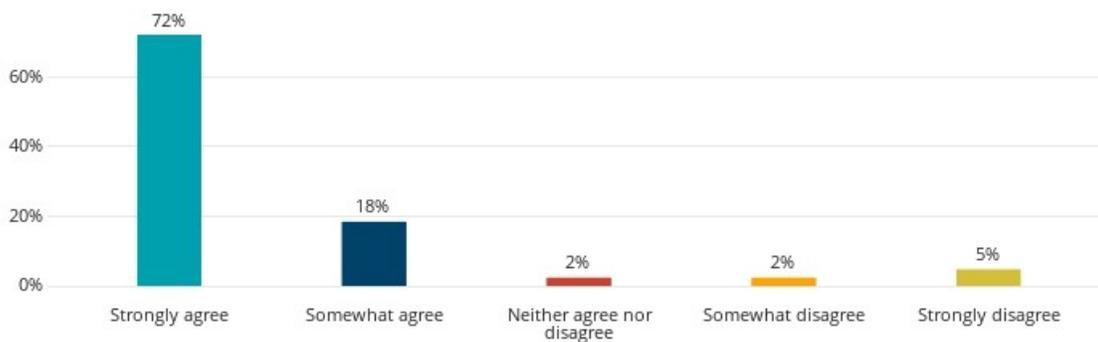
In order to ensure physicians meet their legal obligations, the new [Advertising](#) draft policy contains both expectations from the Regulation and additional expectations of CPSO.

The first section of the draft policy outlines what kind of content is appropriate and inappropriate in physician advertising.

The Regulation requires that advertising must “be readily comprehensible, dignified and in good taste.” As some of these concepts may be subjective and difficult to define, CPSO has developed further draft expectations that advertising must:

- Be accurate and factual,
- Be verifiable and supported by available evidence and science,
- Be respectful and balanced in tone, and
- Uphold the reputation of the profession.

Please indicate whether you agree or disagree that the addition of the requirements above are helpful in setting expectations for appropriate content in physician advertising. (n=125)



Q2. Please feel free to elaborate on your answer. Are there other requirements that should be added to the ones listed above? (n=31)

While the majority of respondents agreed the additional requirements were helpful, several physician respondents were concerned with the subjective nature of some of the concepts contained in the Regulation (e.g. “dignified” and “good taste”) and in the draft policy (e.g. “respectful and balanced in tone” and “uphold the standard of the profession”).

Suggestions for additional requirements for appropriate physician advertising included:

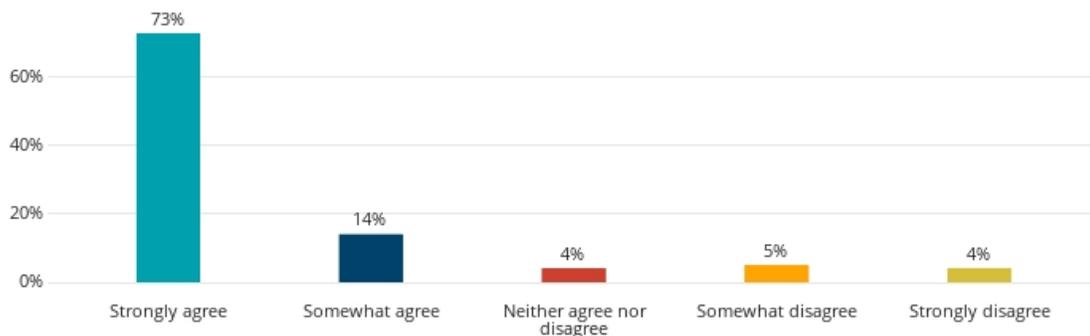
- The content should not target a specific group of individuals; and
- Any claims or information made or provided by physicians, a clinic, or a medical corporation on any social media platform should be considered advertising.

Q3. The Regulation requires that advertising must not “be false, misleading, or deceptive by the inclusion or omission of any information, contain a testimonial or any comparative or superlative statements.”

