



Federal Trade Commission and U.S. Department of Justice
Joint Hearings on Health Care and Competition Law and Policy

Statement of Laura Carabello

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Laura Carabello

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CPRi Communications



CPRi Communications

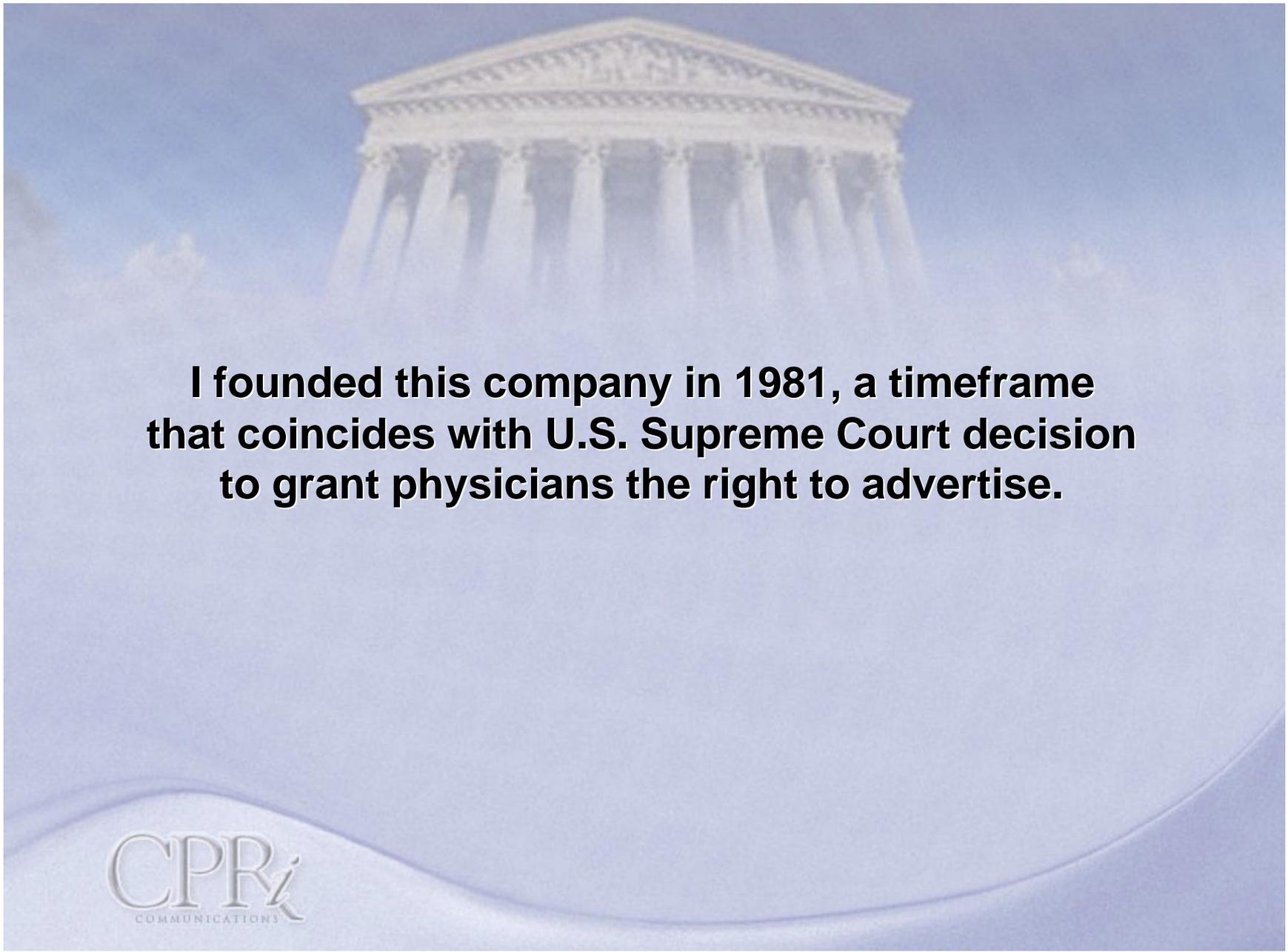
- **Specializes in the positioning of healthcare-related businesses, products and services**
- **Offering a full range of marketing communications services, including:**
 - **Public relations and media relations**
 - **Advertising and media planning**
 - **Online marketing**
 - **Interactive communications (Web/multimedia development)**
 - **Direct mail programs and market research**
- **Headquartered in Teterboro, NJ with an office in Scottsdale, AZ**
- **Clients in 35 U.S. states and strategic partners located in London**
- **CPRi maintains a global presence and a continuous focus on generating results for its customer base**



