

**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. EDWARD SMOLEN**, of the City of Haliburton 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: Richard Hunter, Chair  
Lisa Kelly  
Vinay Bhide  
Susan Davis  
Manohar Kanagamany

**BETWEEN:**

<b>ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO</b>	) Appearances: ) ) Ms. Andrea Gonsalves ) Independent Counsel for the ) Discipline Committee of the Royal ) College of Dental Surgeons of Ontario ) ) Ms. Dayna Simon ) For the Royal College of Dental ) Surgeons of Ontario ) ) Mr. Neil Abramson ) For Dr. Edward Smolen
- and -	)
<b>DR. EDWARD SMOLEN</b>	)

Hearing held on January 12, 2018

## **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 January 12, 2018.

### **PUBLICATION BAN**

On the request of the College and on the consent of the Member, the Panel made an order that no person shall publish, broadcast or in any manner disclose any facts or information concerning the personal health information of the Member or his patients referred to orally in evidence or in submission, or in the exhibits filed at the hearing. Further, the Panel ordered that there shall be no public release of any documentary evidence filed at the hearing that contain or identifies the Member’s personal health information.

### **THE ALLEGATIONS**

The allegations against Dr. Edward Smolen (the “Member”) were contained in the Notice of Hearing, dated January 18, 2017. The allegations against the Member were as follows:

1. *Withdrawn*
2. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Health Professions Procedural Code, being Schedule 2 of the Regulated Health Professions Act, 1991, Statutes of Ontario, 1991, Chapter 18 in that, during the year(s) 2015 and 2016 you failed to reply appropriately or within a reasonable time to a written enquiry made by the College, contrary to paragraph 58 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

#### Particulars:

- You failed to respond to the College when you were contacted multiple times to remind you about your obligation to complete the specified continuing education or remediation program (SCERP), which included a course in cosmetic veneers and fixed prosthodontics, an informed consent course and a recordkeeping course followed by 24 months of monitoring at your expense, as set out in the decision ordered by another panel of the Inquiries, Complaints and Reports Committee on July 2, 2015:
  - A letter sent to you by the College on July 16, 2015.

- A letter sent to you by the College on February 4, 2016.
  - A voicemail message left to you by a College staff member on August 17, 2015, of which you did not respond.
3. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Health Professions Procedural Code, being Schedule 2 of the Regulated Health Professions Act, 1991, Statutes of Ontario, 1991, Chapter 18 in that, during the year(s) 2015 and 2016 , you engaged in conduct or performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional contrary to paragraph 59 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- You failed to completed the specified continuing education or remediation program (SCERP), which included a course in cosmetic veneers and fixed prosthodontics, an informed consent course and a recordkeeping course followed by 24 months of monitoring at your expense, as ordered by another panel of the Inquiries, Complaints and Reports Committee on July 2, 2015 with courses to be completed by January 2, 2016 and an extension granted to June 3, 2016.
- You failed to respond to the College when you were contacted multiple times to remind you about your obligation to complete the specified continuing education or remediation program (SCERP), which included a course in cosmetic veneers and fixed prosthodontics, an informed consent course and a recordkeeping course followed by 24 months of monitoring at your expense, as set out in the decision ordered by another panel of the Inquiries, Complaints and Reports Committee on July 2, 2015:
  - A letter sent to you by the College on July 16, 2015.
  - A letter sent to you by the College on February 4, 2016.
  - A voicemail message left to you by a College staff member on August 17, 2015, of which you did not respond.
- *Withdrawn*

## **THE MEMBER'S PLEA**

The Member admitted the allegations of professional misconduct. He 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 which substantiated the allegations. The Agreed Statement of Facts (without exhibits) provides as follows.

### **Background**

1. Dr. Edward Smolen first registered with the Royal College of Dental Surgeons ("College") in 1993, as a general dentist.
2. Dr. Smolen received a Notice of Hearing, dated January 18th, 2017 and reviewed it with his legal counsel [Tab A – Document Book].
3. The Notice of Hearing particularizes three allegations of professional misconduct all with respect to Dr. Smolen's failure to complete the required remediation, namely:
  - Failed to abide by a written Undertaking given to the College
  - Failed to reply appropriately or within a reasonable time to a written enquiry made by the College
  - Engaged in disgraceful, dishonourable, unprofessional or unethical conduct

### **Withdrawals**

4. The College seeks to withdraw Allegation #1 set out in the Notice of Hearing dated January 18, 2017. This allegation makes reference to a written Undertaking, which is an error as Dr. Smolen was required to complete a SCERP and did not enter into a written Undertaking with the College.
5. The College also seeks to withdraw the last particular of Allegation #3 set out in the Notice of Hearing as the College is

satisfied that Dr. Smolen is willing to be governed by the College, for reasons set out below.

