



# CONSULTING ROOM

*Your Aesthetic Partner*

## **FEATURE ARTICLE**

**Advertising  
Standards &  
Aesthetics**

**Are you up to  
speed with the  
rules?**



# ADVERTISING STANDARDS AND AESTHETICS

## Are you up to speed with the rules?

Advertising – this isn't something which always sits well within the arena of medical or cosmetic interventions, depending on whether they are surgical or non-surgical, but I think it's fair to say that as an elective option delivered by private medical aesthetic clinic, promotion or services is something which cannot be avoided. What can be avoided is advertising incorrectly or irresponsibly; doing so in a misleading or inappropriate manner, or trivialising the medical nature of treatment through time limited or discount deals. Knowing where the lines are drawn isn't as simple as many might think and many clinic businesses get it wrong.

Every business will advertise and more importantly is likely to 'need' to advertise to recruit new clients to their services. No matter which method of advertising you use to promote your cosmetic treatments, rules do apply and it's important to know them, to try not to get caught by them and to realise that those policing it are not doing as effective a job as you might otherwise think!

Advertising is used to encourage or persuade an audience to continue to 'take an action' or 'take a new action'. The audience can be viewers, readers or listeners or another specifically filtered and targeted group such as

your existing client base. The goal as we all know is to drive consumer behaviour in relation to a commercial offering, in this case drive new clients and existing clients to seek first time or repeat treatment at your clinic.

In terms of the media used for advertising, apart from the larger cosmetic surgery chains, most aesthetic clinics don't have the deep pockets needed for broadcast adverts on television, so this article will focus on non-broadcast medium such as magazines, newspapers, billboards, posters, brochures, direct mail (including printed, email and SMS text messaging), as well as Internet based material such as web sites, blogs, social media (Facebook, Twitter, Instagram etc) and banner or pay-per-click advertising.

## The Police

In the UK, the **British Code of Advertising, Sales Promotion and Direct Marketing (the Code)** is the rule book for non-broadcast advertisements, sales promotions and direct marketing communications. The **Committee of Advertising Practice (CAP)** is the self-regulatory body that creates, revises and enforces the Code; and the **Advertising Standards Authority (ASA)** is the

independent body set up by the advertising industry to police the rules laid down in it. The **Medicines and Healthcare products Regulatory Agency (MHRA)** also polices the advertising and promotion of licensed medicines, and has published guidance on the legal requirements for this in its *Blue Guide*.

Additionally, the UK legislative base for the control of advertising, particularly that of medicines, was contained in *The Medicines (Advertising) Regulations 1994* and *The Medicines (Monitoring of Advertising) Regulations 1994*, however from August 2012 this became *Part 14 of the Human Medicine Regulations 2012*.

As well as setting out basic and general rules governing all non-broadcast advertising, the CAP Code also details specific rules applicable to the advertising of health & beauty products and cosmetic therapies. In general these rules broadly state such things as; medical or scientific claims should be backed by evidence, marketing materials should not encourage public self-diagnosis, or imply a product is safe because it is 'natural', or use scientific words for common conditions to baffle consumers.

With respect to medicines, the

Code states, in conjunction with the legislative acts, that prescription only medicines (such as botulinum toxins, including all brands - Botox®, Azzalure™, Bocouture™ etc.) must not be advertised to the public; and that advertisers should not use health professionals or celebrities to endorse medicines.

The specific rules aimed at cosmetic treatments also state, more significantly, that references to the relief of symptoms or the superficial signs of ageing are acceptable if they can be substantiated; however, unqualified claims such as 'cure' and 'rejuvenation' are not generally acceptable. The general rules are not to mislead, make unrealistic claims or claim anything which you cannot substantiate if required. This also applies to the use of before and after photos, which should be genuine patients, with unadulterated images and be direct representations of a treatment being advertised. (Adjudication, Harley Medical Group, November 2010).

The ASA will reactively investigate complaints made about an advertisement and if your advert is judged to be in breach of the Code by them, then the likely request is that it must be withdrawn or amended. In general, the vast majority of advertisers comply with this and the adjudication becomes a matter of public record, (opinions on the effect of this in terms of reputation damage are pretty subjective based on public knowledge of their existence). If the advertiser does not comply then the ASA does have effective sanctions which it can impose.

