

DENTAL PRACTICE BOARD OF VICTORIA

RE: Dr Mihai Rosca

[2004] DPBV 2

PANEL:

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

DATES OF HEARING: 6 July 2004

DATE OF DECISION: 6 July 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 18 May 2004 ("the Notice") to be established:

- 1 Dr Rosca, being a dentist bound by the *Dental Practice Act 1999*, and maintaining premises in which he was practising at 1551 Heatherton Road, Dandenong ("the premises") is in breach of both paragraphs (a) and (b) of Regulation R401(2) of the *Dentists Regulations 1992*, promulgated under the *Dentists Act 1972*:
- 2 Regulation 401(2) required dentists to ensure that:
 - “(a) *the premises in which he or she practices are kept in as clean and hygienic state as is practicable to prevent the spread of infectious disease; and*
 - “(b) *in attending a patient, he or she takes such steps as are practicable to prevent or contain the spread of infectious disease.*”
- 3 Those provisions of Regulation 401 have been adopted by the Dental Practice Board (under the *Dental Practice Act 1999*) as an Interim Code of Practice applicable to all registered dental care providers;
- 4 Dr Rosca failed to comply with the publication *Infection control in the health care setting: Guidelines for the Prevention of Transmission of Infectious Diseases* published by the National Health and Medical Research Council April 1996 and Australian Standard AS/NZS 4815:2001 entitled *Office-based health care facilities not involved in complex patient procedures and processes - Cleaning, disinfecting and sterilizing reusable medical and surgical instruments and equipment, and maintenance of the associated environment*.
- 5 Accordingly, Dr Rosca is guilty of unprofessional conduct of a serious nature as defined in Section 3 of the *Dental Practice Act 1999*.
- 6 Dr Rosca is also guilty of unprofessional conduct of a serious nature by reason that he:
 - 6.1 Failed to institute and implement appropriate and acceptable standards and practices in regard to the general hygiene and cleanliness of his practice premises;
 - 6.2 Failed to implement appropriate and acceptable waste disposal practices and procedures appropriate for the storage and disposal of biomedical waste at his practice premises;
 - 6.3 Failed to properly store Schedule 4 poisons (as specified in Schedule 4 to the *Drugs, Poisons and Controlled Substances Act 1981* and the *Drugs, Poisons and*

Controlled Substances Regulations 1995) at his practice premises, in that he failed to store local anaesthetic solution in a lockable cupboard.

- 6.4 Failed to ensure that there were adequate and appropriate dental equipment and facilities at his practice premises and adequate and suitable sterilising equipment and facilities at his practice premises.
- 6.5 Worked as a general practitioner on many occasions without a dental nurse when it was not proper or appropriate for him to do so.
- 6.6 Failed to maintain a practice privacy policy as required under the *Health Records Act 2001*.

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 impose the following penalty:

- 1 Dr Rosca is fined \$2,500.00 to be paid by 6 September 2004.
- 2 The following conditions are imposed upon Dr Rosca's registration as a dental care provider:
 - 2.1 Dr Rosca has training in infection control. Such training is to be of a minimum 1 days duration and the content and provider is to be first approved by an authorised officer of the Board. The training is to be undertaken by 6 October 2004 and is to be at the expense of Dr Rosca. This training is not to be considered as being in satisfaction of Dr Rosca's Continuing Professional Development requirements or any part of it for the period ending 31 December 2006.
 - 2.2 Dr Rosca will not conduct his dental practice in the absence of an assisting qualified dental nurse trained in infection control save and only to the extent that Dr Rosca may be undertaking the practise of removable prosthetics.
 - 2.3 Dr Rosca submit his practice to an audit every six months to assess ongoing compliance with his professional obligations in the conduct of his dental care practice. The audit is to be undertaken at Dr Rosca's expense by a person first approved of by an authorised officer of the Board and the nature of the audit must also be first approved by an authorised officer of the Board. These audits are to be conducted for a period of two years from the date of the first audit which is to be conducted by 30 September 2004. The results of the audit are to be provided directly to an authorised officer of the Board within two weeks of the audit, and a copy is to be provided to Dr Rosca. Dr Rosca must provide to the Board a plan to rectify any deficiencies identified in the audit within four weeks of the Board receiving the audit.
- 3 If Dr Rosca fails to pay the fine or comply with any of the conditions imposed upon his registration by the due dates, Dr Rosca's registration as a dental care provider is suspended from the date of non-compliance until the date of compliance.
- 4 The Panel reprimands Dr Rosca for his conduct found to be unprofessional conduct.
- 5 The Panel also cautions Dr Rosca against a repetition of his unprofessional conduct.

