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

Disciplinary Inquiry under s.21 of DRO

Defendant: Dr WAN Ming Yeung 尹銘洋牙科醫生 (formerly registered as WAN Chi Hang, Franco 尹志恆) (Reg. No. D03451)

Hearing dates: 19 June 2014 (Day 1), 25 June 2014 (Day 2), 4 September 2014 (Day 3), 15 September 2014 (Day 4)

1. The Defendant, Dr WAN Ming Yeung (formerly registered as WAN Chi Hang, Franco), is charged that:-

"He, being a registered dentist, disregarded his professional responsibility to adequately treat and care for his minor patient Miss [redacted] ("Miss [redacted]") or otherwise to have neglected his professional duties to her in that, in about July 2010 to August 2012 –

(a) he devised an orthodontic treatment plan for Miss [redacted] with inadequate pre-operative examination and assessment; and/or

(b) he failed to obtain informed consent from Miss [redacted] and/or her parents before commencing the orthodontic treatment; and/or

(c) he commenced orthodontic treatment for Miss [redacted] without first making a proper diagnosis and/or proper treatment plan; and/or

(d) he failed to take adequate steps to keep the patient information of Miss [redacted] confidential;

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

Facts of the case

2. The patient was 11 years old when she consulted the Defendant on 19 July 2010 for orthodontic treatment. The Defendant referred the patient to have panoramic and cephalometric radiographs taken.

3. On 22 July 2010, the Defendant took impressions of the patient's upper and lower dental arches for study models to be made. He made the following notes in the patient record:-

"(1) Upper and lower anterior crowding.
(2) Palatal displaced 12 and 22.
(3) Class I left and right molar and canine relationship.
(4) Unilateral crossbite from 23 to 27.
(5) Gummy smile warned patient cannot be solved by orthodontic treatment alone."

4. Orthodontic treatment commenced on 29 July 2010, and continued until early 2012 when the Defendant decided to refer the patient to a specialist. At various consultations during the treatment period, teeth 14, 24, 34 and 44 were extracted, and a rapid palatal expander was fitted to the upper arch. A lower anchorage device, orthodontic brackets, archwires and power chains were fitted.

5. During the treatment period, the parents observed various problems of the patient, including dislodgement of the archwires, increasing open bite and drooling. When the mother asked about those problems, the Defendant simply told her to have confidence in him and gave strange

explanations for the problems (e.g. open bite caused by playing wind instruments, although the patient had not played any wind instrument).

6. In December 2011, the Defendant told the father that the dental condition was unsatisfactory, and raised the need for referral to a specialist. In February 2012, the Defendant referred the patient to a specialist in orthodontics. However, the specialist subsequently refused to accept the referral.

7. Feeling disappointed and losing confidence in the Defendant, the parents took the patient to see another specialist in orthodontics recommended by their friends. That specialist made a diagnosis of open bite, which required surgical rather than orthodontic treatment. He recommended that the orthodontic devices be removed for observation for 6 months, before reassessing the way forward.

8. The patient returned to see the Defendant on 23 February 2012. Having spoken to that specialist over the telephone, the Defendant removed all orthodontic devices from the patient's mouth.

9. On 27 August 2012, the patient's parents went to see the Defendant to discuss the arrangements for the patient's further treatment. At the end of the discussion, the parents discovered that there was another man present inside the surgery in which the discussion took place. When the parents asked who he was, the Defendant told them not to involve the man who was his friend and was unconnected with the case.

10. On 18 September 2012, the mother made a complaint to this Council against the Defendant.

Findings of the Council

11. At the preliminary investigation and throughout the Secretary's case in the inquiry, the Defendant contested the allegations in all 4 charges. Nevertheless, in the middle of the Defence case when the Defendant was giving evidence, Defence Solicitor informed us that the Defendant changed his mind and would admit all factual allegations in the 4 charges. Under oath, the Defendant confirmed the same when

being re-examined by the Defence solicitor. However, he went on to give further evidence which in effect disputed some of the allegations. Given such inconsistent stances taken by the Defendant, we have no alternative but to evaluate all evidence and make the necessary findings on the allegations.

