



'Sacramento's Best Docs'



By F. James Rybka, MD

You've come a long way, baby. See you in court?

IN 1970, WHEN I ENTERED PRACTICE as a plastic surgeon, there were tight restrictions on physician advertising. You could send out announcement cards listing your address, phone numbers, medical and specialty training, and languages spoken. *Period.*

These rules had been imposed for over a century by the Sacramento Medical Society (see box), but they generally were the same statewide - in fact, nationwide.

Today, some specialists entering the area have probably budgeted a line of credit of \$100,000 to "prime the pump" in advertising themselves. It began with the Yellow Pages but it now blankets every conceivable public medium. What caused this radical change was a US Supreme Court decision in 1977, *Bates vs. State Bar of Arizona*, which held that attorney advertising was protected by the right to free speech.

After that, it wasn't long before controversy occurred as younger, less experienced doctors tried to propel their practices in a conservative environment based on "word of mouth" for referrals. The area's ophthalmologists, for example, had been a very traditional group until, "Ivan, the Eye Van," suddenly hit town and, using clever ads, he offered a novel outpatient convenience that changed the practices of many.

As advertising progressed, some of it became tacky and undignified. Years ago, I recall discussing it with friends from San Francisco, when the wife agreed saying, "Why, the other day, I had lunch at a restaurant near Union Square, and some plastic surgeon had posted his ad about breast implants right in the toilet stall of the ladies room!"

Another thing that occurred about this same time was the demonstration that many surgical procedures could be done, just as safely, on an outpatient basis, saving the patient larger hospital costs. Sensing a loophole here, some minimally trained surgeons, or even non-surgeons, marketed themselves as "plastic surgeons," or "cosmetic surgeons," and set up well-advertised shops outside the scrutiny of any hospital credential committee. To their credit, plastic surgical societies instigated some laws prohibiting false and misleading advertising, and other rules that beefed-up the licensing of outpatient facilities. Still, too many loopholes exist.

Although it nearly all seems bad, there was one minor providential effect of advertising in Sacramento: it reduced a smugness and snobbery that had begun to afflict a few well-established, central area doctors who, because of seniority and location alone, were benefiting disproportionately from "word of mouth." Although most of the seniors were welcoming of younger colleagues who brought in fresh ideas, a few grumbled, and denigrated the newcomers as "marginal" doctors. Although "word from a trusted mouth" is still about the finest way to choose a physician, advertising made it no longer the only way.

Unfortunately, many well-trained, advertising subspecialists now practice outside the

hospital, and have dropped out of the medical society. I wish there was a way to attract them back in, because there is a wealth of talent out there. Their input would be valuable indeed as we attempt to solve the more important issues that will affect the future of American medicine. If even a small fraction of the money now spent on advertising were redirected to the medical society, and used imaginatively for community health improvement, the benefits could be enormous. And it is not just the doctors now huckstering. Hospitals and drug companies are spending huge amounts of taxpayers' money on advertising, driving up healthcare costs with no medical benefit.

A physician relishing publicity might take notice how, apparently, some nebulous point exists where public accolades and self promotion can alter his status before a court of law. This past February, a decision in Sacramento by the Third District Court of Appeal looked into when an advertising physician advances to where he becomes "a limited public figure."

The arguments went something like this: Does the doctor issue such statements about his experience and expertise on a website, on TV or in a book that "injects him into the public debate?" If so, then he has "placed himself into the spotlight" and he "invites public attention and comments" regarding his practice.

The case involved a distinguished, very well-trained colleague who, unfortunately, had a disgruntled and vengeful female patient. She established a counter website very critical of him. Calling some of her statements "false," he understandably went to court to shut it down.

But the court refused. It said her website was protected free speech because he was a "limited public figure" who had cited how he had appeared on TV, written books, etc., about the particular surgery. Therefore, he was held to a higher standard. Even if her statements were false, he would need to show that they were made with malice. "Malice" is a much tougher standard because it means he would have to prove that she *knew* her statements were false when she issued them.

Finally, a thought about the title of this article. Who *are* the best doctors in the city? I certainly don't know. Do you know who they are? Who is in a position to know? It's probably a lot easier to find out who the worst docs are. I am not sure how *Sacramento Magazine* determines this. I recall that they describe some survey that they do. Even so, the validity of this is immediately questionable.

I do not know about Sacramento, but for some other city magazines, the "best" may be big advertisers who are fed to the publishers by public relations agents. Even if that is not the case here, it raises an interesting question: When the magazine cites who is "the best," is it pushing this particular physician across that legal line to the status of a "limited public figure?" If so, enter one vindictive patient and this honor could create a potential risk that the physician did not intend to take on.

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