Litigation and the practitioner

Bill Harvey introduces the first in a series of interactivity CET exercises based on the recent series of articles by Dr Nizar Hirji concerning the legal requirements of eye care practitioners.

The eye-care professions are evolving at a rapid pace, with changes in responsibility, modes of practice and an ever-present requirement to follow guidelines and act within an evolving but rigid legal framework. We are all aware of the possibility of litigation, and so it is important to understand the nature of the law, who is responsible for establishing it, and the process undertaken when legal action is initiated.

Interactive CET is an excellent opportunity to reinforce understanding and interpretation of the legal requirements of individual practitioners. The introduction of the Standards of Practice guidance by the GOC last year has helped highlight areas which had previously, perhaps, been under-represented. This might include our understanding of supervisory roles, responsibility for those acting on our behalf, the nature of consent and our duty of candour.

Using the six articles in the series as source material, there will then be a case study describing one aspect of practitioner or patient behaviour or action about which you will be asked to have a discussion with a colleague and reach a conclusion as to the legality of any advice or outcome. The case examples selected have been designed as having relevance to each of the professional categories, so for these exercises you are required to undertake discussion with a peer of the same category as your own (optometrist with optometrist, dispensing optician with dispensing optician and so on).

SOURCE MATERIALS

The six articles in the source material for this exercise are linked online and should be read through before attempting the CET exercise to ensure an adequate understanding of the subject matter prior to your discussions. The articles are as follows:

- Part one (Optician 19 February 2016): a discussion of some recent landmark cases of relevance and a review of sources of law, such as common law and statutory law, European Union law and the European Convention on Human Rights (still relevant at present), and civil and criminal law.
- Part two (Optician 22 April 2016): the first of four articles discussing the concept of accountability for eye care practitioners. In this article, the author focuses firstly upon the legal accountability and the need for clinicians to disclose any conviction or other information of criminal relevance into the public domain. This is seen to outweigh the normal duty of confidentiality that the individual usually has owed to them. The issues of burden of proof and of non-disclosure are included. Secondly, there is consideration of accountability relating to our professional regulator, the GOC, and a clarification of their requirements for registered practitioners.
- Part three (Optician 24 June 2016): an article on accountability discusses employment and legal aspects of working as an employed practitioner, and then goes on to look in detail at practitioner accountability when working within the NHS.
- Part four (Optician 30 September 2016): an article concerning accountability looks at accountability within civil law and explains the processes surrounding clinical negligence, duty of care and the and the 'Balancing' test.
- Part five (Optician 16 December 2016): an article on the issues around informed consent and disclosure and the distinction between peer-view consent to patient-view informed consent.
- Part six (Optician 31 March 2017): the final article in the series returns to the concept of accountability with a discussion of the inter-related accountability of practitioners and the process of complaints or grievances. It also includes an overview of what is currently required to maintain good practice, including staying within your own competency, keeping adequate records and ensuring patient satisfaction.

INTERACTIVE EXERCISE

Remember there may be no one single answer, but what needs to be shown is sufficient evidence that you have reflected on the various issues. Obviously, your submission will demonstrate an understanding of the relevant legal requirements, so no points will be granted to those suggesting otherwise – appropriate feedback will instead be given.

- Go to opticianonline.net and click into the CET zone where you can select this exercise.
- Read the source materials available – six relevant articles are available.
- Complete six multiple-choice questions to confirm you have grasped the main concepts.
- Read the case scenario about which you are to confer with a registered colleague (for at least 10 minutes please).
- The exercise is aimed at all registrant categories and your discussion must be with someone of similar category to you.
- Confirm with us the name and GOC registration number of the colleague with whom you have discussed the case and also write some short notes on the outcome of your discussion.
- At the end of the month’s active period we will confirm that your discussion outcome meets the requirement for an interactive point.