



**DENTAL COUNCIL OF TRINIDAD AND TOBAGO**  
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23<sup>rd</sup> October 2019

Dear Members,

**Further Advisory and Guidelines on Advertising**

(Elaborating on the previous Advisory and Guidelines and clarifying questions and concerns raised)  
**Is Council doing its own thing and making up laws in the absence of specific legislation on the point**

The answer is no. Council is not passing or making up laws, but merely expressing policy within the law.

**Can Council create guidelines outside the parameters of the Dental Profession Act and the Dental Regulation**

The purpose of the Advisories and Guidelines on Advertising is to inform board members about how Council intends to address the thorny conundrum of advertising; and, to provide helpful guidance to board members in being able to distinguish prohibited advertising from the posting of acceptable, relevant information.

The Advisories and Guidelines do not have the force of statute but are just a helpful aid to the way Council intends to implement the relevant regulations.

**Do the guidelines on 'informational advertising' infringe section 12 (g) of the Dental Profession Act (which requires Council to ensure the maintenance of proper standards of professional conduct by dentists)**

The short answer is no. In its Advisory on Advertising Council gave notice that all who breach the prohibition against advertising will be subject to disciplinary proceedings. Council will strive to ensure the maintenance of proper standards of professional conduct by dentists.

**How does Council propose to investigate breaches of the Regulations on Advertising and what sanctions are to be applied**

It is recognized that patients do not usually complain when dentists advertise, it is other dentists who do so. Council will investigate and deal with all complaints against advertising, including



complaints from dentists about other dentists and complaints from the Trinidad and Tobago Dental Association.

While Council can consider and inquire into allegations of improper or unprofessional conduct on its own initiative, it is helpful when members of the board assist in policing proper standards by reporting all instances of unprofessional conduct.

In treating with alleged offenders, Council's approach will be nuanced:

#### *Signage*

- In the Advisory on Advertising and at the Extraordinary General Meeting of the Board held at Mt. Hope on 27 June 2019 (EGM) members were urged to ensure that their signage is compliant with the applicable Regulations, and were warned that anyone in breach of the prohibition against Advertising will be subject to disciplinary measures.
- Where there is sufficient evidence for a dentist to be called upon to answer the complaint, Council proposes (as a first instance measure) to contact the offender requesting that the offending sign or signs be removed forthwith. If he complies voluntarily, he may avoid sanction or just get a reprimand.
- Those who do not take down the signs voluntarily will get formal letters requiring them to remove the offending signs forthwith under Regulation 32. And if they fail to do so, they will then be required (via Notice) to show cause why they should not be disciplined under the Act and Regulations. At the Show Cause hearings, before a panel of Council members, the alleged offenders will be given an opportunity to contest the allegation, make submissions, and offer pleas in mitigation. Depending on the severity of the offense, whether or not the offending signs were taken down, and the level of contrition (or lack thereof), the offenders may be subject to censure or suspension.
- If suspended and found practising, Council can prosecute the offender under Section 34 of the Dental Professions Act.

#### *Advertising in print and digital media*

- In the Advisory on Advertising and at the EGM members of the board were urged to look at their posts, publications and presence on the internet and social media, and to promptly remove all prohibited advertising. Members were warned that anyone in breach of the prohibition against Advertising will be subject to disciplinary measures.



- Where there is sufficient evidence for a dentist to be called upon to answer the complaint, Council proposes (as a first instance measure) to contact the offender requesting that he take down the offending material forthwith. If he complies voluntarily, he may avoid sanction or just get a reprimand.
- For those who fail to remove the offending material, inquiries into allegations of unprofessional conduct will be initiated.
- Where found guilty the offender will be liable to sanction under Section 29 (2) of the Dental Profession Act as Council deems just or expedient.

The above is a general approach, but there is no one blue print. Power must be exercised responsibly and thoughtfully, and Council reserves the right to explore all options.

### **How will every registered dentist be advised of the Advisory on Advertising?**

It is recognized that only 63 out of 529 dentists attended the EGM.

Council sent email to all registered dentists for whom we have email addresses attaching the Advisory, the Guidelines, the Minutes of the EGM and the slide presentation.

And where there was no email address available to Council, we posted the information to the addresses we have on file for those dentists.

It is instructive to note that in Council's Survey 90.09% of the Dentists polled agree that Council should implement guidelines to control advertising.

### **The names of multiple dentists on signs**

It has been suggested that if a practice was to erect a sign with the names of its 10 dentists using the 10 cm letter sizing, the sign would be 5 to 6 feet high; and the question which followed is whether a sign that size would be acceptable?

In some jurisdictions it is expressly provided that in the case of a partnership or other practice with 2 or more dentists, the aggregate area of the plate or plates must not exceed 60 x 40 cm. We don't have similar provision in our legislation, so, where objections or concerns of this nature are raised, it will be a judgement call whether the particular name plate offends the principles against advertising and publicity.

