香港牙醫管理委員會 •
The Dental Council of Hong Kong

Disciplinary Inquiry under s.18 of DRO

Defendant: Dr CHIU King-wan, Eric 趙景雲牙科醫生 (Reg. No. D01209)

Date of hearing: 1 August 2019

Present at the hearing

Council Members: Dr LEE Kin-man (Chairman)
Dr CHAN Chi-chun
Dr LAU Kin-kwan, Kenny
Dr TONG Chi-kit, Antonio
Dr YOUNG Wan-yin, Betty

Legal Adviser: Mr Stanley NG

Legal representative for the Defendant: Ms Alison SCOTT, Messrs. Howse Williams, Solicitors

Legal Officer representing the Secretary: Mr Mark CHAN, Asst. PGC (Ag),
Ms Sanyi SHUM, Government Counsel

The Charges

1. • The amended charges against the Defendant, Dr CHIU King-wan, Eric are as follows:-

"In about November 2017, you, being a registered dentist, disregarded your professional responsibility to adequately treat and care for your patient, Ms [redacted] ("the Patient") or otherwise neglected your professional duties to the Patient in that you–

(i) • failed to carry out adequate pre-operative assessment to investigate the potential risks of removal of the Patient's upper right third molar;

(ii) failed to advise the Patient properly of the possible risks and complications arising from the treatment;

(iii) failed to execute the removal of the upper right third molar ("the tooth") properly resulting in fracture of the tooth and leaving the rest of the tooth in the Patient's maxilla;

(iv) failed to provide adequate follow-up treatment in order to remove the rest of the tooth in the Patient's maxilla; and/or

(v) failed to refer the Patient to another dentist or specialist for follow-up treatment;

and that in relation to the facts alleged you have been guilty of unprofessional conduct."

Facts of the case

2. On 14 November 2017, Ms [redacted] ("Ms [redacted]") consulted the Defendant for treatment of her upper right third molar.

3. After the Defendant clinically examined Ms [redacted], the Defendant suggested simple extraction of the upper right third molar under local anaesthesia. Ms [redacted] agreed to the extraction.

4. The Defendant then proceeded with injection of local anaesthesia and the extraction. There was no pre-operative x-ray taken. Also, the Defendant had not advised Ms [redacted] of any possible risk and complication arising from the extraction.

5. Ms [redacted] felt severe pain during the extraction and recalled that the upper right third molar was broken into pieces. The Defendant then explained to Ms [redacted] that the tooth was very difficult to remove and required to take an x-ray. An x-ray was then taken.

6. The Defendant noted a retained root subgingivally in the x-ray, and told Ms [redacted] that he failed to remove the whole tooth. The Defendant prescribed 3 days of antibiotics and analgesics and discharged Ms [redacted]

7. Ms [redacted] felt severe pain and swelling after the treatment. Ms [redacted] called the Defendant's clinic and requested an emergency appointment. Ms [redacted] went back to consult the Defendant on the same day. The Defendant told Ms [redacted] that the pain and swelling were normal and suggested ice packs and medications to control the symptoms.

8. On 17 November 2017, Ms [redacted] consulted the Defendant for a review. The Defendant told her that he could not take out the remaining part of the upper right third molar. The Defendant told Ms [redacted] to find another clinic or hospital to remove the tooth.

9. Ms [redacted] consulted another dentist in December 2017. Extraction of the remaining tooth root of the upper right third molar was performed in January 2018. The healing was uneventful.

10. The Defendant had made submission to the Preliminary Investigation Committee of this Council by a letter from Messrs Howse Williams Bowers, and now known as Messrs Howse Williams, Solicitors ("HW"), dated 20 February 2019 ("the PIC Submission").

11. In the PIC Submission, the Defendant admitted to the facts of all charges (i) to (v) and would defer to the Council as to whether such admissions would amount to unprofessional conduct.

12. At today's inquiry, the Defendant maintains the same position and admits to the facts as set out in Charges (i) to (v).

