

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2007-404-1818

BETWEEN SURESH KANJI PATEL
Appellant
AND THE COMPLAINTS ASSESSMENT
COMMITTEE
Respondent

Hearing: 9 and 10 August 2007

Appearances: Mr A A H Walkens QC and Ms A Credin for appellant
Mrs J C Hughson for respondent

Judgment: 10 August 2007

Reasons: 13 August 2007

**REASONS FOR JUDGMENT OF LANG J
[on penalty]**

This judgment was delivered by me on 13 August 2007 at 4 pm, pursuant to Rule 540(4) of the High Court Rules.

Registrar/Deputy Registrar

Date.....

Solicitors:
Fisher Lamberg, Auckland
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Counsel:
Mr A A H Waalkens QC, Auckland
Mrs J C Hughson, Wellington

[1] On 10 August 2007 I allowed an appeal by Dr Patel against the penalty imposed upon him by the Dentists Disciplinary Tribunal after he pleaded guilty to three charges on 14 February 2007. The charges were laid by the Complaints Assessment Committee (“CAC”) under s 54(1)(b) and (c) of the Dental Act 1988 (“the Act”).

[2] In pleading guilty to the charges Dr Patel expressly acknowledged to the Tribunal that his conduct amounted to professional misconduct in terms of s 54(1)© of the Act. There was no challenge in this Court to the Tribunal’s conclusion to the same effect.

[3] Counsel agreed that, in the event that the appeal was to be allowed, this Court should consider the issue of penalty de novo. For that reason I heard detailed submissions from both counsel on 9 August 2007 regarding the issue of penalty.

[4] When the hearing resumed on 10 August 2007, I imposed the following penalties upon Dr Patel:

- a) Dr Patel is censured.
- b) Dr Patel is suspended from practising as a dentist for a period of seven months commencing on 1 November 2007.
- c) Between 10 August 2007 and 31 October 2007 and from 1 June 2008 Dr Patel is to practise in accordance with the conditions imposed by the Dental Council and in effect as at 8 August 2007, together with any additional or alternative conditions that the Council may impose hereafter.

[5] I now give my reasons for imposing those penalties.

The charges

[6] The charges against Dr Patel follow complaints made by three patients to whom he had administered dental treatment between 1997 and 2002. All three

complainants came forward after allegations made by other former patients of Dr Patel were the subject of an episode of the television programme “20/20” that was screened on 1 September 2002.

[7] The charges contain numerous allegations in relation to each complainant, all of which are particularised in considerable detail. Rather than recite the charges in the body of this judgment, I propose to attach them as an appendix to it. It is necessary, however, to set out in some detail the factual background to the charges laid in respect of each complainant. This is taken from an agreed summary of facts that was placed before the Tribunal.

Factual background

The complaint by Mrs S

[8] Dr Patel treated Mrs S between August 1997 and February 1998 whilst he was in sole practice in Whangarei. The charge that he faced in relation to his treatment of Mrs S arises as a result of crown work that Dr Patel carried out for Mrs S in October 1997.

[9] On 10 October 1997 Dr Patel fitted new crowns to two of Mrs S’s teeth without having first undertaken the necessary root canal treatment. He also failed to keep adequate records regarding the material that he used to fill the two teeth. The crowns that Dr Patel fitted were poor in shade, shape and fit. Between mid-October 1997 and February 1998 Dr Patel failed to provide Mrs S with post-operative relief from the severe pain that she continued to suffer in her teeth. He also masked the situation in respect of one of the teeth by the inappropriate use of Ledermix. Despite numerous appointments between November 1997 and February 1998 Dr Patel also failed to adequately control infection in Mrs S’s teeth, and thereby subjected her to undue and unnecessary pain. This required Mrs S to seek emergency antibiotic and anti-inflammatory treatment from other health professionals.

[10] Dentists who subsequently treated Mrs S found serious shortcomings in Dr Patel's clinical work. In particular, the margins of the crowns had significant defects. Not only were they unsightly, but they also had deficiencies that caused gingival irritation.

[11] In addition, root canal treatment that Dr Patel carried out on Mrs S was found to have been poorly carried out. That work was described by another dentist as being "clinically and radiographically unacceptable".

[12] Moreover, in carrying out the crown replacement Dr Patel was acting in breach of a signed undertaking that he had given to the Dental Council only six weeks prior to commencing the treatment in question. In that undertaking, signed by Dr Patel on 30 June 1997, Dr Patel had expressly agreed not to practise in the area of fixed and removable prosthodontics until such time as he had demonstrated that he had undertaken acceptable continuing education in those areas.

Complaint by Mrs C

[13] Dr Patel undertook crown and bridge work for Mrs C in July 1999 and again in June 2000.

[14] Before commencing the treatment Dr Patel failed to adequately inform Mrs C of the complexity of the procedures that he was about to undertake. Nor did he mention other available treatment options and their foreseeable risks and benefits. He therefore did not obtain informed consent from her for the treatment that he undertook.

[15] In order to obtain Mrs C's agreement to allow Dr Patel to undertake the work for her, he made a number of representations to her regarding the training and experience that he had acquired in both New Zealand and Australia. These were demonstrably false or exaggerated.

[16] Dr Patel failed to provide adequate treatment for Mrs C in the course of initially fitting the crowns and bridges in July and August 1999, and also later when

surgically removing the root of a tooth and fitting new crowns and bridges in June and July 2000. The deficiencies in Dr Patel's treatment of Mrs C were widespread. They included a failure to perform a full evaluation of his patient's condition and a failure to take satisfactory x-rays prior to commencing the bridgework. In addition, he failed to undertake root canal treatment on one tooth before fitting a crown.

