

## DENTAL PRACTICE BOARD OF VICTORIA

RE: Mr Bernard Houareau

[2005] DPBV 5

**PANEL:**

Mr Victor Harcourt (Chair)  
Ms Pam Leong  
Mr Craig McCracken

DATE OF HEARING: 23 May 2005

DATE OF DECISION: 23 May 2005

**FINDINGS**

The Panel, having considered the evidence and submissions placed before it, and taking into account the admissions, finds the following allegations in the Notice of Formal Hearing under section 45 of the *Dental Practice Act 1999* dated 19 April 2005 ("the Notice") to be established:

- 1 At all material times Mr Houareau was registered as a dental care provider in Victoria under the *Dental Practice Act 1999* ("the Act"), having been registered as a dental prosthetist under the Act since 1 July 2000.
- 2 For many years prior to 1 July 2000, Mr Houareau had been registered as an Advanced Dental Technician under the *Dental Technicians Act 1972*.
- 3 Section 28(1) of the *Dental Technicians Act 1972* provided that:

"Subject to sub-section (3) an advanced dental technician may perform any work which under this Act a dental technician is authorised to perform and in addition may ..."
- 4 Section 14 of the *Dental Technicians Act 1972* provided that:-

"A dental technician may -

  - a) in accordance with the written prescription of a dentist or under the supervision of a dentist make or repair any...appliance for use upon or in connexion with the teeth jaw or associated structure or tissue or in the treatment of any condition thereof; and
  - b) in accordance with the written prescription of an advanced dental technician or under the supervision of an advanced dental technician make and repair dentures of a type that an advanced dental technician is permitted to make and repair without a prescription from or supervision by a dentist."
- 5 Section 26A of the *Dental Technicians Act 1972* provided that:-

(1) An advanced dental technician may apply to the Board for an endorsement of his or her licence to permit him or her to make, fit, supply or repair partial artificial dentures"
- 6 Mr Houareau is referred to the full wording of Section 26A of the *Dental Technicians Act 1972*, which required such an applicant to first satisfactorily complete the "prescribed course of training".

7 The *Dental Technicians Act 1972* was repealed by the *Dental Practice Act 1999* with effect from 1 July 2000.

8 Pursuant to a series of resolutions of the Dental Practice Board of Victoria on 27 June, 1 July 2000 and 6 July 2000, the Dental Practice Board of Victoria adopted various statutes and policies as interim Codes of Practice of the Dental Practice Board of Victoria, and these included the provisions of Section 26A and 28 of the *Dental Technicians Act 1972*.

9 By notice sent to all dental care providers (including dental prosthetists), the Dental Practice Board of Victoria informed all dental care providers in Victoria that it had adopted at its meeting on 1 July 2000 as interim Codes of Practice which have the force of law (inter alia) the following:-

*“Sections 26A and 28 of the Dental Technicians Act 1972 (as amended) relating to the work a Dental Prosthetist is authorised to perform. In particular, endorsement of the registration of a Dental Prosthetist is required to permit him or her to fit, supply or repair partial artificial dentures”.*

10 This stipulation was later confirmed by the Code of Practice number C001 of the Dental Practice Board of Victoria adopted on 12 June 2002 which provided (relevantly) as follows:-

*“A Dental Prosthetist who has not completed a course of training approved by the Board in the making, fitting and repairing of partial dentures shall have a condition placed on his or her registration: “Not registered to deal directly with the public in the provision or repair of partial dentures”.*

11 Mr Houareau made no application for an endorsement of his licence under section 26A to permit him to make, fit, supply or repair partial artificial dentures.

12 At all material times, Mr Houareau had not completed the “prescribed course of training” required under section 26A of the *Dental Technicians Act 1972*, nor had he completed an appropriate course of training approved by the Dental Practice Board in the making, fitting and repairing of partial dentures.

13 Mr Houareau made no application to the Dental Practice Board of Victoria at any material time for an endorsement of his registration as a dental prosthetist under the Act to permit him to fit, supply or repair partial artificial dentures.

