

DENTAL PRACTICE BOARD OF VICTORIA

RE: Dr Nicholas Kirmos

[2004] DPBV 4

PANEL:

Mr Victor Harcourt (Chair)
Dr Pamela Dalgliesh
Dr Mandy Leveratt

DATE OF HEARING: 31 August 2004
DATE OF DECISION: 11 October 2004

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 21 July 2004 ("the Notice") to be established:

- 1 At all material times Dr Kirmos has been a dentist registered as such under the *Dental Practice Act 1999* and bound by the provisions of that Act.
- 2 Dr Kirmos has been found guilty of an indictable offence in Victoria.
- 3 Particulars of the indictable offence of which Dr Kirmos has been found guilty are as follows:
 - 3.1 Dr Kirmos' case was heard in the Magistrates' Court of Victoria at Melbourne on 25 May 2004 under Case No. S00067542;
 - 3.2 Dr Kirmos had earlier been charged with (inter alia) three charges of stalking another person (and thereby breaching Act 6231.21A.1) and one count of knowingly possessing child pornography (and thereby breaching Act 6231.70.1);
 - 3.3 Dr Kirmos pleaded guilty to all four of those charges;
 - 3.4 Dr Kirmos was found guilty of all four of those charges;
 - 3.5 Dr Kirmos was released without conviction upon an undertaking to be of good behaviour for a period of four years;
 - 3.6 Dr Kirmos was ordered to pay \$4,000 to the Court Fund on or before January 2005;
 - 3.7 Two special conditions were imposed on Dr Kirmos -
 - 3.7.1 To continue treatment, including the taking of prescribed medication as recommended by Dr Brown, psychiatrist, or his nominee; and
 - 3.7.2 Not to attend Chadstone or Knox Shopping Centres for a period of 12 months;
 - 3.8 A forfeiture order was made by consent in relation to all property which had been seized from Dr Kirmos in the course of the investigation.
- 4 Dr Kirmos has accordingly engaged in unprofessional conduct as defined in Section 3(k) of the *Dental Practice Act 1999*.
- 5 Such unprofessional conduct was of a serious nature.

It is noted that an appeal by the Director of Public Prosecutions against sentence which was heard before His Honour Judge Williams of the County Court on 17 August 2004 was dismissed. The orders made by the magistrate set out above were, in all material respects, reimposed by the Court.

DETERMINATION

Having considered the matter and having given due weight to the submissions placed before the Panel, the Panel considers appropriate under section 47(2) of the *Dental Practice Act 1999* to make the following determination:

- 1 Dr Nicholas Kirmos is reprimanded in the strongest possible terms in respect of the conduct which he has been charged with and found guilty of.
- 2 Dr Nicholas Kirmos is fined the sum of \$2,500.00 to be paid by 1 January 2005.
- 3 The following conditions, limitations and restrictions are imposed upon Dr Nicholas Kirmos' registration as a dental care provider:
 - 3.1 For a period of two years from 1 September 2004 Dr Kirmos cannot engage in the practise of dentistry, whether for fee or otherwise, unless he is working in an employee capacity employed by a person or entity independent of Dr Kirmos.
 - 3.2 Dr Kirmos will fully inform any prospective employer of the facts and circumstances surrounding the findings of guilt as to the indictable offences of stalking and possession of child pornography. Without limiting the generality of the foregoing, Dr Kirmos must, at the very least, provide to any prospective employer the following:
 - 3.2.1 the summary of the sentencing remarks of His Honour Judge Williams of the County Court in the Director of Public Prosecutions' unsuccessful appeal made 17 August 2004 prepared by Mr Howard QC and submitted to the Panel;
 - 3.2.2 a copy of the undertaking given by Dr Kirmos to the Court dated 17 August 2004; and
 - 3.2.3 a copy of this decision made by the Panel including the Findings, Determination and Reasons.
 - 3.3 For a period of two years commencing 1 September 2004, Dr Kirmos must not provide dental care to any person, whether for fee or otherwise, in the absence of a person employed by the dental care practice in which he is working who is first informed of the requirement for this condition and who undertakes to her or his employer not to leave Dr Kirmos alone with a patient.
 - 3.4 Dr Kirmos will continue receiving psychiatric treatment as recommended by and obey all lawful directions of Dr Paul Brown, psychiatrist. Dr Kirmos may apply to the Board to approve a transition to an alternative treating psychiatrist for the purposes of these Determinations, and the Board shall provide such approval if it is satisfied as to the reasons for the transition, the expertise of the alternative treating psychiatrist and that the Board's role in protecting the public is served by the transition.
 - 3.5 Dr Kirmos will authorise and procure Dr Brown to provide to the Board reports as to his ongoing psychiatric treatment every six months. The reports of Dr Brown must provide:
 - 3.5.1 an opinion of Dr Kirmos' psychiatric condition;

