

## IN THE PROVINCIAL COURT FOR SASKATCHEWAN

## LLOYDMINSTER, SASKATCHEWAN

BETWEEN:

Her Majesty the Queen

-and-

Kristofer P. KURC

Mr. Reynold Robertson  
Mr. Mark DemongCounsel for the Prosecution  
Counsel for the Defendant

June 22, 2006

L.P. Deshayé, PCJ.

DECISION

[1] The defendant is charged with the offences described in the Information as follows:

"COUNT #1, on or about the 22<sup>nd</sup> day of October, A.D. 2004, at or near Lloydminster, Saskatchewan, while not being a member of the College of Dental Surgeons of Saskatchewan and while being unauthorized under his existing licence as a dental therapist, performed one or more of the following on Ashley Heck:

- (a) surgical extraction of teeth, numbers 38 and 48;
- (b) application of silk sutures in number 38 and 48 site;
- (c) causing flap raise at tooth number 18 site;
- (d) application of gut sutures at tooth number 18 site.

all contrary to s. 44 of *The Dental Disciplines Act*, Chapter D-4.1 of The Statutes of Saskatchewan, 1997.

AND FURTHER, COUNT #2: on or about the 29<sup>th</sup> day of October, A.D. 2004, at or near Lloydminster, Saskatchewan, while not being a member of the College of Dental Surgeons of Saskatchewan and while being unauthorized under his existing licence as a dental therapist,

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performed a pulpctomy on Patty Dawson contrary to s. 44 of *The Dental Disciplines Act*, Chapter D-4.1 of The Statutes of Saskatchewan, 1997.

AND FURTHER, COUNT #3: on or about the years January 1, 1998 to June 1, 2005, at or near Lloydminster, using the title 'dentist' or 'dental surgeon' or any word, title or designation, abbreviated or otherwise, to imply that he was a member of the College of Dental Surgeons of Saskatchewan, in connection with matters including the following:

- (a) Bill of Sale dated January 1, 1998;
- (b) Interim Lease Agreement dated January 1, 1999;
- (c) Support Services Purchase order with Byte Dental Systems Inc. dated December 4, 2002;
- (d) Being referred to as 'Dr. Kurc' by his office receptionist;
- (e) Correspondence addressed to 'Dr. Kurc';
- (f) Being registered in Continued Dental Education programs as 'Dr. Kris Kurc';
- (g) Displaying material in his workplace reception addressed to 'Dr. Kurc'; and
- (h) Operating under the name and style of 'Lloyd Dental Centre - Comprehensive, Comfortable, Dentistry'.

All contrary to s. 44 of *The Dental Disciplines Act*, Chapter D-4.1 of The Statutes of Saskatchewan, 1997."

The Information was sworn on the 17<sup>th</sup> of June, 2005, upon the oath of Dr. Patti Grassick, Registrar of the College of Dental Surgeons of Saskatchewan.

[2] *The Dental Disciplines Act*, provides in part:

"2 In this Act:

- (c) 'authorized practice' means the practices set out in section 23 for members of each of the associations;
- (l) 'dentist' means a person who is registered as a member of the College of Dental Surgeons of Saskatchewan;

5(1) The membership of the College of Dental Surgeons of Saskatchewan consists of:

- (a) those persons who are members of the College of Dental Surgeons of Saskatchewan on the day before this subsection comes into force; and
- (b) those persons who are admitted as members of the College of Dental Surgeons of Saskatchewan pursuant to this Act and the bylaws.

(6) The membership of the Saskatchewan Dental Therapists Association consists of:

- (a) those persons who are members of the Saskatchewan Dental Therapists

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Association on the day before this subsection comes into force; and

(b) those persons who are admitted as members of the Saskatchewan Dental Therapists Association pursuant to this Act and the bylaws.

22 (1) No person other than a dentist shall use the title 'dentist' or 'dental surgeon' or any word, title or designation, abbreviated or otherwise, to imply that the person is a member of the College of Dental Surgeons of Saskatchewan.

23 (1) A dentist is authorized, subject to the terms, conditions and limitations of that person's licence:

(a) to communicate a conclusion, identifying a disease, disorder or dysfunction of the oral-facial complex as the cause of a person's symptoms;

(b) to perform a procedure on tissues of the oral-facial complex below the dermis, below the surface of a mucous membrane or in or below the surfaces of the teeth, including the scaling of teeth; ...

(6) A dental therapist is authorized, subject to the terms, conditions and limitations of that person's licence:

(a) to communicate a conclusion identifying dental caries or dental abscesses as the cause of a person's symptoms;

(b) to perform a procedure in or below the surface of the teeth, conduct simple extractions of primary and permanent teeth and perform space maintenance on teeth;

(c) to administer local anaesthesia in the provision of dental treatment; and

(d) to expose, process and mount dental radiographs in accordance with *The Radiation Health and Safety Act, 1985*.

