

DENTAL PRACTICE BOARD OF VICTORIA

RE: Dr A, Dr B and Dr C

[2005] DPBV 9

PANEL:

Mr Victor Harcourt (Chair)
Dr Pam Dalgliesh
Ms Pam Leong

DATE OF HEARING: 17 October 2005

DATE OF DECISION: 17 October 2005

FINDINGS

The Panel, having considered the evidence and submissions placed before it, and taking into account the admissions, finds the following allegations in the Notices of Formal Hearing under section 45 of the *Dental Practice Act 1999* ("the Notices") to be established:¹

- 1 At various relevant times, Drs A, B and C have been registered as a dental care provider in Victoria under the *Dental Practice Act 1999* ("the Act"), having been initially registered as a dentist under the Act:
 - 1.1 In the case of Dr A on 21 January 2004;
 - 1.2 In the case of Dr B on 13 January 2004;
 - 1.3 In the case of Dr C on 4 December 2003.

FAILURE TO RENEW REGISTRATION

- 2 Drs A, B and C were registered as dentists in Victoria under the Act during 2004, with their registration falling due for renewal on 31 December 2004.
- 3 Section 12(1) of the Act provides that an application for renewal of registration must be made to the Board before the existing registration expires, and otherwise in accordance with the provisions of section 12 of the Act.
- 4 The registration of each of the dentists in Victoria expired on 31 December 2004.
- 5 Drs A, B and C each failed to make application for renewal of their registration before that date.
- 6 Section 12(3) of the Act provides that:

"If a person's registration has expired without being renewed that person is deemed to be registered for a period of three months after that expiry, and if, at the end of that period of three months, that person has not renewed his or her registration, the Board must remove that person's name from the register."

¹ The formal hearings in respect of Dr A, Dr B and Dr C were initiated as separate hearings to be heard on the same day consecutively. While the circumstances of each matter arose separately and distinct from the other, as it turned out the issues to be considered by the Panel were similar in each matter. In light of the extensive admissions the matters were heard concurrently and it is convenient that the decision in respect of each dental practitioner be set out in this decision.

- 7 An application was not made by each of Drs A, B or C during that three month period for the renewal of their registration.
- 8 Each failed to respond to a reminder letter and notice sent by the Board to each of them at their registered postal address during that three month period.
- 9 Accordingly, the names of Drs A, B and C were removed from the register of dental care providers kept under the Act with effect from 1 April 2005 and each was notified of this by letter from the Board dated 1 April 2005.
- 10 Drs A, B and C each made a separate application for registration as a dental care provider in Victoria:
- 10.1 In the case of Dr A in May 2005;
 - 10.2 In the case of Dr B dated 26 May 2005;
 - 10.3 In the case of Dr C dated 7 June 2005;
- and each was issued a Certificate of Registration as a dentist in Victoria:
- 10.4 In the case of Dr A dated 5 May 2005;
 - 10.5 In the case of Dr B dated 26 May 2005;
 - 10.6 In the case of Dr C dated 8 June 2005.

PRACTISING DENTISTRY WHILE UNREGISTERED

- 11 Drs A, B or C were not registered as dental care providers in Victoria during the period from 1 April 2005:
- 11.1 to 5 May 2005 in the case of Dr A;
 - 11.2 to 26 May 2005 in the case of Dr B;
 - 11.3 to 8 June 2005 in the case of Dr C.
- 12 During each of the respective periods, Drs A, B and C continued to practise dentistry in Victoria.
- 13 Section 61(1) of the Act provides that:
- “A person must not practise dentistry unless he or she is registered as a dental care provider under the Act.”
- 14 By continuing to practise dentistry over the relevant respective period whilst unregistered, each of Dr A, B and C acted in breach of section 61(1) of the Act.
- 15 In practising dentistry whilst unregistered the dental practitioners did not have the benefit of professional indemnity insurance covering each of them against legal liability for breach of their professional duty as a dentist, by virtue of the fact that they were not registered.
- 16 Accordingly, each jeopardised the position of those patients whom they treated whilst practising dentistry over the relevant respective period, and/or who made claims against them during that period based upon alleged professional negligence, in that, had they been professionally negligent in the course of their dental treatment of their patients, they would

not have had the benefit of professional indemnity insurance to assist them financially in meeting such legitimate claims of professional negligence against them.²

- 17 The conduct of each of Drs A, B and C constituted unprofessional conduct as defined in section 3 of the Act not of a serious nature.

FAILURE TO NOTIFY THE BOARD OF A CHANGE OF REGISTERED POSTAL ADDRESS

- 18 In the initial application for general registration as a dental care provider in Victoria each of Drs A, B and C informed the Board of a postal address as each was obliged to do pursuant to section 4(2)(b) of the Act.

- 19 Those particulars had been included on the register against each name as their respective registered postal address pursuant to section 16(6) of the Act.

- 20 Section 19(2) of the Act provides that:

“A registered dental care provider or student must notify the Board in writing of any change of the address of the dental care provider which appears on the register within 14 days after that change.”

- 21 Wrongly, and in breach of this provision, each of Drs A, B and C failed to notify the Board in a timely manner of the change of postal address and only did so on:

21.1 9 May 2005 in the case of Dr A;

21.2 26 May 2005 in the case of Dr B;

21.3 7 June 2005 in the case of Dr C.

- 22 By failing to notify the Board in writing of that change of registered postal address within the prescribed period, each of Drs A, B and C breached section 19(2) of the Act.

