

DC/DOF

5 October 2023

Mr. Stephen Donnelly, T.D.
Minister for Health
Department of Health
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Re: Legislative Change

Dear Minister,

There is a long-held goal of several Dental Councils to see legislative reform in dental regulation. In a regulatory environment of growing complexity, the members of the Dental Council now frequently find themselves - in the context of an outdated, limited and often simplistic piece of governing legislation - forced into adopting positions and making decisions that do not sit comfortably with their responsibility to protect the public. I am writing to you in accordance with Section 66(1) of the Dentists Act, 1985 which states that: *'It shall be a function of the Council to advise the Minister, either at the request of the Minister or on its own initiative, on all matters relating to the functions assigned to the Council under this Act.'* You will note that this is a mandatory requirement, and I am obliged to write to you to express the Dental Council's serious concerns at the failure to implement a system of regulation that provides a proper level of safety for the dental patients of Ireland.

As you will be aware, deficits in the dental regulatory framework were featured on Prime Time Investigates for the second time this year. The matters discussed on both occasions were matters that have caused patient harm and distress, and which understandably have raised questions regarding the Department of Health's intentions in relation to updating the Dentists Act 1985. While the responses provided by the Department suggest that there is support at Government level for updating the Act, from our vantage point as the dental regulator, we are unable to reconcile this high-level and publicly repeated commitment with the lack of engagement to date. The National Oral Health Policy (NOHP) lists reform of the 1985 Act as a priority, as indeed it must, as many aspects of the Policy cannot be implemented without reform of the current Dental Act.

The Dental Council presented its *Submission Regarding Legislative Change in Dental Regulation* to the Department in October 2021. This submission:

- a) identifies gaps in the dental regulatory framework which represent risks to the public,
- b) identifies existing regulatory legislation in Ireland that could be adapted to address these gaps, and
- c) demonstrates how the Dental Council's vision for legislative change aligns with the NOHP.

It is important to note that the submission has benefitted from the lived experience and expertise of several terms of Council and has been unilaterally supported by the dental profession. The significance of both the regulator and the regulated holding a shared vision and advocating for legislative change cannot be overstated and may indeed be unique.



To date, there has been no response to our submission from the Department beyond confirmation of its receipt nearly two years ago. Such a lack of engagement would have been extremely disappointing if Council had presented its submission to you outside of any particular context or national initiative. However, our submission was prepared at the express invitation of the Department, within a requested defined timeline, and intended to generate collaboration, engagement, and momentum in support of the NOHP specifically, and significantly in relation to patient care and safety.

In the context of the suspected illegal practice of dentistry, which was the focus of the most recent coverage on Prime Time Investigates, reference was made by the Department in its public statement to a number of other agencies holding responsibilities in relation to dental regulation. In addition, a response from your office to a recent parliamentary question posed by Róisín Shorthall, T.D. suggests that the practice of dentistry is underpinned by a range of legislation additional to the Dentists Act 1985 and regulated by a number of state and regulatory agencies. In the context of the recent media coverage regarding deficits in dental regulation and the risk and harm that patients have been exposed to, this relatively recent narrative raised by the Department could be seen as being misleading. With reference to the other bodies and agencies cited by the Department as holding roles in dental regulation, it may be useful to look more closely at the remits held by those bodies. In addition to the bodies cited by the Department, we have listed additional bodies and their roles pertaining to dentistry and dental practices (*See Appendix 1*). To be clear, only the Dental Council is responsible for the practice of dentistry and directly responsible for patient care and protection, with at best two of the agencies cited having a specific role in patient safety - HIQA on radiation safety and the HPRA relating to medical device and medicines.

The remits held by the bodies cited by the Department and summarised below are narrow in focus and intentionally so. None of the remits have been designed to regulate the practice of dentistry or to establish or investigate the illegal practice of dentistry. It may in fact be worthwhile for the Department to solicit the views of the bodies mentioned by the Department to confirm the practical extent of their remits involving the practice, and suspected illegal practice, of dentistry.

