

# THE DENTAL PRACTICE BOARD OF VICTORIA

## Re: Dr Raymond Lu [2008] DPBV 2

<b>PANEL:</b>	Mr Michael Gorton (Chair) Professor Michael Morgan Mr Peter Martin
<b>Counsel Assisting the Panel:</b>	Mr P Monahan of Monahan + Rowell, Lawyers
<b>Counsel for the Practitioner:</b>	Mr D Masel instructed by DLA Phillips Fox, Lawyers
<b>Dates of Hearing:</b>	14, 15 November 2007 & 13 December 2007
<b>Date of Decision:</b>	12 March 2008

### **Findings**

Pursuant to section 47(1)(a) of the *Dental Practice Act 1999* ("the Act"), the Panel having considered the Notice of Formal Hearing, the Statement of Agreed Facts, the evidence and the submissions of counsel finds:

- i) That the allegations set out in paragraphs (m), (p), (q), (r), (s) (t) & (v) of the Amended Notice of Formal Hearing are not made out and accordingly in his dental treatment of Mr DD, Dr Lu has not been guilty of unprofessional conduct.
- ii) That the allegations concerning failure to produce dental records are made out and that Dr Lu has been guilty of unprofessional conduct of a serious nature.

### **Determinations**

Pursuant to section 47(2) of the Act the Panel makes the following determinations:

- i) Dr Lu is reprimanded;
- ii) Dr Lu is cautioned to cooperate with the investigative functions of the Dental Practice Board of Victoria in the future if and when called upon;
- iii) Dr Lu is fined \$5000, such fine to be paid by monthly instalments of \$500, the first payment to be made by 17 April 2008.

## **Reasons for decision**

1. The Dental Practice Board of Victoria determined pursuant to section 45 of the Act that a Formal Hearing was to be held into the professional conduct of Dr Lu, a registered dental care provider. A Panel was convened and the hearing was held on 14 and 15 November 2007 and 13 December 2007.

The Amended Notice of Formal Hearing, dated 26 September 2007, is set out below:

The allegations made against you are as follows:

- (a) At all material times, you have been registered as a dental care provider in Victoria under the *Dental Practice Act 1999* (“the Act”), and its predecessor, the *Dentist Act 1972*, having been first registered on 16 December 1986.
- (b) At all relevant times, you have practised as a Prosthodontist.

### **Your Patient**

- (c) Over the period from 1993 to 1999, you provided dental treatment to your patient, Mr DD.
- (d) Mr DD had suffered an assault causing dental injury during or about February 1993.
- (e) Following that assault, Mr DD had submitted a claim for compensation to the New South Wales Victims’ Compensation Tribunal, assisted by his solicitors.
- (f) After a process of appeals, that application ultimately succeeded when, on 22 August 1996, an Appeal lodged on his behalf was successful, and Mr DD was to be paid an amount of \$27,600 which included a component for:-
  - Expenses - \$5,000.00  
(up to \$15,000 to be paid on production of receipts)

### **Your Quotations**

- (g) In the course of assisting your patient, Mr DD, and his solicitors in regard to the Victims’ Compensation Application, and thereafter, you provided various quotations/estimated costs of the anticipated prosthodontic dental treatment required by Mr DD, including:
  - Your letter dated 4 July 1995 to the solicitors;
  - Your letter dated 12 February 1996 to the solicitors; and
  - Your letter dated 16 September 1996 to Mr DD.
- (h) In each of these letters, you provided details of the proposed treatment, based upon the provision by you to Mr DD of an implant supported artificial porcelain fused to gold bridge.
- (i) In particular:-
  - In your 4 July 1995 letter to the solicitors, you itemised the proposed services with reference to ADA item numbers and described the services as follows:-

<u>ADA Item No.</u>		<u>Services</u>	<u>Cost</u>
625	cast gold post core		\$246.00
615	<u>porcelain fused to gold crown</u>		\$1,033.00
582 (x2)	composite resin veneer (x2)		\$276.00
661, 615 (x2)	implant based porcelain-gold crown		\$2,776.00

To this you added the cost of hardware including implant abutments, gold abutment screws, gold cylinders and set gold screws etc. at approximately \$1,200, and concluded that the total cost of the proposed prosthodontic treatment was therefore approximately \$5,531;

- In your 12 February 1996 letter to the solicitors, you again itemised the proposed services with reference to ADA item numbers and described the services as follows:-

<u>ADA Item No.</u>		<u>Services</u>	<u>Costs</u>
625A (x2)	cast post core in gold (direct)		\$865.00
615 (x2)	<u>porcelain fused to gold crowns</u>		\$2,087.00
583 (x2)	porcelain laminated veneers		\$1,319.00
661/615 (x2)	implant based porcelain-gold crowns		\$2,884.00

You again added the cost of hardware including implant abutments, gold abutments screws, gold cylinders and set gold screws etc. at approximately \$1,250 and concluded that the total cost of Mr DD's proposed prosthodontic treatment was therefore approximately \$8,405. You noted in that letter that the adjustment in fees from the original estimate took into account the likely deterioration of Mr DD's dental condition due to the time lapse between the original trauma and the date of necessary treatment; and

- In your 16 September 1996 letter to Mr DD, you confirmed prior discussions with Mr DD stating:

*"As we discussed, your missing teeth 11, 21 and 22 can be replaced by an implant supported artificial porcelain fused to gold bridgework ...*

*The fee for my services for the above procedures will be \$5,009. This includes the provision of two trans-mucosal abutments and one three unit porcelain fused to gold bridgework with its associated matching implant hardware. ...*

*It is our policy to receive a deposit of \$500 prior to the commencement of treatment and progressive payments are requested during treatment. The balance is requested prior to the insertion of new dental bridgework".*

- (j) These letters confirmed your oral statements to Mr DD to the same effect.
- (k) You duly commenced the proposed implant prosthetic work for Mr DD during 1997 comprising a three unit implant-supported bridge.
- (l) Mr DD duly paid the initial deposit of \$500 prior to the commencement of treatment.

