# 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. KEVIN CALZONETTI**, of the City of London 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").

Members in Attendance: Ms. Susan Davis, Chair
Dr. Harpaul Anand
Dr. Elliott Gnidec
Dr. Ben Lin
Mr. Ram Chopra

**BETWEEN:**

| | | |
|---|---|---|
| **ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO** | ) | Appearances: |
| | ) | Ms. Andrea Gonsalves |
| | ) | Independent Counsel for the |
| | ) | Discipline Committee of the |
| | ) | Royal College of Dental |
| - and - | ) | Surgeons of Ontario |
| | ) | Mr. Ian Roland |
| | ) | For the Royal College |
| | ) | of Dental Surgeons of Ontario |
| **DR. KEVIN CALZONETTI** | ) | Mr. Neil Abramson |
| | ) | For Dr. Kevin Calzonetti |

Hearing held on June 21, 2017.

## REASONS FOR DECISION

This matter came on for hearing before a panel of the Discipline Committee (the "Panel") at the Royal College of Dental Surgeons of Ontario (the "College") in Toronto on June 21, 2017.

## PUBLICATION BAN

The Panel made an order banning the publication or broadcasting of the names of any patient referred to in the hearing, including in the Notice of Hearing and/or the Agreed Statement of Facts and/or any of the exhibits, as well as an order banning the publication or broadcasting of any information that would identify the patient.

## THE ALLEGATIONS

The allegations against Dr. Kevin Calzonetti (the "Member") were contained in the Notice of Hearing dated August 26, 2015. The allegations against the Member were as follows.

1. You committed an act or acts of professional misconduct as provided by s. 51(1)(c) of the *Code*, in that, during the years 2013 and 2014, you treated your patient, [A.S.], for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which consent is required by law, without such consent, contrary to paragraph 7 of Section 2 of the Dentistry Act Regulation.

   Particulars:

   - On October 29, 2013, you performed an auto-transplant procedure on your patient, [A.S.], by extracting teeth 27 (upper left second molar) and 17 (upper right second molar) and then placing extracted tooth 17 into the socket of tooth 27, without previously obtaining [A.S.'s] informed consent to the auto-transplant procedure, including a discussion of the risks of the treatment, available alternatives, the likelihood of success of the treatment and the relevant information of what to expect during the healing process following the procedure.

- On October 29, 2013, you performed an auto-transplant procedure on your patient, [A.S.], by extracting teeth 27 (upper left second molar) and 17 (upper right second molar) and then placing extracted tooth 17 into the socket of tooth 27, without documenting [A.S.'s] informed consent to the auto-transplant procedure, including discussion of the risks of the treatment, available alternatives, the likelihood of success of the treatment and the relevant information of what to expect during the healing process following the procedure.

- In your response to the complaint you wrote that you had a discussion with [A.S.] about the risks of the auto-transplant procedure, the possible need for a splint, your success rate with the procedure of 90% and the possibility that the patient's bruxism could contribute to the risk of failure, yet none of this appears in anywhere in your records.

- [A.S.'s] consent to the auto-transplant procedure is not recorded in your records.

- The consent form for oral surgery included in your records, signed by [A.S.] and dated October 29, 2013, the date of the auto-transplant procedure, provides no information about the auto-transplant procedure nor does any explicit reference to the auto-transplant procedure appear in that document.

- You appear to have not learned from the previous specified continuing education or remediation program you were ordered to complete on February 23, 2010 consisting of a course in informed consent to address concerns about your failure to document a discussion with your patient about, amongst other things, the alternatives to treatment and the risks and benefits of the proposed treatment.

- You appear to have not learned from the oral caution that you were ordered to receive on October 20, 2011 about, amongst other things, the need to obtain informed consent to treatment from your patient prior to initiating treatment including information about the diagnosis, nature and purpose of the proposed treatment, the treatment alternatives, the associated risks and benefits of the treatment, the likely consequences of not having the proposed treatment, and the importance of recording the informed consent discussions as well as the patient's decision.

2. [*withdrawn*]

**THE MEMBER'S PLEA**

The Member admitted the allegation of professional misconduct set out in paragraph 1 of the Notice of Hearing. A second allegation of professional misconduct was withdrawn by the College. The Member also made admissions in writing in the Agreed Statement of Facts, which was signed by the Member.

