

LEGAL AND ETHICAL ISSUES IN DENTISTRY

(NOTES ON JURISPRUDENCE AND ETHICS)

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OBJECTIVES

- to outline the expectations that society have towards the dentist and the dental profession
- to outline the characteristics of a profession
- to define the terms jurisprudence, ethics and explain the difference between these two disciplines
- to define basic legal concepts
- to outline the legal privileges, rights, obligations and duties governing the practice of dentistry in Hong Kong:
 - * the Dentist Registration (Amendment) Ordinance 1984
 - * the Dentists (Registration and Disciplining Procedure) (Amendment) Regulations 1985
 - * The Ancillary Dental Workers (Dental Hygienists) Regulations
- to discuss in broad terms the precautions a practicing dentist can take to prevent legal problems such as false allegations of negligence
- to outline the legal concept of duty of care
- to discuss the legal importance of records and record keeping
- to outline the role of the Dental Council of Hong Kong
- to outline the meaning of 'unprofessional conduct' as defined in the Warning Notice of the Dental Council of Hong Kong
- to give examples of the more common types of offence or unprofessional conduct which may be regarded as grounds for disciplinary proceedings
- to outline the meaning of informed consent as the basis of patient's decision-making
- to outline the role of the medical/dental defense or protection organisations

LEGAL ISSUES IN DENTISTRY

THE PRIVILEGED DENTIST

Dentists are a very privileged group for not only are we a profession but we are what is known as a **closed profession** - No one but a registered dentist may practice dentistry. Whilst enrolled dental hygienists may perform a limited range of dental procedures, as may dental therapists employed in Government clinics, both of these groups are required to work under the direction of a registered dentist.

This is not the case in many other professions including medicine. It is not illegal for persons other than registered medical practitioners to provide medical treatment. Herbalists, osteopaths, chiropractors, acupuncturists do it every day although they cannot prescribe dangerous drugs or sign death certificates.

Society expects each and every individual to observe the laws of whichever country he happens to be in. Members of the learned professions are expected to do even better-to be seen to be worthy of the trust that society places in them and the privileged status that they enjoy. Thus one of the important characteristics of a profession is that it imposes upon its members the obligation to conduct themselves according to a set of often unwritten rules which have been evolved over the years in addition to the laws of the land and are known as ethics.

WHAT CHARACTERIZES A PROFESSION?

- . **Abstract Knowledge**
- . **Prolonged specialized training and education**
- . **Self-regulation** through licensure and through **setting own standards of education**
- . **Relatively free of control of outsiders**
- . **Services necessary for the functioning of society**
- . **Service orientation** rather than profit orientation

A profession has a high degree of **AUTONOMY** as compared to paraprofessions. The privileges and rights that a profession has are justified by the heavier duties and obligations which the members of the profession are expected to fulfil e.g. the ethical and legal norms.

SOME BASIC LEGAL CONCEPTS

The law is defined as a body of enacted rules recognised by a community as binding on all.

A law is one of these rules which in the United Kingdom are enacted in the form of Bills by Parliament and in Hong Kong are enacted in the form of Ordinances by the Legislative Council.

Ethics are rules of conduct based on moral principles.

Jurisprudence is the term applied to the philosophy, science, study and skilled interpretation of human law.

Much of the world, including all the European countries except Great Britain and the Irish Republic, is governed under various forms of codified or **regulatory law** which has developed from the codes developed in Ancient Rome and modified under the rule of the Emperor Napoleon of France. In such systems both offences and punishments are classified in great detail and rigidly applied by courts which are granted little discretion to vary either their decisions or the penalties in individual cases.

The remainder of the world including all the countries of the British Commonwealth, the Republics of South Africa and Ireland and the British Colonies such as Gibraltar and Hong Kong are governed under what is known as **Statute and Common Law**. Under this system offences are broadly defined by statute and guilt and innocence, and even the degree of guilt or the form or amount of punishment, where appropriate, are determined in each individual case in court. The system was evolved in the ancient Royal Courts and relies heavily on **precedents** in the form of judgments in previous similar or relevant cases. It is more flexible and less predictable than codified law.

Thus in Belgium, which is governed by a type of Napoleonic law, there are three types of practitioners practising dentistry, the dentist, the medically qualified dentist and the stomatologist who is a medically qualified dentist who has undertaken a prescribed course of additional training of some years duration. The field of activity of each kind of practitioner is carefully defined, that of the dentist being the most restricted. For example he is legally entitled to extract a mandibular third molar if its occlusal surface is visible but prohibited to do so if the tooth is partially covered with an operculum of gum. As most dentists know the presence or absence of a small hood of gum is irrelevant when the difficulty of extracting an individual tooth is being assessed. This is well known to our Belgian colleagues but amending codified law is a complex and prolonged undertaking and until it is changed they must obey it.

Law is subdivided into the **criminal law** and **civil law**. As its name suggests the first of these deals with criminal acts or crimes and the latter is concerned with the private rights of individuals or groups of individuals.

A **crime** is an evil act or grave offence punishable by law whilst a **tort** is a private or civil wrong for which the injured party claims redress and/or compensation.

Thus if a dentist kills or injures someone he could be tried under the criminal code for either murder if the act was deliberate, or manslaughter if he was reckless or he could be sued for negligence under the civil code or he could even be tried for manslaughter, sued for negligence and disciplined by the registration body in the same case. There was such a case last year in the United Kingdom when a dentist was unwise enough to act as a single-handed operator/anaesthetist and his patient, a young woman, died under general anaesthesia. He was originally found guilty of manslaughter and sentenced to a term of imprisonment. His appeal against conviction was upheld by the Court of Appeal on legal technical grounds but he is still faced with an indefensible claim for damages from the patient's family and disciplinary proceedings before the General Dental Council which has the power to strike him off the Dentists Register, if it decides that this course is in the public interest. He will then be unable to practise dentistry and be ruined.

In many countries, including the United Kingdom, there are specialist courts and lawyers who specialise in such subjects as criminal law, commercial law, maritime law, divorce law etc. but the size of Hong Kong dictates that both the courts and the lawyers who practice in them have to deal with all kinds of cases. Thus medico-legal cases here are dealt with by non specialist solicitors, barristers and judges.

A good example of the value of common law is the guiding principle on which cases of alleged clinical negligence are determined. Whilst every dentist has a **duty to care for his patients** in a responsible fashion the law recognises that a general practitioner cannot be expected to exhibit the same standard of skill or provide the same type of care as a highly qualified and experienced specialist. Thus the lawyers defending the dentist have only to prove that he or she displayed the level of skill, knowledge and care when treating the patient in question as could be expected of any practitioner with the same background and experience working in similar circumstances to successfully resist an allegation of negligence.

THE ORDINANCES GOVERNING DENTISTRY IN HONG KONG

The practice of dentistry in Hong Kong is governed by:

1. **the Dentist's Registration (Amendment) Ordinance 1984**
2. **The Dentists (Registration and Disciplinary Procedure) (Amendment) Regulations 1985**

3. **The Ancillary Dental Workers (Dental Hygienists) Regulations 1973**

By courtesy of the Secretary to the Dental Council you will each be issued, against a signature, with a copy of **the Warning Notice to Dentists** which was revised in 1982 and is normally issued to dentists upon registration. You are expected to read these documents carefully and to familiarise yourselves with their contents.

In essence, the first two paragraphs of **the Dentists Registration Ordinance** define terms.

Paragraph 3 makes it an offence for persons other than registered dentists to practise dentistry and lays down penalties for anyone convicted of doing so. It also allows registered medical practitioners to extract teeth for the relief of pain.

Paragraph 4 lays down the composition of **the Dental Council of Hong Kong** whilst paragraph 5 is procedural.

Paragraph 6 - 11 are concerned with registration and the categories of persons eligible for registration are laid down in paragraph 8.

Paragraph 12 permits body corporates to carry on the business of dentistry under certain rules.

Paragraph 13 - 15 are concerned with registration matters.

Paragraphs 16 and 17 are designed to ensure that dentistry is only practised in suitable premises.

Paragraph 18 - 29 are concerned with disciplinary matters, procedures and penalties.

Paragraphs 30 and 31 deal with exemptions.

Certain minor amendments to the Dentists Registration Ordinance have been processed recently 1984 and are now in force. They comprise:-

1. The recognition of the Faculty of Dentistry University of Hong Kong by inviting a representative of it to serve on the Dental Council.
2. The recognition of the BDS (HK) degree for the purposes of registration.
3. Depriving dentists from the European Economic Community (EEC), other than British dentists, of the right to practise here as this right is not reciprocal.
4. The introduction of lower registration fees for dentists wholly engaged in Government/University practice thus

bringing the Dentist's Registration Ordinance into line with the Medical Registration Ordinance.

5. Tidying up paragraph 31 which deals with certain exemptions.

The Dentists (Registration and Disciplinary Procedure) Regulations as their name suggests:-

1. Detail procedures concerned with registration.
2. Set up a **Preliminary Investigation Committee** and lay down its constitution and procedures.
3. Prescribe the manner in which disciplinary matters are dealt with by Council.
4. Define the duties of the Legal Adviser to the Council.
5. Describe the lay out of the Register and the forms related to it.
6. Detail the fees payable to the Council.

The Ancillary Dental Workers (Dental Hygienists) Regulations (1973) establish a roll of dental hygienists, lay down administrative procedures relating to enrolment, detail the types of dental work which may be undertaken by an enrolled dental hygienist working under the direction of a registered dentist who must be available on the premises at all times when the work is being carried out.

As **dental therapists** can only work in Government clinics in which their activities are carefully supervised by registered dentists it has not been thought necessary to introduce regulations concerning them.

The dentist is, of course, like any other citizen subject to all the laws of Hong Kong but other laws of especial interest to him include:-

1. **The Pharmacy and Poisons Ordinance and Regulations.**
2. **The Dangerous Drugs Ordinance and Regulations.**
3. **The Radiation Ordinance.**
4. **The Control of Irradiating Apparatus Regulation.**

These then are the laws which govern the practice of our profession. Make sure that you know and understand their provisions for it is a well established principle that '**Ignorance is no defence in law**'.

PRACTICAL APPLICATIONS

It is not always realised by the lay public that much of the business of the law, and indeed the vast majority of the civil law, is conducted outside the courts and indeed never comes to trial. Nevertheless litigation appears to be constantly on the increase and even the most conscientious and law abiding dentist is likely to find himself appearing in court at some time in his professional career. He may appear as either a **witness**, a **defendant**, or the **plaintiff**, in either a civil or a criminal case. However, if he acts responsibly and sensibly in both his everyday life and in court the experience, though an ordeal to most of us, need not be an unfortunate experience.

Certain guidelines are of value in this context.

It goes without saying that society expects the members of a profession to set an example in the way they conduct themselves and, on the whole, they are seldom disappointed.

Nevertheless every year a tiny minority of health professionals are charged under the provisions of the Criminal Law, convicted of crimes and punished according to the law.

Furthermore all convictions of a registered physician or dentist are normally reported to the appropriate registration body who may either institute disciplinary proceedings or issue a warning notice to the practitioner concerned, depending upon the gravity of the offence. Dental Councils tend to take a particularly serious view concerning drug offences, drunkenness especially when driving a motor vehicle, the issue of false certificates and fraud and embezzlement. Practitioners have had their names erased from the register for all of these offences.

