

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

PANEL: Ivan McFarlane, Chairperson, Public Member
Bruce Selinger, Professional Member
Luc Tran, Professional Member
Arnella Csongradi, Public Member

BETWEEN

COLLEGE OF DENTURISTS)
OF ONTARIO) REBECCA DURCAN, for
) College of Denturists of Ontario
) (the “College”)
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)
)

– and -)
)

DOMINIC MORGAN) VALERIE WISE, for the member
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) ROBIN McKECHNEY
) Independent Legal Counsel
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) Heard: December 2, 2015

DECISION AND REASONS

This matter came up for hearing before a panel of the Discipline Committee on December 2, 2015 at Victory Verbatim in Toronto, Ontario.

THE ALLEGATIONS

The Notice of Hearing, dated April 17, 2015, alleged that Dominic Morgan committed an act of professional misconduct as set out in Ontario Regulation 854/93, section 1. particularly

- a. Mr Morgan failed to maintain the standards of the profession (para. 2);
- b. Mr Morgan charged a fee that was excessive or unreasonable in relation to the service performed (para 26); and
- c. Mr Morgan engaged in conduct or performed an act, in the course of practising denturism that, having regard to all the circumstances, would reasonably be regarded by members as dishonourable, unethical, or unprofessional (Para 47).

RESPONSE TO THE ALLEGATIONS

Dominic Morgan admitted the allegations of professional misconduct set out in the Notice of Hearing as indicated below. It should be noted that with regard to the allegation of dishonourable, unethical, or unprofessional conduct (paragraph 47), Mr Morgan admitted only to unprofessional conduct, which was accepted by counsel for the College.

The panel conducted an oral plea enquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

THE FACTS

The following Statement of Agreed Facts was filed as Exhibit No. 2 and presented to the Committee:

1. At all material times, Dominic Morgan ("Mr. Morgan") was a member of the College and has been a member in good standing since 2007.
2. J.N. was Mr. Morgan's patient. On or about February 2014, J.N. met with Mr. Morgan for a consultation regarding dentures and implants. Based on the discussion, J.N. agreed to retain Mr. Morgan to provide denture services.
3. On or about March 7, 2014 and April 21, 2014, J.N. paid Mr. Morgan instalments

totalling approximately \$9,855.00. At the time, Mr. Morgan thought that this was a reasonable fee, given the work that he intended to include in the fee. In retrospect, Mr. Morgan now understands and agrees that in light of the services required, this may have been an inappropriate fee.

4. On or about April 15, 2014, Mr Morgan performed the “try-in” on. If J.N. were to testify, he would say that he told Mr. Morgan that he could not close his lips as the dentures were too high. If Mr. Morgan were to testify, he would say that he understood that J.N. was satisfied with the upper denture, but had concerns about the aesthetics of the lower denture. Mr. Morgan believed that the concerns could be addressed with adjustments to the dentures later.
5. On or about April 21, 2014, Mr. Morgan delivered the processed dentures to J.N. If J.N. were to testify, he would say that, once again, he told Mr. Morgan that he could not close his lips as the dentures were too high. Mr. Morgan did not address the deficiency in the dentures. If Mr. Morgan were to testify, he would say that he understood that J.N.'s concerns were aesthetic only, and he was planning to adjust the dentures at the next visit, after the oral surgeon had completed the torque on the implants.
6. Mr. Morgan admits and agrees that had he understood J.N.'s complaints, as framed herein, Mr. Morgan should have addressed the complaints more appropriately before sending J.N. home with the dentures.
7. It is agreed that Mr. Morgan sent J.N. home on April 21, 2014 without complete instructions on how to care for the dentures.
8. J.N. was scheduled to return to see Mr. Morgan on May 1, 2014, for loading of the components to his denture and to complete the agreed treatment plan. Mr Morgan also intended to complete the instructions for care of the dentures, among other things, at this visit. J.N. did not attend on May 1, 2014, and on May 6, 2014, advised Mr. Morgan that he would not be returning as he had sought alternative treatment elsewhere.
9. J.N. purchased a new set of dentures from another dentist at a cost of approximately \$6,600.00.

