Dentist, Dr B

Hill Park Dental Limited

A Report by the

Deputy Health and Disability Commissioner

(Case 13HDC00203)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

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Executive summary

1. Between 14 August and 30 November 2012 Dr B provided dental treatment to Mr A at a dental practice for the purpose of replacing Mr A's existing crowns. Dr B operates from the dental practice, owned and operated by Hill Park Dental Limited.

2. On 14 August 2012 Mr A attended Dr B's surgery for an initial consultation. Mr A's teeth were in poor condition. At that initial consultation, Dr B recorded in the clinical notes a treatment plan that included insertion of temporary Lava[1] crowns, fitting of dentures, and replacement of the temporary Lava crowns with permanent Emax[2] crowns.

3. At the end of the appointment, Dr B provided Mr A with a written treatment plan, which briefly outlined various dental treatments for Mr A over five appointments. This plan did not state that the Lava crowns were temporary, and it did not refer to Emax crowns. Dr B advised HDC that he had expected Mr A's crown replacement treatment to take up to 24 months.

4. In contrast, Mr A understood that the Lava crowns would be permanent and left the initial appointment believing that his existing crowns would be replaced the next day, with no further treatment necessary relating to his crowns.

5. On 15 August 2012 Dr B inserted temporary Protemp[3] crowns rather than Lava crowns because Mr A wanted his current crowns removed immediately, and Dr B was not able to provide Lava crowns immediately. Prior to the appointment, Mr A was not aware that he would be receiving temporary crowns. However, on placement of the Protemp crowns, Mr A understood that they were temporary. The Protemp crowns were not mentioned in the written treatment plan provided to Mr A.

6. On 21 September 2012 Dr B replaced the temporary Protemp crowns with temporary Lava crowns. Mr A continued to believe that the Lava crowns were permanent. Mr A found the Lava crowns to be "painful".

7. On three further occasions Mr A attended appointments with Dr B for adjustments to his Lava crowns. However, treatment was discontinued before permanent crowns were inserted. Mr A subsequently sought treatment elsewhere.

Decision summary

Dr B — Breach

8. It was found that Dr B's treatment plan for Mr A was inadequate and that the overall standard of care provided by Dr B to Mr A was poor. Accordingly, Dr B failed to

[1] Lava crowns are ceramic on a zirconia base. They are effective for long-term use as they retain their colour and are durable.
[2] Emax crowns are made out of porcelain. They are strong and durable, being less likely to crack or chip than a zirconia-based crown.
[3] Protemp is a material used for temporary crowns. Protemp allows for the fabrication of temporary crowns very quickly by moulding them to the impressions of the patient's original teeth. Protemp crowns, however, do not have a very long lifespan.

provide services with reasonable care and skill and breached Right 4(1)[4] of the Code of Health and Disability Services Consumers' Rights (the Code).

9. In addition, Dr B failed to provide the information to Mr A that a reasonable consumer in Mr A's circumstances would need to make an informed choice with regard to his treatment plan. Accordingly, Dr B breached Right 6(2)[5] of the Code. Consequently, Mr A was unable to make informed choices about his treatment. Accordingly, Dr B breached Right 7(1)[6] of the Code.

10. It was also found that the standard of documentation by Dr B was poor. Dr B failed to comply with the relevant professional standards and, accordingly, breached Right 4(2) of the Code.

Hill Park Dental Limited — Breach

11. It was found that Hill Park Dental Limited was vicariously liable for Dr B's breaches of the Code by failing to ensure that Dr B provided services to Mr A with reasonable care and skill. Accordingly, Hill Park Dental Limited breached Right 4(1) of the Code.

Complaint and investigation

12. The Commissioner received a complaint from Mr A about the services provided to him by Dr B at the dental practice. The following issues were identified for investigation:

- *Whether Dr B provided an appropriate standard of care to Mr A between August 2012 and February 2013.*
- *Whether Hill Park Dental Limited provided an appropriate standard of care to Mr A between August 2012 and February 2013.*

13. An investigation was commenced on 20 September 2013. This report is the opinion of Rose Wall, Deputy Health and Disability Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

14. The following parties were directly involved in the investigation:

Mr A — Consumer/complainant

[4] Right 4(1) of the Code states: "Every consumer has the right to have services provided with reasonable care and skill."
[5] Right 6(2) states: "Before making an informed choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent."
[6] 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."

Dr B	General dentist
Hill Park Dental Limited	Provider

15. Independent expert advice was obtained from a dentist and prosthodontist, Dr Andrew Cautley (**Appendix A**).

Information gathered during investigation

Background

16. Between 14 August and 30 November 2012, Dr B provided dental treatment to Mr A for the purpose of replacing Mr A's existing crowns. Dr B operates from a dental practice owned and operated by Hill Park Dental Limited (Hill Park). This report relates only to the treatment regarding the replacement of Mr A's crowns.

Crowns

17. A crown is a type of dental restoration that completely caps or encircles a tooth. Crowns are often used to improve the strength or appearance of teeth, and may be needed when a large cavity threatens the ongoing health of a tooth. Crowns are bonded to the tooth using dental cement.

18. The method most commonly used for placing crowns involves creating a dental impression of the prepared[7] tooth in order to create the crown outside of the mouth. Once created, the crown is inserted into the mouth over the prepared tooth.

19. Usual practice is to fit temporary crowns before replacing them with permanent crowns at a later date. The purpose of temporary crowns is to ensure that the patient is satisfied with the appearance of the crowns before taking an impression of the completed temporary crowns and proceeding to permanent crowns. It is also necessary to ensure that the patient has satisfactory oral health before inserting permanent crowns.

Initial consultation

20. On 14 August 2012 Mr A had an initial consultation with Dr B at the dental practice. Mr A wanted replacement of the existing crowns on his upper and lower front teeth. These were six teeth in his upper jaw, three front teeth in his lower jaw, and one front right tooth in his lower jaw.