Whilst each case is decided on its merits in an eminently fair manner and the offending dentist has the right to be legally represented it is important to realise that the original case is not retried at these disciplinary proceedings for the registration body is not competent to do this.

This means that a conviction in a court of law is accepted as proof that the offence concerned was committed by the practitioner concerned. If he or she wishes to challenge the verdict of the court he or she must do so in a higher criminal court. If the conviction stands at the disciplinary hearing the offending dentist or his representative can do nothing but make a plea in mitigation in which any extenuating circumstances are explained and any reasons why the maximum disciplinary procedure should not be applied in the case under consideration are detailed.

Fortunately such cases are rare and if the dentist appears as a defendant it is usually in a civil court contesting a claim of negligence. A number of steps can be taken to either minimise the risk of such a circumstance occurring or to ensure that such

allegations can be rebutted successfully and these will be detailed later. Even more frequently a dentist appears in court as either a factual witness in the same way as any other citizen or as an expert witness. More rarely a dentist appears in court as a plaintiff in which case he is usually either suing for fees or in dispute with a colleague with whom he has worked as either a partner, associated or an assistant. It is best to take steps to prevent such situations arising, and these will now be discussed. It is wise to remember that a common response of a patient who is sued for non-payment of dental fees is to make an allegation of unsatisfactory treatment or negligence against the practitioner concerned.

PRACTICAL PREVENTION OF LITIGATION

The dentist can do much to avoid such problems arising and facilitate a defence against false allegations of negligence. Many of these precautions are merely the application of common sense principles. You will seldom if ever have problems if you always:-

1. Practice dentistry at a level which you would be happy for any colleague to examine. They may well be called upon to do so!
2. Avoid short cuts and sharp practices.
3. Stay within your own bounds of knowledge, skill and competence.
4. Advocate to utilise only those techniques on patients that you would use on yourself or a member of your own family.
5. Refuse to be persuaded to undertake any treatment plan which conflicts with the dictates of your trained opinion. It is not uncommon for a patient to press one to either modify a treatment plan or substitute an alternative one. When and if things go wrong and they sue you, the courts invariably rule that you, as the professional expert concerned, should not have been persuaded. So where there are two acceptable treatment plans, e.g. to fit either a bridge or a partial denture the pros and cons of each course should be explained to the patient so that he or she can then make a rational decision. If, however, the patient will not agree to any acceptable treatment plan that you propose, politely decline to treat them. This advice is particularly difficult to follow when you are trying to get established in practice and need patients. Neglect it at your peril for if you do your practice standards will be determined by the laity and not by you.
6. Obtain a second opinion from a more experienced colleague or one with better facilities whenever this course is

indicated. A good dentist never loses face by referring a patient to a competent colleague who practises ethically. If the practitioner's diagnosis and treatment plan is correct an able specialist will tell the patient so. If it is incorrect any worthwhile specialist will inform the referring dentist of his or her opinion whilst telling the patient that he or she would like to discuss the problem in detail with the practitioner concerned who will contact the patient. Most patients have more respect for and confidence in dentists who are seen to ensure that their patient obtain the best treatment available.

7. Accept that the only way to stop having problems with or complications of dental treatment is to stop providing it.
8. Try to avoid problems or complications occurring or deal with them promptly if and when they arise. The importance and value of pre-operative assessment and treatment planning in this context can never be over-emphasised. Remember the old Army adage 'Time spent in reconnaissance is never wasted'. When either a problem or a complication occurs don't ignore it or attempt to hide it from the patient. Deal with it giving any necessary explanation to the patient.
9. **Keep good clinical records in an efficient filing system.** The commonest reason why cases are either regarded as being indefensible or lost is the paucity or even complete absence of clinical records including letters and radiographs.
10. Keep clinical notes separate from financial records and laboratory instructions.
11. Ensure that such notes are brief and to the point and devoid of both jargon and your own shorthand.
12. Observe the ethical rule of **confidentiality** and do not disclose information about your patient to unauthorised persons.

The maintenance of professional secrecy and confidentiality is one of the cornerstones on which the doctor-patient relationship is built. Under regulatory law it is rigidly enforced but under English Common Law each case is settled on its merits. This is fortunate for complications and difficulties do arise when circumstances dictate that the doctor is forced to make a decision between the best interests of his patient and those of society as a whole.

Thus if a doctor has an epileptic patient who is a petrol tanker driver and suffers from unpredictable grand mal fits, common sense dictates that he has a duty to ensure that he doesn't drive his vehicle even if it costs him his job. On the other hand a dentist who is asked by the police to produce the dental records of a patient is entitled to ask

what it is intended to use them for. They are most commonly required to aid the identification of a body but it is not unknown for them to be used as evidence when a criminal charge is made against the patient. Whenever doubt arises the advice of the medical defence organisation should be sought before such materials are released.

When a case comes to trial the decision of the Presiding Judge is paramount and is sought in all cases of dispute. If the judge orders a practitioner to disclose personal information about his patient he must do so or he may be held to be in contempt of court and punished. In such circumstances no civil action brought later against the doctor concerned could succeed.

13. Make sure that you obtain the **informed consent** of the patient in writing before embarking on the procedure. So called 'blanket consent' such as a solitary signature on a hospital record has no standing in law. The patient must be told precisely what is to be done, why it should be done, what will happen if it is not done, and warned of any side effects or complications which may occur. It is not necessary to discuss complications which are only likely to occur in remote circumstances in this context. Suitable draft consent forms are available and should be used.

Whilst on this subject I should perhaps remind you that the informed consent of all subjects involved in a research project must be obtained. Minors, medical and dental students and the mentally incompetent are regarded as being especially at risk. Institutions such as the Faculty of Dentistry, University of Hong Kong have an Ethical Committee to vet and approve all research protocols.

14. Remember that **you are responsible in law for the actions of those you employ.** This may include assistants and associates as well as ancillary staff.
15. Follow established procedures which comply with the relevant legislation when engaging employees and always make a written contract with them.
16. Enter into partnerships, associateships and assistantships on the basis of a formal written agreement drawn up and agreed with the aid of lawyers. Friends can and do fall out and the existence of a formal written agreement does much to avoid both acrimony and litigation when a professional relationship is dissolved.

Many such agreements contain a 'binding out' clause which prohibits a practitioner from engaging in practice in a specified geographic location for a specified period of time. This may be a reasonable provision but in a small place like Hong Kong it could mean ruin for a practitioner. In such circumstances it may be possible to persuade a court

that such a clause is unreasonable and so should not be invoked. It is always advisable to obtain skilled legal advice before signing a contract containing such a provision.

17. Give any patient who requires an elaborate, prolonged or expensive course of treatment a full explanation of the reasons for it, the expected benefits, time scale, shortcomings, complications and precise details of the total cost of treatment. It is a wise precaution to then hand such a patient a letter in which full details of what is proposed and its cost etc. are confirmed and to keep a copy of such a letter in the patient's records.

18. **Avoid defamation, libel and slander.** These terms are defined in glossary.

Defamation is to speak ill of a person and to attack his or her good name.

A **libel** is a published (written) false or defamatory statement damaging to another person's reputation.

Libel is the act of publishing such a statement.

A **slander** is a false report maliciously uttered to another person's detriment.

Slander is to defame falsely by word of mouth.

Don't be stupid enough to either defame, slander or libel another colleague and be very sure of your facts before you either speak or write ill of another person. Before you express your opinion ask yourself whether you could prove that you are right in a court of law if required to do so.

More commonly such offences are not carefully considered acts.

Try to avoid defamation, libel or slander by accident. Don't pass adverse comments on the work of other practitioners which is present in the mouths of patients who consult you. It is unethical to do so any way and may cause you great embarrassment as you are either sued or called upon to support a disgruntled patient when he or she sues a professional colleague.

19. **Belong to a professional defence organisation!**

Allegations of negligence can be and indeed are made against the most conscientious practitioners and recognising this fact a group of doctors in the United Kingdom banded together to form **the Medical Defence Union** at the turn of the century. Later **the Medical Protection Society** and **the Medical Defence Union of Scotland** were formed for the same

purpose and membership was extended to dentists. In recent years it has been extended to dental hygienists although in law they are regarded as 'men of straw' and so patients seldom sue them preferring to sue the directing dentist.

These protection societies are uniquely British and are envied by practitioners in other countries in which the premiums for professional risks insurance escalate annually. The defence organisations are much more than insurers. They are run entirely for the benefit of their members, and not for profit, they publish educational material, offer immediate advice and assistance to members when required, they vet all relevant legislative proposals which affect the professions and make any necessary representations to the authorities, they provide skilled legal and professional experts to assist members to either defend themselves against unjustified claims or help them to settle out of court when this is necessary, they pay the total costs of all such activities and give unlimited indemnity against damages to members.

This is important in a world in which quantum increases by leaps and bounds.

Quantum is the amount of damages awarded to a plaintiff who brings a successful action under the Civil Law. Under Common Law it is decided by the judge in individual cases on the basis of precedent. Over the years the amounts awarded in professional negligence cases have increased rapidly and frequent revisions of the lawyer's reference books (Keane and Keane) on the subject are required.

All these services are provided throughout the world, with the exception of the USA, for a modest annual fee and this must be one of the best bargains of all time. The number of medico-legal cases in Hong Kong is relatively small at present but is increasing significantly. Both Universities and Government make membership of a defence organisation a condition of employment for clinically qualified staff and even pay the annual fee. Any dentist who practises without belonging to a defence organisation is making a false economy and living dangerously quite unnecessarily. A good advice to each and every one of you is to join a defence organisation on the day you register as a dentist and to fill out a direct debit order so that you do not let your membership lapse throughout your practising life.

You can join the Medical Defence Union either directly or through either the Federation of Medical Societies or the Hong Kong Dental Association or the Medical Protection Society either directly or through the Hong Kong Dental Association.

ASSISTING THE LAW

Your assistance may be requested by solicitors acting on behalf of either the plaintiff or the defendant and your decision must be made on ethical grounds alone. Patients are entitled to expect professional people to respect and uphold their legitimate rights even when they are in dispute with a professional colleague. It is absolutely essential to demonstrate that the profession discharges its responsibilities honourably and does not 'close ranks' or 'gang up' against other members of society.

The process usually commences with the preparation of either a report or statement.

Ensure that such a report:

- a) Contains only facts that you know to be true.
- b) Includes only opinions that you are prepared to sustain under cross examination.
- c) Does not breach the ethical principle of confidentiality.
- d) Is objective and unbiased.
- e) Does not trespass beyond the bounds of your own knowledge and competence.

REMEMBER that the original statement given to the police or to a solicitor, sometimes months or even years before the trial determines whether the dentist gets a rough ride in the witness box.

It is vital that this first statement, which is a formal declaration of the facts known to the witness and, where appropriate, his opinion on those facts should be exactly what the dentist is prepared to say in oral evidence in the court.

Therefore when preparing reports you must decide just what you are prepared to say in court knowing that you will be cross examined on what you say.

Never commit yourself to opinions that you are not willing to maintain. Do not be biased or partisan.