- (m) During the course of the treatment and at its conclusion, you received further payments from Mr DD, or on his behalf by the Victims' Compensation Tribunal in New South Wales, totally \$5,009 (including the deposit).
- (n) Accordingly, at all material times, you represented to and agreed with Mr DD that the bridgework to be provided to him would comprise implant-supported porcelain fused to gold bridgework.

### **Work Actually Done**

- (o) In truth and in fact, you did not provide Mr DD with porcelain fused to gold bridgework.
- (p) Rather, the bridgework which you finally provided to him was made of an acrylic / composite material, suitable only as a temporary prosthesis.
- (q) By your conduct, you have inappropriately charged Mr DD (and through him the Victims' Compensation Tribunal) for porcelain fused to gold bridgework and only in fact provided a grossly inferior and cheaper product comprised of acrylic / composite materials.
- (r) By your conduct, you have accordingly received a substantial monetary benefit to which you were not entitled.

### **Unprofessional Treatment**

- (s) The dental treatment which you provided to Mr DD was:
- Extremely poor
  - Grossly sub-standard
  - Of a lesser standard than that which the public might reasonably expect of a registered dental care provider (and in particular a registered prosthodontist).
  - Of a lesser standard that might reasonably be expected of a registered dental care provider (and in particular a registered prosthodontist) by his peers.
- (t) In particular, the dental treatment which you provided to Mr DD was unacceptable in these respects for the following reasons:
- Despite your quotation, you provided Mr DD with bridgework comprised of an inferior and inadequate acrylic or composite material, and suitable only as a temporary prosthesis.
  - Bridgework constructed of such acrylic / composite material is not suitable for a permanent bridge.
  - In your letters to the solicitors dated 4 July 1995 and 12 February 1996, you stipulated expressly that *“with normal wear and tear and changing oral conditions, the life expectancy of the artificial tooth replacement for Mr DD is about 15 to 20 years”*.
  - There was no prospect whatever of the acrylic / composite bridgework having a life expectancy of 15 to 20 years.
  - In fact, the bridgework failed completely within 7 years and had to be replaced in 2004.
  - You misled your patient about the quality of the treatment (and the quality of the bridgework) which you were providing.

- You failed to complete your own stated treatment plan, and for which you had charged your patient.
- You failed to provide the treatment for which you had quoted to your patient, and for which you had been paid (or substantially paid).
- You did not take reasonable, necessary and appropriate steps to complete the treatment plan which you had recommended, and which you had commenced to implement.
- You did not take reasonable, necessary and appropriate steps to call your patient in to your surgery so as to complete your treatment.
- You failed to make reasonable, necessary and appropriate follow-up inquiries as to why your patient did not come to your surgery for the treatment plan to be completed.
- You failed to inform your patient that the bridge in place was only a temporary one, and to take all reasonable and necessary steps to make sure that your patient understood this.
- You accordingly left your patient in a vulnerable condition, when it was not reasonable or appropriate to do so.

### **Threatening Behaviour**

- (u) During the course of the treatment which you provided to Mr DD, he was often accompanied to his consultations with you by his mother.
- (v) In the course of a telephone call with you after one such consultation, his mother queried the progress of the treatment with you, and you responded in a threatening manner by saying words to the following effect:

*“If you complain about me, your son’s treatment will never be finished”.*

### **Failure to Produce Dental Records**

- (w) On 2 March 2006, a Panel of the Board found that you had engaged in unprofessional conduct of a serious nature by virtue of your failure to respond appropriately to inquiries by the Investigative Officer of the Board, Dr Anthony Roseman.
- (x) Dr Anthony Roseman is the Investigative Officer of the Board, and the person to whom the Board has delegated its power to conduct preliminary investigations into complaints under Section 23 of the Act.
- (y) A full transcription of the hearing was provided to you by the Chief Executive Officer of the Board by letter dated 9 March 2006, and a copy of the Panel’s Findings and Determinations were posted to you with a letter from the Board dated 17 March 2006.
- (z) In a letter written to you originally by the Investigative Officer of the Board, Dr Roseman, dated 28 June 2005 he requested your dental records relating to Mr DD (including radiographs and dental models) and your written comments on the allegations made against you by Mr DD.
- (aa) After the Formal Hearing of the Board on 2 March 2006 (which you did not attend), Dr Roseman repeated his earlier requests to you for your dental records and a response to the allegations made against you, having done so at meetings with you on 30 May 2006 and 11 July 2006, and subsequently by letter dated 26 July 2006.

(bb) Notwithstanding the above, you failed for a considerable and unreasonable period to provide Dr Roseman with your dental records or your written comments on the allegations made against you by Mr DD, and to answer his reasonable inquiries and by your conduct frustrated the progress of his investigation.

(cc) The full details of communications between you and Dr Roseman from 30 May 2006 are as follows:-

- On 30 May 2006, Dr Roseman visited your home to advise you of the outcome of the formal hearing and request you to forward your dental records of Mr DD to the Board.
- On 11 July 2006, you met with Dr Roseman at the offices of the Board and requested more time to produce your dental records of Mr DD and were advised that the recommendation for a Formal Hearing into the matter would be considered by the Board that evening.
- You wrote to Dr Roseman by letter dated 25 July 2006, but only informed him that you had written to DPL Australia Pty Ltd for assistance.
- Dr Roseman wrote to you thereafter by letter dated 26 July 2006 repeating his request for you to forward the complete dental records of the patient including radiographs and dental models within 10 days, and to treat his request as one of the utmost urgency.
- You did not respond to that letter within that 10 day period
- Dr Roseman then wrote a letter to your Insurers, DPL Pty Ltd, dated 3 August 2006 requesting their assistance in obtaining your dental records, radiographs and dental models, concerning the treatment of the patient.
- You then attended at the offices of the Board on 8 August 2006 and provided Dr Roseman with four envelopes containing documents, payment records, radiographs, photographs, etc and one box containing dental models, but did not provide an acceptable explanation of the failure on your part to complete the treatment plan and insert the porcelain fused to gold bridge.
- On 9 August 2006 Dr Roseman left messages on your telephone and email requesting that you contact him to discuss some matters arising from his review of your records
- At a meeting with Dr Roseman on 29 August 2006 you provided a verbal explanation of the treatment you provided to Mr DD on 7 April, 10 July and 9 December 1998. The explanation was that you understood that Mr DD was to return to his referring practitioner for completion of treatment to his lower teeth before insertion of the implant supported bridge.
- Dr Roseman then received a letter dated 18 September 2006 from your solicitors, DLA Phillips Fox.
- Ultimately, through your solicitors DLA Phillips Fox, you provided a written explanation of your treatment of your patient (Mr DD) by letter dated 8 May 2007, forwarded to Dr Roseman by letter from your solicitors, DLA Phillips Fox dated 28 November 2006 and received by the Board on 11 May 2007.
- Dr Roseman wrote a letter in response to DLA Phillips Fox dated 22 May 2007 requesting further details from you explaining nine matters raised by Dr Roseman in that letter.

