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Legal Implications of Wage-Fixing

The Ontario Dental Association (ODA) recently identified a fraudulent memorandum circulating on social media that falsely purported to originate from the Ontario Dental Hygienists' Association (ODHA). The memorandum titled, "Pay Equity for Registered Dental Hygienists," allegedly announced a new standard hourly rate for registered dental hygienists to ensure fair compensation and align with rising operational costs in the dental industry. It was later confirmed that the memo was neither authored nor endorsed by the ODHA. Misinformation of this nature has the potential to mislead dental professionals and disrupt the integrity of industry communications.

As a trusted source of information for dental professionals in Ontario, the ODA has taken steps to ensure its members are fully informed. This article highlights best practices for ODA members in safeguarding against misinformation. We also take the opportunity to discuss generally the competition law implications of agreements by professionals to fix wages and other terms of employment.

Agreements to fix wages, fees, rates or other compensation charged for services can violate the Canadian *Competition Act* in two ways. First, it is illegal for service providers who compete with each other to agree on the wages, fees, rates or other compensation they will charge for their services. As an example, the members of an association of lawyers in Ontario were found guilty of agreeing on the fees they charged for providing certain real estate related legal services. Second, it is illegal for employers to agree on the wages, fees, rates or other compensation they will pay to employees. This is a new prohibition that came into force recently and is designed to prevent restrictions on the economic freedoms of employees. In both cases, parties who violate these provisions are guilty of a criminal offence and may be sentenced to prison for a maximum of 14 years or ordered to pay a fine in the discretion of the court (i.e. there is no cap or limit). Guilty parties may also be sued for damages by plaintiffs who allege that they were harmed by the criminal conduct in question.

These rules can also raise issues when associations try to negotiate compensation on behalf of their membership. While collective bargaining by labour unions is expressly exempt from the application of the *Competition Act*, there is no "safe harbour" for voluntary trade or professional associations. The concern is that the joint negotiation process will encompass exchanges of price information

between individual members of the association and ultimately lead to an agreement whereby members will all charge the same price.

Best Practices for ODA Members – Agreements to Fix Wages

In light of the risks posed by agreements to fix wages and other compensation, you should conduct yourselves with the following in mind:

1. Do not engage in any form of price fixing with other dental practitioners. You must independently determine what fees you will charge patients based on your own individual practice considerations. Note that it is perfectly acceptable to use the *ODA Suggested Fee Guides* as a resource for this purpose.
2. Do not agree with other dental practitioners on the wages or other compensation that you will pay to service providers (i.e. dental hygienists).
3. Conversely, be alert to any efforts by service providers whom you engage to agree between themselves on the fees they charge. Just as you cannot agree with other dental practitioners on the fees you charge, service providers are prohibited from doing the same with respect to the fees they charge.

Best Practices for ODA Members – The Importance of Verifying Information Online

This incident serves as a crucial reminder to remain skeptical of information shared on social media. Misinformation campaigns can cause confusion and misrepresent the intentions of professional organizations and/or its members. The ODA urges members to verify any alarming, urgent, or unusual claims before sharing them.

By staying informed and exercising caution, ODA members can contribute to maintaining transparency and trust within Ontario's dental community and with other organizations, your patients, and the public. **OD**



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