

THE DENTAL PRACTICE BOARD OF VICTORIA

Dr Naomi Hollander [2007] DPBV 3

Panel:

Ms Deborah Foy (Chair)

Dr Gerard Condon

Professor Michael Morgan

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

Counsel for the Practitioner: Dr Ian Freckelton instructed by DLA Phillips Fox

Date of Hearing 17 November 2006

Date of Decision 8 May 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 Naomi Hollander with respect to allegations contained in paragraphs A to G with the exception of paragraphs s 84 and 85 of the Notice of Formal Hearing, finds Dr Hollander 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 Hollander is reprimanded for her conduct; and
2. Dr Hollander is cautioned with respect to her future conduct; and
3. Dr Hollander's registration is suspended for six weeks commencing 1 July 2007.

Reasons for decision

- [1] 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 Hollander, a registered dental care provider. A Panel was convened and a hearing was held on 17 November 2006.
- [2] The allegations heard by the Panel are contained in an Amended Notice of Formal Hearing, which described the allegations against Dr Hollander in the following terms:
- [3] **A. HER EMPLOYEES**
- (3) At various relevant times, she employed the following dental nurses at her practice –
- Ms AA
 - Ms AB; and
 - Ms AC.
- (4) Ms AA ceased her employment with her in March 2005.
- (5) Ms AB ceased her employment with her on or about 1 June 2005.
- (6) Ms AC ceased her employment with her during or about August 2005.
- [4] **B. DENTAL TREATMENT PROVIDED BY DR HOLLANDER TO THOSE EMPLOYEES**
- (7) She provided certain dental treatment to Ms AB, the last occasion she treated her being 26 May 2005.
- (8) She provided certain dental treatment to Ms AC, the last occasion she treated her being well prior to June 2005.
- (9) She provided certain dental treatment to Ms AA by way of certain fillings, the last occasion she treated her being no later than 2004.
- (10) At the request of the Investigative Officer of the Board, she wrote a letter to him date 2 November 2005 concerning the dental condition of these three employees, and the dental treatment which she had provided to them. A copy of her letter is tendered marked "A".
- (11) With that letter, she provided to the Investigative Officer what she described as "*their dental records and x-rays*" relating to her alleged treatment of Ms AB and Ms AC.

- (12) A copy of those records which she provided relating to Ms AB is tendered marked "B".
- (13) A copy of those records which she provided relating to Ms AC is tendered marked "C".

[5] C. GENERAL ALLEGATIONS AGAINST DR HOLLANDER

(14) Based upon the Particulars contained in this Notice, it is alleged that she:-

- Submitted a series of three fraudulent claims to Harvey World Travel, or participated in the process of submitting such claims, in the names of Ms AC, Ms AB and Ms AA;
- Applied the signatures of Ms AB and Ms AA on the Harvey World Travel, Travel Insurance Claim Forms without their knowledge or authority;
- Unduly influenced Ms AC to sign the Harvey World Travel, Travel Insurance Claim Form submitted on her behalf;
- Provided false and dishonest medical certificates to Harvey World Travel in support of such claims in regard to Ms AC, Ms AB and Ms AA;
- Falsely and dishonestly certified to Harvey World Travel that, solely due to the condition described by her in paragraph 3 of each such medical certificate, it was medically necessary for the claimants to cancel their holiday arrangements;
- Provided false and dishonest dental certificates relating to Ms AC, Ms AB and Ms AA dated 8 June 2005, 7 June 2005 and 4 June 2005 respectively;
- Responded dishonestly (by her letter marked "A") to a letter of inquiry from the Investigative Officer of the Board to her dated 20 October 2005 (a copy of which is tendered marked "D");
- Dishonestly sought to mislead the Investigative Officer of the Board, and to subvert his investigations into her conduct, and thereby to frustrate the investigative and disciplinary jurisdiction of this Board;
- Fraudulently altered her dental records for Ms AB and Ms AC;
- Her conduct described above constituted unprofessional conduct as defined in Section 3 of the *Dental Practice Act 1999*;
- Such unprofessional conduct is of a serious nature.