[17] The crowns and bridges that Dr Patel did fit were unsatisfactory in numerous respects, and they caused Mrs C to develop long-term pain and a lisp. In June and July 2000 Mrs C returned to Dr Patel for treatment because the crown he had fitted in 1999 had snapped off. Dr Patel misrepresented the likely cause of the tooth fracturing. He told her it was likely to have been caused by her grinding her teeth, whereas the likely cause was the faulty occlusion of the tooth he had fitted. In undertaking the work to fix this tooth Dr Patel fractured another tooth and then endeavoured to repair it in a way that left the patient at high risk of infection. He neither advised Mrs C of the treatment required to repair it, nor obtained her consent for the treatment.

[18] There were numerous other issues in relation to the bridgework carried out for Mrs C, all of which showed that the clinical work that he carried out was of extremely poor quality. The work was so poor in fact that another dentist subsequently described his treatment as being "third world" in nature.

[19] Dr Patel also failed to keep satisfactory records relating to his treatment of Mrs C. He did not advise Mrs C of the oral hygiene requirements for the new crown and bridgework and made no follow-up appointments to enable him to monitor her.

[20] Dr Patel's treatment of Mrs C caused serious detrimental consequences for her. She required extension periodontal and restorative work. She also suffered considerable financial loss over and above the fees that she was initially charged (but later refunded) by Dr Patel.

Complaint by Ms E

[21] Ms E sought advice from Dr Patel on 7 August 2002, when she presented with an abscessed front tooth.

[22] Dr Patel failed to obtain informed consent from Ms E before embarking on a course of treatment involving dressing and root canal treatment for the abscessed tooth. When Ms E returned on 12 August 2002 with symptoms of local and systemic infection, Dr Patel failed to take adequate steps to investigate and control the infection and also failed to provide the appropriate analgesic treatment. He also failed to adequately monitor the dressing that he had applied on 7 August 2002, because he did not notice at subsequent appointments that it had broken.

[23] On 21 August 2002 this Court required Mr Patel to provide an undertaking that he would not undertake any further root canal work pending the determination of an appeal against an earlier decision of the Tribunal. When Dr Patel saw Ms E eight days later, he failed to advise her that he could not complete the treatment on her tooth. He also failed to refer her to another dentist for completion of that work. Instead, he made a further appointment for 6 September 2002. In making that appointment Dr Patel obviously anticipated that he would continue with the treatment that he had already begun.

[24] Ms E subsequently cancelled the appointment on 6 September after she saw a 20/20 television programme that was screened on 1 September 2002 featuring the unsatisfactory treatment that Dr Patel had provided for other patients.

Purpose of disciplinary proceedings

[25] It is well established that disciplinary proceedings in a professional context serve a variety of purposes, one of which is the protection of the public. There are numerous pronouncements of this Court and the Court of Appeal to that effect. The following passage from *Dentice v The Valuers Registration Board* [1992] 1 NZLR 720 at 724-725 provides a valuable summary of these purposes:

Although in respect of different professions, the nature of the unprofessional or incompetent conduct will attract disciplinary charges is various described, there is a common thread of scope and purpose. Such provisions exist to enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the profession or calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them ... in New Zealand, such provisions exist in respect of medical practitioners, barristers and solicitors, dentists, architects, pharmacists, real estate agents and a number of other professions and callings, as well as valuers; ...

[26] The punitive aspect of disciplinary proceedings under the Act is reflected in the fact that the Tribunal has the power under s 55(d) and (e) to fine and censure dental practitioners who commit offences in terms of s 54 of the Act. It may also (under s 55(b)) suspend a practitioner from practising dentistry for a period of up to 12 months. Penalties in the nature of a censure and a fine are obviously purely punitive in nature. Although the suspension of a practitioner operates to protect the public during the term of the suspension, it is clear that it, too, involves a significant punitive aspect.

[27] Such penalties may be appropriate because disciplinary proceedings inevitably involve issues of deterrence. They are designed in part to deter both the offender and others in the profession from offending in a like manner in the future.

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed upon Dr Patel.

[29] The Tribunal considered that the appropriate penalty to be imposed upon Dr Patel was removal from the Register. In the hearing before me counsel for the CAC maintained that that was the appropriate penalty to be imposed in the present case. She also acknowledged, however, that an order removing a practitioner from the Register is an order of last resort. That is an important concession, because it recognises that alternative options should be explored before such an order is made.

That is particularly the case in relation to cases involving allegations of clinical incompetence rather than outright dishonesty or moral turpitude.

[30] This point was made by Randerson J when he considered another appeal involving Dr Patel in 2002. In *Patel v The Dentists Disciplinary Tribunal* HC AK AP 77/02 8 October 2002 he said:

[30] The consequences of removal from a professional register are ordinarily severe and the task of the Tribunal is to balance the nature and gravity of the offences and their bearing on the dentist's fitness to practice against the need for removal and its consequences to the individual: *Dad v General Dental Council* [2002] 1 WLR 1538. As the Privy Council further observed at 1543:

Such consequences can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual.

[31] I respectfully adopt the observations of the Privy Council and would add that it is incumbent on the Tribunal to consider carefully the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case. As well, while absolute consistency is something of a pipe dream, and cases are necessarily fact dependent, some regard must be had to maintaining reasonable consistency with other cases. That is necessary to maintain the credibility of the Tribunal as well as the confidence of the profession and the public at large.

