

H200014

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. AMIR ABBAS HAYDARIAN**, 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*”);

AND IN THE MATTER OF the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

NOTICE OF PUBLICATION BAN

This is formal notice that on January 19, 2022, the panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario made an Order directing that no person shall publish or broadcast the identity of any patients of the Member, or any information that could disclose the identity of any patients who are named in the Notice of Hearing and/or the Agreed Statement of Facts in this matter.

This Order is made pursuant to subsection 45(3) of the *Code*.

Subsection 93(1) of the *Code* reads:

93(1) Every person who contravenes an order made under subsection 7(3) or Section 45 or 47, or who contravenes subsection 76(3), 82(2) or (3), 85.2(1), 85.5(1) or (2) or 85.14(2) or Section 92.1 is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.



Dr. Richard Hunter, Chair
Discipline Panel

January 19, 2022

Date

H200014

**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. AMIR ABBAS HAYDARIAN**, 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
- Ms. Judy Welikovitch
- Dr. Nancy Di Santo
- Dr. Nalin Bhargava
- Mr. Rod Stableforth

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO	)	Appearances:
)	
	)	Luisa Ritacca
	)	Independent Counsel for the
	)	Discipline Committee of the Royal
	)	College of Dental Surgeons of Ontario
- and -)	
	)	Linda Rothstein and Glynnis Hawe
	)	For the Royal College of Dental
	)	Surgeons of Ontario
)	
DR. AMIR ABBAS HAYDARIAN	)	Symon Zucker for the Member
)	

Hearing held by way of video conference

REASONS FOR DECISION

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the Royal College of Dental Surgeons of Ontario (the “College”) in Toronto on January 19, 2022, and continued on January 20, 21, March 3, September 20, 21 and 22, 2022. This matter was heard by way of videoconference.

OVERVIEW

There is no dispute that at least as of October 19, 2018, and up until Spring 2020, Dr. Haydarian engaged in a sexual relationship with his patient, Person A. The issue before the Panel was whether Person A was the Member’s “spouse” within the meaning of the Health Professions Procedural Code (the “Code”) during that time.

The College alleged that at the time Dr. Haydarian entered into a sexual relationship with his patient, Person A, he was married to his wife, Person C. Dr. Haydarian and Person C separated in October 2018 but are still legally married in Ontario. As such, the College alleged that Person A could not be the Member’s “spouse” as defined in the Code.

The Member acknowledges that at the time he and Person A met, he was still married to Person C, but that by September 2018 they were emotionally separated and were divorced on October 19, 2018, using the *Talaq Raji* method of divorce in accordance with Islamic Law. On that same day, the Member says that he entered a religious, Islamic marriage with Person A, which he reasonably believed made Person A his “spouse” for the purposes of the Code. The Member explained that the religious divorce from Person C was obtained in Iran, where he is not resident or present, by using proxies instead.

This case also involves allegations of professional misconduct arising out of the Member’s decision to co-sign a mortgage for a patient, which the College alleges is an impermissible

boundary-crossing. The Member does not dispute that he co-signed a mortgage for a patient but denies that he crossed any boundary in doing so.

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing, dated December 17, 2020 (Exhibit 1), a copy of which is attached here as Appendix A.

THE MEMBER'S PLEA

The Member denied the allegations of professional misconduct as set out in the Notice of Hearing.

DECISION OF THE PANEL

For the reasons set out below, the Panel finds that the Member engaged in professional misconduct as alleged. He engaged in sexual relations with a patient, who was not his spouse. Further, he crossed the patient/dentist boundary by entering into a financial relationship with another patient.

THE ISSUES

In reaching its decision, the Panel considered the following four issues:

1. Was Person A the Member's patient; if so, were the Member and Person A engaged in a sexual relationship?
2. When did the sexual relationship begin?
3. What was the Member's marital status at the time he began his sexual relationship with Person A?
4. Was Person B the Member's patient at the time he co-signed a mortgage with her?

ANALYSIS

Issue 1: Was Person A the Member's patient and were the Member and Person A engaged in a sexual relationship?

The Member acknowledged that Person A became his patient in or about June 2018 and remained his patient into Spring, 2020. There was also no dispute that the Member and Person A engaged in a sexual relationship starting, at least as of October 19, 2018. The relationship produced a child, born on July 9, 2019.

Issue 2: When did Person A and the Member's sexual relationship begin?

The College alleged that the Member's and Person A's sexual relationship began on September 6, 2018, when the Member visited Person A at her home to confess his love for her. The Member conceded that he attended Person A's home in early September 2018, at which time he told her that he was in love with her and that he wanted to marry her. His evidence was, however, that they did not commence a sexual relationship until the evening of October 19, 2018, after he divorced his wife, Person C, in an Islamic divorce proceeding that took place in Iran with his brother as his proxy, and after he and Person A were married in a private Islamic ceremony in Toronto at which, he said that only he and Person A were present.

Evidence of Person A

Person A testified that shortly after becoming the Member's patient, she received a personal invitation from Dr. Haydarian to visit his farm on July 1, 2018. Person A stated that Dr. Haydarian had obtained her cell phone number from her patient record in order to make the call to invite her to the farm. Person A accepted the invitation to attend the farm on July 1, 2018, where she visited with the Member and met his wife, Person C.

Person A testified that following her July 1st visit to the farm, Dr. Haydarian would play love songs in Farsi during her dental treatments and would touch her face and breasts. She indicated that at the time she was confused by the Member's behaviour, as she understood that he was married with four children.

In early September 2018, the Member asked Person A to meet with him privately, outside of his dental office. Person A agreed to allow the Member to come over to her home on the morning of September 6, 2018, after her children had left for school. Person A testified that the Member arrived at her home with sweets and an orchid. The Member told Person A that he was in love with her and that he wanted to marry her. Person A testified that she was shocked and responded to the Member that he was already married; however, the Member insisted to her that he was separated from Person C and showed Person A a document he purported to be a divorce or separation agreement. Person A testified that she could not read the document as it was in English.

Person A told the Panel that while she had not considered being with Dr. Haydarian before that day, she decided to accept his proposal because he seemed to be a “good package”. Person A testified that while she accepted the proposal, she insisted that they get married in a Christian ceremony, because she is a Christian. She said that Dr. Haydarian agreed and then gave her a ring with a blue stone that belonged to his mother. Person A testified that Dr. Haydarian then recited an Islamic verse to himself, but that she did not recite anything as she is no longer a Muslim. Person A acknowledged that from that day forward (September 6, 2018), she considered herself to be engaged to Dr. Haydarian. Person A denied participating in a marriage ceremony with Dr. Haydarian on September 6 or on any day thereafter.

Person A testified that she and the Member had sexual intercourse for the first time that day, before the Member left her apartment to begin seeing patients. Person A explained that their sexual relationship continued from then on until they were separated in 2020. The Member would come to her apartment to have sex and to spend time together. They also met for sexual intercourse in the apartment above the Member’s dental office and at the Member’s farm.

Conduct after September 6, 2018

Person A explained that after she and the Member were engaged on September 6, she and her children began to visit Dr. Haydarian every weekend on his farm. She produced a series of photographs corroborating these farm visits, as well as photographs showing the Member and Person A kissing and hugging. Many of these photographs included heart and kissing lips emojis, and at least some of the photographs appear to have been taken in early October 2018, in the

Member's apartment, above his dental office. Person A testified that these photographs were taken immediately prior to her and the Member engaging in sexual intercourse in the apartment.