14 At all material times, and for the avoidance of doubt, before 12 June 2002, Mr Houareau was accordingly not registered to make, fit, supply or repair partial artificial dentures.

15 At all material times, and for the avoidance of doubt, after 12 June 2002, Mr Houareau’s registration as a dental prosthetist under the Act was expressly subject to the following condition:

*“Not registered to deal directly with the public in the provision or repair of partial dentures.”*

16 On a number of occasions between September 2001 and 12 June 2002, and between 13 June 2002 and January 2004 Mr Houareau:

16.1 took impressions, both primary and secondary, for the purposes of making or repairing a partial denture;

16.2 took a registration (wax bite) inside the patient’s mouth for the provision of a partial denture;

- 16.3 tried in a waxed up denture in the patient's mouth as a stage for the provision of a partial denture;
- 16.4 fitted a partial denture or fitted a partial denture repair; and
- 16.5 eased and adjusted a partial denture or partial denture repair.
- 17 During the period from September 2001 to January 2002, and while Mr Houareau was employed by Dental Health Services Victoria ("DHSV") as a dental prosthetist, Mr Houareau frequently and routinely performed clinical procedures relating to the making, fitting, supplying and/or repairing of partial artificial dentures for patients.
- 18 Mr Houareau acknowledged this and explained his position in his letters to the investigative officer of the Board dated 11 June, 28 August and 10 December 2004 respectively.
- 19 In conducting himself in this way, Mr Houareau failed to comply with the condition, limitation or restriction on his registration as a dental prosthetist in Victoria, namely that he was "not registered to deal directly with the public in the provision or repair of partial dentures" and was thereby in breach of section 6(3)(a) of the Act.
- 20 Further, in conducting himself in this way, Mr Houareau was in breach of :
- 20.1 the interim Code of Practice of the Board (adopted at its meeting on 1 July 2000); and
- 20.2 Code of Practice number C001 of the Board approved 12 June 2002.
- 21 Mr Houareau's conduct in all these respects constitutes unprofessional conduct as defined in section 3 of the Act, with particular reference to sub-paragraphs (a), (b), (h) and (i) of that definition.
- 22 Such unprofessional conduct was 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 *Dental Practice Act* 1999 to impose the following determinations:

- 1 Mr Houareau is fined the sum of \$1,000.00 to be paid within 45 days of the date of this decision. Should Mr Houareau fail to make payment of the fine or any part of it, Mr Houareau's registration as a dental prosthetist shall be suspended from the date of non-compliance until the date of compliance.
- 2 Mr Houareau is reprimanded for his conduct in acting outside of his scope of registration and also subsequently acting in contravention of a condition imposed upon his registration.
- 3 Mr Houareau is cautioned to be more careful in the future to ensure that his practise as a registered dental prosthetist is within his scope of registration.

### **REASONS**

- 1 On 23 May 2005, the Dental Practice Board of Victoria ("the Board") in a panel of three members ("the Panel") convened to conduct a formal hearing pursuant to the *Dental Practice Act* 1999 (Vic) ("the Act") into the conduct of the dental care provider, Mr Bernard Houareau. Mr Houareau was at all material times registered as a dental prosthetist.

## Allegations

2 The formal hearing concerned allegations placed before Mr Houareau in a Notice of Formal Hearing dated 19 April 2005 which stated:

- “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 under the Act since 1 July 2000.
- b) For many years before that, you had been registered as an Advanced Dental Technician under the *Dental Technicians Act 1972*.