[6] D. MS AA

(15) Ms AA was employed by her as a dental nurse over various periods and in various capacities during the overall period from June 2001 to March 2005.

- (16) Before leaving her employ in March 2005, Ms AA gave her a period of notice of her impending departure.
- (17) Prior to that, she had offered Ms AA (and other members of her staff) a holiday in Queensland in June at her holiday unit in Mooloolaba, and had booked and paid for the flights for that trip.
- (18) During or about 2003/2004, she performed a number of restorations for Ms AA. She maintained no dental records of that treatment.
- (19) Apart from that, she never provided any other dental treatment to Ms AA and, in particular, she never treated Ms AA in regard to her wisdom teeth, or any problems associated with them, including pericoronitis.
- (20) She submitted a Travel Insurance Claim Form to Harvey World Travel in the name of Ms AA bearing the date 14 June 2005. A copy of that claim form is tendered marked "E".
- (21) The signature and date on the bottom of page 1 of that document under the heading "*Declaration*" was not written by Ms AA, but was written by Dr Hollander, without Ms AA's knowledge or authority.
- (22) As part of that Claim Form, Dr Hollander completed the incorporated medical certificate and declaration which she signed and dated 8 May 2005.
- (23) In that medical certificate, she:-
- Described the nature of Ms AA's illness or injury as "*impacted wisdom teeth*";
 - Stated the date of onset of that illness or the date the injuries were sustained on 3 June 2005;
 - Stated that she was first consulted in regard to that condition on 4 June 2005;
 - Certified that solely due to the condition which she had set out in answer to question 3 of that certificate, it was medically necessary for Ms AA to cancel her holiday arrangements;
 - Gave her reasons for that certification as follows:-

"Infected & impacted wisdom teeth, needs to be dealt with and treated as soon as possible. Infection could worsen and best not to travel with swollen face".
 - Signed a declaration below that medical certificate in her capacity as a dentist certifying that the statements she had made were correct.
- (24) Each and all of those statements were false and incorrect and were made dishonestly.
- (25) As part of that Claim Form, she requested a refund of all irrecoverable pre-paid travel costs for Ms AA of \$300.
- (26) Further, she purported to write Ms AA's signature on a document prepared by her and addressed "*To Whom it May Concern*" (a copy of which is tendered marked "F") in which she purported to direct Harvey World Travel to reimburse her for Ms AA's

airfare on the basis that the ticket had been paid for by her, and provided her address for that reimbursement as Shop 12 Webb Street, Narre Warren, and without Ms AA's knowledge or authority.

- (27) She also prepared a false dental certificate dated 4 June 2005 purportedly addressed to Ms AA, describing her condition in a manner which was false, incorrect and dishonest.
- (28) A copy of that dental certificate is tendered marked "G".
- (29) That certificate was false, incorrect and dishonest in various respects, as follows:-
- Ms AA had not presented to her with pericoronitis, whether associated with impacted wisdom teeth or at all;
 - Ms AA did not have a swollen left cheek;
 - Dr Hollander did not debride that area;
 - Ms AA was not placed on antibiotics;
 - Ms AA did not require the removal of four wisdom teeth under general anaesthetic in the immediate future;
 - Ms AA was not unable to travel;
 - In particular, Ms AA was not unable to travel because arrangements had been made to remove her wisdom teeth;
 - Ms AA was not suffering an infection; and
 - Such infection could not have worsened and did not need to be monitored.
- (30) Ms AA never received that certificate and Dr Hollander never forwarded it to her.

