



New Zealand  
Health Practitioners  
Disciplinary Tribunal

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**DECISION NO:** 550/Dtech13/243P

**IN THE MATTER** of the Health Practitioners  
Competence Assurance Act 2003

AND

**IN THE MATTER** of a Charge laid by a Professional  
Conduct Committee pursuant to  
Section 91(1)(b) of the Act against  
**Michael van Vliet**, registered  
dental technician and clinical  
dental technician of Auckland.

**BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL**

**HEARING:** Held at Auckland on 31 May 2013

**TRIBUNAL:** Mr D M Carden (Chair)  
Ms T Burke, Mr J Batchelor, Mr K Lock and Ms A Kinzett  
(Members)

Ms K Davies (Executive Officer)

Ms H Hoffman (Stenographer)

**APPEARANCES:** Ms A Miller for the Professional Conduct Committee

The practitioner, Michael van Vliet, in person

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## Introduction

1. Mr Michael van Vliet is a registered dental technician and clinical dental technician practising in Auckland. Before his Annual Practising Certificate (APC) expired on 31 March 2012 he was sent reminders by the Dental Council of New Zealand (Dental Council) of the need to renew this. Despite those reminders he did not complete the necessary application or pay the appropriate fee for renewal in time and it was not until 23 April 2012 that M van Vliet received the renewed APC. Between 1 April 2012 and 23 April 2012 Mr van Vliet did practise the profession of clinical dental technology. The matter was investigated by a Professional Conduct Committee (PCC) of the Dental Council which laid a charge before the Tribunal.

## The Charge

1. The Charge read as follows:

*“TAKE NOTICE that a Professional Conduct Committee of the Dental Council established under section 71 of the Health Practitioners Competence Assurance Act 2003 (“the Act”) has determined in accordance with section 80(3)(b) of the Act that a disciplinary charge should be brought against Mr Michael van Vliet before the Health Practitioners Disciplinary Tribunal.*

*The Professional Conduct Committee has reason to believe that grounds exist entitling the Tribunal to exercise its powers under section 100 of the Act.*

### **PARTICULARS OF CHARGE**

*Pursuant to section 81(2) of the Act, the Professional Conduct Committee lays a charge that Mr van Vliet, a registered dental technician and clinical dental technician practised the professions of dental technology practice and clinical dental technology practice between, on or around 1 April 2012 and 23 April 2012, when he did not hold a current practising certificate.*

*This is a ground on which a health practitioner may be disciplined under section 100(1)(d) of the Act.”*

2. At the hearing an Agreed Summary of Facts was produced which read as follows:

1. *“Michael van Vliet has been a registered dental technician and clinical dental technician since 18 October 1996. Mr van Vliet is registered within the dental technology and clinical dental technology scopes of practice under the Health Practitioners Competence Assurance Act 2003.*
2. *From the date of his registration Mr van Vliet has been required to hold a current annual practising certificate (APC) in order to practise the profession of dental technology and clinical dental technology.*

**Background**

3. *On 1 March 2012 the Dental Council posted out APC renewal application forms for the 2012/2013 practising year to all registered dental technicians and clinical dental technicians.*
4. *On 2 March 2012 the Dental Council sent an email to all registered dental technicians and clinical dental technicians, including Mr van Vliet, advising that:*

*We would like to remind all practitioners registered in any of the professions listed above [including dental technician and clinical dental technician] that your current Annual Practising Certificate (APC) expires on 31 March 2012. The APC forms for the new cycle are in the post and you should receive your form within the next few days.*

....

**Help us to help you**

*The Council would like to ensure that all practitioners’ APCs are issued as soon as possible and we kindly request that you ensure you complete your form correctly and include the correct amount as published. Any incomplete or incorrectly completed forms will be returned to the practitioner.*

*Also bear in mind that standard post can take between 7 – 10 days if you are located outside of the main cities; please allow sufficient time for postal delivery to ensure that your completed application is received by Council on/before **Friday 30 March 2012** and you do not find yourself in the position of having to pay the Additional Processing APC Fee, or more importantly, having to cease practise until such time as your APC is issued.*

*(emphasis in original)*

5. *On 19 March 2012 the Dental Council sent an email reminder to all registered dental technicians and clinical dental technicians, including Mr van Vliet, advising that:*

*As you are aware your Annual Practising Certificate (APC) is due for renewal prior to 1 April 2012. All APC and Retention forms were sent out on 1 March 2012, if you have not received your form please download a form from our website at the following links...*

...

