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Welcome...

Sixty years strong

It is 60 years since the Medical Defence Union first opened its doors to dentists. Since then, before and following the creation of the DDU in 1994, we have strived to offer the best for our members. We have kept up with advances in dentistry and the dento-legal environment, and we have listened to our members’ needs.

Recently, in response to a major change in the dental regulatory environment, and in recognition of the expanding range of treatments being offered in dental practices across the country, we have offered two new types of membership.

Firstly, in response to the General Dental Council’s (GDC’s) mandatory registration of dental nurses, we have introduced membership to dental nurses (see page 6). Secondly, in recognition of the broadening scope of dentistry and in response to members’ requests, we have introduced for the first time insurance for dentists undertaking cosmetic procedures using botulinum toxin and dermal fillers (see page 8). Although these do not currently constitute ‘the proper practice of dentistry’, the GDC is now consulting on the role of the dental team and asking for views on what should be seen as ‘legitimate additions to conventional dentistry’ (see page 4).

Such changes to the dento-legal environment inevitably bring with them challenges. As ever we hope to help you, our members, rise to these challenges. Read about the dilemmas that nurse registration can bring on pages 14-15 and the risk management issues in cosmetic work on page 17.

I hope you enjoy your Journal.

Rupert Hoppenbrouwers
dental editor and head of the DDU

Members’ benefits

A review of member benefits:

Professional indemnity
Insured professional indemnity — underwritten by SCOR Insurance (UK) Limited and by International Insurance Company of Hannover Limited — for most paying members. Discretionary indemnity for our student members.

Dento-legal advice
24-hour advice, guidance and support from our expert dento-legal teams.

DDU publications
Free dental advisory information.

DDU website
Access to members-only sections of the DDU site to read case studies and articles.

Online CPD
Practical risk management tools and advice.

Media
Expert media advice if you have to deal with a newspaper, TV or radio enquiry.

Book discounts*
Discounts on dental text books.

*The DDU always seeks to offer attractive benefits as part of membership and, from time to time, may add, withdraw or amend benefits at its discretion.
‘Justify your actions,’ says GDC in new guidance for dental professionals with management responsibilities

The General Dental Council (GDC) has published new guidance for dentists and dental care professionals with management responsibility.

Guidance on Principles of Management Responsibility provides advice relevant to those who are directors of dental bodies corporate (DBC), who own or are responsible for running dental practices or laboratories, or who have a management role in dental healthcare organisations or educational establishments such as universities.

The GDC expects dental professionals to be prepared to justify their actions as managers, and its guidance includes the following dento-legal points:

- Make sure you work within your knowledge and competence as a director or manager
- Be aware of your legal responsibilities
- Be open and honest in any financial and commercial dealings
- Ensure patients are not put at risk by allowing financial and other targets to have a negative influence on the quality of care delivered
- Make sure systems are in place to allow staff within the organisation to raise concerns

Ensuring all staff are familiar with the GDC’s Standards for Dental Professionals (2005) and its supporting guidance

In the wake of amendments to The Dentists Act 1984 an increasing number of dental professionals are taking on management responsibilities. The changes to the Act led to the removal of restrictions on the number of DBCs and opened the way for any dental practice to incorporate by becoming a limited company or a limited liability partnership.

The amendments also allowed any registered dental professional to own and run a dental practice, though it should be noted that there is a requirement for a majority of the directors of any dental corporate body to be registered dental professionals, over whom the GDC has disciplinary jurisdiction.

The DDU is on hand to advise members with specific queries.

Consultation to clarify roles opens

DDU members regularly call the DDU 24-hour dento-legal advice line asking whether a dental care professional (DCP) is legally allowed to carry out a certain task and, if so, under what conditions. We also receive a number of requests for advice from DCP members wishing to extend their repertoire of treatments and wondering whether they can legally do so.

The General Dental Council (GDC) is currently consulting on the scope of practice of GDC registrants with the aim of producing new guidance clarifying what different members of the team may and may not do. It is seeking views on the skills that dentists, dental hygienists, dental therapists, clinical dental technicians and orthodontic therapists should have at the point of qualification and those they may develop throughout their career.

It is also considering issues relating to dental technicians and dental nurses, such as who can do what in an emergency.

Other areas being considered include:

- Whether any skills should be ‘reserved’ to any particular registrant groups
- Whether any DCP group should be able to carry out tooth whitening
- Whether treatments such as botulinum toxin, dermal fillers and bone harvesting should be recognised as ‘legitimate additions to conventional dentistry’


See p17 ‘Not just a cosmetic exercise’
Pilot scheme offers confidential health advice to dentists

Dentists from the London area with mental or physical health or addiction concerns will be able to take advantage of a new pilot scheme to be launched in the autumn.

Provisionally called the Practitioner Health Programme (PHP), the service will be run by a small team of clinicians who will be able to access additional professional help as necessary. All calls to the service will be treated in confidence to encourage self-referral and early referral from colleagues, family or friends, as clinicians are often best helped early in their illness.

It is a pilot project funded by the Department of Health following the Chief Medical Officer’s concerns regarding the availability and accessibility of services for doctors raised in his July 2006 report Good Doctors, Safer Patients. It also responds to the White Paper on professional regulation published in February 2007. It has been designed by the National Clinical Assessment Service (NCAS) in conjunction with a group of expert professionals.

Initially, the scheme will be piloted for dentists and doctors living or working in the Greater London area, but the aim over the longer term is to provide a service throughout the UK for a range of healthcare professionals.

NCAS deputy director Dr Rosemary Field said: ‘All professional clinicians are aware of the fact that doctors and dentists do not readily acknowledge their own illness, and will sometimes self-medicate or deny their problems rather than seek help from a colleague. At the same time many are not even sure where they can go for good, reliable advice. We hope the PHP will address these issues and bring dentists and doctors swiftly back to good health.’

