

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

PANEL:

**Chair, Hanno Weinberger
Anita Kiriakou
Alexia Lanoue
Mordey Shuhendler
Bruce Selinger**

BETWEEN:

COLLEGE OF DENTURISTS OF
ONTARIO

- and -

HONG (TRACY) TRAN

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)
) REBECCA DURCAN for
) College of Denturists of Ontario
)

)
) VALERIE WISE & JULIE
) LAUWERS for the Member)
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) LUISA RITACCA
) Independent Legal Counsel
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) Heard: February 27-28, 2017

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on February 27 and 28, 2017, at Victory Verbatim in Toronto, Ontario.

At the outset of the hearing, the College advised that it would be seeking to withdraw allegations found at paragraph 8, and 17(b) and 17(d) of the Notice of Hearing, dated July 17, 2015. The Member consented to the request and as such the panel withdrew those allegations.

The Allegations

The allegations against the Member as set out in the Notice of Hearing, dated July 17, 2015, which was marked as Exhibit #1, are as follows:

1. At all material times, Tracy Tran (“Ms. Tran”) was a member of the College.
2. B.C. was Ms. Tran’s patient. B.C. required a full upper denture.
3. On or about January 28, 2014, B.C. made a full payment of approximately \$1,292 to Ms. Tran for the full upper denture.
4. On or about March 18, 2014, Ms. Tran inserted the full upper denture.
5. B.C. returned to Ms. Tran several times for adjustments because the full upper denture would not remain in place.
6. On or about July 11, 2014, B.C. asked Ms. Tran to view the model of her mouth, but Ms. Tran failed or refused to do so.
7. Ms. Tran told B.C. on or about July 11, 2014, that if the full upper denture did not fit after the scheduled appointment on August 8, 2014, Ms. Tran would refund the costs of the full upper denture.
8. *Allegation Withdrawn.*
9. After multiple adjustments and fittings, the full upper denture:
 - a. Did not fit B.C. on or before August 8, 2014;
 - b. Regularly required glue to remain in place;
 - c. Rocked back and forth while B.C. chewed; and/or
 - d. Was too thick and too short for B.C.
10. On or about August 8, 2014, B.C. asked Ms. Tran about the refund. Ms. Tran told B.C. that the office manager would contact B.C.
11. The office manager was Ms. Tran’s husband.
12. On or about August 12, 2014, Ms. Tran’s husband, at a Tim Horton’s, advised B.C. that the refund would only be provided if B.C. signed a release and immediately returned the

full upper denture. B.C. advised Ms. Tran's husband that she would not immediately take out her full upper denture and return them.

13. The release provided to B.C. indicated that, among other things, in exchange for the refund B.C. would cease and desist:
 - a. Visiting and or speaking to dentists, denturists, oral surgeons, denturist associations, patients, past or present with the sole purpose of maligning Trillium Denture Center, Tracy Tran DD or any employees of Trillium Denture Centre;
 - b. Phone calls to Trillium Denture Centre demanding measures contrary to the prescribed Immediate Denture treatment protocol;
 - c. Threats to damage the community's opinion of Trillium Denture Centre by way of damaging reviews on websites accessible by the internet or otherwise;
 - d. Threats to Trillium Denture Centre to disparage the clinic and the work performed there; and
 - e. Threats to visit Trillium Denture Centre and disrupt the daily health care procedures.
14. On or about August 29, 2014, and/or September 2, 2014, B.C. tried to contact Ms. Tran and/or Ms. Tran's husband regarding the refund without any success. B.C. left messages and neither Ms. Tran nor Ms. Tran's husband responded.
15. On or about September 3, 2014, B.C. again called Ms. Tran. Later that day, Ms. Tran's husband contacted B.C. and informed her that B.C. would not receive a refund and that if B.C. came to see Ms. Tran, the police would be called.
16. Ms. Tran knew or ought to have known and/or condoned the above noted actions and inactions of Ms. Tran's husband.
17. It is alleged that Ms. Tran engaged in the following acts of professional misconduct as set out in Ontario Regulation 854/93, section 1:
 - a. She failed to maintain the standards of the profession (paragraph 2);
 - b. *Allegation Withdrawn*;
 - c. She failed to fulfill the terms of an agreement with a patient (paragraph 7);
 - d. *Allegation Withdrawn*;

- e. She 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 dishonourable, unethical or unprofessional (paragraph 47).

18. Further particulars of the specified allegations of professional misconduct relied upon by the College are contained in the documentary disclosure provided to Ms. Tran in support of the allegations in the Notice of Hearing.

Member's Plea

The Member denied the allegations as set out in the *Notice of Hearing*, save for those which were withdrawn.