12. We remind ourselves that none of the charges is about the treatment itself. Charges (a) to (c) are about what the Defendant failed to do before treatment, i.e. pre-treatment examination and assessment for Charge (a); pre-treatment advice and explanation for Charge (b); and pre-treatment diagnosis and planning for Charge (c). Charge (d) is about failure to maintain confidentiality of the patient's information.

13. Before making a finding on the factual allegations, it is relevant for us to point out that the Defendant impressed us as a dishonest and unreliable witness. In reaching this finding, we have warned ourselves of the possibility that the Defendant might have acted out of carelessness or had forgotten what actually happened. However, we are satisfied that he deliberately gave false evidence with the intention of misleading this Council, based on the following reasons:-

    (a) In his explanation to the Preliminary Investigation Committee and in his evidence under oath in the inquiry, the Defendant produced silicone bite registration impressions categorically alleging that they were taken from the patient's mouth, to ensure proper articulation of the study models to truly represent the occlusal relationship of the upper and lower arches. However, during our questions he admitted that the silicone accessory was not taken from the patient's mouth, but was only fabricated from the master study models. This was not a bite registration, but a fabricated device to mislead us that he had done the proper pre-treatment assessment.

    (b) Mamelons were obviously present in the patient's lower incisors. However, there were no corresponding mamelons in the master study models produced by the Defendant. Careful examination revealed that the lower arch study model was in fact refabricated from broken halves, with the mamelons trimmed off. If the Defendant had examined the study models

during treatment planning as he claimed, he could not have missed such obvious defects of the study models.

(c) The Defendant claimed that he had made cephalometric tracing and measurements for analysis, but after formulation of the treatment plan he had discarded the tracing and measurements, as they were no longer needed. Cephalometric tracing and measurements are essential for analysing various parameters required for orthodontic treatment. They are required not only for pre-treatment planning, but also for mid-treatment progress assessment and end-treatment evaluation. Once these intricate tracings and measurements are made, they become part of the clinical record and there is no reason to discard them, even after treatment has been completed. It is an affront to logic for the Defendant to say that he had done the tracing and measurements but then discarded them. It is impossible that he could remember all the measurements without any record as he claimed.

(d) The Defendant admitted that at the discussion with the parents on 27 August 2012 the man present was a dentist who was about to join his practice, but he lied to the parents that he was a friend of his for fear that they might involve him in the case. This showed that the Defendant was prepared to lie in order to suit his purposes.

14. Having assessed all evidence, we find the parents to be honest and reliable witnesses. They gave evidence in a straight forward and unexaggerated manner. We accept their evidence.

15. To the contrary, we reject the evidence of the Defendant.

16. Having considered all evidence, we make the following factual findings:-

(a) Before treatment, the Defendant arranged for the necessary radiographs to be taken.

(b) Pre-treatment clinical photographs were not taken.

(c) Although impressions were taken for study models to be made, the models were not true representation of the patient's dental condition. The lower arch model had been refabricated from broken pieces, and some parts of the teeth were improperly trimmed off.

(d) No bite registration was taken, thus making it impossible to trim the study models to truly and accurately represent the occlusal relationship between the upper and low arches.

(e) Cephalometric tracing and measurements were not made. Only rudimentary measurements were made and recorded on 20 January 2012.

(f) The patient record only recorded clinical findings. There was no record of the chief complaint, orthodontic assessment and diagnosis.

(g) An incomplete treatment plan was recorded, only stating the use of rapid palatal expander and the extraction of 4 teeth. There was no mention of any retention measures.

(h) Apart from the possibility of gummy smile, no advice was given on the risks and complications of the proposed treatment. No advice was given on alternative treatment options.

(i) At the discussion with the parents on 27 August 2012, there was another person unconnected with the patient's treatment present within hearing distance, as the surgery was a very small room.

(j) During the discussion, the patient information including her personal particulars, her dental condition and treatment outcome were raised. Given the nature of the discussion, the Defendant should have anticipated that it was inevitable that such information would be raised.

17. We then turn to consider the individual charges.

Charge (a)

18. Charge (a) is about the failure to make proper pre-treatment examination and assessment, before formulating the treatment plan.

