

# DO DENTAL TECHNICIANS DISADVANTAGE THEMSELVES IN REGULATORY MATTERS?

By Heather Beckett, Barrister and Registered Dental Specialist

**PURPOSE: TO INVESTIGATE THE TYPE AND OUTCOMES OF REGULATORY MATTERS FACED BY DENTAL TECHNICIANS. A SUMMARY REPORT. FOR FULL STUDY REPORT SEE: [www.Dentalbarrister.co.uk](http://www.Dentalbarrister.co.uk)**

## RESULTS:

Sixteen (16) Registered Dental Technicians were identified from the filtered database on the GDC website as having had their fitness to practice considered by a Professional Conduct Committee between 01 January 2019 and 31 December 2019.

Eight (8) of the identified 2019 hearings were "resumed/review hearings", intended to review Orders made at previous hearings.

The other eight (8) identified cases are where fitness to practise was first considered by a Professional Conduct Committee at a hearing during 2019.

## CHARGES:

Charges against Dental Technicians involved two main primary areas:

1. Working or offering to work outside the registrant's scope of practice. These featured in ten (10) of the cases.
2. Criminal convictions or cautions/failing to notify the GDC of same. These featured in four (4) of the cases.

In all but two of these fourteen cases, it was charged in addition that the "primary" areas of

alleged misconduct meant that the registrant's actions were:

- i. Misleading; and
- ii. Dishonest.

In a number of cases it was additionally charged that the actions also evidenced a lack of integrity and in one case that a patient's informed consent was not gained as a result of the treatment provided being outside the registrant's scope of practice.

A number of charges featured in more than one case:

- i. Failure to have in place adequate insurance or indemnity cover;
- ii. Failure to cooperate with the GDC investigation (this was commonly a failure to provide details of insurance or indemnity cover);
- iii. False declarations to the GDC regarding indemnity insurance;
- iv. Poor or inadequate record-keeping.

One registrant was also charged with failure to wear gloves while treating a patient (that treatment itself being outside the registrant's scope of practice), and failure to respond professionally to a patient's complaint

One registrant was charged with misleadingly

and dishonestly representing to GDC counsel that he was enrolled on a CDT program at the time he had treated a patient outside the scope of practice of a Dental Technician and allowing GDC counsel to so submit at an Interim Orders Committee hearing.

One was charged with allowing misleading publication of advertisements and/or misleading information to appear on a website.

Two determinations mentioned registrants' health, but understandably there were no further details, given the personal and private nature of the health of an individual.

Use of "in guise" ("under guise") investigations:

A particular feature of the evidence in four cases was the use by the GDC of investigators "in-guise" (or "under-guise"), in other words posing as members of the public. The registrants in these cases were charged with having offered to provide services outside their scope of practice during enquiries by the investigators in relation to "fictitious" potential patients, usually described by the investigators as "relatives" during the enquiries.

## ATTENDANCE AND REPRESENTATION AT HEARINGS:

Original Hearing	1st Review	2nd/3rd Review			
Attended	Represented	Attended	Represented	Attended	Represented
Yes	Yes	No	No		
Yes	No	No	No		
Yes	No	No	No		
Yes	No	No	No		
Yes	No	No	No		
No	No	No	No	Yes	No
No	No	No	No	Yes	No
No	No	No	No	Yes	No

TABLE 2 SUMMARY OF 8 INITIAL HEARINGS

Attended	Represented
No	No
No	No
No	No
Yes	No
Yes	No
Yes	No
Yes	Yes
Yes	Yes

TABLE 3 SANCTIONS:

SANCTION	NUMBER OF TIMES IMPOSED	COMMENT
Reprimand	2	Imposed at first hearing
Conditions (with a review)	1	Imposed at first hearing
Conditions revoked, Suspension imposed at review hearing	1	When registrant failed to continue meaningfully to engage
Suspension (with a review)	11	Imposed at first hearing
Suspension extended (with a review)	8	Where registrant failed to attend a review hearing following an earlier suspension
Suspension lifted, Conditions of practice formulated	2	At review hearing
Conditions extended at review hearing	2	Following imposition of conditions at earlier hearing

Dental Technicians are only infrequently represented by counsel:

It has relatively recently been reported<sup>1</sup> that a Freedom of Information request by Dental Protection to the GDC illustrated an apparent significant discrepancy between the level of sanctions applied to dentists who are legally represented and those who are not. The general suggestion seems to be that substantially more dental professionals whose fitness to practise is found not to be impaired are legally represented than not. In addition, it seems that many more dentists erased from the register (and therefore unable to continue to practice for a minimum of five years and even then only if they achieve restoration) following a hearing are unrepresented.

As shown in tables 1 and 2, Dental Technicians often fail to attend regulatory hearings and are rarely legally represented. It would seem that this is likely to seriously disadvantage their position.

## CONCLUSIONS:

Based on this small study, whilst recognising the methodological limitations, it appears that

some registered Dental Technicians are prepared to offer to work and/or actually work outside their scope of practice. The GDC, in line with its statutory duties, takes a robust approach, upon occasions commissioning under-guise investigations where there is suspicion that this is occurring. Where these investigations present to registrants no more than unexceptional scenarios, they are likely to be justifiable.

It is most unwise to accept any opportunity to work outside your scope of practice. Because of the nature of the legal test for dishonesty derived from the Supreme Court case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, it is more likely than not that where a registrant offers to work or actually works outside the scope of practice or fails to inform the GDC of a criminal conviction, their actions will be also found dishonest.

A finding of dishonesty will almost inevitably result in a finding of "current impairment" on public interest grounds. A sanction of suspension of registration at the very least will then result and

the Dental Technician will not be able legally to work as a technician whilst suspended.

It is significant that several Dental Technicians have failed to engage in the regulatory process in a consistent and meaningful way, by failing to appear at hearings. Suspension of registration or extension of suspension is likely to result from such a course of action. Dental Technicians facing a regulatory hearing rarely have professional legal advice and representation but may well benefit from doing so.

To minimise sanctions and damage to income, career and reputation, Dental Technicians should seek legal advice, must attend hearings and should respond to the regulator with equal rigour of case preparation and representation.

## FOR ADVICE CONTACT:

[h.beckett@goldsmithchambers.com](mailto:h.beckett@goldsmithchambers.com)  
Heather Beckett, Barrister, Goldsmith Chambers, Goldsmith Building, Temple London EC4 7BL

REFERENCES: <sup>1</sup>GDPUK website. <https://www.gdpuk.com/news/latest-news/3193-dentists-without-legal-representation-face-much-tougher-sanctions-at-gdc-hearings>  
Downloaded on 31 December 2019