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Associate indemnity

It is a requirement of the GDC for all dental professionals in the UK to have adequate indemnity provision in place, or they may face removal from the register.

In order to comply, there are currently three types of cover that are recognised by the GDC, and it is crucial that each dentist makes the appropriate choice. The options are:

- Dental Defence Organisation membership – held individually or as membership provided by the employer
- NHS / Crown indemnity – most doctors employed by the NHS are covered for the duties described in their contract
- Professional indemnity insurance held individually or by the employer.

At first glance, the concept of indemnity cover seems fairly straightforward: you are either covered or you are not. However, for a practice principal working with an

associate the issue of indemnity, and more crucially the party responsible for it, can cause some confusion due to the nature of their professional relationship. For instance, a question that regularly arises is: Does an associate dentist count as an employee?

This is relevant because according to employment law, an employer is vicariously responsible for the actions and his or her employee and could be held accountable should any claims be brought against them. However, it is widely understood that this is not the case for dental associates who are often thought of as self-employed. Indeed, it is not uncommon for practice owners to operate under the assumption that they will not be held liable, or responsible, for the actions of an associate dentist working in their practice due to their self-employed status. Nonetheless, there have recently been more than a couple of incidents that show that this is not always the case. As such these situations have highlighted the necessity of ensuring any associates working at your practice are sufficiently covered.

The recent Whetstone case is often used by some legal firms to demonstrate how practice owners are vicariously liable for the actions of their self-employed associates. A somewhat unique situation, this case involved an associate who did not have indemnity and the practice owner has held liable for their actions. As the owner had not checked whether the associate had sufficient cover, he was held responsible, despite the self-employed status of the associate. Despite deliberate trying to demonstrate vicarious liability on his part so as to receive compensation from his insurance, he not only lost the case, but was also awarded all the costs.

This case and many others exemplify the position that many principals find themselves in, whereby if their associate was found to have insufficient cover they would face increased scrutiny around the relationship between the two parties, and potentially could be held liable for any claims against the associate. Following the correct procedures and taking reasonable steps to ensure sufficient cover is in place, will help practice owners avoid situations like the case above.

For more information about the ADG visit www.dentalgroups.co.uk.