Overview

In January 2014, BC attended the clinic of Tracy Tran (TT or the “Member”) to engage her services as a denturist. BC wanted to have all her remaining upper teeth extracted. She required an immediate full upper denture to be inserted directly following the extraction of her teeth. The Member examined BC and accepted her as a patient. BC’s teeth were extracted in March 2014 and her immediate upper denture was inserted at that time. As part of the treatment plan and during the healing process, several subsequent visits were scheduled to address the usual fit concerns. By July 2014, BC was expressing concern that she was not happy with the fit or with the progress she was making. The Member advised BC to complete the scheduled treatment plan and to allow for the healing process, before making any final decisions. At her final appointment on August 8th, still unhappy with the fit of her denture, BC demanded a refund. The Member agreed and told BC that CL, her office manager (and husband), would be in touch to discuss the office protocol and standard for a full reimbursement.

On August 11th, CL called BC and left two messages on her phone. He advised that going forward he would be the point person and that all communication should go through him. He told BC that there would be forms to sign prior to a refund being given. CL assured BC that in the end, everyone would be happy.

BC and CL agreed to meet at a Tim Hortons to facilitate the refund process. BC did not want CL coming to her home and CL did not want BC attending at the clinic.

CL arrived at Tim Hortons with a cheque and two release forms requiring BC's signature. CL expected BC to return her denture in exchange for the refund cheque. As BC was still wearing the dentures fabricated by the Member, she was not prepared to return them at that meeting. She expected to receive the refund cheque and to return her denture sometime later, once her new set was ready. CL was not prepared to give the refund cheque to BC unless he received the denture and he felt that he was not authorized to make any alternate arrangements. The Tim Hortons meeting ended with BC agreeing to contact CL once she was in possession of her new denture.

By the end of August, once BC had her new denture, she contacted CL to inform him the refund and return of the denture could now move forward. On September 3rd, CL left two phone messages for BC informing her not to attend at the clinic. He further stated that BC was no longer entitled to a refund and if she came to the clinic, the police would be notified.

Decision

In its deliberations, the panel considered whether the Member had entered into an agreement with the client and if so, whether that agreement had been honoured. The panel also considered whether the Member had engaged in professional misconduct by involving her husband (CL) in her dealings with the client and in particular, in arranging the meeting with the client at Tim Hortons to exchange the denture for the financial refund.

In its deliberations, the panel considered the documentary evidence and Agreed Statement of Facts filed as exhibits and the testimony of four witnesses.

The panel found that the Member, Tracy Tran did fail to fulfill an agreement with BC, as described at paragraph 17(c) of the *Notice of Hearing*. Further, the panel found that the failure to fulfill the agreement, the involvement of CL and the location of the proposed exchange would reasonably be regarded by members of the profession as unprofessional as set out in paragraph 17(e) of the *Notice of Hearing*.

The panel did not find that the Member failed to maintain the standards of the profession, as set out in paragraph 17(a) and it did not find that the conduct would reasonably be regarded by members of the profession as dishonourable or unethical.

The Evidence:

Witness #1 BC (the patient)

BC became a patient of the Member sometime in January 2014. She attended the Member's clinic, on referral from her dentist, Dr. Wong. BC had decided to complete a full upper teeth extraction and attended upon the Member to arrange for the fabrication of a full upper immediate denture, she could use following her extraction. BC paid the Member \$1292.00 for the immediate denture, a fee which included the denture, three months of post-care and complete relines by August 2014.

On or about March 2014, Dr. Wong extracted the Member's teeth. At the same time, he inserted the full upper immediate denture, which was prepared by the Member. During her examination, BC explained that following her extraction, she made numerous visits to the Member's clinic for soft relines (i.e. adjustments to the immediate denture). She told the panel that she had to use glue two to three times a day to help secure the fit of her new denture and that in her view the immediate denture never fit the way she expected.

At her July 2014 appointment, BC told the Member that she had gone to see two other denturists and her dentist to complain about the fit and feel of her immediate denture. BC maintained that the immediate denture did not fit properly. She told the Member that she needed a new denture. BC testified that in response to her complaints, the Member advised her to wait until the end of her treatment in August to fully allow for the healing process.

BC left the July appointment with the impression that if her immediate denture did not fit properly by the end of her treatment (August 2014), she would receive a refund for her denture. BC stated that the Member told her she would have to speak with the office manager regarding the

terms of the refund. BC further testified that no mention was made that her immediate denture would have to be returned in order for the refund process to occur.

