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

Disciplinary Inquiry under s.18 of DRO

Defendant: Dr CHAN, William To-wang 陳道宏牙科醫生 (Reg. No. D01835)

Date of hearing: 20 February 2014 (Day 1) and 20 August 2014 (Day 2)

1. The Defendant, Dr CHAN To-wang William, is charged that:-

"He, being a registered dentist, in the period from about July to October 2011, disregarded his professional responsibility to adequately treat and care for his patient ████████ ("█████"), or otherwise neglected his professional duties to her in that –

(a) he failed to undertake proper or adequate pre-operative assessment and planning before carrying out the surgery of removal of █████'s tooth '48' ("the Surgery");

(b) he failed to adequately or properly explain to █████ before the Surgery about its possible risks and complications;

(c) he failed to obtain informed consent from █████ before the Surgery;

(d) he failed to carry out proper and effective Surgery on the right side of the mandible of █████;

(e) he damaged the lingual nerve on the right side of the mandible of █████ during the Surgery; and/or

(f) in the presence of post-surgical complication (parasthesia of the right side of tongue) following the Surgery, he failed to promptly refer [redacted] to another dental practitioner or specialist for remedial treatment when the circumstances so warranted;

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

Facts of the case

2. On 23 August 2010, the patient consulted another dentist in the Defendant's clinic. Periapical radiographs were taken, and the patient was advised that extraction of the tooth 48 was indicated. The patient made no decision on the advised extraction.

3. On 6 July 2011, the patient returned to the clinic and consulted the Defendant. Having reviewed the record and the radiographs taken in 2010, the Defendant advised the patient that extraction of tooth 48 was indicated. The patient agreed. The Defendant then proceeded with the extraction, by sectioning the tooth and removing the divided parts separately. Local anesthesia was given both before and during the extraction process.

4. Post-operatively, the lingual numbness on the right side did not recover, and there was anaesthesia of the right anterior two third of the tongue with total loss of taste sensation of the affected side. After monitoring the recovery for about 2 months, on 21 September 2011 the Defendant referred the patient to Prince Philip Dental Hospital for management of the lingual nerve injury. The patient subsequently received microsurgical repair of the right lingual nerve on 21 December 2011.

Findings of the Council

5. We must state from the outset that Charges (a) and (d) are so vague that we fail to understand what impropriety or inadequacy is alleged in respect of the pre-operative assessment and planning and the manner of performing the surgery. Neither is such ambiguity clarified by the evidence. Despite pointing out such

ambiguity to the Legal Officer, all that he could say was that the expert report alluded to risks of third molar extractions and desirable practices in pre-operative assessment and planning for such extractions.

6. The facts are not in dispute. In fact, the Defendant admitted all the facts alleged in the charges. However, the admissions in respect of some of the charges are so vague that we fail to understand what impropriety or inadequacy is admitted. This probably stemmed from the fact that the allegations in the charges are vague and no particular was given as to the allegations. Without the specific facts which are alleged as constituting unprofessional conduct, it is impossible for us to determine whether the Defendant's conduct constituted unprofessional conduct.

7. We have heard evidence from the patient and the expert. The Defendant does not challenge any such evidence. Having considered all evidence, we make the following findings:-

(a) Before the extraction, the Defendant had reviewed the radiographs taken in August 2010.

(b) The radiographs were of good quality, and showed the operative field clearly.

(c) The Defendant only advised the patient that extraction of tooth 48 was indicated, without explaining the risks and complications of the proposed extraction.

(d) The patient gave consent for the extraction, without any understanding of the risks and complications.

(e) The right lingual nerve was damaged by the Defendant during the extraction.

(f) Post-operatively, the patient complained to the Defendant of lingual numbness and loss of sensation on the right side.

(g) The Defendant regularly reviewed the patient's recovery from the lingual numbness until 21 September 2011, when he referred the patient to Prince Philip Dental Hospital for management of the lingual nerve injury.

8. We note the expert's opinion that it is preferable for third molar extractions to be performed by specialists instead of general practitioners. However, he accepts that extractions by specialists do not mean that the risks are smaller. As to his opinion that other imaging techniques including panoramic radiograph and CT scan may assist in surgical risk assessment, he accepts that all such imaging is only relevant to assessment of the location of the inferior dental nerve which lies in the inferior dental canal, but not at all in respect of the lingual nerve. The expert also accepts that in cases of lingual nerve injury, the patient's recovery should be monitored for at least 3 months before considering surgical intervention.

9. We must point out that:-

(a) The Specialist Register is indicative of a dentist's specialist training, but not restrictive of his dental practice. All registered dentists, irrespective of whether specialist or non-specialist, are entitled to perform all forms of dental work, as long as they have the relevant competence.