In addition to these expectations from the Regulation, CPSO has developed further draft expectations that advertising must not:

- **Be sensationalised, exaggerated, or provocative**
- **Contain any statement that is discrediting, disparaging, or attacking in nature**

Please indicate whether you agree or disagree that the addition of the requirements above are helpful in setting expectations for inappropriate content in physician advertising. (n=121)



Q4. Please feel free to elaborate on your answer. Are there other requirements that should be added to the ones listed above? (n=23)

The majority of respondents agreed the addition of these requirements are helpful in setting expectations for inappropriate content in physician advertising. Notwithstanding this:

- Some physician respondents identified concerns related to obligations set out in the Regulation, primarily the use of testimonials and the inability to counter negative patient reviews on third party websites; and
- The concepts “sensationalized,” “exaggerated,” or “provocative” are subjective and widely interpretable.

Q5. Incentives are used in all kinds of advertising to motivate or encourage people to buy a particular product or behave in a certain way. Often these incentives will be financial, in the form of discounts or special prices.

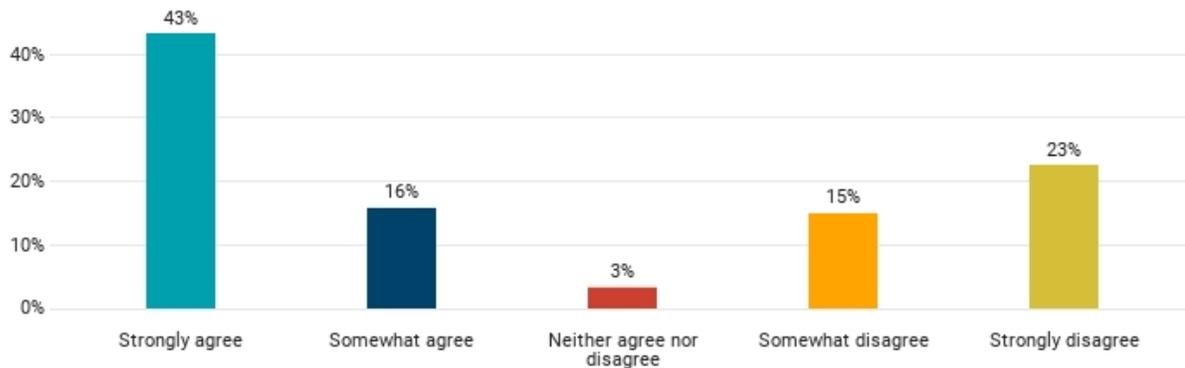
Sometimes physicians might consider using incentives in advertising which could include such things as:

- **Time limited prices for a medical service**
- **Discount coupons, gift certificates, or prizes**
- **Offering treatments or procedures as prizes in a contest**

- Offering free products, vouchers, or gift certificates not related to the medical service when a patient books or undertakes a medical service
- 2 for 1 deals
- Package deals or discounts offered for a certain number of treatments.

The draft policy prohibits the use of incentives in physician advertising (while still allowing physicians to offer discounts, special pricing, etc. as part of discussions with patients in their offices).

Please indicate the extent to which you agree or disagree with this prohibition. (n=120)



Q6. Please feel free to elaborate on your answer or touch on other issues related to incentives. (n=51)

Respondents were somewhat divided over the prohibition of using incentives in physician advertising: 59% agreed with prohibiting incentives in advertising while 38% disagreed.

Some physician respondents who disagreed felt the prohibition is restrictive and disadvantageous, particularly for those who provide uninsured services (e.g., cosmetic procedures) or work in private clinics. Concerns from these physicians revolved around the following issues:

- The paternalistic nature of prohibiting incentives in advertising erodes patient choice (i.e., patients search for final out-of-pocket costs for services prior to in-office visits);
- Hinders physicians' ability to provide services and compete with commercial enterprises who are not subject to the same restrictions (e.g., medical spas) for market share; and
- Inconsistent to prohibit incentives in advertising when the same incentives are permitted as part of discussions with patients in-office, and could lead to unfairness in the same incentives not being offered to all prospective patients (some felt this draft expectation implies physicians must work around loopholes or "under the table" to provide incentives).

