

IN THE MATTER OF THE DENTAL DISCIPLINES ACT, 1997 and a FORMAL COMPLAINT dated August 14, 2009 regarding Dr. Raymond Abouabdallah of Montreal, Quebec, and formerly of Saskatchewan, RAISING PROFESSIONAL ISSUES

BETWEEN:

The College of Dental Surgeons of Saskatchewan

- and -

Dr. Raymond Abouabdallah

SENTENCING DECISION

THE DISCIPLINE COMMITTEE HEARING PANEL:

Ms. Francine Chad Smith, Q.C., Chair of Hearing Panel
Dr. Hilary Stevens, Chair of Discipline Committee
Dr. Todd Graham, Past Chair of Discipline Committee
Dr. Raj Bhargava, Member of College
Ms. Margaret Wheaton, Appointee to the College Council

APPEARANCES:

For the Professional Conduct Committee:
Mr. Reynold Robertson, Q.C.

For Dr. Abouabdallah:
Mr. Anthony Rizzi, Counsel – by telephone
Dr. Raymond Abouabdallah – by telephone

DATE OF HEARING: October 24, 2012
DATE OF DECISION: December 7, 2012

[1] In our decision of August 13, 2012 we found Dr. Raymond Abouabdallah guilty of nearly all of the charges against him in the Formal Complaint dated August 14, 2009. The findings we made follow:

Incompetency:

1. In providing dental treatment to [REDACTED] from January 14, 2002 to and including June 21, 2008, Dr. Abouabdallah displayed a lack of knowledge, skill or judgment, and a disregard for the welfare of [REDACTED], particulars of which are:

- (a) Failure to prepare, explain and record a treatment plan respecting:
 - (i) alleged Periodontal services;
 - (ii) Prosthodontic services; and
 - (iii) Endodontic services;
- for [REDACTED] to allow [REDACTED] to make an informed consent as to treatment;
- (b) Lack of skill in providing endodontic treatment to teeth #26, #27, #35, #36, and #47;
- (c) Lack of skill in providing prosthodontic treatment between May 20, 2005 and October, 2007;
- (d) Failure to refer [REDACTED] to specialists in the fields of endodontics, prosthodontics and periodontics when the provision of treatment in those areas was complex and beyond his skill level;
- (e) In his charting:
 - (i) Failure to keep medical history current;
 - (ii) Failure to provide complete and specific treatment and diagnostic information;
 - (iii) Use of sticky notes to record information as opposed to making chronological notes in the chart;
 - (iv) Failure to record patient treatment and recording periodontic treatment not performed;

All of the foregoing were of a nature or to an extent that demonstrates that Dr. Abouabdallah is unfit to provide services ordinarily provided as part of the practice of the profession of dentistry, including:

- (a) provision of endodontic treatment;
- (b) maintenance of proper charting;
- (c) provision of periodontic treatment;
- (d) provision of prosthodontic treatment;
- (e) diagnosis of a patient's complaint; and

(f) providing an adequate treatment plan for a patient.

And that all of the forgoing conduct and treatment provided by Dr. Abouabdallah was contrary to:

- (a) *The Dental Disciplines Act*, 1997, section 26(a) and 26(b);
- (b) Bylaws of the College of Dental Surgeons, section 9.2(1)(c), 9.2(1)(f), 9.3(1)(a) - (f) inclusive and 9.3(3);
- (c) Code of Ethics, Responsibilities to Patients, Article 2 (competency), and Article 3 (consultation and referral) and Article 12 (records).