21. Mr A advised Dr B that he was having an allergic reaction to the material in his current crowns. Mr A told HDC that he asked Dr B whether he could make his new teeth the same shape and size as his natural teeth. Mr A told HDC that he provided Dr

[7] A "prepared" tooth or "preparations" refers to the work done to natural teeth before placement of the crowns. The process of preparation usually involves cutting the tooth with special dental burrs, to make space for the planned restorative materials, and to remove any dental decay or portions of the tooth that are structurally unsound.

B with an X-ray of his jaw dated May 2012, as well as an old photograph of himself, both with his original teeth. Mr A told Dr B that he also wanted his crowns replaced in a manner that would allow him to be able to eat raw food. Mr A advised HDC that Dr B told him, "Yes," he could make Mr A's new teeth look like his natural teeth.

22. Dr B advised HDC that he expected Mr A's treatment to take up to 24 months.[8] Dr B said that he proposed to use Lava technology for Mr A's temporary crowns, as he is able to mill Lava crowns at his surgery, which significantly reduces the cost. Dr B further advised that Lava crowns are more durable than the alternative options for temporary crowns. However, there is no record in the clinical notes that Dr B discussed with Mr A his reasons for using Lava crowns as temporary crowns.

23. Dr B told HDC that he discussed a treatment plan with Mr A during his initial appointment, and said that the plan included inserting temporary crowns. This discussion was documented in the clinical notes as follows:

> "[T]x [treatment] plan was discussed and the pt [patient] was [advised] that it would be better to remove the old bridge and place [intermediate][9] crown made out of [L]ava and once [Mr A] is happy with bite[10] and everything we can go ahead and do Emax crown. Pt was [happy] with this and had agreed to go ahead with tx."

24. Dr B elaborated on the clinical notes and told HDC that he discussed the following treatment plan with Mr A:

a. Mr A's old bridge[11] would be removed and replaced with temporary Lava crowns on six of his teeth.[12]

b. Dr B would fit temporary upper and lower partial dentures, to improve Mr A's bite. Mr A was to improve his oral health, allowing the inflammation in his gum to decrease before permanent crowns were placed.

c. Once Mr A's bite had settled, Dr B would remove Mr A's lower teeth and fit him with a full lower denture supported by two implants.[13]

d. Once Mr A's bite had once again settled following insertion of the new denture, and Mr A had regained a functional dentition, Dr B would remove the temporary Lava crowns and insert permanent Emax crowns.

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[8] In response to the provisional opinion, Mr A told HDC that Dr B never told him that he expected the treatment to take 24 months.

[9] Dr B advised HDC that he uses the words "temporary", "provisional" and "intermediate" interchangeably. For consistency, the term "provisional" has been used throughout this report, except where a source is quoted directly.

[10] "Bite" or "occlusion" is the manner in which the upper and lower teeth come together when the mouth is closed.

[11] A piece of material with one or more artificial teeth attached, which is kept in place in the mouth by securing it to natural teeth, "bridging" a gap between natural teeth.

[12] Teeth numbers 13, 12, 11, 21, 22, and 23.

[13] As stated above, this opinion relates to treatment provided by Dr B to Mr A regarding the replacement of his crowns only.

25. Dr B advised HDC that Mr A presented with severe gum disease and visible decay of his teeth. Dr B said that Mr A told him that his current denture[14] was not fitting well and caused problems with eating. Dr B understood that Mr A wanted his existing crowns removed immediately, so he booked Mr A for an appointment the next day.

26. At the end of the consultation, Dr B provided Mr A with a copy of a written treatment plan (see **Appendix B**). The written plan outlined a total of five further appointments, during which Lava crowns were to be placed at appointments one and two, and Valplast[15] dentures and a "Zirconia bridge"[16] at appointment four. There was no explanation in the written plan of what was expected to occur at appointment five. Further, the written treatment plan did not state that the Lava crowns were intended to be temporary, or make any mention of Emax crowns, permanent or otherwise.[17]

27. In response to the provisional opinion, Mr A told HDC that the first time he ever heard the word "Emax" was when he read the provisional opinion, and that he does not know what it means.

28. Mr A denies that Dr B said at the initial appointment that the crowns to be inserted at the following appointment would be temporary, or gave him reason to believe that they would be. Mr A stated that he understood from Dr B that he would have his new teeth "very quickly", and that he believed his teeth would be fixed at the following appointment. However, as noted above, the written treatment plan referred to two appointments with regard to Lava crowns.

29. In response to the provisional opinion, Mr A told HDC that Dr B had promised that he would have his new crowns and dentures by Christmas 2012.

Second consultation

30. On 15 August 2012 Mr A returned to Dr B's surgery. Dr B told HDC that, as Lava crowns take time to make, he was unable to mill Lava crowns that day. Therefore, as Mr A had wanted his old crowns removed immediately, Dr B decided to use Protemp crowns.

31. In response to the provisional opinion, Dr B said that he explained to Mr A that the Protemp crowns were temporary, while he milled the Lava crowns, and that he "firmly believe[s] that [Mr A] understood that each set was temporary".

32. Dr B removed Mr A's existing crowns. Dr B told HDC that as Mr A's teeth had been "over prepared" by a previous dentist, he felt it best to make as few changes to the

[14] Mr A had natural teeth, crowns and a denture.
[15] Valplast is a flexible denture base resin that is ideal for partial dentures and unilateral restorations.
[16] A zirconia bridge is produced from zirconium oxide, a tough form of dental ceramic that is compatible with the body (as opposed to a metal-based bridge, to which some people have an allergic reaction).
[17] In response to the provisional opinion, Mr A told HDC that prior to meeting Dr B he had noticed a comment on Hill Park Dental's website, which states: "Now with our state of art E4D cad cam system we can get your crown done on the same day which means, you do not have to wear a temporary crown and return for multiple visits."

preparations as possible, and only those that were necessary. Dr B stated that, for this reason, he did not touch the preparations except to smooth out scratches in the margins (the point where the tooth meets the gum) that were caused by removal of Mr A's crowns. Dr B said that he intended to improve the preparations before placing Mr A's permanent Emax crowns. Dr B stated that it was his impression that Mr A was happy with the results of the Protemp crowns.

