

IN THE DENTISTS DISCIPLINARY TRIBUNAL

IN THE MATTER of the Dental Act 1988

AND

IN THE MATTER of complaints by **Ms XXX** and **Mrs YYY** 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 Wendy Davis

LEGAL ASSESSOR Ms K McDonald QC

TRIBUNALS OFFICER Mrs S D' Ath

COUNSEL Mr M McClelland (for the CAC)
Mr H Waalkens (for Dr Patel)

DATE OF HEARING 24 March 2003

DATE OF DECISION 25 March 2003

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. In that when treating Ms XXX between August 1999 and November 1999 he:
- (a) Failed to inform Ms XXX of the risks associated with root canal procedures;
 - (b) Failed to inform and manage Ms XXX regarding a separated root canal instrument in tooth 46;
 - (c) Failed to diagnose and/or manage a perforation at the bifurcation of tooth 36 resulting in an abscess associated with this tooth;
 - (d) Treated tooth 36 inadequately by failing to place an adequate filling in the mesiobuccal root canal;
 - (e) Failed to complete and/or keep accurate dental records for Ms XXX;
 - (f) Failed to refer Ms XXX to another practitioner for management.
- B. In that when treating Mrs YYY between the beginning of October 2000 and the end of January 2001 he:
- (a) Failed to diagnose and/or manage a perforation of the root of the lateral incisor;
 - (b) Failed to complete and/or keep adequate records relating to his treatment of Mrs YYY;
 - (c) Fitted an inadequate and unacceptable post and crown on the lateral incisor in that the post perforated the root and the restoration lacked retention;
 - (d) Failed to diagnose and/or discuss the condition of the periapical tissues prior to restoring the tooth;
 - (e) Failed to refer Mrs YYY to another practitioner for management.

2. The Charges are framed as to require consideration of the Particulars separately and cumulatively.

EVIDENCE

3. The Tribunal received written briefs of evidence and heard oral evidence from:

- Ms XXX
- Dr Bruce Sanson
- Dr David Stallworthy
- Dr Karl Lyons
- Dr Robert Love

The Tribunal also considered the brief of evidence of Mrs YYY and a number of references from local dental practitioners

BACKGROUND

Ms XXX

4. Ms XXX first consulted Dr Patel in June 1998 and continued to be treated by him until November 2000 when Dr Patel left the Kowhai Clinic. During that time root canal treatments were carried out by Dr Patel over several appointments including the following dates: 12 August 1999, 23 August 1999, 22 December 1999, 10 February 2000 and 21 November 2000.

5. One of the teeth root canal treated by Dr Patel caused problems for some time after the treatment was completed. On 21 January 2001, after Dr Patel had left Whangarei, this tooth (tooth 45) was xrayed by Dr Sanson of the Kowhai Clinic. Dr Sanson informed Ms XXX that an abscess had formed under teeth 45 and 46 (both of which had had root canal treatment) and tooth 46 had a root canal instrument broken off inside it.

6. Ms XXX stated that at the time of the initial root canal treatment Dr Patel advised her that root canal treatments do not have 100% success rate. She was not told that there was a risk that the root canal instrument could break. She was not informed that there had been any complications with the procedure and was not told that an instrument had broken off in the root canal or what the implications of this were. Dr Patel claimed that he had fully informed Ms XXX of the risks associated with root canal treatment and specifically gave her a typed information sheet about the procedure.

7. Ms XXX claimed if she had been fully informed of her options at that stage she would have had the tooth removed or asked for a referral to another dentist.

8. Ms XXX asked Dr Sanson to xray the other teeth treated by Dr Patel. She was advised by Dr Sanson that another of the teeth (tooth 36) root canal treated by Dr Patel had a problem. She was told that Dr Patel had put a "needle" (a root canal instrument) into the gum between the root canals damaging the tooth and the gum. Since that time this tooth has had to be removed.

9. As a consequence of the treatment by Dr Patel, Ms XXX has had significant stress, pain and financial cost.

Mrs YYY

10. Mrs YYY first visited Dr Patel on 10 August 2000 for a routine check up. She discussed with Dr Patel her concerns about the discolouration of one of her teeth (tooth 22, a lateral incisor). Dr Patel said that the tooth would continue to darken with time and suggested that the tooth be crowned for cosmetic reasons.

