

Decision One

Dr. David Chuang
143 Queen Street East #201
Brampton, Ontario

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

Notice of Hearing #1

- Signed or issued a certificate, report or similar document that he knew or ought to have known contained a false, misleading or improper statement (para. 28).
- Disgraceful, dishonourable, unprofessional or unethical conduct (para. 59).

Notice of Hearing #2

- Contravened a standard of practice or failed to maintain the standards of practice of the profession (para. 1).
- Failed to keep records as required by the regulations (para. 25).
- Signed or issued a certificate, report or similar document that he knew or ought to have known contained a false, misleading or improper statement (para. 28).
- Charged a fee that was excessive or unreasonable (para. 31).
- Disgraceful, dishonourable, unprofessional or unethical conduct (para. 59).

Notice of Hearing #3

- Contravened a standard of practice or failed to maintain the standards of practice of the profession (para. 1).
- Recommended or provided an unnecessary dental service (para. 6).
- Abused a patient (para. 8).
- Charged a fee that was excessive or unreasonable (para. 31).
- Charged a fee or an amount under an agreement that was excessive or unreasonable having regard to the services covered by the agreement (para. 32).
- Disgraceful, dishonourable, unprofessional or unethical conduct (para. 59).

Notice of Hearing #4

- Abused a patient (para. 8).
- Disgraceful, dishonourable, unprofessional or unethical conduct (para. 59).

BRIEF SYNOPSIS OF FACTS

Notice of Hearing #1

- Complaint made by a patient with respect to the member's billings in respect of her treatment.
- The patient and a representative from her insurance company testified at the hearing.
- Panel concluded that the member issued an insurance claim that contained false statements as the patient did not visit the member's office nor receive treatment on the date set out in the claim.
- By receiving and cashing a cheque for treatment the member must have known he had not performed and his failure to honestly inform the patient of the payment when she asked, the member engaged in disgraceful and unprofessional conduct.

Notice of Hearing #2

- Complaint made by a patient about the member's standards of care associated with the extraction of her wisdom teeth, his persistent telephone calls, unannounced visit to her home, and unprofessional behaviour.
- The patient, her sister, her boyfriend, and an expert in oral surgery, called by the College, all testified at the hearing.
- Evidence showed that following the extraction of her wisdom teeth by the member, the patient became very ill with fever and pain for several days. An infection was subsequently diagnosed by another dentist.
- Panel accepted evidence of the College's expert who reviewed the patient records and testified that the member failed to maintain standards of practice of the profession, as follows: failed to perform treatment under proper aseptic conditions; performed surgery without an assistant; failed to remove one tooth in its entirety and did not explain fragment to patient; failed to provide proper post-operative instructions; failed to reassess patient after three days of post-operative pain, among other things.
- Panel also accepted evidence of College's expert with respect to the member's recordkeeping deficiencies, including no record of patient's first attendance, no adequate record of medical history, examination, diagnosis, treatment plan, tooth fragment, or post-operative instructions.
- Panel accepted evidence of College's expert that there was nothing to substantiate the emergency fee or fee for unusual difficulties in extracting the teeth, nothing in the records to support the charges and thus the fee was excessive/unreasonable.

- Panel found that the member failed to maintain a professional relationship with the patient. It was inappropriate to visit this new patient at her home without an invitation or appointment and to give her roses, a balloon and a card signed with “love.” His repeated telephone calls, particularly when she requested that he no longer communicate with her, and the inappropriate language he used in some of the calls caused the patient to question his motives and become frightened. Panel concluded this conduct would be regarded by the profession as disgraceful, dishonourable and unprofessional.

Notice of Hearing #3

- Patient complained about the member’s standards of care associated with her treatment, his fees, and his abusive and unprofessional behaviour towards her when she worked for him.
- The patient and an expert in endodontics, called by the College, testified at the hearing.
- The patient testified that she came to the member’s office due to pain in her jaw and to have her teeth cleaned. The member took two x-rays, cleaned and examined her teeth, and recommended root canal treatment for the pain. The patient made an appointment for the treatment, but cancelled it after she lost her job and could not afford to pay for it.
- The member then offered her employment in his office as a receptionist and offered her full dental benefits.
- During her employment, the member performed root canal treatments, as well as some restorations, but did not take x-rays either before or after the root canal treatments.
- Following the root canal treatment, a swelling/ infection developed in the gum region. She testified that the member told her she had “popcorn syndrome” from eating popcorn and that she had a “jaw defect” and that he performed surgery to insert artificial bone. After she left the member’s employ, a specialist told her that he may not be able to save the tooth.
- Panel accepted the evidence of the College’s expert in endodontics who testified that the member failed to meet the standards in that he failed to make a proper diagnosis and treatment plan, adequately debride and enlarge the root canals of the tooth, record the length and type of file used, and completely fill the canals. It was the expert’s opinion that this caused the infection and that the member failed to recognize the cause of the infection and improperly treated it with unnecessary periodontal surgery, including a periodontal flap and the insertion of synthetic bone material.
- The patient testified that during her employment, the member engaged in conduct that was abusive in both a physical and emotional sense, including remarks of a sexual nature. Also, she testified to occasions when the member would touch her inappropriately. Further, the member was constantly asking her to accompany him to social functions, including an out-of-town vacation.
- After she resigned her employment, he continued to telephone her at home and left vulgar messages.
- In the panel’s opinion, the patient was a credible witness and the member’s conduct towards her was offensive and abusive, as well as inappropriate by any professional standards.
- After the patient left the member’s employ, he sent her a bill for the dental treatment he provided during her employment. He then sent the account to collections.
- The panel accepts the evidence of the patient that there was an agreement that all dental services would be provided as a benefit of her employment, which seems to have been a significant factor in her accepting his offer of employment. No accounts were recorded or sent at the time the treatment was rendered.
- Panel rejects the member’s suggestion that the agreement was only to cover services in her second year of employment or that the arrangement was conditional on her remaining in his employ for one full year.
- Accordingly, the panel found that charging a fee was contrary to the agreement and therefore was excessive or unreasonable.