33. Mr A advised HDC that prior to the appointment he was not aware that Dr B would be inserting temporary crowns. Once at the appointment, he was told that the crowns to be inserted that day would be "plastic" (and therefore temporary), and that they would be in place only while Dr B made his permanent crowns, which Mr A understood to mean the ceramic Lava crowns.

34. The provision of Protemp crowns is not included in either the written treatment plan provided to Mr A, or in the 14 August clinical notes. The clinical notes from the 15 August appointment state:

> "pfm [porcelain fused to metal] crown removal and temp crown placed. 14–23 and 33–41 pfm crown was removed. 14 had severe caries and fractured from the gingival level. 33 the pulp is almost exposed and advice [that] it may need rct [root canal] if plays up. 32 will need rct and post core crown. [A]ll the removed site was placed with temp crown using the mould taken before removing the crown."

Third consultation

35. On 21 September 2012 Mr A returned to Dr B's surgery. The clinical notes dated 21 September state: "[C]rown prep done digital impression taken — Crown made and cemented using clearfill cement." In contrast, Dr B told HDC:

> "I reiterate that I did not make the crown preparations for [Mr A's] teeth. I left these as they were when [Mr A] presented to me … I agree that the preparations would need improvement before placing of the permanent Emax crowns, but I felt that would be best done at the time when I would design the permanent [E]max crowns."

36. Dr B replaced Mr A's Protemp crowns with Lava crowns. Dr B advised HDC that these crowns were, again, temporary. The fact that these crowns were temporary is not reflected in the written treatment plan provided to Mr A or in the 21 September clinical notes. However, it is reflected in the clinical notes from the 14 August consultation.

37. Mr A advised HDC that it was his understanding that these crowns were permanent. He stated that he asked Dr B if the crowns were ceramic, and Dr B replied that they were. Mr A advised HDC that it was his understanding from Dr B that ceramic crowns are permanent. Mr A explained that Dr B did not tell him at this appointment that the crowns were temporary.

38. Mr A advised HDC that he told Dr B at this consultation that he was not happy with his teeth, as they were not the same size and shape as they were prior to Dr B's

treatment. Mr A said that he told Dr B that he would not accept the crowns as they were. Dr B disputes that Mr A said this at this time.

Fourth and fifth consultations

39. Dr B advised HDC that, on or around 25 October 2012, Mr A returned to have his Lava crowns adjusted, as he was not happy with the shape of them. Mr A said that he still understood that these crowns were permanent. The clinical notes state: "[U]pper 4 crown replaced." A summary written by Dr B retrospectively states:

> "Upper 4 crowns replaced. Replaced because [Mr A] requested a different shape initially, now not happy … [Mr A] stayed and designed the teeth with [Dr B] using E4D machine and was happy with the shape."

40. Dr B advised that Mr A returned at a later date and complained that the crowns were now too short. Dr B advised Mr A that he could fix the crowns for him, but that this would be at an additional cost. No further changes were made at that point. Mr A advised HDC that the Lava crowns were pointing outwards, causing his top lip to be constantly tender and swollen, and causing him to bite his bottom lip. He also stated that the margins did not match up properly.

41. Dr B told HDC that the margins became more apparent as the state of Mr A's gums improved. However, Dr B did not consider it necessary to remake the temporary crowns because of the margins, as ultimately the crowns would be removed.

Final consultation

42. On 30 November 2012, Mr A returned to Dr B's surgery for further treatment. Mr A advised HDC that he asked Dr B to redo his crowns the way they had discussed on 14 August 2012, as he was not happy with their current state. An entry in the clinical notes on 30 November reads: "[L]ower teeth adjusted." Dr B recorded in a summary written retrospectively: "Lower crowns were adjusted as requested by [Mr A]."

43. Mr A advised HDC that Dr B said: "I'm not going to do anything more for you, find someone else who can do it for you." There is no record of this conversation in the clinical notes.

44. In response to the provisional opinion, Mr A advised HDC that in November 2012 he cancelled his next appointment with Dr B (10 January 2013). This is not recorded in the clinical notes at that time. However, on 1 January 2013 it is recorded in the clinical notes that Mr A cancelled his next appointment with Dr B (10 January 2013) as he had decided against further treatment with Dr B.

Subsequent events

45. On 1 February 2013 it is recorded in the clinical notes that Mr A telephoned Dr B and made a complaint regarding the work on his crowns. In light of Mr A's dissatisfaction, treatment was discontinued with Dr B, including placement of permanent Emax crowns.

46. Mr A subsequently attended a prosthodontist,[18] who removed Mr A's Lava crowns, improved the preparations and, ultimately, fitted Mr A with permanent crowns.

Response from Hill Park Dental Limited

47. Hill Park advised HDC that at the time of these events it did not have any written operating procedures in place with regard to treatment planning, referrals to specialists, or informed consent. Hill Park stated that treatment planning is the responsibility of individual practitioners. It said that, where possible, a practitioner will try to find an in-house solution for the patient, but that, in the event that the patient's treatment is beyond the scope of the dental practice, a referral will be made to an appropriate specialist. Hill Park further advised that it is the responsibility of the individual practitioner to ensure that informed consent is obtained from a patient, and to record this on the patient's file, before starting a procedure.

