

## DECISION:

### MR GARY BARUTZKI (DENTAL PROSTHETIST)

7<sup>th</sup> May 2003

Panel: Mr J Harty  
Dr. G. Condon  
Mr. A. Edwards

The Panel, after considering all the submissions made about the professional conduct of Mr. Barutzki, found that he has engaged in unprofessional conduct of a serious nature under the following general headings:

- 1 Matters arising from an earlier informal hearing
- 2 Advertising issues
- 3 Failure to respond to the Board
- 4 "Free Dental Insurance Policy"

The Panel further found that Mr. Barutzki had engaged in unprofessional conduct which was not of a serious nature under the following heading:

- 5 Mrs M

The Panel noted that Mr. Barutzki chose to be unrepresented and counselled him regarding his rights, including the right to representation by counsel. He acknowledged understanding his rights and declined the offer of representation. The Panel noted that throughout the hearing, Counsel assisting the Board exhibited purposeful care to ensure Mr. Barutzki was able to present his case clearly and in a timely fashion, and the Panel safeguarded Mr. Barutzki's right to be heard.

A number of admissions were made by Mr. Barutzki at the commencement of the hearing, and the Panel was thankful for this assistance.

#### Matters arising from Informal Hearing

Mr. Barutzki admitted some allegations arising from an informal hearing held on 27 March, 2002. Other determinations were conditionally admitted.

The Panel from the informal hearing had required Mr Barutzki to attend a full day infection control course, and Mr. Barutzki attended a half-day course. Mr. Barutzki claimed that he spoke with Mr. Gardner, the CEO of the Board, about the availability of such courses and it had been agreed he could attend a half day course. The Panel found Mr. Gardner a credible witness, and considered that any confusion about the allowed length of course related to confusion on Mr. Barutzki's part.

Mr. Barutzki admitted failure to obtain a copy of AS/NZS 4815:2001, and the Panel acknowledged he would not have been able to acquire a copy of the National Health and Medical Research Council's "Infection Control in the Health Care Setting, April 1996" as it was out of print at the time and had not been reprinted subsequently.

Mr Barutzki claimed the requirement that "he would read and comprehend matters contained in stipulated documents relevant to his practice as a dental health care provider" was met in his letter of 2 July 2002 to the Board. The Panel noted that he did not have the documents in his possession at that time so he could not have complied with this requirement. The Panel did note, however, that he obtained information from another document not stipulated.

Mr. Barutzki was also obliged to provide the Board with practice protocols by 27 April 2002. These were not received until 10<sup>th</sup> July 2002 in his letter of 2<sup>nd</sup> July 2002.

The Panel considered that Mr. Barutzki had not given proper weight to the authority of the Board. It considered that he has done this by omission rather than deliberate contumelious disregard of the Board. The evidence presented to the Panel indicated that similar compliance failures were also present in a number of other areas of Mr. Barutzki's professional life, and were evidence of his inability to cope with his professional obligations.

However, compliance with Board directives is paramount for maintaining respect within the profession for its regulatory authority, as well as maintaining confidence amongst the public that the Board will respond effectively to their concerns if proven.

Accordingly, the Panel found that Mr. Barutzki had engaged in unprofessional conduct of a serious nature.

### Advertising Issues

These advertising allegations are a continuation of the allegations proven at the aforementioned informal hearing. The continuation of the advertisements in the Bairnsdale local paper offering "Pensioner Discounts" was admitted.

The Panel heard evidence from Dr. Roseman, the Board's Investigative Officer, that Mr. Barutzki's advertisements for mouthguards on his City Search website continued to offer monetary inducements without setting out the terms and conditions of the offer. Mr. Barutzki stated that he thought the addition of the words "conditions apply" was sufficient to comply with the Act. The Panel was made aware that this offering of inducements without specifying the conditions applying to them had been an important issue at the informal hearing.

The Panel was disappointed that Mr. Barutzki had not been able to correct his breaches of s64 of the Act since the informal hearing, and was also disappointed that his attempted correction of his website still was in breach of the Act, despite counselling at the informal hearing.

Because of the continuation of these advertising breaches, the Panel found that Mr. Barutzki had engaged in unprofessional conduct of a serious nature.

### Failure to Respond to the Board

The Panel heard evidence from Dr. Roseman, and was appreciative of the information in the Board's records to assist in this regard.