Rupert Hoppenbrouwers, head of the DDU, said: ‘The DDU welcomes the scheme. Every year we advise and assist a number of dental professionals encountering problems with their professional practice which, it transpires, have their roots in underlying health problems, such as a dependence on alcohol or drugs, or a psychiatric illness. Sometimes finding out where to access the appropriate support and treatment is far from straightforward, and this exacerbates an already complex situation for the member.’

The PHP is modelled partly on the Ontario Physician Health Program, whose director, Dr Michael Kaufmann, has advised NCAS on the project. The Ontario programme has seen the numbers referred to it grow from 350 in 2006 to 520 last year. The Ontario programme has been in place for seven years and has shown a 70 per cent success rate in helping doctors with addictions recover. That programme does not include dentists, but does work with pharmacists and veterinarians, as well as doctors.

‘We all know how devastating it can be for a busy doctor or dentist to be faced with a problem with their own health,’ said Dr Field. ‘The tendency is often just to work through health problems. We want to change that culture so that doctors and dentists are allowed to get sick too, and have a highly professional organisation that understands and can respond to the needs of doctors and dentists as patients, ready to step in and help.’

NCAS has sought expressions of interest from organisations which might be interested in providing the pilot service. A range of organisations has applied and NCAS hopes to award the contract in June 2008, with the service going live in September 2008.
The General Dental Council (GDC) has introduced compulsory registration for dental nurses, dental technicians, clinical dental technicians and orthodontic therapists. The requirement for registration comes into effect on 31 July 2008, when any dental nurse wishing to work in the UK will need to registered (or be enrolled in a course leading to a registrable qualification). From that date it will be illegal to work as a dental nurse if you are not registered or on a recognised training course.

The background
As GDC registrants, there is a professional requirement for dental nurses to ensure that they are indemnified for the work that they do. Some dental nurses employed by and working under the direction of a dentist may think it is enough to rely on their dentists’ professional indemnity arrangements, as their employer is vicariously liable for the acts and omissions of employees, but the DDU does not believe that this is wise.

The legal position with regard to vicarious liability in dental practice is unaltered, ie the employer remains liable for the acts and omissions of everyone he or she employs while in the course of their employment. This means that, in the event of a claim for compensation against a dental nurse, it is the employer who is likely to be exposed to the financial risk – legal costs and patient compensation.

All GDC registrants are required to make sure there are appropriate and adequate arrangements in place so that patients can claim any compensation to which they may be entitled. The only appropriate arrangements recognised by the GDC are:

- Dental defence organisation membership (eg The DDU)
- Professional indemnity insurance held by yourself or an employer
- NHS indemnity

**DDU advice to dentists and their dental nurse/s**

The role of the traditional dental nurse is changing and their contribution to the dental team is likely to have an increasing impact on patient care. As dental nurses take on more responsibilities, they face the risk of direct complaints or claims for negligence from patients. GDC registration also brings additional personal accountability and dental nurses will be subject to the same professional obligations as dentists and will need to be aware of, and adhere to, GDC policies and guidelines. Under the GDC’s guidance to all registered dental professionals, dental nurses who choose to rely on their employers’ indemnity arrangements will be responsible for checking and ensuring that appropriate arrangements are in place to provide indemnity against clinical negligence claims brought against them by patients.

DDU dentists can rest assured that they may seek assistance from us in the event of a claim for compensation against them arising out of a negligent act or omission by a dental nurse who is under their direction. The policy of insurance that members receive as a benefit of membership has specific provision for claims arising out of vicarious liability.

If a dental nurse carries out work independently, without the direct supervision of a dentist, or in the event of disciplinary action against the dental nurse, assistance is not available through their dentists’ DDU insurance arrangements. In addition, dental nurses relying on their employer’s indemnity do not have access to the DDU’s extensive range of support services and cannot receive assistance directly.

Dental nurses can now benefit from a 50 per cent discount in the cost of membership if their employer is a DDU member. Any dental nurse who wishes to apply to join the DDU can do so by going to the DDU website ([www.the-ddu.com](http://www.the-ddu.com)) or calling the DDU membership helpline on 0800 085 0614.

See p14-15 ‘Nursing dilemmas’
An easier way to renew your DDU membership

Quickly, easily and safely: that is how you can now renew your DDU subscriptions thanks to the introduction of our new online payment process.

Providing there have been no changes to the work details shown in your renewal documentation, you can now use the DDU website to:

• set up an annual direct debit to pay your subscription in one single payment.
• request a form to pay your subscription by direct debit in 10 monthly instalments.
• pay the full outstanding balance by credit or debit card.

To access the service go to: www.the-ddu.com/subs (available to UK members only). You will need your:

• Membership number
• Payment reference
• Outstanding balance

All of this information can be found in your renewal documentation.

Taking security seriously
We take the security of your personal information seriously and all details are transmitted to us securely. When using the internet you can check if you are in a secure environment by looking for either a locked padlock icon or key in the bar at the bottom of your browser.

For your protection, emails from the DDU will never include a link directly to the online subscription payment section of our site. You should always access this section by typing www.the-ddu.com into your web browser and following the links from the membership section or by typing www.the-ddu.com/subs. We will also never send you an email asking you to disclose your personal information. For your own safety, when using the DDU website please ensure you always log out and close the session when you have finished using it, and never share your login details with anyone.

For more information about paying your subscription online please visit the frequently asked questions page in the membership section of the DDU website.

Jason Ellis
e-business manager
ellisj@the-mdu.com

New co-insurance arrangements for DDU’s insurance

The DDU is pleased to announce that the professional indemnity policy for DDU members in the UK is now being provided, on a co-insurance basis, by SCOR SE and Hannover Re reinsurance groups.