Response to provisional opinion

48. In response to the provisional opinion, Dr B told HDC:

> "I personally feel that I have let myself down as well as my patient and my company Hill Park Dental [by] not recording the information discussed in as such a detailed form as my discussions with [Mr A]. I also feel that if I had presented [Mr A] more written information during the course of the treatment with me, there would have been less confusion."

49. Dr B told HDC that he has made the following changes to his management of patients:

a) He ensures that he charts each stage of his treatment of consumers in detail, and writes clearer, more comprehensive treatment notes.

b) He assesses the cases he takes on more carefully, and refers more complex cases to specialists.

c) He ensures that consumers with complex treatment plans are provided with, and are able to understand, the proposed treatment plan.

d) He consistently uses written consent forms that include "pros and cons" of the type of treatment proposed.

e) He spends more time with consumers explaining the proposed treatment options.

f) He ensures that consumers are informed regarding proposed changes to the treatment plan, and that consent is sought at each stage.

g) He spends more time in the design stage of milled crowns, in consultation with consumers, to ensure that they will be happy with the results.

h) He ensures that he keeps photographic records of more complex cases.

i) He discusses more complex cases with peers, with regard to treatment options.

[18] A specialist in replacement of missing teeth and restoration of natural teeth.

50. Dr B told HDC:

> "It was never my intention to cause [Mr A] any undue stress in regards to his dental treatment and I offer my sincerest apologies to him and all those who have been inconvenienced by this issue."

51. In response to the provisional opinion, Hill Park apologised to Mr A for the treatment he received. Hill Park told HDC:

> "[Dr B] is a talented and ambitious dentist, who took on a case that was probably more complicated in treating than as first assessed and due to communication issues and lack of accurate record keeping resulted in his failure to complete treatment on [Mr A] in a professional and satisfactory manner."

52. Hill Park told HDC that it has made the following changes as a result of this matter:

a) It has created a "dentists operation manual" specific to Hill Park, to be completed by the end of June 2014.

b) It has provided more educational material in the form of pamphlets and educational videos for consumers to watch in the surgery, and it is keeping the company website updated.

c) It has provided education to the dentists employed by Hill Park regarding treatment planning and documentation.

d) It ensures that dentists are seeking written consent prior to providing treatment.

Opinion: Dr B — Breach

53. Dr B provided dental treatment to Mr A between 14 August and 30 November 2012. Dr B initially replaced Mr A's existing crowns with temporary Protemp crowns, before subsequently placing temporary Lava crowns. Dr B did not place permanent crowns for Mr A.

54. The care provided by Dr B to Mr A was poor. Dr B failed to form an adequate treatment plan for Mr A. Further, Dr B did not provide adequate information to Mr A regarding his treatment plan and, consequently, Mr A was not able to make an informed choice regarding his treatment. The standard of care that Dr B provided to Mr A with regard to preparing and inserting temporary crowns was also suboptimal.

Adequacy of treatment plan — Breach

55. Given Mr A's initial presentation to Dr B, and the length of time that Mr A's treatment was expected to take, a clear and detailed treatment plan was required, and consideration should have been given to a specialist referral. Dr B's planning of Mr A's treatment was poor.

56. On 14 August 2012, Mr A attended Dr B's surgery for an initial consultation. Mr A's teeth were in poor condition.

57. It is recorded in clinical notes dated 14 August: "[R]emove the old bridge and place intermediate crown made out of [L]ava and once [Mr A] is happy with bite and everything we can go ahead and do Emax crown …" Dr B advised HDC that his treatment plan for Mr A included the initial placement of temporary Lava crowns, fitting with dentures to improve Mr A's bite, and replacement of temporary Lava crowns with permanent Emax crowns. In contrast, the written treatment plan that Dr B provided to Mr A outlined two appointments with regard to insertion of Lava crowns, and did not mention the use of Protemp crowns or Emax crowns. Further, the written treatment plan did not state that the Lava crowns were temporary.

58. My expert advisor, dentist and prosthodontist Dr Andrew Cautley, advised that the overall treatment planning of Mr A's case was poor. Dr Cautley stated that Mr A "present[ed] a complex case, requiring a high level of expertise and appropriate treatment planning". In Dr Cautley's opinion, "[Dr B] was well out of his depth in taking on a case like this" and he should have referred Mr A to a specialist as early as the initial appointment.

Conclusion

59. The written treatment plan provided to Mr A on 14 August was different from the treatment plan outlined in clinical notes on the same day.[19] Dr B did not implement either of the plans. I am guided by Dr Cautley's advice in finding that neither of the plans were adequate. Further, Protemp crowns were not recorded in any version of Dr B's treatment plan for Mr A. The use of Protemp crowns added an additional step to Mr A's treatment, which could have been avoided with adequate planning.

60. I accept my expert's advice that, given Mr A's initial presentation to Dr B, a comprehensive treatment plan was necessary, including consideration of a referral to a specialist. I consider that Dr B's planning of Mr A's treatment was inadequate and, accordingly, Dr B failed to provide services with reasonable care and skill and breached Right 4(1) of the Code.

Information and informed consent — Breach

61. Dr B failed to communicate the treatment plan clearly to Mr A. Mr A was not aware of basic elements of his treatment plan, including that the Lava crowns were temporary.