11. Dr Patel prepared this tooth (tooth 22) for a crown on 12 September 2000. On 2 October 2000 Mrs YYY visited Dr Patel again to have the crown fitted on tooth 22 and Dr Patel also prepared and fitted a post on the same tooth (tooth22). Dr Patel did not tell Mrs YYY about any complications or issues with the procedure. In January 2001 the crown and post fitted by Dr Patel 3 months earlier fell out, leaving a gap. Mrs YYY consulted Dr Sanson at the Kowhai Clinic. Dr Sanson took an xray and temporarily replaced the crown. A clinical examination indicated that the post had passed out through the side of the root

and there was extensive inflammation associated with this. He explained this to Mrs YYY and told her she would probably have to have the tooth removed.

12. After discussing the matter with the Dental Association, Mrs YYY wrote to Dr Patel asking him for a refund and to pay for any remedial work that would be required. Dr Patel subsequently did so.

13. Mrs YYY then consulted Dr Stallworthy, another Whangarei dentist, for a second opinion. Dr Stallworthy told Mrs YYY that the tooth was unlikely to survive given the damage to the root. He discussed options with Mrs YYY and subsequently removed the tooth and fitted a partial denture. In October 2001 he fitted a bridge.

14. Because Mrs YYY did not think that Dr Patel's work was of the standard she expected from a dentist, she wrote a letter of complaint to the Dental Council of New Zealand in September 2001.

ACCEPTANCE OF CHARGES

Mrs YYY

15. At the commencement of the hearing Counsel for the CAC sought to amend particular (a) of the Charge relating to Mrs YYY. The particular was accordingly amended to delete the words "and/or manage"

16. Dr Patel, through his counsel, admitted the following particulars:

In that when treating Mrs YYY between the beginning of October 2000 and the end of January 2001 he:

- (a) He failed to diagnose a perforation of the root of the lateral incisor.
- (b) Failed to complete and/or keep adequate records relating to his treatment of Mrs YYY;
- (c) Fitted an inadequate and unacceptable post and crown on the lateral incisor in that the post perforated the root and the restoration lacked retention;
- (d) Failed to diagnose and/or discuss the condition of the periapical tissues prior to restoring the tooth;
- (e) Failed to refer Mrs YYY to another practitioner for management.

17. Dr Patel, through his Counsel, accepted that the particulars admitted amounted to conduct detrimental to patient welfare both separately and cumulatively.

Ms XXX

18. Dr Patel, through his counsel, admitted the following particulars:

In that when treating Ms XXX between August 1999 and November 1999 he:

- (c) Failed to diagnose and/or manage a perforation at the bifurcation of tooth 36 resulting in an abscess associated with this tooth;
- (d) Treated tooth 36 inadequately by failing to place an adequate filling in the mesiobuccal root canal;
- (e) Failed to complete and/or keep accurate dental records for Ms XXX;
- (f) Failed to refer Ms XXX to another practitioner for management.

19. Dr Patel, through his Counsel, accepted that the particulars admitted amounted to conduct detrimental to patient welfare both separately and cumulatively

Disputed Particulars

20. In relation to the Charge relating to Ms XXX, Dr Patel disputed the following particulars:

- (a) He failed to inform Ms XXX of the risks associated with root canal procedures;
- (b) He failed to inform and manage Ms XXX regarding a separated root canal instrument in tooth 46;

FINDINGS

Mrs YYY

21. The Tribunal's decision is that the particulars (a), (b), (c), (d), and (e) of the charge in respect of Mrs YYY, as admitted by Dr Patel, are established.

22. The Tribunal finds that Dr Patel's conduct as established was or could have been detrimental to patient welfare, both separately and cumulatively and meets the threshold for a disciplinary finding and amounts to a disciplinary offence as provided for in s54 (1)(b) of the Act. The Tribunal finds that Dr Patel has been guilty of acts and omissions associated with the practice of dentistry that were or could have been detrimental to the welfare of Mrs YYY. Specifically as a consequence of his substandard treatment, Mrs YYY's tooth 22 was damaged to the extent that it was no longer viable and had to be extracted. Mrs YYY was then put to the inconvenience and stress of complex prosthodontic treatment to remedy the situation.

23. The Tribunal finds that the treatment was well below the standard expected of a general dental practitioner. The Tribunal notes that the witnesses, Dr Lyons and Dr Love were also of that opinion.