Several physicians indicated physicians should be able to advertise or offer incentives for uninsured services, but incentives should not be permitted for OHIP-funded services.

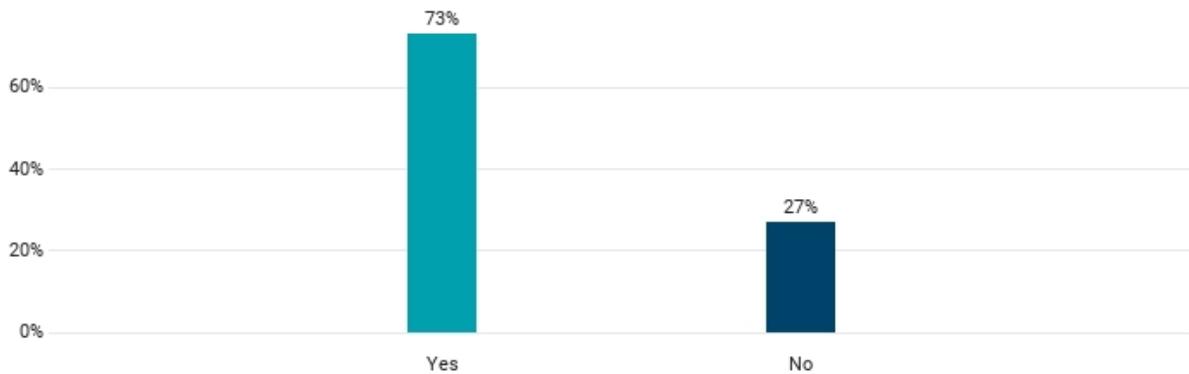
Additional comments provided related to incentives in advertising included the following:

- One physician respondent felt incentives can be tastefully done and uphold the reputation of the profession and cited instances of physicians donating services as part of a fundraising effort for hospital foundations and other non-profit health care ventures;
- A few respondents questioned if add-ons and certain services offered as incentives by in vitro fertilization (IVF) clinics and their suppliers would be permitted; and
- One organizational respondent (CPSA) suggested including communal gatherings (e.g., “Botox parties”) in the list of inducements.

Q7. Before and after photos and videos are one type of imagery often associated with medical procedures.

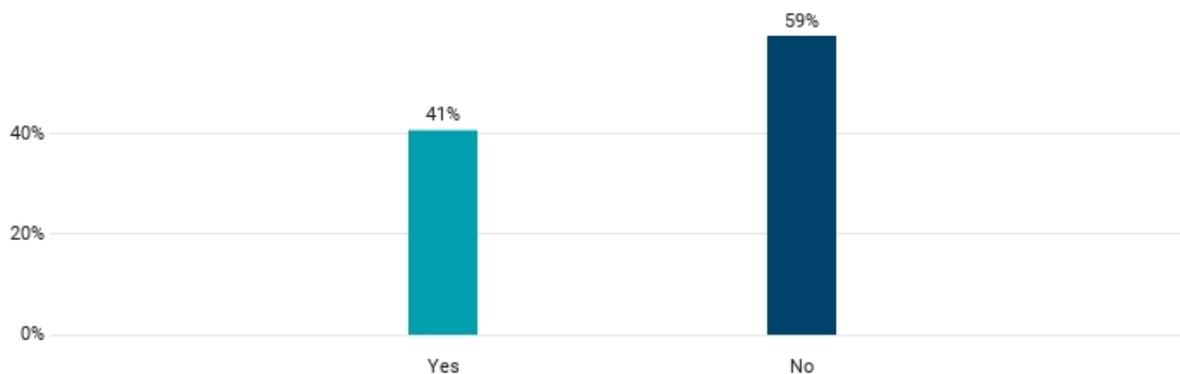
Before and after photos or videos are images of a patient taken before and after a procedure or treatment and placed side by side to demonstrate the results.

