

**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. JEFFREY SWARTZ**, of the City of Toronto, 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: Dr. Richard Hunter (Chair)
Dr. Peter Delean
Mr. Brian Smith

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS

OF ONTARIO

- and -

DR. JEFFREY SWARTZ

) Appearances:
)
) Mr. Brian Gover
) Independent Counsel for the
) Discipline Committee of the
) Royal College of Dental
) Surgeons of Ontario
)
) Ms. Denise Cooney
) For the Royal College of Dental
) Surgeons of Ontario
)
) Mr. Symon Zucker
) For Dr. Jeffrey Swartz

Hearing held on March 4, 2021.

ENDORSEMENT

This matter proceeded virtually (by means of videoconference) before a panel of the Discipline Committee (the “Panel”) of the Royal College of Dental Surgeons of Ontario (the “College”) on March 4, 2021.

PUBLICATION BAN

On the request of the parties, the Panel made an order banning the publication or broadcasting of the names of the patient referred to in the Notice of Hearing, as well as an order banning the publication or broadcasting of any information that would identify that patient.

THE ALLEGATIONS

The allegations against Dr. Jeffrey Swartz (the “Member”) were contained in a Notice of Hearing dated November 3, 2016, which was presented to the Panel as Exhibit 1.

These allegations were (1) contravening a standard of practice or failing to maintain the standards of practice of the profession (particularized as improperly diagnosing the need for restorative treatment and improperly diagnosing the need for root canal therapy), (2) treating a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent (particularized as failing to obtain informed consent from the patient for restorative treatment and failing to explain to the patient that chewing or eating bones could lead to the need for repeated repairs of his restorations), (3) failing to keep records as required by the Regulations (particularized as relying on radiographs that were not of diagnostic quality for diagnostic purposes, failing to document radiographic interpretation, failing to otherwise document the reasons for the restorative treatment, failing to document the reasons for believing the patient might require root canal therapy, and failing to document any informed consent discussions with the patient and/or that the patient provided informed consent for the treatment), (4) signing or issuing a certificate, report or similar document that he knew or ought to have known contained a false, misleading or improper statement (particularized as issuing claims for restorations, including numerous multi-surface restorations, on teeth which did not appear to have been performed because they were not visible in post-treatment radiographs), (5) recommending and/or providing an unnecessary dental service (particularized as providing unnecessary restorative treatment for which there was no radiographic or clinical justification on 20 teeth), and (6) charging a fee that was excessive or unreasonable in relation to the service

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performed (particularized as charging fees for restorations on the same 20 teeth, including numerous multi-surface restorations, for which there was no radiographic or clinical justification).

THE DISPOSITION

In addition to the Notice of Hearing, the Panel received two other documents, which were also exhibited. These were an Undertaking, dated July 30, 2020 (Exhibit 2) and a Resignation Form, dated January 29, 2021 (Exhibit 3).

In the Undertaking, the Member undertook and agreed as follows:

1. To resign his membership with the College, effective January 31, 2021, thus relinquishing his certificate of registration as of that date;
2. To never practice dentistry again in the Province of Ontario;
3. Not to apply to the College at any time for reinstatement of his certificate of registration;
4. Not to apply to the College at any time for a new certificate of registration;
5. To permit the College to monitor his practice by means of inspection(s), up to a maximum of two occasions, at such time or times as the College shall determine between July 30, 2020 and January 31, 2021, and to cooperate with the College during those inspection(s), and to pay in full monitoring costs in the amount of \$2,000 when he provided the executed Undertaking to the College; and
6. Pursuant to section 23 of the *Health Professions Procedural Code* and section 28 of the College's by-laws, that the Register of the College will include a notation of the terms set out in clauses (1) through (5) above and a notation that he has agreed to resign to avoid a proceeding before the Discipline Committee.

In relevant part, the Resignation Form stated as follows:

This is to notify you officially of my decision to resign my membership with the Royal College of Dental Surgeons of Ontario. I understand and agree that the effective date of my resignation will be January 31, 2021.

The Resignation Form further stated that the reason for Dr. Swartz's resignation was his retirement.

Following the filing of these documents, counsel for the College asked for the Panel's permission to allow the College to withdraw the allegations in the Notice of Hearing.

Counsel for the College explained that allegations involved the treatment of a single patient over the course of 15 years (2000-2015). She further explained that had Dr.

Swartz not permanently resigned from the College, there would have been a lengthy and complicated hearing with competing expert evidence. Together with the Undertaking, Dr. Swartz's resignation would, in the circumstances, amount to his permanent withdrawal from the practice of dentistry. Counsel for the College submitted that this outcome achieved any public protection role that a successful prosecution would have achieved. Finally, counsel for the College pointed out that inclusion of a notation of the terms of the Undertaking, including that Dr. Swartz agreed to resign to avoid a proceeding before the Discipline Committee ensured transparency to the public.

As a precedent for what was being sought, counsel for the College provided a decision of a panel of the Discipline Committee in which that panel agreed to the withdrawal of a notice of hearing (*RCDSO v. Dreksler*, H170005, dated December 7, 2017).

Counsel for the Member joined in the submission that the Panel should grant permission to the College to withdraw the Notice of Hearing. He confirmed that had Dr. Swartz not resigned, there would have been a lengthy and complicated hearing with conflicting expert evidence. Withdrawal of the allegations following his resignation would allow Dr. Swartz to leave the practice without admitting acts of professional misconduct, while saving the College and himself the cost of the hearing.

After carefully considering these submissions and after receiving advice from its independent legal counsel, the Panel acceded to the request and granted permission to the College to withdraw the Notice of Hearing and the allegations contained therein.

The Panel noted that, pursuant to section 4.1 of the *Statutory Powers Procedure Act* R.S.O. 1990 c. S22, the Panel may dispose of a matter without a hearing on consent of the parties.

The Panel recognized that the alternative to this disposition of the matter would have been a lengthy and costly hearing. While noting that the allegations will remain unproven and that there will be no findings against the Member, the Member's resignation and removal from practice will achieve any public protection goal that may have been required had a hearing resulted in findings of professional misconduct. In addition, the public interest goal of transparency is met by the fact that the resolution will be reflected on the Register in accordance with the Undertaking.

I, Dr. Richard Hunter, sign this Endorsement as Chairperson of this Discipline Panel.



March 9, 2021

Chairperson

Date

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