

**THE DISCIPLINE COMMITTEE OF THE
ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 (“Code”) respecting one **DR. RANDALL EARL DAVEY**, of the City of Wellesley, in the Province of Ontario;

AND IN THE MATTER OF the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended (“Dentistry Act Regulation”).

AND IN THE MATTER OF the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

Members in Attendance: Dr. Richard Hunter, Chair
 Ms. Judy Welikovitch, Public Member (Stay Motion only)
 Dr. Amelia Chan, Professional Member
 Dr. Peter Delean, Professional Member
 Mr. Brian Smith, Public Member

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO) Appearances:)) Paul Le Vay) Independent Counsel for the) Discipline Committee of the Royal) College of Dental Surgeons of Ontario
- and -)) Linda Rothstein and Glynnis Hawe, with) Ms. Wendy Waterhouse) for the Royal College of Dental) Surgeons of Ontario
DR. RANDALL EARL DAVEY)) Michelle Dwyer for Dr. Davey))
Hearing held by way of videoconference)

REASONS FOR DECISION¹

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the Royal College of Dental Surgeons of Ontario (the “College”) in Toronto on September 8, 2022. The Notice of Hearing was admitted as Exhibit 1 on that date.

Prior to taking Dr. Randall Davey’s (“Dr. Davey” or the “Member”) plea, the Panel heard a motion brought by Dr. Davey to dismiss – or alternatively stay – the proceedings on the grounds of inordinate delay, abuse of process and *res judicata*. In reasons dated September 14, 2022 we dismissed the motion.

Prior to reconvening on November 21, 2022, we advised the parties that Ms. Welikovitch was not available and that we would be proceeding with the four remaining panel members, which constitutes a quorum under the Code.

The Member’s plea was taken and the evidence and argument heard on place on November 21 and 23, 2022. After the conclusion of argument, we deliberated and then announced that we had made findings of professional misconduct and that our written reasons would follow. These are those reasons.

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing, dated May 18, 2021 (Exhibit 1).

1. You committed an act or acts of professional misconduct as provided by section 37(3)(b) of the *Health Disciplines Act, 1974*, S.O. 1974, c. 47, and section 37(3)(b) of the *Health Disciplines Act*, R.S.O. 1980, c. 196, and paragraph 34 of section 36 of Ontario Regulation 576-75, in that, during the years 1974, 1975, 1976, 1977, 1978, 1979, and/or 1980, you engaged in sexual impropriety with a patient, namely Patient A

Particulars:

- Patient A was your patient from 1974 until 1980.
- On more than one occasion during that period, you engaged in touching of a sexual nature with your patient, Patient A
- Further, during this time, you exhibited behaviour or made remarks of a sexual nature towards your patient, Patient A

2. You committed an act or acts of professional misconduct as provided by s. 37(3)(b) of the *Health Disciplines Act, 1974*, S.O. 1974, c. 47, and s. 37(3)(b) of the *Health Disciplines Act*, R.S.O. 1980, c. 196, and paragraph 35 of section 36 of Ontario Regulation 576-75 in that, during the years 1974, 1975, 1976, 1977, 1978, 1979, and/or 1980, you abused a patient verbally or physically, namely Patient A

¹ This version of the Reasons has been corrected to redact Patient B.’s name that was inadvertently included in one place when these reasons were originally released.

Particulars:

- Patient A was your patient from 1974 until 1980.
- On more than one occasion during that period, you engaged in touching of a sexual nature with your patient, Patient A
- Further, during this time, you exhibited behaviour or made remarks of a sexual nature towards your patient, Patient A

3. You committed an act or acts of professional misconduct as provided by s. 37(3)(b) of the *Health Disciplines Act*, S.O. 1974, c. 47, and s. 37(3)(b) of the *Health Disciplines Act*, R.S.O. 1980, c. 196, and paragraph 38 of section 36 of Ontario Regulation 576-75, in that, during the years 1974, 1975, 1976, 1977, 1978, 1979, and/or 1980, you engaged in conduct or performed an act or acts relevant to the practice of dentistry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional relative to one of your patients, namely Patient A

Particulars:

- Patient A was your patient from 1974 until 1980.
- On more than one occasion during that period, you engaged in touching of a sexual nature with your patient, Patient A
- Further, during this time, you exhibited behaviour or made remarks of a sexual nature towards your patient, Patient A

THE MEMBER'S PLEA

The Member denied all of the allegations of professional misconduct as set out in the Notice of Hearing.

