

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, RSBC 1996, C. 183

AND

IN THE MATTER OF A HEARING BY

THE COLLEGE OF DENTAL SURGEONS OF BRITISH COLUMBIA INTO

THE CONDUCT OF REGISTRANT

DR. SERGEI AGAFONTSEV

**CONSENT ORDER PROPOSAL TO INQUIRY
COMMITTEE:**

REGISTRANT ADMISSIONS AND CONSENTS

Citation Issued: June 7, 2013

Hearing Dates: November 12-15, 2013

Proposal Submitted: November 4, 2013

1.0 AUTHORITY and ACKNOWLEDGMENTS

1.1 As permitted under section 37.1(1) of the *Health Professions Act* (the “HPA”), Dr. Sergei Agafontsev hereby provides this consent order proposal to the Inquiry Committee (the “Committee”) of the College of Dental Surgeons of British Columbia (the “College”). The proposal has been arrived at jointly with Dr. Agafontsev, through his legal counsel, and counsel to the College.

1.2 The College and Dr. Agafontsev acknowledge that acceptance of this proposal would result in the Committee making an order consistent with the proposal, which order would be considered to be that of a discipline committee for all purposes. The College and Dr. Agafontsev acknowledge that rejection of this proposal would result in the hearing of the Citation in this matter proceeding, without prejudice to Dr. Agafontsev’s right to seek an adjournment, and that the discipline committee in that hearing must not consider any admission or consent provided herein. The Citation in this matter is attached as **Appendix “A”**.

2.0 BACKGROUND and SUMMARY of AGREED FACTS

Registrant Information

2.1 Dr. Agafontsev is 58 years of age, was registered with the College to practise dentistry as of March 1997 and has been continually registered since then. At all times relevant to this proposal and the hearing of the Citation, Dr. Agafontsev was practising general dentistry out of his practice in Vancouver, BC.

Complaint and Investigation Summary

CDSBC File No. 6045

- 2.2 In March 2009, the College received a written complaint from Ms. B. C. dated February 21, 2009. The complaint outlined concerns about treatment she received in August-September 2008 from Dr. Agafontsev in relation to her concerns about gingival recession. The College conducted an investigation that included seeking and reviewing information from the complainant, respondent and third parties, including five other dentists who treated the complainant.
- 2.3 Paragraph 1 of the Citation outlines the various allegations made by the College arising out of the investigation into Ms. B.C.'s complaint.

CDSBC File No. 101795

- 2.3 Mr. R.V. submitted a complaint letter to the College dated November 19, 2010. The complainant had sought treatment from Dr. Agafontsev in October 2010 to address a lost filling. The College's investigation included interviewing the complainant, Dr. Agafontsev and certain staff members of his dental office.
- 2.5 Paragraphs 2 and 3 of the Citation set out the allegations made by the College arising out of the investigations into Mr. R.V.'s complaint.

CDSBC File No. 101843

2.6 In early February 2011, the College received a complaint against Dr. Agafontsev dated January 29, 2011, from Ms. R.R. The complainant had sought advice and treatment from Dr. Agafontsev in November and December 2010 for placement of veneer restorations. The College conducted an investigation leading to the allegations arising from Ms. R.R.'s complaint as found at Paragraph 4 of the Citation.

CDSBC File No. 102222

2.7 Ms. F.P. submitted a written complaint against Dr. Agafontsev to the College dated April 16, 2012. The complaint related to endodontic and crown removal treatment performed by Dr. Agafontsev in or about February 2012. The College investigation included interviews with the complainant and respondent and review of information from other dentists who treated the Ms. F.P.

2.8 The allegations arising from the investigation into Ms. F.P.'s complaint are set out in Paragraph 5 of the Citation.

Citation Decision and Issuance

2.9 In August 2012, the Inquiry Committee reviewed a memorandum from College Complaint Investigator Dr. Alex Penner regarding the four complaint investigations summarized above. On August 21, 2012, the Committee directed the Registrar to issue a

citation pursuant to section 37 of the *Health Professions Act* against Dr. Agafontsev. The College notified Dr. Agafontsev's legal counsel of this decision by letter dated August 24, 2012.

2.10 The Citation in this matter was issued on June 7, 2013, and acknowledgment of service made on Dr. Agafonstev's behalf by his legal counsel on June 17, 2013. The Citation established hearing dates of November 12-15, 2013, in Vancouver.

Additional Relevant Facts

2.11 In July 2003, Dr. Agafontsev executed a Mutual Acknowledgment and Undertaking (the "MAU") with the College arising out of four earlier complaints unrelated to those at issue in the current Citation. In the MAU, Dr. Agafontsev gave acknowledgments as to concerns about diagnosis and treatment planning, standard of care in treating patients, lack of informed patient consent and inadequate patient recordkeeping. Dr. Agafontsev undertook to engage in various remedial measures including coursework, study club participation and a periodontic mentorship program. Dr. Agafontsev satisfied the undertakings given in the MAU.