In response to the Member's evidence, Person A denied that she ever married Dr. Haydarian, legally or otherwise. She explained that she asked her pastor whether she and the Member could be married in the Christian church, but because Dr. Haydarian could not provide proof of divorce, they could not be married in the church. Person A testified that Dr. Haydarian promised her that after he travelled to Iran in late October/early November 2018 to obtain her family's blessing, they could be married.

Dr. Haydarian went to Iran and was away from Canada from October 21 to November 4, 2018. During that time, Person A discovered she was pregnant. She testified that she became pregnant in late September or early October, as her last menstrual period had been in September. She told the Member of her pregnancy following his return to Canada on November 4, 2018. Their child was born on July 9, 2019.

Person A denied engaging in a temporary Islamic marriage ceremony on September 6, October 19 or at any other time with the Member. She testified that the only time the Member attended her home with flowers was on September 6, when he brought her an orchid. She never recited an Islamic verse or received three "holy books", as Dr. Haydarian alleged was proof of the ceremony.

Evidence of Dr. Haydarian

Dr. Haydarian testified that while he did attend at Person A's apartment on September 6, 2018, to profess his love and propose marriage, they did not have sexual intercourse until October 19, 2018, the day the Member says he obtained an Islamic divorce from his wife and entered into a private Islamic marriage ceremony with Person A

The Member told the Panel that during their meeting on September 6, he and Person A discussed marriage and that they agreed to have both an Islamic and a Christian wedding ceremony. Dr. Haydarian planned to obtain Person A's parents' blessing during a trip to Iran, which he had previously planned to take place sometime in October or November 2018. He also told the Panel that he consulted his Imam and an expert on religious laws about whether he as a Muslim man,

could marry a Christian woman. The Member acknowledged that he was advised that he had to be divorced from Person C before then being able to enter into a temporary (Talaq) marriage with Person A

Dr. Haydarian denied telling Person A that he was divorced from Person C but acknowledged that he had consulted a family lawyer for separation and divorce, while still living at home with Person C.

The Member did not dispute Person A's evidence that from early September onwards, he and Person A began spending time together at his farm and her house. He also admitted to frequently staying with her late into the night and that as a result, Person C hired a private investigator, who discovered the Member with Person A. The Member also acknowledged the authenticity of the photographs produced by Person A, including those photos taken in early October, late at night in his apartment above his dental office.

Dr. Haydarian also acknowledged that he and Person A were very affectionate with one another, but that they stopped short of engaging in sexual intercourse because he viewed it as "sinful" for them to do so before they were married.

The Talaq Divorce

Dr. Haydarian testified that his sexual relationship with Person A commenced on October 19, 2018. On that day, Person C attended his dental office where they had a heated argument. Dr. Haydarian testified that he decided that their marital relationship was at an end, and so that same afternoon, around 3:30pm, he called his brother in Iran to help him initiate divorce proceedings. The Member says he contacted his brother, instead of contacting his Ontario lawyer, to whom he had already spoken, or his Imam, to whom he spoke about marrying Person A, a Christian woman.

The Member stated that his brother found him the name and contact of a notary public, Mr. Mojtahedzadeh that same evening (approximately 11:30pm in Iran). Dr. Haydarian explained that

he spoke with the notary public who asked him for his name and his wife's name. He did not ask for any other details, such as their ages or place of residency. The Member testified that he emailed a copy of his marriage certificate to his brother at the notary's request. The Panel did not receive a copy of the Member's email exchange with his brother or anyone else from October 19, 2018.

Dr. Haydarian testified that following his call to Iran with Mr. Mojtahedzadeh, the notary public carried out a talaq divorce as the Member's proxy, in front of witnesses. Dr. Haydarian was not present for the divorce proceedings and as such, was unable to provide the panel with any information about when or where the proceedings took place, or who was present.

The Member did provide the Panel with a copy of a "Divorce Certificate" he said he obtained from the notary during his visit to Iran on November 1, 2018. The Panel received the document for identification purposes only, as it was not accompanied by an affidavit or statutory declaration to confirm its authenticity. Dr. Haydarian testified that on that date he attended the notary's office to sign and receive a copy of the certificate. The Divorce Certificate produced, together with the accompanying translation, is not a certified copy and does not, on its face, confirm October 19, 2018, as the date of the Member's divorce.

The Wedding Ceremony

Following the divorce proceedings, Dr. Haydarian testified that he attended at Person A's home with 14 white roses and three "holy books"¹. He told Person A that he had just obtained a divorce from Person C by calling Iran and asked her if she wanted to get married that night in a temporary Islamic marriage ceremony. Dr. Haydarian told the Panel that Person A agreed to his proposal on the spot, despite having previously insisted on a Christian marriage ceremony and even though Dr. Haydarian had yet to receive Person A's parents' blessing.

Dr. Haydarian testified that they carried out the marriage ceremony, during which he recited the marriage formula, in private. After the ceremony, Dr. Haydarian testified that they had sexual intercourse for the first time. Two days later, on October 21, Dr. Haydarian left Canada, traveling

¹ The panel was advised that these gifts represented the dowry required for a 3-year temporary marriage. Dr. Haydarian's expert, Mr. Sotoudehfar confirmed that the offering of the dowry, plus the recitation of the "marriage formula" would amount to a binding marriage under Islamic law.

to Spain and Iran, returning on November 4, 2018. He conceded that immediately upon his return, Person A told him that she was pregnant. Dr. Haydarian testified that he and Person A must have conceived on either October 19 or October 20, 2018, immediately after he said their sexual relationship began.

Finding on Issue #2

Having considered the evidence of Person A, Dr. Haydarian, and the documentary evidence provided, the Panel finds that it is more likely than not that the Member and Person A commenced their sexual relationship on September 6, 2018.

Person A's evidence regarding when she and Dr. Haydarian commenced their sexual relationship was credible. The photographs she provided offered strong corroboration that she and Dr. Haydarian were engaged in a close and intimate relationship prior to October 19th. Further, both Person A and the Member conceded to spending late nights together, both at her home and in his apartment, above his dental office.

In addition, Person A did not stray from her recounting of events at any time during her examination or cross-examination. She was consistent in saying that she wanted to be married in a Christian ceremony and would not and did not consider herself married until they were able to perform such a ceremony. She conceded, however, that she considered herself engaged to the Member and that she commenced a sexual relationship with him immediately following their engagement. It would not have made sense for Person A – having been clear about wanting a Christian ceremony – to suddenly agree to a private Islamic ceremony with the Member on October 19th.

While Person A was challenged on cross-examination about calling the Member her “husband” from time to time, she explained that it was the Member who wanted her to refer to him in that manner and that she understood she and Dr. Haydarian were not married, either legally or religiously.

Dr. Haydarian's position that he and Person A did not engage in sexual intercourse until October 19th, following his apparent divorce and their private wedding ceremony is not credible and is not

reasonable in the circumstances. Other than Dr. Haydarian's assertion that a private wedding ceremony had taken place, there was nothing before the Panel to memorialize the event, like a photograph or text or email to family sharing the news. Further, Dr. Haydarian conceded to professing his love to Person A in September 2018, and that from that day forward, they spent time together, including at her apartment, his farm, and late nights at his apartment. He also conceded that they were affectionate with one another after September 6th and that they kissed each other.

