

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

Citation: Royal College of Dental Surgeons of Ontario v. Shaughnessy, 2024 ONRCDSO 5

Date: 2024-12-19

File No.: 23-0976

IN THE MATTER OF: A Hearing 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”)

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

BETWEEN:

Royal College of Dental Surgeons of Ontario

-and-

Dr. Stephen John Shaughnessy

DECISION AND REASONS FOR DECISION

PANEL MEMBERS:

Ms. Judy Welikovitich, Public Member (Chair)

Dr. Peter Delean, Professional Member

Dr. Ian Brockhouse, Professional Member

APPEARANCES:

Ahmad Mozaffari, for the College

Paul Martin, for Dr. Shaughnessy

Luisa Ritacca, Independent Legal Counsel

Heard: December 19, 2024, by videoconference

Decision Date: December 19, 2024

Release of Written Reasons: January 16, 2025

REASONS FOR DECISION

[1] 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 December 19, 2024. This matter was heard electronically.

The Allegations

[2] The College’s allegations of professional misconduct against Dr. Shaughnessy (the “**Registrant**”) are set out in Notice of Hearing 23-0976, dated October 25, 2023, as follows:

1. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 in that, during the year 2022, you contravened section 2(59) of the Ontario Regulation 853, Regulations of Ontario, 1993, in that you engaged in conduct or performed an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional, or unethical.

Particulars:

- The Patient presented with a concern about a patch on their tongue. You told the Patient that the patch appeared to be hyperkeratosis;
- You took a photograph of the patch.
- When the Patient followed up with you about the patch, you lied to the Patient. You falsely told the Patient that you had shown the photograph to an oral pathologist and that the oral pathologist agreed that it appeared to be hyperkeratosis and was not of urgent concern. In fact, you had not shown the photo to, or discussed the Patient’s case with, an oral pathologist.
- You did not document this conversation in your clinical records.

The Registrant’s Plea

[3] The Registrant admitted the allegations of professional misconduct contained in the Notice of Hearing. The Chair conducted an oral plea inquiry on the record at the hearing and a written plea inquiry signed by the Registrant was entered as an exhibit. Based on the

Registrant's responses to the inquiry, the Panel was satisfied that his admissions were voluntary, informed and unequivocal.

The Evidence

[4] On consent of the parties, the College introduced into evidence an Agreed Statement of Facts (Exhibit 3). The Agreed Statement of Facts ("ASF") (with the documents attached to it omitted) provides, in relevant parts, as follows:

Background

1. At the material times, Dr. Stephen John Shaughnessy (the "Registrant"), was a registered member of the Royal College of Dental Surgeons of Ontario (the "College") practising at Jacobs & Associates in Oakville, Ontario. A copy of the Registrant's profile from the Dentist Register is attached as "Tab 1".
2. The Patient became a patient of the Registrant's on February 6, 2020. The Patient continued to see the Registrant on an ongoing basis over the next two and a half years.

Patient Reports Concerns to the Registrant

3. On April 26, 2022, the Patient attended for an appointment with the Registrant. The Patient's primary concern at this appointment was a white patch on the left lateral border of his tongue.
4. The Registrant examined the Patient at this appointment and advised him that the patch appeared to be hyperkeratosis caused by irritation from teeth that were adjacent to the patch. The Registrant took a photograph of the patch with his cell phone and told the Patient that he would send the photograph to a pathologist he knew for their impression. The Registrant did not make a formal referral to a pathologist at this time.
5. In or around early May 2022, the Patient contacted the Registrant and inquired whether the Registrant had discussed his case with a pathologist. Though the Registrant had not yet discussed the Patient's case with a pathologist, he told the Patient he had consulted with an oral pathologist and had shown them the photograph of the white patch on the Patient's tongue. The Registrant further

advised the Patient that the oral pathologist had agreed with the Registrant's diagnosis of hyperkeratosis. The Registrant told the Patient the white patch was not of urgent concern and was not malignant. The Registrant did not document his conversation with the Patient in the Patient's record.

