

PLEASE NOTE:

This decision by the Dentists Disciplinary Tribunal was the subject of an Appeal to the High Court.

The ruling of the High Court on 8th October, 2002 has modified the penalty as follows:

- a) *a censure*
- b) *The appellant to be suspended from practice for a period of four months commencing on 1 December, 2002*
- c) *The appellant to be restricted from undertaking any dental treatment involving bridge work or crown work for three years from the date of this decision*
- d) *The appellant to be prohibited from recommencing bridge work or crown work without the written consent of the Dental Council*
- e) *The appellant not to engage in sole practice without the written consent of the Dental Council.*

IN THE DENTISTS DISCIPLINARY TRIBUNAL

IN THE MATTER of the Dental Act 1988

AND

IN THE MATTER of a complaint by **Joan Elson-White** and **Victor Elson-White** against **Suresh Patel** formerly of Whangarei and now of Auckland, Dentist.

TRIBUNAL Dr D Bambery (Chair)
Dr C A Casswell
Dr P A C Coote
Ms W Davis
Ms W Davis

LEGAL ASSESSOR Ms K McDonald QC

TRIBUNALS OFFICER Mrs S D' Ath

COUNSEL Dr D Collins QC (for the CAC)
Mr H Waalkens (for Dr Patel)

DATE OF HEARING 29 July 2002

DATE OF DECISION 30 July 2002

DECISION OF THE TRIBUNAL

CHARGES

1. These proceedings involve charges against **Suresh Patel**, Dentist, of Auckland. The charges were brought under Section 54 (1) (b) and (c) of the Dental Act 1988, and Dr Patel was notified of the following particulars of those charges:

- A. During or about the period of time from 1 January 1998 until 31 December 1999 while Joan Elson-White was his patient he failed to adequately treat Joan Elson-White in that he:
- (a) did not effectively inform Joan Elson-White that he was a general dentist or of alternative treatments available to her, including treatment by a specialist, when advising her of the need to have complex mouth rehabilitation work;
 - (b) inadequately treated Joan Elson-White in the provision of two bridges in her upper arch in October 1998, including leaving the surface of the upper left bridge rough following excessive occlusal grinding;
 - (c) undertook treatment for Joan Elson-White in respect of her lower three unit bridge after a serious fall she had in May 1999 in that such treatment was conducted prior to ACC approval;
 - (d) in preparing abutment teeth 8 days after the extraction of the tooth 42 of Joan Elson-White, did not provide for stable gingival tissue to give a long term finishing margin for a pontic;
 - (e) provided unacceptable treatment, including inadequate impressions for the laboratory, in respect of the mouth of Joan Elson-White which led to a discrepancy in the marginal fit of the bridgework placed in her mouth.
- B. During or about the period of time from 1 January 1998 until 31 December 1999 while Victor Elson-White was his patient he failed to adequately treat Victor Elson-White in that he:
- (a) did not effectively inform Victor Elson-White that he was a general dentist or of alternative treatments available to him, including treatment by a specialist when advising him of the need to have complex mouth rehabilitation work;
 - (b) provided treatment for Victor Elson-White which was inappropriate in view of his age and the possibility of increasing difficulties for him to physically maintain good oral hygiene;
 - (c) failed to keep adequate dental records for the actual treatment provided;
 - (d) provided unacceptable treatment, including inadequate impressions to the laboratory, in respect of the mouth of Victor Elson-White which led to a discrepancy in the marginal fit of the bridgework placed in his mouth.

EVIDENCE

2. Briefs of evidence were received from:

- Dr H Stephen (dentist)
- Dr S Baylis (dentist)
- Dr D Stallworthy (dentist)

Testimony was given by:

- Mrs E Urbahn (daughter of Mr and Mrs Elson-White)
- Dr S Patel (respondent)

BACKGROUND

3. During 1998 and 1999 the late Mr and Mrs Elson-White were treated by Dr Patel. Mr Elson-White had extensive crown and bridgework and Mrs Elson-White had some upper bridgework in 1998, and the following year further treatment following a fall which resulted in one of her lower teeth being broken and an adjacent tooth being loosened. The cost of the work carried out for them both by Dr Patel came to approximately \$24,000.

4. In her evidence Mrs Urbahn explained that after Dr Patel completed the dental work Mr and Mrs Elson-White were reasonably satisfied with the work although Mrs Elson-White complained that her bite was not right.

