

**SINGAPORE DENTAL COUNCIL DISCIPLINARY INQUIRY AGAINST
DR. X**

2 to 4 March 2015, 19 May 2015

Disciplinary Committee:

Dr Jennifer Neo (Chairperson)
Dr Grace Ong
Dr Kaan Sheung Kin
Mrs Noor Quek (Lay person)

Legal Assessor:

Mr Andy Chiok (M/s Michael Khoo & Partners)

Counsel for the SDC (M/s Colin Ng & Partners):

Ms See-Tow Soo Ling
Mr Edwin Chia

Counsel for the Respondent (M/s MyintSoe & Selvaraj):

Dr Myint Soe

DECISION OF THE DISCIPLINARY COMMITTEE

(Note: Certain information may be redacted or anonymised to protect the identity of the parties.)

1. This inquiry arose out of a complaint dated 22 November 2011 (“the Complaint) by one AA, (the “Complainant”) in respect of treatment that he received at the Respondent’s clinic. The Respondent Dr. X is a dentist who has a dental clinic.
2. This inquiry was convened to inquire into 2 Charges against the Respondent.
3. The relevant facts are:
 - (1) The Complainant attended at the Respondent’s clinic on various occasions in 2007. Broadly, the treatment procedure entailed the extraction of a tooth on 4 June 2007 and an implant procedure that was carried out on 30 July 2007.
 - (2) The treatment was uneventful and the crown was placed on 7 December 2007.
 - (3) Sometime between July to September 2011, the Complainant called and also attended at the Respondent’s clinic and asked for a breakdown of the cost of the procedures performed by the Respondent.

- (4) Between 2 September 2011 and 22 November 2011, the Complainant wrote to the Respondent, seeking a breakdown of the claims made by the Respondent on the Complainant's CPF. The Respondent did not provide the breakdown but asked the Complainant to attend at the clinic and have a meeting to discuss the matter.
- (5) The Complainant lodged the Complaint on 22 November 2011.

A point of law – the Complaint was not supported by a Statutory Declaration

4. We first turn to a point of law raised by the Respondent. It is undisputed that on 22 November 2011, the Complainant lodged a complaint at the SDC. This “first” complaint was substituted by the Complainant on the same day with the Complaint, which then formed the basis for the Charges in this inquiry. It is not in dispute that the Complainant did not provide another statutory declaration for the Complaint.
5. The Respondent objected to the validity of these proceedings on the basis that there was no statutory declaration supporting the Complaint, unlike the “first” complaint. The relevant provision is section 34(4) of the Dental Registration Act:

“34(4) Every complaint made or information given shall be in writing and *shall* be supported by such statutory declaration as the Council *may* require except that no statutory declaration shall be required if the complaint or information is made or given by any public officer.” (italics added)

6. Various legal authorities were cited by the parties in support of their opposed positions. After having perused them, and with the advice of the Legal Assessor, we are of the view that the fact that these proceedings are not invalidated for the following reasons:
 - (1) Although it appears that the requirement of statutory declaration is mandatory, we understand that the word “shall” can, in appropriate circumstances confer a discretionary obligation.

- (2) We note that the Council retains a discretion in that it “may require” a statutory declaration. This is consistent with the judicial decisions cited by the SDC.
 - (3) Looking at the intent behind the requirement for a statutory declaration, the purpose was to deter vexatious complainants. In the present case, this concern did not materialize because the Complainant had stood by his Complaint and attended these proceedings.
 - (4) More importantly, the Respondent was not prejudiced because he had been provided with the opportunity to address the Complaint, and the matters in the Charges were drawn from the Complaint.
7. For the above reasons, we are of the view that these proceedings are not invalidated by the absence of a statutory declaration for the Complaint.

The Charges

8. The Charges against the Respondent are annexed as “A”. The Respondent contested both Charges in this inquiry.

The First Charge

9. The nub of the First Charge is whether the Respondent had misrepresented to the Complainant that the cost of the implant procedure was \$3,500 and could be paid entirely from the Complainant’s Medisave account. It cannot be disputed that such a representation, if made, is unprofessional conduct that would warrant sanctions against a practitioner.
10. The Respondent denied making such a representation. He contended that the costs of the treatment would exceed \$3,500 and he could not have made such a representation. If at all there was any representation, such a representation was merely a “fee quote” and not a misrepresentation.