Notice of Hearing #4

- Patient complained that she gave the member \$2,000 for new dentures. Patient said that she is a senior on a fixed income and that the member agreed to make upper and lower dentures, including any follow-up for that amount.
- The patient and her friend testified during the hearing.
- The new dentures did not fit and she could not eat. After approximately a dozen appointments for adjustments failed to fix the problem, the patient asked the member to either return her money or make new dentures, which he refused to do.

- The patient then brought a small claims court document to the member's office and told him that she was going to sue him. The member agreed to refund the money and arranged to meet her in a few days to do so.
- The patient came to the member's office at the agreed upon time, accompanied by a girlfriend. The member told her that he could not refund the money at that time since his computer was broken and he could not print the necessary papers. The patient offered to write a receipt and when the member refused, she said she would be filing the court papers the next day.
- That evening at 9:00 p.m. the member woke the patient up by calling from the intercom of her lobby and said he wanted to refund the money. The patient refused him entry to her building. After another phone call that night, she agreed to meet him in the morning with her friend.
- When they met, the member asked the patient to sign a receipt. The patient signed it but refused to give the papers to the member until he gave her the money. When the member refused to give her the money, the patient put the paper "down in her bosom."
- The patient and her friend testified that the member came around behind her, had her in a "collar hook" and attempted to put his hand down her bra to pull out the papers.
- The patient then reported the matter at a police station, where the member managed to rip the receipt in half. The patient and the member then agreed to meet another day to exchange the money for the receipt in front of a police officer. In the interim, she filed a letter of complaint against the member with the College.
- When the patient and the member met, he gave the patient two papers to sign. She reviewed one that said the member was returning the money as a goodwill gesture. She crossed out "goodwill gesture" and signed it. The patient assumed the second paper was another copy and signed that too. The member returned her money.
- The patient later discovered that the other paper that she did not read was a letter to the College requesting that the complaint be withdrawn, a letter she did not mean to sign or have sent to the College.
- The patient testified that she later received a letter from a collections agency indicating that she owed the member in excess of \$3,800.

- The panel accepted the evidence of the patient and her friend and found that the member's actions were deplorable and constituted an abuse of a patient and, particularly given the age and vulnerability of the patient, that his conduct was disgraceful and unprofessional.

DECISION

1. Finding

- The member pleaded not guilty and was found guilty of professional misconduct with respect to the above allegations.

2. Penalty

- The member's certificate of registration was revoked.

3. Costs/Publication

- Costs to the College in the amount of \$250,000.
- Pursuant to the legislation, publication of this matter includes the member's name and address.

4. Panel's Reasoning

- The reasons provided by the panel were in respect of all four matters.
- The College requested that the member's certificate of registration be revoked.
- The member submitted that the appropriate penalty would be a suspension of two-and-a-half to four months in duration and perhaps a fine.
- The panel was advised that the member had previously been the subject of a discipline hearing. That case involved failure to maintain the standard of care in the area of endodontic therapy. In that case, the member pleaded guilty and entered into a joint submission on penalty where his certificate was suspended for one month. There were also terms, conditions and limitations placed on his certificate, namely that he complete a mentoring program.
- The panel was advised that three different mentors indicated that the member was not co-operative. One mentor testified at the penalty phase of the current hearing that the member was resistant to comply with his recommendations. The College took the position that the mentoring program had never been successfully completed. The member took the position that he did complete the mentoring program to the College's satisfaction.
- At the penalty portion of the current hearing, the member entered into evidence three letters of support from dental colleagues, although two were

unsigned, and called one patient who testified as to his positive experience as a patient of the member.

- The member himself gave evidence at the penalty portion of this hearing. He testified that all patient complaints were isolated incidents, that he is a honest and compassionate dentist who cares about his patients more than most dentists, and that since he is not a lawyer, is unable to properly defend himself in the hearing.
- The panel considered submissions of both parties before reaching the decision to revoke Dr. Chuang's certificate of registration. The panel recognized that this is the ultimate penalty, but felt it was necessary to deal with the nature of the problems in this case.
- The panel was gravely concerned about the member's underlying attitude, which prevents him from improving his practice, and noted that he demonstrated very little respect for authority or his regulatory body, and hence was viewed by the panel as ungovernable.
- The degree of misconduct warrants strong deterrence for both this specific member and other members of the College.
- The penalty is appropriate relative to the panel's absolute obligation to protect the interest of the public. The panel felt that there was no other alternative but to order revocation in order to protect the public interest.
- If the member ever sought to be reinstated, under the legislation the onus would lie with him to prove to a new panel that he has rehabilitated himself.
- Amount of costs warranted due to the fact that it was a second offence and due to the member's conduct during the hearing, including repetitive motions, lengthy and repetitive cross-examinations, and his constant failure to attend the hearing on time and days that he did not attend at all.

Dr. Chuang appealed the decision of the Discipline Committee to the Divisional Court of Ontario. The appeal was dismissed on June 5, 2006. He then sought leave to appeal to the Ontario Court of Appeal, which leave was refused on September 22, 2006. His application for leave to appeal to the Supreme Court of Canada was dismissed on February 15, 2007.