

THE DENTAL PRACTICE BOARD OF VICTORIA

In the matter of Mr Daryl Morrison

Hearing held on 19 February 2003

[2003] DPBV 5

Panel:

Dr Anthony Dickinson (Chair)
Mr Victor Harcourt
Mr Antony Edwards

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 17 December 2002 to be established:

- (a) As a "*Participating Practitioner*" in the Victorian Denture Scheme ("**VDS**"), which is funded by the Department of Human Services and managed by the Dental Health Services Victoria, Mr Morrison was obliged to abide by the "*Participating Practitioner Guidelines*" of that Scheme;
- (b) Further, by treating VDS patients and subsequently submitting claims for payment under the VDS, Mr Morrison agreed to adhere to the program guidelines, and accordingly agreed to abide by the "*Participating Practitioner Guidelines*" of the VDS;
- (c) A copy of the Participating Practitioner Guidelines dated June 1999 (and current at all relevant times since June 1999) is attached to the Notice of Formal Hearing;
- (d) Under Guidelines and the operation of the VDS, Mr Morrison was obliged to accept the fees set out in the Fee Schedule attached to Guidelines (as amended from time to time) and stipulated in the Letter of Authority, and additional fees could not be charged for items of care already included in the VDS (such as the provision of "*better teeth*");
- (e) Mr Morrison has breached those provisions in his dealings with the following patients:
 - Ms A;
 - Ms B;
 - Ms C;
- (f)
 - (i) In the treatment of the abovenamed patients, Mr Morrison promised them that, in return for payments above those required under the VDS, Mr Morrison would provide them with such things as "*a decent set of teeth*", "*better dentures*", "*better materials*", "*a better fit*", and "*the job will be done sooner*";
 - (ii) These promises were made falsely and Mr Morrison was already obliged to provide those services to such patients under the VDS for the set payment due under the VDS.
- (g) In addition, in Mr Morrison's treatment of Ms A, while Mr Morrison agreed that Ms A could pay the account off in instalments, she later received a demand from Mr Morrison to pay it off in one immediate amount.

The Panel finds that the breaches set out in paragraphs (e) and (f)(i) and (ii) above constitutes unprofessional conduct, as defined in section 3 of the *Dental Practice Act* 1999 of a serious nature, and further finds that the breach set out in paragraph 3(g) constitutes unprofessional conduct which is not of a serious nature.

DETERMINATION

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

1. Mr Morrison is reprimanded for his conduct;
2. As a condition of Mr Morrison's registration, Mr Morrison make the payments set out in Attachment A by 5 September 2003, and provide evidence of the payments specified in Attachment A to the Dental Practice Board by 19 September 2003. The condition must be removed by the Dental Practice Board upon the provision of satisfactory evidence of the payments specified in Attachment A to the Board;
3. Mr Morrison's registration as a dental care provider is suspended for a period of twelve (12) months. The said suspension will be suspended until 31 July 2005, but will take effect should Mr Morrison be found to have engaged in unprofessional conduct of a serious nature in respect of any conduct which may take place in the period 31 July 2003 to 31 July 2005 and which is found to be in contravention of the Victorian Denture Scheme. The suspension of Mr Morrison's registration will not take effect and will lapse on 1 August 2005 in the event there has been no such finding of unprofessional conduct of a serious nature.

REASONS

The Panel heard evidence from Ms A, Ms B and Ms C concerning demands that had been made by Mr Morrison for the payment of money in addition to that required under the Victorian Denture Scheme ("**VDS**") for services which were required to be provided under the VDS. Ms A gave the following evidence about the discussion that she had with Mr Morrison:

"What was the discussion as far as money was concerned? - He said he couldn't possibly do it for the price that the Rosebud had quoted, it would cost a lot more, and I said, 'How much more?'. He told me how much more.

Which was what? - Instead of me paying \$76.00 I had to pay \$417.00 extra.

What reason did he give you for that? - I had a very odd top-top mouth or something or other. I didn't understand what he said really. And I didn't see why, but ...

You said that he told you that he couldn't possibly make it for the price that the Government had quoted. What else did he tell you along those lines, if anything? - Because he said that the Government scheme didn't cover the work and that they were just way out on their prices." (T 83-84)

Ms B gave the following evidence regarding her discussion with Mr Morrison about the cost of the treatment to be provided to her:

"Just say that again? He explained to you that he couldn't do what? - He couldn't give me very good teeth for \$76.00.

