

Maintaining Compliant Marketing in Aesthetics

Communications consultant Julia Kendrick examines the regulations and guidelines for aesthetic marketing and advertising to the public

Abstract

Latest figures indicate that the UK cosmetic surgery market is booming, with more than 51,000 surgical procedures taking place in 2015 – an increase of 13% compared to 2014.¹ UK statistics for non-surgical interventions are hard to come by, but as an example, in the US in 2013, \$5 billion was spent on non-surgical procedures.² In recent years, aesthetic marketing practices have evolved and successful public relations and advertising can be critical to business differentiation and survival. This paper will examine the current marketing and advertising regulatory landscape, identifying key aspects for successful marketing and understanding regulations and guidance, whilst highlighting common pitfalls.

Introduction

In 2012, the PIP (Poly Implant Prothèse) scandal laid bare the effects of unethical practices, inconsistent regulations and poor patient safeguarding.³ The UK Department of Health swiftly began a review, publishing the Keogh Review in April 2013.⁴ Among many other issues, this report raised concerns about unethical aesthetic marketing.⁴ This kick-started a cascade of tighter, clearer regulations for aesthetic marketing from several regulatory bodies, with the Committee for Advertising Practice (CAP) issuing updated guidance in November 2013,⁵ and industry-specific bodies like the General Medical Council (GMC),⁶ Royal College of Surgeons (RCS)⁷ and the Nursing Midwifery Council (NMC)⁸ following suit over the intervening years. The General Dental Council (GDC) also has a guidance document on ethical advertising, however this has not been updated since 2012.⁹ These regulations represent a change for practitioners who, if they hadn't already, may be faced with re-shaping their marketing. An understanding of the guidance, regulations, and relevant industry associations can help practitioners to comply with these changes.

Regulations, guidance or legislation?

Firstly, it is important to understand the difference between regulations, guidance and legislation. Legislation refers to the creating and enactment of laws. Broadly speaking, contraventions of legislation involve breaking the law and as such are subject to more serious sanctions – including fines and jail sentences.¹⁴ Regulations are to ensure the legislation is executed and followed – where a rule or directive is made and maintained by a particular authority – such as the Medicines and Healthcare products Regulatory Agency (MHRA).¹² The MHRA is the Government agency responsible for ensuring that medicines and medical devices work and are safe.¹² Regulations can be underpinned by laws, but are not necessarily laws in themselves and depending on the governing authority, breaches may include banning of material and fines.¹³ Finally, guidance is based around best

practice, however it can be subject to scrutiny by the professional bodies. A guidance document comprises advice, standards or information given by a person or body in authority, aimed at instilling particular behaviours, standards or benchmarks.¹⁰ For example, the GMC states that part of its role is to provide 'Detailed guidance on ethical principles that most doctors will use every day, such as consent and confidentiality, and specific guidance on a range of areas.'¹¹ Severe breaches of guidance could lead to fines sanctions on registration and ultimately potential for removal from the medical register.¹⁰

POMs, medical devices and cosmetic products

The complexity of the aesthetic marketing landscape lies in the fact that it deals with cosmetic products, medical devices and prescription-only medicines (POMs). Some aesthetic professionals can sometimes confuse these, however they have distinct differences.

A POM is a licensed drug regulated by law that must be prescribed by a doctor or nurse prescriber and is not licensed for sale to the general public. The term is used to differentiate it from over-the-counter drugs, which can be accessed without a prescription.¹⁵ In the aesthetics industry, common POMs include botulinum toxin injections, hyaluronidase and lidocaine.¹⁶

A medical device is defined as an instrument, apparatus, implant, in vitro reagent, or similar or related article that is used to diagnose, prevent, or treat disease or other conditions, and does not achieve its purposes through chemical action within or on the body (which would make it a drug).¹⁷ Examples in aesthetics include everything from gloves and thermometers to dermal fillers and injector pens. Cosmetic products are classified as substances which are for external use on the body (or within the mouth) for the purposes of cleaning, perfuming, protection, maintenance and correcting or changing its appearance.¹⁸

Relevant associations and their standing

Industry organisations have implemented their own guidance for professionals undergoing cosmetic treatments, which include guidance on marketing. In June 2016, the GMC released its updated aesthetic guidance, which included key points on marketing,

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including the need for it to be accurate, responsible and not misleading.⁵ It states, 'Market your services responsibly, without making unjustifiable claims about interventions, trivialising the risks involved, or using promotional tactics that might encourage people to make ill-considered decisions.'⁵

When it comes to marketing and promotion of POMs, it is tightly controlled and enforced by the Human Medicines Regulations 2012¹⁹ – which is legislation – and the MHRA, which provides regulations.²⁰ The GMC, RCS, NMC, GDC and CAP advice are classified as guidance.

