
Discipline Summary

Dr. Athi Somasundaram
No current practice address
Formerly at:
2191 Warden Avenue
Scarborough, Ontario

Hearing Dates:
March 13, 14, 2018 August 15, 2018
May 11, 2018 October 5, 2018
May 18, 2018 November 7, 2018
June 21, 2018

Allegations of professional misconduct

- Sexual abuse of a patient
- Contravened a standard of practice or failed to maintain the standards of practice of the profession
- Failed to keep records as required
- Treated without consent
- Disgraceful, dishonourable, unprofessional or unethical conduct

Synopsis

As a result of a patient complaint, five allegations of professional misconduct were referred to a panel of the Discipline Committee for a hearing. The dentist admitted to the following three allegations:

- His orthodontic treatment of the patient contravened a standard of practice or failed to maintain the standards of practice.
- He treated the patient without consent.
- He failed to keep records as required by the Regulations.

The dentist disputed the allegations that he sexually abused the patient and engaged in conduct that was disgraceful, dishonourable, unprofessional or unethical.

The dentist allegedly hugged the patient on two occasions:

- rubbed her face and cheek for a non-dental purpose;
- grabbed her by the hips; nuzzled her neck and/or put his face next to her neck to “take a big smell” of her;
- and kissed and/or tried to kiss her.

The dentist also allegedly expressed a desire to the patient to have a personal relationship with the patient, and allegedly made comments to her about her physical appearance which were of a sexual nature, inappropriate and/or a breach of dentist-patient boundaries. It was also

alleged that the dentist’s spouse (who is also his employee) attended at the patient’s home unannounced and uninvited.

The panel heard testimony from five witnesses: the patient, her sister and husband, and the dentist and the dentist’s assistant. The panel also considered documentary evidence and conducted a site visit of the dentist’s dental office.

Decision

1. Finding

The dentist was found guilty of all five allegations of professional misconduct.

2. Penalty

- Reprimand
- Revocation of certificate of registration
- Must post security in the amount of \$5,000 for funding for reimbursement of funding provided to the patient for therapy and counselling under the legislation
- In the event that Dr. Somasundaram decides to apply for reinstatement of his certificate of registration in the future, the Discipline panel recommends that the panel hearing the application impose the following terms and conditions:
 - Successfully complete a course or counselling program related to the prevention of sexual abuse of patients and the need to maintain doctor-patient boundaries;
 - Successfully complete program in professional/ problem-based ethics;
 - Successfully complete a course in recordkeeping;
 - Successfully complete a course in informed consent;
 - Successfully complete a course in orthodontics for the general practitioner;
 - Cooperate with any office monitoring that is deemed appropriate.

3. Costs

- Dr. Somasundaram to pay costs to the College in the amount of \$192,937.04
- Dr. Somasundaram to pay any and all costs associated with the recommended courses and counselling listed above

Panel's reasoning for findings

- The panel found the patient's version of events highly credible. Her evidence was internally consistent, plausible and corroborated by much of the documentary evidence, as well as evidence from other witnesses.
- The conduct clearly falls into the category of sexual abuse as defined in the legislation.
- The serious misconduct brings shame and embarrassment to the profession and could undermine public confidence in the profession as a whole. There is no tolerance for such behaviour by a dentist.
- It is unacceptable to sexually abuse a patient by making inappropriate comments and by making inappropriate and unwanted physical contact.

Panel's reasoning for penalty and costs

- Dr. Somasundaram broke the trust that is expected between a dentist and their patient, and the panel was very concerned about the increasing physical contact that the dentist made with his patient.
- There were many aggravating factors, including that Dr. Somasundaram persistently committed sexual abuse against the patient. He forcibly confined her and repeatedly forced himself on her; attempted to contact her after the last and most serious incident took place; and misled the College during its investigation.
- The patient has been seriously impacted by the dentist's misconduct, as described in her victim impact statement which was filed with the panel.
- At no time did Dr. Somasundaram show any insight as to the damage he had caused nor were there any signs of contrition or remorse.
- The mitigating factors include that the dentist has not been disciplined previously and has performed charity work for his community.

- The panel's decision on penalty was not unanimous in respect of the revocation.
- The three majority members of the Discipline panel felt that, although this was not a case wherein the legislation mandated revocation, revocation was the only appropriate penalty in the circumstances in order to adequately protect the public and ensure both specific and general deterrence.
- The two dissenting members of the Discipline panel felt that revocation was not the most appropriate recourse for the dentist for these reasons: the nature of the sexual abuse did not attract mandatory revocation under the governing legislation and this was the dentist's first time before the Discipline Committee. In addition, there was good character evidence that set out that he has been an active and generous member of his ethnic and religious community for decades.
- The dissenting panel members would have ordered a suspension of 36 months, coupled with significant terms, limits, and conditions that the dentist would have to meet prior to re-obtaining his certificate. This penalty would serve to restore the public's confidence in the profession, and the profession would be deterred from engaging in such disgraceful conduct. The various terms, limits, and conditions that the dentist would need to fulfill prior to re-obtaining his certificate would ensure that the public is protected and would greatly minimize any future risk.
- With respect to the costs order, the panel recognized that the costs awarded to the College are significant. However, they were only a portion of the true costs associated with the prosecution. The College was fair and reasonable by not seeking costs of the investigation and reducing its legal costs by one-third.