Facing the judge and the jury

Allegations have been made against you to the GDC and your career’s hanging in the balance. What do you do next? Get a good lawyer, says John Goodwin

A ll of a sudden, your busy professional life is interrupted. You receive a letter from a caseworker in the Fitness to Practise Department of the General Dental Council (GDC). It says that your case has been referred to the Investigating Committee, and to the Registrar who has in turn decided to refer it to the Interim Orders Committee.

This is to decide whether an order for interim suspension of your registration should be made, or whether it should be made subject to certain conditions.

Your initial reaction may well be one approaching panic. After all, you could be suspended from your practice. Not only this, you do not have very long to act. You are not likely to get more than up to two weeks’ notice of the hearing and it would be difficult to agree an adjournment with the GDC caseworker.

You might also have been told previously that allegations against you have been received and that you, or someone on your behalf, have responded to these allegations. For example, you may already have filed your representations in response to the allegations on record.

When you receive a referral to the Interim Orders Committee, you will be told when and where the hearing will be and that you have a right to be represented by Counsel or solicitor or “some other person”.

You will be given information on the Dentists’ Act, what can happen if you do not attend the hearing (the Committee can proceed in your absence) and a very brief outline as to what the Interim Orders Committee can take into account. You will receive a copy of the relevant rules. What you will not receive at first is a copy of the papers that will be placed before the Interim Orders Committee. You may only receive these two or three days before the hearing.

So, in short, your whole professional career may be on the line. If you are suspended from practice there is no guarantee that you will ever actually be able to practice again, depending on how the investigation pans out in the future. Assuming that very few dentists in this position will wish suddenly to retire, the issue then is how to prepare and, in particular, you must be aware of the rules, regulations and guidance under which the General Dental Council will be acting.

Take legal advice
You must seriously consider taking immediate legal advice. You may be entitled to representation by your defence Union or you may wish to instruct a firm of solicitors privately. An experienced lawyer will know what guidance documents will be considered by the GDC and that the Committee will be comprised of members, some of who are examining dentists.

The first document that should be considered is one entitled, “Guidance for the Professional Conduct Committee”, the latest version of which was published in October 2009. This sets out the fact that the Professional Conduct Committee has to balance public protection and proportionality. They decide whether your fitness to practise is impaired by reason of your conduct, while at the same time aiming to protect patients and colleagues from the risk of harm and safeguarding public confidence in registered dental professionals.

In an Interim Orders Committee, the members will know, and in any event will be reminded by their legal adviser, that it is not a “fact-finding hearing”. This is a very complicated concept with which to come to terms and it cannot be stressed too highly that you will need an experienced solicitor/Counsel to guide you through this.

Presenting your case
The next step is to consider on a practical basis how to present your case. Of course there may be circumstances where a dental professional’s behaviour has been so extreme all hope is lost, but assuming this isn’t true, one has to adopt a practical and speedy approach to preparing the hearing. The following are guidelines, although not extensive, as to what can be done:

1 Prepare a detailed statement giving details of your professional history to date including where you trained and qualified, where you have worked since qualification, where you currently work, the status of your employment, your job description and title, your responsibilities and any information which will give a full picture of your professional history and current professional life to the Committee. They need to know who you are and what you do. It may be relevant (for example in cases where there is concern about prescription practice) for them to know whether your practice is private, NHS or a mixture.

The bundle of documents is likely to contain details of any previous appearances before the various committees of the General Dental Council but, in any event, it is imperative that, if there are any such matters, you give as full a history as possible of these to the Committee and therefore in the first instance to your solicitor.

2 References. When the Committee is looking at protection of the public and the proportionality that might be involved if you were suspended, it can only help your case to provide as many references as possible from patients and professional colleagues. Many dentists will have collected these over the years as a matter of course or will have comments and suggestion books, which contain references. However, what you should really be seeking to do is to obtain references, including personal references, as a matter of urgency. Anyone providing a reference should be told the purpose of it and the allegations which are made. It is much better to have a reference which contains words to the effect of “I know that Dr X has been accused of serious professional issues...” than one which does not make it clear that the referee knows of this.