[31] I therefore propose to proceed on the basis that Dr Patel should not be removed from the Register unless no other penalty can adequately protect the public and also achieve the other objects of the disciplinary process.

[32] I turn now to consider the aggravating factors in relation to the charges.

Aggravating factors

Seriousness of charges

[33] There is no doubt that the present charges are extremely serious in nature. The facts upon which they are based demonstrate serious clinical shortcomings on the part of Dr Patel in relation to both complex and routine dental procedures. They also demonstrate a distinct lack of judgment on his part, both as to the needs and comfort of his patients and to his professional obligations as a dentist.

Mrs S

[34] It is obvious that, in undertaking crown work for Mrs S, Dr Patel was operating in a field that was well beyond his field of competence. He was also unable to recognise, and therefore treat, symptoms likely to be associated with post-operative infection. I accept the CAC submission that, in his treatment of Mrs S, Dr Patel displayed multiple serious clinical and professional shortcomings and that his clinical skills and judgment fell well short of the standards expected of a registered general dentist.

[35] The fact that Dr Patel was prepared to carry out the crown replacements on Mrs S so soon after signing the undertaking to the Dental Council is a further aggravating factor that renders this particular charge more serious. He had signed the undertaking just six weeks prior to being consulted by Mrs S. Notwithstanding that fact, he was prepared to embark on a course of treatment for Mrs S involving work that was clearly in breach of his undertaking. I do not accept Dr Patel's explanation that he believed that the repair or replacement of an existing crown would not breach the undertaking. It is obvious from the terms of the undertaking that it applied to all crown work. Dr Patel was not given an exemption in respect of the repair or replacement of existing crown work.

Mrs C

[36] Similarly, I accept that Dr Patel's clinical care of Mrs C fell well below accepted professional standards. Her complaint demonstrates that Dr Patel undertook work that was well beyond his clinical skills and ability. He also showed a serious lack of judgment when making clinical decisions.

[37] The representations that Dr Patel made to Mrs C regarding his previous qualifications and experience are also a matter of real concern. Patients are entitled to rely on their professional advisors to act in the utmost good faith. Dr Patel clearly breached that obligation when he misrepresented the nature and extent of his previous qualifications and experience.

[38] It is also evident that Dr Patel failed to ensure that Mrs C was adequately informed regarding a number of important matters. As a result, she gave her consent to the crown and bridgework without a true appreciation of the risk and benefits that that work entailed.

[39] Finally, it was a serious matter for Dr Patel to have told Mrs C that the crowns fitted adequately when even a cursory examination by an experienced dentist with expertise in the field would demonstrate that that was not the case. I therefore accept the CAC's submission that in his dealings with Mrs C Dr Patel was less than frank about the outcome of the treatment that he had undertaken.

[40] Finally, the records that Dr Patel kept in respect of Mrs C were clearly inadequate. His records did not show the clinical procedures undertaken and they failed to record several other significant events (and in particular the fracture of a tooth in 2000) that occurred during the course of treatment.

Ms E

[41] I consider that the most serious aspect of Dr Patel's dealings with Ms E was his failure to recognise the symptoms of infection in the tooth that he had treated for an abscess. They should have been evident to any dentist of reasonable competence.

The failure to recognise and treat the symptoms of infection would undoubtedly have caused Ms E to suffer significant and ongoing pain.

[42] The fact that Dr Patel was also prepared to continue making appointments for Ms E in relation to root canal treatment after 21 August 2002 is also a matter of concern. That was done at a time when he knew that he had undertaken to this Court that he would not carry out any dental work involving root canal work.

Breadth of charges

[43] The widespread deficiencies that the charges encompass are clearly an aggravating factor. They include failure to keep proper records, failure to obtain informed consent, failure to recognise and treat post-operative symptoms of infection and failure in each case to meet the clinical standards required of dentists practising in the field in question. They also extend to the misrepresentations that Dr Patel made to Mrs C, his willingness to undertake crown and bridge work for Mrs S when he had earlier undertaken to the Council not to undertake such work, and the willingness to make further appointments for Mrs S notwithstanding the orders made by this Court a few days beforehand. I accept that such widespread shortcomings are an obvious matter of concern in the present case.

Timing

[44] A further aggravating factor in the present case is the fact that the conduct that has given rise to the charges spans a reasonably lengthy period. It occurred in 1997 and 1998 (Mrs S), 1999 and 2000 (Mrs C) and 2002 (Ms E). The fact that such deficiencies occurred over such a lengthy period suggests that the standard of treatment administered by Dr Patel to his patients remained at a substandard level throughout this period.

Previous disciplinary proceedings

[45] The fact that an offender has been guilty of earlier transgressions is obviously a matter that may aggravate the seriousness of subsequent offending. It serves to indicate that the offender has failed to heed the lessons of the past.

[46] There is no dispute in the present case that Dr Patel has been the subject of earlier disciplinary proceedings. I accept that this factor operates to aggravate the present offending.

1991 - 1993

[47] Dr Patel was first registered as a dentist in 1989. Over the next four years he came before the Tribunal on three occasions in relation to disciplinary matters. These arose from incidents that occurred in 1991 whilst he was in sole practice.

[48] In August 1991 Dr Patel was censured and ordered to pay costs for failing to account to another dentist for fees collected.