Finally, the Panel accepts Person A's evidence that she became aware of her pregnancy sometime between October 21 and November 4, 2018, while Dr. Haydarian was out of the country. If Dr. Haydarian's evidence is to be preferred, that would mean that Person A became pregnant on October 19 or 20, 2018 and became aware of her pregnancy within 14-16 days. In the circumstances, the Panel prefers Person A's evidence that she had her last menstrual period in September 2018 and likely became pregnant sometime in late September or early October 2018, and became aware of it in late October, while the Member was abroad.

Issue 3: What was the Member's marital status at the time he began his sexual relationship with Person A?

Having found that the Member and Person A commenced their sexual relationship in September 2018, there can be no dispute that the Member was still married to Person C at the time. However, the Panel went on to consider this issue in the event that the sexual relationship did not commence until October 19, 2018.

Even if the sexual relationship did not commence until October 19, 2018, the College alleged that at the time that Dr. Haydarian and Person A met, he was married to his wife, Person C. They had been legally married in Ontario, following an Islamic religious ceremony, and that while Dr. Haydarian and Person C separated in October 2018, they are still legally married in Ontario. The Member stated that he was divorced from Person C in an Islamic ceremony on October 19, 2018, and married Person A the same day.

Dr. Haydarian's Evidence of his Divorce

As summarized above, following a heated dispute with Person C on October 19, 2018, Dr. Haydarian testified that he decided that he wanted a divorce from his wife. He explained that acting on advice he received from his Imam and a religious expert, he believed he could initiate divorce proceedings in Iran, in absentia, by having his brother act as his proxy. Dr. Haydarian testified that the notary public his brother found for him and with whom he spoke on the evening of October 19, conducted the *Talaq* divorce proceedings, in Dr. Haydarian's absence, in the presence of two witnesses.

According to Dr. Haydarian, the proceedings took place late at night on October 19, 2018, in Tehran, which was a Friday, traditionally a special day of worship for Muslims in Iran, when businesses are closed. Neither Dr. Haydarian nor Person C needed to be present to give effect to the divorce and Person C did not have to be notified of the proceedings at all. Dr. Haydarian was not able to provide the Panel with the names of the witnesses present for the divorce proceeding and no one who had been present was called to testify. The evidence Dr. Haydarian provided to the Panel about the divorce proceeding was based on information he obtained from others.

Evidence of Mohammed Sotoudehfar

In support of Dr. Haydarian's position that he had entered a legally recognized proxy divorce from Person C, the Panel heard evidence from Mr. Sotoudehfar, an expert in the religion of Islam, although not an Imam.

Mr. Sotoudehfar conceded that he was not expert in the civil laws of Iran. He is not a lawyer in either Canada or Iran and could not provide expert evidence regarding the laws of Iran. Mr. Sotoudehfar confirmed that, if the proceedings took place as Dr. Haydarian described to him, Dr. Haydarian was validly divorced under Islamic law on the night of October 19, 2018. However, in cross-examination, Mr. Sotoudehfar also made clear to the Panel that for an Islamic divorce to be legally recognized, the parties must follow the civil requirements as set out in the relevant jurisdiction.

Mr. Sotoudehfar could not, nor did he purport to, confirm that the divorce proceeding took place as Dr. Haydarian described. Mr. Sotoudehfar's evidence was based on information he received from Dr. Haydarian, which itself, was information Dr. Haydarian received from others.

The "Divorce Certificate"

As described above, Dr. Haydarian provided the panel with a Divorce Certificate, which he said he obtained during his visit to Iran on November 1, 2018. The certificate and its translation are not certified. They were not accompanied by evidence from the notary public or some other witness who could confirm their authenticity. Further, the certificate does not appear to corroborate Dr. Haydarian's position that his divorce took place on October 19, 2018. Based on the translation made available to the Panel, the "date of execution of divorce" is indicated to be October 20, 2018, in one part of the document and "November 1, 2018" in another part. The document also suggests that the type of divorce sought is a "Khula", which is a divorce that is initiated by the wife and not the husband.

Finding on Issue #3

Based on the evidence before it, the Panel finds, on a balance of probabilities, that as of October 19, 2018, the Member was still legally married to his wife, Person C.

The Panel is not persuaded by the evidence presented that Dr. Haydarian received a religious divorce via proxy on October 19, 2018. The Panel received no direct evidence from anyone who was purportedly present for the proceedings. There was no evidence available to confirm what was said or how the proceedings unfolded. Further, the "Certificate of Divorce" document received by the Panel is of little assistance. It was not authenticated or provided to the Panel in a certified form, and it does not, in any event, corroborate Dr. Haydarian's evidence that an Islamic *Talaq* divorce took place on October 19, 2018.

Even if the Panel were to accept Dr. Haydarian's evidence regarding the divorce proceedings, the Panel is not satisfied that such a proceeding would be recognized under Canadian law.

The Panel received uncontested evidence that in 1998, following an Islamic religious ceremony, Dr. Haydarian and Person C were legally married in Ontario. Although they separated in October 2018, they remain legally married pursuant to the laws of Ontario.

The law of Canada, as set out in section 22(1) of the *Divorce Act*, RSC 1985, c. 3 (2nd Supp) recognizes foreign divorces under certain circumstances, including that one of the persons filing for divorce has been habitually resident of the jurisdiction where the divorce is being sought for at least one (1) year preceding the commencement of proceedings for the divorce.

This requirement was not met. In determining this issue, the Panel is guided by the recent decision of the Ontario Court of Appeal in *Abraham v Gallo*², where Roberts, JA, speaking for the Court, confirmed that “Canadian courts will recognize a foreign divorce...vi. where the foreign divorce is recognized in another foreign jurisdiction with which the petitioner or respondent has a real and substantial connection.”³

In this regard, Roberts, JA, further confirmed that the “focus of the real and substantial connection analysis should be on the parties’ real circumstances at the time of the divorce, not on historical or transitory factors.”⁴

In this case, Dr. Haydarian gave no evidence that he was habitually resident in Iran for at least one (1) year preceding the commencement, by him, of a Talaq divorce, or at all. His evidence was that he immigrated to Canada and attended York University as an undergraduate. He then completed dentistry school at the University of Toronto in 1996. He and Person C were married in Ontario in June 1998, and they have four (4) children together.

Dr. Haydarian’s evidence was that he and his wife have been continuously and ordinarily resident in Ontario throughout their marriage; that since his marriage to Person C, and until October 19, 2018, he and his wife had been living together in the matrimonial home and raising their children together, although he asserted that they had effectively separated. Further, his

² *Abraham v Gallo*, 2022 ONCA 874 (CanLii), P

³ *Abraham v Gallo*, 2022 ONCA 874 (CanLii), Para 27; Payne, Julien D., *Payne on Divorce* 4th ed (Scarborough: Carswell, 1996) @ p. 111

⁴ *Ibid* Para 30

evidence was that he has been practicing dentistry in Ontario since 1996. The evidence on this point, confirmed by the Member in his own evidence, is clear and uncontroverted.

Dr. Haydarian further testified that he and his wife had separated, notwithstanding that both continued to reside in the matrimonial home; that by the time he proposed to Person A, he had already consulted a family lawyer in Ontario about obtaining a divorce from Person C. Furthermore, the common-law principles which provide for recognition of foreign divorces, extend beyond the need for there to be a real and substantial connection to the place of the divorce and include an *overarching requirement for due process and fairness*⁵. The spouse must be provided with notice of the divorce and be able to participate. This requirement was not met.