Misconduct:

1. In relation to dental services Dr. Abouabdallah provided to [REDACTED] from January 14, 2002 to and including June 21, 2008, Dr. Abouabdallah:

- (a) Charged excessive fees for periodontal, endodontic and prosthodontic services;
- (b) Charged fees for periodontal dental services not performed;
- (c) Charged fees for dental services performed incompetently, being endodontic treatment and prosthodontic treatment;
- (d) Knowingly submitted false or misleading accounts for services rendered;

causing [REDACTED] to pay Dr. Abouabdallah the sum of \$148,350.30;

all of which is contrary to:

- (a) *The Dental Disciplines Act*, 1997, section 27(a), 27(b), and 27(c); and
- (b) Bylaws of the College of Dental Surgeons, section 9.2(2)(a) and 9.2(2)(b) and 9.2(2)(g); and
- (c) Code of Ethics, Responsibility to Patients, Article 2 (competency), Article 3 (consultation and referral), and Article 12 (records);

2. In providing dental treatment to [REDACTED] between January 14, 2002 and June 21, 2008, Dr. Abouabdallah:

- (a) Falsified records regarding the examination and treatment of [REDACTED];
- which is contrary to:

- (a) *The Dental Disciplines Act*, 1997, section 27(a) and 27(c);
- (b) Bylaws of the College of Dental Surgeons, section 9.2(1)(f), 9.2(2)(f), 9.2(2)(r), 9.3(1)(b) to (f) inclusive; and
- (c) Code of Ethics, Responsibility to Patients, Article 12 (records).

[2] While the above recitation did not include incompetency regarding the actual delivery of periodontic services to [REDACTED] nevertheless, we made a general finding that Dr. Abouabdallah was not competent to deliver periodontic services to patients. In paragraph 197 of our decision, we observed:

With respect to professional incompetence, having concluded Dr. Abouabdallah did not perform the periodontic grafts, we have not found him incompetent in relation to having failed to prepare, explain and record a treatment plan regarding those periodontic treatments as charged in item 1(a) of the Formal Charge. Nor have we found him guilty of failing to refer to a specialist in periodontics because of our finding that he did not perform the grafts. Nevertheless, we have found him to be incompetent to provide periodontic work because his false chart entries demonstrated his lack of knowledge and understanding of periodontal diagnoses and treatment.

[3] We accepted the opinion expressed by both Dr. Sutherland and Dr. Tenaski that neither the prosthodontic work, nor the periodontic work reflected in the chart, (the latter of which we found had not been performed) had been required. As those experts observed the work performed, or alleged to have been performed, were simply “make work projects”.

[4] In addition, Dr. Abouabdallah’s chart did not demonstrate the endodontic work was required.

[5] Lastly, at paragraph [195] of our substantive decision we stated:

We regret to conclude that this case presents sufficient evidence for us to find that [REDACTED] being an unsophisticated and trusting individual, was targeted by Dr. Abouabdallah for the highly unethical treatment and charges [REDACTED] was subjected to.

[6] After undergoing the extensive treatment by Dr. Abouabdallah, [REDACTED] dental health, including the resulting irregular external lip line and resulting internal structural irregularities, was significantly worse than [REDACTED] condition before the treatment. Furthermore, [REDACTED] was left out of pocket \$ 148,443.80 for that deplorable result.

[7] We have also considered the victim impact statements of [REDACTED] the Complainant, and of [REDACTED]

[8] An excerpt from [REDACTED] statement follows:

. . . The condition of my mouth affects how I chew, how I speak, the ease of which I open my mouth, and my facial appearance. I live with an abscess in my mouth and can expect more to come. My pain varies with the abscess activity.

I spent my savings and this affects what I can spend and how I live. I trusted a professional dentist when his work was not to be trusted. He took me for what I now don't have – the health of my mouth and my retirement fund. I am now uncertain as to who I can trust. . . .

[9] ██████ statement, noting that ██████ lived through the four years from the date of complaint to now, focussed on the response of Dr. Abouabdallah to the complaint, compensation for ██████, and included a request that the decision in this matter be delivered to the regulator of dental practice in Quebec with a view to having Dr. Abouabdallah's practice there constrained by our orders. With reference to Dr. Abouabdallah's response to the complaint, ██████ noted:

During this entire process Dr. Abouabdallah and council [*sic*] have primarily endeavoured to delay or circumvent the college. They have shown no concern or conscience for the plight of ██████ in the face of overwhelming evidence of wrong doing on the part of Dr. Abouabdallah. Recognizing the fact that that the College's mandate is to protect the public we believe that sentencing should include conditions for recovery of ██████ funds. This is a case of both dental incompetence and larceny.

