

PRACTICE ADVICE

ADVERTISING: UNDERSTANDING THE PROPOSED REGULATION

EFFECTIVE: SEPTEMBER 2016

The College receives a number of inquiries regarding the proposed Advertising Regulation from different parties including members of the public, audiologists, speech-language pathologists and employers. The [Advertising Regulation](#) is still in the 'proposed' stage. However, the College regards the content as reflective of the practice standards that are to be followed by members of the College.

Advertising is a form of marketing communication used to promote or sell a business, product or service. [Advertising Standards Canada](#) requires businesses, in their advertising practices, to be accurate and truthful. This is especially important when it comes to advertising healthcare services, the public must be protected from false, misleading or unverifiable information.

The College, in particular, receives questions about the use of advertising strategies such as testimonials and endorsements, referral programs and "free" giveaways.

TESTIMONIALS

QUESTION:

Why can't we use testimonials?

ANSWER:

The Ministry of Health and Long Term Care prohibits the use of patient testimonials by any regulated health professional in order to protect the public. Consequently, the proposed regulation is clear in its restriction against the use of testimonials.

Section 2 (1) states that "An advertisement with respect to a member's practice must not contain:

- (g) a testimonial by a patient or client or former patient or client or any of their friends or relatives".

The Business Dictionary defines advertising testimonials as "a written (or recorded) recommendation from a satisfied customer affirming the performance, quality, and/or value of a product or service".

However, testimonials, in whatever format, are considered unreliable and cannot be verified. There is also a lack of balance as negative comments are rarely included. Finally, no one person's experience is the same, especially with the provision of healthcare.

QUESTION:

If I remove a patient's name, does that mean it is no longer a testimonial?

ANSWER:

If a patient or relative or friend of the patient is providing a review about your service it is a testimonial and cannot be used in advertising, regardless of whether the patient's name has been included or not. The source of the review (e.g. patient, etc.) will identify that it is a testimonial.

QUESTION:

I understand that we cannot use testimonials on our website, but what about unsolicited reviews on social media sites? What should we do about those?

ANSWER:

While the use of social media can be an effective way to advertise your services, should you or your company use such sites, for example, Facebook, LinkedIn, etc. to advertise, it is your responsibility to monitor the site regularly and to remove any unsolicited patient reviews or testimonials. If it comes to your attention that a patient testimonial has been posted on a site you do not subscribe to, you should make best efforts to get the content removed.

QUESTION:

A freelance Public Relations writer has been asked by an audiology clinic to write stories about patients with hearing loss to post on the clinic's website. Is this allowed?

ANSWER:

Yes, this is allowed as long as what is written is true, accurate, verifiable and understandable to the intended audience. The content must be professionally appropriate, meet the standards of practice and relate to the audiology scope of practice. It must not be misleading nor include the use of testimonials.

ENDORSEMENTS

QUESTION:

Can I use written reviews from other people, i.e., not patients or patients' relatives, in my advertising?

ANSWER:

These reviews are known as 'endorsements' and the Proposed Advertising Regulation prohibits their use in advertising with the following two exceptions:

(f) unless the organization or individual proposing to endorse a member or a member's services:

- (i) has the expertise relevant to the subject matter of the endorsement; and
- (ii) has appropriately assessed the member as providing quality care;

However, if an individual has the relevant expertise and assessed your services but was a patient of yours, then the endorsement is a patient testimonial and cannot be used.

QUESTION:

I work with a lawyer on a regular basis in my company which provides service to patients with traumatic brain injury (TBI). Can I ask him to endorse my practice on my website?

ANSWER:

If the lawyer has the expertise relevant to the provision of speech-language pathology services to patients with TBI, has assessed you as a regulated health professional who provides quality care, and is willing to do so, then he or she may endorse your practice.

QUESTION:

I understand the requirements regarding the use of testimonials and endorsements, but I work for a company whose owners and managers are not regulated health professionals. They tell me that they are trying to run a business in a competitive market and need to use these strategies in advertising. What should I do?

