

DISCIPLINE COMMITTEE OF THE COLLEGE OF DENTURISTS OF ONTARIO

COLLEGE OF DENTURISTS
OF ONTARIO

- and -

WILLIAM KENYON D.D.

REASONS FOR DECISION

Pursuant to sections 38 through 56 of the *Health Professions Procedural Code*, as amended, the Panel of the Discipline Committee of the College of Denturists of Ontario held a hearing on December 12, 1997 to hear and determine specific allegations of professional misconduct of William Kenyon as outlined in the amended Notice of Hearing dated November 13, 1997.

Attendance:

Panel of the Discipline Committee: Jurgen von Fielitz, D.D.
 George Gelb, D.D.
 Rudy Pasch, D.D.
 Robert Zochodne, Public Member, Chair

Member: William Kenyon

Counsel for the Member: Jeffrey Levy

Counsel for the College of Denturists of Ontario: Julia Martin

Independent Counsel to the Discipline Committee: Odette Soriano

This matter came on for hearing on December 12, 1997. Mr. Kenyon was afforded the opportunity to object to the composition of the Panel and he raised no objection.

The College contends that William Kenyon is guilty of professional misconduct.

Jaro Wojcicky is the Registrar of the College. He testified for the College as did Flo Meingast, executive assistant for the College. Mr. Kenyon testified on his own behalf.

Mr. Wojcicky has been the Registrar of the College since January 1994. He testified that Mr. Kenyon has been the subject of previous disciplinary proceedings. Exhibit 3 is a copy of an Order of the Discipline Committee of the College dated March 10, 1995.

The Order states, inter alia as follows:

1. The Discipline Committee hereby finds William Kenyon guilty of professional misconduct as defined in paragraphs 30, 33, 44, and 45 of Section 1 of Ontario Regulation 853/93 as amended, made under the *Denturism Act*.
2. The Discipline Committee orders that William Kenyon be reprimanded and that the fact of the reprimand be recorded in the register.
3. The Discipline Committee orders that William Kenyon pays \$2,500.00 (two thousand five hundred dollars) in respect of the College's costs and expenses and that it be paid to the College as follows:
 - (a) \$200.00 (two hundred dollars) to be paid by March 30, 1995;
 - (b) \$200.00 (two hundred dollars) each month for eleven months commencing May 1, 1995; and
 - (c) \$100.00 (one hundred dollars) on the 12th month, April 1, 1996.

The evidence establishes that Mr. Kenyon did not pay the sums mentioned in the Order by the dates indicated. Rather, he sent a series of post-dated cheques in 1996, some of which were dated May 30, October 30 and December 30, 1996. These cheques were marked as Exhibit 14.

Mr. Wojcicky testified that the cheque from Mr. Kenyon dated May 30, 1996 was returned NSF by Mr. Kenyon's bank. Mr. Wojcicky instructed Ms. Meingast to send a

letter dated July 19, 1996 to Mr. Kenyon which letter was marked as Exhibit 4. The letter was sent to Mr. Kenyon at 66 Ryan's Way, Waterdown, Ontario L0R 2H0. Mr. Wojcicky further testified that he sent a further letter to Mr. Kenyon on January 15, 1997 advising Mr. Kenyon that two more cheques from him had been returned NSF, namely the cheques for October, 1996 and December 1996 and that a replacement cheque had not yet been received for the cheque dated May 30, 1996. Mr. Wojcicky testified that these cheques totalled \$750.00. The letter of January 15, 1997 which was marked as Exhibit 5 was sent to Mr. Kenyon at 66 Ryan's Way, Waterdown, Ontario L0R 2H5 and requested the following sums from Mr. Kenyon:

1.	For NSF cheques	\$750.00
2.	For administration fee	75.00
3.	For bank charges	<u>13.50</u>
	TOTAL	\$838.50

The letter went on to provide as follows:

If the College has not received the certified cheque by this date (February 3, 1997), the matter will be referred to the executive committee for further action.

Mr. Wojcicky testified that this letter was sent by registered mail but was returned to the College unclaimed by Mr. Kenyon.

