

# THE DENTAL PRACTICE BOARD OF VICTORIA

## Dr Andrew Kikuts [2008] DPBV 3

**Panel:** Ms Deborah Foy (Chair)  
Dr Gerard Condon  
Dr Pam Dalgliesh

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

**Counsel for the Practitioner:** Mr C Winneke instructed by DLA Phillips Fox

**Dates of Hearing:** 27 & 28 November 2007

**Date of Decision:** 21 April 2008

### **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 Kikuts to allegations contained in paragraphs (a) to (aa) of the Notice of Formal Hearing, finds Dr Kikuts 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 with respect to the allegations in paragraphs (a) to (l) and (v) to (aa) but not with respect to allegations in paragraphs (m) to (u).

### **DETERMINATIONS**

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 determinations:

1. reprimand Dr Kikuts for his conduct;
2. caution Dr Kikuts with respect to his future conduct; and
3. require Dr Kikuts to undertake further education with an authorised person in:
  - i) current philosophies of periodontal disease and dental caries management of one day's duration;
  - ii) diagnosis and treatment planning, with particular regard to the interface between endodontics and crown and bridge of two days duration;
  - iii) patient consent and record keeping of one day's duration

This education is to be provided at Dr Kikuts' expense by a person authorised by the Board and is to be completed by 30 June 2008. The Board is to receive a report from the authorised person by 14 July 2008.

A random audit of Dr Kikuts' records is to be conducted by a person authorised by the Board, at Dr Kikuts' expense, on three separate occasions before the end of November 2008. The Board is to receive a report from the authorised person by 14 December 2008.

## Reasons for Decision

1. The allegations heard by the Panel are contained in a Notice of Formal Hearing which described the allegations against Dr Kikuts below.

“The allegations made against him are as follows:

- (a) At all relevant times, you have been registered as a dental care provider in Victoria under the *Dental Practice Act 1999* (“the Act”) and its predecessor, the *Dentists Act 1972*, having been first registered as a dentist in Victoria in December 1962.

### A. YOUR PATIENTS

- (b) During the period from February 2005 to December 2005, you provided regular dental treatment to your patient, Mr BB.
- (c) During the period from October 1996 to November 2006, you provided regular dental treatment to your patient, Ms AA.

### B. YOUR PATIENT - MR BB

- (d) The dental work which you provided to Mr BB was:-
  - (i) extremely poor;
  - (ii) grossly substandard;
  - (iii) of a lesser standard than that which the public might reasonably expect of a registered dental care provider; and
  - (iv) of a lesser standard than that which might reasonably be expected of a registered dental care provider by his peers.
- (e) In particular, the dental work which you provided was deficient in the following respects:
  - (i) You did not prepare or implement an appropriate treatment plan, taking into consideration Mr BB’s dental state at the time.
  - (ii) You restored teeth 12, 11, 21 and 22 with crowns on those teeth, at a time when those teeth were periodontally compromised.
  - (iii) You placed a post crown on tooth 22 on or about 17 March 2005 at a time when that tooth required a root filling.
  - (iv) An earlier root filling which had been performed on tooth 22 was inadequate in that it was poorly condensed and did not obturate the apical portion of the root canal.
  - (v) It was not appropriate to place a post in that canal (as you did) without first re-doing the root filling.
  - (vi) No periodontal assessment was conducted before the crown was placed on tooth 22; alternatively, there is no periodontal assessment recorded before the crown was provided for tooth 22.