[49] In December 1991 Dr Patel was found guilty of another disciplinary charge that related to an incident that occurred in October 1990. On that occasion Dr Patel had failed to take any steps to provide antibiotic cover notwithstanding the fact that he had been told that his patient, a child, suffered from a heart condition. The Tribunal found that the offence was a serious one, and potentially life-threatening. The Tribunal imposed a fine of \$1000 and also ordered him to practise under supervision.

[50] In January 1993 Dr Patel was censured and fined on a charge that related to treatment administered to a patient in 1991. Although the treatment had resulted in the perforation of a root canal, the charge did not relate to the perforation itself. Rather, Dr Patel was disciplined for his failure to notice that the perforation had occurred. The Tribunal accepted that this particular incident was at the lower end of the scale. He was censured and fined \$2500 in respect of this offence.

1994

[51] A much more serious issue arose in 1994, when Dr Patel was found guilty of professional misconduct following his conviction in the District Court on 34 charges arising from fraudulent ACC claims. He had been sentenced in the District Court to six months periodic detention and ordered to pay reparation of approximately \$10,700. The Tribunal found Dr Patel guilty of a flagrant abuse of trust and ordered his name to be removed from the Dental Register for a period of three years.

1997 - 2002

[52] In 1997 Dr Patel applied to have his name restored to the Register. As part of this process he signed two undertakings to the Dental Council in April and June 1997. These included an undertaking that he would not practise in the areas of fixed and removable prosthodontics until he had demonstrated that he had undertaken acceptable continuing education in those two areas. He agreed to limit his practice of dentistry to a position approved by the Dental Council, and to accept a senior practitioner appointed by the Council as a mentor. The undertakings were to be reviewed by the Council after 12 months.

[53] Dr Patel did not appear again before the Disciplinary Tribunal until 29 July 2002, when he faced charges (“the *E-Y* charges”) in relation to treatment that he had administered to a husband and wife in 1998 and 1999 whilst he was in sole practice in Whangarei. The most serious aspect of these charges related to inadequate crown and bridgework that Dr Patel had carried out between February and October 1998. On that occasion the Disciplinary Tribunal ordered Dr Patel’s name to be removed from the Register for a period of two years.

[54] On appeal, Randerson J quashed that penalty on the basis that the penalty that the Council had imposed was grossly disproportionate to the gravity of the offending: *Patel v Dentists Disciplinary Tribunal* HC AK AP77/02 8 October 2002 at [38]. Although (at [32]) the Judge accepted the Tribunal’s finding that the work that Dr Patel had undertaken was “grossly incompetent and completely unacceptable”, he considered (at [33]) that counter-balancing factors also had to be

taken into account. These included the fact that the charges related solely to two patients and should be treated as isolated in that sense. In addition, there was no evidence before the Tribunal of incompetence in general dental work and, in fact, the evidence was to the opposite effect. In addition, the Judge noted that it was possible to impose a condition restricting Dr Patel from carrying out the more complex forms of dental work in respect of which his work had been found to be below standard. Randerson J suspended Dr Patel from practising for four months and imposed strict conditions upon his return to practice at the end of the suspension.

[55] On 25 March 2003 Dr Patel appeared again before the Tribunal, this time following complaints by two patients (“the *B and M* charges”) in respect of root canal work that he had carried out. That work had been carried out in respect of the first complainant between August 1991 and November 1999. The treatment in respect of the second complainant was completed between October 2000 and the end of January 2001. The Tribunal concluded that the treatment administered by Dr Patel in respect of both patients was well below the standard expected of a general dental practitioner. Notwithstanding the aggravating features of the case, including the seriousness of the findings and Dr Patel’s previous record, the Tribunal considered that it could adequately protect the public by imposing further conditions on Dr Patel’s ability to practise. For that reason the Tribunal fined Dr Patel and imposed conditions relating to the basis upon which he could undertake root canal treatment on patients in the future. The Tribunal also directed that Dr Patel was to practice under supervision for three years from the date of its decision according to a prescribed protocol.

[56] Real care needs to be taken when assessing the weight to be ascribed to Dr Patel’s previous convictions. This is because, with the exception of one aspect of the charge relating to Ms E, all of the conduct leading to the present charges occurred prior to the determination of the charges that the Tribunal and Randerson J dealt with in 2002 and 2003. As a result, it cannot be said that Dr Patel committed the present offences notwithstanding the sanctions that were imposed upon him in 2002 and 2003.

[57] Without detracting in any way from the seriousness of Dr Patel attempting to treat Ms E in the face of an undertaking given to this Court, I consider that the most serious aspects of his present offending relate to his treatment of Mrs S and Mrs C. Those charges relate to treatment that was grossly incompetent and caused significant and long-term suffering for his patients. Given that those offences were committed between 1997 and 2000, Dr Patel's convictions in 2002 and 2003 cannot be taken into account in fixing the penalty to be imposed in respect of the charges that he now faces in relation to Mrs S and Mrs C.

[58] Moreover, although some of the offending in 1990 and 1991 involved clinical issues, I consider (as did Randerson J at [34]) that that offending was at the lower end of the scale. And, although the ACC fraud in 1994 was undoubtedly an extremely serious matter, it did not relate directly to Dr Patel's clinical competence. For that reason I do not consider that Dr Patel's previous convictions carry the weight that they would at first sight appear to warrant.

