Edition 142 March 2015

CONSULTING ROOM
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FEATURE ARTICLE

Training, Qualifications and the 'Aesthetic' Pirate's Code

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If we were to take everything said in respect of upcoming Aesthetic regulation at face value, we might think that we were working in a properly regulated medical sector, where strict requirements are in place to govern who can and who cannot carry out the range of procedures and practices that come under the umbrella of 'Cosmetic' or 'Aesthetic' medicine - and how such procedures are carried out. Of course, the reality is very different as fragmented historic regulation continues to over-regulate registered medical professionals, while leaving the most risky class of operators - unqualified and untrained 'civilians', free to work under no sector regulation whatsoever.

These are the views of **Jo Martin, Founder and Clinical Director** of the **Mapperley Park Clinic and Laser Training Centre** in Nottingham who is our *Guest Author* for this month's feature article.

Successive governments have taken an anti-regulation stance, preferring a light-touch approach to let 'the market' find its own level while exploring 'alternatives' to legislation and 'better mandates' for existing regulators. What we get by default is straight out of *Pirates of the Caribbean*, for as Captain Barbossa said to Jack Sparrow of the Pirate's Code, '*they are more what you'd call 'guidelines' than actual rules*". And there you have it – pirates don't have to obey even their own rules - and no-one can make them do so.

Public and professional opinion has consistently supported statutory, universal regulation - a scheme that applies to ALL and not just to those already well regulated by professional organisations. And government does, to its credit, consistently promise to deliver the same at every turn of the regulatory wheel, all the way back to Sir Liam Donaldson's Expert Report on Cosmetic Interventions in 2005, where the Chief Medical Officer's recommendations were initially accepted under the Blair regime - but repudiated under Brown's Treasury led agenda.

This approach continued through promises – and indeed the writing of regulation following 'Botox' and Fillers scares around 2007 - and the subsequent refusal to regulate injectors and injection methods. We then saw the shameful 2010 deregulation of lasers, forced against the evidence and following early tactical abandonment - and in the end relying on extrapolations from evidence of good safety in breast implants that ironically prefigured the PIP breast implant scandal, which hit the headlines in 2012. With each health scare arising, government finds itself forced to act - or at least to be seen to act.

Most recently, following the PIP revelations, and under significant pressure from up to 10,000 injured women and the Mail on Sunday, David Cameron's then Secretary of State for Health, Andrew Lansley announced a Review into the regulation of cosmetic interventions in England to be led by the NHS Medical Director Prof Sir Bruce Keogh. The Keogh review was published in April 2013 and included, once again, serious concerns over both the regulation of lasers and cosmetic injectables, as well as cosmetic surgery. Sir Bruce concluded that a level playing-field of universal regulation was required to control '*grubby practices in the sector*'.

After an eight month delay in the publication of a response, (during which it was leaked that government had no intention of actually legislating), Parliamentary Under-Secretary of State for Health Dr. Dan Poulter MP announced that the government welcomed the Keogh report and agreed with the *'overwhelming majority'* of its findings; yet it would not be introducing statutory means. He said that the government was determined to take '*robust action against cosmetic cowboys*' working in an industry with '*virtually no regulation*' but that, rather than introducing the regulation recommended by Sir Bruce, Dr. Poulter stated that the '*range of measures already undertaken with healthcare regulators and patient safety groups will ensure appropriate and proportionate improvements*'. And so, Health Education for England (HEE), an 'arms-length' government agency became retrospectively mandated to determine how a diverse sector, using medical techniques under a variety of models might be regulated. Unfortunately, considerations of statute were ruled 'out-of-scope' at the inaugural meeting, with only voluntary mechanisms or application of existing legislation to be considered. The resulting HEE proposals, published in late 2014 as a Phase I report, is perhaps the most detailed attempt to date to define training and qualification requirements across the sector – and perhaps it is too detailed at this stage, given that there is no indication of how

such a scheme might actually require its 'requirements' in the absence of any mechanism to require. There is a term, 'paralysis through analysis' that describes this kind of project, for all other activity or any consideration of anything else ceases while the analysis works through and it is already 2018 before it is proposed that this new voluntary Code might arrive.