5. The charges came before the Tribunal because of problems associated with a claim to ACC which followed a fall by Mrs Elson-White in May 1999 resulting in the loss of one tooth and the loosening of another. There were difficulties associated with the processing of the claim. Dr Patel's receptionist rang Mr and Mrs Elson-White and demanded that they pay the money and pursue ACC for a refund. Mr and Mrs Elson-White paid \$2,280 to Dr Patel promptly. This incident caused Mr and Mrs Elson-White to lose faith in Dr Patel.

6. The following year they required a check up and decided, because of the way in which Dr Patel's receptionist had treated them, they would see another dentist. This resulted in them seeing Dr Stephanie Baylis, another practitioner in Whangarei. She saw Mr and Mrs Elson-White in November 2000.

7. After visiting Dr Baylis Mr and Mrs Elson-White were distressed. Dr Baylis had made comments about the quality of the dental treatment that Mr and Mrs Elson-White had received.

8. Mr and Mrs Elson-White conveyed their concerns to their daughter Mrs Urbahn. Mrs Urbahn then put in motion a chain of events which resulted in Dr Baylis and other dentists examining Dr Patel's workmanship. Mrs Urbahn obtained written reports from both Drs Baylis and Stephens before she confronted Dr Patel on 7 December 2000.

9. Much to Mrs Urbahn's surprise when she confronted Dr Patel about the quality of his workmanship he readily admitted that he had been out of his depth in undertaking the treatment he carried out on Mr and Mrs Elson-White. Dr Patel accepted Mrs Urbahn's verbal explanation of the opinions she had obtained from Drs Baylis and Stephen. She sought a full refund and Dr Patel obliged. He also provided Mrs Urbahn with a handwritten acknowledgement that this workmanship was sub-standard.

FINDINGS

10. The Tribunal accepted Dr Stephen's description of the work carried out on Mr Elson-White:

- There was a lower bridge from tooth 43 to 34 which had teeth cantilevered on each end to replace pre-molars and molars. There was insufficient support for such a bridge.
- The teeth in the bridgework were bulbous in the gingival third and the porcelain appeared chipped in places.
- The contour of the teeth on the bridgework did not resemble the natural shape of the teeth.

- The appearance of the bridgework was opaque with little translucency. The margins were roughened and had ledges. The marginal discrepancies on teeth 33 and 34 were filled with what appeared to be composite resin.
- The chipping indicated the probability of occlusal stresses. The marginal chipping could be the result of a poor fit.
- There was inflammation of the gums and recession around the margins.
- Mr Elson-White had difficulty with home care because of the bridgework.
- There were two upper bridges; one from tooth 14 to 11 and the other from 21 to 26. The upper right bridge had two teeth cantilevered off the distal end.
- The shape and colour of the margins were better than the lower bridge but again two teeth were cantilevered.
- The occlusion of the bridges was haphazard and the top and bottom bridges did not fit together in a natural manner (either there was no bite registration or if one was taken it was so far out of alignment as to be meaningless).

11. The xrays presented in evidence showed poor marginal fit of the bridgework on the lower incisors; decay on the root of tooth 31 and an inadequate root filling on tooth 43 (the filling did not go to the end of the root). The upper x-ray showed apical pathology related to the palatal root of 26 and there was also bone loss between tooth 26 and 28. Tooth 13 was root filled and there is decay under the distal margin.

12. The laboratory work was of an inferior standard. The appearance of the lower bridgework was very poor.

13. The Tribunal also accepted Dr Stephen's evidence with regard to the treatment afforded Mrs Elson-White:

- There was a bridge between teeth 41 to 43 replacing tooth 42. The colour and shape of the incisors was reasonable but the shape of the canines was causing problems with the gingival tissues which were swollen and inflamed. The condition and shape of the canines was very unsatisfactory.
- There was a cantilevered bridge replacing teeth 14 and 15 and attached to 13 and 12. The shape and the colour of this bridge were reasonable. The gingival tissues were swollen and inflamed. It was not possible to determine whether this was due to the margins, the shape of the bridge or from difficulties with cleaning. Two teeth were cantilevered which is an inappropriate design.
- A third bridge extended from tooth 23 to 26 replacing tooth 24 and cantilevered to replace 27. The shape and colour of the bridge was reasonable but the margins were roughened. There was recession on the buccal aspect of tooth 23 and 26. The gums were inflamed and swollen. The bridge had been ground down to fit the occlusion leaving a rough surface on the occlusal.

14. The x-rays presented in evidence show a lack of definition of the bone around teeth 23 and 25 which indicates that bone loss was occurring. Rough margins and overhangs were present on the upper bridge. The roots of the abutment teeth were of good length.