[7] E. MS AB

- (31) Ms AB was employed by Dr Hollander as a dental nurse from approximately April 2004 until on or about 1 June 2005.
- (32) Before leaving her employ on or about 1 June 2005, Ms AB gave notice of her impending departure.
- (33) Prior to that, Dr Hollander had offered Ms AB (and other members of her staff) a holiday in Queensland in June at her holiday unit in Mooloolaba, and had booked and paid for the flights for that trip.
- (34) Whilst Ms AB was employed by Dr Hollander, she performed certain dental treatment on her, and last saw her for such treatment on 26 May 2005. She had commenced root canal treatment on her tooth 45 on 12 May 2005 and continued with that treatment on 26 May 2005.
- (35) She did not provide any dental treatment whatever to Ms AB on 7 June 2005, or discuss her dental condition with her on or after that date.

- (36) Prior to Ms AB giving notice of termination of her employment, she had agreed that she was fit to travel.
- (37) Dr Hollander submitted a Travel Insurance Claim Form to Harvey World Travel in the name of Ms AB bearing the date 8 June 2005. A copy of that claim form is tendered marked "H".
- (38) The signature and date on the bottom of page 1 of that document under the heading "*Declaration*" was not written by Ms AB, but was written by Dr Hollander, without Ms AB's knowledge or authority.
- (39) As part of that Claim Form, Dr Hollander completed the incorporated medical certificate and declaration, which she signed and dated 8 June 2005.
- (40) In that medical certificate, she:-
- Described the nature of her illness or injury as "*non vital lower 2nd pre-molar, resulting in acute infection requiring drainage and immediate treatment with antibiotics*";
 - Stated the date of onset of that illness or the date the injuries were sustained as 7 June 2005;
 - Stated that she was first consulted in regard to that condition on 7 June 2005;
 - Answered "*None*" when asked to give details of any other treatment in the last 12 months in relation to the condition described, notwithstanding her earlier root canal treatment provided to Ms AB on tooth 45 on 12 May 2005 and 26 May 2005;
 - Answered "*No*" in answer to the question – "*Is the above condition caused or accelerated by or traceable to any pre-existing physical or mental defect or infirmity or from any recurring condition?*"
 - Provided no particulars of any such prior treatment or medication prescribed, notwithstanding her earlier root canal treatment provided to Ms AB on tooth 45 on 12 May 2005 and 26 May 2005;
 - Answered "*No*" to the question – "*Has she previously treated this patient for the same, similar or related illness?*", notwithstanding her earlier root canal treatment provided for Ms AB on 12 May and 26 May 2005;
 - Certified that solely due to the condition which she had set out in answer to question 3 of that certificate, it was medically necessary for Ms AB to cancel her holiday arrangements;
 - Gave her reasons for that certification as follows:-

"Patient is generally unwell and needs to rest to recover from the infection. She needs to be assessed in a week's time to make sure the infection has responded to treatment. If it does not respond, she may need to be hospitalised";
 - Signed a declaration below that medical certificate in her capacity as a dentist certifying that the statements she had made were correct.

- (41) Each and all of these statements were false and incorrect and were made dishonestly.
- (42) As part of that Claim Form, she requested a refund of all irrecoverable pre-paid travel costs for Ms AB of \$300, adding the words "*please pay Dr Hollander*".
- (43) Further, she purported to write Ms AB's signature on a document prepared by her and addressed "*To Whom it May Concern*" (a copy of which is tendered marked "I") in which she purported to direct Harvey World Travel to reimburse her for Ms AB's airfare on the basis that the ticket had been paid for by she, all without Ms AB's knowledge or authority.
- (44) She also prepared a false dental certificate dated 7 June 2005 addressed to "*To Whom it May Concern*", describing Ms AB's condition in a manner which was false, incorrect and dishonest.
- (45) A copy of that dental certificate was tendered marked "J".
- (46) That certificate was false, incorrect and dishonest in various respects, as follows:-
- Ms AB did not attend at her dental clinic for emergency treatment, either on 7 June 2005 or at all;
 - She did not have a swollen right cheek;
 - She did not have an infected lower right second premolar;
 - She did not have an acute infection;
 - Drainage was not required;
 - She was not generally unwell;
 - Antibiotics were not prescribed;
 - She did not require further treatment arising from any such infection; and there was no prospect of the suggested "*infection*" worsening or needing to be monitored;
 - She was not unfit to work for five days.
- (47) Three different, and inconsistent, copies of her computerised records of her treatment of Ms AB on 26 May 2005, all emanating from her practice, are tendered marked "K". "L" and "M".
- (48) The copy marked "K" is a correct and apparently contemporaneous record of the treatment which she provided to Ms AB on 26 May 2005.
- (49) The copy of her supposed records marked "L" was provided by Dr Hollander to Dr Roseman in answer to his letter of inquiry (see paragraph 72 below).
- (50) This document is false and has been altered after the event in the following respects:-
- The supposed date of the treatment has been altered from the correct date (26 May 2005) to a false date (7 June 2005);