The MHRA can bring sanctions for breaches of the code, which can include 'a fine and/or imprisonment for severe breaches'.¹² Furthermore, these restrictions do not just apply to traditional 'adverts' but also to publicly accessible information, such as a website's homepage or social media channels.²¹

The GMC, RCS, NMC and GDC recommendations are distilled from the more comprehensive CAP guidance, which has further standards in place that practitioners should consider.¹⁰ The CAP sets the overall standards for advertising practice, which apply to written materials, online (including social media) and broadcast (video and radio) – such as the need for proper substantiation, clear identification as an advert, promotions, incentives and targeting of specific audiences.¹⁰

Each industry association body is responsibly for breaches in its own guidance, however the CAP guidance is enforced by the Advertising Standards Agency (ASA), which has the 'teeth' in terms of responding to complaints of unethical or inappropriate advertising, by banning adverts and potentially issuing fines (regulation). Part of the ASA mandate is to proactively monitor marketing channels such as radio, TV and social media for non-compliant advertising.²¹

POM marketing example

Botulinum toxin injections account for the vast majority of non-surgical cosmetic procedures, with more than 6.7 million procedures taking place in the US in 2015 alone.¹⁶ Despite the term 'Botox' passing into the common vernacular, under the Human Medicines Act (law), no reference to a POM can be made in marketing material such as a sponsored advertisement, website homepage, in logos or testimonials.²¹ In addition, any small print at the bottom of a homepage should not refer to POMs or directly link consumers to a page where they are referenced. Other POMs to consider include hyaluronidase and lidocaine.¹⁶ Advertising or promotion of POMs to the public is strictly prohibited: UK law states that 'any advertisement wholly or mainly directed to the general public which is likely to lead to the use of a prescription-only medicine are prohibited'.²¹

So what CAN be done when marketing POMs?

- Raise awareness of the 'conditions' treated, such as signs of ageing around the eyes, or frown lines¹⁶
- Talk in broad terms such as 'anti-wrinkle' injections or 'cosmetic injections' as these are non-specific to POMs and could also be deemed to include fillers, which are medical devices¹⁶
- To get more specific, information about a POM should only be provided in the context of a possible treatment option following a consultation¹⁶

Cosmetics and medical devices

For the rest of aesthetic marketing, which includes marketing for cosmetics and medical devices, as well as POMs, the GMC, NMC, GDC and CAP guidance may be considered, important points mentioned can be broken down and combined into four key areas: it

must be responsible, accurate, not mislead patients or the public, or encourage ill-considered treatment decisions.^{5,6}

Responsible marketing

Responsible marketing post-Keogh includes more focus on ensuring the psychological wellbeing of the patient. Promotional activities should not target or encourage those suffering from clear psychological disorders such as body dysmorphic disorder. This can be challenging in practice, as patients often investigate cosmetic procedures following a change in life circumstances (such as post pregnancy, wedding, divorce or a major birthday). However, the GMC guidance highlights the need to consider patients' vulnerabilities and psychological needs when considering an intervention, alongside the need for certainty that the patient is requesting the procedure voluntarily.⁵ Best practice is to use two-week cooling-off periods to ensure advertising hasn't encouraged them to undergo treatment too soon.⁷ Responsible marketing requires clear treatment information – whether in verbal, written, or video format – to ensure patients have realistic treatment expectations. They need to understand what the procedure, side effects, downtime and recovery periods will entail. The root cause of many ASA complaints on cosmetic advertising is that procedures were trivialised: information was inaccurate or misleading, with procedures not being given their due gravitas and thereby implying to patients that a quick decision could or should be made.²¹ The new GMC guidance encourages cosmetic interventions to always be given their due gravitas and, by extension, has banned marketing gimmicks such as offering treatments as prizes.⁶

Accuracy

Accuracy may seem self-evident, but the CAP guidance provides great detail about commonly used terms that are no longer appropriate for promoting cosmetic products or treatments. For example, colloquial phrases like 'boob job' or 'tummy tuck' are no longer permitted, as they can diminish the severity of the procedure and could lead to patient confusion.⁵ The key message is to ensure patients have absolute clarity on what treatments are and what they involve, in order to make an informed decision. Phrases such as 'lunch-time fixes', 'non-invasive', 'safe' or 'no downtime' can cause serious difficulties, so it is vital to substantiate all claims around the treatment process, results and post-procedure care. Substantiation means you need to have personally reviewed (and kept hard copies of) any claims, studies or evidence that you put into the public domain.²³ This guidance applies to your own materials as well as those of manufacturers or suppliers.⁵ Practitioners are also encouraged to avoid hyperbole in their treatment descriptions, such as 'revolutionary' or 'turns back time', as these require substantiation. However, you can use descriptions that are unlikely to be taken literally, such as 'feel fantastic' and 'new you'.⁵