- You responded to those inquiries by your letter dated 7 June 2007, forwarded to Dr Roseman by your solicitors, DLA Phillips Fox by their letter dated 8 June 2007.
  - Dr Roseman responded by letter to your solicitors dated 26 June 2007 noting the comments that you had made aimed at clarifying your actions in the matter, and informing your solicitors that a Formal Hearing into the matter would proceed.
- (dd) Your conduct in this regard is particularly serious in the light of the very recent findings against you by a Panel of the Board on 2 March 2006.

### **Conclusion**

(ee) Your conduct in all of the respects set out above constitutes unprofessional conduct as defined in Section 3 of the *Dental Practice Act 1999*.

(ff) That unprofessional conduct constitutes unprofessional conduct of a serious nature.

2. Prior to the commencement of the hearing agreement was reached on some issues between the Board and Dr Lu's legal advisers, and this led to the tendering, at the hearing, of a lengthy Statement of Agreed Facts ("Statement") dated 14 November 2007.

This Statement is attached to the Reasons.

3. There were four substantive allegations (or set of allegations) against Dr Lu.

First, the allegation that his treatment of Mr DD was unprofessional as alleged in paragraphs (s) and (t) in the Amended Notice.

Second the allegations made in paragraphs (o), (p) (q) and (r) of the Amended Notice which appeared to suggest that Dr Lu had obtained and kept money to which he was not entitled and that he knowingly provided Mr DD with cheaper and inferior bridgework from that contracted.

Third the allegation that Dr Lu behaved in a threatening manner to Mr DD's mother.

Fourth the allegation that he failed to produce dental records and respond appropriately to inquiries from the Investigative Officer of the Board.

4. The fourth of these allegations is separate and distinct from the first, second and third, and will be discussed separately. The Panel considers that the first three sets of allegations can be discussed, in effect, as one transaction.

5. The Statement is very detailed. The significant findings of fact which the Panel can make after considering the Statement are:

- Dr Lu's treatment plan was (inter alia) to supply a porcelain fused to gold bridge.
- The last occasion on which patient DD attended Dr Lu's rooms was 9 December 1998.
- On 9 December 1998 patient DD left Dr Lu's rooms fitted with a belle glass temporary bridge.
- Dr Lu wrote to patient DD a letter dated 28 April 1999 advising of a review appointment on 25 May 1999.
- Patient DD did not attend the review appointment.

- Dr Lu received \$4009 in payments for his work as opposed to the sum of \$5009 alleged in paragraph (m) of the Amended Notice.
6. The Panel heard evidence from Mr DD and his mother, the Panel found both of these witnesses unhelpful in that their recollections of events, conversations and payments were vague. Mr DD's evidence too often was "I can't remember" and the Panel could not feel satisfaction that important parts of his evidence could be relied on. This was, no doubt, in part due to the lapse of time.
  7. Dr Lu did not fit a porcelain fused to gold bridge, but the Panel finds that he did have it in his rooms and was planning to fit it. His difficulty was that his patient did not return, as requested, on 25 May 1999.

### **Evidence of Mr DD**

8. He was the victim of an assault in February 1993. He won compensation from the NSW Victims Compensation Tribunal. Part of that compensation was to cover dental expenses.
9. He attended Dr Lu as stated in the Statement and continued to see Dr Lu until December 1998. The Panel accepts and relies on the facts stated in the Statement.
10. An important issue is the state of mind of Mr DD at the conclusion of his session with Dr Lu in December 1998. In his viva voce evidence he said, of the dental work:
 

"I figured if there was no more appointments there must have been no reason for another appointment. It must be done or as good as he could get it."<sup>1</sup>
11. Mr DD said that it had been normal practice at the end of a session for an appointment to be made for the next occasion.<sup>2</sup>
12. In examination-in-chief Mr DD was asked:
 

Q "So did you think it was permanent or temporary?"

A "Permanent."<sup>3</sup>
13. As set out in the Statement, Dr Lu wrote to Mr DD on 28 April 1999 advising of a further appointment on 25 May 1999.
14. Of this letter Mr DD said he could not remember receiving it – "I don't recall it".<sup>4</sup>
15. The letter was however, produced to Dr Roseman by Mr DD and the Panel finds that he did receive it. For reasons unknown Mr DD did not attend that appointment and as a consequence the porcelain fused to gold bridge was not fitted and languished in Dr Lu's rooms.
16. Despite his positive assertions that he thought in December 1998 that he had been fitted with his permanent bridge the Panel is not persuaded that that was his belief.
17. His answers were such that it was obvious that he had no recollection at all of several letters sent to him by Dr Lu advising of appointments. He did, however, attend those appointments – except for May 1999. The Panel is unable to accept that he thought his treatment was completed in December 1998 because no further appointment was made at that time.

