Practice Guideline- Advertising

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Introduction: Why regulate advertising?

Advertising in health care is different from advertising in a business or commercial context. Regulated health professions are held to specific standards outlined by their college with respect to advertising in order to protect the public interest. Advertising can be a means to allow the public to make informed choices regarding their health care. Advertising allows the public to make decisions about which provider to seek out based on services offered, location, fees, etc. However, misleading, dishonest or pressure-based advertising may result in the opposite. While it is recognized that members are engaged in a business, the goals are for members to provide quality health care, and for the College to fulfill its mandate of protecting the public interest. A member's advertising falls within the standard when it is informative in nature and not persuasive and where it helps the public, not harms it. In drafting the Advertising Standard, the College followed the policy recommendations of the Health Professions Regulatory Advisory Council. The policy recommendations outlined basic principles for all the health regulatory colleges as follows:

- Advertising should reflect a balance between the public interest requirement and individual interest or freedom of commercial expression requirement.
- The public interest must be served by ensuring that the public gets accurate and understandable information so that it can make an informed choice.
- Advertising should focus solely on providing truthful information and should not stimulate a demand for unnecessary health care services.
- Advertising must not exploit the relationship of trust between patient/client and practitioner

The purpose of this guideline is to provide members with specific information about what may or may not be included in advertisements in order for them to comply with the College's Practice Standard on Advertising.

What can/should be included in an advertisement?

The information in advertisements must be:

- Accurate;
- True;

- Verifiable by the member; and
- Professional and not misleading by either omitting relevant information or including non-relevant information.

Providing the public with accurate, factual, objective and verifiable information to make an informed choice in health care is in the public's best interest. Subjective opinions may cause confusion and lack of trust.

Members can advertise the professional services offered by them that are within the scope of practice of kinesiology. Members should ensure that they are competent by reason of their education, training and/or experience to provide the service(s) advertised, or to act in the manner or professional capacity advertised.

Members can provide information about fees or prices in advertising. Any references to fees or prices must meet the expectations for truth and accuracy described in the Practice Standard on Advertising. For example, the fee, which is available to all patients/clients, will include all components of the service which is fairly described. Members should refer to the Practice Standard on Fees and Billing. This is not intended to prohibit a member from:

- displaying or distributing a fee schedule and/or an explanation of the way fees are calculated;
- providing information about fees or charges in response to a request for this information;
- providing information on the funding models or insurance plans for which he or she accepts patients/clients; or
- indicating the forms of payment he or she will accept.

Members should use caution when mentioning insurance coverages since these may vary among companies and group policies and can be misleading to the patient/client.

The public is entitled to full disclosure of what is and what is not included in the advertised fee.

Price information should be exact, with all fees and applicable taxes for services clearly identifiable, and any conditions or other variables to an advertised price or fee disclosed.

Members are able to offer discounts, complimentary consults or gift certificates in their advertising, provided they do not encourage the unnecessary use of regulated health services and they are not misleading. If a member or a person advertising a service does offer a discount, gift or any other inducement to attract patients/clients to a service, the offer must be truthful, and the full terms and conditions of the offer must be set out clearly in the advertisement. If there is a specified period of time in which the offer is redeemable, this should be made clear and visually apparent. The offer should not be limited to a certain number or type of client. There should not be any pressure or requirement for the client to return for further services. The member must not seek compensation from any third party payor of any part of a complimentary service.

What cannot be included in an advertisement?

Unnecessary services

An advertisement cannot include anything that can be interpreted as an intention to promote a demand for unnecessary services. Offering to provide a product, service or treatment prior to an

assessment (e.g. a free walker with every new assessment) could be perceived as promoting a demand for unnecessary treatment. Without an assessment, the need for treatment cannot be justified. Another example would be advertising a block fee for services that does not specify that an adequate assessment must be conducted.

Testimonials

An advertisement cannot contain any information that can be interpreted to be a testimonial and/or endorsement of a member or his or her practice from an individual or an organization. A testimonial is the provision by a member of a subjective statement from a patient/client or other individual expressing an opinion about the nature or quality of the member's services. It is distinct from research conducted by others (e.g., prospective patients/clients) gathering information without the involvement of the member. An example of an endorsement is where a sports celebrity appears in an advertisement endorsing the member.