### **Admissions**

6. Dr. Smolen admits to Allegations #2 and #3 and the particulars therein as set out in the Notice of Hearing (with the exception of the last particular of Allegation #3).
7. Dr. Smolen further admits that these allegations together with the particulars and facts set out in the Notice of Hearing, and this Agreed Statement of Facts, constitute professional misconduct, as set out in the professional misconduct regulation [Tab B – Document Book].

### **Facts**

8. On July 2, 2015, as a result of a formal letter of complaint, a panel of the ICR Committee issued a decision requiring Dr. Smolen to complete a Specified Continuing Education or Remediation Program (SCERP) and attend for a caution. [Tab C – Document Book].
9. Specifically, the panel of the ICR Committee required Dr. Smolen to complete a SCERP, the components of which are summarized as follows:
  - A course in case selection for cosmetic veneers and fixed prosthetics (specifically crown and bridge), including occlusal factors that affect treatment outcome, with a particular focus on comprehensive preoperative assessment and examination as well as when to consider fixed prosthetic treatment and/or seek a second opinion.
  - A clinical course in cosmetic veneers and fixed prosthetics (specifically crown and bridge) that addresses preparation, margins (placement and integrity), biological width and occlusal factors.
  - A course in informed consent.
  - A course in record keeping.
  - All courses to be successfully completed at the Member's expense within 6 months of the decision (January 2, 2016)
  - Subsequent to completion of the courses, practice monitoring for 24 months.

10. As of July 28, 2016, Dr. Smolen did not comply with the decision of the ICR Committee in that he had not completed the courses by the deadline, January 2, 2016. After the deadline, Dr. Smolen requested an extension of time to complete the courses due to “personal and financial reasons”. An extension was granted until June 3, 2016. By this extended date Dr. Smolen also had not completed the courses.
11. After the SCERP decision was issued, College staff sent Dr. Smolen a letter with all of the details and advised him to consult Dr. Greg Anderson of the College for assistance in arranging the courses. Dr. Anderson and Dr. Smolen exchanged email correspondence between August 11 and 17, 2015. The College sent a follow up letter on February 4, 2016. Between February and July 2016 multiple emails exchanges happened between Dr. Smolen and College staff where he was reminded of his obligation to complete the SCERP as set out in the decision.
12. While Dr. Smolen did send Dr. Anderson some emails, he did not return Dr. Anderson’s voicemail message from August 17, 2015 or call Dr. Anderson on the telephone to discuss the required courses, as Dr. Anderson requested that he do in August 2015, March 2016 and May 2016.
13. On June 6, 2016, the fact that Dr. Smolen had not yet completed any of the courses required by the ICR committee was brought to the attention of the Registrar, Mr. Irwin Fefergrad, who appointed an investigator under section 75(1)(a) of the *Code* to investigate the breach.
14. Dr. Helene Goldberg conducted the investigation. The investigator’s findings are set out in a Registrar’s Report, dated September 7, 2016 [Tab D – Document Book].
15. In summary, Dr. Goldberg recounted the history of the decision of the ICR Committee and the College’s attempts to both help facilitate the courses and to remind Dr. Smolen of his obligation to complete the courses, as detailed above. Dr. Goldberg concludes that as of the date of her report, September 7, 2016, Dr. Smolen had not completed the SCERP as required by the ICR Committee’s decision of July 2, 2015.

