



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

Disciplinary Inquiry under s.18 of DRO

Defendants: Dr CHAN, Alan 陳展禮牙科醫生 (Reg. No. D01949)

Date of hearing: 30 March 2017

Present at the hearing

Council Members: Dr LEE Kin-man (Chairman)
Dr AU YEUNG Kim-hung, Nelson
Dr LAM Tak-chiu, Wiley JP
Dr LAU Kin-kwan, Kenny

Legal Adviser: Mr Stanley NG

Defence: Defendant absent at the inquiry

Legal Officer representing the Secretary: Mr William LIU, Senior Government Counsel

1. The charge against the Defendant, Dr CHAN, Alan, is as follows:-

“On or about 30 December 2014, you, being a registered dentist, disregarded your professional responsibility to adequately treat or care for your patient Mr [REDACTED] [REDACTED] (‘the Patient’), or otherwise neglected your professional duties to the Patient in that –

- (i) you failed to carry out adequate examination and assessment on the Patient’s dental condition before commencing the treatment; and/or
- (ii) you failed to offer the Patient any alternative options for managing the Patient’s dental condition before commencing the treatment; and/or
- (iii) you extracted the Patient’s tooth despite the objection by the Patient and his mother;

and that in relation to the facts alleged you have been guilty of unprofessional conduct.”

Facts of the case

2. The complainant in this case is Mr. [REDACTED] (“[REDACTED]”).
3. On 30 December 2014, at about 12:30 p.m., [REDACTED] attended the Defendant’s clinic. [REDACTED] was accompanied by his mother.
4. [REDACTED] gave evidence at the inquiry. [REDACTED]’s chief complaint was that he had developed pain in his upper right first molar (“the Tooth”).
5. [REDACTED] said that he had requested the Defendant to perform root canal treatment and to take an x-ray. However, the Defendant ignored his request. Instead, the Defendant performed a percussion test. The Defendant then proceeded to apply anesthesia and then extracted the Tooth. [REDACTED] said that during the extraction, he did not open his mouth wide. [REDACTED] also said he had shown pain during the extraction and he took it that by this the Defendant should know that he was opposing to the extraction. [REDACTED] also said that the Defendant had not offered any treatment options but only offered extraction of the Tooth.
6. The Defendant’s case however is that he had inspected [REDACTED]’s mouth, and noticed that a few of his teeth had been treated with fillings including his Tooth. The Defendant then carried out a percussion test with a mirror handle on both the upper right gum and his teeth. The Defendant then diagnosed that the Patient suffered from acute pulpitis. As the symptom and the diagnosis were clear, he did not suggest the Patient to take any x-ray. The Defendant said that he had offered three treatment options to [REDACTED]: (i) taking antibiotics and painkiller; (ii) root canal treatment followed by a post and a crown; and (iii) extraction of the Tooth. The Defendant said [REDACTED] then decided to have his Tooth extracted. The Defendant then proceeded to extract the Tooth.
7. In the Secretary’s bundle, there is an x-ray of the Defendant taken on 1 December 2014 by another dentist at another clinic. That x-ray is a panoramic x-ray showing all the teeth including the Tooth.
8. The Secretary had also produced the Tooth as real exhibit (real exhibit P1). The Council had looked at the Tooth. It had three intact roots and a large disto-occlusal cavity with the gingival margins extended beyond the enamo-cemental junction. Carious lesion was detected inside the cavity.

Burden and Standard of Proof

9. The Council bears in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. The 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.

