

Dentist, Dr B

**A Report by the
Health and Disability Commissioner**

(Case 03HDC09604)



Health and Disability Commissioner
Te Toihea Hauora, Hauātanga

Parties involved

Ms A	Consumer / Complainant
Dr B	Provider / Dentist
Dr C	Dentist
Dr D	Orthodontist
Dr E	Dentist

Complaint

On 27 June 2003 the Commissioner received a complaint from Ms A about dental services provided by Dr B. The issues arising from the complaint that I intend to investigate are summarised as follows:

Between 12 February 2001 and 6 March 2002 Dr B did not provide Ms A with services of an appropriate standard. In particular, Dr B

- did not perform remedial treatment of an appropriate standard to teeth 34, 35 and 36. He did not place sufficient gutta percha in tooth 34, underfilled tooth 35 and overfilled tooth 36*
- did not refer Ms A to an endodontist at any stage, or inform her of the option of such a referral, despite acknowledging difficulties in redoing the root canal treatment, and the recurrence of repeated infections.*

On 4 October 2002 Dr B did not provide Ms A with services of an appropriate standard. In particular, Dr B did not fill tooth 16 appropriately.

On 10 October 2002 Dr B did not provide Ms A with services of an appropriate standard. In particular, Dr B did not fill tooth 46 appropriately.

An investigation was commenced on 19 August 2003. Dr B did not respond to any of my requests for information, and did not supply Ms A's dental records.

Information reviewed

- Information from Ms A
- Information and Ms A 's dental records from:
 - Dr C
 - Dr D
 - Dr E
- Letter of referral from Dr B

Independent expert advice was obtained from Dr David Purton, a restorative dentist.

Information gathered during investigation

Background

On 18 March 2003 Ms A complained to the Auckland Dental Association that two years previously she had had root canal treatment to teeth 34, 35 and 36 by an unregistered dentist. The treatment was unsuccessful and caused her a lot of pain. She consulted Dr B to remedy the unsuccessful treatment. Dr B replaced the root canal fillings and there were repeated infections in the general area, which he treated with antibiotics only for about two months. Dr B told her that the unregistered dentist's treatment was so bad that it was impossible for him to re-treat the root canal fillings.

Eventually Ms A consulted another dentist, Dr E. He advised her that the root canal fillings could be corrected and he referred her to an orthodontist. She consulted Dr D, who corrected the work that Dr B had been treating for about two years.

Ms A complained to Dr B, who offered to refund her \$500 of the \$1,500 she had paid him. She rejected this offer. The Dental Council forwarded Ms A's complaint to the Commissioner on 27 June 2003.

Ms A also made a claim to the Disputes Tribunal, in which she documented the chronology of her dental treatment.

Dr B's treatment

On 1 February 2001 Ms A had root canal treatment to teeth 34, 35 and 36, performed unsuccessfully by an unregistered dentist. After her treatment she continued to have toothache, which did not settle.

On 12 February 2001 Ms A consulted registered dentist Dr B. He removed and replaced the root canal fillings to teeth 34, 35 and 36. There was no improvement and Ms A continued to suffer repeated infections. Ms A recalled that Dr B provided prescriptions for antibiotics but she cannot remember the details. Dr B has not provided Ms A's dental records and the details of the services he provided cannot be clarified. Dr B provided dental

treatment for Ms A for almost two years. Although she does not have her dental records, Ms A provided dental receipts from Dr B dated 12, 15, 19, 22 and 26 February; 1, 8 and 29 March; 8 August, and 14 November 2001; and 6 March, 4 and 10 October 2002. Ms A provided radiographs dated 27 February 2001 and 6 February 2002.

Dr B also treated some of Ms A's other teeth. On 4 and 10 October 2002 he placed simple fillings in teeth 16 and 46. Prior to the fillings Ms A had no pain or sensitivity in either tooth, but after the fillings she was unable to bite on them. When she told Dr B he explained to her that she had a crack in the teeth causing the problem and there was nothing he could do for a crack. (Dr C later reported no cracks in her teeth, but that the fillings were not done correctly.)