THE EVIDENCE

Joint Document Book

On consent of the parties, the College introduced into evidence a Joint Document Book (“JBD”) (Exhibit 2) containing twelve tabs. Ms. Rothstein explained that the Panel could rely on the documents for the truth of their contents, save and except for tabs 11 (interview summary of Betty Jo Charters) and 12 (interview summary of Sylvia Wilson).

Tab 1 of the JBD is the Member’s Public Register entry and shows that he was initially registered with the College on April 18, 1975 and that continued to December 31, 2020.

The JBD also contained a Certificate of Conviction (Tab 2) establishing that Dr. Davey had been convicted on December 8, 1981 of indecent assault against 11 complainants, all of whom are named in the Certificate. Newspaper articles (Tab 3) outline the charges laid and confirm that the persons in respect of whom charges had been laid ranged in age from 6-20 and that the assaults

had occurred in Dr. Davey's dental office. The complainant in this case, Patient A, is not one of the persons named in the Certificate. The Certificate also discloses that Dr. Davey was sentenced to six months imprisonment. He advised during his evidence that he had served two months of that and then was released.

In June 1982 a proceeding was initiated by the College alleging that the Member had been convicted of an offence relevant to his suitability to practice dentistry (Tab 4). Dr. Davey pleaded guilty and was reprimanded and received a 42 month suspension of his licence, which was remitted subject to certain conditions (Tabs 5-7).

A General Occurrence Report from the Sault Ste. Marie Police Service dated December 20, 1980 is found at Tab 8 and contains a handwritten statement of Patient A signed that day by her mother and a police officer. Tab 9 is a letter dated February 5, 2002 from Patient A to Glen Wasyliniuk, who was the Crown Attorney who prosecuted the Member as outlined above.

Tab 10 of Exhibit 2 contained an Agreed Statement of Facts which we are to rely on as if proved in evidence and which reads as follows:

1. In December of 1980, Dr. Randall Earl Davey was arrested and charged with 24 counts of indecent assault and gross indecency.
2. On December 8, 1981, Dr. Davey pleaded guilty to and was convicted of 12 counts of indecent assault, against 11 of his female patients. The remaining 12 counts were withdrawn. All of the assaults occurred in his former dental office in Sault Ste. Marie. The victims of the assaults were aged 6-20.
3. Dr. Davey was convicted of one count of indecent assault against [Patient B]. Patient B was approximately six years old at the time of the assault.
4. In or around August or September of 1980, Patient B attended an appointment with Dr. Davey. Dr. Davey's dental assistant was present in the operatory at the beginning of the appointment.
5. Dr. Davey told Patient B to lay back and close her eyes. Dr. Davey then told Patient B to squeeze "hard" on his "finger" while he provided her dental treatment. Instead, Dr. Davey placed his penis in Patient B's hand.
6. If Patient B were to testify, Patient B would state that she does not know if Dr. Davey's dental assistant remained in the room during the assault because her eyes were closed.
7. If Patient B were to testify, Patient B would state that she informed her mother later that day what had occurred. Patient B's parents then called the police, which led to Dr. Davey's arrest.

We note that Patient A testified that she knew Patient B, but not as a child, and was not aware she was involved in allegations concerning the Member.

Evidence called by the College

The College called the complainant, Patient A, as its only witness.

Patient A is a lifelong resident of Sault Ste Marie. Starting in 1975 when she was 6 years old, she became a patient of Dr. Davey who had a practice on Queen Street in Sault Ste Marie. She remained his patient until the time of the Member's arrest in December of 1980. She saw him for check ups twice a year, as well as for fillings and extractions.

