

File No. CN /.

**IN THE DENTISTS DISCIPLINARY TRIBUNAL**

**IN THE MATTER** of the Dental Act 1988

**AND**

**IN THE MATTER** of a referral by the Complaints Assessment Committee of certain convictions against **Nicolas Arthur John Smith**, of Nelson, Dentist.

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

**LEGAL ASSESSOR** Mr G Pearson

**TRIBUNALS  
OFFICER** Mrs S D' Ath

**COUNSEL** Mr M McClelland (for the CAC)  
Mr A H Waalkens (for Dr Smith)

**DATE OF  
HEARING** 28 March 2002

**DATE OF  
DECISION**

---

**DECISION OF THE TRIBUNAL**

---

## **CHARGE**

These proceedings involve a charge against **Nicholas Arthur John Smith**, Dentist of Nelson. The charge was brought under s.54 (1) (a) of the Dental Act 1988, and arises from certain convictions against Dr Smith by the District Court at Nelson. Dr Smith was notified of the following particulars of those convictions:

On 10 August 2001 in the District Court at Nelson, Dr Smith was convicted of the following offences punishable by imprisonment for not less than 3 months:

- Using a document for pecuniary advantage. The convictions being on 3 representative charges brought pursuant to s.229A of the Crimes Act 1961.
- Willfully attempting to obstruct the course of Justice. The conviction being on 1 representative charge brought pursuant to s.117(d) of the Crimes Act 1961.

## **THE FACTS**

Dr Smith was contracted to provide services to the Health Funding Authority under s51 of the Health and Disability Act 1993. Those services were ones for which General Dental Benefits (GDB) were payable for eligible patients. Dental benefits were paid to Dr Smith following the submission of batches of handwritten GDB claim schedules. These were prepared and submitted by Dr Smith, usually on a monthly basis.

Health Benefits Limited (HBL) conducted an on-site audit of Dr Smith on or about 17 November 2000. That audit disclosed a number of irregularities which led to a subsequent investigation by HBL. That investigation examined claims made by Dr Smith between January 1999 and December 2000. During that period Dr Smith received \$105,285.00 in GDB payments.

The investigation established that the average value of each batch of claims submitted by Dr Smith increased noticeably during 2000, rising from a monthly average of \$2,500 during 1999 to a monthly average of \$6,825 by December 2000. The investigation also established that a series of fraudulent GDB claims were included in the claims submitted by Dr Smith. These claims covered services alleged to have been provided by Dr Smith during the period June 1999 to November 2000. 23 of the 30 batches of claims examined included fraudulent claims.

The value of the fraudulent claims made by Dr Smith amounts to \$40,000.

HBL investigators made photocopies of patient records during the on-site visit audit of Dr Smith on 17 November 2000. Dr Smith was later asked by HBL investigators to provide further records. Dr Smith provided those records to HBL on 30 November 2000. Analysis of those further records disclosed that Dr Smith had altered clinical details on a patient treatment card after the audit had commenced.

Dr Smith pleaded guilty to the charges and was sentenced to an effective term of six months imprisonment. The commencement of his sentence was deferred to allow Dr Smith to apply for home detention. Dr Smith applied for home detention and that application was

granted. He continued to practise during the period of investigation, after the charges were laid and since his convictions.

Dr Smith was diagnosed with a generalized anxiety disorder characterized by chronic ruminating and worrying that is in excess of the actual reality. There is a high level of associated physical symptoms and tension and anxiety. At the time of his offending Dr Smith had considerable personal and professional stress and his anxiety disorder worsened. His condition is amenable to specific therapies. There was no suggestion of psychosis or cognitive impairment.

### **CONCLUSION**

Dr Smith admitted the charge under s54 (1) (a) and the Tribunal is satisfied that Dr Smith was convicted in the District Court of New Zealand in respect to the charges outlined above and that these were offences punishable by a term of imprisonment of not less than 3 months.

The Tribunal finds that the circumstances of the offences in respect of which Dr Smith was convicted do reflect adversely on his fitness to practice dentistry.

### **PENALTY**

Under s55 (1) (b) the Tribunal orders that the registration of Dr Smith be suspended for a period of 6 months. The period of this suspension is to start one month after receipt of this decision by counsel for Dr Smith.

In reaching this decision the Tribunal considered:

- A significant amount of money was involved
- The offending continued over a considerable period of time
- Dr Smith's conduct in this respect, including the gross breach of trust involved, is completely unacceptable as a member of the dental profession.
- Dr Smith was granted home detention but was able to continue practising.
- Apart from the financial aspect of the conduct in question the Tribunal considered the altering of clinical records to be a very grave matter.

Under s55 (1) (e) The Tribunal orders that Dr Smith be censured.

### **COSTS**

Dr Smith will pay 30% of the costs of and associated with this Dentists Disciplinary Tribunal hearing

### **APPEAL**

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 Bamberg**  
(Chairperson of the  
Dentists Disciplinary Tribunal)