24 (1) No person shall perform an unauthorized practice unless:

(a) the person is a member of an association whose members are authorized to perform the authorized practice and his or her licence does not prevent that member from performing that authorized practice;

(b) the performance of the authorized practice has been delegated by a member mentioned in clause (a) to a person employed by that member, in accordance with

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the bylaws of his or her association; ...

(2) The performance of an authorized practice is not a contravention of subsection (1) if it is done in the course of:

(a) rendering first aid or temporary assistance in an emergency.

45 No prosecution for a contravention of any provision of section 22 or 24 is to be commenced:

(a) after the expiration of 24 months from the date of the alleged offence; and

(b) without the consent of the Minister of Justice or the council of the association to which the offence relates."

[3] Section 44 of the *Act* creates an offence for a contravention of any provision of section 22 or 24 of the *Act*.

[4] As mentioned in an Interim Ruling with written reasons made by me in this matter on April 11, 2006, the prosecution of the alleged offences was authorized by a resolution of The College of Dental Surgeons of Saskatchewan.

[5] With respect to Count #3 on the Information, if there was conduct amounting to an offence against s. 22 of the *Act* prior to June 17, 2003 (which is 24 months before the date the prosecution was commenced by the swearing of an Information), then the prosecution is statute barred by virtue of s. 45 (a) of the *Act*. Any references in that count to conduct prior to June 17, 2003, alleges conduct which the Court is without jurisdiction to sanction. More will be said of this count later in these reasons.

[6] Kristofer Kurc has been registered as a member of the Saskatchewan Dental Therapists Association since 1997. He has never been registered as a member of the College of Dental Surgeons of Saskatchewan and accordingly is not a 'dentist' within the meaning of the *Act*. At all times material to the alleged offences he has maintained a place of business as a dental therapist at 5303 - 50<sup>th</sup> Avenue in Lloydminster, Saskatchewan.

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*Evidence for the Prosecution*

[7] Eleven witnesses testified for the prosecution, including two private investigators, Christopher Mason and Christopher Yeo, who had conducted searches of the defendant's business premises. Two former patients of the defendant, Ashley Heck and Patricia Dawson, also testified, as did Ms. Heck's mother. There was considerable evidence from dental professionals.

[8] Much of the evidence was technical and specific to the composition, location and health of human teeth. I will mention the specific references as needed throughout these reasons. It is appropriate to mention near the outset, however, a recognized method for identifying a specific tooth in the human mouth. Typically an adult human being will have 32 teeth - 16 in the upper jaw and 16 in the lower jaw. Professionals have developed a numerical system for identifying teeth, according to where the tooth is located in the mouth. Each tooth is assigned a two digit number. Counting begins at the mid section of the mouth, on either side of a mid line between the two upper front teeth and the two lower front teeth. The front tooth to the subject's right, in the upper jaw, is numbered "11". The tooth next to that tooth, to the right, is numbered "12", then "13", "14" and so on to the last tooth on the right side - "18". On the left side, in the upper jaw, the teeth are numbered "21" (which is the top left front tooth), "22" and so on to "28". Teeth in the lower jaw are numbered in a similar fashion, and on the lower left side are numbered, starting with the lower left front tooth - "31", then "32", *et cetera*. Teeth on the lower right are numbered, again from the mid line of the mouth, moving to the right - "41", "42" - through to the last tooth - "48".

[9] Ashley Heck was seeking dental treatment in October, 2004. At that time she lived in Lloydminster. She saw an advertisement in the yellow pages of the Lloydminster phone book for "Lloyd Dental Centre", which is the defendant's place of business. She made an appointment and attended at the Lloyd Dental Centre where her teeth were cleaned and x-rayed. Ms. Heck was introduced to the defendant and they discussed removal of her wisdom teeth. In fact Ms. Heck had previously been advised to have her lower wisdom teeth removed and she had made arrangements to see a dental surgeon in April 2005. The defendant told her he could remove the wisdom teeth and that it was a simple procedure, and that he 'does it all the time'. There was some urgency on Ms. Heck's part to get the procedure done soon because she was insured for dental care through her place of work and was planning to leave that employment at the end of

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October. She wanted to have the dental work done while she was still insured. At the time Ms. Heck was 22 years old.

