Orthodontic allegations raised against registrants by the General Dental Council

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In brief

Stimulates greater levels of awareness of allegations being investigated by the GDC.

Aims to increase the standard of care being provided to patients.

Following the guidance in Standards for the Dental Team, the incidence of an allegation of a FtP issue against a member of the dental team should be reduced..

An allegation calling a dental professional's Fitness to Practise (FtP) into question is probably one of the most stressful events a General Dental Council (GDC) registrant could face during their career. The practise of dentistry is experiencing unprecedented levels of complaints against registrants with orthodontics traditionally being seen as a low risk area. However, as a recently appointed clinical advisor and expert witness to the GDC, I can testify this may no longer be the case. The last twelve months has seen me provide advice on seven cases associated with orthodontics. This review of frequently occurring allegations in cases being investigated by the GDC should stimulate greater levels of awareness for all members of the dental team and increase the standard of care being provided to our patients.

Introduction

The GDC is the statutory regulator for members of the dental team in the United Kingdom, established under the Dentists Act, 1984.[1]

The principle objective of the GDC is the protection of patients and the public. As well as maintaining a register of dental professionals, the GDC's powers and duties include setting standards for conduct, performance and behaviour that registrants are expected to adhere to. Additionally, the GDC will look into any complaints where there is an allegation of impairment in a registrant's ability to practise dentistry.

The guidance produced by the GDC has evolved over the last decade with a revised version of the Standards for Dental Professionals in 2005.[2] An enhanced and more comprehensive revision of the Standards was undertaken and published in 2013. This remains the latest guidance available.[3]

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This document is based on nine principles that apply to all registrant groups (Table 1). Throughout Standards for the Dental Team, the word 'must' is used where the duty of the registrant is compulsory and 'should' is used where the duty would not apply in all situations unless there are exceptional circumstances.[3]

A recent article on the implications of the new GDC Standards concludes, 'there is less wriggle room for any Registrant, given the breadth of the Standards contained within the publication and, therefore for many Registrants, it will become increasingly difficult to put forward information, in relation to any allegation of misconduct, performance or health, to defend their position at the Investigating Committee stage'.[4]

While the incidence of malpractice litigation in the United Kingdom has previously been considered at a low level,[5] recent studies from Dental Protection would indicate that claims arising from orthodontics are increasing. Significantly, general dental practitioners feature in 80 to 90% of the complaints and claims.[6] Such occurrences can probably be regarded as one of the occupational hazards of dental practise according to Dental Protection.[7]

Table 1 The nine principles registered dental professionals must keep to at all times[3]

Principles	
1	Put patients' interests first
2	Communicate effectively with patients
3	Obtain valid consent
4	Maintain and protect patients' information
5	Have a clear and effective complaints procedure
6	Work with colleagues in a way that is in patients' best interests
7	Maintain, develop and work within your professional knowledge and skills
8	Raise concerns if patients are at risk
9	Make sure your personal behaviour maintains patients' confidence in you and the dental profession

Most orthodontic patients or parents are appreciative according to Abdelkarim and Jerrold;[8] however, the authors state that a few are demanding, overprotective or naturally unhappy. They suggest giving a fee refund to ameliorate the problem if the issue concerns money, obviously, without an admission of liability. This may halt a complaint escalating to the GDC where there is no issue of FtP and all the patient is seeking is a refund for fees paid.

The receipt of a complaint has been considered one of the most distressing events that can occur during the course of a registrant's career. A complaint referred to the GDC against any registrant has a major impact on the individual and the potential for devastating social and financial consequences.[9]

Singh *et al*.,[9] reported a year on year increase in the number of cases appearing before the Professional Conduct Committee and assumed this was due to a combination of factors. These included a more robust approach by the GDC, an increase in patient awareness, expectations and demands, and a general increase in the litigious nature of society.

With the rise in the GDC's caseload, in 2014, the regulator looked to expand its list of clinical advisors and experts who could bring their knowledge, skills and expertise to its FtP process. Clinical advisors and experts assist the GDC with these investigations by providing independent clinical advice and opinion. They provide their opinion in written reports and may also be asked to attend hearings when a registrant is referred to one of its practice committees.

Candidates are required to have at least five years' experience in practice and applications from those with either specialist training or an interest in orthodontics and/or implants are welcome.

I embraced the opportunity to provide unbiased clinical advice and opinion. Working in primary care as a specialist orthodontist and teaching on a MClin Dent programme for general dental practitioners seeking enhanced skills in orthodontics, I felt the clinical advice and opinion I would provide would be realistic rather than idealistic. After all, the standard is 'clinical care at the level of professional practice reasonably expected of a dentist working within the same discipline'.