### Introduction

- c) Section 28(1) of the *Dental Technicians Act 1972* provided that:-

*“Subject to subsection (3) an Advanced Dental Technician may perform any work which under this Act a Dental Technician is authorised to perform and in addition may...”*

- d) Section 14 of the *Dental Technicians Act 1972* provided that:-

*“A Dental Technician may -*

- a) *in accordance with the written prescription of a dentist or under the supervision of a dentist make or repair any...appliance for use upon or in connection with the teeth, jaw or associated structure or tissue or in the treatment of any condition thereof; and*
- b) *in accordance with the written prescription of an advanced dental technician or under the supervision of an advanced dental technician made and repair dentures of a type that an advanced dental technician is permitted to make and repair without a prescription from or supervision by a dentist.”*

- e) Section 26A of the *Dental Technicians Act 1972* provided that:-

*(1) An advanced dental technician may apply to the Board for an endorsement of his or her licence to permit him or her to make, fit, supply or repair partial artificial dentures”*

- f) You are referred to the full wording of Section 26A of the *Dental Technicians Act 1972*, which required such an applicant to first satisfactorily complete the “*prescribed course of training*”.
- g) The *Dental Technicians Act 1972* was repealed by the *Dental Practice Act 1999* with effect from 1 July 2000.
- h) Pursuant to a series of resolutions of the Dental Practice Board of Victoria on 27<sup>th</sup> June, 1<sup>st</sup> July 2000 and 6<sup>th</sup> July 2000, the

Dental Practice Board of Victoria adopted various statutes and policies as interim Codes of Practice of the Dental Practice Board of Victoria, and these included the provisions of Section 26A and 28 of the *Dental Technicians Act 1972*.

- i) By notice sent to all dental care providers (including dental prosthetists), the Dental Practice Board of Victoria informed all dental care providers in Victoria that it had adopted at its meeting on 1<sup>st</sup> July 2000 as interim Codes of Practice which have the force of law (inter alia) the following:-

*“Sections 26A and 28 of the Dental Technicians Act 1972 (as amended) relating to the work a Dental Prosthetist is authorised to perform. In particular, endorsement of the registration of a Dental Prosthetist is required to permit him or her to fit, supply or repair partial artificial dentures”.*

- j) This stipulation was later confirmed by the Code of Practice number C001 of the Dental Practice Board of Victoria adopted on 12 June 2002 which provided (relevantly) as follows:-

*“A Dental Prosthetist who has not completed a course of training approved by the Board in the making, fitting and repairing of partial dentures shall have a condition placed on his or her registration: “Not registered to deal directly with the public in the provision or repair of partial dentures”.*

Mr Houareau

- k) You made no application to the Dental Technicians Board for an endorsement of your licence under Section 26A to permit you to make, fit, supply or repair partial artificial dentures.
- l) At all material times, you had not completed the *“prescribed course of training”* required under Section 26A of the *Dental Technicians Act 1972*, nor had you completed an appropriate course of training approved by the Dental Practice Board in the making, fitting and repairing of partial dentures.
- m) You made no application to the Dental Practice Board at any material time for an endorsement of your registration as a dental prosthetist under the Act to permit you to fit, supply or repair partial artificial dentures.
- n) At all material times, you were accordingly neither trained nor registered to make, fit, supply or repair partial artificial dentures.
- o) Accordingly, at all material times, your registration as a dental prosthetist under the *Dental Practice Act 1999* was expressly subject to the following condition:-

*“Not registered to deal directly with the public in the provision or repair of partial dentures”.*

### Breaches

- p) During the period from June 2001 to January 2004, and while you were employed by Dental Health Services Victoria as a dental prosthetist, you frequently and routinely made, fitted, supplied and/or repaired partial artificial dentures for patients.
- q) You have done so in regard to at least 165 different patients over that period, involving over 2,100 separate items of service relating to partial artificial dentures, none of which you should have performed, as you were not trained, qualified or registered to do so.
- r) You have acknowledged this (and explained your position) in your letters to the investigative officer of the Board dated 11<sup>th</sup> of June 2004 28<sup>th</sup> of August 2004 and 10<sup>th</sup> of December 2004 respectively.
- s) In conducting yourself in that way, you failed to comply with the condition, limitation or restriction on your registration as a dental prosthetist in Victoria, namely that you were *“not registered to deal directly with the public in the provision or repair of partial dentures”*, and were thereby in breach of Section 6(3) of the *Dental Practice Act 1999*.
- t) Further, in conducting yourself in that way, you were in breach of:-
  - (i) The interim Code of Practice of the Board (adopted at its meeting on 1 July 2000); and
  - (ii) Code of Practice number C001 of the Dental Practice Board of Victoria (adopted on 12 June 2002).
- u) Your conduct in all these respects constituted unprofessional conduct as defined in Section 3 of the Act, with particular reference to subparagraphs (a), (b), (h) and (i) of that definition.
- v) Such unprofessional conduct was of a serious nature.