The new arrangements, which came into force from 1 April 2008, are excellent news for DDU members as the combined financial strength of these two major global reinsurance groups now supports the insurance policy given to members. The benefits of membership, a unique combination of an insurance policy and access to discretionary benefits including help with GDC investigations, are unchanged and you will continue to receive the same high standards of service and support.

Under the new arrangements, SCOR SE, which successfully took over Converium AG in August 2007 and which is the world’s fifth-largest reinsurance group, will provide a 75 per cent share of the MDU Services Limited’s insurance for members. Hannover Re, the world’s fourth-largest reinsurance group and which has also conducted business with the MDU over a number of years, will take on the remaining 25 per cent share. The UK arms of both companies — SCOR Insurance (UK) Ltd (Converium Insurance (UK) Limited changed its name to SCOR Insurance (UK) Limited on 25 February 2008) and the International Insurance Company of Hannover Ltd — will issue the policy. Both are FSA registered.

You will be individually informed about the change as you renew your DDU membership, and if you have questions you can of course contact us for further information.
Name a winner to be a winner

Nominations have opened for the DDU’s 2008 Educational Awards, designed to recognise excellence in dental teaching and reward dental educators.

Students and vocational dental practitioners (VDPs) can download a nomination form from the DDU website (www.the-ddu.com) on which they can rate their teacher or trainer over a number of criteria, from their commitment, innovation and enthusiasm to their willingness to ‘go the extra mile’.

The names of all those filling in nomination forms will be entered into a prize draw* for an iPod nano. The closing date for nominations is 1 September 2008.

The DDU Educational Awards, sponsored by Dentsply and supported by the British Dental Association (BDA), are now in their sixth year. There are three award categories:

- Dentist Teacher of the Year
- Dental Care Professional (DCP) Teacher of the Year
- Vocational Teacher of the Year

The awards will be presented at a ceremony in central London on 19 November. The finalists in each category will each receive £250 and £1,000 will be donated towards the cost of educational material for each winner’s school or VT scheme.

See p10-11 ‘Fine tuning the next generation: the role of the VT’

* Terms and conditions apply. Go to www.the-ddu.com/dduawards

DDU boosts expert team to handle growing dento-legal challenges

A new dento-legal adviser has joined the DDU’s expanding team of experts. Alison Large will help the existing team respond to the increasing number of calls and requests for assistance from DDU members.

Commenting on Alison’s appointment, Rupert Hoppenbrouwers, head of the DDU, said: ‘I am delighted to welcome Alison to the team. We have a steadily growing membership and also our members need our help increasingly often. The entire dental team is facing more dento-legal challenges and is under greater scrutiny than ever before.

‘By expanding our number of dento-legal advisers we are demonstrating our continued commitment to handling members’ requests for assistance promptly, efficiently and effectively. The team of advisers and specialist claims handlers at the DDU now numbers 12, the majority of whom are full-time appointments. This allows us to provide outstanding levels of service. For example, we consistently exceed our own performance targets for answering advice calls from members, and 98 per cent of members are connected to an adviser straight away.’

The DDU is seeing a steady increase in its workload. In 2007 the DDU opened 1,605 dental files — up 14 per cent from the previous year.

In 2007 it also took 5,037 calls from members on its 24-hour advice line, compared with 4,698 in 2006.

Alison Large qualified from Newcastle Dental School in 1999. She has been a vocational trainer (VT) with the Wearside VT scheme and is currently an associate at a private family dental practice in Oxfordshire. She will combine her work for the DDU with this role.

She said: ‘I am looking forward to widening my professional development with new challenges at the DDU. I hope that the practical experience gained through my regular clinical work and from helping vocational dental practitioners (VDPs) to meet the challenges of general practice will help me to assist our members with the myriad legal issues arising from patient care.’

New for 2008 — insurance for botulinum toxin and dermal fillers

The DDU is pleased to announce the introduction of insurance for dentists who plan to administer botulinum toxin and non-permanent resorbable dermal fillers to the lips or face, but excluding the neck, in addition to their dental work.

Insurance is in the form of a supplement to the standard subscriptions and is based on the amount charged to patients for these treatments per membership year and on the understanding that botulinum toxin as well as dermal filler procedures do not represent more than 50 per cent of the dentist’s clinical time.

The supplement is only available to dentists, and evidence of adequate and appropriate training will be required. For further information contact the DDU membership department on 0800 085 0614.

"The total fees received from patients undergoing these procedures, before deduction of overheads, expenses and income tax.

DDU 24-hour advisory helpline: UK 0800 374 626 / IRL 1 800 535 935
Members may recall the recent case of a dental practice which won a legal battle with the clothing giant La Chemise Lacoste over its crocodile practice logo. Lacoste objected to the logo, saying it was too similar to its own. Lacoste lost its appeal against the decision by the UK Intellectual Property Office (IPO). In its summary of the appeal ruling, the IPO said that ‘the [original] hearing officer had taken account of all the relevant facts in her comparison of the respective marks and she had reached the reasoned determination that the respective marks were not confusingly similar in relation to dentistry services’.

While this is a trade mark decision, calls to our dento-legal helpline over the years have highlighted a number of dento-legal issues in the naming and promoting of dental practices.

What’s in a name?
The General Dental Council (GDC) expects all dental professionals to be open and honest and it is important that practice names and signs do not make false or potentially misleading claims. To take a simple example, a practice sign which states ‘NHS and private treatments available’ would be misleading if the practice is not accepting any new NHS patients.

Limited companies or limited liability partnerships carrying on the business of dentistry must be aware of relevant guidance and legislation. The GDC in its frequently asked questions (FAQs) on corporate bodies and the business of dentistry reminds that the use of the words ‘dental’ or ‘dentistry’ is restricted under the Company and Business Names Regulations 1981. If you intend to use a business name that includes either of these words you must obtain a letter of non-objection from the GDC.

