

DENTAL PRACTICE BOARD OF VICTORIA

RE: Dr Nathaneal Yim

[2006] DPBV 1

PANEL:

Mr Victor Harcourt (Chair)
Dr Gerard Condon
Dr Pam Dalgliesh

DATE OF HEARING: 6 June, 11 August & 8 September 2005 & 30 January 2006
DATE OF DECISION: 30 January 2006

FINDINGS

The Panel, having considered the evidence and submissions placed before it, and taking into account the admissions, makes the following findings in respect of the Notice of Formal Hearing ("the Notice") under section 45 of the *Dental Practice Act 1999* (Vic) ("the Act") dated 20 April 2005:

- 1 Dr A, Dr B and Dr C have not engaged in unprofessional conduct as alleged in the Notice.
- 2 At all material times Dr Nathaneal Yim was registered as a dental care provider in Victoria under the Act.
- 3 Dr Yim was employed as a dentist by Dental Health Services Victoria ("DHSV") at Brimbank Dental Clinic ("Brimbank") over the period from June 2001 to July 2002.
- 4 During that period Dr Yim was the Senior Dentist in Charge at Brimbank and had managerial and supervisory responsibility in regard to Mr Bernard Houareau.
- 5 Over the period from 25 June 2001 until January 2004 Mr Bernard Houareau, a dental prosthetist, was employed by DHSV at Brimbank. He commenced making, fitting, supplying and repairing partial artificial dentures from about September 2001 and continued to do so on a routine and regular basis until January 2004, and in that process dealt directly with the public in the provision and repair of partial dentures ("the work"). Specifically, over that period, Mr Houareau directly treated 165 partial denture patients at Brimbank which involved 2,168 items of service (as identified in the ADA Schedule of Dental Services and Glossary) with regard to fitting, supplying and repairing partial dentures.
- 6 Mr Houareau had been a registered dental prosthetist since 1 July 2000. Before that, he worked for many years as an Advanced Dental Technician ("ADT"). Mr Houareau had not completed an appropriate course of training so as to provide him with the skills and qualifications necessary to make, fit, supply and repair partial dentures, or to deal directly with the public in the provision or repair of partial dentures.
- 7 Mr Houareau's registration as a dental prosthetist did not entitle him to perform the work described in paragraph 5 above, and his doing so was unlawful.
- 8 In his capacity as the Senior Dentist in Charge Dr Yim set up a process with Mr Houareau whereby Mr Houareau was instructed by Dr Yim to treat patients directly in relation to the provision or repair of partial artificial dentures, and to make, fit, supply or repair partial artificial dentures for a large number of patients.
- 9 Dr Yim actively and directly supervised Mr Houareau over a lengthy period of time in performing this dental work and directed his behaviour.
- 10 At all material times Dr Yim ought to have known that:

- 10.1 Mr Houareau was not registered to make, fit, supply or repair partial dentures;
 - 10.2 Mr Houareau had not been appropriately trained to make, fit, supply or repair partial dentures;
 - 10.3 It was unlawful, and contrary to the Act, for Mr Houareau to make, fit, supply or repair partial dentures;
 - 10.4 It was contrary to a condition on Mr Houareau's registration as a dental prosthetist for him to deal directly with the public in the provision or repair of partial dentures.
- 11 By his conduct, Dr Yim influenced or attempted to influence the conduct of Mr Houareau's practice in such a way that patient care may have been compromised.
 - 12 By Dr Yim's conduct, he directed, encouraged, authorised or permitted Mr Houareau to breach the conditions of his registration as a dental prosthetist under the Act.
 - 13 Dr Yim's conduct constitutes unprofessional conduct as defined in section 3 of the Act which is 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 determinations:

- 1 Dr Yim is reprimanded for his unprofessional conduct.
- 2 Dr Yim is cautioned to be more careful in the future about ensuring that dental employees are properly qualified.