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<sup>1</sup> Transcript p.83

<sup>2</sup> Transcript p.83

<sup>3</sup> Transcript p.84

<sup>4</sup> Transcript p.85

### **Evidence of Mrs DD**

18. Mrs DD was asked in her evidence many questions about many conversations she may have had with Dr Lu, about payments made to him by cheque or cash. She could not remember any of them. The Panel was not persuaded by her evidence that Dr Lu threatened her in any way – and the Panel considers it was entirely appropriate for Counsel Assisting to inform the Panel in his final address that the Board was not pressing for an adverse finding on this allegation.

### **Evidence of Dr Lu**

19. Dr Lu gave evidence supporting the facts set out in the Statement. The Panel finds that he did not receive \$5009 as alleged in the Amended Notice of Formal Hearing, did not supply Mr DD with a grossly inferior and cheaper product from that agreed to as alleged in the Amended Notice of Formal hearing, and did not by his conduct receive a substantial monetary benefit to which he was not entitled as alleged in the Amended Notice of Formal Hearing.
20. The Panel finds that Dr Lu at all times intended to supply a porcelain fused to gold bridge, had it in his possession and would have supplied and fitted it if Mr DD had returned for the appointment in May 1999.
21. The Panel finds that the dental treatment provided to Mr DD was appropriate, competent and professional in all respects and no allegation of unprofessional conduct has been made out.

### **Assessment of Evidence**

22. Counsel Assisting submitted that because Dr Lu only wrote one letter in April 1999 advising of an appointment in May 1999, and thereafter did not write again or make other inquiries, he was guilty of unprofessional conduct. It was submitted that because the last letter was at the end of a long gruelling process with a patient who could very easily be unsure about his position Dr Lu should have done a great deal more than just write one letter.
23. The Panel considers that it might have been appropriate for Dr Lu to write again but does not consider that his failure to do so constitutes unprofessional conduct.

### **Dental Records**

24. The allegations relating to Dr Lu's failure to produce dental records are set out in allegations (w) to (ff) in the Amended Notice of Formal Hearing.
25. Dr Lu did not contest any of the allegations from (aa) onwards. This failure to produce records when requested, particularly coming so soon after another Panel had found Dr Lu guilty of unprofessional conduct for failure to provide the records, seems very hard to understand indeed.
26. The Panel notes that Dr Lu did not attend the earlier hearing but was provided with a full transcript and advised of the earlier Panel's Findings and Determinations.
27. This Panel notes that the Determinations included suspension of Dr Lu's registration and a fine and it would seem likely that these factors might have made Dr Lu well aware of the need to cooperate with the Board.
28. Dr Roseman repeated his request for the dental records and/or written comments at meetings with Dr Lu in May and July 2006 and also by letter dated 26 July 2006.
29. On 8 August 2006 Dr Lu did finally produce the records.
30. The delay in producing the records constituted unprofessional conduct and the Panel considers that it was of a serious nature. The original request for the records was made by

Dr Roseman in June 2005 and follow –up requests were made. The records sought related to Mr DD.

31. This Panel is concerned only with delay after 2 March 2006. In one sense the delay since then can be regarded as part of the earlier delay dealt with by the previous Panel.
32. Nevertheless this Panel must deal with these allegations before it.
33. Evidence was called before this Panel that was not available to the previous Panel. This evidence addresses Dr Lu’s failure to cooperate from a psychological perspective.
34. Without descending to the detail of that evidence the Panel was provide with medical evidence which cannot excuse Dr Lu’s failure to comply with legitimate requests from Dr Roseman but which nevertheless may be relevant to any Determination made by this Panel.
35. The Panel has carefully and fully considered all the evidence before it. It finds Dr Lu guilty of unprofessional conduct as alleged in the Amended Notice of Formal Hearing under the heading “Failure to Produce Dental Records” and it further finds that the unprofessional conduct was of a serious nature.
36. In paragraph 61 of the Reasons of the previous Panel (see [2006] DPBV 2 re Raymond Lu, the Panel said this:

“It is of some concern to us that Dr Raymond Lu, despite his previous findings, has chosen to entirely ignore this hearing and not attend, to either explain himself or to point to any mitigating circumstances in his favour. We can only surmise from that that there is in fact no explanation nor any mitigating circumstances other than a contemptuous and wilful disregard, indeed contumelious disregard for the functions of this Board.”
37. This Panel has not been ignored and mitigating circumstances have been suggested. The Panel heard evidence about the mitigating circumstances “in camera” and the Panel does not intend to set out what that evidence was. The Panel was persuaded that Dr Lu was not showing any contempt, wilful or contumelious disregard for the function of the Board and accordingly decided upon the determinations set out above. Nevertheless, the determinations made demonstrate the Panels view that practitioners absolutely must cooperate with the Board in all its functions when called upon to do so.

**Michael Gorton  
Chair**

**Attachment:                    Statement of Agreed Facts**

**FORMAL HEARING UNDER SECTION 45 OF THE  
DENTAL PRACTICE ACT 1999**

**DR RAYMOND LU**

**STATEMENT OF AGREED FACTS**

It is agreed that the Formal Hearing in this matter, and any subsequent appeal or review, is to be conducted on the basis of the following agreed facts which will be supplemented by Dr Lu giving evidence and submitting to cross-examination at the Hearing and Mr DD and Mrs DD giving evidence and submitting to cross-examination at the Hearing.

1. Dr Lu has been registered as a Dental Care Provider in Victoria under the *Dental Practice Act 1999* (“*the Act*”) and its predecessor the *Dentists Act 1972*, since 16 December 1986. Accordingly, at all material times to this case, Dr Lu was registered.
2. At all relevant times to this case, Dr Lu practised as a prosthodontist.

**THE PATIENT**

3. Mr DD suffered an assault causing dental injury during or about February 1993.
4. Following the assault, Mr DD submitted a claim for compensation to the New South Wales Victims’ Compensation Tribunal, assisted by his solicitors.
5. After a process of appeals, that application ultimately succeeded when, on 22 August 1996, an Appeal lodged on his behalf was successful, and Mr DD was to be paid an amount of \$27,600 which included a component for:-
  - ❖ Expenses - \$5,000.00  
(up to \$15,000 to be paid on production of receipts)
6. On 16 September 1996, Mr DD told Dr Lu that he (Mr DD) would be paid \$45,000 by the "Crimes Compensation Tribunal" (sic) and that he (Mr DD) will pay Dr Lu's account. On the same day, Mr DD's mother told Dr Lu that by the next day she would place a cheque for \$500 under Dr Lu's door.