ADMISSION

Mr. Morgan admits that he engaged in the following acts of professional misconduct as set out in Ontario Regulation 854/93, section 1:

- a. He failed to maintain the standards of the profession (paragraph 2);
- b. He charged a fee that was excessive and unreasonable in relation to the services preformed (paragraph 26); and
- c. He engaged in conduct or performed an act, in the course of practising denturism that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional (paragraph 47).

DECISION

The panel considered the Statement of Agreed Facts and found that the facts supported a finding of professional misconduct and, in particular, found that Mr. Morgan committed an act of professional misconduct as alleged in the Notice of Hearing in that:

- a. He failed to maintain the standards of the profession (paragraph 2);
- b. He charged a fee that was excessive and unreasonable in relation to the services performed (paragraph 26); and
- c. He engaged in conduct or performed an act, in the course of practicing denturism that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional (paragraph 47).

PENALTY

Counsel for the College advised the panel that a Joint Submission as to Penalty and Costs had been agreed upon. The Joint Submission as to Penalty provided as follows:

1. Mr. Morgan is required to appear before a panel of the Discipline Committee to be reprimanded on the date of the order.
2. The Discipline committee shall direct the Registrar to suspend Mr. Morgan's certificate of registration for a period of eight (8) weeks, to commence on a date acceptable to the Registrar.
3. The Registrar will suspend five (5) weeks of the suspension ordered in paragraph 2 if the Member successfully, in the opinion of the Registrar, completes all the requirements set out in paragraph 4 of this order within four (4) months of the date

of this order. In any event, the Member must complete the requirements set out in paragraph 4 of this order within (12) twelve months of the date of this order.

4. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on Mr Morgan's certificate of registration:
 - a. The Member must submit proof of registration in a course of ethics approved by the Registrar, to the Registrar;
 - b. Mr Morgan must, at his own expense, successfully complete to the Registrar's satisfaction, a course in ethics, as approved by the Registrar; and
 - c. Mr Morgan must provide proof acceptable to the Registrar that he has completed the course in ethics and submit a summary of the learning outcomes of the ethics course.

5. Mr. Morgan is required to pay to the College costs in the amount of \$2,000.00, payable in full no later than 60 (sixty) days from the date of Mr Morgan's suspension.

PENALTY SUBMISSIONS

Ms. Durcan submitted that the conduct in this matter was serious and deserving of significant sanction which is reflected in the joint submission on penalty and costs. She stated that the suspension and reprimand will send a message to Mr. Morgan himself and other denturists that conduct of this nature must be scrupulously avoided. Further, Ms. Durcan submitted that the ethics course will help to ensure that Mr. Morgan will not repeat such behaviour in the future. In this way, the joint submission fulfills the principles of general and specific deterrence, public protection and remediation. Ms. Durcan stated that while the conduct was serious, Mr. Morgan had admitted the conduct alleged and obviated the need for a hearing and the necessity of testimony from the complainant and others.

Ms. Durcan stated that because it was a joint submission it should be accepted unless it is unreasonable, contrary to the public interest or would bring the administration of justice into disrepute. She stated that the proposed penalty is within the same range as the sanctions imposed on other individuals for similar conduct and that the Panel should not tinker with the proposed penalty unless it had reason to believe that it was unreasonable and outside the appropriate range.

Ms. Wise submitted that the joint submission on penalty and costs was in the appropriate range and should be accepted by the Panel. She emphasized that there was no intentional misconduct in this matter, it was limited to a single patient, Mr Morgan had no prior disciplinary history and that by his plea he has taken responsibility for his actions.