Submissions by Counsel:

The Professional Conduct Committee:

[10] Counsel for the Professional Conduct Committee sought the following penalties be imposed against Dr. Abouabdallah:

1. That he be expelled from the College of Dental Surgeons of Saskatchewan and his name be struck from the register;
2. That he make restitution to ██████ in the amount of \$ 148, 443.80;
3. That he pay a fine of \$ 5,000.00;
4. That he pay the costs of the investigation and hearing into his conduct and related costs, including the costs of legal services and witnesses estimated at \$ 140, 301.09 as of October 1, 2012, and such further costs as may be established after the final determinations of the Discipline Committee;

5. That the College publish a summary of the Formal Complaint and the decision on penalty in the College newsletter; and
6. That Dr. Abouabdallah publish an apology to [REDACTED]

[11] The findings of the Hearing Panel of the Discipline Committee were relied upon to support the penalties requested. Counsel also invited us to consider the factors for determining penalty as contained in the Discipline Manual of the Royal College of Dental Surgeons of Ontario at pp 41-42. Those factors were applied in the College's disciplinary cases involving Dr. Dufour (Chaired by William Johnson, Q.C.) and Dr. Lawrence Ho (Chaired by Francine Chad Smith, Q.C.)

[12] Counsel also relied upon the principles of sentencing enunciated by the Saskatchewan Court of Appeal in *Regina v. Morrissette (1970)*, 75 W.W.R. 644.

[13] With respect to the conclusions of the Hearing Panel into the allegations contained in the Formal Complaint, Counsel stated the evidence is overwhelming that Dr. Abouabdallah is incompetent and unfit to deliver dental services to patients. He submitted the level of incompetence and misconduct represents a danger to the public, particularly the guiding maxim that dentists should do no harm as Dr. Sutherland testified.

[14] Here Dr. Abouabdallah was also proven to be a cheat. In the course of providing dental services to [REDACTED] "he preyed upon [REDACTED] to the extent of \$ 148, 443.80 and left [REDACTED] with worse dental health than before" [REDACTED] treatment. Then Dr. Abouabdallah chose not to face up to the seriousness of the charges and fought to avoid them. Lastly, Dr. Abouabdallah has not shown any contrition or desire to apologize to, and reimburse [REDACTED] who is an unsophisticated and trusting individual.

Dr. Abouabdallah:

[15] Counsel for Dr. Abouabdallah submitted the doctor never attempted to delay or avoid the disciplinary process. Rather, at all times he was exercising his rights to contest the issue of the jurisdiction of the Hearing Panel of the Discipline Committee because he was at the time residing and practising in Quebec.

[16] Regarding the submission that Dr. Abouabdallah should be ordered to pay the costs of the investigation and hearing, Counsel submitted that would be oppressive, exorbitant, blatantly severe and contrary to section 34 (2) (ii) of *The Dental Disciplines Act*. He submitted the majority of the costs were in relation to the appeal hearings before the courts and were addressed by the Courts. Accordingly to the

extent that the costs requested include those amounts, they should be disregarded. Counsel also took issue with the lack of supporting documentation in relation to the costs requested.

[17] Regarding an order for restitution of fees to ██████████ Counsel submitted the amount of \$ 148,443.80 is inaccurate because ██████████ failed, neglected or omitted to produce ██████ income tax statements into the record that would clearly show what ██████ paid in terms of expenses for ██████ treatment under Dr. Abouabdallah". In addition, it was submitted that account should be taken of the fact ██████ ██████████ was able to deduct dental fees from ██████ taxes payable. It was also submitted repayment of the full amount of the fees would fail to take into account the work performed by Dr. Abouabdallah, or the estimated costs for such work as presented in evidence during the hearing. In addition Counsel relied upon the fact no evidence was introduced at the hearing regarding the costs to repair the work done by Dr. Abouabdallah.

[18] Lastly, Counsel for Dr. Abouabdallah submitted all of the following matters should be taken into account: Dr. Abouabdallah was unable to defend the allegations against him, he was denied the right to a full and fair defence, his requests for particulars were denied, and he did not receive full disclosure of the evidence.

