Inquiry of the Dental Council

Defendant: Dr NG Kai-cheong, Desmond

Dates of hearing: 22.2.2011 (Day 1), 28.2.2011 (Day 2), 8.7.2011 (Day 3), 9.8.2011 (Day 4)

Ruling on Defence submission of no case on charge (iii) (8.7.2011)

1. This is a submission of no case to answer on charge (iii) under regulation 27(b)(i) of the Dentists (Registration and Disciplinary Procedure) Regulations, i.e. "*that sufficient evidence has not been adduced upon which the Council can find that the facts alleged in that charge have been proven*".

2. We accept that the test at this stage is whether a reasonably directed panel can find the facts alleged proven, not whether the panel will find the facts alleged proven.

3. The Legal Officer concedes that there is insufficient evidence upon which the panel can find the facts alleged proven. In effect, he is withdrawing charge (iii).

4. Charge (iii) is about the Defendant's failure to refer the patient to another dentist for remedial treatment when the circumstances so required. It is not about whether the remedial treatment can be performed by the Defendant. If the overall management of the patient is beyond the Defendant's competence, he ought to refer the patient to another dentist who has the competence to provide the remedial treatment. For the avoidance of doubt, by saying so we are not making any finding about the Defendant's competence to provide the remedial treatment.

5. Nevertheless, the Legal Officer takes a very narrow view of charge (iii) and presents his case on the basis of whether extraction of the implant can be performed by the Defendant himself without referral to another dentist. He does not give any explanation on, and we do not understand, why the charge should be interpreted on such a narrow basis.

6. While we have strong reservation on such narrow interpretation of charge (iii), we can only adjudicate on the basis of the Legal Officer's case. If he presents the case on that narrow basis and takes the view that he has failed to adduce sufficient evidence to prove

the charge, we are bound by his decision.

7. In the circumstances, we have no alternative but to rule that the Defendant is not guilty of charge (iii). We shall proceed with charges (i) and (ii) only.

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Judgment on charges (i) and (ii) (9.8.2011)

1. The Defendant, Dr NG Kai-cheong, Desmond, is charged that:-

"He, being a registered dentist, from about 20 April 2007 to about 4 July 2007, disregarded his professional responsibility to adequately treat and care for his patient [redacted] ("[redacted]"), or otherwise neglected his professional duties to him in that:-

(i) during the implant surgery for [redacted] on 19 May 2007, he negligently damaged the dental nerve in the right lower second molar region, causing paraesthesia to the right lower lip and right chin of [redacted]; and/or

(ii) he failed to conduct a proper check-up for [redacted] during the period 25 May 2007 to 4 July 2007 after he had complained to him about the numbness and pain in the right lower lip and right chin area following the implant surgery; and/or

(iii) he failed to refer [redacted] to another practitioner or specialist for remedial treatment when the circumstances so required.

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

2. As we have found no case to answer on Charge (iii), we shall now deal with only charges (i) and (ii).

Facts of the case

3. On 20 April 2007, the Defendant advised the patient to have 2 dental implants, at site 26 and 47 respectively. CT scan was taken on that day.

4. On 19 May 2007, the Defendant told the patient that there was insufficient bone for placement of the proposed implant at site 26. It was decided to proceed with implant at site 47 only. The Defendant raised a standard crestal flap under local anaesthesia ID block, and with standard drilling procedure inserted a Nobel Replace implant at site 47. After inserting the implant, the flap was closed with sutures and medication was given.

5. Later that day, the patient suffered numbness and bouts of severe pain near the right side of the lower lip. As the numbness and pain persisted, on 21 May 2007 the patient told the Defendant's clinic assistant over the telephone that there was still pain and numbness of the right lower lip.

6. On 25 or 26 May 2007, the patient returned to the Defendant with pain and numbness. The Defendant took 2 radiographs, and told the patient that it was a normal phenomenon after implant surgery which would last for 3 weeks, and asked the patient to be patient. The patient asked for the implant to be removed, as he felt very painful and was worried. The Defendant told the patient that the implant could not be removed, and gave him some painkillers.