(b) A dentist's conduct is judged according to the standard expected of registered dentists exercising proper care and competence. As long as he reaches that standard, his conduct is acceptable, although he may not have reached the highest standard. Best practices are advocated, but they cannot be made a requirement in all circumstances.

(c) Before asking the patient for consent to a proposed procedure, it is a dentist's professional responsibility to give to the patient proper explanation of the nature of the proposed procedure, the risks and complications, and the treatment options. In other words, the patient must be given proper explanation so that he can make an informed decision as to whether to undergo the procedure. Consent in the absence of proper explanation is blind consent, thus not valid informed consent.

(d) Owing to the anatomical variation of the lingual nerve and the difficulty in assessing its precise location, lingual nerve injury is a known complication in oral surgical procedures including third molar extractions, even if the procedure is performed to a high standard.

(e) Surgical failure cannot be equated with unprofessional conduct. If the dentist has taken proper measures to avoid the risks and complications, he is not guilty of unprofessional conduct even if a risk or complication occurs.

Charge (a)

10. The fact that the Defendant relied on the radiographs taken about 10 months before the extraction was not improper, as there was no pathology in the operative field and there should have been little change in the patient's dental condition in the intervening 10 months. Other imaging technologies such as CT scan and cone-beam scan would not have assisted in avoiding the risk of lingual nerve injury, as the lingual nerve cannot be visualized in any such imaging.

11. We are of the view that the Defendant's pre-operative assessment and planning was adequate. We find him not guilty of Charge (a).

Charge (b)

12. The Defendant did not advise the patient of the risks and complications of the proposed extraction, and thus failed his duty to give proper advice to the patient before obtaining consent for the proposed extraction. As lingual nerve injury is a known risk in third molar extractions, it is a risk which should have been explained to the patient.

13. We are satisfied that the Defendant's conduct in this respect would be reasonably regarded as disgraceful by registered dentists of good repute and competency. We find him guilty of unprofessional conduct as in Charge (b).

Charge (c)

14. As the patient's consent for the extraction was given in the absence of proper explanation by the Defendant, it was neither informed nor valid consent. To proceed with a dental procedure in the absence of valid informed consent is conduct which would be reasonably regarded as disgraceful by registered dentists of good repute and competency.

15. We find the Defendant guilty of unprofessional conduct as in Charge (c).

Charges (d) and (e)

16. As we have pointed out, surgical failure by itself is not unprofessional conduct. In the present case, the third molar was successfully extracted. The unintentional

injury to the lingual nerve was a known complication, and not a result of improper execution of the extraction. As there is no evidence of the extraction being performed in an improper manner, we cannot find the Defendant guilty of unprofessional conduct. We find him not guilty of Charges (d) and (e).

Charge (f)

17. After the extraction, the Defendant properly kept under regular review the patient's recovery from lingual numbness, and made a timely referral after about 2 months. This is in accordance with accepted standards of monitoring of recovery from lingual nerve injury. We see no need for the Defendant to make a referral at an earlier time.

18. In the circumstances, we find the Defendant not guilty of Charge (f).

Sentencing

19. The Defendant has a clear record.

20. In accordance with our published policy, we give him full credit for his honest admission in the inquiry.

21. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant. The purpose of a disciplinary order is to protect the public from persons who are unfit to practise dentistry, and to maintain public confidence in the dental profession.

22. We note that he has taken effective measures to ensure that proper explanation of the risks and complications will be given to the patients in future. We are of the view that the Defendant has learned a lesson, and the likelihood of re-offending is low.

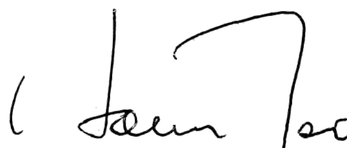
23. Having regard to the gravity of the case and the mitigating factors, we order that a lenient order of a warning letter is appropriate. The order shall not be published in the Gazette.

Other remarks

24. We must make the observation that the Defendant was over-zealous in demonstrating his cooperation in the inquiry, in making admissions of impropriety even though he did not know what was being improper.

25. Admissions should be of facts but not the propriety or impropriety of the relevant conduct, as it is the Council's responsibility to decide the question of whether the relevant conduct is below the standard expected of registered dentists. As we have said earlier, such inappropriate admissions may usurp the function of the Council to determine the required standard of professional conduct, and may set a wrong standard of conduct for the whole profession to follow.

26. We are of the view that this should not happen again. We urge the legal representatives on both sides to ensure that admitted facts in future cases will not have the effect of usurping the Council's function of determining whether particular conduct is below the standard expected of registered dentists.



Dr Homer TSO, SBS, JP
Chairman, Dental Council