The SDC's case

11. It is undisputed that the Respondent had, after treating the Complainant, submitted various claims for payment from the Complainant's Medisave account. The Respondent's justification for these claims was that various procedures had been carried out by him.
12. During the inquiry, counsel for the SDC cross-examined the Respondent whether he had in fact performed these procedures. The purpose of the cross-examination is to demonstrate that the Respondent had not done these procedures, and, by making various claims from the Complainant's Medisave Account, endeavored to raise sufficient monies which would then be used to pay for the dental implant procedure. This will enable the Complainant to make payment without any cash payment, and hence make good the Respondent's purported representation to the Complainant that the cost of the entire procedure is payable from his Medisave Account.
13. Counsel for the Respondent took objections in his submissions. He contended that this line of cross-examination are irrelevant to the First Charge and hence ought to be disregarded by this tribunal.
14. We are aware that the charges set the boundaries of the conduct of these proceedings. To this end, we are not convinced by the SDC's approach of extrapolating evidence of the purported misrepresentation from the non-performance of any procedure¹. To put it simply, the alleged representation could have been made or otherwise, regardless whether the procedures were carried out by the Respondent.

¹ This extrapolation is set out at para. 78 of the SDC's closing submissions where it was stated: "It is the Council's submission that the evidence shows that the Respondent had recovered the full cost of the dental implant procedure from the Complainant's Medisave account and did not require the Complainant to pay any cash for the \$3,500.00 which was quoted to the Complainant. In the circumstances, the Council submits that the Respondent had indeed made the said misrepresentation to the Complainant and it was done dishonestly."

15. During the course of the inquiry, we were therefore mindful of the fact that whether the procedures were actually carried out was not directly relevant to the First Charge. The main issue in this case is whether the Respondent had misrepresented to the Complainant that the cost of the dental implant procedure could be paid entirely from his Medisave account when that was untrue. Nonetheless, we allowed counsel for the SDC some latitude in the conduct of the cross-examination because the cross-examination also covered the Respondent's interactions with the Complainant which are directly relevant to the First Charge. Further, the Respondent's explanation for the various procedures may provide valuable clues as to how he had arrived at the claims that he ultimately made against the Complainant's Medisave Account. These explanations could be used to test the Respondent's account of what transpired between the Complainant and him.

16. After having had the benefit of hearing the witnesses and examined the documents, we are of the view that the First Charge against the Respondent is not made out because the matters alleged therein had not been proven beyond a reasonable doubt. In particular, we are unable to find that the requisite threshold was reached. Our reasons are:
 - (1) The primary evidence on what transpired between the Respondent and the Complainant came from the two men, and is oral in nature. We cannot reject with certainty either version of the evidence by both witnesses. We would also bear in mind that there are no true "independent" witnesses in the inquiry, save for Dr. A. While the Respondent made much of the animosity of the Complainant as evinced from the Complainant's emails, we do not think that this has the effect of completely undermining the Complainant's evidence. We note that he candidly conceded points against him under cross-examination and was not unduly combative.

 - (2) While we noted that there were inconsistencies in the Respondent's testimony and the documentation of the various procedures, we are not convinced that such inconsistencies directly proved the matters alleged in the First Charge. As we have stated above, there is no logical or direct nexus between the

performance or otherwise of the procedure, and the making of the alleged representation.

- (3) While the Dental Implant Consent Form² stated an amount of \$3,500, this form was not the basis of the case against the Respondent. In any case, the Form clearly excluded medication, radiographs, removal of tooth / teeth and treatment of any other dental infections.
 - (4) Both sides referred to the medical audits conducted on the Medisave claims submitted by the Respondent. The difficulty that we have with this aspect of the evidence was that the evidence presented of Dr. A could not conclusively point to whether certain procedures were in fact performed by the Respondent. The best evidence on this aspect remained the X-rays, and clinical notes, apart from the testimonies of the relevant witnesses. As we will highlight below, certain X-rays are not available.
17. For the above reasons, while we were inclined to disbelieve the Respondent, we are mindful that the Charge against him has to be proven beyond any reasonable doubt. We are unable to find that the First Charge had been proven such by the SDC.