REASONS

- 1 On 6 June 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 Nathaneal Yim, Dr A, Dr B and Dr C. The evidence did not support any finding that either Dr A, Dr B or Dr C knowingly authorised or permitted Mr Houareau to perform clinical work outside his scope of practice. The Panel acknowledges with gratitude the efforts of Dr A in discovering Mr Houareau's unprofessional conduct.
- 2 Before considering the facts which arise in this matter and the allegations, it is important to set out some general comments and statements of principle which apply to the questions considered by the Panel. Fundamental as some of these comments may seem, the application of them in any particular circumstance delivers up many complexities.
- 3 Each registered dental care provider is responsible for ensuring they adhere to the standards of professional conduct which apply to them. That is to say, each registered dental care provider must take care to ensure that they do not engage in unprofessional conduct and that they are not placed in a situation where the standards of professional conduct have been breached by them by reason of the conduct or demands of other persons. Further, other health professionals dealing with the registered dental care provider are entitled to assume, to a reasonable degree, that registered providers will at the very least act within the scope of their registration.
- 4 The *Dental Practice Act* 1999 allowed, for the first time, the ownership of dental care practices by non-registered dental care providers in the private sector. What however has not been interfered with by the legislation is the primary obligations and the duty of care

which a registered dental care provider owes to their patient. The content of this duty can be found in many different areas. These include in legislation, the common law, the standards of the profession established by this Board and contract law.

- 5 A registered dental care provider may have direct supervisory obligations in the delivery of services to a patient but this does not extend to all registered dental care providers who may be involved in the care of a patient. So for example a dental care provider has supervisory responsibilities for the work of dental auxiliaries who may be assisting in the delivery of care to the patient. The position is different when a dental care provider refers a patient to a specialist for the delivery of specialist dental care services.
- 6 It is not necessary to define all aspects of the relationship between these persons. The relevant aspect is that the referring dental care provider has a duty to ensure that the referral is made appropriately, in a timely manner and to a person for whom there is a reasonable basis to form the opinion that they are competent and capable of providing the services for which the patient is being referred. We do not suggest that the degree of satisfaction required is onerous.
- 7 The same may be said when a dental care provider refers the patient to another provider in the clinic in which they work. If we explain this matter in the context of an organisational structure such as Dental Health Services Victoria, which is the organisation at the centre of this controversy, the point can be well illustrated.
- 8 Dental Health Services Victoria ("**DHSV**") is a large public sector provider of dental care services to the community. It is geographically widespread, with a central office, suburban and regional clinics and linkages into other facilities providing specialist dental care services. Brimbank Dental Clinic was one of those suburban clinics.
- 9 The Clinic itself had a fairly flat management structure. There was a formally designated position of Senior Dentist in Charge ("**the Senior Dentist**"). Immediately below the Senior Dentist, there were a number of other dentists who had responsibilities for patients of the Clinic they saw. The dentist responsible for a patient on any one visit depended upon availability although regard was had to the principle of continuity of care by the one provider. Working with the dentists were nurses. The Clinic was supported by administrative staff. The Clinic was also supported by a dental prosthetist.
- 10 Outside of the Clinic but within the organisational structure of DHSV, the Senior Dentist reported to the Regional Manager. It would appear that the Regional Manager's responsibility was designated across a geographical region and there were also certain other portfolio responsibilities. The Regional Managers were based at head office and reported to the Chief Executive Officer. At head office there were administrative units supporting the organisation including Human Resources. The Human Resources section was a unit which assisted in the development and implementation of general policy and procedures. It would seem that the operational responsibility for Human Resources lay with the Senior Dentist reporting directly to the Regional Manager.
- 11 Until the establishment of a formal Clinical Privileges and Credentialing system, the responsibility for ensuring that employees were appropriately qualified and registered for their duties started and finished with the recruitment process. That is to say, it was the responsibility of the selection panel to interview appropriate candidates, ensure that they had the appropriate qualifications and registration for the position and to do reference checks. The evidence disclosed that the Human Resources section at head office required evidence of qualifications prior to the payment of salary and wages. This would however appear to have been a routine administrative function.
- 12 The position descriptions produced by Dr D, under subpoena, made it clear that the responsibility for the recruitment of staff lay with the Regional Manager. Dr D was the Regional Manager with responsibility for the Brimbank Clinic certainly between mid-2001 to

the end of 2002. Following a restructure, Dr D's responsibilities as Regional Manager encompassing Brimbank Clinic were transferred to Dr E although his formal title was somewhat different. As we understand it, he was in this position throughout 2003 and certainly up to February 2004. The Senior Dentist also had a formal role in her or his position description for the selection and induction of staff.