Ms A recalled confronting Dr B because he had treated her for so long without success and had failed to refer her to an orthodontist. She said that Dr B told her, "Well it's the patients that say to us if you want to see a specialist. Normally we don't refer you to see a specialist. We want business to go on and on. We want you to come back and see us." She asked him for her money back and he offered to refund \$500, and "at the same time, changed his story. He said 'the first day you come to see me, I told you if I can't finish the job you need to see a specialist and you said no'. I can't remember at all if I said that."

On 7 November 2002 Ms A visited dentist Dr E for a check-up. On examination he noted the root canal treatment to teeth 34, 35 and 36. Her teeth were not tender to percussion, but the associated mucosa and gingivae bled on probing. Dr E took radiographs (dated 12/11/02). On reading the radiographs he reported that the canal of tooth 34 had no gutta percha (material used to fill root canals). In tooth 36 the distal canal was overfilled but the mesial canal had "hardly any filling", and tooth 35 looked "OK".

Ms A told Dr E that tooth 36 had been giving her a lot of pain every now and then ever since the first root canal treatment. Dr E replaced amalgam fillings in tooth 46 (previously treated by Dr B) and placed simple amalgam fillings in teeth 47 and 17. Ms A reported that Dr E showed her the radiograph and told her that tooth 36 was "dying" and she should see an orthodontist urgently. In relation to tooth 46, Dr E told her the filling material was "too soft" and he replaced the filling. Dr E told her that tooth 16 had the same problem, but also had a "crack" in it and would probably need a crown.

Dr E referred Ms A to Dr D for orthodontic treatment. Ms A went back to Dr B with Dr E's advice that she needed to see an orthodontist as soon as possible. Dr B gave her a letter of referral to an orthodontist, dated 13 November 2002, stating:

"[Ms A] had her 36 tooth treated with an unregistered dentist in [a city] 18 months ago. She came to my surgery with pain in this region. I found that the tooth was not treated in the proper way, instead the canals were blocked and I found it very difficult to redo the root canal treatment. I kept her under observation but she had repeated infection in the area which had been treated with antibiotics. I am referring [Ms A] to you for your management and treatment and I would appreciate if you could inform me of the results."

Ms A did not go to see this orthodontist. Ms A consulted Dr D, an orthodontist, to whom she was referred by Dr E.

Dr D's dental records show that he first saw Ms A on 17 December 2002. Over three appointments – 17 December 2002, 31 January and 3 February 2003 – he replaced the root canal filling in tooth 36. Dr D commenced treatment on teeth 34 and 35 on 24 February 2003. The treatment was completed on 13 March 2003.

On 8 September 2003 Ms A saw Dr D for a check-up on teeth 34, 35 and 36, as it was six months since he completed her orthodontic treatment. Dr D recorded the following:

“[Ms A] said the 35 still has some feeling, the infection has been there for 2 years, I said this may never go away, recommended crowns on the 3 teeth with [Dr C].”

Dr D's referral letter to Dr C stated:

“There is still an awareness associated with tooth 35, but [Ms A] has no problems chewing on the teeth. She said there was an infection and pain in the area for 2 years prior to me starting treatment. In cases like this there is often some residual discomfort when the tooth is stimulated. This may gradually diminish with time, but there may always be some sensation associated with the tooth.”

Ms A saw Dr C on 1 April 2003. He recorded:

“Pt presented for full examination and to check biting discomfort RHS molars. Pt had previously had dental treatment performed by an unregistered dentist. Pt said had discomfort lower left which was difficult to rectify at the time and ended up with poor endodontic treatment 34, 35, 36. Also had some restorations placed.