*If you intend to practise at any time during the next APC cycle (1 April 2012 – 31 March 2013) you must hold a current practising certificate. You are advised that under the Health Practitioners Competence Assurance Act 2003 it is unlawful to practise without a current APC.*

6. *On 27 March 2012 the Dental Council sent a third email reminder to those dental technicians and clinical dental technicians, including Mr van Vliet, from whom an application to renew their APC had not yet been received. The email advised that:*

*As you are aware your Annual Practising Certificate (APC) is due for renewal prior to 1 April 2012. As yet we have not yet received your application to renew your APC for the practising period 1 April 2012 to 31 March 2013, and we are accordingly not aware of your practising intentions for this period...*

...

*If you intend to practise at any time during the next APC cycle (1 April 2012 – 31 March 2013) you must hold a current practising certificate. You are advised that under the Health Practitioners Competence Assurance Act 2003 it is unlawful to practise without a current APC.*

7. *All three emails were sent to the most recent email address notified by Mr van Vliet to the Dental Council, that is [dental.world@xtra.co.nz](mailto:dental.world@xtra.co.nz). In each case, transmission was successful.*
8. *At midnight on 31 March 2012 Mr van Vliet's APC expired.*
9. *On 3 April 2012 the Deputy Registrar of the Dental Council wrote to Mr van Vliet:*

*We note that you have not yet submitted to the Dental Council ("Council") your completed application to renew your Annual Practising Certificate (APC) for the practising period 1 April 2012 – 31 March 2013, and we are accordingly unaware of your practising intentions for this period. If you intend to practise at any time during this period you are required by law to hold a current practising certificate.*

*Please be aware that under the Health Practitioners Competence Assurance Act 2003 it is an offence to practise without a current APC punishable upon conviction by a fine of up to \$10,000.*

*If you are practising at the moment without a current practising certificate, you are doing so unlawfully and you must cease immediately; complete your APC application form, including the Workforce Survey, and return it to the Dental Council together with your practising fee. Only when you have received a current practising certificate may you resume practise.*

...

*If we have not heard from you by Monday 16 April 2012, your name and HPI number will be forwarded to the following agencies who will be advised that you have not renewed your APC:*

- ACC
- Dental Protection Limited
- Ministry of Health, Compliance Unit

*If we become aware that you are practising without an APC you will also be referred to a Professional Conduct Committee. We will not be sending any further communications to you before initiating action.*

*(emphasis in original)*

10. *On 5 April 2012 Mr van Vliet rang the Dental Council. A Dental Council staff member recorded the following file note:*

*Michael rang today to advise that he never received his APC application. I advised him to download the form from our website and to forward it to us as soon as possible. I reminded him that he was not suppose[d] to practise without an APC and that he should get the APC application to us as soon as possible.*

11. *On 17 April 2012 the Registrar of the Dental Council wrote to Dental Protection Limited, ACC, and the Ministry of Health to give notice that, among others, the registered dental technicians and clinical dental technicians recorded in an attached schedule, including Mr van Vliet, did not hold current practising certificates: "The Annual Practising certificates for these practitioners expired on 31 March 2012 and to date; applications for renewal of their Annual Practising Certificates have not been received by the Dental Council".*

12. *On 18 April 2012 a Dental Council staff member attempted to call Mr van Vliet, and recorded the following file note:*

*Called practise phone number which went straight to voicemail, I left a message for Michael to say that following his phone call of 5 April when we advised him to download an APC form and post it in that we had not yet received and form that he therefore did not have an APC and was not entitled to practise. I asked him to call me back.*

*Called the postal phone number listed, they said he doesn't work there and referred me to the practise I had already called.*

*Called his cell phone and the number did not work.*

13. *On 19 April 2012 Mr van Vliet rang the Dental Council. A Dental Council staff member recorded the following file note:*

*Michael called to say that he got my message, he said that it had completely slipped his mind and apologised for this. I explained that he does not hold and [sic] APC and is not currently entitled to practise. He said okay and that he doesn't have his form and tried to find one on our website but couldn't locate it. I gave him directions through the website to find the form, he said he would print it off and confirmed the fee amount with me. I asked when we could expect to receive his form, he said he would try and do it tonight but if not he would get his wife to help him do it tomorrow.*

14. *On Friday 20 April 2012 the Dental Council received Mr van Vliet's completed application form. On the application form Mr van Vliet identified the same practice contact details (but new mobile phone number), and new postal and residential contact details.*

15. *On 23 April 2012 a Dental Council staff member rang Mr van Vliet and recorded the following file note:*

