Dental Council of Hong Kong
Disciplinary Inquiry under s.21 of DRO

Defendant: Dr. CHECK Wa-ming (Reg. No. D02705)

Date of hearing: 16 & 24 June 2011, 9 September 2011 and 14 October 2011

1. The Defendant, Dr. CHECK Wa-ming, is charged that:

"He, being a registered dentist, disregarded his professional responsibility to adequately treat and care for his patient [redacted] ([redacted]"), or otherwise neglected his professional duties to her in that, during the period from about October 2008 to March 2009:-

(a) he failed to properly diagnose the dental condition of [redacted] before grinding and crowning her teeth; and/or

(b) he failed to properly investigate the cause of and manage the regular and intense pain experienced by [redacted] despite her repeated complaints of post-operative painful symptoms,

and that in relation to the facts alleged he has been guilty of unprofessional conduct."

Facts of the case

2. On 30 July 2008, the patient consulted the Defendant in his clinic in Fu Ning Garden ("Fu Ning Clinic") for the food trapping problem in the gaps between the upper right first and second molars (i.e. teeth #16 and #17) and between the upper left first and second molars (i.e. teeth #26 and #27). The Defendant advised the patient to install splinted dental crowns for the teeth.

3. On 23 October 2008, the patient went back to have the treatment. The Defendant advised to do the crowns on the left side first. He prepared the upper left second premolar, the first and the second molars (i.e. teeth #25, #26 and #27) by reducing the teeth under local anaesthesia. After reduction, the patient was told to return in one week for installation of the crowns. No temporary crowns were installed for the reduced teeth. The patient felt soreness and tenderness from the prepared teeth shortly after the anaesthetic had worn off, and could not chew with them. These symptoms lasted for the whole week.

4. On 30 October 2008, the patient went back for installation of the crowns. The Defendant installed three splinted crowns on the three teeth. The patient felt that the crowned teeth were heavier and significantly "higher" than the right side of the arch. After leaving the clinic, the patient felt pain, and the crowns were heavy and bulging on the lingual and the occlusal surfaces. She immediately telephoned the clinic but was told that the Defendant had gone to the clinic in On Ning Garden ("On Ning Clinic"). The patient went to the On Ning Clinic and the Defendant briefly adjusted the crowns by grinding.

5. After the crowning, the patient experienced persistent soreness and intense pain around the crowned teeth extending to the left cheek. From then on until February 2009, she

returned to the Defendant repeatedly and complained about the soreness and intense pain. Other than occasional visual inspection, the Defendant took no further action to investigate the cause of or managed the problem. He simply advised her to rinse the teeth with saline. No radiograph was taken, and no medication was prescribed.

6. On one occasion (i.e. 5 January 2009), the patient again went to the Fu Ning Clinic because of the pain and swollen gum. As she could not see the Defendant even after waiting for 30 minutes and could not tolerate the intense pain, she had to go to a medical doctor who prescribed anti-inflammatory drug and analgesic for her.

7. On 2 February 2009, the patient consulted another dentist for dealing with the problem of the crowned teeth. That dentist advised to remove the crown. The patient telephoned the Defendant on the next day requesting him to remove the crown. The Defendant refused. On 17 February 2009, the Defendant agreed to refund the treatment fee to the patient. On 25 February 2009, the other dentist removed the crowns. Subsequently, root canal treatments were performed and the pain was significantly reduced. She was further followed up by yet another dentist and also Prince Philip Dental Hospital ("PPDH").

Findings of the Council

8. There is no dispute that in all the consultations the Defendant never took a radiograph of the patient's teeth.

9. The Defendant gave oral evidence in the inquiry. He said that:-

   (i) the patient consulted him for inflammation of the gum and he advised her to use saline or mouthwash to relieve the inflammation;
   (ii) he advised the patient that the food trapping problem could not be solved by filling the interdental gaps;
   (iii) he briefly mentioned dental crown without any strong recommendation;
   (iv) the patient insisted on having the crowns despite his advice that such procedure was unnecessary;
   (v) he thoroughly examined the patient's teeth and gave her proper advice before preparing the teeth by grinding for crowning;
   (vi) the patient made no post-operative complaint until 12 November 2008, and the complaint was discomfort on the cheek but not pain.