The matter was then handed to counsel for the College, Ms. Martin. Exhibit 6 is a copy of a letter from Ms. Martin to Mr. Kenyon with affidavit of service attached. The affidavit states that a process server served Mr. Kenyon with the letter, which is dated February 20, 1997 from Ms. Martin, by leaving it with William Kenyon at 153 Main Street West, Hamilton, Ontario. The letter enclosed a copy of Exhibits 4 and 5 and copies of the

cheques and advice from the bank evidencing the fact that the cheques in question were returned by Mr. Kenyon's bank. The letter went on to state as follows:

You are in breach of the Order of the Discipline Committee dated March 10, 1995 for your failure to pay your indebtedness to the College. You also failed to respond to the letter from the College. It is professional misconduct for a member to fail to respond appropriately to a letter from the College pursuant to paragraph 1.44 of Ontario Regulation of 584/93 and for a member to fail to pay an amount owed to the College pursuant to paragraph 1.45.

If the College is not in receipt of your cheque in the amount of \$838.50, which represents the full amount outstanding plus an administration fee and bank charges, by March 12, 1997, you will be prosecuted for professional misconduct before the Discipline Committee of the College.

By way of history, Mr. Kenyon sent the College a letter which is marked as Exhibit 13 and which was received by the College on March 22, 1996. This letter states in part as follows:

I understand that because of my previous situation I was unable to pay any fines set out by the College for conviction of professional misconduct let alone pay for anything. I became increasingly deeper in debt. It is not without respect that any fines have not been paid. I have conveyed my situation to representatives of the College in the past and have informally kept them aware of my financial state. I would appreciate the opportunity to pay for my outstanding fine immediately. I would like to propose that the amount of \$250.00 be submitted to the College by post-dated cheque monthly or until the amount can be paid in full.

Of those cheques referred to in Exhibit 13 three of them were returned marked NSF namely May 30, October 30 and December 30, 1996.

With reference to Exhibit 6, the letter from Ms. Martin requesting \$838.50 by March 12, 1997, Ms. Meingast testified that this sum was not paid by that date. She said and Exhibit 8 confirms that the College received a cheque on or about the 14th of March, 1997 which cheque was returned NSF by Mr. Kenyon's bank. Therefore, by March 14, 1997 Mr. Kenyon had failed to comply with the Order of the Discipline Committee. In

particular, the costs that were awarded to the College, which were to have paid by Mr. Kenyon in full by April 1, 1996, had not been paid in full.

The evidence establishes that Mr. Kenyon eventually did pay this sum by way of a money order dated April 14, 1997. Exhibit 9 is a copy of that money order together with a copy of Mr. Kenyon's letter enclosing it. The letter confirms that his earlier cheque from March 1997 was returned NSF. Mr. Kenyon stated in the letter that he was not aware that the cheque was returned NSF until he received his bank statement on April 12, 1997. He apologized for any inconvenience caused by the NSF cheque. In that letter Mr. Kenyon also inquired as to the annual licencing fee now due to permit Mr. Kenyon to continue to practice. He sent a money order in the amount of \$220.00 also dated April 14, 1997 representing what he contended in the letter to be the amount owing as a first installment for his annual fee.

Ms. Meingast stated that an annual fee statement was sent to all members of the College on March 7, 1997. She stated that it went to Mr. Kenyon at 66 Ryan's Way, Waterdown, Ontario. She said that in response to Mr. Kenyon's letter which is Exhibit 9 she sent a further renewal notice which she believes was sent to the address of Mr. Kenyon on Main Street in Hamilton.

Exhibit 10 is a copy of the form sent to all members as indicated by Ms. Meingast. The letter provides for the payment of annual fees and states as follows:

As you are aware, your annual fees for registration with the College of Denturists of Ontario are due by April 15, 1997. This year you have the option of paying the fee by a lump sum amount or in four equal installments.

Active Practice

If you are planning to be active (practicing), at any time during the year, (April 15/97 to April 14/98) your fees are:

lump sum: \$770.00 + \$53.90 GST = \$823.90 due April 15, 1997 or;

installments: \$820.00 + \$57.40 GST = \$877.40, (four cheques due on April 15, 1997) dated:

- | | |
|---------------------|----------|
| 1. April 15, 1997 | \$219.35 |
| 2. July 15, 1997 | \$219.35 |
| 3. October 15, 1997 | \$219.35 |
| 4. January 15, 1998 | \$219.35 |

Mr. Wojcicky stated and Ms. Meingast confirmed that Mr. Kenyon did not pay the remainder of his fees due for 1997 as set out in Exhibit 10. As a result, a letter was sent by Mr. Wojcicky to Mr. Kenyon which is Exhibit 7 and is dated August 8, 1997. It states as follows:

Despite having spoken to you on the telephone and sending you a 2nd copy of the certificate of registration renewal form plus the information letter which discussed the payment plan of the renewal fees. The College, to date, has not received the remainder of your payments, therefore:

This letter is to inform you that, July 19, 1997, your certificate of registration with the College is suspended.

