

**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. MUSTAFA ABOUZGIA** of the City of Amberstburg 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. Amelia Chan
 Mr. Mano Kanagamany

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO) Appearances:)) Ms. Luisa Ritacca) Independent Counsel for the) Discipline Committee of the Royal) College of Dental Surgeons of Ontario
- and -)) Ms. Emily Lawrence) For the Royal College of Dental) Surgeons of Ontario)
DR. MUSTAFA ABOUZGIA) Mr. Matthew Wilton) For Dr. Mustafa Abouzgia

Hearing held on October 22, 2019

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 October 22, 2019.

At the outset of the hearing, the College sought an order banning the publication of the names of patients or any information that could be used to identify any patients. The Member consented to the request. The Panel granted the order, which extends to the exhibits filed, as well as to these reasons for decision.

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing, dated June 11, 2019 (Exhibit 1). At the outset of the hearing, the College advised that it intended to proceed with all allegations, except noted that the particulars set out at paragraph 2 were not pursued. The Notice of Hearing provides as follows:

1. 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 2017, you contravened a standard of practice or failed to maintain the standards of practice of the profession relative to one of your patients, namely, R.A., contrary to paragraph 1 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- On or about November 28, 2017, you planned for R.A.’s oral surgery based on the CBCT report of the wrong patient.
- On or about December 2, 2017, you performed incorrect and unnecessary surgery on R.A., who is a minor, under general anaesthesia.
- On or about December 2, 2017, you performed oral surgery on R.A. under general anaesthesia for at least forty minutes before you discovered that he did not have a mesiodens and thus that an error had occurred. If the patient had a mesiodens, this should have been obvious within a few minutes of the surgery commencing, and likely would have been obvious visually before the surgery commenced.

- You did not have the necessary office protocols in place to prevent the unnecessary and incorrect surgery you performed on R.A. under general anaesthesia on or about December 2, 2017.
 - You failed to consider and/or review several documents in the patient chart prior to the incorrect and unnecessary surgery you conducted on R.A. or about December 2, 2017, that indicated he had been referred for extraction of an impacted tooth in the 14/15 area, and not the removal of a mesiodens:
 - The note from R's referring dentist dated October 31, 2017, says "please extract impacted 14/15."
 - The clinical note in your patient chart dated November 10, 2017, says "referred for extraction of impacted tooth at #14 and #15 region."
 - An impacted tooth in the 14/15 area is evident on the radiographs dated October 4, 2017, and October 31, 2017, from R's referring dentist, Dr. Sashpal Sandhu.
 - The referral note that you wrote for the CBCT scan states the reason for referral was an "impacted #14."
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 2017, you treated 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 relative to one of your patients, namely, R.A., contrary to paragraph 7 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- You did not obtain informed consent for the surgery you conducted on or about December 2, 2017, for R.A.
- On or about November 10, 2017, R.A. and his parent signed the consent document for removal of tooth 99, a mesiodens tooth that the patient did not have.
- R.A. and his parent signed the consent document on or about November 10, 2017, before you had ordered and reviewed the patient's CBCT scan, a diagnostic tool that was necessary for you to properly assess the risks and benefits of surgical treatment.
- Prior to conducting surgery for R.A. on or about December 2, 2017, you did not verify that consent had been obtained.

THE MEMBER'S PLEA

The Member admitted the allegations of professional misconduct as set out in the Notice of Hearing. He also made admissions in writing in an Agreed Statement of Facts (Exhibit 2), which he signed.

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, the College introduced into evidence an Agreed Statement of Facts which substantiated the allegations. The Agreed Statement of Facts provides as follows:

Background

1. Dr. Abouzgia has been registered with the College as an Oral and Maxillofacial Surgeon since 1996, and previous to that, as a general dentist from 1988 to 1995. He received his dental degree from the University of Garyounis, Libyan Arab Jamahiriya. He went on to complete his specialization in Oral and Maxillofacial surgery in 1991 at the University of Toronto.
2. Dr. Abouzgia works at a clinic which he owns and operates in Brampton.