There was no evidence that Person C was given notice of the divorce. In fact, given the tight timeline during which the Islamic divorce is alleged to have been obtained and Dr. Haydarian's purported marriage to Person A, there would have been no ability to provide Person C with notice. In the circumstances, even if this Panel were to accept Dr. Haydarian's evidence of his Islamic divorce, such divorce cannot be recognized under Ontario law.

Given the Panel's finding regarding Dr. Haydarian's ongoing marriage to Person C, the Panel does not accept that Dr. Haydarian was or could have believed himself legally married to Person A as of October 19, 2018. The Panel does not accept that the Member believed he had entered a legally binding marriage with Person A in good faith. Given all the circumstances as describe above, Dr. Haydarian's evidence that he acted in good faith is simply not credible.

The definition of "spouse" in the *Health Professions Procedures Code*⁶ relies on the definition of "spouse" found at s. 1(1) of the *Family Law Act*⁷, which provides that "spouse" means either two persons who (a) are married to each other; or (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on his clause to assert any right. In order for two persons to be legally married under the laws of Ontario, that marriage must comply

⁵ *Amin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 168 (CanLII), [2008] 4 FCR 531, Para 21 [emphasis added]

⁶ *Regulated Health Professions Act*, RSO 1991, SO 1991 c.18, Schedule 2

⁷ *Family Law Act*, RSO 1990 c. F. 3, section 1(1)

with the provisions of the *Marriage Act*⁸, such that neither of the parties can be legally married to someone else. The Panel understands this to mean that a party cannot enter into a legally binding marriage with another person, while being legally married to a third person. In this case, Dr. Haydarian knew he remained legally married to Person C at the time he allegedly entered into an Islamic marriage with Person A. In the circumstances, Dr. Haydarian simply could not have been married to Person A while still married to Person C, regardless of his intentions. He also knew that to comply with Ontario law, he had to obtain a marriage license and that his ceremony needed to be officiated by a person authorized to do so and to be completed in the presence of witnesses. He had fulfilled these requirements for his marriage with Person C and so he should, or would, have known that he would have to do the same to give effect to any marriage ceremony or commitment he made to Person A.

Issue 4: Was Person B the Member's patient at the time he co-signed a mortgage with her?

The College provided the Panel with evidence that Person B was the Member's patient in September 2011, at the time the Member agreed to co-sign a mortgage with her. The Member did not take issue with the documents produced, nor did he dispute that he co-signed the mortgage as alleged.

During his testimony, the Member admitted that Person B was his patient at the material time. The Member testified that he asked Person B what was causing her stress, since it was clear to him that she was grinding her teeth. The Member testified that he eventually learned from Person B's mother – who was also his patient – that Person B was having financial issues and that she needed a guarantor for her mortgage. The Member volunteered to guarantee the loan for Person B. Ultimately, the Member became a co-mortgagee on Parcel Register [REDACTED] [REDACTED]⁹ (the "Property") on September 30, 2011, and he remains listed as such to the present day. The mortgage guaranteed by the Member had a value of \$475,000 as at the date of signing.

The Panel received documents corroborating the Member's interest in Person B's property as a co-mortgagee, including a reporting letter from the lawyer involved in the transaction. The Panel,

⁸ *Marriage Act*, RSO 1990, c. M.3, section 8

⁹ Exhibit 1, Joint Book of Documents, Tab 17, p 256

therefore, finds that the Member co-signed a mortgage with his patient, Person B for approximately \$475,000.00 on September 30, 2011.

The Member's evidence in this regard was that he knew what it was like to be a newcomer and to struggle to get one's footing; that he wanted to help Person B to find her own footing. Dr. Haydarian did, ultimately, state that he now understands his act to constitute a boundary-crossing and that he would not do it again, in future; that he now understands that his conduct constitutes a breach of the College's *Prevention of Sexual Abuse and Boundary Violations Practice Advisory*.¹⁰

CONCLUSION AND REASONS FOR DECISION

As set out above, the Panel finds that the Member engaged in professional misconduct in that he engaged in sexual relations with a patient, who was not his spouse. In engaging in this conduct, the Member acted contrary to s. 51(1) (b.1) of the *Code*¹¹ in that in or around the years 2018 and 2019 he sexually abused a patient, namely Person A

The Panel further finds that Dr. Haydarian crossed the patient/dentist boundary by entering into a financial relationship with another patient.

Further and contrary to paragraph 59 of Section 2 of Ontario Regulation 853, Regulations of Ontario, as amended, the Panel finds that the Member engaged in conduct, that having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical. This finding is made both in relation to Person A and Person B. In making our findings, we placed the onus of proving the allegations to the civil standard of proof on the College: that being the balance of probabilities. Put differently, the Panel had to consider whether the College satisfied us that it was more likely than not that the allegations were true.

For the reasons set forth above, the Panel finds that the College has established on a balance of probabilities that the Member engaged in professional misconduct as alleged. The Member and Person A started having sexual intercourse on or by September 6, 2018. At the time, Person A

¹⁰ *Ontario (College of Physicians and Surgeons of Ontario) v McIntyre*, 2015 ONCPSD 25

¹¹ *Regulated Health Professions Act*, RSO 1991, SO 1991 c.18, Schedule 2

was the Member's patient and was not his "spouse" as defined in the Code¹². The Panel finds, on a balance of probabilities, that at the time Dr. Haydarian purported to enter into an Islamic marriage with Person A, that he was still, and remains, legally married to Person C. Given our findings, the Panel finds that the Member engaged in sexual abuse of his patient by engaging in sexual intercourse with Person A starting in September 2018.

Even if the Panel accepted the Member's evidence that the sexual relationship did not commence until October 19, 2018 – which it does not -, the panel finds on a balance of probabilities that the Member was legally still married to Person C as of October 19, 2018, and that as such Person A could not have been his "spouse" as well.

The Member's evidence of his *Talaq* divorce proceedings, which allegedly took place by proxy, was not persuasive, credible, or reliable. There was no direct evidence from anyone present for the proceedings and the "Divorce Certificate" presented was unreliable.

Further, even if the Panel accepted the Member's evidence of the divorce proceedings, the uncontroverted evidence before the Panel was that the Member had not obtained a divorce from Person C in Ontario. Without such a divorce, the Member could not have entered into a legally binding marriage with Person A on the night of October 19, as he alleged.

Sexual abuse is a strict liability offence. Dr. Haydarian's good intentions or mistaken beliefs about the status of his relationship with Person A are not relevant. In any event, he knew he remained legally married to Person C at the time he says he began having sexual intercourse with Person A. In the circumstances – even if the sexual relationship did not commence until October 19 – Dr. Haydarian engaged in sexual abuse as defined by the *Code*¹³. Person A was not his spouse and as such, Dr. Haydarian violated the Code.

The Panel is satisfied that by entering into a sexual relationship with his patient, the Member engaged in conduct which would reasonably be regarded by other members as disgraceful, dishonourable, unethical or unprofessional.

¹² Ibid

¹³ Ibid s. 1(3)

Similarly, the Panel finds that Dr. Haydarian's decision to become a co-mortgagee with Person B would be regarded by other members of this profession as disgraceful, dishonourable, unethical or unprofessional. In both circumstances, Dr. Haydarian used his position as a health care provider to inappropriately involve himself in his patients' lives. Regardless of whether Person B needed financial assistance, it was not appropriate for Dr. Haydarian, as her dentist, to insert himself into her personal affairs.

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



January 20, 2023

Date

Ms. Judy Welikovitch
Dr. Nancy Di Santo
Dr. Nalin Bhargava
Mr. Rod Stableforth

Appendix A

H200014

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. AMIR ABBAS HAYDARIAN**, 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”).