Credibility of witnesses

10. Having carefully assessed all the evidence, we are satisfied that the patient is a truthful and reliable witness. Her evidence is also corroborated by other evidence on a number of issues, such as her intense pain which was corroborated by the records of the other dentist and PPDH which recorded "pain was reported & precipitated to hot water" and "severe pain esp. at night (burning sensation)" respectively. We do not accept the Defendant's claim that the patient never complained of pain. We recognize that there may be a number of minor inconsistencies, such as the date of her first consultation with the Defendant. However, such inconsistencies are insignificant and do not affect her credibility. We accept her evidence.

11. We are satisfied that the Defendant is a dishonest witness and did not tell the truth. We emphasize that we found the Defendant dishonest, not that he failed to convince us that

he was an honest witness. There are many problems with his evidence which we shall not elaborate, the most obvious being that he has clearly lied about the radiographic machine in his clinics. On 9 September 2011, he was questioned how he could properly make diagnosis for patients without an X-ray machine. At the risk of perjury, he categorically confirmed under oath that from the time the X-ray machine in the Fu Ning Clinic broke down in 2008 until now, he could take radiographs of his patients whenever necessary at the On Ning Clinic where he had a fully functional intraoral X-ray machine. Despite having been reminded that he was under oath and must tell the truth and that his evidence could be verified with the Radiation Board, he confirmed that he had a valid operating licence for the intraoral X-ray machine in the On Ning Clinic.

12. The Radiation Board (being the authority for issuing licences for irradiating apparatus under the Radiation Ordinance) confirmed that:-

    (a) no operating licence had ever been issued for the On Ning Clinic, and a licence for installation (not operation) of irradiating apparatus was only issued to the Defendant for the On Ning Clinic on 3 October 2011;

    (b) the licence for the X-ray machine at the Fu Ning Clinic was terminated on 1 April 2003, and the Defendant applied for abandonment of the machine and the machine was certified to be radiologically harmless by the Radiology Board on 1 April 2003;

    (c) a licence for installation (not operation) of irradiating apparatus was issued to the Defendant for the Fu Ning Clinic on 15 July 2011.

13. In other words, there had never been any X-ray machine at the On Ning Clinic, and the Defendant had no operating X-ray machine at the Fu Ning Clinic and the On Ning Clinic from 2003 until now. If he had a machine in his possession or operation in either of those clinics, he was possessing or operating it illegally.

14. In view of the Defendant's preparedness to lie when necessary, we do not believe him and reject his evidence.

Charge (a)

15. Charge (a) is about the Defendant's failure to make proper diagnosis before commencing the treatment of crowning.

16. We must emphasize from the outset that all dental treatment must be based on proper diagnosis, and the diagnosis must be based on scientific investigation. This is important for invasive surgical treatment, and particularly so where the treatment is irreversible. A proper diagnosis is required for eliminating other pathological causes before concluding that the proposed treatment is indicated. This is the fundamental basics of dentistry which all competent dentists must know.

17. It is improper to institute an invasive and irreversible treatment without a firm diagnosis. The present case involved the irreversible compromise of three healthy and important teeth. It is a very destructive procedure, and must be justified by good reasons having conducted a risk-benefit analysis to the patient. We do not see any justification for such a destructive procedure simply for the purpose of avoiding food trapping, which is a problem to which there are many other options such as proper oral hygiene.

18. The Defendant defended his decision on the claim that it was the patient's own decision

after proper advice. We have earlier held that we accept the patient's evidence, which was that the Defendant did not advise her of the pros and cons of the proposed procedure and what the procedure entailed. On the other hand, even if a patient insists to have a procedure, a dentist must not perform the procedure if it is not clinically indicated, not to mention procedures which cause harm to the patient. A dentist has a professional duty to safeguard the dental health of the patient, and must not allow a patient's wish to override his professional judgment and duty. Again, the principle of non-maleficence (i.e. do no harm) is the fundamental concept for all dentists.

