Orthodontist, Dr B

Orthodontic Clinic

A Report by the
Deputy Health and Disability Commissioner

(Case 14HDC00736)

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Executive summary

1. In mid April 2014 Miss A (aged 11 years) had an appointment at an orthodontic clinic (the Clinic) with orthodontist Dr B and dental assistant Ms C. Miss A attended the appointment with her mother (Ms A), Mr D (a friend of Ms A), and Miss A's younger sister. The appointment was for a consultation to observe Miss A's dental development and determine whether orthodontic work was required.

2. During the appointment, Dr B removed three of Miss A's baby teeth without first informing Miss A and Ms A, and without obtaining consent to the teeth being removed.

Deputy Commissioner's findings

3. For failing to inform Miss A and Ms A of the need to remove three baby teeth, or the options available for doing so, Dr B breached Right 6(1)(b) of the Code of Health and Disability Services Consumers' Rights (the Code).[1] Without this information, neither Miss A or her mother were in a position to make an informed choice and provide informed consent for the removal of the three baby teeth. It follows that Dr B breached Right 7(1) of the Code.[2] In addition, Dr B did not document Miss A's appointment appropriately, and breached Right 4(2) of the Code.[3]

4. The Clinic was found not to be liable for Dr B's decision to remove three of Miss A's baby teeth without consent, or his failure to document the removal.

Complaint and investigation

5. The Commissioner received a complaint from Ms A about the services provided to her daughter, Miss A (age 11 years), by orthodontist Dr B at the Clinic. The following issues were identified for investigation:

- *Whether Dr B provided an appropriate standard of care to Miss A in April 2014.*
- *Whether the Clinic provided an appropriate standard of care to Miss A in April 2014.*

6. This report is the opinion of Theo Baker, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

[1] Right 6(1)(b) states: "Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including — (b) an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option."

[2] Right 7(1) states: "Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise."

[3] Right 4(2) states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."

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7. The parties directly involved in the investigation were:

Ms A	Complainant, consumer's mother
Miss A	Consumer
Dr B	Orthodontist

8. Information was also reviewed from Ms C, dental assistant at the Clinic, Mr D, a friend of Ms A, and Miss A's younger sister.

Information gathered during investigation

The orthodontic clinic

9. The Clinic provides orthodontic services[4]. Dr B[5] is the sole orthodontist and the sole director of the practice.

Miss A

10. Miss A, aged 11 years at the time of the event in question, had been a patient at the Clinic since 2011. Miss A had attended two previous appointments at the Clinic. The purpose of those appointments was to assess Miss A's dental development and determine whether she required orthodontic treatment.

11. Clinical notes from an appointment in late 2011 record: "NP [no problems], Class1,[6] Large frenum[7] and diastema[8] 3.5mm, Ugly duckling stage,[9] too early for [treatment] (8–11 [months]) recall 12.12. OJ[10] 3mm Ob[11] 60%."

12. Clinical notes from an appointment in late 2012 record, "no deep bite all OK", and "schedule recall exam observation 12m/15m".

13. This report relates to an appointment Miss A had with Dr B on a date in mid April 2014, in which Dr B extracted three of Miss A's baby teeth without consent.

Mid April 2014 appointment

14. In mid April 2014, Miss A had an appointment with Dr B and dental assistant Ms C. Miss A's mother, Ms A, was also in attendance during the appointment, along with

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[4] A speciality in the field of dentistry, involved in straightening of teeth and correction of improper bites.
[5] Dr B gained qualifications in orthodontics overseas and is registered for practice in New Zealand. Dr B is a member of the New Zealand Dental Association, the New Zealand Association of Orthodontists, and various overseas professional organisations.
[6] Class I malocclusion (misalignment) is when the upper front teeth slightly overlap the lower teeth.
[7] A small fold of tissue that secures or restricts the motion of teeth.
[8] A space or gap between two teeth.
[9] A stage of dental development in children that precedes the eruption of permanent teeth, so called because the upper front teeth may be tipped laterally owing to crowding by the unerupted teeth crowns.
[10] Overjet. This is the horizontal protrusion of the upper teeth in front of the lower teeth.
[11] Overbite. This is the vertical extension of the upper large teeth over the lower ones.

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Miss A's younger sister and a friend of Ms A, Mr D. Ms A told HDC that her understanding of the visit was for a consultation regarding future braces.

15. Dr B advised HDC: "[Miss A] came to see me on [a date in mid] April 2014 for an observation visit. The purpose of this visit was to observe her dental development to determine whether orthodontic treatment was still indicated, and if so, when to begin that treatment."

16. The clinical notes from the appointment record: "Wait 9 months. Diagnostic. Photos," and, "Schedule consultation observation 8 [months]/15 [months]."