[10] An appointment was made and on October 22, 2004, Ashley Heck and her mother, Shelly Heck, returned to the defendant's office. The first thing he did was apply freezing and then did a filling. Following that procedure the defendant applied more freezing and began to remove the wisdom tooth in the lower right jaw, tooth number four eight (48). The defendant cut the gum to expose the tooth. When the tooth was removed Kurc stitched the wound and then began to work on tooth number 38. In that case he also cut the gum before removing the tooth, and stitched the incision after the tooth was removed. The defendant then prepared to remove tooth 18 - the upper right wisdom tooth. He cut Ms. Heck's gum at that location but decided he would not attempt to pull the tooth, explaining that the tooth was "too far up" (which I took to mean well embedded below the gum) and that an attempt to remove it might damage the sinus cavity. Kurc stitched the incision he had made. Ashley Heck testified that none of her wisdom teeth were exposed above the gum before the procedures described were undertaken. She also said she could not recall a conversation with the defendant that the lower wisdom teeth were partially through the gum and she said she could have felt them if that were so.

[11] To this point Ashley Heck assumed that Mr. Kurc was a dentist. It was only after leaving his office on October 22, 2004, through a discussion with an acquaintance, that she learned he was not a dentist. Within an hour of departing Kurc's office, Ashley Heck had gone to the office of Dr. Craig Oster, a Doctor of Dental Medicine (DMD). Dr. Oster has been practising general dentistry in Lloydminster since 1998. Dr. Oster examined Ashley and reported his finding to her.

[12] Ashley Heck also identified the location in Mr. Kurc's office where procedures were performed on her, from photographs I later ruled to be inadmissible (see: Interim Ruling - April 11, 2006). Nevertheless I am satisfied from other evidence that the procedures were performed at Mr. Kurc's office at 5303 - 50<sup>th</sup> Avenue, in Lloydminster, Saskatchewan. Ashley testified that she did not see in the yellow pages advertisement nor at Kurc's office anything which held him out to be a dentist. She did not know nor was she told anything about Dr. Anaman, DMD, a dentist with whom Mr. Kurc purported to be associated at the time. She did not read any notices in the reception area of Kurc's office, nor was she told anything of Kurc's qualifications. She did say that she was anxious to have her wisdom teeth removed and had "pushed" the defendant to do the extractions then. At the time of testifying on January 10, 2006, she said she still had both

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wisdom teeth in her upper jaw and they were not giving her trouble.

[13] Ashley's mother is Shelly Heck. Shelly testified that she accompanied Ashley to the defendant's office on October 22, 2004, and was introduced to the defendant. The defendant did not identify himself to them as "Dr. Kurc". Shelly Heck was present while Ashley's two teeth were extracted. During this process Shelly testified that Kristofer Kurc told her he had not written all his tests in Canada. He assured them he could do the extractions. Shelly Heck observed the defendant to cut the lower gum at each location and remove the lower wisdom teeth. She also observed him to cut the gum at the upper right wisdom tooth. He probed the location slightly and told them he could not remove this tooth because he might damage the sinus cavity. Shelly Heck denied that she had insisted to the defendant that he remove the teeth. Mrs. Heck testified that she was concerned about Kurc having enough time to complete the procedures because he was committed to speaking at a local school at 1:00 P.M. that day and the Hecks had arrived at his office at around noon. Her evidence was to the effect that they could return another time to complete the procedures if necessary. She also confirmed that they had gone to see Dr. Oster about an hour after leaving Kurc's office.

[14] Ashley Heck had issued a cheque payable to Lloyd Dental Centre Ltd. on October 22, 2004. After leaving the Dental Centre office and speaking with Dr. Oster, she placed a stop payment order on the cheque. Subsequently she was contacted by a collection agency and ultimately paid the entire amount of the account for the benefit of Lloyd Dental Centre. Following this Ashley Heck and Shelly Heck composed and sent a letter of complaint to the College of Dental Surgeons of Saskatchewan on March 10, 2005.

[15] The next witnesses to testify were Christopher Mason and Christopher Yeo, both of whom had been employed as private investigators in 2004 and 2005. They had conducted two searches of Kristofer Kurc's office, on January 6, 2005, and on May 18, 2005. Several documents were seized or copied and some were photographed. Data was also copied from computer records. I will refer to the seized material as required throughout these reasons. Otherwise the circumstances of the search have been discussed in my ruling of April 11, 2006.

[16] Patricia ("Party") Dawson is now a 46 year old woman living in Macklin, Saskatchewan. Prior to October, 2004, she had seen Dr. Paul Wayne Beck, a licenced dentist, practising in Lloydminster. On October 28<sup>th</sup> Ms. Dawson began experiencing pain in one of her teeth which

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continued the next day. She attempted to make an appointment with Dr. Beck but was unable to do so. She then looked in the yellow pages and saw an advertisement for Lloyd Dental Centre. She called and spoke to a female receptionist. Dawson asked for an appointment to see a "dentist" and the receptionist told her she could come right away. On October 29, 2004, Ms. Dawson went to Lloyd Dental Centre and completed a form which provided introductory personal information. She signed the form which provides in part "I authorize practitioners of Lloyd Dental Centre Ltd. to perform any necessary prescribed dental treatment for myself.." The form also provided: "Which dental professional you prefer? K. Kurc S.D.T. \_\_\_\_\_ K. Anaman D.D.S. \_\_\_\_\_ Either \_\_\_\_\_." This portion of the form was not discussed with her and it was not completed. Patty Dawson was introduced to the defendant and could not recall how he was addressed. Ms. Dawson believed the defendant was a dentist.

