

## **College of Dental Surgeons of Alberta**

Hearing Tribunal Decision – December 28, 2021 and July 6, 2022

Appeal Panel of Council Decision – March 15 and May 23, 2023

Court of Appeal Decision – January 3, 2025

### **IN ACCORDANCE WITH BYLAW 24.5 OF THE COLLEGE OF DENTAL SURGEONS OF ALBERTA**

#### **DECISION OF THE HEARING TRIBUNAL**

On December 28, 2021, the Hearing Tribunal of the College of Dental Surgeons of Alberta (CDSA) found Dr. Sholina Kherani guilty of unprofessional conduct in relation to a complaint about her orthodontic treatment of a patient. The patient received treatment from Dr. Kherani between May 2008 to February 2010 and again from September 2012 to December 2015, and then filed a letter of complaint with the CDSA in early 2016. The Hearing Tribunal was comprised of two dentists and two members of the public appointed by the Government of Alberta. The Hearing Tribunal made the following finding of unprofessional conduct against Dr. Kherani:

1. Failing to prepare an appropriate treatment plan to adequately deal with the complex issues that the patient presented with;
2. Failing to obtain appropriate diagnostic information prior to preparing the treatment plan, including the failure to obtain a cephalometric radiograph;
3. Failing to appropriately manage the patient's care, including failure to provide appropriate appliances for the patient; and
4. Failing to create or maintain adequate patient records.

On July 6, 2022, the Hearing Tribunal ordered the following:

1. Dr. Kherani is reprimanded, with the decision of the Hearing Tribunal serving as the reprimand;
2. Dr. Kherani shall pay a fine of \$7,500 for each of the 4 findings, for a total of \$30,000;
3. Dr. Kherani shall engage with a Coach and Mentor to review ongoing cases involving treatment planning, diagnostic information and records, adequacy of treatment, patient records, and informed consent; and
4. Dr. Kherani will pay 50% of the costs of the investigation and hearing.

#### **DECISION OF THE APPEAL PANEL OF COUNCIL**

Dr. Kherani appealed the decision of the Hearing Tribunal to an Appeal Panel of Council. An Appeal Panel of Council is comprised of two dentists and two public members who sit on Council of the College of Dental Surgeons of Alberta. On March 15, 2023, the Appeal Panel upheld the findings of the Hearing Tribunal. The Appeal Panel also upheld the sanctions ordered by the Hearing Tribunal, but reduced the

costs of the Hearing payable by Dr. Kherani from \$75,000 to \$40,000. The Appeal Panel also issued a decision dated May 23, 2023, regarding costs of the appeal.

The Appeal Panel found that a standard of care, or the standards to which a professional is held can be assessed beyond what is found in a formal Standard of Practice. It may be established by evidence of a common understanding within the profession as to what is expected of a reasonable professional in the circumstances or by logical deduction from the fundamental values of the professional body itself.

The Appeal Panel upheld the Hearing Tribunal's findings on the allegations of unprofessional conduct.

With respect to sanction and costs, the Appeal Panel noted that Dr. Kherani's conduct was serious unprofessional conduct that constituted a marked departure from expected practice. There is no requirement that a dentist have engaged in professional negligence to determine that unprofessional conduct is serious and a marked departure from the standard of care expected of a dentist.

The Appeal Panel upheld the sanction with respect to the reprimand, fines, and coaching and mentoring. The Appeal Panel fixed the total cost of the investigation and hearing at \$40,000, payable by Dr. Kherani, and ordered Dr. Kherani to pay \$13,260.17, representing approximately 40% of the costs of the appeal.

#### **ALBERTA COURT OF APPEAL**

Dr. Kherani appealed the decision of the Appeal Panel to the Alberta Court of Appeal. On January 3, 2025, the Court of Appeal upheld the decision of the Appeal Panel of Council with respect to the findings of unprofessional conduct. The Court of Appeal found that the allegations were clear, expert and non-expert evidence was appropriately considered, and the findings of unprofessional conduct were reasonable.

In considering the sanctions, the Court upheld the orders for a reprimand, fines, a coaching and mentoring order and costs. The Court determined that the Hearing Tribunal provided sufficient reasons why fines were warranted, namely that Dr. Kherani's conduct fell substantially below the expected standard of practice but found that the fines should be reduced to \$3,750 per finding (for a total of \$15,000). The Court also made adjustments to the coaching and mentoring order to reflect the passage of time and noted that the coaching and mentoring would be for a maximum of six (6) hours within a period of 90 days, with a focus on complex orthodontic treatment cases. The Court declined to interfere with the costs order of the Appeal Panel.