*Phoned Michael at his practise and advised that we had this morning received his Application for Annual Practising Certificate. I advised that as his application is now 23 days late his application would be referred to the Registrar for consideration. I asked whether he had been working during April, to which Mr van Vliet responded 'yes'. I asked whether he has worked the entire time again Mr van Vliet responded 'yes'.*

*I thanked him for his co-operation and honesty. He said well it pays to be honest as you always have the Good Lord to answer to at the end of the day.*

*I explained that his application would be referred to the Registrar and he would hear from us once we were able to issue his APC.*

16. *An APC was issued to Mr van Vliet on 23 April 2012. The APC was sent to him under cover of letter of the same date. The letter stated: "As you are aware, your previous APC expired on 31 March 2012. Your application for a further APC was received by the Dental Council after that expiry date. If you continued to practise after 31 March you were doing so unlawfully". Mr van Vliet was also advised that his case had been referred to the Dental Council for consideration of referral to a PCC.*
17. *On 30 April 2012 the Registrar of the Dental Council wrote to Mr van Vliet to apologise for an error in the letter dated 23 April 2012. An amended letter, dated 30 April 2012, was enclosed.*

18. On 2 May 2012 the Dental Council wrote to Mr van Vliet stating that it had come to its attention that while processing his 2012/2013 APC application there had been an accidental data entry error resulting in an error to his address details. The Dental Council acknowledged that Mr van Vliet may not have received the 23 April 2012 letter, and another APC and receipt were provided. The Dental Council noted that its 30 April letters had been sent by courier and had been received by Mr van Vliet. Mr van Vliet was given until 7 May 2012 to file supporting evidence in relation to the Dental Council's consideration of a referral to a PCC.

19. On 6 May 2012 Mr van Vliet emailed the Council. The email stated:

*I am writing to explain my actions as to my late registration. In May 2011 I dissolved my partnership with Graham Goultier Dental Laboratories Ltd and we had a mutual agreement that any mail sent incorrectly to them for myself would be forward [sic] however we never received any mail from the Dental Council.*

*I received a phone call on the 3<sup>rd</sup> of April advising me that I was unregistered. My wife and I tried to find the correct forms to be completed via your website but found it very difficult to find the correct one that related to me. As this was the day before Easter we went on our Family holiday and renewing my registration slipped our minds, we realised that we had forgotten to renew the registration and made contact with the Dental Council to assist us in finding the correct forms to complete and had them completed and returned on the 20<sup>th</sup> of April.*

*We do sincerely apologise for our forgetfulness and have taken steps to ensure that this will not happen again in the future.*

20. A PCC was subsequently appointed to investigate whether Mr van Vliet had practised the profession at a time when he did not hold a current practising certificate.

21. By letter dated 6 November 2012 Mr van Vliet wrote to the PCC and advised, among other things:

*When I left my partnership with Graham Goulter Dental Laboratories Ltd in 2011 I forgot to change my mailing address with the Dental Council, therefor [sic] any correspondence sent to me from the Dental Council was... never received*

...

*We were then made aware of it around 4<sup>th</sup> of April and we had trouble finding the correct forms to complete via the Dental Council's website. As it was after hours we were unable to get assistance from the Dental Council before we had to leave for our Easter family holiday.*

*After our Easter Holiday the renewal of my registration slipped my mind*



...

*Between the period of 1 April and 23<sup>rd</sup> April I carried out work as per normal as a Clinical Dental Technician.*

*I understand that the oversight of this matter is my own responsibility and I have put a procedure in place to ensure this does not happen again.*

22. *On 16 November 2012 the PCC made a determination to lay a charge. A charge was duly laid before the Health Practitioners Disciplinary Tribunal alleging that Mr van Vliet had practised his profession at a time when he did not hold a current practising certificate.*

23. *Mr van Vliet admits that he practised his profession between on or around 1 April 2012 and 23 April 2012 when he did not hold a current practising certificate”.*

3. The Agreed Summary of Facts was signed by counsel for the PCC and by Mr van Vliet.

4. There was also an Agreed Bundle of Documents produced by consent on the basis that had been canvassed at a preliminary conference namely:

*“.. each document in the Bundle:*

- (a) is what it purports to be on its face;*
- (b) was signed by any purported signatory shown on its face;*
- (c) was sent by any purported author to, and was received by, any purported addressee on its face;*
- (d) was produced from the custody of the party indicated in the index;*
- (e) is admissible evidence; and*
- (f) is received into evidence as soon as referred to by a witness in evidence, or by counsel in submissions, but not otherwise.”*

