

IN THE DENTISTS DISCIPLINARY TRIBUNAL

IN THE MATTER of the Dental Act 1988

AND

IN THE MATTER of a complaint by **The Director of Proceedings of the Health and Disability Commissioner** against **Natu Rama** of Auckland, Dentist.

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

LEGAL ASSESSOR Mr D Howman

TRIBUNALS OFFICER Mrs S D' Ath

COUNSEL
Ms M A McDowell (Director of Proceedings)
Mr P Collins (for Dr Rama)

DATE OF HEARING 2 – 3 May 2002 and
12 August 2002

DATE OF DECISION 13 August 2002

DECISION OF THE TRIBUNAL

CHARGE

1. These proceedings involve a charge against **Natu Rama**, Dentist of Auckland. The charge was brought by the Director of Proceedings under s15 of the Health and Disability Commissioner Act 1994, acting in accordance with s47 of the Health and Disability Commissioner Act 1994 and the powers contained in s68E of the Dental Act 1988. The Director of Proceedings formed a view that these proceedings should be taken against Dr Rama under s.54(1)(b) and (c) of the Dental Act 1988. The charge was amended by a decision of the Tribunal dated 28 March 2002. Dr Rama was notified of the following particulars of that charge:

2. That between 3 August 1998 and 5 October 1988 while Mrs A was his patient Dr Rama:

- A. In preparation for a bridge did not prepare Mrs A's teeth, adjacent to her missing upper left lateral incisor, to an appropriate professional standard, and/or
- B. Installed a temporary bridge in Mrs A's mouth which was of an unacceptable standard.
- C. Failed to appropriately follow up the patient's dental care by
 - (i) Repetitively canceling follow up appointments intended for completion of her bridge work, and/or
 - (ii) Failing to refer Mrs A to another dentist for completion of her bridgework.

EVIDENCE

3. The Tribunal received evidence from:

- Mrs A, the complainant
- Dr Denis Woodward, dentist
- Ms Doreen Hart, employed by the Health Advocates Trust
- Dr Jane Isdale, dentist
- Dr Natu Rama, the practitioner
- Ms Marie Woonton, dental assistant to Dr Rama
- Mr Arvind Harakh, a dental technician employed by Dr Rama

BACKGROUND

4. Mrs A first consulted Dr Rama on 20 July 1998. She went to him because she heard his services and qualifications advertised on the radio. The reason for her visit was to have a missing tooth replaced, having broken her partial denture. Mrs A says she insisted she wanted an implant while Dr Rama said he examined her mouth and then discussed the options for replacing the missing tooth. These options included a bridge or a partial denture. Dr Rama said he did not discuss an implant. Mrs A was told the cost of the treatment would be \$1700. Mrs A said the time in Dr Rama's surgery at this initial consultation was 5 to 10 minutes while Dr Rama said he spent at least 20 minutes with Mrs A.

5. On 31 July 1998 Mrs A went with her ex-husband when he consulted Dr Rama regarding his dental requirements. Mrs A had no treatment herself on that day, neither was her future treatment discussed.

6. Mrs A attended Dr Rama on 3 August 1998. She paid \$1700 by way of bank cheque before treatment commenced. The upper left central incisor (tooth 21) and the upper left canine (tooth 23) were prepared for a bridge, impressions were taken and Mrs A was fitted with a temporary bridge. Mrs A said she was shocked to find her teeth had been prepared for a bridge when she had been expecting to have an implant. However Dr Rama insisted Mrs A had received a detailed explanation on what was to be done previously by telephone and again at that appointment. Before leaving the surgery Mrs A made an appointment for 17 August 1998 to have the bridge fitted.

7. When Mrs A got home on 3 August she phoned the Dental Association. Someone from the Association phoned back the following day and advised Mrs A to give Dr Rama the opportunity to rectify the situation and to contact the Health Advocates if not satisfied. Mrs A said that on the same day she rang Dr Rama's surgery and asked to speak to him because her tooth was sore and she was unhappy with the procedure carried out. She says that Ms Woonton, the receptionist, told her that Dr Rama had a patient with him and would call her later. The call was not returned. On 7 August Mrs A telephoned the Health Advocates Association and spoke to Doreen Hart.

8. Mrs A says that she again rang Dr Rama on 10 August 1998, was unable to speak with him, and left a message which was not returned. On 11 August 1998, on the advice of the Health Advocate she wrote to Dr Rama by registered post. Dr Rama claims he did not receive the letter until 14 September 1998.