Incorporated company names also have to be agreed and registered with Companies House. The Companies House website includes advice on business names. For example, it recommends: ‘It is advisable to consult a solicitor before using a business name. You should also check local phone books and any relevant trade journals or magazines, to see if any other business is already using the name. It if is, you could face legal difficulties.’

Advertising
The GDC has given advice on dental advertising and has stated: ‘Dental professionals have a responsibility to communicate with their patients on a calm, rational basis … Advertising material should be honest and truthful and dental professionals should steer clear of making any statements which may not stand up to scrutiny.’

Printed advertising material should also comply with the Advertising Standards Authority (ASA) code of practice.

Promoting success
Iain Cuthbertson, DDU dento-legal adviser, offers guidance on how to avoid the dento-legal pitfalls of marketing your practice.

This states that: ‘All marketing communications should be legal, decent, honest and truthful’. The ASA can demand the withdrawal of adverts breaching its code and offenders can be referred to the Office of Fair Trading.

DDU advice
When putting together marketing material, dental professionals should also bear the following in mind:

• All printed material relating to a given practice should include the name of at least one registered dental professional normally in attendance at the practice.
• You should not claim to be a specialist unless your name is entered on a GDC specialist list.
• Dentists should not use the title ‘Doctor’. An ASA ruling considered that this could lead the public to confuse them with medical doctors.
• If you use images of patients you must follow the GDC’s guidance in Principles of Patient Confidentiality (2005).
• References to fees should indicate whether the stated fee relates to treatment provided under the NHS or some other arrangement, and whether it is liable to vary.

References
3. www.companieshouse.gov.uk
4. GDC Golden Gazette, Summer 2006 issue, page 8
5. The British Code of Advertising, Sales Promotion and Direct Marketing, ASA, March 2003
6. ASA adjudications against John Stowell and Eric Gankwee, February 2000 – Number 105

‘The General Dental Council (GDC) expects all dental professionals to be open and honest and it is important that practice names and signs do not make false or potentially misleading claims’
Vocational training can be rewarding. It can also be a challenge, not least in the dental-legal issues it raises for vocational trainers (VTs), writes Dr Anne M Milarvie, Vocational Teacher of the Year in the 2007 DDU Educational Awards.

New graduates can be bright and brimming full of ideas and enthusiasm. However, it is important that they have realistic expectations of their clinical skills and what they might achieve in the vocational training year. A VT must manage the expectations of the vocational dental practitioner (VDP), and assess and help the VDP to develop his or her clinical skills. This includes an obligation to build the VDP’s clinical confidence and skill in a safe environment and ensure that, in line with the General Dental Council (GDC) guidance in Standards for Dental Professionals (2005), they ‘put patients’ interests first and act to protect them at all times’.

At the beginning of the year, I always discuss what sort of work VDPs would like to undertake over the next 12 months: crowns, bridges, veneers and surgical procedures always top the list. However, the move from academia, where student dentists have relatively few hours in clinics, to dental practice is a transition that should be carefully managed so that newly qualified VDPs do not begin their vocational training with complex procedures during the first week. In Standards for Dental Professionals, the GDC urges dental professionals to ‘protect patients’ and ‘set standards of dental practice and conduct’. It is important that trainers take the time to assess the VDP’s clinical skills. After all, appraisal is expected as part of good clinical governance.

As qualified dentists, VDPs are responsible for their clinical care of patients but as trainers we may be criticised for not properly supervising them and, in the event of a complaint or claim, we may need to demonstrate that the trainee had adequate preparation and support before undertaking any procedure on a patient. This raises the question of what steps should be taken to maintain patient safety and minimise the risk of harming the patient.

Back to basics

Good training starts with building the blocks of good clinical practice from day one and early observation of the VDP can help to identify strengths and weaknesses. The trainer needs to know what level of clinical skill the trainee has achieved, which may depend in part on when they were last in a clinical setting. For example, the VDP may not have lifted a hand-piece for months by the time they start in practice. Consequently, it is wise to start with the most basic yet one of the most difficult skills: the patient examination.

If the VDP is able to make a successful diagnosis and prepare and implement a simple treatment plan it will engender confidence not only in the VDP but also in the trainer. It sets in motion a culture of co-operation, assistance and mutual respect that will make for a successful year. VDPs will have varying degrees of confidence and knowledge. For example, some trainees will be good at diagnosing caries from radiographs from day one, others may need more help. Important attributes are patience on the part of the trainee and a desire to learn on the part of the trainer.

Working together

At the start of the year it often works well to build in joint sessions for the VDP and the trainer to review clinical notes. It is important that VDPs, just like dentists, recognise the limits of their competence and seek assistance when they need help in diagnosing to avoid unnecessary or inappropriate treatment. Take the following fictional example:

A VDP restored a virgin tooth with no history of caries. However, the patient returned several days later with continuing pain. The VDP refilled the tooth but this failed to address the cause of the pain and the patient eventually made a complaint to the practice. At this stage, the VDP asked the VT for help and together they were able to diagnose the source of the pain and also resolve the complaint.

So how can we try to avoid complaints and, if they do unfortunately occur, manage them effectively?

In dealing with any complaint, it is important that patients feel listened to. In the first instance, steps should be taken to deal with the consequences and provide necessary ongoing clinical care – in this example, to deal promptly with the problem of the patient’s ongoing pain. The patient should also be given an explanation and, where appropriate, an apology; and/or an offer to waive an proportion of the fee. The complaint also provides an opportunity to re-evaluate the case, for example during a tutorial, and consider the correct diagnosis and treatment plan. At the end of the day we have all made mistakes and we hope hope all learned from them.