[19] Following all the submissions by Counsel, Dr. Abouabdallah expressed a wish to address the Hearing Panel and was invited to proceed. His remarks focussed on facts that related to the evidence before us in arriving at our findings of fact. They generally included comments previously made by him that were before us through exhibits filed at the hearing, such as: ██████████ was always very pleased with the work that was done; that the work had to be done because ██████████ suffered from TMJ; and that the work done for ██████████ was of the very highest standard. After listening for a few minutes, the Chair interrupted Dr. Abouabdallah to advise this was not the information we were willing to hear at this time, and asked if he had any remarks to make regarding the nature of penalty to be imposed. He declined to make any further submissions.

The Decision:

[20] The Hearing Panel has addressed the legally significant submissions made on behalf of Dr. Abouabdallah in our substantive decision.

[21] We have taken into account the following considerations drawn by the Royal College of Dental Surgeons of Ontario, and applied by Saskatchewan Hearing Panels in the cases of *Dufour* and *Ho*:

Considerations in assessing a penalty

The three major considerations in assessing a penalty are:

- (i) the effect on, and appropriateness for, the dentist (reformation, rehabilitation and deterrence);
- (ii) the effect on future conduct of the other dentists (deterrence); and
- (iii) the expression of regard and concern on behalf of the public interest about the conduct in issue (punishment).

In assessing the appropriate penalty in any particular case, the panel may consider any relevant evidence or submissions including the following:

- (i) the seriousness of the misconduct including the effect on the patient (where applicable);
- (ii) the wilfulness and persistence of the misconduct;
- (iii) the previous disciplinary record of the dentist;
- (iv) the character of the dentist;
- (v) the effect of the proposed penalty upon the dentist; and
- (vi) the deterrent effect of the penalty upon other dentists.

The panel should not be influenced by the following factors:

- (i) the attitude if [sic] the dentist or his/her counsel during the hearing as it relates to the "likeable-ness" of his/her personality (i.e. whether s/he has a cavalier attitude towards witnesses and counsel, etc.); and
- (ii) any conduct other than that alleged in the Notice of Hearing.

[22] We have also had reference to the Saskatchewan Court of Appeal case of *R v. Morrisette* (1970), 75 W.W.R. 644 (Culliton, CJS). Although the case addresses sentencing in a criminal matter, the comments on behalf of the Court, contained in the headnote, are applicable here. Those comments are:

While the principal factors to be considered in fixing an appropriate sentence are punishment, deterrence, protection of the public and the reformation and rehabilitation of the offender, the approach to the question must be flexible and subject to change as social concepts change. The public can best be protected by the imposition of sentences that punish the offender, that may deter him and others from committing such an offence and may assist in his reformation and rehabilitation. . . .

[23] We find the facts of this case to be highly egregious. The level of incompetency was high. The incompetency demonstrated included many basic and fundamental components of dentistry. The nature and breadth of the incompetent work was extensive – it amounted to essentially a reconstruction of the complainant’s mouth. Most, if not all, of the work was unnecessary. And there was a marked level of fraud, dishonesty and fee gouging. The work performed failed to meet acceptable professional standards and left ██████████ in worse dental health than before the treatment began. There can be no question that all fees paid should be reimbursed to ██████████

[24] In the case of Dr. Lawrence Ho, the Hearing Panel of the Discipline Committee was cognizant of concerns expressed by the courts that the high costs of professional discipline cases may prevent, or limit the ability of, professionals from defending charges against them. We have also considered *Barik v. College of Physicians and Surgeons* (1992), 100 Sask. R. 26 (C.A.) where the Court concluded the assessment of costs is compensatory, and not punishment. The Court went on to note at page 28, para. 5 the following:

... the awarding of compensation is discretionary and must be exercised judicially. The reasonableness of the assessment or awarding of compensation to the investigation body is therefore subject to judicial review.

Bearing these considerations in mind, and the fact that Dr. Ho was required to pay 50% of the costs, we conclude it is reasonable to order Dr. Abouabdallah pay 65% of the costs. His conduct was more egregious than that of Dr. Ho, and Dr. Abouabdallah’s delays and incomplete responses to requests for information, together with his lack of co-operation generally throughout the process, resulted in more work being necessitated than otherwise should have been required. In this regard I am specifically not faulting him for Court proceedings regarding jurisdiction.