16. Dr. Smolen was provided with a copy of the section 75(1)(a) report and given an opportunity to respond. Dr. Smolen did not respond to the report, which is his right as a response is not required.
17. On October 28, 2016, a panel of the Inquiries, Complaints and Reports (ICR) Committee met to consider this matter. The panel expressed serious concerns about Dr. Smolen's conduct. In particular, the panel was concerned that:
  - Dr. Smolen failed to complete the SCERP ordered by another panel of the ICR Committee on July 2, 2015;
  - Dr. Smolen failed to respond to the College when he was contacted about this matter;
  - Dr. Smolen's conduct raised concerns about his governability.
18. Given its concerns, the panel formed an intention to refer specified allegations of professional misconduct to the Discipline Committee.
19. By letter dated November 7, 2016 sent by courier, Dr. Smolen was advised of the intention of the Committee and as per the College's protocol, he was invited to make written submissions by November 21, 2016 and/or attend at its next meeting on December 15, 2016, to make oral submissions before the Committee made its final decision.
20. As no response was received to this letter, a College staff member, Ms. Wendy Waterhouse, emailed Dr. Smolen on November 25, 2016 to follow up as to whether he would be attending at the panel to make submissions about the panel's intention to refer specified allegations of professional misconduct to the Discipline Committee. She asked Dr. Smolen to contact her to let her know whether or not he would be attending the panel meeting scheduled for December 15, 2016. No response was received.
21. On December 15, 2016, Dr. Smolen attended before the panel of the ICR Committee to receive a caution in respect of another matter. When he arrived for the caution, Ms. Waterhouse spoke to him in the reception area of the College and asked if he also planned to make submissions on the intention to refer allegations for a discipline hearing. He said he was unaware of this.

22. After the caution, the panel asked Dr. Smolen if he intended to make submissions on the intention to refer. He said that he intends to make submissions as soon as possible but he had not seen or read the letters from the College. The panel confirmed with Dr. Smolen that the email address it had on file was correct.
23. In response to Dr. Smolen's remarks, the panel decided to give him a final opportunity to make written and/or oral submissions prior to it finalizing its decision with respect to the intention to refer allegations of professional misconduct to the Discipline Committee. He was given a deadline of January 3, 2017 for written submissions and invited to attend before the panel on January 5, 2017.
24. Dr. Smolen advised the College that he had contacted the CDPA and was awaiting direction. He asked for a further extension in order to obtain proper advice from the CDPA and retain counsel. College staff responded that his emails would be provided to the panel who would decide whether to grant the extension or proceed to make a decision.
25. On January 5, 2017, the panel of the ICR Committee decided to confirm its intention and finalized its decision to proceed with a referral of specified allegation of professional misconduct to the Discipline Committee for a hearing.
26. Prior to the hearing date, Dr. Smolen submitted proof to the College that he completed all of the outstanding courses required by the SCERP. A copy of the certificates of completion of the courses was sent to the College by Dr. Smolen's lawyer on December 4, 2017 [Tab E – Document Book]. The College is satisfied that the courses Dr. Smolen completed were appropriate and completed successfully.

## **DECISION**

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



## REASONS FOR DECISION

The Member pled guilty to the allegations as set out in the Notice of Hearing and did not dispute the facts presented in the Agreed Statement of Facts.

The Panel finds that the Member was given ample time to complete the SCERP as required by the ICR Committee, but failed to do so. The ICR Committee then granted the Member a 6-month extension to complete the courses specified in the SCERP. The Member failed to meet the extended deadline as well. The Member did not answer numerous attempts by Dr. Anderson to contact him regarding completion of the courses. By these actions, the Member failed to reply appropriately or within a reasonable time to a written enquiry made by the College, and engaged in conduct that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional, as alleged in the Notice of Hearing.

## PENALTY SUBMISSIONS

The parties presented the panel with a Joint Submission with respect to Penalty and Costs, which provides as follows.

1. The Royal College of Dental Surgeons of Ontario ("College") and Dr. Edward Smolen ("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:
  - (a) requiring the Member to 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;
  - (b) directing that the Registrar impose the following terms, conditions and limitations on the Member's Certificate of Registration ("Conditions"), namely:
    - (i) the Member's practice shall be monitored by the College 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 with the date of the finalization of this Order and ending twenty-four (24) months later;