At her final appointment on August 8th, BC admitted that she was forceful, but she denied that she yelled or at any time threatened the safety of the Member, her son or the staff. According to BC, at this final appointment, no mention was made of office protocol or standards regarding the refund. Further, BC confirmed that no mention was made that she would have to return the immediate denture in order to receive the refund.

BC called the Member's office the following day, August 9th, to tell her that the immediate denture still did not fit properly and asked for the refund. Arrangements were made for BC to meet with CL. She expected to receive a cheque, to sign some release forms and to return the immediate denture once her new one was ready, on some other date.

At the meeting with CL on August 12th, BC stated that CL told her if she wanted her refund, she would have to provide him with the immediate denture. Given that she was still wearing the denture, BC testified that CL suggested she should go to the parking lot to remove it.

Following her meeting with CL, BC stated that she did not set foot in the clinic again and did not call the clinic.

Responding to cross examination by Member's Counsel, BC stated that she understood the concept of a refund, and had fully intended to return the denture once her new one was ready. BC agreed with the bulk of comments made by the Member in her patient notes, however stated that she did not know if the Member had documented all of her complaints.

BC admitted to being condescending at the July 11th appointment. However, she stated that giving the Member the Toronto Star article (*Exhibit #4*), which addressed how and when to push for refunds, was not a veiled attempt to threaten the Member.

BC did admit that at the August 8th appointment she informed the Member that she had already complained to the College. However, she denied threatening the Member and denied that she yelled or complained about her to other patients in the clinic waiting room. She did acknowledge that she stayed in the waiting room for several hours while her denture was being repaired, but she indicated she did so because she did not want to leave without teeth in her mouth.

On or about August 29th, once she was in receipt of her new denture, BC contacted CL to make arrangements for a refund cheque to be ready for her on September 3rd.

Replying to College Counsel, BC stated that she had never contacted the media about this matter. She stated that on August 8th, the last day of her treatment plan, her denture still did not fit properly and that she fully expected a refund.

#2 Jason Gillooly (JG)

The College sought to tender Jason Gillooly (JG) as an expert witness in the area of standards of the profession, specifically regarding any standards or protocols involving refunds to patients and discussing refunds with patients. A curriculum vitae was not provided to the panel, but following a brief examination of JG's background and, hearing no objection from Member's Counsel, the panel agreed to qualify JG to give expert opinion evidence on the standards of the profession and in particular on the issue of refunds.

JG testified that members of the profession are not obligated to offer refunds to their patients. However, JG stated that once an offer of a refund was made, the standards of the profession required members to honour any such offer. It was JG's opinion that honouring an offer given, while not a written standard, would certainly be considered a "common practice". JG stated that a patient's conduct or behaviour, even if it was aggressive or persistent, did not give a denturist the right to alter or rescind an agreement.

JG went on to state that not honouring an agreement reflected poorly on the profession as a whole.

When asked by College Counsel if there were any other issues in this case that concerned him, JG responded that the meeting between the client and CL at Tim Hortons was of concern. The location of the meeting was seen by JG to not be professional. The location raised issues of patient privacy and potential sepsis (infection control). Returning saliva covered dentures at a Tim Hortons restaurant or the parking lot did not rise to the standard of the profession. JG stated that the proper standard would be to arrange for the dentures to be returned in a sanitary location (ideally the professional's office), with gloves and the ordinary infection-control procedures in place. JG stated that denturists must always be aware of infection transmission.

In JG's opinion, there was a communication breakdown. BC had not been properly apprised that the dentures needed to be returned at the time of the refund. The Member should have seen it as a common courtesy to not have a patient walk around for three weeks without any upper teeth.

Under cross examination, JG stated that a professional does not have to offer a refund for services provided and that it was reasonable for the Member to expect that the denture would be returned as part of the refund process. JG stated that in his opinion, the location chosen for the refund and exchange did meet the level of professional misconduct. He acknowledged that there are no written guidelines dealing with refunds for services provided to difficult patients. He also agreed that there was no evidence that the Member expected BC's denture to be removed at Tim Hortons.

In conclusion, JG agreed that if the Member did not expect BC to remove her denture at the Tim Hortons, then the selection of that location for the meeting was not a breach of the standards of the profession.

#3 Hong (Tracy) Tran (TT or the Member)

The Member has been a member of the College since October 2004. She has no previous discipline history with the College. The Member prepared BC's immediate full upper denture in the winter of 2014. The immediate denture was inserted by BC's dentist on or about March 2014. The Member oversaw BC's healing process from March until August 2014. Between March and May 23, 2014, the Member saw BC seven times for post care follow up. The Member performed

chairside relining for BC at no extra charge. The Member was paid a total of \$1292.00 for the immediate denture and follow-up care.

