WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: **2845/19**
Applicant: **Vahik Zahrabi**
Respondent: **Warringah Crane and Transport Service Pty Ltd**
Date of Determination: **5 August 2019**
Citation: **[2019] NSWWCC 267**

The Commission determines:

1. I am satisfied, on the balance of probabilities, that the All on Four procedure proposed by Dr Verdian is reasonably necessary medical treatment as a result of Mr Zahrabi's injury on 12 February 2009 and order the respondent to pay the costs of and incidental to that treatment.

The Commission orders:

2. Pursuant to section 60 of the *Workers Compensation Act 1987*, the Respondent is to pay the Applicant's expenses of and incidental to the All on Four dental procedure proposed by Dr Verdian.

A brief statement is attached setting out the Commission's reasons for the determination.

Jill Toohey
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF JILL TOOHEY, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Mr Vahik Zahrabi, the applicant, sustained an injury to his back on 12 February 2009 in the course of his employment with the respondent, Warringhah Crane and Transport Service Pty Ltd. The respondent accepted liability for his injury.

2. It is not in dispute that, as a result of his back injury, Mr Zahrabi suffered a consequential injury to his teeth by way of severe degeneration from the combined effects of smoking and the opiate medications prescribed for his back pain.

3. Mr Zahrabi claims compensation pursuant to section 60 of the *Workers Compensation Act 1987* (the 1987 Act) for the cost of an "All on Four" dental procedure proposed by dentist, Dr Gamer Verdian.

4. By a notice issued on 9 November 2018 under the former section 74 of the *Workplace Injury Management and Workers Compensation Act 1998*, the respondent denied liability to compensate Mr Zahrabi for the cost of the treatment proposed by Dr Verdian on the ground that it is not reasonably necessary treatment as required by s 60 of the 1987 Act. The respondent said it preferred the "simpler and more dependable option" of upper and lower implant retained dentures suggested by oral and maxillofacial surgeon, Dr Nigel Curtis.

ISSUES FOR DETERMINATION

5. There is no dispute that Mr Zahrabi requires dental treatment as a result of his accepted injury. Parties agree that the only issue for determination in these proceedings is whether the treatment proposed by Dr Verdian is reasonably necessary.

PROCEDURE BEFORE THE COMMISSION

6. Parties attended a hearing on 29 July 2019 at which Ms Eraine Grotte of counsel appeared for Mr Zahrabi and Ms Sarah Warren of counsel appeared for the respondent.

7. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary evidence

8. The following documents were in evidence before the Commission and taken into account in making this determination:

    (a) Application to Resolve a Dispute and attached documents;

    (b) Reply and attached documents;

    (c) Application to Admit Late Documents and attached documents.

9. At the hearing, Ms Warren tendered a report of Dr Curtis dated 26 July 2019 which had been provided to the applicant's solicitor on 26 July 2010. Ms Grotte did not object to its tender and I was satisfied it was in the interests of justice that it be admitted into evidence.

Oral evidence

10. Neither party made application in respect of oral evidence.

EVIDENCE

Mr Zahrabi's evidence

11. Mr Zahrabi provided three statements of evidence. The first concerned his accepted back injury and is not relevant for present purposes. His second and third statements, dated 6 December 2018 and 12 February 2019 respectively, can be summarised as follows

12. In his statement dated 6 December 2018, Mr Zahrabi said he had no problems with his teeth before his workplace accident but, a few years after it, he began to notice that his upper and lower teeth were gradually deteriorating. He would constantly experience aching pain in his teeth and would struggle to consume food without feeling severe pain in his mouth. He would often grind on his teeth to deal with the constant severe pain from his back injury. The pain increased to the point where he was no longer was able to have proper conversations with people.

13. Mr Zahrabi stated that, on 24 August 2017, he consulted with Dr Gamer Verdian (his treating dentist since 2011). Dr Verdian advised that he needed urgent treatment in order to regain function in his teeth and improve the quality of his day to day life, and he recommended an "upper and lower all on four procedure".

14. In response to the insurer's stated preference for the procedure proposed by Dr Curtis, Mr Zahrabi stated that he would like a "fixed solution" to his teeth problems and therefore preferred not to undergo the surgery recommended by Dr Curtis "as this is only a temporary solution. He said Dr Verdian had advised him that his proposal would provide a "strong stable long-term solution". Mr Zahrabi said he was motivated to undergo the treatment and had quit smoking and had made "significant improvements to [his] oral hygiene". He said Dr Verdian had explained the risks of the surgery, that he understood them, and he wished to proceed. He said he believed it was the most beneficial treatment for him as it would most likely relieve the pain in his teeth and would also be a "positive long-term solution."