Patient A described the layout of the Member's office and drew a diagram (Exhibit 3) showing the operatory that she usually attended. She described appointments in which Dr. Davey would sit on her right, with his assistant (whose name she could not recall), sitting on her left. She described being asked to lie back and close her eyes and then being told by Dr. Davey to squeeze his finger. She recalled that what was placed in her hand was warm and smooth and, on an occasion, that it got harder. She said Dr. Davey would praise her for squeezing, telling her that she was a 'good girl'. A few times when she tried to stop because it was pulsing or throbbing, she was told to continue and, on one such occasion, was told that if she squeezed long enough she could feel his heart beat. She testified that she believed she had been asked to squeeze his finger 8 or more times.

Twice after appointments she recalls something on the right sleeve of her clothing that looked like white residue. The first time her mother commented that the dentist was sloppy, thinking it was toothpaste. On the second occasion, Patient A had felt something wet on her wrist and when she tried to wipe it off it 'felt like snot'. She was wearing a brown pant suit and she found it later in the laundry to see if it smelled like toothpaste and it did not.

She said that she had felt terrified, disgusted and shameful about these occurrences. She told her mother about being asked to squeeze Dr. Davey's finger and that she didn't like it but did not tell her explicitly what was happening because she didn't understand it at the time. Her mother told her that she thought Dr. Davey was being kind.

Later, when she was in Grade 5, in the year before Dr. Davey was arrested, she attended sex education classes and realized that she had been holding his penis and that he had ejaculated. She also thought about how it could be that he was working on her mouth with two hands while she was holding his finger. She was terrified but felt unable to tell anyone.

In or around August 1980, she described being in the operatory, the assistant was present when Dr. Davey walked in front of the dental chair while making small talk. He was wearing brown cords. They were open and she could not see underwear but could see his penis hanging out. He left the operatory and went into another room without anyone noticing. She told her mother as they were leaving. Her mother said that it must have been an accident. She told her it was not. Her mother did nothing further.

Later her mother received a call from the police inquiring about whether she and her sisters were patients of Dr. Davey. She confirmed they were. In answer to police questions, her mother advised that none of them were taken to an x-ray room but that Patient A had been told to squeeze the finger.

The police then attended and interviewed Patient A in her mother's presence. This is what is set out in the Occurrence Report (Tab 8 of the JBD). She discussed the exposure incident. Her mother confirmed the date as August 28th from her calendar. She reviewed the handwritten statement and confirmed its accuracy and that her mother had signed it. The statement does not expressly describe the penis. Patient A testified that assumed they were there because of that, which she offered as the explanation for why it was not mentioned.

She did not hear further from the police and never heard from the RCDSO. Later, she took steps herself to discover what had happened. She described this as part of her healing process. She testified that she had suffered from anxiety and depression and had developed trust issues with persons in authority such as medical professionals. In cross-examination, she advised that she had also suffered from PTSD.

In cross-examination, she testified that she held his finger (penis) at every visit. She had begged her mother to come in to the operatory with her and she had done so once, though she didn't remain

for the whole time. Her mother's view was obscured and the lights were off. She could not recall if the conduct had also happened with her mother in the room.

She described realizing what was in fact happening as a process. She testified that she could not say how many appointments she had after she had realized but there was at least one before the arrest. She did not expressly tell her mother that she thought she was holding Dr. Davey's penis because she was scared and ashamed and that they didn't talk about sex or body parts in their home.

She didn't tell the police about the moisture on her sleeve or a white substance and she doesn't believe that they discussed the assistant being present. She said that the police focused on Dr. Davey in the interview.

Member's Evidence

The only witness called by the defence was Dr. Davey.

Dr. Davey denied the allegations.

He expressly denied exposing himself to Patient A and said that he never exposed himself to a patient.

Although he had admitted to similar conduct with respect to the finger squeezing with Patient B, he denied engaging in the conduct with Patient A. He testified that he remembered her as a patient even though it was over 40 years ago because she was 'a bit of a handful' and didn't like needles. Further, he claimed that he pleaded guilty in the criminal case in respect of the complainants where the allegations were true but did not where it was not true. This included Patient A.

He testified that he had had no other complaints of sexual impropriety following his conviction.

In cross-examination, he confirmed that he did not dispute much of Patient A's evidence, including the period of time she was a patient and the frequency and nature of visits, that her mother attended but stayed in the waiting room, that Patient A's description of the premises was reasonably accurate, and that his assistant was generally present, although he said that she occasionally would step away briefly.

