Consultation Document

Advertising and Marketing Standards for Refractive Surgery

April 2016

Contents

1 Summary

1.1. Advertising and marketing must be conducted in a ~~socially~~ responsible manner.

1.2. Where ~~C~~celebrity endorsements are ~~discouraged and, in the event~~ ~~these are~~ used to promote refractive surgery to suitable patients, a written declaration clarifying any financial relationship, including reduced cost treatment, between the clinic and the celebrity should appear alongside the endorsement.

1.3. Data supporting all claims and statements must be available for independent verification.

1.4. All advertisements for surgical procedures where possible must state the following "All eye surgical procedures carry a level of risk ~~including not obtaining the desired outcome through to varying levels of visual loss~~. Your eye surgery team ~~on~~ will discuss the risks, benefits and alternatives of sight correction surgery, including those specific to your own circumstances, at the time of your preoperative consultation".

1.5. ~~The following are considered socially irresponsible and must not be used:~~
~~1.5.1. Time-limited deals~~
~~1.5.2. Financial inducements~~
~~1.5.3. Package deals, such as 'buy one get one free' or reduced prices for previous patients' friends and family.~~
~~1.5.4. Offering eye surgical procedures as competition prizes.~~

1.6. ~~Advertising price is highly discouraged.~~GMC rules require you to explain your charges clearly. Under CAP requirements where ~~In the event that~~a price for ~~of~~ surgery is advertised, ~~the majority~~ten percent (10%) of eligible patients ~~recipients (>50%)~~ must~~should~~ ~~in reality be~~qualify to receive~~ing~~ surgery at that price.

1.7. The content of marketing information must be consistent with other patient information documents and should not differ substantially from the content of consent forms provided to the patient.

1.8. Qualifications and experience must not be exaggerated or misleading. Patients should be made aware of the experience of their treating surgeon including qualifications and the number of refractive surgery procedures they have undertaken in the last twelve (12) months and throughout their career.

2 Introduction

2.1 Providers of ophthalmic care, specifically refractive surgery, use advertising and marketing to promote the service to eligible ~~compete for~~ patients. A variety of media are ~~is~~ used to promote business including radio, television, newspaper, magazine, advertorials (paid articles), press coverage and, in the last decade, social media and the internet. ~~Celebrity endorsements are also used and can have considerable influence on the general public~~.

2.2 ~~-~~Advertising, ~~and~~ marketing and endorsements have an important role to play

Comment [1]: Adds nothing and goes beyond GMC guidance.

Comment [2]: This is not required under CAP regulations which are enforced by the ASA or Clearcast depending upon the medium of advertising.

However we could accept this suggested amendment.

Comment [3]: This goes substantially beyond the GMC guidance and is therefore not necessary or appropriate.

Comment [4]: Under CAP regulation 10% of patients must qualify for the treatment at the price that you advertise.

As per point 3.22 of the CAP Code, when assessing the availability of a headline "up to" or "from" price, the ASA expects advertisers to be able to demonstrate a reasonable level of availability. What is reasonable will depend on the circumstances, and the ASA will consider each case on its own merits, but as a general rule 10% of the advertised products should be available at the headline "up to" or "from" price.

Comment [5]: Celebrity endorsements are common in many sectors of healthcare today. Regardless of their source of interest, all patients go through a process of informed consent where they learn of the risks, range of outcomes and alternatives of the procedure they elect to undergo/

1 Summary

in increasing awareness and educating the public about available procedures and choices of providers~~. Those providers with more resources will obtain better coverage and in turn access to the public and this is the reality of a competitive world.~~

~~There is a potential negative side of advertising and marketing in that there is a~~

Comment [6]: This is a truism so why include?

~~danger of~~You must not trivialis~~inge~~ procedures available ~~and~~ or overstat~~inge~~ claims of what can be achieved. You must not ~~as well as~~ target~~ing~~ individuals who are more vulnerable. Advertising must ~~therefore~~ be conducted in ~~an ethical~~a responsible manner.

2.3 ~~Some methods such as advertising price e.g. from £395.00 per eye, or competitions with procedures as prizes, distract from the desirable process of increasing consumer knowledge and awareness, and have the potential to divert the potentially vulnerable consumer from gaining information and understanding risks to looking for a "deal". Price inducements are also often a "bait and switch" tactic where patients are enticed to contact the provider only to find out they are not within criteria or to be "upsold" with heavy sales tactics. Such marketing tactics are unacceptable and socially irresponsible in provision of medical care.~~

Comment [7]: Again goes beyond GMC guidance. Additionally, we are not clear that the Royal College is competent to offer views on what is appropriate marketing, this should be a matter for the ASA and CAP.

