

27.1 Advertising

- (a) In this bylaw:
- (i) “Advertising” or “advertisement” includes any communication made orally, in print, through electronic media or via the internet (including websites and social media), by or on behalf of a physician, to the public where its substantial purpose is to promote the physician, the physician’s services, or the clinic or group where the physician practises or with which the physician is associated.
 - (ii) “Inducement” means anything that persuades or influences someone to do something.
 - (iii) “Medical service” includes a service provided by a physician or an individual under the direction or authority of a physician and includes cosmetic services of the types commonly provided by medspas.
 - (iv) “Practice interest” means areas within a physician’s scope of practice they concentrate on and/or have a special interest in (e.g., gynecology, obstetrics, surgery).
- (b) A physician or clinic may make information about the physician and services provided or the clinic and the services it provides available to any patient, potential patient, or the public generally, subject to the limitations contained herein.
- (c) A physician or clinic may participate in or donate services to charitable endeavors.
- (d) A physician who is responsible for an advertisement **must** ensure the information provided:
- (i) conforms to the *Code of Ethics & Professionalism*;
 - (ii) contains factual and relevant information about the nature of the practice;
 - (iii) is accurate, clear and explicitly states all pertinent details of an offer, with disclaimers as prominent as other aspects of the message;
 - (iv) is supported by current, best-available medical evidence; and,
 - (v) is compatible with the best interests of the public and upholds the reputation of the medical profession.
- (e) Advertising, promotion, and other marketing activities must be in good taste, accurate, demonstrably true and not capable of misleading the public. Any conduct, either directly or indirectly or through any medium or agent that:
- (i) misrepresents facts;
 - (ii) makes statements which are not statements of fact or makes statements that cannot be proven to be accurate by the physician or clinic;
 - (iii) compares either directly, indirectly or by innuendo, the physician’s services or ability with that of any other practitioner or clinic, or promises or offers more effective service or better results than those available elsewhere;
 - (iv) deprecates another physician or clinic as to service, ability or fees;
 - (v) creates an unjustified expectation about the results the physician can achieve;
 - (vi) is made under any false or misleading guise, or takes advantage, either physical, emotional, or financial of any patient or uses coercion, duress or harassment;
 - (vii) is undignified, in bad taste or otherwise offensive so as to be incompatible with the best interests of the public or physicians licensed under the Act or tends to harm the standing of the medical profession generally;

- (viii) contains any reference to a specific drug, appliance or equipment; or
 - (ix) takes advantage of a person or persons who are vulnerable
- is to be strictly avoided as such conduct is contrary to the interest of the public and the profession.
- (f) Notwithstanding paragraph (e)(i), a physician may advertise in a manner which promises or offers more effective services or better results than those available from another provider only if the physician has first substantiated the accuracy of the information to the satisfaction of the Registrar based on publicly available information.
 - (g) A physician **must not**:
 - (a) disclose the name or identifying features of a patient unless the physician has obtained the patient's prior written consent to use the information for advertising purposes;
 - (b) offer any incentive to the patient in return for using the information for advertising purposes; or,
 - (c) permit or authorize disclosure of any information about a patient unless the physician believes that information is accurate.
 - (h) In addition to complying with the other expectations in this bylaw, physicians **must** only use before and after photos or videos in advertising where the photos or videos:
 - (i) are for the purpose of providing accurate and educational information;
 - (ii) portray an outcome that can reasonably and typically be expected;
 - (iii) depict an actual patient who received the advertised medical service from the physician associated with the advertisement;
 - (iv) are not manipulated to misrepresent the results of the medical service;
 - (v) have consistent lighting, pose, photographic techniques, and setting to maintain a standardization of images;
 - (vi) only depict a patient who has been de-identified, unless the patient has specifically consented to being identified; and
 - (vii) are included alongside a statement that the outcome or results depicted are not guaranteed, and may vary between patients.
 - (i) Physicians **must not** display before and after photos or videos in advertisements where members of the public are likely to see them unsolicited.
 - (j) In addition to the requirements set out in the *Health Information Protection Act* regarding the collection, use and disclosure of personal health information, physicians **must** obtain express consent to the specific use of before and after photos or videos before using them in their advertising. As part of this physicians **must**:
 - (i) wait until after the medical service is provided to discuss and obtain consent to the use of the before and after photos or videos in their advertising;
 - (ii) show the final images to be used in the advertisement to the patient before using them in any advertisements;
 - (iii) inform the patient that they can withdraw their consent to the use of before and after photos and videos at any point;
 - (iv) inform the patient about the risks of consenting to the use of before and after photos and videos (for example, that once posted on social media they may be unable to be completely withdrawn);

- (v) engage in a dialogue with the patient about the use of the photos or videos, regardless of whether supporting documents (such as consent forms, patient education materials or pamphlets) are used;
- (vi) consider how the power imbalance inherent in the physician-patient relationship could cause patients to feel pressured to consent to the use of photos or videos and take reasonable steps to mitigate this potential effect; and
- (vii) **not** offer incentives to consent to the use of before and after photos or videos.
- (k) Physicians **must not** permit their name or likeness to be used in or associated with advertising:
 - (i) for any commercial product or service other than their own medical services, or
 - (ii) for facilities where medical services are not provided by the physician.
- (l) Notwithstanding paragraph (k), physicians who are part of a multi disciplinary practice are permitted to be associated with that practice's advertising; however they **must** ensure that advertising for the practice meets the following conditions:
 - (i) the advertisement does not provide or appear to provide any physician's endorsement of services at the practice not provided by the physician; and
 - (ii) the advertisement does not state or imply that a physician provides all of the services offered at the practice, or that a physician provides any services that they do not in fact provide.
- (m) A physician **must not** directly or indirectly participate in advertising that offers any inducement to a patient to receive a medical service, including but not limited to:
 - (i) time-limited prices for a service;
 - (ii) discount coupons, gift certificates, or prizes for a service;
 - (iii) communal gatherings ("parties") where consultation or medical services are offered;
 - (iv) a service in conjunction with "makeovers" created for entertainment or promotional purposes; or
 - (v) events, including "education sessions," where registration fees are donated.
- (n) A physician who provides services which are not publicly funded through Medical Services Branch must specify clearly what services that are being offered are not publicly funded.
- (o) A physician may only indicate a practice interest in an advertisement if:
 - (i) the area of interest falls within the context of the physician's practice discipline;
 - (ii) the area of interest is a demonstrated, significant focus of the physician's practice;
 - (iii) the physician pursues continuing medical education related to the area of interest; and,
 - (iv) the physician has complied with bylaw 4.1 if the practice interest identified in the advertisement constitutes a change in scope of practice as defined in bylaw 4.1,.
- (p) A physician **must**:
 - (i) ensure advertising done on their behalf by a third party complies with this bylaw;
 - (ii) show, in writing, where advertising by a third party was reviewed and approved; and
 - (iii) be able to demonstrate this review and approval to the College upon request.
- (q) A physician **must** promptly comply with a request from the Registrar to:
 - (i) substantiate any advertising claim or representation; or

- (ii) confirm whether a specific advertisement is made by or on behalf of the physician.
- (r) It is unbecoming, improper, unprofessional or discreditable conduct for a physician to advertise in a manner contrary to this bylaw, or to permit such advertising to be done on the physician's behalf or to permit any clinic with which the physician is associated to advertise contrary to this bylaw.

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