The letter goes on to request payment of the sum of \$988.40.

Ms. Meingast stated that Mr. Kenyon sent a cheque for \$988.40 by letter received by the College August 27, 1997. This cheque did not clear Mr. Kenyon's bank as he stopped payment on it. The letter, cheque and bank advice are Exhibit 11. In his letter, Ms. Kenyon states that he had not received his certificate of registration renewal form and stated "I am concerned that documents of such importance should be received on time as should any proposals to change legislation regarding the practice of denturism".

Exhibit 12 is a further letter from Mr. Kenyon dated September 3, 1997 which was received by the College on September 9, 1997. In that letter Mr. Kenyon states that he stopped payment on his earlier cheque because of the following:

Upon remittance of this amount (he is referring to \$988.40) I remembered the \$300.00 I had sent in the spring. I immediately put a stop payment on the cheque for \$988.40 and went over my statements to see when the \$300.00 cheque was cashed. Apparently this cheque has not been cashed for reasons I am not sure of. I enclose a money order for amount of \$988.40 trusting that this is the full amount of renewal fees for 1997.

I would like to request once more that all correspondence and documents be sent to 66 Ryan's Way, Waterdown, Ontario L0R 2H5 address and not to 153 Main Street, Hamilton, Ontario, address.

Attached to the letter was a money order for \$988.40. The letter and money order were marked as Exhibit 12.

It was acknowledged by Mr. Wojcicky that when the College received the money order for \$988.40 Mr. Kenyon had in fact overpaid his fees for 1997. Mr. Wojcicky was not in a position to be able to state the precise amount which was owed at that time. Presumably, from reviewing the material Mr. Kenyon would have owed at least \$657.40 being the amount owing by way of installment pursuant to Exhibit 10 less the \$220.00 money order sent by him. This, of course, does not account for further administrative charges and bank charges incurred by the College as a result of the events set out above.

Mr. Wojcicky also conceded that Exhibit 7 being his letter dated August 8, 1997 which purported to retroactively suspend his certificate of registration was done without giving Mr. Kenyon any notice.

While Mr. Wojcicky was uncertain in respect of certain details in considering his evidence viewed as a whole and that of Ms. Meingast we conclude that the facts as set out above and as testified to by those individuals is accurate.

William Kenyon testified that he is 28 years of age and graduated in the spring of 1992. He said that he began to work part time with a denturist in Hamilton and then began working full time in Waterdown. He practiced there for about two years and then opened a second office in Dundas, Ontario. He said that this did not go as well as he had hoped and hired an associate (a friend from school) and that that associate "ran the business into the ground". He stated that he was doing very badly in Waterdown. He stated when he began to work as a denturist he had never run a business, had no bookkeeping skills and so on.

Mr. Kenyon's solicitor spent a substantial amount of time with Mr. Wojcicky questioning the various addresses set out on the correspondence referred to above. For example, Exhibit 4 was sent to the 66 Ryan's Way address but had a postal code of L0R 2H0. Exhibit 5 was sent to the same address except with a postal code of L0R 2H5. Exhibit 7 was sent to 153 Main Street East, Hamilton L0R 2H0. While Mr. Kenyon appears to have been served with Ms. Martin's letter of February 20, 1997 at 153 Main Street West, Hamilton, Ontario.

Exhibit 13 being the letter from Mr. Kenyon dated March 22, 1996 states as follows:

My business address is now 153 Main Street East, Hamilton, Ontario.

It also states as follows:

P.S. Please direct any correspondence to my home address at 66
Ryan's Way, Waterdown, Ontario L0R 2H0. Thank you.

Mr. Kenyon stated that he incorrectly put the postal code on Exhibit 13. He said that the correct postal code for the Ryan's Way address is L0R 2H5.