I think most would agree that it's perhaps in your best interests to avoid having to deal with a complaint, in terms of time, energy, financial implications and the stress, so getting it right is the best option, to be on the safe side.

## The Aftermath of the Keogh Review

Following the UK Government's review of the provision of cosmetic interventions in England, known as The Keogh Review<sup>1</sup>, the CAP published a revised and updated help note on advertising cosmetic interventions<sup>2</sup>

in November 2013. This document is designed to offer clearer guidance, so advertisers can ensure their ads, for both surgical and non-surgical procedures, are responsible and not misleading. Essentially, it made things more specific, gave increased examples of unacceptable advertising practice, referred to non-surgical cosmetic interventions, instead of the previous focus on cosmetic surgery, and for the first time looked at social responsibility for advertising in this sector.

The Code itself did not change, it just became much easier to interpret and apply the rules that were defined. This is both for the benefit of advertisers and the ASA when dealing with complaints about adverts for cosmetic interventions.

Post-Keogh, other organisations waded in on the thorny issue of advertising in the cosmetic interventions sector, most notably the General Medical Council (GMC). They touched on the subject in a document that came into effect in June 2016 which offered guidance to doctors who offer cosmetic interventions<sup>3</sup>. Aimed at GMC registrants, it encourages the following of the CAP Code, but focuses heavily on the issue of responsible marketing, choosing to ban doctors from providing their services as a prize.

Although mostly in-line with the Code, the GMC guidance explicitly states that doctors must not mislead about the results they are likely to achieve, falsely claim or imply that certain results are guaranteed from an intervention, use promotional tactics in ways that could encourage people to make an ill-considered decision, or knowingly allow others to misrepresent them or offer their services in ways that would conflict with the guidance. The penalty of course could include one's licence to practice, so a far greater deterrent than anything CAP or the ASA have to offer at the table.

## The Code

### Social Responsibility

Since Keogh, and the report's findings that cosmetic interventions were often trivialised through advertising, the concept of socially responsible advertising practice has been born. As well as pointing out that adverts often made light of potential health risks, the report also made reference to misleading and unethical practices used to induce the public into having cosmetic interventions. Keogh considered that the following practices were socially irresponsible

- time-limited deals, financial inducements, package deals, and offering cosmetic procedures as competition prizes.



Although having to operate within their scope, the revised help note from CAP did address the issue of responsibility when preparing advertising for

this sector, and explicitly says that adverts should not trivialise cosmetic interventions, suggest that they be undertaken lightly, or play on consumers' insecurities. Since Keogh, this is also a specific breach - trivialising cosmetic interventions - that the ASA have ruled upon (The Hospital Group Ltd, 21 August 2013 and Stratford Dermatotherapy Clinic, 31 October 2012).

One area where the advertising standards differs from Keogh is with competitions. The ASA has ruled that it is not necessarily irresponsible to offer cosmetic surgery as a gift or a prize; but advertisers should take particular care when executing and administering prize draws or competitions. The ASA is likely to look more favourably on advertisers offering a strict consultation process, and if it is made clear in the advert that a prize winner would only receive a treatment, if after a consultation, they are deemed suitable (Optical Express Westfield Ltd, 24 July 2013).

Time-limited offers, countdown clocks

or 'hurry, must end Friday' deals, which put consumers under undue pressure to purchase a cosmetic intervention without adequate time to consider the decision should not be used (Liverpool Cosmetic Surgery Ltd, 20 March 2013 and 21 August 2013).

## Surgical, Non-Surgical, Minimally-Invasive, Non-Invasive?

Words we are all familiar with when describing the myriad of treatments now available with the advancement of medical technologies. Sensibly it would be misleading to claim that invasive surgery was a 'minor procedure', and one must also not imply unrealistic claims in relation to the complexity or duration of the operation, the pain experienced either during or after the operation, the length of the recovery time or the potential side-effects, as well as the outcomes achievable. Claiming that a cosmetic intervention is 'safe' or 'easy' will not go down well as all interventions carry some level of risk to the patient (MYA Cosmetic Surgery Ltd, 3 September 2014).

Examples to illustrate would include that the permanent removal of localised areas of fat (through liposuction) will prevent subjects from gaining fat elsewhere, that tattoos can be removed 'without trace' or that surgically replaced hair will last permanently.