Patient went to a registered dentist elsewhere who attempted endodontic treatment but was not successful. Pt also was having biting discomfort RHS molars at this stage which were previously asymptomatic. Dentist said restoration tooth 46 was not adequate and replaced the amalgam. Mention was made at this stage of possible tooth fracture and crown treatment. Patient has recently had endodontic treatment 34, 35, 36, [Dr D] and these to be reviewed 6/12 to chk healing prior to crowns, tooth coloured restoration present with partial cuspal coverage, advised care with these teeth in interim to avoid fracture.”

Dr C noted the following in Ms A's records:

“Patient thought sensitive biting has been less noticeable but still quite sharp occasionally on hard foods, patient not too sure 16 or 46, teeth not ttp and vital to cold, tooth slooth nad, 16 quite sensitive to probe Db cusp at edge of recent tooth coloured restoration, advise quite possibly fractured but no obvious signs at present to treat conservatively initially and to replace 16 restoration, bonding over sensitive area also, 16 B restoration appears to be deficient on BW replace this also. To replace three other B restorations at

this stage, advised other restorations should be replaced later (some rougher margins) but OK to review at this stage.”

Although he noted decay on the buccal surface of tooth 15 (and others), he decided not to fill the tooth. Likewise, he noted decay on tooth 46, but decided to observe it. On 7 April 2003 Dr C replaced the filling to tooth 16.

Dr C placed crowns on teeth 34, 35 and 36. Ms A completed her treatment with Dr C on 11 November 2003, but continues to see him six-monthly.

Subsequent events

Ms A advised me that after Dr D managed to save her teeth and she learned that Dr B contributed to her almost losing several teeth by his poor treatment and non-referral to an orthodontist, she was so angry that she confronted him. Dr B told her that it was her responsibility to ask for a referral. She was shocked when he suggested that he did not refer her because she continued to pay for the treatment he provided.

On 1 August 2003 Ms A applied to the Disputes Tribunal alleging improper dental treatment by Dr B. Ms A provided evidence that she had paid Dr B \$2,012 for dental work, which he did not complete appropriately, and had subsequently spent substantial amounts on restoration. Dr B did not attend the hearing.

The Tribunal’s orders stated:

“... ”

Having considered the evidence, on the balance of probabilities, this Tribunal finds in favour of the applicant. It appears at least four subsequent dentists and dental specialists have confirmed the inadequacy of the respondent’s dental services in regards to the applicant, and all the respondent’s work has been required to be redone or remedied. The applicant is therefore justified in seeking a refund according to the payment receipt issued by the respondent.”

Dr B was ordered to pay Ms A \$2,000 within seven days. Dr B initially did not pay, but has since paid Ms A.

ACC

Ms A also lodged a claim with ACC for medical misadventure. ACC declined her claim because she had been to an unregistered dentist (which is not covered by ACC) and there was insufficient evidence to show that Dr B caused Ms A’s personal injury. I note that Dr D also considered that this was not a case of medical misadventure because the original treatment was carried out by an unregistered dentist and there are no records of the treatment Dr B performed.

Independent advice to Commissioner

The following expert advice was obtained from Dr David Purton, an independent restorative dentist:

“Re – PROFESSIONAL EXPERT ADVICE – 03/09604

I have been asked to provide an opinion to the Commissioner on case number 03/09604. I have read and agree to follow the Commissioner’s Guidelines for Independent Advisors.

I am a Senior Lecturer at the University of Otago School of Dentistry. I have specialist registration with the Dental Council of New Zealand as a Restorative Dentist. My qualifications are BDS (Otago) MDS (Otago) and FRACDS.

I have had 11 years of general dental practice experience, 3 years of hospital dental practice and 14 years of full-time teaching at the University of Otago. I teach undergraduate and post-graduate students. Relevant to this case is my regular clinical supervision and teaching of 4th year undergraduates in endodontic (root canal) treatment. I am fully conversant with the techniques and standards expected of dentists when they graduate with the BDS degree from the University of Otago.

The purpose of this report is to advise the Commissioner on whether [Ms A] received an appropriate standard of dental care from [Dr B].