During her examination in chief, the Member explained that as of April 2nd, 2014, BC was complaining that her immediate denture was loose. She repeated that complaint at a visit on April 15th. The Member took steps to make BC more comfortable and had even provided her with denture glue, as she was aware that BC would be out of the country for several weeks in the spring. At no time before her July 2014 appointment did BC request a refund from the Member.

The Member testified that BC arrived angry at her July 11th appointment. She proceeded to tell the Member that she had been to see other denturists regarding her concern about her ill fitting immediate denture. The Member stated that BC did not tell her that the complaints were made anonymously. In other words, the Member believed that BC was complaining about her to other denturists.

The Member testified that her interaction with BC at her August 8th appointment was traumatizing. She stated that BC was angry and agitated. The Member explained that she was scared. She stated that BC started yelling and made threats to her staff. The Member was concerned about her son who was present at the clinic and who observed the Member's interaction with BC. The Member explained that BC threatened to bad mouth her to the community and that she was terrified. The Member admitted that she agreed to give BC a full refund if, at the end of her treatment plan, she was still not happy with the final product.

The Member testified that on August 9th, BC telephoned the clinic and told her to have a refund cheque ready for pick up at the clinic on the following Tuesday. The Member stated that BC was loud, aggressive and made violent threats against her. The Member said that her heart was beating very fast. Out of concern for her own safety and the safety of her staff, the Member agreed to provide BC a full refund. The Member explained that she felt unsafe having BC attend at the clinic and stated that she did inform BC that release documents would have to be signed releasing her as a patient.

The Member testified that she expected the immediate denture to be returned even though she had not specifically told BC that was what she expected. In no way did the Member expect that BC would have the denture in her mouth at the meeting at Tim Hortons. She expected that BC had a back up pair of dentures and expected the immediate denture she prepared to be returned in a zip-lock bag. The Member did not expect BC to have the denture in her mouth, however she did admit that this had not been communicated explicitly to BC.

Referring to *Exhibit #2* (tab 1), the Member testified that she had filled out page 13 (Final Release form) and that CL had filled out page 14 (Trillium Denture Centre Final Release) which outlined the “cease and desist” conditions of the refund. This type of situation had never happened to the Member before and she felt harassed, threatened and abused by BC.

The Member reiterated that her agreement with BC was that she would provide her with a refund, in exchange for the return of the denture on August 12th, at the Tim Hortons as arranged. She denied that there was any further agreement to provide BC with a refund after that date. The Member testified that she was prepared to honour the agreement on August 12th and that it was BC who chose not to honour the agreement.

When asked why she did not agree to a refund three or four weeks later, the Member explained that she felt she had been abused by BC, taken advantage of and that a line had to be drawn in the sand.

Under cross examination by College Counsel, the Member acknowledged that she had not given BC any information regarding office protocol around refunds. She thought she recalled telling BC that a refund was tied to signing release forms, but did not recall telling BC that her denture would have to be returned since the Member assumed that was obvious.

The Member admitted that BC was clearly not satisfied with the fit of her denture at the August 8th appointment. BC demanded a refund or a replacement.

The Member admitted that even though she felt threatened by BC and felt her son had been traumatized by BC's conduct at the clinic, at no time did BC threaten to physically harm the Member, her staff or her son. The Member further admitted that she was not concerned that BC was going to physically harm her, her staff or her son. Ultimately, the Member admitted that as of August 8th, she had agreed to provide BC with a refund.

The Member testified that BC's tone on the August 9th telephone call was aggressive. Given that aggressive behaviour, the Member explained to BC that her office manager would contact her early the next week to follow through the office protocol of signing the release forms prior to receiving the refund.

At the August 12th meeting between BC and CL, the Member expected that the patient release forms would be signed, the denture returned and the cheque given to BC. The Member assumed the denture would be returned. The Member had given CL two release forms (*Exhibit #2* tab 1, pages 12, 13) before the meeting with BC. Both forms were to be signed by BC as part of the refund protocol. The Member acknowledged that there was nothing on page 14 (*Exhibit #2* tab 1), the form which contained the "cease and desist" conditions of the refund, which referenced the return of the denture. In the Member's mind, BC's failure to return the denture at the August 12th meeting meant that the refund agreement was over. BC had changed the terms of the agreement by requiring additional time prior to returning her denture.

Even though CL and BC had agreed to connect again once her new teeth were ready, the Member testified that she felt that any agreement between them was no longer valid.

The Member acknowledged that she was aware of the communications between BC and CL during and immediately following the Labour Day weekend. The Member understood that CL advised BC that the refund agreement was no longer on offer. The Member testified that she agreed with CL's approach. The Member felt the procedure for BC had been successful. BC had traumatized her son and was threatening to attend the clinic again. These factors lead the Member to conclude that the refund agreement was no longer valid.