### **Background**

- 3 This matter came before the Board following receipt of a letter dated 2 April 2004 from Dental Health Services Victoria (“DHSV”). The letter informed the Board that Mr Houareau was employed by DHSV as an Advanced Dental Technician (Dental Prosthetist) at its Brimbank Dental Clinic on 25 June 2001. Mr Houareau was requested by the senior dentist in charge to extend his clinical role to the provision of partial dentures for patients shortly after commencement. DHSV could not find any formal record of the arrangement but understood that it was agreed to by Mr Houareau who was of the belief that the oversight and supervision of his care by a dentist effectively placed him in a teaching environment.
- 4 DHSV stated that this matter came to its attention in about mid-2003, as a result of the introduction of a credentialling and clinical privileges process in 2002. Mr Houareau was unable to provide documentary evidence that his qualification extended to the construction of acrylic and/or chrome cobalt dentures. It was not until 30 January 2004 that DHSV said it became aware that Mr Houareau’s registration contained a condition that he was not registered to deal directly with the public in the provision or repair of partial dentures. From

that date Mr Houareau ceased his practice in that area although he continued to provide full dentures to his patients.

- 5 DHSV stated that its inquiries revealed that all of the stages of the construction and provision of partial dentures undertaken by Mr Houareau were checked and overseen by dentists employed within the Clinic albeit not as part of an oversight role in a teaching capacity. It also advised of clinical indicator data suggesting that the remake rate of dentures from the relevant Clinic was low and within the statewide averages.
- 6 It was noted that Mr Houareau's involvement in the provision of partial dentures was not of pecuniary advantage to him. He was a salaried employee of DHSV employed on a part-time basis.
- 7 Mr Houareau was informed of the DHSV letter and responded by letter dated 11 June 2004. He stated that the arrangement was initially put into place at the request of Dr A, the senior dentist in charge at the time, and that his role was limited to that of an assistant in the making of a partial denture prosthesis. Mr Houareau claimed that Dr A was aware of the limitations of his registration. Mr Houareau claimed that his role of assisting Dr A was known to A's superior, Dr B, and regional management in performance appraisals. He also asserted that other dentists in charge were aware of the limited scope of his registration at all times.
- 8 Mr Houareau denied an allegation in the letter from DHSV that he had made application for clinical privileges that included full and partial denture provisions. Finally, he reiterated that he had undertaken the role to assist the Clinic to improve its performance in the manufacture of the full and partial dentures and stated as follows:

"I do not shy away from my personal responsibilities nor the consequences of my actions. If my actions are deemed to have contravened the regulations of DPBV then I offer my sincerest apology. All I ask is that due consideration be given to the circumstances which surrounded me.

"...The extension of my clinical role to the provision of partial dentures was a directive given to me by the senior dentists in charge of the Brimbank Dental Clinic DHSV (my employer). It was my belief at the time that by providing my assistance and acting under the guidance and direction of a senior dentist's instruction, I was not in breach of the conditions of my license.

"...I would like to reiterate that I have at no time benefited financially or by career advancement but was motivated by assisting and caring for the public needs to reduce a long and unacceptable waiting list and to produce a high quality of care to these needy public patients. Again I regret any actions which may have breached the conditions of my license. I take pride in having always maintained an impeccable record with the DPBV and my employers."