However, statements that refer to the benefits of kinesiology, and not to a particular member or office, are permissible. Any statements must be truthful and verifiable, and contain generally accepted principles of the profession by those with sufficient expertise. Any statements about the benefits of Kinesiology cannot include negative remarks about another health profession. An example of an unacceptable testimonial would be: "My Kinesiologist, John Doe, helped me walk without pain again". An example of an acceptable statement would be: "Kinesiology can help restore normal joint functioning"

Comparisons, guarantees or endorsements

Advertisements cannot contain any statement that can be interpreted to be a/an:

- Guarantee as to the success of the service provided. Claims or guarantees of success are often not verifiable and may appear unprofessional. Members should not use expressions such as "will help", "can cure" and "does relieve", which imply a guarantee. Members may use expressions such as "may be able to help" or "has been shown to relieve".

- Comparative or superlative statement about service quality, products or people. Comparison to any facet of another member's practice or to another regulated health care provider is unprofessional. The public and the profession are better served by positive and generic kinesiology facts. Members should not use adjectives with comparatives ("more" or "better") in their advertising because they imply a comparison. Members may use words such as "safe" and "effective" to describe the kinesiology profession in general.

- Express or implied endorsement or recommendation for the exclusive use of a drug, product or brand of equipment used or sold in the practice. Exclusive endorsements of products suggest superiority and imply a comparison, which is not permitted. Endorsements may give rise to conflict of interests. Members are expected to put the interests of their patients/clients ahead of their own and avoid conflict of interest situations. Members can advertise use of general types of products or technology, such as ultrasound. Where the member does use or recommend an exclusive brand, this should be explained to the patient/client during an initial appointment or assessment, not in an advertisement. The member should refer to the Conflict of Interest Standard and the Consent Standard.

- Communication that is so undignified or in such poor taste as to be unprofessional. All advertisements must maintain professional integrity and serve the public's best interest.

Who can advertisements be directed to?

The information contained in advertisements should be directed to a specific audience, comprehensible to its intended audience and created in accordance with the generally accepted standards of good taste of both its intended audience and the profession.

Members must not directly or indirectly solicit patients/clients in person, by telephone, e-mail, or any other means of communication that is not considered to be a public medium. This is not intended to prohibit a member from:

- Undertaking activities that are considered to be reasonably necessary to carry out normal and required health care notices and reminders with current or former patients/clients;
- Periodically contacting current or former patients/clients for goodwill purposes; or
- Providing information to prospective referral sources.

New federal legislation coming into force in 2013 will prohibit the sending of "commercial electronic messages" (CEMs) without express consent, or in limited cases, implied consent. The legislation allows for implied consent when there is an existing relationship; therefore, sending information to former patients/clients for goodwill purposes, via an electronic message such as email, would be permitted. However, this implied consent may be deemed to lapse if the patient/client has not been seen by the member in over two years. Violating this act can result in penalties under the new legislation.

Where can members place advertisements?

Any advertisement should be presented using a public medium. For example, newspapers, radio, television, websites, flyers and the Yellow Pages are considered public mediums. This means that, generally speaking, the advertisement is equally available to anyone who chooses to use it and that it is directed to the public, or a subsection of the public, rather than to an individual(s).

Advertisements also include any in-office promotional materials, such as pamphlets, brochures, news bulletins, business cards, etc.

Advertisements can be placed on social media websites and personal pages, but they must comply with the Practice Standard on Advertising. Even if the member's social media page is private, they must not make use of any techniques that are described in the Standard as a breach. Private social media pages, such as Facebook, are still accessible by outside sources.

Members must also keep in mind that making simple statements about themselves as professionals, while not intended to be advertisements, may be perceived as such. For example, members should refrain from posting on a page, "I successfully cured 10 people today". While the audience may only be for a member's friends, it could be construed by an onlooker as self-aggrandizing, as a testimonial, or as misleading.

Who is responsible for advertising?

A member is always responsible for advertisements about his or her practice regardless of whether or not the advertisement is made by the individual member. The member is responsible for taking reasonable steps to ensure that any advertising referencing the services provided by him/her meets the Practice Standard on Advertising. This includes advertising that is done by another person on

their behalf. *Reasonable* in this context means understanding the expectations in the Standard, ensuring that the employer, or other individual or entity, is aware of the expectations and requesting changes to any content that does not meet the Standard.