But can something be described as non-surgical? Well the simple answer is yes; if it is being used to distinguish between surgical and non-surgical procedures offered by a clinic, but treatments such as Laser Lipolysis for example, which is not, in itself, surgical cannot be described as 'non-surgical' or 'non-invasive'. (The Norton Clinic Ltd, 2008).

## I'm the Best!

We all want to shout about how good

we are, but when making claims about the status of your clinic or the skills of your practitioners, there are some pitfalls that you could fall into by using what seem like inconsequential statements.

Claims such as 'a/the leading clinic' are likely to be seen to refer to the clinic and not purely to the doctors/surgeons it uses. Therefore, you should be able to demonstrate, if questioned, that the clinic has qualities, such as a proven track record, outstanding facilities and additional staff that would put it above most or all other clinics.

The same goes for practitioners, be wary of terms such as 'experienced', 'skilled', 'leading', 'foremost', 'specialist', to name but a few. The claim 'qualified' and derivatives such as 'highly qualified' or 'fully qualified' should be used only if the surgeons involved are on the Specialist Register of the General Medical Council (GMC) in respect of a relevant surgical specialty or were practicing cosmetic surgery independently before 1st April 2002 and hold a Certificate of Completion of Training (CCT formerly CCST) in that specialty or hold another country's equivalent or are successfully revalidated in a relevant surgical specialty, hold NHS Consultant posts (excluding

Locum Consultant posts) or are eligible for inclusion in the Specialist Register under the transitional arrangement or grandfather clause. Worth also noting is that surgeons must hold a FRCS qualification to be described in marketing materials as a 'surgeon' and may only be described as 'cosmetic surgeons' if they have chosen to specialise, and have received training and gained experience, in plastic surgery; oral and maxillofacial surgery; ENT or ophthalmological surgery.

With the new guidance, CAP explains at length the likely experience required to evidence such bragging rights.

Another common pitfall would be linking oneself or ones business to renowned locations such as Harley

Street; this is not acceptable unless you can show that you carry out consultations or treatments/procedures there. Equally when noting how many branches or clinic locations you have around the country, you should only include those premises where you carry out consultations or treat, and be wary of using 'nationwide' if you have only one clinic in Manchester and one in London!

Interestingly, the ASA also views that dentists referring to themselves using the title 'Doctor' or 'Dr' is misleading, unless they hold a medical qualification or a relevant PhD/doctorate, despite the GDC allowing this honorary title. Several example adjudications have upheld complaints of this nature. (Woodvale Clinic, February 2009 and December 2012).

## Before and After Photos

You must hold documented evidence that any before and after photographs that you use in your adverts or marketing materials are both genuine and that you hold signed and dated proof and consent for use from the patient shown. You may also be asked to substantiate the efficacy that a set of pictures is claiming so keep adequate notes and annotations to explain treatments and time frames that accompany images.

The use of before and after photographs in relation to botulinum toxins is likely to be interpreted by the ASA as an efficacy claim, which is not permitted (see more below), so you should avoid featuring any before and after images for this treatment in your marketing. But, as we all know, most websites include images of patients scrunching up their frowns within information for toxins.

## Cosmetic Injectables

*Please note that for the purposes of ease in this section, and to avoid over use of the primary brand of botulinum toxin (namely Botox), I will use the terminology BoNTA to describe all the brands currently available in the UK, (Botox®, Vistabel®, Azzalure®, Dysport®, Bocouture® and Xeomin®).*

According the CAP, if you offer BoNTA and other injected treatments in your clinic you may advertise using the term 'cosmetic fillers' or 'injected fillers', however, you may not name a BoNTA



brand directly or describe the treatment in any way that would imply BoNTA.

But, and this is where it gets silly! If BoNTA is the only one you offer, (i.e. you do not carry out dermal fillers as well) then you should not advertise 'fillers' because that would be an indirect promotion of a prescription only medicine, namely the BoNTA! But as above, if you also offer dermal fillers, you may advertise 'fillers'. Thankfully, most clinics and practitioners would have both treatment options within their armament to offer clients so this small complexity is unlikely to trip most advertisers up.