[17] The defendant examined Ms. Dawson on October 29, 2004, and in particular the painful tooth, which was number 'one five'. Ms. Dawson had planned a trip to Dominican Republic and wanted to have the tooth attended to before her departure. After discussion with the defendant she understood he was going to "clean up" the tooth so she would have no problem. He told her she would probably have to have a root canal and would prepare the tooth for such a procedure. He applied a freezing agent and used a drill to work on the tooth. Ms. Dawson said she was in the dental chair for 3 to 3 ½ hours. She described extensive drilling and being worked on with other instruments. She became agitated during this process and asked Kurc to pull the tooth. He told her it was better to try to save the tooth with a root canal. She then understood that Kurc packed the tooth and put a form of cap in the cavity. She also understood from discussion with the defendant that he would not do the root canal and that she would have to return to have "another dentist" (*her words*) complete the root canal procedure. When she left the office on October 29, 2004, she had made an appointment to return. Following that, however, she learned from another source that Kurc was not a dentist and she cancelled the appointment. She then made an appointment with Dr. Beck, who saw her on December 4, 2004. Dr. Beck observed the tooth (15) but did not attempt treatment. He referred Ms. Dawson to a specialist, Dr. Stark.

[18] Dr. Beck is a doctor of dental surgery and has been practising dentistry for 32 years. He does general practice, including dentures, fillings and root canals. He saw Patty Dawson at his office on December 7, 2004. Dr. Beck did not open tooth 15 nor disturb the temporary filling placed in the tooth by the defendant. He referred the patient to Dr. Stark to complete root canal treatment and then saw Ms. Dawson later to cap the tooth, placing the final crown on the tooth on



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June 1, 2005. Dr. Beck also testified that a cavity in the coronal portion of the tooth (the crown) would not be considered an emergency. In the particular case of Patty Dawson, if he had seen such a cavity in her tooth, knowing that she was planning a trip out of the country, he would have prescribed anti-biotics and pain killer. Even if root canal treatment was advised he would not have started the procedure just before the patient planned to leave for a foreign country.

[19] Dr. David Stark is a dentist and a specialist in endodontics, having received special training in the discipline. Endodontics is the practice of preserving human teeth. He is a skilled and knowledgeable professional and specializes in difficult cases. He saw Patty Dawson on February 25, 2005, at his office in Saskatoon.

[20] In order to understand what was done by the defendant and Dr. Stark, it will be useful to describe (albeit briefly) the composition of a human tooth and some of the procedures involving treatment of tooth decay and disease. The top of the tooth is the "crown", the surface of which is made of enamel. The structure below the crown is described as "dentine" which gives the tooth its approximate shape. The crown consists of enamel and dentine, and is located above the gum line - the coronal portion. Embedded within the dentine is the pulp, consisting of nerves and blood vessels. The lower portion of the tooth is the root, consisting usually of one or two canals. The bottom of a canal, where the root ends, is called the "apex". The lower portion of the tooth is embedded in the bone of the jaw.

[21] Dr. Bernard Eugene White is a dentist and has been licensed to practice dentistry in Saskatchewan since 1972. He has been an active practitioner since that time. He has also been registrar of the College of Dental Surgeons since July 1, 2005. Referring to section 23 of *The Dental Disciplines Act* he described the "oral-facial complex" as referring to all the soft and hard tissues of the mouth. The "dermis" is the skin inside the mouth. The mucous membrane is the tissue covering the tongue, lips and gum - all the soft tissue inside the mouth. Endodontics refers to treatment of the inside of the tooth - the pulpal tissues and the apex of the tooth.

[22] A pulpotomy is a dental procedure which is limited to the coronal portion of the tooth, and may involve delving below the surface of the tooth at the crown. According to Dr. Stark, a pulpotomy is usually defined by the crest of the bone of the jaw and the coronal portion above that level. A pulpectomy is a procedure wherein all the pulp in the tooth is exposed and removed. The procedure also involves cleaning and shaping the root canal system to

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accommodate a filling.

[23] When Dr. Stark examined Patty Dawson he found what he described as a large "restoration" on the distal (back) portion of tooth number 15. The tooth itself was straight with a sharp bend in the last 2 millimetres at the apex. All the pulp had been removed from the tooth - a complete pulpectomy. He testified that a specialist performing a pulpectomy on this tooth would require 30 to 45 minutes; an hour would be long. He was surprised to hear that the procedure conducted by Kuro took 3 to 4 hours. There had been a temporary filling installed which Dr. Stark drilled out and replaced. He then referred Ms. Dawson back to Dr. Beck to provide a filling at the crown of the tooth.

