

THE DENTAL PRACTICE BOARD OF VICTORIA

DR PAUL GARDNER [2007] DPBV 1

Panel:

Ms Deborah Foy (Chair)

Dr Vlad Hardi

Dr John Boucher

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

Counsel for the Practitioner: Ms Mary-Anne Hartley instructed by DLA Phillips Fox

Dates of Hearing 30 October 2006 and 20 November 2006

Date of Decision 21 March 2007

FINDINGS

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 Dr Gardner with respect to allegations contained in paragraphs (a) to (d) , (f), (g), (h)(i) and (o) to (u) of the Notice of Formal Hearing, finds Dr Gardner 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

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. Dr Gardner is reprimanded for his conduct;
2. Dr Gardner is cautioned with respect to his future conduct; and
3. Dr Gardner is required to undergo a course of counselling with a counsellor approved by the Board concerning the relationship between Dr Gardner's religious beliefs and his dental practice. The counsellor will provide a report on the counselling within six months from the date of this determination. The focus of the counselling will be avoidance of dual relationships with patients.

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 Dr Gardner, a registered dental care provider. A Panel was convened and a hearing was held on 30 October 2006 and 20 November 2006.

The allegations heard by the Panel are contained in a Notice of Formal Hearing which described the allegations against Dr Gardner as follows:

- (a) At all material times he was registered as a dental care provider in Victoria under the *Dental Practice Act 1999* ("the Act"), or its predecessor, the *Dentists Act 1972*, having been so registered since 24 December 1985.

Your Patients/Appointments

- (b) On or about 13 January 2006, appointments had been made for him to see two of his patients:-
 - (i) Mrs AB; and
 - (ii) Mr AB
- (c) At the time, Mrs AB suffered from schizophrenia.
- (d) He duly consulted with Mrs AB on that date and conducted an initial examination and a scale and clean.

- (e) Mr AB cancelled his appointment with him, as he disapproved of the conversation which he had had with his wife whilst he was treating her.

Consultation with Mrs AB

- (f) Mrs AB consulted him for a dental examination and in addition he provided a scale and clean of teeth;
- (g) Whilst Mrs AB was in the dental chair, she stated that she suffered from schizophrenia and takes medication for her condition.
- (h) He then proceeded as follows:-
- (i) Identified himself as a strong practising Christian;
 - (ii) Inquired whether Mr and Mrs AB were aware of what causes schizophrenia;
 - (iii) Disagreed with Mr and Mrs AB as to the real medical cause of her illness;
 - (iv) Stated that she was possessed by, or oppressed by, evil spirits;
 - (v) Informed Mr and Mrs AB that Mrs AB should attend at his church and consult his spiritual adviser / priest / minister who would be able to perform a "*spiritual healing upon her*";
 - (vi) Informed Mr and Mrs AB that Mrs AB would then be cured and it would no longer be necessary for her to take prescribed medication for her illness;
 - (vii) In answer to an expression of disbelief, cited his dental assistant who was also present, as an example of someone who had been cured of a mental illness by spiritual healing;
- (i) Mr AB then left the treatment room;
- (j) At the conclusion of the treatment, Dr Gardner followed Mrs AB out to his reception area and claimed to her that Mr AB was also possessed of "*evil spirits*", and that both Mr and Mrs AB should seek some sort of healing from his church, and then began "*chanting*" something;
- (k) His behaviour made both and Mr and Mrs AB feel extremely uncomfortable, and his purported medical advice to them was incorrect, inappropriate and potentially dangerous.
- (l) In his letter to the Board dated 27 February 2006, he defended certain aspects of this alleged conduct, referring inter alia to biblical sources.

- (m) In that letter, he expressed the following observations general to his practice, and his dealings with his patients:-

“One of the reasons my practice is building at such a rate is that we successfully deal with the spirit of fear that oppresses so many patients (2 Timothy 1:7). This spirit of fear is the cause of behaviours such as needle phobia, non-attendance leading to a mutilated dentition, gagging, anxiety, crying and vomiting. I say a simple command prayer and the behaviour ceases and does not return. The patient leaves feeling different and knowing that they have been touched by Jesus Christ. Please note that this is offered, never forced, and rarely rejected, and that I have been quietly serving my patients in this manner for 2 ½ years”.

