

Ask the Ethicist: Patient Testimonials

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Q: *My new advertising agency refuses to include patient testimonials in their revision of my website. They say it is against state law. How can that be?*

A: Testimonials may be defined as a personal statement given by patients, colleagues, family members, friends, actors, celebrities and other real people. In some states, including New York, Illinois and West Virginia, it is a violation of state law to use testimonials in physician advertising. Other state laws vary, and for the most part, testimonials can be used only if they include disclaimers, identify the patient and offer only information about which the average patient might reasonably have knowledge. For example, patients cannot testify to the physician's skill or the quality of professional services, but can testify to their own personal experience, comfort and pleasantness of staff.

As with all advertising, patient testimonials, where permitted, must convey typical results, must disclaim that not all patients get the same results, must disclose possible complications and must include alternatives.

The reason patient testimonials are singled out as prohibited or restricted types of advertising is that members of the public, who may already have misconceptions or unrealistic expectations, are susceptible to a personal testimonial as opposed to a traditional advertisement in which the physician notes routine information about the practice. Personal testimonials have a greater risk of appealing to individuals' anxieties and creating unrealistic expectations of results.

All states and the Federal Trade Commission ban advertising that contains false, fraudulent, deceptive or misleading material, or advertising that guarantees success.

The Ophthalmic Mutual Insurance Company (OMIC) offers the following advice for physician advertisers: "Ophthalmologists who advertise also must consider how their ad will sound to a jury. Any good plaintiff's attorney will subpoena ads generated from a doctor's office and exploit their impact at trial. Plaintiffs often will claim they were seduced or influenced by representations made in the doctor's advertising. Such claims have tremendous jury appeal and can, in fact, be the decisive factor between a verdict for the defense and a jury award." OMIC also offers guidelines on its website (www.omic.com).

Always be sure to research your own applicable state laws to ensure compliance.

For more information or to submit a question for this column, contact the Ethics Committee staff at ethics@aao.org.