- (vii) You failed to ensure that the necessary periodontal treatment of the patient was completed before crowning all four of these teeth (12, 11, 21 and 22).
- (viii) The patient's periodontal and endodontic condition should have been fully assessed and appropriately managed before crown treatment was commenced.
- (f) Prior to commencing particular treatments, and in the course of providing treatment to this patient, you failed to provide him with all necessary information about the treatment options, the likely outcomes, advantages, disadvantages, risks and possible complications of the dental treatment proposed.
- (g) In particular, you failed to inform Mr BB that:-
  - (i) It was absolutely necessary for the work required on his dentition to be performed in a particular order.
  - (ii) It was absolutely necessary for his periodontal condition to be fully assessed and appropriately managed (and to establish periodontal health) before crown treatment was commenced.
  - (iii) It was absolutely necessary for that endodontic treatment to be fully and satisfactorily completed on tooth 22 before the crown was placed on that tooth.
  - (iv) In placing the crowns before completing all necessary endodontic and periodontal treatment, the treatment was virtually certain to fail.
  - (v) Performing the work in the sequence in which you in fact did it meant that there was a very substantial risk that the treatment would fail.
  - (vi) That was an unnecessary risk, to which your patient should not have been exposed.
- (h) You accordingly failed to ensure that your patient understood what treatment he was consenting to, and had the necessary details and information available to him concerning such treatment before he provided any apparent consent.
- (i) You accordingly failed to obtain the prior consent (fully and appropriately informed) of Mr BB to that dental treatment being performed.
- (j) You should have declined any request from the patient to place crowns on any of these teeth (12, 11, 21 and 22) without first attending to the periodontal and endodontic issues identified in paragraphs (e) and (g) above.
- (k) Your conduct set out above constituted unprofessional conduct as defined in Section 3 of the Act.
- (l) Such unprofessional conduct was of a serious nature.

**C. YOUR PATIENT – MS AA**

- (m) Over the period from October 1996 to November 2006, you provided extensive and regular dental treatment to Ms AA.
- (n) In the course of providing such treatment to this patient, you continually failed over that period of 10 years to provide her with all necessary information about the treatment options, the likely outcomes, advantages, disadvantages, risks and possible complications of the dental treatment proposed.
- (o) In particular, you failed to inform Ms AA over that 10 year period that:-
  - (i) Many of her teeth were grossly carious and mobile.
  - (ii) Many of her teeth required extraction.
  - (iii) She had many failed restorations in her dentition.
  - (iv) You were in effect providing only limited “patch up” dentistry for her most serious dental problems, rather than providing her with a complete and adequate set of dental services appropriate to her dental condition.
  - (v) She was (in your words) a “WALKING DENTAL DISASTER”.
- (p) In particular, at your final appointments with Ms AA on 3 and 14 November 2006, you failed to inform Ms AA that:-
  - (i) She had multiple grossly carious teeth and failed restorations in her remaining dentition.
  - (ii) She in fact had caries in 10 of her remaining teeth (noting that she was missing 12 teeth).
  - (iii) She had failed restorations in eight of her remaining teeth.
  - (iv) The dental work you had been providing to her for the last 10 years was limited in its nature and that the general state of her dentition was extremely poor.
  - (v) She was (in your words) a “WALKING DENTAL DISASTER”.
- (q) You accordingly failed to ensure that your patient understood what treatment she was required to have so as to provide her with a healthy dentition, and had the necessary details and information available to her concerning such treatment before she provided any apparent consent to any particular treatment which you did provide her.
- (r) You accordingly failed to obtain the prior consent (fully and appropriately informed) of Ms AA to the dental treatment which you performed.
- (s) Further, you failed to provide Ms AA with all of the necessary and appropriate information which she would require (as set out in paragraph (o) above) to put her in a position to request full, necessary and

appropriate dental treatment from you, in the light of the state of her dentition.

- (t) Your conduct set out above constituted unprofessional conduct as defined in Section 3 of the Act, and also constituted professional misconduct under Section 25 of the Dentists Act 1972 (in relation to such conduct on or before 30 June 2000).
- (u) Such unprofessional conduct was not of a serious nature.

#### **D. DENTAL RECORDS**

- (v) The dental records which you maintained in regard to the treatment of these two patients (Mr BB and Ms AA) are inadequate and defective, and did not comply with the stated Policies of the Board at any relevant time.
- (w) In particular, dealing with your records post 12 August 2003, on 12 August 2003 and pursuant to Section 69(1)(e) of the Act, the Board promulgated (and later publicised) a Code of Practice No C003 entitled "*Dental Records*" ("the Code").
- (x) In breach of the provisions of the Code, you failed to maintain adequate and appropriate dental records of your treatment of Ms AA and Mr BB.
- (y) Particulars of the respects in which your dental records for Ms AA were not adequate or appropriate, and did not comply with the stated Policies of the Board or with the Code, are marked "A".
- (z) Particulars of the respects in which your dental records for Mr BB were not adequate or appropriate, and did not comply with the Code, are marked "B".
- (aa) Your failure to maintain adequate and appropriate dental records of your treatment of these patients constituted unprofessional conduct as defined in Section 3 of the Act.