The Panel conducted a plea inquiry at the hearing, and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

**THE EVIDENCE**

On consent of the parties, College Counsel introduced into evidence an Agreed Statement of Facts and Admission of Professional Misconduct which substantiated the allegation of professional misconduct. The Agreed Statement of Facts and Admission of Professional Misconduct provides as follows.

1. Dr. Kevin Calzonetti is an endodontist practicing in Stoney Creek, Ontario.

2. The Complainant, [A.S.], was referred to Dr. Calzonetti by her general dentist in September, 2013, for a consultation regarding tooth 27, the maxillary left second molar. On September 12, 2013, she presented with throbbing pain. At the time she was 50 years old.

3. On September 12, 2013, Dr. Calzonetti determined that tooth 27 had been previously treated endodontically. He suspected a crack in the tooth.

4. Dr. Calzonetti presented three treatment options to [A.S.]; endodontic treatment of tooth 27, extraction of tooth 27, or no treatment.

5. Dr. Calzonetti also informed [A.S.] that he suspected that tooth 27 was fractured and could not be saved, in which case the right second maxillary molar, tooth 17, was a potential candidate for autotransplantation into the site of tooth 27. Dr. Calzonetti did not present autotransplantation to [A.S.] as an option at this time, as he was not sure whether or not tooth 27

could be saved.

6. The notation by Dr. Calzonetti in [A.S.'s] chart for September 12, 2013, reads:

> [1] Dr. Kevin Calzonetti
> Dr. CALZ CONSULT Dr
> reviewed med hx
>
> CONSULT #27.2 periapical taken.
> CC:throbbing pain, pt is taking Amox and its helped as per her pt
> Dr. discussed med. hx.-
> Intra Oral Palpation-
> Percussion-25-26+27+
> Mobility-
> Bite Stick-
> COLD-26+
> PER10-#27 and #26 WNL
> DX: #27: prey rctx`d, suspicious of a crack
> Discussed CBCT scan however it doesn't chng tx plan at this time therefore not required
> If significant crack is noted exo is required
> Note tooth #17 is not in function if tooth #27 is deemed hopless transplant of #17 into #27
> socket was discussed
> dr. discussed findings with pt. and discussed options 1) retx, 2) extraction, 3) nothing.
> Dr. discussed risks and benefits
> Pt. understands and would like to go ahead with retx on #27.
> Send predetermination and set apt.
> Report sent.
> #27 (01802)
> Est. 27 33145
> Tooth #27 will be disassembled and assessed.
> Mp/kc

7. [A.S.] returned on October 8, 2013, for endodontic retreatment of tooth 27. Dr. Calzonetti initiated endodontic treatment and noted a crack in the tooth rendering the tooth hopeless. Dr. Calzonetti stopped endodontic treatment, temporized the tooth and recommended to [A.S.] that this tooth be extracted. It was at this time that he recommended to [A.S.] that he remove tooth 17 at the same time and place it in the socket of tooth 27, i.e., autotranspiantation.

8. The notation by Dr. Calzonetti on [A.S.'s] chart for October 8, 2013, reads:

> [1] Dr. Kevin Calzonetti
> MEDICAL HISTORY UPDATED by Dr. Calzonetti: no change.

ENDONTIC RETREATMENT# 27: ACCESS & EVALUATE

Access & Evaluate Tooth #27
(1:100,000 x 1) Astracaine 4%
Medium bite block used.
Rubber dam isolation.
Significant crack noted, tooth is split.
Crack runs thru floor of tooth.
Tooth #27 deemed hopless, extraction required.
Temporized tooth with cotton pellets & flowable.
*Discussed auto-transplantation of toot #17 into to socket of #27.
1 pa taken of tooth #17 (perfect fit for the socket of #27)
*Clinical photos were taken today.
Send pre-determ for #27 (71201) #17 (34453 33141 43211x2)
Re-App't for Autotransplanation of tooth #17 into the socket of #27
(END of DAY)
Report sent.
#27 (39413) $200
KC/AR

9. On October 29, 2013, Dr. Calzonetti, extracted [A.S.'s] tooth 27 and tooth 17, and then autotransplanted tooth 17 into the socket of tooth 27. The tooth was adjusted to ensure there was no excessive bite pressure on it. Dr. Calzonetti noted that tooth 17 fit well into the socket of tooth 27 and that no splint was required. Post-operative instructions were provided along with an antimicrobial rinse and analgesic for pain control. A subsequent appointment was scheduled for endodontic treatment of tooth 17 in the site of tooth 27. [A.S.] returned on October 31, 2013, for additional adjustment of tooth 17 to prevent excessive biting forces on that tooth, Her bite surface of that tooth was adjusted and a splint was provided to give the tooth additional support.