19. A proper orthodontic treatment plan will require the following process:-

    (a) assessment of the patient's dental and skeletal conditions, including the jaw relationship, the angulation and alignment of the teeth, and the occlusal relationship;

    (b) assessment of the deviation from accepted orthodontic norms;

    (c) plan an intervention programme for improving the patient's aesthetic and functional conditions.

20. The relevant assessments should be made with the assistance of a number of findings based on radiographs, lateral cephalometric measurements and analysis, and properly articulated study models.

21. The panoramic and lateral cephalometric radiographs taken are proper for the present case.

22. However, the study models were improperly made and thus could not provide a proper assessment of the patient's dental condition. The lack of bite registration made it impossible for the study models to be properly trimmed and articulated for orthodontic assessment.

23. Lateral cephalometric analysis is an important assessment for orthodontic treatment planning. The lack of cephalometric measurements means that the assessment in the present case was glaringly inadequate.

24. Although the Defendant claimed that he had taken clinical photographs but had lost them when he computerized the patient records in 2012, we do not accept such claim. The lack of clinical photographs was a significant defect in the assessment process.

25. We are of the view that the Defendant did not make a proper diagnosis (as opposed to clinical findings) of the patient's dental condition. Even if he did, the inadequacy of the necessary assessments made it difficult, if not impossible, to formulate a proper treatment plan.

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

Charge (b)

27. Charge (b) is about the failure to give proper advice and explanation before obtaining the parent's consent for the proposed treatment.

28. Consent for dental treatment must be informed consent given after proper advice and explanation of the nature and effect of the proposed treatment, the risks and complications involved, and the alternatives available. Consent given in the absence of proper advice and explanation is blind consent and is invalid.

29. The extent of explanation required will depend on the complexity and importance of the proposed treatment. Complicated and more important treatments, particularly irreversible treatments, will require more detailed explanation.

30. The present case was a major treatment involving a long period, the extraction of 4 teeth, and repositioning of a large number of teeth. The patient will suffer inconvenience and pain for an extended period, during the treatment period.

31. The patient was at early adolescence. Her anterior open bite dental condition would evolve with her growth, and her orthodontic problem might be alleviated or exacerbated. This would also add uncertainty to the outcome of treatment. The parents should be advised of this variable, and the alternative of observing the dental condition until it became stable.

32. We have made the finding that apart from the possibility of persistence of gummy smile, the Defendant had not given any advice on the risks and complications involved. Neither did he advise the parents of any alternative treatment options. Consent thus obtained was not informed consent.

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

Charge (c)

34. Charge (c) is about the failure to make proper pre-treatment diagnosis and/or planning.

35. We have made the finding that the Defendant failed to make the relevant assessments and diagnosis necessary for proper planning. It follows that there was lack of vital information required for proper planning of the treatment. The planning process was defective. Obviously, he did not consider retention measures.

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

Charge (d)

37. Charge (d) is about the failure to take adequate measures to maintain confidentiality of the patient's information.

38. We have made the finding that a man unconnected with the patient's treatment was present within hearing distance in the surgery during the Defendant's discussion with the parents about the patient's further treatment.

39. During the discussion, the patient information including her personal particulars, her dental condition and treatment outcome were raised.

40. When being confronted by the father, the Defendant said that the man was a friend of his unconnected with the case. In his evidence in the inquiry, he said that the man was a dentist who was about to join his practice, and he lied to the patient's father in order that the father would not involve that man in the case. The Defendant further explained that he was discussing other matters with that dentist before the patient's parents entered the surgery.

41. A dentist has the professional duty to take proper measures to maintain the confidentiality of the information of his patients. It is a breach of the dentist's professional duty to reveal the information of his patients to other persons without the relevant patient's consent.

42. In dental treatment, persons involved in the patient's treatment are entitled to have access to the patient's information on a need-to-know basis. Such persons include members of the treatment team, such as surgery assistants, who need to have access to the patient's information in order to perform their duties.

43. However, the patient's information should not be disclosed to persons unconnected with the patient's treatment, even if the other person is a dentist.