15. In his statement dated 12 February 2019, Mr Zahrabi reiterated his preference for the treatment proposed by Dr Verdian because it was "a long-term solution" whereas what Dr Curtis proposed was not "as it requires removable dentures". Mr Zahrabi said he wanted treatment that would relieve his pain for the long term. He said Dr Verdian had explained to him that the procedure would give him "a new set of teeth which is supported by a total of four dental implants", it would improve the look and functionality of his teeth, and he would be able to eat solids food comfortably, and speak, smile and laugh with renewed confidence. As it was a fixed replacement, he would not need to worry about his teeth falling out as he would with dentures.

16. Mr Zahrabi stated that he understood that the treatment recommended by Dr Curtis was a "valid solution" for his dental issues but it would only assist for a short time before he would have to remove the dentures, and Dr Verdian had explained that he would "constantly have to move the dentures around [his] mouth to ensure that they are fitted correctly", and wearing dentures over a prolonged period would cause the gum and jaw tissue in his mouth to shrink which was "the most common cause for dentures becoming loose or falling out."

17. Mr Zahrabi stated that, in view of the long-term benefits from the treatment proposed by Dr Verdian, he was "extremely committed to maintaining cleanliness & oral hygiene to ensure that I get the best out of Dr [Verdian's] recommended treatment."

Dr Verdian's reports

18. Dr Verdian provided three undated reports and a fourth report dated 11 February 2019. Clinical notes from his practice are also in evidence. They show that Dr Verdian first saw Mr Zahrabi in March 2011. He was seen at the practice a number of times in 2011 and again since 24 August 2017.

19. In his first undated report[1], Dr Verdian stated that Mr Zahrabi's teeth had deteriorated "at an alarming rate" over the last few years. Following examination and a cone beam CT he had diagnosed Mr Zahrabi with advanced severe generalised periodontitis and a "hopeless prognosis for the remainder of his teeth." Mr Zahrabi required urgent treatment to help him regain function and improve his day to day life. Dr Verdian stated that, due to the significant loss of bone, it was unlikely that a full clearance and dentures would provide adequate stability for normal dental function. He recommended an "upper and lower All on Four procedure" to enable Mr Zahrabi to chew and to restore his previous dentition.

20. Dr Verdian provided a treatment plan and associated costings. The plan in full shows:

> APPOINTMENT l *Time: 30 minutes*
> RECORDS FOR ACRYLIC BRIDGE AND SURGICAL GUIDE
> • Impressions
> • Photography
> • Diagnostlc aesthetic work-up
> • Manufacture of acrylic bridge and surgical guide
>
> Item No. 711 x 1, 712 x 1, 679 X 1
> Fee $5,000
>
> APP0INTMENT 2 *10-14 days later* *Time: 4 Hours*
> IMPLANT SURGERY (UNDER INTRAVENOUS SEDATION)
> • Extraction of all remaining teeth (If any)
> • Removal of residual infection and diseased tissue
> • Reshaping of the bone (Alveoplasty)
> • Placement of titanium implant fixtures and abutments
> • Closure with dissolvlng stitches
> • Implant Impressions and bite registration
>
> Item No. 688 x 8, 661 x 8
> Fee $30,000
>
> APPOINTMENT 3 *Next day* *Time: 45 minutes*
> BRIDGE FITTING
> • Fitting of metal reinforced acrylic bridge
> • Bite and fit adjustments as required
>
> Item No. n/a
> Fee *inclusive*
>
> APPOINTMENT 4 *10-12 days later* *Time: 30 minutes*
> REVIEW APPOINTMENT
> • Review of healing
> • Removal of any remaining stitches
> • Hygiene Instruction for cleaning under All on 4 bridge
>
> Item No n/a
> Fee *inclusive*

[1] ARD at page 1

APPOINTMENT 5 *3-6 Months* *Time: 30 minutes*
HYGIENE and LONG-TERM TREATMENT PLANNING
• Inclusive professional cleaning and self-care hygiene Instruction
• Review of healing
• Measurements, photographs & additional records for long term upper and lower Zirconia bridgework ·

Item No 666 x 2
Fee $23,800

21. The total cost of $58,800 did not include a separate fee for a "sedation doctor" to administer the anaesthetic during surgery. The plan also described a number of "Modifications" which might become apparent during surgery and which would require the surgeon's judgment, and could change the overall cost. They included additional implants if the bone was poorer than expected, and sinus lifting and bone grafting to allow placement of further implants. Twice-yearly hygiene appointments would be required, and maintenance appointments would incur additional charges.