Events Giving Rise to Allegations

3. On December 7, 2017, the College received a formal complaint from Mr. A.A. concerning an oral surgery that Dr. Abouzgia had performed on his teenage son, R.A. on December 2, 2017.
4. R.A. was referred to Dr. Abouzgia on October 31, 2017 by Dr. Shergill of Dr. Sandhu's office for the extraction of an impacted tooth in the tooth 14/15 region.
5. On November 10, 2017, R.A. and his parents and Dr. Abouzgia had a preliminary discussion about surgical options, including the use of general anesthesia. Dr. Abouzgia referred R.A. for a CBCT scan for tooth 14 and 15, which proceeded on November 10, 2017.
6. Dr. Abouzgia met briefly with R.A. and his parents on November 28, 2017, the purpose of the appointment was to discuss "the CBCT results and proposed procedure" according to Dr. Abouzgia's charting.
7. During that appointment, Dr. Abouzgia reviewed a CBCT scan on his cellphone, which he believed was the CBCT scan of R.A. It was not;

Dr. Abouzgia reviewed the CBCT scan of another patient, believing it to be R.A.'s CBCT scan. This occurred because his receptionist had forwarded him CBCT scans for two patients and both patients required tooth extractions. Dr. Abouzgia mistakenly opened the wrong email and planned for R.A.'s surgery using another patient's CBCT scan. That patient required an extraction of an impacted mesiodens, a supernumerary tooth present in the midline between the two central incisors.

8. Dr. Abouzgia, R.A. and R.A.'s parents discussed the proposed procedure. Dr. Abouzgia acknowledges and admits that this discussion was at a general level and without significant detail about the procedure, such that R.A. and his parents did not realize that Dr. Abouzgia was explaining a procedure that was not applicable to R.A.'s impacted tooth 14. Dr. Abouzgia acknowledges that his discussion with R.A. and R.A.'s parents did not contain sufficient detail to allow R.A. to make an informed decision about the procedure or for Dr. Abouzgia to obtain R.A.'s informed consent.
9. The procedure was scheduled for December 2, 2017.
10. In advance of the procedure, R.A. and his mother signed two documents:
 - a. Patient Consent Form: For Collection, Use and Disclosure of Personal Information. This form has a handwritten date of "Nov/10/2017"; and
 - b. Informed Consent for Oral Surgery and Anesthesia and Receipt of Information Confirmation. This form has a handwritten notation that the procedure to be performed was "Ext of #99 under GA". This form has a handwritten date of "Nov/10/2017" beside R.A.'s signature.
11. If Dr. Abouzgia were to testify, he would state that these documents were dated November 10, 2017, but were actually signed on November 28, 2017. In any event, Dr. Abouzgia admits and acknowledges that R.A. and his parents were not fully informed of the procedure that he intended to perform (an extraction of a mesiodens) and that the execution of these documents do not demonstrate that Dr. Abouzgia had informed consent.
12. Dr. Abouzgia planned a procedure for the extraction of an impacted mesiodens, based on his reliance on the CBCT scan of another patient. He did not consider and/or review documents in the patient's chart prior to the surgery which would have clarified that R.A. required surgery on an impacted tooth in the 14/15 area. These documents include the note from R.A.'s referring dentist dated October 31, 2017,

radiographs dated October 4, 2017 and October 31, 2017, and the referral note Dr. Abouzgia prepared on November 10, 2017 for R.A.'s CBCT scan.

13. Dr. Abouzgia did not have the necessary office protocols and practice protocols to prevent this occurrence, including a process to review the entirety of CBCT scans (including patient names), a process to review patient charts in advance of surgery, or a process to confirm patient consent prior to surgery, all of which he admits are required procedures to meet the standards of practice of the profession.
14. On December 2, 2017, R.A. attended at Dr. Abouzgia's office for oral surgery. Dr. Abouzgia and R.A. did not speak in advance of the procedure. Dr. Abouzgia did not confirm the nature of the procedure or confirm consent with R.A. or his parents on the day of the procedure.
15. Dr. Abouzgia commenced a procedure for the extraction of an impacted mesiodens, based on his reliance on the CBCT scan of another patient.
16. Dr. Magdi Gaid (the physician anaesthetist) attended and supervised the administration of general anesthesia to R.A. commencing at 0958.
17. R.A. was under general anaesthetic for approximately 50 minutes. If Dr. Abouzgia were to testify, he would state that it took 15 or 20 minutes to reflect the flap, and some time trying to find the mesiodens. He removed some bone in order to attempt to locate a mesiodens. He could not locate the mesiodens and closed up the incision.
18. While R.A. was in recovery, Dr. Abouzgia told R.A.'s parents that he could not extract the tooth given its location. At this point, Dr. Abouzgia had not yet realized that R.A. did not have a mesiodens, and surmised that the mesiodens was connected to the bone and not visible. Dr. Abouzgia prescribed R.A. antibiotics and pain relief medication.
19. R.A. had swelling and pain on the night of December 2 and the following day.
20. On December 4, 2017, R.A.'s parent called Dr. Abouzgia's office to inquire about R.A.'s swelling and to request a copy of his chart.
21. Upon review of R.A.'s chart, Dr. Abouzgia discovered that he had completed the incorrect surgery (the attempted mesiodens extraction) instead of the surgery that R.A. required (extraction of tooth 14).
22. At Dr. Abouzgia's request, R.A. returned to Dr. Abouzgia's office and Dr. Abouzgia examined R.A. He told R.A.'s family of his error.
23. On December 5, 2017, Dr. Abouzgia informed the referring dentist of the surgery and his reliance on the wrong CBCT.
24. Dr. Abouzgia did not charge R.A. for the procedure.