REASONS FOR PENALTY DECISIONS

Counsel for the College and Counsel for Mr. Morgan made a joint submission as to the appropriate penalty and costs which was accepted by the Panel. The Panel is aware that a joint submission must be accepted unless to do so would be contrary to public interest and would bring the administration of justice into disrepute. The Panel is also aware of the accepted principles that guide the determination of an appropriate penalty. These principles include protection of the public from further misconduct by the member, specific and general deterrence and rehabilitation. Aggravating and mitigating factors should also be considered.

The conduct in this matter was serious and fell below the standards of the profession. There were significant deficiencies in the work completed by Mr. Morgan and the patient was not provided with adequate instructions or follow-up care. Further, and perhaps more aggravating, was the fact that the fees charged to the patient were excessive and unreasonable for the services performed. However, as indicated by Ms. Wise, Mr. Morgan has no previous disciplinary history and has demonstrated remorse by entering a plea of guilty thereby taking responsibility for his actions, all of which are mitigating factors.

The Panel was of the opinion that the proposed penalty reflected both the public's and profession's level of disdain for this activity and fell within the spectrum of penalties imposed in similar cases.

The eight (8) week suspension addresses all four pillars of sanction. It is a significant period of time during which the Member is prevented from practising his profession. The period of suspension therefore gives the Member an opportunity to reflect on the conduct that brought him before the Panel of the Discipline Committee and to think about the necessary changes he must incorporate in his practice in order to continue to progress as a health professional. The suspension also ensures that public confidence in the profession is maintained.

The required course work in ethics specifically addresses the issue of remediation. The course in ethics will be a reference point for the Member's conduct in his professional interactions with patients. As well, the successful completion of the course work will help to ensure that the public has confidence in the regulatory process.

A reprimand is a daunting experience for the Member. It is the Panel's opportunity to speak directly to the issues that brought the Member to this point. A reprimand acts as a specific deterrent as well as a general deterrent. In this case it also addresses the issue of remediation and provides an opportunity for the Member to learn from the experience.

The *Health Professions Procedural Code* under the *Regulated Health Professions Act, 1991*, S.O. 1991 c. 18 allows the College to seek costs. In this matter, the costs sought by the College are in the nature of recovery of costs incurred in the amount of \$2,000.00. The Panel is satisfied that the penalty is fair and reasonable, that it speaks to the four pillars of sanction, and that it serves and protects the public interest.

ORDER

The Panel makes the following order as to penalty and costs:

1. Mr. Morgan is required to appear before a panel of the Discipline Committee to be reprimanded on the date of the order.
2. The Discipline Committee shall direct the Registrar to suspend Mr. Morgan's certificate of registration for a period of eight (8) weeks, to commence on a date acceptable to the Registrar.
3. The Registrar will suspend five (5) weeks of the suspension ordered in paragraph 2 if the Member successfully, in the opinion of the Registrar, completes all the requirements set out in paragraph 4 of this order within 12 (twelve) months of the date of this Order.
4. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on Mr. Morgan's certificate of registration:
 - a. Mr. Morgan must submit proof of registration in a course of ethics approved by the Registrar, to the Registrar;
 - b. Mr. Morgan must, at his own expense, successfully complete to the Registrar's satisfaction, a course in ethics, as approved by the Registrar; and
 - c. Mr. Morgan must provide proof acceptable to the Registrar that he has completed the course in ethics and submit a summary of the learning outcomes of the ethics

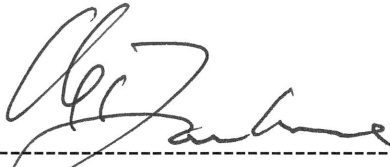
course.

5. Mr. Morgan is required to pay to the College costs in the amount of \$2,000.00, payable in full no later than 60 (sixty) days from the date of Mr Morgan's suspension.

THE REPRIMAND

At the end of the hearing, the Member confirmed on the record that he was waiving his right to appeal from this decision and so the panel conducted the reprimand.

I, Ivan McFarlane, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the Discipline Panel as listed below.



Ivan McFarlane, Chairperson



Date

Bruce Selinger, Professional Member
Luc Tran, Professional Member
Arnella Csongradi, Public Member