22. In a further undated report[2], apparently in response to a report by Dr Curtis, Dr Verdian said he had diagnosed Mr Zahrabi with moderate to severe generalised periodontitis. In his view, a "double arch rehabilitation with immediate implant supported bridge with long term bridges" was necessary. He said Mr Zahrabi had expressed a strong desire for a fixed solution and did not want removable dentures. The solution he had recommended would provide "a strong stable long term solution that will also provide excellent aesthetics."

23. Dr Verdian acknowledged that Dr Curtis' recommendation would be "of significant benefit" to Mr Zahrabi but said he had expressed "such a strong desire for a fixed solution and has shown significant improvements in his hygiene as motivation for the All on four treatment" which would provide a "full upper and lower bridge that will provide a much more stable occlusion to chew with and it will provide much better aesthetics."

24. Dr Verdian stated that he did not agree with Dr Curtis that the surgery he proposed was unreliable and unlikely to be successful, and said his practice had had "excellent success rates" over recent years with this specific procedure. He said:

> "With excellent home care, the All on Four provides excellent bone stability and hence longevity by implant placement in basal bone. There is better distribution of force over four implants rather than two hence increasing longevity and having better protection of force related failure."

25. According to Dr Verdian's third undated report[3], Mr Zahrabi had presented that day "in desperate circumstances with a high level of pain". Dr Verdian proposed extraction of three teeth and a temporary denture pending a fixed solution. The insurer apparently met this cost. Other than as background, this report is not presently relevant.

26. On 11 February 2019, Dr Verdian provided responses to questions from Mr Zahrabi's solicitors. The questions are not in evidence but they can be discerned, in general terms, from Dr Verdian's responses. He stated an "OPG" was taken in 2011 and a "CBCT" in 2017. Parties agree that these appear to be forms of dental x-rays and CT scans. He described the potential complications of his proposed treatment as:

[2] ARD at page 5
[3] ARD at page 6

> **"…** pain, swelling, bruising. There is also potential for the implants to fail to osseo-integrate and require replacement. When working on the upper jaw there is risk of sinus related complications. There is also risk of nerve paraesthesia when providing surgical treatment to the teeth and jaw. I can provide a consent form that outlines all the possible complications."

27. With reference to his qualifications to undertake the procedure, Dr Verdian said he was "a general dentist qualified to undertake this procedure" and that a specialist prosthodontist is also qualified to undertake it. He said he had completed "numerous full arch and full mouth rehabilitation cases with excellent levels of success". He reiterated that both treatment plans are "valid solutions" for Dr Zahrabi's condition. However, his proposal aligned "very closely with Mr. Zahrabi's desire to have a fixed solution and not a removable one that has been suggested by Dr Curtis." Dr Verdian concluded that he believed Mr Zahrabi is "more than capable of maintaining cleanliness and oral hygiene around the fixed solution to provide long term success."

28. In an undated letter[4] addressed "Dear Kirra" (apparently a case manager for the insurer) Dr Verdian confirmed his diagnosis of Mr Zahrabi's condition as generalised severe chronic periodontitis. He said "the high level of bacteria in his blood stream due to severe periodontitis will place significant risk of orthopaedic prosthesis as well as putting significant strain on other physiological systems such as cardiovascular system." Further, the "high flow bacterial load in his blood stream due to periodontal micro-organisms affect other body systems adversely with increased risks of heart disease, lung disorders etc."

29. A brief questionnaire from the insurer dated 27 March 2018 to Dr Verdian is in evidence. It shows:

> "1. Do you agree with Dr Curtis' opinion that the most successful outcome would be for [Mr Zahrabi] to be supplied with dentures? If not, can you please provide your rationale for your proposed treatment?
>
> *Dr Curtis' opinion is valid however the patient is insistent on not wearing a removable option. As a result I had deemed it an unsuitable option.*"

Dr Benge's report

30. Dr Larry Benge of Malo Clinic in Victoria provided an undated, one-page report addressed "To Whom It May Concern" which he said he had been asked to write on behalf of Mr Zahrabi. He said he understood that Mr Zahrabi needed upper and lower full arch implant supported restorations; he had no remaining upper teeth and the prognosis of his few remaining lower teeth was poor.

31. Dr Benge stated that, having viewed the CBCT, he believed an upper and lower All-on-4 procedure, following the Malo protocol, was "the treatment of choice" in this case. He said it had a "well-documented success rate of over 96% which is superior to other forms of full arch implant supported treatment." He said overdentures can have variable results and in the upper arch, "if the implants are not splinted together there is significant risk of implant failure." As well, overdentures rest on the soft tissue and "can irritate and cause ulcers and discomfort." He said considering Mr Zahrabi's age and his desire for fixed, not removable prostheses, All-on-4 treatment "offers a comfortable, functional, predictable and cost effective way of restoring his dentition."

