

## Ask the Ethicist: “Premium” IOL Advertising

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**Q:** *I was approached by sales representatives for several presbyopia-correcting intraocular lenses, and I was encouraged to use “premium” lenses to avoid “falling behind competitors” in my area who were already using the “more-advanced” technology. I wanted to offer the best for my patients but was not sure how to begin marketing the new lenses in my practice. The sales representatives encouraged me to do three things: 1) tell patients that I offer “premium” lens technology that will allow them to see everything from near to far, 2) tell patients that they have the option of using the “government issue” lens that requires glasses after surgery if they can’t afford the “premium” lens, and 3) tell patients that I would personally use the presbyopia-correcting lens because I would allow only the “best” if I had surgery on my eye. After all, the additional cost is less than many TV sets, and “what is more important than vision?”*

*Convinced by the sales representatives that the new technology was better, I began following their advice. In the end, I found the presbyopia-correcting lenses had higher rates of visual consequences than monofocal lenses, and I had to remove some of them in frustrated patients. I also had a significant number of patients who needed glasses despite uncomplicated surgery and who complained of visual symptoms that the glasses couldn’t correct. I have not totally abandoned presbyopia-correcting lenses but now use different words when educating these patients. I tell them that we now have lenses that reduce the need for reading glasses but that they do not always accomplish that goal. I also mention that some visual side effects are more likely with these lenses than with a monofocal, resulting in higher explanation rates than with monofocal lenses. Additionally, I make sure to let them know that insurance does not cover the whole cost of these lenses. Now that I understand the lenses better and describe them more accurately to my patients, it is rare for a patient to choose one; however, I will implant them for the properly informed patient who wishes to proceed with the presbyopia-correcting lenses. I feel let down by the sales representatives and, to be honest, by the ophthalmic community, which has been “selling” me these ideas at meetings now for years. Can I submit an ethics complaint against the sales representatives who misled me or against the companies who make the lenses?*

**A:** The answer to your question is no, since the Academy’s Ethics Committee has jurisdiction only over Academy fellows and members. However, an ophthalmologist who claims that a lens implant will always eliminate the need for glasses, when evidence clearly disputes this claim, would potentially be in violation of Rules 2 and 13 of the Academy’s Code of Ethics; potentially be at increased risk of medicolegal liability; and may be in violation of Federal Trade Commission (FTC) advertising regulations.

It is the ophthalmologist’s obligation to be the expert, rather than to rely on the advice of a sales representative. Ultimately, the ophthalmologist is responsible for the consequences of any misleading advertising or inadequate informed consent.

From a liability perspective, promotional comments must be consistent with information provided in the informed consent discussion. Most states now have consumer protection laws that make it easier for patients to claim false advertising, which is not usually covered by professional liability policies and may allow a plaintiff to ask for punitive damages.

Although the more recent changes that you made in your practice do appear to bring your practice into alignment with requirements of the Code of Ethics, it is important to understand that it was you, not the sales representative, who may have been in violation of the Code when you implemented the three recommendations outlined above in your surgical practice.

**For more information** about appropriate professional advertising for newer technologies, please see the FTC's relevant materials at [www.ftc.gov/bcp/guides/eyecare2.shtm](http://www.ftc.gov/bcp/guides/eyecare2.shtm) and the joint Academy- ASCRS-ISRS statement regarding advertising refractive procedures ([www.aao.org/about/policy](http://www.aao.org/about/policy)). Although these materials address refractive surgery, the issues are equally applicable to presbyopia- correcting lenses and femtosecond laser cataract surgery.

**For more information** or to submit a question for this column, contact the Ethics Committee staff at [ethics@aao.org](mailto:ethics@aao.org).