Ms XXX

24. In respect of the XXX charge, Dr Patel admitted particulars (c), (d), (e) and (f). He did not admit particulars (a) and (b) which provide that he:

- (a) Failed to inform Ms XXX of the risks associated with root canal procedures;
- (b) Failed to inform and manage Ms XXX regarding a separated root canal instrument in tooth 46.

25. The Tribunal does not find that particular (a) of the charge is established. The onus is on the CAC to prove the charge (and the particulars) on the balance of probabilities, having regard to the gravity of the allegations. These charges involve serious allegations against Dr Patel. Ms XXX said that all that Dr Patel told her was that root canal treatments do not have a 100% success rate and that there was a risk of discoloration of the treated teeth. She says he did not tell her that there was a risk that the "needle" (instrument) used to clean the tooth could break. She also indicated that because these events took place some years ago she had difficulty in remembering the details. She did recall Dr Patel drawing a picture of a tooth on a piece of paper at one point.

26. Dr Patel says that he informed Ms XXX verbally about the risks and gave her a typed information sheet about the procedure. He also said he used a whiteboard to draw explanatory diagrams. He says that he outlined other options, discussed with her the poor prognosis for her teeth, explained the relative complexity of the treatment because of the infection present and because the teeth were heavily filled. He also says he gave her specific advice about teeth 36 and 46 at the time of treatment.

27. The Tribunal's decision is that Ms XXX was informed of at least some of the risks associated with root canal therapy and particular (a) is therefore not established.

28. Particular (b) relates to the separated root canal instrument in tooth 46. Dr Patel's evidence was that he did inform Ms XXX at the time this happened. Ms XXX said that at no stage did Dr Patel tell her that the "needle" had broken or what the implications of that were. She said if he had told her of what had happened and what her options were, she would have asked Dr Patel to remove the tooth or to refer her to another dentist.

29. The Tribunal finds particular (b) established. It is significant that Dr Patel made no note in his treatment records about the broken instrument or that he had informed Ms XXX about this. Dr Patel's general recollection of events and treatment details was vague and confused, but he insisted that he clearly remembered telling Ms XXX at the time. The Tribunal does not find it credible that in this one matter Dr Patel's recollection of an event which occurred in December 1999 was so clear, when he made no note and when he could not recollect other significant matters. The Tribunal does not consider that Dr Patel's evidence about this matter is believable.

30. Ms XXX said that she did not know about the broken instrument until Dr Sanson told her about this in January 2001. This is supported by Dr Sanson's evidence that Ms XXX was surprised and distressed when he told her about this. The Tribunal prefers Ms XXX's evidence on this matter. The Tribunal finds the particular established to the required standard of proof.

31. The Tribunal finds that Dr Patel's conduct was or could have been detrimental to patient welfare, both separately and cumulatively and meets the threshold for a disciplinary finding and amounts to a disciplinary offence as provided for in s54 (1)(b) of the Act. The Tribunal finds that Dr Patel has been guilty of acts and omissions associated with the practice of dentistry that were or could have been detrimental to the welfare of Ms XXX. Specifically Dr Patel's treatment:

- was a major cause of infection relating to 2 teeth
- was a major contributing factor in the loss of 2 teeth
- caused Ms XXX significant stress and pain
- contributed to significant costs for remedial work.

32. The Tribunal finds that the treatment was well below the standard expected of a general dental practitioner. The Tribunal notes that the witnesses Dr Love and Dr Lyons were also of that opinion.

PENALTY

33. In reaching its decision on penalty the Tribunal fully considered all of the submissions of Counsel in particular the following matters are noted:

Aggravating features:

- The seriousness of the findings
- Dr Patel's disciplinary record and in particular the Tribunal's previous findings against Dr Patel in 1993 (when Dr Patel was found guilty of an act or omission which was or could have been detrimental to the welfare of a patient) and 2002 (professional misconduct) involving similar problems of root perforation and inadequate crown work.
- Dr Patel's lack of insight and judgment about his level of competence.