However, there should be no denigration by anyone of any piece of the work carried out in any forum – there is plenty of really good work being carried out with diligence by dedicated and committed professionals determined to do positive things to improve standards and indeed, we have in the past done some of this work ourselves, having been involved in various regulatory initiatives since 2003 and all helping to maintain strong islands of good practice within wilder seas of commercial opportunism and where of course, the Pirate's Code holds sway.

The Keogh report also recommended that the Royal College of Surgeons (RCS) set up a Cosmetic Surgery Inter-specialty Committee (CSIC) to include all surgical disciplines appropriate to cosmetic practice to be tasked with setting standards for training and practice in cosmetic surgery. Co-operation among the surgical colleges does have a long history, starting under the late Jon Lowry, so that while government delayed on its response to Keogh, RCS developed their own plans, now also at the stage of public consultation.

The RCS proposals are well designed but also voluntary as,*' surgeons working in the private sector will have to prove they meet new standards of training to be certified and included on a register,'* so, once again, the scheme relies on patients choosing from yet another voluntary register of credentialed individuals, here held on record by the General Medical Council (GMC) and entirely commendable in itself but not representing the requirement that all surgeons will actually meet those standards. And, of course, the scheme only covers surgeons and surgery, not the medical (and the non-medical) practitioners who deliver the overwhelming majority of aesthetic interventions - and even surgery as hair transplants and liposuction techniques, for example, and these legitimately offered by non-FRCS doctors who could not appear on this register even if they wanted to. Consequently, the register will, by definition be incomplete as excluding both those that could register (but don't) and those that would (but can't).

Meanwhile, CEN – the European standard-setting agency - have been working on putting EN Standards into place to cover both surgery and non-surgical interventions. The European CEN Standard process is a fully thought through regulatory mechanism with a long and distinguished history, originating as the all-British, British Standards Institute (BSI). For example, the grandparent document in lasers and light, BS60825:1984.pre-empts all BSEN management and it is a great compliment to traditional UK governance that CEN acknowledge UK primacy by referring to their own as BSEN (British Standards, European Normalised). CEN have already completed the 'aesthetic surgery services' Standard through EN16372 and now we have in consultation 'aesthetic medicine services - non-surgical medical procedures', draft Standard, EN16844.

Both Standards are mandatory and in theory, universal throughout the EU – except that they won't apply directly in the UK, government having achieved an exemption (technically, an A-standard deviation) from its own, BS inspired Standards! Except again that these Standards will apply, under European law - if and when raised in a UK court. I think that we can look forward to these Standards entering our world through the back door if not the front, whether government likes it or not – unless as held out, new relationships are negotiated, or the UK leaves the EU…

We also mustn't forget that there are a range of voluntary industry registers and voluntary associations that we are invited to join as, for example *Treatments You Can Trust*, *Save Face*, numerous professional members' organisations and any number of Institutes and Academies – and I am sure there will be more arising within our regulatory vacuum. Voluntary schemes were originally intended to fill the role of statutory regulatory bodies but, the unfortunate fact is that the profusion of options and claims confuses rather than clarifies the regulatory position so that the public finds it difficult to differentiate between the captains of capital ships and the black-water pirates.

So, where is regulation to come from if not from government and regulators or are we really going to leave it to patients to determine the difference between a bona fida operation and a pirate one? One route is to look where risk is valued and monetised - through insurance/indemnity. Anyone insuring their activities today – and, of course not everyone does insure their activities but, anyone holding insurance will know that rates and excesses rise inexorably each year and cover requirements also tighten, now to include training evidence and, most recently qualification evidence from the main medical insurers.

A perfect market solution then, laying off the cost of regulation from government to providers through the medium of insurance/indemnity? Of course, there are always insurance providers prepared to take lower premiums and try to evade the consequences when a claim comes to be made, either by loading excesses or denying the claim through policy infringements that insurers always find it easy enough to discover. And, while professional indemnity/insurance cover is a legal requirement for health-care professionals, there is no statutory obligation for

non HCPs to carry indemnity or insurance, only third party liability insurance and which covers accidents and contingencies, rather than the outcomes of deliberate interventions. So, not everyone is guaranteed to be insured and insurance isn't likely to cover the vast liabilities arising in something like a PIP-grade scandal so that, once again, statutory compliance to protect patients through insurance/indemnity only applies to the already well-regulated - but not to those under no regulation. Not the perfect market solution after all, for pirate ships are unlikely to be insured through Lloyds of London underwriting as our own ship is.