He said that the confusion regarding addresses was part of what he described as "being unorganized". He said that he did not make the original payments owing under the discipline order because of his financial situation at the time. He stated that he simply did not have the money. He stated that he believed that by sending the post-dated cheques with Exhibit 13 the College had accepted his offer to submit payments. Mr. Kenyon's counsel argued that because the College did not act on Mr. Kenyon's failure to pay in accordance with the Order until April 1997, the College should be deemed to have accepted the new payment schedule proposed by Mr. Kenyon through his post-dated cheques and the College should be estopped from relying on the schedule ordered by the Discipline Committee in 1995. The Panel rejects this argument and notes that three of the post-dated cheques sent with Exhibit 13 were not honoured by Mr. Kenyon's bank and in fact were not replaced in total until over one year later in April 1997.

With regard to those post-dated cheques included with Exhibit 13, Mr. Kenyon stated that his practice was not doing well that he had intended to replace the May 30, 1996 cheque but it had slipped his mind. He said that he intended that the October and December 1996 cheques would be honoured. He stated that had he received notice of

Exhibit 5 the registered letter from Mr. Wojcicky he would have picked it up from the post office but that he did not receive such notice. He also stated that he did not receive Exhibit 4 being the letter from Ms. Meingast dated July 19, 1996 or he would have responded to it.

He also claimed that he did not receive any renewal notices from the College. What is interesting, of course is that, with the exception of Exhibit 5, the College's evidence through Mr. Wojcicky and Ms. Meingast was that none of the other notices or letters sent to Mr. Kenyon were returned. Further, there is no dispute that Mr. Kenyon received Exhibit 6 since it was served upon personally.

Section 51 of the Health Professions Procedural Code being Schedule 2 of the *Regulated Health Professions Act* S.O. 1991, c.18 provides, inter alia, as follows:

51(1) **Professional Misconduct** - a panel shall find that a member has committed an act of professional misconduct if,

- (a) when a member has been found guilty of an offense that is relevant to the member's suitable to practise;
- (c) the member has committed an act of professional misconduct as defined in the regulation.

Ontario Regulation 854/93 made pursuant to the *Denturist Act*, 1991 provides, inter alia, as follows:

The following are acts of professional misconduct for the purposes of clause 51(1)(c) of the Health Professions Procedural Code:

44 - failing to reply appropriately in writing within 30 days to any written communication from the College that requests a response

45 - failing to pay a fee or amount owed to college after reasonable notice of the payment due has been given to the member

47 - engaging in conduct or performing an act, relevant to the practice of denturism, that, having regard to all the circumstances, would

reasonably be regarded by members as disgraceful, dishonourable, unethical or unprofessional.

The *Denturism Act* provides in Section 3 as follows:

Scope of Practice - the practice of denturism in the assessment of arches missing some or all teeth and the design, construction, repair, alteration, ordering and fitting of removal of dentures.

The Panel confirms that the burden of proof rests with the College. The allegations of professional misconduct must be proven on a balance of probabilities which, in the context of discipline proceedings, has been described as requiring clear, cogent and convincing evidence. See *Bernstein v. College of Physicians and Surgeons of Ontario* (1977), 15 O.R. (2d) 477 (Div. Ct.) and *Board of Ophthalmic Dispensers v. Toth* [1990] O.J. No. 1802 (Ont. C.A.)

Counsel for the College submits that Mr. Kenyon was guilty of professional misconduct with respect to section 44 of the Regulation, by failing to respond to the letter of January 19, 1996 which was Exhibit 4, by failing to respond to the letter of January 15, 1997 which was Exhibit 5 and by failing to respond to the letter of February 20, 1997 which was Exhibit 6.

We find that the College has failed to satisfy us that Mr. Kenyon committed professional misconduct by violating Section 44 of the Regulations.

First of all as Mr. Kenyon did not receive the January 15, 1997 letter, whether as a result of a deliberate decision not to pick it up or otherwise, he did not fail to respond. With regard to the February 20, 1997 letter, Mr. Kenyon did respond although his response may not have been one which was satisfactory to the College. With respect to the July 19, 1996 letter, while we have concerns about Mr. Kenyon's contention that

he never received this as well as other letters, we are not satisfied that the College has met its burden of proof on the balance of probabilities establishing that Mr. Kenyon did indeed receive this letter and failed to respond to it.

