



New Zealand  
Health Practitioners  
Disciplinary Tribunal

Level 13, Mid City Tower, 139 Willis Street, Wellington 6011  
PO Box 11649, Manners Street, Wellington 6142, New Zealand  
Telephone: 64 4 381 6816 Facsimile: 64 4 802 4831  
Email: [dgainey@hpdt.org.nz](mailto:dgainey@hpdt.org.nz)  
Website: [www.hpdt.org.nz](http://www.hpdt.org.nz)

**DECISION NO:** 568/Den13/246P

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

**AND**

**IN THE MATTER** of disciplinary proceedings against  
**DR SANJAY GOVIND SATHE,**  
registered dentist of Auckland

**BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL**

**HEARING** held at Auckland on 9 August 2013

**PRESENT:**

Mr B A Corkill QC, Chairperson

Ms A Kinzett, Dr R East, Dr P Luteru and Dr W Ross  
(Members)

Miss D Gainey (Executive Officer)

Ms H Hoffman (Stenographer)

**APPEARANCES:**

Ms A Miller, for the Professional Conduct Committee

Mr H Waalkens QC, for Dr S G Sathe

**Introduction:**

1. Dr S G Sathe, a registered dentist of Auckland, is the subject of a charge brought by a Preliminary Proceedings Committee (PCC) following convictions entered in the District Court at Manukau on 12 September 2012.
2. The charge is as follows:

***"PARTICULARS OF CHARGE***

*Pursuant to section 81(2) of the Act, the Professional Conduct Committee lays a charge that on 12 September 2012 Dr Sathe, a registered general dental practitioner, was convicted in the District Court at Manukau of the offences set out below, each of which is an offence punishable by imprisonment for a term of 3 months or longer:*

- (a) *10 representative charges of dishonest use of a document pursuant to section 228(b) Crimes Act 1961; and*
- (b) *8 representative charges of false accounting pursuant to section 260(a) Crimes Act 1961.*

*These convictions, either separately or cumulatively, reflect adversely on Dr Sathe's fitness to practise as a dentist. This is a ground on which a health practitioner may be disciplined under section 100(1)(c) of the Act."*

**Legal principles:**

3. Many previous decisions of the High Court and the Tribunal have established the relevant principles, which are:
  - a) It is not necessary that a relevant conviction conclusively demonstrates that the practitioner is unfit to practise, although there is a high threshold to be met – namely, the conviction must raise serious questions about whether a practitioner is fit to practise (*PCC v Martin*, High Court 27 February 2007, CIV 2006-485-1461, Gendall J, at [17]).
  - b) A determination of "fitness to practise" does not relate solely to the practitioner's clinical ability or confidence:
    - It includes a consideration of whether the practitioner's conduct was immoral or unethical (*Murdoch*, 76/Phys06/45P).

- It involves a consideration of character (*Pellowe* (137/Phar/07/74P)).
  - That the conviction is likely to bring discredit to the profession, this may well indicate that it reflects adversely on fitness to practice, although that is not in itself determinative (*Pittwood*, 84/Ost06/42P).
- c) There are many previous cases where convictions for dishonesty or fraud have led the tribunal to conclude that those convictions reflect adversely on fitness to practise including *Pellowe* (137/Pakr07/74P), *Chiew* (180/Phar08/95P) and *Bain* (387/Nur11/176P).
- d) In *Condon* (23/Nur04/13P) the Tribunal stated "... members of the public are entitled to expect to be able to trust and have confidence in the honesty of all members of the nursing profession. In this case the misconduct has let both herself down and the public." That is, a breach of trust may well reflect adversely on practice.

### **Hearing:**

4. The hearing was able to proceed on the basis of an agreed summary of facts. It states:
- "1. *Dr Sanjay Govind Sathe is registered with the Dental Council in the general dental practice scope of practice. He has been registered with the Dental Council since 22 July 2003.*
  2. *On 12 September 2012 Dr Sathe appeared in the District Court at Manukau and entered guilty pleas to 10 charges under section 228(b) of the Crimes Act 1961 (dishonest use of a document), and 8 charges under section 260(a) Crimes Act 1961 (false accounting).*
  3. *By letter dated 14 September 2012 Dr Sathe wrote to the Registrar of the Dental Council to advise that he had entered guilty pleas to 18 charges relating to dishonest use of a document and false accounting. Dr Sathe advised that the case had been adjourned for sentencing on 23 November 2012.*
  4. *On 23 November 2012 Dr Sathe was convicted at the District Court at Manukau and sentenced to 8 months' home detention. The details of the offending are set out in the caption summary.*
  5. *For the District Court sentencing, Dr Sathe provided a bundle of references which are [before the Tribunal]. All referees who have*

written references for the District Court have agreed to have those references placed before the Tribunal.