10. The notation by Dr. Calzonetti on [A.S.'s] chart for October 29, 2013, reads:

[1] Dr. Kevin Calzonetti
Update to med hx: Note pt is on pain meds for nerve damage in foot as per pt.

AUTO TRANSPLANTATION of TOOTH #17 into SOCKET of #27 (1:100,000 x 2) Astracaine 4%
Gave patient 2 x 200mg Advil pre-op

Tooth #27 was loosened, elevated & extracted.
(significant crack noted, tooth #27 cannot be saved).

Granulation tissue noted & removed.
Tooth #17 was loosened, evelvated & extracted
Tooth #17 was the transplanted into the socket of tooth #27 (great fit).
Adjusted occlusion. No splint required.
Gave patient post-op instructions & Rx for peridex & Toradol.
Re-App't for endodontic treatment of tooth #17 (in the socket of #27)
1 hour in Jan. 2014 due to coverage.
Report Sent.
#27 (71201) $290
#17 (34453) $450
KC/AR

11. Thereafter, over the next 8 months, Dr. Calzonetti provided root canal therapy on tooth 17, as well as splint adjustment and re-evaluation due to discomfort, aching and swelling on the left side of [A.S.'s] mouth and cheek area.

12. On July 17, 2014, another dentist diagnosed that the autotransplanted tooth 17 was infected, with a hopeless prognosis. That dentist extracted the tooth.

13. If called as a witness, [A.S.] would testify that Dr. Calzonetti did not discuss with her the risks of the autotransplantation procedure on September 12, 2013, or when he determined on October 8, 2013, that tooth 27 could not be saved, and that no other options were presented to her. Instead, he proceeded with the autotransplantation, which occurred on October 29, 2013.

14. If called as a witness Dr. Calzonetti would testify that, on the initial appointment on September 12, 2013, he explained to [A.S.] that if tooth 27 could not be saved, they could consider autotransplantation, and that he explained to [A.S.] that there is a risk that the autotransplant will ultimately fail, but that his success rate with autotransplantation was approximately 90%.

15. Further, Dr. Calzonetti would testify that on October 8, 2013, after determining that tooth 27 was extensively cracked, and therefore it could not be restored and would need to be extracted, he discussed the options of replacing tooth 27, including not replacing it, placing an implant, or autotransplantation as had been previously discussed on September 12, 2013. Dr. Calzonetti would testify that he discussed the material risks of autotransplantation with

[A.S.]. [A.S.] would testify that Dr. Calzonetti did not discuss any of the risks of autotransplantation with her.

16. The *Healthcare Consent Act*, 1996, S.O. 1996, c. 2, Schedule A, at sections 10 and 11, requires healthcare practitioners, including dentists, to obtain informed consent from a patient before providing treatment. Consent must be informed with respect to:

- The nature of the treatment
- The expected benefits of the treatment
- The material risks of the treatment
- The material side effects of the treatment
- Alternative courses of action
- The likely consequences of not having the treatment

17. If called as a witness, the College's expert, Dr, James Posluns, would testify that,

- The autotransplantation of a healthy tooth from one area of a patient's mouth to an area where an unhealthy tooth has very recently been extracted is an uncommon procedure that is considered controversial in the dental community. The younger the patient the higher the success rate. Studies indicate a procedure success rate of nearly 90% if the patient is younger than 40 years of age.

- Osteointegrated implants are the therapeutic alternative of choice when replacing a lost tooth. Autotransplantation is relatively less expensive than osteointegrated implants, the traditional method of rehabilitation, but autotransplantation requires careful case selection, professional skill, and patient collaboration. It is a relatively rare procedure.

- Due to the unconventional and unpredictable nature of autotransplantation in a patient of [A.S.'s] age, and the rarity of the procedure, Dr. Calzonetti was required to

provide unique and detailed information about this procedure to ensure that [A.S.] was fully aware of and understood the risks, as well as the benefits of the particular procedure.

- The patient must be provided with viable treatment alternatives to autotransplantation, such as no replacement, or replacement of the missing tooth with a dental implant.

- Financial costs of all treatments must be outlined in detail in the patient record. The patient file contains two signed consent to treatment fee forms.