- Certain ADA item numbers have been removed;
- The following words have been added –

“Severe swelling. Pus exuded from canal.

Rx Amoxicillin 500mg tid for 5 days

Rx Panadeine forte 1-2 tabs qid prn”.

- (51) The copy of her supposed records marked “M” was provided by Dr Hollander to Ms AB after she left her employment.
- (52) This document is false and has been amended after the event in all the same respects set out in paragraph 50 above, save that the final words “*Rx Panadeine forte 1-2 tabs qid prn*” were not included on this version.

[8] F. MS AC

- (53) Ms AC was employed by Dr Hollander as a dental nurse for some years until she left her employ during or about August 2005.
- (54) Prior to June 2005, she had offered Ms AC (and other members of her staff) a holiday in Queensland in June at her holiday unit in Mooloolaba, and had booked and paid for the flights for that trip.
- (55) During the time of her employment with her, she had performed certain dental work on Ms AC, including in particular the surgical removal of four of her wisdom teeth during 2004.
- (56) Dr Hollander did not provide any dental treatment to Ms AC on 8 June 2005, and did not prescribe either Amoxicillin or Panadeine Forte.
- (57) Dr Hollander submitted a Travel Insurance Claim Form to Harvey World Travel in the name of Ms AC bearing the date 8 June 2005. A copy of that claim form is tendered marked “N”.
- (58) The Claim Form was signed and dated by Ms AC, who also signed an undated letter addressed “*To Whom it May Concern*”, reading as follows:-
- “I am claiming cancellation of my air fair (sic) ticket. Could she please refund Dr Hollander as she paid for the tickets on my behalf”.*
- (59) Ms AC signed those documents at her request, fearing that if she did not do so, she would jeopardise her employment with Dr Hollander.
- (60) It was improper, inappropriate and dishonest for her to ask Ms AC to sign those documents.
- (61) As part of that Travel Insurance Claim Form, Dr Hollander completed the incorporated medical certificate and declaration which she signed and dated 8 June 2005.
- (62) In that medical certificate, she:-
- Described the nature of Ms AC’s illness or injury as:-

“Acute gum infection, due to poor oral hygiene and possibly due to fishbone getting caught under gum tissue”.

- Answered “No” in answer to the question *“Has she previously treated this patient for the same, similar or related illness?”* notwithstanding her treatment of Ms AC for *“overgrowth of gingival tissues suggestive of local irritant”* in the same lower anterior region on 18 December 2003.
- Certified that solely due to the condition which she had set out in answer to question 3 of that certificate, it was medically necessary for Ms AC to cancel her holiday arrangements;
- Gave her reasons for that certification as follows:-

“Patient presented with a high temperature, vomiting and swelling of her chin region. She required immediate drainage and antibiotic cover. It is due to possibly tartar or food material becoming lodged beneath her gum. She will require rest and further treatment”.

- Signed a declaration below that medical certificate in her capacity as a dentist certifying that the statements she had made were correct.

(63) Each and all of these statements were false and incorrect and were made dishonestly.

(64) As part of that Claim Form, she directed Ms AC to request a refund of all irrecoverable pre-paid travel costs of \$300, by adding the words *“Please reimburse Dr Hollander”*.