- 9 DHSV responded by letter dated 9 August 2004 to Mr Houareau's letter. It also provided certain requested information in particular about the senior dentists in charge at the Brimbank Clinic during the tenure of Mr Houareau. DHSV denied that anyone other than Mr Houareau and Dr A was aware of any breach of clinical practice by Mr Houareau until the introduction of DHSV's credentialling process. It further noted as it had in its original letter, that the breach of clinical practice by Mr Houareau was notified to the Board in the interests of full and open disclosure albeit some months after the breach was discovered.
- 10 A further letter from Mr Houareau dated 28 August 2004 was received. In it, Mr Houareau outlined the process for construction of a partial denture in the following terms:

“Supervision and oversight of partial denture construction stages was carried out by Dr A, Dr C and Dr D. Patient assessment was always completely carried out by a senior dentist. Direction, supervision and oversight was provided for primary and secondary impression stages, partial denture design including clasp design and placement, try in stages, insertion and check visits. Instructions received were verbal and by way of pencil outlining/drawing on primary and secondary cast models. As previously stated, Dr E was fully aware that direction, supervision and oversight was conducted for all stages of partial denture construction.”

- 11 Mr Houareau met with the Board’s investigative officer on 3 November 2004 and a letter the following day from the Board confirmed information given by Mr Houareau. By letter dated 10 December 2004 Mr Houareau responded to this letter and provided further information including that he had completed all of the assessment requirements of a partial denture bridging program. He also noted that during his clinical practice all oral instruction was provided by the dentist supervising at each pre-treatment stage of the appointment and at any time during the appointment if it were necessary. He also said that at the end of each treatment the dentist would assess the treatment that was provided and make constructive comment and further oral instruction if necessary.
- 12 During the course of its investigation, the Board’s investigative officer made contact with a number of the dental care providers involved including Dr E, Dr C and Dr A. Dr E was the senior dentist in charge/practice manager at the Brimbank Dental Clinic from October 2002 to June 2004 according to a letter dated 20 September 2004 from Dr E. When Dr E commenced her employment at DHSV Mr Houareau had been practising as a dental prosthetist for approximately two days per week for the previous eighteen months. Mr Houareau was described as part of an excellent team which had a 100 percent denture success rate. At some stage, Dr E was informed by Mr Houareau that he was enrolled in the partial denture training course through RMIT. Upon further enquiry, Mr Houareau volunteered the information that the senior dentist in charge prior to Dr E had employed Mr Houareau and was aware that he was not formally qualified to deliver partial denture services. Dr E further stated:
- “According to Mr Houareau, he initially only constructed full dentures. Not long after, he was directed by the previous Senior Dentist in Charge to construct partial dentures as well. Mr Houareau alleged that the previous Senior Dentist in Charge informed him that he had checked with the concerned authority! [The Panel assumed that the concerned authority was Dental Health Services Victoria (DHSV).] And allegedly confirmed to Bernard that it was permissible for him to construct both full and partial dentures under dentist supervision ...”
- 13 Dr E made her own investigations and also discussed the matter with Dr B, the previous DHSV regional manager and the manager who had performed the handover of Brimbank management to Dr E. Dr B informed Dr E that she had delegated the task of employing a dental prosthetist to the senior dentist in charge at the time. As far as Dr B was aware, the prosthetist had to be fully registered to provide the full scope of the tasks and she was not aware that Mr Houareau was not registered for the provision of constructing partial dentures.
- 14 Dr E’s letter also described a discussion with her senior dentist manager who confirmed that Mr Houareau routinely double-checked stages of denture construction with the senior dentist manager or other senior clinicians. This statement was verified to Dr E by a number of senior long term employed clinicians, as she described them.
- 15 Dr E described further in her letter that having ascertained the situation, Mr Houareau was asked not to provide any further partial dentures to patients. Dr E described Mr Houareau’s work as of a high standard, appreciated by the patients he attended who were often very

complimentary of his technical skill and professionalism. Mr Houareau sought assistance from a dentist when appropriate.

