

# THE DENTAL PRACTICE BOARD OF VICTORIA

## Mr Patrick Davies [2006] DPBV 8

### Panel:

Ms Deborah Foy (Chair)  
Mr Craig McCracken  
Professor Michael Morgan  
Dr Vlad Hardi

Counsel Assisting the Panel: Mr P Monahan of Monahan + Rowell, Lawyers

Counsel for the Practitioner: Mr Chris Winneke instructed by Ebsworth & Ebsworth, Lawyers

Date of hearing 24 October 2006

Date of Decision 24 October 2006

### **FINDING**

Pursuant to section 47(1)(a) of the *Dental Practice Act 1999* ("the Act"), the Panel having considered the evidence and submissions placed before it, and taking into account the admissions made by Mr Davies that in relation to allegations (c) to (j) of the Notice of Hearing, Mr Davies has engaged in unprofessional conduct as defined in paragraphs (a) and (b) of the definition of "unprofessional conduct" in section 3 of the Act and that conduct is of a serious nature.

### **DETERMINATION**

The Panel records its acknowledgement of Mr Davies' admissions. These admissions assisted in the conduct of the hearing and were taken into account by the Panel in making the Findings and Determinations which have been made.

Nonetheless, having considered the matter and having given due weight to the submissions placed before the Panel, the Panel considers it appropriate under section 47(2) of the Act to impose the following penalties:

1. Mr Davies is reprimanded for his conduct;
2. Mr Davies is cautioned with respect to his future conduct.
3. Mr Davies is fined the sum of \$3,000.

### **Reasons for decision**

The Dental Practice Board of Victoria determined under section 45 of the Act that a Formal Hearing was to be held into the professional conduct of Mr Davies, a registered dental care provider. A Panel was convened and a hearing was held on 24 October 2006.

The allegations heard by the Panel are contained in a Notice of Formal Hearing which described the allegations against Mr Davies:

- (a) At all material times you have been registered as a dental care provider in Victoria under the *Dental Practice Act 1999* ("the Act") having been registered as a dental prosthetist since 1 July 2001.
- (b) Prior to that, you practised as a Dental Technician (from 9 December 1988) and then as an Advanced Dental Technician (from 17 December 1998), both under the then *Dental Technicians Act 1972*.

**Mr X**

- (c) At all material times, Mr X has been a member of the Victorian public, living in Melbourne.
- (d) On or about 9 May 2005, and in your handwriting, you issued a Tax Invoice/Statement numbered 46 addressed to Mr X under your provider number 1001521T in the amount of \$780. A copy of the Tax Invoice/Statement was tendered as an exhibit.
- (e) By that Tax Invoice/Statement you stated and represented that you had performed the following treatment for Mr X at the following cost:-
  - (i) Item 728 - \$680
  - (ii) Item 733 - \$100Total - \$780
- (f) The Australian Schedule of Dental Services and Glossary 8<sup>th</sup> edition (2004) defines these items as follows:-
  - (i) Item 728 – Partial mandibular denture – cast metal framework;
  - (ii) Item 733 – Tooth/teeth (partial denture).
- (g) Thereafter, you received payment in the sum of \$780 under that Tax Invoice/Statement and wrote the words "*Paid in full*" in your own handwriting on the Tax Invoice/Statement and appended below that your signature/initials.
- (h) In truth and in fact, you never provided any dental treatment whatever to Mr X, and in particular, never provided the treatment described in your Tax Invoice/Statement no 46 to Mr X on or about 9 May 2005 or any other date.
- (i) In truth and in fact, Mr X received certain illegal dental treatment from one Mr AB, who handed him your duly completed Tax Invoice/Statement no 46.
- (j) Your Tax Invoice/Statement was duly presented by Mr X to Medibank Private, who reimbursed a benefit totalling \$379.40 to Mr X in relation to that account. A copy of the Medibank Private Statement of Benefit Paid was tendered as an exhibit.
- (k) You have accordingly produced your Tax Invoice/Statement no 46, and provided it to Mr AB or someone on his behalf, fraudulently and dishonestly.
- (l) Further, by so doing, you facilitated and assisted Mr AB in practising dentistry illegally in Victoria, and in obtaining payment for doing so.
- (m) You thereby placed the public of Victoria, and in particular Mr X, at potential risk.