9. Mrs A claims appointments on 17 August, 20 August, 27 August, 3 September, 10 September and 1 October 1998 were cancelled by Dr Rama. Dr Rama agrees that appointments were cancelled on 17 August, 27 August and 3 September, but denies that he cancelled appointments on 10 September and 1 October. He says that Mrs A failed to turn up for those appointments and for a later appointment made for her on 8 October.

10. After the 1 October appointment was cancelled, Mrs A consulted several dentists including Dr Woodward, who commenced her treatment on 10 December when he removed the temporary bridge fitted by Dr Rama. Dr Woodward completed his treatment of Mrs A over the next few months.

FINDINGS

Preparation of Mrs A's teeth

11. Evidence was given by Dr Woodward and expert evidence by Dr Isdale as to the standard of preparation of Mrs A's teeth by Dr Rama for the purpose of fitting the bridge. Dr Woodward said that the teeth (21 and 23) had been poorly and minimally prepared for bridgework, in that there were no well-defined margins, the angulation of the teeth was probably divergent from each other, and the reduction in height of the central incisor and the canine was insufficient. The disto-incisal corner of the central incisor was absent (this was referred to in the hearing as the "jagged edge").

12. In his evidence Dr Woodward referred to photographs of Mrs A's teeth he had taken on 10 December 1998 when he removed the temporary bridge fitted by Dr Rama.

13. Dr Isdale's evidence was that teeth 21 and 23 had been poorly and inadequately prepared for bridge placement. She said that no margins could be seen on either tooth and referred to the "jagged edge." Dr Isdale did not clinically examine Mrs A at any stage. She relied on the documentation provided, the photographs and also the x-rays and study models examined by her during the hearing.

14. Dr Rama's evidence was that he had prepared the teeth to an optimal shape for the construction of both a temporary and permanent bridge, that the margins were of an appropriate standard and that they had a smooth finish. He was concerned that the photographs taken by Dr Woodward were unfair in several respects and did not represent a fair comparison. Dr Rama relied on working (master die) models produced to the Tribunal showing the preparatory work he carried out.

15. The Tribunal finds that the reduction in height of the central incisor and the canine were inadequate. This finding is confirmed by Dr Rama's working models which were introduced in evidence. The Tribunal did not conclude that the margins were inadequately defined or that the angulation of the teeth was divergent. The Tribunal does not find that Dr Rama's treatment of Mrs A resulted in the "jagged edge" shown in the photographs of tooth 21. The x-ray taken by Dr Wakefield (whom Mrs A consulted in November 1998) showed that the disto-incisal corner was still present then. The Tribunal concludes that it is likely that the corner of this tooth (probably a restoration) was lost when the temporary bridge was removed on 10 December 1998.

Standard of temporary bridge

16. Dr Woodward's evidence was that the temporary bridge fitted by Dr Rama on 3 August 1998 was poorly constructed. He said it was incompetently made in that it was unhygienic, a gross irritant to the surrounding soft tissues, there were gross overhanging margins at either end of the temporary bridge and gaps were present at the gingival margins. He said that the inflammation and swelling in Mrs A's mouth was only around the area of the temporary bridge. He referred again to the photographs he had taken of the temporary bridge on 12 October 1998.

17. Dr Isdale's opinion was that the temporary bridge was of an unacceptable standard. She said there were obvious overhangs and the margins of the bridge were irritating the gingival tissues. The pontic was of an unusual design and the temporary bridge would be impossible to keep clean. Her view was that plaque was very likely present because of the contour and roughness of the temporary bridge. Dr Isdale referred to the grossly inflamed gingival tissues around teeth 21 and 23 and said that in her view this was related to the poor margins of the temporary bridge and the consequent inability to keep the area clean.

18. The bridge itself was not available for Dr Isdale or the Tribunal to inspect as it had been thrown away by Dr Woodward after he removed it in December 1998. However Dr Isdale was able to view working die models prepared by both Dr Rama and Dr Woodward for the purposes of making the permanent bridge.

19. Dr Rama gave evidence about the steps he took in relation to the temporary bridge. He said he took an alginate impression of Mrs A's upper jaw, prepared teeth 21 and 23, poured Protamp temporary crown material into the impression, and placed it onto the prepared teeth. Once the Protamp had set, he inspected the work visually to ensure a

reasonable finish, would likely have done some finishing work, and then fitted the temporary bridge to ensure a snug fit and reasonable bite. He installed the temporary bridge using temporary cement and showed it to Mrs A before she left the surgery.