Initial consultation

62. Dr B advised HDC that on 14 August 2012 he discussed a treatment plan with Mr A to replace his current crowns. Dr B recorded in the clinical notes that day that the following treatment plan was discussed with Mr A: "[R]emove the old bridge and

[19] As outlined in the "facts gathered" section of this report, Dr B informed HDC of further details regarding Mr A's treatment plan, which were not in either the clinical notes or the written treatment plan provided to Mr A.

place intermediate crown made out of [L]ava and once he is happy with bite and everything we can go ahead and do Emax crown …"

63. In contrast, Mr A told HDC that Dr B did not explain to him at the initial appointment that the Lava crowns were intended to be temporary. Dr B provided Mr A with a written treatment plan[20] that briefly outlined various dental treatments for Mr A over five appointments. This plan did not include the provision of Protemp crowns or Emax crowns. Further, this plan did not state that the Lava crowns were temporary, as outlined in the 14 August clinical notes. Accordingly, Mr A understood that he was to receive permanent crowns on 15 August, and that, despite the further appointments in the written treatment plan, no further appointments regarding his crowns would be necessary.

64. I am not satisfied that the relevant information regarding Mr A's treatment plan was communicated adequately to Mr A at his initial appointment. Further, the written treatment plan provided to Mr A did not reflect the treatment plan outlined in the clinical notes.

Second consultation

65. Dr B advised that on 15 August 2012 he was not able to mill Lava crowns, so he placed temporary Protemp crowns because Mr A wanted his current crowns removed immediately. Mr A advised HDC that he understood that the crowns Dr B provided on 15 August were temporary, but that he was not aware that he would be receiving temporary crowns when he agreed to a treatment plan at his initial consultation.

66. I accept that Mr A expected to receive permanent crowns on arrival at his second consultation, and that at this consultation Dr B advised Mr A that the Protemp crowns would be temporary and would remain in place until Lava crowns were milled. I consider it to be suboptimal to provide such information to a consumer after arrival at a consultation, in circumstances where Mr A had been advised that a different treatment would take place.

Third consultation

67. On 21 September 2012, Dr B replaced the Protemp crowns with temporary Lava crowns. Dr B advised HDC that the Lava crowns were to be in place temporarily to ensure that Mr A's oral hygiene and occlusion improved sufficiently to place permanent Emax crowns (this is referred to in the clinical notes dated 14 August 2012). In contrast, Mr A advised HDC that he understood from Dr B that Lava crowns are ceramic, and that ceramic crowns are permanent. Mr A told HDC that Dr B did not advise him on 21 September that the Lava crowns were temporary. Mr A's account is supported by the written treatment plan, which does not state that the Lava crowns placed on 21 September 2012 were to be temporary.

68. I consider that at Mr A's third consultation Dr B did not communicate adequately to Mr A that the Lava crowns would be temporary.

[20] See Appendix B.

Conclusion

69. All health consumers have a right to information that a reasonable consumer in their circumstances would need to make an informed choice. This is affirmed in Right 6 of the Code, and is reiterated in the New Zealand Dental Association *New Zealand Code of Practice — Informed Consent.*[21]

70. I consider that due to Dr B's failure to provide the necessary information, Mr A did not have an adequate understanding of his proposed treatment plan. Dr B failed to provide the information to Mr A that a reasonable consumer in Mr A's circumstances would need in order to make an informed choice with regard to his treatment plan. Accordingly, Dr B breached Mr A's rights under Right 6(2) of the Code.

71. Consequently, Mr A was unable to make informed choices or provide informed consent regarding his treatment and, therefore, Dr B breached Right 7(1) of the Code.

Implementation of treatment plan — Breach

72. Dr Cautley advised that the overall standard of care provided by Dr B with regard to the preparation of Mr A's teeth, the placement of the crowns, and the marginal finish, was below accepted standards.

Preparations

73. Dr B advised HDC that he did not touch the preparations of Mr A's teeth, except to smooth out scratches, as they had already been over-prepared by a previous dentist. Dr B went on to state, however, that he intended to improve the preparations before placing Mr A's permanent Emax crowns. In contrast, clinical notes dated 21 September 2012 state that preparation was done the same day that Dr B replaced Mr A's Protemp crowns with Lava crowns.

74. Dr Cautley advised that the original teeth preparations were of poor quality, stating that there were "multiple undercuts, poor marginal finish and over preparation". In Dr Cautley's view, it would be impossible to create adequate temporary crowns on the preparations as they were. He stated that it is "not standard treatment" to make temporary crowns without first improving the preparations to a satisfactory level, and that Dr B failed to recognise that the preparations of Mr A's teeth were "grossly inadequate". Dr B should not have proceeded to make temporary crowns in these circumstances. Dr Cautley stated:

> "The reason for that is that it is then possible to make provisionals that will have better retention, your preparation work is 'complete' and any improvements in gingival health would take place following their placement. From there, the requirement is to achieve acceptable aesthetics with the provisionals as far as the patient is concerned, prior to taking an impression of the completed preps and making them permanent.
>
> …

[21] "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."

> The problem with [Dr B's] approach is that should the patient be happy with the appearance of the 'provisionals' he placed, if he is going to improve the tooth preparations at all (and this was definitely required here), he would have had to then make another set of provisionals and go through the whole process again, which is both time consuming and costly."

75. I accept my expert's advice that the preparations of Mr A's teeth were inadequate. Further, Dr B has provided conflicting information regarding his failure to prepare Mr A's teeth adequately. I consider that Dr B did not prepare Mr A's teeth adequately prior to creating temporary crowns.

Lava crowns

76. Mr A advised HDC that the Lava crowns were ill fitting and uncomfortable. He stated that the crowns pointed outwards into his upper lip, causing his mouth to be tender and swollen.

77. Dr Cautley advised that he is not sure why anyone would choose the method used by Dr B for temporary crowns. Dr Cautley stated that, in his view, it is much easier and more cost-effective to make acrylic temporary crowns, rather than using milled Lava crowns. Dr Cautley advised that Lava crowns are not normally used for temporary crowns.

78. Dr B advised that he expected Mr A's treatment to take up to 24 months. Dr B said that he decided to use Lava crowns because they are durable and he is able to mill them at his surgery, thereby significantly reducing the cost to the consumer. However, on 15 August Dr B provided Protemp crowns for Mr A. Dr B advised that Mr A had wanted his existing crowns removed immediately, and that he was unable to mill Lava crowns that day.