6. It is agreed that at the time of the Registrant's discussion with the Patient in or around early May 2022, the Registrant had not discussed the Patient's case with an oral pathologist or any other health care professional.
7. In or around mid-May 2022, and after he had followed up with the Registrant about the pathologist's impression, the Patient noticed two ulcers on the left, lateral side of his tongue, next to the white patch. This caused the Patient concern, and he scheduled a further appointment with the Registrant.
8. The Patient attended for an appointment with the Registrant on May 24, 2022. At that time, the Registrant referred the Patient to an oral surgeon for a consultation regarding the extraction of two teeth and an examination of the Patient's tongue. The next day, on May 25, 2022, the Registrant's office received a call from the oral surgeon advising that they would not see the Patient for reasons unrelated to the Registrant.
9. The Patient attended a further appointment with the Registrant on May 31, 2022. The Registrant examined the Patient's mouth and noted an additional area, posterior to the white patch, that was ulcerated. The Registrant took a photograph of that area and, on June 3, 2022, referred the Patient to another oral surgeon for further investigation.
10. The Patient attended an appointment with the oral surgeon on June 22, 2022, for the purposes of having two teeth extracted. The Patient saw the oral surgeon again on July 21, 2022, at which time the oral surgeon completed a biopsy of the affected area on the Patient's tongue.
11. The biopsy was sent to an oral pathologist on July 22, 2022. The oral pathologist issued their report on July 28, 2022. The pathologist concluded that the white patch was a malignant tumour and made a diagnosis of squamous cell carcinoma.

12. In or around February 2023, the Patient died of oral cancer.

The Registrant

13. In or around August 2022, the Registrant was diagnosed with cancer. He ceased practising dentistry in or around April 2024.
14. The Registrant has signed an Acknowledgement and Undertaking to resign his membership and certificate of registration with the College, and to not apply or re-apply for registration as a dentist to practise dentistry in Ontario or in any other jurisdiction in Canada. Attached hereto as "Tab 2" is the Registrant's signed Acknowledgement and Undertaking.

The Registrant engaged in conduct that would reasonably be regarded as disgraceful, dishonourable, unprofessional or unethical

15. It is agreed that in misrepresenting that he had consulted an oral pathologist who agreed with the Registrant's assessment that the white patch on the Patient's tongue was hyperkeratosis, the Registrant engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable, unprofessional, or unethical.

Professional Misconduct Admitted

16. The Registrant admits and acknowledges that the conduct described above constitutes professional misconduct according to:
 - a. Section 51(1)(c) of the *Health Professions Procedural Code* (the "Code"), being Schedule 2 of the *Regulated Health Professions Act, 1991*, SO 1991, c 18 and as defined in the following paragraphs of section 2 of Ontario Regulation 853/93 made under the *Dentistry Act, 1991*:
 - i. Paragraph 59: Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical.

Decision

[5] Having considered the evidence and submissions of the parties, the Panel found that the Registrant committed acts of professional misconduct as provided in section 51(1)(c) of the *Code* and section 2(59) of *Ontario Regulation 853/93*, as alleged in the Notice of Hearing and that his misconduct would reasonably be regarded by members of the profession as disgraceful, dishonourable, unprofessional or unethical.

Reasons for Decision

[6] The facts in this case are relatively simple: after a long and untainted career, Dr. Shaughnessy engaged in a serious act of professional misconduct — when he failed to send the photograph of a patient's oral patch to a pathologist for advice. This misconduct was then compounded when he lied to his patient about (a) having sent the photograph of the oral patch to a pathologist for advice, and (b) also lied to the patient about the advice he received. The Panel found, on a balance of probabilities standard, that his actions constituted serious misconduct by Dr. Shaughnessy.

[7] The Registrant admits that despite what he told the Patient, he failed to discuss the Patient's case with a pathologist. The Registrant lied to his Patient when he told him that the pathologist had reviewed the photograph and that he agreed with him (the Registrant) that the white patch on the Patient's tongue was hyperkeratosis and not anything of concern. The Panel is satisfied that the Registrant's conduct would certainly be regarded by other members of this College as disgraceful, dishonourable, unprofessional or unethical.

[8] The Panel could reasonably infer that Dr. Shaughnessy's serious misrepresentation to his patient caused a delay in the patient's cancer diagnosis. While the events in this case were particularly troubling, it should go without saying that it is wholly unprofessional for a member of this College to lie to and mislead their patient. In this case, the patient specifically went to the Registrant because of the concern he had about the patch on his tongue. There was no evidence presented as to why the Registrant failed to followup with a pathologist, but having failed to do so, it was simply unacceptable for the Registrant to then lie to and mislead his Patient about it.

[9] The Panel is satisfied, on a balance of probabilities standard, that Dr. Shaughnessy's conduct involved serious dishonesty with his patient and a disregard for his professional

obligations as a registrant of the Royal College of Dental Surgeons of Ontario. The Panel notes that Dr. Shaughnessy expressed shame and regret about his conduct.