A close working relationship will naturally support the old aphorism that ‘prevention is better than a cure’. In the real world, however, the pressure to strike a balance between intervention and a more relaxed approach is not easy — it all comes down to a question of judgement not only on the part of the VDP but more importantly by the trainer in carrying out an early and comprehensive risk assessment of the true ability of the VDP. An early investment of time is necessary and worth it in the long run.

Personal skills

It is important to encourage the VDP to involve the patient directly in the treatment planning — not only because it is necessary in order to reach a mutual decision about the best treatment for the patient but also because it will develop the VDP’s communication skills and increase the likelihood that the patient will place trust in the VDP. Any treatment plan needs the full consent of the patient — which should
include an explanation of risks as well as alternative therapies and the option of no treatment where appropriate.

Time invested at the beginning of the year building a rapport with a trainee always brings its own reward. In building their confidence, based on real achievement, their skills will grow and their sense of achievement will blossom too. A programme of relevant tutorials, together with hands-on sessions, to remind them of principles and best practice helps prepare VDPs for challenging clinical procedures and, ultimately, it helps to ensure that patients receive a high quality of care.

See p8 for information on nominations for the 2008 DDU Educational Awards.
Even the most conscientious of dental professionals can occasionally make a patient feel that they have cause for complaint. And even the dental professional with the best will in the world can occasionally find it difficult to resolve a complaint.

That may leave a patient with a dilemma. If they are an NHS patient, then for many years they have been able to resort to the NHS complaints scheme. However, for private dental patients there was no independent complaints procedure and it is only relatively recently that patients have been able to call upon the Dental Complaints Service (DCS).

The service was set up and funded by the General Dental Council (GDC), but is operationally independent of both it and the GDC’s fitness to practise process, although a failure to co-operate with the DCS could result in a referral to the GDC.

It enables patients who have not been able to resolve a complaint through the practice-based complaints procedure to complain about any aspect of private dental care, treatment or service, involving any member of the dental team, and helps to resolve complaints as fairly, efficiently, transparently and as quickly as possible, encouraging dental professional and patient to restore their relationship.

Following its launch in May 2006, and after 18 months of operating, the DCS had received more than 16,000 calls to its local rate complaints hotline (08456 120540), logging more than 2,400 complaints. More than half of the calls we received during this period were about NHS dental care. We redirected these to the appropriate local NHS contact. Other calls were for advice, many callers wanting to know...
if they had a valid complaint. One in six callers contacted the service at the suggestion of a dental professional; and, in a number of cases, dental professionals had called us themselves, seeking help with a complaint that had become difficult or longstanding. We are glad to help.

So how does the DCS work? Briefly, we encourage the dental practice and the patient to resolve the complaint. If they can’t, our staff try to help. If they can’t help, a local panel considers the complaint.

Our starting point is that if a patient has a concern, he or she should be able to seek resolution through the practice’s in-house complaints procedure. If the practice is unable to resolve the complaint, the patient can then call us.

Often, callers haven’t complained directly to the practice, so we encourage them to do so, preferring local resolution wherever possible. Close to three-quarters of those with a complaint are referred back in this way, and fewer than one in five return to us with their complaint unresolved. Given the chance, it seems that practices do resolve complaints effectively, but their complaints procedures may need to be made more visible to patients.

If a dental practice cannot resolve a complaint, the DCS’s advisers then try to sort things out informally with the practice and the patient. At this stage (or the next), resolving complaints may involve an apology, a refund of fees and/or a contribution towards the costs of remedial treatment.

In 34 cases, complaints have been referred further, to meetings facilitated by a panel of three trained volunteers — two lay and one dental professional. This is the last step in the service’s attempts to resolve a complaint. It’s good that there have been comparatively few of these panels.

Of those panel meetings, 14 concluded that there was no complaint to answer. Recommendations by panels have ranged from refunding fees to advice on best practice in complaints-handling, issuing treatment plans and keeping contemporaneous records; as well as carrying out, or contributing financially towards, remedial treatment.

The majority of complaints to date have been about dentists, with a handful about other dental professionals. Most complaints concerned solely private treatment, but a few were about mixed NHS/private treatment, with which we can usually help. Treatment issues have included fillings, crowns and dentures; and service issues have included pain, cost and rudeness.

Most of the dental professionals who provided feedback rated the service’s performance as ‘excellent’ or ‘good’. Four out of five complainants offering feedback rated quality of service in the same way.

The view from the DDU

Two years on from the DCS first opening its doors, the DDU believes the DCS deserves credit for providing private patients with a recognised system for resolving concerns.

Yet although the system has worked well overall, we believe there are still elements that may disadvantage dental professionals. In particular, we still have concerns over the system of full panel hearings.

To begin with some positive points: it is heartening to learn the DCS is strongly in favour of local resolution, with almost three-quarters of complaints referred back to dental practices and less than one-fifth of these returning to the DCS. This reinforces our own experience, which shows around 90 per cent of complaints where the member seeks the DDU’s assistance are resolved at the patient’s satisfaction at practice level.

The DCS should also be applauded for attempting to resolve complaints by conciliation, with DCS advisors acting as ‘go-betweens’ for the practice and patient, and seeking common ground as a basis for resolution. This has been hugely successful and the DDU believes such attempts at conciliation are in the best interests of both practitioners and patients.

However, while we are pleased that, to date, very few complaints have reached panel hearings, should they do so we firmly believe that dental professionals should be permitted to have a DDU representative at the hearing — and at the moment they are not. In our view it is not fair that dentists are not allowed to have representation in a hearing which may result in an adverse finding that could be reported to the GDC. Our experience of other hearings confirms our belief that the presence of a dento-legal advisor is often helpful, both to our members and to the panel in helping to resolve the issues surrounding the complaint. Some practitioners find a panel hearing quite daunting and stressful, and may lack the confidence or ability to adequately explain their side of the case.