Federal Trade Commission

Hearings to address:

- **The quality of information provided to consumers through physician advertising and marketing**
- **Impact on the decision-making processes for selecting a provider or healthcare financing arrangement**

The background of the slide is a faded, light blue image of the U.S. Supreme Court building, showing its iconic portico with columns and pediment. The text is centered over this image.

I founded this company in 1981, a timeframe that coincides with U.S. Supreme Court decision to grant physicians the right to advertise.

Defining the Scope of Physician Advertising and Marketing

- **Over the past two decades, we have witnessed a dramatic change in the way physicians market and advertise their services**
- **Several key factors have influenced these changes:**
 - **Regulatory oversight**
 - **Guidance and censure from professional and trade organizations**
 - **Increased competition, particularly for non-covered services classified as out-of-pocket expenditures**
 - **Advent of Internet/Web site communications**
 - **Commercialization of medicine**
 - **Consumer empowerment**





Yellow Page Advertising

- **Look Back.**

Prior to the 1980's

Yellow Pages for Manhattan reveals doctor listings including address(es) and telephone number(s).

- **Jump Ahead.**

Circa 1980-1990

Same section provides small space ads and full page promotions in black and white, promoting specific services; listings become aggrandized with boxed information (as an up charge) as well as detailed information on practice offerings.

- **Fast Forward.**

1990-present

Not only did the Yellow Pages triple in size with the sheer number of doctors listed but also the number of color display ads grew exponentially

95% of all physicians
engage in some form of
paid advertising or marketing

25% of all physicians
opt for public relations activities

Public Relations versus Advertising

- Public relations is considered “earned media.”
- Advertising is “paid media.”
- Consultants and PR specialists work with physician practices to generate coverage in local, regional and national print and electronic media.
 - Press releases complemented by outreach to editors, reporters and producers.
 - The results can be measured by mentions in newspaper and magazine articles, appearances on TV/radio, speaking engagements and other venues where the physician is positioned as an authority or thought leader in his/her given field.
 - Many physicians opt for this coverage since it offers an opportunity to share quality information and may be perceived as a third-party endorsement.
 - The credibility of public relations versus paid advertising cannot be disputed; many physicians seek both.

Yahoo! - Microsoft Internet Explorer provided by Cablevision Optimum Online

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites History Mail Print Edit Discuss MSN Real.com AIM

Address http://www.yahoo.com/

Personalize Finance Travel

YAHOO!

Yahoo! Travel - Reserve: [Flights](#), [Hotels](#), [Cars](#), [Cruises](#) Get Deals: [Fare Sales!](#)

Email Messenger Help

Search advanced search most popular

Now! [SRC Yahoo! DSL](#) - only \$29.95/mo for first 6 months

Shop Find [Auctions](#), [Autos](#), [Classifieds](#), [Real Estate](#), [Shopping](#), [Travel](#)

Connect [Careers](#), [Maps](#), [People Search](#), [Personals](#), [Yellow Pages](#)

Organize [Chat](#), [GeoCities](#), [Greetings](#), [Groups](#), [Mail](#), [Messenger](#), [Mobile](#)

Fun [Addresses](#), [Briefcase](#), [Calendar](#), [My Yahoo!](#), [PayDirect](#), [Photos](#)

Info [Games](#), [Horoscopes](#), [Kids](#), [Movies](#), [Music](#), [TV](#)