- 3.5.2 an opinion as to whether Dr Kirmos' ability to practise dentistry, having regard to his mental health, may be affected;
- 3.5.3 an opinion as to whether Dr Kirmos poses any greater risk of sexually deviant behaviour in the professional setting than his professional peers; and
- 3.5.4 comment and an opinion, if appropriate, upon the following:
- (a) Compliance
 - Responsible attendance at consultations
 - Compliance with medication regime
 - (b) Treatment
 - General progress with treatment
 - Testing of DSM scales for depression and dissociation
 - Cravings as to the use of the internet for child pornography or the use of a video for "up skirting"
 - (c) Professional Practice
 - Patient's conduct and performance in the surgery, including compliance with the requirement to treat patients only in the presence of a nurse or other authorised person, any inappropriate or troubling feelings he may have towards patients or instances of stress, anxiety, poor concentration or lack of judgment which may impact adversely on his professional practice.
 - (d) Other relevant matters
 - Any relevant matters as to personal conduct, improvement or otherwise in general lifestyle and emotions or feelings including irritability and uncontrolled anger, poor concentration or lack of judgment.
 - Any other relevant matters
- 3.6 The reports of Dr Brown are to be provided to the Board for a period of 4 years commencing 1 September 2004, the first report to be provided on or before 17 January 2005, or such lesser period as may be determined if the Board is satisfied the reports are no longer necessary.

- 4 If Dr Kirmos fails to pay the fine or comply with any of the conditions, restrictions or limitations imposed upon his registration by the due dates, Dr Kirmos' registration as a dental care provider is suspended from the date of non-compliance until the date of compliance.

REASONS

- 1 On 31 August 2004, 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 dentist, Dr Nicholas Kirmos. Dr Kirmos was at all material times a registered dentist.

- 2 The role of this Panel in considering the Determinations to be made following the Findings is to protect the public. This Panel does not have any role in imposing Determinations for the purposes of punishing Dr Kirmos. That role has been undertaken by the criminal law courts.
- 3 In fulfilling its role, the Panel had regard to the evidence which was placed before it, the Determinations which could properly be made by it and the risk that Dr Kirmos may or may not pose to any members of the public who may come into contact with Dr Kirmos in the course of receiving dental care services from him.
- 4 It is appropriate to demonstrate the Panel's strong disapproval of the conduct engaged in by Dr Kirmos of which he was found guilty. This is reflected in the reprimand and in the fine which has been imposed upon Dr Kirmos. The fine reflects this disapproval and while the maximum fine which could be imposed by this Panel is of a greater amount, the Panel has taken into account the fine imposed by the criminal law courts, the legal costs which Dr Kirmos has personally incurred and the attendant circumstances surrounding the commission of the indictable offence by Dr Kirmos.
- 5 In considering what conditions, limitations and/or restrictions should if any be imposed upon Dr Kirmos' registration as a dental care provider, the Panel took into account the evidence given by Dr Brown, his treating psychiatrist. In Dr Brown's opinion, the commission of the offences by Dr Kirmos took place in the context of an untreated mental illness, a factor taken into account in the criminal law proceedings. Dr Brown stated to the Panel that, in his opinion, the ability of Dr Kirmos to practise as a dental care provider was not affected by his mental health and that he did not pose any greater risk of sexually deviant behaviour in the professional setting than any of his professional peers. The Panel placed great weight upon Dr Brown's opinion given his expertise, his treating psychiatrist relationship with Dr Kirmos and the absence of any contrary evidence.
- 6 The Panel took into account the fact that the offences of which Dr Kirmos was found guilty did not take place in the course of Dr Kirmos providing dental care services. There was therefore no evidence before the Panel directly linking Dr Kirmos to a risk to members of the public who he may treat. However, given the seriousness of the offences and the nature of them, the need for Dr Kirmos to continue receiving psychiatric treatment and the implications for his mental health state, the Panel considered it was appropriate to impose the conditions, limitations and/or restrictions which it did to minimise, as far as was possible for this Panel to achieve, the risk to the public.
- 7 The Panel notes that Dr Kirmos was co-operative with the Board and in the course of these proceedings. Indeed, Dr Kirmos made many admissions as to the Findings and proposed the substance of many of the conditions, limitations and/or restrictions which the Panel has imposed. The Panel took into account the co-operation and the willingness of Dr Kirmos to address the problems which seemingly have contributed to his current situation and his mental health state.

Dated: 11 October 2004

**Victor Harcourt
Chair**