



April 10, 2019

VIA EMAIL

Timothy E. Flanigan
Chief Legal Officer
Cancer Treatment Centers of America Global, Inc.
5900 Broken Sound Parkway NW
Boca Raton, FL 33487
[REDACTED]

Re: CTCA'S Use of Deceptive Patient Testimonials in Marketing Materials

Dear Mr. Flanigan:

Thank you for your March 28 letter. TINA.org agrees with CTCA that cancer care is extraordinarily complex and that there is no one-size-fits-all approach to the disease. TINA.org further appreciates CTCA's admission that "[t]here simply are no 'generally expected' or 'typical' outcomes of cancer care." It is precisely for this reason that marketing cancer treatment through the use of CTCA patient testimonials violates FTC law.

As the FTC has clearly stated, marketing materials that contain consumer testimonials "will likely be interpreted as representing that the endorser's experience is representative of what consumers will *generally achieve* with the advertised product or service." 16 CFR § 255.2(b) (emphasis added). Thus, if an advertiser uses consumer testimonials, as CTCA does, it either needs to have adequate substantiation for the representation that the depicted result is generally achievable, or clearly and conspicuously disclose the generally expected performance in the depicted circumstances.¹ *Id.* There is no third option. In other words, if, as you explain in your letter, every patient's cancer treatment is inherently atypical, then CTCA's only legal option is to stop using patient testimonials. CTCA is not permitted to circumvent FTC law to lure patients to its for-profit centers with atypical testimonials simply because cancer treatment is complex.

¹ TINA.org is not seeking to dictate how CTCA complies with FTC disclosure law. Rather, it is simply insisting that CTCA either provide a disclosure that satisfies FTC law or delete all the patient testimonials it is using.

Your letter further suggests that CTCA’s disclaimer – which now appears in gray font at the bottom of its testimonial webpages – stating that the depicted results “may not be typical or expected for the particular disease type described in this testimonial” is legally sufficient. That position is inconsistent with the FTC’s current policy on testimonials. *See* 16 CFR §255.2, fn 1 (“The Commission tested the communication of advertisements containing testimonials that clearly and prominently disclosed either ‘Results not typical’ or the stronger ‘These testimonials are based on the experiences of a few people and you are not likely to have similar results.’ Neither disclosure adequately reduced the communication that the experiences depicted are generally representative. Based upon this research, the Commission believes that similar disclaimers regarding the limited applicability of an endorser’s experience to what consumers may generally expect to achieve are unlikely to be effective.”)²

Moreover, your letter makes inaccurate assumptions – without any documented support – about the consumers CTCA is targeting with its marketing material. Specifically, your letter states that:

- “[patients and their families] understand that not every treatment option may be available to or work for them,”
- “[c]ancer patients and their families are careful consumers who talk to their own doctors and do research before selecting a provider,”
- “patients do not start cancer treatment at CTCA after simply seeing a patient testimonial in an ad, without doing further research,” and
- “[n]o reasonable person would think the mere mention of these options in an ad is a guarantee that they always work for everyone.”

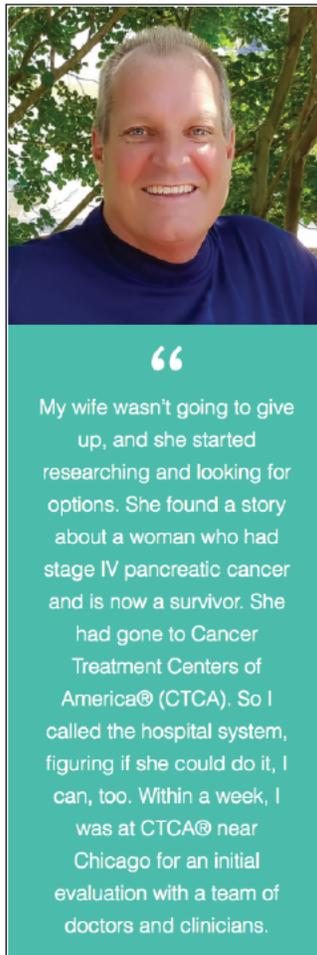
These statements fail to account for the indisputable fact that cancer patients are not typical consumers. Rather, they are a susceptible class of purchasers who may be particularly influenced by claims that implicitly promise a cure.³ *See FTC v. IFC Credit*