The effect of the offending on the complainants

[59] There can be no doubt that Dr Patel's offending has had devastating effects on the complainants, and in particular Mrs S and Mrs C. They were left with significant long-term adverse effects as a result of their treatment at his hands. Their situations were made worse by his failure to detect the seriousness of their problems and to be open with them about their predicament. Equally, they were disadvantaged by his failure to refer them to a competent practitioner in a timely manner. Even taking into account any refund of fees that Dr Patel may have made, the complainants have also been put to considerable financial expense as a result of his incompetence. All of these matters can properly be viewed as aggravating the offending in the present case.

Mitigating factors

[60] There are, however, several mitigating factors that must be taken into account.

Guilty pleas

[61] As in any criminal or quasi-criminal proceeding, Dr Patel must be given credit for the fact that he has pleaded guilty to the charges that he faces. A plea of guilty must be recognised for two reasons. First, it saves the time and expense of a defended hearing and relieves the complainants from the further stress of having to relive their unpleasant experiences. Secondly, it can be viewed as an acknowledgement that the offender accepts responsibility for the conduct that forms the subject of the charges.

Refund of fees

[62] The fact that Dr Patel has been prepared to refund virtually all of the fees that he rendered to the complainants must also be taken into account. On the other hand, it must still be acknowledged that the complainants are likely to have suffered further financial loss in rectifying the results of Dr Patel's treatment.

Support from other practitioners

[63] Letters of support from several dental practitioners have been presented for consideration in the context of penalty. These include specialists to whom Dr Patel has been referring patients over the last four years. These practitioners are of the view that the standard of Dr Patel's clinical work is now adequate, and that he has been referring patients to specialists in an appropriate manner.

Continuing education

[64] Dr Patel has provided numerous references to attest to the fact that he has attended continuing educational courses over a lengthy period. He attended some of these voluntarily and others as a particular requirement of the Dental Council. Like the Tribunal, I accept that attendance at such courses constitutes a mitigating factor, albeit to a limited extent because the value of the courses (and their lasting effect on Dr Patel) is not capable of measurement.

Other relevant factors

[65] In the present case I do not consider that it is appropriate, as it might be in other cases, to fix the penalty to be imposed upon Dr Patel merely by taking into account the aggravating and mitigating factors relevant to the offending and the offender. There are two other aspects to this case that, in my view, require separate consideration. These are the context in which the offending occurred and the events that have occurred since that time.

The context within which the offending occurred

[66] I have already referred to the fact that the most serious aspects of the present offending occurred prior to the point at which the *E-W* and *B and M* charges came before the Tribunal and Randerson J in 2002 and 2003. This highlights the importance in the present case of viewing the offending in its proper context. This can only be done by placing it within the context of the other significant events that have occurred in Dr Patel's professional life since 1997.

[67] The offending in respect of Mrs S occurred between August 1997 and February 1998. It therefore represents the first occasion upon which Dr Patel offended after he resumed practice in 1997. I have already referred to the seriousness of this offending, which related to defective crown work and acting in breach of the undertaking that Dr Patel had given to the Dental Council. By any standard this must be viewed as serious in its own right. In terms of clinical shortcomings alone, it is probably as least as serious as the offending in the *E-Y* charges that the Tribunal and Randerson J dealt with in 2002.

[68] The next offending was that contained in the *E-Y* charges, which related principally to defective bridge and crown work that Dr Patel carried out between February and October 1998. This, too, gives rise to serious cause for concern regarding Dr Patel's clinical competence.

[69] The treatment of Ms M, which gave rise to some of the *B and M* charges, then took place between August and November 1999. This involved sub-standard

root canal work that Dr Patel carried out on the complainant. During the same period, beginning in July 1999, Dr Patel began treating Mrs C and he continued to carry out crown and bridgework for her until July 2000. Shortly thereafter, in October 2000, Dr Patel began the root canal and crown work for Ms B that led to the balance of the *B and M* charges. That work was completed at the end of January 2001.

[70] Finally, in August 2002, Dr Patel began treating Ms E for her abscessed tooth. The screening of the “20/20” programme on 1 September 2002 prevented Dr Patel from completing this work.

[71] It is common ground that Dr Patel has not faced any disciplinary action arising out of his conduct since 2002.

[72] Viewing this series of events as a whole, it seems reasonably apparent that Dr Patel’s problems have arisen as a result of the sub-standard crown, bridge and root canal work that he undertook for patients between August 1997 and the end of January 2001. During that period he was quite clearly operating in fields and at a level that was considerably beyond his competence. The present charges fall for the most part to be considered at the beginning and in the middle of that period.

[73] Had the present charges fallen to be determined in 2002 or even 2003, there can no doubt that Dr Patel would have been at very great risk of having his name removed from the Register. The frequency with which he was guilty of carrying out severely defective work during the previous 5 years would have negated any suggestion that individual complaints could be viewed as isolated incidents. Moreover, Dr Patel’s apparent willingness to breach undertakings to the Dental Council and the Court would have been sufficient to render untrustworthy any further undertaking that he might make to abide by any conditions that might be imposed upon him.

[74] The only way in which the Tribunal and the Court could realistically have protected the public at that time would have been by preventing Dr Patel from causing further harm to an unsuspecting public. The only real issue would have

been whether to impose the maximum suspension available (12 months) or to remove Dr Patel's name from the Register and to direct that he not be permitted to apply for re-registration for a prescribed period – in all likelihood 2 to 3 years. Removal from the Register would in my view have been the likely outcome.

[75] As matters stand, however, the penalty to be imposed upon Dr Patel must be determined on the basis of what is now known about him. That requires consideration of the events that have occurred since 2002.