- 23 In the cases of Dr A and Dr C, they did not provide the Board with any address of any premises where they proposed to provide dental care in their initial application for general registration as they were obliged to do pursuant to section 4(2)(b) of the Act. Drs A and C also failed to notify the Board as to where they had commenced providing dental care and their failure constituted a breach of section 19(1) of the Act which provides that:

“A registered dental care provider must notify the Board in writing of the address of any premises where the dental care provider is providing dental care which has not been notified to the Board under Section 4(2)(b)(iii).”

- 24 The conduct of Drs A, B and C constituted unprofessional conduct as defined in section 3 of the Act not of a serious nature.

² It is however to be noted that the Panel received an affidavit from the regional manager at Guild Insurance Limited who stated that whilst each dentist was not prima facie covered whilst practising dentistry unregistered, Guild Insurance had a discretion to provide cover in respect of claims that would otherwise not normally fall under the policy. In the present case, Guild Insurance had formed the view that as each of the three dentists unintentionally failed to renew their registration Guild Insurance would accept claims brought by any patients of the three dentists which arose as a result of treatment provided during the period when the dentists were practising whilst unregistered.

DETERMINATION

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

- 1 Each of Drs A, B and C are cautioned against their failure to renew their registration, practising dentistry whilst unregistered and failing to notify the Board of a change of registered postal address and that they should ensure that this does not occur again.
- 2 Each of Drs A, B and C are reprimanded for their breaches of the Act and their unprofessional conduct.

REASONS

- 1 On 17 October 2005, the Dental Practice Board of Victoria ("the Board") in a panel of three members ("the Panel") convened to conduct a formal hearing pursuant to the *Dental Practice Act* 1999 (Vic) ("the Act") into the conduct of the dental care providers, Dr A, Dr B and Dr C.
- 2 The Panel of this Board was convened to adjudicate upon the three separate but similar matters concerning the dental care providers, Dr A, Dr B and Dr C. In short, each had failed to renew their registration as a dental care provider and, for a short period of time, practised whilst unregistered. In each case, the failure took place in the context of their omission to notify the Board of a current registered postal address and the consequent non-receipt of reminders from the Board and their own lack of vigilance in ensuring renewal of their registration.
- 3 At the hearing affidavits from each of the dental care providers were filed and tendered as part of the evidence. The affidavits contained detailed descriptions of the contexts within which the individual failures occurred. It is notable that each of the dental care providers were new graduates having been registered for the first time in Victoria on or about December 2003 or January 2004.
- 4 Each of the dental care providers deposed to understanding that their failures which formed the basis of the allegations and subsequently the findings constituted breaches of the *Dental Practice Act*. They each expressed embarrassment about having allowed the events to occur and were sorry. They each expressed regret and a determination to ensure that their failures would not occur again.
- 5 The sentiments expressed in the affidavits reflected sentiment expressed in letters received from two of the three dental care providers shortly after finding out that they were unregistered. It is to the credit of each of the dental care providers that they acted immediately upon learning about their unregistered status.
- 6 The Panel formed the view that while the omissions of the dental care providers were not to be treated lightly, they did not, in the current circumstances, meet the criteria for being characterised as unprofessional conduct of a serious nature. It certainly was unprofessional conduct as defined in section 3 particularly in light of the breach of the express provisions of the Act but there existed factors which were considered appropriate in classifying the unprofessional conduct as being not of a serious nature. These factors were as follows:
 - Each of the dental care providers was a recent graduate consequently with very little practical experience in the administration of maintaining registered status;
 - The failures were unintentional oversights which could be viewed as administrative in nature but certainly not routine nor unimportant;

- Each of the dental care providers proffered a reasonable explanation of the circumstances within which the oversight took place;
- Each took immediate steps to rectify the omission upon being notified;
- Each dental care provider expressed contrition and remorse for their unprofessional conduct;
- Each dental care provider was highly unlikely to re-offend;
- Each of the dental care providers satisfied the Panel that they had insight into the nature of their conduct and what was required to avoid it in the future;
- Each had been subject to a formal hearing with its attendant stress and no doubt had received proper legal advice upon their obligations and responsibilities;
- The circumstances of each of these matters were not one which were appropriate for a general deterrence approach to the imposition of the determinations. In each specific case, the mere fact that they had been involved in these proceedings should act as specific deterrence together with the findings and the determinations which have been made.

7 For the purposes of completeness, we note that Guild Insurance has exercised its discretion to provide cover in respect of any claims which may be brought by any patients of the three dentists which arose as a result of treatment provided during the period when the dentists were practising whilst unregistered. In his affidavit, Mr D indicated that Guild Insurance had formed this view as each of the three dentists unintentionally failed to renew their registration. This is obviously a matter at the discretion of Guild Insurance and was not known to each of the dental care providers during the relevant periods. The Panel acknowledges the approach taken by Guild Insurance which is in the public interest. Being discretionary in nature however it should not be seen by other practitioners as somehow diminishing their obligation to renew registration or as setting a precedent.

8 In these circumstances, the Panel considered that it was appropriate to provide a caution to each of the dental care providers to be more vigilant in the future and that a reprimand was in order given the potentially serious consequences of their conduct for their patients. Counselling or education were not seen to be appropriate as it was apparent that the lessons the dental care providers could each take away from their experience had already been learnt.

DATED: 25 October 2005

Victor Harcourt
Chair