(65) She also prepared a false dental certificate dated 8 June 2005 purportedly addressed to Ms AC, describing her condition in a manner which was false, incorrect and dishonest.

(66) A copy of that dental certificate is tendered marked “O”.

(67) That certificate was false, incorrect and dishonest in various respects, as follows:-

- Ms AC had not presented at her clinic feeling unwell and vomiting;
- She did not have a severely swollen lower chin region;
- Dr Hollander did not examine her, and she was not examined, on 8 June 2005;
- On that date, her gums were not known by Dr Hollander to be inflamed, and it was not known that a piece of food had lodged in between her teeth unknowingly;
- She did not require debridement under local anaesthetic and antibiotic cover;
- The reason for Ms AC’s not travelling was not that further treatment was required.

(68) In response to a letter of inquiry from Dr Roseman as the Investigative Officer of the Board (see paragraph 72 below), Dr Hollander provided what she described as her dental records for Ms AC.

- (69) The documents which she provided are false and were provided dishonestly, as:-
- She never provided any dental treatment whatever to Ms AC on 8 June 2005;
 - She never prescribed Amoxycillin to her on 8 June 2005;
 - She never prescribed Panadeine Forte to her on 8 June 2005.
- (70) The true reason for the cancellation of Ms AC's flight was that she had informed her shortly before 8 June 2005 that she had made alternate plans to go away with her boyfriend at that time, and that she was no longer able to take the trip which she had earlier offered her.

[9] G. INQUIRIES BY INVESTIGATIVE OFFICER

- (71) Dr Anthony Roseman is the Investigative Officer of 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.
- (72) By letter dated 20 October 2005 (a copy of which has been marked "D"), Dr Roseman wrote to Dr Hollander in the course of performing his duties as the Investigative Officer of the Board seeking her written comments on the allegations made concerning the treatment which she allegedly provided to Ms AB, Ms AC and Ms AA and claims made for refunds / reimbursement of travel costs by those persons, and provided she with a copy of the original letter of complaint from Harvey World Travel dated 15 September 2005 (a copy of which was tendered marked "P").
- (73) She replied to Dr Roseman's letter by letter dated 2 November 2005 (a copy of which is marked "A").
- (74) That letter contained an inaccurate, incorrect and dishonest account of the dental treatment which she claimed to have provided to Ms AB, Ms AC and Ms AA.
- (75) In particular, in regard to Ms AB, the letter falsely, incorrectly and dishonestly claimed that:-
- A decision was made that she would not be able to travel as she was in severe pain from the root canal that would not settle down;
 - It flared up on 7 June (2005) just prior to travelling;
 - Ms AB rang her at home in severe pain;
 - The tooth was retreated and Ms AB told her she did not feel up to travelling as she felt physically ill from this tooth;
 - Prior to the tooth becoming symptomatic, she was medically fit to travel; and
 - The decision was made to lodge a claim purely because of the severity of pain she was in and the amount of pain killers she was taking had made her feel unwell.
- (76) In particular, in regard to Ms AC, the letter falsely, incorrectly and dishonestly claimed that:-

- A claim was lodged for Ms AC because she was treated for an acute infection of a periodontal pocket in the anterior region;
- Ms AC's claim that she signed the documents because she feared losing her job was false; and
- Ms AC refuted her comment that she did not have any injuries at the time and speculated that she was making such false accusations because she had had a fall out with Dr Hollander.

(77) In particular, in regard to Ms AA, the letter falsely, incorrectly and dishonestly claimed that:-

- She contacted Ms AA some time prior to departure and she mentioned to Dr Hollander that her wisdom teeth had flared up again;
- She had been diagnosed two years before that with pericoronitis associated with her wisdom teeth so she knew that it could reoccur;
- She accordingly decided to send in a claim form;
- Because she was unable to attend the clinic to sign these documents, she decided to sign them;
- She supposed that her judgment at the time was clouded as she were trying to recoup money paid for airline tickets, and were also upset because the girls could not travel.