AND IN THE MATTER OF the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

TO: DR. AMIR ABBAS HAYDARIAN
Mount Pleasant Dental Centre
707 Mount Pleasant Road
Toronto, ON M4S 2N4

NOTICE OF HEARING

TAKE NOTICE THAT IT IS ALLEGED THAT:

1. You committed an act or acts of professional misconduct as provided by s.51(1)(b.1) of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18, in

that in or around the years 2018 and 2019 you sexually abused a patient, Person A.

Particulars:

- In or around the years 2018 and 2019, you engaged in sexual intercourse and/or other forms of sexual relations with your patient, Person A. Your sexual relationship with Person A resulted in the birth of your child, [REDACTED].
 - Person A was your patient from on or about June 12, 2018, until on or about September 23, 2019.
 - During this time, you also engaged in touching of a sexual nature and/or behavior or remarks of a sexual nature towards Person A, your patient.
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 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 or unethical relative to your patients, Person A and Person B, contrary to paragraph 59 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- You engaged in sexual intercourse, touching of a sexual nature, and/or behavior or remarks of a sexual nature with your patient, Person A. Person A became known to you in your capacity as her dentist; you had no previous relationship with her.
- You crossed or violated boundaries appropriate to a dentist-patient relationship when you co-signed a mortgage for your patient, Person B, after she became known to you in your capacity as her dentist.

Such further and other particulars will be provided from time to time, as they become known.

AND TAKE NOTICE THAT the said allegations respecting professional misconduct will be heard and determined by a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario ("panel") on a date and time to be agreed upon by the parties, or on a date to be fixed by the Chair of the Discipline Committee, at the offices of the Royal College of Dental Surgeons of Ontario, 6 Crescent Road, Toronto, Ontario, M4W

1T1. You are required to appear in person or by a legal representative before the panel with your witnesses, if any, at the time and place aforesaid.

ONCE A DATE IS FIXED, IF YOU DO NOT ATTEND ON THE FIXED HEARING DATE, THE PANEL MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE OF THE PROCEEDINGS.

The *Code* provides that if a panel finds that you have committed an act of professional misconduct, it may make an order doing any one or more of the following:

- (1) directing the Registrar to revoke your certificate of registration;
- (2) directing the Registrar to suspend your certificate of registration for a specified period of time;
- (3) directing the Registrar to impose specified terms, conditions and limitations on your certificate of registration for a specified or indefinite period of time;
- (4) requiring you to appear before the panel to be reprimanded;
- (5) requiring you to pay a fine of not more than \$35,000.00 to the Minister of Finance;

or any combination thereof.

Furthermore, the *Code* provides that if a panel is of the opinion that the commencement of these proceedings is unwarranted, it may make an order requiring the College to pay all or part of your legal costs.

The *Code* also provides that in an appropriate case, a panel may make an order requiring you, in the event the panel finds you have committed an act or acts of professional misconduct or finds you to be incompetent, to pay all or part of the following costs and expenses:

1. the College's legal costs and expenses;

2. the College's costs and expenses incurred in investigating the matter; and
3. the College's costs and expenses incurred in conducting the hearing.

If you have not done so already, you are entitled to and are well advised to retain legal representation to assist you in this matter.

You are entitled to disclosure of the evidence in this matter in accordance with section 42(1) of the *Code*. You or your representative may contact the solicitor for the College, Ms. Linda Rothstein, in this matter at:

Ms. Linda Rothstein
Roland Rosenberg Rothstein LLP
155 Wellington St W, 35th Floor
Toronto ON M5V 3H1
Tel: 416 646-4300
Email: linda.rothstein@paliareroland.co

You, or your legal representative, should familiarize yourself with your disclosure obligations under law, including section 42.1 of the *Code*.

DATED at Toronto, this 17th day of December, 2020.

[Seal]

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. AMIR ABBAS HAYDARIAN**, 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*”).

AND IN THE MATTER OF the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

NOTICE OF HEARING

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO

6 Crescent Road
Toronto ON M4W 1T1

Telephone: 416-961-6555

Fax: 416-961-5814

H200014

**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. AMIR ABBAS HAYDARIAN**, 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
 Ms. Judy Welikovitch
 Dr. Nancy Di Santo
 Dr. Nalin Bhargava
 Mr. Rod Stableforth

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO	) Appearances:)) Luisa Ritacca) Independent Counsel for the) Discipline Committee of the Royal) College of Dental Surgeons of Ontario
- and -	) ) Linda Rothstein and Glynnis Hawe) For the Royal College of Dental) Surgeons of Ontario)
DR. AMIR ABBAS HAYDARIAN	) Symon Zucker for the Member

Motion Heard in Writing.

REASONS FOR DECISION ON MOTION FOR IMMEDIATE SUSPENSION

OVERVIEW

- (1) On January 23, 2023, this Panel released its Reasons for Decision, wherein it found Dr. Haydarian had a sexual relationship with a patient, which ultimately resulted in the patient becoming pregnant with the Member's child. Having engaged in sexual intercourse with his patient, the Panel held that Dr. Haydarian had sexually abused a patient, contrary to section 51(1)(b.1) of the *Code*.
- (2) By way of written motion, the College seeks an immediate interim order suspending Dr. Haydarian's certificate of registration until a final penalty has been ordered. Further, the College asks that the penalty hearing be scheduled on an expedited basis.
- (3) The Member does not oppose the College's requests.

DECISION AND DISCUSSION

- (4) The Panel grants the College's request and orders an immediate interim suspension of Dr. Haydarian's certificate of registration. Further, the Panel directs that the penalty hearing for this matter be scheduled on an expedited basis.
- (5) Section 51(4.2) of the *Code* provides that where a member of the College is found to have sexually abused a patient and where the sexual abuse involves intercourse, the Panel shall immediately make an interim order suspending the member's certificate of practice.
- (6) Given the mandatory language of the *Code*, the Panel is obligated to impose the interim order. The Panel has no discretion in this regard.
- (7) Further, with respect to the request for an expedited penalty hearing, the Panel has provided the Hearings Office with its availability. We understand that the Hearings Office is currently in the process of canvassing dates with the parties. We direct that the parties make best efforts to be available for the penalty hearing as soon as can be arranged.

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



February 16, 2023

Date

Ms. Judy Welikovitch
Dr. Nancy Di Santo
Dr. Nalin Bhargava
Mr. Rod Stableforth

H200014

**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. AMIR ABBAS HAYDARIAN**, 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
 Ms. Judy Welikovitch
 Dr. Nancy Di Santo
 Dr. Nalin Bhargava
 Mr. Rod Stableforth

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO	) Appearances:)) Luisa Ritacca) Independent Counsel for the) Discipline Committee of the Royal) College of Dental Surgeons of Ontario
- and -	) ) Linda Rothstein and Glynnis Hawe) For the Royal College of Dental) Surgeons of Ontario)
DR. AMIR ABBAS HAYDARIAN	) Symon Zucker for the Member

Penalty and Costs Hearing held on March 20, 2023

REASONS FOR DECISION ON PENALTY AND COSTS

OVERVIEW

- (1) On January 23, 2023, this Panel released its Reasons for Decision, wherein it found Dr. Haydarian had a sexual relationship with a patient, which ultimately resulted in the patient becoming pregnant with his child. Having engaged in sexual intercourse with his patient, the Panel held that Dr. Haydarian had sexually abused a patient, contrary to section 51(1)(b.1) of the *Code*.
- (2) On February 16, 2023, this Panel released supplementary decision and reasons where it ordered the immediate, interim suspension of Dr. Haydarian's certificate of registration pending a determination regarding a final penalty.
- (3) The parties appeared before this Panel on March 20, 2023, to make submissions regarding a final penalty and costs.