In addition, although we believe that in most cases the panels have made reasonable and balanced recommendations, in the interests of fairness we believe there should be a right of appeal against a DCS recommendation when a dental practitioner feels aggrieved by it. Practitioners must comply with the recommendations made by panels or risk being referred to the GDC’s fitness to practise procedures.

With the DCS funded by and ultimately answerable to the GDC, and without these safeguards, dental professionals are right to question whether the DCS is truly independent.

Rupert Hoppenbrouwers
head of the DDU
Nursing dilemmas

From this summer dental nurses must register with the General Dental Council (GDC). DDU dento-legal adviser Leo Briggs considers two fictional dilemmas illustrating responsibilities facing both nurses and dentists in the changing regulatory landscape.

Q. I am a dental nurse working in a busy NHS practice. The dentist I work with has told me to wash out and disinfect the plastic saliva ejectors with a solution of dilute bleach so that they can be used again. The saliva ejectors are marked as single use. Should I follow the instructions of the dentist?

A. If the equipment is marked as single use, it should be treated as single use. It should then be disposed of appropriately following the patient’s appointment.

You should discuss your concerns regarding the re-use of the saliva ejectors with an appropriate person at the practice, such as the practice manager or principal. If you are unable to reach a decision within the practice that you think is acceptable and you think the actions of the dentist may be placing patient safety at risk you will need to consider raising your concerns with an appropriate external organisation, such as the primary care trust.

Background

Although dental nurses have been able to register with the GDC since July 2006, it will be mandatory for nurses to be registered from 31 July 2008. From that date it will be illegal to work as a dental nurse if you are not registered or on a recognised training course. A dentist who employs such a dental nurse is also at risk of GDC disciplinary action.

Q. I am a dental practitioner and have a dental nurse who has worked with me for six years. She qualified three years ago. Her work was always of a very high standard and she was very conscientious. However, over the past nine months her attendance has become more erratic, her behaviour more unpredictable and her appearance less smart. She arrived at work this morning in a bit of a state and I had to send her home. Some of the staff at the practice have hinted that she may be taking illegal drugs, and I am concerned about patient safety. In addition, last week she asked me to sign her character reference so that she can register with the GDC. I have not completed the form yet. Is it acceptable for me to do so?

A. If you have any concerns about patient safety at all you need to address them. Your duty, as stated in the GDC’s The Principles of Practice of Dentistry, is to put patients’ interests first and act to protect them. You could try talking to your nurse as a first step to getting to the bottom of the problem, bearing in mind your contractual obligations to do this fairly and in line with employment law.

You should not sign a declaration if you have concerns about the professional conduct of your nurse. You have a professional duty to be trustworthy. If you sign the declaration when you have legitimate concerns about the professional behaviour of your nurse, your own registration with the GDC may be at risk. Again, you will need to discuss the concerns you have formally with your nurse and try to find a satisfactory way forward.

Background

In its guidance Standards for Dental Professionals (2005) states you should put patients’ interests ‘before your own or those of any colleague, organisation or business’ (para 1.1). The concerned nurse above who called the DDU’s dento-legal advice line is being asked to carry out a task that may place patients at risk and she should not ignore her ethical obligations. In Principles of Dental Team Working (2006) the GDC advises: ‘All members of the dental team who have to register with us are individually responsible and accountable for their own actions and for the treatment or process which they carry out’ (para 3.1). A dental nurse will almost certainly be expected to carry out infection control procedures in a dental surgery and is responsible and accountable for the processes he or she performs.

In the same guidance, the GDC also advises: ‘As a team member, you have a responsibility to raise any concern you have that patients might be at risk because of... any action you have been asked to carry out that you believe conflicts with your main duty to put patients’ interests first and act to protect them’ (para 3.9). It adds, in para 3.10, that you ‘have a responsibility to do this whether or not you are in a position to control or influence the organisation within which you work’.

The practice should have an infection control policy, which should be kept up to date. If the dental nurse is concerned that the practice infection control procedures are not adequate with the GDC may be called into question — and if registration is lost he or she will not be able to work as a dental nurse in the UK.

If the nurse has a contract of employment, there may be formal procedures for raising concerns within the practice and these should be followed.

Once registered, a dental nurse has ethical obligations that may outweigh the duty to his or her employer

Once registered, a dental nurse has ethical obligations that may outweigh the duty to his or her employer and he or she should follow GDC guidance.

GDC guidance in Standards for Dental Professionals (2005) states you should put or if he or she has been asked to carry out tasks that break the policy, he or she should raise the concerns with an appropriate senior member of staff. This may be another nurse, a practice manager or a dentist.

If the nurse fails to do so, his or her registration
Professionals, the GDC states that you should:

• ‘Justify the trust that your patients, the public and your colleagues have in you by always acting honestly and fairly.
• ‘Apply these principles to clinical and professional relationships, and any business or educational activities you are involved in.
• ‘Maintain appropriate standards of personal behaviour in all walks of life so that patients have confidence in you and the public have confidence in the dental profession’ (paras 6.1 – 6.3).

It therefore follows that, in acting honestly and fairly, registered members of the dental team should not sign a declaration unless they are happy it is factually correct. The worried dentist in the question above has concerns about the professional conduct of the nurse and until those concerns have been addressed and resolved he should not sign the declaration.

The dentist needs to decide how to deal with the concerns that he has as well as those hinted at by staff members within the practice. If these members of staff are also registered members of the dental team the dentist may wish to consider discussing with them their obligations to act honestly and fairly, and their obligations to raise concerns formally about other members of the team.