6. *By letter dated 27 November 2012 Dr Sathe wrote to the Registrar of the Dental Council to advise that the District Court had imposed a sentence of home detention. Among other things, he advised that he would cooperate with any PCC investigation, and that he would plead guilty to a disciplinary charge "reflecting the fact of my convictions and that they reflect adversely on fitness to practise."*

5. The District Court Judge described the offending in this way:

*"[1]...the background to this matter is that you are a dental surgeon and you operated a small dental surgery in Howick trading as A+ Howick Dentists. The practice was operated under a small company run by yourself and your wife. That company contracted dental services on behalf of the Counties Manukau District Health Board to children and adolescents. Under the contract you were permitted to claim a fee from the Ministry for a set list of dental treatments which were beyond the scope of school dental therapists. You were also entitled to claim for specified treatments for children and adolescents who did not have access to a regular oral health provider.*

*[2] You were required to submit specific claim forms. This included claim summary documents which collated a number of individual claims over a set period. Each form had a declaration signed on it by you saying that the contents of the form were true and correct.*

*[3] Between January 2007 and September 2011 you submitted 172 claim summary forms which were found to include one or more false or inflated claims and it is that conduct that has been the subject of the composite charges of dishonesty and the dishonest use of a document. The total amount falsely claimed and paid to you over this period was some \$49,274.41. In addition, a worrying aspect of this case is that you maintained false clinical records for patients who were the subject of false claims. These clinical records detail treatments, including multiple teeth extractions, which had in fact not occurred. The false entries were made with the apparent purpose of avoiding detection should an audit take place and that conduct is the subject of the eight composite false accounting charges.*

*[4] With the permission of the victim, represented here today by Ms McKay from the Counties Manukau District Health Board, I am going to read into the record the impact that has been felt as a result of your fraud. The statement says in part:*

*The dental services provided in our region to children and adolescent patients under the age of 18 years rely on the honesty and professionalism of a small number of contracted dentists and health professionals. Dr Sathe was part of this honesty based system from 2006 to 2011. As one of our contracted dentists, he*

*was the public face for dentistry in our region. He was trusted and highly thought of by us and his patients. Dr Sathe's offending has damaged this image and undone years of hard work by the Counties Manukau District Health Board to develop our public dental programmes into the community and our school system. His offending has also damaged the reputation of the small number of contracted dentists we work with to provide our dental services.*

*Dr Sathe's offending has left a mess for us to address. We are currently tracking down hundreds of Dr Sathe's former patients to ensure that their recorded dental treatment actually occurred or not. We note in some circumstances the patient may not have accessed dental care despite being falsely recorded in clinical records as having had dental care and the treatment that was claimed for. This includes patients now aged over 18 years of age and no longer covered by the adolescent dental programme.*

*[5] The victim notes that they have had to attend to calls from other dentists who have picked up former adolescent patients of yours who have questioned the accuracy and quality of your clinical records. They have also had to receive phone calls from the parents of children and adolescents concerned about treatment or lack of treatment done by you and those inquiries have taken time to address. As a result of your offending, some parents now believe they are entitled to regular oral care from their contracted dentists but sadly, that is not the case and there has had to be a re-education policy. There has been difficult communication undertaken with upset parents to pacify their concerns about the oral hygiene and treatment of their children not being funded by the state.*

*[6] Finally, the victim notes that the budget for oral health treatment for children and adolescent patients in the Counties Manukau area is limited and that the money spent on payments for false claim treatments, the costs of investigation and the productivity lost in staff hours assisting with the investigation, are all wasted resources that have been taken away from much better and good use in the community.*

...