While the Dentists Act 1985 provides for Council to prosecute the illegal practice of dentistry, the Act does not provide Council with corresponding investigative powers to allow Council to meaningfully discharge this role. As you will appreciate, the legal system requires evidence to be gathered and thresholds for action to be met. At a recent meeting between officials from your Department and Dental Council staff, your officials questioned why the Medical Council didn't face similar issues. They do, but they have better and updated regulation to deal with these issues. They have three explicit provisions under Section 105 of the Medical Practitioners Act 2007 that the Dental Council does not: the Medical Council can investigate illegal practice, it can bring injunctive proceedings, and it can refer matters to the Gardaí where required. Simply put, while the Dental Council can prosecute a case of illegal practice, it lacks the legislative powers to investigate.

Last Thursday, the Dental Council found itself unable to deal with a matter concerning a dentist with sanctions from the United Kingdom and who the Council considers poses a potential risk to patients in Ireland because of the failure to commence the relevant sections of the Regulated Professions (Health and Social Care)(Amendment) Act, 2020. This Act was signed into law in October 2020 and three years later none of the provisions relating to dentistry have been commenced. This is despite the fact that Council has repeatedly signalled its preparedness for their commencement. There are other dentists practicing in Ireland with sanctions from other countries that the Dental Council is unable to address.

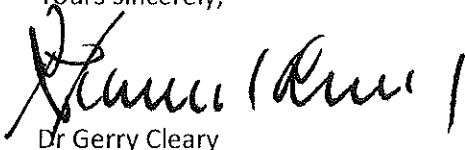
In relation to co-operation with other bodies, Council has previously collaborated with and continues to work with the Gardaí to explore concerns regarding patient safety. However, it is difficult to make

a coherent case for Gardaí resources as a preferable alternative to direct regulation by the dental regulator. It should also be noted that Council has a Memorandum of Understanding in place with the HPRA and HIQA to allow for co-operation and exchange of data as the need may arise.

Despite the range of bodies holding tangential roles to the practice of dentistry, the gaps in dental regulation as set out in our submission still stand. The ongoing risk to the public continues and the lack of material progress on legislative change becomes increasingly indefensible. It is very much the view of the Dental Council that regulatory reform should be approached urgently, constructively and collaboratively without being triggered by patient harm and distress, or by adverse media coverage.

To this end, I would like to invite you to meet with me and my colleagues in the Dental Council on a shared agenda of improving patient safety and towards the development of a regulatory model that is fit-for-purpose.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gerry Cleary', written in a cursive style.

Dr Gerry Cleary
PRESIDENT



APPENDIX 1 - GAPS IN REGULATION

Public Safety Measures	Agency and Role
Investigate complaints/disclosures against dental practices	No agency
Ensure appropriate patient protections are in place: appropriate referral pathways, clinical audit policy, risk management, 'cooling-off' periods etc.	No agency
Ensuring practices are adequately insured or indemnified	No agency
Investigate concerns of illegal practice	No agency, Gardaí (must reach evidential threshold)
Check registration and indemnity	No agency HSE at point DTSS contract is awarded and by invitation of contractor
Robust complaint management	No agency
Regulating practice-wide record keeping	No agency
Supportive and professionally appropriate practices for the employment of dental practitioners	No agency
Monitoring ongoing professional competence	No agency HIQA (for ionising radiation matters)
Regulating medicinal products and medical devices	Partially HPRA (must reach evidential threshold)
Enforcing infection prevention and control standards	No agency (especially for larger practices/chains) HSA&EPA (partial waste management) HSE (at point DTSS contract award and by invitation of holder)
Compliance with environmental directives	EPA
Ensuring safe use of ionising radiation	HIQA
Ensuring the health and safety of staff and public at work	HSA
Compliance with corporate and consumer law	CCPC, CEA, Revenue Commissioners

Key
Public Adequately Protected
Public Somewhat Protected / Limited Protection
Public Inadequately or Not Protected