

SAFE-COMMUNICATION



CONTINUUM SERIES

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CONTENTS

- 1.0 Introduction
- 2.0 Online patient comments
- 3.0 Defamation
- 4.0 Web marketing
- 5.0 Texts and emails
- 6.0 Fax
- 7.0 CCTV
- 8.0 Teledentistry
- 9.0 Summary
- 10.0 References

OVERVIEW

Dental Protection's **Continuum** series of advice booklets forms part of our commitment to assist and support members every step of the way from student to graduate, from the early years of professional life on to safely negotiating the many challenges that can arise at critical moments throughout a professional career, and helping them through to a happy and worry-free retirement (and beyond). In particular we aim to make members aware of the dentolegal pitfalls associated with all these critical moments, so that they are more able to cope with them at a personal level and to manage them safely and successfully in a professional sense.

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1.0 INTRODUCTION

The range of options for communicating with patients has never been so wide – especially with less formal access via the internet, email and text messaging.

Patient feedback is now encouraged online by many websites, and this can include a practice's own website, increasingly used as an essential marketing tool.

At a more local level, cameras can serve as a helpful adjunct to record keeping and, in areas not well served by the usual oral health care channels, teledentistry is joining the ranks of telehealth, delivering real-time consultations and information via modern-day technologies.

Therefore, if harnessed, electronic media can be a major communication tool for dentistry, active 24/7 and spread across multiple platforms.

But, with every potential use of new technology comes risk – and, in this exciting virtual world, it is as important to be aware of the pitfalls as it is the unbounded potential to attract new patients, retain their loyalty and deliver good dental care with their best interests as your focus.

The professional dentist/patient boundary, patient confidentiality and relationships with colleagues are all flashpoint areas in which an alarming number of dentolegal issues lurk if crossed, misused or abused.

SOCIAL WHIRL

Social media includes practice websites, social networking sites such as Twitter, Facebook, YouTube and LinkedIn, blogs and forums and, of course, perhaps more onerous for some, the TripAdvisor-esque feedback sites such as NHS Choices.

Some risks are more obvious than others. For example, entering into discussions with patients in an online public forum, such as Twitter, is best avoided; as is befriending patients on Facebook – a practice from which not only dentists should be dissuaded, but the rest of the practice staff, too. For this reason, it is important to have a policy document for the practice that covers social media behaviour.

Your social media policy should cover...

- Privacy settings – be sure to review the privacy settings of any private social media accounts
- Patient confidentiality – never use public social media sites to discuss individual patients
- Maintaining boundaries – apply the same standards of behaviour in a virtual world as you would in the real world. Never have a patient as a friend on Facebook
- Respect for colleagues – online comments about colleagues is not acceptable
- Damage to reputation – online behaviour should not damage the reputation of the practice.

Indeed, the area of electronic communication is such a legal and ethical minefield that all manner of bodies have now addressed the subject in either guidance or legislation.

LEGAL PERSPECTIVE

In the UK, dentists have to be mindful of the Data Protection Act and the GDC's Standards for the Dental Team¹ that states: 'You must not post any information or comments about patients on social networking or blogging sites. If you use professional social media to discuss anonymised cases for the purpose of discussing best practice, you must be careful that the patient or patients cannot be identified.'

It's easy to let off steam on social media after a particularly challenging day, but do think hard before posting any comments on how it may reflect on you and, just as importantly, how words typed in a moment of frustrated fury – or even after a glass or two of wine – can skew public perceptions of, and trust in, the profession.

While social media can provide a very convenient platform to keep in touch with other dental colleagues, you should also remember that even if you do not identify yourself as a dental professional, you could still put your registration at risk if you display inappropriate behaviour when using social media.

Even discussing patient cases in a password-protected online professional forum can pose a risk. While online discussions about anonymised patients and best practice can have an educational and professional benefit, it is important to remember that posting information under another username does not guarantee confidentiality.

