

## THE DENTAL PRACTICE BOARD OF VICTORIA

In the matter of Mr Malcolm Wallace

Hearing held on 27 October 2003

**[2003] DPBV 7**

Panel:

Mr Victor Harcourt (Chair)  
Dr Gerard Condon  
Dr Michael Morgan  
Mr Craig McCracken

### FINDINGS

The Panel, having considered the evidence and submissions placed before it, and taking into account the admissions made by Mr Wallace, finds the following allegations in the Notice of Formal Hearing under section 45 of the *Dental Practice Act 1999* dated 2 October 2003 to be established:

- (a) At all material times, Mr Wallace has been registered with the Dental Practice Board of Victoria ("**the Board**") as a Dental Prosthetist under section 6 of the *Dental Practice Act 1999* ("**the Act**");
- (b) Section 6(4) of the Act provides that the Board may impose any condition, limitation or restriction it thinks appropriate on registering a person;
- (c) The Board imposed such a condition on the registration of Mr Wallace to the effect that Mr Wallace was not registered to deal directly with the public in the provision or repair of partial dentures;
- (d) This condition was imposed pursuant to the Code of Practice adopted by the Board entitled "Practice of Dentistry by Dental Prosthetists", which Code was approved by the Board on 12 June 2002;
- (e) The relevant portions of that Code read as follows:

"A Dental Prosthetist who has not completed a course of training approved by the Board in the making, fitting and repairing of partial dentures shall have a condition placed on his or her registration: Not registered to deal directly with the public in the provision or repair of partial dentures."
- (f) Mr Wallace has not and had not at the material time completed a course of training approved by the Board in the making, fitting and repairing of partial dentures;
- (g) Accordingly, the condition referred to above was placed on the registration of Mr Wallace;
- (h) Notwithstanding this condition, Mr Wallace breached that condition by dealing directly with the public on two separate occasions in the provision or repair of partial dentures, and did so in his dealings with the following patients:
  - Mr X - about March 2003; and
  - Ms Y - July/August 2002;
- (i) In breach of the condition, Mr Wallace provided partial dentures directly to both Mr X and Ms Y;

- (j) In doing so, Mr Wallace engaged in unprofessional conduct on each occasion;
- (k) Such unprofessional conduct was of a serious nature;
- (l) Mr Wallace failed to maintain any dental records whatsoever in relation to the treatment which Mr Wallace provided to Mr X, and the dental records which Mr Wallace maintained in relation to his treatment of Ms Y were inadequate and defective;
- (m) Mr Wallace has accordingly engaged in unprofessional conduct in regard to his record-keeping for each of Mr X and Ms Y;
- (n) In the case of Mr X, such unprofessional conduct was of a serious nature and, in the case of Ms Y, such unprofessional conduct was 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 Wallace is to undertake counselling in dental record-keeping. This counselling is to be conducted at Mr Wallace's expense, by a person appointed by the Board. The counselling is to comprise 3 half-day sessions. The first session is to involve instruction on record-keeping, with relevance to current legislation, and the Board's Codes of Practice. The following session is to comprise a review by the person conducting the counselling of a sample of Mr Wallace's patient files, with record entries made subsequent to the commencement of the counselling. Relevant instruction will be provided where necessary. The third session is to comprise a review of Mr Wallace's patient files for one day. This session is to occur approximately 3 months after the second session, and the day to which the files relate is to be advised by the person conducting the counselling. The counselling is to be commenced by 31 December 2003;
2. Mr Wallace is cautioned against engaging in such conduct as has been found today, as any future Panel of the Board may be entitled to take a more serious view of the unprofessional conduct;
3. Mr Wallace is reprimanded for his conduct;
4. A fine of \$2,500.00 be imposed upon Mr Wallace to be paid by 4.00pm Friday, 28 November 2003.

The Panel draws Mr Wallace's attention to the provisions of section 47(5) of the Act which reads as follows:

"If the panel has made a determination under sub-section (2)(a)(d) or (f) and the dental care provider has not complied with the determination within the time specified in the determination, the Board may suspend the dental care provider's registration until the determination is complied with."

### **REASONS**

The course of the preliminary investigation into the conduct of Mr Wallace and the subsequent formal hearing was greatly assisted by Mr Wallace's co-operation, his full and frank disclosures to the officer

of the Board and the admissions made in respect of the allegations made against Mr Wallace in the Notice of Formal Hearing dated 2 October 2003. It is noted that Mr Wallace admitted the allegations made in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i) and (l) (insofar as it related to Mr X) set out in the findings above. It was also submitted on behalf of Mr Wallace that he has improved his dental record-keeping by introducing new and appropriate forms in the nature of a patient record card and patient history record. In recognition of Mr Wallace's cooperation, admissions and his effort to redress the deficiency in his practice, the penalty imposed by this Panel is not as onerous as it might otherwise have been in the circumstances of this case.

While Mr Wallace stated in his letter dated 13 June 2003 to the Board that it was not his normal practice to make part dentures for the general public direct, he acknowledged that he was not registered to treat the patients. This was not a mere oversight but a deliberate act in respect of these two patients in providing dental care that Mr Wallace was not registered to provide. The Panel viewed very seriously Mr Wallace's failure to maintain any dental records whatsoever in relation to the treatment which he provided to Mr X. Mr X will therefore not have the benefit of dental records relating to the treatment which he received from Mr Wallace therefore compromising his future dental care. In respect of Ms Y, the Panel found that the dental records were inadequate and defective on any view and in particular when compared to the stated policy of the Board. Counsel assisting the Panel described Ms Y's dental records as being in the nature of a diary rather than a dental record, save in one respect. The Panel concurs with this characterisation of the dental records.

The Panel, in addition to the matters stated above, took into account Mr Wallace's unblemished record and the evidence of good character which was presented to the Panel. It is satisfied that Mr Wallace has recognised the errors which he has made and is seeking to take corrective action. The Panel further notes Mr Wallace submitted that he will enrol in a course of training approved by the Board in the making, fitting and repairing of partial dentures which, it was submitted, will be conducted in 2004. Such a course of training will enable Mr Wallace to seek the condition on his registration to be removed to enable him to deal directly with the public in the making, fitting and repairing of partial dentures.