[Finance](#), [Health](#), [News](#), [Sports](#), [Weather](#)

Yahoo! Personals
 Subscribe & Choose a Free Gift!
 Find Your Match, Post a Free Ad

Personal Assistant
 Sign up to personalize Yahoo! - [learn more](#)

In The News 11:04am ET, Sat Sep 21

- [Arafat compound under siege; collapse feared](#)
- [U.S. to adopt first-strike military strategy](#)
- [Experts warn of attacks on U.S. food supply](#)
- [Astronomers examine massive rotating star](#)
- [Johnny Carson diagnosed with emphysema](#)
- [Baseball](#) · [College football](#) · [Hockey](#) · [Golf](#)

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[Shopping](#)

Yahoo! Movies

In Theaters

- [Ballistic](#)
- [Banner Sisters](#)
- [Four Feathers](#)
- [Trapped](#)

Coming Soon

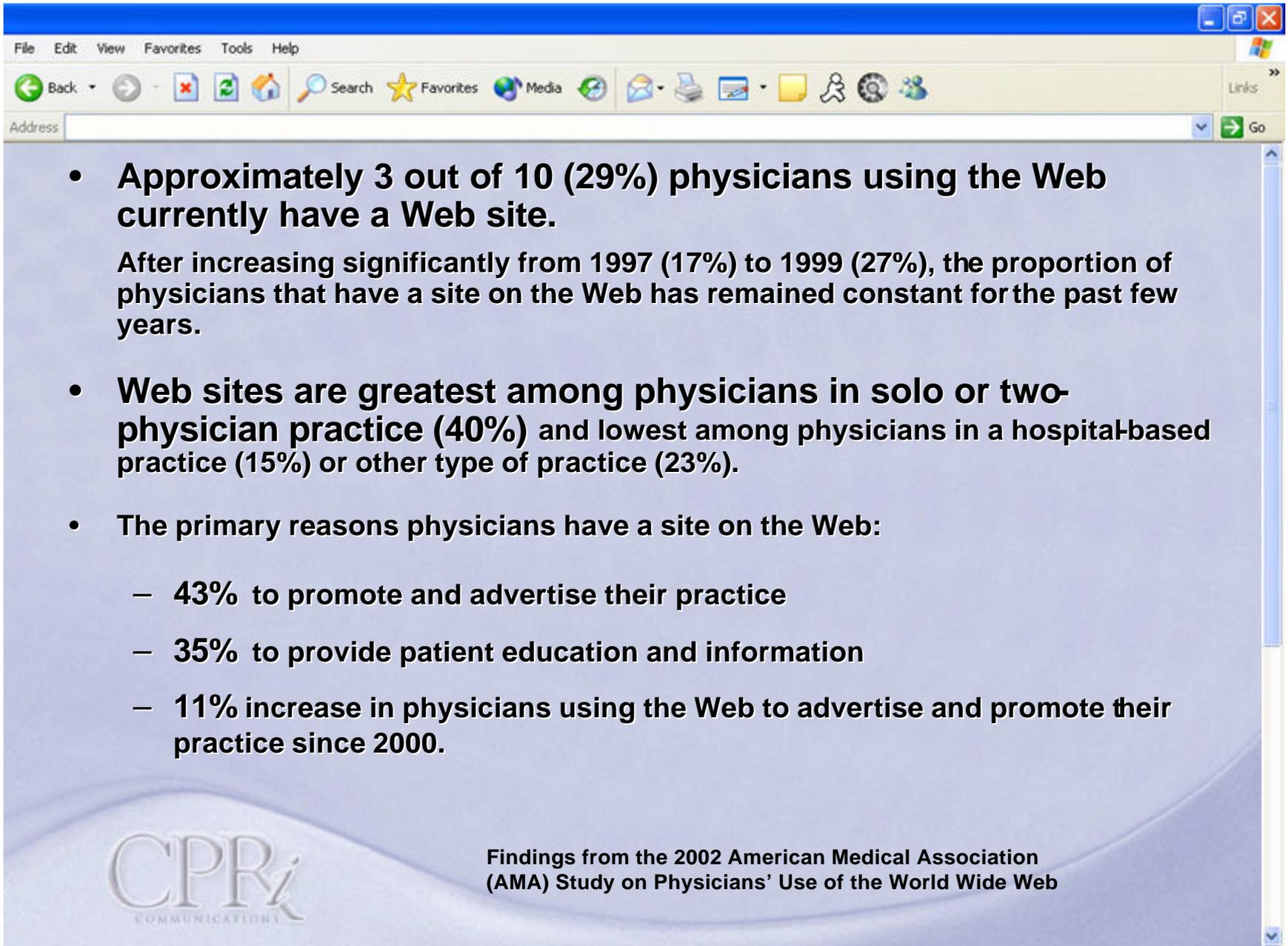
- [Sweet Home Alabama](#)
- [The Tuxedo](#)
- [Red Dragon](#)
- [Knockaround Guys](#)

