

Dentist, Dr B

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

(Case 05HDC13588)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Miss A	Consumer
Mrs A	Complainant/Miss A's mother
Dr B	Provider/Dentist
Ms C	Ex-Dental Assistant
Mrs D	Ex-Dental Administrator
Mrs E	School Dental Therapist

Complaint

On 26 July 2005, the Commissioner received a complaint from Mrs A about the services provided by Dr B to her daughter, Miss A. The following issue was identified for investigation:

- *The appropriateness of the dental care provided by Dr B to Miss A on or about 14 July 2005.*

An investigation was commenced on 26 September 2005.

This investigation has taken 13 months. The difficulty in obtaining written statements from the ex-dental assistant delayed the process.

Information reviewed

Information from:

- Mrs A
- Dr B
- Ms C
- Mrs E
- Mrs D
- Dental Council of New Zealand

Miss A's dental records from:

- A School Dental Clinic
- A Dental Centre

The following responses to my provisional opinion were received:

- Mrs A, on 10 November 2006
 - Dr B's lawyer, on behalf of Dr B on 6 December 2006
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Information gathered during investigation

Background

The dental centre is located in suburban area, and is solely owned and operated by Dr B, a general dental practitioner. Prior to October 2005, Dr B routinely performed surgery on children using nitrous oxide sedation,¹ and was one of the few dentists in the area who accepted referrals from school dental therapists. (This is discussed further in the report.) The latter are employed by the District Health Board's School Dental Service (School Dental Service) to provide free dental care for pre-school, primary and intermediate school children in the surrounding areas.

Dental care in July 2005

On 14 June 2005, Miss A, aged six, was referred to the dental centre by her school dental therapist, Mrs E. Teeth 74² and 84³ were in an advanced state of decay and required extraction. As Miss A was very apprehensive and "anxious about needles", Mrs E recommended that she be sedated during the procedure.

On 13 July 2005, Miss A had her first appointment with Dr B. He examined Miss A's mouth and confirmed Mrs E's diagnosis. Dr B also demonstrated the procedure for nitrous oxide gas sedation, which involves covering the mouth and breathing through a mask (nose piece) to inhale the nitrous oxide. According to Dr B, the demonstration went "very well". In addition, Dr B weighed Miss A, and gave Mrs A a prescription for 5mg diazepam (muscle relaxant), with instructions that she administer the diazepam an hour before Miss A's appointment the following day.

Mrs A and Miss A returned to the dental centre around mid-morning on 14 July 2005. Initially, Miss A was apprehensive and reluctant to sit in the dental chair. After she was seated, Dr B began to administer the nitrous oxide sedation by putting the mask on Miss A. As she became calm and drowsy, Dr B inserted local anaesthetic-soaked pellets onto the proposed local anaesthetic injection sites inside her mouth. Miss A did not like the taste of the local anaesthetic, spat the pellets out and pulled the mask off

¹ Inhalation anaesthetic agent in the form of a gas that is rapidly absorbed in the bloodstream. It is often combined with local anaesthetic for managing anxiety and pain.

² Deciduous (primary) molar tooth on the lower left jaw.

³ Deciduous molar tooth on the lower right jaw.

her face. Dr B re-commenced the sedation procedure, and was able to inject local anaesthetic into the gum around tooth 84. However, when he began to inject the local anaesthetic into the gum surrounding tooth 74, Miss A reacted. According to Dr B:

“[Miss A became] very aggressive and totally unco-operative pulling away the nose piece and getting into a tantrum. We all had to restrain the little girl for her own protection [however] not before she bit my left forefinger.”

Miss A had to be restrained as she refused to breathe through the mask to inhale the gas after the mask was put back on her. Dr B asked Mrs A to leave the room in an attempt to get Miss A to co-operate.

Mrs A stated that “as I was walking away I heard a slap”. Mrs A returned immediately to her daughter, and recalls Dr B telling her that he had “slapped” Miss A. However, Mrs A stated that she did not comment as she was in shock, and was primarily concerned about Miss A’s welfare. After a while, Dr B succeeded in numbing the lower right gum and extracted Miss A’s tooth 84 while she sat on Mrs A’s lap. Because he could not anaesthetise Miss A’s lower left gum adequately, he did not extract tooth 74. Dr B recommended extracting tooth 74 under general anaesthetic, and referred Miss A to the public hospital’s dental department.

Ms C, ex-dental assistant, confirmed that she was present at the consultation on 14 July 2005. She recalled Miss A screaming, and Dr B and Mrs A trying to hold her still in the dental chair while he administered the anaesthetic. Ms C also recalled hearing Dr B ask Mrs A to leave the treatment area. She then witnessed Dr B slap Miss A “on the mouth”. Apart from Ms C, there were no other witnesses. Ms C felt very uncomfortable with Dr B’s actions “as it was not right for a dentist to hit a child”.

On reflection, Mrs A said that the consultation did not go well, and felt “very distressed and guilty as I should have asked [Dr B] to stop”.