Such unprofessional conduct was of a serious nature.

2. The allegations against Dr Kikuts contain three components. The first related to the dental treatment which he provided to Mr BB and the second related to the dental treatment provided to Ms AA and an alleged failure to provide her with appropriate information about her dentition over the course of ten years of treatment. The third set of allegations relate to dental records maintained by Dr Kikuts of his treatment of those two patients, Mr BB and Ms AA. At the outset, it should be acknowledged that Dr Kikuts made a significant number of admissions in relation to the allegations concerning his treatment of Mr BB's tooth 22 and his record keeping.
3. Dr Kikuts did not make admissions with respect to his care of Ms AA. The Panel did not make adverse findings in relation to all of the elements of paragraphs (o) -(r) concerning the treatment of Ms AA but did find the allegations concerning the information provided to Ms AA by Dr Kikuts in paragraph (n) made out on the basis that Dr Kikuts was not himself fully informed about the state of Ms AA's dentition because of his apparent lack of knowledge about management of a patient such as Ms AA.

4. The Panel acknowledges the admissions made by Dr Kikuts. It also acknowledges that both Mr BB and Ms AA had dentition which was difficult to treat.
5. Each of these sets of allegations is referred to in turn below.

### **Allegations regarding the treatment of Mr BB**

6. Mr BB was not available to give evidence and the Panel agreed to accept written evidence of his complaint.
7. Mr BB complained to the Board that he had initially consulted Dr Kikuts in February 2005 about his front teeth, one of which was broken and two other front teeth which were crossing over. Initially, one crown was placed by Dr Kikuts on tooth 22 in early 2005, which led to some discomfort and treatment with antibiotics. Subsequently, after some periodontal treatment, a further three crowns were placed by Dr Kikuts.
8. In his complaint, Mr BB stated "When I got the first two crowns done I told Dr Kikuts that I had discomfit (sic) and that I bled at times, and in my sleep, and he gave me a prescription. He said it was just me getting used to the crowns. Couldn't eat properly, chewing down on things with the front teeth". Some time later, the next two crowns were placed by Dr Kikuts. Mr BB wrote that he "Told him (Dr Kikuts) that he still felt sore with the other two crowns."
9. On 19 December 2006, he went to Dr Kikuts' surgery and saw Dr Noronha who examined him, and "to my horror told me what I had happening with my front 4 crowns."<sup>1</sup>

### **Evidence of Dr Kikuts regarding the complaint of Mr BB**

10. Dr Kikuts gave evidence that, in 2005, Mr BB had been undertaking some renovations at his clinic and then had come to see him explaining that he was very embarrassed by the appearance of his teeth and in particular with tooth 22. It was very broken and he wished to have it treated as soon as possible.
11. In February 2005, at the first visit Dr Kikuts took an x-ray of the anterior area and there was a root filling on that very badly broken down tooth. He told the Panel that Mr BB did not have any pain on it, "he just wanted to get it all fixed up and straightened up"<sup>2</sup>.
12. On 2 March 2005, Dr Kikuts prepared for the post crown on tooth 22. He told the Panel "the tooth was a very, very ultra-soft rooted tooth as well. It wasn't just the root filling that was the problem in hindsight and it wasn't just a straight out post crown."<sup>3</sup>
13. Dr Kikuts said he was faced with the choice of hoping, "everything would have worked out, it's either that or take the tooth out and he didn't want any dentures"<sup>4</sup>.
14. Dr Kikuts told the Panel that he gave Mr BB all necessary advice regarding the tooth. But he conceded that he did not advise him that he should have a root canal filling on tooth 22 redone prior to the crown.
15. Tooth 22 was crowned in March of 2005. Dr Kikuts prescribed antibiotics to deal with

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<sup>1</sup> Written complaint of Mr BB to the Dental Practice Board of Victoria

<sup>2</sup> Transcript p.145

<sup>3</sup> Transcript p.146

<sup>4</sup> Transcript 147

the infections present in Mr BB's gums. Mr BB was keen to have tooth 21 repaired as well. Dr Kikuts told the Panel that there was a delay because he still wanted the gum condition to improve.