Not misleading

Not being misleading revolves mainly around the validity of both verbal and visual claims. Critically, that aesthetic advertising should not exaggerate the effect that the cosmetic intervention alone is capable of achieving. Re-touching or digital manipulation tools such as Photoshop are permitted, but subject to stringent caveats and disclaimers. The CAP provides a separate help note specifically relating to production techniques in cosmetic advertising.¹⁶ However, disclaimers do not give a 'carte blanche'. If Photoshop is used, as per the guidance, any retouched images should be kept on file alongside the originals, so that the alterations can be verified in the event of a claim.

Not encouraging ill-considered treatment decisions

Not encouraging ill-considered treatment decisions refers to the use of limited-time offers, promotions and incentives; anything which could encourage patients to make a treatment decision without appropriate consultation, consideration and cooling-off time. Special offers and promotions can be valuable tools to manage and maintain clinic revenue, and by nature must have an appropriate time limit. The key point when marketing all aesthetic procedures is to ensure appropriate terms and conditions are clearly stipulated alongside any offers (such as 'subject to consultation and cooling-off period') and that the offers themselves follow the rest of the guidance, in terms of accuracy, not trivialising and being responsible. As stated in the CAP guidance, countdown clocks and wording such as 'Hurry, offer ends on X date' are deemed unsuitable.⁵

Raising your reputation

When considering communications, the route to success begins with a strong foundation of compelling messages, which set you apart and establish a rapport with your audiences. Much of this boils down to 'Unique Selling Points' or USPs – and in the effort to differentiate, it can be easy to embellish credentials or encroach on other businesses' positioning. Once again, the CAP guidance gives details as to how you can describe expertise and capabilities. For example:⁵

- **'Experienced'** – deemed to mean at least six years in the field
- **'Specialist'** – must be the main area of practice
- **'Leading'** – must provide objective evidence of rank within the speciality
- **'Setting the Gold Standard'** – must be verified by relevant external evidence

Differentiation vs. defamation

General statements for the purpose of clarity and differentiation are one thing, but beware of targeting specific practitioners or clinics as this can easily tip into disparaging language. Defamation refers to the action of damaging someone's reputation – through slander (a spoken falsehood) or libel (a published false statement) and whilst it is not illegal, it is still a 'tort' – or civil 'wrong', which can be resolved through legal proceedings. If disparaging comments or written materials damage another businesses' reputation to the point where actual or probable financial loss is incurred, then the party has grounds to sue for defamation as per the 2013 Defamation Act.²² As well as the CAP and ASA resources, when it comes to making responsible comparisons, referring to the Association of the British Pharmaceutical Industry Code of Practice may be useful.¹⁸ As the name suggests, this guidance is primarily intended for pharmaceutical communications, but Clause 8 delivers some sage advice: 'the medicines, products and activities of other companies must not be disparaged' and 'the health professions and clinical and scientific opinions of health professionals must not be disparaged'.¹⁸ The bottom line is about taking an ethical approach; ensuring that any critical references made regarding another provider (or their products etc.) are firstly justified, as well as accurate, balanced, fair and able to be substantiated.

Discussion

Marketing and advertising in medical aesthetics can present challenges for some practitioners and clinics who do not have specialist knowledge in this area or support from marketing or public relations agencies. Whilst the scope and clarity of guidance in

aesthetics has improved in the wake of the PIP scandal and Keogh report, there seems to still be confusion as to what kind of promotion is appropriate for a POM versus a medical device. Unethical marketing in aesthetics may still be taking place – perhaps because the oversight and monitoring is split across so many different agencies and professional bodies. As a whole, the industry relies on a high degree of self-regulation and public reporting to identify and penalise any offences. Professional regulatory bodies should also be ensuring that medical practitioners within their organisation understand and comply with the resources offered by the CAP, ASA, GMC, RCS, NMC, GDC and MHRA.



Julia Kendrick is an award-winning communications and PR consultant specialising in medical aesthetics. With over 12 years' experience, she aims to help brands, clinics and practitioners take a strategic approach to take control of their reputation, tangibly grow their business and cut through the competition. Kendrick is a regular industry media contributor, congress presenter and trainer.

Julia Kendrick will speak on Building a Brand with PR at the Aesthetics Conference and Exhibition 2017 on March 31. Visit www.aestheticsconference.com/programme to find out more.

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