Further reading

Principles of Raising Concerns,
GDC, 2006
See p6 ‘DDU membership for nurses explained’
Dealing with dental tourism

The DDU’s website is the first place members can turn to find clarification and advice on dento-legal issues of the day. Deputy head of the DDU Bryan Harvey here advises on what to do if your patient seeks treatment abroad. Find this and other hot topics at www.the-ddu.com

Of 77,000 travellers from the UK who went abroad in 2006 for medical treatment, an estimated 43 per cent were seeking dental treatment. Among the popular destinations for treatment are Eastern Europe, Turkey and even the Far East, and common procedures include crowns, implants and veneers.

Of course, UK dental professionals are not responsible for the treatment provided by overseas dentists. However, patients may ask the advice of their dentist about travelling abroad for treatment or they may contact a UK dentist if there is a dental emergency after their return home. A patient or a dentist overseas may also seek access to the patient’s dental records and/or radiographs that you hold, and the patient or anybody properly authorised by the patient is entitled to copies under the Data Protection Act 1998. A charge can be made for copies, subject to certain limits laid down in the Act. The GDC’s guidance Standards for Dental Professionals makes it clear that a dental professional should cooperate with others involved in the patient’s care to facilitate treatment.

How much and what advice you offer to patients who inform you that they are planning to travel overseas for treatment is a matter for your clinical judgement and whether you have training and experience in the field in question.

Confusion can arise about who has overall responsibility for the patient’s care and ongoing monitoring of their condition. For example, a patient may go abroad for an implant and a crown on the implant, and then expect their dentist to be responsible for their on-going maintenance. You may wish to consider asking the clinic concerned or the patient to confirm the precise details of follow-up arrangements at the outset.

If the patient presents with complications or requires emergency dental treatment on their return to the UK, then you have a professional duty to assess the patient and provide care in so far as you are able. The DDU advises dental professionals against refusing treatment solely because you believe that the patient’s actions may have contributed to their condition.

However, with all treatments or advice it is important to recognise and act within the limits of your competence: so don’t agree to carry out follow-up treatment with which you are unfamiliar. You might, for example, need to refer the patient to a colleague or relevant specialist.

Members with specific dento-legal queries about treatment abroad should contact the DDU for advice.

References
1. Medical Tourism Survey 2007 conducted by European Research Specialists on behalf of Treatment Abroad
2. Standards for Dental Professionals, GDC, 2005, para 4.1
Not just a cosmetic exercise – risk management in the practice of cosmetic dentistry

Dentistry today is placing ever greater emphasis on improving the aesthetic appearance of the teeth and face. Rupert Hoppenbrouwers, head of the DDU, looks at the risk management issues involved in cosmetic work.

A growing number of dentists are now providing cosmetic procedures such as veneers, tooth whitening and botulin toxin injections. In recognition of what is taking place in dental practices across the country and in response to member requests, from April 2008 the DDU is offering insurance to dentists for botulin toxin and resorbable dermal filler treatments (see p8 ‘New for 2008’). There are a number of dental-legal issues that dentists should consider before providing these treatments to patients.

The legal framework

You should be familiar with all the law, regulations and guidance that apply to the treatments you are offering, and ensure that you comply with them.

In particular, dentists should be aware that botulinum treatment is not considered by the General Dental Council (GDC) to be the practice of dentistry. The GDC is, however, at the moment undertaking a consultation process on the scope of practice of the dental team that may address some of the issues arising (see p8 ‘Consultation to clarify roles open’). The GDC is, however, clear that any GDC registrant thinking of offering botulinum, or other non-dental procedures, should first consult its guidance, Standards for Dental Professionals (2005) and in particular the paragraphs which state that dental professionals must:

- Put patients’ interests first
- Not make any claims which could mislead patients
- Work within their knowledge, professional competence and physical abilities.

The Healthcare Commission is currently working with the Independent Healthcare Advisory Services (IHAS) to put in place an effective self-regulatory scheme for those offering botulinum toxin and dermal fillers. Dentists should also be aware that it is illegal to supply tooth-whitening products containing more than 0.1 per cent hydrogen peroxide although most tooth-whitening products contain or release considerably higher concentrations. The maximum penalties for illegal supply are six months’ imprisonment and/or a £5,000 fine. Local authorities are now being encouraged to prosecute anyone who uses products that contain or release more than the legal limit.

In a statement last year, the GDC said that only dentists are suitably trained and competent to give clinical advice about or carry out tooth whitening, adding that it would prosecute anybody undertaking it illegally. In the same statement it said: ‘We can confirm that in the absence of a conviction [from Trading Standards] we would not initiate disciplinary action solely on the basis that a product was used which contravened the Cosmetics Regulations.’

Consent

You should give a full explanation to your patients of what the procedures you are offering involve, as well as discussing the alternatives, including that of no treatment at all. You should explain the risks as well as the benefits of each treatment option, and detail the likely outcome, including possible side-effects and the long-term prognosis. In addition, you should ensure patients are aware of the signs of complications following treatment and know what steps to take if these occur.

Take measures to check that patients understand the explanations and warnings given and try to ensure that they do not have any unrealistic expectations. A patient may be entitled to compensation if it is proved there was a negligent failure to provide adequate information and, as a direct result, the patient suffered avoidable harm or loss.

If bleaching teeth, the DDU advises that dentists explain to patients the uncertain legal position (see above).

Remember that dentists have a professional duty to only prescribe treatment that is appropriate and in the patient’s best interest and to attempt to dissuade patients seeking inappropriate treatment or with unrealistic expectations. Asking a patient to sign a ‘disclaimer’ would not render a dentist safe from a claim for negligence.

Training

You should ensure that you are adequately and appropriately trained for any procedures you undertake. You should recognise your own limitations, as well as those of the patient to undergo certain types of treatment. If a task lies beyond your own capabilities then you have a professional duty to offer to refer the patient for specialist care.