44. In the present case, given the nature of the discussion, the Defendant should have anticipated that the patient's information including her personal particulars, her dental condition and treatment outcome would be raised. As the other dentist was unconnected with the patient's treatment, the Defendant should send out the other dentist before continuing with the discussion. Failing to do so was a breach of his professional duty to the patient.

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

Sentencing

46. The Defendant has a clear record.

47. Defence Solicitor made the submission that after confirming that he would admit all allegations of the charges, the Defendant did not wish to give further evidence to dispute the allegations, but did so only because Council Members wished to ask him questions. That is not the point. Our concern is not that he continued to give evidence. Our concern is that at one stage he said that he would admit all the allegations, but at the next stage he disputed the allegations. It is also necessary for us to point out that, more significantly, the Defendant disputed the allegations during further cross-examination by the Legal Officer on matters arising from Members' questions, and his shifting stance was specifically queried by the Legal Officer.

48. 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 by maintaining the reputation of the profession.

49. Integrity is an important attribute for registered dentists. The public expects registered dentists to act with honesty.

50. We have made findings that the Defendant fabricated false evidence to mislead us. Although such dishonesty did not arise in the treatment or in dealings with the parents, we must point out that it was a carefully planned and orchestrated effort in an attempt to mislead both the Preliminary Investigation Committee and the Council. This is the classic situation of adopting a more serious misconduct to cover up a less hideous misconduct, thus aggravating the whole problem.

51. While it can be argued in the Defendant's favour that he resorted to such dishonest conduct under the pressure of being investigated for unprofessional conduct, we cannot lose sight of the fact that the Defendant is prepared to act dishonestly to the extent of fabricating false evidence. In dental practice, dentists always act under pressure. Acting under pressure is no excuse for resorting to dishonest acts. If

he succumbs to pressure, he is not a fit and proper person to practise dentistry.

52. In usual treatment cases involving deficient competency alone without dishonesty, the defendants can be dealt with by way of suspended orders with conditions designed to improve their competence to bring them up to the required standard. However, where the defendant has been demonstrated to be acting with dishonesty, suspended orders are inappropriate.

53. We bear in mind that the dishonesty in the present case did not arise in the dealings with the parents, but in defending the charges during preliminary investigation and the inquiry. We cannot and should not aggravate the sentencing for his dishonesty in defending the charges. We should only impose disciplinary orders commensurate with the gravity of the charges. However, such dishonesty reflects upon his attitude and propensity to re-offend. It is a significant factor to be taken into consideration in determining whether suspension of the disciplinary order is appropriate.

54. It is correct that no one can tell whether in future, when the patient's dental condition is reassessed, the patient's problem can be fully corrected. However, it cannot be overlooked that the patient has suffered significant inconvenience and pain during the long treatment period, and the treatment aggravated rather than alleviated her dental problem.

55. Other than his clear record, there is no mitigating factor of weight.

56. Having regard to the gravity of the charges and the mitigating factor, we consider that in respect of Charges (a), (b) and (c) which are competency related, a global order of removal from the General Register for a period of 3 months is appropriate. In respect of Charge (d), an order of reprimand is appropriate.

57. We then have to consider whether the orders can be suspended. Putting all factors in the balance, we are of the view that suspension of the orders is not appropriate.

58. In the circumstances, we make the following orders:-

(a) In respect of Charges (a), (b) and (c), the Defendant's name be removed from the General Register for a period of 3 months.

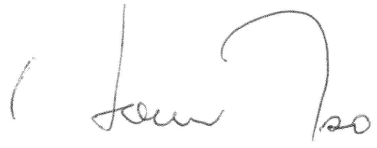
(b) In respect of Charge (d), the Defendant be reprimanded.

(c) The above orders shall not be suspended.

Other remarks

59. While it is for the Council in future to consider the application for restoration to the General Register if and when the Defendant makes such an application, we recommend that before approving such application the Council should require evidence that the Defendant has completed continuing professional development courses in orthodontics to the equivalent of 30 CPD points.

60. Given our finding that the Defendant has given under oath false evidence fabricated in advance, we shall refer the matter to the relevant authorities for investigation. The relevant evidence shall be kept in safe custody, to be provided to the authorities on request for investigation and any follow-up purposes.



Dr Homer Tso, SBS, JP
Chairman, Dental Council