Events that have occurred since 2002

[76] Between 2002 and 2005 Dr Patel practised in accordance with the conditions that Randerson J imposed on 8 October 2002. These prevented him from carrying out bridge and crown work, and he has also been required by the Council to carry out root canal work on a very restricted basis. In addition, he has been subject to a rigorous supervisory and reporting regime that was initiated by the conditions imposed by Randerson J. That regime has remained in place since 2005 as a result of conditions imposed by the Dental Council when it has issued annual practising certificates to Dr Patel.

[77] Between 2002 and 2007 there is nothing to suggest that Dr Patel has ever undertaken work that he was not authorised to perform, or that he has otherwise breached the conditions to which he has been subject. Moreover, the Court has the benefit of several reports and an affidavit prepared by Dr David Crum, the senior dental practitioner appointed by the Council to supervise Dr Patel following the *B and M* case. The reports demonstrate that since 2002 Dr Patel has made significant improvements both in clinical and administrative terms. Dr Crum's affidavit provides the following information:

4. As one of the conditions in the *B and M* case, which the Dentists Disciplinary Tribunal heard in March 2003, I was appointed by the Dental Council to act as Dr Patel's supervisor for a period of three years. It is in that capacity that I have come to know Dr Patel and his practice of dentistry well. He is not a personal friend of mine.
5. My role as supervisor involved visiting Dr Patel's practice and maintaining regular contact with him. The purpose of the supervision was educative in nature and also to ensure that Dr Patel

was aware of and using techniques and treatment methods consistent with the safety and wellbeing of patients, the need for provision of information and education to patients and the importance of informed consent. It also related to checking that Dr Patel kept complete and adequate records. All of these matters were carried out as an accepted means of supervising Dr Patel in the provision of competent dentistry to address deficiencies related to the *B and M* case.

6. Specifically, my visits to Dr Patel's practice were to ascertain that all endodontic and all crown and bridge work was referred to appropriate specialists and more latterly to review endodontic treatments once Dr Patel was permitted to resume practice in this area of dentistry....I did this in the knowledge of the conditions which were imposed on his practice and I confirm to the best of my knowledge and belief that Dr Patel has complied with these conditions. Certainly I have never observed any indication that he may have breached these conditions.
7. ...
8. I am prepared to continue in the role of "mentor" to Dr Patel and supervise his continued practice in dentistry whether as directed by the High Court, or as the Dental Council of New Zealand may direct. Within any future supervision I provide, I am prepared to continue to set strict boundaries and expectations with Dr Patel.
9. Indeed Dr Patel has made substantial progress and I consider we have addressed previous deficiencies with some real success, as evidenced by my reports. This has been a very constructive supervision and one that, in my view, reflects the thinking embodied in the Health Practitioners Competency Assurance Act. In my opinion it would be needless if he were now to be precluded from continuing to practice general dentistry under the current conditions on his practice. I consider these conditions are adequate protection of the public's health and safety.
10. I would be prepared to fulfil this role as mentor/supervisor whether it be a condition of the stay of enforcement of the Tribunal's orders, which I understand that Dr Patel is seeking, and/or in the event of a successful appeal.

[78] The letters from other dental practitioners also support Dr Crum's conclusion regarding the progress that Dr Patel has made in rectifying the deficiencies that were so obviously apparent in 2002.

[79] I consider that these matters are important, and that they should carry considerable weight in the present case. Their importance lies in the fact that they suggest that the public have been protected to date through the imposition of appropriate conditions. These have included conditions that restrict the areas of

dentistry within which Dr Patel is able to practise, and that require him (at his own cost) to be subject to ongoing reporting obligations and supervision by the Council.

[80] Dr Patel's performance over the last 5 years also suggests that, whatever the position may have been in the past, he now realises that his future career as a dentist depends entirely upon his compliance with conditions and restrictions that do not apply to other dentists. As Dr Patel no doubt realises, his conduct between 1997 and 2002 has cost him the right to practise in an unfettered manner.

Conclusion

[81] The ultimate issue that I am required to determine is whether, bearing in mind the principle that removal from the Register is a remedy of last resort, the various objects of the disciplinary process can be adequately achieved through the imposition of a lesser penalty. The protection of the public is to the forefront in consideration of this issue.

[82] In the present case I have the considerable benefit of knowing that other options and alternatives have in fact been explored for period of just under 5 years. These have taken the form of the various conditions and restrictions to which Dr Patel has been subject during that period. The fact that no further complaints have come to light since 2002 persuades me that all of the objects of the disciplinary process, including the protection of the public, can be achieved by means of a penalty falling short of removal from the Register.

[83] Notwithstanding the seriousness of the charges that Dr Patel now faces and has faced in the past, I have therefore concluded that sufficient protection is already in place by virtue of the conditions to which Dr Patel is currently subject as a result of the requirements of the Dental Council. Over the last 5 years Dr Patel has demonstrated a commitment to abide by those conditions, and he will know that he needs to continue to abide by them if he wishes to remain in his chosen profession. The conditions are designed to prevent Dr Patel from practising in areas where the public is likely to be at risk. They also provide the Council with the ability to constantly monitor the compliance by Dr Patel with his obligations.

[84] Like Randerson J in 2002, I do not accept that the gravity of the present charges could be adequately reflected merely by imposing a censure and a fine. A more severe penalty is clearly required.