[4] Reply at page 15

Dr Curtis' reports

32. Dr Curtis, qualified by the respondent, is an oral cranio-facial maxillary specialist. He saw Mr Zahrabi for assessment on 12 March 2018. He provided a report of his assessment dated 14 March 2018 and supplementary reports dated 24 January 2019, 15 February 2019 and 26 July 2019.

33. In his report dated 14 March 2018, Dr Curtis noted that he had not been provided with radiographs and recommended an OPG be obtained for initial analysis. He commented that Dr Verdian's qualifications and specialist training in the proposed treatment were not disclosed and it would appear that he and others at the same practice were "basic dental practitioners". Dr Curtis said the treatment, which appeared to include removal of all the dentition and replacement with all on four implants and bridges "has been demonstrated as a flawed option in such cases". He noted there appeared to be some bone loss around the degenerating dentition, and some alveovolar bone grafting at the time of implant placement would be necessary.

34. Noting that Mr Zahrabi had been prescribed extensive use of opiates for his back pain and "was smoking at this stage", Dr Curtis said their combined effects was well documented and it was fair to say the degeneration was causally related to the original workplace injury. He noted that Mr Zahrabi "has now ceased smoking and his general oral health does appear to have improved."

35. Dr Curtis said the treatment proposed by Dr Verdian would appear to suggest "a flawed treatment pathway" including the use of four maxillary and four mandibular implants joined by bridgework. In his opinion, it appeared unlikely this "relatively expensive treatment" would be successful and he suggested "a simpler and more dependable option" using upper and lower implant retained dentures. The treatment he proposed would involve:

> " Surgical removal of the remaining dentition including the 12, 13, 23, 34, 35, 43, 44 and 45 teeth plus immediate first stage implant treatment including the insertion of 2 first stage implants in the maxillary region and 2 first stage implants in the mandibular region plus appropriate alveolar bone grafting. The costs of this treatment are described below find would be carried out on a day surgical basis in hospital.
>
> a. Removal of teeth and immediate first stage implant surgery. Surgical Fee (item numbers 323 x 8/ 684 x 4/ 52624 x 2) $15,000.00 anaesthetic and hospital fees would also be applicable.
>
> b. Second stage implant surgery which would be carried out under local anaesthesia in a dental office Surgical Fee (691 x 4) $4,000.00
>
> c. The upper and lower dentures would have to be provided by a suitable dental practitioner or a prosthodontist with an approximate cost of $5,000.00."

36. Dr Curtis said this option would give a "reliable approach and easier maintenance of oral hygiene around the implants for Mr Zahrabi thus improving the potential success in this case."

37. In his report dated 24 January 2019, Dr Curtis again recommended that an OPG radiograph be obtained for proper analysis if this case. He said Dr Verdian's correspondence provided "little information in relation to the merits" of his treatment and "due to the previous smoking habit and poor periodontal condition" the proposed procedure "would not appear either reasonable or effective in this case". He recommended an opinion be obtained from a qualified prosthodontist to assess the "dubious effectiveness" of the proposed treatment.

38. In his report dated 15 February 2019, Dr Curtis noted that he had been provided with the OPG image (described to him, it seems incorrectly, as taken on 12 February 2019). He noted it showed "significant periodontal bone loss in all areas of the maxilla and mandible which would ethically preclude Mr Zahrabi from the dental implant treatment suggested by Dr Verdian."

39. In his final report, dated 26 July 2019, Dr Curtis commented on Dr Benge's report. He noted Dr Benge had not examined Mr Zahrabi and "appears to suggest he is some kind of expert in this procedure". He noted that Dr Benge did not discuss Mr Zahrabi's "ongoing smoking habit and ongoing periodontal disease" and the significant bone loss and destruction in the mandible and maxilla on the "so called CBT scans … would in fact indicate an extremely low chance of success in his suggested technique in this case".

40. Dr Curtis doubted the 96% success rate claimed by Dr Benge "from his so-called spruiked Malo on all four cases" and said it appeared unrealistic and Dr Benge mentioned nothing of Mr Zahrabi's significant periodontal disease and smoking habit which, he said, would limit any potential success of the technique. Dr Curtis noted that Dr Benge did not disclose his qualifications and said it was unlikely he was any kind of specialist. He said all the evidence would suggest that the procedure "clearly would be doomed to surgical failure .. and would represent unethical behaviour and treatment in this case".