7. On 28 or 29 May 2007, after taking all the painkillers, the numbness and pain still persisted. The patient went to see the Defendant, who told him to be patient as it was not yet 3 weeks.

8. On 5 June 2007, the patient returned for removal of sutures and told the Defendant that there was no improvement of the numbness and pain. The Defendant again gave him painkillers and told him to give it more time.

9. On 3 July 2007, the patient told the Defendant's clinic assistant over the telephone that the numbness and pain still persisted.

10. On 4 July 2007, the patient went to see the Defendant and told him that he was very depressed and troubled by the numbness and pain in the past one and a half months.

The Defendant again told him to wait and apply hot towel to the face for alleviating the pain.

11. On 12 July 2007, the patient consulted another dentist. After taking an X-ray, the other dentist noted that the inferior dental nerve ("IDN") canal near site 47 had been damaged by the implant. He recommended to remove the implant by unscrewing, as the patient had paraesthesia in that region and the implant's position was poor for restoration purpose. The implant was then removed.

12. Soon after the implant was removed, there was significant improvement to the patient's pain and numbness.

Findings of the Council

13. The most crucial question for us is whether the patient's IDN had been damaged by the Defendant during the implant surgery. On this question, we have the benefit of pre-operative and post-operative radiographs and CT scans.

14. We have examined the radiographs taken by the Defendant on 26 May 2007 and by the other dentist on 12 July 2007. It is clear that the implant overlapped the IDN canal. While this is not conclusive evidence that the implant damaged the IDN canal as the radiographs were 2-dimensional, we have further confirmation of the position from the CT scan taken on 12 July 2007.

15. We accept the interpretation of the CT scan films by the expert Prof. Niklaus Lang. The serial CT scan films, in particular slices number 8 to 12, provide convincing evidence that the cortex of the IDN canal was penetrated from the top near the 47 region.

16. The radiographs together with the CT scan confirmed that the IDN canal was damaged.

17. We then have to consider whether the IDN was damaged, and whether the damage was caused by the Defendant during the implant surgery.

18. The patient's numbness and pain began almost immediately after the implant surgery. Prior to the surgery, he did not have such symptoms. Numbness can only be the result of mechanical trauma, not inflammation. The symptoms persisted for almost 2

months, which is consistent with nerve damage. There was over 50% improvement of the symptoms soon after the implant was removed. Coupled with the fact that the cortex of the IDN canal was penetrated from the top at the 47 region, the only reasonable conclusion is that the IDN had been damaged during the implant surgery.

19. In the submission to the Preliminary Investigation Committee by the Defendant's solicitor, it was said that the Defendant "*has carefully reviewed his own X-ray films taken on 26 May 2007 again. Dr Ng now agrees that the X-ray films done by him could raise suspicion of nerve injury. Yet, it was minute and subtle and not easy for him to make a finite diagnosis....The fact that Dr. Ng was not able to find nerve injury upon reviewing his own X-ray films on 26 May2007 would mean that Dr. Ng had...made an error of judgment at the most.*"

20. It has been suggested by the Defence that nerve injury is one of the known complications of an implant surgery and it cannot be avoided even with proper care and caution. We disagree. The IDN damage in the present case was the result of substandard treatment planning and execution, not the result of surgical complication arising from proper planning and execution.

21. The Defendant used the Nobel Procera software to plan the site, angle and depth of the implant, with a safety margin of 3 mm between the implant and the IDN canal. While we make no comment on the accuracy and reliability of the software, there was no concrete measure for transferring the plan from the computer to the drilling site to ensure that the drilling proceeded in accordance with the plan.

22. The OPG radiograph and the study model showed that the site of the implant deviated significantly from the original plan. The original plan as indicated in the study model was to insert the implant at site 47, but it was actually inserted at site 48, making a deviation of at least 1 dental unit. This showed that the plan was poorly executed.