He confirmed that he had no contemporaneous records and that he did not attempt to obtain any. He confirmed that until the College obtained the Certificate of Conviction (Tab 2) he could not recall who the complaints were in respect of whom he had plead guilty, including whether Patient A was one of them. In all of his correspondence with the College, he never said that he had a specific recollection of Patient A.

Although his assistant was with him for at least two years or more, he claimed that he could not recall her name. He testified that his assistant would not have been present in the room when he engaged in any of the impropriety with patients because he wanted to hide the activity from them. He testified that he didn't think he was harming the patients because he thought they were too young to know what he was doing but nonetheless acknowledged that what he did was very wrong and harmful.

DECISION AND REASONS FOR DECISION

The Panel finds that the Member engaged in professional misconduct in that, on more than one occasion between 1975 and 1980, the Member engaged in touching of a sexual nature with his patient, Patient A, by placing his penis in her hand while telling her that it was his finger, and, on more than one of those occasions, ejaculating.

The Panel finds that this conduct constitutes professional misconduct contrary to section 37(3)(b) of the *Health Disciplines Act, 1974*, S.O. 1974, c. 47, and, in particular, contrary to

1. paragraph 34 of section 36 of Ontario Regulation 576-75 in that he engaged in sexual impropriety with a patient;
2. paragraph 35 of section 36 of Ontario Regulation 576-75 in that he abused a patient physically; and
3. paragraph 38 of section 36 of Ontario Regulation 576-75, in that he engaged in conduct or performed an act or acts relevant to the practice of dentistry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

The Panel dismisses the allegation that Dr. Davey exposed himself to Patient A during an appointment in August 1980.

Our reasons follow.

In making our findings, we placed the onus on the College of proving the allegations to the civil standard of proof: the balance of probabilities. Put differently, the College satisfied us that it was more likely than not that the allegations in respect of which we made a finding were true based on clear and cogent evidence.

In making our decision, we had to decide on the credibility of the evidence of Patient A and of Dr. Davey. In doing so, we asked ourselves whether their respective evidence made logical sense and was consistent with the surrounding circumstances, including available documents. Specifically, we considered:

1. whether the witness had an interest in the outcome
2. whether there was a specific reason they might not be telling the truth
3. were their observations accurate
4. did they have a good memory and was it selective
5. were they able to testify from a first hand perspective - were they present
6. did any inconsistencies make their evidence more or less believable
7. what was their demeanour (though we approached this with caution)

With respect to Dr. Davey's criminal conviction, we weighed it when assessing his credibility but were careful not to use it to presume guilt.

Ms. Rothstein explained the use of similar act evidence in respect of Patient B's evidence in the ASF. She submitted that we could not use this evidence to simply conclude that Dr. Davey had a propensity for such acts. Rather, if we found that there were common characteristics such as proximity in time, detail of the events, and surrounding circumstances such that it would be an affront to common sense that the similarities were mere coincidence, then we could use this as persuasive that the events happened in this case.

The Panel considered the evidence given by both witnesses. It concluded that Dr. Davey had placed his penis in her hand during visits as described by Patient A in her evidence.

We find on this point that Patient A was more likely than not to be telling the truth as she remembers it. As a whole, Patient A's evidence seemed credible and the sequence of events and timing coincided with similar acts related to his criminal conviction in 1981. In particular, the Panel considered the expression of Patient B's evidence in the ASF contained in Exhibit 2 as similar fact evidence in all aspects.

Both witnesses had inconsistencies in their evidence. However, this could be explained, at least in part, by the 40-year period since the misconduct had occurred. The Panel is of the view that the inconsistencies in Dr. Davey's evidence were more likely related to selective memory and thus made his evidence less believable. On two occasions he changed his evidence. First, before he reviewed the Certificate of Conviction, he told the College that he didn't remember which patients had been the subject of the conviction, including whether Patient A was one of them. Afterwards, he claimed to remember Patient A because she was a "handful as a patient" and that she was not one of the patients whom he had abused. Second, Dr. Davey stated that the assistant was always in the room with him. Later in his evidence, he admitted that when committing the indecent acts he would wait until the assistant left the room so he wouldn't be caught.