- (n) Accordingly, such conduct on his part has been regular and ongoing for the last two and a half years.
- (o) By such conduct, he had engaged in unprofessional conduct as found in Section 3 of the *Dental Practice Act 1999*.
- (p) Such unprofessional conduct is of a serious nature.

Code of Practice

- (q) Alternatively, and in addition, his conduct is in breach of his obligations under Code of Practice Number C 008.
- (r) On 13 September 2005, the Board promulgated Code of Practice Number C 008 about the practice of dentistry entitled *“Professional Boundaries”*, under Section 69(1)(e) of *the Act*.
- (s) At that time, and thereafter, this Code of Practice was promulgated and publicised within the dental profession in Victoria, by being posted on the Board’s website, and published in the Board’s bulletin in October 2005, which was posted to all registered dental care providers in Victoria in October 2005.
- (t) A copy of the Professional Boundaries Code of Practice Number C 008 was tendered at the hearing.
- (u) The Code of Practice states that *“Professional Boundaries are the legal and interpersonal limits dental care providers’ peers or the public might reasonably expect them to observe”*.
- (v) The Code of Practice stipulates in paragraph 9 that all registered dental care providers have a professional responsibility: -

- (i) To act in the best interests of their patients;
 - (ii) To maintain appropriate professional boundaries with their patients;
 - (iii) Not to exploit their patients;
 - (iv) Not to violate the trust placed in them by their patients;
 - (v) Not to abuse the power they have by virtue of their position and professional standing;
 - (vi) To be conscious of the risks inherent in any dual relationship.
- (w) By his conduct, he is in breach of the Code of Practice.
- (x) He has in particular breached his professional responsibilities set out in paragraph 9 of the Code of Practice.
- (y) By this conduct, he has engaged in unprofessional conduct as defined in Section 3 of the *Dental Practice Act 1999*.
- (z) Such unprofessional conduct is of a serious nature.

REASONS

On 3 October 2006, the Dental Practice Board of Victoria in a Panel of three members convened to conduct a formal hearing pursuant to the *Dental Practice Act 1999* ("the Act") into the conduct of Dr Gardner. Dr Gardner was at all material times a registered dentist.

The Panel was informed at the outset of the hearing that Dr Gardner made a number of admissions with respect to factual matters contained in the Notice of Formal Hearing through his Counsel. In particular, the Panel also notes that Dr Gardner did not contest the evidence of two medical practitioners with respect to Mrs AB's illness.

Mr AB's evidence

Mr AB gave evidence that he and his wife had been members of the Baptist Church but that neither of them had attended church for some years.

He told the Panel that his wife suffered from schizophrenia and that she had been diagnosed some six or seven years ago and received regular psychiatric care.

He had attended Dr Gardner's clinic previously and had been happy with the service so he made an appointment for him and his wife to attend. Mrs AB had taken the first appointment and as she sometimes suffered from anxiety, he had gone into the treatment room with his wife. At some time after the beginning of the consultation, he told the Panel that some kind of music was playing, which he thought was religious and a conversation began in which Dr Gardner and his wife stated that each was a Christian. During the course of the consultation, Dr Gardner also asked Mrs AB what sort of medication she was taking and she advised him that she took medication to treat schizophrenia.

Mr AB then gave evidence that Dr Gardner asked him and his wife if they were aware of the causes of schizophrenia and Mr AB said that he explained that it was caused by chemical imbalances in the brain. He told the Panel that Dr Gardner had then suggested that "mental illness was - or had a root in some kind of spiritual - whether it was like an evil spirit, that was the cause for (the imbalance in brain chemistry which causes schizophrenia)." ¹

Mr AB said he couldn't recall the exact words but they were to this effect.

In his letter of complaint with respect to Dr Gardner, Mr AB had stated that:

"Dr Gardner then asked if we were aware of what causes schizophrenia. Upon telling Dr Gardner the real medical cause for my wife's illness, Dr Gardner then disagreed stating that my wife was possessed by an 'evil spirit'." ²

Mr AB then said that Dr Gardner suggested that his wife could undertake spiritual healing and that medication might not be necessary.