Be objective, take great care in wording your report, check your memory and your facts, and do sufficient homework to ensure that you really know what you are talking about.

Never trespass beyond the bounds of your own knowledge and competence.

Take care to distinguish facts from opinions and between facts you know to be true and those included in statements from others.

The **COMPONENTS OF A TYPICAL MEDICAL REPORT** are as follows:-

- 1) **Personal details**
- 2) **Statement of events (state source e.g. patient, parent, solicitor, police etc.)**
- 3) **History of present complaints or disabilities**
- 4) **Findings of clinical examination**
- 5) **Results of special investigations**
- 6) **Diagnosis and treatment required (if any)**
- 7) **Opinions (if requested) on**
 - a) Lesions, past and present.
 - b) Incapacity, pain and suffering, past and present.
 - c) Prognosis
- 8) **Recommendations re other specialist opinions of value**

Never back off from your own recorded earlier opinions when and if the case comes to trial unless you are convinced that you are in error. If you have followed the guidelines outlined above such a situation should never occur.

The lawyers on both sides then consider the evidence and the case may either be settled out of court or come to trial. In the latter case you may have to appear in court as a witness.

An appearance in court as a witness, in either a civil or a criminal case, need not be an ordeal for a dentist provided he or she has not made any unwise or ill considered statements prior to giving evidence, keeps cool and behaves sensibly.

Although counsel today often have penetrating intellects and may ask piercing questions they are almost invariably courteous and considerate, especially to witnesses who are members of a sister profession.

There is an old adage that says that the doctor in court should 'dress up, stand up, speak up and shut up'.

Dress like a professional man and not like a pop star, a hawker or a street sleeper. A good appearance will add weight and authority to your evidence especially if combined with a confident demeanour. Avoid giving the impression that you are over-confident, condescending or arrogant.

Give your evidence and respond to questions calmly and responsibly.

Be objective and unbiased.

If your evidence is worth giving it must be heard and understood by judge, counsel and jury. Don't mumble and mutter for inaudibility will irritate both judge and counsel alike. Give your evidence slowly and clearly for the judge often makes notes in longhand and in Hong Kong interpretation may be required. Use language that can be understood by lay persons and avoid the use of both jargon and abbreviations.

The loquacious witness is a sheer delight to opposing counsel who will encourage him to tie himself in knots with his own tongue. Be concise and precise.

Refresh your memory before going to court. Bring the original copies of all relevant records such as case notes or contemporary reports to court, having read them again beforehand. Be prepared and happy for the judge to examine these records for he is likely to ask to do so.

Refer to them to refresh your memory when being questioned.

Do not allow yourself to be led into making statements containing doubtful facts or unwise opinions or matters outwith your field of competence. A junior house officer is not expected to give opinions which might tax the capabilities of a senior consultant - if he or she does so he or she is likely to be destroyed by opposing counsel.

If pressed to answer questions that he or she considers to be outwith his or her competence the dentist should firmly say that he or she feels unable to give a useful opinion on this point. If you stray on to thin ice due to doubtful facts or unwise opinions - cut your losses by admitting that you do not know a fact or that an opinion contrary to your own may be correct. Do not be afraid to admit to being wrong in the face of new facts or interpretations from elsewhere.

Never allow yourself to be provoked or let embarrassment or loss of face tempt you into anger, sarcasm or impertinence. Remember that an opposing counsel can run rings around an angry witness and the old adage that 'he who loses his temper loses his case.'.

EMPLOYING STAFF

An increasing number of practitioners are having problems with employment legislation. When employing staff it is important to consider two important facts.

1. The law may still regard a person as an employee even though described as self employed.

2. A written agreement recording the intentions of the parties is vital.

An employee is someone who works under a contract of employment, which is a contract of service, whether oral or in writing.

A self employed person is an independent contractor who works under a contract for services.

In determining to which category a worker belongs the following points are considered:-

1. Whether those performing the services provide their own equipment.
2. Whether they hire their own helpers.
3. The degree of financial risk they take.
4. The degree of investment and management responsibility they have.
5. What opportunity they have for profiting from sound management in the performance of the task.

This applies to associates and dental hygienists in the dental context. Recently a self-employed dental hygienist in the United Kingdom who used a dentist's surgery when he didn't won a case for wrongful dismissal at an Industrial tribunal. She worked under his direction as required by law, used his capital equipment and was paid a fixed sum and had no direct risk for the financial fortunes of the practice.

A written agreement between the dentist and the hygienist that the latter was self employed might have avoided this problem. Payment of the hygienist by commission would further support the self-employment argument by suggesting a direct financial stake in the business.

The laws concerning property may also cause problems.

In law once dentures are fitted they become the patients' property and cannot be removed. A colleague in New Zealand fitted a difficult patient with full upper and lower dentures. When she still complained even after he had relined the dentures, he waived his fee and smashed the dentures in front of the patient with a hammer. Despite waiving his fee he was wrong in law and had to pay damages.

SOME COMMON PROBLEMS

Many of the complaints and claims made against dentists stem not so much from ignorance of the latest technological innovations as from failure in basic procedures - examining the patient carefully and taking a relevant history - and a lack of communication. Even when the technical expertise is adequate the traditional values of courtesy and kindness are still essential for successful practice.

Some patients are never satisfied and complain continuously. Be patient, tolerant and courteous to them at all times, listen carefully to their complaints and try to determine if they have any substance. Many older persons, particularly ladies, expect to regain their youthful appearance when a prosthesis is fitted. Whilst their looks may be improved by the prosthetist's art he or she is but a clinician not a magician. Don't promise patients results that you know in your heart cannot be achieved. Don't be persuaded to perform treatment that is against the dictates of your trained opinion.

Don't try to force patients to have treatment they don't want to have. Explain their problem to them in simple language, tell them what needs to be done and why it should be done, explain the likely effects of treatment including complications and the prognosis if nothing is done. Try to persuade them to make a sensible decision but if they decline record the fact in their casenotes and get a witness to countersign the notes discreetly and discharge them saying that if they change their mind in the future you will be pleased to see them.

No area of medical or dental practice is devoid of potential causes for litigation and practitioners have been sued for a wide variety of alleged clinical errors and omissions. Some problems occur more frequently than others and a knowledge of these enables the practitioner to take steps to avoid their occurrence. Fortunately both society and the law recognise that in any human endeavour unforeseen incidents, errors of judgement and accidents will occur and the way in which the practitioner handles such a situation is often of critical importance. An attempt to conceal the problem from the patient or a misleading or untrue statement at a time of crisis may cost the practitioner dearly.

When such an incident occurs take whatever remedial or first aid action is required immediately. Make accurate notes of events whilst they are fresh in your mind and get those present to attest to their accuracy by counter-signing the notes. If indicated, call an ambulance and transfer the patient to hospital. Either accompany him or her or provide an accurate account of events. Carefully label and retain such items as broken injection needles, broken teeth, roots etc. When the situation is under control explain either to the patient, or parent in the case of children, what has happened, what you have done, what the possible results may be. Do not admit liability! Telephone the defence organisation to which you belong and be

guided by them.

To illustrate the way in which one copes with such incidents it is useful to study some examples. Many of these are recurrent problems and it is important that you know about them so that you can take the necessary steps to either avoid them or effectively deal with them when they occur.

Fracture of the needle during an injection is much less common since dentists started using sterile disposable needles and gave up chemical disinfection of syringes and needles. Needles usually break at the hub due to corrosion.

The risk can be reduced to virtually zero by using a new disposable needle for every patient and a recognised technique of injection. The needle should never be inserted up to the hub so that if it fractures the end which is left protruding from the tissues can be grasped with haemostats and withdrawn. If the needle fragment is embedded in the tissues refer the patient, with a letter of reference, to a consultant oral surgeon. Make careful notes of the incident, keep the other needle fragment for metallurgical examination. Contact your defence organisation. Injections are sometimes complicated by **haematoma formation at the site of injection**. This complication is most frequently seen in dental practice after either a posterior superior dental or an inferior dental block injection have been given. The former gives an unsightly appearance whilst the latter may cause trismus. In either case it is wise to arrange for the patient to have the benefit of a second opinion from a consultant oral surgeon.

Cardiac arrest may complicate general anaesthesia. Institute cardio pulmonary resuscitation, telephone for an ambulance and accompany the patient to hospital. Never act as an operator/anaesthetist. The maintenance of an unobstructed airway whilst dental procedures are being undertaken is both a skilled and a full time job so employ an experienced anaesthetist, regularly practice emergency procedures and CPR and check your anaesthetic and emergency equipment systematically and regularly.

INHALATION OF FOREIGN BODIES

Never undertake dental procedures on an anaesthetised patient without ensuring that an effective throat pack is in situ. This precaution is essential if blood, pus, teeth, roots, or fillings are not to enter the bronchial tree. Employ an assistant using an efficient sucker to clear blood and secretions etc. from the operative site. Make it an invariable routine to identify all tooth fragments and to count and account for all extracted teeth and roots. If there is any possibility that a foreign body has either been ingested or inhaled the patient must be referred immediately to hospital with a letter of reference for clinical and radiographic examination and management.

On rare occasions an anaesthetist may inadvertently damage or dislodge one or more of a patient's teeth whilst using a laryngoscope. The same accident may complicate tonsillectomy during which an ENT surgeon uses a Davis gag to obtain access to the site of surgery. Note should be taken and the anaesthetist warned of the presence of loose, broken or isolated teeth, crowns and bridges and teeth with incompletely formed roots before anaesthesia is induced or surgery commenced. Any damage which occurs should be recorded and treated immediately.

In such cases the courts often apply the doctrine of '**Res ipse loquitur**' which being roughly translated means that the facts speak for themselves. In these circumstances the practitioner may find it difficult if not impossible to counter an allegation of professional negligence. For this reason most of these cases are settled out of court.

ENDODONTIC PROBLEMS

Reamers and files used in endodontics may slip out of the operators grasp and be either inhaled or ingested. This complication of endodontics can be avoided by applying a rubber dam whenever root canal therapy is undertaken. In the rare instances in which this cannot be done each reamer and file should have a thread attached to its handle the end of which extends out of the mouth. If such an incident occurs the patient should be referred immediately to hospital with a letter of reference for clinical and radiographic examination and management. A more common complication of endodontics is the perforation of roots during reaming. Every attempt should be made to avoid the occurrence of such a complication by strict adherence to good technique. Should it occur it must be recognised and treated immediately and the patient informed. The opinion and assistance of a colleague with special experience and training in endodontics can be invaluable in such circumstances. On fortunately rare occasions patients are seen in whom root filling material has entered the periapical tissues and even the inferior dental canal during the obturation of root canals using an engine driven Giromatic root filler. Such cases are as difficult to defend as they are to treat.

WRONG TREATMENT

Before any form of treatment is undertaken it is important to identify the patient, to check the history and to confirm the treatment plan. This is of especial importance when children, mentally subnormal or psychiatric patients or anaesthetised patients are being treated. Healthy teeth may have to be extracted for orthodontic reasons and it is essential to ensure that the right teeth are removed. If such an error occurs it is

virtually indefensible and it is the usual practice of the defence organisations to settle such cases out of court after obtaining the expert opinion of a specialist orthodontist on the immediate and long term effects of such an error.