16. Dr Kikuts undertook periodontal treatment prior to inserting the crown on tooth 21 on 30 March 2005. On 5 May 2005, he undertook further scaling and cleaning and periodontal lasering prior to inserting a crown on tooth 21.
17. Dr Kikuts told the Panel that he waited for some time before inserting the crowns on teeth 11 and 12 because the gums were still a little bit worrisome. He also told the Panel "the patient still insisted on 11 and 12 to be crowned, with my warning to try his best with toothbrush and rinsing with Amosan."<sup>5</sup> In June 2005, Dr Kikuts prepared two further crowns and inserted them on 14 July 2005. Mr BB still had problems when he came back on 15 August 2005 with his periodontal condition. He was still tender and non-improving as he should have been and Dr Kikuts prescribed further antibiotics, despite notations on the patient's record indicating "no penicillin". Mr BB came back in December 2005 with tenderness on tooth 15.
18. When asked by Counsel assisting the Panel why he had agreed to place the crown when he was aware of the periodontal and endodontic condition of tooth 22, he told the panel that "Well I did give advice and ..... but (Mr BB) insisted on doing the very badly broken down tooth mainly for the embarrassment he was going through and the gum condition was not extreme. My assessment was just with a little probing - it was about two, two and a half, the maximum was three millimetres at one spot on the 22. The other ones (the other three teeth) weren't bad at all."<sup>6</sup>
19. Dr Kikuts admitted in evidence that he should have advised the patient to have the tooth properly root canal filled before it was crowned.
20. He admitted that there was a failure to provide the necessary information about the impact of each treatment option and the advantages, disadvantages, risks and benefits of each option for treatment for each tooth.
21. He also told the Panel that "even if you tried to do an additional root filling on it there would be no - no guarantee the whole thing would have lasted anyway" and "I do admit now I should have probably referred it off to some specialist, I do admit to it."<sup>7</sup>

### **Evidence of Dr Noronha regarding Mr BB**

22. Dr Noronha told the Panel that he first saw Mr BB on 14 December 2006 who had come in with problems from his gums around the upper anterior region, complaining of bleeding and discomfort.
23. He found that Mr BB's oral health was poor with heavy accumulation of calculus around lower anterior teeth, with significant gingival recession around two particular teeth. In Dr Noronha's opinion, there were deficient margins on two of the crowns placed by Dr Kikuts with no root filling obvious in the root canal of 22. He also took a periapical radiograph, which, in his opinion, showed deficient margins around two of the teeth, which had been crowned by Dr Kikuts.
24. He told the Panel that on tooth 22 there was bone loss around the tip of the root

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<sup>5</sup> Transcript p149

<sup>6</sup> Transcript p 156

<sup>7</sup> Transcript p 147

which could indicate active infection or could be chronic infection.

25. He told Mr BB that the crowns would need to be redone due to the deficient margins. Further, he told Mr BB that tooth 22 would need endodontic treatment before new post core could be fabricated and a subsequent crown placement. He also told Mr BB that he "may require further periodontal treatment prior to restorative work in this area, as well as vitality testing of teeth 12, 11 and 21 ascertain if they are non-vital and candidates for endodontic treatment."<sup>8</sup>
26. He also told him that the cost of doing all of this including the redoing the endodontic treatment on tooth 22 was going to be close to \$10,000, and that did not take account of any periodontal surgery which might be necessary.
27. In a written report to the Panel, Dr Noronha wrote, "Tooth 22 was restored with a post core and crown but no obvious root filling" and that he "advised the patient that these crowns would need to be redone due to the deficient margins."
28. He told the Panel that it was necessary to treat a patient's periodontal condition first before inserting a crown by replanning, scaling and oral hygiene instruction.
29. Probing and resolution of symptoms and signs could measure success in periodontal treatment. Failure to do so and have resulting deficient margins can become a plaque trap and can cause gingival inflammation and gingival infection as well.
30. He told the Panel that Mr BB had not returned for treatment. He also told the Panel that while he had determined that the radiograph indicated margins on two teeth, teeth 12 and 11, he was unable to measure them, as he could not find them on probing.
31. In his report to the Board, he also stated, "In my opinion, the patient's periodontal condition should've been assessed and managed, prior before crown treatment was commenced". He concluded by saying, "In my opinion Dr Kikuts should've warned Mr BB that the proposed treatment had a poor prognosis, or declined to provide the treatment."
32. He also explained to the Panel that Mr BB had heavy calculus both on his first visit which was removed and reappeared on a subsequent visit which indicated to him that Mr BB's oral hygiene was insufficient.
33. On cross-examination, he agreed that some people suffer from more problems with their teeth than others due in part to their diet, level of oral hygiene and genetic predisposition.
34. He acknowledged that Mr BB's periodontal condition could have deteriorated significantly since Dr Kikuts had last seen Mr BB.