Should physicians be permitted to use before and after photos or videos in their advertising? (n=119)



The following questions were only posed to respondents who answered “No” to Q7:

Q8. Do you think that if strict limits were placed on the use of before and after photos or videos, they may be able to be appropriately used in advertising (for example, that they only depict a real patient who has achieved typical results, can only be used where the patient consents, only displayed in certain settings, etc.)? (n=32)



Q9. Why or why not? Please elaborate on your answer above or touch on other issues related to before and after photos or videos. (n=16)

The following issues were highlighted in the comments by physician respondents:

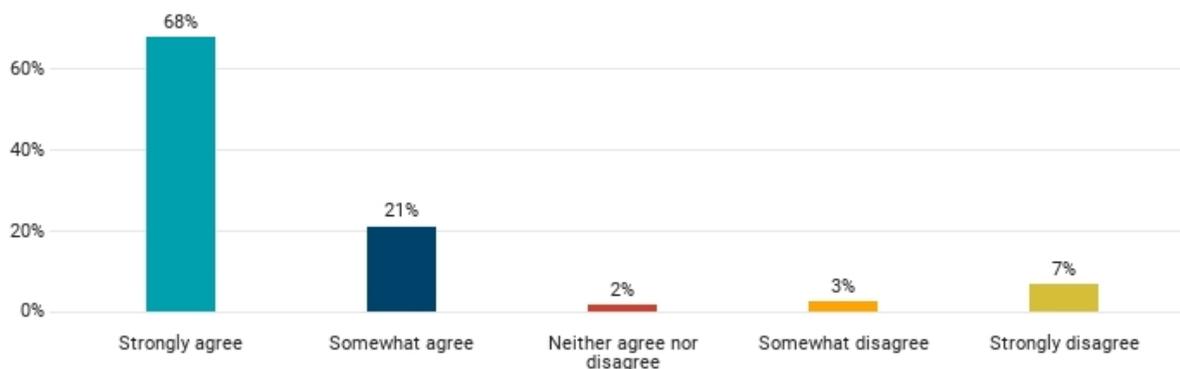
- Concerns this could allow physicians to only advertise their positive outcomes (i.e., cherry-picking their best results and not publicizing the negative) which may idealise the outcome or bias patients’ decision-making when choosing treatments or services;
- Before and after photos or videos should only be permitted if they also show the worst outcome, or the advertisement should indicate that best results cannot always be obtained;
- Difficulty in monitoring or enforcing these expectations (e.g., manipulation, lighting, photographic techniques, etc.) combined with the lack of reliable means to verify the authenticity of the demonstrated results of treatment.

The following questions were posed to all survey respondents:

Q10. The draft [Advertising](#) policy allows for the use of before and after photos or videos in limited circumstances where the following criteria are met. The photos or videos must:

- be for the purpose of providing accurate and educational information;
- portray an outcome that can reasonably and typically be expected;
- depict an actual patient who received the advertised medical service from the physician associated with the advertisement;
- not be manipulated;
- have used consistent lighting, photographic techniques, and setting; and
- only depict a patient who has been de-identified, unless the patient has consented to being identified.

Please indicate the extent to which you agree that the criteria in the draft policy are the right ones. (n=119)



Q11. Please feel free to elaborate on your answer above. Are there any criteria that should be added? (n=39)

The vast majority of respondents agreed (89%) the criteria in the draft policy around before and after photos or videos are the right ones. Comments from physician respondents who agreed indicated the criteria protect patients and are essential to ensure patients only see accurate or achievable results of treatment in before and after photos or videos.

A few physician respondents felt the criteria are not stringent enough and suggested before and after photos or videos should only be available in-office for reference but not published or used in advertising, or only restricted to brochures to explain the benefits and limitations of procedures.

Other physician respondents felt the draft criteria are too restrictive and difficult to enforce. Specific concerns from physicians regarding the criteria in the draft policy included:

- It is unreasonable to expect physicians, and/or their staff to have specialized knowledge regarding lighting, photographic techniques, and settings;
- How CPSO will be able to determine whether or not an image is accurate, has been manipulated, or has biased a patient's decision;

- The draft policy favours plastic surgeons and discriminates against other specialities (e.g., physicians providing uninsured services).