Good record keeping

The GDC says you should ‘make and keep accurate and complete patient records, including a medical history at the time you treat them.’ In the case of cosmetic dentistry, this is likely to include all discussions with the patient about the possible options, risks or complications, referral letters and a written treatment plan and fee estimate. Records can provide vital evidence if the dental professional’s standard of care is called into question.

Insurance

If you are considering carrying out cosmetic procedures talk to the DDU about the appropriate insurance for you. If you practise in any field without appropriate insurance, your GDC registration will be at risk.

References

1. Standards for Dental Professionals, GDC, 2005, paras 1.1; 1.10 and 1.3
2. Dentists providing Botox, GDC, 2007
3. Standards for Dental Professionals, 2005, para 1.4
DDU members are reporting an increasing number of complaints and claims arising from the provision of tooth bleaching. The following case history concerns that of a young man whose expectations proved too great.

A young male patient attended the dentist and requested tooth bleaching. He had been advised at an earlier consultation that the amount of shade lightening would be limited in view of his age and starting shade, but he wished to proceed with the treatment and further discussions took place regarding the types of bleaching that could be carried out and their relative costs.

Having been advised that shade A1 could be achieved, the patient opted for in-surgery bleaching with additional night-wear trays. At the consultation, the patient was warned about foods and drinks that could cause staining.

At the first treatment visit, a pre-treatment photograph was taken with a shade tab, which showed the patient’s starting shade as D3. The bleaching was carried out, and the patient was given instruction in the use of the night trays and desensitising techniques. After one further treatment session, the dentist determined that the final shade A1 had been achieved. A picture was again taken with the shade tab.

Subsequently, however, the patient contacted the practice and said that he was dissatisfied with the shade reached. He was offered free gel for further night-time applications, some days later the patient wrote asking for a refund of all the fees. The dentist declined to do this as he felt he had achieved the agreed shade.

The patient then complained to the Dental Complaints Service, but mediation was unsuccessful in resolving the complaint. A panel hearing was set up locally, at which both the patient and the dentist put forward their views. At this hearing, the patient also complained that, apart from the dispute over the shade, he felt the dentist had been patronising.

The panel determined that the dentist had achieved the treatment outcome promised to the patient but felt there may have been a breakdown in communication and a misunderstanding between the parties following treatment. The dentist offered the patient a refund of 25 per cent of the original fee, which represented the profit element of his treatment. The patient declined this offer.

The panel, on balance, concluded that there was no case to answer and considered that the refund offer was very reasonable, and endorsed it.

‘The panel determined that the dentist had achieved the treatment outcome promised to the patient but felt there may have been a breakdown in communication and a misunderstanding between the parties’

Learning points
The following learning points can be considered:

• It is important to keep good records, including pre- and post-treatment photographs where appropriate.

• It is important to seek informed consent and assess the patient for unrealistic expectations about the outcome of treatment, particularly where cosmetic treatment is planned.

The consent should be documented.

• Sensitive and careful complaints handling can encourage early resolution of a complaint.

Bryan Harvey
deputy head of the DDU

A whiter shade of pale
A patient brought a claim against her dentist of 20 years, a DDU member, for the cost of a treatment plan written by an Australian dentist. The patient claimed nearly £7,000 after returning from a holiday in Australia where she had undergone emergency treatment following the fracture of her lower left pre-molar. Subsequently, the Australian dentist had provided her with a detailed treatment plan that included the replacement of 10 crowns.

The patient alleged that her teeth should not have got into this condition and she was claiming the full cost of the remedial work deemed necessary by the Australian dentist. The member explained that she was shortly to emigrate to Australia and she planned to have all the treatment carried out there.

The member contacted the DDU for advice. The DDU claims handler sought a copy of the clinical records from the Australian dentist as well as the member. The patient then asked to attend an independent general dental practitioner (GDP), who provided an expert opinion on the patient’s current condition and prognosis, as well as on the liability of the member.

The expert considered that some of the treatment suggested by the Australian dentist was unnecessary and that other treatment was required because of the inevitable breakdown of crowns that were many years old. However, the expert also considered that some of the treatment required was due to a failure on the part of the member to diagnose and treat decay earlier, and some of the crowns that the member had provided in recent years had failed sooner than would reasonably have been expected.

The member agreed that the DDU should attempt to reach an amicable settlement of the claim.

Meanwhile the patient had returned to Australia and provided the DDU with invoices to show that much of the full treatment plan had been carried out.

The DDU drafted a detailed letter of response, explaining to the patient, a claimant in person, that all dental restorations have a finite lifespan and that as intra-coronal restorations become larger the remaining tooth becomes weaker and the risk of fracture increases. It was this factor that caused the need for the emergency dental treatment in the first place.

In the letter, the DDU reflected the findings of the independent GDP expert and detailed what treatment costs the DDU was therefore including within the settlement proposal and what it was not.

After obtaining the member’s approval, the letter was sent to the patient with an inclusive settlement offer of less than half the original claim. The patient accepted the offer of settlement.

Learning points
The following learning points can be considered:

• It is important that patients do not have unrealistic expectations of their dental health. Ideally their dentist should inform them of the expected lifespan of existing restorations, plan anticipated future treatment and record in the notes what clinical advice has been provided to the patient.

• It is important for a dentist to take appropriate radiographs (when indicated and in accordance with current guidance/standards) in order to be in a position to diagnose and treat caries that may not be apparent on visual clinical examination.

Ian McLaren
lead claims handler, DDU
Further advice
For detailed advice about specific instances and situations, call the DDU’s 24-hour freephone advisory helpline on 0800 374 626 (UK) and 1 800 535 935 (IRL). You will also find a range of helpful advisory and risk management articles on the DDU website.

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