

SUMMARY

DR. AVI WALLERSTEIN (CPSO# 66140)

1. Disposition

On April 15, 2016, the Inquiries, Complaints and Reports Committee (“the Committee”) required ophthalmologist Dr. Wallerstein to appear before a panel of the Committee to be cautioned with respect to his professional and legal obligation to comply with the Advertising Regulation (Part II of Ontario Regulation 114/94 under the *Medicine Act, 1991*).

2. Introduction

A member of the public who had no physician-patient relationship with Dr. Wallerstein (the Complainant) complained to the College that Dr. Wallerstein’s advertising practices (with regard to a company with which he was associated) breached the Advertising Regulation by offering prospective patients the chance to win a free surgical eye procedure. The Complainant was also concerned that the low pricing referenced in the advertising was “illusory”, and part of a “bait-and-switch” tactic.

Dr. Wallerstein responded that the advertising was not in violation of the Advertising Regulation, as the contest was neither undignified nor in poor taste and the rules of the contest were easily comprehensible and clearly outlined. He maintained that the pricing was neither “illusory” nor “bait-and-switch”, and stated that patients who have basic prescriptions are medically suited for a surgery at the lower cost quoted as the starting price for such procedures.

3. Committee Process

A Surgical Panel of the Committee, consisting of public and physician members, met to review the relevant records and documents related to the complaint. The Committee always has before it applicable legislation and regulations, along with policies that the College has developed, which reflect the College’s professional expectations for physicians practising in Ontario. Current versions of these documents are available on the College’s website at www.cpso.on.ca, under the heading “Policies & Publications.”

4. Committee’s Analysis

The Advertising Regulation states that information communicated to the public in the form of advertising must not be false, misleading or deceptive by the inclusion or omission of any information; and it must be readily comprehensible, dignified and in good taste.

The Committee concluded that it was clear that Dr. Wallerstein was associated with advertising which included a contest that allowed participants to win free surgical procedures. The Committee noted that it had advised Dr. Wallerstein in a decision in November 2012 (when he was cautioned in writing about other aspects of his advertising), of the College's position that contests of such a nature (which are blatantly commercial) are neither dignified nor in good taste, and as such, contravene the Advertising Regulation. The Committee stated in the previous decision that given it had made its position regarding such contests known, it expected Dr. Wallerstein to "take whatever steps are necessary so that he is not associated with advertising that contravenes the regulation".

The Committee was troubled by Dr. Wallerstein's failure to take any steps to address the issue of contests in the advertising with which he was associated, and felt that, in light of Dr. Wallerstein's blatant disregard of the Committee's previously stated expectation regarding this issue, it was appropriate to issue a caution. In the Committee's opinion, in this form of advertising, commercial interests are being served over public interests, contrary to the values of professionalism. The Committee expressed concern that a financial incentive was being offered to patients (i.e. the chance to undergo a costly procedure at no charge) which has the potential to improperly influence the patient's normal decision-making when considering an elective surgical eye procedure (which has various risks and complications associated with it, just like any other medical procedure).

Regarding the issue of pricing, the Committee was of the view that the information in the record before it did not show that the figures quoted in the advertising were inaccurate or misleading. There was also no information from any patient to offer support for the Complainant's allegation regarding "bait-and-switch" tactics.