Transient impairment of lingual and labial sensation may complicate the removal of some impacted mandibular third molars or buried lower premolars by even the most experienced and skilled operators and does not imply that they have been negligent. No such tooth should be removed without the benefit of a pre-extraction radiograph which shows the whole tooth and a margin of bone around it. If such a film reveals a close relationship between the tooth and the inferior dental canal the possibility of post operative impairment of labial sensation and the measures which should be taken to either avoid or minimise it should be carefully considered and discussed with the patient prior to surgery being undertaken. It is a wise precaution to make a witnessed note in the patients record that this has been done. The risk of permanent damage to the lingual nerve occurring can be minimised by placing a metal retractor under the periosteum on the lingual surface of the mandible and keeping it between the lingual soft tissues and the bur whenever it is used. Patients with post operative impairment of sensation should be referred to a consultant oral surgeon for opinion and management. Precise details of the site and degree of impaired sensation should be recorded in the patient's record and used to determine the degree of recovery in the post operative period. Patients are often unaware that recovery is occurring for it is usually a gradual process.

The discovery of either **retained tooth roots or unerupted teeth** under either dentures or bridgework has led to many claims alleging negligence against dentists. When undertaking a dental clearance it is a wise precaution to radiograph the whole mouth so that the presence of either unerupted teeth or retained roots in clinically edentulous areas can be detailed in addition to unfavourable root patterns of teeth to be extracted. If a root fractures during extraction such details as which root of which tooth has been retained should be recorded and a radiograph taken to confirm the position and size of the retained fragment. A decision can then be made whether to perform an elective removal of the root or to 'put it on probation'. In either case the patient must be informed and the decision recorded in the clinical notes. It is not negligent to fracture a root during the extraction of a tooth. It is negligent not to recognise that one has done so, to fail to record the fact and to manage the problem properly. All too often roots are left in situ by default rather than design.

It is not even necessarily negligent to **fracture the jaw** whilst extracting a tooth, for disease and atrophy may so weaken the bone that such a complication may occur despite every precaution being taken. If a tooth has to be removed under such circumstances the patient should be warned of the possibility pre-operatively. Splints should be constructed before surgery

and the operation plan designed to minimise the force applied to the weakened jaw. Bone should be removed with burs rather than mallets and chisels. Should a fracture occur in such circumstances temporary support should be applied and the patient transferred to the care of the specialist oral surgeon without delay.

The possibility of creating an **oro antral communication** during the removal of teeth or roots from the antral floor should be anticipated and surgery designed accordingly. Nose blowing tests should be performed as a routine and if they are either positive or equivocal the defect should be covered with a periosteal lined flap. If roots on the antral floor are removed with a 'back hand shot' they are unlikely to be displaced into the antrum. If a tooth or root is displaced into the antrum it is wise not to search for it but to repair the defect in the antral floor and refer the patient to an oral surgeon.

Dentists have been sued for **failure to take a medical history** or to provide antibiotic cover when undertaking surgery on patients with known valvular heart disease.

Dentists should be careful in using physical restraint when treating uncooperative patients and more than one has been sued for slapping either a naughty or a hysterical child. Don't do it!

By far the commonest allegation made against dentist is that a restorative procedure has been performed in an unsatisfactory manner. Expensive items like implant dentures and full mouth rehabilitation are not infrequently the subject of such disputes and the dentist should never make extravagant claims for them nor guarantee their success.

Be sensible, conscientious, considerate and competent and you will either be lucky enough to avoid such troubles altogether or be in position to cope with them competently if they occur.

ETHICAL ISSUES IN DENTISTRY

WHAT IS ETHICS?

What has generally been considered as acceptable in terms of human beliefs, values, attitudes, and behaviours has varied from time immemorial. It still varies - mankind has been searching for **rules, norms, and codes** which could serve as guidelines both in every-day-life and in special or unusual situations.

Today - a few years from the turn of the millennium - a population of a modern society - like for example Hong Kong - will hold a wide variety of not only human beliefs, values, attitudes but also norms, rules, and guidelines which determine the way various people behave and why they behave the way they do.

Different cultures, subcultures, political and religious convictions all have their significant impact on human behaviour and the way the individual or groups of persons conduct themselves.

The **cultural, social, and religious** norms guide people to a large extent. But these norms are supplemented by a whole system or set of **legal norms or rules** which cut across cultural, social, and religious norms and which often in a very strict manner regulate people's individual and collective behavior. But law is not detailed enough, and should not be, because life would then be rather rigid. Just think about the administrative and technical problems that we would have if the politicians and judges were to regulate our lives in detail. That is why we - in any society - need a supplementary set of advices, norms, or rules to guide us in our daily life.

We need some kind of a "compass" which is able to advise us in our daily decision-making and in our almost continuous evaluation of what is **RIGHT** and what is **WRONG**. These norms or rules are what we call **moral or ethical norms**.

Ethics can simply be defined as knowing right from wrong.

It has to do with honesty, trust, good behaviour, and conforming to accepted norms of conduct.

GENERAL ETHICS

The **general ethical or moral rules** regulating behaviour among all people in a society are characterized by being non-written or non-codified.

The ethical norms are conveyed from generation to generation through upbringing, training and education - the so-called

socialization process through which we become full-fledged members of our society.

However, the most important trait or characteristic of ethical norms is the way we react when they are violated. Contrary to the breach of legal rules which are counteracted by defined **sanctions** like imprisonment/penalty and fines, the breach of ethical norms are generally met with social sanctions like isolation, contempt, reproach, loss of reputation, loss of face etc.

SPECIAL ETHICS

But besides the general ethical rules we have **special ethical rules** or **standards**. Contrary to the general ethical rules these special rules are often in written form and are often upheld by serious reactions and sanctions. Let me explain this further.

Already early in the history of mankind some people were either born or selected for heavier responsibilities and higher privileges. For this elite the ethical codes became much more demanding.

In a modern, complex society stricter and more detailed special ethical norms are applied to for example professions like lawyers, medical doctors, accountants, and dentists.

Society and people have much higher expectations of professional behaviour. These higher expectations and heavier duties and responsibilities are generally compensated by privileges such as higher social status, better income, and the fact that they enjoy high esteem.

Ethical conduct is an extremely important aspect of **professionalism**. Professionalism has to be learned - it is not automatically acquired in the socialization process during upbringing and specialization. It is of great importance that the educational process leading to professional degrees in such disciplines as medicine and dentistry has in-built opportunities for the students to get insights into the ethical norms and codes guiding their profession.

The ethical norms guiding the medical and dental professions of today have their roots in documents written more than two thousand years ago.

Ever since Hippocrates- the Greek philosopher and medical doctor- formulated the so called **Hippocratic Oath** medical ethics has been the subject of discussion and debate.

The Hippocratic Oath outlined the duties and responsibilities of the medical doctor towards the patients and the medical profession.

A GOOD medical doctor was both a skilled craftsman, a humanitarian, and a considerate colleague according to Hippocrates.

The Hippocratic Oath has been considered the prototype of medical ethics for many, many generations of medical doctors and in the modern codes of medical ethics we can still find elements from the original oath.

The medical and dental codes of ethics of today have been heavily influenced by major dramatic events in the 20th Century. After the Second World War the Nuremberg Code of Ethics for Medical Research was formulated in 1949. The Nuremberg Code of Ethics was one of the results of the Nuremberg War Crimes Tribunal.

During the scientific epoque in Medicine stretching from around 1870's to the Second World War when many scientific breakthroughs, great discoveries and new technologies emerged the ethicality of studies involving human subjects were almost never discussed. Medical research and it's results were accepted without criticism. Both medical and dental research were seen as humanistic disciplines that could only be good.

The Nuremberg War Crimes Tribunal demonstrated that Nazi doctors had conducted scores of grim biological experiments upon the concentration camp inmates. This disclosure was shocking but it was almost generally accepted by the medical profession that such unethical experimentation was only carried out by Nazi doctors or similar degenerates - it could never happen in the civilized world. In 1966, however, an internationally reputed scientist, Henry Beecher published an article which became a milestone in modern medical ethics, Henry Beecher studied the scientific medical journals and was able to prove that one out of eight studies was unethical. Here are some examples. One reputed scientist injected live cancer cells into 22 human subjects as part of a study of immunity to cancer. The subject were only told that they would be receiving "some cells" - the word cancer was deliberately omitted. The same scientist conducted similar experiments on so-called volunteers from a state penitentiary. The United States Public Health conducted a long-term medical study on the natural history of syphilis in the Tuskegee prison. Over a period of 25-years several hundred black males were deprived of anti-syphilis therapy even after it had become known that penicillin was a highly effective antisyphilitic agent. From our own field we know of the Vipeholm study which would be declared unethical today.

From the beginning of the 1950's the codes of medical ethics have been modernized, revised, and most importantly - they have become internationalized.

ETHICAL DECLARATIONS

The emergence of the **International Code of Medical Ethics** - the so-called **Geneva Declaration** by the World Medical Association regulating the professional conduct of medical practitioners in both peace and war was an important event. However, an urgent need was also felt to give international recommendations guiding medical doctors in biomedical research involving human subjects. Therefore, the World Medical Assembly in 1964 agreed on the so-called **Declaration of Helsinki**. The Declaration of Helsinki was later on revised at the assembly in Tokyo 1975.

Inspired by the Declaration of Geneva the **International Dental Association (F.D.I.)** formulated a new set of **International Principles of Ethics for the Dental Profession**. Most national medical and dental associations have restyled and revised their codes of ethics according to the needs of a modern society.

Generally, Principles of Ethics for the Dental Profession state that the dentist has an obligation to work constantly for the progress of dental science, and defines the dentist's obligation to his or her patients, the responsibilities relative to the practice of dentistry, the duties to the community, and the relationship between the dentist and his or her professional colleagues.

THE HONG KONG SCENE

In Hong Kong we have two sets of written codes regulating dentists professional conduct and behaviour.

The **Dental Council** of Hong Kong published a **WARNING NOTICE** in 1982 on Professional Discipline for the Guidance of Registered Dentists.

The **Hong Kong Dental Association** has published its **Principles of Ethics for Dental Practitioners**.

The Dental Council is established according to the Dentists Registration Ordinance and has 10 members and a Secretary and a Legal Adviser. Two of the members are medical practitioners appointed by the Governor and 6 are registered dentists. One of the members is a Government consultant dental surgeon.

The publication of the Warning Notice by the Dental Council of Hong Kong underscores that unethical behaviour by dentists can be of such character and have such consequences that it must be obviated by the threat of disciplinary action.

The definition of **UNPROFESSIONAL CONDUCT** that may lead to disciplinary action by the Dental Council is:

"If a dental practitioner, in the pursuit of his profession, has

done something which may be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency judged according to the rules, written or unwritten, governing the profession, then it is open to the Dental Council of Hong Kong, if such be proved, to say that he has been guilty of unprofessional conduct."

The Warning Notice from the Dental Council sets out certain kinds of offences and of unprofessional conduct which may lead to disciplinary proceedings by the Council.

The notice also emphasizes that the 15 types of offences and forms of unprofessional are only examples.