*[8] The duration of your offending and the number of acts of dishonesty over a continued period of four and a half years and 172 false claim summary forms submitted during that period are clear and severe. The amount of loss of \$49,274.71 is a serious sum of money. I do find there was premeditation and efforts to conceal the offending..."*

6. The Judge went on to consider mitigating factors including remorse, the making of reparation payments, and an early plea of guilty; he also alluded to serious issues which applied at the time of the offence within the practitioner's family and when he was left

alone to run his practice. The Judge also acknowledged an excellent reputation and previous good character.

7. He then imposed a sentence of 8 months home detention and conditions which would apply during the home detention sentence.
8. A PCC was subsequently appointed to investigate Dr Sathe's conviction. Dr Sathe was invited to make submissions and/or to be heard on the matter. Through counsel, Dr Sathe accepted that the convictions would be referred to the Tribunal, and that he did not wish to meet with the PCC.
9. Dr Sathe admitted that his convictions reflect adversely on his fitness to practise as a dentist.

**Discussion:**

10. There is no doubt that Dr Sathe has been convicted of 18 offences under the Crimes Act 1961, all of which are punishable by terms of imprisonment exceeding three months (seven years in the case of the 10 charges of dishonesty using a document under section 228(b), and 10 years in respect of the 8 charges of false accounting under section 260(a)). The first element of the charge is established.
11. As regards the second element, which relates to reflecting adversely on fitness to practise, the PCC submitted:

*"(a) Dr Sathe has been convicted of significant dishonesty offences involving nearly \$50,000 of public monies. The maximum penalties available on conviction reflects the seriousness of the offending;*

*(b) The offending was to the financial detriment of the Ministry of Health and Counties Manukau DHB, but more broadly it was to the detriment of the public (and specifically, members of the public seeking publicly funded dental services). Judge Winter referred to the victim impact statement, noting (at paragraph [6]) that:*

*...the victim notes that the budget for oral health treatment for children and adolescent patients in the Counties Manukau area is limited and that the money spent on payments for false claim treatments, the costs of investigation and the productivity lost in staff hours assisting with the*

*investigation, are all wasted resources that have been taken away from much better and good use in the community.*

- (c) *Dr Sathe's offending was inextricably linked to his professional practice. It is highly relevant that Dr Sathe created false clinical records to support his fraudulent claims:*

- (i) *As noted by the District Court Judge in sentencing:*

*...a worrying aspect of this case is that you maintained false clinical records for patients who were the subject of false claims. These clinical records detail treatments, including multiple teeth extractions, which had in fact not occurred. The false entries were made with the apparent purpose of avoiding detection should an audit take place...*

*(paragraph [7] sentencing notes)*

- (ii) *The District Court also referred to the victim impact statement noting that:*

*The victim notes that they have had to attend to calls from other dentists who have picked up former adolescent patients of yours who have questioned the accuracy and quality of your clinical records. They have also had to receive phone calls from the parents of children and adolescents concerned about treatment or lack of treatment done by you. As a result of your offending, some parents now believe they are entitled to regular oral care from their contracted dentist...there has had to be a re-education policy.*

*(paragraph [5] sentencing notes)*

- (d) *The offending involved deliberate acts of dishonesty (and not acts of oversight, carelessness, or inadvertence). Each of the claim forms submitted by Dr Sathe was signed under a declaration that the contents were true and correct (paragraph 5, caption summary). Further, the District Court found that there was "premeditation and efforts to conceal the offending" (paragraph [8] sentencing notes);*

- (e) *Dr Sathe's offending covered a period of more than 4 1/2 years (January 2007 to September 2011). Sentencing notes at paragraph [8] state that:*

*The duration of your offending and the number of acts of dishonesty over a continued period of four and a half years and 172 false claim summary forms submitted during that period are clear and severe.*

- (f) *As well as being illegal, Dr Sathe's actions were immoral, unethical, and involved significant breaches of trust. The public can legitimately expect dentists to be honest and trustworthy. It is a relevant requirement of the Dental Council's Statement on the Principles of Ethical Conduct for Oral Health Practitioners to uphold trust:*

***Principle 4: Uphold trust and professional integrity***

*Uphold the integrity of your profession and justify the trust placed in you by your patients, colleagues, and the public.*