Just amplify on that. Exactly what did he tell you about that? - He said they wouldn't be very good material, he showed me two sorts of material which meant nothing to me, really. Showed me two sets of teeth, just loose teeth, and he just said that he could make good - better teeth and that they would be done sooner.

And how much did he ask you to pay? - \$400.00

Sorry? - \$400.00.

So he told you that if you paid \$400.00 you would get better teeth, better materials and you'd get them sooner? - Yes.

Did he give you any other explanation that you can remember as to why you were being asked to pay more than the Government scheme said? - No, not really."
(T 111-112)

Similarly, Ms C gave evidence of the following discussion that she had with Mr Morrison concerning the cost of treatment under the VDS:

"What happened when you went to see Mr Morrison in regard to payment? - When I first spoke to him he said that the teeth couldn't really be made for that price and it would be reasonable for him to ask for me for half the cost between the Government price and what he considered a reasonable price.

Yes. So what else did he say? - He also said, because I mentioned to him that I wasn't financially capable of making a large instalment of any money, he said that he'd allow me to pay it off - each visit to pay a small amount off.

What was the reason he gave you for having to make a further payment? - He said that it couldn't be made for the price that the - was on the paperwork. A decent set of teeth couldn't have been made for that price and he couldn't do it for that price. And because I persisted in seeing him, because he was the closest in the area, we had to make some sort of arrangements to come to terms with the cost.

So how much did he ask you to pay him? - I'm terribly sorry but my memory's not exactly perfect for this part, and because I don't have any documents anymore. He estimated approximately \$500.00 and said the price on the paperwork and the \$500.00, we'd make up some sort of arrangements half way." (T 70)

Each of Ms A, Ms B and Ms C approached Mr Morrison to provide a denture in accordance with the Victorian Denture Scheme. Mr Morrison admitted paragraphs 3(a), (b), (c) and (d) of the Notice of Formal Hearing dated 17 December 2002 which are relevantly set out in paragraphs (a), (b), (c) and (d) in the Findings above. The Panel heard evidence whether the care which was being provided to Ms A, Ms B and Ms C for the additional fee was care already included in the VDS or outside its scope.

It was submitted on behalf of Mr Morrison that each of the patients required the provision of an immediate denture and that the attendant care was outside the VDS. The Panel finds that the care required to be provided for Ms C and Ms B was not for an immediate denture. That being the case, there was no evidence before the Panel that the care which was being provided to Ms C and Ms B fell outside the care already included in the VDS. The Panel further notes that the VDS encompasses the provision of full or partial dentures. Provision is made for a denture that is placed immediately (or very soon after) the extraction of a tooth or teeth through additional items which refer to the extra work which may be involved in the provision of an immediate denture. If there was any doubt, Mr Morrison should have requested Ms C and Ms B to obtain from the referring clinic a letter of authority for undertaking any additional work.

In respect of Ms A, the position was slightly different. The Panel finds that insofar as Ms A may have required additional care, it was a denture reline, being care clearly incorporated in the VDS. Mr Morrison should have requested Ms A to obtain from the referring clinic a letter of authority for the provision of the denture reline. He did not.

The Panel finds that Mr Morrison should not have sought from each of the patients additional payments for care which was covered by the VDS or which could have been covered by the VDS if Mr Morrison had adopted the proper course of requiring the patient to obtain the appropriate letter of authority from the referring clinic. In each of these cases, Mr Morrison sought to obtain payments over and above that allowed by the VDS from patients who were not in a position to pay the money being requested by Mr Morrison and for whom the VDS had been set up to allow them access to dental care that they may not otherwise have been able to access.

The Panel notes that the VDS is a voluntary scheme in which the dental care provider can elect to participate in or not. Dental care providers who opt to participate in the VDS must be meticulous in following the relevant guidelines and conditions attaching to the VDS. The VDS operates for the benefit of the patients who qualify for the assistance provided by the VDS. Dental care providers should act accordingly. If there is any doubt about whether the cost of work which is undertaken is included in the VDS or not, the dental care provider must refer the matter back to the referring clinic or other appropriate body for clarification or authorisation.

ATTACHMENT A

Mr Morrison refund the following sums of money received by Mr Morrison from Ms A and Ms C for the provision of dental care under the VDS, being money received in addition to that allowable pursuant to the VDS for the services provided:

Mr Morrison refund to Ms A the sum of \$341.00

Mr Morrison refund to Ms C the sum of \$143.00

* It is noted that Ms B has received a refund of \$324.00.