79. I note Dr Cautley's advice that, had the Lava crowns been permanent, the standard of care provided by Dr B would have been very poor.

80. While I accept that the clinical notes on 14 August record that the Lava crowns were to be temporary, Mr A could have expected to have them for up to two years. Given the length of time for which Mr A may have had the Lava crowns, I do not consider that the quality of the Lava crowns can be justified on the basis that the crowns were intended to be in place for only a short period of time. I accept Dr Cautley's advice that the quality of the crowns was very poor.

Margins

81. Mr A stated that the margins of the crowns did not line up properly. Dr Cautley confirmed that the marginal finish of the temporary crowns was moderately inadequate. Dr B advised that the margins became more apparent as Mr A's oral hygiene improved, and that he did not consider it necessary to fix the margins, as ultimately the Lava crowns would be removed. However, I again note Dr B's statement that he expected Mr A's treatment to take up to 24 months. I accept Dr Cautley's advice that the quality of the marginal finish was inadequate.

Conclusion

82. It is my view that the overall standard of care provided by Dr B to Mr A was poor. Dr B failed to prepare Mr A's teeth adequately, and should not have proceeded to place temporary crowns on the preparations as they were. Further, the quality of the temporary crowns and marginal finish was poor. Accordingly, Dr B failed to provide services with reasonable care and skill and breached Right 4(1) of the Code.

Documentation — Breach

83. Health professionals are required to keep accurate, clear, legible and contemporaneous clinical records. They are a record of the care provided to the patient and clinical decisions made. Furthermore, as demonstrated in this case, records are important in verifying facts once a complaint has been made.

84. The Dental Council's *New Zealand Code of Practice: Patient Information and Records (2006)* outlines the importance of recording a patient's treatment. It states:

> "1.1 The patient's treatment record is legally regarded as 'health information' and is an integral part of the provision of dental care. A record of each encounter with a patient will improve diagnosis and treatment planning and will also assist with efficient, safe and complete delivery of care considering the often chronic nature of dental disease …
>
> 1.2 The treatment record may also form the basis of self protection in the event of a dispute associated with any treatment provided and it may also form the basis for some types of self monitoring or audit systems used in quality review systems."

85. The clinical notes lack sufficient detail and are not always consistent with the recollections of Dr B or Mr A. Further, the clinical notes are not consistent with the written treatment plan provided to Mr A. There is no record that Dr B discussed with Mr A his reasons for using Lava technology for temporary crowns.

86. The written treatment plan is very brief and is not consistent with either the clinical notes or Dr B's recollection of events. There is no explanation in the written treatment plan regarding what was expected to occur at Mr A's fifth consultation. Further, the written treatment plan did not state that the Lava crowns were intended to be temporary, or make any mention of either Protemp crowns or permanent Emax crowns.

Conclusion

87. The standard of documentation by Dr B was poor. This Office has frequently emphasised the importance of record-keeping. [22] The failure to keep proper records is poor practice, and puts patients at risk of harm. By failing to document the care provided to Mr A adequately, and failing to provide Mr A with a detailed treatment plan that was consistent with the clinical notes, I consider that Dr B failed to comply with the relevant professional standards and, accordingly, breached Right 4(2) of the Code.

[22] Opinion 08HDC10236 (available from www.hdc.org.nz).

Summary of findings

88. As stated above, I consider that Dr B's planning of Mr A's treatment was inadequate, and the overall standard of care provided by Dr B to Mr A was poor. Accordingly, Dr B failed to provide services with reasonable care and skill and breached Right 4(1) of the Code.

89. The standard of documentation by Dr B was also poor. Dr B failed to document the care provided to Mr A adequately, and failed to provide Mr A with a detailed treatment plan that was consistent with the clinical notes. I consider that Dr B failed to comply with the relevant professional standards and breached Right 4(2) of the Code.

90. Dr B failed to provide the information to Mr A that a reasonable consumer in Mr A's circumstances would need to make an informed choice with regard to his treatment plan. Accordingly, Dr B breached Right 6(2) of the Code. Consequently, Mr A was unable to make informed choices or provide informed consent regarding his treatment. Accordingly, Dr B breached Right 7(1) of the Code.

Opinion: Hill Park Dental Limited — Breach

Vicarious liability — Breach

91. Dr B was an employee of Hill Park. Under Section 72(2) of the Health and Disability Commissioner Act 1994 (the Act), an employing authority may be vicariously liable for any act or omission by an employee. Under section 72(5) of the Act, it is a defence for an employing authority if it can prove that it took such steps as were reasonably practicable to prevent acts or omissions leading to an employee's breach of the Code.

92. Hill Park advised that at the time of these events it did not have in place any written operating procedures with regard to treatment planning, referrals to specialists, or informed consent, including information sheets to be provided to consumers. Hill Park said that individual practitioners were responsible for making decisions with regard to comprehensive treatment planning and referrals to specialists, and ensuring that they seek informed consent from a patient and recording this on the patient's file, before starting a procedure.

93. I do not accept this argument. In my view, any employing authority has a responsibility to ensure that its staff provide appropriate care. It is not enough for an employing authority to rely on the individual practitioner to provide care of an appropriate standard. It also needs to provide clear written guidance to its staff.

94. While Dr B had an individual responsibility, Hill Park also had a responsibility to ensure that its staff were adequately supported and guided. I am concerned about Hill Park's lack of any written procedures or guidelines, especially with regard to appropriate treatment planning for patients, referrals to specialists, and informed consent, including information sheets to be provided to consumers. Such resources can be valuable in setting out the minimum requirements for a dentist, to assist a

practice to ensure the safe and effective provision of care, and to ensure that consumers receive sufficient information about their condition and treatment options.