41. Responding to the question why the treatment he proposed was more appropriate, and on its longevity, Dr Curtis said:

> "… the fact that Mr Zahrabi has suffered significant bone loss plus ongoing periodontal disease and smoked significant levels of cigarettes any implant treatment would be compromised. The obvious form of treatment is to remove the dentition, replace with dentures and assess a healing response and limit the level of surgical exposure in this case. *If indeed Mr Zahrabi stopped smoking* and the healing response is good the transition to an implant supported denture which may require some localized bone grafting would appear the clear and common sense approach in this case. In this case it would be clear that [Dr Verdian] supported by the undated and unqualified letter of Dr Benge would like the insurance company to pay for their expensive implant treatment to be provided which as stated would undoubtedly fail and would result in an extremely un cost [sic] effective and unethical form of treatment in this case." (emphasis added)

Internet article

42. A document headed *Dental Implant Cost Guide* was submitted on behalf of Mr Zahrabi. Although referred to by his solicitors as a "journal article", it describes itself as "the leading online resource for determining how much dental implants will cost you". Although stated to be "an independently run resource", it relies on advertising. Its content is written by "dental professionals" and its author, "Alison A", is a "UK trained and qualified Dental Care Professional" registered with the General Dental Council in London. It includes a table of the "benefits and drawbacks of dentures compared to implants".

43. Ms Grotte did not seek to rely on the document other than by way of background information about implant procedures generally. Given that its provenance is unclear, its writer identified only as "Alison A", and that the writers' interests appear to be at least in part commercial, I place no weight on this document.

SUBMISSIONS

The applicant's submissions

44. Ms Grotte submits that:

(a) Dr Verdian explains his reasons for recommending the All on Four procedure. In his view, it will provide a stable, long-term solution, with better aesthetics that aligns with Mr Zahrabi's strong desire for a more permanent solution;

(b) Dr Verdian acknowledges the possible complications which are no more than the normal risks associated with surgery;

(c) Dr Curtis makes very derogatory comments about Dr Verdian and takes issue with his "general" qualifications but Dr Verdian has answered his concerns, explaining that both a general dental practitioner and a specialist are qualified to perform the procedure;

(d) Mr Zahrabi is aware of the risks associated with the treatment proposed by Dr Verdian and has demonstrated, by giving up smoking and improving his oral hygiene, an excellent attitude and motivation to ensure its success;

(e) Dr Curtis says the proposed procedure is unlikely to be successful without really explaining why, and nor does he properly explain why it would be unethical to undertake the procedure;

(f) In his latest report, Dr Curtis indicates, incorrectly, that Mr Zahrabi is still smoking, a factor he apparently takes into account in recommending against the procedure;

(g) given the problems with Dr Curtis' reports, more weight should be given to Dr Verdian's opinion; he is an expert and has been Mr Zahrabi's treating dental practitioner since 2011; he does not dispute that what Dr Curtis proposes is valid and will provide significant benefits but it will not meet Mr Zahrabi's strong desire for a more permanent, fixed solution;

(h) following *Diab v NRMA Ltd* (*Diab*)[5], whether treatment is reasonably necessary depends on the circumstances of each case and, in the circumstances of this case, the procedure proposed by Dr Verdian is reasonably necessary.

The respondent's submissions

45. Ms Warren submits that:

(a) the tone of some of Dr Curtis' remarks may be explained by his view that what Dr Verdian proposes is simply not appropriate treatment for Mr Zahrabi;

(b) Dr Curtis explains his reasons for disagreeing with Dr Verdian; he records that Mr Zahrabi has severe periodontal disease, which is not disputed, and proposes instead the alternative simpler and more dependable option;

[5] [2014] NSWWCCPD 72 at [86]

(c) Dr Curtis notes that Dr Verdian sets out details of his proposed treatment but provides very little information about its actual merits; in contrast, Dr Curtis identifies Mr Zahrabi's smoking, severe periodontal disease and significant bone loss as reasons for the extremely low chance of success of the All on Four procedure;

(d) in Dr Curtis' opinion, Mr Zahrabi's significant bone loss, which is not disputed makes Dr Verdian's proposal unethical;

(e) Dr Verdian acknowledges particular risks to Mr Zahrabi in addition to those associated with any surgical procedure;

(f) Dr Verdian's proposal comes at significantly higher cost, with the potential for the cost to go even higher if "modifications" are required, and he acknowledges that Dr Curtis' procedure offers significant benefits and is a valid option for Mr Zahrabi;

(g) Dr Curtis' opinion should be preferred; he is a specialist as opposed to a general dental practitioner, and he is independent whereas Dr Verdian is the treating doctor and so has an interest in his own recommendation;

(h) no weight should attach to Dr Benge's undated report; Dr Benge does not provide his qualifications and he did not examine Mr Zahrabi; nor should any weight attach to the internet article, the identity and qualifications of the author of which are unknown, it makes no reference to studies or other research, and neither Dr Verdian nor Dr Benge refer to it.