(78) Further, with her letter, she enclosed what she described as "*their dental records and x-rays*" for Ms AC and Ms AB, but provided no dental records whatever for Ms AA.

(79) Copies of those records are marked "B" and "C".

(80) Those purported records which she provided to Dr Roseman in regard to Ms AB were false, and had in fact been altered by Dr Hollander after the event in the respects set out in paragraph 50 above, and were therefore not accurate records of her treatment which she provided to Ms AB.

(81) Those purported records which she provided to Dr Roseman in regard to Ms AC were false in the respects set out in paragraph 69 above, and were therefore not accurate records of the treatment which she provided to Ms AC.

(82) She made no subsequent attempt to correct this incorrect and dishonest information, despite having ample opportunity to do so.

(83) By this conduct, she dishonestly sought to mislead Dr Roseman in his investigations, and to subvert the investigative and disciplinary processes of this Board.

(84) By letters written to her dated 6 June, 8 June and 14 June respectively (copies of which are tendered marked "Q", "R" and "S"), Dr Roseman requested her to provide evidence in the nature of a date log, to confirm that particular entries on her patient notes were in fact made on the date recorded and, in the case of Ms AA, requested her to forward all the dental records of that patient held by her including radiographs.

85 She failed to respond in substance to the further inquiries made by Dr Roseman concerning Ms AA in his 14 June letter, and failed to respond in substance to his letters dated 6 June and 8 June concerning Ms AB and Ms AC respectively.

[10] H. **CONCLUSION**

86 By her conduct in each and all of the respects set out above, Dr Hollander engaged in unprofessional conduct as defined in Section 3 of the *Dental Practice Act 1999*.

87 Such unprofessional conduct is of a serious nature.

REASONS

[11] On 17 November 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 the dentist Dr Hollander. Dr Hollander was at all material times a registered dentist.

[12] The Panel was informed at the outset of the hearing that Dr Hollander made admissions with respect to all matters contained in the Notice of Formal Hearing with the exception of paragraphs 84 and 85 about which the Panel made a finding in her favour; that the allegations had not been made out.

[13] In addition, amendments to the Notice of Formal Hearing were made and confirmed with everyone present in relating to paragraph 33 of the Notice which stated that Ms AC had signed a claim form to enable Dr Hollander to obtain a refund. It became apparent in preparation for the hearing that Ms AC had only signed a document headed to "To whom it may concern" and had not in fact signed a claim form.

[14] Dr Hollander admitted that she had falsely signed the claim form purporting to be Ms AC. Ms AC had been labouring under a significant fear for some months that she herself had performed an illegal act in falsely signing a claim form. In fact, she did not sign a claim form. All that she did was to sign the form headed "To whom it may concern" prepared by Dr Hollander.

[15] This came to light only days before the hearing. Ms AC had first been contacted by investigators from the insurance company some months prior to the hearing and Ms AC's misunderstanding had persisted for some time.

[16] Otherwise, the Panel accepted Dr Hollander's admissions and acknowledged her deep remorse about the conduct that she had undertaken. In particular, the Panel notes that Dr Hollander did not seek to dispute any matters and most particularly, her admissions avoided the need to call Ms AA or Ms AB or Ms AC, her staff at the time of the conduct which was the subject of this hearing.

Findings

[17] Dr Hollander made full admissions in respect of her conduct in falsely claiming that three staff for whom she had purchased airline tickets from Melbourne to the Gold Coast paid by Dr Hollander were unable to travel for health reasons and in attempting to wrongly obtain reimbursement of those tickets from an insurer. In addition, she made full admissions in relation to:

- her attempt to ensure against discovery of the dishonest claims; and
- falsification of dental records to give the appearance that she had treated the staff

members for dental problems.