2.0 ONLINE PATIENT COMMENTS

With the dawn of the internet, the world became a smaller place and, these days, patients will much more likely go online to seek testimonials and recommendations than rely on the old-fashioned and naturally occurring word-of-mouth. This has its upside as well as its downside, possibly depending on what kind of feedback your practice has already received.

A disgruntled patient can post comments on any social media site of their choosing and we all know how 'bad news' can spread like wildfire, which could mean bad news for you. If there is anything said that is defamatory, then you are advised to seek dentolegal advice in the first instance before steaming headlong into a fiery exchange in a public arena; far better to take the conversation offline and discuss in the real world than engage in a battle of words in the virtual world.

Everyone's a critic and, hard though it may be to protect your reputation when criticism is justified, it's even more of a challenge to respond in an even-handed, fair-minded way when you are the object of an attack that is completely misplaced.

However, defamation laws do extend to online and patients cannot write anything about anybody without remaining answerable. If it can be demonstrated that the comments concerned are factually inaccurate, the author can be asked to delete it.

3.0 DEFAMATION

The Defamation Act 1996 sets out the basis on which claims of defamation can be brought, as well as providing various defences available.

Under the terms of the Act, the author should initially be given the opportunity to make amends. However, defamation proceedings are expensive and notoriously time-consuming, unpleasant and the outcome is often hard to predict, so it's not an action to be undertaken lightly.

If you believe you have been defamed, contact Dental Protection. The dentolegal advisers can also assist with defamation actions brought against a dentist, provided the matter arises from your professional practice.

Worth noting is that, if you are involved in a radio or television programme, you should always ask the producer for an indemnity before you agree to participate.

In the UK, the NHS Choices website – described as the online 'front door' to the NHS – informs patients it is 'helping put you in charge of your healthcare' and offers them an opportunity to provide feedback on – and a rating of – health services.

Every dental practice, providing NHS services, now has its own practice profile on the NHS Choices website. Whether you believe this to be a marketing dream or a moaner's charter will depend to a greater or lesser extent on what comments you have found posted on your own profile.

In addition to editing rights, NHS Choices has also given practices the administration rights to comments posted on their page. This alerts the practice when comments are uploaded to their online profile and also permits the administrator to make a response.

Dental Protection advises practices to use this facility wisely. Take all online comments seriously and reply to them whether they are good or bad. It is a good idea to personalise your replies and to avoid 'stock' responses. Take anonymous comments as seriously as named ones. If a comment is anonymous and negative, invite the reviewer to discuss their comment and provide a named contact. Do not use the website to respond to complaints or to be defensive or aggressive if the comments are negative; as previously suggested, it is always better to take the conversation offline.

When responding to a comment about treatment, you can state that patient confidentiality prevents you from going into detail, but tell the author of the remark that they are welcome to meet to discuss the issues personally. Remember patients' comments are opinions, not statements of fact. While it is always difficult to accept criticism and to act positively, NHS Choices is simply another forum that allows you to capture feedback that can be used to reflect on the care and services you offer and to make improvements where necessary.

Do bear it in mind that everyone who reads the comments on your practice page will see your response, and so a professional and courteous response will reflect well on the practice and so provides another form of marketing.

The GDC says remember...

- Maintain and protect patients' information by not publishing any information that could identify them on social media without their explicit consent
- Maintain appropriate boundaries in the relationships you have with patients
- Comply with any internet and social media policy set out by your employer [see box above]
- As a registrant, you have a responsibility to behave professionally and responsibly both online and offline
- Your online image can impact on your professional life and you should not post any information, including photographs and videos that may bring the profession into disrepute
- Anything you post on social media is in the public domain and can be easily copied and redistributed without your knowledge
- You should presume that everything you share online will be there permanently
- You should think carefully before accepting friend requests from patients
- You should regularly review your privacy settings to ensure unintended audiences do not access information
- Even the strictest privacy settings do not guarantee your information will be kept secure
- Any information you post could be viewed by anyone including your patients, colleagues or employer.