5. For the PCC it was submitted that there were the three elements to be proven, namely that during the relevant period:

5.1. Mr van Vliet was a registered dental technician and clinical dental technician;

5.2. Mr van Vliet practised as a dental technician and clinical dental technician;

and

5.3. Mr van Vliet did not hold a current practising certificate.

6. As to the first element, the PCC referred to the Dental Council records confirming registration at the relevant time. As to the third element, the PCC also referred to records that the APC for the period from 1 April 2012 had not been issued until 23 April 2012. As to the second element, practising during the period as a dental technician and a clinical dental technician the PCC referred to the acknowledgement in the Agreed Summary of Facts referred to above at paragraph 23. It also noted first that in a telephone conversation with Dental Council staff Mr van Vliet acknowledged that he had been working during April and during the entire period in question and secondly that in a letter to the chair of the PCC dated 6 November 2012 Mr van Vliet acknowledged carrying out work as normal as a clinical dental technician between 1 and 23 April 2012. It was submitted that the PCC did not need to establish an intent to flout professional obligations, that the breach was deliberate, that the practitioner knew or ought to have known of the absence of the APC, or that disciplinary sanction was required for the purpose of protecting the public, maintaining professional standards or punishing the health practitioner. Authorities were referred to.
7. Mr van Vliet made submissions. Primarily he wished to address matters of mitigation in relation to penalty, but he did refer to the fact that there had been a change in his practice in that he had left a previous partnership and had failed to notify the Dental Council of his change of address such that reminders to him were sent to the previous address and previous email address. In correspondence with the PCC Mr van Vliet had said that there had been the change of those addresses and further acknowledged that he let the matter slip from his mind during the relevant period following the Easter vacation. He had also referred to difficulties with the website registration processes. In that letter he did acknowledge that he carried out work “*as per normal as a Clinical Dental Technician*” during the relevant period.

8. The Tribunal must consider the Charge in light of the Agreed Summary of Facts and the evidence as given to the hearing.

### **Charge – General Principles**

9. The burden of proving the Charge is on the PCC.
10. The standard of proof is the balance of probabilities, the standard that applies in civil litigation. The gravity of the allegation is an important factor. The more serious the allegation, the greater must be the degree of satisfaction on the balance of probabilities<sup>1</sup>. The balance of probabilities standard is to be applied flexibly, dependent on the seriousness of the matters to be proved and the consequences of proof. The standard in disciplinary proceedings is that of the civil standard of balance of probabilities.
11. In *B v Medical Council of New Zealand*.<sup>2</sup> Elias J (as she then was) said:<sup>3</sup>
- “The structure of the disciplinary processes as set up by the Act, which rely in large part upon judgment by a practitioner’s peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical and responsible practitioners. But the inclusion of lay representatives in a disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative: the reasonableness of the standards applied must ultimately be for the court to determine, taking into account all the circumstances including not only usual practice but also patient interests and community expectations, including the expectation that professional standards are not permitted to lag. The disciplinary process in part is one of setting standards.”*
12. Orders can be made under section 100(1)(d) of the Health Practitioners Competence Assurance Act 2003 if the Tribunal, after conducting a hearing on a Charge laid, finds that the practitioner has practised his or her profession while not holding a current practising certificate.

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<sup>1</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>2</sup> Noted in [2005] 3 NZLR 810

13. A charge under section 100(1)(d) of the HPCA Act is absolute in its terms and, once the three elements are established: that the practitioner was registered, that he or she had not renewed an APC, and that he or she was practising in the profession during the period of non-renewal, the Charge is made out.
14. In *Henderson*<sup>4</sup> Mr Henderson, a pharmacist, faced certain charges which included practising without a practising certificate. In relation to a submission based on the facts that any practising without a certificate was inadvertent the Tribunal said:

*“35. The establishing of a charge under section 100(1)(d) of the HPCA Act does not require the PCC to establish that the practitioner intended to practise the profession of pharmacy without a current APC. Previous decisions of the Tribunal have clearly established that there is a failure to comply with an important professional obligation even if the breach is inadvertent or innocent. In H<sup>5</sup> notwithstanding that the fact there had been an inadvertent lapse by a practitioner continuing to practise when she did not hold an APC, the elements of the charge were accepted by the Tribunal as being made out.*