In contrast, we found Patient A's testimony was unwavering. She had no interest in the outcome of the hearing and her demeanour was steadfast. Patient A's testimony appeared reliable and detailed. She was able to sketch out Dr. Davey's office layout accurately and was clear on the details of the events.

The Panel was not convinced on a balance of probabilities that Dr. Davey indecently exposed himself to Patient A as she had described. The Panel found it unlikely that Dr. Davey could expose himself to Patient A with his dental assistant in the room. Furthermore, Patient A testified that Dr. Davey left the room and walked by the reception desk and waiting area with his penis out. The Panel considered it highly unlikely that another staff member or a patient would not notice this type of bizarre behavior.

A hearing on penalty and costs is to be scheduled.

I, Richard Hunter, sign these Reasons for Decision as Chairperson of this Discipline Panel.



December 6, 2022

Chair, Discipline Panel

**THE DISCIPLINE COMMITTEE OF THE
ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 (“*Code*”) respecting one **DR. RANDALL EARL DAVEY**, of the City of Wellesley, in the Province of Ontario;

AND IN THE MATTER OF the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended (“*Dentistry Act Regulation*”).

AND IN THE MATTER OF the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

Members in Attendance: Dr. Richard Hunter, Chair
 Dr. Amelia Chan, Professional Member
 Dr. Peter Delean, Professional Member
 Mr. Brian Smith, Public Member

BETWEEN:

**ROYAL COLLEGE OF DENTAL
SURGEONS OF ONTARIO**

- and -

DR. RANDALL EARL DAVEY

) Appearances:
)
) Andrea Gonsalves
) Independent Counsel for the
) Discipline Committee of the Royal
) College of Dental Surgeons of Ontario
)
) Linda Rothstein and Glynnis Hawe,
) with Ms. Wendy Waterhouse
) For the Royal College of Dental
) Surgeons of Ontario
)
)
) Michelle Dwyer for Dr. Davey
)

Hearing held by way of videoconference

REASONS FOR DECISION ON PENALTY AND COSTS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the Royal College of Dental Surgeons of Ontario (the “College”) in Toronto on September 8, November 21, and November 23, 2022. At the conclusion of the hearing and after deliberating, the Panel announced its decision, making findings against Dr. Randall Earl Davey (“Dr. Davey” or the “Registrant”) as set out in the Notice of Hearing except for one allegation, which was dismissed. Specifically, the Panel found that the Registrant engaged in professional misconduct contrary to section 37(3)(b) of the *Health Disciplines Act, 1974*, S.O. 1974, c. 47, and, in particular, contrary to

1. paragraph 34 of section 36 of Ontario Regulation 576-75 in that he engaged in sexual impropriety with a patient;
2. paragraph 35 of section 36 of Ontario Regulation 576-75 in that he abused a patient physically; and
3. paragraph 38 of section 36 of Ontario Regulation 576-75, in that he engaged in conduct or performed an act or acts relevant to the practice of dentistry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

The Panel released its written reasons for decision on December 6, 2022.

On February 16, 2023, the matter resumed for a hearing on the issues of penalty and costs.

At the outset of the penalty hearing, the complainant, Patient A, read out a victim impact statement. The written version of that statement was made Exhibit 6.

PENALTY SUBMISSIONS

The parties presented the Panel with a Joint Submission with respect to Penalty and Costs (Exhibit 7), which reads as follows.

The Royal College of Dental Surgeons of Ontario (the “College”) and Dr. Randall Earl Davey (the “Member”) jointly submit that the Discipline Committee should make the following Order:

1. The Member shall appear before the Panel of the Discipline Committee to be reprimanded on the date this Order becomes final, or on a date to be fixed by the Registrar.
2. The Registrar shall immediately revoke the Member's Certificate of Registration.
3. The Member shall pay to the Registrar \$17,380 within 60 days of the date this Order becomes final, as security for any funding the College may provide Patient A under the program established pursuant to s. 85.7 of the Code.
4. The Member shall pay costs to the College in the amount of \$58,000, within 60 days of the date this Order becomes final.