- 13 In these circumstances, it was a reasonable assumption for staff to hold that if a person were recruited to a particular position and to perform certain functions, then they were duly qualified, competent and registered. It was also a reasonable assumption for staff to hold that if the Senior Dentist allowed a registered dental care provider to provide certain services, which could have been provided within the scope of that person's actual or potential registration, then that person must be appropriately qualified and registered.
- 14 In an organisation like DHSV, it would be unrealistic and unreasonable to expect that each registered dental care provider must make their own independent inquiries of each person responsible for the patients to ensure that they are appropriately qualified, registered and competent. Of course, the Board would not condone a registered person turning a blind eye to acts which were obviously outside the scope of registration of another registered provider. Nor would it condone the referral of a patient to a registered dental care provider to provide services which were clearly outside their scope of registration.
- 15 That is not however the case which we are concerned with here. When one considers an organisation like DHSV, where portfolio responsibility for the recruitment of staff rested with the Senior Dentist, Regional Manager and Human Resources, and in the context of the primary responsibility for each registered dental care provider ensuring they act within the scope of their registration, it is reasonable for members of that organisation to rely upon this in the absence of any information to the contrary.
- 16 On the evidence which was before the Panel, there appeared to be certain deficiencies in the systems adopted by DHSV which were relevant to the facts. While evidence was heard from the Senior Dentists in Charge during the relevant period, an experienced, long-serving dentist at the Clinic and a Regional manager with responsibility for the Clinic during at least part of the relevant time, DHSV was not represented during the hearing, did not have the opportunity to consider the evidence and respond to the matters being considered by the Panel and had not been given any advance notice of the comments in this decision which may affect it. Accordingly, the comments set out in this decision which relate to DHSV must be seen in this context and arise only from the evidence which has been presented to the Panel.
- 17 Before turning to the facts of this matter in more detail the general observation can be made that this Act does not allow the Board to inquire into all questions about the conduct of a registered dental care provider. Specifically, the conduct that may be the subject of an investigation and hearing such as this must be related to the registered person's conduct as a dental care provider, or as otherwise set out in the Act. The mere fact that a manager of a dental clinic is also a registered person does not mean that every management decision made by that person can be the subject of scrutiny by this Board. Indeed it may be that the fact the manager is registered is incidental to their primary role, which seems to have been the case with Dr D. Her position description as Regional Manager did not require her to be a registered dental care provider, despite the fact that she had the responsibility for ensuring clinical standards were maintained. Care needs to be taken when scrutinising the conduct of the Senior Dentist or indeed Regional Manager in this matter not to fall into the error of assuming that every decision they made or step taken or omitted could be considered within the bounds of this inquiry.
- 18 At the commencement of the hearing, Dr Yim, and indeed the other dentists, made broad and extensive admissions and were generally cooperative in the way in which the case was conducted. The Panel expresses its appreciation and has taken this into account in forming

its views generally in relation to Dr Yim. The admissions have been incorporated into the findings.

19 What was put in issue by Dr Yim was his involvement in setting up a process with Mr Houareau by which the latter treated patients directly in relation to the provision or repair of partial artificial dentures and to make, fit, supply or repair partial artificial dentures, and his supervision of Mr Houareau in performing this dental work. On the evidence, the Panel was comfortably satisfied that Dr Yim had engaged in this conduct and that, at all material times, he ought to have known that:

19.1 Mr Houareau was not registered to make, fit, supply or repair partial dentures;

19.2 Mr Houareau had not been appropriately trained to make, fit, supply or repair partial dentures;

19.3 It was unlawful and contrary to the *Dental Practice Act* 1999 for Mr Houareau to make, fit, supply or repair partial dentures; and

19.4 It was contrary to a condition on Mr Houareau's registration as a dental prosthetist for him to deal directly with the public in the provision or repair of partial dentures.