Post-extraction events

After leaving the dental centre, Miss A mentioned the slapping incident to Mrs A in the car. However, because of the effects of sedation, Miss A could not recall the incident clearly. Mrs A was reluctant to discuss this further because of Miss A’s fear of dentists, and she did not want Miss A to re-live the event.

Before going home, Mrs A took Miss A to Mrs E to report Dr B’s actions. Mrs E recorded in her notes: “Cheek very bruised. Child been slapped.” Mrs E photographed Miss A’s right cheek. She also contacted a dentist who was then the clinical head of the School Dental Service, who advised her to “remain neutral”.

The following morning, on 15 July 2005, Mrs A said that Miss A’s face was bruised, and additional photographs were taken using Mrs A’s sister’s digital camera. However, Mrs A was unable to supply these photographs as they have since been deleted from the hard drive of her sister’s camera.

On the same day (14 July 2005), following the alleged events, Ms C spoke to the practice's administrator, Mrs D. Mrs D stated that Ms C came to her, "visibly upset [and] shaking", and reported that Dr B had slapped Miss A. Mrs D confronted Dr B about Ms C's allegation, but Dr B denied that he had slapped Miss A.

After returning home that day, Ms C recorded what she had witnessed at the dental centre. Subsequently, she telephoned the Citizen's Advice Bureau for advice. However, she decided not to take the matter any further once she learned that Mrs A had made a complaint to the Dental Council of New Zealand (discussed below). Ms C agreed to provide a written statement and her contemporaneous records but has not done so. Following several requests from this Office, Ms C stated that she has since misplaced the notes she recorded on 14 July 2005.

Ms C's job at the dental centre was her first full-time position, and she worked there for approximately five months. Eventually, she left the dental centre. According to Ms C, she left because she "did not like what [Dr B] had done". In contrast, Dr B and Mrs D state that Ms C was asked to leave the dental centre after several discussions were held with her about her regular unexplained absences from work.

Dr B's response

During the investigation (which included an interview), Dr B denied slapping Miss A. He clarified that he held his hand over Miss A's mouth during the nitrous oxide sedation, but "did not apply any force" in doing so. According to Dr B, Ms C misinterpreted his action as it was the first time she had seen such a procedure, having had no prior experience as a dental assistant. Dr B stated:

"It's an area [working with children] which is close to my heart, I always strive very, very much to be gentle."

According to Dr B, Miss A left his surgery happy and doing "high fives" with a sticker on her hand. He telephoned Mrs A that evening to ensure that Miss A was all right, as he was aware that he had tried to administer the nitrous oxide three times, and because "one of the drawbacks of intermittent nitrous oxide administration is the possibility of hiccups occasionally". Dr B spoke briefly with Miss A, and was told by Mrs A that "all was fine, and that [Miss A] had played all afternoon".

Dr B commented that it is "very difficult to treat very difficult and uncooperative children with advanced tooth decay", and "many dentists are refusing to accept referrals from the school dental nurses⁴". Prior to October 2005, Dr B accepted referrals from school dental clinics to provide a service to school children in the area, and to ease the pressure on the hospital's Dental Department. However, from October 2005, Dr B stopped accepting school referrals, and the dental care for children in this

⁴ Now called school dental therapists.

area is now carried out by their respective school dental therapists, and two dental therapists whom Dr B employed in January 2006.

Dr B's response to the Dental Council of New Zealand

On 15 July 2005, Mrs A telephoned the Dental Council of New Zealand (the Dental Council) and spoke to them to complain about Dr B. She subsequently sent an e-mail outlining her complaint to the Dental Council on 18 July 2005. That same day, the Dental Council wrote to Dr B for his account of the consultation. A week later, on 26 July 2005, Mrs A forwarded a copy of her e-mail to the Dental Council to this Office. In August 2005, Dr B provided the following response to the Dental Council:

“With regards to the letter you have received from [Mrs A]. I would like to submit the following for your consideration and assistance in conveying to [Mrs A].

1. In doing numerous sedation cases we take pride that we take a team approach which always includes the parent or caregiver in all aspects and stages of the treatment right up to and including follow-up phone calls.
2. All work, and communication is done in a friendly, inclusive, supportive and kind manner.
3. With the all round cooperation little [Miss A] succeeded in overcoming her anxieties to all us to do the extraction sitting in Mum's lap and giving me the 'High Five' after we gave her her tooth for the 'tooth fairy' to do its magic!
4. [Miss A] was challenging in that it took many attempts and clapping her mouth breathing to allow her to benefit from the Nitrous. With lots of patience and perseverance we got her confidence up and achieved the desired result, which as noted earlier was very successful.
5. [Mrs A] thanked us for our patience during the appointment.
6. I called that evening and [Miss A] took the phone and sounded very happy and on talking with [Mrs A] was told that everything was OK and that [Miss A] had played well the whole afternoon.
7. Since it was a long session for all concerned, during the post operative talk I suggested and we agreed that it may be better to have further treatment done under general anaesthetic at the hospital as the procedure would be over quickly.
8. I have already done this referral.
9. I too am a parent of a 9 and 7-year-old so I can understand [Mrs A's] concerns and wish to reassure her that she has no cause to worry regarding the treatment of her daughter.