College counsel confirmed that the primary goal of a penalty decision is public protection. Revocation of Dr. Davey's certificate of registration acts as both a specific and general deterrent. It is the strongest form of deterrence a discipline panel can order. With a revocation order, it is highly unlikely that Dr. Davey will ever practise dentistry again.

College counsel noted that where the Discipline Committee finds a member guilty of professional misconduct under the *Health Disciplines Act, 1974*, S.O. 1974, c. 47, it has the authority to revoke the member's licence and/or reprimand the member, along with other penalties. Accordingly, the first two terms of the Joint Submission are available under the *Health Disciplines Act, 1974*, as they are under the *Regulated Health Professions Act, 1991*, SO 1991, c 18, and its Schedule 2, the *Health Professions Procedural Code* (the "Code").

Paragraph 3 of the Joint Submission, regarding funding for therapy and counselling under s. 85.7 of the Code, and paragraph 4, requiring the Registrant to pay costs to the College, contain terms that are not within the Discipline Committee's power to order under the *Health Professions Act, 1974*, but they are provided for in the Code. College counsel argued that those terms are procedural in nature, not substantive, and therefore the current law can be applied retrospectively in this case. In support of that submission, College counsel relied on *CPSO v Ruggiero*, 2017 ONCPSD 1, in which the Discipline Committee of the College of Physicians and Surgeons of Ontario imposed an order for costs under the Code although the underlying misconduct was governed by the *Health Disciplines Act, 1980*. College counsel also emphasized Dr. Davey's agreement to those terms through the Joint Submission.

College counsel argued that Dr. Davey breached the trust of a female child for his own sexual gratification. This was considered a major aggravating factor. There was no therapeutic purpose for any of the Registrant's behaviour. There were several incidents with Patient A and evidence of a pattern of such conduct with other young female patients.

The Registrant's cooperation with the College throughout the hearing and his willingness to enter into the Joint Submission was a mitigating factor. However, it does not reduce the seriousness of the misconduct or make revocation less appropriate.

Counsel for the College stressed the principle of proportionality and provided case law showing the penalties ordered in other cases of sexual misconduct under the *Health Disciplines Act, 1974*, which did not provide for mandatory revocation of a member's certificate of registration where the member was found to have engaged in sexual misconduct. Those cases demonstrate that the penalty proposed in the Joint Submission falls within the range of penalties for this kind of misconduct.

The Registrant's counsel noted that revocation is not mandatory under the *Health Disciplines Act, 1974*, and point to Dr. Davey's own prior misconduct case as an example of how such misconduct would have been dealt with under that Act at the time: Dr. Davey's licence was not revoked. The Registrant had legal arguments available to him that revocation was not appropriate. He gave up the right to advance those arguments by entering into the Joint Submission with the College. He has agreed to the funding term in paragraph 3 of the order even though he could have argued that such a term was not appropriate.

Dr. Davey's lawyer noted that there were no allegations of professional misconduct made against him in the 40 years that followed his actions toward Patient A. He went on to live a very prosocial life. He has now retired and will not be returning to the profession. This should give comfort as to public protection.

In reply, College counsel argued that Dr. Davey's prior discipline case does not assist the Panel in deciding the issue of penalty, as it is difficult to conclude why the penalty chosen in that case was imposed. That case involved quite different facts, with a different Patient. He pleaded guilty to a crime relevant to his suitability to practise. There was no finding by the Committee that he engaged in sexual interference or engaging in conduct that members would regard as disgraceful, dishonourable or unprofessional.

PENALTY DECISION

The Panel accepted the Joint Submission on Penalty and made the following order (the "Order"):

1. The Registrant shall appear before the Panel of the Discipline Committee to be reprimanded on the date this Order becomes final, or on a date to be fixed by the Registrar.
2. The Registrar shall immediately revoke the Registrant's Certificate of Registration.

3. The Registrant shall pay to the Registrar \$17,380 within 60 days of the date this Order becomes final, as security for any funding the College may provide Patient A under the program established pursuant to s. 85.7 of the Code.
4. The Registrant shall pay costs to the College in the amount of \$58,000, within 60 days of the date this Order becomes final.