**DR LU’S TREATMENT OF THE PATIENT (PART 1)**

7. Over the period from 3 September 1993 to 9 December 1998, Dr Lu provided dental treatment to his patient Mr DD.
8. After that date, there were communications (and lack of communications) between Dr Lu and Mr DD as set out later in this statement of agreed facts.

**DR LU'S QUOTATIONS**

9. In the course of assisting his patient, Mr DD, and his solicitors in regard to the Victims' Compensation Application, and thereafter, Dr Lu provided various quotations/estimated costs of the anticipated prosthodontic dental treatment required by Mr DD, including:

- ❖ Dr Lu's letter dated 4 July 1995 to the solicitors,
- ❖ Dr Lu's letter dated 12 February 1996 to the solicitors,
- ❖ Dr Lu's letter dated 16 September 1996 to Mr DD.

10. In each of these letters, Dr Lu provided details of the proposed treatment plan for Mr DD.

11. The letter dated 4 July 1995 proposed treatment based upon two implant supported porcelain fused to gold crowns (teeth 21 and 22) and one porcelain to fused gold crown (tooth 11).

12. The letter dated 12 February 1996 was based upon;

- ❖ One porcelain fused to gold crown (tooth 11)
- ❖ Two implant supported porcelain fused to gold crowns (teeth 21 and 22)
- ❖ One porcelain fused to gold crown (tooth 32)

13. The letter dated 16 September 1996 provided details of a proposed treatment based upon an implant supported artificial porcelain fused to gold bridge (teeth 11, 21 and 22).

14. In particular:-

- ❖ In Dr Lu's 4 July 1995 letter to the solicitors, Dr Lu itemised the proposed services with reference to ADA item numbers and described the services as follows:-

<u>ADA Item No.</u>	<u>Services</u>	<u>Cost</u>
625	cast gold post core	\$246.00
615	porcelain fused to gold crown	\$1,033.00
582 (x2)	composite resin veneer (x2)	\$276.00
661, 615 (x2)	implant based porcelain-gold crown	\$2,776.00

- ❖ To this Dr Lu added the cost of hardware including implant abutments, gold abutment screws, gold cylinders and set gold screws etc. at approximately \$1,200, and concluded that the total cost of the proposed prosthodontic treatment was therefore approximately \$5,531.

- ❖ In Dr Lu's 12 February 1996 letter to the solicitors, Dr Lu again itemised the proposed services with reference to ADA item numbers and described the services as follows:-

<u>ADA Item No.</u>	<u>Services</u>	<u>Cost</u>
625A (x2)	cast post core in gold (direct)	\$865.00
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582 (x2)	porcelain laminated veneers	\$1,319.00
661, 615 (x2)	implant based porcelain-gold crown	\$2,884.00

Dr Lu again added the cost of hardware including implant abutments, gold abutments screws, gold cylinders and set gold screws etc. at approximately \$1,250 and concluded that the total cost of Mr DD's proposed prosthodontic treatment was therefore approximately \$8,405. Dr Lu noted in that letter that the adjustment in fees from the original estimate took into account the likely deterioration of Mr DD's dental condition due to the time lapse between the original trauma and the date of necessary treatment; and

- ❖ In Dr Lu's 16 September 1996 letter to Mr DD, Dr Lu wrote to Mr DD stating:

*"As you know, both your upper left central and lateral incisors (teeth numbered 21 and 22) had been lost. Furthermore, x-ray tests revealed that your upper right central incisor tooth (tooth numbered 11) was damaged (from root resorption) and will need to be removed and replaced.*

*As we discussed, your missing teeth 11, 21 and 22 can be replaced by an implant supported artificial porcelain fused to gold bridgework. ...*

*The fee for my services of the above procedure will be \$5,009. This includes the provision of two trans-mucosal abutments and one three unit porcelain fused to gold bridgework with its associated matching implant hardware. Of course it does not cover any procedures that I do not perform. If it is necessary to modify the treatment plan due to new findings made during treatment, I will discuss that with you before proceeding. It is our policy to receive a deposit of \$500 prior to the commencement of treatment and progressive payments are requested during treatment. The balance is requested prior to the insertion of new dental bridgework".*

15. The letter of 16 September 1996 accorded with Dr Lu's oral statement to Mr DD to the same effect, namely that by his revised treatment plan (to which Mr DD agreed), after Mr DD had tooth 11 removed, Dr Lu would provide to Mr DD an implant supported artificial porcelain fused to gold bridge.

16. The letter of 16 September 1996 was handed to Mr DD by Dr Lu. At the same time, Dr Lu explained to Mr DD that the price of \$5,009 referred to in the letter was the price of Dr Lu's services associated with the bridgework and did not include procedures performed by other practitioners nor did it include Dr Lu's fee for work other than work associated with the bridgework performed.

**DR LU'S TREATMENT OF THE PATIENT (PART 2)**

17. In 1996, Dr Lu duly commenced the proposed implant prosthetic work for Mr DD comprising a three unit implant-supported bridge.

18. Mr DD (or his mother) duly paid the initial deposit of \$500 on 17 September 1996 (receipt 20) following the commencement of treatment on 16 September 1996.