[Showtimes](#) - [Trailers](#) - [More](#)

[More Yahoo!](#)

A close-up photograph of a silver Sony VAIO laptop. The screen is open and displays the text "Advent & Growth of Web-based Communications" in a black, serif font. The text is centered on the screen and slightly tilted. The laptop's keyboard is visible at the bottom, and the "VAIO" and "SONY" logos are visible on the bezel. A camera lens is visible at the top of the screen frame.

*Advent & Growth of
Web-based Communications*



The image shows a screenshot of a web browser window. The browser's address bar is empty, and the main content area displays a slide with the following text:

- **Approximately 3 out of 10 (29%) physicians using the Web currently have a Web site.**
After increasing significantly from 1997 (17%) to 1999 (27%), the proportion of physicians that have a site on the Web has remained constant for the past few years.
- **Web sites are greatest among physicians in solo or two-physician practice (40%) and lowest among physicians in a hospital-based practice (15%) or other type of practice (23%).**
- **The primary reasons physicians have a site on the Web:**
 - **43% to promote and advertise their practice**
 - **35% to provide patient education and information**
 - **11% increase in physicians using the Web to advertise and promote their practice since 2000.**

At the bottom left of the slide is the logo for CPRx COMMUNICATIONS. At the bottom right, the text reads: Findings from the 2002 American Medical Association (AMA) Study on Physicians' Use of the World Wide Web.

