

**Failure to disclose and obtain informed consent by a dentist  
(12HDC00437, 4 February 2014)**

*Dentist ~ Dental practice ~ Root canal ~ Broken instrument ~ Re-treatment ~ Informed consent ~ Failure to disclose ~ Vicarious liability ~ Rights 6(1)(g), 6(1)(b), 4(2)*

A young man, aged 16–17 years old at the time of these events, experienced a fracture to one of his fillings. The man was assessed and a root canal recommended. The man subsequently underwent the root canal treatment and during that treatment, the dentist became aware that one of the fine instruments used had separated or broken off in the root canal. The dentist did not tell the man about the separated instrument, nor did he document this in the clinical records.

Sometime later, the man began to experience pain. The dentist undertook re-treatment of the tooth on three occasions, attempting to remove or bypass the separated instrument. However, the dentist did not tell the man about the reason for the re-treatment, the options available, or the risks associated with each option, including his skill in this area. Even when the man and his parents asked the dentist about the reasons for the re-treatment, the dentist did not tell them about the separated instrument.

When the tooth began to break away the man sought a second opinion. It was only at this time that the man became aware of the separated instrument.

The dentist was found to have breached Right 6(1)(g) for failing to disclose that an instrument had separated during the root canal treatment. The dentist breached Right 6(1)(b) for failing to fully inform the man about the reasons for his re-treatment, the treatment options available to him, and the risks, side effects, benefits and costs of those options, including his skills in the area. The dentist also breached Right 7(1) for failing to obtain the man's informed consent for the re-treatment.

For failing to comply with his professional responsibility to keep proper records, the dentist also breached Right 4(2).

The dentist was referred to the Director of Proceedings. The Director laid a charge before the Health Practitioners Disciplinary Tribunal. The Tribunal viewed the dentist's failure to inform his patient of the separated instrument and obtain his informed consent to on-going treatment seriously. The Tribunal censured the dentist and imposed a fine.

The employer did not have specific written policies in relation to informed consent, and was vicariously liable for the dentist's breaches of the Code.