Mr AB said that he and his wife reacted with disbelief to this suggestion and indicated that they would not be prepared to undertake that sort of action.

He gave evidence that Dr Gardner, in response to their disbelief, cited his dental assistant as a person who had undergone that process. Mr AB said that he assumed from that comment that Dr Gardner's dental assistant "was drug free, or medication free for that kind of condition, I'm unsure to the specifics".³

¹ Transcript p 23

² Letter of 2 February 2006 – Exhibit E2

³ Transcript p 23

Mr AB stated that he became angry at that point and left the room and had no further conversation with Dr Gardner.

He said: "I left the dental room and I waited in the reception until my wife emerged at which point I informed her that I would not be attending my appointment and I left the premises."

Mr AB was asked to clarify whether or not Dr Gardner had used the word "possessed" or "oppressed" by "evil spirits".

Mr AB was asked this question by both Counsel Assisting the Panel and Counsel for Dr Gardner.

Counsel for Dr Gardner suggested to Mr AB that there was a time gap of some 10 days between the incident complained of and the writing of the complaint and that consequently, memories may change after several conversations between Mr AB and his wife during those 10 days.

Mr AB agreed that Dr Gardner did not suggest that a spiritual cause was the only possible cause of schizophrenia.

Mr AB also stated that he did not recall the exact words which Dr Gardner used in reference to spiritual healing. He recalled a reference to spiritual healing and a possibility that such a process may result in ceasing of medication.

Mrs AB's evidence

Mrs AB gave evidence that she had suffered from schizophrenia for some six or seven years prior to the time when she had met Mr AB. She had found the experience very frightening and still suffered from several symptoms of the illness such as memory lapses, a stutter from time to time and that she still heard voices although that had diminished considerably. She took Clozapine and attended a psychiatrist on a regular basis.

She gave evidence that Dr Gardner asked her and Mr AB if "we knew what the cause of schizophrenia were."

She said that Mr AB told Dr Gardner that "it's a chemical imbalance in one section of the brain that they – they don't meet."

She also gave evidence that Dr Gardner said "No, (you) shouldn't be on the medication" and that he

also stated:

“If I came to his church that I would get healing for the schizophrenia and that I would never have to take medication again.”

Mrs AB also gave evidence that Dr Gardner said that “(schizophrenia) was an evil spirit in me and that I needed that, you know, taken away”.

Both the evidence of Mrs and Mr AB and Dr Gardner’s untested evidence indicate that there was a conversation about schizophrenia and its causes, that there was a discussion about whether or not there was a spiritual basis or component of the illness; there was a discussion about “possession” or “oppression” by spirits.

Dr Gardner’s written evidence

Dr Gardner did not give oral evidence but provided a sworn Affidavit to the Panel.

In that Affidavit, Dr Gardner states that he had become a strong practising Christian in recent years and advised that some of his patients belonged to his Church or chose his practice because of his and their beliefs.

He stated that it was not his routine practice to discuss religion with patients although he did advise the Panel that he sometimes used prayer as a means of resolving a patient’s anxiety and added;

” However I have only had such conversations if I have felt that such patients have wanted to discuss religion.”⁴

While Dr Gardner stated in his Affidavit that he disagreed with many of the statements made by Mr and Mrs AB, he did agree that Mr and Mrs AB attended together and that Mr AB had left the consultation and that there was a conversation between them about the cause of schizophrenia.

Dr Gardner says that this conversation arose in the context of an inquiry by him regarding Clozapine, which Mrs AB had listed on the patient questionnaire. After being told by Mrs AB that she took Clozapine for the treatment of schizophrenia, Dr Gardner says he then told Mrs AB that he was a practising Christian and that “he believed in the healing power of prayer and that I believe that schizophrenia like any other illness could be cured by prayer”.

⁴ Affidavit of Dr Paul Gardner - Exhibit F1 p 44

In his Affidavit, he contradicts this statement later where he states that he did not suggest that prayer will heal all conditions for all persons and gave the example of dental decay.⁵

He also gave evidence that Mrs AB told him that the AB's were Christians and that "she had unsuccessfully tried prayer at a church for healing in the hope that such prayer might cure the condition".⁶

Dr Gardner did not submit himself to cross-examination on his Affidavit and therefore his evidence on this point is untested. Given that there was no suggestion in the evidence of Mr and Mrs AB, which was tested by Counsel for Dr Gardner, the Panel does not accept that Mrs AB made such a statement.