3 Current Advertising Regulators and Regulations

3.1 Advertising practice is controlled by a regulatory system that is independent of government ~~and operates by self and co-regulation. It is~~ administered by the Advertising Standards Authority (ASA)[1]. Advertising codes are written and maintained by The Committee of Advertising Practice (CAP)[2] and the Broadcast Committee of Advertising Practice (BCAP)[3].

3.2 The ASA governs all forms of advertising in whatever media they appear and ensures compliance with ~~the~~ obligations under prevailing advertising codes. The stated purpose of the ASA is to "make advertisements responsible" and their ambition is to "make every UK ad a responsible ad"[4].

3.3 While there is no specific code for refractive surgery, CAP has guidance on good practice for the marketing and advertising of cosmetic surgery[5]~~.~~ ~~the principles of~~ which, we recommend, should apply to refractive surgery.~~Many of the principles of this code, rules on use of the term "specialist" and "leading clinic" for example, could be applied to all medical advertising including ophthalmic and refractive surgery~~.

Enforcement

3.4 Enforcement mainly occurs in reaction to complaints, which are in turn investigated by the ASA using ~~tilising~~ experts where required. Although an improper advertisement can be removed, this is only after it has already been ~~seen~~ in the public domain and damaging messages may have been propagated. Furthermore, advertising is becoming increasingly direct, through email campaigns and social media, and serious breaches may be missed.

3.5 On the principle that prevention is better than cure, we will explore with partners in the refractive surgery sector the desirability and possibility of developing and maintaining and agreed Code of Advertising for Refractive Surgery.

Advertising content does not inform of potential risks and consequences

3.5 There is no requirement for advertisements to provide information on risks for surgical interventions. ~~Procedures are often presented as a desirable commodity,~~

~~which may be interpreted by the reader as "fool-proof".~~

3.6 ~~Unlike advertisements for instance in the financial, tobacco, alcohol or food industry where there is an obligation to list potential harmful consequences, there is no such obligation in medical advertising~~ These should be set out however in patient information made available either in advance or at preliminary consultation stage.

Avoiding ~~M~~misleading and unethical advertising

3.7 Advertising ~~used in the refractive industry can~~should not be misleading, for instance "100%
20/20 vision" and similar, which to the reader could suggest~~s~~ the procedure performed by the provider is a 100% guarantee. ~~Such statements are often not independently verified or framed with reference to what may be a highly selected patient group. These statements do not consider quality of vision attained or the so-called 20/20 unhappy patient.~~ You must not claim that interventions are risk free. The information you publish must be factual and be able to be checked. The average consumer does not have ~~the~~ medical knowledge to ~~pick this apart and is thus vulnerable~~interpret or challenge ambiguous information.

3.8 ~~Celebrity endorsements are commonly used in numerous forms including social media. They are designed to glamorize the procedure and attract patients to the specific clinic endorsed. There is no requirement to declare a financial interest on the part of the celebrity. Interests may include surgery at no cost or endorsement fees.~~

3.9 Cost is always a serious consideration for patients and can be critical in terms of deciding which procedure or which clinic to opt for. Financial inducements~~, specifically time-limited offers, provide~~should not put undue pressure on patients to make a decision without giving them the time to perform their due diligence, consider~~ing~~ the risks and find~~ing~~ out more about the clinic and the surgeon. Information about pricing, including advertising, should be clear so that the patient knows the financial implications of their decisions. ~~There is also a lack of clarity in price advertising such as "From £395.00 per eye…" as the criteria that must be met may well be impractical and in reality very few patients may be able to avail themselves of the "offer".~~

4 Regulating and controlling marketing and advertising

4.1 ~~Ideally the ASA will, following the Keogh report~~s~~, extend their remit and consider the adoption of a code of practice and guidance for refractive surgery. In the absence of such a code, the Royal College of Ophthalmologists, as the professional body for Ophthalmology in the UK and working in the best of interests of the public, through this standards document provides recommendations for advertising and marketing practice and expects all providers to comply.~~

4.2 Advertising and marketing should be conducted in a ~~socially~~ responsible manner. The overall principles and prevailing advertising codes provided by the CAP~~PA~~ and BCAP must be adhered to and followed.

4.3 Where c~~C~~elebrity endorsements ~~are discouraged and in the event these~~ are used a written declaration clarifying any financial relationship, including reduced cost for treatment, between the clinic and the celebrity should appear alongside the endorsement.

Comment [8]: Guidance should be that, not a place to offer views on what may or may not have been done in previous advertising.