- (n) By this conduct, you have engaged in unprofessional conduct as defined in Section 3 of the *Dental Practice Act 1999*.
- (o) Such unprofessional conduct is of a serious nature.

**Failure to cooperate with the Board's Investigative Officer**

- (p) Dr Anthony Roseman is the Investigative Officer of the Dental Practice Board of Victoria ("*the Board*") and the Board has (pursuant to Section 23 of the Act) delegated to Dr Roseman its power to conduct preliminary investigations into complaints, including the complaint made by Mr X.
- (q) In the performance of his functions and duties as Investigative Officer of the Board, Dr Roseman wrote a letter on 15 December 2005, to you requesting:-
  - (i) A report on your initial consultation with Mr X;
  - (ii) Details of any treatment provided to Mr X; and
  - (iii) All the dental records of the patient Mr X (for which a signed authority was provided).
- (r) Despite the exchange of correspondence thereafter between Dr Roseman and yourself, and thereafter between Dr Roseman and your solicitors Ebsworth & Ebsworth, you have failed, refused and / or declined to provide Dr Roseman with:-
  - (i) Any details of the treatment which you provided to Mr X; and
  - (ii) A report of your initial consultation with Mr X.
- (s) Further, in answer to the request that you forward "*all the dental records of this patient*":-
  - (i) You first informed Dr Roseman through your solicitors (by letter dated 19 January 2006) that "*Mr Davies does not hold any dental records in relation to Mr X*";
  - (ii) By letter dated 14 February 2006, Dr Roseman wrote to your solicitors Ebsworth & Ebsworth requesting you once again "*to provide details of the treatment allegedly provided, for which charges were raised and payment received by Mr Davies as detailed in the above receipted invoice*";
  - (iii) After Dr Roseman then provided your solicitors in that letter with a copy of your Tax Invoice / Statement no 46 dated 9 May 2005 (annexed hereto marked "A"), you then ultimately responded many months later through your solicitors (by letter dated 5 May 2006) attaching a duplicate of that receipt and saying that "*the above duplicate receipt is the only document in our client's possession relating to Mr X*";
  - (iv) Through your solicitors, you refused to provide any further documentation or information in this regard.
- (t) By your conduct, and by the instructions which you provided to your solicitors, you have refused to provide appropriate cooperation to the Investigative Officer of the Board in the exercise of his duties under the Act, and have refused to answer his inquiries and provide him with the information which he has reasonably requested.
- (u) Your conduct has hindered and hampered the investigative and disciplinary processes of the Board required by the Board to discharge one of its primary functions, namely resolving matters subject of such complaints.

- (v) By your conduct, you have engaged in unprofessional conduct as defined in Section 3 of the Act.
- (w) Such unprofessional conduct is of a serious nature.

The allegations in paragraphs (k) and (l) were made out.

Mr Davies was at all material times a registered dental prosthetist

### **Admissions**

The Panel was informed at the outset of the hearing that Mr Davies made a number of admissions concerning his conduct in providing a false invoice/tax statement to Mr X and enabling Mr X to claim an amount from Medibank Private for treatment provided by an unregistered person purporting to provide dental treatment.

Mr Davies had practised in Victoria firstly as a Dental Technician and then as an Advanced Dental Technician since 1988.

On or about 9 May 2005, Mr Davies issued a tax invoice/statement addressed to Mr X under his provider number in the amount of \$780.

It referred to two item numbers, 728 and 733 and the total of the invoice was \$780. Item 728 is a partial mandibular denture, cast metal framework and Item 733 is tooth/teeth on the partial denture.

At the time of issuing the invoice, Mr Davies was aware that he had not provided any services to Mr X and that the invoice may be used for a purpose unconnected with any treatment provided by Mr Davies.

The invoice was subsequently presented by Mr X to Medibank Private who reimbursed a benefit totalling \$379.40 to Mr X in relation to that account.

### **Evidence of Mrs X**

Mr X's wife gave evidence about the history of events leading up to the receipt of the tax invoice issued by Mr Davies.

Her husband, who is not as fluent in English as she is, attended Mr AB for orthodontic work on several occasions.