*36. The principal purpose of the Act is to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions; and the holding of an APC is a cornerstone requirement of the accountability regime of the Act. Having regard to these factors the Tribunal is satisfied that it cannot have been intended by Parliament that intention is an element of the disciplinary offence under section 100(1)(d).”*

15. It is clear from the Agreed Summary of Facts that the three elements are made out. Mr van Vliet was at the time registered as a dental technician and clinical dental technician as he acknowledges; he did not have renewal of his APC until 23 April 2012; and he did practise his profession as a dental technician and clinical dental technician between 1 and 23 April 2012. While there may have been a breakdown of communication because of changes of addresses, this was primarily because Mr van Vliet failed to notify the Dental Council of the corrected addresses; and in any event

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<sup>3</sup> page 15

<sup>4</sup> 477/Phar12/210P & Phar12/213P

the responsibility lay with him to renew his APC rather than by relying on the Dental Council to remind him about this.

16. Accordingly the decision of the Tribunal is that the Charge is made out.
17. The Tribunal announced the decision at the hearing and the Tribunal proceeded to consider penalty.

**Penalty: submissions for the PCC**

18. The submissions for the PCC referred first to the functions of disciplinary process and the relevant penalty factors as enunciated in the cases. Reference was made to what was said to be comparable cases which the Tribunal has taken into account.
19. It was submitted that Mr van Vliet had practised as a registered health practitioner since 1996 and knew, or ought to have known, of the legal requirement to obtain a current APC in order to lawfully practise his profession; that the onus was on him to comply with the requirements imposed; and that previous decisions of the Tribunal found that even inadvertent or unintentional lapses in meeting these obligations deserved the imposition of penalties.
20. The submissions were that the aggravating factors included
  - 20.1. That a renewal form for his APC and three reminder emails had been sent to the last known addresses for Mr van Vliet and that it was his failure to update his contact details that led to the failure in his receiving these reminders.
  - 20.2. That Mr van Vliet had been reminded on several occasions that he did not have an APC and was not entitled to practise but did so nevertheless.
21. It was said that a clear message had to be sent to the profession that practising without a current practising certificate for any length of time is unacceptable and will not be tolerated by the profession. Emphasis was placed on the important aspect of

protecting the health and safety of the public, the principal purpose of the HPCA Act. It is not simply a matter, it was said, of the payment of the fee or in completion of a form but there were provisions which allowed a degree of scrutiny as to the competence of the practitioner too which was part of the process. It was said that the holding of a current APC “*is a cornerstone of the HPCA Act’s regulatory regime.*”

22. The penalty that the PCC submitted was appropriate was first that Mr van Vliet be censured and secondly that he be fined between \$500.00 and \$1,000.00. It was said that these penalties would express disapproval for failure to have regard to the communications from the Dental Council, that the fine would reinforce the high standards expected within the profession, and that these penalties were proportionate to comparable cases. A contribution to costs was sought and this is referred to below.
23. Reference was made to the fact that there was included in the Health Practitioners Competence Assurance (Restricted Activities) Order 2005 in the Schedule of Restricted Activities: “*Clinical procedures involved in the insertion and maintenance of fixed and removable orthodontic or oral and maxillofacial prosthetic appliances.*” It was submitted that the risk to the public was greater in the case of Mr van Vliet as a clinical dental technician because of the provisions of that Order.

**Penalty: Mr van Vliet**

24. Mr van Vliet made oral submissions. He acknowledged that he had not renewed his APC in time and had continued to practise his profession until receipt of the renewed APC on 23 April 2013. He referred to the intervention of the Easter break in that year and the fact that the renewal had slipped his mind until he received the telephone message advice on 18 April 2013 that the APC form had not been received and that he was not entitled to be practising. He referred to the previous addresses of

his partners and previous email address and said that it had been the practice manager at his previous practice who had telephoned him on receipt of the advice from the Dental Council.

25. Mr van Vliet said that he had put in place proper processes such that this would not occur again, with appropriate reminders. He acknowledged that he had worked 8 hours per day for the 13 working days up until, but excluding, 23 April 2012. He referred to his co-operation with the Dental Council in the matter and the emphasised that this had been a case of human error rather than any deliberate attempt to practise unlawfully. He said that the work he had done was normal for a clinical dental technician but there were no orthodontic appliances or maxillofacial prosthetic appliances. When asked about his financial position and means, he said these were “*not terribly good*” and referred to his personal circumstances and the practice commitments he had.