Admissions relating to Standards of Practice

25. The standard of practice of the profession require all dentists to:
- a. plan treatment based on diagnostic tools, including CBCT scans taken of the patient they intend to treat;
 - b. avoid performing treatment unnecessary on patients;
 - c. explain proposed treatment in sufficient detail that the patient understands the nature of the treatment, including which tooth or area of the mouth will be treated;
 - d. adopt office protocols and practice protocols to ensure that the correct treatment is performed on the correct patient;
 - e. adopt office protocols and practice protocols to review the entirety of relevant diagnostic tools including CBCT scans (including patient names) and to review patient charts in advance of treatment;
 - f. adopt office protocols and practice protocols to confirm patient consent prior to surgery; and
 - g. provide treatment only with informed consent.
26. Dr. Abouzgia admits that he failed to meet the standards of practice in the following ways:
- a. Dr. Abouzgia planned and performed an unnecessary oral surgery on R.A., based on the CBCT report of the wrong patient;
 - b. Dr. Abouzgia did not consider and/or review several documents in R.A.'s chart prior to the surgery which indicated that R.A. required surgery on an impacted tooth in the 14/15 area;
 - c. Dr. Abouzgia did not have the necessary office protocols and practice protocols to prevent this occurrence, including a process to review all of the CBCT scans (including patient names), a process to review patient charts in advance of surgery, or a process to confirm patient consent prior to surgery; and
 - d. Dr. Abouzgia performed the incorrect and unnecessary surgery on R.A., including subjecting him to general anaesthesia for at least 40 minutes. Once commenced, he failed to realize that he was completing an incorrect and unnecessary surgery, which should have been obvious upon visual inspection prior to the surgery and/or immediately after he removed the flap of R.A.'s gum.
27. Therefore, Dr. Abouzgia admits that he contravened a standard of practice of the profession relative to his patient, R.A., contrary to

paragraph 1 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 1 of the Notice of Hearing.

Admissions Relating to a Failure to Obtain Informed Consent

28. Dr. Abouzgia admits and acknowledges that he failed to obtain informed consent for the procedure he performed on R.A. in that:
 - a. Dr. Abouzgia obtained R.A.'s consent for an oral surgery on the wrong tooth;
 - b. Dr. Abouzgia did not have oral or written informed consent to perform the extraction of a mesiodens, in that R.A. and his parents did not understand that Dr. Abouzgia intended to perform that procedure;
 - c. Dr. Abouzgia did not verify and re-confirm consent with R.A. or his parents on the day of the surgery.
29. Therefore, Dr. Abouzgia admits that he treated R.A. for a therapeutic purpose in a situation in which consent was required, without consent, contrary to paragraph 7 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 2 of the Notice of Hearing.

General

30. Dr. Abouzgia admits that the acts described above constitute professional misconduct and he now accepts responsibility for his actions and the resulting consequences.
31. Dr. Abouzgia has had the opportunity to take independent legal advice with respect to his admissions.

DECISION

Having considered the evidence and submissions of the parties, the Panel found that the Member committed professional misconduct as alleged in amended paragraph 2 of the Notice of Hearing.

REASONS FOR DECISION

The Member pled guilty to both allegations as set out in the amended paragraph 2 of the Notice of Hearing and did not dispute the facts as presented in the Agreed Statement of Facts.

The Panel was of the view that Dr. Abouzgia did not meet the standards of practice expected of a registered specialist in oral and maxillofacial surgery in respect to treatment planning and providing a surgical procedure for his patient.

Dr. Abouzgia admits that he failed to obtain proper informed consent as required by the Regulations in relation to his patient.

PENALTY SUBMISSIONS

The parties presented the panel with a Joint Submission with respect to Penalty and Costs (Exhibit 4), which provides as follows.