Red Flags

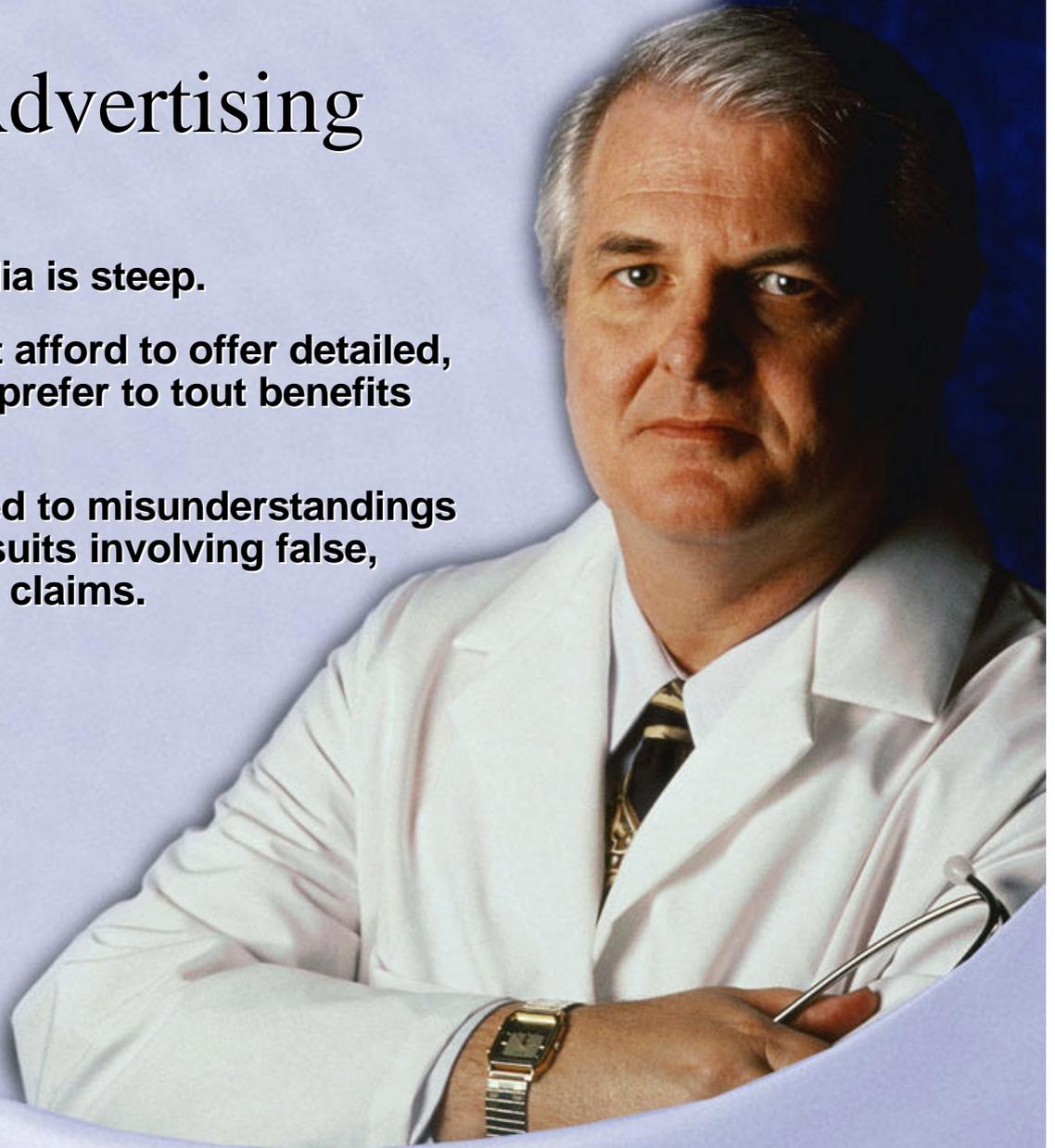
The Federal Trade Commission, which oversees regulation and enforcement of physician advertising, has raised some red flags of concern regarding substantiation for both the express and implied claims of some of the promotions now being offered. These concerns may be well-founded.

Consumer-Driven Healthcare

- **Patients take on an even greater role in the selection of providers and services.**
- **Increased physician participation in advertising and marketing venues is likely.**
- **Patients employ comparison shopping techniques, scrutinizing media outlets for information and following up with calls to providers to ascertain coverage options and costs.**
- **In paid advertising, the quality of information is largely at the discretion of the physician advertiser.**

Healthcare Advertising

- **Cost of purchasing media is steep.**
- **Most advertisers cannot afford to offer detailed, quality information and prefer to tout benefits (real or otherwise).**
- **Some advertising has led to misunderstandings and has resulted in lawsuits involving false, deceptive or misleading claims.**



Forecast

The FTC and others will make even greater demands for competent and reliable scientific evidence as substantiation . . . a burden that lies with the advertiser.

Setting the Standards for Quality Information

- **Physician advertisers receive ample guidance for developing advertising and promotional materials, with the Federal Trade Commission, American Medical Association, state legislatures, local/state medical societies, and specialty medical organizations offering regulations, policies and guidelines.**
- **Regulations grant the relevant medical boards certain powers to take disciplinary action which may result in reprimands or lead to license suspension or revocation against a physician whose advertisements violate the applicable regulations.**
- **State attorneys general usually have the authority to seek injunctive relief and civil penalties against individuals who or entities that violate general consumer protection laws that prevent deceptive trade practices.**

Guideline Examples

- **Physicians are urged and directed to avoid deceptive advertising which may mislead consumers.**
- **Physicians need not wonder what is allowed or appropriate.**
- **State boards of medicine, state laws, and federal law govern advertising by healthcare providers, with professional organizations providing appropriate verbiage.**
- **Ethical advertising is achievable, but not always practiced.**

According to the FTC, an advertisement is deceptive under the Federal Trade Commission Act if it contains a material representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances. Advertisers are also responsible for claims that are reasonably implied from their statements. These rules apply to all advertisements, including consumer testimonials. In addition, advertisers must be able to substantiate all objective claims they make about a product or service.