The Second Charge

18. We now turn to the Second Charge.
19. The Second Charge premised on two disputed points between the SDC and the Respondent:
- (1) Whether the relationship had been terminated by the time the Complainant made his demands to the Respondent for the breakdown of the claims made to the Medisave Account, and

² This Form appears at page 19 of the Agreed Bundle.

- (2) Whether the information sought by the Complainant was “medical information” as set out in the Ethical Guidelines:

“4.2.5.3. Termination of a dentist-patient relationship

...

Where a dentist-patient relationship is terminated by a patient, a dentist should not withhold medical information from the patient or another dentist/doctor to whom the patient subsequently goes, if requested by the patient.”

20. We have no doubt that on the facts, by the time the Complainant sought the information from the Respondent, their dentist-patient relationship had ended.
21. However, we are unable to say that the information sought by the Complainant was “medical information” within the ambit of paragraph 4.2.5.3. The information sought by the Complainant from the Respondent was a breakdown of the claims made by the Respondent. While arguably the information contained an element of medical information in that the procedures would have to be described, the context of the request was that the Complainant wanted the breakdown of the claims i.e. how the total sum of \$3,700 deducted from his Medisave Account was derived. Given this context, we cannot say that the nature of the information sought was “medical information”, as opposed to financial information.
22. We also note that the intent and concern of paragraph 4.2.5.3 was the continual care of the patient in the event that he terminated the services of his dentist. This is evident from the complete paragraph that states:

“4.2.5.3. Termination of a dentist-patient relationship

There may be reasons for a dentist to want to terminate his professional relationship with a patient. It could be a serious personality conflict, or he may feel that a patient's or the relatives' confidence and trust in him are undermined that he cannot continue with the management of the patient.

When a dentist-patient relationship is to be terminated by a dentist, he has the responsibility of offering a referral to another dentist who will take over the entire care of the patient. The referring dentist shall also ensure that sufficient information is communicated to the new dentist to enable a seamless transition of care. Such termination should be mutually agreed on whenever possible.

Where a dentist-patient relationship is terminated by a patient, a dentist should not withhold medical information from the patient or another dentist/doctor to whom the patient subsequently goes, if requested by the patient.”

23. While the framers of the Second Charge may have intended to slot the Respondent's conduct into the paragraph 4.2.5.3 pigeonhole of the Ethical Guidelines, we do not think that the framing of this charge was apt given the factual matrix and the context of the request. For this reason, we are of the view that the Second Charge, as framed, must fail.
24. Notwithstanding our decision, we frown upon the Respondent's response to the Complainant's request for the information. We cannot understand why the Respondent, when faced with the request for the breakdown of the claims, must insist on a face-to-face meeting when the Complainant had clearly conveyed that he wanted a written breakdown and did not want a meeting. The Respondent's claim that he wanted to explain the breakdown using the Medisave deductions data is unconvincing, when it was clear that all the Complainant wanted was to know which were the procedures and the breakdown of the unit cost that justified the total claim of \$3,700.
25. We are of the view that if the Second Charge had been framed differently i.e. on the basis of the Respondent's unjustified refusal to provide the breakdown of the claims (as opposed to a specific breach of paragraph 4.2.5.3), then such a charge involving a breach of general professional ethics would have been proved. A dentist cannot refuse to provide a patient with information of how the charges paid by a patient were derived. It is a basic entitlement of a patient to have such information.

To refuse to do so invites the inference that there was somehow a lack of transparency in levying charges, as well as the more damaging allegation of dishonesty. It would in fact serve a dentist well to furnish such information so that the dentist-patient relationship is not undermined.