[85] In 2002 Dr Patel was suspended for 4 months on the *E-Y* charges alone. The present charges are much more serious, because they involve three complainants, they stretch over 5 years and they involve a multiplicity of allegations. Included within these are allegations relating to the breaches of undertakings given to the Tribunal and to the Court. They also include the misrepresentations that Dr Patel made to Mrs C.

[86] Had Dr Patel been dealt with on all charges in 2002, the most lenient outcome that he could possibly have hoped for would have been suspension for the maximum period of 12 months followed by the ability to practise on a restricted basis. Taking into account the fact that Dr Patel has already served a suspension of 4 months and has also been subject to the fines imposed in relation to the *B and M* charges, I consider that an appropriate outcome is one whereby Dr Patel is censured and suspended from practising dentistry for a period of 7 months. The suspension will commence on 1 November 2007, thereby giving Dr Patel time to make the necessary arrangements for his practice to be adequately staffed during his absence.

[87] Given the reasonably lengthy term of the suspension, I do not consider that it would be appropriate to impose the added penalty of a fine.

[88] I also consider that, as ordered by the Tribunal, it would be appropriate for Dr Patel to meet 20 per cent of the costs of the hearing and prosecution before the Tribunal.

[89] For these reasons I made the orders referred to at [4] above.

Costs

[90] Costs are to be dealt with in accordance with the procedure set out at [49] of my judgment dated 10 August 2007.

Lang J

CHARGES

These proceedings involve three complaints against **Suresh Patel**, Dentist, of Auckland. The complaints were brought by the Complaints Assessment Committee under s54(1)(b) and (c) of the Dental Act 1988.

Dr Patel was notified of the following particulars of those complaints.

A. That when treating Ms C (your patient), which commenced on or about 23 July 1999 or thereabouts:

Failure to keep adequate dental records

1. You failed to keep and produce adequate dental records showing your patient attended your surgery, and you treated her during the years 1999 and 2000.
2. In particular your records failed to adequately record:
 - 2.1 The initial appointment for treatment of tooth 22, its restoration and root canal dressing;
 - 2.2 A treatment plan for your patient;
 - 2.3 Treatment involving crown and bridge work undertaken for your patient;
 - 2.4 The fracture of tooth 23;
 - 2.5 Abutment preparation of the crown on tooth 24, and impressions for work planned in June 2000 (or thereabouts).

Misrepresentation, Failure to provide adequate advice and Failure to obtain informed consent

3. To procure your patient's consent to treatment you falsely represented your qualifications, experience and ability to undertake treatment on your patient, in particular:
 - 3.1 You falsely represented to your patient that you had received training in Sydney, Australia, to undertake the treatment you proposed
 - 3.2 You falsely represented to your patient that you had lectured throughout New Zealand on treatment of the kind you proposed;
 - 3.3 You mislead your patient causing her to believe that you undertook specialist restoration work at a hospital, and were called in to undertake such work for accident victims.

4. Further you failed to inform your patient to obtain her consent to treatment, in that:
 - 4.1 You failed to inform your patient of the state of her dentition, the treatment options available, and the risks and benefits that were foreseeable for the alternative courses of treatment;
 - 4.2 You failed to inform your patient of the likely outcome of the treatment you proposed;
 - 4.3 Further, in the course of fitting crowns for teeth 21, 22 and 23, and bridges for teeth 11 – 13, and 15 – 17, you wrongly represented that the crowns fitted adequately.
 - 4.4 Further, in the course of (in June, July 2000 or thereabouts) when surgically removing the root of tooth 23, and fitting new crowns and bridge for teeth 22 – 24, you misrepresented the likely cause of tooth 23 breaking. The likely cause being the faulty occlusion of tooth 23 which you had fitted, you wrong represented it as being caused by your patient grinding her teeth.
 - 4.5 Further in the course of surgically removing the root of tooth 23 you fractured tooth 22, and concealed that from your patient, and failed to advise her of the treatment that was required or obtain her consent for the treatment you applied (cementing post into tooth 22).

Failure to provide adequate or proper clinical care

5. You failed to provide adequate treatment for your patient in the course of fitting crowns for teeth 21, 22 and 23, and bridges for teeth 11 – 13, and 15 – 17 (about July or August 1999); and further when surgically removing the root of tooth 23, and fitting new crowns and bridge for teeth 22 – 24 (in June, July 2000 or thereabouts).

6. In particular:

July/August 1999 treatment

- 6.1 You failed to perform a full evaluation of your patient's periodontal, occlusal and aesthetic condition which was required before undertaking extensive bridge work which you planned;
- 6.2 You failed to take satisfactory X-rays prior to treatment;
- 6.3 You failed to undertake root canal treatment on tooth 22 before fitting a crown;
- 6.4 You fitted crowns and bridges which were unsatisfactory in fit, aesthetics and occlusion, with midline off centre and no contact between back teeth;

- 6.5 The unsatisfactory fit of the crown and bridges was such that it caused your patient long-term pain, and affected her speech so that she developed a lisp;