Mr. Barutzki initially admitted receiving only 2 of 9 letters sent to him by the Board. The Panel noted that 2 other registered letters had been returned to the Board.

Mr. Barutzki gave evidence to the Panel that for 2 letters, he had changed address without notifying the Board. He advised the Panel that his mailing address was at his premises in Doveton, and he had suffered a lot of vandalism and theft from these premises. As he was not working full time due to a practice downturn, he was not always in attendance at the premises, and mail other than correspondence from the Board had also gone missing.

Perusal of the correspondence between Mr. Barutzki and the Board revealed inconsistencies between the missing correspondence from the Board and Mr. Barutzki's response to the Board. Mr. Barutzki claimed that he did not know what he had or had not received, and repeatedly stated that "if I answered it, I got it".

Mr. Barutzki advised the Panel that he kept a post office box for correspondence from sporting clubs, but not for anything else. He could not explain this anomaly, and the Panel was likewise mystified by this lack of logic, particularly as there had been so much apparent difficulty with mail at his premises.

Under s4(2)(b)(ii) a registered person is required to provide the Board with a postal address. This is an important requirement and the Board is required under s16(6)(e) to maintain the postal address of the registered person on the register, where it is available for public scrutiny. For this provision to be effective, it is self evident that the registered person must provide a functional postal address.

It was demonstrated to the Panel that in Mr. Barutzki's circumstances, the postal address was most ineffective. The Panel considered this failure by Mr. Barutzki to again be indicative of his overall inability to successfully manage the business side of his dental health care provision. The Panel did not consider that there has been intended deceit of the Board, but rather incompetence.

However, lack of functional communication with the Board is a serious breach of one's professional obligations, and accordingly the Panel found Mr. Barutzki to have engaged in unprofessional conduct of a serious nature.

## "Free Dental Insurance Policy"

Admissions were made regarding advertisements for insurance on various mouthguard products appearing in various publications.

It was demonstrated to the Panel that the advertisements offering "Free \$2,000.00 Insurance on CLM" (or similar) in fact had 6 conditions attached to them from the manufacturer ('PRO-TECT' Mouthguards) who provided the warranty through Mercantile Mutual Insurance (Australia) Limited.

These conditions were not insubstantial and are summarized below

- a sunset clause of 12 months
- dental expenses covered if not otherwise insured
- injuries necessarily incurred in consequence of injury or accident
- participation in an officially organized sporting event required
- cover only for sound natural dentition
- insured had to be have been correctly wearing the mouthguard

The advertising of this "free insurance" without stating the terms and conditions attached constituted a breach of s64(1).

In cross examination, Mr. Barutzki acknowledged that the terms and conditions should have been included, and claimed he had made an "honest mistake".

During his informal hearing, Mr. Barutzki's obligations to comply with s64(1) had been explained to him, and indeed he was sent a copy of s64(1), as well as being given the advice to acquire a copy of the *Dental Practice Act 1999* to ensure his actions did not contravene it.

The Panel considered this to be further proof of Mr. Barutzki not being in control of the business aspects of his profession. He had given little consideration as to how his advertisements might detrimentally affect the well being of his patients, or how such advertisements might unfairly attract patients to him.

The Panel did not consider Mr. Barutzki set out to be deliberately misleading, however given the flagrant breach of the act, it found that Mr. Barutzki had engaged in unprofessional conduct of a serious nature.

## Mrs. M

Mr. Barutzki admitted advertising a Denture Service with "free home visits", which Mrs. M had utilized, and he provided her with a set of dentures.

Mrs. M gave evidence to the Panel that Mr. Barutzki provided her with dentures as she was at the time housebound and unable to wear the dentures recently made for her under the Transport Accident Commission's (TAC) processes. She found Mr. Barutzki's dentures "too big" and she was unable to wear them. She testified that she made arrangements on a couple of occasions for Mr. Barutzki to visit her home to rectify the dentures but he did not attend. She did not continue to request Mr. Barutzki's attendance as she was nursing her dying husband at home. The Panel found Mrs. M to be a credible witness, particularly in her recollection of events during a traumatic and stressful period in her life.