However, it was clear that Mr and Mrs AB did have some discussion with Dr Gardner about why they had left the Church and that this had been the source of some distress to them, which concurs in part with Dr Gardner's evidence.

Dr Gardner does agree that there was a conversation about the causes of schizophrenia. He further states in his Affidavit that while "I discussed possible causes of schizophrenia I did not enquire whether either of Mrs AB or Mr AB was aware of what causes schizophrenia and that further he states that "he did not disagree with any particular cause that they contended."⁷

Counsel for Dr Gardner argued that Mr and Mrs AB had spent some time together considering the wording of their complaint and that the lapse of time between the events of 23 January 2006 and the making of the complaint may have resulted in concordance of their evidence to the Panel as to the words used by Dr Gardner.

The Panel accepts that Dr Gardner did not disagree with the medically defined causes of schizophrenia as suggested by Mr and Mrs AB. However, on the basis of his admissions, it appears that Dr Gardner suggested an antecedent or background cause; namely an "oppression by spirits of fear." He stated in his letter to the Board that he "felt it would be acceptable to talk about the spiritual nature of her condition" and in his Affidavit he stated:

"I expressed my view that it was my opinion that it was possible that Mrs AB's illness as with other mental or physical illnesses could have a spiritual root".

Mr and Mrs AB stated in their evidence that Dr Gardner referred to "spirits of evil". However, the

⁵ Affidavit of Dr Paul Gardner – Exhibit F1 p 45 paragraph 14.

⁶ Affidavit of Dr Paul Gardner – Exhibit F1 p 44 paragraph 11

Panel accepts that Dr Gardner may not have used the words “possession” or “evil” to describe ‘spirits’. Nonetheless, it is clear that Dr Gardner is likely to have used the words “oppression” and “spirits of fear” as he did use them in his letter to the Board of 27 February 2006⁸ and again in his sworn Affidavit.

Counsel Assisting the Panel suggested that as Mr and Mrs AB had made themselves available for cross-examination by Counsel for Dr Gardner that their evidence on the question of which words were used should be preferred on the question of the actual words

The Panel notes that Mr and Mrs AB were credible, forthright and consistent witnesses as to the conversation which took place in Dr Gardner’s consulting rooms. Dr Gardner provided sworn written evidence.

The Panel is not required to make a finding on whether or not the words “oppression” or “possession” or “spirit of fear” or “evil spirits” were used. By Dr Gardiner’s own evidence, it is clear that it is more probable than not that words, synonymous with the words “oppression” and “spirit of fear”, were used by Dr Gardner. In the Panel’s view, those words are sufficient to satisfy the allegations described in paragraph (h) (iv) of the Notice of Formal Hearing.

The Panel acknowledges that the words “possession” or “oppression” may have significantly different spiritual meanings for a person concerned with such matters but that the difference is one of degree in the context of whether or not there has been a breach of the Code of Conduct with respect to maintaining professional boundaries for dental care providers.

Submissions on behalf of Dr Gardner

Discussion regarding the nature of schizophrenia

Dr Gardner submitted through his Counsel that his conversation with Mrs AB was an expression of his personal views and did not constitute the provision of advice.

Dr Gardner stated that as a Christian “he believes that schizophrenia and other illness can have a spiritual root.” He also stated that he would in future be more sensitive “recognising that it is not unusual for emotional issues to arise when people are seeking dental treatment.”

Dr Gardner also stated: “I say that any comments I made to them about spiritual matters were not by

⁷ Affidavit of Dr Paul Gardner – Exhibit F1 p 44 paragraph 12.

⁸ Letter of 27 February 2006 - Exhibit E5

way of advice but were by way of an expression of my views about spiritual matters.” The Panel acknowledges that Dr Gardner stated that he accepted that the comments were not appropriate in the situation in which they were made.

However, the Panel does not accept that a suggestion that an illness can have a spiritual root or be as a result of oppression by spirits in the context of a consultation with a health care provider can simply be described as an expression of views about spiritual matters.