- 16 Dr C forwarded a letter dated 26 August 2004 to the Board. He admitted that he was aware of the nature of Mr Houareau's prosthetic credentialing but that in Dr C's role as a supervisor, he continued a practice that had been initiated by the previous senior dentist in charge of the Clinic. He also admitted to supervising Mr Houareau in the provision of partial dentures to patients at the Brimbank Dental Clinic. He described what took place as follows:

"These services included the provision of simple upper and lower acrylic dentures as well as repairs of the same. Repair services included the repair of broken bases, reattaching missing teeth and adding clasps to existing dentures.

"Before Mr Houareau performed these duties the patients were examined by myself. This was in the form of a 'pros exam', after patients were removed from the appropriate waitlist, or during a brief screening examination in the case of repairs. The suitability of the patient to be treated by Mr Houareau was assessed at this time. I must stress that only patients being suitable were then subsequently booked in with Mr Houareau.

"During the construction of the partial denture (or partial denture repair), Mr Houareau was supervised throughout; I was present to oversee all stages of the partial denture construction. As each of us occupied adjacent surgeries this was a simple and time-effective exercise. Directions given to Mr Houareau included:

- Partial denture design (including number, type and placement of clasps).
- Checking final insertion of partial denture, particularly in relation to remaining natural teeth.
- Responding to questions raised by Mr Houareau (eg. persistent oral ulceration)."

- 17 Finally, the Board received written responses from Dr A dated 8 June and 13 September 2004. Dr A readily conceded his involvement with Mr Houareau dealing with partial dentures. He described it in the following terms:

"Mr Houareau's role at Brimbank Dental Clinic first and foremost was always the provision of full dentures. His involvement with removable partial prosthetics was not a deliberate extension of his clinical duties but rather a result of providing practical, efficient dental service in Public Dentistry. Situations would often arise where patients were appointed to see Mr Houareau for provision of full dentures but in fact were dentate and thus required partial dentures. Keeping in mind that many such patients had waited over three years for this appointment we would be faced with the option of having to advise the patient that no service would be provided today and that they would have to wait a further three or four weeks before they could be reappointed. Thereby wasting that appointment with Mr Houareau as well as the allocated time made with the laboratory technician expecting to start the prosthesis. Alternatively the senior dentist could be called to assess the patient and work in conjunction with Mr Houareau in the provision of the prosthesis. All diagnostic assessment, design and insert requirements were carried out by a dentist. To my knowledge all cases were documented and counter-signed by myself. I cannot however speak for other Dentists."

- 18 Dr A's letter goes on to describe the quality of the work performed by Mr Houareau, and the benefit in the reduction of waiting lists which was achieved by virtue of the arrangement. He further describes the motives of himself and Mr Houareau as being to serve the public's interest dealing with "... the endless list of disadvantaged people suffering from poor oral health and inadequate dentition." He further offered the following apology:

"I understand that guidelines set out by the Dental Practice Board of Victoria pertaining to procedures allowed by an Advanced Dental Technician are there for a reason and if the combination of my naivety and desire to make a difference has resulted in the blurring of these boundaries then I offer my unreserved apologies to both the board and Mr Houareau."

### **Admissions**

- 19 At the commencement of the hearing, the Panel was informed that Mr Houareau was prepared to admit the following allegations made in the Notice: (a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (l), (m) and (r). Mr Houareau denied the other allegations. He also admitted all of the relevant documents in the Brief prepared by the board except for a summary of patient records prepared by the Board's investigating officer. This summary went to allegations (p) and (q) and in particular was prepared in support of the allegation that Mr Houareau had dealt with 165 different patients involving over 2100 separate items of service relating to partial artificial dentures. The only oral evidence which was received during the hearing was from Dr Roseman part of which involved an analysis of some of these records. Following an invitation from the Panel, Mr Houareau made a further admission to the following effect:

"On a number of occasions between September 2001 and 12 June 2002, and between 13 June 2002 and January 2004 Bernard Houareau:

1. took impressions, both primary and secondary, for the purposes of making or repairing a partial denture
2. took a registration (wax bite) inside the patient's mouth for the provision of a partial denture
3. tried in a waxed up denture in the patient's mouth as a stage for the provision of a partial denture
4. fitted a partial denture or fitted a partial denture repair
5. eased and adjusted a partial denture or partial denture repair.