### **Penalty - principles**

26. The Tribunal does not consider that penalties of cancellation of registration, suspension of re-registration, or conditions following practice need be considered. The Tribunal is authorised under section 101 of the HPCA Act to censure, to impose a fine up to \$30,000.00 and to order costs.
27. The functions of disciplinary proceedings have been canvassed by the High Court in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand*.<sup>6</sup> In that case the practitioner, Mr Roberts, had had his registration as a nurse suspended by the Tribunal for a period of three years, the maximum provided. The charge against him had included having had an “*inappropriate and/or sexual relationship*” between him and a patient.

28. The Court referred to the following factors which the Tribunal is required to take into account in determining penalty.<sup>7</sup>

28.1. What penalty most appropriately protects the public, a factor identified as the principal purpose of the HPCA Act in section 3, namely:

*“... [T]o protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions.”*

28.2. The important role of setting professional standards.

28.3. A punitive function but this is

*“ ... often viewed as a by-product of the penalties imposed by the Tribunal and that protecting the public and setting professional standards are the most important factors for the Tribunal to bear in mind when setting a penalty.”*<sup>8</sup>

28.4. Rehabilitation of the health professional. The court recorded that:

*“A reason why rehabilitation may be an important consideration is that health professionals and society as a whole make considerable investments in the training and development of health practitioners. Where appropriate, the Tribunal should endeavour to ensure that these investments are not permanently lost, provided of course the practitioner is truly capable of being rehabilitated and reintegrated into the profession.”*<sup>9</sup>

28.5. That any penalty imposed is comparable to other penalties imposed upon health professionals in similar circumstances. The court recognised that each case would require a careful assessment of its own facts and circumstances, and that rarely would two cases be identical.

28.6. Assessing the health practitioner’s behaviour against the spectrum of sentencing options that are available and trying to ensure that the maximum penalties are reserved for the worst offenders.

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<sup>6</sup> [2012] HC 3354 and HC Wellington, CIV -2012-404-3916, 12 December 2012, Collins J

<sup>7</sup> *Roberts*, supra, paragraph 44

<sup>8</sup> Paragraph 46

<sup>9</sup> Paragraph 47



28.7. An endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances with reference to *Patel v Dentists Disciplinary Tribunal*.<sup>10</sup>

28.8. Whether the penalty proposed is

“... *fair, reasonable and proportionate in the circumstances presented.*”<sup>11</sup>

29. The court referred to the penalty imposition as involving a “*finely balanced judgment*” and not being a “*formulaic exercise.*”

### **Penalty: discussion**

30. It is important that any health practitioner have a current practising certificate; and that that certificate is renewed regularly as required. It is not simply a matter of a fee being paid but the application form requires completion of certain details and the content of the form and the performance of the practitioner need to be assessed before the renewed practising certificate is then issued. That takes time and it must be done in a timely fashion if there is to be continuity of the practising certificate applicable to the individual practitioner.

31. Although it is helpful for a Responsible Authority to send out reminders of the need to renew the certificate, the prime responsibility for this lies with the practitioner. It is the responsibility of every practitioner to ensure that the application is made and the appropriate fees paid in a timely fashion such that the practising certificate is issued before the previous one expires. Otherwise, the responsibility is then on the practitioner not to practise until the renewed certificate is received.

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<sup>10</sup> HC Auckland, AP77/02, 8 October 2001, Randerson J

<sup>11</sup> Paragraph 51

32. It is not a case of the receipt of the form by the Responsible Authority nor of the receipt of the appropriate fee; it is a case that the certificate must have been issued and received by the practitioner.
33. In this case several reminders were sent to Mr van Vliet in a timely fashion and he had plenty of warning. Regrettably, he had changed his contact details and had failed to notify the Dental Council of the changes. This meant that the reminders to him were sent to the old addresses and he did not receive them immediately. The obligation was on him to advise the Dental Council of these changes and also to ensure that the recipient of advices to the old addresses would forward these on in a prompt manner where relevant. This did ultimately occur but by then the current certificate had lapsed.
34. The Tribunal has considered other relevant cases. Although these are helpful as a guide and for the purpose of achieving some consistency in the profession and with other health practitioners, each case must be decided on its own facts. These cases are:
- 34.1. *Dr E*.<sup>12</sup> In this case a registered dentist practised his profession between 1 October 2011 and 4 November 2011. There were issues about his receipt of reminders for renewal of his APC and evidence of personal difficulties at the time. Dr E practised for a three day period during that time. He was fined \$500.00 and ordered to pay \$5,000.00 contribution to costs.
- 34.2. *Dr S*.<sup>13</sup> Dr S, a registered dentist, claimed that he had forgotten about the change in the APC cycle and practised his profession between 1 October 2010 and 30 April 2011 without an APC. The Tribunal noted that there had been a