20. Dr Rama said that by its very nature a temporary bridge is made of relatively inferior materials and applied “on the spot” and consequently was not prepared with the precision and technical detail of a permanent bridge. For that reason he said a temporary bridge may possibly prove unsatisfactory if it remains in use over a much longer period of time than intended. In his view it was likely that Mrs A’s poor gingival condition was attributable to a combination of having worn the temporary bridge for some 3 months beyond what was intended and gastric reflux.

21. Mrs A gave evidence that she was in pain from the moment the anaesthesia wore off, particularly in relation to the central incisor. She took painkillers during the entire period the temporary bridge was on her teeth. At times she would get up at 3 or 4 in the morning to take pain relief. She said there was a big hole at the back of the temporary bridge over her tooth (21) and if anything got in, it was sore. With respect to tooth 23, she said that it felt like there was something really sharp pushing on it, like the cement was pushing on an exposed nerve. Her gums became spongy and felt like jelly.

22. The Tribunal finds that the temporary bridge made by Dr Rama was seriously defective in that:

- There was excess material with gross overhangs interproximally at both ends.
- The temporary bridge was not able to be cleaned properly, resulting in gingival inflammation and discomfort.
- The bridge caused significant pain and discomfort to Mrs A from the time it was first installed.
- There were open margins which irritated the gingival tissues and contributed to the difficulties in cleaning and sensitivity.

23. The Tribunal further finds that while a temporary bridge is not expected to be as perfectly contoured, durable or aesthetic as a permanent bridge, the standard of the temporary bridge prepared by Dr Rama for Mrs A falls significantly short of any acceptable standard for a temporary bridge.

24. In the course of the hearing evidence was given about the nature of the study model on which Dr Rama had made the definitive bridge. Dr Woodward and Dr Isdale were of the opinion that this model had been altered and differed from the situation shown in the photographs and x-rays presented in evidence. On the evidence before it Tribunal could not conclude the models had been manipulated.

25. Dr Rama put forward the proposition that Mrs A’s poor gingival condition may have been the result of a gastric reflux problem. There was no evidence, however, of gastric reflux significant enough to have affected Mrs A's dental health in the way contended by Dr Rama. The Tribunal therefore did not accept this proposition.

Follow –up dental care for Mrs A

26. Mrs A said that she phoned Dr Rama’s surgery after the treatment on 3 August 1998 because her tooth was sore and she was unhappy with the procedure carried out. She had

gone to Dr Rama wanting to have an implant to fill the gap in her teeth and Dr Rama had done bridge preparation work instead. The Tribunal notes that no charges were laid in relation to issues of informed consent.

27. Mrs A said she phoned on 4 August to speak to Dr Rama, but was unable to speak with him and left a message with Ms Woonton for Dr Rama to call her. The call was not returned. Another call on 10 August was also not returned. Ms Woonton said she had no recollection of these calls. On 11 August Mrs A wrote to Dr Rama requesting further information. Dr Rama says he did not receive this letter until 14 September 1998 and this assertion was supported by the evidence of Mr Harakh. On 7 August Mrs A contacted the Health Advocates Association and spoke to Mrs Doreen Hart, with whom she had contact over the next few weeks. Mrs Hart also gave evidence to the Tribunal and produced copies of notes she had made of her contact with Mrs A.

28. On 11 September and 6 October 1998 Mrs A wrote to the Health and Disability Commissioner describing her attempts to contact Dr Rama and outlining her other concerns.

29. Following the treatment on 3 August 1998, several appointments were made for Mrs A to return to Dr Rama's surgery to have the permanent bridge fitted and her treatment completed. Mrs A says that all of these appointments were cancelled by Dr Rama. There was significant conflict between Mrs A on the one hand, and Dr Rama and Ms Woonton on the other, about the number of appointments made and the reasons for cancellation. Mrs A said that the sequence was as follows:

- **17 August.** First follow up appointment made on 3 August, cancelled on 14 August by Ms Woonton who advised Mrs A that the bridge was not ready and Dr Rama was going overseas.
- **20 August.** Second follow up appointment made on 14 August, cancelled by Ms Woonton on 19 August because the bridge was still not ready.
- **27 August.** Third follow up appointment cancelled by Ms Woonton because Dr Rama was still overseas. Further appointment made for 3 September.
- **3 September.** Fourth follow up appointment cancelled by Ms Woonton because Dr Rama was ill with the flu. Further appointment made for 10 September.
- **10 September.** Fifth follow up appointment cancelled when Mrs A arrived at the surgery and was told that Dr Rama was sick and would not be there until later in the morning. Mrs A says that there was another receptionist there, not Ms Woonton, and a patient waiting in the reception room who told Mrs A she has an appointment with Dr Rama at 9am.
- At that stage Mrs A felt that Dr Rama was avoiding her and again phoned Mrs Hart of the Health Advocates Association. Ms Woonton phoned on 11 September and told Mrs A she could not give her an appointment and would ring her the following week to arrange one. Mrs A said that by this stage she had had enough and did not intend to attempt to return to Dr Rama. However she was advised by the Assistant Health and Disability Commissioner, Mr Williamson, to make a further attempt for an appointment. She therefore phoned on 28 September and was given an appointment (by Ms Woonton) for 9am on 1 October.