Aspects of the Respondent's practice that concerned us

26. While we had dismissed the two Charges in these proceedings, we wish to add our observations and comments on various aspects of the Respondent's practice that troubled us and which we found to be unsatisfactory and troubling. These points are raised with the hope and expectation that the dental profession will take note of these aspects, and improve the standard of practice:
- (1) The Respondent used a general Dental Implant Consent Form in his practice. The Form used was a general one for a "blanket" consent by his patients to a dental implant procedure. Such a practice is not desirable because it does not inform the patient of specific contingencies e.g. the necessity to perform a bone graft and the attendant risks. In our view, there was no informed consent because the consent was taken from the Complainant after the procedures were performed.
 - (2) We note that the record-keeping of the Respondent left much to be desired. The case-notes are scanty and did not record sufficient particulars of the procedures which later formed the subject matter of the Medisave claims. There was no record of a pre-operation discussion between the Respondent and the Complainant. From the Complainant's account, it seems that the Respondent did not discuss with him the detailed procedures, e.g. bone to be taken from another site, i.e. that there will be two surgical sites. This is poor communication with a patient for a practitioner and can amount to a failure to take informed consent. It is a very high risk behavior, and certainly should not be condoned in any profession, more so in health care where the patient's safety is paramount.

- (3) Further, we think it was extremely shoddy that a complete set of the X-rays taken during the treatment procedure were not produced. The Respondent did not produce the post-operative X-rays taken on various dates and a dental panoramic tomography taken on 4 June 2007. These post-operative X-rays would have resolved, amongst others, the disputed issue whether bone graft had indeed been carried out by the Respondent. We also note that a portion of the existing X-rays were not identified as the Complainant's. Under the Guidelines on Medisave Claims for Dental Surgery, "*Radiographs should ideally have the patient's identifier (name/NRIC) and date of radiograph embedded or permanently labelled.*"
- (4) What is also alarming is that the Respondent had asserted during his testimony that he routinely carried out bone graft as part of dental implant procedures. All the more so the record keeping should have been better. We are also of the view that bone grafts should not be carried out routinely, but only when there is insufficient bone for an implant procedure and not as a matter of routine. The practice of routinely carrying out bone grafts is questionable.
- (5) We also note that with regard to the clinical management of the patient, the treatment notes on 4 June 2007 stated "localized perio abscess at #23 with 5mm pocket". The treatment that the Respondent rendered was LA incision and drainage ("I&D"). The usual treatment and ideal treatment for a "localized abscess is LA Root planing and not incision and drainage. In our view, an incision and drainage will not solve the patient's problem, since it is usually an emergency treatment. In addition, the Medisave claim for "cellulitis and abscess of oral soft tissue" did not match the clinical diagnosis of intra-oral abscess.
- (6) On 9 June 2007, the Respondent noted that the patient had poor oral hygiene. Putting together the notes on 6 and 9 June 2007, it appeared that the Complainant presented with a perio(gum) abscess and coupled with the observations on 9 June 2007 when he noted poor oral hygiene, this shows that the Complainant had some form of gum problem. It is poor clinical

practice to carry out implant and bone augmentation surgery (which the Respondent did on 6 June 2007) when a patient's active gum problem is not treated and resolved. For maximum bone regeneration and success of an implant surgery, periodontal problems should be under control and the patient's oral hygiene good, which was not the case here. There were no notes to indicate that the Respondent had carried out any gum treatment prior to implant placement on 30 July 2007.

27. In respect of the costs of these proceedings, as the Charges were not proved against the Respondent, we order that no costs be ordered against him.
28. Pursuant to Regulation 25 of the Dental Registration Regulations, we order that the grounds of our decision be published, for the benefit of the public and to raise the standard of the dental profession. The details of the parties involved are to be anonymized and redacted, in view of the fact that the Respondent had been acquitted.
29. This hearing is hereby concluded.

Dated this 19th day of May 2015.

Dr Jennifer Neo
Chairperson, Disciplinary Committee

Dr Grace Ong
Member, Disciplinary Committee

Dr Kaan Sheung Kin
Member, Disciplinary Committee