

The ethics of “Top Doctor” awards: A tangled web

Brandon Kirsch, LL.M,^a Jane M. Grant-Kels, MD,^b and Lionel Bercovitch, MD^a
Providence, Rhode Island, and Farmington, Connecticut

CASE SCENARIO

Dr Edmund runs a successful dermatology practice but covets the business of cosmetic patients in his competitive community. These patients are extremely discerning and tend to select doctors based on reputation and peer recognition awards.

Dr Edmund attended a well-known medical school and residency program, but feels that this is not enough to distinguish him from the competition. He was flattered to have recently received a letter stating that he was selected to receive a “Top Doctor” award. The letter included a glossy brochure offering him the opportunity to purchase magazine advertising, listings in the company’s published directories, and commemorative plaques and trophies. Dr Edmund is aware that many of the successful dermatologists in his area have received similar awards.

Dr Edmund should:

- A. Purchase advertising and associated memorabilia for display without regard for the selection methodology for the award, because he will otherwise be at a competitive disadvantage.
- B. Request full disclosure of the selection process methodology from the company bestowing the award before making a decision.
- C. Decline to purchase self-promotional products or advertise “Top Doctor” accolades because to actively market himself as a “Top Doctor” could be misleading to the public.
- D. Refuse to be acknowledged as a “Top Doctor” and request to be removed from any directories or lists.

COMMENTARY

The first American Medical Association (AMA) *Code of Ethics* in 1847¹ strictly prohibited advertising by physicians:

§ 3. *It is derogatory to the dignity of the profession, to resort to public advertisements [...] to boast of cures and remedies, to adduce certificates of skill and success, or to perform any other similar acts. These are the ordinary practices of empirics, and are highly reprehensible in a regular physician.*

For many years, the prohibition against advertising by physicians was a defining criterion of the profession.² It distinguished physicians from unlicensed health care providers. Solicitation was scorned because it was considered irreconcilable

with the profession’s goal of holding the interests of patients first and otherwise a dishonorable attempt to manipulate people lacking the expertise to judge professional competence.³ It was further derided as a stratagem to be used by those unable to compete professionally because of “incompetence in either timeliness, personalization, or expertise of service.”³

The AMA was compelled to remove its prohibition against advertising in the 1970s after a series of related court decisions, beginning with *Goldfarb v. Virginia State Bar*, and an accusation of “restraint of trade” by the Federal Trade Commission.² Since that time, there has been a dramatic increase in competition among health care providers along with exponential growth in advertising. Although there are no longer restrictions on marketing physician services,

From the Departments of Dermatology at Warren Alpert Medical School of Brown University,^a Providence, and the University of Connecticut Health Center,^b Farmington.

Funding sources: None.

Conflicts of interest: None declared.

Presented in expanded form at the 71st Annual Meeting of the American Academy of Dermatology, Miami, Florida, March 2, 2013.

Reprints not available from the authors.

Correspondence to: Lionel Bercovitch, MD, Department of Dermatology, Rhode Island Hospital, APC 10, 593 Eddy St, Providence, RI 02903. E-mail: Lionel_Bercovitch@brown.edu.

J Am Acad Dermatol 2013;69:792-4.

0190-9622/\$36.00

© 2013 by the American Academy of Dermatology, Inc.

<http://dx.doi.org/10.1016/j.jaad.2013.04.055>

using false or misleading advertising to attract patients is unethical and illegal. According to the AMA's Opinion 5.02,⁴ "An advertiser must have a reasonable basis for claims before they are used in advertising." As exemplified by "Top Doctor" awards, the promotion of medical services often straddles the line between puffery and deceptiveness.