(NOTE: The FTC and the FDA share jurisdiction over refractive surgery advertising). In general, the FTC is responsible for protecting consumers against false or misleading advertising and other deceptive trade practices. The FDA regulates drugs and medical devices, including the advertising or labeling of devices such as the excimer laser. The agency has approved certain lasers as safe and effective for LASIK, PRK, and other specific uses. Thus far, the Summit, VISX, and Technolas 217 lasers have been approved for LASIK. For any other laser, LASIK is still considered an "off-label" use of the laser. Although the FDA does not regulate physicians' off-label uses of medical devices, it does have jurisdiction over physician advertising of such devices.

SAVE UP TO ~~\$35~~ INSIDE!

LASIK

\$499*

FOR THE FIRST 1,000 EYES



Come see why we have performed more laser vision procedures in our centers during the last calendar year than any other company in the world!

FREE CONSULTATION
With a LASIK counselor**



NIDEK
EC-5000

3-D EYE TRACKING

1-800-555-5555

CALL TOLL FREE: MON - FRI 8AM TO 9PM EST AND SAT-SUN 9AM-6PM EST

*Nidek laser only. Price may increase based on RX and astigmatism as determined by bilateral procedure. See center for details. Price per eye. Price subject to change without notice.

**Eligibility for procedure to be subsequently determined by an independent physician. is a division of a privately held American company providing excellence in eye care for over 15 years. Medical procedure performed by Independent Surgeon.

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The AMA Policies Governing Advertising and Publicity

Section E-5.02

There are no restrictions on advertising by physicians except those that can be specifically justified to protect the public from deceptive practices. A physician may publicize him or herself as a physician through any commercial publicity or other form of public communication (including any newspaper, magazine, telephone directory, radio, television, direct mail, or other advertising) provided that the communication shall not be misleading because of the omission of necessary material information, shall not contain any false or misleading statement, or shall not otherwise operate to deceive.

“The AMA is a membership organization, not a regulatory body. The FTC put us out of that business in 1980.”

~ AMA spokesperson

It is evident from the AMA policies, however, that the organization is concerned about the quality of physician advertising. Throughout the profession, most responsible physicians endeavor to adhere to the guidelines cited.

North Carolina Medical Board

It is the position of the North Carolina Medical Board that physician advertising or publicity that is deceptive, false or misleading is unprofessional conduct. The key issue is whether advertising or publicity, regardless of format or content, are true and not materially misleading.

Maryland

Maryland advertisements by physicians may not contain

- (1) "Statements intended to, or likely to, create false or unjustified expectations of favorable results," or**
- (2) "[Statements containing representations or implications that in reasonable probability can be expected to cause an ordinary prudent person to misunderstand or to be deceived."**

Virginia

Virginia regulations of physicians provide that “It shall be considered unprofessional conduct for a licensee of the board [of Medicine] to publish an advertisement which is false, misleading, or deceptive.”

District of Columbia

Washington, D.C. regulations prohibit a health professional from making a communication that contains "material misrepresentations or omits to make a representation necessary to make the statement considered as a whole not misleading."

Illinois

Illinois law explicitly provides that “It is unlawful for any [physician] licensed under this Act to use testimonials or claims of superior quality of care to entice the public.”

New York and Texas

New York and Texas also preclude the use of testimonials by physicians. Texas law provides that false, misleading, or deceptive acts or practices in the conduct of trade or commerce are unlawful. The statute cites the following activities, among others, as examples of deceptive practices: (1) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, and (2) representing that goods or services have sponsorship, approval, or characteristics that they do not.