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<sup>12</sup> 503/Den12/219P

<sup>13</sup> 445/Den11/198P

pattern of multiple reminders and Dr S was censured, fined \$2,000.00 and ordered to pay costs \$12,000.00. In that case the Tribunal said:<sup>14</sup>

*“It is useful to reiterate the dicta of the High Court in the H case<sup>15</sup> where the Court stated:*

*“... an APC is a fundamental and important requirement ... The Tribunal was entitled to take the view that the requirement to obtain an annual practising certificate was an important professional obligation and of sufficient significance to justify the imposition of the fine in addition to censure ...”*

34.3. *Ms H.*<sup>16</sup> The charge against Ms H of having practised her profession as a registered psychologist between 1 April 2005 in 20 June, 2008 was found made out. In mitigation she referred to her belief that payment of her fees to the College was an alternative to a practising certificate and her failure to obtain an APC was regarded as innocent and inadvertent. The fine imposed by the Tribunal was reduced by the High Court on appeal to \$2,000.00, the Court making the statement referred to in paragraph 34.2 above. Ms H was censured and ordered to pay \$3,900.00 towards costs.

34.4. *Mr Henderson.*<sup>17</sup> Mr Henderson faced a charge of practising his profession as a registered pharmacist between 4 May 2010 and at least October 2011 without a current practising certificate. The background to that was that he had not been issued with an APC in May 2010 for failure to comply with a re-certification programme. The charge was found made out and the Tribunal fined Mr Henderson the sum of \$2,000.00 and censured him, also ordering him to contribute \$20,525.00 towards costs.

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<sup>14</sup> At paragraph 16.3

<sup>15</sup> Known as *G S v A Professional Conduct Committee*, CIV-2009-404-0070801 April 2010, Venning J

<sup>16</sup> 256/Psy09/128P - appealed; referred to above in paragraph 34.2 and footnote 15

<sup>17</sup> Supra at paragraph 14 and footnote 4

- 34.5. *Ms G.*<sup>18</sup> In that case a dental therapist, living on an island with relatively delayed communications, had received appropriate reminders from the Dental Council for renewal of her APC and had thought she had left these with the appropriate personnel for completion. In fact that did not occur and she did practise for five days over the 18 day period. She was censured, fined \$500.00 and ordered to pay \$2,000.00 towards the cost of the investigation and prosecution.
- 34.6. Two previous cases heard by the Tribunal (with a different chairperson) the day before the hearing of this matter where one dental technician had been fined \$500.00, censured and ordered to pay \$1,750.00 towards costs and the other had been fined \$1,500.00, censured and ordered to pay \$9,000.00 towards costs. It was said that there were aggravating factors in that case.
35. There are other cases referred to by counsel for the PCC and referred to in the decisions in the cases mentioned above, which the Tribunal has also taken into account.
36. The aggravating features in this case are these:
- 36.1. Mr van Vliet had repeated and comprehensive advice and warning about the expiry of his then current practising certificate and was given adequate opportunity to renew this in time which he did not. The Tribunal accepts that these were sent to old addresses, but the responsibility and consequences for that lay with Mr van Vliet.
- 36.2. In the telephone conversation on 5 April 2012 apparently Mr van Vliet was reminded that he was “*not suppose[d] to practise without an APC.*” While that was an advice to him of the consequences of not having renewed in a

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<sup>18</sup> 544/Dth12/229P

timely fashion, the Tribunal also takes into account that the language used was not significantly compelling such as might categorically advise him not to practise.

37. The mitigating features are:

37.1. The fact that Mr van Vliet did not receive the reminders by post or email that are mentioned for the reasons that he had not sent changed details to the Dental Council and the person who received the advices did not pass those on to him promptly.

37.2. Mr van Vliet has been co-operative with the PCC and the Tribunal in disposal of this manner. He has participated in the process. He has signed the Agreed Summary of Facts and so facilitated the hearing. He has come to the hearing and fronted up and explained his position clearly and this is all helpful.

37.3. Mr van Vliet may be said to have been let down to the extent that mail to his old address and email address were not forwarded to him.

37.4. The tenor of the certain telephone advices to Mr Van Vliet as recorded in the Dental Council Practitioner Notes was not that of urgency or relative importance. The 5 April 2012 note records advice to Mr van Vliet to download the form and forward this "*as soon as possible*". The reminder to him was that he was "*not suppose[d] to practise without an APC*". The fact that these advices to him were of this nature may have led him into a sense and understanding that the matter did not have the urgency and importance that the Dental Council now places on the requirement for prompt renewal.