20 Dr Yim obtained his degree in dentistry in 1993 and remained in private practice until 2000 at which time he ceased practice for a year to complete an MBA. He was employed by DHSV as Senior Dentist in Charge from 28 May 2001 to 29 August 2002. Dr Yim is currently practising as a dentist in private practice.

21 Dr Yim was involved in the interviewing and appointing of Mr Houareau. As the Senior Dentist in Charge, Dr Yim supervised Mr Houareau's work. Dr Yim ought to have known, from his involvement in this process, the scope of Mr Houareau's registration, qualifications and training and in particular the limits of his scope of practice. By his own admission, Dr Yim did not. He was in no position to agree to Mr Houareau working on partial artificial dentures but nevertheless he did so in the following circumstances as described by Dr Yim in evidence (T. 141-142):

"I want you to put it in your own words then, what changed after he had been there about three months. He says he started in June doing full dentures and around about three months in, somewhere around September, things changed. Can you tell me what you remember about that? There was an incident where Mr Houareau advised me that the patient he had in his chair required partial dentures, he asked me to assess the situation and he offered to provide the service for partial dentures under supervision.

This was something new, hadn't happened before with him? Yes.

You realised it was something new surely? At that stage everything was new to me.

But you realised that he was coming to you specifically to tell you that here is something that has happened which has not happened to me before in three months of my practice and talk to you about how it should be managed? Yes.

My question to you is, what steps did you take at that stage in regard to checking on his training and his registration? I did not take any steps.

Do you accept it as a criticism of yourself that you should have done so? Given he was one out of 30 something close to 40 employees, given everything that I was doing was heavily scrutinised by a regional manager who knew that I was new to the system I would still have to say that if circumstances were different I would accept that criticism.

But in the circumstances that faced you, you don't accept that criticism? Not at that stage of my involvement at DHSV.

When he comes and tells you this, did you say 'Hang on, don't do anything, I will check with Dr D? No I didn't.

Rather you dealt with the situation within your authority as the senior dentist? I did that, yes.

And you authorised Mr Houareau to go ahead and do work which was working on a partial denture? Yes.

Under your supervision? Yes.

What inquiries did you make at all, before making that decision. It seems to me you made none. Is that correct? That would be correct."

- 22 Dr Yim was informed by Mr Houareau that he could perform the work subject to supervision. This was incorrect but by his own admission, Dr Yim did not check this and allowed the practice to continue until he left DHSV in August 2002. Dr Yim did not make any warning disclosures to any of the other dental care providers in the practice, his superiors or his successors.
- 23 It was Dr Yim's failure to make appropriate inquiries and his agreement with Mr Houareau to do clinical work involving partial artificial dentures that caused the difficulty for DHSV. It is this decision and the consequences of it which the Panel found to be unprofessional conduct of a serious nature. There was no evidence that Dr Yim had knowledge that Mr Houareau could not perform clinical work involving partial artificial dentures and the findings do not extend that far. He clearly ought to have known however, given his role as Mr Houareau's immediate supervisor, his line manager, and the Senior Dentist in Charge at the Brimbank Dental Clinic.
- 24 Dr Yim accepts that it is the professional obligation of every registered dentist in Victoria to acquaint him or herself with the regulatory requirements of the Board (T. 145) but he himself did not do so (T. 143-145). Indeed, Dr Yim claimed not to know at all about the Board's Interim Code of Practice which made clear the limit of Mr Houareau's scope of practice (T. 143). Dr Yim provided no supervision to Mr Houareau in relation to full denture work (T. 146) but did not make any further inquiries in the light of Mr Houareau's assertion that he required supervision to do the partial artificial denture work.
- 25 In addition to not making any inquiries and allowing the work to proceed, Dr Yim did not document his arrangement with Mr Houareau. It was not the subject of a file note, an exchange of letters or a record on either Mr Houareau's personnel file or elsewhere.
- 26 The Panel is of the opinion that Dr Yim had a clear professional duty to make appropriate inquiries about Mr Houareau's registration status, training and qualifications before agreeing to the establishment of the process in or about September 2001 whereby Mr Houareau worked on partial dentures at the Brimbank Dental Clinic. He did not do so and this process continued until it was stopped some time later. By directing Mr Houareau to work on partial dentures, patient care could have been compromised by virtue of the fact that Mr Houareau had no qualifications or training in partial dentures. As Mr Houareau himself acknowledged