The Member explained that by the August 12th meeting between BC and CL, she believed that BC's new denture was ready. The Member assumed that her new denture was ready since she understood that BC had been seeing another denturist.

#3 Cid Lippa (CL)

CL is the Member's husband. He was held out to BC as the Member's office manager. There was no dispute between the parties that on or after August 11th, 2014, all of BC's dealings with the Member's clinic were made through CL. He testified that the Member asked him to become involved in arranging for the refund to BC, sometime after August 9th, 2014. CL acknowledged that he was neither a health professional, nor the Member's actual office manager. He is a general contractor who constructed the clinic for the Member, and who would discuss the clinic's business from time to time, at home with the Member.

Following the August 8th, 2014 visit, CL stated that the Member was no longer comfortable having BC attend at the clinic and so she asked CL to handle the refund process off site. CL contacted BC to inform her that going forward he would be the contact person in this matter and that BC was to deal exclusively and only with him.

CL stated that he told BC about the release forms that would require her signature. He stated that he expected the denture to be returned in exchange for the refund cheque. The Member had given him a sterilized bag to accommodate the return of the teeth. CL stated that he did not expect BC's denture to be removed at Tim Hortons. He told the panel that he felt badgered by BC and her friend who was also present at the meeting. He reiterated that he was not in a position to postpone the return of the denture by a few weeks. That was a decision only the Member could make.

CL stated that in responding to BC's call over Labour Day weekend, he did not want BC to attend at the clinic. Following BC's telephone message over the Labour Day weekend, the Member told CL about their son's reaction to BC's August 8th appointment. CL was angry that BC had frightened his son. He had not been aware of the full extent of the incident prior to that time. In a telephone message to BC, CL told her that he wanted her to have nothing more to do with

his family. He was now seeing things in a different light, and felt that BC was no longer entitled to any refund.

Regarding page 24 (*Exhibit #2*), CL testified that he had put the document together and admitted that the hand writing on the document could be his, but he could not be sure.

CL admitted that BC was the first patient for whom he had been asked by the Member to facilitate a refund. In reference to *Exhibit 2* page 23, the release of BC as a patient, CL stated that he had not read through the document. It was a clinical document which he might have made notes on, but was unable to confirm whether or not it was his handwriting. CL admitted that he had created the document on page 24 of *Exhibit #2* based on the input of the Member and some of her staff. CL testified that the Member had advised him of the forms that required BC's signature but not about the process to follow regarding the return of the denture.

CL admitted that his remark to BC telling her to go to her car and remove her denture was a flip-pant one, made in response to being badgered by BC and her friend.

CL stated he could not say the agreement with BC was over on August 12th without the return of the denture. That decision was not his to make. Only the Member could make that decision.

CL stated that he only learned about BC's conduct at the August 8th appointment and the trauma the Member claimed their son had suffered immediately prior to BC's September 3rd telephone message. He admitted that the Member never advised him that she was no longer going to give BC the refund.

CL testified that he was upset and that in his mind the refund offer was over. He stated that at that time he was in no position mentally to deal with BC any longer.

College's Closing Submissions

The College reminded the panel that it (the College) had the burden of proving on a balance of probabilities that the Member had engaged in an act or acts of professional misconduct as alleged

in the *Notice of Hearing*. The College argued that the facts as admitted and as demonstrated in the witness testimony did establish professional misconduct.

The College argued that the Member had entered into an agreement with BC for a full refund, if at the completion of her treatment BC was still not happy with the results. On August 9th, the day following the completion of her treatment, BC called to express her dissatisfaction and requested a refund, as per the agreement.

The College argued that by the time of the Tim Hortons meeting between BC and CL, the Member had handed over all responsibility to her husband, CL. While BC had been advised that she would need to sign release forms prior to receiving her refund cheque, she was not told that her denture would have to be returned at the same time.

The Member did not want BC attending at the clinic. She was aware that Tim Hortons was to be the location of the meeting. As of BC's August 8th appointment, the Member was aware or should have been aware that BC's new denture was not yet ready. At the conclusion of the August 12th meeting, an agreement still existed between BC and CL, who was acting on the Member's behalf. BC was to contact CL in a few weeks once she had received her new teeth. However, once BC contacted CL she was informed via two telephone messages that CL was seeing things in a different light and that the agreement made was no longer valid.

