

**DISCIPLINE COMMITTEE
OF THE COLLEGE OF DENTURISTS OF ONTARIO**

PANEL:

Chairperson: Barry Solway
Member: Keith Collins DD
Member: Robert Velensky DD
Member: Michael Vout, Jr. DD
Public Member: Barbara Smith

BETWEEN:

**COLLEGE OF DENTURISTS OF
ONTARIO**

) BERNARD LEBLANC and REBECCA
) ZARETSKI for the College of Denturists of
) Ontario
)
)
)

- and -

ERNEST POLISHCHUK DD

) VALERIE WISE for Ernest Polishchuk
)
)
) LUISA RITACCA, Independent Legal
) Counsel

Heard: August 30, 2012

DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee on Thursday, August 30, 2012 at the College of Denturists of Ontario (“the College”) at Toronto.

The Allegations

Counsel for the College advised the panel that the College was requesting leave to withdraw the allegation as it related to paragraph 47 of section 1 of Ontario Regulation 854/93, a regulation under the *Denturism Act, 1991*, S.O. 1991, c. 25. The panel granted this request. The remaining allegations as set out starting at page 4 in the Notice of Hearing (Exhibit #1) are as follows:

1. Ernest Polishchuk (“Mr. Polishchuk”) was at all material times a denturist registered to practise denturism in the Province of Ontario. Mr. Polishchuk practised at 507-4430 Bathurst Street, Toronto, Ontario.

2. Mr. Polishchuk sent an email to E ■ L ■■■, a Registered Dental Hygienist, on January 18, 2012, in which he solicited business by offering a fifteen (15) per cent reward for each patient referred for denture services to Mr. Polishchuk.
3. Mr. Polishchuk thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain the standards of practice of the profession) and 32 (contacting or communicating, directly or indirectly, with a person in an attempt to solicit patients) of section 1 of the Ontario Regulation 854/93-Professional Misconduct, a regulation under the *Denturism Act, 1991*, S.O. 1991, c. 25.

Member's Plea

Mr. Polishchuk admitted the allegations as set out above. The panel conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the College advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit #2) which provided as follows:

Agreed Statement of Facts

1. Ernest Polishchuk ("Mr. Polishchuk") was at all material times a denturist registered to practise denturism in the Province of Ontario. Mr. Polishchuk practised at 507-4430 Bathurst Street, Toronto, Ontario.
2. Mr. Polishchuk sent an email to E ■ L ■■■, a Registered Dental Hygienist, on January 18, 2012, in which he solicited business by offering a fifteen (15) per cent reward for each patient referred for denture services to Mr. Polishchuk. Attached at Tab "A" is a copy of the email.
3. At the time, Mr. Polishchuk was a newly registered member of the College of Denturists of Ontario and, had he testified, would have said that he was unaware that this conduct could constitute professional misconduct. It is the College's position that he should have been so aware but that even if he was not, such lack of knowledge does not constitute a defence.
4. Mr. Polishchuk thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain the standards of practice of the profession) and 32 (contacting or communicating, directly or indirectly, with a person in an attempt to solicit patients) of section 1 of the Ontario Regulation 854/93-Professional Misconduct, a regulation under the *Denturism Act, 1991*, S.O. 1991, c. 25.

5. The parties hereby accept these facts as accurate.
6. Mr. Polishchuk understands that the nature of the allegations that have been made against him and that by voluntarily admitting these allegations, he waives his right to require the College to otherwise prove the case against him.
7. Mr. Polishchuk further understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
8. Mr. Polishchuk further understands that depending on any penalty ordered by the Discipline Committee, the panel's decision and reasons may be published, including the facts contained herein and his name.
9. Mr. Polishchuk further understands that any agreement between him and the College does not bind the Discipline Committee.
10. Mr. Polishchuk acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

Decision

The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that the Member committed an act of professional misconduct as alleged on page 4 of the Notice of Hearing, paragraph 3 being in particular, failing to maintain the standards of practice of the profession and contacting or communicating, directly or indirectly, with a person in an attempt to solicit patients. Such conduct being in contravention of paragraphs 2 and 32 of section 1 of the Ontario Regulation 854/93-Professional Misconduct, a regulation under the *Denturism Act, 1991*, S.O. 1991, c. 25.

Reasons for Decision

We are satisfied that the email attached to the Agreed Statement of Facts (Exhibit 2), together with the Member's own admission clearly show that the Member attempted to solicit patients, in exchange for a fifteen (15) per cent reward. We are further satisfied that such conduct fell below the standards of practice.

Penalty

Counsel for the College advised the panel that a Joint Submission as to Penalty (Exhibit #3) had been agreed upon. The Joint Submission as to Penalty provides as follows:

1. Reprimanding the Member.
2. Imposing a term, condition and limitation on the Member's certificate of registration that he successfully complete, at the Member's expense, a course on ethics, with an advertising component if available, such course to be approved in advance by the Registrar. The Member must provide to the Registrar proof of successful completion of the course in a form acceptable to the Registrar by no later than November 1, 2012.

3. There will be no order as to costs.
4. The Member acknowledges that this matter will be publicized in the usual manner through, among other things, the College's publications, which publication will include, among other things, the Member's name.
5. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee. The parties to this Joint Submission agree that in the event it is not accepted by the Discipline Committee, the parties may request an adjournment and seek permission from the panel to possibly adduce further evidence and make additional submissions prior to the panel's decision as to penalty.
6. The Member acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

Penalty Submissions

In her submissions, Counsel for the College emphasized that the penalty imposed by the panel must, (i) adequately protect the public; (ii) give confidence to the public in the College's ability to govern itself; and (iii) act as both a general and specific deterrent. Counsel submitted that the Joint Submission as to Penalty clearly met these criteria. In addition, Counsel for the College highlighted a number of mitigating factors in this case that supported the penalty as proposed.

Counsel for the Member agreed with the submissions of College Counsel and further emphasized the mitigating factors present in this case, including the fact that the Member was a new member of the College at the time of events at issue; he was unfamiliar with the prohibition against soliciting for clients; and this was his first time before the Discipline Committee.

Penalty Decision

The panel accepts the Joint Submission as to Penalty and accordingly orders:

1. The Member will be reprimanded.
2. The imposition of a term, condition and limitation on the Member's certificate of registration that he successfully complete, at the Member's expense, a course on ethics, with an advertising component if available, such course to be approved in advance by the Registrar. The Member must provide to the Registrar proof of successful completion of the course in a form acceptable to the Registrar by no later than November 1, 2012.
3. There will be no order as to costs.
4. The outcome of this matter will be publicized in the usual manner through, among other things, the College's publications, which publication will include, among other things, the member's name.

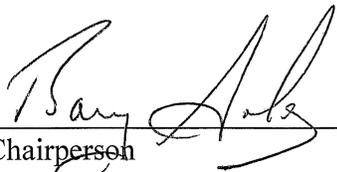
Reasons for Penalty Decision

The panel concluded that the proposed penalty is reasonable and in the public interest. The Member has fully co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions. The mitigating circumstances in this case were significant and the panel did not find any aggravating circumstances.

The penalty adequately meets the principles of both general and specific deterrence. The penalty provides for sufficient rehabilitation of the Member, who will no doubt benefit from participating in the ethics course.

Finally, the panel is satisfied that the penalty falls well within a reasonable range of penalties, as were presented by College counsel.

I, Barry Solway, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:


Chairperson

AUC. 3e/12
Date

Barbara Smith, Public Member
Keith Collins DD
Robert Velensky DD
Michael Vout DD