One of the attractions for choosing to set up as an independent practitioner may be greater freedom to make decisions about the number of patients you see and what treatment you can offer.

With such freedoms come greater responsibilities for a range of important areas which may have been previously undertaken on your behalf by teams of NHS managers or other healthcare professionals. Here we examine some of the medico-legal challenges facing consultants who are about to begin independent practice.

**Regulation**

**GMC**

In common with other doctors, individual independent practitioners must be registered with the GMC and hold a licence to practise. They also retain all professional obligations regarding ethical standards, revalidation and fitness to practise.

**Care Quality Commission**

All independent sector providers of healthcare are required to register with the Care Quality Commission (CQC) for:

- the type of work they do, and
- at each location in which they carry out that work.

Doctors consulting in a private hospital may not need to register separately if the hospital is appropriately registered, but this exemption will only apply where consultations are carried out under the organisation's management and policies, including those relating to clinical governance, audit and complaints handling.

Doctors who are employed by the NHS alongside their independent practice may also be exempted from registration. However, this exemption will not apply where doctors work in a group if even one member of the group is not employed by the NHS. This exemption will also not apply where certain procedures, such as treatment under sedation or anaesthesia, are carried out. This is a complex area and failure to register with the CQC when this is a requirement can amount to a criminal offence. MDU members are encouraged to seek advice if they have any questions about whether they need to register.

**Professional indemnity**

As indemnity from NHS bodies only applies to negligence claims against NHS bodies, it is important to ensure you have appropriate medical indemnity cover for your independent practice, including medico-legal work.

The GMC's booklet *Good Medical Practice* (2013), states "You must make sure you have adequate insurance or indemnity cover so that your patients will not be disadvantaged if they make a claim about the clinical care you have provided in the UK."

Make sure you contact our membership team on freephone 0800 716 376 to discuss your indemnity requirements before undertaking any independent work.

In addition, it is advisable to ensure that the healthcare professionals you employ, such as nurses, are suitably indemnified in their own right where appropriate and that you confirm their registration status.

**Marketing your services**

It is important to be careful when promoting your services as an independent practitioner. The GMC's guidance in *Good Medical Practice* (2013), paragraph 69, states "When advertising your services, you must make sure the information you publish is factual and can be checked, and does not exploit patients' vulnerability or lack of medical knowledge."

Any advertisement you make will need to comply with the Advertising Codes enforced by the Advertising Standards Authority. You may also need to consider the Medicines and Healthcare products Regulatory Agency's guidance on the advertising of medicines (The Blue Guide).

In addition, it is essential to ensure that you have written consent from the patients concerned if you intend to use testimonials or patient photographs.

If a third party (such as a clinic) is publishing material on your behalf, it is important that you check to ensure it meets the required standards. As other people's perceptions are important, it may be helpful to consider seeking the views of an impartial colleague or your medical defence organisation beforehand.

**References**

Independent practitioners who are registered with the CQC need to apply directly to the Commission for permission to use its logo on advertising and must abide by its terms and conditions. All these considerations are also relevant if you promote your services via a website.

There is a statutory requirement to take reasonable steps to make it accessible to people with disabilities. The RNIB and the Disability Rights Commission offer advice on this.

If you offer general medical information on your website you should include a statement that it is general advice only and should not be used as a substitute for personal, face-to-face consultations. If you link your website with third party websites, you should inform patients that you cannot guarantee that another website is secure and that you do not necessarily endorse the contents of the site.

The GMC expects doctors to protect confidentiality of patient information. No electronic system is 100% secure but if you communicate with patients via the website you must warn them that it may not be secure and they need to be told how their data will be used.

Independent practitioners who are considering providing remote consultations should follow the GMC’s specific guidance2.

Medical records

If you hold medical records about your patients, you have an obligation to keep them safely and ensure confidentiality. You need to consider how long to retain the records and who will handle them if you are no longer able to do so. Although there are no guidelines for retention of clinical records in private practice, the MDU suggests that independent practitioners should follow the guidelines for retention of NHS records3.

If you intend to process electronically-held data relating to private treatment, you are required to register under the Data Protection Act 1998. You can find out how to register from the Information Commissioner’s Office website www.ico.gov.uk

Whether you need to register with the Information Commissioner or not, you will still be obliged to comply with the Data Protection Act 1998, which includes informing patients about what data you are collecting and the reasons for doing so.

Fees

The most obvious point of difference with your previous experience is that independent practice is a business operation. It is your responsibility to be honest and open in any financial arrangements with patients. Paragraph 4 and 5 of GMC guidance Financial and commercial arrangements and conflicts of interest, (2013) says: ‘4 If you charge fees you must: a) tell patients about your fees, if possible before seeking their consent to treatment b) tell patients if any part of the fee goes to another healthcare professional.