June, July 2000 treatment

- 6.6 You failed to fully assess, X-ray and plan crown and bridge work following the fracture of crown 23;
- 6.7 You cemented a post into fractured tooth 22, leaving a high risk of apical infection, and for the second time crowned tooth 22 without taking an X-ray and identifying the apical pathology which indicated that root canal treatment was required;
- 6.8 Given the apical pathology affecting tooth 22 you inappropriately fitted a crown, and fitted an immediate bridge for teeth 22 – 24;
- 6.9 You placed glass ionomer cement against exposed bone in the socket of tooth 23, which precluded healing and contributed to sepsis developing in that area, and consequent pain and discomfort;
- 6.10 You failed to allow sufficient time for the socket of tooth 23 to heal before undertaking further treatment in that area (two months or more being required before a bridge could be appropriately fitted in that area).
- 6.11 You placed bridge sealant in a “wet field” thereby limiting the longevity of the sealant and creating a risk of decay and sensitivity from poorly sealed margins;
- 6.12 You fitted bridge work that was unsatisfactory in fit, aesthetics and occlusion;
- 6.13 You failed to advise your patient of the oral hygiene requirements for the crown and bridge work;
- 6.14 You attempted to restore occlusion by excessive grinding down of lower opposing anterior teeth, with no consideration for the long-term effects (including ongoing pain and the need for restorative work);
- 6.15 You failed to arrange follow-up appointments to monitor your patient.

B. That when you treated Ms E (your patient) which commenced on or about 7 August 2002:

Failure to provide adequate advice and obtain informed consent

7. On 7 August 2002, your patient presented with an abscessed front tooth 24.

8. You failed to obtain informed consent before embarking on a course of treatment involving dressing and root canal treatment for tooth 24. In particular:

8.1 You failed to advise that root canal treatment for your patient's tooth 24 would have a 60 to 70 percent chance of being successful;

Failure to provide adequate or proper clinical care

9. You failed to provide adequate treatment for your patient's abscessed tooth 24.

10. In particular:

10.1 On 12 August 2002 your patient presented and reported pain associated with tooth 24, and reported symptoms of local and systematic infection likely to be associated with tooth 24, at that consultation:

10.1.1 You failed to re-dress the tooth, and failed to take steps both to control the infection associated with your patient's tooth 24 (having regard to her diabetic condition and the associated increased risk from infection), and further failed to provide appropriate analgesic treatment.

10.2 The dressing on tooth 24 (which you applied on 7 August 2002) broke at some point between 12 August and 27 August, you failed to adequately monitor the dressing.

Failure to refer patient for care outside those limits of your practice

11. On 21 August 2002 you were required to provide an undertaking to the High Court that you would not undertake any dental work involving root canal work.

12. You were aware that the course of treatment you commenced (as previously described) on 7 August 2002 required root canal work.

13. On 21 August 2002 you were aware that you could not complete the course of treatment required by your patient.

14. At the appointment you had with your patient on 29 August 2002 you failed to notify your patient that you could not complete the treatment you had commenced, and facilitate referral to a practitioner who would complete the treatment.

C. That when treatment Ms S (your patient), which commenced in or about October 1997, and continued until February 1998 or thereabouts, relating to treating her teeth 11, 21 and 25:

Failure to keep adequate dental records

15. Your clinical records failed to adequately record:

15.1 The materials used to fill teeth 11 and 21.

Failure to provide adequate or proper clinical care

16. You failed to provide adequate and competent treatment for your patient.

17. In particular:

General

17.1 You failed to assess and diagnose your patient's presenting symptoms of severe pain and discomfort;

Radiographic

17.2 You failed to obtain or interpret radiographic information to adequately assess the treatment required by your patient.

Prosthodontic Skills

17.3 You fitted crowns which were poor in shade, shape and fit.

Root Canal Treatment

17.4 On or about 10 October 1997 you fitted crowns to teeth 11 and 21, when you had failed to undertake necessary root canal treatment prior to crown placement;

17.5 After fitting the crowns you continued to fail to control infection associated with those teeth, and masked the situation in respect of tooth 11 by the inappropriate use of Ledermix;

Pain control

17.6 You failed to control the pain your patient experienced in the operative and post-operative situations, between mid-October 1997 and February 1998 (or thereabouts);

17.7 You subjected your patient to undue and unnecessary pain over eight or more appointments where treatment was undertaken between 11 November 1997 and 13 February 1998 (or thereabouts); and during that period failed to control infection necessitating emergency anti-biotic and anti-inflammatory treatment;

Breach of undertaking and failure to refer patient for care outside the limits of your practice

18. On 18 August 1997 you signed an undertaking to the Dental Council, outlining restrictions and conditions under which you could practice dentistry. Your undertaking included that you would not “*practice in the areas of fixed and removable prosthodontics until such time as [you] have demonstrated that [you] have undertaken acceptable continuing education in these two areas*”.
19. The undertaking also provided that you would accept a senior practitioner, appointed by the Council as a mentor, who would report to the Chairperson of the Council on practice management and personal issues.
20. The undertaking went on to say that in breaching any terms of the undertaking you would be subject to a charge of professional misconduct.
21. On 18 August 1997 you were consulted by your patient for severe toothache associated with teeth 11 and 21. At that consultation you discussed crown replacement, and sealed the margins of existing crowns.
22. You proceeded with a course of treatment involving crown replacement and by doing so you breached your undertaking.
23. Due to your inability to undertake the work competently without remedial training, the course of treatment resulted in adverse effects on your patient, in particular:
 - 23.1 Pre-existing conditions, or inept treatment had resulted in irreversible pulpitis by the time you fitted crowns (temporary on or about 6 October 1997 and final on or about 10 October 1997);
24. Having embarked on treatment in breach of your undertaking to the Dental Council you failed to refer your patient to appropriate practitioners instead of treating your patient yourself.
25. Both in treating your patient in breach of your undertaking to the Dental Council, and in failing to provide adequate and proper care, it was professional misconduct.

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