Penalty Submissions

[10] The parties presented the Panel with a Joint Submission with respect to Penalty and Costs (“JSPC”) (Exhibit 4), which reads as follows:

1. The Royal College of Dental Surgeons of Ontario (the “College”) and Dr. Stephen John Shaughnessy (the “Registrant”) jointly submit that this panel of the Discipline Committee impose the following penalty on the Registrant as a result of the panel’s finding that the Registrant is guilty of professional misconduct, namely, that it makes an order:
 - a. requiring the Registrant to appear before the panel of the Discipline Committee to be reprimanded within ninety (90) days of this Order becoming final or on a date fixed by the Registrar;
 - b. that the Registrant pay costs to the College in the amount of \$7,500.00 in respect of this discipline hearing within thirty (30) days of the date this Order becomes final.
2. The College and the Registrant further submit that pursuant to the Code, as amended, the results of these proceedings must be recorded on the Register of the College and any publication of the Decision of the panel would therefore occur with the name and practice address of the Registrant included.

[11] The parties submitted that the proposed penalty and costs order satisfies the principles of penalty, including general deterrence and public protection. The Registrant’s undertaking to resign and to not seek reinstatement is a complete answer to any concerns regarding public safety or remediation. The Registrant will no longer be able to practise in Ontario or to hold himself out as a member of this College. Given the fact of the undertaking, the parties urged the Panel to accept the joint submission.

Penalty Decision

[12] The Panel accepted the Joint Submission with respect to Penalty and Costs, and made the following order (the “**Order**”):

1. The Registrant shall appear before the panel of the Discipline Committee to be reprimanded within ninety (90) days of this Order becoming final or on a date fixed by the Registrar;
2. The Registrant shall pay costs to the College in the amount of \$7,500.00 in respect of this discipline hearing within thirty (30) days of the date this Order becomes final.

Reasons for Penalty Decision

[13] It is settled law that a decision-maker should not lightly depart from an agreement that has been reached by the parties with respect to an appropriate penalty. The test is not one of “fitness of sentence” but, rather, the more stringent test of whether the jointly proposed penalty would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.¹

[14] For the reasons that follow, the Panel accepted the JSPC and concluded that the proposed penalty award and costs award to the College are reasonable and appropriate in the overall circumstances of this case.

[15] The Discipline Committee’s goal in imposing penalties is not to punish the Registrant. It is not intended to be punitive. The goal of a penalty is to protect the public from dentists who have committed professional misconduct. It is also to maintain public confidence in the profession and in its ability to self-regulate.

[16] A penalty must serve as a measure of general deterrence, in that it sends a clear and unequivocal message to all registrants of the dental profession that the type of misconduct at issue cannot and will not be tolerated. It must also serve as a measure of specific deterrence with respect to the dentist concerned.

[17] An appropriate penalty should also provide for remediation or rehabilitation of the dentist concerned, where possible and appropriate.

[18] Counsel for the College and for the Registrant urged the Panel to accept the JSPC. They argued that the jointly proposed penalty reflects the seriousness of Dr. Shaughnessy’s misconduct, and that the terms are appropriate having regard to the objectives of penalty, the

¹ *R v Anthony-Cook*, [2016 SCC 43](#), applied in the professional discipline context in *Ontario College of Teachers v Merolle*, 2023 ONSC 3453 at para 32

aggravating and mitigating factors in this case, and the interests of the public, the profession, and the Registrant himself.

[19] In reaching its decision, the Panel considered the principles of penalty, the submissions of the parties and the advice of its independent legal counsel, the mitigating and aggravating factors, and the circumstances of this case as a whole.

[20] The mitigating factors present in this case that weighed in the Panel's assessment of the joint position include that:

1. This case involves a Registrant who has practised dentistry for more than forty (40) years and who has no prior discipline history whatsoever;
2. The Panel found that Dr. Shaughnessy took accountability for his conduct and avoided the necessity of a contested hearing on the merits;
3. Dr. Shaughnessy exercised insight into his wrongdoing and acknowledged the severity of his misconduct. He expressed shame and regret at his conduct; and
4. Dr. Shaughnessy cooperated with the investigation into his conduct.

[21] Against the mitigating factors, the Panel weighed the aggravating factors present in this case. These include:

1. The misconduct to which Dr. Shaughnessy admitted is serious. He lied to his patient about having sent the photograph of the patch on his tongue to an oral pathologist;
2. Dr. Shaughnessy compounded that lie by telling the patient that the oral pathologist agreed with him that the patch was hyperkeratosis and therefore, nothing to be worried about;
3. Dr. Shaughnessy's lies to his patient caused a delay in the patient receiving a diagnosis of cancer of approximately four (4) months. Dr. Shaughnessy thereby caused harm to his patient.