### **Determination**

35. On the basis of Dr Kikuts' evidence and Dr Noronha's evidence regarding Dr Kikuts' treatment of Mr BB, the Panel accepted the admissions of Dr Kikuts regarding the treatment of tooth 22.
36. It should be noted that Mr BB did not give evidence in person and therefore in respect of a number of matters, Dr Kikuts' evidence is preferred. The Panel

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<sup>8</sup> Transcript p81

accepted Dr Kikuts' evidence that he had been put under pressure by Mr BB for treatment of his teeth and notes Dr Kikuts' admission that he should not have acceded to Mr BB's request for immediate treatment with respect to tooth 22 when he was aware that the tooth was so compromised.

37. It is clear that Dr Kikuts waited some time for Mr BB's condition to improve before placing the crowns on the other three teeth. However, the Panel does not accept Dr Kikuts' evidence that the remaining three teeth should not have been in a better condition before the crowns were placed.
38. Equally, the Panel did not accept Dr Noronha's evidence that there were inadequate margins on the teeth.
39. Nonetheless, while the Panel does not find the allegations in paragraphs (g) (iv) made out, it does find that Dr Kikuts' treatment of Mr BB's was at risk of failure as he had not adequately assessed and treated Mr BB's periodontal condition before placing all four crowns.
40. Consequently, the Panel found that his treatment of Mr BB constitutes unprofessional conduct of a serious nature.
41. The Panel was not satisfied that Dr Kikuts' care of Mr BB met an adequate contemporaneous standard in relation to the periodontal and endodontic requirements for Mr BB's treatment.
42. It was clear from Dr Kikuts' evidence and from his notes and response to Mr BB's complaint initially that Mr BB's periodontal condition was poor as Dr Kikuts repeatedly administered antibiotics on a number of occasions throughout the period of Mr BB's attendance. Dr Kikuts himself acknowledged in evidence that it would have been preferable to have waited for an improved periodontal status before placing the second two crowns on Mr BB's teeth.

### **Allegations concerning the treatment of Ms AA**

43. Ms AA attended Dr Kikuts for a period of ten years. When she first presented to Dr Kikuts, she had already had a number of fillings and extractions. During the period of his treatment of her, he undertook a number of fillings, extractions and a root canal filling. Ms AA attended another dentist, Dr Noronha, who, it is claimed, told her that her teeth were in very poor condition and it "was as if she had never seen a dentist".
44. It was alleged against Dr Kikuts that he had failed to advise her that many of her teeth were grossly carious and mobile, many of her teeth required extraction, and that she had many failed restorations in her dentition, and further that he was providing limited "patch up dentistry".

### **Evidence of Ms AA**

45. Ms AA gave evidence that she had attended Dr Kikuts' practice over a ten year period and paid the practice a total of \$2390 over just less than five years.
46. She told the Panel that she had liked Dr Kikuts and had taken his advice regarding treatment decisions. She had attended him regularly and that from time to time, he had mentioned oral hygiene to her.