4.0 WEB MARKETING

Marketing to patients through a website is a relatively new phenomenon in the world of dentistry but, if done well, can prove an excellent marketing tool for a practice.

However, there are rules pertaining to this that need to be adhered to, including those that place an expectation upon the dental professional to advertise ethically.

Guidelines from the GDC clarify the position for dental professionals and, although there has always been a duty on dental professionals to advertise in accordance with standards set by the Advertising Standards Authority (ASA) and the Office of Fair Trading (OFT), these include what should appear on the practice website – along with what should not.

In line with European guidance [2], for all dental professionals providing dental care mentioned on the practice website, the following information must be displayed:

- Their professional qualification and the country from which that qualification is derived
- Their GDC registration number.

Dental practice websites must also display the following information:

- The name and geographic address at which the dental service is established
- Contact details of the dental service, including email address and telephone number
- The GDC's address and other contact details, or a link to the GDC website
- Details of the practice's complaints procedure and contact details of person to be contacted by the patient if they are not satisfied with the response (Namely the relevant NHS body for NHS treatment and the Dental Complaints Service for private treatment)
- They are not satisfied with the response (namely the relevant NHS body for NHS treatment and
- The Dental Complaints Service for private treatment
- The date the website was last updated.

Update your website regularly so that it accurately reflects the personnel at the practice and the service offered. A dental practice website must not display information comparing the skills or qualifications of any dental professional providing any service with the skills and qualifications of other dental professionals.

5.0 TEXTS AND EMAILS

Far less obvious a problematic area of electronic communication is that of text messaging and emails as these are direct, one-to-one, communication systems solely between the practitioner and the patient in a private capacity and not broadcast in an open, online public forum.

However, these too come with their own risks, not least of which are the expectations of data protection and the safeguards required in order to preserve patient confidentiality.

In accordance with the General Dental Council's Standards for the Dental Team (2013)¹, all dentists have a responsibility to ensure that any data about patients is kept secure.

Texting is popular with many practices as a means of reminding patients of their appointments but a practice must not assume that, just because it holds on file a mobile telephone number in a patient's record, it has consent for text messages to be sent. The reception team should ask the patient if he or she would be happy to receive a text message via mobile phone for an appointment reminder. The patient's consent or refusal must be clearly recorded on the patient's computer record where it is easily visible.

Patients who consent should be advised of the need to inform the surgery of any changes to their contact details. This is important because patients may change their mobile phones at regular intervals and, if they choose to give their old phone to a friend or family member, there is obvious potential for a breach of confidentiality. Like all records, the consent should be revisited and updated at regular intervals.

It is worth mentioning that under no circumstances should you engage in social conversations with patients via text messaging and no personal information should ever be shared. Texting about treatments is also off limits – it would be more appropriate to invite patients into the surgery should they wish to discuss their dental care with you.

The safest option is to have a separate out-of-hours mobile phone that isn't your own personal mobile and, as in all circumstances, keep a record of all communications.

Dental practices hold vast amounts of sought-after data, including names, health history, addresses and banking information of patients. IT data security breaches can occur when staff members fail to follow practice protocol and procedures or there is a culture of password sharing.

The advice is to place all computers in areas where the screens are not visible to patients, and to use encryption and individual log-in passwords to protect each computer.

Passwords should contain mixed-case letters and include numbers or symbols and should be changed regularly. In addition, passwords should not be written down under keyboards or kept on desks or surfaces where the public may be able to access them.

It is also common sense that staff members are dissuaded from storing personal data on practice computers as this too may lead to any confidentiality and security issues. The best advice is to seek professional and reliable IT guidance before connecting any laptop or other electronic device to a practice network.

It is also unwise to use your personal computer to store patient data including clinical photographs and referral letters, even temporarily. Remember that all parts of the patient's record should be stored together wherever possible and readily available for another clinician to be able to access in an emergency.