The College submitted that the evidence presented demonstrated that an agreement existed between the Member and BC and that the Member had failed to adhere to that agreement. The College argued that when a denturist does not adhere to an agreement, the failure to do so is in fact a breach of the standards of the profession and similarly, to leave a patient without any teeth in their mouth, if even for a few weeks, would also be considered to be a breach of the standards of the profession.

Regarding witness credibility, the College submitted that BC was a credible witness. The witness conceded points when she could not remember and had no financial interest in making her complaint. BC had yet to receive a refund and it was unlikely that she ever would. BC was clearly

frustrated and upset at the conclusion of her treatment. She denied being violent, screaming at anyone or harassing anyone.

The College argued that the Member, on the other hand, was not always a credible witness. She denied that there was any discussion of a refund at the July 11th appointment, yet there are two notations in her patient notes indicating that there was discussion of a refund. The Member stated that she was taken aback by BC's early arrival at her clinic on August 8th. She stated that she never scheduled appointments before 9:30, yet in that week's log (*Exhibit #2, tab 3*), someone had been scheduled for an appointment at 9:00.

The College submitted that CL's evidence was impassioned but did not always make sense. He was not always a credible witness. CL's claim that he only found out about the impact of BC's conduct on his son after BC's telephone message over Labour Day seemed improbable.

With respect to the expert witness, JG, the College argued that he was a credible witness. He explained his opinion in a straightforward manner. When challenged with reasonable alternative versions of the facts, he made reasonable concessions.

The College argued that there was no reasonable basis for the Member to conclude that rescinding the offer after the August 12th meeting absolved her of her professional obligations. Nothing had changed in the relationship between the Member and client from August 12th to the end of the month. Ultimately even if it was difficult to deal with BC, the Member had offered a refund if BC was not happy at the end of her treatment. The Member had an obligation to live up to that offer.

The College submitted that the Member failed to maintain the standards of the profession (as per allegation 17(a)). The College relied on JG, the expert witness, in support of this position. There was no competing evidence submitted by Member's Counsel and Member's Counsel did not challenge the expert. The offer of a refund does not need to be made by any member of the profession. However, once it is made, it becomes part of the financial agreement between the dentist and the patient. The terms of the refund, as the terms of any treatment plan, need to be clear

and upheld. It is the responsibility of the professional to ensure the clarity and transparency of all aspects of the treatment plan. Even if the patient becomes rude and demanding, once an offer is made, it must be honoured.

The choice of Tim Hortons as the meeting place to conduct the refund transaction was suggested by BC. She did not want CL to come to her home, just as the Member did not want BC attending at the clinic. BC was not advised that she would have to return her denture at that time. The Member, on the other hand, knew or ought to have known that as of BC's August 8th appointment, she had yet to receive her replacement denture. Given that, the Member should not have assumed that by the August 12th meeting between BC and CL, her replacement denture would be available. Even though BC chose the location for the exchange, the Member was the professional and should have been cognizant of the issues concerning patient privacy and sepsis (infection control) in choosing a location other than her clinic to facilitate the exchange.

BC was unwilling to be without teeth for any period of time but expressed her willingness to return the denture by the end of August once she had her replacement teeth.

Many assumptions were made on both sides; however it was the opinion of the expert witness that BC should have been fully apprised of the terms and conditions of the refund.

College Counsel submitted that the Member is a regulated health professional. It is not credible that the Member did not know that BC would have no teeth by the August 12th meeting. Further, it was the Member who made the decision to involve CL and there was no evidence presented to indicate that the Member had been advising CL in any way during his meeting with BC.

The College submitted that there was evidence to confirm that an agreement for a refund had been made either on or about July 11th or on or about August 8th. There was no evidence that BC was provided with the provisions of the office protocol or standards regarding the return of the denture. For BC, returning the denture at the August 12th meeting came as a surprise. A meeting was scheduled between BC and CL for the end of August, once BC had possession of her replacement denture. Therefore, the agreement between BC and the Member did not die on

August 12th. The Member and or her husband made a choice to rescind the offer by Labour Day weekend.

The College reminded the panel that it did not need expert evidence to make a finding that the members of the profession would reasonably regard the conduct at issue here as dishonourable, unethical or unprofessional. The College argued that in this case, the conduct would be regarded as unethical and unprofessional at a minimum.

Member's Closing Submissions

Counsel for the Member argued that this case had evolved dramatically from when it was first referred by the ICRC to the hearing. Counsel argued that the Member had suffered enough and as such asked the panel to dismiss all allegations.

Counsel submitted that the Member was a very credible witness. There were no inconsistencies on the material facts. In fact, many of BC's admissions supported the Member's version of events. Further, Counsel argued that CL was impassioned, but ultimately a credible witness.