[22] The acceptance by the Panel of the JSPC is predicated upon Dr. Shaughnessy's undertaking. It was a key factor in the Panel's assessment. It was in consideration of Dr. Shaughnessy's written undertaking to resign from the College and to not seek reinstatement of

his certificate at any time, that the Panel was satisfied that the proposed penalty is appropriate in the circumstances of this case as a whole.

[23] Further, the Reprimand will impress upon the Registrant, the membership at large, and the public, that it is wholly improper to mislead patients, and that this type of conduct cannot and will not be tolerated by the College or the members of the dental profession.

[24] Dr. Shaughnessy's undertaking to resign, which is not something the Panel could impose, will protect the public and it will send a clear message to the profession and the public that the Registrant and the College have taken this misconduct seriously. The Panel agrees with the parties that Dr. Shaughnessy's undertaking is a complete answer to concerns about public protection in this case. For this reason, the imposition of remedial requirements is not necessary. The Panel notes that had Dr. Shaughnessy not undertaken to resign, the Panel would have entertained submissions with respect to an appropriate suspension.

[25] In the Panel's view, this case is a tragic reminder of the need for openness, honesty and transparency in a dentist's dealings with their patients. It also serves as a reminder to all dentists of the need to deal expeditiously when faced with oral lesions.

Reasons for Costs Decision

[26] The College and Counsel for the Registrant jointly proposed that the Panel impose costs against Dr. Shaughnessy in the amount of \$7,500.00, payable within thirty (30) days of this Order becoming final. College counsel submitted that he would typically have requested a costs award of \$10,000.00 but that he had joined Defence Counsel in proposing a lesser amount in consideration of Dr. Shaughnessy's very specific circumstances. A costs award in the circumstances of this case is not intended to be punitive. Its primary purpose is to reimburse the College for expenses incurred by it in investigating and prosecuting its case against the Registrant. The jointly proposed amount of \$7,500.00 is somewhat lower than is typically ordered in similar cases that involve a plea. The Panel found, however, that this was an appropriate amount given the overall circumstances of this case.

[27] For these reasons, the Panel accepted the jointly proposed penalty and orders that the Registrant pay costs to the College in the amount of \$7,500.00.

The Reprimand

[28] At the conclusion of the discipline hearing, the Panel administered the reprimand to the Registrant. A copy of the reprimand is attached as Appendix "A" to these Reasons.

I, Judy Welikovitch, sign these Reasons for Decision as Chairperson of this Discipline Panel.



January 16, 2025

Date

Appendix “A”

RCDSO v. Dr. Shaughnessy

Dr. Shaughnessy, as you know, this Discipline panel has ordered that you be given an oral reprimand as part of the sanctions imposed upon you.

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 professional misconduct.

The misconduct related to your treatment of a Patient whom you treated from February 2020 until mid-2022. You have admitted that in April 2022, your patient attended for an appointment with you and that their primary concern was a white patch on the left side of their tongue. You advised the patient that the patch appeared to be hyperkeratosis. Nevertheless, you took a photo of the patch with your phone and told your patient that you would send the photo of the patch to a pathologist.

Later, in May 2022, when your patient contacted you and inquired whether you had discussed their case with a pathologist, you misrepresented to the Patient that you had consulted with an oral pathologist whom you said had agreed with you that your assessment of a white patch on the Patient’s tongue was hyperkeratosis. This was not true. Ultimately, the Patient was diagnosed with squamous cell carcinoma and in February 2023, the Patient died of oral cancer. You have admitted that your conduct in relation to this Patient would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical.

Your professional misconduct is a matter of profound concern.

Of special concern to us is the fact that the professional misconduct in which you engaged delayed the Patient’s cancer diagnosis.

You have had a long, forty-plus-year career and we acknowledge that this is your first appearance before a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario.

We also acknowledge your undertaking to resign from the College and never to seek to reapply to the College for membership. We appreciate that your cooperation and decision to resign has allowed this matter to proceed without the need to conduct a fully contested hearing.

That being said, the Panel notes that this case is a tragic reminder of the need for openness, honesty and transparency in a dentist's dealings with their patients. It also serves as a reminder to all dentists of the need to deal expeditiously when faced with oral lesions.

Is there anything you'd like to say?

Thank you