[24] Dr. Kobena Anaman is a dentist and became a member of the College of Dental Surgeons of Saskatchewan in 1980. He conducted a practice in general dentistry in Saskatchewan until 2002, when he accepted a full time teaching position at the National School of Dental Therapy in Prince Albert, Saskatchewan. This school provides a comprehensive two year training course to students of dental therapy. Dr. Anaman testified that he had a professional relationship with Kristofer Kuro in the summer of 2003, wherein he would provide professional dental services to some patients seen in Kuro's office for work Kuro was not allowed to do because Kuro was licenced only as a dental therapist. Apparently Dr. Anaman would come to the defendant's office periodically and perform dental procedures on patients. He defendant provided all the facilities for doing so and Dr. Anaman was paid 45 percent of his billings. Anaman was not paid anything for the work done by Kuro. Dr. Anaman has a billing number which allows him to submit charges to various agencies and institutions (such as the Province of Saskatchewan) for payment. Dr. Anaman permitted Kuro to use this billing number as part of their arrangement. Dr. Anaman did not treat or consult with or about Ashley Heck or Patricia Dawson, nor did he ever bill them for any services.

[25] Dr. Anaman testified that dental therapists are trained to perform simple procedures on teeth. Operative procedures such as root canals and cutting of the gums is not part of the training for dental therapists and is not permitted by anyone other than a dentist. In his training and experience a dental therapist could do a pulpotomy, but not a pulpectomy. Moreover, the specific service performed on October 22, 2004, for which the defendant charged Ashley Heck (according to a fee schedule widely used in the dental profession) was assigned a code number on Ashley's chart, prepared in Kuro's office, of # 72221.

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[26] The College of Dental Surgeons of Saskatchewan (CDSS) has adopted a uniform system of coding and listing services. The system was developed by the Canadian Dental Association and has permitted the CDSS to use it, under a licensing agreement. It was presented in evidence at Tab #88 of exhibit P1, and described as "Suggested Fee Guide for General Practitioners". Noted on the cover sheet of this document are the words "Effective Date January 2005". Various procedures are described, a code number is assigned for that procedure, and a suggested fee is listed. For # 72221 the description of the procedures is as follows: "Removals, Impaction, Requiring Incision of Overlying Soft Tissue, Elevation of a Flap, Removal of Bone AND Sectioning of Tooth for Removal". The suggested fee for this procedure on a single tooth is \$289.40. Since the number "72221" is noted on Ashley Heck's chart for each of teeth 38 and 48, and the fee charged for each tooth was \$287.00, I presume that a similar fee guide was in effect prior to January 2005, and the one exhibited in these proceedings is an update. The actual chart produced by the defendant on October 22, 2004, suggests that he intended to charge for a complicated removal of a tooth. Dr. Anaman testified that this sort of procedure, involving as it did the making of an incision and a flap (laying back the gum to expose the bone), is far beyond the scope of what he teaches prospective dental therapists.

[27] Dr. Anaman did say he trains dental therapists on the application of sutures, and the removal of the pulp above the gum line, for example with a broken tooth. A tooth broken below the gum line should not be removed by a dental therapist according to this witness. Dr. Anaman thought a dental therapist could poke an abscess to drain puss but not make an incision. Whether there is a distinction in such a case is not material here because there is no evidence Mr. Kurc was doing such a thing for either Ashley Heck or Patty Dawson.

[28] Dr. Craig Oster met Ashley Heck on October 22, 2004, after she left Kurc's office. He testified that he examined her mouth and found that a flap had been raised for each of the lower wisdom teeth. This means the gum was cut and skin was removed from the bone, presumably to expose the crown of the tooth. Dr. Oster also took X-rays of the areas where the procedures were done. In his opinion the level of difficulty to remove the two wisdom teeth was beyond the competence of a dental therapist, and was a procedure he himself would have referred to a specialist. It was also Dr. Oster's opinion that the wisdom teeth at 38 and 48 had not erupted because there was enough skin from the gum to pull over the wound when it was stitched. There was at least some impaction (bone covered by skin) with these teeth and the removal of those teeth was a surgical procedure. Moreover, he did not think there was any obvious reason to

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remove 38 and 48; there was no urgency and certainly no emergency. With respect to tooth 18 Dr. Oster could see that an incision had been made and he expressed the opinion that an incision was not necessary in order to determine that extraction of that tooth should not have been attempted other than by a specialist.

[29] Dr. Oster employs dental therapists in his practice, and said they perform a valuable service for preventative measures and simple extractions. He said they should not do complicated procedures nor should they cut gums. He also said if a dental therapist in his employ were to attempt procedures such as cutting gums or pulpectomy, he would dismiss the therapist from employment.