In making the above determinations, the Panel has relied upon the undertaking provided by Dr Rosca that he will adhere to a standard of infection control which is appropriate for the practice which he conducts, and that at the premises at 1551 Heatherton Road, Dandenong, Dr Rosca will only be

undertaking the practice of removable prosthetics. The Panel further noted that while the standard of infection control at the premises is adequate to enable Dr Rosca to undertake the practice of removable prosthetics, any adjustments to natural teeth or restorations would constitute the practice of dentistry requiring an appropriate standard of infection control that is clearly not currently in place at the premises.

REASONS

- 1 On 6 July 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 Mihai Rosca. Dr Rosca was at all material times a registered dentist.
- 2 The Panel was informed at the outset of the hearing that Dr Rosca admitted all of the allegations which had been made against him in the Notice of Formal Hearing dated 18 May 2004.
- 3 In her submissions to the Panel concerning the Determinations to be made, Dr Rosca's Counsel, Ms Dixon, submitted that the admissions of Dr Rosca were proof of his contrition, his insight into the errors of his practice and a commitment to move forward in an appropriate manner. The Panel accepted this submission and took it into account in making the Determinations which it did.
- 4 It was submitted on behalf of Dr Rosca that his conduct could be explained in the context of a practitioner who had wound down his practice since 1999. Indeed, it was submitted that by 2003 Dr Rosca only saw an average of 10 patients per month at his premises. Dr Rosca did not keep pace with the developments in dentistry since 1999 concentrating as he was on other pursuits outside of this field. It was submitted however that Dr Rosca has learnt a salutary lesson following the inspection of his premises which took place on Thursday, 20 November 2003 and which led to the closure of his practice until May 2004.
- 5 It was submitted that Dr Rosca has attended courses to rectify the deficiencies in his knowledge and, recognising the limitations of his premises, that he will now only practice in the area of removable prosthetics at the premises. It was submitted that Dr Rosca may practice as a dentist at other premises in a capacity as an employee or locum.
- 6 The Panel was very concerned that Dr Rosca had neglected his professional obligations to his patients albeit few in number by not adhering to an appropriate standard of infection control. This neglect potentially placed his patients in a position of risk to their health and safety. It is not acceptable that the wind down of a practice should result in a less than adequate standard of care being delivered to patients.
- 7 The Panel appreciated that Dr Rosca recognised the limitations of the practice premises and therefore proposed only to undertake the practice of removable prosthetics at the premises. Of more importance however is that Dr Rosca understand that whatever practice of dentistry he undertakes an appropriate standard of infection control must be adhered to.
- 8 The Panel's function in making the determinations is one of protecting the public and not of punishing the dental care provider. In considering whether discharging this function would necessitate imposing a determination which protected patients from any repetition of Dr Rosca's unprofessional conduct, regard must be had to the likelihood of Dr Rosca repeating his behaviour and the public interest in him continuing in practice.
- 9 The Panel was satisfied that protecting the public was adequately served by imposing the conditions upon the registration of Dr Rosca which ensured that he conducted himself in an appropriate manner, complied with his obligations and maintained his continuing education in the area. If these conditions are complied with, the Panel is satisfied that the public will be protected and that it is not necessary to suspend Dr Rosca's registration.

- 10 The Panel also took into account the need for specific and general deterrence against such conduct. The need for appropriate standards of infection control must be reinforced as must the point that it is unacceptable to equate winding down a dental practice with winding down the standards which should be adhered to in the conduct of the practice, limited as it may be. The patients of dental care providers should receive an adequate standard of care regardless of whether they are one of many attending the dental care provider or one of a few.

**Victor Harcourt
Chair**