*It is submitted that Dr Sathe's offending betrayed that trust; and*

- (g) *Dr Sathe has behaved in a way that represents a significant and serious departure from the standards expected of a dentist. There can be little doubt that Dr Sathe's offending brings (or has brought) discredit to the profession of dentistry. In sentencing it was noted (at paragraph [7]) that:*

*Yes, there was money lost but by far and away the greatest harm was the damage you have done to your profession and the damage you have done to a programme of care for the health of the children in our community...the cost to a policy that relies on trust can never be repaid.”*

12. It is also noted that Dr Sathe accepted that his conduct reflected adversely on his fitness to practise. Nonetheless, the Tribunal is required to determine the issue itself.
13. The Tribunal accepts the submissions made by the PCC. The offences occurred in a work context, and involved a very significant breach of trust. That trust resulted not only in monies being illegally taken, but as the Court pointed out there was significant impact on the health of children in the community. The Tribunal is also very concerned that false clinical records were prepared to support the offending; predictably this has resulted in significant adverse consequences for patients and the DHB.
14. There is no doubt that the conduct reflects adversely on Dr Sathe's fitness to practise as a dentist.
15. The charge is accordingly established.

**Penalty:**

16. The above conclusion was announced at the hearing and submissions were then received as to penalty.
17. The PCC made submissions as follows:
  - a) Reference was made to the general principles as to penalty, as summarised below.



- b) Full submissions were also made as to comparable cases; these are discussed below.
- c) It was submitted the starting point for imposing a penalty must be the cancellation of registration. This was because:
- Of the seriousness of the offending, which involved nearly \$50,000 of public monies; there had been a significant breach of trust.
  - The offending involved dishonesty in Dr Sathe's professional practice. It was sophisticated and premeditated.
  - False clinical records had been created to support the offending. Patients should be able to trust their dentist to make fair and accurate records of their treatment, and Dr Sathe ought to have appreciated the potential implications for those patients whose records were falsified for his financial gain.
  - That fact distinguishes this case from those where suspension has been considered appropriate.
  - The length of time over which the offending occurred – there was a gross breach of trust over a four and a half year period.
  - Dr Sathe had behaved immorally, unethically and was in clear breach of principle 4 of the Dental Council's "Statement on the Principles of Ethical Conduct for Oral Health Practitioners", which stresses the importance of holding the integrity of the profession and justify the trust placed by patients.
  - There had been a significant and serious departure from the standards expected of a dentist, and, as the Judge had noted, discredit had been brought to the profession with the potential to undermine public confidence in it.
  - Registration brings privileges and responsibilities. Dr Sathe had forfeited the privilege to remain registered.

- d) In mitigation, it was appropriate to record that Dr Sathe had indicated to the PCC at an early stage that his offending reflected adversely on his fitness to practise.
- e) A penalty short of cancellation (such as suspension or the imposition of conditions) would not adequately serve sentencing principles. The question was what orders would protect the public through advancing responsible standards and practise of dentistry.
- f) It would be open to Dr Sathe to apply for registration again in the future.
- g) If the Tribunal was not minded to cancel Dr Sathe's registration, a lengthy period of suspension should be imposed. That should be followed by conditions which were outlined.
- h) As well there should be an order of censure to reinforce the clear message that offences of dishonesty would not be tolerated by the profession.
- i) An order for costs should be made. The submissions in relation to this topic are summarised below.

18. For Dr Sathe it was submitted:

- a) Dr Sathe was a 60 year old professional who had no prior relevant convictions or other adverse findings.
- b) The offending was out of character. Detailed reference was made to the multiple references which had all (except for one) been placed before the District Court, and which referred to Dr Sathe in positive terms.
- c) The convictions represented a substantial fall from grace for a highly regarded and respected member of the community; previously he had been a well respected member of the dental profession.
- d) The convictions had also impacted on Dr Sathe's family circumstances.
- e) He entered a guilty plea at the earliest opportunity both in the Criminal Court proceedings, and in the disciplinary proceedings.