"Mr Houareau did all of this under the close supervision and oral instruction of registered dentists at each relevant stage of the process."

- 20 The Panel formally accepted, in its findings, all of the admissions made by Mr Houareau save for the admission that he performed his work under the close supervision and oral instruction of registered dentists at each relevant stage of the process. Notwithstanding that a formal finding to this effect has not been made by the Panel, counsel assisting the Panel did not contest this statement. For the purposes of this decision, and in particular in making the determinations, the Panel accepted on the basis of the evidence before it, that Mr Houareau was closely supervised by and received oral instruction from registered dentists at each relevant stage of the process described in the above admissions.

### **Preliminary Issue**

- 21 At the commencement of the hearing, Mr Houareau's legal representative sought an adjournment by reason of the Board's failure to respond in whole to a freedom of information

application made by Mr Houareau at the time of the hearing. While the Panel was provided with scant detail, it would appear that an FOI application was made following what was considered to be an inadequate response to a request for further and better particulars of the allegations. The Board received the freedom of information application and responded in part to it but not in respect of other parts. At the time of the hearing, the time allowed to the Board to respond to the application had not expired. The nub of the issue as understood by the Panel was an allegation by Mr Houareau that he was being treated differently to two other dental prosthetists who had been the subject of a preliminary investigation for a similar matter some years before. It was not asserted that the case of the other two dental prosthetists had reached formal hearing. Indeed, it was asserted that the matter had not proceeded beyond some initial investigation.

- 22 In support of the application, the Panel was referred to the case of *Sunshine Coast Broadcasts Limited v The Australian Broadcasting Tribunal & Ors*, a decision of Pincus J, Federal Court of Australia, made 8 July 1988 as authority for the proposition that administrative bodies fall into error if they deal with like cases in different ways. A copy of the decision downloaded from the internet was provided to the Panel when it retired to consider the application. The Panel's attention was directed to certain parts of the decision including relevantly the following conclusion:

“The decision was vitiated by inconsistency of application of the guideline thought to be relevant: it was true of a number of the competing applicants that their licences did not, and others did, include part of the shire - but that ground was used to defeat this applicant only, and others similarly placed.”

- 23 The application for an adjournment was refused by reason that the Panel has specific and defined roles according to the Act. One of those is not to review the administrative decisions of the Board or its investigative processes. That is the function of other tribunals or courts as the case may be and nothing that this Panel could do could affect Mr Houareau's rights in that regard. Accordingly, the issues raised by Mr Houareau were not relevant to the matter before the Panel.
- 24 That was not however the end of the matter, as Mr Houareau's legal representative sought to cross-examine the Board's investigative officer, Dr Roseman, about the case involving the other two representatives. An objection was sustained by the Panel. The matter was also raised in the submissions on behalf of Mr Houareau to the effect that the Panel would be falling into error if it dealt with like cases in anything other than a similar manner. The Panel does consider itself to be bound by the principles of administrative law which apply to it. It did however consider that the submissions made on behalf of Mr Houareau were misguided insofar as he sought to place the Panel in a position of reviewing the decisions of the Board, in its widest sense, made during the initial stages of the investigative process. Mr Houareau's avenues of challenge in this regard lie elsewhere. The Panel was not informed but can conclude that Mr Houareau has not taken up this option.