- **1 October** Sixth follow up appointment cancelled by phone call from Ms Woonton at 5.35pm on 30 September.

30. Dr Rama and Ms Woonton agreed that the appointments made for 17 and 27 August and for 3 September 1998 were cancelled by Dr Rama. However their evidence differed from Mrs A's evidence in important respects:

- **20 August.** Ms Woonton denied that there was an appointment made for 20 August. She said the next appointment after the cancelled appointment on 17 August was for 27 August.
- **3 September.** Ms Woonton says that she phoned Mrs A on 2 September to cancel this appointment because Dr Rama was sick. However Mrs A insisted on coming in to the surgery the next day regardless. She said that Mrs A asked why another person was in the waiting room. Ms Woonton said in her evidence that this person would have been waiting to see a dental technician, not Dr Rama.
- **10 September.** Ms Woonton says that there was no appointment scheduled for 10 September and her next contact with Mrs A was when she phoned her on 14 September to make an appointment. She says Mrs A told her she did not want any more appointments. She denies that Mrs A phoned her between 14 and 18 September and was told that Dr Rama would be away until 25 September. She says that Mrs A did phone her back later on 14 September to ask if her letter had been received.
- **1 October.** Ms Woonton says this appointment was made when Ms Woonton phoned Mrs A on 30 September and that Mrs A did not turn up to the appointment.
- **8 October.** Ms Woonton says that she phoned Mrs A again on 5 October to indicate that a further appointment was available on 8 October, but that Mrs A told Ms Woonton to stop ringing her and that she was going to another dentist.

31. Ms Woonton said she had made detailed notes of most of her conversations with Mrs A and these were produced to the Tribunal.

32. Dr Rama said that he left the responsibility of making follow up appointments with Ms Woonton. He said he was concerned that Mrs A did not come back but in the end he was satisfied that she was able to make an appointment if she wanted to. He said he had done all he could through Ms Woonton to make contact with Mrs A and to make himself available for the follow-up treatment. So far as Dr Rama was concerned, it was Mrs A who elected not to return to him for completion of her treatment. He did not consider that he had any obligation to try to contact Mrs A himself, even after he had cancelled (by his own admission) 3 post-treatment appointments.

33. Dr Isdale's evidence was that a dentist was obliged to personally contact the patient no later than 3 – 4 weeks after the temporary restorations are placed if final restorations have not been cemented. She said that if Mrs A had phoned the surgery several times, wrote to Dr Rama personally, and expressed concern repeatedly about her treatment and the discomfort she was in, then Dr Rama had an obligation to personally contact her. Further Dr Isdale considered that it was also unacceptable to leave a patient in a situation where treatment is incomplete and the patient's dental situation is unstable. Dr Isdale's view was that Mrs A's situation was unstable in that there was ongoing deterioration of her periodontal and dental health. The Tribunal accepts Dr Isdale's evidence in this respect.

34. The Tribunal finds that Dr Rama did repeatedly cancel follow up appointments for Mrs A. The Tribunal finds that appointments were made and cancelled essentially as contended for by Mrs A. In the case of the direct conflicts of evidence between Mrs A on the one hand and Ms Woonton and Dr Rama on the other, the Tribunal prefers the evidence of Mrs A. In reaching this conclusion the Tribunal noted that:

- Mrs A's evidence about the cancellation of the 20 August and 3 September appointments is corroborated by Ms Hart's notes about her telephone discussions with Mrs A and supported by the sequence of letters Mrs A wrote to Dr Rama and to the Commissioner.
- In relation to the 1 October appointment, Mrs A says she particularly remembers this because the appointment was made to fit in with her daughter's birthday on that day and gave details about this. In addition the Tribunal does not accept that an appointment for 9am on 1 October was made at 5.35 pm on the previous day, particularly given the difficulties over the previous weeks.
- Dr Rama and Ms Woonton gave different reasons for the cancellation of the 27 August appointment. Dr Rama said he was ill, but Ms Woonton's note records that he was overseas.

The Tribunal also finds that Mrs A repeatedly informed Ms Woonton that she was experiencing pain and discomfort and that this was never addressed by Dr Rama.