Discussion at commencement of appointment

17. Ms A advised HDC that at the commencement of the appointment Dr B was eating an apple while he showed them photographs of other patients' teeth and the orthodontic work that had been completed. Dr B advised HDC that he "make[s] a conscious attempt to act in a relaxed and approachable way", and he would not have "continued eating once the formal treatment began". Furthermore, Dr B advised HDC that he obtains written patient consent to use the photos, and that "the use of clinical photographs follows best practice in orthodontics".

Removal of three baby teeth

18. During the appointment, in addition to assessing Miss A's dental development, Dr B removed three of Miss A's baby teeth. The removal of the three teeth is not recorded in the clinical notes, although it is evidenced by photos taken of Miss A's mouth following the consultation.

Informed consent

19. Ms A told HDC:

> "[Dr B and Ms C] pulled out three of [Miss A's] teeth (which I have kept) without informing myself (her mother) or my daughter, also I did not get any information and/or option regarding what he or his assistant were going to do with my daughter or consent, as she is only 11 years old …"

20. According to Ms A, Dr B removed two baby teeth before Ms A became aware of the situation. When Ms A asked Dr B what he was doing, she said he replied: "I needed to get them out, because food could get stuck under them." Dr B then went on to remove a third baby tooth.

21. Dr B told HDC:

> "Upon inspection of [Miss A's] teeth and surrounding tissues I observed three deciduous [baby] teeth that were translucent. This is a sign of complete root resorption.[12] The tooth 53 was persisting even after buccal[13] eruption of tooth 13, thus blocking the adult tooth 13 from erupting normally. The tooth 55 and tooth 84 were very loose. Of the two, the tooth 84 was already causing inflammation by

[12] The breakdown or destruction, and subsequent loss, of the root structure of a tooth.
[13] The side of a tooth that is adjacent to the inside of the cheek.

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trapping food debris and by mechanical irritation with the sharp edges of a resorbed[14] baby tooth. It is well known in dental practice that loose teeth can prevent a child from cleaning teeth properly and can prevent chewing on that side due to discomfort and gum irritation.

I made a clinical decision that it was in [Miss A's] best interest for these teeth to be removed. Removing teeth from children is a sensitive matter for both children and parents. It is always my intention that an extraction is performed in a way that causes the least stress and discomfort to the child. In dental school I was taught to minimise any potential comments which may frighten or cause a child to refuse necessary treatment."

22. Ms C recalls: "[Miss A] sat in the clinical chair and willingly let [Dr B] look into her mouth. He [Dr B] said to myself and the patient that there were some very loose teeth that were 'over-retained', and causing problems with the new tooth underneath. He then proceeded to remove the three very loose teeth."

23. Dr B advised HDC:

"Based on my experience and clinical assessment of the state of [Miss A's] teeth, I considered I could remove them quickly and painlessly and that this would be the preferred course of action. I made a judgement call that administering an anaesthetic and discussing the issue with [Miss A] prior to removal would cause her greater distress, as would delaying the removal by referral to a general dentist. It should be noted that the administration of an anaesthetic in itself can cause pain and distress and be upsetting to a child …"

24. In an additional statement to HDC, Dr B advised: "It is clear that I made a decision that was not mine to make. Without doubt, I should have discussed the required treatment more fully with [Miss A's] mother prior to removing the baby teeth."

25. Ms C advised: "In hindsight and what has now become a valuable learning moment for the entire practice, we should have had the patient consent to the teeth being removed."

<u>Physical restraint and comments made during appointment</u>

26. Ms A told HDC that in order to remove Miss A's third tooth, Ms C had to hold Miss A down. Ms A told HDC that Dr B "abruptly told her [Miss A] to lie back down, she didn't so the assistant physically forced her down by the shoulder, making verbally insensitive comments, and I quote 'Aww, it doesn't hurt'". Furthermore, Ms A advised that Ms C said: "Oh look we've got waterworks now," and, "[A]ww she's leaking all over the place."

27. Mr D told HDC: "[Miss A] seemed quite agitated and her squirming only seemed to be increasing, at which point the nurse proceeded to hold [Miss A's] arms down … the nurse began making comments, with very little empathy."

[14] Broken down by the body.

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28. It is understood the three removals happened very quickly, without time for Ms A to intervene.

29. In response, Dr B advised HDC:

> "I do not accept that [Miss A] was spoken to in an inappropriate way. My assessment of the assistant's comments and my own was that they were directed towards trying to normalise the removal and distract [Miss A] so as to minimise any discomfort or distress. I also do not accept that [Miss A] was forcibly held on the chair. The assistant was gently guiding [Miss A] to remain lying down while I quickly completed the final removal. The whole extraction took less than two minutes and I was anxious not to prolong matters for [Miss A]."