Initially, Mr and Mrs X paid Mr AB \$200 for a deposit for Mr X's brace and denture services on 22 February 2004 and \$1960 on 29 February. All monies were paid prior to the service being provided. They received a simple tax invoice in the name of Superior Dental.

Mr and Mrs X were organised to visit Mr AB once a month and he took an impression for an orthodontic appliance for Mr X's braces for his upper teeth. Two sets of frames were also made which were orthodontic appliances that were being made to straighten his teeth.

Towards the end of the treatment, Mr AB provided a partially constructed lower denture to Mr X which Mr X was unhappy with as it did not have the two teeth needed to replace Mr X's missing teeth in his lower jaw after his teeth had been straightened. Mr and Mrs X discovered that the invoices which had earlier been provided by Mr AB could not be used to recover any benefit from their private health insurance.

On 28 July 2005 Mr and Mrs X received an invoice issued by Mr Davies on 9 May 2005 which referred to an amount of \$780 and described as "paid in full".

Mr X took the invoice straight away the same day to Medibank Private and he recovered a benefit of \$379.40 from Medibank Private on that same day.

Mrs X gave evidence that she had never met Mr Patrick Davies over that period and Mr or Mrs AB gave her no explanation as to why she was receiving a tax invoice from somebody else. Mrs X also gave evidence that when Mr and Mrs X initially saw Mr AB back in February 2004, the very first condition before engaging them to provide services was to ensure that Mr and Mrs X could claim on the private health insurance which they had recently purchased. They were advised that a proper tax invoice could be provided to enable them to claim a refund.

### **Evidence of Mr Davies**

Mr Davies gave evidence that he conducts two businesses on his premises. One is the business which he conducts as a dental prosthetist dealing directly with the public and the other is a commercial dental laboratory to service other dentists. Mr Davies told the Panel that he had a business relationship with Mr AB as he used the services of a laboratory at which Mr AB works to provide metal castings. Mr Davies primarily conducted business on a weekly basis with Mr AB as Mr AB was delivering the metal castings to Mr Davies laboratory.

Mr Davies also gave evidence that he did not know whether or not Mr AB had any formal dental qualifications prior to this incident. Mr AB had asked whether Mr Davies could provide an invoice for him when he was delivering to Mr Davies premises sometime in July 2005. Mr Davies said:

“He asked me if I could do him a favour in providing an invoice with some item numbers on it for a particular patient, that being Mr X. I think that the association was that they were friends.”<sup>1</sup>

When asked by his Counsel as to why there were certain details, including the date, the name and address of the patient and the item numbers and costs on the receipt, Mr Davies replied that Mr AB had told him the name of the patient and the address and what the patient was having. Mr Davies also agreed that he had written: “Paid in full” on the invoice at Mr AB’s request.

Mr Davies then gave evidence that his reason for complying with the request was that he thought that “doing him a favour probably over-powered my actual thoughts for thinking about it at the time and I gave it not as much consideration as I should have”.<sup>2</sup>

He also knew the possibilities regarding its future use.

There was argument before the Panel as to allegations (l) to (k) contained in the Notice of Hearing. In summary, these allegations concern whether or not Mr Davies facilitated Mr AB to illegally practice dentistry.

Counsel Assisting the Panel argued that by his conduct, Mr Davies facilitated and assisted Mr AB in practising dentistry while acknowledging that clearly, as the evidence shows, the provision of the tax invoice came after the illegal practice of dentistry.

It was argued that the Panel should take a broader view of the matter and that part of the process of Mr AB being able to practise dentistry illegally is his ability to provide his patients, with invoices which enable them to obtain benefits from their medical benefit funds. Accordingly, it was put to the Panel that Mr Davies' conduct did facilitate Mr AB practising dentistry illegally in Victoria and did assist him in doing so.

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<sup>1</sup> Transcript of evidence p.29

<sup>2</sup> Transcript of evidence p.30

Mr Davies acknowledged in cross-examination that he did know that that was the purpose for which the invoice was going to be used. Accordingly, it was argued that by his conduct, Mr Davies did place the public of Victoria at risk in that he assisted Mr AB to keep practising dentistry illegally in Victoria and, ipso facto, placed the public of Victoria at potential risk.