Unprofessional Conduct

10. According to section 18(2) of the Dentists Registration Ordinance, Cap. 156 (“DRO”), “unprofessional conduct” means an act or omission of a registered dentist which would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

Findings of Council

Charge 1

11. Charge 1 is about the Defendant’s failure to carry out adequate examination and assessment on [REDACTED]’s dental condition before commencing the treatment.
12. According to both [REDACTED] and the Defendant, there is no dispute that the Defendant had performed clinical examination and assessment of the Tooth, which was performing the percussion test, thereby identifying the problematic tooth (i.e. the Tooth). There is also no dispute that the Defendant had offered extraction of the Tooth. [REDACTED] told the Council that he knew that the Defendant would perform extraction of the Tooth.
13. The Council had heard the evidence of [REDACTED]. The Council finds that [REDACTED] had knowledge and had consented to the extraction of the Tooth before the extraction was performed. There is no evidence to show that [REDACTED] had during the performance of the extraction of the Tooth changed his mind and would wish to have the extraction ceased. All [REDACTED] told the Council was that he did not open his mouth wide and he had expressed pain during the extraction. [REDACTED] told the Council that he had freedom of movements of his hands at the time. The Council finds that not opening the mouth wide and expressing pain were not an effective means of communicating to cease the extraction of the Tooth. The Council considers that unless explicitly communicated, the Defendant would not have known that [REDACTED] would not wish to continue to proceed with the extraction.
14. According to Dr. CHIU Mei-ling Bonnie, the Secretary’s expert, the percussion test performed by the Defendant could confirm the problematic tooth and assess the disease status. If extraction was the treatment choice, x-ray examination would not be mandatory. Concerning the pre-operative assessment before making a correct diagnosis, the expert took the view that the Defendant had met the standard as a general dental practitioner. The Council notes from the Tooth (real exhibit P1) that there was a large disto-occlusal cavity with the gingival margins extended beyond the enamo-cemental junction. Tooth extraction is one of the treatment options. The Council agrees with the expert’s view. Given that [REDACTED] knew of and consented to the extraction before extraction was performed, extraction was the treatment choice. The Council finds that taking x-ray was not mandatory.

15. The Council finds that the Defendant had adequately performed examination and assessment of the Tooth before commencing the extraction.
16. The Council does not find Charge 1 proven. The Defendant is acquitted of Charge 1.

Charge 2

17. Charge 2 is about the Defendant's failure to offer [REDACTED] any treatment options before commencing the treatment.
18. [REDACTED] told the Council that the Defendant had not given him any treatment options. His evidence was very clear and unshaken even when the legal officer asked [REDACTED] on his comments on the Defendant's statement, which wrote that he had given three treatment options. The Council believes [REDACTED] on this.
19. The Defendant's clinical record also does not show that he had given any treatment option to [REDACTED]. This in a way corroborates [REDACTED]'s evidence.
20. The Council is satisfied that by not giving treatment options, the Defendant's conduct had seriously fallen below the standard expected amongst registered dentists. It would be regarded as disgraceful and dishonourable by registered dentists of good repute and competency.
21. The Council therefore finds the Defendant guilty of Charge 2.

Charge 3

22. Charge 3 is about the Defendant's extraction of the Tooth despite [REDACTED]'s and his mother's objection.
23. [REDACTED] told the Council that the Defendant applied local anesthesia, and then [REDACTED] waited for at least couple minutes for the anesthetics to take effect. [REDACTED] said that during the extraction he had freedom of movement. However, all that he did was not opening his mouth wide and showing pain. All along his mother was in the clinic and his mother had not at any stage during the extraction objected to and stopped the extraction.
24. The Council finds that there was ample opportunity for [REDACTED] or his mother to explicitly object to and stop the extraction, but they had not done so.
25. The Council does not find Charge 3 proven. The Defendant is acquitted of Charge 3.

Sentencing of the Defendant

26. The Defendant is of a clear record.

27. The Council has no opportunity to hear any mitigation from the Defendant as he does not appear today.
28. The Council bears in mind that the purpose of a disciplinary order is not to punish the Defendant, but to protect the public and maintain public confidence in the dental profession.
29. Having regard to the gravity of the case, the Council makes the following orders:
 - (a) In respect of Charge 2, a warning letter be given to the Defendant.
 - (b) The order in (a) above shall be published in the Gazette.

A handwritten signature in black ink, appearing to read 'Kin-man Lee', with a long horizontal stroke extending to the right.

Dr LEE Kin-man
Chairman
The Dental Council of Hong Kong