Photographs following appointment

30. Following Miss A's appointment, Dr B requested that Ms C and a colleague take internal and external oral photographs of Miss A. Ms A told HDC:

> "They wanted her [Miss A] to lie back down to take photographs of her mouth and teeth, but after all that had just happened [Miss A] was very reluctant to do so, however she did due to their forcefulness … the assistant wanted another photo of [Miss A] smiling. [Miss A] was still crying and in no mood to smile, the assistant yelled down the hallway and, I quote, 'Someone make this girl smile'."

31. Ms C recalls that Miss A "complied very well [with the photographs] except we couldn't coax a smile for the portrait shot".

32. Although Dr B could not recall Ms C's comments to Miss A while photographs were being taken, he advised HDC: "I believe the assistant's comments were only directed at trying to be humorous so as to distract [Miss A]."

The Clinic's "Code of Rights"

33. In April 2014, the Clinic had a "Code of Rights" in place that loosely mirrors the Code of Health and Disability Services Consumers' Rights. Right seven of the Clinic's "Code of Rights" outlines: "[O]ur patients are fully informed of what to expect [and] they are free to make a choice whether to continue treatment."

The Clinic's informed consent process

34. The Clinic provided HDC with evidence of its written informed consent procedures for planned orthodontic treatment. As Miss A's appointment was intended to be only a consultation, no consent form had been completed prior to the visit.

The Clinic's changes to practice

35. Both Dr B and Ms C advised HDC that the practice has reflected upon the events of the appointment in mid April 2014. Dr B advised that the matter was discussed at a team meeting, in particular the practice's "approach in terms of confirming parental approval in situations involving their child's need for dental extractions". Dr B stated:

> "As a result of this matter being raised we now seek consent be it written or verbal (witnessed by one of my staff members) prior to any removal of loose deciduous

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teeth. We already have a written consent procedure in place prior to any orthodontic treatment. I have also provided to my entire staff a copy of the [Dentistry] Code of Practice and we have discussed this fully."

36. In addition, Ms C has advised: "[Consent to teeth removal] is now a practice policy."

Additional information

37. In her complaint to HDC, Ms A advised: "This whole episode has left [Miss A] very traumatised, which is very unfortunate as [Miss A] may need braces in the future".

38. Dr B advised: "I sincerely regret that my actions have caused such distress to [Miss A] and her mother and hope they will accept my apology."

39. Ms C stated: "I sincerely apologise for any discomfort we caused this particular patient."

Other relevant standards

40. The *Dental Council of New Zealand Code of Practice: Informed Consent (2004)* states:

> "The dentist has an ethical and statutory responsibility to communicate effectively and take reasonable steps to ensure that the patient is given all the information necessary to make an informed choice.
>
> …
>
> 'Informed Consent' means the patient has been given information on treatment proposals and on the basis of this, may 'consent' to a discussed treatment plan.
>
> …
>
> **Information to be given**
>
> An explanation of the existing condition
>
> An explanation of the options available including an assessment of the expected risk, side effects, benefits, and costs of each option …"

41. The *Dental Council of New Zealand Code of Practice: Patient information and records (2006)* states:

> "2.6 The patient's treatment record must contain a record of any and all treatment or service provided within a dental practice, whether it is provided by the dentist or any other health practitioner or other employee of the dentist.
>
> 2.7 This record must include:
>
> …

HDC

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(f) Detail of any presenting complaint, relevant history, clinical findings, diagnosis, treatment options given, and final treatment plan agreed upon;

(g) A concise description of any and all treatment or services provided; …"

Opinion: Dr B — Breach

Information and consent to remove teeth — Breach

42. Miss A visited Dr B on a date in mid April 2014 to determine whether she needed orthodontic work in the future. Dr B advised HDC that "the purpose of this visit was to observe her dental development to determine whether orthodontic treatment was still indicated, and if so, when to begin that treatment". Miss A's mother, Ms A, also understood that the purpose of the appointment was for observation. During the appointment, Dr B determined that three of Miss A's baby teeth required removal. Miss A was aged 11 years at the time of the events in question.

43. The Code requires that consumers are provided with the information that a reasonable consumer would require in the situation, including an explanation of the options available, so that they can make an informed choice about the treatment. The *Dental Council of New Zealand Code of Practice: Informed Consent (2004)* is also very clear that a patient must be given information on treatments proposed, and must agree to the treatment before it is commenced.

44. A child under 16 may consent themselves if and when the child achieves sufficient understanding and maturity to understand fully what is proposed. Otherwise consent must be given by the parent and/or guardian. In these circumstances, as Dr B did not seek consent from either Miss A or her mother, I have not deemed it necessary to decide whether Miss A had sufficient understanding to give consent.