The member should attempt, at the very least, to ask an employer, or other individual or entity, to remove any unprofessional references to him/her as an individual practitioner. For example, if the employer advertises that the member is a registered specialist in Kinesiology, the member should ask that this reference be removed because no specialty class exists within the College's Registration Regulation.

Many social media pages also allow other individuals to post comments about someone else. A member should not allow others to post misleading comments or testimonials about his/her practice either on their page(s) or on any other person(s) page(s). If a member becomes aware of any statements about himself/herself and their practice that are in breach of the Practice Standard on Advertising, he/she is responsible for removing, or requesting the removal (if it is not possible to do it themselves) of any such statements.

Summary

The following is a list of what is and what is not acceptable in advertising. The list is not intended to be exhaustive. A checklist is also provided to be of assistance to members when assessing whether or not their advertisements fall within the standard. Members are encouraged to submit any proposed advertisements to the College for review if they are unsure whether the advertisements conform to this Guideline.

What is acceptable advertising?

Advertising used to inform the public of the availability of kinesiology services may be considered to comply with these guidelines if it is information published in the public interest and if it is factual, honest, accurate, clear, verifiable and not misleading. This section is intended to provide examples of the types of advertising of services that the College considers to be acceptable. These examples are not intended to be exhaustive. Advertising may contain:

(a) A factual and clear statement of the service(s) and/or any product(s) offered;
(b) Contact details of the office of the member, including email or website addresses, and telephone numbers;
(c) A statement of office hours regularly maintained by the practitioner and the availability of after-hours services;
(d) Non-enhanced photos or drawings of the member or his or her office;
(e) A statement of any language(s) other than English or French fluently spoken by the member or another person in his or her office;
(f) A statement about fees charged, billing arrangement or other insurance plan arrangements and payment methods accepted;
(g) A statement regarding the registration of the member with the College. This information must include the member's name as it appears on the College's Register of Kinesiologists; and/or
(h) A statement regarding the certifications and additional qualifications of the member which have been recognized by the College.

What is unacceptable advertising?

This section is intended to provide a clear indication of the types of advertising that the College considers unacceptable. Where examples are provided, they are intended to assist members and

other persons who advertise regulated health services to comply with the Practice Standard on Advertising. They are not intended to be exhaustive.

Advertisements are considered unacceptable if they:

(a) Create or are likely to create unwarranted and unrealistic expectations about the effectiveness of the services advertised;
(b) Mislead, either directly, or by implication, use of emphasis, comparison, contrast, or omission;
(c) Use testimonials or purported testimonials;
(d) Compare different regulated health professions where there is no evidence on which to base the comparison and/or in a way that may mislead or deceive;
(e) Claim that the services provided by a member are superior to those provided by other regulated health practitioners;
(f) Use superlative terms such as "state of the art" or "cutting edge" when referring to a particular service, technology or product used;
(g) Contain price information that is inexact, or fails to specify any conditions or variables to an advertised price; and/or
(h) Contain any claim, statement or implication that:
    - Either expressly, or by omission, that the treatment is infallible, miraculous or a certain, guaranteed remedy;
    - A member has a product that is "exclusive"; and/or
    - The results of the service offered are always effective.

Suggested Other Reading

Practice Standard – Code of Ethics
Practice Standard - Conflict of Interest
Practice Standard - Fees and Billing
Practice Guideline - Use of Title and Designations

Advertising Checklist

When considering the content of an advertisement, members may find the following checklist helpful. This is not an exhaustive list, but rather it is intended to provide members with an optional tool to facilitate the application of the Advertising Standard in practice. This checklist is not intended to be a substitute for thorough reading and understanding of the expectations outlined in the Standard and expanded upon in this Guideline, and should not be used in isolation.

Is the advertised information:

- □ True
- □ Accurate
- □ Verifiable
- □ Not misleading
- □ Professionally appropriate

Does the advertised information:

- □ Meet the College's Practice Standards (e.g. Advertising, Code of Ethics, Conflict of Interest, Fees and Billing, etc.)
- □ Use a public medium
- □ Relate to the scope of practice of kinesiology
- □ Facilitate informed choice

Does the advertisement avoid:

- □ Promoting a demand for unnecessary service
- □ The use of endorsements, testimonials or guarantees