95. Accordingly, I conclude that Hill Park is vicariously liable for Dr B's breaches of the Code. I consider that Hill Park failed to ensure that Dr B provided services to Mr A with reasonable care and skill, in breach of Right 4(1) of the Code.

Recommendations

Dr B

96. In my provisional opinion, I recommended that Dr B apologise to Mr A for his breaches of the Code. Dr B has subsequently provided an apology to HDC to be forwarded to Mr A.

Hill Park Dental Limited

97. I recommend that Hill Park Dental Limited implement appropriate guidelines for staff with regard to informed consent and appropriate treatment planning referrals to specialists. Hill Park Dental Limited should provide this Office with a copy of these guidelines within three months of the date of this report.

Follow-up actions

98.
- A copy of this report with details identifying the parties removed, except the expert who advised on this case, and Hill Park Dental Limited, will be sent to the New Zealand Dental Council. The New Zealand Dental Council will be advised of Dr B's name, with the recommendation that it review Dr B's competence.

- A copy of this report with details identifying the parties removed, except the expert who advised on this case, and Hill Park Dental Limited, will be sent to the Auckland District Health Board, and it will be advised of Dr B's name.

- A copy of this report with details identifying the parties removed, except the expert who advised on this case, and Hill Park Dental Limited, will be sent to the New Zealand Dental Association, for educational purposes.

- A copy of this report with details identifying the parties removed, except the expert who advised on this case, and Hill Park Dental Limited, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Appendix A — Independent advice

The following expert advice was obtained from dentist and prosthodontist Dr Andrew Cautley:

"Background

[Mr A] attended the rooms of [Dr B] and was initially seen on the 14th of August 2012. His chief complaint concerned some existing crowns on his upper and lower anterior teeth. These were effectively splinted single units made from porcelain fused-to-metal. They had been in place for some time and the patient was concerned about both their appearance and function. A treatment plan was devised and ultimately these crowns were removed. It became apparent that one of the supporting teeth was un-restorable and so the remaining tooth root was left for future extraction.

According to [Dr B's] notes, he made no attempt to modify the tooth preparations that were revealed when the splinted crowns were removed. I have images of these preparations showing them to be of poor quality. These images show multiple under-cuts, poor marginal finish and over preparation of the remaining tooth cores. It is unclear as to why [Dr B] decided that he would not modify these preparations as they were in need of modification. In my view it would be impossible to create adequate temporary crowns given the preparations as they were. (It is notable from the treatment provided by [the subsequent provider] at a later date that these preparations were modifiable and he was able to create acceptable preparations and produce excellent provisional restorations.)

Returning to [Dr B's] treatment, for some reason he decided to make provisional crowns using a milling machine. It is unclear as to what material was used for these provisional crowns. According to [Dr B] on the 15th of August when these crowns were placed, [Mr A] was happy with these temporaries. However he returned on the 25th of September and the temporary crowns were removed and Lava crowns were designed using the same (I presume) E4D milling machine and later inserted.

The upper four incisors were again replaced on the 25th of October and there was some question about design of the crown shape. [Mr A] had some input into that and again these crowns were made using a milling process.

It is interesting to note that earlier on in the treatment plan [Dr B] mentioned that he would be making temporary crowns and once the patient was satisfied with the size and shape then permanent crowns would be made. He mentions that his permanent crown material of choice would be E-Max.

It would appear at this point that [Mr A] lost faith in [Dr B's] ability to produce the crowns to his satisfaction and he made an appointment to see a Specialist Prosthodontist in [another region]. [Mr A] attended [the subsequent provider's] surgery and [the subsequent provider] took extensive photographs and records, and I have access to the images. [The subsequent provider] removed the crowns and the photos of the preparations show just how poor they were, and how difficult it would have been to produce an adequate temporary crown on these

preparations. He also commented that the margins on these crowns were exceedingly poor and measured the marginal gaps between the preparations and the crown margin.

[The subsequent provider] has worked through the process of making further provisional crowns to the patient's liking and has spent some time refining the tooth cores and repairing and replacing missing tooth tissue, removing the under cuts and creating acceptable margins. The image of his preparations prior to the impression being taken demonstrate that it was quite possible to generate a reasonable core shape and margin finish on these teeth, although they obviously have been severely compromised; one would have to question their long term viability. [The subsequent provider] commented on that, and wonders whether or not [Mr A] may be better served to have a full upper denture at some point.

In the meantime [the subsequent provider] has placed laboratory-manufactured provisional crowns, made from an impression and cemented in place, and a plastic partial denture to make good the loss of the upper posterior teeth. He has removed the remaining lower teeth and produced a full lower denture.

Overall I have a few concerns with this case. Firstly [Dr B] did not recognize that the preparations were grossly inadequate and proceeded to try and make provisional crowns which were unlikely to be successful due to the poor state of the underlying tooth tissue. He has made no explanation as to why he did this.

Secondly, the quality of the marginal finish of the provisional crowns was inadequate, and I would describe this as moderately inadequate.

[Dr B] would have had great difficulty making milled provisional crowns on these teeth due to the state of the preparations and either chose to ignore, or was not concerned by, the poor quality of the margins of the temporary crowns which he produced.

Thirdly, while [Dr B] has stated that these crowns were provisional it seems possible that the patient understood that these crowns were indeed permanent. Indeed, [the subsequent provider] was unsure whether the crowns were permanent or provisional, and I contacted him to confirm that.

Fourthly, I am concerned about the overall treatment planning of this case. Clearly [Mr A] is quite a demanding patient, and has set ideas as to what he wants. Having said that, [Mr A] presents a complex case, requiring a high level of expertise and appropriate treatment planning. It would appear that while [Dr B] had an idea as to what might be required he did not have the skill or the expertise to provide an adequate treatment plan for this patient. That treatment plan may have been to refer [Mr A] to a specialist, and my feeling would be that that would have been a wiser course of action.