5 You must not exploit patients’ vulnerability or lack of medical knowledge when charging fees for treatments and services’. You should also take care when offering or providing private treatment to patients that you have already seen on the NHS, so that others do not misinterpret your actions. You will need to declare any potential conflicts of interest that may arise. HMRC inspectors may ask to see invoices for your private patients. Tax inspectors have legal powers to obtain documents under Schedule 36, Part 1 of the Finance Act 2008. They can request, in writing, any information or document it is reasonable for them to have to assist them in checking a taxpayer’s position. You should satisfy yourself that it is reasonable to provide that information.

It may be possible to give the necessary information in an anonymised form. The GMC says: ‘If you are asked to disclose information about patients for financial or administrative purposes you should, if practicable, provide it in anonymised or coded form, if that will serve the purpose. If identifiable information is needed, you should, if practicable, seek the patient’s express consent before disclosing it.’

If seeking patients’ consent or anonymising/coding the information would require unreasonable effort, it may be justifiable to provide relevant information.

Protection of vulnerable groups

You will be required by independent sector hospitals to whom you apply for practising privileges to provide a Criminal Records Bureau (CRB) enhanced disclosure check via the Independent Safeguarding Authority for yourself.

You may be asked to have separate checks for each hospital at which you have practising privileges.

If you employ other staff, you are obliged to obtain CRB checks if they work with vulnerable groups in roles nominated as ‘regulated positions’ under the Protection of Children Act 1999.

You should also be aware of employer responsibilities under the Safeguarding Vulnerable Groups Act 2006, which include a duty to refer to the Independent Safeguarding Authority information about employees you consider may pose a risk, or have harmed children or vulnerable adults.

References

1 GMC, Good practice in prescribing medicine – guidance for doctors (2013), paras 60-66
2 GMC, Confidentiality: disclosing records for financial and administrative purposes (2009)
Complaints procedures

If something has gone wrong during the care of a patient, the MDU advises you to provide an explanation of what has happened, an apology where appropriate, and assurances that steps will be taken to prevent a recurrence. The GMC’s guidance in Good Medical Practice (2013), paragraph 55, states ‘You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should:

a) put matters right (if that is possible)
b) offer an apology
c) explain fully and promptly what has happened and the likely short-term and long-term effects’.

All complaints, even verbal ones that might have been resolved at the time, should be logged and dated. If you see patients in an independent hospital or clinic, the hospital or clinic is required to have a complaints procedure. If you see patients in other settings, it is important to develop your own in-house complaints procedure that is clearly set out and communicated, and easy for patients and staff to use.

Responding to a complaint in a timely and sympathetic way, including an apology where appropriate, e.g. for any distress caused, may well help to resolve the complaint at an early stage. An apology is not the same as admitting liability and is expected by the GMC where appropriate as part of a ‘prompt, open, honest and constructive response’.

It can also be useful to offer the complainant the opportunity to meet to discuss this with members and assist in the wording of any letters. It may be helpful to model your procedure on the current NHS and social care complaints procedure, addressing complaints using a local resolution procedure.

There is no second-stage review process for complaints from the independent sector if the complainant is not satisfied with the outcome of the local investigation. Some private hospitals are members of the Independent Sector Complaints Adjudication Service (ISCAS) which has its own three-stage complaints procedure involving local resolution, internal appeal and independent external adjudication.

It is important to develop your own in-house complaints procedure that is clearly set out and communicated.

Some hospitals also belong to the Independent Healthcare Advisory Services which provide a second stage procedure.

The CQC has a remit to monitor private complaints, and independent practitioners are required by law to provide an annual summary of complaints to the CQC.

For more detailed information on the NHS and social care complaints procedure in England, Scotland and Wales, the MDU has published a guide which is available to download at http://bit.ly/nhscomplaints

Business laws

As a potential employer, it is also important to be aware of any relevant legislation or regulations which may affect your business, for example, the need for employers’ liability insurance, the Control of Substances Hazardous to Health (2002) regulations, and various other employment, health and safety, and equality legislation. You may wish to take advice from an appropriately skilled and experienced expert in these fields.

Corporate indemnity for your business

Traditionally, claims for clinical negligence have been made against individual healthcare professionals. Where doctors own, or are employed by a limited company, it is increasingly likely that a claim may be made against the company itself. We offer a comprehensive solution for your business, including indemnity and expert risk management support. For more information, please visit themdu.com/corporate

We regularly run courses for consultants who are considering setting up in private practice. Visit themdu.com/learn for more information.
For medico-legal queries

24-hour advisory helpline

Call freephone 0800 716 646
Email advisory@themdu.com
Visit themdu.com

This information is intended as a guide. For the latest medico-legal advice relating to your own individual circumstances, please contact us directly.

Our medico-legal team are available between 9am-5pm Monday to Friday and provide an on-call service for medico-legal emergencies or urgent queries 24 hours a day, 365 days a year.

Have you got our app?

Corporate member of Plain English Campaign
Committed to clearer communications

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