I have reviewed the following information:

- [Ms A’s] complaint to the Commissioner and associated documentation (pages 1-29) marked ‘A’
- The Commissioner’s notification to [Dr B] dated 19 August 2003 (pages 30-32) marked ‘B’
- [Ms A’s] dental records from [Dr E] (pages 33-35) marked ‘C’ and two radiographs dated 12.11.02
- [Ms A’s] dental records and photographs of radiographs from [Dr D] (pages 36-53) marked ‘D’
- [Ms A’s] dental records from [Dr C], including radiographs, photographs and dental records (pages 54-62) marked ‘E’
- Three radiographs dated 22.2.01 and 6.2.02 that are otherwise unlabelled but it appears they must have come from [Dr B].

Summary of events

[Ms A] consulted [Dr B] on about 12 February 2001 suffering from toothache. [Dr B] provided endodontic treatment for teeth 34, 35 and 36 which had all previously been unsatisfactorily treated elsewhere. Some information about the sequence of events and the nature of the treatment comes from the radiographs.

A radiograph dated 22.2.01 shows endodontic treatment in progress in tooth 36 and a radiograph dated 6.2.02 shows root canal filling material in the tooth.

A radiograph dated 22.2.01 (presumably [Dr B's]) shows that tooth 34 had no root canal filling in it, and a radiograph dated 12.11.02 (presumably [Dr E's]) shows that there was still no root filling in 34.

A radiograph dated 22.2.01 shows that tooth 35 had a root filling in place and a radiograph dated 12.11.02 shows the same root filling in place.

[Ms A] reports that for the remainder of 2001 and until November 2002 she was suffering pain from the region of teeth 34, 35, and 36. [Dr B] twice treated the pain via prescriptions for antibiotics.

[Ms A] also reports that [Dr B] provided fillings in teeth 16 (4 October 2002) and 46 (10 October 2002) and that these teeth were both painful after treatment.

On 7 November 2002 [Ms A] consulted [Dr E] who placed a filling in tooth 46 and referred her to [Dr D] for endodontic treatment.

[Ms A] consulted [Dr D] on 10 March 2003. [Dr D] subsequently provided endodontic treatment for teeth 34, 35, 36, and referred the patient to Dr C.

[Ms A] saw [Dr C] on 7 April 2003 and amongst other treatments he subsequently placed a filling in tooth 16.

The Complaints and Expert Opinion relating to each

Between 12 February 2001 and 6 March 2002 [Dr B] did not provide [Ms A] with services of an appropriate standard. In particular, [Dr B]:

- *did not perform remedial treatment of an appropriate standard to teeth 34, 35 and 36. He did not place sufficient gutta percha in tooth 34, underfilled tooth 35 and overfilled tooth 36*

I agree that [Dr B] did not treat tooth 34 to an appropriate standard in that he did not place sufficient gutta percha in this tooth. He placed no gutta percha in this tooth.

I do not agree that he did not treat 35 to an appropriate standard in that he underfilled the tooth. The root canal filling visible on radiographs from the start is of an acceptable, if not ideal, standard. [Dr E] agrees. In his referral to [Dr D] on 9/11/02 he states '35rct looked ok'. The treatment subsequently failed but I cannot agree that underfilling with gutta percha is the reason. Many dentist and patient factors can contribute to failure of root canal treatment. I cannot distinguish what may have caused the failure here.

I agree that he did not treat tooth 36 to an appropriate standard but for a different reason than that stated in the complaint. My opinion regarding this tooth is that he did

not treat tooth 36 to an appropriate standard in that he did not place sufficient gutta percha in the tooth. The tooth has inadequately filled canals in the mesial root. [Dr E] agrees. In his referral to [Dr D] on 9/11/02 he states ‘... hardly any root filling in the mesial canal/canals’. This root shows an area of infection on the radiographs. The overfilling of the distal root is very minor and probably clinically insignificant.

In making these statements about the appropriateness of the root canal fillings I refer to a chapter in the current textbook on endodontics used in undergraduate teaching at the University of Otago School of Dentistry.

