



DECISION 5

Dr. Cameron Clokie

(NO CURRENT PRACTICE ADDRESS)

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

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

BRIEF SYNOPSIS OF FACTS

A patient complained that during the time she was a patient of Dr. Clokie's he engaged in sexual intercourse and/or other forms of sexual relations with her, including touching of a sexual nature and exhibiting behaviour or making remarks of a sexual nature. After seeing the member in Ontario for treatment, the patient and the member met each other in Europe and had sexual relations there. Following this encounter, the member and the patient exchanged email and text messages over the course of more than two years, which at various times indicated both a personal relationship that included sexual activity and a professional relationship. The patient claimed that during this period, there were approximately eight more occasions involving either sexual intercourse, oral sex, touching of a sexual nature or a conversation of a sexual nature.

DECISION

1. Finding

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

2. Penalty

- Revocation of certificate of registration¹
- Reprimand

3. Costs/Publication

- Costs of \$318,297.87 ordered to be paid by Dr. Clokie to the College in instalments over 12 months
- Pursuant to the legislation, publication of this matter includes the member's name and address

PANEL'S REASONING

- The panel considered the Agreed Statement of Facts, the medical/dental records, the evidence of the patient, the evidence of the patient's husband, emails, text messages, audio-recordings and the submission of counsel for the College and counsel for Dr. Clokie.
- Key issues for the panel in its consideration of this case were: when the doctor-patient relationship between the member and the patient began and ended; what constitutes sexual abuse under the legislation; how the credibility of the witnesses should be assessed; and inferences that could be drawn from Dr. Clokie's dishonesty to the College about his sexual relationship with the patient, which included a fabricated explanation that a former employee had sent the emails with sexual references to the patient rather than himself; and his failure to testify in his own defence.
- Dr. Clokie admitted that he had sexual intercourse with the patient on a certain date but took the position that she was not a patient at the time. The panel rejected this position and unanimously agreed that any reasonable member of the public or dental profession would have recognized this woman as a patient of Dr. Clokie's on the relevant date. The panel also accepted the evidence of the patient and believed that other encounters of a sexual nature occurred, a conclusion which was supported by corroborative email messages that were sent during this time. However, and despite the complainant's testimony in that respect, the panel was unable to find that sexual intercourse occurred on a particular subsequent date because the email correspondence suggested that the relationship was becoming acrimonious at that time.
- The panel unanimously concluded that Dr. Clokie sexually abused his patient and that, considering all the circumstances, his conduct would reasonably be regarded by members as disgraceful, dishonourable, unprofessional and unethical. Both of these findings were made having regard to the relevant legal standard of proof, which is on the balance of probabilities, based on clear, cogent and convincing evidence.
- With respect to penalty, Dr. Clokie questioned the constitutional validity of the mandatory revocation provisions applicable to the finding of sexual abuse made in this case. The Discipline panel concluded that the Court of Appeal has addressed the constitutionality issues raised by Dr. Clokie and that unequivocal and binding jurisprudence compelled the conclusion that the mandatory revocation provisions are constitutionally valid. The panel found that the creation of the spousal exemption did not have any bearing on this case.
- In connection with its finding concerning the sexual abuse allegation, the Discipline panel was legally required to impose both the revocation of

¹ Pursuant to s. 72(3) of the Health Professions Procedural Code, the member cannot apply for a new certificate of registration earlier than five years from the date of revocation.



Dr. Clokie's certificate of registration and the oral reprimand. The panel noted that even if the mandatory revocation provisions did not apply, revocation of Dr. Clokie's certificate of registration was the appropriate penalty in this case, having regard to the factors articulated by a task force of the College of Physicians and Surgeons.

Those factors are as follows:

- > the general vulnerability of patients in such relationships;
 - > the power imbalance that almost invariably exists in favour of the practitioner, thus facilitating easy invasion of the patient's sexual boundaries;
 - > the privileged position of doctors in society, based on their education, status and access to resources;
 - > the breach of trust entailed in such conduct;
 - > the serious, long-term injury to the victim, both physical and emotional, that results from sexual abuse, including the harmful effects on future care caused by the victim's inability to place her trust in other doctors and caregivers;
 - > the fact that sexual abuse tarnishes public trust in the entire profession.
- Revocation of Dr. Clokie's certificate of registration serves to protect the public and to provide for specific and general deterrence. In this case, he violated the essential trust between a doctor and his patient. The panel had no difficulty in determining that the complainant was Dr. Clokie's patient when sexual intercourse and other forms of sexual abuse occurred.
 - In addition, even if the mandatory revocation provisions did not apply to the sexual abuse finding, the circumstances of the finding of disgraceful, dishonourable, unprofessional or unethical conduct called for revocation due to aggravating factors arising in the case. The first of these was the false sworn evidence Dr. Clokie provided to the College during the investigation, which was deceitful behaviour toward his professional regulator. The second was his failure to accept responsibility and accountability for his actions as emphasized by his submission during the hearing that it was the patient who had ulterior motives from the outset. This demonstrated a profound lack of insight.
 - The panel considered the evidence of Dr. Clokie's accomplishments and contributions as an oral and maxillofacial surgeon. However, the panel did not consider these as having any impact on the finding that he sexually abused a patient who was in his professional care and the penalty that is required to be imposed.
 - The penalty demonstrates to the member, the entire profession and the public that the dentists of Ontario believe that sexual abuse of a patient is one of the most serious offences a dentist can commit. It should serve as a clear reminder, notwithstanding the spousal exemption, that the onus lies entirely with the dentist to ensure that sexual

relations with a patient do not occur and, if sexual relations are anticipated, it is the dentist who is obligated to sever the doctor-patient relationship before any sexual activity occurs.

- Dr. Clokie appealed both the decision on finding and on penalty to the Divisional Court. At the time of publication, those appeals are pending. Dr. Clokie also brought a motion to the Divisional Court to stay the penalty pending the disposition of his appeal. That motion was dismissed, and consequently, at the time of publication the panel's penalty order is in effect.

ADDENDUM:

On May 19, 2017, the Divisional Court dismissed Dr. Clokie's appeal from the Discipline Committee's decision. Dr. Clokie then sought leave to appeal to the Court of Appeal, but his motion for leave to appeal was dismissed on October 6, 2017.

Accordingly, the decision made by the College's Discipline panel stands, including the findings made and penalty ordered (reprimand and revocation of certificate of registration). Subsequently, however, the College and Dr. Clokie entered into terms of settlement reducing the amount of costs payable by Dr. Clokie and those costs have now been paid.

The decisions of the Discipline Committee and of the courts are posted on the College's Register.



Royal College of
Dental Surgeons of Ontario

6 Crescent Road, Toronto, ON Canada M4W 1T1

T: 416.961.6555 F: 416.961.5814 Toll Free: 1.800.565.4591

www.rcdso.org

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