



The American College of Obstetricians and Gynecologists

Women's Health Care Physicians

COMMITTEE OPINION

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Committee on Ethics

This Committee Opinion was developed by the Committee on Ethics of the American College of Obstetricians and Gynecologists as a service to its members and other practicing clinicians. Although this document reflects the current viewpoint of the College, it is not intended to dictate an exclusive course of action in all cases. This Committee Opinion was approved by the Committee on Ethics and the Executive Board of the American College of Obstetricians and Gynecologists.

Ethical Ways for Physicians to Market a Practice

ABSTRACT: It is ethical for physicians to market their practices provided that the communication is truthful and not misleading, deceptive, or discriminatory. All paid advertising must be clearly identified as such. Producing fair and accurate advertising of medical practices and services can be challenging. It often is difficult to include detailed information because of cost and size restrictions or the limitations of the media form that has been selected. If the specific advertising form does not lend itself to clear and accurate description, an alternative media format should be selected. Advertising that seeks to denigrate the competence of other individual professionals or group practices is always unethical.

Traditionally, physicians and medical societies have raised concerns that advertising commercializes the practice of medicine and does not respect the dignity of the profession. Physicians have been expected to generate referrals from other physicians and from satisfied patients by providing good care to their patients. In the past, some state and national professional medical societies prohibited advertising in their code of ethics. In 1982, the United States Supreme Court affirmed a ruling in favor of the Federal Trade Commission (FTC) in its determination that the prohibition on advertising contained in the American Medical Association's code of ethics was an unlawful restraint of competition (1). The FTC argued that all businesses and professionals have the right to inform the public of the services they provide and that all consumers have the right to make informed choices based on truthful advertising. The purpose of this Committee Opinion is to provide objective criteria to help members of the American College of Obstetricians and Gynecologists determine whether or not a certain advertisement or method of marketing is ethical. In considering appropriate marketing practices, physicians should evaluate not only their own actions but also those undertaken on their behalf by hospitals or other health care centers that may be marketing their services. To this end, the Committee on Ethics makes the following recommendations and conclusions:

- It is ethical for physicians to market their practices.
- Advertisements must be truthful and not deceptive or misleading.

- Advertisements must not convey discriminatory attitudes.
- Advertising that seeks to denigrate the competence of other individual professionals or group practices is always unethical.
- All paid advertising must be clearly identified as such.
- Physicians should consider not just the intent of any advertisement but also its effect on the public's view of the profession.

Appropriate Forms of Communication

According to the FTC, physicians must be allowed to make their services known through advertising to assist the public in obtaining medical services. A physician or practice should not be restricted from marketing medical services using public media, such as newspapers, magazines, telephone directories, radio, the Internet, television, and direct mail. All of these media formats have the potential for both effective, ethical communication as well as misrepresentation, depending on their form and content. Advertising in any format may be ethical but still reflect poorly on the profession and undermine the public impressions of the profession. For example, use of a large billboard or television infomercials to advertise services is not unethical but still might be considered by many to be unprofessional. Physicians should consider not just the intent of any advertisement but also its effect on the public's view of the profession.

A paid advertisement promoting the activities of a physician or practice must be clearly identified as advertising. It is not ethical to compensate the communication media in any way for publicity in a news item. If a television infomercial is used to inform the public of services available, it should be very clear at all times that this is paid advertising and not part of a news program.

Care should be taken to choose information appropriate to the form of communication. The complexity of medical terms and treatments may not always lend itself to the restrictions of a particular advertisement design or media format. For example, the brevity of television and radio advertisements may require the omission of so much information that the advertisement becomes misleading.

The location in which an advertisement is placed also may contribute to deception. For example, some readers may assume that a physician who advertises his or her practice under the subheading "Infertility" in the telephone directory has received extensive subspecialty training in that area and regularly treats patients with these problems. Advertisers should be careful not to imply subspecialty training when none exists.

Actively approaching specific individuals, in person or by phone, with the purpose of attracting them as patients usually is not considered ethical because the risk of undue pressure from the solicitor is too great. Common expectations for a physician-patient relationship may make the prospective patient feel obligated to respond affirmatively to the encounter. Although many physicians view such active approaches as always being unprofessional, they may be ethical in rare circumstances if extraordinary care is taken to avoid undue pressure. For example, it may be appropriate to pass out cards to potential clients at a community health fair.

Appropriate Content of Advertisements

Advertisements must be truthful and not deceptive or misleading. Specifically, this means that all information must be accurate and must not create false or unjustified expectations. The omission of information should not render the advertisement misleading. Images and graphics can be as deceptive or misleading as text. The physician or clinic must be able to substantiate all claims made in the advertisement. Advertisements may include non-deceptive information, such as address, phone numbers, web site address, office hours, languages spoken, board certification, contracted insurance plans, publications by physicians, teaching positions, hospital affiliations, and methods of payment accepted.