REASONS FOR PENALTY DECISION

The Panel is aware that joint submissions should be respected unless they fall so far outside the range of an appropriate sanction that they would bring the administration of justice at the College into disrepute, or are otherwise contrary to the public interest.

When considering the appropriateness of the proposed penalty, the Panel considered the paramount objective to be public protection. Maintaining the public's confidence in the College and its ability to regulate the profession is also an important objective. The Joint Submission on penalty reflects the parties' agreement that revocation is appropriate to address Dr. Davey's misconduct and protect the public. The Panel agrees. The revocation of Dr. Davey's certificate protects the public and helps maintain confidence in the College and the College's regulation of its registrants.

Deterrence is also an important objective given the serious nature of the misconduct in this case. By accepting the Joint Submission and ordering revocation of Dr. Davey's certificate of registration, the Panel is sending a clear message to the Registrant and the profession that misconduct of this nature will not be tolerated and will be dealt with in the strictest manner possible.

We are satisfied that the Order falls within the range of reasonable penalties for misconduct of this nature. Even though revocation was not mandatory under the *Health Disciplines Act, 1974*, there are cases decided under that Act in which a member's certificate of registration was revoked for sexual misconduct. The Panel had no hesitation in accepting the Joint Submission and finding revocation to be the appropriate penalty in this case.

The reprimand provided the Panel with an opportunity to express to Dr. Davey our profound disapproval and denunciation of his behaviour. He preyed upon a young, vulnerable female patient and evidence from Patient A's victim impact statement demonstrated that his actions scarred her for life. The Order reflects the significant aggravating factors in this case.

The Panel also acknowledges Dr. Davey's willingness to enter into a Joint Submission with the College. We accept that this is a mitigating factor, but we agree with College counsel that it does not reduce the seriousness of the misconduct or make revocation inappropriate.

The Panel finds that we have jurisdiction to include in the Order the requirement that Dr. Davey pay \$17,380 to the College for any additional counselling Patient A may require. We accept that this term is procedural in nature and our jurisdiction under s. 51(2)5.1 to make an order requiring a registrant to reimburse the College for funding provided to Patient A for therapy and counselling can be applied retrospectively in this case. Moreover, Dr. Davey has agreed to the term. Likewise, the Panel finds that the parties' agreement that Dr. Davey should pay costs to the College in the amount of \$58,000 is within our jurisdiction to order and is appropriate in the circumstances.

THE REPRIMAND

At the conclusion of the discipline hearing, the panel delivered the reprimand to the Registrant. A copy of the reprimand is attached as Appendix "A" to these Reasons.

I, Richard Hunter, sign these Reasons for Decision as Chairperson of this Discipline Panel.



March 3, 2023

Date

Appendix “A”

RCDSO v. Dr. Randall Davey

Dr. Randall Davey, as you know, this Discipline panel has ordered you be given an oral reprimand as part of the sanction imposed upon you. The reprimand should impress upon you the seriousness of your misconduct.

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

You will be given an opportunity to make a statement at the end of the reprimand if you wish.

The panel has found that you have engaged in multiple acts of professional misconduct. The misconduct related to:

- Sexual impropriety with your patient and
- Abusing your patient physically

The cumulative effect of your conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional.

Your professional misconduct is a matter of profound concern. It is completely unacceptable to your fellow dentists and to the public. You have brought discredit to the entire profession and to yourself. Public confidence in this profession has been put in jeopardy.

Of special concern to us is the fact that the professional misconduct in which you engaged has involved breaching the trust of a young, vulnerable patient, whose family had entrusted her to your care. There was no reason for your conduct other than your own personal sexual gratification. Your conduct caused substantial, enduring harm to your patient.

We have ordered the penalty of revocation, being the most significant penalty this Committee can impose. It is appropriate because it is necessary to send a

Appendix “A”

message to the profession that misconduct of this nature will never be tolerated. Your actions in violating your patient’s trust are fundamentally incompatible with the obligations of this profession.

As I advised earlier, you will now be given an opportunity to make a comment if you wish to do so. This is **not** an opportunity for you to debate the merits or the correctness of the decisions we have made.

Do you have any questions or do you wish to make any comments?

(Hear the Registrant’s comments at this point)

Thank you for attending today. We are adjourned.