In respect of dermal filler products, irrespective of composition, you may refer to them as being capable of 'temporarily reducing the appearance of fine lines and wrinkles' but you should not suggest either that treatment can 'cure' or 'rejuvenate skin' or that 'lines and wrinkles will be permanently eliminated'. Similarly, unqualified claims, such as 'wrinkle reduction', are likely to be unacceptable.

BoNTA is a prescription only medicine which cannot be advertised to the public, so the promotion of BoNTA, whether direct or indirect is likely to breach both the Code and MHRA (legislation) rules. Being 'sneaky' and thinking that you're not 'really' mentioning it won't work either as an advert on the daily deal site Groupon proved which tried to claim that the advert related to a dermal filler treatment when the terminology used in the advert stated, "facial injection treatments on one, two or three areas" and "choice of crow's feet, between the eyebrows and forehead area". Needless to say the ASA did not buy that argument and deemed it to be indirect promotion of BoNTA. (MyCityDeal Ltd t/a Groupon (Bath Facial Aesthetics advert), March 2012). Using social media is also not a 'get out of jail free' card (Venus Beauty Lounge, 5 August 2015).

The MHRA issued a document in 2011 entitled, 'Advertising of Medicines: Guidance for consumer websites offering medicinal treatment services'<sup>4</sup>, which highlights its advice for those wishing to include information about POMs, such as BoNTA on their website. They request that there be no reference to named POMs on your home page, no hover text (tool tips), small print, hidden text or icons/logos naming a POM and that links from the home page may refer to conditions but not to the POM itself. Additionally, the website URL itself should not include the POM name, e.g. www.wesellbotox.com. However, they are not interested in the meta tag information for a website, used to assist in Search Engine Optimisation (SEO) such as keywords, titles and descriptions as they are deemed to be not public facing, thus these elements may name a POM.

As you will have noted, the MHRA is only interested in policing the home page of a website, which they put down to resource difficulties, but this leaves them wide open to not effectively policing non-compliant content on other pages within a site which have been SEOed to appear higher in Google™ rankings than the home page! Although, the MHRA are proactively checking sites, on a region by region basis, and writing to clinics if their website is deemed to be in breach. Offenders are also named and shamed in quarterly reports on their website.

It is true though that the ASA takes a harder line than the

MHRA on the advertising of BoNTA and will for example look at a website as a whole, but there may be limited exceptions for clinics offering consultations for treating specific conditions for which BoNTA brands may be used.

In looking at a particular complaint against a clinic, the ASA considered that:

...it was acceptable for a website to make **balanced and factual references to BoNTA as a treatment option** IF the advertisers **emphasised the promotion of the consultation** rather than any associated POM AND, during that consultation, **a range of therapeutic options would be discussed**; that consultation may or may not lead to the provision of BoNTA. But, if the context or content of claims in the advert go beyond balanced and factual references to BoNTA as one of several treatment options likely to be discussed during a consultation, the ASA is likely to consider the advert promotes the use of a POM to the public. (Anesis Spa, July 2012).

The bottom line is that you must promote the consultation for lines and wrinkles (or for hyperhidrosis/excessive sweating) on your website, and not the prescription toxin product, (HB Health of Knightsbridge, 15 January 2014).

You may include a price list with a range of treatments available, but the price list should not include product claims or actively encourage viewers to choose a product based on the price (Skinboost, February 2012).

***"The bottom line is that you must promote the consultation for lines and wrinkles (or for hyperhidrosis) on your website, and not the prescription toxin product."***

CAP recommend that advertisers who wish to refer to BoNTA on websites keep their wording as close as possible to the information provided in the summary of product characteristics (SPC) or patient information leaflet (PIL). This includes avoiding reference to off-label treatments (Dermaskin Clinics, 15 January 2014).

This is of course the most controversial aspect of advertising standards in relation to aesthetics and one which everyone knows is flouted daily, particularly with the advent of social media.

## Hair Removal – Permanent or Not?

When describing treatment options for hair removal with electrolysis and laser/IPL, two phrases are predominantly used - 'permanent removal' and 'permanent reduction'. Electrolysis is the only one which can make the claim for permanent removal of hair, but it cannot make claims for being painless. With light emitting devices, the Code takes its

lead from the US FDA who have given market clearance for some devices to claim 'permanent hair reduction' but not 'permanent hair removal', thus this applies when the ASA investigate complaints here.