California

**Physician Advertising, New legislation (SB 450 and SB 836)
went into effect January 1, 2000; www.leginfo.ca.gov.**

Following the Rules

Advertising is designed to spark the interest of the healthcare consumer and prompt the buyer (patient) to access/purchase services. In some instances, consumer expectations are elevated, leading to liability for physicians who cannot deliver what they promise.

Consumer Access to Quality Information

- **For those consumers who are employed, information regarding healthcare financing is usually provided by their employers.**
- **A hit-or-miss opportunity, depending upon the individual employer and its concern to deliver good information.**
- **For employers that are bearing the majority of costs – particularly in the current economic environment – plan selection may largely be a function of price.**

Access to Information

- **Large employers usually distribute brochures, which are provided by the plans, and often sponsor health fairs, offering plans the opportunity to provide more information.**
- **Employees have come to count on the fact their employers have reviewed quality aspects of the plan.**
- **For small employer groups, this type of information can be scant, leaving the consumer more dependent upon the recommendations of the employer's insurance broker or suggestions from friends and relatives.**
- **In both settings, employees can log on to the plan Web site for information, benefits and provider rosters.**

Quality of Information

Since this information is largely self-reported, the quality of the information may be driven by marketing objectives to drive enrollment.

Provider Selection Criteria

- **Provider selection criteria are more vague.**
- **Consumers turn to their health plans for provider bios.**
- **May rely upon word-of-mouth from family and friends regarding quality of care.**
- **Quality indicators, including board certification, may offer some comfort level.**
- **But the bottom line for consumers is often the personal recommendation from friends or colleagues.**



Selecting a Health Plan

- **When price is the determining factor, the provision of quality information means little to the consumer.**
- **Consumers often select plans based upon the participation of doctors they know – not necessarily quality benchmarks.**
- **For those who are unemployed and do not have coverage, the options to access information are narrower.**
- **These consumers must turn to advertising or Web messaging, and their reliance on personal recommendations is heightened.**

Growth of Consumerism

- **The growth of consumerism, including consumer-driven healthcare plans, medical savings accounts, flex spending accounts and other offerings, may drive the need for quality information.**
- **As consumers spend their “own money” to pay for healthcare services, they may be seeking better information regarding quality.**
- **This will put more emphasis on advertising and marketing and further burdens on the providers, themselves, to establish credibility and substantiate claims.**

Consumerism

- **Consumers can access select information regarding provider quality.**
- **As noted earlier, NCAQ, URAC, JCAHO accreditations for plans and networks offer benchmarks.**
- **Many, not all, employers utilize accreditation as criteria for offering the plans to their workforce and tout these achievements in a variety of advertising venues.**
- **However, employees and consumers do not usually understand accreditation and may not regard this as important to the selection process.**
- **Furthermore, the economics of achieving accreditation or issuing “Report Cards” often forces plans to forego the process.**

Advertising Overview

- **Condition-specific advertising dominates physician advertising and often includes information about the nature of the underlying condition...chronic or acute.**
- **Many advertisers play upon the emotional aspects of the condition, particularly those that represent life-threatening conditions such as cancer or heart disease.**
- **There is usually a strong “call to action,” with a toll-free number or other opportunity to respond.**
- **Many physicians who advertise track the overall response and attempt to gauge the return-on-investment of a particular venue.**

Advertising Overview

- **Ads may target the impact on a spouse or loved one or the impact on patient quality of life or appearance.**
- **The more responsible physicians do not claim to offer a cure but may offer diagnostic, treatment or management options, which may be surgical or medical.**

Communicating Quality

- **The quality and quantity may depend upon the advertising venue.**
- **For example, billboards offer up a two-second opportunity to deliver the message – leaving little room for information or quality communication.**
- **Radio spots usually run .30-.60 seconds, hardly enough time to cover details.**