15. Mrs Elson-White was having discomfort associated with her bridgework probably due to the occlusion and/or the marginal fit. Cleaning was difficult.

16. The Tribunal finds that preparing abutment teeth for a bridge only 8 days after an extraction is inappropriate. To make a definitive bridge before healing was complete would lead to a gap between the pontic tooth and the underlying gum. As a consequence food can collect and without an airtight seal some aspects of speech may be affected.

CONCLUSION

17. Charge (a) is framed in identical terms with respect to both Mr and Mrs Elson-White. No direct evidence was presented to the Tribunal about what information Dr Patel provided to Mr and Mrs Elson-White about his qualifications and professional background. Mrs Urbahn's view was that her parents thought that Dr Patel was extremely well qualified and had many certificates on the wall of his surgery. However this falls far short of establishing this aspect of the charge to the required standard.

18. With respect to alternative treatments, Dr Patel's hand written treatment record notes a consultation on 10 February 1998 "about partial plates / bridge" for Mr Elson-White. In a typed treatment proposal for Mr Elson-White under comments he states "The major issues include an immediate denture or full crown bridge" and under other treatment options lists "full upper immediate denture, vitallium metal partial dentures and implants." Dr Patel indicated that he had also done a treatment plan for Mrs Elson-White, but he was unable to produce it for the Tribunal. Dr Patel's evidence was that he did advise Mr and Mrs Elson-White that he would refer them a specialist in Auckland in respect of their periodontal condition and the rehabilitation work needed and that he had other discussions with them about specialist treatment. No reliable evidence was presented to the Tribunal to counter Dr Patel's statements regarding information about alternative treatments, including specialist treatment. Therefore the Tribunal also does not find this aspect of charge (a) proven.

19. With regard to charge A(a) that Dr Patel *did not effectively inform Joan Elson-White that he was a general dentist or of alternative treatments available to her, including treatment by a specialist, when advising her of the need to have complex mouth rehabilitation work* the Tribunal finds the charge **not established**. The reasons for this decision are outlined above in paragraphs 17 and 18.

20. With regard to charge A(b) that Dr Patel *inadequately treated Joan Elson-White in the provision of two bridges in her upper arch in October 1998, including leaving the surface of the upper left bridge rough following excessive occlusal grinding* the Tribunal finds the charge **established**. The Tribunal concluded that the occlusion had been incorrect and Dr Patel had been required to make some gross alterations after fitting the bridge. After the adjustments the occlusal surface was roughened and the bite was still not correct. The Tribunal concludes that this was grossly inadequate treatment. No trial fit was undertaken and no attempt was made to have the defects in the occlusion attended to (possibly by returning the bridges to the laboratory) before fitting the bridges. The patient was not told of the problems when, in the Tribunal's view, the defects would have been apparent at the fit appointment.

21. With regard to charge A(c) that Dr Patel *undertook treatment for Joan Elson-White in respect of her lower three unit bridge after a serious fall she had in May 1999 in that such treatment was conducted prior to ACC approval* the Tribunal finds the charge **established**. The Tribunal concluded that Mrs Elson-White had assumed that the treatment would be covered by ACC. Dr Patel had a duty of care to ensure Mrs Elson-White

understood who would be responsible for payment and in his particular practice should have sought prior approval. In fact the Tribunal's conclusion is that it was unacceptable treatment to proceed with this bridge on clinical grounds. It was inappropriate for Dr Patel's receptionist to demand payment from an elderly patient in these circumstances.

22. With regard to charge A(d) that Dr Patel *in preparing abutment teeth 8 days after the extraction of the tooth 42 of Joan Elson-White, did not provide for stable gingival tissue to give a long term finishing margin for a pontic* the Tribunal finds the charge **established**. In reaching this decision The Tribunal accepts that following the removal of a tooth some time is required before the gum will heal and then stabilise. The fit of the bridge will be compromised if it is placed too soon.

23. With regard to charge A(e) that Dr Patel *provided unacceptable treatment, including inadequate impressions for the laboratory, in respect of the mouth of Joan Elson-White which led to a discrepancy in the marginal fit of the bridgework placed in her mouth* the Tribunal finds the charge **established**. This decision is based on the evidence accepted by the Tribunal that the bridgework fitted by Dr Patel was grossly inadequate with respect to

- Design, especially in respect to cantilevering two teeth to form a bridge with two adjacent abutments. In addition the patients oral hygiene was compromised.
- Marginal fit. Open margins patched with composite resin would lead to caries and gum irritation.
- The occlusion which was incorrect even after gross adjustments of the biting surfaces which were left unpolished.