### **Findings and Determination**

- 25 As stated earlier, oral evidence was adduced from Dr Roseman. Mr Houareau chose not to give evidence. Mr Houareau's position was frankly set out in his admissions and correspondence to the Board. Many of the submissions made on his behalf raised what can be characterised as technical issues going to the framing of the allegations, the adoption of the interim Codes of Practice, the nature of the notice given to dental care providers about the Interim Codes of Practice and the notion of dealing directly with the public in the provision or repair of artificial dentures. The matters raised in these submissions were not, in the Panel's opinion, of substance and it is not proposed to dwell upon this any further.
- 26 What is clear from the admissions and the evidence is that Mr Houareau knowingly engaged in practice which was outside the scope of his registration during the period September 2001

to January 2004. Extraordinarily, if one accepts the untested allegations of Mr Houareau, DHSV was aware at all times, and certainly should have been aware through its Credentialling Committee process, that Mr Houareau was engaging in practice outside the scope of his registration but allowed it to continue. The correspondence from DHSV itself contests this allegation but there is also correspondence from the practitioners involved which supports Mr Houareau's allegations. The Panel noted with concern the length of time it took DHSV to notify the Board of the situation involving Mr Houareau. It took some months from the discovery that Mr Houareau was working outside of his scope of practice, for DHSV to notify the Board. On the material considered by the Panel, DHSV should have acted quicker to ensure Mr Houareau acted within the scope of his registration, and to notify the Board of the situation.

- 27 Based upon the material which was before it, the Panel accepted that Mr Houareau conducted himself in a manner which breached the interim Code of Practice, the Code of Practice and the condition on his registration at the various times, respectively, and did so under the close supervision and oral instruction of registered dentists engaged by DHSV at the Brimbank Clinic. It was asserted, and the Panel accepted, that Mr Houareau did so with the best of intentions, in the context of providing services to a segment of the community in disadvantageous circumstances, without pecuniary advantage to himself and subject to the scrutiny of dentists. Further, it would appear that Mr Houareau undertook the necessary training to seek an endorsement to allow him to deal directly with the public in the provision or repair of partial dentures as soon as he was able to after the commencement of his employment. Further, it would appear that there were no adverse outcomes for the public.
- 28 Weighing all of these matters up, the Panel was compelled to find that Mr Houareau had engaged in unprofessional conduct of a serious nature. He knowingly, and on a repeated basis, breached applicable Codes of Practice and a condition. These breaches could not be described as minor or insignificant notwithstanding the best of intentions which Mr Houareau or his various supervisors may have had in allowing him to deal with the public in relation to partial dentures as he did. The Board has made it clear in previous matters which have come before a Panel in a formal hearing that it is the registered dental care provider who is primarily responsible for ensuring that they act within the scope of their registration. Mr Houareau did not discharge his responsibility in this manner. His departure from the expected standards was substantial when one considers not only the nature of it but also the number of times it occurred.
- 29 In deciding what was an appropriate determination, the Panel was satisfied that Mr Houareau would not again reoffend. Indeed, it noted that Mr Houareau had undertaken the course which was a prerequisite to seeking an endorsement and the lifting of the condition on his registration. The Panel was of the opinion however that its determination needed to reflect the importance of maintaining the integrity and standards of the profession in the light of the breach, and the general deterrence effect on other dental care providers considering acting outside the scope of their registration. The Panel is acutely aware that its function is not to punish a dental care provider but in the formulation of determinations pre-eminent is the protection of the public and also the profession.
- 30 The Board, in adopting the interim Code of Practice, maintain a position which was well known to advanced dental technicians such as Mr Houareau. The Code of Practice approved 12 June 2002, had been the subject of extensive consideration and consultation. The condition which was imposed upon the registration of dental prosthetists was clear and unequivocal. Mr Houareau chose not to comply and this is a matter which the Panel cannot ignore.
- 31 It is for these reasons that the Panel considers it appropriate to reprimand Mr Houareau and to caution him against future like conduct. It was also considered appropriate that a fine be imposed to reflect the Panel's view about the nature and extent of the unprofessional conduct of a serious nature engaged in by Mr Houareau and the importance of maintaining

the integrity and standards of the profession, and generally deterring other dental care providers from engaging in similar conduct.

DATED: 3 June 2005

**Victor Harcourt  
Chair**