47. She had little recollection of the treatment given to her either by Dr Kikuts or Dr Noronha.
48. She told the Panel of her first appointment with Dr Noronha whom she had attended on 5 January 2007.
49. He told me that "all my teeth would most - well, nearly all my teeth would have to be extracted due to poor - poor teeth and whatever, and he said that it looked like I hadn't been to the dentist for ten years."<sup>9</sup>
50. She told the Panel that she "was pretty angry considering I go to the dentist every six months since I was a child."<sup>10</sup>
51. She also told the Panel that her dental hygiene and oral health were not discussed with her by Dr Kikuts over the years that she attended his surgery, other than a couple of times when he had cleaned the teeth a couple of times, and once he had showed her how to brush her teeth. She thought that he was happy with the way she was managing her teeth.
52. During her evidence and on cross-examination, Ms AA was asked a number of questions about the history of her dental treatment both prior to and during Dr Kikuts' treatment. She had a difficulty remembering very much of the information that had been given to her both by her prior treating dentist, Dr Kikuts and Dr Noronha.
53. Ms AA agreed that she had had a very long history of fillings and extractions and she was aware that she had a lot of problems with her teeth. She also had awareness that her teeth were prone to cavities.
54. She was unable to tell the Panel about her conversations with Dr Kikuts or about the nature of the difficulties with her teeth and the reasons why she so frequently attended him for fillings, restorations and extractions.
55. Ms AA was asked by the panel if she had ever been recommended to use products such as Listerine by Dr Kikuts and she advised that she had but that she had not had any conversation with him or the impact of dietary sugar or diet assessment or fluoride treatment.
56. Ms AA did agree that Dr Kikuts had stressed to her that it was most important to do as much as she could to keep her teeth clean and to look after her oral hygiene. However, for example, Ms AA was unaware that when she first attended Dr Kikuts, she had already had a number of teeth extracted.
57. She was not aware that Dr Noronha extracted tooth 37 earlier in 2007.
58. She did not recall whether she was offered root canal treatment on tooth 37 by Dr Kikuts. She told the Panel that, "if he extracted them I just assumed that that is what he wanted to do. If he had have suggested root canal work I would've had the root canal work done."<sup>11</sup>
59. She agreed that over the years when she attended Dr Kikuts, he would say to her, "Now, look, that tooth has got a problem. It needs to be filled and it may or may not

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<sup>9</sup> Transcript pp.30-31

<sup>10</sup> Transcript p.31

<sup>11</sup> Transcript p.46

work"? <sup>12</sup>

60. She also told the Panel that Dr Kikuts had never mentioned anything about her teeth being soft.
61. She was not sure how many teeth Dr Noronha had extracted. She told the Panel that Dr Noronha had not given the option of having root canal fillings which is inconsistent with Dr Noronha's evidence and notes.
62. Her evidence indicated that the information which appeared to have been given to her had not been clearly imparted in a way that she understood with respect to the cause of the many cavities, fillings and extractions which she had experienced.
63. There was, for example, evidence that the dentist prior to Dr Kikuts had discussed the need for a high level of oral hygiene with her before 1996. Further, Dr Kikuts clearly had concerns about her oral hygiene.
64. However, it appears that she did not have a full understanding of the extent of the difficulties with her teeth until she was seen by Dr Noronha late in 2007.

### **Evidence of Dr Noronha**

65. Dr Noronha gave evidence that Ms AA had presented to him on 5 January 2007. He examined tooth 37 and found that it was grossly carious and there was significant mobility associated with the tooth as well. In his diagnosis, he saw there was an advanced periodontal condition associated with the tooth.
66. He believed the tooth was not salvageable, so he suggested extracting the tooth. Ms AA agreed to the extraction. On that day, he also had a quick look at the rest of her teeth and suggested she come back for an examination. He told the Panel that the rest of her teeth were in a very poor state (with) multiple carious lesions and failed restorations.
67. Dr Noronha told the Panel that he informed Ms AA of the various options in the case of teeth needing to be filled, and she was aware that her teeth had many fillings. She was aware that many of her teeth required extractions.
68. On 9 January 2007, Dr Noronha undertook a thorough examination and charted 16 restorations and pathologies. He described Ms AA as having 12 teeth missing, ten with caries and eight failed restorations.

"All I could tell the patient was that her oral status was in an extremely poor condition. It appears that she had neglected her oral health to the point that it didn't seem like she could've been checked six monthly." <sup>13</sup>

69. He also told the Panel, "Ms AA's oral hygiene can be a lot better and I think this has contributed to the condition she is in at this stage." <sup>14</sup>
70. Dr Noronha told the Panel that due to Ms AA's diet and oral hygiene, it made it hard to obtain reasonable long standing results. He explained to Ms AA that, in his view, she required a considerable amount of dental treatment including extractions and fillings.