3 It might go without saying, but you will often find in all types of committee and court hearings that the person accused has not dealt with all the allegations in detail. You must prepare a sentence by sentence/paragraph by paragraph response to all the allegations against you. Bearing in mind that these hearings have to be dealt with quickly, you may have to burn the midnight oil to do this properly.

You must consider carefully whether you accept the allegations against you. If, for example, a prescription issue arises, do you accept that the writing on the prescription is yours? Is the signature yours? If there is an allegation that you treated a young person without your nurse being present and allegations have arisen from this, do you really accept this?

An Interim Orders Committee is not a fact-finding hearing. In my extensive experience of representing people in front of all types of tribunals and courts it is surprising how many people make admissions or concessions without really considering the allegations properly.

When they later realise that they may have been too hasty in doing this, they become a hostage to their own admission/concession. Great care and caution must therefore be exercised. Of course you should never seek to mislead a committee but it must be borne in mind that all this is being done as a rush and may be in something of a panic, and careful reflection must take place before nailing any colours to the mast.

4 Documentary exhibits. If allegations are made which concern the keeping of records you should seek urgently to gather those records, review them and prepare them and...
You should also prepare a bundle for the shorthand writer who will be present at such a hearing to assist.

The Committee has power to suspend but it also has power to impose conditions to be placed on your registration. The Committee will have a bundle in front of them entitled, GDC Conditions Bank. These are extensive but you will not be limited to the standard sets of conditions. The current conditions bank used by the GDC includes a total of 71 conditions. It is divided into different areas to help the panel choose which conditions might be appropriate. As just a few examples, if you have a problem with alcohol misuse, a condition might be imposed for you to abstain completely from the consumption of alcohol. If there are personal drug issues, you may have condition to take drugs only as prescribed to you by your medical supervisor or a registered medical or dental practitioner.

If there is an issue in relation to prescribing practices, you might have a condition not to administer or prescribe benzodiazepines or other sedating drugs or to refrain from practices involving sedation or complicated procedures. You may also have a mentoring condition where a mentor is appointed to supervise and assist you. It would be useful to consider these before a hearing, see if you can suggest an appropriate person to your solicitor, obtain their approval, and provide their details to the Committee. The consideration of conditions is vital. You should go in front of a committee in appropriate cases stating that whilst you deny allegations of professional misconduct, you appreciate the concern and the purpose of the Committee and feel that any concerns would be allayed by the imposition of various conditions.

Undertakings. The Director of Hearings sent a letter to Defence organisations in June 2006 explaining that undertakings can be offered to a committee about your future conduct and how it can be monitored. An undertaking does not have to be offered and the Committee does not have to accept one if it is. It is a defence (dental professionals) responsibility to offer an undertaking and not the duty of the Committee to request them. The offer of a suitable undertaking therefore is also something that might be considered.

This article is very much an outline and not intended to be a full and detailed description of all the procedures and all the potential ways of dealing with allegations.

What I particularly wish to draw to your attention is however that, if you find yourself in the unenviable position of facing an Interim Orders Committee, you have to act quickly, and you have to take proper advice, you have to try not to panic and you have to deal with all preparation and paperwork to be placed before the Committee, as a matter of urgency and applying general principles of good legal practice, for example:

1. What is mischief alleged against you; and
2. How can you best put together a case, quickly, to prevent the potentially career-threatening sanction of suspension?

As a final point, I would also urge anyone appearing before the Committee to consider obtaining advice from an expert dental practitioner to assist their lawyer in connection with specific practice issues. I have not dealt with the appeal procedure that is available to the High Court, although that is something which would need to be considered if you are unhappy with the decision.

About the author

John Goodwin is a solicitor advocate. He has been in practice for 27 years. He represents dental practitioners in connection with any inquiries into their conduct and working practices as a member of the Dental Team at Cohen Cramer Solicitors. He also represents dental professionals concerning their regulatory practice. To contact Cohen Cramer Solicitors, call 0113 2440597, email dental.team@cohencramer.co.uk or visit www.cohen cramers.co.uk.