3.0 ADMISSIONS

3.1 Dr. Agafontsev admits to each of the allegations in the Citation issued June 7, 2013, as specifically alleged in that document, except as modified below:

3.1.1 With respect to allegation 1(c), Dr. Agafontsev admits that he failed to provide adequate care, attention and supervision of his employee(s) in the preparation of the transcript provided to the College;

3.1.2 With respect to allegation 3(a), Dr. Agafontsev admits:

- that he did not show the drawing referred to in that subparagraph to the patient but prepared the drawing during the investigation of the complaint in order to illustrate the treatment provided; and
- that he miscommunicated the origin and intent of the drawing to the College during the complaint investigation;

3.1.3 With respect to the allegation in 3(b), Dr. Agafontsev admits that he failed to provide adequate care, attention and supervision of his employee(s) such that the patient's record/chart was amended to indicate a notation by an employee ("JC") who had not in fact made that notation; and

3.1.4 With respect to allegation 4 (a) (ii), Dr. Agafontsev admits to a failure to provide adequate care, attention and supervision of his employee(s) with respect to that patient's records as particularized in the Citation.

3.2 Dr. Agafontsev acknowledges that the allegations and admissions raise concerns regarding his understanding of and the obtaining of informed consent, his quality of dental care and treatment and his supervision of employees in relation to patient recordkeeping.

4.0 CONSENT to ORDER and INDEMNITY

4.1 In light of the agreed facts and registrant's admissions above, Dr. Agafontsev hereby proposes to resolve the allegations in the Citation on the following basis:

- 4.1.1 Consent to a reprimand;
- 4.1.2 Consent to indemnify the College for its costs of the investigation of the various matters leading to the Citation in an amount fixed at \$1,500.00, payable within 30 days of the making of an order by the Committee arising out of this proposal;
- 4.1.3 Consent to the imposition of conditions on his practice of dentistry as follows:
 - a. completion (by way of pass or pass with conditions) of the Professional/Problem Based Ethics course provided by The Centre for Personalized Education of Physicians at a location of Dr. Agafontsev's choosing within eight months of the making of an order by the Committee arising out of this proposal (the next Canadian offering is scheduled for April 4-6, 2014, in Toronto);
 - b. satisfactory completion of a recordkeeping course designated by the College within 90 days of notice by letter from the College to Dr. Agafontsev of the designation of such course;
 - c. review and completion, including post-test, of the College's informed consent DVD within 30 days of the making of an order by the Committee arising out of this proposal;
 - d. entering into a mentorship agreement with the College within 90 days of the making of an order by the Committee arising out of this proposal for review of all dental procedures and operative care provided by him and being the subject of the concerns raised in the Citation. This mentorship agreement will be at Dr. Agafontsev's entire cost for a minimum of eight sessions to specifically address the standards of practice (substandard care/competency) concerns raised in the Citation. The agreement will include standard terms by which the mentoring dentist will report to the Committee as to Dr. Agafontsev's practice standards for further action as may be reasonably necessary. The College will provide the names of three mentoring dentist

candidates to Dr. Agafontsev from which Dr. Agafontsev must select the mentor;

- e. entering into a monitoring and inspection agreement with the College for a period of 24 months commencing from the date of the making of an order by the Committee arising out of this proposal by which:
 - i. patient chart reviews are conducted every six months; and
 - ii. the monitoring/inspecting representative of the College will report to the Committee on findings for further action as may be reasonably necessary.

4.1.4 Consent to payment of a fine to the College in the amount of \$12,000.00 on the following payment terms:

- a. a first payment of \$3,000.00 within one month of the making of an order by the Committee arising out of this proposal;
- b. a second payment of \$3,000.00 within four months of the making of an order by the Committee arising out of this proposal;
- c. a third payment of \$3,000.00 within seven months of the making of an order by the Committee arising out of this proposal; and
- d. a fourth payment of \$3,000.00 within ten months of the making of an order by the Committee arising out of this proposal.

5.0 ACKNOWLEDGMENT and AGREEMENT

5.1 Dr. Agafontsev acknowledges that the failure to satisfy any one or more of the consents, conditions and/or indemnities above may constitute professional misconduct or unprofessional conduct and may trigger an investigation and disciplinary proceedings in accordance with the provisions in the *HPA*.

5.2 Dr. Agafontsev confirms that he has been advised by the College to seek legal advice and representation throughout the College's investigation, disciplinary and consent order proposal processes and that he has obtained legal advice with respect to the execution and submission of this proposal to the inquiry committee.

5.3 Dr. Agafontsev confirms his understanding and agreement with respect to the mandatory public notice requirements set out in section 39.3 of the *HPA*, including his understanding that his name, the nature of the action taken and the reason for the action taken will be included in this public notice.

5.4 The College and Dr. Agafontsev agree that this proposal may be executed in counterpart and delivered by facsimile or as an electronic document.

Respectfully submitted to the Committee by:

Dr. Sergei Agafontsev

Date

Signature of S. Agafontsev witnessed on above date by:

Witness Name (Please Print) and Signature

Witness Phone Number

November 5, 2013

**Thomas M. Lutes, Barrister & Solicitor,
Counsel for the College**

Date