² Not only is the disclaimer legally ineffective, but its placement is such that the vast majority of consumers will never see it. As the Commission has stated, disclosures must be prominent, conspicuous, and effectively communicated to consumers. *See* .com Disclosures: How to Make Effective Disclosures in Digital Advertising. And advertisers should assume that consumers do not read an entire website or online screen so disclosures should be placed as close as possible to the claim they qualify. Simply making the disclosure available somewhere in the ad, where some consumers might find it, does not meet the clear and conspicuous standard. *Id.* There can be no dispute that CTCA’s disclaimer is neither prominent nor conspicuous.

³ *See e.g.*, “Today, I feel better than before I was diagnosed.” Testimonial of CTCA stage 4 esophageal cancer patient Andrew S., available at <https://www.truthinadvertising.org/wp-content/uploads/2018/07/Andrew-Slachta-Esophageal-Cancer-CTCA-Website.png>; “Dr. Shrestha read my results to me and all my cancer was gone.” Testimonial of CTCA stage 4 transitional cell carcinoma cancer patient Troy, available at <https://www.truthinadvertising.org/wp-content/uploads/2018/07/Troy-Mikell-Bladder-Cancer-CTCA-Vid-A.mp4>; “In this commercial, George, a stage III lung cancer survivor and his wife, Sue, talk about his diagnosis, finding CTCA, and getting his life back.” Testimonial of CTCA stage 3 lung cancer patient George Alan

Corp., 543 F. Supp. 2d 925, 946 (N.D. Ill. Apr. 9, 2008) (citing H.R.Rep. No. 156, Pt. 1, 98th Cong., 1st Sess. 37 (1983); Trade Reg.Rep. (CCH) P 50,421 at 55,948) (referring to seriously ill cancer patients as a “highly susceptible class[] of purchasers); *In the Matter of Cliffdale Assocs.*, 1984 FTC 71, 181 (F.T.C. 1984) (stating that “terminally ill consumers might be particularly susceptible to exaggerated cure claims”); Lisa M. Schwartz and Steven Woloshin, *Cancer Center Advertising – Where Hope Meets Hype*, 176(8) JAMA Intern. Med. 1068-1070 (Aug. 1, 2016) (stating that “[p]otentially misleading advertisements are a problem when they generate false hope; increase the use of new, expensive high-technology treatments that are unproven (and possibly inferior to proven treatments); or lure vulnerable patients to leave their home, family, and other support systems in their communities by the illusion of receiving better care.”)

Further, CTCA’s own marketing materials show that its testimonials do indeed lure patients to its centers under the misguided presumption that CTCA patient testimonials show typical results. For example,



“

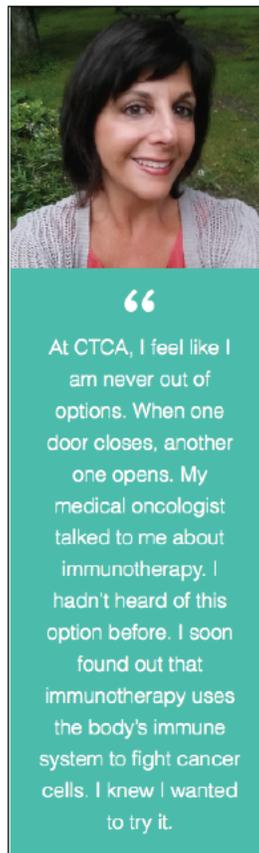
My wife wasn't going to give up, and she started researching and looking for options. She found a story about a woman who had stage IV pancreatic cancer and is now a survivor. She had gone to Cancer Treatment Centers of America® (CTCA). So I called the hospital system, figuring if she could do it, I can, too. Within a week, I was at CTCA® near Chicago for an initial evaluation with a team of doctors and clinicians.

R., available at <https://www.truthinadvertising.org/wp-content/uploads/2018/07/George-Rader-Lung-Cancer-CTCA-Website-Commercials-Vid-A.png>.