[30] The final witness for the prosecution was Cindy Reed, a dental therapist since 1983, and registrar of the Saskatchewan Dental Therapist Association. She testified that a national dental therapy working group had designed a booklet called "The Dental Therapy Profession in Canada - Scope of Professional Practice/Competencies". In 2001 the Saskatchewan Dental Therapist Association passed a motion to adopt the booklet, which was mailed to all members of the Association. Subsequently the Saskatchewan Dental Therapist Association produced its own brochure, which Ms. Reed described as a reprint of the national document in a more convenient format. That document was mailed to the membership in 2005.

[31] The brochures, adopted in turn by both national and provincial dental therapist associations, provides a general description of the competencies and the scope of permitted practices by dental therapists. The section headed as "Competencies" provides as follows:

"Dental therapists are competent to provide the full range of professional services within their scope of practice. However their practice may vary, depending upon health care legislation or employment policy that may exist within different settings or jurisdictions in Canada. Upon graduation from a school of dental therapy in Canada, dental therapists will demonstrate competency and provide the full range of professional care in the following four broad categories:

1. Diagnostic Dentistry,
2. Operative Dentistry,
3. Community and Preventive Dentistry, and
4. Practice Management, Principles of Professionalism and Ethics."

Under the category "Operative Dentistry" the following is provided (in part):

"Dental therapists are trained to restore teeth to proper form, function and esthetics,

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perform uncomplicated extractions, recognize and manage dental/medical emergencies, post extraction complications and provide local anesthetics to manage pain to restore and maintain the health of the dental patient.

**Restorative Dentistry**

Restore teeth to proper form, function and esthetics  
Perform vital pulp therapy on primary teeth

**Oral Surgery**

Plan and perform extraction of primary teeth and uncomplicated extraction of permanent teeth  
Place and remove sutures  
Manage common intra-operative and post extraction complications."

[32] Primary teeth are the teeth humans first obtain, as children. They are sometimes called "baby teeth", or deciduous, and, according to Dr. White, are usually retained until about 30 months of age. They are then replaced by permanent teeth. Permanent teeth are the teeth humans have after about age 6, and into adulthood.

[33] Ms. Reed testified that dental therapists cannot cut tissue, and that they can extract baby teeth and perform simple uncomplicated extractions of permanent teeth. Also, dental therapists are also permitted to do pulpotomy and pulpectomy on baby teeth. A dental therapist is not permitted to perform pulpectomy on permanent teeth, and in emergency only can do pulpotomy on permanent teeth, and only in the coronal portion of the tooth. This witness did acknowledge that the brochures presented in evidence describe permitted practices, but do not list practices which are not allowed. She did not think that a dental therapist should puncture an abscess to relieve pain. She also said that an uncomplicated extraction of a permanent tooth would not include a tooth covered by either hard or soft tissue. She has never removed a permanent tooth.

[34] Mr. Mason and Mr. Yeo seized several documents from Kurc's office in two searches which were conducted pursuant to search warrants. Also seized was computer data, collected electronically onto a disc, from which they were printed and introduced in evidence in the printed form. Stored on the Lloyd Dental Centre computer were billing records for both Ashley Heck and Patty Dawson, to which I will refer below. Other documents seized were a lease contract, and name tags and receipts related to participation in educational seminars. The names, variously, on these documents were "Kristofer Kurc", "Mr. Kristofer Kuro" and "Dr. Kristofer Kurc". Most of the documents pre-dated June 17, 2003 (the anniversary of the 24 month

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limitation period stipulated in s. 45 (a) of the statute). A name tag and receipt for registration fees issued by the University of Alberta, Faculty of Medicine and Dentistry, and letter of participation from the Director of Continuing Dental Education, all dated in February, 2004, named "Dr. Kristofer Kurc" as a participant in a course described as "*Introduction to Dental Implants and Bone Grafting*". Apparently the conference took place in Uvero Alto, Dominican Republic, which raises the interesting question whether *if* (I use the term advisedly) the defendant did use a title to imply he was a member of the CDSS, can he be prosecuted in Saskatchewan for an offence committed in a foreign country.

*Evidence for the Defence*

[35] Erika Dick is employed as a dental assistant in the defendant's office, and has been employed there for almost 4 years. She was present when both Ashley Heck and Patty Dawson come to the defendant's office. She particularly recalled Ashley's mother insisting that all the work be done that day and that she wanted Kurc to pull all of Ashley's wisdom teeth. Ms. Dick said that Mr. Kurc did not refer to himself as a dentist and that he never does. This witness says she assists at dental procedures and did so for both Heck and Dawson. She said she does not do write the charts and that Kris Kurc always completes the codes. On Ashley Heck's chart (Exhibit P15 in these proceedings) the defendant filled in the billing code numbers. Though she had not seen the chart for Patty Dawson (P1 - Tab 31) she did recognize Kurc's handwriting on the document.