The applicant's submissions in reply

46. In reply, Ms Grotte submits:

(a) it is not clear what Dr Curtis is proposing and why his proposal is simpler and more dependable; like Dr Verdian's treatment, it appears to involve implants, presumably with similar risks;

(b) it is difficult to assess the relative costs of the proposals and I cannot be satisfied that Dr Curtis' proposal comes at less cost that Dr Verdian's; Dr Curtis also refers to additional hospital and anaesthetic fees and does not include after care; like Dr Verdian, he thinks bone grafts might be needed but does not appear to allow for this in his estimate.

FINDINGS AND REASONS

47. Section 60(1) of the 1987 Act provides:

"(1) If, as a result of an injury received by a worker, it is reasonably necessary that:
(a) any medical or related treatment (other than domestic assistance) be given, or
(b) any hospital treatment be given, or
…
the worker's employer is liable to pay, in addition to any other compensation under this Act, the cost of that treatment or service and the related travel expenses specified in subsection (2)."

48. Section 59 provides that "medical or related treatment" includes:

> "(a) treatment by a medical practitioner, a registered dentist, a dental prosthetist, a registered physiotherapist, a chiropractor, an osteopath, a masseur, a remedial medical gymnast or a speech therapist,"

49. There is no dispute that the procedure proposed by Dr Verdian is "medical treatment" within the meaning of s 59.

50. "Reasonably necessary" is not defined in the Act. The general principles to be considered when determining whether treatment is reasonably necessary were described by Burke CCJ in *Rose v Health Commission (NSW) (Rose)*[6] as follows:

> "1. Prima facie, if the treatment falls within the definition of medical treatment in section 10(2), it is relevant medical treatment for the purposes of this Act. Broadly then, treatment that is given by, or at the direction of, a medical practitioner or consists of the supply of medicines or medical supplies is such treatment.
>
> 2. However, although falling within that ambit and thereby presumed reasonable, that presumption is rebuttable (and there would be an evidentiary onus on the parties seeking to do so). If it be shown that the particular treatment afforded is not appropriate, is not competent to alleviate the effects of injury, then it is not relevant treatment for the purposes of the Act.
>
> 3. Any necessity for relevant treatment results from the injury where its purpose and potential effect is to alleviate the consequences of injury.
>
> 4. It is reasonably necessary that such treatment be afforded a worker if this Court concludes, exercising prudence, sound judgment and good sense, that it is so. That involves the Court in deciding, on the facts as it finds them, that the particular treatment is essential to, should be afforded to, and should not be forborne by, the worker.
>
> 5. In so deciding, the Court will have regard to medical opinion as to the relevance and appropriateness of the particular treatment, any available alternative treatment, the cost factor, the actual or potential effectiveness of the treatment and its place in the usual medical armoury of treatments for the particular condition."

51. Following *Rose*, Roche DP in *Ajay Fibreglass industries Pty Ltd t/as Duraplas Industries v Yee*[7] said:

> "Whether any particular treatment is reasonably necessary as a result of an injury must be assessed on a case by case basis with the Commission exercising 'prudence, sound judgment and good sense' (*Rose*). It is not solely a matter for statistical analysis, though that will often be relevant. On balance, the Arbitrator concluded that there is a reasonable chance of a successful outcome from the proposed surgery and that it is better for Mr Yee to have the surgery than to forgo it. That conclusion was open on the evidence and discloses no error."

[6] [1986] NSWCC 2; (1986) 2 NSWCCR 32, 47

[7] [2012] NSWWCCPD 41 at [67]

52. *Diab*, Roche DP said:

> "Reasonably necessary does not mean "absolutely necessary" (*Moorebank* at [154]). If something is "necessary", in the sense of indispensable, it will be "reasonably necessary". That is because reasonably necessary is a lesser requirement than "necessary". Depending on the circumstances, a range of different treatments may qualify as "reasonably necessary" and a worker only has to establish that the treatment claimed is one of those treatments. A worker certainly does not have to establish that the treatment is "reasonable and necessary", which is a significantly more demanding test that many insurers and doctors apply..."