in evidence, he had no prior experience at all in dealing directly with the public in regard to partial dentures. In those circumstances, Dr Yim engaged in unprofessional conduct of a serious nature as set out in the findings.

27 In considering the determinations counsel for Dr Yim suggested that his conduct should be seen in the light of the following facts:

27.1 The Brimbank Dental Clinic:

27.1.1 is the largest public dental health facility outside the Dental Hospital in Victoria with a significant hierarchy of management;

27.1.2 had long patient waiting lists of greater than three years;

27.1.3 had a high remake rate prior to Mr Houareau being appointed;

27.1.4 had not previously employed a dental prosthetist before Mr Houareau was employed at the Clinic. The decision to employ a dental prosthetist was made prior to Dr Yim commencing employment.

27.2 Dr D:

27.2.1 did not suggest to Dr Yim that he should check whether the applicants could do partial dentures at the interview;

27.2.2 gave no guidance to Dr Yim in relation to the process of engaging a prosthetist;

27.2.3 did not make any inquiries as to whether Dr Yim knew that only some prosthetists could do partials. At the interview, there were no questions asked concerning Mr Houareau's qualifications and they were to be provided to the Human Resources department; and

27.2.4 did nothing even when she discovered that Mr Houareau was doing partial dentures in July 2003, and did not think anything of it.

27.3 The specific circumstances involving Dr Houareau commencing doing partial denture work:

27.3.1 Dr Yim was advised by Mr Houareau that he could perform the work subject to supervision. He never checked Mr Houareau's qualifications and was unaware of them.

27.3.2 Dr D never found out that Mr Houareau could not do partial dentures.

27.3.3 Dr D did not know whether Dr Yim was aware that only some prosthetists could do partial dentures.

27.3.4 The DHSV file did not disclose whether Mr Houareau did or did not have the requisite qualifications.

28 These matters were all relevant to the Panel's findings as were the submissions of counsel assisting the Panel. It was submitted that it was important that a strong message be sent to the dental community in Victoria that it is important for registered dental care providers in Victoria to ensure that those working under them follow strictly all conditions of their registration under the Act. It is also important for the dental community of Victoria to realise that it is completely inappropriate for a registered dental care provider in Victoria to influence

or attempt to influence the conduct of another registered dental care provider in such a way that patient care may have been compromised. The Panel concurs.

- 29 In all the circumstances, the Panel was of the opinion that the findings against Dr Yim would send a very clear message to the dental community in Victoria. Further, a reprimand for his serious lapse in judgment was required to highlight the seriousness of it and the consequences. Dr Yim has been cautioned to ensure that he is more vigilant in the future about ensuring that employees are properly qualified to perform the clinical tasks which they do under his supervision.
- 30 The Panel concludes by noting that this hearing has consumed many resources and time, as well as causing considerable stress to a number of dental care providers. The hearing was conducted on four separate occasions over an eight month period. It involved four dental care providers with three barristers representing them. There was a voluminous amount of evidence taken and documents considered.
- 31 All of this could have been avoided if DHSV had in place a proper system of checking the clinical privileges for clinical staff well prior to June 2003. It is a system which requires checking not only at the initial stages of engagement of clinical staff, but throughout their employment.
- 32 The deficiency in the system let down not only the public but those who worked with Mr Houareau in the Clinic and the successor to Dr Yim, Dr A. During the hearing, Dr Yim was critical of his superiors and the lack of organisational structure to support him in his role. On the evidence which was before the Panel, and we note our qualifications in relation to this comment set out in paragraph 16, there was some merit in his observation.

DATED: 30 January 2006

Victor Harcourt
Chair