45. Dr B did not inform either Miss A and Ms A that the teeth required removal, nor did he inform them of the options available for removal (for example, anaesthetic, referral to a general dentist, or removal by Dr B without anaesthetic). In my view, this is information that a reasonable consumer in Miss A and Ms A's circumstances would expect to receive. Furthermore, instead of obtaining consent to the removal, Dr B simply removed the teeth.

46. Dr B advised that he made a judgement call that administering an anaesthetic and discussing the issue with Miss A prior to removal would cause her greater distress, as would delaying the removal by referral to a general dentist. I have significant concerns about Dr B's rationale for not obtaining consent. It is not for the practitioner to impose his or her views on the consumer. The consumer is entitled to make an informed choice about his or her treatment. The provider's clinical opinion is relevant information to inform that decision, but, in this instance, Dr B let his personal (non-clinical) views dictate the course of treatment without any regard to the wishes of Miss A or Ms A.

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47. For failing to provide Miss A and Ms A with information that a reasonable consumer would require in the situation, including an explanation of the options available, Dr B breached Right 6(1)(b) of the Code. Without this information, neither Miss A nor Ms A were in a position to make an informed choice and provide informed consent for the removal of the three baby teeth. It follows that Dr B also breached Right 7(1) of the Code.

Documentation — Breach

48. Dr B's appointment records for the date in mid April 2015 record: "Wait 9 months. Diagnostic. Photos, [and] Schedule consultation observation 8 [months]/15 [months]." There is no mention in the records of the removal of three of Miss A's baby teeth.

49. The *Dental Council of New Zealand Code of Practice: Patient information and records (2006)* outlines that dental records must "contain a record of any and all treatment or service provided within a dental practice". The removal of baby teeth warrants inclusion in clinical records. As this Office has stated on multiple occasions, the importance of adequate documentation cannot be overstated. Documentation is essential for ensuring continuity of care. For not adhering to professional standards appropriately, Dr B breached Right 4(2) of the Code.

Opinion: The Clinic — No breach

Informed consent and documentation

50. At the time of the events in question, the Clinic had a written informed consent process in place for planned orthodontic procedures. The removal of the baby teeth was not part of a planned orthodontic procedure. However, Dr B did not seek any form of consent to remove the teeth. As the practitioner responsible for Miss A's care, it was Dr B's responsibility to obtain consent. As such, I consider that the Clinic is not liable for Dr B's decision not to obtain consent prior to removing Miss A's baby teeth. However, I am concerned at what appears to be a limited awareness on the part of the Clinic's staff of the fundamental importance of informed consent.

51. I consider that the Clinic could have expected Dr B to document the removal of Miss A's teeth adequately, as required by the Dental Council's Code of Practice. I am satisfied that the poor documentation in this case was an individual failing on the part of Dr B.

Communication

52. Ms A and Mr D raised concerns about the manner in which the Clinic staff, particularly Dr B and Ms C, interacted with Miss A. Allegations include inappropriate comments and Ms C physically restraining Miss A.

53. Dr B and Ms C advised HDC that the practice endeavours to create a "personalised and relaxed setting", and that comments made were "directed towards trying to normalise the removal and distract Miss A so as to minimise any discomfort or

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distress". Furthermore, both Dr B and Ms C deny allegations of Ms C physically restraining Miss A. They note that Ms C guided Miss A back into the dental chair, rather than forcefully holding her down.

54. There are conflicting accounts of the manner in which Miss A was dealt on the date in mid April 2014. Based on these conflicting accounts I am unable to determine whether dental staff inappropriately held Miss A down or made inappropriate comments. However, the behaviour of practice staff towards Miss A had an impact on those in attendance at the appointment in mid April 2014. The manner in which practice staff interacted with Miss A was considered inappropriate by both Ms A and Mr D. It is important that consumers, and their families, are treated with professionalism and courtesy at all times, and I consider it is the responsibility of the Clinic to ensure that this occurs.

Recommendations

55. In accordance with the recommendation in my provisional opinion Dr B has provided a written apology to Miss A and Ms A.

56. I recommend that the Dental Council of New Zealand review Dr B's competence, and report back to me on the outcome of that review.

57. I recommend that the Clinic provide an education seminar for its staff on informed consent, including processes for obtaining written and verbal consent. The education seminar should include reference to the Dental Council of New Zealand Code of Practice: Informed Consent (2004). Evidence of this education seminar is to be provided to HDC within three months of the date of the final report.

Follow-up actions

58.
- A copy of this report, with details identifying the parties removed, will be sent to the Dental Council of New Zealand, and it will be advised of Dr B's name.
- A copy of this report, with details identifying the parties removed, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.
- A copy of this report, with details identifying the parties removed, will be sent to the New Zealand Association of Orthodontists and the New Zealand Dental Association, for educational purposes.

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