- Dr. Calzonetti was required to document, in detail, exactly what was discussed and, in particular, the inherent risks of the procedure and the expected treatment outcomes.

- The patient record of [A.S.] should have set out a discussion of alternative treatment options, such as no replacement of tooth 27, or placement of a dental implant in the area of tooth 27.

- Dr. Calzonetti should have documented confirmation that [A.S.] understood all benefits, risks, and costs associated with autotransplantation.

- In light of the nature of the autotransplantation procedure, a specific written document was required for [A.S.] to sign that indicated that she fully understood the risks she was about to undertake which included the potential for the autotransplantation process to fail, ankylosis (fusion of the autotransplanted tooth to the bone), tooth hypermobility, pulp necrosis, pulp obliteration, and root resorption.

18. The only signed consent to treatment form in Dr. Calzonetti's patient file for [A.S.] is a standard "Consent Form for Oral Surgery" dated October 29, 2013, signed by [A.S.], that dealt with the tooth extractions that occurred on October 29, 2013, not the autotransplantation process and alternative treatment options. The file also contains two signed consent to treatment fee forms.

19. Dr. Calzonetti admits the alleged act of professional misconduct set out in paragraph 1 of the Notice of Hearing which states:

    1. You committed an act or acts of professional misconduct as provided by s. 51(1)(c) of the Code, in that, during the years 2013 and 2014, you treated your patient, [A.S.], for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which consent is required by law, without such consent, contrary to paragraph 7 of Section 2 of the Dentistry Act Regulation.

**DECISION**

Having considered the evidence and submissions of the parties, the Panel found that the Member committed professional misconduct as alleged in paragraph 1 of the Notice of Hearing.

**REASONS FOR DECISION**

The Member admitted the allegation of professional misconduct as set out in paragraph 1 of the Notice of Hearing. He also agreed that the facts as set out in the Agreed Statement of Facts and Admission of Professional Misconduct constituted professional misconduct.

The Panel was satisfied that the evidence contained in the Agreed Statement of Facts and Admission of Professional Misconduct supports the allegations and establishes that Dr Calzonetti committed an act of professional misconduct by failing to obtain and document his patient's informed consent to the auto-transplantation of one tooth into the socket of another. By law, specifically the *Health Care Consent Act, 1996*, Dr. Calzonetti was required to obtain the patient's informed consent before providing the treatment and on the evidence, the Panel finds that he did not do so.

**PENALTY SUBMISSIONS**

The parties presented the Panel with a joint submission with respect to penalty and costs, which requested that the Panel make an order as follows.

> The Royal College of Dental Surgeons of Ontario ("College") and Dr. Kevin Calzonetti ("the Member") jointly submit that this panel of the

Discipline Committee impose the following penalty on the Member as a result of the panel's finding that the Member is guilty of professional misconduct, namely, that it make an order:

1. Requiring the Member 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. Directing the Registrar to also impose the following terms, conditions and limitations on the Member's Certificate of Registration, namely:

    a. the Member shall successfully complete a one-on-one course on informed consent, approved by the Registrar, at the Member's expense;

    b. the Member shall successfully complete a record keeping course, approved by the Registrar, at the Member's expense, within 12 months of the date of this Order;

    c. the Member's practice shall be monitored by the College, including monitoring his recordkeeping and practice with respect to informed consent, by means of inspection(s) by a representative or representatives of the College at such time or times as the College may determine with advance notice to the Member, during the period commencing the later of sixty (60) days from the date of this Order, and ending twenty-four (24) months thereafter;

    d. the Member shall cooperate with the College during the Inspection(s) and further, shall pay to the College In respect of the costs of monitoring, the amount of $600.00 per monitoring inspection, such amount to be paid immediately after completion of each of the inspections, provided that the overall cost of monitoring paid by the member shall not exceed $2,400.00, regardless of the number of inspections performed;

    e. the representative or representatives of the College shall report the results of those inspections to the ICRC and the ICRC may, if deemed warranted, take such action as it considers appropriate.

The College and the Member further submit that pursuant to the *Regulated Health Professions Act, 1991*, the results of these proceedings must be

recorded on the Register of the College and publication of the Decision of the panel will therefore occur with the name and address of the Member included.

**Cost**

The Member agrees that the Discipline Committee order that he pay the costs of the College, in the amount of $10,000, within 30 days of the date of its order.

