

Corporate bodies and the business of dentistry

Frequently Asked Questions November 2009

Important Information

We aim to keep the information in this leaflet up to date but please take advice from your solicitor or other appropriate professional adviser before making an investment or other business decision.

The GDC does not provide advice on the interpretation and application of the provisions of the Dentists Act, please consult your solicitor or other appropriate professional adviser.

The GDC does not advise on the advantages of alternative business arrangements and we do not give guidance or "clearance" for particular proposed business models. However if you intend to use a business name which includes the word 'dental' or 'dentistry' you need to obtain a letter of non-objection from us. This is because these two words are restricted under the Company and Business Names Regulations 1981. To obtain a letter of non-objection please email us at businessnames@gdc-uk.org stating the proposed business name and business activity.

We recommend that in all cases you seek independent legal and professional advice before proceeding.

Frequently Asked Questions

Q1 Has the law changed now so that anyone can set up a company or other form of corporate body to carry on the business of dentistry?

A1 An Order to amend the Dentists Act 1984 was made in July 2005 which removed key restrictions on Dental Bodies Corporate (DBC's). Prior to these changes 28 DBC's existed and they formed the GDC's list of DBC's. This list is no longer in force. Any corporate body can now carry on the business of dentistry provided they satisfy the requirements in relation to directors of bodies corporate set out in section 43 of the amended Dentists Act.

Q2 What is *the business of dentistry*?

A2 As per section 40 (1) of the Dentists Act, a person shall be treated as carrying on the business of dentistry if, and only if, he or a partnership of which he is a member receives payment for services rendered in the course of the practice of dentistry by him or by a partner of his, or by an employee of his or by all or any of the partners.

Q3 Will the 1955 rule disappear?¹

¹ Prior to the Order to amend the Dentists Act 1984 made in July 2005, there were a number of restrictions on companies carrying on the business of dentistry. One of these restrictions is that a company cannot carry on the business of dentistry unless it was doing so on 21 July 1955.

A3 Yes. Any corporate body which complies with the requirements in relation to directors of bodies corporate set out in section 43 of the amended Dentists Act is now able to carry on the business of dentistry.

Q4 What does the Dentists Act say about directors of bodies corporate?

A4 Section 43 was intended to require a majority of directors of a DBC to be registered dentists or registered Dental Care Professionals (DCPs) or a combination of dentists and DCPs. However we understand that the wording of section 43 is causing confusion amongst registrants. We are currently seeking independent legal advice on the requirements under section 43 and may revise the information on our website.

A person whose name is currently erased or suspended from one of the specified statutory registers² will be committing an offence if he/she is the director of a DBC³.

Q5 Will the GDC hold a list of corporate bodies carrying on the business of dentistry?

A5 No.

The GDC is not a licensing body as far as DBCs are concerned and a corporate body does not require our approval to set itself up as a DBC. Therefore, whilst we have been considering establishing a list of all corporate bodies carrying on the business of dentistry under the provisions of the amended Dentists Act, such a list would have limited regulatory impact.

This does not preclude corporate bodies from continuing to come into being and to carry on the business of dentistry as long as they meet the requirements in relation to directors of bodies corporate set out in section 43 of the amended Dentists Act.

Q6 What are the penalties for corporate misconduct?

A6 The GDC's Professional Conduct Committee will also have powers to impose a financial penalty of up to £50, 000 on a dental body corporate if

- a registrant-director is erased by the Professional Conduct Committee

OR

² Registers kept by: The General Chiropractic Council; The General Dental Council; The General Medical Council; The General Optical Council; The Health Professions Council; The Nursing and Midwifery Council; The General Osteopathic Council; The Royal Pharmaceutical Society of Great Britain; The Pharmaceutical Society of Northern Ireland.

³ A summary offence punishable by a fine not exceeding level 5 on the standard scale.

- a registrant-member of staff is erased by the Professional Conduct Committee *and*
 - a director instigated or connived at the offence or misconduct etc. which led to the erasure, or
 - the act or omission was a continuing one and a director knew about it or ought to have known about it.

Q9 What will happen to the money that the GDC receives from financial penalties?

A9 The GDC will pass on any money to central Government funds.

Q10 What about appeals?

A10 Directors and companies ordered to pay a penalty by the Professional Conduct Committee will have the right to appeal to the Court against that penalty.

Q11 What about professional standards?

A11 GDC registrants are personally accountable through the fitness to practise procedures for their conduct in their capacity as a director of a corporate body. Registrant directors are required to uphold high professional standards within corporate bodies just as they are in their own work as a dentist or dental care professional.

Q12 Do DBCs require professional indemnity?

A12 As indicated in the answer above GDC registrants are personally accountable through the fitness to practise procedures for their conduct in their capacity as a director of a corporate body. All GDC registrants are required to have professional indemnity. Independent legal and professional advice should be sought to ensure that DBCs have adequate indemnity and are protected against claims.

Q13 What is the situation regarding the need for new contracts with Primary Care Trusts (PCT's)?

A13 The GDC is not directly involved with the issuing or approval of contracts and this does not form part of its function. For information please contact your PCT.

Q14 How would NHS superannuation contributions be dealt with under a DBC?

A14 This is an area which must be dealt with directly with the PCTs.