23. Implant surgery, particularly at a site of high risk as in the present case, calls for high precision both in planning and in execution. This is what surgical precision means.

24. Proper implant surgery would require the use of directional guide and depth gauge, drilling gradually on small increments, with repeated measurements after each increment including intra-operative radiographs. It is not proper to attempt to achieve the intended depth in a single drilling, particularly in a dangerous site with a very small safety margin. We see no evidence that this was done by the Defendant.

25. We are satisfied that the Defendant failed to exercise reasonable care and competency at both the planning and the execution stage of the implant surgery. We are satisfied that the Defendant's conduct would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. We find him guilty of unprofessional conduct as alleged in Charge (i).

26. We then turn to Charge (ii). Almost immediately after the surgery, the patient complained repeatedly of numbness and pain. These persisted for more than a month.

27. While pain and numbness may result from implant surgery for a few days, persistent numbness and pain for a longer period are classic symptoms of nerve damage and calls for investigation to identify the cause. A dentist exercising reasonable care and competency will be alerted to the possibility of nerve damage and investigate in that particular direction.

28. Other than taking 2 periapical radiographs on 26 May 2007 and intra-oral examination, the Defendant had not done anything to investigate the cause of the persistent symptoms.

29. A number of factors showed that the Defendant was either careless or of substandard competency. Firstly, in the submission to the Preliminary Investigation Committee, it is stated that "*According to Dr. Ng's knowledge and experience, mild pain and numbness was common after an implant surgery*". This reflects his poor knowledge about implant surgery, as numbness is uncommon after implant surgery.

30. Secondly, the 2 periapical radiographs (Exhibit F-3) taken by the Defendant on 26 May 2007 were of poor quality, showing only a small part of the IDN canal. This makes it difficult for a dentist to detect problems accurately. This reflects that the Defendant either did not know what he was trying to look for, or that he did not care about the outcome of the radiographs. If the radiographs do not show the intended area properly, another radiograph should be taken. The Defendant did not, and caused no further investigation to be made.

31. Thirdly, even on the basis of the unsatisfactory images in Exhibit F-3, it can be seen that the implant extended into the IDN canal. Nevertheless, the Defendant failed to see any abnormality. However, as he admitted in his submission to the Preliminary Investigation Committee, he was able to see the nerve injury upon careful review of

the radiograph. This can only be explained by the fact that he was careless or grossly incompetent at the time he looked at the radiograph in May 2007.

32. We are satisfied that the Defendant had failed to exercise reasonable care and competency in dealing with the patient's symptoms of persistent numbness and pain. We are satisfied that the Defendant's conduct would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. We find him guilty of unprofessional conduct as alleged in Charge (ii).

Sentencing

33. The Defendant has a clear record. Other than this, we see no mitigation of weight.

34. We are surprised that Defence Counsel urged us to give the Defendant credit for remorse and cooperation during the inquiry. He mitigated on the basis that the Defendant shortened the inquiry by not giving evidence, and blamed the lack of a pleading guilty mechanism under the Dentists Registration Ordinance for not being able to render further cooperation during the inquiry.

35. It is true that the Dentist Registration Ordinance does not provide for the dentist to plead guilty to the charge, and it is always for this Council to determine whether the proven facts constitute unprofessional conduct.

36. However, Defence Counsel completely ignored the clear provisions of the "*Practice Directions on Preliminary Investigation of Complaints*" and the "*Practice Directions on Disciplinary Inquiries*". Paragraph 12 of the former provides that honest admission to the PIC of allegations which are true and assistance to the PIC during the preliminary investigation process are mitigating factors for which credit will be given in sentencing. Paragraph 18 of the latter provides that admitted facts should be drawn up in respect of undisputed facts in order not to waste time on proving such undisputed fact, and saving of time by such admissions and remorse reflected by admission of the charge(s) are mitigating factors.

37. Even if the Defendant is not conversant with the Practice Directions, it is the duty of Defence Counsel to explain the provisions to him so that he can act in his favour, assuming that he had intended to make admissions as suggested by Defence Counsel.