10. Needless to say I have been very distressed and disillusioned that the successful efforts of my team have culminated in this.

11. I'm sure though that I was misunderstood."

A copy of Dr B's response was forwarded to Mrs A. However, Mrs A was unsatisfied with Dr B's reply as he failed to address the core issue of slapping Miss A during the treatment.

Other matters

During Ms C's and Mrs D's telephone discussions of the events of 14 July 2005 with this Office, both indicated their willingness to participate further in the investigation. However, Ms C repeatedly failed to provide written information, and subsequently left the area without informing this Office of a forwarding address. Mrs D decided that she did not want any further involvement with the investigation.

Response to provisional opinion

Dr B

Dr B's lawyer responded on Dr B's behalf to my provisional opinion. He stated:

"[Dr B] does not agree with the provisional opinion of the HDC. There are indeed a number of aspects in it that he has already said he disagrees with.⁵ ... [His] interview record ... is in conflict with HDC's provisional opinion.

What is clear, however, is that the consultation in question was a particularly unusual one with considerable difficulties. [Dr B] has practised safely now for many years and he is not a threat to the public. ...

...

... [Dr B] ... does very much regret what has happened. There can be no prospect of a repeat incident and it was very much a one-off incident."

Mrs A

Mrs A confirmed that the information gathered in my provisional opinion was accurate, and no amendments were necessary.

⁵ Details of these were not specified in the response from Dr B's lawyer.

Code of Health and Disability Services Consumers' Rights

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

Right 4(2)

Right to Services of an appropriate Standard

(2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.

Other relevant legislation

The Crimes Act 1961:

"2. Interpretation —

'Assault' means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose; ..."

Pursuant to section 194 of the Crimes Act 1961, it is an offence to assault a child under the age of 14 years.

Opinion

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

Breach — Dr B

The core issue in this case is whether Dr B slapped Miss A during the course of her treatment on 14 July 2005. If he did, his action breached Right 4(2) of the Code in that he failed to provide services that complied with his legal, ethical and professional standards. Slapping a child constitutes an assault under the Crimes Act 1961 and is therefore illegal. It is also plainly unprofessional to physically assault a patient. This is so fundamental that it requires little further comment.

I acknowledge that Dr B experienced considerable difficulties treating Miss A as she was apprehensive and uncooperative. Despite the assistance of Mrs A to calm her daughter, Miss A became very distressed and combative during the treatment, and bit Dr B's left forefinger. Mrs A was asked to leave the treatment area temporarily as Dr B sought Miss A's co-operation. Mrs A claims that as she turned and walked away, she heard the sound of a slap. When she turned around and returned to Miss A, she recalls Dr B informing her that he had slapped Miss A. After the appointment, Mrs A visited the school dental therapist, Mrs E, to complain about Dr B's action. Mrs E photographed Miss A's right cheek and noted that it was very bruised.

In addition to what Dr B told Mrs A, Ms C stated that she witnessed Dr B slap Miss A on the mouth. Later that day, Ms C reported the incident to Mrs D, who recalled that Ms C was "visibly upset" and "shaking".

In contrast to Mrs A's and Ms C's accounts, Dr B denied that he hit Miss A. According to him, Ms C misinterpreted his act of holding his hand over Miss A's mouth during the nitrous oxide sedation.

I accept as credible Mrs A's claim that Dr B slapped Miss A — there is no apparent reason for her to concoct such an allegation. Mrs A's account is consistent with Ms C's statement that she witnessed Dr B slapping Miss A, and Ms C's subsequent actions of reporting the slap to the practice's administrator. In addition, Mrs A's claim is supported by the complaint she made to Mrs E, the school dental therapist, and Mrs E's observations of Miss A. Mrs E's decision to telephone the School Dental Service for advice indicates that she took Mrs A's complaint seriously. I note that Mrs A's and Ms C's responses (by reporting Dr B's actions to Mrs E and Mrs D) were independent of each other, and occurred at the same time.

Taking into account the consistency, independence and timeliness of Mrs A's and Ms C's actions after the incident, it is probable that Dr B slapped Miss A. The act appears to have been intentional and direct, as it occurred after Mrs A left the treatment area. Even if it "was very much a one-off incident" and there is "no prospect of a repeat incident", in my view, the act was one time too many, and raises a public safety concern. Although Dr B may have felt frustrated by Miss A's lack of co-operation, and been provoked by her biting, striking a patient, much less a child, can never be justified. Given the difficulties Dr B encountered while administering the nitrous oxide sedation, he should have considered and discussed with Mrs A the option of referring Miss A to another practitioner before proceeding further with her treatment. There is no indication that he did so. In my view, Dr B failed to provide services in a manner that complied with legal and professional standards, and consequently breached Right 4(2) of the Code.

Follow-up actions

- Dr B will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.
 - A copy of this report will be sent to the Dental Council of New Zealand, the New Zealand Police, and District Health Board.
 - A copy of this report, with details identifying the parties removed (except the name of Dr B), will be sent to the New Zealand Dental Association.
 - 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.
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Addendum

The Director of Proceedings considered this matter and decided not to issue proceedings.