Additionally the efficacy of laser treatments can vary depending on a person's skin type (colour), as well as their hair colour, therefore it is important to avoid giving the impression that laser or IPL hair reduction will be effective or is suitable for all consumers. Similarly, the ASA has upheld complaints against advertisers for failing to substantiate claims made that their laser treatments were 'painless'.

## Lasers and Light for Skin Treatments

As mentioned above, the ASA does not like unqualified claims such as 'rejuvenation' or 'rejuvenate', yet this is often the terminology used to describe treatments to improve the appearance of the skin using ablative and non-ablative laser and light treatments. They do however accept that skin can be 'resurfaced', but urge the use of phrases such as 'temporarily rejuvenate the skin's appearance' when promoting laser treatments.

Similarly Intense Pulsed Light (IPL) treatments are often marketed as 'photo-rejuvenation', so you could be asked to disclaim or delete the name if you use it to advertise your treatment.

The claim that lasers can 'reduce the superficial appearance of wrinkles' is generally accepted, but claims that the treatment can 'remove wrinkles or the signs of ageing' are not. This was highlighted in a complaint where the phrase 'remove fine facial lines and wrinkles permanently' was used as a claim for CO<sub>2</sub> laser resurfacing. Although the advertiser submitted evidence which showed that CO<sub>2</sub>

laser resurfacing could improve the appearance of static facial lines, the studies showed those lines could return within a year, especially if the lines were caused by the movement of underlying muscles so 'permanent' removal could not be substantiated and was thus misleading. (West of England Laser Centre, 2004).

## Conclusion

It is very clear that although there are many guidelines laid down and enforced by the ASA, CAP and MHRA regarding appropriate advertising of cosmetic surgery, aesthetic treatments and prescription only medicines used for cosmetic purposes there are literally hundreds of examples of clinics and practitioners currently breaking these rules and guidelines.

Speaking to industry stakeholders, as I often do, most are quick to point out that they know of local competitors who are 'breaking the rules', so they wonder what incentive they have to stick to them themselves!

Most 'offences' are partly due to a lack of knowledge regarding the specific CAP guidelines, but many clinics flout the rules in the knowledge that policing of these guidelines is still ineffective, despite increased awareness of the sector from both CAP and the GMC and their guidance for doctors delivering cosmetic interventions.

It's not that easy to shop a local competitor without creating 'enemies' as ASA reporting on a business-to-business footing requires transparent dialogue and mediation, which frankly no one wants to do as you may as well be placing head in a hornets' nest if you 'out' your neighbours – expecting not to get 'stung' by them in future is perhaps naive. This means that clinics wishing to market their aesthetic services within current guidelines often complain that they are operating at a disadvantage to

local competition that don't, and can be tempted to follow suit if they think they are losing customers.

Representative industry bodies, such as doctor and nurse associations appear to try to help reinforce appropriate advertising guidelines amongst membership, but it is simply not their remit to police this and they do not have the resources to do so.

Regulatory bodies such as the MHRA are taking a more proactive stance, but openly admit to not having the resources to really investigate to any great depth, leading to many loopholes being wide open to their 'policing'.

Most regulation of advertising compliance is therefore reactive which, although makes examples of a few offenders, does little as a deterrent when most think that they simply won't get caught, or that "everyone else is doing it too so why shouldn't I!". With no 'real' penalties if they do get investigated and found to be in breach, it doesn't serve to put them off.

For advice and guidance, direct from CAP, please visit their Advice Online Database<sup>5</sup> and search under the category of 'cosmetic surgery and procedures'.

## References

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**Lorna Jackson, BSc.**

Lorna has been Editor of Consulting Room since 2003. She is an industry commentator on a number of different areas related to the aesthetic industry. Lorna has been published in Aesthetic Medicine, Cosmetic News, Journal of Aesthetic Nursing, Body Language, PMFA News and Aesthetic Dentistry Today, as well as supplements in The Times and The Independent on Sunday. She has also presented at various industry events, including Smart Ideas, FACE and CCR Expo. Lorna was awarded Journalist of the Year 2014 at the MyFaceMyBody Awards.