Furthermore, the statement to Mrs AB, which Dr Gardner acknowledges that he made, that she might wish to seek healing ministry from a pastor whom he knew constitutes more than an expression of views about spiritual matters and falls within the category of provision of specific advice about Mrs AB’s illness, in the Panel’s view.

Dr Gardner clearly acknowledges in his Affidavit that he “for example, would never suggest that a person should pray in lieu of having dental decay treated by restoration”.

In his consultation with Mrs AB, Dr Gardner effectively suggested that a spiritual resolution of Mrs AB’s mental illness is at least possible. Such advice is either spiritual advice or it is medical advice. It is not advice with respect to dental care. Further, such a comment from a person who is expected by the public to have a significant body of knowledge about a range of clinical matters is likely to be treated more seriously than the same comment from a layperson.

Dr Gardner’s Affidavit stated that he thought that there was a commonality of views about spirituality and the power of spiritual healing and that he acted accordingly. There is no evidence before the Panel to suggest that such commonality of views about spiritual matters existed between Dr Gardner and Mrs AB other than evidence from Mrs AB that she had attended a church and had a distressing experience and subsequently no longer attended that church.

It was suggested by Counsel for Dr Gardner that many people who suffer from schizophrenia will try a variety of measures to reduce the suffering from the illness. This may be so but there is no evidence to suggest that Mrs AB was in any way seeking advice from Dr Gardner for her illness during the consultation. In addition, according to Mrs AB’s evidence, her condition was currently (and in the preceding few years) very well managed by conventional medical means.

Counsel for Dr Gardner submitted therefore that Dr Gardner made an error of judgement in his conversation with Mr and Mrs AB about Mrs AB’s religious views.

In mitigation, Counsel on behalf of Dr Gardner stated that Mrs AB was an unusual patient. The Panel rejects this assertion. Current data indicates that as many as 1 in 7 people in Australia may suffer at one time or another from a mental illness. Mrs AB: may be distinguished from others only by reason of her frankness in discussing her illness with Dr Gardner, an illness that was relevant to her dental care only insofar as her medication may have interacted with some medication to be used by Dr Gardner in his treatment of her.

Counsel for Dr Gardner also suggested that as Mrs AB had no intention of ceasing to take her medication, no harm had resulted from the conversation.

An issue arose in relation to the conversation between Dr Gardner and Mr and Mrs AB as to whether or not Dr Gardner suggested that Mrs AB should cease her medication. Counsel for Dr Gardner argued that Dr Gardner never suggested that Mrs AB should cease her medication only that if she was to be cured by spiritual healing, she might be able to cease her medication.

Counsel for Dr Gardner referred to the evidence of Mrs AB and submitted that both Mr and Mrs AB gave evidence that "There was never a moment when Mrs AB thought she would stop taking her medication. Mr AB says the same thing."⁹

The Panel accepts that Mrs AB was unlikely to have stopped taking her medication on the basis of Dr Gardner's advice. Counsel for Dr Gardner suggested that Dr Gardner acknowledged that this conversation was unwise and that should be the end of the matter.

The Panel does not accept this suggestion. It is not sufficient to say that a conversation which might have given rise to such a significant harm is merely an "unwise conversation". The conversation between a health care provider and a patient is of a different order to that between laypersons where neither party is regarded as having special expertise.

Code of Conduct

Counsel for Dr Gardner submitted that Dr Gardner is a person of strong religious views and that many of his patients find comfort in the concordance between their views and his.

Dr Gardner suggested in his letter to the Board in response to notice of the complaint that "as another dentist may talk about football, politics or holiday destinations, my conversations with my patients and I have tended to be about spiritual things, but not always".¹⁰

⁹ Transcript 11-13 p 142

¹⁰ Letter to the Board 27 February 2006 from Dr Paul Gardner

The Panel accepts that this may be correct to a degree. However, religion for many people, including Dr Gardner, is a matter of serious, private and profound importance. Further a conversation between a health care provider and a patient about a relationship between spirituality or religion and the cause of a serious illness; namely schizophrenia, in the Panel's view, cannot be equated with conversations about cricket, even accepting the importance that many Australians place on sport.

Counsel for Dr Gardner argued that "if a dual relationship is going to arise between a dentist and a patient because they've got a common religion, then there will be dual relationships all over the place."

