
Prior to this time the majority of the profession carried out tooth whitening procedures in breach of the law; in the absence of any political will to enforce it a messy situation ensued. The problem was that despite its illegality, tooth whitening was a treatment which in many cases offered a cheaper, less damaging and less risky approach to improving patients’ smiles compared with conventionally carrying out veneers or crowns.

However, the current amendment completely changes this. The vast majority of tooth whitening procedures can now comfortably be carried out with concentrations of six per cent or less Hydrogen Peroxide, rendering the need to use greater concentrations almost obsolete. Accordingly, it is now incredibly difficult for dentists to provide a clinical justification to break the law.

The regulations set out that products containing or releasing up to six per cent hydrogen peroxide can be used, subject to the following conditions:

• It is only to be sold to dental practitioners
• For each cycle of use, the first use is to be by a dental practitioner, or under their direct supervision, if an equivalent level of safety can be ensured
• After the first cycle of use, the product may be provided by the dental practitioner to the consumer to complete the cycle or use
• It is not to be used on a person under 18 years of age

The GDC position statement on tooth whitening further expands on this legislation stating that if they receive information or a complaint that a registrant is using a product for cosmetic purposes in excess of six per cent they may face fitness to practise proceedings and can expect to have the matter referred to the relevant trading standards department.

The Dental Defence Union (DDU) advises its members in the worst case scenario ‘dental professionals who use bleaching products containing or releasing over six per cent hydrogen peroxide could be imprisoned and/or fined up to £5,000 under the Consumer Protection Act 1987.’ The DDU
also states ‘the six per cent hydrogen peroxide limit applies to any compound whether used externally or internally e.g. on a root canal treated tooth’ and that ‘it remains illegal to use tooth bleaching compounds containing or releasing more than six per cent hydrogen peroxide’.

Dental Protection also states that ‘the use of products containing or releasing more than six per cent hydrogen peroxide is a breach of the Regulations’ and ‘members may consider, for example, the extensive published evidence that products containing or releasing more than six per cent hydrogen peroxide may lead to a higher incidence of side effects including sensitivity, which in turn are responsible for a significant number of complaints relating to these procedures. Furthermore, this evidence suggests that the use of these higher concentrations, whether administered in the surgery or at home, may ultimately confer no long-term benefits in aesthetic terms when compared to the alternative products that remain within the proposed new six per cent limit.’ If a member considers that it is in a patient’s best interests to use a product containing or releasing more than six per cent hydrogen peroxide and a member chooses to use this product they may be challenged on the use of the product by Trading Standards Officers.

As part of the agreement to change the directive the EU demanded that there should be reporting of any adverse effects from the use of HP products up to six per cent. At the time of writing I am not entirely sure as to how this is meant to work in practice, so if ever I find out I will do my best to update you on this position. Alternatively if there is anyone out there who knows please email me at neel@saw-student.com.

In what may seem as a somewhat contradictory position The Department of Business, Innovation & Skills (BIS), who oversee consumer safety and trading standards, have advised that the Consumer Protection Act 1987 and the cosmetic Products (Safety) (Amendment) Regulations 2012 do not cover the final ‘use’ of the product, therefore these specific regulations do not prevent the direct application of any whitening product of any concentration to the teeth.

This suggests that it is not illegal under these regulations for anyone to apply whitening products of any strength directly to the teeth of patients, however it is difficult to see how this can work if dentists are restricted from purchasing HP products over six per cent and are not supported by their dental defence unions.

Essentially, the need to use stronger concentration whitening products has always been debatable given that similar results can easily be achieved using ‘weak’ or ‘strong’ products. Those advocates of ‘power whitening’ may ultimately feel disheartened by the ruling, however really have no choice but to abide by it. Over the past year I personally noticed seemingly excellent deals in a number of power whitening lamps – I am now extremely glad that I wasn’t tempted to buy one.

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About the author

Neel Kothari qualified as a dentist from Bristol University Dental School in 2005, and currently works in Sawston, Cambridge as a principal dentist at High Street Dental Practice. He has completed a year-long postgraduate certificate in implantology and is currently undertaking the Diploma in Implantology at UCL Eastman Dental Institute.

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