The ostensible purpose of recognizing doctors as "top" or "best" is to assist patients to be more discerning consumers. The best known awards include America's Top Doctors (Castle Connolly Medical Ltd), Super Doctors (Key Professional Media), Top Doctors (US News & World Report), Top Doctors (Consumer Checkbook), Best Doctors (National Coalition on Health Care and Best Doctors, Inc), America's Top Dermatologists (Consumer Research Council of America), and America's Leading Doctors (Black Enterprise). In addition, many regional lifestyle magazines publish "Top Doctor" issues on an annual basis, often in partnership with one of the companies listed above.

However, unlike the 100-meter dash, there is no simple way to measure the relative skill of physicians. Some organizations use their own survey and research process to identify accomplished physicians with a high degree of peer recognition, while others are completely nonselective. Usually unbeknownst to patients, conflicts of interest are commonplace even among the more reputable firms. For example, their business model often includes selling plaques, directories, trophies, and health care advertising in "Top Doctors" magazine issues. In order to market as a US News & World Report "Top Doctor," awardees or their institutions must negotiate and purchase licensing rights. Nevertheless, a perusal of one's colleagues' and competitors' Web sites will reveal just how pervasive these awards have become as marketing tools. Indeed, what has developed is a veritable arms race of physicians, group practices, hospitals, and academic medical centers competing for bragging rights. It has even become common practice to list "Top Doctor" awards on curricula vitae used for academic promotion.

US News & World Report "Top Doctors" is probably the best known. It selects recipients by partnering with Castle Connolly (as do many regional lifestyle magazines). According to the Castle Connolly Web site,⁵ nominations are submitted by a sample of the

nation's physicians, academic medicine leaders, and health care executives. A company research team reviews the credentials of nominees considering among other factors, "medical education, training, hospital appointments, administrative posts, professional achievements, and malpractice and disciplinary history." Not disclosed are details such as inclusiveness or representativeness of the sample, response rate, statistical methodology, and the weight assigned to individual factors. Doctors cannot recommend themselves or pay to be included, but the online nomination site is open to any licensed physician. It is unclear what effect the number of nominations received has on the selection process, but there is reason for concern that this approach amounts to a popularity contest. Physicians are more likely to nominate colleagues that they know personally, and larger health care organizations have an inherent advantage in this regard. In fact, in a story on "Top Doctor" awards, ABC News reported on a senior hospital administrator offering \$300 American Express gift cards to the first 100 doctors who nominated their hospital peers for an award on the Castle Connolly Web site.⁶

The apparently far less discerning Consumers' Research Council of America "provides consumers' information guides for professional services throughout America." It offers "Top Doctor" awards across dozens of specialties based on a "point value system" (including criteria such as number of years practiced) and claims no "fees, donations, sponsorships, or advertising from any individuals, professionals, corporations, or associations." It does not solicit nominations, and its less than rigorous selection process allowed for a dachshund puppy named Max Tailwager to be included in the 2009 "Guide to America's Top Financial Planners."⁷ The dog's owner paid \$183 for the award to SLD Industries Inc, the designated seller of plaques for honors granted by Consumers' Research Council.⁷ Moreover, a cross-check of state databases by ABC News showed several convicted felons and disciplined physicians among their awardees.⁶ Perhaps most egregiously, the organization "TopDocs.com" sells listings without even the pretense of evaluating the performance of physicians. When questioned by ABC News, a representative stated that "we are not inferring in any way that the doctors in the site are top doctors."⁶

ANALYSIS OF CASE SCENARIO

Of the choices offered, option (A) is the most questionable from the ethical standpoint. However, this is the course commonly followed.

Options (B), (C), and (D) each constitute, to varying degrees, an ethically defensible decision. Although a dermatologist who declines to promote an award may be at a competitive

disadvantage, it is disingenuous to advertise as a “Top Doctor” without, at a minimum, a reasonable understanding of the selection process. This amounts to exploitation of the medical ignorance of patients. That competitors may gain an advantage by marketing such accolades is clearly not a justification for choosing option (A).