[36] With respect to Patty Dawson, Ms. Dick said Dawson had been there for an hour or an hour and a half. She said also they removed an old filling from her tooth, medicated her and told her she would have to see a dentist.

[37] Kristofer Kurc testified that he is a graduate of the National School of Dental Therapists and has been a member of the Association since 1997. He works at the Lloyd Dental Centre and sees patients regularly. He introduces himself as "Kris Kurc" and says he does not claim to be a dentist. He explained that documents found in his office bearing the designation "Dr. Kurc" were created by other people and he neither solicited nor encouraged the use of the title "doctor" or "dentist". He said people sometimes address him as "doctor" but he corrects them when they do.

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[38] Mr. Kurc first saw Ashley Heck on October 6, 2004, for an initial examination. He got approval from Heck's insurance company to remove her wisdom teeth and removed the two lower wisdom teeth on October 22, 2004. He said he did not consider removing the top wisdom teeth because they were totally impacted, though he said that Shelly Heck was pressing him to remove all Ashley's wisdom teeth. The defendant testified that the extraction of Ashley Heck's wisdom teeth were not complicated extractions. Mr. Kurc seemed to try to minimize what was required to remove Ashley's lower wisdom teeth. He said it was a case of "pushing" the distal part of the gum to expose more of the coronal portion of the tooth, which he said were partially erupted at 38 and 48. When cross-examined he said at first that he did not cut the gum, then that he did, then that he could not remember. Regarding tooth 18 he said he looked to see how deep the tooth was by using a periostial elevator, an instrument the defendant said resembles a knife. He explained that he damaged the gum in doing so, but did not "cut" the gum.

[39] When the defendant examined Patty Dawson he said he removed an old filling in the tooth she complained (#15) of and found "necrosis" (rot) in the pulp of tooth. He said he performed a pulpotomy, his objective being to open the tooth to drain it - to release pressure from the apex at the root. This testimony must be weighed against other evidence including data from Kurc's own computer which indicates he billed Ms. Dawson for having performed a pulpectomy.

#### *Analysis*

[40] The evidence in this case does not prove that the defendant used the term "dentist" or "doctor" to imply he was a member of the College of Dental Surgeons in Saskatchewan. There is certainly a paucity of evidence as to any references to Kurc as a dentist after June 17, 2003. References to "Dr. Kurc" prior to that time may have some tenuous relevance as 'similar fact evidence' but that proposition was not argued in this case. I find nothing in the evidence which persuades me that the defendant invited or encouraged other people or organizations to refer to him as a dentist. If that happened through some mistaken misapprehension of his status, the defendant cannot be sanctioned for such misapprehension. The charge under count #3 on the Information is dismissed.

[41] The other charges on the Information require interpretation of the meaning and extent of the words "authorized practice" under s. 24 of *The Dental Disciplines Act*. In this case I think the meaning may be determined from the plain words of the statute, the context in which the words

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are used in the Act and also from the scope of practice accepted and understood by practitioners in the field.

[42] I conclude that the procedures used by the defendant with respect to Ashley Heck on October 22, 2004, were a surgical extraction of teeth number "38" and "48". The evidence is clear that the defendant cut the gum of his patient at each of these locations. The cuts were deliberate incisions and were not accidental. The extraction of the teeth themselves may have been accomplished without complications for the health of the patient, but the extractions were not "simple". Several well trained and respected professionals testified in this case that these extractions were complicated and posed some risk to the patient which a dental therapist is neither trained nor licenced to undertake. Dr. Oster testified that he would not have attempted those extractions, preferring the intervention of a specialist, even though he is licenced to perform such procedures. Moreover, both Dr. Anaman and Cindy Reed corroborated other testimony that such extractions, involving cutting of tissue and removal of deep rooted teeth present a risk for damage to a major nerve bundle embedded in the jaw (the inferior alveolar nerve). Section 23 (1) (b) does not state that a dentist can extract teeth, but it does permit a dentist to perform "a procedure on tissues of the oral-facial complex", and according to Dr. White the word "tissues" includes gum, bone, teeth and nerves. This statutory provision must be compared to the wording of s. 23 (6) which authorizes a dental therapist to "conduct simple extractions" of both primary and permanent teeth.

[43] Dental Therapists are a trained and organized body in Saskatchewan and Canada. They have a statutorily recognized professional association in Saskatchewan and they have attempted to define and identify limits of their professional competence. As a group of professionals the Saskatchewan Dental Therapists Association has adopted in written text the scope of permitted professional practice and competencies. One such limit is "uncomplicated extraction of permanent teeth". In my opinion the word "uncomplicated" is interchangeable with the word "simple" in this context. Dr. Bernard White described the term "uncomplicated" in a sort of spectrum. The teeth which are most likely to present uncomplicated procedures are single rooted teeth closer to the front of the mouth. More roots present more complications. An unerupted tooth is more complicated than a fully exposed tooth. The positioning of a tooth can introduce more complications, as can bone cover (pericoronitis) and proximity to other nerve structures. It would seem apparent to me that well rooted, impacted wisdom teeth present a much more complicated scenario for extraction than a fully erupted tooth.