37.5. When the full import of the circumstances was apparent to Mr van Vliet on 18 April 2012 he took the necessary step steps then to promptly renew his APC.

38. Having weighed all these issues, the Tribunal is of the view that the appropriate penalty to impose is a fine of \$750.00.

39. Mr van Vliet is censured. This is not to be treated as a mere formality but is an expression of the concern that the Tribunal has about the breach of standards and of the HPCA Act by Mr van Vliet.

### Costs

40. The PCC has sought an order for costs and estimated its costs at some \$7,500.00 – \$8,000.00. In addition to that the Tribunal must consider its own costs and these have been estimated on a detailed basis at \$8,130.28. In both cases those costs take into account the facts first that there were two Charges heard by the Tribunal on the same day involving the same Tribunal members and counsel and secondly that there had been similar Charges heard by the Tribunal (differently constituted) the previous day. In the case of the Tribunal costs, it was a simple case of dividing total estimated costs of \$32,521.10 by four. The total costs of this hearing is approximately \$16,130.00. Mr van Vliet and every other dental technician must realise that except to the extent that Mr van Vliet contributes to this these costs, they will be born by other practitioners.
41. Under section 101(1)(f) of the HPCA Act the Tribunal can order a health practitioner to pay all or part of the costs and expenses of and incidental to any inquiry made by the PCC in relation to the subject matter, the prosecution of the Charge by the PCC and the hearing by the Tribunal.
42. The principles applicable to costs are these. In *Cooray v Preliminary Proceedings Committee*<sup>19</sup> there is reference to a 50% contribution. That is in the context, however, of a starting point and other factors may be taken into account to reduce or mitigate that proportion. If Mr van Vliet does not pay or contribute to the cost of this proceeding to any extent, those costs must be met by other members of his

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<sup>19</sup> HC Wellington, AP 23/94, 14 September 1995, Doogue J

dental technicians profession. As was said in *O'Connor v Preliminary Proceedings Committee*<sup>20</sup>

*“It is a notorious fact that prosecutions in the hands of professional bodies, usually pursuant to statutory powers, are very costly and time consuming to those bodies and such knowledge is widespread within the professions so controlled. So as to alleviate the burden of the costs on the professional members as a whole the legislature empowered the different bodies to impose orders for costs.”*

43. In *Winefield*<sup>21</sup> the Tribunal held that costs of some 30% of actual costs were appropriate having regard to:
- 43.1. The hearing being able to proceed on an Agreed Statement of Facts.
  - 43.2. Co-operation of Mr Winefield.
  - 43.3. The attendance of Mr. Winefield at the hearing.
  - 43.4. Consistency with the level of costs in previous decisions.
  - 43.5. Costs not paid by Mr Winefield would fall on the profession as a whole.
44. Having regard to Mr van Vliet’s personal circumstances and all other factors, the Tribunal has decided that the appropriate order for costs should be \$2,000.00, to be divided equally between the PCC and the Tribunal.

### **Orders**

45. Mr van Vliet is censured pursuant to section 101(1)(d) of the Health Practitioners Competence Assurance Act 2003.
46. The Tribunal orders, pursuant to section 101(1)(e) of the Health Practitioners Competence Assurance Act 2003, that Mr van Vliet pay a fine of **\$750.00**.
47. The Tribunal orders, pursuant to section 101(1)(f) of the Health Practitioners Competence Assurance Act 2003, that Mr van Vliet pay a contribution of **\$2,000.00**

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<sup>20</sup> HC Wellington, AP 280/89; 23 August 1990, Jeffries J – at page 13

<sup>21</sup> 83/Phar06/30P

towards the cost of this prosecution, to be divided as to \$1,000.00 to the costs of the PCC and as to \$1,000.00 to the Health Practitioners Disciplinary Tribunal costs.

48. The Tribunal directs pursuant to section 157 of the Health Practitioners Competence Assurance Act 2003 that the Executive Officer publish a copy of this decision and a summary on the Tribunal's website. The Tribunal further directs the Executive Officer to publish a notice stating the effect of the Tribunal's decision on the Dental Council website and in the Dental Council newsletter.

**DATED** at Auckland this. 10<sup>th</sup> day of July 2013

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David M Carden  
Chairperson  
Health Practitioners Disciplinary Tribunal