



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

Disciplinary Inquiry under s.18 of DRO

Defendant: Dr YUEN Kit-zin 袁潔臻牙科醫生 (Reg. No. D03837)

Date of hearing: 2 April 2015

1. The Defendant, Dr YUEN Kit-zin, is charged that :

“The Queensland Board of the Dental Board of Australia was satisfied that she had acted in a way that constituted unsatisfactory professional conduct under the Health Practitioners (Professional Standards) Act 1999, in that she,

- (i) failed to provide an appropriate standard of dental treatment to her patient between 4 April 2006 and 18 July 2006; and/or
- (ii) practiced dentistry without being registered at the Mudgeeraba Dental Surgery contrary to the Dental Practitioners Registration Act 2001 (Qld) (now repealed) between 1 July 2006 and 29 July 2006;

and had she been registered in Australia, she would have been reprimanded.”

Facts of the case

2. The Defendant’s name has been included in the General Register of this Council from 19 January 2010 to present.
3. By a letter dated 23 February 2011, the Dental Board of Australia informed this Council that on 11 January 2011 the Registration and Notifications Committee of the Queensland

Board of the Dental Board of Australia had finalized disciplinary proceedings arising out of a complaint about the Defendant being their former registrant as a dentist in Queensland, and the Queensland Board had resolved to give notice of a decision to bring the disciplinary action against the Defendant to the attention of this Council, as it noted that the Defendant appeared to be registered as a dentist with this Council and it reasonably believed that this Council needed to know about its decision. The Notice of Decision of the Queensland Board dated 23 February 2011 (“Notice of Decision”) was attached with the letter.

4. According to the Notice of Decision, the Queensland Board had made material findings of fact, largely as follows:
 - (a) The Defendant was registered as a dentist in Queensland until 30 June 2006, following which her registration lapsed.
 - (b) At all material times, and until 29 July 2006, the Defendant was employed at the Mudgeeraba Dental Surgery, Queensland (“Surgery”).
 - (c) On 4 April 2006, the complainant attended the Surgery and was examined by the Defendant.
 - (d) The Defendant had made submissions to the Queensland Board. In her submission dated 24 December 2009, the Defendant said that on 4 April 2006, based on the clinical signs and radiographic findings, she advised the complainant that she had an acute periapical abscess on teeth 31 and 41, and 42 did not look promising and there would be high chance of apical infection on 42 in the future.

Treatment options were discussed with the complainant, who preferred to undergo root canal treatment. The Defendant then performed pulpectomy on both 41 and 31 and dressed them with Ledermix. Antibiotics and pain killers were prescribed.

- (e) On 9 May 2006, the complainant returned to the Surgery and was seen by the Defendant for root canal treatment to teeth 31 and 41.
- (f) On 29 May 2006, the Defendant examined the complainant's teeth. The clinical notes recorded that the Defendant found tooth 42 tender to percussion. The Defendant said that the complainant agreed to undergo root canal treatment to tooth 42 and she performed a pulpectomy on tooth 42 and dressed teeth 31, 41 and 42 with Ledermix.
- (g) On 15 June 2006, the complainant returned to the Surgery, and the Defendant performed chemo-preparation on tooth 42 and re-dressed tooth 31 with Ledermix.
- (h) On 19 June 2006, the Defendant re-dressed the complainant's teeth 31 and 42.
- (i) On 27 June 2006, the complainant returned to the Surgery and saw the Defendant. In her submission to the Queensland Board dated 24 December 2009, the Defendant said that the complainant agreed to have the 3 lower incisors obturated at that appointment, and be filled with composite resin.

- (j) On 29 June 2006, the Defendant again examined the complainant's teeth. In her submission to the Queensland Board dated 24 December 2009, the Defendant said that all three teeth (31, 41 and 42) were examined and the complainant was happy about them. A full examination was then performed and the complainant was scheduled for follow up dental treatment.

- (k) On 18 July 2006, the complainant had a further follow-up appointment with the Defendant.

- (l) Dr. Peter Mackintosh, who at all material times was a registered dentist and the owner of the Surgery, treated the complainant after she returned to the Surgery in November 2006. Dr. Mackintosh said in correspondence dated 17 September 2007 that the quality of treatment provided by the Defendant to the complainant was deplorable, and he had to redo without charging endodontic treatment on the lower anterior 41, 31 and 32 that the Defendant had provided. The endodontic treatment provided by the Defendant was inadequate. The canals had not been obturated correctly resulting in acute abscess apically in each tooth.

- (m) Dr. Peter Leask, in an expert opinion delivered on 19 April 2010 said that radiographs were taken on 4 April 2006, 9 May 2006 and 27 June 2006. However, a final treatment radiograph was not available, hence a final obturation observation was not possible. Even without a final treatment radiograph, it would appear, with the poor quality of the radiographs and inadequate instrumentation shown on them, that the treatment given left a lot to be desired.