In brief then, and contrary to what many training providers would like you to believe, there is not and with current political mind-set, there is not likely to be any universal statutory requirement for anyone to formally train or to hold qualifications in any particular discipline, be it lasers and light, injectables, non-surgical interventions and even surgical techniques – it's not even proposed as a legal requirement to be insured to carry out those procedures – unless they are already obliged as medical professionals to hold insurance/indemnity. Government have not put in place or even proposed any mechanism that could cause voluntary 'requirements' to actually be required. Perhaps that will change when HEE report back to the Department of Health, following public consultation - if indeed HEE or even this government have any role in medical regulation post-election.

So, why train and qualify if government says you don't have to and, with the pirates swarming around you, you don't believe that you can afford the cost? At the most mundane level, you should find it cheaper and easier to secure your insurance with well documented training in place. Qualifications can also carry discounts to premiums that might be worth more than the cost of the initial training and this is a situation only likely to tighten up as the risk profile of this industry continues to develop.

There are also strong business reasons for training and qualifying in specialty or procedure, for while price is increasingly a key driver in a competitive marketplace, activity at the higher end of the market is not price-driven and based more around reputation, quality and the experience/qualification of treatment providers. Why would anyone choose to be at the cheap end of what is supposed to be a quality sector unless happy to compete with the pirates? You can be pretty sure that everyone who holds qualifications makes it a large part of their marketing to differentiate, for a qualification places you into an 'expert' category and separates you from those that work according to the Pirate's Code, for it is a truism that pirates don't hold qualifications, or they wouldn't be pirates!

Finally, your personal development is important and learning is the best way to take your knowledge and skills to the next level – whatever level that might be. The only people who can't learn something are those closed to experience – a characteristic particular to legislators. And none of us are perfect, all more-or-less complacent, while tempted to take the line of least resistance when perhaps, we should be challenging ourselves a bit more.

Even if we are simply refreshing and updating our knowledge and skills, being held to account in a learning environment can be a real catalyst for fresh thinking, opening our eyes to what, through familiarity has become invisible. As one qualification candidate with 20 years of laser experience said to me on a recent training course, '*you just don't know what it is that you don't know*'. That's a bit too self-critical, I would put it more that, '*you forget how much it is that you have forgotten*'. Until you find out, that is.

My experience is that we all really enjoy stretching ourselves once we decide to do so and, if it is a question of doing so in order to learn more, to update our knowledge and skills in order to deliver a better service, (just what Keogh wanted the sector to do), and while reducing professional risk and insurance costs while placing us well away from pirate practices, why would we not want to do so?

Training is an opportunity, rather than a burden, and those grasping that opportunity recognise their good fortune in being able to take advantage over those that they would like to differentiate from. I love learning things both on my own and from others and I have never run a BTEC yet without learning new things. And I love sharing my own knowledge for, with only a limited time left before I retire, I want to share what I know with as many people as I possibly can before taking it all with me to those Caribbean shores... in search of Captain Jack!

Jo Martin
Jo Martin is an ex-NHS Physiotherapist but working in private healthcare since 1987. Jo founded the Clinic in 1993 (under the Laserase brand for laser tattoo removal) and was joined by her partner, Paul Stapleton to create The Mapperley Park Clinic in 1995. Mapperley Park Training was founded in 2002 with the purchase of the Loughborough College Laser Centre portfolio, including the BTEC awards which have been delivered by Mapperley Park since 2003. After 22 years, Jo still runs daily clinic lists, concentrating on the more invasive, resurfacing and RF procedures, while managing staff training and taking the lead clinical role in BTEC training and Master-classes. **Web:** www.mapperleypark.co.uk/training **Telephone: 0115 969 0111**