See <https://www.cancercenter.com/patient-stories/jimm>. Even according to CTCA’s own statistics for pancreatic cancer, which are three webpages removed from this testimonial, 11 percent of patients diagnosed with metastatic pancreatic cancer between 2000 and 2015 at CTCA survive for two years after diagnosis, and only 3 percent of these patients live for five years.

As for CTCA’s contention that patients are entitled to learn about “new and evolving” treatment options, TINA.org does not disagree. However, if CTCA wants to tout the benefits of new treatment options, then it is legally obligated to also share the risks associated with these options. *See, e.g.*, 21 CFR 202.1(e)(5) (FDA’s implementing regulations require that promotional pieces for drugs and medical devices present information about effectiveness and risk in a balanced manner). *See also* FTC’s .com Disclosures: How to Make Effective Disclosures in Digital Advertising.

For example, the problem with Stacy’s testimonial that promotes immunotherapy is that it fails to disclose any risks whatsoever, such as, by way of example, the fact that this treatment option does not work in about 50 percent of cases.⁴



⁴ <https://www.cancercenter.com/discussions/blog/why-does-immunotherapy-work-for-some-but-not-others/> (“Now researchers and cancer doctors are trying to unravel the mystery behind why in some cases—about half the time immunotherapy is tried on most cancers—the patient’s immune system doesn’t respond at all.”).

See <https://www.cancercenter.com/patient-stories/stacyf>.

Finally, not only does CTCA’s marketing of patient testimonials fail to comply with FTC law, but medical articles have consistently disapproved of and criticized the use of patient testimonials as a way to market healthcare. See e.g., Lisa M. Schwartz and Steven Woloshin, *Cancer Center Advertising – Where Hope Meets Hype*, 176(8) *JAMA Intern. Med.* 1068-1070 (Aug. 1, 2016) (discussing how cancer centers “should read and follow FTC guidance on truthful advertising, paying particular attention to the responsible use of testimonials and formally test advertisements in the target audience to ensure that the patients are not misled.”). See also Yael Schenker and Alex John London, *Risks of Imbalanced Information on US Hospital Websites*, 175(3) *JAMA Intern Med.* 441-443 (Mar. 2015) (discussing the informational asymmetries between healthcare institutions and patients, and how patients “lack the framework for evaluating what they need to know about many medical treatments and surgical procedures and, therefore, whether the information they have received is adequate.”); Robin Larson et al., *Advertising by Academic Medical Centers*, 165(6) *Arch. Intern. Med.* 645-651 (Mar. 28, 2005) (discussing how consumers tend to have a greater degree of confidence in the quality, accuracy, and underlying altruistic motivations of medical institutions than they do other types of marketers, and therefore may not be able to differentiate between educational information and advertising designed to generate revenue); Alex John London and Jonathan Kimmelman, *Clinical Trials in Medical Center Advertising*, 4(6) *JAMA Oncol.* 769-770 (June 2018) (discussing how the advertising of novel treatments such as clinical trials as viable cancer treatment options can create material misconceptions among patients). In short, TINA.org’s position is well supported by medical experts and bioethicists alike.

Since receiving TINA.org’s letter more than five months ago, CTCA has not only continued to use inappropriate testimonials in its marketing materials, but it has modified the testimonials such that the cancer stage for each patient endorser is no longer prominently provided on each page (so there is no longer a simply way for prospective patients to know if the endorser had stage 1 or stage 4 cancer or something in between). Further, the inadequate disclosure that CTCA relies on (stating that the depicted results may not be typical) is no longer at the top of each testimonial webpage highlighted in green, but at the very bottom in inconspicuous gray font. This is a far cry from being “an industry leader in providing information to patients and their families in a transparent and responsible way.”

In short, if CTCA truly cares about cancer patients and is not merely paying lip service to their well-being, then it will do the right thing and stop using deceptive tactics to lure them to its for-profit centers.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

Cc: Andrew Smith, Director, Bureau of Consumer Protection, FTC
Mary Engle, Division of Advertising Practices, FTC
James Kohm, Associate Director, Division of Enforcement, FTC