

THE MATTER OF THE COLLEGE OF DENTAL SURGEONS OF BRITISH
COLUMBIA

AND DR. BOBBY RISHIRAJ, A REGISTRANT

PENALTY DECISION

Dr. Josephine Chung (Chair) }
Dr. Michael Wainwright }
Mr. Martin Gifford } Panel

Hearing Date: August 24, 2015, Vancouver, B.C.

Counsel for the CDSBC: Mr. Alastair Wade and Mr. Greg Cavouras

Counsel for Dr. Rishiraj: Mr. Dennis Hori Q.C.

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

INTRODUCTION

1. The Panel released its decision in this matter on June 23, 2015. The hearing reconvened in Vancouver on August 24, 2015, to consider the issue of an appropriate penalty. This is the Panel's decision on disposition.
2. The allegations proven against or admitted by Dr. Rishiraj may be summarized as follows:
 - (a) he failed to comply with the College of Dental Surgeons of British Columbia's (CDSBC) sedation guidelines (Guidelines) when he provided deep sedation to twelve patients at the Kamloops Oral Surgery and Implant Centre (Facility) during the period under review;
 - (b) he provided deep sedation to patients when neither he nor the Facility were approved by the CDSBC to do so;

- (c) he advertised on the Facility's website that it was an approved non-hospital and certified intravenous facility when it was not;
- (d) he failed to exercise the level of care, skill and knowledge of a competent practitioner in that he did not recognize HZ's cardiac arrest in a timely fashion thereby delaying resuscitative measures, and he did not take appropriate resuscitative measures in the circumstances; and
- (e) he failed to adequately monitor his patients while they were under sedation.

3. Section 39 of the *Health Professions Act*, RSBC 1996, c.183 (the "HPA") sets out the options available to the Panel:

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.

4. The Panel has reviewed the cases presented with respect to penalty. There are many factors to consider, some of which may compete with one another, depending upon the nature of the offences, the facts of the case and the circumstances of the registrant.

5. The Panel has found the following extract from *Law Society of B.C. v. Ogilvy* [1999] LSBC 17 to contain a useful guide in this respect and notes that it was adopted by another panel of this Committee in *The Matter of the College of Dental Surgeons of British Columbia and Dr. Michal Kaburda*, February, 2015:

The criminal sentencing process provides some helpful guidelines, such as: the need for specific deterrence of the respondent, the need for general deterrence, the need for rehabilitation and the need for punishment or denunciation. In the context of a self-regulatory body one must also consider the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members. While no list of appropriate factors to be taken into account can be considered exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:

- a) the nature and gravity of the conduct proven;
- b) the age and experience of the respondent;
- c) the previous character of the respondent, including details of prior discipline;
- d) the impact upon the victim;
- e) the advantage gained, or to be gained, by the respondent;
- f) the number of times the offending conduct occurred;
- g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- h) the possibility of remediating or rehabilitating the respondent;
- i) the impact on the respondent of criminal or other sanctions or penalties;
- j) the impact of the proposed penalty on the respondent;
- k) the need for specific and general deterrence;

- l) the need to ensure the public's confidence in the integrity of the profession; and
- m) the range of penalties imposed in similar cases.

POSITION OF THE CDSBC

6. The CDSBC has asked the Panel to:
 - a. cancel Dr. Rishiraj's registration;
 - b. direct that he may not apply for reinstatement until after 18 months has elapsed from the date of cancellation and he has successfully completed the ProBE program at the Centre for Personalized Education for Physicians;
 - c. order him to pay costs and disbursements to the CDSBC (counsel have agreed that the amount of costs is \$50,891.30); and
 - d. reinstatement to the CDSBC would be on condition that he may only administer mild sedation to patients and his practice ought to be monitored by the CDSBC for a period of three years, the cost of which would be borne by him.
7. The CDSBC submitted the following factors are the most important considerations to apply in assessing an appropriate penalty in this case:
 - a. the seriousness of Dr. Rishiraj's conduct;
 - b. the need for deterrence to him and others; and
 - c. the need to ensure the public's confidence in the integrity of the profession.
8. Counsel suggested that Dr. Rishiraj's conduct was of a most serious nature warranting cancellation of his registration for eighteen months. He pointed out that triple sedation therapy increases the risk of respiratory depression in patients and that Dr. Rishiraj would have known this. Despite this increased risk, he failed to comply with the Guidelines in many important respects. Among other things he did not use supplemental oxygen during surgery, he did not adjust drug dosages based upon an individual patient's condition, the oxygen saturation monitor was set too low, he did not have appropriately trained personnel in