Currently, Dental Protection is seeking clarification from the GDC as to their expectations in respect of sending patient information by email that is an easy way for patients to communicate with the practice and vice versa.

However, safeguards are required in order to preserve patient confidentiality and, unless messages are encrypted, patients should be aware messages could potentially be read by someone else.

Only appropriate matters should be dealt with via email exchanges, eg: appointment scheduling, requesting a call back, updating contact details and nothing that wanders into discussions about care or complex courses of treatment. Good practice dictates that there should be a written staff policy regarding email communication – both in-house and with patients – and that any email exchanges form part of the patient's dental record.

Encryption will only work if both sender and recipient use the same encryption.

Password protection is an alternative, but relies on the original information and the password being sent to the same email address. If the email address is incorrect in the first instance, the password will also go to the incorrect address.

6.0 FAX

Even posting patient information by special delivery cannot be considered entirely secure and Dental Protection suggests that, where possible, dentists should try to remove sensitive patient information from communications between third parties.

You've got mail!

- Ensure appropriate levels of encryption
- Liaise with your IT provider to ensure appropriate safeguards are in place and information on the clinical system remains secure
- Have an automated response indicating the email has been received, when the patient should expect to receive a reply and a recommendation they should contact the practice directly if urgent
- Monitor email enquiries at regular intervals and ensure they are promptly brought to the attention of the relevant person
- Respond in a professional manner
- Ensure there is a mechanism in place to deal with enquiries that arrive while you are on leave or away from the practice
- Ensure any patient email communication is sent from a secure practice email address and not from a personal email address.

As the internet is now such a large part of our working and personal lives, it is easy to forget that, in some instances, the fax machine remains very much part of the day-to-day running of a dental practice. They may have mostly been overtaken by newer technology. However, there remain some areas of the world where WiFi and internet access are not as practical as a fax machine. It can certainly prove a safer, more reliable form of communication in such situations.

But here too there are risks and Dental Protection has dealt with a number of situations in which the wrong person has picked up information, often because of misdialled or out-of-date fax numbers. This can mean that patient confidentiality is breached and treatment is delayed due to time lapsing before the information reaches the correct person. So, it's advised that practices using fax machines do so to send sensitive data only if absolutely necessary, eg: for urgent referrals, and when no other means of requesting the referral is available.

Fax machines should only be accessible to authorised staff and should be placed in a secure location.

A good tip is to send a cover sheet containing a confidentiality statement, along with the fax, but best practice is to ensure that only the minimum amount of personal information necessary is sent by fax and, where possible, is anonymised or a unique identifier used.

7.0 CCTV

Got it taped!

The complexity of privacy and data protection considerations is an area of concern when it comes to the use of close circuit television (CCTV) as it does make it difficult (or even impossible) to capture all the key aspects of a patient's dental care in this way.

If your CCTV is designed for security alone it will be essentially in public areas such as a reception area. Your legal responsibility in this case is to display a sign that informs the public that security CCTV operates in the practice. And the sign itself is some degree of security.

However, if it is to be used in a clinical area, there are far more demanding legal requirements. You will be required to inform the patient personally on each occasion that the patient attends and it is operating. Because of privacy considerations they have the right to demand that it be switched off.

Dental Protection does not recommend video recording as an alternative to conventional written notes augmented with photography. If CCTV is used as an alternative, any such recordings would form part of the patient's notes and would have to conform with privacy and data-protection requirements that make it difficult or impossible to capture all aspects of the patient's treatment in a form that can be easily shared.

It may be sensible (or, in some countries, a legal requirement) to explain the purposes of the recordings, who will have access to them, and how long they will be kept.

Even at the reception desk, patients will be easily identifiable from recordings and they may feel it is an infringement on their rights to have their confidentiality in a healthcare setting protected.