DECISION AND DISCUSSION ON PENALTY

- (4) With respect to penalty, the College submitted that in light of the Panel's finding that Dr. Haydarian committed "sexual abuse", contrary to section 51(1)(1.b) of the Code in that he engaged in sexual intercourse with Person A, the mandatory penalty provisions of section 51(5) of the Code applied. The Member did not oppose the College's submission.
- (5) As such, the Panel confirmed that it was bound by section 51(5) of the Code to impose a penalty revoking the Member's certificate of registration and an order that the Member appear before the Panel to be reprimanded.

DECISION AND DISCUSSION ON AN ORDER UNDER S. 51(2)(5.1) and (5.2) AND COSTS

- (6) On the question of costs and an order under sections 51(2)(5.1) and (5.2), at Dr. Haydarian's request, the Panel gave the parties an opportunity to deliver written submissions.

- (7) The Panel received submissions from the College, however, Dr. Haydarian did not provide written submissions by the agreed upon date and did not provide any explanation for his failure to do so.

Position of the College

- (8) The College seeks an order pursuant to s. 51(2)(5.1) and (5.2) of the Code that Dr. Haydarian reimburse the College for the costs of Person A's therapy and counselling in the amount of \$17,370.00. Person A has already accessed funding from the College in the amount of \$4,141.56.
- (9) In addition, the College seeks an order requiring Dr. Haydarian to pay costs to the College in the amount of \$234,569.60, which the College says is 70% of the College's legal costs and expenses, and costs and expenses of the discipline and penalty hearings¹.
- (10) In support of its position for an order reimbursing the costs of therapy and counselling, the College noted that Person A has already accessed funding from the College in the amount of \$4,141.56. Further, in her Victim Impact Statement, Person A explained that because of her relationship with Dr. Haydarian she has developed serious anxiety around men. While she has already obtained some therapy for herself and her children, she said that it is "very important" for her to continue to attend.
- (11) With respect to the issue of costs, the College argued that this was an appropriate case for costs. In support of its position, the College submitted the following:
- a. Dr. Haydarian prolonged the hearing unreasonably and unnecessarily. He raised meritless legal arguments, refused consent where appropriate, repeatedly appeared unprepared resulting in adjournments, costs thrown away and multiple and unnecessary written submissions. Dr. Haydarian tendered one document in support of his central response to the allegations – that is his alleged divorce certificate – which was erroneous on its face, requiring extensive cross-examination, the retention of an expert by the College and multiple costly translations.

¹ In its written submissions, the College erroneously requested \$298,766.83, which represents more than 80% of its actual costs.

- b. The quantum and proportion of costs sought by the College is in line with prior costs awards, including in the case of *Clokie v. RCDSCO*, 2017 ONSC 2773 (Div Crt) (“*Clokie*”).
- c. Dr. Haydarian was represented by senior, experienced counsel capable of advising him of the cost consequences of the conduct of his defence, and he was warned by the College that it would seek full costs (which it has not done) if the hearing proceeded.
- d. Dr. Haydarian resiled from/refused settlement. In doing so, Dr. Haydarian failed to recognize his misconduct, caused the College to incur significant costs for an unnecessary seven-day hearing, and secured a worse outcome for himself.

Position of Dr. Haydarian

- (12) Dr. Haydarian asked for and was provided the opportunity to deliver written submissions to the Panel on the question of costs. Counsel suggested that Dr. Haydarian would provide evidence of impecuniosity. No evidence was provided.

Panel’s Decision and Reasons

- (13) In addition to the mandatory penalty orders set out above, the Panel orders as follows:
 - a. Dr. Haydarian is ordered to reimburse the College for the costs of Person A’s therapy and counselling in the amount of \$17,370.00, pursuant to s. 51(2)(5.1) and (5.2) of the Code; and
 - b. Dr. Haydarian is ordered to pay two-thirds (or 66%) of the Actual costs incurred by the College, as set out in the Bill of Costs filed.
- (14) With respect to the order made pursuant to s. 51(2)(5.1) and (5.2), the Panel is satisfied that it is appropriate to require the Member to reimburse the College for the therapy and counselling funds which have been accessed by Person A. The membership of the College should not bear the costs of providing funding for therapy for patients who have been sexually abused. Person A made clear in her Victim Impact Statement that she has benefitted from being able to access therapy following her relationship with Dr. Haydarian, which has left her anxious.
- (15) With respect to the costs order, the Panel recognizes that the power to award costs is discretionary and that costs are not intended to be punitive. Costs are intended to recognize

that the full cost of an investigation and discipline proceeding should not be borne exclusively by the membership. It is fair and appropriate for the Member who is the subject of an investigation and discipline process, and who is found to have engaged in professional misconduct, to share in the costs incurred by the College.

- (16) The Panel is satisfied in all the circumstances that this is an “appropriate case” to order costs. As set out by the College in its submissions, Dr. Haydarian took steps in his defence of the allegations which resulted in lengthening the hearing by several days; requiring the College to call expert evidence and to spend money on translations; and to prepare for a late-breaking constitutional challenge which was ultimately abandoned. In addition, Dr. Haydarian chose to initially contest the motion brought by his wife to access exhibits, which required the preparation of written submissions by the College.
- (17) With regard to the quantum sought, the Panel notes that the College seeks 70% of its actual legal costs and expenses, and costs and expenses of the discipline and penalty hearings.
- (18) The Panel has considered the case law provided, including *Clokie*, and finds that the Member should be required to pay costs equivalent to two-thirds (or 66%) of the College’s actual legal costs and expenses and the costs and expenses of the discipline and penalty hearings. The *Clokie* case proceeded over a similar number of days as this matter, involved serious issues and had similar delays. The Panel does not take issue with the reasonableness of the actual costs incurred by the College in prosecuting this matter, however it is not prepared to require Dr. Haydarian to pay 70% of the College’s actual costs as set out in the Bill of Costs provided.

- (19) An order requiring the Member to pay two-thirds of the actual costs (\$218,154.72) is consistent with what this Discipline Committee has done in the past and consistent with the approach accepted by the Divisional Court in both *Clokie* and *Reid v. College of Chiropractors of Ontario*, 2016 ONSC 1041.

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



May 9, 2023

Date

Ms. Judy Welikovitch
Dr. Nancy Di Santo
Dr. Nalin Bhargava
Mr. Rod Stableforth

H200014

**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. AMIR ABBAS HAYDARIAN**, 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
 Ms. Judy Welikovitch
 Dr. Nancy Di Santo
 Dr. Nalin Bhargava
 Mr. Rod Stableforth

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO	) Appearances:)) Luisa Ritacca) Independent Counsel for the) Discipline Committee of the Royal) College of Dental Surgeons of Ontario
- and -	) ) Linda Rothstein and Glynnis Hawe) For the Royal College of Dental) Surgeons of Ontario)
DR. AMIR ABBAS HAYDARIAN	) Symon Zucker for the Member

Request for Reconsideration heard in writing.