attendance at the Facility and there were occasions when sedated patients were left alone and unmonitored. Dr. Rishiraj's failure to comply with the Guidelines meant that he put patients at risk of respiratory distress when neither he nor his employees were in a position to respond properly should such an emergency arise. Counsel characterized this conduct as reckless given Dr. Rishiraj's experience and training.

9. Counsel for the CDSBC acknowledged there are some mitigating factors the Panel may take into account in assessing penalty, such as Dr. Rishiraj's prompt reporting of the HZ incident and his cooperation in the CDSBC's investigation. However, from the CDSBC's point of view, there are additional aggravating factors which should not be ignored and ought to lead to a severe penalty. These include Dr. Rishiraj's misrepresentations on the Facility's website, the number of incidents of non compliance with the Guidelines over a short time period and that the efficiency in the Facility's operation achieved by this non compliance led to increased risk of harm to patients.
10. The CDSBC emphasized the need to deter Dr. Rishiraj from his pattern of behaviour as well as other registrants. It says this Panel should impose a severe penalty to send a message that breach of the Guidelines will not be tolerated. In this way, the public will have confidence in the profession.

POSITION OF DR. RISHIRAJ

11. Counsel for Dr. Rishiraj submitted that the penalty should be:
 - a. a reprimand;
 - b. continuation of the restrictions imposed by the CDSBC for a period to be determined by the Panel;
 - c. a fine of \$50,000.00; and

d. payment of costs to the CDSBC in the agreed upon amount of \$50,891.30.

12. He advised that Dr. Rishiraj is 52 years old, married and has an eight month old child. He was registered as a dentist with the CDSBC in 1995 and as a specialist in oral and maxillofacial surgery in 2006. He has privileges at Royal Inland Hospital and does not have a prior discipline record.
13. Counsel emphasized the mitigating factors in this case including that Dr. Rishiraj cooperated with the CDSBC in its investigation. He provided full access to the Facility and its staff, participated in two interviews, and agreed to and complied with conditions on his practice. He has further made significant changes to his practice such as the hiring of appropriately trained staff, changing the manner in which he monitors sedated patients and he has now obtained deep sedation accreditation for the Facility. He has also undertaken some remediation.
14. He points out that Dr. Rishiraj has continued to operate the Facility and practice as an oral and maxillofacial surgeon with restrictions and conditions while the investigation and hearing have been ongoing without incident and that he is well regarded by his peers.
15. Counsel described how these events have had a negative effect on Dr. Rishiraj given the publicity that has surrounded them. There has also been a financial impact since the number of surgeries performed at the Facility has declined and he has had to reduce the number of employees as a result. HZ commenced legal action against him and he has been denied insurance coverage for the claim.
16. Counsel submitted that Dr. Rishiraj's registration should not be cancelled or suspended since he is the only oral and maxillofacial surgeon in Kamloops area and at Royal Inland Hospital. This hospital is the third busiest trauma centre in the province and services a catchment area of over 200,000 people. From this

point of view the public will not be served if he is not permitted to practice. He says the public will be protected by continuing the conditions that are in place now. He further points out that Dr. Rishiraj has undertaken meaningful remediation and there is no evidence he is not a competent specialist. He says if Dr. Rishiraj is suspended for a long period or his registration is cancelled, his employees will lose their employment, he will lose his surgical skills and the Facility will be closed.