- f) He had paid full reparation, prior to entering guilty pleas; and additionally he had agreed to contribute a further \$45,000.00 to the investigation costs incurred as a consequence of the investigation by the authorities.
- g) The prospect of any reoffending was remote.
- h) Reference was made to the relevant legal principles, which are set out below.
- i) Dr Sathe accepted the breach of trust on his part for which he had been convicted, and that the offending was serious. There were however significant mitigating factors including:
- Reparation immediately repaid.
  - Previous good behaviour.
  - Character references.
  - An early guilty plea.
  - Genuine remorse, and insight with no risk of repetition.
  - The District Court Judge had imposed 8 months home detention, which needed to be put in the context of the maximum penalties available under the relevant provisions of the Crimes Act.
  - The criminal sentence imposed had a very significant deterrent effect, as well as the recognition of maintenance of standards. Accordingly it was not necessary to impose a further deterrent sentence to dissuade others from embarking on such conduct.
  - The convictions were specific, rather than based on representative charges.
  - Dr Sathe had completed his home detention and the conditions attached to it, without breach or any other issues.
  - He had cooperated fully with the PCC's investigation, and in relation to the Tribunal's proceeding.
  - He had already suffered very significantly as a direct result of the convictions.

- He recognised he had let down his family, his profession and himself.
  - He had stopped practising dentistry due to health issues, but those issues had now been resolved and he wished to resume dentistry.
  - He had incurred significant ancillary costs as a result of his offending.
  - Reference was made to multiple cases (as referred to below); it was strongly submitted that having regard to previous cases cancellation would be harsh and unreasonable. A period of suspension was appropriate for a period of between three and eight months. That would be consistent with other decisions, excepting that all cases turn on their own facts.
  - As regards the conditions which had been proposed by the PCC, apart from one instance, there was no difficulty with the imposition of conditions. Nor was an order of censure opposed.
- j) The submissions as to costs are dealt with below.

### **Legal principles – penalty:**

19. There is a convenient summary of sentencing principles in *Katamat v PCC*:<sup>1</sup>

"[49] *In Roberts v Professional Conduct Committee, Collins J identified the following eight factors as being relevant whenever the Tribunal is determining an appropriate penalty. They are which penalty:*

- (1) *most appropriately protects the public and deters others;*
- (2) *facilitates the Tribunal's "important" role in setting professional standards;*
- (3) *punishes the practitioner;*
- (4) *allows for the rehabilitation of the health practitioner;*
- (5) *promotes consistency with penalties in similar cases;*
- (6) *reflects the seriousness of the misconduct;*
- (7) *is the least restrictive penalty appropriate in the circumstances;*

---

<sup>1</sup> [2012] NZHC 1633, 21 December 2012

and

- (8) *looked at overall, is the penalty which is "fair, reasonable and proportionate in the circumstances".*

[50] *In Patel v Dentists Disciplinary Tribunal, regarding the decision to de-register the practitioner specifically, Randerson J held that:*

*... the task of the Tribunal is to balance the nature and gravity of the offences and their bearing on the dentist's fitness to practise against the need for removal and its consequences to the individual: Dad v General Dental Council at 1543. As the Privy Council further observed: [in Dad]*

*Such consequences [cancellation] can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual.*

[51] *Similarly in A v Professional Conduct Committee, Keane J derived the following five principles from the Privy Council speeches in Taylor v General Medical Council:*

*First, the primary purpose of cancelling or suspending registration is to protect the public, but that 'inevitably imports some punitive element'. Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is 'some condition affecting the practitioner's fitness to practise which may or may not be amenable to cure'. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish.*

[52] *Keane J continued, affirming the importance of considerations of rehabilitation:*

*...the Tribunal cannot ignore the rehabilitation of the practitioner: B v B (HC Auckland, HC 4/92, 6 April 1993) Blanchard J. Moreover, as was said in Giele v The General Medical Council [2005] EWHC 2143, though '... the maintenance of public confidence ... must outweigh the interests of the individual doctor', that is not absolute – 'the existence of the public interest in not ending the career of a competent doctor will play a part.'*

[53] *In summary, the case law reveals that several factors will be relevant to assessing what penalty is appropriate in the circumstances. Some factors, such as the need to protect the public and to maintain professional standards, are more intuitive in their application. Others, such as the seriousness of offending and consistency with past cases, are more concrete and capable of precise evaluation. Of all the factors discussed, the primary factor will be what penalty is required to protect the public and deter similar conduct. The need to punish the practitioner can be considered, but is of secondary importance. The objective seriousness of the misconduct, the need for consistency with past cases, the likelihood of rehabilitation and the need to impose the least restrictive penalty that is appropriate will all be relevant to the inquiry. It bears repeating, however, that the overall decision is ultimately one involving an exercise of discretion."*