Mr. Z, a registered dental prosthetist, gave evidence that having seen Mrs M's dentures he considered they had a difficulty with a negative freeway space. He found the quality of workmanship satisfactory, but considered the dentures to be of a lower standard than the public or another dental prosthetist would accept. Mr. Z has constructed satisfactory dentures for Mrs. M. The Panel noted that Mr. Z's method of writing up his treatment notes allowed for the possibility of recording the faults in the previous dentures at a later time, although he stated this had not been the case. The Panel found Mr. Z to be a credible witness.

In his evidence, Mr. Barutzki stated that he adjusted Mrs. M's TAC dentures before constructing a new set, a fact that Mrs. M denies. The Panel was advised that all records relating to his treatment of Mrs. M have been stolen. Mr. Barutzki denied that the dentures shown to the Panel during the hearing as being the ones he had constructed for Mrs. M were in fact, his (again a fact denied by Mrs. M).

In examination, Mr. Barutzki admitted he did not comply with his advertisement and did not offer a pensioner discount.

Who had actually made the dentures said in evidence to have been made by Mr. Barutzki was in dispute. The presence of calculus on the upper denture indicated it had been worn by the patient for some time, and Mr. Z stated

in evidence that he had not seen the TAC dentures. Mrs. M stated she had thrown out the TAC dentures.

Disputes as to whether dentures are satisfactory or not are not uncommon in dentistry, and on the evidence before it the Panel was not in a position to make any finding regarding the quality of the dentures provided to Mrs. M by Mr. Barutzki.

However, the Panel considered that the level of professionalism exhibited by Mr. Barutzki towards Mrs. M to be lacking. In particular, his not offering an advertised discount because she did not ask for it, demonstrates a lack of understanding of his professional responsibilities. This deficiency, apparent to the current Panel, had been clear to the Panel in the informal hearing. Accordingly, the Panel found that Mr. Barutzki engaged in unprofessional conduct which was not of a serious nature.

The Panel believed Mr. Barutzki had some serious problems managing the conflicts of his commercial requirements with his professional responsibilities as a dental care provider. The Panel's determination was intended to assist Mr. Barutzki to resume his dental care provision to the public in a safe manner. Previous determinations against Mr. Barutzki had been made solely with the intent of protecting the public. This present determination also ensured that a message of general deterrence was sent to other dental care providers to ensure they did not flout the Board's authority..

For those matters in which the Panel had found allegations of unprofessional conduct of a serious nature to have been proven, it

1. Reprimanded Mr. Barutzki
2. Cautioned Mr. Barutzki that his conduct was unacceptable for a professional person and further continuance of this conduct could be considered adversely in any future disciplinary hearing. It further cautioned Mr. Barutzki that if there were elements of the determination that he did not understand, it was his professional responsibility to seek clarification from the Board
3. Required that Mr. Barutzki complete the determinations of the panel of the informal hearing held 27.3.02, in particular, that he
  - complete a one-day infection control course approved of by the Board within 6 weeks of this determination
  - obtain a copy of the National Health and Medical Research Council's "Infection Control in the Health Care Setting" as soon as it was published, and as an interim measure, obtain a copy of the final draft which was available at the date of this determination on the following website: <http://www.health.gov.au/pubhlth/strateg/communic/review/draft.htm>
4. Determined that one month after the date of this determination, Mr. Barutzki's registration would be suspended for one year.  
This suspension could be removed at any time prior to the latter date if he either
  - (a) Provided evidence to the Board that his professional practice was being overseen by a mentor. Such mentor must be a registered person under this Act approved of by the Board, and would be required to pay particular attention to Mr. Barutzki's understanding of his professional responsibilities, including the balance between his commercial interests and his patients' interests. This mentorship would be reviewed by the Board annually, with six-monthly reports from the mentor

-or-

  - (b) Provided evidence to the Board that he was only practising as an employee of a registered person under this Act approved of by the Board, or as an employee of an appropriate institution approved of by the Board. This would be reviewed by the Board on an annual basis.

For those matters in which the Panel had found allegations of unprofessional conduct not of a serious nature to have been proven, it

1. Reprimanded Mr Barutzki;
2. Counselling Mr Barutzki that the patient's welfare must always be his top priority
3. Cautioned Mr Barutzki that his conduct was unacceptable for a professional person and further continuance of this conduct could be considered adversely in any future disciplinary hearing.