The Warning Notice describes the more **common types of offence or unprofessional conduct** which may be regarded as grounds for disciplinary proceedings under the following headings:

1. Convictions punishable with imprisonment

The Dental Council emphasizes that any conviction in Hong Kong or elsewhere of any offence punishable with imprisonment will lead to subsequent disciplinary proceedings, irrespective of whether a prison term is imposed or not.

A particularly serious view is likely to be taken if a dental practitioner is convicted of criminal deception (e.g. obtaining money or goods by false pretences), forgery, fraud, theft, indecent behaviour or assault in the course of his professional duties or against his patients or colleagues

2. Disregard of professional responsibilities to patients

3. Abuse of alcohol or drugs

Convictions for drunkenness, or other offences arising from the abuse of alcohol or drugs (such as driving a motor car when under the influence of alcohol or drugs) may lead to disciplinary proceedings.

A dental practitioner who treats patients or performs other professional duties while under the influence of drink or drugs to such an extent as to be unfit to perform his professional duties is also liable to disciplinary proceedings.

4. Abuse of dangerous or scheduled drugs

Disciplinary proceedings

- a. may be taken in any case in which a dental practitioner has been found or alleged to have prescribed or supplied drugs of addiction or dependence otherwise

than in the course of bona fide treatment

- b. will be taken against a dental practitioner convicted of offences against the Dangerous Drugs Ordinance and the Regulations made thereunder committed in order to gratify the dental practitioner's own addiction; and
 - c. may be taken against any dental practitioner who permits unqualified assistants to be left in charge of any place in which scheduled poisons or preparations containing scheduled poisons are sold to the public.
5. **Abuse of professional position in order to further an improper association or commit adultery**

A dental practitioner who abuses his professional position in order to further an improper, immoral, or indecent association or to commit adultery with a person with whom he stands in a professional relationship may be subjected to disciplinary proceedings.

6. **Abuse of professional confidence**

Disciplinary proceedings may be taken where it is alleged that a dental practitioner has improperly or carelessly disclosed information which he has obtained in confidence from or about a patient.

7. **Advertising**

The tradition that dental practitioners should refrain from self-advertisement has long been accepted by the dental profession.

Advertising is incompatible with principles which should govern relations between members of the profession, and could be a source of danger to the public.

'Advertising' in this context will be regarded by the Council in its broadest possible sense to include any means by which a dental practitioner is publicized, either by himself, his servants, agents, or others in a manner which can reasonably be regarded as promoting his own professional advantage.

Whether a dental practitioner actually benefits from publicity is no defence to a charge of advertising.

Special standards are given for signs including signboards, directory boards, notices of consulting hours, stationery, announcements of commencement of practice, entries in street or telephone directories, and circulars.

The Council is of the opinion that dental practitioners in giving interviews to radio, television, or the lay

press should preserve anonymity both as to name and identifiable photograph wherever possible when dental matters are under discussion.

Dental practitioners should take steps to ensure that ethical codes are respected whenever they have dealings with radio, television and press interviews and reporters.

8. Depreciation of other dental practitioners

The depreciation of the professional skill, knowledge, services, or qualifications of another dental practitioner or other dental practitioners may lead to disciplinary proceedings.

9. Canvassing

The Council particularly wishes to warn dental practitioners that any of the following may be held to be canvassing:

- a. Attempting to induce persons whom a dental practitioner has treated as patients of a practice in which he is, or has been, employed by some other person, to attend him for treatment or advice in any other practice.

It is the duty of a dental practitioner who ceases to be employed in a practice to ensure that arrangements are made for the completion of any treatment commenced by him; but a dental practitioner who makes such arrangements without the consent of the lawful owner of the practice may be held to have canvassed for the purpose of obtaining patients or promoting his own professional advantage.

- b. Attempting to induce patients to a practice by means of some advertised financial saving, gift, prize, reward, or other advantages.
- c. Advertising dental services ostensibly as a means of recruiting members to some club, organization or association.

10. Misleading and unapproved descriptions and announcements

The Council warns dental practitioners specifically against the use of descriptive wording such as 'Specialist', etc., other than such as have been specifically approved by the Council. Reference to such unapproved titles or positions held, employment, honorary appointments, or experience and qualifications which are not registrable (other than those that have been specially recognized and authorized) by the Dental Council, on signboards, stationery, visiting cards, letterheads, envelopes, prescription slips, notices, etc.; may, in the opinion of the Council, be guilty of unprofessional conduct.

11. Improper financial transactions (Dichotomy)

Dichotomy or fee-splitting with any person who has not taken a commensurate part in the service for which the fees are charged is considered to be an unethical practice, as also is the receipt of rebates from diagnostic laboratories etc., and may lead to disciplinary action.

Any dental practitioner who improperly prescribes drugs or appliances in which he has a financial interest may also be regarded as having committed misconduct.

12. Untrue or misleading certificates and other professional documents

Dental practitioners are required to issue certificates for a variety of purposes, (e.g. incapacity to work through illness or injury, certificates etc.) on the assumption that the truth of the certificates can be accepted without question. In some cases the certificates are required to include a statement that a patient has been examined on a particular date.

Dental practitioners are expected to exercise care in issuing certificates and kindred documents, and should not include in them statements which the dental practitioner has not taken appropriate steps to verify.

13. Covering

Any registered dentist who practises dentistry in premises in which an unregistered person practises dentistry shall be guilty of an offence...'

It is unlawful for anyone to give, or even to suggest that he is prepared to give, any treatment or advice (including any treatment or advice in connection with the insertion of artificial teeth or other dental appliances) unless he is registered either in the Dentists Register or in the Medical Register.

A dental practitioner should in no way countenance, help, encourage, or assist, either wilfully or by neglect, the practice of dentistry by an unregistered person.

14. Improper delegation of dental duties

A dental practitioner who improperly delegates to a person who is not a dentist duties or functions in connection with dental treatment on a patient for whom the dental practitioner is responsible or who assists such a person to treat patients as though that person were a dental practitioner, is liable to disciplinary proceedings.

15. Responsibility of partners and directors

A dental practitioner who enters into a partnership for the purpose of carrying on a dental practice and, more especially, a dental practitioner who becomes a director of a body corporate carrying on the business of dentistry thereby accepts responsibility for the maintenance of a high standard of professional conduct in that practice or business.

In conclusion the Dental Council emphasizes that the categories of unprofessional conduct described in the Warning Notice cannot be regarded as exhaustive, since from time to time with changing circumstances, the Council's attention may be drawn to new forms of unprofessional conduct.

Any abuse by a dental practitioner of any of the privileges and opportunities afforded to him, or any dereliction of professional duty or breach of dental ethics, may give rise to a charge of unprofessional conduct.

If, after due inquiry into any case referred to it, the Dental Council of Hong Kong is satisfied that any registered dentist has been guilty of unprofessional conduct the Council may, in its discretion:

- order the name of the registered dentist to be removed from the register completely or for such period of time as it may think fit; or
- order the registered dentist to be reprimanded; or
- postpone judgement on the case up to 2 years.

Appeals against an order of the Council for removal from the Register are heard by the Hong Kong **Court of Appeal**.

INFORMED CONSENT

It is generally accepted now - on the basis of the **Declaration of Helsinki** that any research project involving human subjects must be carefully scrutinized and reviewed to ensure that the rights and welfare of the subjects involved are adequately protected. This detailed scrutiny is performed by permanent and independent **Ethical Committees** in the vast majority of universities and research institutes. These Ethical Committees will safeguard that:

- the risks to the participants of the study are outweighed by potential benefits or by the importance of the knowledge to be gained
- informed consent has been obtained by methods that are adequate and appropriate

What is meant by **Informed Consent**?

Informed consent means that each participant - his or her legally authorized representative - is able to exercise free choice in deciding whether to participate, without any element of coercion or constraint.

Informed Consent necessitates straightforward and easily understandable answers to the following questions:

- **WHAT** sort of procedures are to be followed and **WHY** (i.e. the purposes)?
- **WHAT** are the experimental conditions or procedures?
- **WHAT** are the risks, hazards, or discomforts that are reasonable to expect?
- **WHAT** are the benefits that are reasonable to expect?
- Are there any appropriate **alternative procedures** that might be advantageous for the participants?

Any further information or explanation that the prospective participant needs should be offered.

It should furthermore be stressed that any participant is at liberty to abstain from participation in the study and that he or she is free to withdraw consent to participation at any time without prejudice to further treatment.

The doctor should then - on this basis - obtain the prospective participants **freely-given informed consent**, preferably in writing.

EPILOQUE

The ethical norms for our profession must be flexible and open to interpretations guided by the developments in the society.

No doubt, the many duties and obligations we have towards the patient, the society, our auxiliary personal, and our colleagues may be in conflict with each other.

Sometimes the obligation we have towards our patient will be in conflict with the responsibilities we have towards one of our colleagues. Sometimes we may not be able to protect both the interests of our patients, or the interest of society, and at the same time protect a colleague.

The crucial characteristic of professional ethics is that we often find ourselves in situations:

Where we have to mediate between various ethical obligations.

Where we have to make a choice between alternatives - such a decision might have serious consequences for those involved.

This is what makes the medical and dental profession so challenging.

GLOSSARY

ACCIDENT

an unforeseen misfortune or an un-designed damaging event. An accident is called inevitable if the effects or consequences could not have been foreseen by exercising a reasonable degree of caution, care, and skill. Inevitable accidents are generally considered to be a valid ground of exemption from **liability** in **tort**.

ACTION

the legal and formal demand of one's right from another person or party in a court of justice. A cause of action is a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person.

ADMISSIONS AGAINST INTEREST

"It was my fault" -statements after accidents or injuries are often admissible as evidence in courts. These contrary-to-one's-own-interest statements can be written, oral, or inferred from conduct or behaviour.

ADVERTISING

According to the **Warning Notice** issued by the **Dental Council** of Hong Kong dental practitioners should refrain from self-advertisement. Advertising is incompatible with principles which should govern relations between members of the profession, and could be a source of danger to the public. 'Advertising' in this context will be regarded by the Council in its broadest possible sense to include any means by which a dental practitioner is publicized, either by himself, his servants, agents, or others in a manner which can reasonably be regarded as promoting his own professional advantage. Whether a dental practitioner actually benefits from publicity is no defence to a charge of advertising.

AGENT

a person hired, delegated, (the principal) or appointed to act on behalf of another. The act of an agent binds

the principal provided that it falls within the scope of his authority. While every employee may be an agent, not every agent is an employee.

ALLEGATION

an unproved assertion of a fact, a charge, or a statement. Allegations are produced in court proceedings e.g. in pleading.

**ANCILLARY DENTAL
WORKERS REGULATIONS**

are the rules in Cap. 156, Section 29 of 14th November, 1969 governing persons practicing as **dental hygienist**.

ARBITRATION

a process by which disputes are determined by the decision of one or more persons (arbitrators). In cases of disagreement between arbitrators an umpire decides the matters.

APPELLANT

the one who appeals to a higher court because of dissatisfaction with the process, decisions, or rulings of a lower court.

ASSAULT

is a punishable crime and usually defined as the unlawful laying of hands on another person. **Technical assault** is the unconsented-to touching of another. The extraction of the wrong tooth is a technical assault.

ATTORNEY

a person appointed by another to act in his place or represent him.