LASIK
\$499*

FOR THE FIRST 1,000 EYES

1-800-555-5555



The Effects on the Behavior of Healthcare Providers

- **Physicians who advertise often adopt their own marketing personæ.**
- **For every patient generated through advertising, four additional patients will be referred by that patient.**
- **Physicians that make the investment in advertising must also follow through during the patient encounter to ensure a pleasant experience (regardless of the diagnosis).**
- **Marketing-oriented physicians often undergo training not only to prepare them for media interviews but also to deal with patients.**
- **Practice management and public relations counselors advise on a variety of issues impacting multiple aspects of interpersonal relations – from developing appropriate body language to eliminating bad breath.**

Effects on Physician Marketers

- **Physician marketers may encounter some push-back from their colleagues or a drop-off in referrals.**
- **Professional jealousy.**
- **Their colleagues who do not engage in advertising express disdain by minimizing referrals.**
- **For successful marketers, however, these issues are no longer of grave concern.**



Physician Marketing

- **Physicians who run advertising for elective “out-of-pocket” procedures not covered by insurance usually tout benefits (substantiated or otherwise) along with cost-competitive positioning.**
- **Plastic surgery, corrective vision procedures, laser hair removal, fertility and diet plans are among those conditions which fall under this category.**
- **The quality or credentials of the physician are not a key selling feature. In some of these instances, the volume of procedures performed or the number of pounds lost are cited. Before and after photos are often featured as the incentive.**
- **This hard sell approach extols the volume of procedures, not the quality of the outcomes.**

Is Advertising Driving up the Cost of Care or Simply Fueling the Competitive Spirit?

- **Physician reimbursement is established by the government (Medicare, Medicaid) or set by individual health plans; the fees do not change for physicians who advertise.**
- **In the area of non-covered benefits, however, physicians can use pricing as a sales tool.**
- **The competition for patients remains fierce, and competitive market forces come into play.**

What Form of Advertising is in Good Taste vs. What Is Allowed by Regulation?

Advertising Quality Pays off
in the Long Term.

Comparative Advertising

- **As the competitive climate escalates, there is likely to be a surge in comparative advertising, including scorecards.**
- **This is most evident in the “race” to be chosen by the leading regional publications (i.e., *NJ Monthly*, *New York Magazine*), *US News and World Report* or others as “Best Doctor.”**
- **Most physicians realize that this is a popularity contest unrelated to performance and not a real litmus test of quality. Consumers, however, use these reports as a barometer...and the doctors know it.**
- **Hospitals and health plans also use these ratings, along with satisfaction surveys, to market programs and services and can be leveraged by promoting access to specialists and specialized services.**

Marketing Quality

- **Marketing quality services and actually delivering quality services are two distinct issues.**
 - **There are no restrictions which limit the advertising of healthcare goods and services based upon quality,**
 - **There are regulations articulating standards for avoiding advertising claims that are misleading or cannot be substantiated.**
 - **These standards are widely respected and adhered to by most physician marketers.**
 - **Coupled with guidelines from other sources as cited earlier, these restrictions level the playing field and are enforced to protect the patient – the ultimate buyer and consumer of healthcare services.**

Competition

- **The ability to advertise and market healthcare services supports a competitive climate and should, ultimately, drive improved quality.**
- **Competition is healthy – even in this delicate market niche.**
- **For those that stray from the restriction and guidelines, however, there should be enforcement that protects the consumer.**
- **While healthcare services are a consumer commodity, we must remember that dissatisfaction with the performance of a vacuum cleaner or other product can hardly be compared with less than satisfactory outcomes of a particular medical service.**

Final Thoughts About Advertising

- **When developing and implementing a marketing campaign, it is incumbent upon physicians and their advisers to know and play by the rules.**
- **Advertising that is in bad taste is simply distasteful.**
- **Advertising that is false or misleading is illegal.**
- **“Guarantees” are simply not allowed.**
- **The objective is to elevate quality of care goals to the same level as financial goals.**
- **Advertising that adheres to standards set forth by government and others is mandatory.**
- **Advertising that communicates quality and provides information should be the end result.**

CPR*i*
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