Terms such as "top," "world-famous," "world-class," or even "pioneer," usually are misleading and designed to attract vulnerable patients. Statements that rank the competence of physicians or the quality of medical services usually are not factually supportable. If attributions of this type are used, the advertisement must describe how

these rankings were established. The testimonial of one or two satisfied patients may mislead the public into believing that all patients, even those with dissimilar histories, have similar outcomes. The designation of "Top Doctor" as voted by magazine readers, other doctors, or specific groups may be used in promotional material because the term is a factual statement of the results of a survey. However, advertisements must state if such a designation involved payment by the physician. Furthermore, any advertising that seeks to denigrate the competence of other individual professionals or group practices is always unethical.

Care must be taken in advertising procedures that are experimental or have never been proved to result in the desired outcome. It is deceptive to give the public the impression that experimental or untested procedures are of proven value or accepted practice.

Claims that a physician or group of physicians have a unique skill or offer a unique test or treatment often may be deceptive and rarely should be used. If a physician has carefully verified that he or she is the only practitioner to offer a certain treatment in a particular geographic area, then this information may be dispersed. If the uniqueness results from a restrictive commercial agreement, this fact needs to be disclosed in the advertisement.

Specific outcomes should rarely be advertised because the definition of a success rate, the selection of eligible patients for consideration in calculating rates, and the predictive value of rates are all important in accurately assessing outcomes. Whereas these should be discussed with an individual patient in the context of her care, they cannot be interpreted accurately by someone viewing an advertisement and may be very confusing or misleading to the patient trying to determine where to seek care. For example, a fertility clinic's success rate for assisted reproductive technologies is dependent on the patient's age, the clinic's patient selection and exclusion policies, and the clinic's criteria for cycle cancellation. Success may be stated in many ways, each of which results in a different rate, such as clinical pregnancies, singleton pregnancies, or live births per started cycle, per egg retrieval, or per embryo transfer. The Society for Assisted Reproductive Technology requires reporting of live birth rates when these data are available (2). Comparing hospitals by cesarean delivery rate is similarly difficult because rates vary with the characteristics of a patient population or the presence of a neonatal intensive care unit or both. Furthermore, a new program or site should not present the success rates of the parent site as its own, because its new facilities are untested. When advertisements do involve success rates or other outcomes, all claims must be supported by valid, reproducible data, must clearly state the method used to calculate outcomes, and must not lead patients or the public to believe that outcomes are better than they are (2).

Fee structures and costs may be advertised as long as the information is complete and the titles for spe-

cial programs do not mislead or encourage inaccurate assumptions. For example, promises of a money-back guarantee are frequently misleading because they usually refund only a portion of the patient's money if the desired outcome does not occur. Shared-risk plans usually do not share risk between the patient and the clinic, but among a group of patients. "Do one, get one free" treatments may involve extraordinary requirements and expenses for the initial treatment and may not truly save the patient any money. A free initial consultation should not contain any hidden costs or routinely involve recommendations for expensive tests or treatments. Any advertisements that involve such financial plans should contain enough information that the prospective patients are neither misled nor unduly induced to seek services at that clinic.

Producing fair and accurate advertising of medical practices and services can be challenging, even with the best intentions. It often is difficult to include detailed information because of cost and size restrictions or the limitations of the media form that has been selected. If the specific advertising form does not lend itself to a clear and accurate description, an alternative media format should be selected.

Concerns About Discrimination in Advertisements

Discriminatory attitudes about race, color, national origin, religion, or any characteristic that would constitute illegal discrimination are not acceptable in advertisements (3). Moreover, discriminatory language should be avoided even if such discrimination might be legal. For example, sexual orientation and perceived gender are categories that do not have legal protections from discrimination in many jurisdictions; however, it is unethical for a physician to discriminate on such characteristics. A factual line item stating that a health care provider speaks Spanish or Cantonese accurately describes the services provided and would not be considered discriminatory. Conversely, a factual statement that the health care providers in a certain clinic are all women may not be ethical if the wording suggests that health care provided solely by women is superior to health care provided by men; this would be considered discriminatory and, therefore, unethical in the absence of evidence supporting that

claim. If the intent of stating the facts is to imply a value judgment rather than to offer supportable or useful information about access, then even a statement of fact may be unethical.

Vulnerable Groups

Certain individuals and groups of individuals may be more easily misled by some claims made in advertisements. Special care should be taken when designing a marketing plan that targets these groups. Perimenopausal and postmenopausal women who are fearful of cancer may embrace natural therapies, even when these therapies have not been evaluated adequately for efficacy or risk. Patients with advanced cancer may be more likely to pursue unapproved procedures or pharmaceuticals. Patients with infertility or recurrent pregnancy losses who are desperate to have a child often are willing to pursue expensive new treatments that are completely unproved.

References

1. *American Medical Assoc v FTC*, 455 US 676 (1982).
2. Society for Assisted Reproductive Technology. SART policy for advertising by ART programs. Birmingham (AL): SART; 2009. Available at: http://www.sart.org/uploaded/Files/Affiliates/SART/Members/Executive_Council/sart-advertising-policy-4-2009.pdf. Retrieved June 17, 2011.
3. American College of Obstetricians and Gynecologists. Code of professional ethics of the American College of Obstetricians and Gynecologists. Washington, DC: American College of Obstetricians and Gynecologists; 2011. Available at: http://www.acog.org/from_home/acogcode.pdf. Retrieved July 29, 2011.

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