The aggregate area of a name plate comprising 10 dentists, where the lettering used is within the prescribed limit, should fit on a sign under 4 feet. But if the spacing used for the 10 name plates



was to result in a single sign 5 to 6 feet high, whether or not that sign offends the prohibition against advertising will have to be dealt with on the particular facts and circumstances.

In general, signs exhibited in connection with a dental practice should not exceed what is reasonably necessary to indicate to those who are seeking the practice, the location and entrance of the premises.

### **Logos**

Logos are not specifically dealt with in the Dental Profession Act and the Dental Regulations. Regulation 33 (g) provides that a dentist is guilty of unprofessional conduct who advertises or canvases, whether directly or indirectly, for the purpose of obtaining patients or promoting his own professional advantage.

Where Council gets an inquiry or complaint about a logo, it will consider all relevant circumstances in determining whether the dentist or practice concerned is guilty of advertising. Relevant factors may include:

- Whether the logo is of such a character that could reasonably be regarded as likely to bring the profession into disrepute.
- Whether the logo contains any reference to the efficiency, skills or knowledge of the dentist or practice concerned.
- Whether the logo makes a claim which suggests superiority over any other dentist or practice.
- Whether the logo is flamboyant, grandiose or offers a misleading description of any services offered by the dentist or practice concerned.
- Whether the logo is exhibited elsewhere than at the premises where the practice is carried on.

### **Corporate Names**

The law regarding names can be involved and complex, and there are a number of statutes and registries treating with names one way or the other, including the Trademarks Act; the Protection Against Unfair Competition Act; the Registration of Business Names Act; and the Companies Act.

While a company is entitled to display its name plate at its registered office, it is conceivable that the name of a company can run afoul of the prohibition against advertising (for example, Best Dentists Limited).



A corporate name may be regarded as advertising where, for example, it commends or directs attention to the professional skill, knowledge, services or qualifications of one or more dentists, and where the name is clearly designed for the promotion of the professional advantage of a particular dentist or practice.

In general, a dentist who enters into a partnership or becomes a director of a body corporate (usually as a holding company for the operations of the practice) accepts responsibility for the maintenance of a high standard of professional conduct in that business, and may be required to answer to Council for any act or omission in the conduct of that business which appears to Council to constitute unprofessional conduct.

It is recognized that there are members who are associates in practices where there may be shortcomings; but it is also recognized that those members/ associates have no say and control over the conduct of the principals at the practices concerned. It would be unfair and unreasonable to hold associates personally responsible, for matters in respect of which they have no control i.e. the actions of their employers.

### **Was there an ‘amnesty’ on advertising**

There has been no amnesty in the sense of a pardon having been granted to offenders. However, and as was made clear in the Advisory on Advertising, a grace period was allowed for offenders to put their houses in order and to become compliant with the applicable regulations.

Such ‘amnesties’ are not uncommon on the part of regulators. For example, the recent amnesty from the Registrar General’s Department in order to promote and encourage companies to better comply with the filing of documents.

### **Distinguishing acceptable information from prohibited advertising**

The current legislation was born in the 1980s before the advent of the internet and social media, yet it is the internet and social media that people will first turn to for information today.

Whilst there are many positive elements to the current legislative framework, Council recognizes the need to reform the regulatory and disciplinary regime so as to bring them in line with 21<sup>st</sup> century needs and approaches. Indeed, Council has proposed amendments to the legislation which are currently with the Minister of Health.

As it stands, advertising is prohibited. See Dental Regulations 28 (1). But the prohibition is not absolute; ‘advertising’ is permissible in prescribed circumstances.



What is advertising? The principle is fairly easy to enunciate:

It consists of the publication of matter commending or directing attention to the professional skill, knowledge, services or qualifications of one or more dentists, when they have procured or sanctioned such publication primarily, or to a substantial extent, for the purpose of obtaining patients or promoting their own professional advantage.

It is the application of the principle which is so difficult.

The term 'advertising' is defined in the Trinidad and Tobago Standard on Advertising issued by the Trinidad and Tobago Bureau of standards as:

Any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium to persons in Trinidad and Tobago with the intent to influence choice, opinion or behavior and includes advocacy, government, political and election advertising.

Exactly the type of behavior prohibited by the Regulations.

That being said, and as was observed earlier, the legislation permits provision of information in prescribed circumstances. For example:

- Regulation 28 allows for a dentist starting practice to publish that fact in the press
- Regulations 30 and 31 allow dentists to erect two external signs at their practices within constraints (size of lettering and illumination).

As a general principle, it is acceptable for a dentist's identity to be revealed in certain circumstances; in particular, where basic information such as his name, contact particulars and practice address is being provided. This principle can also apply in the digital space without the need for specific legislation.

The challenge is being able to distinguish between the provision of acceptable information and prohibited advertising.

