

IN THE MATTER OF THE COLLEGE OF
DENTAL SURGEONS OF BRITISH COLUMBIA
AND DR. UDAY JOBANPUTRA, A FORMER REGISTRANT

PENALTY DECISION

Dr. Arnold Steinbart (Chair)
Dr. David Speirs
Mr. Paul Durose (Public Representative)

Hearing Date: November 3, 2014, Vancouver, B.C.

Counsel for the CDSBC: Ms. Jean Whittow, Q.C.; Mr. Greg Cavouras; and
Ms. T. Arora, articulated student

Counsel for the Discipline Panel: Ms. Catharine Herb-Kelly, Q.C.

Dr. Jobanputra: Did not appear and no counsel

INTRODUCTION

1. The Panel released its decision in this matter on July 30, 2014. The hearing was reconvened in Vancouver on November 3, 2014, to address the matter of sanctions. The respondent did not attend. Counsel for the College of Dental Surgeons of British Columbia (CDSBC) advised that he had been notified of the date. The hearing proceeded in his absence.
2. Section 39 of the *Health Professions Act*, RSBC 1996, c.183 (the "HPA") sets out the options for penalty:
 - 39 (2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:
 - (a) reprimand the respondent;
 - (b) impose limits or conditions on the respondent's practice of the designated health profession;
 - (c) suspend the respondent's registration;

- (d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;
 - (e) cancel the respondent's registration;
 - (f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).
- (8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may
- (a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,
 - (b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on
 - (i) a date specified in the order, or
 - (ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and
 - (c) impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.
3. Sections 39(5) and 39(7) authorize the Panel to make an order for costs in accordance with the tariff provided in the bylaws. Schedule H of the bylaws contains the tariff which permits an award of costs to include up to a maximum of 50% of legal expenses and 100% of disbursements.
4. The CDSBC has asked the Panel to do the following:
- (a) cancel Dr. Jobanputra's registration (section 39(2)(e));
 - (b) impose an order for costs payable to the College in the amount of \$38,000.00 (section 39(5));
 - (c) direct that Dr. Jobanputra will not be eligible to apply for reinstatement of registration until he has provided medical evidence satisfactory to the discipline committee or the board that he does not suffer from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his ability to practice dentistry (section 39(8)(a) and (b)).

DECISION

5. The main purpose for imposing sanctions in a discipline hearing under the *HPA* is to protect the public. However there are other objectives that may be taken into account which are relevant in this case. These include deterrence of others, promotion of public confidence in the profession, the seriousness of the offences, the age and experience of the registrant, and impact on victims: *Regulation of Professions in Canada*, by James Casey, at Chapter 14, pages 14-5 to 14-7.
6. The Panel concluded Dr. Jobanputra committed a variety of offences on numerous occasions which had a negative impact on many people including his staff and patients. While some of the offences standing on their own may not warrant severe consequences, there are many that are of a most serious nature. In addition there were aggravating features which require the Panel to impose a significant penalty. All of the evidence is outlined in detail in the Panel's findings, but some of the more unacceptable examples of misconduct are highlighted below.
7. The Panel concluded that Dr. Jobanputra repeatedly berated, harassed and intimidated his professional and administrative staff by using profane and threatening language. There were incidents when he used physical force against them, such as when he shoved the Clinic manager out of the lunchroom.
8. There was one example when this unacceptable behaviour was directed toward a patient, Mr. S [redacted]. Dr. Jobanputra had agreed to provide a refund to him but when he attended to collect the funds, Dr. Jobanputra had him escorted out of the Clinic and then later telephoned to threaten him having learned that he had complained to the CDSBC.
9. There were offences which raise significant concern about his honesty including writing cheques when he knew there were insufficient funds in his bank account, and diverting mail addressed to other dentists.