24. With regard to charge B(a) that Dr Patel *did not effectively inform Victor Elson-White that you were a general dentist or of alternative treatments available to him, including treatment by a specialist when advising him of the need to have complex mouth rehabilitation work* the Tribunal finds the charge **not established**. The reasons for this decision are outlined above in paragraphs 17 and 18.

25. With regard to charge B(b) that Dr Patel *provided treatment for Victor Elson-White which was inappropriate in view of his age and the possibility of increasing difficulties for him to physically maintain good oral hygiene* the Tribunal finds the charge **established**. The Tribunal bases this decision on the evidence relating to the design and construction of the bridgework. The expert witnesses were of the view that elderly patients would struggle with oral hygiene and this was reinforced by the photographs provided in evidence. In addition to the design features the contour and marginal discrepancies would also contribute to difficulties with home care. The xray evidence confirmed the presence of decay.

26. With regard to charge B(c) that Dr Patel *failed to keep adequate dental records for the actual treatment provided* the Tribunal finds the charge **not established**. Dr Patel's records as provided to the Tribunal were inadequate. However because of the change in practice location and the possibility that documents provided by Dr Patel to the Accident Compensation Corporation and the Complaints Assessment Committee had been mislaid the Tribunal was not prepared to find this aspect of the charge established.

27. With regard to charge B(d) that Dr Patel *provided unacceptable treatment, including inadequate impressions to the laboratory, in respect of the mouth of Victor Elson-White which led to a discrepancy in the marginal fit of the bridgework placed in his mouth* the Tribunal finds the charge **established**. This decision is based on the evidence accepted by the Tribunal that the bridgework fitted by Dr Patel was grossly inadequate with respect to

- Design, especially in respect to cantilevering two teeth from either end of a lower anterior bridge and off the end of an upper bridge.
- Marginal fit. Open margins patched with composite resin would lead to caries and gum irritation.
- The occlusion was haphazard and the top and bottom bridges did not come together in an acceptable fashion.

28. The Tribunal considered the charges both separately and cumulatively and reached the decision that under Section 54 (1) (c) Dr Patel was guilty of professional misconduct.

PENALTY

29. The Tribunal views the charges that were established as very serious and therefore, under Section 55 (1) (a), orders that the name of Dr Patel be removed from the dental register from the date of receipt of this written decision by counsel for Dr Patel.

30. In deciding on penalty the Tribunal considered:

- Dr Patel's four previous disciplinary findings before the Dentists Disciplinary Tribunal including two convictions on clinical incompetence. To practice in an incompetent fashion after having disciplinary findings against him relating to clinical matters on two previous occasions is completely unacceptable.
- This unacceptable treatment was provided to two elderly vulnerable people.
- Dr Patel fails to understand the limits of his ability. After placing the first bridge he did not see the deficiencies, or he chose to ignore them, and continued to treat the patients in an incompetent fashion.
- The offence occurred during a time when he was being mentored under conditions of practice imposed following a previous disciplinary sanction.
- He had only just had a restriction on practice (following a previous appearance before the Tribunal) with respect to crown and bridgework lifted. The only evidence of a continuing education course in crown and bridgework was a six and a half hour course undertaken with Dr D Purton in November 1998. Some of the bridgework in question predates this course. In these circumstances, and considering the lack of continuing education in the subject, it was completely unacceptable to embark on complex restorative treatment without at least contacting his mentor or another experienced colleague.
- The standard of care for the two elderly patients was grossly inadequate and totally inexcusable.
- His management of these two patients demonstrated a gross lack of judgement in the planning and execution of the treatment..

31. Under Section 58 the Tribunal sets the time after which Dr Patel can apply to have his name restored to the register at three years.

COSTS

32. Under Section 56 the Tribunal orders Dr Patel to pay 30% of the costs and expenses of and incidental to the hearing by the Tribunal.

33. In setting these costs the Tribunal considered:

- An early acceptance by Dr Patel of the majority of the charges.
- Expert witnesses did not have to attend with a consequence reduction in expenses.

APPEAL

34. Attached to, and forming part of this order, is the sheet headed "Notes", which states the Practitioner's right to appeal against the orders made, and the time within which notice of such appeal must be given.

Dexter Bambery
(Chairperson of the
Dentists Disciplinary Tribunal)