Dummer, PMH. (2004) Root canal filling, Chapter 8 in *Harty’s Endodontics in Clinical Practice*, 5th edition, edited by TR Pitt Ford, Edinburgh:Wright, page 113.

The author states as the opening sentence of the chapter ‘The entire root canal system should be filled following cleaning and shaping.’ And later ‘At present, the material of choice is gutta-percha combined with a sealer ...’

Any standard textbook on the subject would give the same advice. The long-term evidence supporting this treatment is undisputed in the dental literature.

- *did not refer [Ms A] to an endodontist at any stage, or inform her of the option of such a referral, despite acknowledging difficulties in redoing the root canal treatment, and the recurrence of repeated infections*

I agree that [Dr B] did not provide [Ms A] with services of an appropriate standard regarding referral to an endodontist. The internationally accepted standards for root fillings and successful root canal treatment outcomes are established beyond dispute. The treatment provided did not measure up to the standards and [Dr B] had an obligation to refer [Ms A] to a specialist for correction of the problems.

In making this statement I refer to the relevant NZDA Code of Practice.

Referral of patients. The second opinion, NZDA Code of Practice approved 1995.

Paragraph 2.1 of this Code states ‘A dentist should refer a patient whenever the welfare of that patient will be safeguarded or enhanced by those who possess special knowledge or expertise.’

On Oct 4 2002 [Dr B] did not provide [Ms A] with services of an appropriate standard. In particular, [Dr B] did not fill tooth 16 appropriately.

On Oct 4 2002 [Dr B] did not provide [Ms A] with services of an appropriate standard. In particular, [Dr B] did not fill tooth 46 appropriately.

I find I am unable to give an opinion on these two items. These teeth have at least two fillings each, as evidenced by [Dr C’s] photographs and radiographs and it is not clear

from the information I have before me which of these [Dr B] placed. Furthermore [Dr C's] and [Dr E's] notes are quite equivocal on the cause of the patient's complaint.

Regarding tooth 46, [Dr E] notes on 7/11/02 that the tooth is possibly cracked and he reports placing one amalgam filling in tooth 46 occlusal surface on 12/11/02. [Dr C's] notes of 23/9/03 state that he replaced a 46 occlusal composite filling and that the tooth had a fractured amalgam filling. He states that he can see no sign of a crack in the tooth and speculates that the previous problems were quite possibly bonding problems.

Regarding tooth 16, [Dr C's] notes of 1/4/03 describe that he and the patient are unsure which tooth is sensitive and what the cause might be. He states that the tooth might be fractured but there are no obvious signs and he will treat the problem conservatively initially. He also notes that 16 buccal restoration appears to be deficient on the x-ray film so he should replace this. However the bitewing x-ray films referred to are not of reliable diagnostic value for defects on the buccal surfaces of teeth.

The use of terms such as 'appears to be deficient', 'quite possibly cracked', 'quite possibly bonding problems' and so on, lead me to the conclusion that this sensitivity was posing diagnostic problems for both dentists and at no time in the notes does either dentist attribute the sensitivity to poor quality restorative work.

Summary

In summary I find that [Dr B] did not provide [Ms A] with services of an appropriate standard, in that he did not provide remedial treatment of an appropriate standard to teeth 34 or 36 and did not refer Ms A to an endodontist when he had a duty to do so.

I find that he did provide a root canal filling of an appropriate standard to tooth 35.

I have insufficient information to reach any conclusions regarding treatment of teeth 16 and 46."

Code of Health and Disability Services Consumers' Rights

The following Rights in the Code of Health and Disability Services Consumers' Rights are applicable to this complaint:

RIGHT 4

Right to Services of an Appropriate Standard

- 1) Every consumer has the right to have services provided with reasonable care and skill.*
- 2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.*

Other standards

The New Zealand Dental Association *Code of Ethics* (1991) states:

“INTRODUCTION

The Code of Ethics is essentially a standard of conduct for personal and professional behaviour and is binding on members of the New Zealand Dental Association.

