

## **CED Statement**

# **Advertising of Healthcare Services**

**MAY 2019**

## I - INTRODUCTION

The Council of European Dentists (CED) is a European not-for-profit association which represents over 340,000 dentists across Europe. The association was established in 1961 and is now composed of 33 national dental associations from 31 European countries.

On the issue of advertising of healthcare services, the CED believes that there is a need for clear rules, in whichever form they might appear at the national level, that follow ethical guidelines and are applied to all those stakeholders advertising for dental services. Patient safety concerns and the maintenance of the relationship of trust between the dentist and the patient must be at the core of these rules.

## II – PROTECTING PUBLIC HEALTH IN THE EU

Protection of public health is one of the core values of the European Union, according to the European treaties and European Court of Justice (ECJ) case law. Article 168 of the 'Treaty on the Functioning of the EU' (TFEU) establishes the need for a high level of human health protection to be ensured in EU policies and activities. Further, ECJ case law has repeatedly stated that health and life of humans are leading interests protected by the EU treaties. Consequently, the protection of health can be a public interest objective capable of justifying a restriction on the freedom to provide services. Moreover, an ECJ ruling in 2017 established that the protection of the dignity of the profession of dentistry can be an overriding reason in the public interest to the end of protecting the relationship of trust between the dentist and the patient, and thereby protecting public health.<sup>1</sup>

When it comes to designing healthcare systems and professional regulation, it is the prerogative of the Member States to determine the level of protection of public health it wants to afford to its citizens and how such a level can be achieved. Since this can differ from one Member State to another, Member States are allowed a margin of discretion.

## III – ADVERTISING AND THE DENTAL PROFESSION

The definition of health policy and the organisation and delivery of health services and medical care, including all the laws and regulations relating to the exercise of health professions, are a Member State responsibility. Therefore, the provision of information and advertising by dentists is performed in accordance with the requirements established in the relevant national laws, regulations or codes of conduct.

The CED, together with its member organisations, has established a [Code of Conduct](#) that sets out guiding principles for professional conduct and ethics throughout Europe. It clearly states that advertisement must respect patient rights, be clearly identified, and must be clear, honest, truthful and non-misleading. Further, it must not create unnecessary treatment needs,

---

<sup>1</sup> Preliminary Ruling of 4 May 2017, *Vanderborght*, C-339/15, EU:C:2017:335

promise unrealistic results, or be unfair or disrespectful towards the profession and colleagues.<sup>2</sup>

The ECJ has further affirmed that the extensive use of advertising or the selection of aggressive promotional messages can undermine the protection of health and compromise the dignity of the dental profession and may therefore be considered a reason for restricting the freedom to provide services.<sup>3</sup>

Unlike dentists, corporate dental chains or offices are not generally bound by the same codes of conduct that apply to healthcare professionals. There seems to be some evidence that some dental chains have tried to recruit patients through more aggressive marketing, focused on prices and payment plans, which potentially misled patients.

#### IV - CED POSITION

- Provision of healthcare is not a commodity and falls outside of the market-driven supply and demand logic of other regulated professions. Regulation must therefore not be seen as an obstacle to internal market and competition, but as a way to protect the higher interest of public health;
- Regulation of advertisement should include **all operators**, and not only those who are members of professional associations to guarantee equal treatment and fair competition for all;
- Advertisement by anyone must:
  - o respect patient rights;
  - o be clear, honest and truthful and must not be misleading;
  - o be clearly identified as advertisement;
  - o not promise unrealistic results;
  - o not encourage treatment:
    - a) using pecuniary, financial or economic incentives that induce the patient to contract or ask for health activities with no clinical benefit for the patient's health or wellbeing
    - b) using testimonies from professionals or persons whose notoriety may induce the patient to contract or ask for health activities with no clinical benefit for the patient's health or wellbeing;
  - o not be unfair or disrespectful towards the profession and colleagues.

\*\*\*

**Adopted by the CED General Meeting on 24-25 May 2019**

---

<sup>2</sup> Council of European Dentists (2017). Code of Conduct. Available on <https://cedentists.eu/ced-code-of-ethics.html>

<sup>3</sup> Preliminary Ruling of 4 May 2017, *Vanderborght*, C-339/15, EU:C:2017:335