Additional suggestions from respondents included:

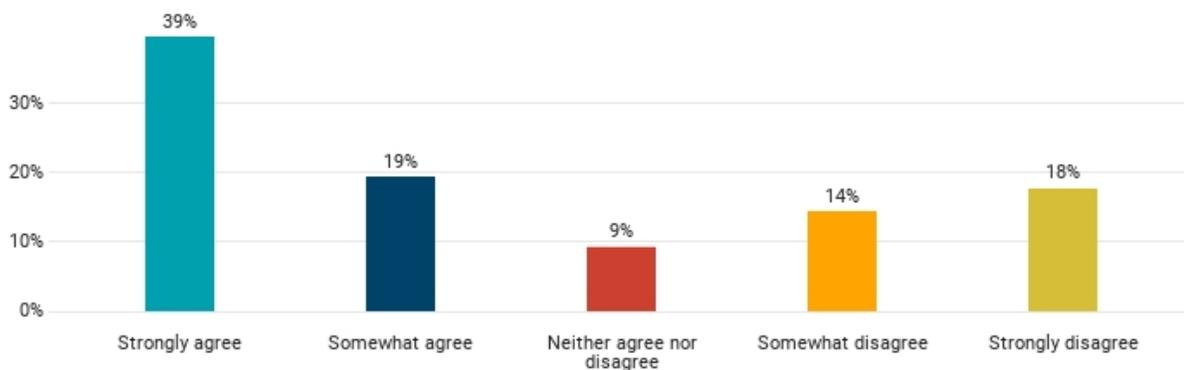
- Defining what is considered “educational” in a before and after photo and elaborate on what “de-identify” entails; and
- The “de-identified” criteria (*lines 63–64*) implies that patients who are de-identified could be used in advertising without their consent and does not allow the patient to see the final image before being used – the expectation could be reworded to “final images or videos must be shown to the consenting patient prior to use in advertising.”

Q12. Physicians use different forms of advertising to promote their professional practice, from websites and social media platforms, to tv and print advertisements and billboards. Depending on the form of advertising and how it reaches the public, some content may be more or less appropriate.

The draft policy states that physicians must not use before and after photos or videos in advertising where the physician or practice is paying to have that content reach the public and prospective patients, who are otherwise not seeking out that information.

For example, the draft policy would permit them to display before and after photos or videos in places where a prospective patient may seek them out, such as on a physician’s website, but would prevent them from being used in print advertisements in magazines or newspapers, as this would constitute paying to “push” the content out to the public.

Please indicate the extent to which you agree that this is an appropriate limitation on the use of before and after photos or videos. (n=119)



Q13. Please feel free to elaborate on your answer above or touch on issues related to the use of before and after photos or videos in different advertising mediums. (n=44)

Several physician respondents indicated that as long as before and after photos or videos comply with the draft criteria (*lines 57–64*) physicians should be permitted to “push” the content out to the public, including through the use of social media platforms.

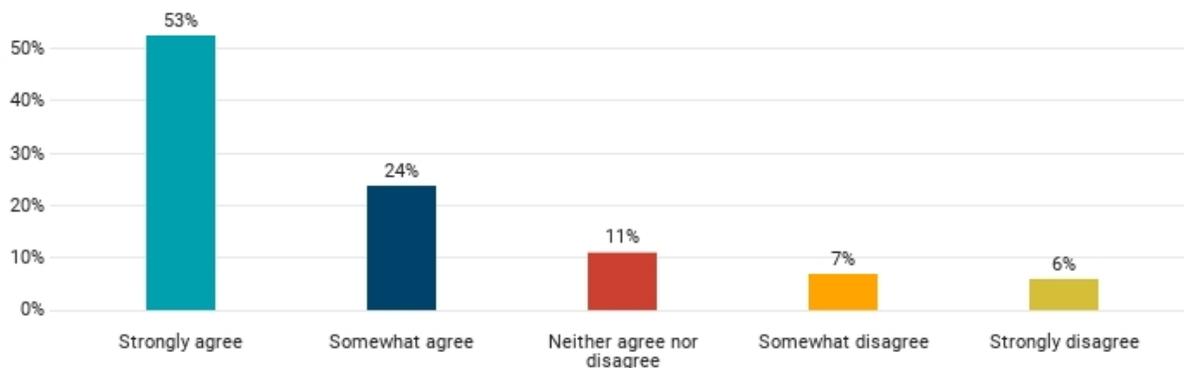
Many physician respondents indicated prohibiting physicians from accessing paid online services is unreasonable, disadvantages physicians who provide uninsured services, and restricts patient choice. Additional comments from physicians who disagreed included:

- If physicians are prohibited from utilizing search engine optimization, patients will be overwhelmed by advertisements from non-local providers making it more difficult to find physicians who are close to them and are offering the services they are seeking;
- There may not be a clear distinction between a physician's or clinic's website and their social media platforms - since social media is often used as an extension of the website the draft policy should extend to all current and future social media platforms; and
- Having to rely on self-directed information gathering unfairly disadvantages those that do not have the means to access that information (e.g., internet and the digital divide).

Q14. The draft policy contains a provision which details how physicians must seek consent for the use of before and after photos or videos from patients. This includes the requirement that physicians not seek consent to use of before and after images until after the medical service has been performed. This is to help ensure that patients do not feel pressured to consent.

Please indicate the extent to which you agree or disagree with the following statement:

It is reasonable for physicians to wait until after a medical service has been performed to seek consent to use before and after photos or videos in their advertising. (n=118)



Q15. Please feel free to elaborate on your answer above or touch on other issues relating to consent for the use of before and after photos or videos. (n=37)

The majority of respondents agreed it is reasonable for physicians to wait after a medical service has been performed to seek patient consent, though several physician respondents questioned how it was possible to take a "before" photo without obtaining patient consent.

Additional constructive comments from physician respondents related to consent included:

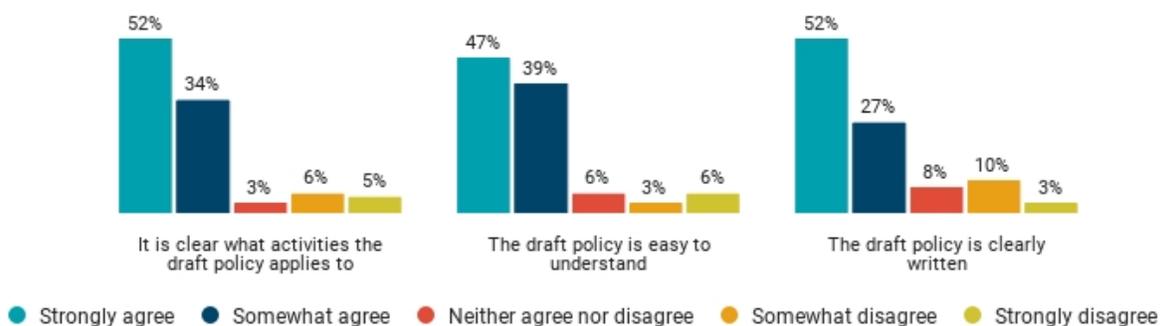
- It seems counterintuitive to wait until after the treatment has been provided to discuss and obtain consent (e.g., consent must be obtained prior to treatment for intra-procedural videos and inter-operative photos);
- Patients should be able to provide or withdraw consent at any time during the process;

- Separate consent should be obtained if the photos or videos will be used in advertising;
- Physicians should be required to show the patient the final advertisement prior to use;
- Dialogue with the patient about the use of before and after photos should be documented regardless of whether supporting documents are used; and
- There may be implicit selection bias in asking for consent post-treatment.

The following questions were only posed to respondents who indicated that they read the draft [Advertising](#) policy:

Q16. We'd like to understand whether the draft policy is clear.