SUPPLEMENTARY REASONS FOR DECISION ON PENALTY AND COSTS
ISSUED FOLLOWING DR. HAYDARIAN'S REQUEST FOR
RECONSIDERATION

OVERVIEW

- (1) On March 20, 2023, the parties appeared before this Panel to make submissions regarding a final penalty and costs.
- (2) At that hearing, the parties agreed to exchange written submissions to be filed with the Panel. The College was required to file its submissions by April 20th and Dr. Haydarian was required to do so by April 27th, 2023.
- (3) Dr. Haydarian did not file submissions on April 27th, 2023. Both the Hearings Administrator and Independent Legal Counsel followed up with Mr. Zucker, counsel who appeared at the March 20th attendance. In her email, Independent Legal Counsel advised Mr. Zucker that the Panel would be meeting to make a decision on the issue of penalty and costs on May 2, 2023. Counsel did not respond to any of the follow-up communications.
- (4) On May 9th, 2023, the Panel released its Reasons for Decision on Penalty and Costs, which was provided to Dr. Haydarian's counsel via email.
- (5) On May 12th, 2023, Independent Legal Counsel received an email from Nancy Tourgis, Dr. Haydarian's counsel who was present during the first phase of this hearing, but not present at the March 20th attendance. Ms. Tourgis' email to Independent Legal Counsel provides as follows:

Mr. Zucker is out of the country. He just sent me the Reasons of the Panel. I have asked to be copied on all communications on the Haydarian matter. Here are the Submissions on Costs of the Registrant. We ask that they, too, be place before the Panel.
- (6) Ms. Tourgis attached a 5-page cost submission to her email.
- (7) In response, the College provided the following submission by way of email:

The College objects in the strongest possible terms to the Member's submissions. The Member's responding costs submissions were due more than two weeks ago. He failed to deliver submissions by the mutually agreed deadline and failed to respond to multiple inquiries from ILC regarding the status of his costs submissions. He and his counsel were warned by ILC that if they failed to respond or file submissions that the panel would proceed to make its decision, which it did. The Member has not even provided an explanation for the delay. The submissions should not be considered by the panel.

ISSUE TO BE DETERMINED

- (8) The only issue before this Panel is whether it should consider Dr. Haydarian's cost submissions, after it has already released its decision.

DECISION AND DISCUSSION

- (9) This Panel has made a final decision in respect of the appropriate penalty and costs to be order in this matter. In the circumstances, we conclude that we are *functus*. There is nothing in the RHPA or in the Discipline Committee Rules that grants the Panel the discretion to reopen its decision at this stage.
- (10) Even if the Panel had discretion to reopen or reconsider its decision, it would not exercise such discretion in this instance.
- (11) Counsel for the College and Dr. Haydarian agreed upon a timetable for the exchange of written materials on March 20th, 2023. Dr. Haydarian's counsel received the College's submission on April 20th, as agreed upon. Counsel did not ask for more time to complete Dr. Haydarian's submissions. When contacted by the Hearings Administrator and Independent Legal Counsel, Dr. Haydarian's counsel did not respond. He did not advise that he was out of the country or that Dr. Haydarian's other counsel should be contacted. Instead, the follow-up email were not responded to.
- (12) Dr. Haydarian did not provide his submissions until three days after the release of our decision. While counsel advised that her co-counsel was out of the country, she provided no explanation for Dr. Haydarian's failure to provide his submissions in the time agreed upon or why her co-counsel did not respond to the reminder email sent after the date the submissions were due.
- (13) The Panel is *functus*. Even if the Panel had discretion to reconsider its decision, this is not an appropriate case which to exercise such discretion. Dr. Haydarian had ample

opportunity to provide this Panel with his cost submissions. He failed to do so. The Panel will not reconsider its decision, as set out in its Reasons for Decision, dated May 9, 2023.

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



June 6, 2023

Date

Ms. Judy Welikovitch
Dr. Nancy Di Santo
Dr. Nalin Bhargava
Mr. Rod Stableforth

Overview

[1] Dr. Amir Abbas Haydarian appeals from a decision of the Discipline Committee of the Royal College of Dental Surgeons of Ontario (“the Panel”) dated January 20, 2023 (the “Decision”), the related penalty and costs decision dated May 9, 2023 and the supplementary reasons for the penalty and costs decision dated June 6, 2023.

[2] The Panel found that the appellant had engaged in sexual abuse of a patient, E.O., contrary to s. 51(1)(b.1) of the *Health Professions Procedural Code* being Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the “Code”).

[3] The Panel rejected the appellant’s argument that he was sheltered by the exemption under s. 1(5) of the *Code* as he was married to E.O. when he had sexual relations with her.

[4] The Panel found that the appellant was still married to A.H. and that he was not divorced on October 19, 2018 when he requested a proxy in Iran to conduct a religious ceremony that would grant him a divorce. The Panel found that he was not married to E.O. despite his statement that he attended an un-officiated and non-religious ceremony with her. The Panel did not accept his argument that his marriage to E.O. was legal because it was “voidable or void” and he entered into it in good faith.

[5] The Panel accepted the evidence of E.O. that she had a sexual relationship with the appellant as of September 6, 2018 and that they were never married.

[6] Given the sexual abuse finding, mandatory revocation of the appellant’s certificate of registration was required under s. 51(5) of the *Code*.

[7] In addition, the Panel found that that the appellant’s decision to become a co-mortgagee with another patient would be regarded by other members of this profession as disgraceful, dishonourable, unethical and unprofessional.

[8] The appellant was ordered to reimburse the College for the cost of E.O.'s therapy and counselling in the amount of \$17,370, pursuant to ss. 51(2)(5.1) and (5.2) of the *Code*.

[9] The appellant was ordered to pay costs in the amount of \$218,154.72.

[10] For the reasons set out below, the appeal is dismissed.

Background

[11] E.O. became the appellant’s patient on or about June 2018 and remained his patient into the spring of 2020. There was no dispute that at least as of October 19, 2018 and up until the spring of 2020, the appellant engaged in a sexual relationship with his patient, E.O. The main issue before the Panel was whether E.O. was the appellant’s “spouse” within the statutory meaning when they began a sexual relationship.

[12] The appellant's evidence at the hearing was that he commenced sexual relations with E.O. on October 19, 2018. He stated that on the same day he had divorced his wife, A.H., in an Islamic divorce proceeding that took place in Iran with his brother's help.

[13] The appellant testified that he obtained a *Talaq* divorce with a notary public in Iran as the appellant's proxy. The appellant was not present for these divorce proceedings. He did not provide a copy of related emails. He did provide a copy of a "Divorce Certificate", though it was not accompanied by an affidavit or statutory declaration to confirm its authenticity.

[14] The appellant testified that on the same day, he and E.O. were married in a private Islamic ceremony in Toronto at which only he and E.O. were present.

[15] E.O. testified that she considered herself to be engaged to the appellant beginning on September 6, 2018, and that they had sexual intercourse on that date. E.O. denied participating in any marriage ceremony with the appellant. Their child was born on July 9, 2019.

[16] The Panel found it more likely than not that the sexual relationship began on September 6, 2018, as E.O.'s evidence was credible, and was supported by corroborating photographs of a close and intimate relationship between E.O. and the appellant.

[17] While E.O. had called the appellant her "husband" from time to time, the Panel accepted her explanation that the appellant had wanted her to refer to him in that manner and that she understood that she and the appellant were not married, either legally or religiously.

[18] The Panel found that there was no dispute that the appellant was still married to A.H. when he commenced sexual relations with E.O. on September 6, 2018. The Panel went on to consider the issue of the alleged marriage to E.O. on October 19, 2018, given the appellant's position that the sexual relationship did not commence until October 19, 2018.