35. The Tribunal finds that at least some of Ms Woonton's notes were not contemporaneous and were written up after, and in some cases a significant time after, the events of July to October 1998. In reaching this conclusion the Tribunal takes into account:

- The fact that the notes were not supplied all at one time. An initial set of notes was supplied to the Health and Disability Commissioner in 1999. A second set of notes was supplied after the issuing of the Commissioner's final opinion in February 2000. A third set of notes was supplied when the hearing reconvened on 12 August 2002.
- The notes answer the substance of the complaints in a detailed and precise way as the complaint developed over time.
- The detailed nature of the notes and their narrative form are quite inconsistent with the type of notes which a dental assistant performing receptionist duties in a very busy practice such as Dr Rama's would be likely to make in the course of her working day.
- Ms Woonton's evidence in her brief and in her DSA note about the 3 September appointment is inconsistent with the evidence of Mrs Hart. The Tribunal accepts the evidence of Mrs Hart as being truthful and accurate.

CONCLUSION

36. In relation to the charge *A that Dr Rama, in preparation for a bridge, did not prepare Mrs A's teeth, adjacent to her missing upper left lateral incisor, to an appropriate professional standard*, the Tribunal finds that Dr Rama's preparation was defective to some extent as set out in our findings on that charge. However the Tribunal does not find that these defects in the tooth preparation were such that his behaviour has reached the threshold where disciplinary sanction should follow under either s54(1)(b) or s54(1)(c) of the Act. Therefore this charge is **not established**.

37. In relation to the charge B *that Dr Rama installed a temporary bridge in Mrs A's mouth which was of an unacceptable standard*, the Tribunal finds that this charge is **established**. The serious defects in the temporary bridge are described in the Tribunal's findings above. The Tribunal does not accept the submissions for Dr Rama that the pain and discomfort experienced by Mrs A were the result of her own decision to take matters into her own hands and place a higher emphasis and priority on the pursuit of her grievance against Dr Rama than she did on her own dental welfare. The Tribunal finds that the unacceptable standard of the temporary bridge caused pain and discomfort to Mrs A and that this was so from the time the bridge was first fitted. The Tribunal accepts that Mrs A had difficulty finding a dentist who was able to address the dental problems resulting from Dr Rama's work and was not restrained by the necessity to "preserve the evidence". The Tribunal also finds that Mrs A's gingival inflammation was caused by the defects in the bridge, and not as a result of the bridge being in her mouth for longer than was first anticipated.

38. The Tribunal finds that, in relation to the charge B, Dr Rama has been guilty of an act which was detrimental to the welfare of Mrs A under s54(1)(b) of the Act.

39. In relation to charge C *that Dr Rama failed to appropriately follow up Mrs A's dental care by*

(i) *Repetitively canceling follow up appointments intended for completion of her bridge work, and/or*

(ii) *Failing to refer Mrs A to another dentist for completion of her bridgework.*

The Tribunal finds this charge **established**. Dr Rama's conduct in respect to this charge falls so far below acceptable standards as to warrant a finding section 54(1) (c) of the Act that Dr Rama has been guilty of **professional misconduct**. In reaching this decision the Tribunal considers Dr Rama's conduct is a gross abrogation of his professional responsibilities as a dentist. In particular Dr Rama:

- Made no personal contact with Mrs A after the appointment on 3 August.
- Failed to meet his professional responsibility to contact his patient and complete the treatment or at least reevaluate the temporary restoration.
- Had every opportunity to contact Mrs A and deliberately avoided returning calls or meeting her in person.
- Cancelled 6 appointments without making any attempt to alleviate the pain Mrs A had repeatedly advised the surgery she was experiencing and without ensuring Mrs A was comfortable with her temporary bridge.
- Failed to give Mrs A the completed bridge.
- Failed to refer to another dentist for the work to be completed.
- Failed to refund any of the money received from Mrs A.
- Failed to provide his records in relation to the treatment in question in a timely and reasonable manner.

PENALTY, COSTS AND NAME SUPPRESSION

40. The Tribunal seeks submissions from counsel on penalty, costs and name suppression according to the following timetable:

- The Director of Proceedings to file and serve submissions within 10 days of receiving this decision;
- Counsel for Dr Rama to file and serve submissions within 10 days of being served with submissions from the Director of proceedings;
- Legal Assessor to file and serve directions within 5 days of being served with submissions from counsel for Dr Rama.

Service of the submissions is to be effected by fax sent to the respective counsel.

Dexter Bambery
(Chairperson of the
Dentists Disciplinary Tribunal)