...

Principles of Ethical Behaviour

1. Strive to improve knowledge and skill so that the best possible advice and treatment can be provided for the patient.
2. While oral health is the responsibility of the patient, they may expect to receive the best available professional advice in making health care decisions.

...

CHARACTERISTICS OF A PROFESSION

...

Profiteering

Members of the New Zealand Dental Association should not allow motives of profit to override other factors in the treatment of patients.”

The New Zealand Dental Association *Code of Practice* (1995) states:

“2 REFERRAL TO SPECIALISTS

2.1 The dentist should seek consultation whenever the welfare of the patient will be safeguarded or enhanced by those who possess special knowledge and skill.”

Opinion: Breach – Dr B

Ms A had the right to dental treatment of an appropriate standard. Rights 4(1) and 4(2) of the Code of Health and Disability Services Consumers’ Rights (the Code) imposed a duty on Dr B to provide Ms A with dental services with reasonable care and skill, in compliance with professional and ethical standards.

The New Zealand Dental Association *Code of Ethics* placed a duty on Dr B to provide Ms A with the best possible dental treatment and professional advice in making health care decisions.

Dr B has refused to provide information or to supply Ms A's records. However, the availability of receipts from Dr B and some radiographs, combined with records from Dr E, Dr D and Dr C, provided sufficient evidence to support Ms A's account of Dr B's treatment and to form the basis of this opinion.

Root canal treatment

Initially, Ms A had root canal treatment to teeth 34, 35 and 36 by an unregistered dentist, which proved unsatisfactory. Very soon after, she contacted Dr B to remedy the problems. Dr B re-treated teeth 34, 35 and 36 by replacing the root canal fillings between 12 February 2001 and 7 November 2002. He also placed simple fillings in teeth 46 and 16.

Ms A subsequently suffered repeated infections to teeth 34, 35 and 36. Dr B treated the infections with antibiotics, always blaming the work done by the previous unregistered dentist and stating that there was nothing he could do. On 7 November 2002 Ms A consulted another dentist, Dr E. He told her that tooth 36 was in a very serious condition and if she did not see an endodontist she would lose the tooth. Dr E referred her to Dr D. Dr D treated Ms A's teeth but when she required crowns to teeth 34, 35 and 36 he referred her to Dr C. Dr D was able to save all three teeth.

There is compelling evidence from Dr E and Dr D, confirmed by my independent advisor, that Dr B's root canal treatment to teeth 34 and 36 did not meet professional standards. My advisor noted that Dr B did not place any gutta percha in tooth 34. After examining radiographs taken by Dr E, my advisor considered that tooth 35 was filled to an acceptable, although not ideal, standard. The treatment of the tooth 35 root canal subsequently failed, but my advisor said this was not because of under-filling. Many patient and dental factors contribute to failure of root canal treatment and he was unable to distinguish what caused the failure. My advisor considered that Dr B did not treat tooth 36 to an appropriate standard, although not for the reason stated in Ms A's complaint. There is radiographic evidence that the mesial root of the tooth is inadequately filled (also noted by Dr E), and the distal root is overfilled to a minor degree, but this is not clinically significant. The root shows an area of infection on the radiographs. My advisor concluded:

“In summary I find that [Dr B] did not provide [Ms A] with services of an appropriate standard, in that he did not provide remedial treatment of an appropriate standard to teeth 34 or 36 and did not refer [Ms A] to an endodontist when he had a duty to do so.”

In my opinion, Dr B's treatment of teeth 34 and 36 was substandard, and Dr B therefore breached Right 4(1) of the Code.

Referral to endodontist

My advisor agreed that Dr B should have referred Ms A to an endodontist sooner. Dr B's treatment was not successful and he had an obligation to refer Ms A to a specialist for

correction of the problems as soon as he acknowledged there was nothing more he could do. In forming his opinion my advisor referred to the New Zealand Dental Association *Code of Practice* (1995), which states:

“The dentist should seek consultation whenever the welfare of that patient will be safeguarded or enhanced by those who possess special knowledge or expertise.”