Dr. Leask was of the opinion that the standard of treatment the Defendant supplied to the complainant was not appropriate.

- (n) The Defendant was employed at the Surgery from 14 March 2006 until 21 August 2006.
- (o) In her submission to the Queensland Board dated 24 December 2009, the Defendant said that:

“The last appointment I had with (sic) was on 18/07/2006, and I left the country at 31/07/2006.

....

In relation to the matter of practising whilst unregistered, I advise that I have had (sic) not practised dentistry in Australia since that time. I have not and would never practice whilst unregistered.”

- (p) At all material times, s.139A of the Dental Practitioners Registration Act 2001 (now repealed), provided under ss.(1) that “a person who is not a general registrant, provisional general registrant or medical practitioner, must not practice dentistry”, and under ss.(4) that “dentistry” was to mean “all or any of the following: (a) diagnosis of conditions of the mouth; (b) fitting or intra-oral adjustment for a person of artificial teeth or corrective or restorative dental appliances; (c) performance of exposure prone or irreversible procedures on a person’s teeth , jaw, mouth and associated structures.”

5. The Queensland Board was satisfied that the Defendant (a) failed to provide an appropriate standard of dental treatment to the complainant between 4 April 2006 and 18 July 2006; and/or (b) between 1 July 2006 and 29 July 2006 practised dentistry without being registered at the Mudgeeraba Dental Surgery contrary to the Dental Practitioners Registration Act 2001.

6. The Queensland Board was satisfied that such acts constituted unsatisfactory professional conduct under the Health Practitioners (Professional Standards) Act 1999 viz. professional conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care in the practice of the profession.

7. The Queensland Board resolved that had the Defendant been registered with them, she would have been reprimanded.

Burden and Standard of Proof

8. This Council bears in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove her innocence. This 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.

9. Each of the allegations made against the Defendant is serious. This Council needs to look at all the evidence and to consider and determine each of the charges separately.

Findings of Council

10. Whilst s.18(1)(b) of the Dentists Registration Ordinance, Cap. 156 (“DRO”) is silent upon the matter, this Council has reached the view that the provision can relate to unprofessional conduct outside Hong Kong.

11. The Defendant via Messrs. Howse Williams Bowers, Solicitors, had sent a letter to this Council dated 26 September 2014. According to the letter, the Defendant does not dispute or contest the findings of fact made by the Queensland Board in the Notice of Decision. According to the Agreed Facts of the parties [Exhibit E] submitted to the Council at today’s inquiry, the Defendant agrees that she has been a registered dental practitioner on the General Register of this Council from 19 January 2010. The Defendant also agrees to the decision of the Queensland Board.

12. In respect of charge (i), the Defendant does not contest the findings of fact of the Queensland Board in the Notice of Decision. From the said findings of fact, this Council takes the view that the Defendant had a professional obligation to the complainant in maintaining a professional standard of care. This Council is satisfied from the said findings of fact that the Defendant’s standard of care to the complainant had fallen short of the standard of care expected amongst dental practitioners.

13. In respect of charge (ii), the agreed fact is that the Defendant had practised dentistry without being registered at the Mudgeeraba Dental Surgery contrary to the Dental Practitioners Registration Act 2001 (Qld) (now repealed) between 1 July 2006 and 29 July 2006.

14. This Council is satisfied on the evidence that the Defendant had (i) failed to provide an appropriate standard of dental treatment to her patient between 4 April 2006 and 18 July 2006; and (ii) practised dentistry without being registered at the Mudgeeraba Dental Surgery contrary to the Dental Practitioners Registration Act 2001 (Qld) (now repealed) between 1 July 2006 and 29 July 2006, and that such acts constituted unsatisfactory professional conduct under the Health Practitioners (Professional Standards) Act 1999. This Council is also satisfied on the evidence that had the Defendant been registered in Australia, she would have been reprimanded. In our view, the Defendant's conduct has clearly fallen below the standards of conduct which is expected of members of the profession.
15. We therefore find the Defendant guilty of unprofessional conduct under s.18(1)(b) of the DRO.

Sentencing

16. The Defendant has a clear record.
17. The Council takes note that the Defendant has a good CPD record.
18. The Defendant has cooperated fully and she admits to the charges without contest.
19. For the purpose of protecting the public and maintaining public confidence, this Council is of the view that providing professional standard of care to patients and practising with a registered status are important.

20. Having regard to the gravity of the case, we make the following orders:-

- (i) the Defendant be issued a warning letter in respect of charges (i) and (ii); and
- (ii) the order shall be published in the Gazette.

A handwritten signature in black ink, appearing to read 'K.M. Lee', with a long horizontal flourish extending to the right.

Dr LEE Kin Man
Chairman
The Dental Council of Hong Kong