The same is true of telephone answering machines although, in such cases, the patient would normally be aware they are being recorded. Many arguments about cancelled appointments could be avoided by keeping accurate details of incoming messages delivered by telephone or left on a messaging system.

8.0 TELEDENTISTRY

Teledentistry can be described as the remote provision of dental care, advice or treatment using information technology and telecommunications. The technology is often harnessed to improve services in areas not well served by health care provision, such as in rural or less developed areas.

Like their medical counterparts, Dental Boards and Dental Councils around the world have been wrestling with the risks in using this facility for some years now. Some regulatory bodies take the view you are practising dentistry wherever you physically happen to be when giving the advice, while others take the alternative view you are practising dentistry where the patient(s) involved are being treated.

Where dentistry is being provided across jurisdictional or national boundaries, this can have complex repercussions, including allegations of the illegal practise of dentistry, questions relating to which law would apply to any legal action brought by the patient, and also to whether the patient could bring an action both where they were based and where the remote clinician was based. Dental Protection has assisted its members in these situations.

Complications arise, too, regarding patient's records that will exist in two places. It also raises questions of:

- Who, will hold what data in what form, for how long, and for what purpose?
- What safeguards are in place in relation to the storage, use, processing, retrieval, access/sharing and security?
- When and how the data will be destroyed, and by whom?

Teledentistry hurdles

- Who has established the patient's medical history, and in what way?
- Has an extra-oral examination been performed and if so, how have the findings been communicated?
- What other enquiries have been made about the patient's personal, social and dental history (Including the presence or absence of any relevant risk factors)?
- What other tests and/or investigations have been carried out and how were the result/findings have been communicated?

Check

- If the 'remote' clinician is in possession of all the relevant facts, or only a selection of them
- If this 'remote' clinician is in a position to contribute to the patient's care and treatment safely and to the same high standards as if they were physically present or had examined the patient personally
- If there is any potential for compromise, has this fact been explained to the patient, and has the patient agreed to proceed on the basis of being in full possession of all the relevant facts about the identity, role and status of this 'remote' dentist and any possible limitations or risks of being treated in this way. This information is 'material' to the patient's consent if it has the potential to influence any decision the patient might make.

If you are inadvertently working with someone who is not registered and/or is not appropriately indemnified, it could land you in trouble with the GDC if the patient at risk is being treated in the UK.

One of the most complex aspects of teledentistry is that of consent because the patient is, in many cases, being asked to consent to having someone involved in their treatment about whom they probably know very little, and who they will never meet. Yet this unknown person's advice could have an impact directly upon their dental care.

9.0 SUMMARY

Most health systems in countries throughout the world now rely on the use of electronic media in order to deliver health care efficiently and effectively – and dentistry is no exception.

It has improved diagnosis, education, appointment making and marketing and has eased the flow of information between dental professional and patient as well dental professional and outside bodies such as dental laboratories. It has allowed for the development of teledentistry and is an excellent communication tool.

There are, however, still standards to be maintained, data protection laws to be respected and professional boundaries to be respected. If communication is at the heart of oral health care, then dentists will want to review new technological choices that will optimise the patient experience.

However, it is always important to be mindful of the many legal pitfalls and traps that can come with the use of electronic communication between colleagues as well as between the dentist and patients, both privately as well as in an online virtual world public arena online.

If there are any issues that arise from reading this article, you are advised to seek clarification by contacting the team of dentolegal advisers at Dental Protection.

10.0 REFERENCES

1. 4.2.3 of Standards for the Dental Team, GDC – www.gdc-uk.org/Newsandpublications/Publications/Publications/Standards%20for%20the%20Dental%20Team.pdf
2. The Council of European Dentists' (CED) EU Manual of Dental Practice contains extensive information on oral health systems as well as legal and ethical regulations across the EU. In particular this includes the Code of Ethics for Dentists in the EU for Electronic Commerce which covers the content of websites.

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