19. We accept the patient's evidence that the Defendant had not made any objective investigation before instituting the treatment. Not even an X-ray had been taken. Without an X-ray, there was no information as to the pulpal condition of the three teeth to be crowned. There could have been endodontic or periodontic problems which must be dealt with before crowning. Otherwise, the crowning would obscure further deterioration of the problems which upon development will cause injury to the patient.

20. The Defendant claimed to have taken a full medical history and dental history of the patient. However, there was no record of any medical or dental history, and the columns for "medical history" and "dental history" in the dental record were left blank. There was no dental charting at all. In this regard, we must also point out that all dentists have a professional duty to keep accurate and contemporaneous dental record of patients. On the other hand, there is evidence which clearly militated against the accuracy and truthfulness of the dental record produced by the Defendant to the Preliminary Investigation Committee. According to the dental record, the patient made a payment of $2,000 on 23 October 2008 leaving an outstanding balance of $2,000. However, the receipt dated 23 October 2008 issued to the patient was for the payment of $1,000 with an outstanding balance of $3,000.

21. We are satisfied that before the crowning procedure the Defendant had not made proper investigation of the patient's dental condition, and therefore there was no basis for him to make any proper diagnosis. Such conduct has fallen far below the standard expected amongst registered dentists, and would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. We find him guilty of unprofessional conduct as charged in Charge (a).

Charge (b)

22. Charge (b) is about the Defendant's failure to properly investigate the cause of the post-operative pain and to manage the problem.

23. Given our acceptance of the patient's evidence and rejection of the Defendant's evidence, we find that the patient suffered intense post-operative pain almost immediately after installation of the crowns. In fact, we find that the patient's pain commenced after the reduction of her teeth by grinding. The reduced teeth were not protected by temporary crowns before installation of the permanent crowns, thus exposing the dentine to external irritation resulting in injury to the pulp. This would have exacerbated the post-operative pain. The post-operative pain persisted in the several months after the crowning.

24. We find that the patient had made repeated complaints to the Defendant about the post-operative pain, but the Defendant had not made any meaningful investigation (other than visual inspection) of the cause of the pain. The pain was so intensive that on one occasion (i.e. 5 January 2009) she had to see a medical doctor to deal with the pain.

25. We find that the Defendant did not manage the post-operative pain in any way at all, not even palliative management. All that he had done was to grind down the buccal and occlusal surfaces of the crowns, which reflects his lack of understanding about the physiology of pain. The Defendant claimed that he had prescribed analgesic for the patient, but there was no record of any prescription of drugs at all. Furthermore, if the Defendant had prescribed analgesic, the patient would not have had to consult a medical doctor for dealing with the pain on 5 January 2009. The Defendant suggested that the patient was suffering from neuralgic pain which was unconnected with the crowning. We disagree. The patient's pain was much improved upon removal of the crowns by another dentist. This clearly shows that the pain resulted from the crowning procedure. Even if there was co-existing neuralgic pain, the existence of post-operative pain resulting from the trauma of the procedure is clear. On the other hand, there was no record of any diagnosis or suspicion of trigeminal pain. His suggestion of the possibility of trigeminal pain can only be an ex post facto justification for his failure to manage the post-operative pain.

26. We are satisfied that the Defendant's conduct in failing to investigate and manage the intensive post-operative pain has fallen far short the standard expected of registered dentists. Such falling short is even more serious in view of the severity of the pain and the long time for which he has literally disregarded the pain, thus making the patient suffer for several months unnecessarily. Such conduct would be reasonably regarded as dishonourable and disgraceful by registered dentists of good repute and competency, and constitutes unprofessional conduct. We find him guilty of unprofessional conduct as charged in Charge (b).