The first twelve months as a clinical advisor and expert witness was a startling reminder of the pitfalls that can face the dental profession. During this time, I provided clinical advice on seven cases at various stages of the investigation process from early advice (as to whether a complaint should be referred to the investigating committee) to being cross-examined at a FtP hearing.

General dental practitioners were either making a referral for an orthodontic opinion or providing orthodontic treatment in all but one of the seven cases. A specialist orthodontist was involved in the final case. Providing specifics of each case has been avoided, but rather the allegations that commonly featured in cases being investigated have been discussed. It is hoped this will stimulate greater levels of awareness for all members of the dental team and increase the standard of care being provided to our patients.

Frequently encountered allegations

'Not undertaking an adequate orthodontic assessment'

While it would seem logical that neither a treatment plan could be devised nor orthodontic treatment started without an orthodontic assessment, all too frequently, the skeletal, soft tissue and dental features were only partially, if at all recorded. Dental practice software, particularly those customised for the orthodontic setting, would go some way to ensuring all the information required for a reasonable orthodontic assessment is captured.

The presenting complaint was almost always recorded but history of dental trauma, digit habits, most recent dental check-up and the outcome from that visit, previous orthodontics and temporomandibular joint symptoms were seldom included in the assessment. The responses to questions about these aspects of the history could impact upon any proposed orthodontic treatment and it would be reasonable to record this, even if it were to say nothing unremarkable had been reported or words to that effect.

'Not making an orthodontic diagnosis'

In general dentistry, it would be considered reasonable to record a diagnosis of irreversible pulpitis or a lateral displacement traumatic injury if these were the most appropriate diagnoses.

In orthodontics, typically, the diagnosis is often crowding or spacing (or derangements of the occlusion), and in clinical practice, one would not normally say to a patient that their diagnosis is crowding or spacing. This would normally be featured in the assessment and treatment planning stages. The diagnosis is therefore implied and can be said to have been made, although to ensure such an allegation does not arise, it would do no harm to record this under a heading of 'diagnosis'.

'Not carrying out sufficient treatment planning'

The triad of appropriate radiographs, photographs and study casts would be considered reasonable in order to carry treatment planning in orthodontic cases. These records were normally taken, and using the diagnosis above, permitted sufficient treatment planning by either creating space or closing space (or correcting features of the occlusion) with orthodontic appliances. The recording of a treatment plan in the clinical notes would go some way to support the carrying out of sufficient treatment planning.

Where compromised or limited objective treatments are proposed, the alternative treatment options should include full correction (which might involve orthognathic surgery). The patient should still be informed of this option even though the clinician may not provide this type of treatment. The other option of accepting things as they are should also be included. While some may argue that this latter option is unnecessary since a patient attends to have their teeth aligned or occlusion improved, others would counter argue that sometimes a patient just seeks reassurance from a dental professional that leaving things alone would not result in any significant harm to their oral health. Therefore, the recording of the option of leaving alone (or more accurately, monitoring) would be reasonable.

'Not providing the patient with a written treatment plan'

While treatment plan estimates were frequently seen in the documentation reviewed, more comprehensive treatment plans that include treatment aims and objectives, associated risks of treatment and alternative treatment options would be considered more robust and reasonable.

'Not obtaining written consent'

In a review of the dento-legal and ethical observations on the last 100 years, Jerrold[10] found significant changes in the doctor-patient relationship, advertising and informed consent.

For comprehensive treatments such as orthodontics, it would be reasonable to obtain written consent. While this does not always indicate that the patient understands everything contained within the consent form, it does demonstrate that the process of consent took place.

In the cases advised upon, the written consent varied from the treatment plan

estimates that are generated by dental practice software to more comprehensive consent forms that would be preferred and considered reasonable with treatment aims and objectives, associated risks of treatment and alternative treatment options.

The patient should be given sufficient information about all of the available treatment options for them to be able to consent to a procedure.[11] This would also go some way towards ensuring that any written consent is also informed consent.

The need for informed consent cannot be overemphasised with those who skimp on the consent process, possibly encountering rather fiery discussions with their patients.[6] The recording of any leaflets provided to the patient should also be undertaken.[12]

'Providing a poor standard of orthodontic treatment'

Allegations ranged from broken appliances to needing to reposition brackets a number of times, and any clinician experienced in orthodontics would testify that these issues would not amount to a poor standard of care but are part of everyday practice. Nevertheless, when such issues occur repeatedly in the same patient, discussions should be recorded as to the reason for the occurrence and what remedial action is needed on the registrant's part as well as the patient's part.

In managing risks in orthodontics, realistic rather than idealistic treatment particularly for adult patients should be outlined.[13] Limitations should be discussed at the outset to ensure a patient fully understands that an ideal result may not be possible.