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<sup>12</sup> Transcript p.48

<sup>13</sup> Transcript p.73

<sup>14</sup> Transcript p.74

71. His treatment plan was to “restore her teeth, by taking out really bad teeth that cannot be restored, giving her some dentures perhaps to - to replace the missing teeth, preventive care as you - as you said with tooth brushing, reinforcing oral hygiene, and a basic treatment plan to try and get on top of her status at the moment.”<sup>15</sup>
72. He also told the Panel that Ms AA was surprised at the condition that she was in and then she was quite upset about the prospect of having re-treatment.
73. On 9 August 2007, Dr Noronha told the Panel that Ms AA arrived with pain from tooth 45 and he gave her the option of providing endodontic treatment for that tooth or an extraction. She chose an extraction over the endodontic therapy, despite his recommendation for endodontic treatment.
74. Subsequently Dr Noronha was asked if Ms AA had been given the choice to have a root canal filling or an extraction on tooth 45 and she had decided to have the tooth extracted. Dr Noronha was asked if he had explained the costs of a root canal filling and he agreed that he had done so. He could not recall if Ms AA had given cost as a reason for her decision.
75. He told the Panel that over the period from January to August 2007 Ms AA had three extractions and nine to ten fillings. She has not had any endodontic work done.
76. Dr Noronha was shown notes of Dr Kikuts’ treatment and prognoses for a number of teeth and agreed in cross-examination that he had also made the same assessments and diagnoses.
77. Dr Noronha also told the Panel that, despite his request to Ms AA that she come for regular check-ups, she had not done so.
78. He agreed that he had not performed a salivary test and told the Panel “we never tested for the metabolism but I can look at the oral hygiene and it's not - not the best.”<sup>16</sup>

### **Evidence of Dr Kikuts concerning his treatment of Ms AA**

79. Dr Kikuts told the Panel that he had first seen Ms AA on 26 February 1997. He began a series of fillings and noted that he "Stressed to improve oral hygiene".
80. Ms AA suffered from periodontal problems for which he suggested Amosan. In 1997/98, Ms AA saw several other practitioners at the practice and had a series of fillings and extractions.
81. Dr Kikuts told the Panel that he was aware of her level of income and gave consideration to that when it came to the fees he charged her, which were lower than his normal fees.
82. He told the Panel that he believed that when she underwent endodontic treatment she was aware from his conversations with her of alternative treatment modalities including extraction.
83. He had commenced endodontic treatment and completed it in February 1999.

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<sup>15</sup> Transcript p.98

<sup>16</sup> Transcript p.100

84. He told the Panel that he had continually stressed the importance of oral hygiene. He said that Ms AA had told him that she was prone to having a lot of soft drinks and snack food.
85. Over the period of 1999-2001, he had cleaned and filled several teeth and had used laser treatment on her gums. He also prescribed antibiotics.
86. He believed that he had conveyed to Ms AA the difficulties that she had with her teeth which arose from her diet, her oral hygiene and that she had very, very soft decalcified teeth.
87. In his many years of practice, he told the Panel that he had never come across a patient with these sorts of difficulties before.
88. He gave evidence about his management of many of Ms AA's teeth. He also told the Panel that root canal treatment was not attractive to her. There were a further two extractions in 2005 and there was a cancelled and a broken appointment on 2 November 2005. On 10 January 2006, again Dr Kikuts noted a very, very poor prognosis for tooth 15 and recommended extraction which was done on 9 July 2006 by another practitioner.
89. On 14 November 2006, Dr Kikuts completed further fillings and told Ms AA that tooth 37 would need to be extracted.
90. Dr Kikuts told the Panel that he believed that in the period of time that he had seen Ms AA she was aware that many of her teeth were grossly carious and prone to cavities and mobile and that he had discussed the reasons for the many fillings and extractions he had undertaken.
91. He told the Panel that he had said to Ms AA on a number of occasions, "If you don't change you're going to keep losing teeth"<sup>17</sup>.
92. Dr Kikuts also told the Panel of his understanding on the management of periodontal disease, attachment loss and use of antibiotics and the circumstances in which use of antibiotics is regarded as best practice. He was also asked if he used glass ionomer and cement as a lining for cavities.

### **Determination**

93. In considering the evidence placed before it in relation to the allegations in paragraphs (m) to (u) of the Notice of Hearing, the Panel had difficulty in separating the degree to which Dr Kikuts himself was fully informed and Ms K was informed by him. The allegations charged Dr Kikuts with a failure to properly inform Ms AA of the nature of her dentition, the risks she faced and the appropriate treatment options.
94. On the basis of the evidence before it, the Panel preferred Dr Kikuts' evidence that he did raise the question of oral hygiene with Ms AA on a number of occasions.
95. The Panel does acknowledge that Ms AA already had a number of teeth extracted before she attended Dr Kikuts and it also acknowledges that Dr Noronha took a number of steps which Dr Kikuts intended to undertake had Ms AA continued to see him ; namely the extraction of tooth 37 and a root canal filling for tooth.