Dr B led Ms A to believe there was nothing that could be done for teeth 34, 35 and 36. When Ms A confronted Dr B with the knowledge that corrective treatment could have been done sooner if he had referred her to a specialist, he told her that he wanted her to return to him and it was up to her to ask for a second opinion. He claimed that he told her before he commenced remedial treatment that she might require specialist services, but Ms A cannot recall their discussion.

Dr B had a fiduciary duty to Ms A. Patients do not know, and cannot be expected to know, the complexities of dental treatment. They rely on their dentist for expert advice. It was not Ms A's responsibility to ask for a referral. Dr B's actions in continuing to treat Ms A's ongoing dental problems, admitting he could do no more for her, not referring her for specialist care, and implying he was happy to continue treating her as long as she continued to pay, demonstrated a serious breach of professional ethics. Ms A suffered unnecessary pain and additional expenses for a considerable period of time as a result of inadequate dental care and failure to refer.

In these circumstances Dr B failed to comply with professional and ethical standards and breached Right 4(2) of the Code.

Opinion: No further action – Dr B

While Ms A was consulting Dr B, he also replaced fillings in teeth 16 and 46. Although they functioned very well before Dr B filled them, after he had placed simple fillings she was unable to bite on the teeth without suffering considerable pain. Dr E told her that tooth 46 was not filled properly and he replaced the filling. Dr C replaced the filling in tooth 16 on 7 April 2003. Dr B had told her that the reason she had ongoing sensitivity in the teeth was that they were both cracked. Dr E told her this was not correct in relation to tooth 46 and Dr C denied that she had a crack in tooth 16. Ms A alleged that Dr B treated her for two years and all he did was to damage her teeth and cause her pain.

My advisor was unable to form an opinion on those two issues. He reported that teeth 16 and 46 have at least two fillings each, as evidenced by Dr C's photographs and radiographs.

My advisor commented:

“It is not clear from the information I have before me which of these [Dr B] placed. Furthermore [Dr C’s] and [Dr E’s] notes are quite equivocal on the cause of the patient’s complaint.

Regarding tooth 46, [Dr E] notes on 7/11/02 that the tooth is possibly cracked and he reports placing one amalgam filling in tooth 46 occlusal surface on 12/11/02. [Dr C’s] notes of 23/9/03 state that he replaced a 46 occlusal composite filling and that the tooth had a fractured amalgam filling. He states that he can see no sign of a crack in the tooth and speculates that the previous problems were quite possibly bonding problems.”

In the absence of Ms A’s dental records, which Dr B has refused to supply, it is not possible to form a definite opinion about the standard of treatment to teeth 16 and 46. Accordingly, I do not intend to take any further action on this aspect of Ms A’s complaint.

Prosecution

Dr B did not respond to any of my requests for information, and failed to provide Ms A’s dental records. I have commenced proceedings against Dr B under section 73 of the Health and Disability Commissioner Act 1994 for his failure to provide the dental records.

Recent investigations

I am currently investigating other complaints about Dr B: HDC cases 03/16810, 03/11122, and 04/01201. An investigation of a previous complaint, 02/166651, resulted in a breach finding and referral to the Director of Proceedings.

Follow-up actions

- This matter will be referred to the Director of Proceedings in accordance with section 45(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken against Dr B.
- A copy of this report will be sent to the Dental Council of New Zealand, the New Zealand Dental Association, and the Accident Compensation Corporation.
- 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 upon completion of the Director of Proceedings’ processes.

Addendum

The Director of Proceedings issued proceedings before the Health Practitioners Disciplinary Tribunal. Pursuant to s 101(1)(a) of the Health Practitioners Competence Assurance Act 2003, the Tribunal found Dr B guilty of professional misconduct and ordered cancellation of his registration as a dentist, with effect from 1 September 2005. The Tribunal also ordered payment of \$5,000 costs.
