With all that was going on with the transition of PCTs to NHS England, the DH’s 2013 update of HTM 01-05 has gone relatively unnoticed. Maybe this is because it was resentfully received on account of wrapped instruments now being able to be stored for six times longer than before, which in turn questions the previous 21- or 60-day guidelines along with the practice costs associated.

This got me thinking about guidelines. I’m not sure why, but people don’t always like to follow guidance and direction. In fact a study has shown that when people are asked to plan a journey they don’t tend to follow their own directions, because the scene, as it unfolds in real-time, presents various opportunities to reduce the journey time through taking short-cuts. Maybe it’s because we think we know better or we are too pragmatic to be wasting our time on “reading” and would rather be “doing”. Either way, when it comes to professional guidelines the risks of not following them could be more serious.

A guideline is considered to be a statement by which to determine a course of action, and clinical guidelines are published by a number of bodies, including the National Institute of Health and Clinical Excellence (NICE) who assert that “good clinical guidelines aim to improve the quality of healthcare”. Are guidelines mandatory to follow? Well, the case of JAC Richards v Swansea NHS Trust [2007] EWHC 487 (QB) demonstrates how the judiciary has held professional guidelines as the legal standard in which to find negligence.

In this particular case, the time taken to deliver a baby by emergency caesarean section exceeded that recommended in the NICE and Royal College of Gynaecologists and Obstetricians guidelines on caesarean section. As such delay was found to have led to the claimant’s cerebral palsy Field J found the NHS Trust to be negligent. This reliance on guidelines represents a judicial shift away from the Bolam standard of a competent body of professional opinion because, unlike experts, guidelines are evidenced-based and objective.

Examples of guidelines within the dental sphere include NICE Guidance on the Extraction of Wisdom Teeth (2000) and FGDP Adult Antimicrobial Prescribing in Primary Dental Care for General Dental Practitioners (2012).

Use of clinical guidelines does however present concerns to the practice of dentistry including the growth of ‘cookbook dentistry’ where dentists are at risk of practicing prescriptively, even when it is justified to use clinical discretion in the patient’s best interests. Fear of litigation could perhaps give rise to defensive dentistry. As inferred from Plato, the imposition of guidelines threaten the autonomy of our profession, which prides itself on being truly imprecise insofar that patients are unique and no disease manifests in the same way. Samanta et al contend that it is important that the courts use guidelines that are credible. This credibility could be determined on the basis of pre-defined standards, ie authorship by esteemed professional bodies and the guidelines themselves being systematically developed on the basis of evidence.

Guidelines are just that – guides. However, beware of likening them to futile instructions. This is because they are valued by the judiciary to help identify what is legally expected, offering a framework which can be used by the courts in order to assess the reasonableness of decisions in the arena of clinical negligence.

• References are available upon request. The views expressed are those of the author and do not necessarily reflect the views of, and should not be attributed to, any organisation or institute that he works for.

About the author
Amit Rai is a General Dental Practitioner, Dental Educator and Advisor with a Dento-Legal background.