At the July 11th appointment, BC admitted to working with another denturist. She claimed that she did not identify the Member to the new denturist, yet did not tell the Member that fact. The Member was still focused on BC's treatment plan and continued to act in good faith to achieve a satisfactory result. BC, on the other hand, was being unfair to the Member and not engaging in good faith.

At the July 15th appointment, BC demanded a refund. She showed the Member the Star article (*Exhibit #4*), inferring that negative publicity would get BC the refund she desired.

August 8th was a very difficult day for the Member. The Member is a quiet, petite and polite person and on that day she was scared. BC sat in her reception room all day and demanded a refund. The Member tried to appease BC by telling her to wait until her treatment was completed. If she was not happy at that time, then the Member told her that she would give BC the refund she was seeking.

On August 9th, BC called the clinic and demanded that a cheque be made available to her by August 12th. Member's Counsel told the panel that BC was the one who chose the date and the location, clearly with no intention of returning her denture.

On August 12th, both the Member and CL assumed arrangements had been made by BC to have her new teeth ready and inserted. The Member was not in attendance at the meeting. Member's Counsel stated that CL was in no position to make any changes to the agreement. CL was merely a courier. CL may have made a flippant remark to BC. However, that remark was based on his feeling of being badgered and his surprise that the immediate denture was not ready to be returned.

Following her husband's meeting with BC, the Member reasonably believed that there was no longer an agreement in place between herself and BC. By the time BC left voice messages for CL at the end of August, the Member had had enough. She did not want BC to attend at the clinic and was no longer willing to move forward with a refund.

Counsel argued that BC knew that by Labour Day weekend there was no longer any agreement to refund her money.

Counsel drew the panel's attention to the two issues in this matter. The first issue was the failure to honour an agreement. Member's Counsel stated that the refund was never part of the original treatment plan agreement. When CL arrived at the August 12th meeting with a cheque, the Member's part of the refund agreement had been met. It was BC who refused to honour the terms of the refund. From that point forward, there was no longer any agreement. Member's Counsel stated that the agreement was not an enforceable agreement, as a matter of law. The Member had completed her treatment plan and BC had given up nothing. After the August 12th meeting, there was no longer any agreement to fulfill.

The second issue for the panel's consideration was the location of the August 12th meeting. Member's Counsel stated that BC chose the location of the meeting and in doing so had in fact waived her privacy rights. As to any sanitary concerns, Counsel reminded the panel that the

Member had never requested the removal of BC's denture at Tim Hortons. The location of this meeting was a red herring and should not be an issue at all. BC wanted to keep her denture for three to four more weeks, while at the same time collecting her money from the Member.

Independent Legal Counsel Advice

ILC advised the panel that its decision needed to be based solely on the evidence from witnesses and exhibits entered. Submissions were not evidence.

ILC advised the panel that the onus was on the College to prove its case based on a balance of probabilities.

As to the expert witness, ILC reminded the panel that it had qualified JG as an expert. That qualification was within its discretion and was not challenged by Member's Counsel. Having qualified JG to give expert evidence, the panel was not bound to accept his evidence. The panel was still required to consider the opinion provided in the context of the other evidence as presented. The panel was still required to weigh JG's evidence to determine what weight, if any, it should be afforded.

As to the standards of the profession, ILC explained that they had not been presented to the panel in written form, but through JG's evidence. In considering JG's evidence, ILC advised the panel to consider what would reasonably be expected of an ethical, prudent denturist. Standards were a base line, not a gold standard.

Decision

Having considered the evidence and the onus and standard of proof, the panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 17 (c) and 17(e) (unprofessional) of the Notice of Hearing.

The panel made no findings with respect to the allegations listed at paragraphs 17(a) of the *Notice of Hearing*. The panel accepted the College's request to withdraw the allegations as set out in paragraphs 17(b) and (d) of the *Notice of Hearing*.

Reasons for Decision

The panel deliberated and discussed at great length the issues in this matter.

While the panel has made findings of professional misconduct in this matter, it concluded that the conduct fell at the low end of the spectrum of potential misconduct. In many ways, this matter was the result of a breakdown in communication and poor decision making. At no point did the panel question the treatment and care the Member provided to BC.

The panel made no finding as to the allegation in 17(a) regarding standards of the profession. While the panel did have some concerns around the location of the refund meeting between CL and BC and more generally CL's involvement, the panel accepted JG's evidence wherein he acknowledged that if the Member did not expect BC's denture to be removed on site (i.e. at the Tim Hortons), then there was no breach of the standard of the profession in the setting up the meeting at the Tim Hortons as was done here. The panel was satisfied on the evidence presented that at no time did the Member expect BC to remove her denture at Tim Hortons or in the parking lot of Tim Hortons.