20. The Tribunal has carefully considered these principles, which are not controversial.

**Legal decisions relating to cancellation/suspension:**

21. Counsel for the PCC referred to seven decisions where cancellation had followed offences of dishonesty<sup>2</sup> and to eight decisions where suspension was considered the appropriate outcome.<sup>3</sup>

22. Counsel for Dr Sathe also made reference to multiple decisions, to support the submission that in the main the appropriate outcome had been tended to be regarded as in order of suspension.<sup>4</sup>

23. The Tribunal has considered all the submitted decisions carefully.

24. Analysis of these decisions has proceeded as follows:

a) A appropriate starting point is the dicta of the High Court in *Winefield*. In that case, a pharmacist had engaged in fraudulent transactions on 898 occasions.

Total offending involving more than \$10,000. The Tribunal had imposed an

<sup>2</sup> *Pellowe* 137/Phar07/74P, *Murdoch* 76/Phys06/45P, *Bain* 387/Nur11/176P, *Condon* 23/Nur05/13P, *Healey* 123/Nur07/70P, *CAC v Dassanayake*, 54/98/31C and *CAC v Philipiah* 264/03/144C

<sup>3</sup> *Satya* 365/Phar10/169P, *Winefield* 60/Phar96/30P, *Palmer* 96/Phys06/43P, *Burton* 142/Phar07/78P, *Marchand* 280/Mod09/133P, *Chiew* 180/Phar08/96P, *Payne* 405/Den11/184P and *Dunn* 466/Phar12/207P

<sup>4</sup> *Payne* Den11/184P, *S Phar*09/126P, *Dacre* 472/Phar/12/206P, *Dunn* 466/Phar12/207P, *Marchand* 280/Med09/133P, *N Anderson* Med08/87P, and *Kohn* 422/Med11/181P

order of suspension for 9 months. The High Court upheld the sentence on appeal.

The Court stated that in many cases involving repeated dishonesty, cancellation is appropriate. But where there were "*strong mitigating factors*" a lengthy period of suspension may be imposed.<sup>5</sup>

- b) The Tribunal regards this as an accurate and helpful statement of principle. In serious cases, the aggravating factors may well outweigh the mitigating factors to the point that the only way in which the objects of the Act can be met<sup>6</sup> is to order cancellation. But particular cases may raise mitigating factors of such significance that a Tribunal may conclude that the objectives of protecting the public and maintaining professional standards can be met by an order of suspension.
- c) The Tribunal must review previous decisions to ascertain which, if any, are relevant comparators.
- d) The cases which have been most helpful to the Tribunal are those which have involved:
- A similar type and seriousness of offending.
  - The presence of compelling mitigating factors.
- e) Cases which are more recent are particularly helpful, because in those instances the Tribunal has had the advantage of referring to a wider range of cases than was previously possible.
25. After reviewing the aggravating and mitigating factors in this case, the Tribunal will return to its consideration of other cases in light of these principles.

---

<sup>5</sup> HC Wellington CIV 2006-485-2225, 18 December 2007, at [52] and [53]

<sup>6</sup> as set out in section 3

### **Aggravating factors**

26. The Tribunal considers that the relevant aggravating factors for professional disciplinary purposes in this case are:
- a) The offences took place over a period of years, from 2007 to 2011.
  - b) Following a desktop audit in late 2009, Dr Sathe's company was ordered to repay a little over \$29,000.00; notwithstanding the audit, and the fact that he had to acknowledge a very significant overpayment he continued to claim payment for emergency after hours consultations, without justification.
  - c) Dr Sathe altered patient notes and there were as a result significant adverse consequences for patients. This involved a significant breach of trust.
  - d) The reputation of the profession has been damaged by these acts; there have also been adverse consequences for the DHB, and the community itself.
  - e) As the Judge held, there was "*...premeditation and efforts to conceal the offending.*"

### **Mitigating factors**

27. The Tribunal considers that there are the following relevant mitigating factors in the circumstances of this case:
- a) Family health issues, as alluded to by the Judge.
  - b) A prompt acknowledgement of the offending to the Dental Council, and then cooperation with the PCC and Tribunal processes.
  - c) A contribution of \$45,000.00 (in addition to reparation) to the DHB's investigation costs.
  - d) The District Court accepted that there was "*sincere remorse.*" Dr Sathe does seem to have taken responsibility for his offending. That said, the remorse did not arise until after the offending came to light, because during the very time he was continuing to offend it is clear from the references provided Dr Sathe was



representing himself to patients and others as an honourable person.