19. Dr Lu calculates that he has received payments from 16 September 1996 onwards from Mr DD (or his mother), or on his behalf from the Victims' Compensation Tribunal in New South Wales, totalling \$4,009 (including the deposit referred to in the preceding paragraph). The relevant correspondence, payments, receipts and adjustments are set out in the following table:

<b>Date</b>	<b>Documentary record</b>	<b>Description</b>	<b>Payer</b>	<b>Tribunal Book Page Number</b>	<b>Cumulative total \$</b>
16/09/96	Letter from Dr Lu to DD and treatment card	Quote of <b>\$5,009</b> for bridgework ( <b>\$8,405</b> including lower teeth)		226, 196	
17/9/1996	Letter of 16/9/1996, treatment card and Receipt 20	Payment ("deposit") of \$500	Mr DD	226, 196, 343. (See also VCT copy at 84, which presumably accompanied solicitor's letter at 65)	500.00
28/4/1997	Treatment card, invoice and receipt 41	Payment of \$500 ("second instalment")	Mr DD	196, 85-6, 343	1,000.00
16/5/1997 (invoice 17/5/1997)	Treatment card, invoice and receipt 64	Payment of \$500 ("third instalment")	Mr DD	196, 344, 86, 87	1,500.00
28/5/1997	Invoice, treatment card	Invoice for "fourth instalment". The invoice is apparently forwarded to VCT, but unlike earlier invoices, without a receipt. Dr Lu's treatment card for 20/5/97 records: "FTA. 2 hour appt. (Fourth instalment retro paid on 23/7/97).		87, 198	

13/6/1997	Treatment card, invoice and receipts 78 and 79	Payment of \$500 (“fifth instalment”) Payment of \$100	Mr DD Mr DD	198, 88, 89, 344 & 345	\$2,100.00
27/6/1997	VCT file	Letter from Mrs DD to VCT advising, among other things, Dr Lu requires further \$500 before next treatment on 14/7/97. A further copy of the same letter is marked with a fax number and the words “Most Urgent”		92, 93	
23/7/1997	Treatment card, invoice and receipts 10 and 11	Payment of \$400 Payment of \$500 (“sixth instalment”)	Mrs DD & Mr DD	198, 89, 90, 91, 94, 345 & 346	\$3,000.00
Undated	VCT file	Letter from Mrs DD to VCT enclosing receipts from Dr Lu for \$900 “which we have paid”, and enclosing an account from Dr Lu for \$500 to be paid		95	
8/8/1997	Letter VCT to Dr Lu	VCT advises “Disbursement” which “includes payment for ... services provided by you on the 12 August 1997” will be forwarded after at least 15 working days		212	
12/8/1997	Invoices (2), receipt 22 and letter	Payment of \$500 (“seventh instalment”), and invoice \$170.00. Letter explains direct <b>composite resin onlay – tooth 32 – fee \$170.</b>	Mr DD	198, 95, 96, 232 & 256	\$3,500.00
14/8/1997	Treatment card & receipt 49	Payment of \$500 received from VCT	VCT	198 & 346	\$4,000.00
25/9/1997 and 26/9/1997		Dr Lu spoke with VCT and Mrs DD about receiving two payments of \$500 for treatment on 12/08/1997. To be credited against final instalment.		198	
30/9/1997		Dr Lu is requested by VCT by letter to refund \$500 to Mr DD		214	
30/9/1997	Letter VCT to Dr Lu	VCT advises Dr Lu that \$670 “disbursements incurred” which “is for the services that you will be providing on 1 October 1997” will be forwarded after at least 15 working days		213	
1/10/1997	Invoice	“Eight instalment” \$500 (not paid)		101	

8/10/1997	Treatment card and copy letter to VCT	Dr Lu repays \$500 to VCT (being double payment of 12/08/1997 received on 14/08/1997).	Dr Lu	200 & 215	\$3,500.00
	Cheque received from VCT	VCT cheque \$670 received, but not banked. <sup>5</sup>	VCT	217	
20/10/97	Letter to Mr DD	Dr Lu sends VCT \$670 cheque to Mr DD		216, 217	
5/11/1997	Invoice	Invoice of \$1,009 raised, and further copy (apparently provided by Mrs DD to VCT is marked "less payment by Victim Compensation Tribunal - \$500.00 (12/8/97)		243, 105	

24/11/97	Treatment card	"Advised payment \$670 to be paid 28/11/98"		200	
28/11/97	Telephone records	Mr DD called Dr Lu – "Not enough money wants a ledger card sent out to him so he can claim"		184	
12/01/98	VCT file	Mrs DD forwards Dr Lu's "final account" \$509 to VCT for payment		103, 104, 107	
27/01/98	Treatment card	(Emergency visit) "Advised to bring \$670 NV"		200	
5/02/1998 – 6/03/1998	Treatment notes/Receipt 50	Received \$509	VCT	200 & 347	\$4,009.00
10/2/99	VCT file	Mrs DD writes to VCT, advising Dr Lu still has not received final payment of \$500, invoice sent to VCT 12/1/98.		107	
	<b>TOTAL PAID</b>				<b>\$4,009.00</b>

20. The work actually done included:

(a) the fabrication of a porcelain fused to gold bridge ("**the definitive prosthesis**") for Mr DD.-

(b) the fabrication and insertion of a temporary prosthesis which was a belle glass temporary prosthesis ("**the belle glass temporary bridge**"). The belle glass temporary bridge was fitted by Dr Lu on 10 March 1998 and was removed and refitted on 7 April 1998.

21. On 9 December 1998, Dr Lu examined Mr DD and found him to be wearing the belle glass bridge. Dr Lu found Mr DD to be asymptomatic.

22. As at 9 December 1998 (which was the last occasion on which Mr DD attended Dr Lu), he left the surgery fitted with the belle glass temporary bridge. .

23. The belle glass temporary bridge was fitted as a temporary prosthesis.
24. On 28 April 1999, Dr Lu wrote to Mr DD, advising of a review appointment Dr Lu had organised for 25 May 1999.
25. Mr DD did not attend that appointment.
26. Dr Lu did not complete the work anticipated by his treatment plan.

### **FURTHER DETAILS**

27. In regard to the dental treatment which Dr Lu provided to Mr DD:-
  - ❖ In Dr Lu's letters to the solicitors dated 4 July 1995 and 12 February 1996, he wrote that "*with normal wear and tear and changing oral conditions, the life expectancy of the artificial tooth replacement for Mr DD is about 15 to 20 years*".
  - ❖ The life expectancy of the definitive prosthesis was about 12 years but the temporary belle glass bridge was expected to be a substantially lesser period.
  - ❖ The belle glass temporary bridge fractured within 7 years and was replaced in 2004 with a porcelain fused to gold bridge.
  - ❖ By reason of Mr DD having the temporary belle glass prosthesis as opposed to the definitive prosthesis, and not returning to see Dr Lu to complete the treatment, Mr DD was in a vulnerable position.