53. Roche DP said further[8]:

> "In the context of s 60, the relevant matters, according to the criteria of reasonableness, include, but are not necessarily limited to, the matters noted by Burke CCJ at point (5) in *Rose* (see [76] above), namely:
>
> (a) the appropriateness of the particular treatment;
>
> (b) the availability of alternative treatment, and its potential effectiveness;
>
> (c) the cost of the treatment;
>
> (d) the actual or potential effectiveness of the treatment, and
>
> (e) the acceptance by medical experts of the treatment as being appropriate and likely to be effective.
>
> With respect to point (d), it should be noted that while the effectiveness of the treatment is relevant to whether the treatment was reasonably necessary, it is certainly not determinative. The evidence may show that the same outcome could be achieved by a different treatment, but at a much lower cost. Similarly, bearing in mind that all treatment, especially surgery, carries a risk of a less than ideal result, a poor outcome does not necessarily mean that the treatment was not reasonably necessary. As always, each case will depend on its facts.
>
> While the above matters are "useful heads for consideration", the "essential question remains whether the treatment was reasonably necessary" (*Margaroff v Cordon Bleu Cookware Pty Ltd* [1997] NSWCC 13; (1997) 15 NSWCCR 204 at 208C)."

54. Turning to the facts and circumstances of the present case, the question is not which treatment is preferable but whether that proposed by Dr Verdian is reasonably necessary. In this case, there are apparently two "valid" treatments, at least according to Dr Verdian, each of which is said to offer significant benefits.

55. Dr Curtis' opinion must carry considerable weight. He is a specialist oral and maxillofacial surgeon whereas Dr Verdian is a general dentist. Dr Curtis says Dr Verdian's qualifications and specialist training were not disclosed, and described him and others at his practice as "basic dental practitioners" but he does not say that Dr Verdian is not qualified to carry out the procedure, and there is no evidence that a general dental practitioner is not so qualified. Dr Verdian says he is a "general dentist qualified to undertake this procedure" as is a specialist prosthodontist. He says he has completed "numerous" such procedures "with excellent levels of success". Dr Curtis appears sceptical but I have no reason to doubt Dr Verdian's claim.

[8] At [88] – [90]

56. I have some difficulties with Dr Curtis' reports. For one, it appears that he was provided with the OPG from 2011 (referred to by Dr Verdian in his first undated report), not February 2019 as he was apparently instructed, although it is not clear that it made any real difference to his opinion. Also, the full difference between the "fixed solution" of the implant supported bridge recommended by Dr Verdian and the "removable" solution recommended by Dr Curtis is not altogether clear. No doubt that is not a reflection on the professionals but on we lay people reading their reports.

57. Dr Curtis describes the procedure proposed by Dr Verdian as a "flawed option in such cases" but he does not clearly state why. He says it would "appear to suggest a flawed treatment pathway including the use of four maxillary and four mandibular implants joined by bridgework" but does not state clearly the basis for his opinion. It appears, from his final report, that the principal reasons are Mr Zahrabi's significant bone loss and ongoing periodontal disease. In the same report, however, Dr Curtis appears to place considerable weight on Mr Zahrabi's smoking as a significant factor weighing against Dr Verdian's proposal.

58. In his report of 14 March 2018, Dr Curtis noted that Mr Zahrabi stopped smoking "two years ago" and his report of 24 January 2019 refers to his "previous smoking habit". In his report of 26 July 2019, however, he says if indeed Mr Zahrabi stopped smoking, transition to an implant supported denture (which he appears to say is different from that recommended by Dr Verdian) would be a "common sense option". The point here is that Dr Curtis apparently considered Mr Zahrabi's continued smoking a significant factor weighing against the All on Four procedure, contrary to the history he had taken earlier.

59. Dr Curtis describes the procedure he recommends as the "simpler and more dependable option" and says it appears "unlikely that this relative expensive treatment" proposed by Dr Verdian would be successful. In a later report he describes the likelihood of success as "extremely low" and in his final report says it would "undoubtedly fail" and "would clearly be doomed to surgical failure" and he describes the proposal as "unethical" without clearly explaining why. With respect to Dr Curtis, some of his comments seem intemperate.

60. In two of his reports, Dr Curtis has suggested that further assessment and opinion of a specialist prosthodontist be sought. The respondent has not elected to pursue this suggestion.