- e) A related point is that although there are numerous positive references, which include indications from some of the referees involved that the offending was "*out of character*", those referees made the statements against what they observed at the time of the offending itself; in that sense they were misled, and their assessment that the offending was out of character has to be understood in that context.
- f) Dr Sathe has already endured penalties imposed by the District Court (home detention), although it appears he may not have been able to work in the period of home detention in any event due to health reasons.

#### **Discussion - penalty**

- 28. The Tribunal considers that this is a very serious case, having regard to the aggravating factors described above. But there are also mitigating factors for which the practitioner is entitled to credit.
- 29. The PCC's primary submission was that a "*starting point*" would be an order of cancellation. That submission took into account only one mitigating factor, namely early indication of admission that the offending reflected adversely on fitness to practise. However, the Court recognised a wider range of mitigating factors and so does this Tribunal.
- 30. When those factors are weighed into the scales, the Tribunal is satisfied that notwithstanding the seriousness of the criminal offending, the matter can be dealt with by way of an order of suspension, rather than an order of cancellation.
- 31. The Tribunal's conclusion is reinforced by the following comparators, which also assist on the issue of period of suspension:
  - a) *Baker*: Mr Baker, a pharmacist, was convicted of 93 offences of using a document for pecuniary advantage with dishonest intent. The offending involved 6 different

distinct categories of dishonest claiming, involving a total of just over \$69,000.00. He was sentenced to 8 months home detention. The Tribunal suspended him for 9 months, imposed an order of censure and imposed certain conditions for two years. The Tribunal considers the present case to be more serious than that of Mr Baker. That is because Dr Sathe's offending occurred over a period of 4 years. There was an extensive period of intentional misconduct, catalyzed by the fact that even following the audit in 2009 (and the repayment of monies at that point) that offending continued. Also serious in this case is the fabrication of patient notes.

- b) *Dunn*: Mr Dunn was also a pharmacist convicted of 47 offences in three categories. The total amount involved was \$49,875.00 of false claiming and a contribution to costs of investigation was also made. The offending was described as "*deliberate, repetitive systematic and occurred over an extended period of time.*" The practitioner was a 62 year old first offender. Patients had been put at risk. An order of suspension of three months was imposed, together with an order of censure and the imposition of conditions. The offending occurred over a 5 year period. In that case the Tribunal found there was no personal gain, unlike in the present instance. Nor did the pattern of behaviour involve alteration of clinical notes with significant adverse consequences of the scale present in this case (although it was held that Mr Dunn had put patients at some risk). This case is more serious.
- c) *Chiew*: a pharmacist was charged under section 228 and 229 of the Crimes Act. He was sentenced to home detention for 1 year and 300 hours community service. The total amount dishonestly obtained was approximately \$221,000.00. He repaid this, together with \$50,000.00 towards investigation costs. He was censured, suspended for 9 months and conditions were imposed on his practice.

Although the amount involved was more significant than in the present case, the decision did not have the feature of fabrication of patient notes or continuation of offending after an audit. The present case is more serious.

- d) *Kohn*: A doctor was convicted on 16 representative charges of using a document with intent to obtain pecuniary advantage. He was sentenced in the District Court to 12 months home detention and 400 hours community work. There was an elaborate system of writing up false/fraudulent entries in patient records, and the creation of fictitious patients and prescriptions. Dr Kohn received over \$180,000.00 through this scheme. He was suspended for 12 months, censured, and ordered to practise subject to conditions. Although the sentence imposed was more significant in that case as was the amount dishonestly obtained, there are significant similarities with the case, including the amending of patient notes by entering false clinical notes and writing false prescriptions (although the Tribunal observed that there was no evidence any patient was actually harmed because of these alterations by a doctor subsequently relying on fictitious notes). A further distinguishing feature in the present case is the continuation of offending following an audit in 2009. The Tribunal considers the penalty imposed in that case was at the low end of the range of outcomes that could have been imposed.
32. The Tribunal does not consider the mitigating factors raised in the present case to be as strong as those which existed in some cases to which the Tribunal was referred, such as *Payne, S* or *Marchand*.
33. Having regard to the aggravating and mitigating factors in the present case, and its consideration of other decisions, the Tribunal considers that a period of suspension is appropriate, and that the suspension period should be 12 months. Honesty by health practitioners is an essential prerequisite for all health practitioners; the system of