### **DENTAL RECORDS**

28. On 2 March 2006, a Panel of the Board found that Dr Lu had engaged in unprofessional conduct of a serious nature by virtue of Dr Lu's failure to respond appropriately to injuries by the Investigative Officer of the Board, Dr Anthony Roseman.
29. Dr Anthony Roseman is the Investigative Officer of the Board, and the person to whom the Board has delegated its power to conduct preliminary investigations into complaints under Section 23 of the Act.
30. A full transcription of the Hearing was provided to Dr Lu by the Chief Executive Office of the Board by letter dated 9 March 2006, and a copy of the Panel's Findings and Determinations were posted to Dr Lu with a letter from the Board dated 17 March 2006.
31. A copy of the letter written to Dr Lu originally by the Investigative Officer of the Board, Dr Roseman, dated 28 June 2005. In that letter, Dr Roseman requested Dr Lu's written comments about the allegations made by Mr DD. He also requested that and that he forward all of his dental records relating to Mr DD (including radiographs and dental models).

32. After the Formal Hearing of the Board on 2 March 2006 (which Dr Lu did not attend), Dr Roseman repeated his earlier requests to Dr Lu for his dental records and a response to the allegations made against him.
33. The communications between Dr Lu and Dr Roseman from 30 May 2006 included: -
- ❖ On 30 May 2006 Dr Roseman spoke with Dr Lu. On this occasion Dr Roseman advised him of the outcome of the Formal Hearing. Dr Roseman and Dr Lu also discussed the provision of a copy of Mr DD's dental records. Dr Roseman's file note records Dr Lu advising that he (Dr Lu) would get in touch with Dental Protection Limited for advice concerning legal privilege and that he would also get in touch with the dental technician. Dr Lu does not expressly recall these matters, but recalls that there was discussion regarding advice.
  - ❖ On 31 May 2006, Dr Lu wrote to DPL Australia Pty Ltd seeking their assistance.
  - ❖ On 15 June 2006, Dr Lu wrote to DPL Australia Pty Ltd again seeking their assistance.
  - ❖ On 11 July 2006, Dr Lu met with Dr Roseman at the offices of the Board and requested more time to produce his dental records of Mr DD and was verbally advised that the recommendation for a Formal Hearing in the matter would be considered by the Board that evening.
  - ❖ On 24 July 2006, Dr Lu again wrote to DPL Australia Pty Ltd seeking their assistance.
  - ❖ Dr Lu wrote to Dr Roseman by letter dated 25 July 2006, and informed him that he had written to DPL Australia Pty Ltd for assistance.
  - ❖ Dr Roseman wrote to Dr Lu by letter dated 26 July 2006 repeating his request for Dr Lu to forward the complete dental records of the patient including radiographs and dental models within 10 days, and to treat his request as one of the utmost urgency.
  - ❖ Dr Lu did not respond to that letter within that 10 day period but he did respond on 8 August 2006.
  - ❖ On 28 July 2006, DPL Australia Pty Ltd responded to Dr Lu's letter of 31 May 2006.
  - ❖ On 1 August 2006, Dr Lu wrote to DPL Pty Ltd providing them with various documents.
  - ❖ Dr Roseman wrote a letter to Dr Lu's Insurers, DPL Australia Pty Ltd dated 3 August 2006, requesting their assistance in obtaining Dr Lu's dental records, radiographs and dental models, concerning the treatment of the patient.
  - ❖ Dr Lu attended at the offices of the Board on 8 August 2006 and provided Dr Roseman with four envelopes containing documents, payment records, radiographs, photographs, etc and one

box containing dental models. On this occasion Dr Lu answered some of Dr Roseman's questions concerning the records of Mr DD.

- ❖ On 9 August 2006, Dr Lu wrote to Dr Roseman enclosing photographs of Mr DD taken during the course of the treatment.
- ❖ On 9 August 2006, Dr Roseman left messages on Dr Lu's telephone and email requesting that Dr Lu contact him to discuss some matters arising from his review of his records.
- ❖ On 16 August 2006, Dr Lu wrote to DPL Australia Pty Ltd.
- ❖ On 17 August 2006, Dr Lu responded by speaking to Dr Roseman by telephone to arrange a meeting with him which was scheduled for 29 August 2006.
- ❖ On 29 August 2006 Dr Lu attended at the Board's office and met with Dr Roseman. At this meeting, which lasted for at least 15 minutes, Dr Lu and Dr Roseman discussed Dr Lu's treatment of Mr DD.
- ❖ On 12 September 2006 Phillips Fox received preliminary instructions from DPL Australia Pty Ltd to act on behalf of Dr Lu and this was communicated that day by Peter Rashleigh telephoning Dr Roseman and then later in writing on 18 September 2006.
- ❖ Between 4 October 2006 and 9 January 2007 there were further communications between Dr Roseman and Phillips Fox/DLA Phillips Fox.
- ❖ By letter dated 8 May 2007 ("**the 8 May 2007 letter**") Dr Lu wrote to Dr Roseman providing a written explanation of his treatment of his patient Mr DD. That letter was sent to Dr Roseman by DLA Phillips Fox under cover of a letter mistakenly dated 28 November 2006 which was received by Dr Roseman on 11 May 2007.
- ❖ Dr Roseman wrote a letter in response to DLA Phillips Fox dated 22 May 2007 requesting further details from Dr Lu explaining nine matters raised by Dr Roseman in that letter.
- ❖ Dr Lu responded to those enquiries by letter dated 7 June 2007, ("**The 7 June 2007 letter**") forwarded to Dr Roseman by Dr Lu's solicitors, DLA Phillips Fox by their letter dated 8 June 2007.
- ❖ Dr Roseman responded by letter to Dr Lu's solicitors dated 26 June 2007 noting the comments that Dr Lu had made aimed at clarifying his actions in the matter, and informing Dr Lu's solicitors that a Formal Hearing into the matter would proceed.