The College contends that Mr. Kenyon violated section 45 in the following respects:

1. He failed to pay the amounts owing under the Order on three different occasions namely when they were initially due, when Mr. Kenyon sent his further post-dated cheques and when his cheque of March 12, 1997 was returned NSF.
2. It is contended that Mr. Kenyon further violated section 45 by failing to make his second installment due July 15, 1997 and by putting a stop payment on his August 31, 1997 cheque.

It is our view that Mr. Kenyon committed professional misconduct in two respects. First of all, Mr. Kenyon did not pay an amount owed to the College after reasonable notice of the payment due had been given to him in relation to the Order of the discipline committee dated March 10, 1995. The amount owing under the Order was due and payable by April 1, 1996. In fact, this sum was not paid in full until April 1997. Along the way there were a series of incidents which have been dealt with above. These are all merely subsets of the main finding that Mr. Kenyon is guilty of professional misconduct by failing to pay the Order in a timely fashion.

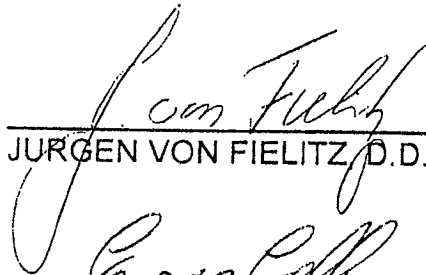
We also find that Mr. Kenyon is guilty of professional misconduct by failing to pay his professional fees for the year commencing April 1997. While we were prepared to find that the College had not met its burden of proof regarding the first letter sent to Mr. Kenyon being Exhibit 4 that letter does not address payment of professional fees and we are not prepared to accept that Mr. Kenyon was not aware of the fact that he had

further professional fees due in April 1997. Mr. Kenyon testified that he did not receive the renewal notice regarding his professional fees from the College but he was aware that fees were due after speaking to a friend/colleague. On this friend's advice, Mr. Kenyon sent \$220.00 to the College because he knew that fees were "at least that much". Mr. Kenyon testified that it was his understanding that the \$220.00 "should cover the first installment". Based on Mr. Kenyon's own evidence, the Panel finds that Mr. Kenyon was aware and had reasonable notice that he had further professional fees due. Clearly, Mr. Kenyon was aware of his outstanding professional fees in August 1997 as he sent a cheque to the College to satisfy those fees; however, he subsequently stopped payment on that cheque. He did not remedy this until September 1997.

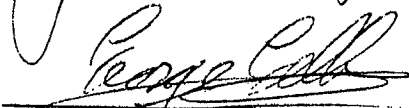
We also find that Mr. Kenyon violated section 47 of the Regulation. This is as a result of accumulated series of events as set out above. To begin with, Mr. Kenyon tendered a series of cheques in 1996 three of which were returned NSF. A further cheque dated March 12, 1997 was returned NSF. He sent a further cheque dated August 31, 1997 upon which he put a stop payment. He also made certain promises to the Registrar to pay which he did not do. It is our view that this conduct on the part of Mr. Kenyon is relevant to the practice of denturism. Mr. Kenyon blames this on bad bookkeeping. In our view this is not an excuse which absolves Mr. Kenyon from responsibility. Mr. Kenyon's belief that he is a bad bookkeeper did not appear to stop him from tendering cheques which were not honoured by his bank. This was being done at a time when he knew he was in financial difficulty. To suggest that a denturist can fail to honour promises to pay to his regulating body and further can stop payment on cheques to his

regulating body without consequences is entirely inappropriate. It is our view that such conduct is dishonourable and unprofessional and should result in a finding of professional misconduct against the member.

We would ask that counsel contact to arrange a suitable date for the return of this matter to hear submissions on penalty.



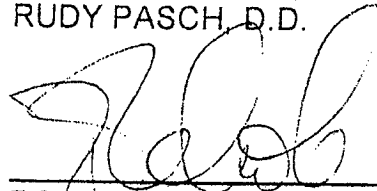
JURGEN VON FIELITZ, D.D.



GEORGE GELB, D.D.



RUDY PASCH, D.D.



ROBERT G. ZOCHODNE
Public Member, Chair