[19] The Panel found on a balance of probabilities, based upon the evidence, that as of October 19, 2018, the appellant was still married to his wife, A.H. The Panel noted that even if it had accepted the appellant's evidence regarding the divorce proceedings, the Panel was not satisfied that the proceeding would be recognized under Canadian law. Neither spouse was habitually resident in Iran for one year preceding the commencement of the divorce proceedings, there is no "real and substantial connection to the place of the divorce", and there was no notice to A.H. of the alleged foreign divorce proceedings.

[20] The Panel did not accept, based on the evidence, that the appellant was or could have believed himself legally married to E.O. as of October 19, 2018. The Panel found that a party cannot enter into a legally binding marriage with another person while being legally married to a third person, and the appellant knew he was legally married to A.H. at the time of the alleged religious marriage with E.O.

[21] The second allegation dealt with the appellant co-signing a mortgage with a second patient, D.F. The appellant admitted that D.F. was his patient at the material time; the Panel found that the appellant co-signed the mortgage; and appellant stated that he would not do it again.

[22] Having found sexual abuse, the Panel was bound by s. 51(5) of the *Code* to impose a penalty revoking the appellant's certificate of registration. The Panel also ordered the appellant to reimburse the College for the cost of E.O.'s therapy and counselling and to pay two-thirds of the legal costs incurred by the College.

Issues

[23] The issues for determination are:

1. Did the Panel err when it found that E.O. was not a spouse when the appellant had sexual intercourse with her?
2. Did the Panel err on the issue of the co-signing of the mortgage?
3. Did the Panel err in making its remedy/costs decision?

Standard of review

[24] In accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, the standard of review is correctness on questions of law, palpable and overriding error on findings of fact, and palpable and overriding error on questions of mixed fact and law (absent an extricable question of law).

[25] With respect to appeals from a sanction imposed by a regulated professions tribunal, the court will interfere with a tribunal's penalty decision only if the penalty reflects an error in law, an error in principle, or if the penalty is "clearly unfit": *Cabot v. College of Nurses of Ontario*, 2023 ONSC 2977 (Div. Ct.), at para. 23, citing *Budarick v. the Corporation of the Townships of Brudenell, Lyndoch and Raglan (Integrity Commissioner)*, 2022 ONSC 640 (Div. Ct.), at para. 40. A penalty will be clearly unfit where the decision does not fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *College of Physicians and Surgeons of Ontario v. Peirovy*, 2018 ONCA 420, 143 O.R. (3d) 596, at para. 38, citing *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47.

Discussion

Issue #1: Did the Panel err when it found that E.O. was not a spouse when the appellant had sexual intercourse with her?

[26] The appellant focuses on the definition of "spouse" in connection with admitted sexual relations on October 19, 2018. The overlooks the impact of the findings regarding September 6, 2018.

[27] No error has been shown in the Panel finding that the intimate relationship commenced between the appellant and E.O. in September 2018, before even the appellant submits they were married.

[28] There was extensive evidence that the appellant and E.O. had an intimate relationship commencing in September 2018. Moreover, the Panel accepted the evidence of E.O. in that regard and was entitled to make the credibility findings on the record before it.

[29] The evidence indicates the appellant obtained E.O.'s phone number from her patient form and called her to ask if he could come to visit her. He obtained her address through the patient form as well.

[30] E.O.'s evidence that they had sexual relations in September was accepted as was her evidence that they did not marry. She was consistent in saying that she wanted to be married in a Christian ceremony and would not and did not consider herself married until they were able to perform such a ceremony.

[31] E.O.'s photographs filed in evidence also provided corroboration that she and the appellant were engaged in a close and intimate relationship prior to October 19, 2018.

[32] The appellant did not show any palpable and overriding error regarding the finding that the appellant and E.O. were not spouses at the time they first had sexual intercourse in September 2018. This, alone, supports the finding of sexual abuse and resulting penalty.

[33] There is a spousal exception, which the appellant relies on for the events that commenced on October 19, 2018. Briefly, sexual intercourse or other forms of physical sexual relations between a member and a patient who is the member's spouse is not, in itself, professional misconduct. Relevant to the case at hand, s. 1(6) of the *Code* defines "spouse" as the member's spouse as defined in the *Family Law Act*. Section 1(1) of the *Family Law Act* defines "spouse" as follows:

"spouse" means either of two persons who,

- a) are married to each other, or
- b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right.

Most of this appeal was focused on alleged errors by the Panel in the interpretation of the above exception, as it was applied to the events of October 19, 2018. However, given the above findings about September 2018, there is no need to address those issues.

Issue #2: Did the Panel err decision on the issue of the co-signing of the mortgage ?

[34] The appellant argues that the Panel erred when it found that he had admitted to committing professional misconduct. Rather, he stated that he felt the need to assist a fellow Iranian but he would not do it again in the future.

[35] The Panel summarized the appellant's evidence in its reasons for decision. The Panel acknowledged the appellant's explanation that he wanted to help his patient, a newcomer, find her footing. The Panel indicated that the appellant now understood that these events constituted a

boundary-crossing and that he would not do it again and that he now understood that his conduct constitutes a breach of the related practice advisory.

[36] The transcript of the appellant's evidence shows that he apologized if what he did was crossing a boundary and said he would never do it again. Although the Panel may have misstated his testimony on this fact, nevertheless, the Panel's finding that he co-signed a mortgage with a patient, and that this constituted professional misconduct was based on the other evidence before it. No palpable and overriding error has been shown.

Issue #3: Did the Panel err in making its costs and penalty award?

[37] As discussed above, because the sexual abuse finding stands, the penalty is mandatory.

[38] The appellant did not identify any specific errors in the costs awards instead generally submitting that they were punitive in nature.


[39] The Panel did not err when it ordered the appellant to pay for E.O.'s therapy and counselling in the amount of \$17,370.

[40] The Panel did not err in its costs award, which is consistent with other similar cases, reflects the length of the proceeding, involvement of an expert witness and a constitutional challenge which was eventually abandoned.


[41] Section 53.1 of the *Code* provides that costs can include the costs of the investigation and hearing. The award of costs is discretionary and the standard of review is reasonableness: see *Veneri v. College of Chiropractors of Ontario*, 2010 ONSC 473 (Div. Ct.), at para. 6. There was no error of principle and the costs award is not plainly wrong.

[42] The Panel considered the relevant factors, the conduct of the appellant at the hearing, and the length of the hearing resulting in costs in the amount of \$218,154.72.

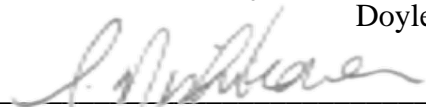
[43] Accordingly, the appeal is dismissed with costs to the respondent in the agreed amount of \$5,000 all inclusive.



Matheson J.



Doyle J.



Nishikawa J.

Date: December 5, 2023

CITATION: Haydarian v. Royal College of Dental Surgeons of Ontario, 2023 ONSC 6830
DIVISIONAL COURT FILE NO: 119/23
DATE: 2023/12/05

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Matheson, Doyle and Nishikawa JJ.

BETWEEN:

AMIR ABBAS HAYDARIAN

Appellant

– and –

ROYAL COLLEGE OF DENTAL SURGEONS OF
ONTARIO

Respondent

REASONS FOR JUDGMENT

Released: December 5, 2023