Burden and Standard of Proof

13. The Council bears in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. The Council also bears in mind that the standard of proof for disciplinary proceedings is the preponderance of probability. However, the more serious the act or omission alleged, the more inherently improbable must it be regarded. Therefore, the more inherently improbable it is regarded, the more compelling the evidence is required to prove it on the balance of probabilities.

Unprofessional Conduct

14. According to section 18(2) of the Dentists Registration Ordinance, Cap. 156 ("DRO"), "unprofessional conduct" means an act or omission of a registered dentist which would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

Findings of Council

Charge (i)

15. A pre-operative assessment for the extraction of a tooth includes understanding of chief complaint, history taking, medical condition, social habits, clinical examination and special investigation such as radiographic examination.

16. There is no dispute that the Defendant had not taken any pre-operative x-ray.

17. Although there is no guideline that radiographic examination must be taken prior to extraction, the Council agrees with the Secretary's expert that it is a standard practice to evaluate the difficulty and risks of the extraction and related adjacent structures. Consideration in root morphology, accessibility to extraction site and surrounding bony structure will determine the need for pre-operative x-ray. In the Defendant's letter to the Council dated 11 July 2018, the Defendant said that on 14 November 2017 when he conducted clinical observation he noted that tooth no. 18 (i.e. the upper right third molar) had the distal half of crown missing. With distal half of crown missing, this justified a pre-operative x-ray. The Council agrees with the Secretary's expert that in this case it was sub-optimal for the Defendant to take an x-ray only after he encountered difficulty in extracting the tooth.

18. The Council stresses that it is not mandatory that pre-operative x-ray has to be taken before extraction in each and every case. However, whether or not pre-operative x-ray has to be taken largely depends on the facts and circumstances of each individual case.

19. In this particular case, with what has been stated in paragraph 17 above, the Council considers it absolutely necessary and important for the Defendant to take a pre-operative x-ray before extraction.

20. The Council is satisfied that the conduct of the Defendant had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

21. The Council therefore finds the Defendant guilty of charge (i).

Charge (ii)

22. The common risks of extracting an upper right third molar include pain, swelling, oro-antral communication, and possible retention of remaining tooth substance. If the tooth is grossly broken down or decayed, the need of a minor oral surgery to remove the remaining tooth substance should also be included in the discussion of possible risks.

23. There is no dispute that the Defendant had not advised Ms [redacted] at all of the possible risks and complications arising from the extraction.

24. The Councils stresses time and again the importance of informed consent. No informed consent whatsoever had been obtained from Ms [redacted] in this case.

25. The Council considers it elemental for the Defendant to explain or advise Ms [redacted] of the possible risks and complications arising from the extraction. However, the Defendant had failed to do so completely.

26. The Council is satisfied that the conduct of the Defendant had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

27. The Council therefore finds the Defendant guilty of charge (ii).

Charge (iii)

28. The Secretary's expert agrees that it is acceptable for fracture of the affected tooth to happen during the extraction process. There is no evidence to show how the Defendant had failed to execute the removal of the upper right third molar properly.

29. In this case, Ms [redacted] said she was in pain when the Defendant performed the extraction. Clearly the pain situation was not controlled by the anesthetics applied. There is no dispute that the Defendant had caused fracture whilst performing the extraction. The Defendant then stopped the extraction and took an x-ray of the tooth. After reviewing the x-ray, the Defendant took the view that he was unable to proceed as he was unable in handling further removal of the tooth.

30. The Council accepts that as soon as a dentist considers that he is unable in proceeding further with a treatment or operation, he should stop immediately and not proceed. There is nothing the Defendant had done wrong for realizing his inability and stopped to proceed there and then, resulting in leaving the rest of the tooth in Ms [redacted]'s maxilla.

31. The Council therefore acquits the Defendant of charge (iii).

Charge (iv)

32. Although the Defendant could not proceed further with the extraction, the Council considers that adequate follow-up treatment should at least aim at managing Ms [redacted]'s condition, which includes alleviating her pain and treating her any other symptoms.

33. Clearly, no follow-up treatment in managing Ms [redacted]'s condition had been given.

34. However, the charge is framed in such a way to suggest that adequate follow-up treatment was for the purpose of removal of the rest of the tooth in Ms. [redacted]'s maxilla. The charge is not about follow-up treatment in managing Ms [redacted]'s condition.