- (ii) that 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, 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;
  - (iii) that the representative or representatives of the College shall report the results of those inspections to the Inquiries, Complaints and Reports Committee of the College and the Inquiries, Complaints and Reports Committee may, if deemed warranted, take such action as it considers appropriate;
- (c) that the member participate in counselling with a qualified member of a regulated profession (physician, psychologist, psychotherapist, social worker) to assist him in managing any stress in his personal life, and that he follows the recommendations of the counsellor. Such counselling to take place at the member's expense for the duration and frequency recommended by the counsellor.
- (d) that the member pay costs to the College in the amount of \$2,500.00 in respect of this discipline hearing, such costs to be paid in full within six (6) months of this Order becoming final.
2. The College and the Member further submit that pursuant to the Code, as amended, the results of these proceedings must be recorded on the Register of the College and publication of the Decision of the panel would therefore occur with the name and address of the Member included.
  3. In this case, both the College and the Member are of the view that the principles of deterrence and rehabilitation can be met in this case without a suspension, for the reasons set out below and made in oral submissions.
  4. This is the first time Dr. Smolen has appeared before a panel of the Discipline Committee. As of the date of the hearing he has

successfully completed all of the outstanding remedial courses required by the SCERP decision. He advises the College that at the time this conduct took place he was attempting to deal with significant stressors in his personal life including financial issues and a serious health issue of an immediate family member. All of which are mitigating factors which have been taken into account in this Joint Submission with Respect to Penalty and Costs.

## **PENALTY DECISION**

The Panel agreed and accepted the Joint Submission with respect to Penalty and Costs and ordered that:

- (a) The Member is to 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;
- (b) The Registrar is directed to impose the following terms, conditions and limitations ("conditions") on the Member's Certificate of Registration namely:
  - (i) the Member's practice shall be monitored by the College 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 with the date of the finalization of this Order and ending twenty-four (24) months later;
  - (ii) that 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, 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;
  - (iii) that the representative or representatives of the College shall report the results of those inspections to the Inquiries, Complaints and Reports Committee

of the College and the Inquiries, Complaints and Reports Committee may, if deemed warranted, take such action as it considers appropriate;

(c) The Member shall participate in counselling with a qualified member of a regulated profession (physician, psychologist, psychotherapist, social worker) to assist him in managing any stress in his personal life, and that he follows the recommendations of the counsellor. Such counselling to take place at the member's expense for the duration and frequency recommended by the counsellor; and

(d) The Member shall pay costs to the College in the amount of \$2,500.00 in respect of this discipline hearing, such costs to be paid in full within six (6) months of this Order becoming final.

#### **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 concluded that the jointly proposed penalty was within the appropriate range for misconduct of this nature, and meets the objectives of penalty, including public protection, general and specific deterrence, and rehabilitation.

The Panel was satisfied that a reprimand and the recording of the results of these proceedings on the College register will deter the Member from behaving in this manner in the future, and will also send a clear message to the members of the profession that decisions of the ICR Committee must be complied with according to their terms.

The terms, conditions and limitations set out in the penalty serve to protect the public as well as to rehabilitate the Member. Office monitoring at the Member's expense will serve to remediate the Member and protect the public.

The mitigating factors considered by the Panel included the personal and financial hardships experienced by the Member during the period in which he failed to complete the SCERP and respond to the College. The Member had no prior discipline history with the College. The Member's admission of guilt and

willingness to cooperate with the College by entering into the Joint Submission with respect to Penalty and Costs demonstrated his remorse and avoided a lengthy and more costly contested hearing. The Panel notes that the Member completed the SCERP prior to the discipline hearing, which addressed the underlying issue that ultimately led to this discipline hearing.

At the conclusion of the hearing, the Member waived his right to an appeal from the decision on liability and penalty. The panel delivered its reprimand, a copy of which is attached as Schedule "A".

I, Richard Hunter, sign these Reasons for Decision as Chairperson of this Discipline Panel.



Chairperson



Date

**Schedule "A"****Reprimand for Dr. Edward Smolen delivered January 12, 2018**

Dr. Smolen, as you know, this Discipline Panel has ordered you 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.

You will be given an opportunity to make a statement at the end of the reprimand if you wish.

The Panel has found that you have engaged in two acts of professional misconduct. You failed to complete a SCERP in the required time frame as ordered by the ICRC. The cumulative effect of your conduct would reasonably be regarded as unprofessional.

Your professional conduct is a matter of concern. It is unacceptable to your fellow dentists and to the public. You have brought discredit to yourself.

The Panel accepts the mitigating circumstances which likely caused your hearing today. We expect this was an isolated incident and that you will not appear before a Discipline panel again.

As I advised earlier, you will now be given an opportunity to make a comment if you wish to do so.

This is not an opportunity for you to debate the merits or the correctness of the decisions we have made.

*(No comments were made)*