34. In the patient card relating to Mr DD, covering the period from 3 September 1993 to 25 May 1999 is recorded, among other things, an entry dated 10 July 1998. It is agreed that what is recorded, expanded to accommodate abbreviation, is:

“Upper anterior bridge. Felt slight flexion with bridge but otherwise asymptomatic. No swelling or tenderness. Happy with colour now. On examination; no mobility noted or swelling. (The next symbol/abbreviation is difficult to read but could possibly be "review") cleaning. The shade of the bridge was A1, Mr DD happy with A1 for definitive bridge. No occlusal interferences. Protrusive on upper right 1. Will wait until VCT confirm payment arrangement. Next visit: try in definitive bridge.”

35. Dr Lu did not insert the definitive prosthesis for Mr DD on either 7 April 1998 or 10 July 1998. He has explained his reasons for not doing so in the 8 May 2007 letter and the 7 June 2007 letter.
36. Dr Lu left the temporary bridge in place from 7 April 1998 until 9 December 1998, even though the definitive appliance had been made up and was in his possession. Dr Lu has explained his reasons for this in the 8 May 2007 letter and the 7 June 2007 letter.
37. As at 7 April 1998, Dr Lu's records show that Mr DD was wearing the temporary bridge and after being fitted with the definitive prosthesis wanted a different shade on that definitive prosthesis. Dr Lu took photographs of the definitive prosthesis.
38. After the consultation on 7 April 1998 Dr Lu has a record, (dated 10 July 1998) which relevantly reads "Shade A1 DD happy for A1 for definitive Bridge. No occlusal interferences. Protrusive on Upper Right 1. Will wait until VCT confirm payment arrangement NV (Next Visit) TI (Try In) definitive bridge." Other than this record he has no record of advising Mr DD that the bridge in place at that stage was of a temporary nature and that the definitive appliance was still to be inserted. Dr Lu has explained his reason for this in the 8 May 2007 letter and the 7 June 2007 letter.
39. Dr Lu did not insert the definitive appliance for Mr DD on 9 December 1998. Dr Lu has explained his reasons for this in the 8 May 2007 letter and the 7 June 2007 letter.
40. Dr Lu wrote a letter dated 28 April 1999 to Mr DD in which he scheduled Mr DD for a “*review visit*” on 25 May 1999 with a fee of \$60 payable. Dr Lu has explained his reason for writing the 28 April 1999 letter in the 8 May 2007 letter and the 7 June 2007 letter.
41. Dr Lu did not attempt to contact Mr DD after 25 May 1999. Dr Lu has explained his reason for this in the 8 May 2007 letter and the 7 June 2007 letter.
42. Dr Lu’s has explained his reasons for when he intended to insert the definitive appliance for Mr DD in the 8 May 2007 letter and the 7 June 2007 letter.
43. Dr Lu’s records show that:-

- ❖ On 13 June 1997 Dr Lu examined tooth 32 and proposed taking a periapical x-ray of that tooth on the next visit.
- ❖ On 12 August 1997 Dr Lu treated tooth 32 with composite resin onlay. On the same day, prior to treating and restoring tooth 32 Dr Lu handed a letter dated 12 August 1997 to Mr DD (a copy of which he has retained and forms part of Dr Lu's records).
- ❖ On 1 October 1997 Dr Lu again examined tooth 32. He took a history that the tooth was occasionally painful, pain rating 3 out of 10, that Mr DD had had symptoms on the tooth once every two to three weeks with a duration of 1 day followed by spontaneous recovery and that those symptoms were staying about the same.

#### **TREATMENT OF MR DD BY OTHER PRACTITIONERS**

44. Mr DD attended at the practice of Dr AA on 26 August 1993, when he was seen by Dr BB.
45. Dr BB then wrote a letter of referral to Dr Lu dated 27 August 1993. By that letter, Dr BB referred Mr DD to Dr Lu concerning implant treatment.
46. Dr Lu responded to that letter by his letter dated either 22nd October 1993 or dated 25th October 1993.
47. There was no further communication between Dr Lu and either Dr AA or Dr BB after the letters from Dr Lu to Dr BB dated either 22 or 25 October 1993 about the continuing dental treatment of Mr DD.
48. A true copy of the records from Dr AA's practice relating to Mr DD was tendered.
49. In the course of his treatment of Mr DD, Dr Lu referred Mr DD to Dr CC (Endodontist) during 1995 or 1996 with regard to an assessment of his previously endodontically treated teeth 21 and 32. Dr CC worked in an adjoining suite to Dr Lu.
50. Dr CC duly saw Mr DD on or before 14 February 1996, and reported to Dr Lu in that regard by letter dated 3 April 1996. The reference to tooth 31 in the third paragraph of that letter should clearly be a reference to tooth 32.
51. Dr Lu's records show no other referral to, or communication with, either Dr CC or Dr AA or any other dentist concerning the treatment of tooth 32, or any other treatment by a general dentist or a specialist to his lower teeth.
52. Dr Lu wrote to Mr DD by letter dated 12 August 1997 concerning the treatment required to his lower left lateral incisor (tooth numbered 32), indicating that Dr Lu himself proposed to provide the necessary and appropriate restorative treatment to that tooth.

53. There is nothing in Dr Lu's records after that date indicating that any other Dental Care Provider was involved in any way in the treatment of that tooth 32, or any other of the lower teeth of Mr DD.
54. The only letters to or from the practice of Dr AA are the letter dated 27 August 1993 originally referring Mr DD to Dr Lu, and Dr Lu's response dated 25 October 1993. No other letters to or from Dr AA's practice had been produced by Dr Lu.

**Signed by Dr Raymond Lu**  
**14 November 2007**

**Signed by Mr Peter Gardner**  
**CEO Dental Practice Board of Victoria**  
**for and on behalf of Dental Practice Board of Victoria**  
**14 November 2007**