[25] We have a broad mandate in relation to the scope of the costs we may order be paid pursuant to section 34(2)(a)(ii) of The Dental Disciplines Act. It reads:

- 34 (2) In addition to an order made pursuant to subsection (1), the discipline committee may order:
- (a) that the member pay to the association within a fixed period:
 - ...
 - (ii) the costs of the investigation and hearing into the member’s conduct and related costs, including the expenses of the professional conduct committee and

the discipline committee and costs of legal services and witnesses.

Accordingly, we are going to require him to pay 65% of the costs of the investigation and hearing, including all related costs and the expenses of the Professional Conduct Committee and the Discipline Committee, and the costs of the legal services and witnesses, in relation to the investigation and the hearing, including the sentencing hearing. Counsel for the Professional Conduct Committee has advised the costs presented to date do not include any costs in relation to the court applications, as those costs have been addressed in the respective judgments. We accept that to be an appropriate approach to the matter.

[26] When all the costs have been submitted, Counsel of the Professional Conduct Committee shall deliver to Dr. Abouabdallah, through his Counsel, an itemization thereof. Dr. Abouabdallah shall have the right to have those costs taxed.

[27] Given that we are requiring Dr. Abouabdallah to pay 65% of the costs, and imposing other severe penalties, we do not consider assessing a fine of \$ 5,000.00 in addition thereto, as requested by Counsel for the Professional Conduct Committee, would serve any useful purpose.

[28] We are also declining to require Dr. Abouabdallah to publish an apology to [REDACTED] as requested by Counsel for the Professional Conduct Committee. This is not because we do not believe an apology is in order. We have formal notice that Dr. Abouabdallah shall be challenging the decision, and under the circumstances it is our opinion that such an order should not be made.

[29] Taking into account the facts of this case, including our foregoing comments, we make the following orders in relation to Dr. Raymond Abouabdallah:

1. That Dr. Raymond Abouabdallah be expelled from the association and that his name be struck from the register of the College of Dental Surgeons of Saskatchewan;
2. That Dr. Abouabdallah pay the amount of \$148,443.80 to the Complainant, [REDACTED], being the full amount of fees paid to Dr. Abouabdallah by [REDACTED] by delivering such payment to the College of Dental Surgeons of Saskatchewan;
3. That Dr. Abouabdallah pay costs to the College of Dental Surgeons of Saskatchewan equal to 65% of the total costs incurred in relation to the investigation and hearing, including the sentencing portion of the hearing, and all related costs, including the

expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses.

4. That a summary of the charges against Dr. Abouabdallah, together with the penalties imposed, and such additional findings or comments in the decisions of the Hearing Panel the Registrar or the Professional Conduct Committee deem appropriate, be published in the newspaper of the College.
5. That a similar summary be published in, or prepared in a press release for, at least one major newspaper in Saskatchewan that is distributed in or close to Foam Lake. And,
6. That the Registrar of the College deliver forthwith to the governing body of dentists in the Province of Quebec, a copy of the August 13, 2012 decision, a copy of this Sentencing Decision, and a copy of the Notice of Appeal regarding the August 13, 2012 decision.

DATED at Saskatoon, Saskatchewan this 7th day of December, 2012.

THE COLLEGE OF DENTAL SURGEONS OF SASKATCHEWAN DISCIPLINE COMMITTEE

per:

"Francine Chad Smith"
Francine Chad Smith, Q.C.
Chair of Discipline Hearing Panel

"Hilary Stevens"
Dr. Hilary Stevens
Chair of the Discipline Committee
Member of the Hearing Panel

"Margaret Wheaton"
Ms. Margaret Wheaton
Member of Discipline Hearing Panel
and Lay Member of Council

"Todd Graham"
Dr. Todd Graham
Past Chair of Discipline Committee
Member of Discipline Hearing Panel

"Raj Bhargava"
Dr. Raj Bhargava
Member of the Hearing Panel