A **power of attorney** is the formal authorization by which one person empowers another to represent him or act on his behalf for specified purposes.

BARRISTER

a lawyer called to the bar and having the right of practicing as an advocate in superior courts.

BREACH OF CONTRACT

a breaking of obligations or failure to comply with terms imposed by a valid mutual agreement between two or more

parties. Breach of a **contract** entitles the injured party the right of action for **damages** regardless of whether the breach was unintentional or wilful.

BYE-LAWS

are published rules made by a local authority with the purpose of regulating, managing, or administering an undertaking or a defined area. All persons who come within the scope of bye-laws are bound by them. Bye-laws usually require endorsement on the ministerial level.

CANVASSING

According to the **Warning Notice** issued by the **Dental Council of Hong Kong** any of the following may be held to be canvassing and lead to disciplinary proceedings:

Attempting to induce persons whom a dental practitioner has treated as patients of a practice in which he is, or has been, employed by some other person, to attend him for treatment or advice in any other practice. It is the duty of a dental practitioner who ceases to be employed in a practice to ensure that arrangements are made for the completion of any treatment commenced by him; but a dental practitioner who makes such arrangements without the consent of the lawful owner of the practice may be held to have canvassed for the purpose of obtaining patients or promoting his own professional advantage.

Attempting to induce patients to a practice by means of some advertised financial saving, gift, prize, reward, or other advantages.

Advertising dental services ostensibly as a means of recruiting members to some Club, Organization, or Association.

CERTIFICATE OF REGISTRATION

is issued by the **Dental Council** to a person on registration according to Section 10 of the **Dentists Registration Ordinance**.

CIVIL LAW

is the law of Rome - the corpus Juris Civilis, which has heavily influenced the laws of Continental Europe.

COMMON LAW

is based on the customs and common sense of the English people. It was unwritten law administered by the old common law courts. Contrary to the Acts of Parliament, it is judge-made law, and not the result of legislation.

COMPLAINANT

a person who brings an action against a defendant. The complainant can be acting as an individual citizen or in a public capacity. See **plaintiff**

CONSENT

is a voluntary agreement by a competent person to yield the will to the proposition of another person. Consent is only valid if it is given by a person above the "age of consent" i.e. 16 years in Hong Kong.

Consent by patients should be in written form. Suitable draft forms are available and should be used.

Informed or genuine consent implies that the patient's decision is based on an in-depth explanation and understanding of the purpose of the treatment, the necessary actions, and the consequences in terms of benefits and risks (such as complications, discomfort, and side-effects).

According to the **declaration of Helsinki** (1975) which deals with "Recommendations guiding medical doctors in biomedical research involving human subjects" INFORMED CONSENT is defined in more detail:

In any research on human beings, each potential subject must be adequately informed of the aims, methods, anticipated benefits, potential hazards of the study, and the discomfort it may entail. He or she should be informed that he or she is at liberty to abstain from participation in the study and that he or she is free to withdraw his or her

consent to participation at any time without prejudice to receiving further treatment. The doctor should then obtain the subject's freely-given informed consent, preferably in writing.

When obtaining informed consent for the research project the doctor should be particularly cautious if the subject is in a dependent relationship to him or her or may consent under duress. In that case the informed consent should be obtained by a doctor who is not engaged in the investigation and who is completely independent of this official relationship.

In case of legal incompetence, informed consent should be obtained from the legal guardian in accordance with national legislation. Where physical or mental incapacity makes it impossible to obtain informed consent, or when the subject is a minor, permission from the responsible relative replaces that of the subject in accordance with national legislation.

The research protocol should always contain a statement of the ethical considerations involved and should indicate that the principles enunciated in the present Declaration are complied with.

CONSPIRACY

the joining together of two or more persons to plan or commit a crime.

CONTRACT

an agreement between two or more competent persons to carry out some lawful act or series of acts. A contract is legally enforceable. A contract is only valid and legally enforceable if

- 1) the purpose is legal;
- 2) the persons have the capacity and intention to contract;
- 3) the persons agree to the same thing;

- 4) the terms are defined with certainty;
- 5) and the values involved in the agreement have been sufficiently considered:

Some contracts are only valid in a prescribed form.

CONTRIBUTORY NEGLIGENCE if the **plaintiff's** own **negligence** has directly contributed to his own loss or injuries the defence is in a position to claim that **damages** are apportioned according to the respective degree of fault.

COVERING according to Section 27 of the **Dentists Registration Ordinance**, a registered dentist is guilty of covering when he or she is practising dentistry in premises in which an unregistered person practises dentistry.

The **Dental Council** considers that a dental practitioner should in no way countenance, help, encourage, or assist, either wilfully or by neglect, the practice of dentistry by an unregistered person.

CROSS-EXAMINATION the opposite party in a court proceeding has a right to cross-examine a **witness** after the chief examination is closed or waived. If a witness is not cross-examined it is generally implied that the opposite party has accepted the facts given by the witness.

DAMAGES a pecuniary compensation recovered in the courts for a person who has suffered a loss, detriment, or other injury to person or property through the unlawful act, omission, or **negligence** of another.

DEFAMATION is a **tort** consisting of false and derogatory accusations about another person. The objective of the defamation is usually to expose the other person to ridicule, contempt, hatred, or to cause

loss of confidence and reputation in the minds of others. A serious type of defamation has injurious effects on the business or profession of the person who is exposed to defamation. See **libel** and **slander**.

DEFENDANT

a person or party against whom an **action** or other civil proceeding is brought e.g. in the form of a lawsuit.

DENTAL COUNCIL

is established and composed according to Section 4 of the **Dentists Registration Ordinance** and is the statutory body which regulates the practice of dentistry in Hong Kong. The main functions of the D.C. are registration and discipline related to practitioners.

DENTAL HYGIENIST

According to the **ancillary dental workers regulations** an enrolled dental hygienist may undertake dental work of the following kinds:

- (a) the cleaning and polishing of teeth;
- (b) the scaling of teeth (that is to say the removal of tartar deposits, accretions and stains from those parts of the surface of the teeth which are exposed or which are directly beneath the free margins of the gums, including the application of medicaments thereto);
- (c) the application to the teeth of solutions of sodium or stannous fluoride or such other similar prophylactic solutions as the Council may from time to time determine;
- (d) the exposure of x-ray films inter-orally or extra-orally for the investigationn of lesions or suspected lesions of the mouth, jaws, teeth and associated structures; and
- (e) the giving of advice on matters

relating to dental hygiene.

A dental hygienist shall not undertake any form of dental work unless-

- (a) he is enrolled in accordance with regulation 4;
- (b) he is employed by a registered dentist;
- (c) any patient upon whom he undertakes dental work has first been examined by a registered dentist who has then prescribed the treatment to be carried out by the dental hygienist;
- (d) such dental work is carried out-
 - (i) in accordance with the directions of a registered dentist who is available in the premises at all times when such dental work is being carried out; and
 - (ii) in such premises and under such conditions as are suitable for such work.

DENTISTS REGISTER

is maintained by the **Dental Council** of Hong Kong according to the **Dentists Registration Ordinance** of 1959 with later revisions.

**DENTISTS REGISTRATION
ORDINANCE**

defines what is meant by the words '**to practice dentistry**' in the Hong Kong legislation. The ordinance specifies rules for the registration of dentists and establishes the **Dental Council** of Hong Kong. The ordinance is the legal basis for the regulation of dentistry in Hong Kong.

**DENTISTS (REGISTRATION
AND DISCIPLINARY
PROCEDURE) REGULATIONS**

establish the rules for the registration of dentists in Hong Kong, the issue of **certificates of registration, practising certificates**, proceedings preparatory to hearing by the **Dental Council**, and proceedings at hearing of the Council.

DUTY OF CARE

duties are instituted by law, custom, or specific contract and are defined as the need to carry out an act attached to a function undertaken in a certain manner. It is the legal duty of a dentist to possess and exercise such care and professional skills as would the other ordinarily prudent dentists in the Community. A specialist must be comparable to the other ordinarily prudent specialists in the Community.

DICHOTOMY

fee-splitting with any person who has not taken a commensurate part in the service for which the fees are charged, is considered to be an unethical practice, as also is the receipt of rebates from diagnostic laboratories etc., and may lead to disciplinary action. Any dental practitioner who improperly prescribes drugs or appliances in which he has a financial interest may also be regarded as having committed misconduct.

ETHICAL COMMITTEE

is an independent committee safeguarding the rights of human subjects participating in bio-medical research. The committee also has a responsibility to safeguard the well-being of animals used in biomedical research.

ETHICS

is a moral concept concerned with the evaluation of human conduct and with standards for judging whether human actions or behaviour are right or wrong and what ought to be right. The "ethics" is derived from the Greek word ethos which means custom or character.

EXPERT WITNESS

a court can decide that a person possessing special skill, technical knowledge, or professional qualifications is so qualified as to be considered an expert.

A dentist who qualifies as an expert witness in court testifies as to what the ordinarily prudent dentist in the Community would do under a given set of

circumstances.

HELSINKI DECLARATION

See **consent**

INFORMED CONSENT

See **consent**

JURISPRUDENCE

is the Science of Law. It includes the study of the principles of law, and the learning of law.

LIABILITY

is an obligation. A person is liable or responsible for wrong-doing or **breach of contract**.

LIBEL

a libel is a tort and consists of published false or defamatory statement damaging to another person's reputation. A libel is a **defamation** in a permanent form e.g. in writing or print. Libel is the act of publishing such a statement.

LIEN

is the right to retain another person's property as security for the fulfilment of an obligation.

A seller has the right to retain the goods until paid in full by the buyer.

LITIGATION

is the judicial process in a court of justice. Each party in a litigation is responsible for the conduct of their own case.

MALICE

is the doing of a wrongful and/or damaging act with ill-will or evil motive. An act is malicious if done intentionally without just cause or excuse.

MALPRACTICE

is improper or negligent treatment of a patient. It includes failure to perform an act that a reasonable and prudent person would perform or the performance of an act which a reasonable and prudent person would not perform. Only if the performance or non-

performance result in injury to the **plaintiff** can a lawsuit be instituted.

MEDICAL DEFENCE UNION

an organization which protects, supports, and safeguards the characters and interests of their members. Members are duly registered medical and dental practitioners. The members are provided with unlimited indemnity against damages and costs awarded against them in cases undertaken by the organization on their behalf. It is also the objective to defend members in cases where legal proceeding related to professional principle or status is brought against them.

MEDICAL PROTECTION SOCIETY

is an organization with similar purposes as the **Medical Defence Union**.

NEGLIGENCE

the failure to exercise a degree of care which it is ordinary and reasonable to expect from the average careful and prudent person.

persons professing special skill or qualifications - like a dentist - must use such care and skill as is usual and generally expected by such persons.

PLAINTIFF

a person who through a lawsuit seeks redress for a wrong to himself

PLEA

is a response or reply used as a defence in a court proceeding.

PLEA IN MITIGATION

is a **plea** with the purpose of reducing the punishment or **damages** to be awarded against a person whose responsibility or guilt has already been proved.

PLEADINGS

are any or all of the formal written or printed statements presented by the adversary parties alternately in a legal action. Pleadings are statements of facts and must not state the evidence by which the facts are to be proved. Pleadings must not contain law.