Counsel Assisting the Panel pointed out that the entire purpose of having professional bodies such as the Board is intended to minimise the risk that the public of Victoria would otherwise be placed at by illegal and uncontrolled practitioners.

Counsel for Mr Davies argued that Mr AB engaged in whatever conduct he undertook without the assistance of Mr Davies. It was argued that the Panel could not find as a matter of fact that Mr AB regularly or irregularly illegally practised dentistry, as there was no evidence before the Panel on these questions. Mr Davies conceded in evidence that what he had done was to enable the complainant to go to Medibank Private and obtain \$379.

Counsel further argued that nothing that Mr Davies did placed Mr X at potential risk, because whatever had occurred in relation to Mr X had already occurred prior to the delivery of the invoice to Mr AB. In relation to any risk to the public, Counsel for Mr Davies submitted that it was not open to the Panel to make a finding that Mr Davies placed the public in general at risk, because there was no evidence as to what Mr AB's conduct was aside from the one matter before the Panel.

The Panel accepted the argument of Counsel for Mr Davies and found that allegations in paragraphs (l) and (m) of the Notice of Hearing were not made out.

The *Dental Practice Act 1999* does not go beyond the definition of unprofessional conduct and define what is not of a serious nature and what is of a serious nature. The meaning of unprofessional conduct "of a serious nature" has been considered in a number of cases. These include *Parr v Nurses Board of Victoria* (1998) 16 VAR 118 and *Domburg v Nurses Board of Victoria* [2000] VSC 369. Most recently, Morris J in *Kozeniauskas v Dental Practice Board of Victoria* [2005] VCAT 1058 stated the following:

"Clearly enough, the difference goes to the gravity of the conduct and must depend upon, not only the facts of the case, but also an assessment of the conduct in the context of the conduct of professional practice generally."<sup>3</sup>

The Panel's function in making the Determinations is one of protecting the public and not of punishing the dental care provider.

The Panel regards the conduct undertaken by Mr Davies with serious concern. The giving of an invoice to a second party to give to Mr X was untruthful and dishonest and allowed a person, Mr X, to obtain a financial benefit from a private health insurer for a service which had not been provided by a registered dental health professional. While Mr Davies did not specifically know that the invoice would be used for that purpose, he must have contemplated such a purpose.

Such conduct is less than that expected by the public or by Mr Davies' peers of a registered dental health professional.

Mr Davies expressed his regret and remorse for the incident and advised the Panel that he would never embark on similar conduct. He apologised sincerely for the incident. The Panel does note that Mr Davies did not, however, take any steps to retrieve the invoice or correct the error until he received notice of a complaint from the Dental Practice Board of Victoria.

Having heard the evidence and noting Mr Davies admissions, the Panel considered the determinations it could make in respect of Mr Davies, given the Panel's purpose in protecting the public.

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<sup>3</sup> *Kozeniauskas v Dental Practice Board* [2005] VCAT 1058

Having found that the conduct constituted unprofessional conduct of a serious nature, the likelihood of repetition is an important aspect of the Panel's function in deciding what an appropriate determination is. The Panel has to consider the importance of maintaining the integrity and standards of the profession and deterring others, not just Mr Davies, from this type of behaviour.

It is important to note that the Panel believed that the admissions made by Mr Davies were in accordance with the evidence and demonstrated an understanding of the seriousness of his departure from the standards expected by the public and his peers.

The Panel took into account the length of Mr Davies' practice since 1988 and the fact that he had not appeared before the Board previously. The Panel also noted that Mr Davies was clearly aware of the importance of providing a high standard of care to his patients.

Mr Davies advised the Panel that the giving of the invoice to Mr AB was "doing a favour for a friend" and he did not consider fully the nature of the consequences of his conduct.

It is a serious matter to reprimand a professional person for their unprofessional conduct. In addition to being cautioned and reprimanded, the Panel believed that it was appropriate to fine Mr Davies the sum of \$3,000 by way of specific deterrence to Mr Davies and by way of general deterrence to other practitioners.

Such a fine reflects the importance of maintaining the standards of truthful conduct and integrity expected of registered dental health professionals, which includes practitioners such as Mr Davies.

**Deborah Foy (Chair)**

**Dated:** 24 January 2007