1. The Royal College of Dental Surgeons of Ontario ("College") and Dr. Mustafa Abouzgia ("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:
 - (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 also impose the following additional terms, conditions and limitations on the Member's Certificate of Registration (the "Practice Conditions"), namely:
 - (i) requiring that the Member successfully complete, at his own expense, a course on informed consent, approved by the College, and provide proof of successful completion in writing to the Registrar within six (6) months of this Order becoming final; and
 - (ii) the Member's practice shall be monitored by the College by means of office visit(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 from the College receiving proof of the Member's successful completion of the course referred to above, or until the Inquiries, Complaints and Reports Committee is satisfied that the Member has successfully completed the monitoring program, whichever date is later;
 - (iii) that the Member shall cooperate with the College during the office visit(s) and further, shall pay to the College in respect of the costs of monitoring, the amount of \$1,000.00 per office visit, such amount to be paid immediately after completion of each of the office visit(s);

(iv) that the representative or representatives of the College shall report the results of those office visit(s) 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;

(v) the Practice Conditions imposed by virtue of subparagraph (1)(b)(i) above shall be removed from the Member's certificate of registration upon receipt by the College of confirmation in writing acceptable to the Registrar that the course described in subparagraph (1)(b)(i) above has been completed successfully;

(vi) the Practice Condition imposed by virtue of subparagraph (1)(b)(ii) above shall be removed from the Member's certificate of registration twenty-four (24) months following receipt by the College of confirmation in writing acceptable to the Registrar that the requirements set out in subparagraphs (1)(b)(ii) above have been completed successfully, or upon receipt of written confirmation from the Inquiries, Complaints and Reports Committee that the Member has successfully completed the monitoring program, whichever date is later.

(c) 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 three (3) 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 any publication of the Decision of the panel would therefore occur with the name and address of the Member included.

PENALTY DECISION

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

1. The Royal College of Dental Surgeons of Ontario ("College") and Dr. Mustafa Abouzgia ("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:

- (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 also impose the following additional terms, conditions and limitations on the Member's Certificate of Registration (the "Practice Conditions"), namely:
 - (i) requiring that the Member successfully complete, at his own expense, a course on informed consent, approved by the College, and provide proof of successful completion in writing to the Registrar within six (6) months of this Order becoming final; and
 - (ii) the Member's practice shall be monitored by the College by means of office visit(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 from the College receiving proof of the Member's successful completion of the course referred to above, or until the Inquiries, Complaints and Reports Committee is satisfied that the Member has successfully completed the monitoring program, whichever date is later;
 - (iii) that the Member shall cooperate with the College during the office visit(s) and further, shall pay to the College in respect of the costs of monitoring, the amount of \$1,000.00 per office visit, such amount to be paid immediately after completion of each of the office visit(s);
 - (iv) that the representative or representatives of the College shall report the results of those office visit(s) 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;

(v) the Practice Conditions imposed by virtue of subparagraph (1)(b)(i) above shall be removed from the Member's certificate of registration upon receipt by the College of confirmation in writing acceptable to the Registrar that the course described in subparagraph (1)(b)(i) above has been completed successfully;

(vi) the Practice Condition imposed by virtue of subparagraph (1)(b)(ii) above shall be removed from the Member's certificate of registration twenty-four (24) months following receipt by the College of confirmation in writing acceptable to the Registrar that the requirements set out in subparagraphs (1)(b)(ii) above have been completed successfully, or upon receipt of written confirmation from the Inquiries, Complaints and Reports Committee that the Member has successfully completed the monitoring program, whichever date is later.

(c) 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 three (3) 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 any publication of the Decision of the panel would therefore occur with the name and address of the Member included.

REASONS FOR PENALTY DECISION

The Panel considered the Joint Submission on Penalty and concluded that the proposed penalty was appropriate in all the circumstances of this case. It therefore accepted the Joint Submission and ordered that its terms be implemented.

The Panel was satisfied that a reprimand and publishing the hearing proceedings on the College register would act as both specific and general deterrence. Public protection is paramount and the Panel concluded that this objective is achieved through the 24-month monitoring period at the Member's expense.

Completion of a course in Informed Consent and the office monitoring will help to ensure that this conduct will not happen again. The Panel was reassured that Dr Abouzgia had instituted changes to his office protocol with his staff that would prevent treatment misadventures in the future.

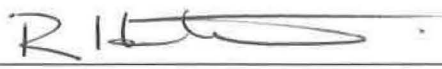
The Panel considered Dr Abouzgia's sloppy office protocol as the only aggravating factor.

Mitigating factors the Panel considered were:

- The Member has been registered with the College for 23 years and has never appeared before the Discipline Committee before
- The incident involving RA was an isolated one
- Dr Abouzgia immediately advised the patient, his family and the referring dentist
- Dr Abouzgia admitted responsibility and demonstrated remorse.

The Panel was satisfied that the provisions set out in this penalty adequately protect the public.

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


Chairperson

Nov 12, 2019.
Date

REPRIMAND

Dr. Abouzigia, 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 an act of professional misconduct in your care for your patient. You failed to ensure that you were performing surgery on the correct tooth.

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

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.

In light of your cooperation we are optimistic that you will not appear before a Discipline panel again.

Thank you for attending today. We are adjourned.