The Panel accepts that a dentist and patient may well have a common religion and that no doubt frequently occurs. Further, discussions about the nature and type of religion may also frequently occur between a health care provider and patient and in some exceptional circumstances, prayer may be an option to consider during the course of a dental consultation.

The allegations against Dr Gardner are not however about commonality of religion and there is no evidence to suggest that there was commonality of religion. The allegations concern the giving of unwanted and unsolicited advice concerning the causation and possible treatment for a mental illness during a dental consultation.

Essentially, Dr Gardner did not simply have a conversation about religion, he provided advice to a patient about how that patient may wish to view their illness. He then went on to suggest that the patient could exercise or perform a practice which has meaning within a religious framework; namely spiritual healing.

Dr Gardner stated in his Affidavit that he did not abuse the power that he has by virtue of his position and professional standing although he accepted that his communication with them was not appropriate in the circumstances.

The Panel does not accept that he did not abuse the power. As noted above, he is a professional person who has training and knowledge in a particular clinical discipline and furthermore, who is able to determine whether or not he wishes to give the benefit of his knowledge to a particular individual who is reliant on the exercise of skill and care. To venture to advise on clinical issues with which he is not familiar but which a layperson may think that he did have some knowledge is in the Panel's view, an abuse of power.

Furthermore, given that the patient is reliant on the exercise of skill and care by the practitioner and is

physically prone and confined in a chair, the patient is physically vulnerable and unlikely to feel confident to strongly disagree with a practitioner about any matter raised.

Professional persons occupy a position of some privilege and are in a position to influence patients. Many people might be embarrassed and uncomfortable about expressing contrary views when in such a situation.

The Panel does not accept his view that he did not abuse his position. The relationship of provider and patient is an unequal one simply on the basis that the patient is vulnerable through lack of knowledge and skill and is not in a position to assert themselves on these matters against a trained health care provider. It is awkward for a patient to find themselves in disagreement on intimate and serious matters such as philosophical or religious matters with their health care provider in the course of their treatment.

Findings

The statements in paragraphs (a) (b), (c), (d), (f), (g), (h)(i) and (i) are admitted by Dr Gardner.

The allegation in paragraph (e) is not a matter concerning Dr Gardner as it concerns Mr AB's state of mind after he left Dr Gardner.

The Panel finds that the allegation in paragraph (h)(ii) is satisfied. The Panel also finds that the allegation contained in paragraph (h)(iii) of the Notice of Formal Hearing is not made out insofar as Dr Gardner did not disagree with medical causes of schizophrenia but posited an alternative, non-medical cause of schizophrenia.

The allegations contained in paragraphs (h)(iv) and (v) of the Notice of Formal Hearing are satisfied to the extent that Dr Gardner did refer to the words "oppressed by spirits of fear" and did suggest spiritual healing to Mrs AB and in paragraph (h)(vi) did advise her that spiritual healing may result in her no longer requiring medication. The allegation in paragraph (h)(vii) is sufficiently made out.

The Panel makes no finding with respect to the allegation in paragraph (j) as there was insufficient evidence.

The allegation in paragraph (k) is admitted by Dr Gardner insofar as he acknowledges that the conversation made Mr and Mrs AB extremely uncomfortable. The Panel is satisfied that the whole of the allegation regarding the purported advice by Dr Gardner is made out. The Panel notes that Dr Gardner acknowledges in his Affidavit that he provided advice about a medical condition for which he

was not trained.

The Panel indicated that it would make no findings in respect of paragraphs (l) to (n) which referred to conduct disclosed by Dr Gardner in respect of other patients and about which no other evidence was led before the Panel.

The Panel finds that the allegations in paragraph (q) to (z) concerning the Code of Conduct are made out with the exception of the allegation in paragraph (v)(iii) and that Dr Gardner did breach the Code of Conduct with respect to his treatment of Mrs AB other than in respect of that paragraph. In acknowledgement of his Affidavit and his clear remorse about Mr and Mrs AB's distress, the Panel does not find that Dr Gardner sought to exploit Mrs AB in any way.

Nonetheless, the Panel takes the view that Dr Gardner has engaged in unprofessional conduct and that such conduct is of a serious nature.