Dr Hollander's evidence

- [18] Dr Hollander gave evidence that she did so not because of financial need. The sum involved in the claim for reimbursement of the tickets was \$900. Dr Hollander stated that the tickets and the failure by the staff to be able to travel for various reasons was an additional stressor.
- [19] She gave evidence that her conduct was a result of great pressure in relation to her home and family life, her work life and the management of her dental practice, which she loved, and that she made a "dreadful decision". She described herself as being in circumstances in which:
- "Your judgment is so clouded, you make such dreadful decisions and you don't know you're under pressure until time later and someone - you know, explained to me how much pressure I was under and I was under a lot of pressure at the time."¹
- [20] She added by way of explanation; "I thought, "Oh no. Harvey World, they told me that I could get my money back on these tickets. Now they say they can't. Well I'll put in a claim, just to get back what I paid" and it was so stupid, I know that."²
- [21] Dr Hollander expressed her deep regret and remorse over her actions and her intention to apologise to her staff for the distress they had experienced. She told the Panel that she had already apologised to Ms AA profusely.
- [22] Dr Hollander also described a number of steps, which she had taken in order to reduce the difficulties of balancing her work and her children, and managing issues, which had affected her deeply in the past to reassure the Panel that this kind of conduct would never be repeated by her.

Evidence of Dr D List

- [23] Dr List, a psychologist gave evidence to the Panel that he believed that Dr Hollander was unaware of the level of stress she suffered at the time of her conduct and that the steps that she had taken to acknowledge and manage the pressures in her life meant that it was very unlikely that Dr Hollander would embark on such a course of dishonesty again.
- [24] The Panel understands that Dr Hollander faced a number of significant pressures in her life resulting from factors beyond her control and which the Panel recognises.
- [25] Dr Hollander had previously been before a formal hearing of the Board under the *Dentists Act 1972* in April 2000. On that occasion, the Panel was critical of her for having allowed dental students from overseas to do procedures, which they did not have the expertise to do and the level of supervision that she had provided.
- [26] It must be noted that Dr Hollander herself in her evidence distinguished this matter from the current matter where she stated that on this occasion she had actively sought to falsify and mislead the insurance company.

¹ Transcript page 110.

² Ibid.

- [27] The Panel acknowledges her frankness and willingness to take responsibility for her conduct.
- [28] The role of the Panel is to protect the public, to maintain the standards of the dental care professions and maintain public confidence in the profession.
- [29] In considering the determination to make, the Panel must weigh up a number of factors. In *Ha v Pharmacy Board of Victoria*, Gillard J stated in relation to the purpose of
- “Members of the public dealing with pharmacists must do so confident that the pharmacist is an honest, reliable careful and responsible person..... The other aspect concerns the standing of the profession in the community. It is important to the reputation of pharmacists in the community that any transgression in their professional lives is marked by appropriate disapproval.”³
- [30] 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, giving cause for anxiety’....”
- [31] 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 the commission or omission by which the conduct was so defined”.⁴
- [32] Dr Hollander’s conduct was neither trivial nor momentary. It involved falsely claiming monies from an insurance company and falsifying dental records, which could, and would have been, but for the knowledge of the patient, relied on by another dental care provider. This may have resulted in considerable harm to the patient.
- [33] Further, it involved the false use of certificates of illness. Such certificates prepared by medical and dental practitioners play a significant role in a range of circumstances to explaining a person’s legitimate absence from work and entitle them to receive payment and entitle people to claim benefits through insurance companies. A certificate provided by a doctor or a dentist is relied on as being determinative of a person’s state of health and therefore is relied on throughout a range of transactions.
- [34] False use of those documents by a practitioner is damaging to the level of reliance and trust in the system of certificates and to the integrity of the profession which is trusted by the community to act with integrity with regard to the issuing of certificates.