ANSWER:

While members may understand advertising restrictions, some are employed by companies who are not governed by the College's regulations, as the College only regulates members of the professions. When faced with a situation where an employer has advertised contrary to the regulations, members are expected to notify their employer of the problem as soon as possible. Members should explain to their employer that advertisements cannot include testimonials nor endorsements as a result of specific direction from the Ministry of Health and Long-Term Care. This restriction applies to all regulated health care professionals in Ontario and is an indication that regulated health care professionals are held to a higher standard to protect the public interest. Show the employer the regulation, you can find it on the College website under 'Resources'. If these strategies are unproductive, call us and we can discuss your situation further.

BENEFIT/REFERRAL PROGRAMS

QUESTION:

Can I give a coffee gift card to a patient if they refer a friend to my place of work who has a hearing loss?

ANSWER:

No, this scenario is normally described as a "referral program" and referral programs can be perceived as encouraging the public to receive potentially unnecessary intervention and may appear as though the member is encouraging services for a financial benefit. Consequently, advertisements that offer a benefit program to generate referrals constitute a conflict of interest as defined in the proposed Conflict of Interest Regulation. Specifically, section 10 states that:

... it is a conflict of interest for a member, where the member or a related person to the member or a related corporation to the member, accepts or receives an benefit, directly or indirectly from, or confers any benefit, directly or indirectly on, any person for the purpose of making or accepting a referral of a patient or client.

QUESTION:

The company I work for wants to offer a \$20 donation to the charity of the patient's choice for referring a friend. Is this is okay?

ANSWER:

No, this is not acceptable because the initiative still confers an indirect benefit to the patient for referring a friend, i.e. a donation to a charity of their choice. There may also be income tax implications with charitable donations. Principles which frame the proposed Conflict of Interest Regulation generally aim to prevent members from being influenced by considerations other than what is in the patient's best interest and to ensure that patients are making informed choices based solely upon their health care needs.

QUESTION:

I have seen companies offer free hearing tests – is this allowed?

ANSWER:

Many companies have chosen to offer "free" products or services to clients, should they make a purchase or book an appointment. While members can certainly engage in these programs, the advertisements should not be misleading in their offer of "free" products. For example, if a company advertises a "buy one get one free" deal on hearing aids, the cost of the free hearing aid should not be hidden in the cost of the hearing aid purchased. As well, the cost of the hearing test should not be hidden in any subsequent purchases made by the patient. Not only is this misleading to the public, and contrary to section 2(1)(a) of the proposed Advertising Regulation, such an advertisement would also conflict with the College's Code of Ethics, which requires all audiologists and speech-language pathologists to "be honourable and truthful in all their professional relationships" (article 4.1.3).

QUESTION:

Can I advertise a therapy product or app on my website that I have developed? I will receive money from the sale.

ANSWER:

Yes, as long as you declare to the patient or family who is receiving your services any conflict of interest such as benefits, including financial, you may receive as a result of the sale.

QUESTION:

Can I advertise that my practice is restricted to a certain area of practice?

ANSWER:

Yes, you can advertise that your practice is restricted to a certain area of practice, as long as you do not hold yourself out to be a 'specialist' or 'expert' in an area. You can advertise that you practice in certain areas, such as childhood apraxia of speech, voice, tinnitus, stuttering, if it is factual and true.

QUESTION:

I have recently joined a website to promote my private practice. In order to post my business on this site, I have to offer a promotion. Am I able to offer \$20 off the first therapy visit?

ANSWER:

Yes, you are allowed to offer a promotion as long as you do not try and recoup the money by inflating the price of your services elsewhere. As with the offer of free products you are required to practice according the Code of Ethics and be honourable and truthful in your professional relationships" (article 4.1.3).

SUMMARY

Advertising can be a tricky endeavour. What you intend, and what the public understands from the advertisement can be two different things. Members must remember that regulated professionals are held to a higher standard and meeting those standards upholds the trust and faith the public has in the profession overall. Also, be aware that patients seeking out health care are frequently in a vulnerable situation and need to rely on the advertised message.

When considering whether your advertisement meets the proposed [Advertising Regulation](#) or conflicts with the proposed [Conflict of Interest Regulation](#) or the [Code of Ethics](#), members are encouraged to speak with a practice advisor at the College about their concerns.