61. I do not think it can be said that Dr Verdian is ignorant of, or has disregarded, the risks to Mr Zahrabi of his proposed treatment. He acknowledges risks, some of which such as pain, swelling, bruising, the potential for the implants to fail to osseo-integrate and require replacement, and sinus related complications and nerve paraesthesia, appear to be risks generally associated with surgical treatment to the teeth and jaw. In his first report he identifies Mr Zahrabi's "advanced severe generalised periodontitis" and "significant loss of bone" which are the same features identified by Dr Curtis. He also identifies particular risks for Mr Zahrabi due to the high level of bacteria in his blood stream due to severe periodontitis, with potential to adversely affect other body systems such as the heart and lungs.

62. I am not persuaded that Dr Verdian's opinion should be given less weight because he will perform the proposed procedure and so stands to gain from his recommendation. On that basis, the recommendation of any treating health care professional would have to be given less weight. I do not accept, merely because he would perform the procedure, that Dr Verdian's opinion should be given less weight.

63. Dr Verdian acknowledges that Dr Curtis' proposed treatment would be "of significant benefit" to Mr Zahrabi and that it is a "valid" option, but says he does not consider it suitable for Mr Zahrabi who insists on not having a removeable piece. Given Mr Zahrabi's history of

severe pain and other problems with his teeth, his desire for a "fixed" solution rather than removeable dentures, is understandable. Dr Verdian also says it is "unlikely that a full clearance and dentures would provide adequate stability for normal dental function" and "full upper and lower bridge that will provide a much more stable occlusion to chew with and it will provide much better aesthetics." He says, with excellent home care" the All on four provides "excellent bone stability and hence longevity by implant placement in basal bone" and there is "better distribution of force over four implants rather than two hence increasing longevity and having better protection of force related failure."

64. I accept Mr Zahrabi's evidence that he is committed to maintaining oral hygiene. He has given up smoking and Dr Curtis acknowledged in his report of 14 March 2018 that his general oral health appeared to have improved. While Dr Curtis said his proposal offered easier maintenance of oral hygiene, that does not in my view weigh against Dr Verdian's proposal because Mr Zahrabi is committed to ensuring its success.

65. On balance, I prefer Dr Verdian's opinion to that of Dr Curtis. In coming to this conclusion, I have taken into consideration the difficulties with Dr Curtis' reports discussed above, and that Dr Verdian has been Mr Zahrabi's treating dental practitioner for the past eight years and is familiar with his clinical history. He does not discount the alternative proposal and acknowledges it would provide significant benefit but considers it does not align with Mr Zahrabi's strong preference for the more permanent solution. Mr Zahrabi's preference is not determinative but it is a factor to be given some weight.

66. I give no weight to Dr Benge's undated report. While he says he had the CBCT scans available, he did not examine Mr Zahrabi, and the extent of the history he had was that Mr Zahrabi was in need of upper and lower full arch implant supported restorations, he had no remaining upper teeth and the prognosis of his few remaining lower teeth was poor. Dr Benge does not disclose his qualifications and it is by no means clear that he is a disinterested party, as his letterhead, which includes Malo Clinic, appears related to the Malo All-on-4 procedure he recommends.

67. The respondent has not opposed the All on Four treatment on the ground of cost but it is a relevant consideration, to be weighed with the others. On its face, Dr Verdian's proposal, at $58,800 plus hospital fees and potential "modifications" appears high when compared with Dr Curtis' proposal. However, it is not clear that like can be compared with like. Leaving aside Hygiene and Long-Term Treatment Planning in Dr Verdian's quote, the costs of $35,000 for the All on Four and "approximately" $24,000 for Dr Curtis' proposed treatment, which does not include "after care" or follow up, are less than they first appear. In any event, merely because other treatment might come at lesser cost does not mean the treatment proposed by Dr Verdian is not reasonably necessary.

68. A range of treatments may qualify as "reasonably necessary". Mr Zahrabi has only to establish that the treatment he wishes to have is one of those treatments (*Diab*[9]). Considering all of the evidence, I am satisfied, on the balance of probabilities, that the treatment proposed by Dr Verdian is reasonably necessary in Mr Zahrabi's circumstances. While it is not without its risks, I am satisfied that it is appropriate treatment in his case. Despite Dr Curtis' strongly expressed opposition, I am satisfied by Dr Verdian's evidence that his proposal has reasonable prospects of success. I accept that alternative treatment is available and would likely also to be effective but that is not the sole consideration and does not mean that what Dr Verdian proposes is not reasonably necessary in Mr Zahrabi's circumstances.

[9] At [86]

DETERMINATION

69. I am satisfied, on the balance of probabilities, that the All on Four procedure proposed by Dr Verdian is reasonably necessary medical treatment as a result of Mr Zahrabi's injury on 12 February 2009 and order the respondent to pay the costs of and incidental to that treatment.