Please indicate the extent to which you agree or disagree with each of the following statements regarding the clarity of the draft policy. (n=103)



Q17. How can we improve the draft policy's clarity? Please feel free to elaborate on your answers above or touch on other issues relating to clarity. (n=40)

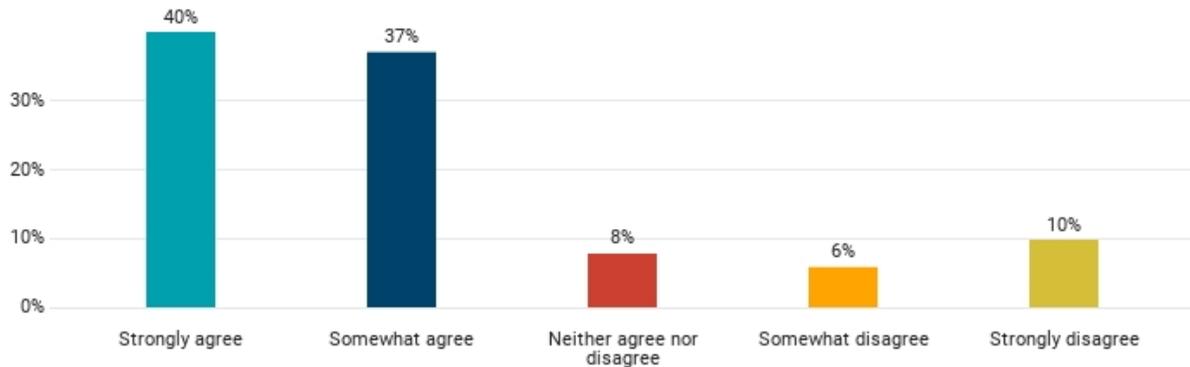
Several physician respondents felt that some of the concepts and language contained in the draft expectations were vague or subjective (e.g., “exaggerated,” “poor taste,” or “sensational”). A few physician respondents felt the definition of “advertising” is not specific enough.

Additional comments from respondents to improve the draft policy's clarity included:

- Provide examples of which activities are and are not permitted under the draft policy;
- Clarify that the expectations apply to physicians who advertise for non-medical services (i.e., not associated with any product or service other than their own medical services);
- Clarify if Provision 10 (*Directing and Targeting Prospective Patients; lines 108–109*) applies to existing patients (e.g., a mass mailout advertising new cosmetic services);
- Clarify if the expectations apply to advertising for physician involvement in professional events (e.g., giving a presentation at a conference); and
- Consider requiring physicians to document express consent.

Q18. We'd like to understand whether the draft policy is comprehensive. That is, it addresses all the relevant or important issues related to advertising and includes definitions of all essential terms.

Please indicate the extent to which you agree or disagree that the draft policy is comprehensive. (n=103)



Q19. How can the draft policy be made more comprehensive? Please feel free to elaborate on your answer above or touch on other issues relating to the draft policy's comprehensiveness. (n=36)

Suggestions to improve the draft policy's comprehensiveness included:

- Clearly indicate ways physicians can and cannot advertise and provide examples;
- Specifically address the use of social media platforms for physician advertising;
- Differentiate between information/education and advertising (e.g., if a video explaining the differences between various procedures offered would be considered advertising);
- Advertising announcements for retiring or departing physicians (e.g., an advertisement posted on the clinic's website or social media to notify patients that their physician is retiring and that a new physician has been recruited to ensure continuity of care);
- Incentives should be available to all patients and provided in writing;
- Concern that the draft policy seems to prohibit advertising for services offered by allied health professionals (e.g., diabetes education by a nurse or smoking cessation clinics).

The following question was posed to all survey respondents:

Q20. If you have any additional comments that you have not yet provided, please provide them below, by email, or through our [online discussion forum](#). (n=26)

Some physician respondents felt that some of the language and expectations were overly restrictive, particularly for those physicians who work in private clinics or provide uninsured services. Several additional comments were related to obligations set out in the Regulation (particularly the requirement that physician advertising must not contain testimonials).

Other additional comments from respondents included:

- Consider suggesting physicians contact CPSO or the Canadian Medical Protective Association (CMPA) for guidance where fundraising is concerned; and
- Consider adding the following examples to the *Advice* document: an example of what would be considered in poor taste; examples of third-party websites; and what an “organized or co-ordinated effort” would entail.