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<sup>17</sup> Transcript p.194

96. In considering the evidence regarding the allegations, the Panel is bound to apply the test outlined in *Briginshaw v Briginshaw*<sup>18</sup>, where the Court held:

“The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.”<sup>19</sup>

97. The consequences flowing from a finding of unprofessional conduct of a serious nature for a health care practitioner require a Panel to be reasonably satisfied that the allegations are proved.
98. On the basis of the evidence before it, the Panel was not satisfied that Dr Kikuts did not tell Ms AA that she had a number of problems with her teeth which may have been as a result of a number of factors.
99. Consequently it does not find the allegations made in paragraphs (o) -(r) made out to its satisfaction.
100. However, the Panel was concerned that Dr Kikuts did not appear to have undertaken a comprehensive assessment from time to time during the ten years which Ms AA attended for treatment of her dental needs.
101. The Panel was not satisfied that Dr Kikuts undertook an assessment, based on up to date dentistry methods, of Ms AA's condition to enable him to give sufficient information to Ms AA.
102. For example, he did not avail himself of a number of assessments including a dietary assessment, and saliva tests to place himself in a position where he could accurately inform her of treatment options, the likely outcomes, advantages and disadvantages of risks and possible complications of the dental treatment available to her.
103. In light of these difficulties, the Panel finds that Dr Kikuts was not himself properly informed and therefore, while the allegations in paragraphs (o) -(r) were not made out, the allegation in paragraph (n) is made out. The Panel further finds that his conduct in this regard falls within the category of unprofessional conduct but not of a serious nature.

## Dental records

104. Insofar as the dental records are concerned Dr Kikuts conceded that his dental records were inadequate and did not comply with the Dental Records Code of Practice No C003. Counsel for Dr Kikuts submitted to the Panel that his client had changed his record keeping practises and would continue to do so.

## Determinations

105. 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.

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<sup>18</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336

<sup>19</sup> *Ibid* 361-2.

**106.** In considering the determination to make, the Panel must weigh up a number of factors.

**107.** 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’....”

**108.** 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.”<sup>20</sup>

**109.** Dr Kikuts’ conduct was neither trivial nor momentary. It concerned the level of information given to two patients, who suffered from difficult-to-treat dentition over a significant period of time, ten years in one case, and the comprehensiveness of treatment planning.

**110.** In one case, that of Mr BB, Dr Kikuts himself acknowledged that he did not provide all of the information to the patient and that patient’s consent to treatment was not a valid consent.

**111.** Compliance with the principles regarding consent to health care treatment is a lynchpin in the framework of professional autonomy which is afforded to health care professionals such as dentists and medical practitioners.

**112.** Failure to properly inform a patient of both the nature of their physical condition and of the advantages and disadvantages of proposed courses of treatment is a very serious matter and cannot be regarded by the Panel as a trivial matter.

**113.** As the failure of Dr Kikuts with respect to his treatment of Mr BB in these aspects was certainly not of a momentary nature, and neither was it trifling, given the discomfort and additional treatment which the complainant is now required to undertake, the Panel takes the view that his failure with respect to his treatment of Mr BB constitutes unprofessional conduct of a serious nature.

**114.** 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.”<sup>21</sup>

**115.** In addition, the Panel’s notes Dr Kikuts’ admissions with respect to record keeping

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<sup>20</sup> *Parr v Nurses Board of Victoria* (1998) 16 VAR 118

<sup>21</sup> *Kozeniauskas v Dental Practice Board* [2005] VCAT 1058

and compliance with the Board's Code regarding records and finds that his failures to comply with the Code constitute unprofessional conduct of a serious nature.

116. Further, the Panel has determined to reprimand Dr Kikuts and caution him 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."<sup>22</sup>
117. The Panel was not satisfied that Dr Kikuts was fully conversant with contemporaneous approaches to endodontic and periodontal treatment and accordingly requires him to undertake further education in these matters.

Deborah Foy  
Chair  
21 April 2008

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<sup>22</sup> *Peeke v The Medical Board of Victoria* BC9400966 19 January 1994