Comment [9]: Unnecessarily subjective.

Comment [10]: Dealt with above

Comment [11]: Again, this goes beyond GMC guidance and is commenting on one possible type of advertising, rather than setting clear principles

Comment [12]: RCO Guidance should not go further than that of CAP, BCAP, ASA or ClearCast.

4.4 Data supporting all claims and statements must be available for independent verification by an advertising and marketing regulator such as the ASA or ClearCast.

4.5 ~~All advertisements for surgical procedures where possible need to state the following "All eye surgical procedures carry a level of risk including not obtaining the desired outcome through to varying levels of visual loss. Your eye surgeon will discuss the risks and benefits of sight correction surgery, including those specific to your own circumstances, at the time of your preoperative consultation".~~

4.6 ~~The following are considered socially irresponsible and are prohibited:~~
~~4.6.1. Time-limited deals~~
~~4.6.2. Financial inducements~~
~~4.6.3. Package deals, such as 'buy one get one free' or reduced prices for friends and family.~~
~~4.6.4. Offering eye surgical procedures as competition prizes.~~

Comment [13]: This goes substantially beyond the GMC guidance and cannot be justified.

4.7 ~~Advertising price is highly discouraged~~You must explain your charges clearly. ~~In the event that~~Where price of surgery is advertised, ~~the majority~~ten percent (10%) of suitable recipients ~~(>50%) should in reality be~~must qualify to receive~~ing~~ surgery at that price.

Comment [14]: Under CAP regulation 10% of patients must qualify for the treatment at the price that you advertise.

As per point 3.22 of the CAP Code, when assessing the availability of a headline "up to" or "from" price, the ASA expects advertisers to be able to demonstrate a reasonable level of availability. What is reasonable will depend on the circumstances, and the ASA will consider each case on its own merits, but as a general rule 10% of the advertised products should be available at the headline "up to" or "from" price.

4.8 The content of marketing information must be consistent with other patient information documents and should not differ substantially from the content of consent forms provided to the patient.

4.9 Qualifications and experience must not be exaggerated or misleading.

Enforcement

4.10 While the Royal College has no role or remit in terms of enforcement, it does have an obligation to report poor practice that is not in keeping with its recommendations to relevant authorities including and not restricted to the following:

- 4.10.1. Advertising Standards Authority (ASA)
- 4.10.2. Care Quality Commission (CQC)
- 4.10.3. Care and Social Services Inspectorate Wales (CSSIW)
- 4.10.4. Care Inspectorate (Scotland)
- 4.10.5. Competition and Markets Authority (CMA)
- 4.10.6. Department of Health

4.11 The Royal College of Ophthalmologists believes the ~~Medical Director of the advertising~~ provider must take responsibility for the final content of advertising and marketing media and it must be clear where this responsibility lies. Non-compliance with either the ASA code of practice or recommendations in this document may be considered an infringement of "Good Medical Practice"[7,8] and thus reportable to the General Medical Council.

Comment [15]: A Medical Director in a large organisation is responsible for Medical Matters and not Advertising Matters. Advertising and Marketing matters are the responsibility of the Marketing Director.

REFERENCES

1. http://www.asa.org.uk/(accessed 20 September 2015).
2. http://www.cap.org.uk/ (accessed 20 September 2015).
3. https://www.cap.org.uk/Advertising-Codes/~/media/Files/CAP/Codes BCAP pdf/The BCAP Code.ashx(accessed 20 September 2015).
4. https://www.asa.org.uk/About-ASA/Strategy.aspx (accessed 20 September 2015).
5. CAP Guidance note on *cosmetic surgery marketing*. Available at https://www.cap.org.uk/~/media/Files/CAP/Help notes new/CosmeticSurgeryMarketingHelpNote.ashx(accessed 20 September 2015).
6. Review of the Regulation of Cosmetic Interventions https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192028/Review_of_the_Regulation_of_Cosmetic_Interventions.pdf (accessed 20 September 2015)
7. "Good Medical Practice", General Medical Council. Clauses 25b, 56, 65, 70, 71, 77.78.79 and 80 http://www.gmc-uk.org/guidance/good_medical_practice.asp (accessed 20 September 2015)
8. Explanatory Guidance: Financial and commercial arrangements and conflicts of interest (2013) http://www.gmc-uk.org/guidance/ethical_guidance/21161.asp (accessed 20 September 2015)

OTHER RESOURCED MATERIAL

1. http://www.aao.org/ethics-center-browse?topic=advertising accessed 3rd January 2016
2. http://www.aao.org/ethics-detail/policy-statement--guidelines-refractive-surgery-ad