10. Dr. Jobanputra participated and sometimes stood by in the bullying and threatening behaviour of M [redacted], a person he permitted to be present in the clinic, especially in the areas where patients were involved. One of the more shocking examples was the incident when he and M took a young Clinic employee, Mr. L [redacted], to a Tim Horton's restaurant late one evening, where M threatened him while Dr. Jobanputra stood by.
11. Finally, there were several examples of misconduct suggesting that Dr. Jobanputra is ungovernable. He continued to advertise his services as a dentist after the CDSBC suspended him from practice. His failure to cooperate with the CDSBC when it asked him to undertake a medical assessment, and his failure to attend the hearing to explain himself are further examples of his lack of respect for his profession and the CDSBC.
12. In the absence of any explanation from Dr. Jobanputra, the Panel is unable to consider whether there are mitigating factors or whether steps may be taken to rehabilitate him.
13. Counsel for the College presented several decisions on the matter of penalty, the most helpful of which was *College of Nurses of Ontario v. Caron* 2013 CanLii 93852. In that case, the College considered "a persistent course of manipulative and predatory behaviour" by a nurse toward her clients and their families. The Discipline Committee decided to revoke the registrant's license to

"protect the public and honour the profession ... given the seriousness of the Member's offences. (page 12)"
14. The analysis provided in *Caron* is applicable to this case. There, the Discipline Committee said:

"This penalty provides a specific deterrent to the Member and a general deterrent to the membership, indicating that the profession will not tolerate this type of behaviour. The Member's total lack of respect for the College and these proceedings demonstrated to the Panel that remedial measures would be ineffective. There has been no indication of remorse by the

Member. The number and magnitude of our findings of professional misconduct by the Member constitute grounds for revocation. The Member betrayed the trust of the nurse/client relationship, which is seen to be a cornerstone of the profession. (page 12)”

15. The Panel has decided that cancellation of Dr. Jobanputra’s license is required to protect the public and to send a message to him and others that the CDSBC will not tolerate such serious misconduct. He may not apply for reinstatement until after March 1, 2017.
16. The Panel considered whether Dr. Jobanputra suffered from a mental illness or other ailment that affected his ability to practice dentistry. However, because of his failure to undertake a medical assessment and to attend the hearing, the Panel was unable to reach a conclusion regarding this issue. Nevertheless, some of his behavior might be consistent with a mental health problem. Therefore he may not apply for reinstatement unless he provides medical evidence satisfactory to the discipline committee or the board that he does not suffer from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his ability to practice dentistry.
17. Finally, section 39(5) of the *HPA* authorizes the Panel to award costs against Dr. Jobanputra in accordance with the tariff of costs set out in Schedule H of the CDSBC’s bylaws.
18. Under its bylaws, the CDSBC is entitled to recover up to 50% of the actual costs of legal representation and 100% of disbursements incurred to conduct the hearing. Instead of calculating 50% of its legal fees, the CDSBC has taken a different approach, calculating the amount of costs for legal representation using the BC Supreme Court Civil Rules as a guide with some adjustments because of the different forum. Its claim for costs for its legal expenses is \$34,496.00, which

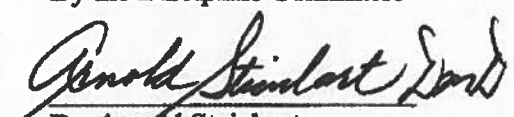
counsel advised is below the amount it is entitled to seek. The disbursements claimed are \$7,804.10 for photocopying, postage, court reporters' fees and other miscellaneous expenses incurred by the CDSBC counsel. The College reduced the total (\$42,300.10) to \$38,000.00 to account for the fact that the Panel dismissed some of the charges against Dr. Jobanputra. The Panel has decided that the amount of costs sought by the CDSBC is reasonable.

19. Accordingly, Dr. Jobanputra must pay the CDSBC costs in the amount of \$38,000.00.

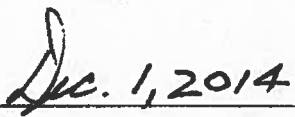
20. In summary, the Panel has decided:

- (a) to cancel Dr. Jobanputra's registration;
- (b) Dr. Jobanputra must pay costs to the CDSBC in the amount of \$38,000.00;
- (c) the earliest date at which Dr. Jobanputra may apply for reinstatement is March 1, 2017 on condition he has provided medical evidence satisfactory to the discipline committee or the board that he does not suffer from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his ability to practice dentistry.

By the Discipline Committee



Dr. Arnold Steinbart



Date

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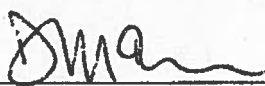
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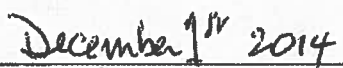
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