MERIDIAN LAWYERS

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# Health insights

DENTAL INSIGHTS

## A reminder to ensure the dental justification for treatment plan is clearly recorded

In this case, the Dental Board of Australia conducted an investigation after a patient notified the Australian Health Practitioner Regulation Agency (AHPRA), alleging over-diagnosis by a dental practitioner.

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### The key facts

- A patient presented in 2015 for extraction of a heavily filled tooth, which was now fractured and un-restorable.
- The tooth was extracted simply and without complication.
- The patient had enough funds to pay for the tooth extraction only.
- The patient's last attendance with a dentist was in 2010/2011 when he received treatment under the then current Medicare Chronic Dental Diseases Scheme.
- The dentist took the opportunity to provide general advice to the patient regarding his dentition and referred the patient for an OPG radiograph at a local imaging practice. This cost was covered by Medicare.
- The patient returned to the dentist the same day, for review of the OPG, and for an oral examination, scale and clean and further advice.
- The dentist reviewed the OPG radiograph and diagnosed a number of carious lesions based on a thorough clinical examination and with the use of a Microlux Transilluminator.
- The practitioner made the following entry in the clinical records:

Checked for caries using microlux light. Full mouth charting done.
Rads not taken as pt did OPG earlier in the day.
diagnosis: caries in the 16,14, 13, 47, 22, 23, 26, 37, 34, 33.

*Treatment plan:*
*Appointment 1*

| | | |
|---|---|---|
| *531* | *16* | *P, Adhesive restoration. 1 surface posterior tooth* |
| *531* | *14* | *M, Adhesive restoration. 1 surface posterior tooth* |
| *531* | *47* | *M, Adhesive restoration. 1 surface posterior tooth* |
| *521* | *13* | *B, Adhesive restoration. 1 surface anterior tooth* |

*Appointment 2*

| | | |
|---|---|---|
| *521* | *23* | *B, Adhesive restoration. 1 surface anterior tooth* |
| *532* | *37* | *DB, Adhesive restoration. 2 surface posterior tooth.* |
| *534* | *26* | *MODP, Adhesive restoration. 4 surface posterior tooth* |

*531 34 M, Adhesive restoration. 1 surface posterior tooth*
*521 33 B, Adhesive restoration. 1 surface anterior tooth*
*521 22 M, Adhesive restoration. 1 surface anterior tooth*

- The patient was unable to pay for any bitewing or periapical radiographs, and the practitioner could not recall whether these were in fact recommended.
- The patient was unable to pay for the restorative treatment that was recommended. He therefore did not receive any treatment for the carious teeth. The Medicare CDDS did not exist by the time of the 2015 attendance.
- The patient reportedly attended another dental practitioner who reportedly diagnosed fewer carious lesions.
- The patient made a notification to AHPRA alleging over-diagnosis by the first dental practitioner.

## Outcome

The Dental Board of Australia conducted an investigation into the notification and expressed concern that the practitioner the subject of the notification had diagnosed caries without the benefit of bitewing radiographs. The Board was clearly concerned that the practitioner may not have appreciated the diagnostic differences between an OPG radiograph and a bitewing radiograph for diagnosing caries.

The practitioner's records unfortunately did not record whether bitewing radiographs were recommended or offered and whether the patient had refused based on cost.

On the contrary, the clinical records unfortunately gave an inference that the practitioner had relied upon the OPG radiograph for diagnosing caries.

The records did not record details of any conversation between the practitioner to the effect that any diagnosis may be compromised without the benefit of bitewing radiographs, which is relevant to informed consent.

The investigation concluded on the basis that the Board cautioned the practitioner to in future always ensure he uses appropriate diagnostic radiography including bitewing radiographs for caries detection as part of a comprehensive examination.

## Discussion and message to practitioners

Health practitioners can fall into traps when it comes to treating friends, or when favours are requested of them, or when treating impecunious patients. Practitioners are reminded to be especially vigilant in these circumstances, and particularly when a patient presses a practitioner to provide a compromised treatment, which goes against the practitioner's better judgement.

Vigilance in these circumstances means:

1. Staying true to your training and best practice for diagnosing and treating patients. Just because a patient has the right to determine their treatment does not mean that the practitioner has an obligation to provide a treatment which goes against the practitioner's better judgement.
2. A patient has the right to select his or her treatment after having been provided information regarding treatment options and advice explaining the pros, cons and risks of each (particulars of which must be recorded in the records). But a practitioner has the responsibility to provide advice and a reasonable standard of care. In the above case scenario, this may have included refusing to provide a diagnosis or

a treatment plan for the restoration of  teeth which required a bitewing radiograph to properly assess the presence of caries.

3. A treatment plan, even if the most compromised of a number of options, must still be a reasonably acceptable treatment plan for the presenting clinical circumstances. It must be treatment that a significant cross section of the profession would support, and if carried out it must be performed to a reasonable standard. If the treatment plan was not a reasonable treatment option, then the fact of the patient having consented to it will, not of itself, justify the treatment.
4. Finally, the importance of good dental records in the above circumstances cannot be overstated. Records should include details of the precise advice given to patient including details of the risks and compromises associated with the treatment. If a patient elects treatment which is the lesser of a number of treatment options and which possibly goes against the practitioner's better judgement to carry out, then this should be a red flag to the practitioner to ensure the records are exceedingly thorough.

In the above case, the practitioner diagnosed 10 carious teeth without the assistance of bitewing radiographs.

The cost of treatment to address the caries was in excess of $1,500 –  for a patient who could afford neither the restorative treatment and nor bitewing radiographs to support the diagnosis which underpinned the treatment plan.

This raises questions whether the diagnosis was or could have been accurate, and hence whether the treatment plan was reasonable. The following information should have been recorded in the notes:

- for those teeth that objectively required treatment, details of the clinical findings that underpinned the recommendations;
- for those teeth that appeared to require treatment, but for which bitewing radiographs were required, a note of that fact, and of the advice to the patient.

But even if this information appeared in the clinical record the practitioner is unlikely to escape an adverse finding and sanction from the Board, unless the treatment plan was reasonable and clinically supported.

FOR MORE INFORMATION PLEASE CONTACT TAMIR KATZ, SPECIAL COUNSEL AT MERIDIAN LAWYERS.