'Not adequately monitoring the progress of the orthodontic treatment'

The nature of orthodontic tooth movement means an accurate time frame for treatment is difficult since the biological response to an orthodontic force can vary from one individual to another. Precise time frames can result in patients becoming dissatisfied with treatment progress and raising allegations that treatment progress was not adequately monitored. Giving exact treatment times should be resisted. General time frames and revising such an estimate as the treatment progresses (in the dynamic oral environment in which orthodontics takes place) would be more reasonable. Any issues encountered should be recorded along with what remedial work is required.

'Not referring the patient for a specialist opinion'

For the general dental practitioner, it is important to ensure they know their limitations with respect to orthodontic treatment, however, even a highly qualified and experienced orthodontist may begin a case that appears straightforward and then find himself or herself in difficulty. All registrants should ensure that when they feel they are reaching the limit of their competencies, an offer should be made for the patient to obtain a second opinion from a more experienced colleague. There is also no harm in obtaining a second opinion from a fellow colleague if a patient is questioning an issue or seeking further reassurance.

Additionally, it may be difficult to defend a legal claim for negligence against a clinician who has failed to treat a case adequately when it is established that his or her training does not match up with that required for the treatment of the malocclusion in question.[5]

Even if an offer of a referral to another registrant is declined, whether it be a specialist or not, it is still important to record that such an offer was made but declined by the patient. This would reduce the chances of this allegation being made.

'Proposing to remove the braces without clinical justification'

Recording that tooth alignment and occlusal objectives have been achieved (or otherwise) should ensure there is sufficient justification to conclude active treatment. The patient should also be asked if he or she is satisfied with the outcome of the treatment provided and the response should be recorded before arranging to remove appliances. This would again reduce the chances of this allegation being brought against a registrant at a later date.

'Not adequately responding to patient concerns'

For patients in treatment, ensuring any concerns the patient has at each adjustment visit are recorded and, if necessary, outlining how these would be addressed would demonstrate an adequate response to patient concerns. Examples would include concerns a tooth still appearing out of line or an overjet still appearing increased.

For patients or parents who raise a concern about features of a malocclusion or retention regime, it would be paramount to discuss these and document the discussions in the clinical notes. Allegations have been brought where an informant feels their son or daughter should be referred for an orthodontic assessment but the general dental practitioner has not adequately explained why this was not appropriate at that moment in time.

A simple entry in the clinical notes to record that there were no further questions from the patient or parent at the appointment would reduce the chances of such an allegation being brought against a registrant.

'Not maintaining an adequate standard of record keeping'

This allegation almost encompasses everything that has been said thus far. For many allegations, there is often an account of the informant (that may or may not be the patient) versus the account of the registrant. Clinical advice work does not extend to commenting on which account should be believed and this is a decision left to the committee.

However, it would generally be considered that if it is not recorded in the clinical notes, it did not happen. The clinical notes may often be the only source of a credible account of what happened before, during or after a course of treatment and would most probably be heavily relied upon to determine if an allegation amounts to a FtP issue.

Therefore, record keeping needs to be contemporaneous, comprehensive and accurate.[3] In areas such as periodontal health, risks of orthodontic treatment and radiography (where there are additional legal obligations), allegations of adequate standards of record keeping were often found to fall below the level of professional practice reasonably expected of a dentist working within the same discipline.

The GDC, like other regulators, attaches a great deal of importance to the concept of 'insight'. Dental Protection state that it will be regarded to the practitioner's credit if he or she has accepted a transgression or shortcoming, and has taken the necessary steps to rectify it or prevent a recurrence.[7] Nowhere else in the clinical advice work was this seen more often than in the issue of an adequate standard of record keeping.

'Lack of clarity regarding if the patient was being treated within the NHS or privately'

Record keeping documentation used for NHS patients along with NHS treatment forms should ensure patients are clear about the terms under which their treatment is being provided. However, to reduce the possibility of this allegation being made, the patient should be informed under which arrangement they are being seen and this should be recorded in the clinical notes.

'Failing to make arrangements for orthodontic treatment to be continued in the absence of the regular treating clinician'

If a clinician asks a colleague to provide treatment, a dental appliance, or clinical advice for a patient, the clinician should make his or her request clear and give their colleague all the information they need.[3] In providing the clinical advice, it was found that sometimes a clinician left a practice (for a prolonged period of time or permanently) without making arrangements for the continuation of treatment of his or her patients. Furthermore, contact details for the clinician who started the treatment were not always readily available. Ensuring adequate arrangements for continuation of treatment, up to date contact details and effective and timely communication should reduce the chance of this allegation being brought against a registrant.

Conclusion

This review of frequently occurring allegations in cases associated with orthodontics being investigated by the GDC has been presented to stimulate greater levels of awareness for all members of the dental team and increase the standard of care being provided to our patients. Following the guidance in Standards for the Dental Team[3] with emphasis on good communication and record keeping, the incidence of an allegation of a FtP issue against a member of the dental team should be reduced.

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