POWER OF ATTORNEY

See *Attorney*

PRACTISING CERTIFICATE

according to Section 11A of the **Dentists Registration Ordinance**, a registered dentist shall not practise as a dentist in Hong Kong, unless he is the holder of a **Practising Certificate** which is then in force. Practising Certificates are issued by the Secretary of the **Dental Council**.

PRECEDENT

a judgement or decision of a court of justice which is authoritative and binding in similar cases. precedents are the basis of **Common Law** and must be adhered to by the Court System.

QUANTUM

is the amount of **damages** awarded to a **plaintiff** who brings a successful **action** under the **Civil Law**. Under **Common Law** it is decided by the judge individually on the basis of **precedent**.

RES IPSA LOQUITUR

"The thing speaks for itself". Under the circumstances it is improbable that such an accident could have happened without the **negligence** of the defendant. The defendant is forced to prove that a degree of care which it is ordinary and reasonable to expect was exercised.

SLANDER

aslander is a **tort** and consists of a false report maliciously uttered to another person's reputation. Slander is to defame falsely by word of mouth.

SOLICITOR

is an officer of the court employed by a client to conduct legal proceedings on his behalf or to serve as a legal adviser.

STARE DECISIS

is the policy of Courts or a judicial system to abide by the **precedents** of previously decided court cases. It is considered the "Sacred principle" of the British Law System. precedents are

authoritative and binding. A judge is generally obligated to follow decisions rendered by equal or higher courts.

STATUTE LAW

are Acts of Parliament in United Kingdom and Ordinances in Hong Kong. There are many kinds of statute law.

SUBPOENA

a writ commanding a person to be present at a given place and at a specified time for a defined purpose. If the person does not appear according to the writ he is subject to penalty.

TO PRACTICE DENTISTRY

in Hong Kong is defined in Section 2 of the **Dentists Registration Ordinance** which states that 'A person shall be deemed to practise dentistry within the meaning of this Ordinance, who, for the sake of gain or otherwise, holds himself out, whether directly or by implication, as practising or being prepared to practise dentistry, or treats or attempts to treat or professes to treat, cure, relieve or prevent lesions or pain of the human teeth or jaws; or performs or attempts to perform any operation thereon, or inserts or attempts to insert any artificial teeth or appliances for the restoration, regulation or improvement of the teeth or accessory structures.

In Section 3 it is stated that

1. Subject to the provisions of any regulations made under section 29(1), any person, not being a registered dentist, who practises dentistry within the Colony shall be guilty of an offence and shall be liable on summary conviction to a fine of \$1,000 and to imprisonment for 6 months. (Amended, 12 of 1968, s.3)
2. Nothing in this section shall operate to prevent the extraction of teeth for the relief of pain, or the application of remedies for such purposes, by a medical practitioner registered under the

Medical Registration Ordinance.

TORT

is an act of wrong doing which causes harm to a person. It is a private or civil wrong for which the injured party claims redress and/or compensation.

UNPROFESSIONAL CONDUCT

has been defined by the Dental Council of Hong Kong as 'If a dental practitioner, in the pursuit of his profession, has done something which may be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency judged according to the rules, written or unwritten, governing the profession, then it is open to the Dental Council of Hong Kong, if such be proved, to say that he has been guilty of unprofessional conduct.'

Common types of offence or unprofessional conduct which may be regarded as grounds for disciplinary proceedings.

1. Convictions punishable with imprisonment
2. Disregard of Professional responsibilities to patients.
3. Abuse of alcohol or drugs
4. Abuse of dangerous or scheduled drugs
5. Abuse of professional position in order to further an improper association or commit adultery
6. Abuse of professional confidence
7. **Advertising**
8. Depreciation of other dental practitioners
9. **Canvassing**
10. Misleading and unapproved descriptions and announcements

11. Improper financial transactions
(Dichotomy)
12. Untrue or misleading certificates
and other professional documents
13. **Covering**
14. Improper delegation of dental
duties
15. Irresponsible conduct in
partnerships or directorships.

WARNING NOTICE

is a small book issued 1982 by the Dental Council of Hong Kong for the guidance of registered dental practitioners on professional discipline. The meaning of '**unprofessional conduct**' is defined and the more common forms of offence or unprofessional conduct which may be regarded as grounds for disciplinary proceedings are described.

Registered dentists are earnestly advised to read through and to acquaint themselves with the contents of the Warning Notice, thereby avoiding the danger of inadvertently transgressing accepted codes of professional ethical behaviour!

WITNESS

a person who in a court of justice makes an oral statement on a question of fact. Witnesses are sworn-in prior to their testimony. In general all persons are considered to be competent to give evidence provided they have sufficient mental capacity. If the testimony of a witness tends to expose himself to a criminal charge, or to forfeiture or punishment he has the right to refuse to answer questions.

WRIT

a document from a court or a high authority ordering a person to perform or refrain from doing some act.

APPENDIX I

DECLARATION OF HELSINKI

DECLARATION OF HELSINKI

Recommendations guiding medical doctors in biomedical research involving human subjects

Adopted by the 18th World Medical Assembly, Helsinki, Finland, 1964 and As Revised by the 29th World Medical Assembly, Tokyo, Japan, 1975.

INTRODUCTION

It is the mission of the medical doctor to safeguard the health of the people. His or her knowledge and conscience are dedicated to the fulfillment of this mission.

The Declaration of Geneva of the World Medical Association binds the doctor with the words, "The health of my patient will be my first consideration", and the International Code of Medical Ethics declares that, "Any act or advice which could weaken physical or mental resistance of a human being may be used only in his interest".

The purpose of biomedical research involving human subjects must be to improve diagnostic, therapeutic and prophylactic procedures and the understanding of the aetiology and pathogenesis of disease.

In current medical practice most diagnostic, therapeutic or prophylactic procedures involve hazards. This applies a fortiori to biomedical research.

Medical progress is based on research which ultimately must rest in part on experimentation involving human subjects.

In the field of biomedical research a fundamental distinction must be recognized between medical research in which the aim is essentially diagnostic or therapeutic for a patient, and medical research, the essential object of which is purely scientific and without direct diagnostic or therapeutic value to the person subjected to the research.

Special caution must be exercised in the conduct of research which may affect the environment, and the welfare of animals used for research must be respected.

Because it is essential that the results of laboratory experiments be applied to human beings to further scientific knowledge and to help suffering humanity. The World Medical Association has prepared the following recommendations as a guide to every doctor in biomedical research involving human subjects. They should be kept under review in the future. It must be stressed that the standards as drafted are only a guide to physicians all over the world. Doctors are not relieved from criminal, civil and ethical responsibilities under the laws of their own countries.

I. BASIC PRINCIPLES

1. Biomedical research involving human subjects must conform to generally accepted scientific principles and should be based on adequately performed laboratory and animal experimentation and on a thorough knowledge of the scientific literature.
2. The design and performance of each experimental procedure involving human subjects should be clearly formulated in an experimental protocol which should be transmitted to a specially appointed independent committee for consideration, comment and guidance.
3. Biomedical research involving human subjects should be conducted only by scientifically qualified persons and under the supervision of a clinically competent medical person. The responsibility for the human subject must always rest with a medically qualified person and never rest on the subject of the research, even though the subject has given his or her consent.
4. Biomedical research involving human subjects cannot legitimately be carried out unless the importance of the objective is in proportion to the inherent risk to the subject.
5. Every biomedical research project involving human subjects should be preceded by careful assessment of predictable risks in comparison with foreseeable benefits to the subject or to others. Concern for the interests of the subject must always prevail over the interest of science and society.
6. The right of the research subject to safeguard his or her integrity must always be respected. Every precaution should be taken to respect the privacy of the subject and to minimize the impact of the study on the subject's physical and mental integrity and on the personality of the subject.
7. Doctors should abstain from engaging in research projects involving human subjects unless they are satisfied that the hazards involved are believed to be predictable. Doctors

should cease any investigation if the hazards are found to outweigh the potential benefits.

8. In publication of the results of his or her research, the doctor is obliged to preserve the accuracy of the results. Reports of experimentation not in accordance with the principles laid down in this Declaration should not be accepted for publication.
9. In any research on human beings, each potential subject must be adequately informed of the aims, methods, anticipated benefits and potential hazards of the study and the discomfort it may entail. He or she should be informed that he or she is at liberty to abstain from participation in the study and that he or she is free to withdraw his or her consent to participation at any time. The doctor should then obtain the subject's freely - given informed consent, preferably in writing.
10. When obtaining informed consent for the research project the doctor should be particularly cautious if the subject is in a dependent relationship to him or her or may consent under duress. In that case the informed consent should be obtained by a doctor who is not engaged in the investigation and who is completely independent of this official relationship.
11. In case of legal incompetence, informed consent should be obtained from the legal guardian in accordance with national legislation. Where physical or mental incapacity makes it impossible to obtain informed consent, or when the subject is a minor, permission from the responsible relative replaces that of the subject in accordance with national legislation.
12. The research protocol should always contain a statement of the ethical considerations involved and should indicate that the principles enunciated in the present Declaration are complied with.

II MEDICAL RESEARCH COMBINED WITH PROFESSIONAL CARE (Clinical Research)

1. In the treatment of the sick person, the doctor must be free to use a new diagnostic and therapeutic measure, if in his or her judgment it offers hope of saving life, reestablishing health or alleviating suffering.
2. The potential benefits, hazards and discomfort of a new method should be weighed against the advantages of the best current diagnostic and therapeutic methods.
3. In any medical study, every patient - including those of a

control group, if any - should be assured of the best proven diagnostic and therapeutic method.

4. The refusal of the patient to participate in a study must never interfere with the doctor-patient relationship.
5. If the doctor considers it essential not to obtain informed consent, the specific reasons for this proposal should be stated in the experimental protocol for transmission to the independent committee (I,2).
6. The doctor can combine medical research with professional care, the objective being the acquisition of new medical knowledge, only to the extent that medical research is justified by its potential diagnostic or therapeutic value for the patient.

III NON-THERAPEUTIC BIOMEDICAL RESEARCH INVOLVING HUMAN SUBJECTS (Non-clinical biomedical research)

1. In the purely scientific application of medical research carried out on a human being, it is the duty of the doctor to remain the protector of the life and health of that person on whom biomedical research is being carried out.
2. The subjects should be volunteers - either healthy persons or patients for whom the experimental design is not related to the patient's illness.
3. The investigator or the investigating team should discontinue the research if in his/her or their judgment it may, if continued, be harmful to the individual.
4. In research on man, the interest of science and society should never take precedence over considerations related to the wellbeing of the subject.

APPENDIX II

THE INTERNATIONAL CODE OF MEDICAL ETHICS

Duties of Doctors in General

A doctor must always maintain the highest standards of professional conduct.

A doctor must practise his profession uninfluenced by motives of profit.

Duties of Doctors to the Sick

A doctor must always bear in mind the obligation of preserving human life.

A doctor owes his patient complete loyalty and all the resources of his science. Whenever an examination or treatment is beyond his capacity he should summon another doctor who has the necessary ability.

A doctor shall preserve absolute secrecy on all he knows about his patient because of the confidence entrusted in him.