The panel did find that the Member failed to fulfill the terms of an agreement with her patient (17(c) of the *Notice of Hearing*). The panel accepted the College's submission that the refund agreement became part of the original treatment plan, once the Member agreed to refund the money if BC was not satisfied at the end of the treatment. The panel also accepted the fact that members of the profession do not have a professional obligation to offer refunds to unsatisfied clients, or at all for that matter. However, once an offer of a refund is made, it must be honoured. Further, even though the offer of a refund was not part of the original treatment plan, it became a part of the plan once it was offered. Treatment plans are living agreements and as such, changes in terms and timelines can reasonably occur as needed, based on the patient's recovery and response to their treatment plan. There was evidence in the Member's July notes that the issue of a refund arose and in her August 8th notes that a refund had in fact been offered. The Member admitted to offering a refund in August. The panel was satisfied that the Member agreed to give BC a refund if at the end of her treatment, BC was not totally satisfied. The panel appreciated that the Member viewed BC as a difficult and sometimes intimidating patient. At the end of the day however, the Member was the health professional in this relationship and no matter how dif-

difficult the patient was to deal with, the Member had an obligation to honour her agreement. Further, from the panel's point of view, the only thing that had changed between the August 12th meeting and the decision to rescind the offer following the Labour Day telephone messages was the fact that CL had suddenly become aware of the impact of BC's August 8th visit on their son. That was not a reason to rescind or cancel the agreement with BC.

The panel concluded that in addition to failing to fulfil the terms of an agreement with a patient, the Member engaged in conduct that would reasonably be regarded by members of the profession as unprofessional (17(e) of *the Notice of Hearing*). The panel did not find that this conduct rose to the level of conduct that would be regarded as "dishonourable" or "unethical". Further, the panel found that while the conduct did rise to the level of "unprofessional", it was conduct that fell at the low end of the "unprofessional" spectrum. The Member made a couple of poor choices. Her communication with BC should have been clearer and particularly when the relationship started to break down, the Member ought to have ensured that whatever arrangements she chose to make with her patient were plainly articulated. The panel believes that this matter would not have come to discipline but for these communication failures. Further, the panel is convinced that these poor choices and communication breakdown occurred as a result of the Member's discomfort with the relationship and ultimately the Member's desire to make the matter go away. There was no evidence before the panel that the Member acted maliciously or in a manner to deliberately injure BC.

Two further issues were of concern to the panel; the location of the refund meeting and the involvement of CL in the refund process. The panel understood that the choice of Tim Hortons was made by BC. She did not want CL attending at her home, just as the Member did not want BC to come to the clinic. However, as stated earlier, the Member was the health professional in the relationship and ought to have known better. The panel finds that a more appropriate and professional venue could have been found to conduct the refund. The involvement of CL also concerned the panel. The panel had initially understood that CL was the office manager and as such could have understandably had some involvement in this process. However, as CL clearly stated in his testimony, he was a contractor who built the clinic and discussed financial aspects of the business at home with the Member. He was not employed at the clinic and was not, other than in this instance, involved in the day-to-day management of the clinic's business. His involvement

came about at the request of the Member, because she no longer felt comfortable dealing with BC. Member's Counsel referred to CL as a courier in the refund process. His role was to facilitate the refund/exchange transaction at Tim Hortons. CL clearly stated that he had no decision making capabilities. However, it appeared to the panel that the final decision over the Labour Weekend to rescind the refund offer was the result of CL being told of the impact of BC's August 8th clinic appointment on their son.

The panel found that the involvement of CL in this matter and the decision to meet the patient at Tim Hortons would reasonably be regarded by members of the profession as unprofessional. On the one hand, CL was not in a position to make any decisions, yet on the other it appeared that he received little guidance from the Member as to what to do during his meeting with BC and in his communications with her via telephone messages. Similarly, while the Member did not know that BC would still have her denture in her mouth at the Tim Hortons meeting, the Member should have ensured that CL arranged for a more private and professionally appropriate location for the exchange. However, the panel did not go so far as to view CL's involvement or the meeting location as a breach of the standard. JG acknowledged that if the Member did not know that BC's denture was still in her mouth then choosing to meet at the Tim Hortons was not a breach of the standards. With respect to CL's involvement, JG, the expert, did not opine on this and the panel concluded that it did not have evidence to make a finding of a breach of the standard in that regard.

I, Hanno Weinberger, 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:

H. A. Weinberger April 2017
 Chairperson, Hanno Weinberger Date

Anita Kiriakou
 Alexia Lanoue
 Mordey Shuhendler
 Bruce Selinger