Mitigating factors:

- Early acceptance of the charges (with the exception of 2 particulars), his efforts to resolve the issue and his apology.
- Prompt reimbursement of Mrs YYY's costs and payment for her remedial treatment.
- That the events complained of occurred prior to the Tribunal's finding against Dr Patel in 2002.
- Although Dr Patel's work in Mrs YYY's and Ms XXX's cases was not of an acceptable standard, it did not reach the threshold of professional misconduct and was not grossly incompetent or reprehensible as in the previous case dealt with by the Tribunal.
- The charges relate to work done by Dr Patel in 1999 and 2000. However recent references provided by other practitioners indicate that his current work is of an acceptable standard and that he is now referring to specialists where appropriate.
- His willingness to accept further conditions on his ability to practice dentistry including a restriction on root canal work and mentoring.

34. Under section 55(1) (d) of the Act Dr Patel is fined \$2,000 in respect of the charge relating to Mrs YYY and \$3,000 in respect of the charge relating to Ms XXX.

35. The Tribunal considers the findings in relation to the XXX charge to be serious and deserving of a significant fine however the Tribunal is limited in any fine that can be imposed because of the provisions in force at the time of the conduct in question. The Tribunal has taken into account the provisions of the Dental Act with respect to the maximum penalty that applied at the time of the treatment in the XXX case. In relation to the Charge involving Ms XXX, the maximum fine available to the Tribunal was \$5000.

36. Under s 55(1) (e) of the Act Dr Patel is censured in respect of each charge.

37. The Tribunal considered ordering the removal of Dr Patel's name from the dental register or ordering a period of suspension. After carefully considering all of the issues the Tribunal makes no order under sections 55 1 (a) and 55 1 (b). The Tribunal considers the issues of the protection of the public and maintaining professional standards can be addressed by imposing conditions on practice.

38. Under s 55 1 (c) the Tribunal notes that Dr Patel is practising under conditions imposed by Randerson J in relation to crown and bridge work after a previous adverse finding before this Tribunal. These conditions require Dr Patel to be restricted from undertaking any dental treatment involving crown or bridge work for 3 years from the date of that decision (8 October 2002). Dr Patel is also prohibited from recommencing crown work or bridge work without the written consent of the Dental Council. He is also not to engage in sole practice without the written consent of the Dental Council.

39. As a further consequence of the findings of the Charges the Tribunal imposes the following conditions on Dr Patel's practice:

- (a) Dr Patel is prohibited from undertaking root canal treatment except for the relief of pain in emergency situations. This restriction is to apply for at least 12 months from the date of this decision.
- (b) Dr Patel can recommence root canal work only with the approval of the Dental Council and after having undertaken further endodontic training including at least one hands-on course approved by the Dental Council.
- (c) Dr Patel is to practise under supervision for 3 years from the date of this decision according to the following protocol:

Purpose of supervision:

The Tribunal's intention is that the supervision be educative in nature and should therefore be regarded as part of continuing postgraduate education.

Supervisor:

One or more supervisors to be appointed by the Chairperson of the Dental Council of New Zealand in consultation with the Chairperson of the Tribunal. It shall be the responsibility of Dr Patel to ensure that he accepts appropriate supervision if he wishes to continue in dental practice. Dr Patel shall meet the costs associated with the supervision.

Objectives:

- To ensure the practitioner is aware of, and using, techniques and treatment methods consistent with the safety and well being of patients, the need for provision of information and education to patients and the importance of informed consent.
- To ensure that the procedures followed by Dr Patel meet the standards of a competent experienced general dental practitioner.
- To ensure that Dr Patel keeps complete and adequate records.

Scope of Supervision:

- Review of the treatment of patients selected by the supervisor(s).
- The keeping of adequate records.

Method:

- Initially fortnightly visits by the supervisor(s) at times selected by the supervisor(s).
- The frequency of these visits to be reviewed by the supervisor(s) in consultation with the Chairperson of the Dental Council.

Reporting:

The supervisor(s) will report to the Chairperson of the Dental Council of New Zealand at 3 monthly intervals following the appointment.

COSTS

40. The Tribunal orders that Dr Patel meets 20% of the costs of and incidental to the Dentists Disciplinary Tribunal process. The Tribunal has had regard to submissions made by Counsel and in particular Dr Patel's acceptance of the Charges (other than two particular) and his personal and financial circumstances.

NAME SUPPRESSION

41. Name suppression was not sought. The Tribunal makes no order in relation to suppressing the name of the practitioner

42. The Tribunal orders the suppression of the name and identifying features of the 2 complainants.

APPEAL

43. 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)