DECISION

17. The Panel listened to the oral presentations of counsel and has considered their written submissions, case authorities and documents. This is a case in which it is necessary to strike a balance between the public's need for an oral and maxillofacial surgeon in the Kamloops area and the mitigating circumstances referred to while taking into account the serious nature of Dr. Rishiraj's misconduct and imposing a penalty that is commensurate with it.
18. The Panel is troubled by this case. There are many disturbing elements of Dr. Rishiraj's conduct that raise concerns about his character. These include his failure to obtain approval from the CDSBC to provide deep sedation to patients at the Facility and his inaccurate advertising on his website. His failure to comply with the Guidelines in so many important respects meant that his patients were at increased risk of respiratory depression in circumstances where the Facility was not properly equipped and his employees were not properly trained to respond to a respiratory emergency such as the emergency that arose in HZ's case. From this point of view his conduct is egregious given his experience and training and arguably ought to be severely sanctioned. This would satisfy the criterion of deterrence to him and to others of a like mind, and would preserve the integrity of the profession and the CDSBC.
19. On the other hand, Dr. Rishiraj has to some extent already been penalized for his misconduct. The patient load at the Facility is diminished, he is a defendant in an

uninsured personal injury lawsuit, and has experienced negative and embarrassing publicity about these events. Other mitigating factors include his cooperation with the CDSBC in its investigation and this hearing, he does not have a prior discipline record and he has complied with the conditions on his practice. The Panel is also concerned that Dr. Rishiraj will lose his surgical skills if his registration is cancelled for the eighteen month period requested by the CDSBC.

20. In reaching its decision the Panel has taken into account letters of support from Dr. Rishiraj's colleagues at the Royal Inland Hospital. These were tendered in evidence at the hearing (Exhibit 9, Tabs 8, 10 and 11) and confirm there is no concern about his competence. Counsel for the CDSBC suggested these letters should not have much weight because they were written before the outcome of the hearing was known. The Panel does not share this view because they address his surgical skills and competence rather than his character. These matters are not affected by the outcome of the hearing.
21. With some reluctance, the Panel has concluded that on balance the public interest would not be served by cancelling Dr. Rishiraj's registration for eighteen months. Further it has decided that the seriousness of his conduct may be dealt with by imposition of the maximum fine available under the bylaw, an order to pay the full amount of costs agreed upon by counsel, a brief period of suspension and conditions when the suspension is lifted. It is not necessary to cancel his license for the period requested by the CDSBC in order to meet the need to deter Dr. Rishiraj and others, and uphold the integrity of the profession. The totality of the monetary penalty is significant since it is slightly in excess of \$100,000.00 in circumstances where the Facility's business has dropped and Dr. Rishiraj is facing a potentially large and uninsured judgment against him. The conditions on his practice will ensure that Dr. Rishiraj continues to operate the Facility in accordance with the Guidelines.

22. The Panel is of the view that the combination of the following orders constitutes significant and meaningful punishment that will deter Dr. Rishiraj and others from similar conduct in the future but recognizes the need of the Kamloops area for a competent oral and maxillofacial surgeon.

23. Therefore, the Panel imposes the following on Dr. Rishiraj:

- (a) a reprimand;
- (b) suspension of registration for three months to commence forthwith;
- (c) he must pay a fine of \$50,000.00 within twelve months of the date of this decision;
- (d) when the suspension is lifted, the following conditions will apply to Dr. Rishiraj's practice for five years:
 - i. he may only provide moderate sedation with only one drug of the benzodiazepine class, and
 - ii. the CDSBC may monitor and inspect his practice at any time without notice at his expense;
- (e) he must successfully complete the ProBE program offered by the Centre for Personalized Education for Physicians within twelve months of the date of this decision; and
- (f) he must pay costs to the CDSBC of \$50,891.30 as agreed within twelve months of the date of this decision.

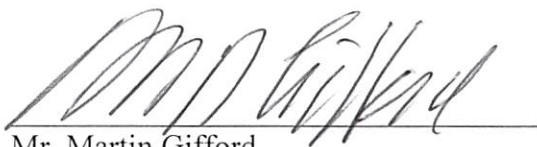
24. If necessary, Counsel may address the deadlines for payment ordered by the Panel as this issue was not spoken to.

By the Discipline Committee:



Dr. Josephine Chung, Chair

Dated: October 19, 2015



Mr. Martin Gifford

Dated: October 19, 2015



Dr. Michael Wainwright

Dated: October 19, 2015