### *Prohibited advertising*

Advertising is prohibited. This is a general principle and the law doesn't have to specify the medium (in fact, the law is neutral where it comes to the medium used). To reinforce the point, prohibited advertising will include advertising oneself or practice via signage, traditional print, flyers and handouts, sky advertising behind a plane, and in the digital media (whether in open or closed groups); the possibilities are endless. Doing any of the following will be regarded as prohibited advertising:



- Publishing flamboyant, grandiose or misleading descriptions of any services offered at a practice
- advertising one's own professional skill, knowledge, services or qualifications, or publicly discussing one's own ability in such a way as to imply that one's methods are superior to those of other dentists
- publishing material that contains any reference to the efficiency, skills or knowledge of any dentist or his practice
- making claims which are not capable of substantiation or not in the best interests of general public dental health
- making claims which suggest superiority over any other dentist or practice
- paid postings, celebrity endorsements, patient testimonials, pricing, promotions, discounts, giveaways, and temporary stories on Facebook and Instagram by any dentist or practice.

### *Acceptable information*

Acceptable information lets a dentist post in the digital space his name, practice location, contact particulars, and relevant information such as whether the practice is wholly or mainly devoted to particular types of treatment. Acceptable information:

- is for the benefit of clients and the general public
- allows dentists to post on the internet and social media legal, decent and truthful information
- has regard for professional propriety.

As a general observation, there is nothing wrong *per se* in posting information on the internet and social media. The issue really is the kind of information posted and its intended purpose. So, for example, factual reports of events; development of public concern; writings on a controversial matter in which the public may have an interest; correspondence in profession journals; and scientific or professional subjects or articles may all be permissible-providing they are free from any suggestion of personal advertising or of puffing or flamboyancy. Usually, it is not the article which gives occasion for the offense but the personal paragraphs or puffs.

Council has no issue with the Trinidad and Tobago Dental Association's definition on advertising:

Advertising is the attracting of the attention to, and the provision of the information about, a product or service by means of announcements, broadcasts, web based or printed material.

Council has also noted and agrees with the following recommendations from the Trinidad and Tobago Dental Association on advertising:

The use of a website to provide practice information is not deemed advertising provided there are no links to the web page from other non-approved web pages. Websites are not to be given preferential placement in a search engine.



Individual web pages may link to external sites for information, Website practice information is to convey to patients or referring dental practitioner's information which is needed by them to make informed decisions in selecting dentists who can provide the services they require.

Information located on a web page will be limited to:

- The contact details of the providers, including the address, telephone numbers, and (if applicable) email address and website
- A statement of the regular office hours of the practice and after-hours services if available
- A statement of the services provided
- Details of access for the disabled
- Languages spoken by the practitioners and staff
- Non-enhanced photos of the dental practitioners or practice premises
- Continuing education courses completed
- Content approved by the Dental Council of Trinidad and Tobago.

#### *Council's discretion*

Another cardinal point to be emphasized relates to Council's prosecutorial discretion.

As regulator of the Dental Profession and the body responsible for holding inquiries into allegations of improper or unprofessional conduct by dentists and the disciplining of those found guilty, we are entitled to exercise prosecutorial discretion.

Ordinarily, Council would not commence disciplinary action against a dentist unless there is reason to believe that the conduct complained of constitutes an offense and there is good and sufficient evidence to obtain a conviction. But, even if a successful prosecution is probable and *prima facie* evidence of guilt is available, we may still decide not to prosecute if:

- Prosecution will serve no substantial public interest
- The contravention is trivial, and not worth the effort of prosecution
- The relevant law or regulation is obsolete, not repealed but out of tune with modern thought
- Prosecution is against the wishes of the injured party
- Where the evidence is obtained by unfair means
- Where alternatives to prosecution are available.

The above examples, while not exhaustive, provide instances where Council may decide not to initiate disciplinary proceedings.



Council is mindful of its statutory duties and responsibilities and that, when exercising powers, we must understand the limit, scope and effect of those powers. And we are also mindful of the extent to which we are entrusted with discretion.

Council recognizes that while it may be ideal to have updated legislation and a Code of Conduct which would provide a recognized standard of professional conduct and clearly defined principles on how dentists should conduct themselves, the absence of such is not fatal to our being able to make determinations on prohibited advertising where basic principles already established within the law are being applied and where we have a discretion on whether or not to prosecute.

Council has a statutory mandate to ensure the maintenance of proper standards of professional conduct by dentists; to hold inquiries into allegations of improper or unprofessional conduct by dentists; and to discipline those found guilty. Board members can rest assured that in the exercise of those functions:

- It is within our power to make determinations between acceptable information and prohibited advertising.
- We will weigh the evidence carefully, skillfully and wisely.
- It is within our purview to give policy guidance on the subject without the need for changes to the law.

Dentists who advertise do not operate in a law free zone.

Yours Sincerely,



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Dr. Ingrid Seeberan DDS (Hons)

Secretary