The role of the Panel is to protect the public and to maintain the integrity of the profession. The purpose of the Code of Conduct established after a process of consultation by the Board is "to ensure that dental care providers maintain professional relationships and standards of interpersonal conduct that serve the best interests of their patients."

The Code of Conduct requires dental care providers to exercise their professional responsibilities by, amongst other things, maintaining appropriate professional boundaries with their patients and not to abuse the power they have by virtue of their position and professional standing and to be conscious of the risks inherent in any dual relationship.

To blur the role of dental care provider with the role of spiritual adviser in relation to discussion about the cause of, and possible response, namely a spiritual healing process, to a serious mental illness is a matter of great seriousness and that unprofessional conduct is therefore of a serious nature.

Alternatively, Dr Gardner has blurred the role of dental care provider with the provision of advice with respect to a medical condition.

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 where Kellam J stated that the consideration of the nature of the unprofessional conduct must depend on the facts of the case and further said:

"...The word serious is defined in the Oxford Shorter Dictionary as being "dealing with or

regarding a matter on its grave side, not jesting, trifling or playful; in earnest' and further 'weighty, important, grave (of quantity or degree) considerable', and 'attended with danger, and giving cause for anxiety'...."

He goes on to say:

"Clearly such conduct would not be serious if it was trivial or of momentary effect only at the time of commission or omissions by which the conduct was so defined".

The Panel takes the view that Dr Gardner's unprofessional conduct is serious as it is conduct which concerned grave matters which could not be regarded as trifling and further, that they were attended with danger because his advice, if acted upon, may have given rise to serious harm to Mrs AB. In addition, the Panel views his conduct as cause for concern.

As Morris J stated in *Kozeniauskas v Dental Practice Board of Victoria* [2005] VCAT 1058. In describing the difference between unprofessional conduct of a serious nature and unprofessional conduct not of a serious nature:

"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."¹¹

Dr Gardner's conduct occurred in relation to a patient who suffers from an illness which is the cause of distress both to Mrs AB and her fellow sufferers and their families. Equally, causation and treatment of the symptoms of mental illness are a matter of great seriousness and profound importance to a person who suffers from such an illness. Generally, a mental illness is not regarded as a spiritual condition but as illness with little understood aetiology.

The fact that its aetiology is not as clearly understood as, for example, the aetiology of dental decay, is no reason to ascribe a spiritual component in the Panel's view. On the contrary, it is a reason for a person in Dr Gardner's position to exercise great care and sensitivity in a discussion about its causation.

The Panel has determined to give a reprimand to Dr Gardner. A reprimand for a professional person is a serious matter. It is not a light matter to give a reprimand to a professional person as a result of their unprofessional conduct.

In addition, a caution is also appropriate to ensure that Dr Gardner should exercise great care when considering his views on spirituality in the context of his dental practice. The Panel notes Dr

¹¹ *Kozeniauskas v Dental Practice Board* [2005] VCAT 1058

Gardner's statement that: "Anything that's sensitive whether it's personal or emotional or spiritual is something that I will avoid (in future)". He also states that he will "ensure that I bring no agenda to my practice other than to offer comfort to the patient where there is need."

The Panel accepts that Dr Gardner's practice is influenced by his religious views and informs all he does, including his practice of dentistry. However, the wider community generally accepts that such matters are private and do not fall within the domain of the professional health care provider unless an individual patient specifically seeks out a health care provider whose religious or spiritual views conform with their own.

The Panel attaches great importance to its caution to Dr Gardner. While he has acknowledged that his conduct was inappropriate in this instance, he should in future exercise significant caution in providing advice on the basis of his views about spiritual matters and any impact which he ascribes to forms of illness to his patients, whether they be mental or physical illness. Equally, he should refrain from providing any purported clinical advice outside the scope of his practice of dentistry.

In addition, the Panel has determined that Dr Gardner is required to undergo a course of counselling with a counsellor approved by the Board concerning the relationship between Dr Gardner's religious beliefs and the conduct of his dental practice. The counsellor will provide a report on the counselling to the Board within six months from the date of this determination. The focus of the counselling will be avoidance of dual relationships with patients.

Deborah Foy
Chair
21 March 2007