All in all I do not consider that the care provided was consistent with expected standards, and there are two reasons for that. Firstly the issue with the provisional crowns was not addressed and [Dr B] seems to have concentrated on shape of crowns when in fact they were simply inadequate due to their poor fit. Secondly I do not believe that the case has been particularly well planned from the start, and my assertion that the expertise of a specialist would have been of benefit in this

case has been born out by the way that [the subsequent provider] has been able to manage this situation, and at the very least stabilize [Mr A] to a point where he can make decisions about his long term dental needs.

I would consider this care departed from expected standards in a moderate manner. I do not believe that it could be categorized as severe, but I do think that they represent more than mild departures from acceptable standards.

Dr Andrew J. Cautley"

Subsequent advice provided by Dr Cautley on 23 September 2013

Dr Cautley advised that, in his opinion, "[Dr B] had gone to great lengths to make the crowns, had they been provisional". He suggested that "this indicated that they were intended to be permanent".

Dr Cautley said that "the problem appeared to be that the dentist [Dr B] is saying that the crowns were supposed to be temporary, while the consumer is saying he understood that they were permanent".

Dr Cautley advised that "you could get away with doing a poor job if [the crowns] were only meant to be there for a short time as they wouldn't need to last as long". "You could explain it [the workmanship] away" to some extent. "On the other hand, had [the crowns] been intended to be permanent, then the work done was very poor … [A] patient should know whether they were intended to be temporary or permanent as this should be communicated very clearly to the patient."

Subsequent advice

On 15 October 2013, Dr Cautley provided the following further advice:

"As in my earlier report, I think there are two issues:

1. The 'provisional' crowns.
[Dr B] has asserted that all the crowns he provided were provisional, or temporary. I obviously cannot refute that but he seems to have gone to extraordinary lengths, by using milled ceramic crowns. It's much easier and [more] cost-effective to make acrylic temporary crowns, and I'm not sure why anyone would choose the method he has done. I guess my suspicion is that in the face of evidence of clear inadequacies in marginal fit, he has called them provisional. I guess that can't be proved either way.

However, it's not 'standard treatment' to make provisional crowns without first improving the preparations to a satisfactory level. Clearly the preparations were very poor, and it would be usually expected that treatment would involve improving these (as [the subsequent provider] did) prior to making provisionals. The reason for that is that it is then possible to make provisionals that will have better retention, your preparation work is 'complete' and any improvements in gingival health would take place following their placement. From there, the

requirement is to achieve acceptable aesthetics with the provisionals as far as the patient is concerned, prior to taking an impression of the completed preps and making permanent crowns.

The problem with [Dr B's] approach is that should the patient be happy with the appearance of the 'provisionals' he placed, if he is going to improve the tooth preparations at all (and this was definitely required here), he would have had to then make another set of provisionals and go through the whole process again, which is both time consuming and costly. He may well claim that this was his intention but I'd be surprised. He hasn't said anywhere that he thought that he could improve the preps any more; he's implied that he had already tried to improve them.

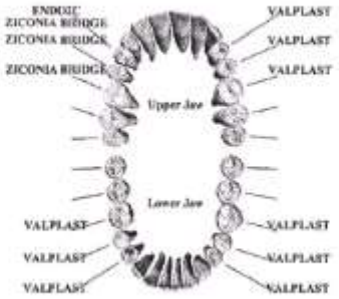
I can't recall exactly what [the subsequent provider] wrote about the crown margins, but from memory he measured the marginal gaps, and they were significant. While it could be argued that 'anything is good enough' for provisionals, I'd suggest that discrepancies as noted by [the subsequent provider] are far from acceptable, in provisional or permanent crowns. Any text would recommend the production of well fitting provisional restorations, and while the definition of 'well fitting' could be debated, these could not be called that in my view. I think [the subsequent provider] was being rather charitable by saying they were acceptable as provisionals.

2. Treatment planning
This patient presents a complex case, with a number of considerations and treatment options. In my opinion [Dr B] was well out of his depth in taking on a case like this. His description of his treatment plan illustrates this. There are standard methods for treating cases like this, and in particular dealing with occlusal problems such as this patient had. It appears he hasn't followed them. However, it could be argued that general dentists regularly attempt cases that are beyond them, but get away with it. As a specialist I regularly see cases where that has occurred, and the results are below what would have been achieved had the case been done 'properly'. I'm sure that's the same in every profession! There's a fine example of poor planning in [Dr B's] report; the fact that he recommended an implant to replace the one missing lower incisor suggests he had no coherent plan to rehabilitate the lower arch."

Appendix B — Written treatment plan provided to Mr A

TREATMENT PLAN ESTIMATE

ESTIMATE FOR PROPOSED TREATMENT AS AT 14/08/2012



LAVA = Lava Crown, ENDO2C = Root Fill 2 Canals, VALPLAST = Valplast, ZICONIA BRIDGE = Ziconia Bridge

	Estimated Fee
Treatment Plan 7431Private	
Appointment 1	
Lava Crown	550.00
Lava Crown	550.00
Lava Crown	550.00
Lava Crown	550.00
Lava Crown	550.00
Lava Crown	550.00
Appointment 2	
Lava Crown	550.00
Lava Crown	550.00
Lava Crown	550.00
Lava Crown	550.00
Appointment 3	
Root Fill 2 Canals	750.00
Appointment 4	
Valplast	1050.00
Valplast	1250.00
Ziconia Bridge	2400.00
Appointment 5	
Total	**$10950.00**

Names have been removed (except Hill Park Dental Ltd and the expert who advised on this case) to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name.