

Breaching the safety requirements on whitening is a criminal offense and could lead to a prison sentence.

The new legal landscape

Andrea James examines recent changes in the law relating to cosmetic tooth whitening.

As a dental professional, you will no doubt be aware of the clinical benefits and risks associated with cosmetic tooth whitening. However, it is also important to be aware of the legal



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risks associated with cosmetic tooth whitening, particularly as this area has been subject to significant change of late.

Between 1976 and 2012, the percentage of hydrogen peroxide permitted in cosmetic tooth whitening or bleaching products within the European Union (EU) was 0.1 per cent. In 2011, the Council of the EU issued Directive 2011/84/EU, which stated that the EU's Scientific Committee on Consumer Safety had decided that cosmetic tooth whitening or bleaching products containing more than 0.1 per cent and up to six per cent hydrogen peroxide were safe for use, subject to compliance with certain safety conditions. On October 31,

2012, The Cosmetic Products (Safety) (Amendment) Regulations 2012 came into force in order to bring UK law into line with the EU Council's Directive.

The legal position

The current legal position on cosmetic tooth whitening in England and Wales is therefore as follows:

- Products containing or releasing less than 0.1 per cent hydrogen peroxide remain freely available to consumers.
- Products containing or releasing more than 0.1 per cent and up to six per cent hydrogen peroxide (or other compounds or mixtures that release hydrogen peroxide, such as zinc peroxide) are now permitted for use.

Products containing or releasing ➔

The GDC's guidance states that tooth whitening products containing or releasing more than 0.1 per cent hydrogen peroxide "cannot be used on any person under 18 years of age".

more than 0.1 per cent and up to six per cent hydrogen peroxide:

- Must only be sold to dental practitioners.
- Must be used for the first time in any cycle by dental practitioners only, or under the direct supervision of a dental practitioner.
- May be provided to consumers to complete the cycle of use.
- Must not be used on any person under the age of 18.

It is a criminal offence to breach the safety requirements detailed above and the maximum penalty for a breach is six months imprisonment and/or a fine of up to £5,000. Trading Standards officers can legally enter and inspect a dental practice at any time to ascertain whether a breach has occurred.

GDC involvement

The General Dental Council (GDC) will not be pursuing criminal prosecutions for breaches of the new regulations, as that is a Trading Standards' responsibility. However:

- If the GDC receives a complaint about a dental practitioner breaching

the regulations, it will pass that information to Trading Standards for investigation.

- The GDC will consider fitness to practise proceedings (separate to any criminal proceedings) against any dental practitioner involved in breaching the regulations.
- As previously, the GDC will continue to prosecute non-dental professionals involved in carrying out tooth whitening, which is a protected activity (namely, the performance of dentistry) prohibited by the Dentists Act 1984.

Under 18s

The aspect of the new regulations which has given rise to most discussion is the ban on using relevant tooth whitening products on those aged below 18. As the new regulations relate specifically to cosmetic products, a question has arisen as to whether relevant tooth whitening products may be used on under 18s where tooth whitening is clinically indicated for non-cosmetic reasons. For example, in the case of a child presenting with a specific condition or trauma where

tooth whitening is clinically assessed to be the most appropriate course of treatment.

The applicability of the regulations to under 18s has been interpreted in different ways by different interested parties. The GDC's guidance states that tooth whitening products containing or releasing more than 0.1 per cent hydrogen peroxide "cannot be used on any person under 18 years of age". Dental Protection has advised its members wishing to provide affected tooth whitening treatment to a child to proceed cautiously, maintain meticulous records and be aware that they are leaving themselves vulnerable to Trading Standards' action.

When the new regulations were enacted the British Dental Association stated, "This change is not the end of the road of course; we must now re-focus on the issues of the use of higher strength products and whitening for patients aged under 18". The BDA and Dental Protection Ltd are working to obtain clarification of the position on treating Under 18s. Additional clarification is being sought for those occasional situations when use of a higher concentration of hydrogen peroxide, during an in-surgery, would be in the patient's best interests.