35. As the Council has mentioned above that there was nothing wrong for the Defendant not to proceed further with the extraction once he found himself incapable, it was not necessary for him to provide any follow-up treatment in order to remove the rest of the tooth in Ms [redacted]'s maxilla.

36. The Council therefore acquits the Defendant of charge (iv).

Charge (v)

37. The Council considers that a proper referral should include the referral source i.e. a particular dentist or a list of capable dentists or specialists.

38. A proper referral can be in the form of a letter, be it a "To Whom it may concern" letter, which at least describes the patient's situation, the assistance requested for, and the contact information of the referring dentist.

39. In this case, Ms [redacted] told the Council that the Defendant had not referred her to any dentist or specialist and simply asked her to leave the clinic and find another dentist herself.

40. The clinical record for 17 November 2017 was left blank. However, the Defendant's version is that he had given Ms [redacted] a name card of a specialist in Oral & Maxillofacial Surgery but he did not remember the name of the dentist. Even if the Council believes in the Defendant's version, simply giving Ms [redacted] a name card of another specialist grossly deviated from what is required for a proper referral.

41. The Council is satisfied that the conduct of the Defendant had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

42. The Council therefore finds the Defendant guilty of charge (v).

Sentencing

43. The Council takes into account that the Defendant has no previous disciplinary record.

44. The Council gives credit to the Defendant's cooperation and early admission to the facts of the charges.

45. The Council bears in mind that the purpose of a disciplinary order is not to punish the Defendant, but to protect the public and maintain public confidence in the dental profession.

46. Having regard to the gravity of the case and the mitigation submitted by the Defendant, the Council makes the following orders:-

(a) In respect of charges (i), (ii) and (v), that the Defendant be reprimanded; and
(b) The order in paragraph (a) above shall be published in the Gazette.

Remarks

47. The Council has the following remarks. The Council stresses that no part of the following remarks was taken into account when considering the findings and sentencing above.

48. First, Ms [redacted] had provided to the Council the clinical record she obtained from the Defendant. The clinical record appears to be too brief and incomplete, and lacks essential details such as relevant clinical findings and diagnosis. If what was produced by Ms [redacted] reflects the actual clinical record kept by the Defendant, the Council would suggest the Defendant to seriously look into such inadequacies.

49. Second, insofar as the complexity of dental treatments is concerned, there is a wide spectrum, ranging from a simple case to the most difficult case. Notwithstanding the level of complexity, in every case, the same principle applies, namely that a dentist has to carry out proper assessment, proper planning and proper execution, all for the patient's safety and benefit. Every dentist has to make his own judgement as to what to perform and what not to perform basing on the facts and circumstances of each individual case. If a dentist wishes however to deviate from the professional norm by not performing in a particular case, he has to ensure that there is sufficient justification.

50. Third, in this case, the Defendant refused to continue treatment of the patient with an effect equivalent to terminating the dentist-patient relationship. A dentist has the primary responsibility to provide proper dental care to his patients. However, there may be situations where it is in the best interest of the patient for such dental care to be provided by another dentist. Examples of such situations include loss of trust between the dentist and the patient, and where the treatment requested for or offered is beyond the dentist's competence. In such situations the dentist may terminate the dentist-patient relationship, provided that the patient's health interest is not jeopardized. Dentists should exercise their professional judgment before terminating the dentist-patient relationship. When it is decided to terminate the dentist-patient relationship, the dentist should inform the patient of his decision at the earliest opportunity. He should explain the reasons for terminating the relationship and offer to refer the patient to another dentist who has the ability to provide the necessary services.

51. Fourth, in terms of patient management, the primary duty is provide responsible care to patient. There are always difficult clinical and patient management situations which may be beyond the dentist's capability to manage. However, as a professional, the public grants trust to a dentist to deliver responsible care to patients. A dentist has the responsibility to face such difficulties instead of blaming the patient when undesirable circumstances arise.

Dr LEE Kin-man
Chairman
The Dental Council of Hong Kong