Consistent with option (B), the recipient of a “Top Doctor” or similar award should at least know the methodology used in the selection process and be able to provide details to patients who would like that information. None of the organizations reveal enough about their specific methodology that would permit critical analysis. The Super Doctors Web site specifically states that “a physician on our list is not a ‘Super Doctor.’ Proper usage is that he or she has been selected for inclusion on the Super Doctors 2010 list.”⁸ It is also difficult for patients to assess what these awards represent or to what extent the physician might have solicited nominations. A reasonable person would infer that a dermatologist who has been named a “top,” “super,” or “best” doctor is a better physician than his or her peers, regardless of small print disclaimers on the awarding organization’s Web site. Marketing an award of dubious or unknown distinction is ethically equivalent to purchasing one.

With regard to option (C), declining to buy advertising or associated memorabilia is admirable. As commonly understood, awards are bestowed and not purchased. Patient perception of the value of an honor would certainly be diminished if it became known that the plaque or trophy commemorating it was bought from, and not given by, the awarding organization (or a related entity).

Option (D) is the most onerous, but reaches the highest ethical standard of the choices provided. However, refusing to be acknowledged or listed as a “Top Doctor” is not typically an option accompanying awards. Abstaining from advertising and the purchase of self-promotional products is probably enough to fulfill the physician’s ethical and professional obligation to be truthful. Therefore, option (C) is, for practical purposes, an equally satisfactory response. In circumstances where a physician’s medical group or institution markets such an honor, the onus remains on the physician to decide what is ethical. Puffery is no more acceptable if a third party is advertising the content. An award of dubious meaning should prompt a request to the medical group to refrain from including this marketing element in promotional materials.

Bottom line:

Hyperbole and puffery in the business world are expected. Unlike other industries, medicine remains a profession whose practitioners have a fiduciary duty to patients that transcends self-interest. Meaningful ratings and awards can provide consumers with useful information and allow for informed decision-making. However, the proliferation of “Top Doctor” awards has cheapened them. In many cases, they have become little more than a marketing ploy for doctors and hospitals and a lucrative business model for the designating organizations. Many recipients of “top” or “best” designations are widely acknowledged to be good physicians and are deserving of recognition as such, but better education of the public, increased physician awareness of ethical implications and the source of the award, and greater restraint of self-promotion are warranted.

REFERENCES

1. American Medical Association Web site. Code of medical ethics of the American Medical Association 1847. Available from: <http://www.ama-assn.org/resources/doc/ethics/1847code.pdf>. Accessed January 11, 2013.
2. Tomycz N. A profession selling out: lamenting the paradigm shift in physician advertising. *J Med Ethics* 2006;32:26-8.
3. Geist R. Advertising in medicine—a physician’s perspective. *N Engl J Med* 1978;299:483-6.
4. American Medical Association, Council on Ethical and Judicial Affairs, Southern Illinois University Schools of Medicine and Law. Code of medical ethics of the American Medical Association: Current opinions with annotations, 2006-2007 edition. Chicago (IL): American Medical Association; 2006.
5. Castle Connolly Medical Ltd Web site. How Castle Connolly makes its “Top Doctors” selections. Available from: <http://www.castleconnolly.com/about/nomprocess.cfm>. Accessed January 28, 2013.
6. Abdelmalek M, Cuomo C, Wagschal J, Doytchinova K. Top Doctor awards: are they always well deserved? Available from: <http://abcnews.go.com/Health/top-doctor-awards-deserved-abc-news-investigation/story?id=16771628>. Accessed February 11, 2013.
7. Barrett W. Dog gets top financial planner honor. Available from: <http://www.forbes.com/2009/05/14/americas-top-financial-planners-personal-finance-consumers-research-council.html>. Accessed February 11, 2013.
8. SuperDoctors.com Web site. Physician FAQ: can a physician selected to the Super Doctors list be called a “Super Doctor”? Available from: http://www.superdoctors.com/about/physician_faq.html. Accessed February 11, 2013.