Both parties submitted that the Panel should accept the proposed penalty. Counsel for both parties submitted that the proposed penalty meets the goals of public protection, general and specific deterrence, and rehabilitation. The reprimand sends a message to both the Member and the profession that obtaining and documenting informed consent is particularly important in the case of an uncommon procedure and that failure to do so will be sanctioned by the College. The specified educational courses, monitoring and inspection components of this penalty will minimize any risk of this behavior reoccurring in the future.

College Counsel noted in his submissions that on a previous occasion the College's Inquiries, Complaints and Reports Committee ("ICRC") expressed concerns about the adequacy of the Member's informed consent protocol. The Member had his practice monitored for a period of time as a result and it did not result in any other proceedings or actions. The fact that this matter was brought before the Discipline Committee reflects the previous findings and actions of the ICRC.
The Member's counsel argued that the fact that the Member has practiced for many years as an endodontist without appearing before the Discipline Committee is a mitigating factor, as is his admission to the misconduct in this case.

## PENALTY DECISION

The Panel ordered:

1. That the Member 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. That the Registrar be directed to impose the following terms, conditions and limitations on the Member's certificate of registration, namely:

a. the Member shall successfully complete a one-on-one course on informed consent, approved by the Registrar, at the Member's expense;

b. the Member shall successfully complete a record keeping course, approved by the Registrar, at the Member's expense, within 12 months of the date of this Order;

c. the Member's practice shall be monitored by the College, including monitoring his recordkeeping and practice with respect to informed consent, by means of inspection(s) by a representative or representatives of the College at such time or times as the College may determine with advance notice to the Member, during the period commencing the later of sixty (60) days from the date of this Order, and ending twenty-four (24) months thereafter;

d. the Member shall cooperate with the College during the Inspection(s) and further, shall pay to the College In respect of the costs of monitoring, the amount of $600.00 per monitoring inspection, such amount to be paid immediately after completion of each of the inspections, provided that the overall cost of monitoring paid by the member shall not exceed $2,400.00, regardless of the number of inspections performed;

e. the representative or representatives of the College shall report the results of those inspections to the ICRC and the ICRC may, if deemed warranted, take such action as it considers appropriate.

3. That the Member shall pay the costs of the College in the amount of $10,000, within 30 days of the date of this Order

**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.

The Panel was satisfied that the reprimand acts as both a general deterrent to the profession and specific deterrent to the Member. This penalty sends a message to the profession that the failure to obtain and document the required informed

consent will not be tolerated by the College. The ongoing monitoring and office inspection component of the order will greatly minimize the risk of this ever happening again with Dr. Calzonetti's practice.

In considering the appropriateness of the proposed penalty the Panel also considered the fact that the Member will take a College-approved record-keeping course and has successfully completed a one-on-one course on informed consent with Dr. Ian Grayson, a professor of Advanced Graduate Endodontics at the Harvard School of Dental Medicine, as approved by the Registrar. These actions will help remediate the Member and protect the public.

The Panel found that the Penalty is within the appropriate range of proposed penaltics and will adequately serve to protect the public. In reaching this decision the Panel was mindful of the fact that this member had not appeared before the Discipline Committee in the past and that by admitting to the misconduct, he avoided a more drawn out hearing. That said, the fact that this misconduct occurred after the ICRC had already cautioned the Member regarding an informed consent complaint and after he had undergone practice monitoring demonstrates that a escalated level of disciplinary action is warranted.

Accordingly, the Panel is satisfied that all of the objectives of penalty have been met with the penalty imposed by this panel.

I, Susan Davis, sign these Reasons for Decision as Chairperson of this Discipline Panel.

Susan Davis
Chairperson

31/07/17
Date

**TEXT OF PUBLIC REPRIMAND**

**Delivered June 21, 2017**

**in the case of the**

**ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO**

**and**

**DR. KEVIN CALZONETTI**

Dr. Calzonetti, as you know, the Discipline Panel has ordered you to 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.

The Panel has found that you have engaged in an act of professional misconduct, the misconduct related to your failure to obtain informed consent from your patient and record it appropriately.

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

The Panel is specifically concerned that were given the opportunity by Inquiries, Complaints and Reports Committee to take a course in informed consent in the past and you failed to implement what you learned in the case before us today. Your failure to obtain informed consent from your patient and record it appropriately in your chart with respect to the autoimplantation of a tooth is unacceptable to this College.

We trust that you have learned from this experience and that we will not see you before a Discipline Panel again.

***This is not an official transcript***