38. We must point out that this inquiry took 4 days. During preliminary investigation the Defendant denied the allegations. In the inquiry, there was strenuous challenge to the Legal Officer's evidence, resulting in the need to issue a summons to compel the attendance of a witness. All the Legal Officer's witnesses, factual or expert, were extensively cross-examined. All along the Defence indicated that the Defendant would give evidence in his defence, and this only changed after all the Legal Officer's evidence has been adduced. We do not see how this can be characterized as cooperative. The approach to preliminary investigation and the inquiry contradicts the claim of remorse. We see no remorse at all.

39. One may argue that the injury caused to the patient's IDN was not particularly serious. However, the Defendant's conduct in proceeding to implant surgery at a highly vulnerable site without the necessary safeguards could have caused more serious injury. It was only fortunate that the patient's injury had not been more serious.

40. We bear in mind that the purpose of disciplinary proceedings is not to punish the Defendant, but to protect the public from those who are unfit to practise dentistry because of incompetence or other reasons, and to maintain public confidence in the dental profession by upholding the reputation of the honourable profession.

41. We are concerned about the Defendant's competence in a number of areas, including oral surgery, oral radiology and implant dentistry, as demonstrated in his response to the PIC and his management of the patient's problem in this case. Having regard to our duty to protect the public, we consider that an order of removal from the General Register for a period of 3 months is appropriate.

42. On the other hand, we are of the view that the Defendant should be given an opportunity to improve his competence while he continues to practise. This will be to the benefit to both the Defendant and the society.

43. Having regard to all the relevant circumstances, we make the following orders:-

(a) the Defendant's name be removed from the General Register for a period of 3 months, and the operation of the removal order be suspended for a period of 2 years, subject to the supervision condition set out below during the suspension period;

(b) the supervision condition is in the following terms:-

(i) The Defendant's practice during the suspension period be subject to supervision by a supervisor to be appointed by this Council.

(ii) The supervisor shall conduct supervision visits to the Defendant's clinic at least once in every 3 months during the suspension period.

(iii) The supervision visits shall be conducted without advance notice to the Defendant.

(iv) The supervisor shall be given unrestricted access to all parts of the clinic and all documents (including clinical records) which in his opinion are necessary for proper supervision.

(v) The Defendant shall not practise implant dentistry until he has proved to the satisfaction of the supervisor that he has satisfactorily completed structured continuing education courses in oral surgery, oral radiology and implant dentistry required to bring his competence in these areas up to standard. The courses shall be approved in advance by the supervisor.

(vi) The Supervisor shall report to the Council the progress of the supervision at the end of the 6th, 12th, 18th and 24th month during the suspension period. If any irregularity is detected, the irregularity should be reported as soon as practicable.

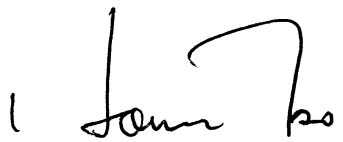
Other remarks

44. We feel obliged to make some remarks on the proper approach of officers prosecuting disciplinary charges in disciplinary inquiries. In our ruling on the submission of no case to answer on Charge (iii), we expressed our strong reservation on the unduly narrow interpretation of charge (iii) adopted by the Legal Officer which compelled us to dismiss the charge.

45. While it is not for us to inquire into why he took that approach, we must emphasize that unlike private litigation he performs a public duty and must act in the interest of protecting the public.

46. While it is the duty of an officer prosecuting disciplinary charges to act fairly, such fairness means fairness to both the Defendant and the public. An unduly narrow view in favour of the Defence is not fairness to the public.

47. We are even more surprised that, after the expert witness's evidence had been challenged for the lack of supporting reference articles and upon the expert raising that he had obtained several supporting reference articles, the Legal Officer himself objected to the production of such articles to reinforce the evidence of his own expert. This cannot be the proper approach. This should not happen again.



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