³ *Ha v Pharmacy Board of Victoria* [2002] VSC 322 at [101] and [121]

⁴ *Parr v Nurses Board of Victoria* [1998] VCAT 16 VAR 118

[35] 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.”⁵

[36] During the course of the hearing, there was evidence from Dr List

[37] Given Dr Hollander’s remorse and her clear intentions to better manage the stresses she found herself under in June 2005, the Board believes that Dr Hollander is not likely to repeat such conduct. Therefore, the Board is required to consider in making its determinations the balance between general deterrence and specific deterrence.

[38] For the following reasons, the Panel has determined to suspend Dr Hollander for a period of six weeks.

[39] The Panel refers to the findings of the Court in *Clyne v New South Wales Bar Association* (1960) 104 186 at 201-202, the Court said in discussing a disbarring order:

“When such an order is made, it is made, from the public point of view, for the protection of those who require protection, and from the professional point of view, in order that abuse of privilege may not lead to loss of privilege”.⁶

[40] Her conduct in issuing false certificates jeopardises the integrity of a system of notifying illness on which many sectors of the community rely from insurers to employers to employees on a daily basis.

[41] Her conduct affected her employees by putting them in an invidious position by asking for their assistance in her enterprises regarding the claims and caused one of them significant distress as she had wrongly thought for some time that she herself had performed an act of illegality;

[42] While the sum of money sought to be obtained by Dr Hollander was small; namely \$900, which she could have afforded to cover, she sought dishonestly to obtain it without thought of the consequences for any other person or the damage to the integrity to the certification process.

[43] It is of grave concern to the Panel that this was Dr Hollander’s second formal hearing in relation to her conduct as a dentist. While the circumstances of the previous hearing are not *prima facie* similar to those involved in the previous matter they are insofar as they represent an attempt by Dr Hollander to obtain an advantage or recompense in her practice in a manner which does not comply with her professional obligations under the Act.

[44] In these circumstances, the Panel believes that a very clear message needs to be sent to Dr Hollander as well as to the profession itself, that such conduct in relation to fraudulent issuing of certificates and falsification of records is not acceptable

⁵ *Kozeniauskas v Dental Practice Board* [2005] VCAT 1058

⁶ *Clyne v NSW Bar Association* (1960) 104 CLR 186 at 201-202

[45] A key component of the Board's obligation to protect the public requires the Board to clearly articulate what constitutes unacceptable and acceptable forms of behaviour. In *Law Society of New South Wales v Bannister*, Mr Justice Sheller stated:

"The Tribunal must also act so as to deter the offender in the future and any other practitioner minded to behave in like manner."⁷

[46] On behalf of Dr Hollander, her Counsel submitted that when the underlying causes of unprofessional conduct of a serious nature of a practitioner are more closely related to personal stressors, it is less appropriate to consider issues of general deterrence in relation to that particular practitioner. The Panel acknowledges that this may be the case. The Panel also notes Morris J's comments in *Vissenga v Medical Practitioners Board of Victoria* where he states:

"In my opinion, neither the public nor the peers of medical practitioners expect perfection at all times. Human frailty visits every person including those who are medical practitioners. Reasonable people are tolerant of occasional lapses, particularly if those lapses do not form a consistent course of conduct or, if taken separately, are insufficiently serious to warrant intervention by those charged with acting on behalf of the state."⁸

[47] In these circumstances, Dr Hollander was consistent and systematic in her unprofessional conduct. The Panel finds that while her conduct may be related to human frailty, the conduct did not constitute an "occasional lapse" and a clear message needs to be sent to the profession.

[48] Further, the Panel has determined to reprimand Dr Hollander and caution her against such conduct in future. As Marks J pointed out in *Peeke v The Medical Board of Victoria*, "a reprimand to a professional person has a potential for serious adverse implications."⁹ The Panel is concerned that Dr Hollander take the Board's decision into account in her future practice as a dentist.

Deborah Foy
Chair

Dated 8th May 2007

⁷ *Law Society of NSW v Bannister*, unreported NSW Court of Appeal [1993]

⁸ [2004] VCAT 1044 at para 3

⁹ *Peeke v The Medical Board of Victoria* BC9400966 19 January 1994