A doctor must give emergency care as a humanitarian duty unless he is assured that others are willing and able to give such care.

Unethical Practices

1. Any self advertisement except such as is expressly authorized by the national code of medical ethics.
2. Collaboration in any form of medical service in which the doctor does not have professional independence.
3. Receiving any money in connection with service rendered to a patient other than a proper professional fee even with the knowledge of the patient.

Intra-professional Relations

A doctor ought to behave to his colleagues as he would have them behave to him.

A doctor must not entice patients from his colleagues.

A doctor must observe the principles of the 'Declaration of Geneva' approved by the World Medical Association.

APPENDIX III

THE F.D.I. PRINCIPLES

The Federation Dentaire Internationale (F.D.I.), since the publication of the Declaration of Geneva has formulated 'International Principles of Ethics for the Dental Profession'.

Introduction

The International Principles of Ethics for the dental profession should be considered as guidelines for every dentist but obviously, they in themselves cannot cover all local or national traditions or circumstances.

The spirit, and not the letter of the principles, therefore must be the guide of conduct for the dentist who has many obligations in addition to those stated within the principles.

The essence of these principles is summarized by the phrase 'Do as you would be done by'. The dentist has an obligation to work constantly for the progress of dental science by service to (1) The Patient, (2) The Community and (3) The Profession.

1. The Patient

- a. The primary duty of the dentist is to safeguard the health of patients irrespective of the nationality, sex, race, creed, political views or social and economic standing.
- b. The dentist should bear in mind that for the benefit of patients all possible treatment should be made available with, if necessary, the assistance of another qualified dental or medical colleague.
- c. Professional secrecy is absolute, except where the laws of the country dictate otherwise. It is also the obligation of the dentist to see that his auxiliary personnel observe this rule.
- d. The dentist when delegating any service or operation to an operating or non-operating assistant shall assume the complete responsibility for such clinical service or operation. The dentist shall not delegate any service or operation to an individual which is not within their competence nor permitted by the laws governing the practice of dentistry within the country.

2. The Community

- a. Accepted measures to improve the general and dental health of the public should be promoted by the dentist.
- b. The dentist should participate in health education and in particular dental health education of the public by promoting generally accepted measures which improve the general and dental health of both the individual and the community
- c. Dentists may only advance their professional reputation through professional services to patients and to society.
- d. The dentist should assume a responsible role in the life of his community.

3. The Profession

- a. Dentists should maintain the honour, morality and integrity of the profession and avoid any conduct which might lower its esteem in the eyes of the public.
- b. Dentists should maintain their professional knowledge and skill by continuing education.
- c. Dentists have an obligation to assist each other professionally.
- d. When consulted by the patient of another dentist, the dentist should attend to any condition constituting an emergency and refer the patient back to his or her regular dentist who should be informed of the conditions found and treated.
- e. The dentist should not refer disparagingly to the services of another dentist in the presence of a patient. If the welfare of the patient demands that corrective treatment be instituted this should be carried out in such a way as to avoid reflection on the previous dentist or on the dental profession.
- f. Dentists have the obligation to support the advancement of their profession through membership of scientific and professional organizations and to observe their rules of ethics.
- g. Dentists have the obligation to make the fruits of their discoveries and labours available to all when they are useful in safeguarding or promoting the health of the public. Patents and copyrights may be secured by the dentist provided that they are not used to restrict research, practice or the benefits of the patented or

copyrighted material.

WHAT I READ

UPDATE ON THE HIPPOCRATIC OATH – A REMINDER!

To be a member of the Medical Profession demands of one, as we know, high standards of ethics and etiquette which were first embodied in the oft-mentioned "Hippocratic Oath". Oft-mentioned indeed though not oft-quoted as many have a rather vague and woolly idea of what the famous words, put together by the physicians of Cos about 400B.C. actually entail! Colleagues despair not! – the World Medical Association after the atrocities of the Second World War, during which members of the profession in some countries deviated disgracefully from the Oath's requirements, met and restyled the Oath, calling it The Declaration of Geneva which is as follows: –

*"At the time of being admitted as a Member of the Medical Profession I solemnly pledge myself to consecrate my life to the service of humanity.
I will give to my teachers the respect and gratitude which is their due;
I will practise my profession with conscience and dignity;
The health of my patient will be my first consideration;
I will respect the secrets which are confided in me;
I will maintain by all means in my power the honour and the noble traditions of the Medical Profession;
My colleagues will be my brothers;
I will not permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient;
I will maintain the utmost respect for human life from the time of conception; even under threat. I will not use my medical knowledge contrary to the laws of humanity.*

I make these promises solemnly, freely and upon my honour." Thus runs the modern restatement of the Oath which should apply worldwide both in times of peace and war. From this the World Medical Association drew up an International Code of Medical Ethics See next month's "What I Read" . . .

Christopher D. Lund.

APPENDIX V

CONSENT FORM

I..... of
hereby consent to my..... undergoing the operation of
the effect and nature of which have been explained to me by Dr.....

I also consent to such further or alternative operative measures as may be found to be necessary or advisable during
the course of such operation and to the administration of a local or other anaesthetic for the purpose of the same.

I understand an assurance has not been given that the operation will be performed by a particular surgeon.

Dated this day of

.....
Witness.

.....
Grade.

接 受 手 術 證 明 書

.....
(Signed).

本人 住
茲同意本人之子／女 接受 手術，該項手術
之性質及效果已由 向本人解釋

在施行該手術期間，如認為應作更進一步之手術或須施行另一項手術者，本人亦同意
施行，對於因此而使用之局部或其他麻醉劑，本人亦概不同意。

本人更明悉，該項手術並無保證特別由某 醫師施行。

一九 年 月 日 見證人 簽署

APPENDIX VI

DENTAL CONSENT FORM

FORM 1. CONSENT BY PATIENT

..... Hospital

I, of

hereby consent to the following treatment:

1. *EXTRACTION OF TEETH

Teeth for extraction to be ringed															
8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8
R								L							
8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8

2. *A GENERAL ANAESTHETIC

3. *DENTAL TREATMENT UNDER INTRAVENOUS ANAESTHESIA

** Delete as necessary*

Mr. has told me that I am free to ask him for an explanation of this treatment.

No assurance has been given to me that the treatment will be carried out by any particular dentist or doctor.

Date (Signed)
Patient

I confirm that I have offered to explain this treatment to the patient.

Date (Signed)
(Dental/Medical Practitioner)

APPENDIX VII

DENTAL CONSENT FORM

FORM II. CONSENT BY PARENT/GUARDIAN

..... Hospital

Patient's name

I, of

the parent/guardian of the above named, hereby consent to the submission of my to the following treatment:

1. *EXTRACTION OF TEETH

Teeth for extraction to be ringed															
E D C B A								A B C D E							
8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8
R _____								_____ L							
8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8
E D C B A								A B C D E							

2. *A GENERAL ANAESTHETIC

3. *DENTAL TREATMENT UNDER INTRAVENOUS ANAESTHESIA

* Delete as necessary

Mr. has told me that I am free to ask him for an explanation of this treatment.

No assurance has been given to me that the treatment will be carried out by any particular dentist or doctor.

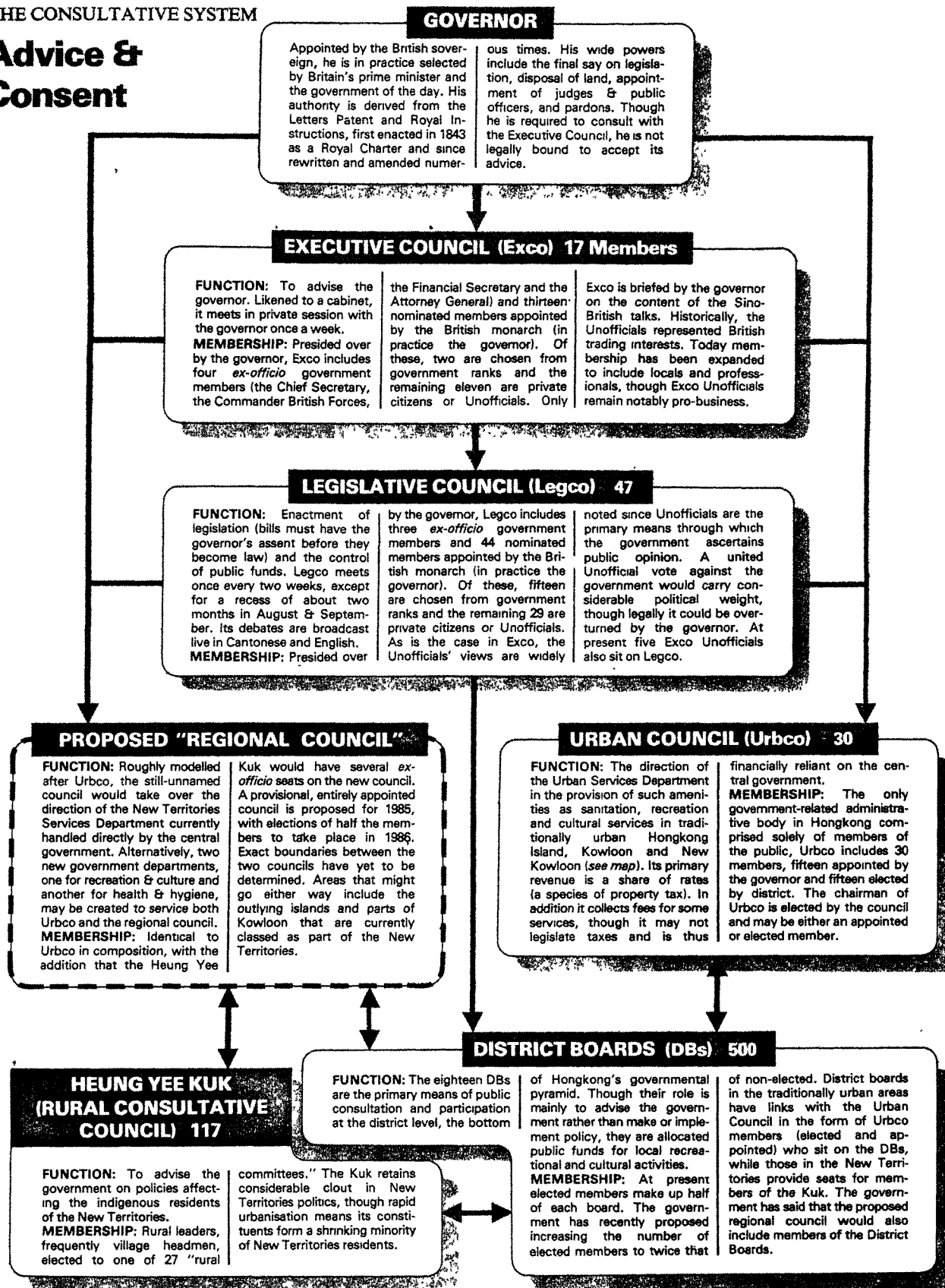
Date (Signed)
(Parent/Guardian)

I confirm that I have offered to explain this treatment to the child's parent/guardian.

Date (Signed)
(Dental/Medical Practitioner)

THE CONSULTATIVE SYSTEM

Advice & Consent



[D] 617 6872 U58

X00682938