Government funding of health care relies on trust; that trust has been significantly breached in the present case, and the suspension period must reflect that.

34. It also considers it appropriate that conditions on practise be imposed. There was largely common ground between the parties as to this, particularly as to the appropriateness of a condition suggested by the PCC, that Dr Sathe "demonstrate competence in law and ethics to the Dental Council before resuming practise". The Tribunal considers such a condition to be too broad, and it has therefore modified this condition, as is set out below.

35. The Tribunal also considers that an order of censure is appropriate.

### **Costs**

36. The PCC sought an order for costs. Costs to the date of hearing (but excluding Counsel's appearance costs) were approximately \$14,495.75; the Tribunal's costs were \$14,677.47 (both sums GST exclusive).

37. The authorities require the Tribunal to take 50% of reasonable costs as a starting point, and then either increase that sum if there are aggravating factors with regard to the way the charge has been dealt with, or reduce that amount if there are mitigating factors in that regard.

38. It was submitted for the practitioner that an order of 20% contribution would be in keeping with other cases. In this case, it was submitted, Dr Sathe was entitled to considerable credit for having cooperated from the outset and throughout, and for his guilty plea. Counsel stated that the practitioner was in a position to pay costs, although it is to be noted (and the Tribunal takes into account) the fact that he has had no income for a significant period.

39. From the considerable range of cases which the Tribunal has been required to review, the Tribunal considers that a more realistic starting point for the assessment of costs in the circumstances of this case is 30%, taking into account the cooperation.

40. A submission was made to the effect that the PCC's costs were excessive (\$14,500.00 plus the cost of appearance) given a relatively straightforward case. There is some force in this submission, and the Tribunal has taken that factor into account.
41. In all the circumstances the Tribunal considers that an appropriate order of costs in respect of the Tribunal is \$5,000.00, and an appropriate order in respect of the PCC costs is \$4,000.00.

### **Conclusion**

42. The charge is established.
43. Dr Sathe was suspended for a period of 12 months as from the date of hearing, 9 August 2013.
44. Should Dr Sathe elect to resume practise, the following conditions will apply for a period of two years. The conditions are:
  - a) He may not practise upon his own account for the period of two years.
  - b) He may not own or manage a practice for the period of two years.
  - c) He may not undertake any financial transactions directly with clients or any other service provider or funder for that period of two years.
  - d) He will undertake such courses as may be determined by the Dental Council in relation to law and ethics and accuracy of clinical record keeping.
  - e) He must practise under the supervision of a Dental Council approved supervisor for a period of two years, at his cost.
  - f) He must make any employer or organisation for whom he works in his capacity as a dental practitioner, whether or not he is in paid employment, aware of the above conditions, and provide that employer or organisation a copy of this decision; this condition also applies for a period of two years.

45. There is an order of censure. The Tribunal must express its formal disapproval of the conduct it has been required to consider. Any criminal conviction involving dishonesty by a health practitioner amounts to a serious breach of professional standards.
46. Dr Sathe is ordered to pay costs as follows:
  - a) \$5,000.00 in respect of the costs and disbursements of the Tribunal.
  - b) \$4,000.00 in respect of the costs and disbursements of the PCC.
  - c) Both sums are GST exclusive and GST is not payable.
47. The Tribunal directs that a copy of this decision and a summary be placed on its website. It further directs that a notice stating the effect of the Tribunal's decision be placed on the Dental Council's website, and in the newsletter of the Dental Council.

**DATED** at Wellington this 6<sup>th</sup> day of September 2013

.....  
B A Corkill QC  
Chairperson  
Health Practitioners Disciplinary Tribunal