27. While this is not subject matter of the charges and have not affected our decision on the charges, we feel obliged to point out that the Defendant's treatment for the problem of food trapping is entirely inappropriate, in particular the splinting of the three crowns into a single unit. This would render future oral hygiene maintenance more difficult leading to periodontal problems. He admitted that he had not learned such splinted crowns procedure in dealing with food trapping from any trainer or textbook, and he devised such treatment protocol from his own experience. This again reflected on the Defendant's non-compliance with the evidence-based principle of dentistry.

Sentencing

28. The Defendant has a clear record. Other than this, we see no mitigation of weight at all. Given the way the Defendant conducted the inquiry, we do not see any basis for Defence Counsel to urge us to give him credit for cooperation in the inquiry. We see no remorse at all.

29. It is evident that the Defendant adopted a loose and unprofessional attitude towards performing treatment without a proper diagnosis. While we shall sentence on the basis that this case is the only incident of such improper practice, we cannot rule out the likelihood that the same attitude is adopted in respect of other patients.

30. We are concerned that in the past eight years (since 1 April 2003) the Defendant has been practising in two clinics without a functioning intraoral X-ray machine which can be operated lawfully. According to him, on average he has been treating a dozen patients each day. All these treatments have been performed without taking any radiograph. Basically he was performing the treatments blindly, not seeing the hidden dental and bony condition of the patient's jaw at all. This is dangerous and

irresponsible practice.

31. In general dental practice, it is essential to conduct radiological investigation in order to reach a proper diagnosis of the patient's dental condition. A general dental practitioner must have a functional intraoral X-ray machine in his clinic in order to provide proper service.

32. In the present case, the Defendant's treatment and post-operative care for the patient can be described as appalling. He performed treatment which was not indicated for the problem at all. The treatment was performed in a substandard manner. He did not provide post-operative care despite repeated complaints of intense pain. This has resulted in unnecessary painful suffering of the patient for an extended period of time. We strongly disapprove of such unprofessional conduct.

33. We are acutely cognizant of our duty to protect the public and to maintain public confidence in the profession by upholding the reputation of the profession. We must have regard to this duty in sentencing.

34. Having regard to the gravity of the case and the mitigation, we order that in respect of each charge the Defendant's name be removed from the General Register for a period of 3 months, and the removal orders shall run concurrently. If not for the fact that this is the Defendant's first offence, the length of removal should have been longer.

35. We have considered whether the operation of the removal orders can be suspended. We see no reason for suspension.

36. While it is for the future Council to consider the application for restoration if and when it is made, we recommend that the Council should impose the following conditions if the application is to be approved:-

    (1) There must be a functional introral X-ray machine which can be operated lawfully in each clinic in which he intends to practise dentistry before he resumes practice. For the avoidance of doubt, this includes the obtaining of the relevant licences from the Radiation Board.

    (2) For a period of two years following immediately the date of restoration, the Defendant's practice be subject to satisfactory monitoring by a monitor to be appointed by the Council in accordance with the following terms:-

        (a) the monitor shall conduct visits to the Defendant's clinic(s) to ensure that the practice is being conducted in a proper manner;

        (b) the monitoring visits shall be conducted without prior notice to the Defendant;

        (c) the monitoring visits shall be conduct at least once in every 3 months;

        (d) the monitor shall be given unrestricted access to all parts of the Defendant's clinic(s) and all documents (including the Radiation Board licences pursuant to the first condition herein) which in the monitor's opinion are necessary for him to properly discharge his duty;

        (e) the monitor shall make clear to all patients to whom treatment is provided by the Defendant in his presence that he: (i) is appointed by the Council

pursuant to the monitoring condition; (ii) is not involved in the treatment; and (iii) has no dentist-patient relationship with the Defendant's patients;

(f) the monitor shall report his observations directly to the Council in the 3rd, 6th, 9th, 12th, 15th, 18th, 21st, and 24th month of the two years. Where any irregularity is observed, the irregularity shall be reported as soon as practicable.

Dr. Homer Tso, SBS, JP
Chairman, Dental Council