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[44] The statute does not attempt to define every conceivable circumstance which might present itself to a dental professional, nor is it desirable that it should do so even if it were possible. The purpose of the Act, in my opinion, is to categorize certain dental disciplines and assign statutory competence to each category. Using the language of the statute as a guide, the opinion and accepted practice of practitioners in the field offer relevant and instructive criteria for interpretation of the law and what those competencies are. The opinion of dentists and dental therapists as to what is complicated and what exceeds the competence of a designated professional is both relevant and instructive. In this case several professionals have all testified with persuasive consistency that the extraction of Heck's teeth was not simple, and not within the recognized competence of a dental therapist. Moreover, in my opinion it would be wrong to define the word "simple" in terms of the skill of the practitioner. Mr. Kurc may well have the technical ability to perform a "complicated" extraction but this does not alleviate the strictures of *The Dental Disciplines Act*. A highly skilled practitioner cannot turn a complicated procedure into a simple one merely by measuring the ease with which it can be done. The term "complicated" should be applied *qua* the procedure itself, rather than the skill and comfort level of the technician.

[45] I reject the evidence of the defendant when he states that the extraction of Ashley Heck's wisdom teeth was uncomplicated. Moreover, I think the testimony of the defendant that he mistakenly used the wrong billing code (#72221) was false. Mr. Kurc impressed me as an intelligent and observant individual. He seemed well informed as to how evaluations (described in part by billing codes) would be used by insurance companies, and I believe that his use of a billing code to describe the procedure employed was deliberate and contrived. In addition, the description of the procedure in the defendant's own records (the computer data) described the procedure as "Comp. Bone Imp." which Kurc himself said meant "complicated bone impacted". At another place in his testimony he said he saw evidence of periocoronitis (bone impaction) which obviously would add to the complexity of the extraction in Heck's case. Whether the defendant described what he did in order to qualify for a more expensive procedure or whether he did so to actually describe the patient's situation is of no moment here, except to say in either scenario his credibility as a witness is diminished when other evidence is considered.

[46] I also reject the evidence of the defendant when he claims he did not "cut" the gum at tooth "18". It is clear from the evidence of Ashley Heck and Shelly Heck as well as that of Dr. Oster that an incision had been made, probably with the intention of probing to locate the fully

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impacted tooth. Such conduct, involving as it does the physical integrity of the patient, is not permitted to dental therapists under the Act.

[47] In the case of Patty Dawson, I do not think the evidence is clear as to the actual amount of pulpal tissue which was exposed to the defendant at the time he examined the tooth. Apparently the tooth (#15) had been worked on prior to October 29, 2004, because Kurc said he located and drilled out an old filling in that tooth. He also said he found pulp in the tooth. Since Ms. Dawson complained of pain, and the pulp contains the nerves which sense pain, it is reasonable to conclude that there was some pulp present in the tooth when it was exposed. The only intervention on the tooth was by Dr. Stark after the defendant had worked on the tooth. Dr. Stark testified that there had been a complete pulpectomy done - removal of all the pulp from the tooth. It was the defendant who removed the pulp. Again in this case the defendant testified that he had only performed a pulpotomy, yet his computer records identify the procedure for Patty Dawson as a pulpectomy. In addition the defendant himself wrote the code on Dawson's chart for tooth 15 and used code number 32311 (which is the code for pulpectomy). I find that the defendant's claim that it was only a pulpotomy, that he did not remove the roots, and that he mistakenly identified it as a pulpectomy is false.

[48] Was the Dawson case an emergency? The term, as used in s. 24 (2) (a) of the Act does not lend itself to easy definition. Whether or not there is an "emergency" will depend on several factors including the immediate peril to the patient and the availability of other resources. What may be an emergency in a remote location will not be in a place where other more qualified help is readily available. Here there is no evidence that the defendant or his assistant tried to contact another dentist to book an appointment for Ms. Dawson, given the circumstances of the diagnosis. Even if other more qualified assistance was not available, I think it is evident from the opinion of Dr. Beck that a complete pulpectomy on October 29, 2004, was not necessary to alleviate Ms. Dawson's pain.

[49] The defendant, Kristofer Kurc, performed practices which are allowed to be performed only by a dentist when he was not licenced to do so. For the reasons stated I find him guilty on Counts 1 and 2 on the information.

June 22, 2006

  
L.P. Deshayc, PCJ