

Taking the 'Aw' Out of Lawsuits

Henry Clover, Denplan's Deputy Chief Dental Officer, looks at the rising occurrences of dental lawsuits and how practices can deal with these to secure the best outcome for everyone while maintaining patient loyalty.

In a recent press release by the General Dental Council (GDC) Ian Todd, Interim Chief Executive and Registrar, asserted that hearings before the GDC have risen dramatically in recent years. He said: "the GDC has seen a 40% year-on-year rise in fitness to practise complaints and has committed extra resources to dealing with this."¹

This was supported at the 2010 BDA Conference in Liverpool, when Alison Lockyer, chair of the GDC confirmed that in 2009 over 1,400 complaints were handled by the Council, compared to around 900 in 2008. This may be partly due to the rising cost of dentistry, the rising expectation of patients, or the ease and availability of information, but it's certainly disturbing news for dental professionals.

A common theme in the overwhelming majority of complaints is a breakdown in communication and this increase is not just coming from patients, but from members of the dental team as well, with associate disputes also on the rise. So what can you do to avoid complicated, stressful and potentially expensive formal proceedings? The following tips are designed to show you how and where you can turn for guidance and advice should you ever need it.

Patient lawsuits

However well you may have explained a particular form of treatment, there will always be occasions where a patient has not fully understood the implications, or has chosen to disregard, or not take responsibility for, some aspects of their oral health. This can lead to an unhappy patient seeking recompense.

¹ Press release "General Dental Council announces interim Chief Executive and Registrar", 7th May 2010 (<http://www.gdc-uk.org/News+publications+and+events/News+releases/New+Interim+Chief+Executive.htm>)

Every practice should therefore have a complaints handling procedure and this should be clearly displayed at the practice. Well-trained staff, who understand the complaints process and have the right skills for handling dissatisfied patients, can play a key role in sorting out problems before they become unmanageable.

In the few cases where local resolution of patient-driven complaints proves unsuccessful, patients in the private sector can turn to the Dental Complaints Service for assistance or ultimately seek to pursue a formal legal action. Alternatively, some payment plan providers, such as Denplan, offer patients and member dentists a free clinical mediation service as well as providing impartial advice on contractual and legislative issues.

Some providers also offer tailor-made training days, which are specific to your practice's needs and can incorporate modules focused on Dealing with Challenging Situations and Complaints Handling. These courses can count towards verifiable Continuing Professional Development (CPD) when undertaken in accordance with GDC requirements and will benefit both your employees and your practice.

Associate Disputes

In a perfect world, dentists and associates would work alongside each other in perfect harmony. And, for those principals who have relationships based on mutual respect or friendship, it's sometimes easy to assume that a verbal agreement is enough. However, it's important to formalise this relationship through a written associate agreement, not only to eliminate confusion in the practice, but also to provide everyone involved with a legal point of reference, should any disputes arise.

If an associate has a longstanding and loyal patient base, and they choose to set up practice elsewhere, principals are in danger of losing a substantial number of their patients if a written associate agreement, containing appropriate barring-out clauses, is not in place. The financial impact in these cases, in terms of loss of goodwill and practice turnover, can be crippling. If you consider that one single lost patient could amount to thousands of pounds of lost revenue over the life of the practice, you can see how damaging this kind of situation can be to your practice.

The difficulty, of course, is that a written agreement is not necessarily needed unless and until there is a disagreement between the parties – by which time it's too late. Therefore, a written agreement, clearly setting down the terms under which a licence is granted to the self-employed associate - covering remuneration, absences from the practice, goodwill ownership and barring-out clauses - offers both parties security as well as clarity in the professional working relationship.

Model agreements are readily available from such sources as the BDA and CODE as well as legal advisers conversant with the dental profession. However, model agreements may well need adaptation to suit individual circumstances and both parties would be well advised to seek individual legal advice before committing to the agreement.

Associates in a practice can also regularly treat lists of payment plan patients that are registered to the principal, so it's important to know where both parties stand when it comes to goodwill, should the associate decide to move on. Some payment plan providers produce a supplemental model associate contract that deals with its specific products and services. It covers such matters as the clinical performance of obligations under the payment plan, adherence to the payment plan terms and conditions, as well as indemnity and security in respect of such performance. The agreement is designed to avoid any misunderstandings in the future by clearly documenting the practising and practical arrangements as they relate to the payment plan provider. It can be incorporated into a "standard" associate agreement or used, with adaptation, as a stand-alone supplementary contract.

It goes without saying that guarding yourself against lawsuits, of any description, makes good business sense. So I'm always surprised at the colleagues of mine who think it will never happen to them...until it does! So, I cannot stress enough the importance of good communication as well as written contracts and procedures and I hope the tips above can give you an idea of where to turn for information and advice, should you ever need it.

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About the author

Dr Henry Clover - Deputy Chief Dental Officer

Henry is a former general dental practitioner who converted his own practice to private practice in 1993. With his experience as a Denplan member dentist, he joined Denplan's Professional Services department on a part-time basis in 1998 and full-time in 1999, with responsibility for professional support and member services.

Henry has now been promoted to Deputy Chief Dental Officer and is responsible for the Professional Services team as well as being a member of the Executive Leadership Team, supporting Denplan's motto – 'By Dentists, For Dentists'.