

DISCIPLINE COMMITTEE
OF THE COLLEGE OF DENTURISTS OF ONTARIO

PANEL:	Hanno Weinberger	Chairperson
	Patrick McCabe	Member
	Keith Collins	Member
	Anita Kiriakou	Public Member
	Peter Cassano	Member
BETWEEN:)	
)	
COLLEGE OF DENTURISTS OF ONTARIO)	<u>Rebecca Durcan</u> for
)	the College of Denturists of Ontario
)	
- and -)	<u>Esther Nwator</u> for
)	Maria Crystal Penano
)	
)	
MARIA CRYSTAL PENANO)	<u>Paul Le Vay</u> , Independent Counsel
)	
)	Heard: August 19, 2015

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee of the College of Denturists of Ontario (“the College”) on August 19, 2015_at the offices of Victory Verbatim Toronto.

The Allegations

The allegations against Maria Crystal Penano (the “Member”) as stated in the Notice of Hearing dated November 7, 2014, are as follows:

1. At all material times, Maria Crystal Penano was a member of the College.
2. On or about December 13, 2013, EY attended Ms. Penano’s clinic for a consultation. EY advised Ms. Penano that she wished to have a cap placed on her anterior teeth, and Ms. Penano advised her that this could be accomplished by a “Snap-On-Smile”. Ms. Penano did so when she knew or ought to have known that EY was not an appropriate candidate for Snap-On-Smile. EY was told the cost would be \$1,350, and EY paid \$700 as a first installment.
3. Approximately six weeks later, on or about January 24, 2014, EY returned to Ms. Penano’s clinic for her Custom Design Partial Lower Denture fitting. At that time, Ms. Penano acknowledged that the Custom Design Partial Lower Denture was not suitable for EY.
4. The conduct described above constituted professional misconduct as it is alleged that Ms. Penano engaged in the following acts of professional misconduct as set out in Ontario Regulation 854/93, section 1:
 - a. She recommended and provided unnecessary denturist services (paragraph 17); and/or
 - b. 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 unprofessional (paragraph 47).
5. Further particulars of the specified allegations of professional misconduct relied upon by the College are contained in the documentary disclosure provided to Ms. Penano in support of the allegations in the Notice of Hearing.

At the outset of the hearing, on consent of the parties, the panel permitted an amendment to paragraph 4(b) of Schedule A to the Notice of Hearing to delete the words “dishonourable, unethical”

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 which provided as follows.

1. Maria Crystal Penano ("Ms. Penano") is registered as a Denturist in the Province of Ontario and has been a member of the College of Denturists of Ontario since 2007.
2. On or about December 13, 2013, EY attended Ms. Penano's clinic for a consultation. EY advised Ms. Penano that she wished to have a cap placed on her lower anterior teeth.
3. Ms. Penano referred EY to an in-house dentist working at The Great Smile Denture Clinic, Dr. S, for examination of natural teeth 43, 41, 31, 32, 33. Dr. S examined EY's remaining lower teeth then recommended extraction or root canal treatment of some teeth. EY declined those treatment options. Dr. S also recommended a 'Snap on Smile' as a form of PLD to cover the lower anteriors.
4. Immediately thereafter, Ms. Penano consulted with EY and discussed the following treatment options with her:
 - i. Extraction of teeth 41, 31, 32, as recommended by Dr. S, followed by provision of a partial lower denture. EY refused to extract the teeth;
 - ii. EY's suggestion of 'trimming' the remaining teeth shorter so as to be able to cap them, an option later rejected by Dr. S and Ms. Penano because of sensitivity and a radiographically detectable periapical lesion;
 - iii. 'Snap on Smile' which Ms. Penano felt was not indicated in light of the condition of EY's remaining teeth. Despite the fact that Ms. Penano felt that 'Snap on Smile' would not be suitable for EY, Ms. Penano acceded to the wishes of EY and took impressions and a bite registration.
5. EY paid a deposit of \$700 to Ms. Penano.
6. The next day, on or about December 14, 2013, Ms Penano called the California office of 'Snap on Smile.' Ms. Penano was advised that the 'Snap on Smile' product may not be possible for EY. Ms. Penano then contacted a dental technician to inquire if a custom design partial lower denture could be fabricated for EY. Ms. Penano was advised that this

may be possible. Therefore, she sent EY's case to the dental technician for fabrication.

7. When the custom design partial lower denture arrived at Ms. Penano's clinic she immediately noticed that it would not be acceptable to EY. When EY arrived for the custom design partial lower denture, she advised Ms. Penano that it was not acceptable.
8. Ms. Penano knew or ought to have known that EY was not an appropriate candidate for a custom design partial lower denture.
9. Ms. Penano eventually reimbursed EY \$500 of the \$700 deposit.
10. It is agreed that Ms. Penano engaged in the following acts of professional misconduct as set out in Ontario Regulation 854/93, section 1:
 - a. She recommended and provided unnecessary denturist services (Paragraph 17); and
 - b. She 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).

Member's Plea

The Member admitted the allegations in the Notice of Hearing as set out in the Agreed Statement of Facts.

The Chair conducted a plea inquiry of the Member and the panel was satisfied that the Member's admissions were voluntary, informed and unequivocal.

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 in paragraphs 4(a) and (b) of Schedule A of the Notice of Hearing in that she engaged in the following acts of professional misconduct as set out in Ontario Regulation 854/93, section 1:

- a. She recommended and provided unnecessary denturist services (paragraph 17); and

- b. 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 unprofessional (paragraph 47).

Penalty

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

1. Ms. Penano is required to appear before a panel of the Discipline Committee to be reprimanded.
2. The Discipline Committee shall direct the Registrar to suspend Ms. Penano's certificate of registration for a period of four (4) weeks, to commence on a date set by the Registrar.
3. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on Ms. Penano's certificate of registration:
 - a. The Member must submit proof of registration in a course of ethics, approved by the Registrar, within thirty (30) days of the date of this Order, to the Registrar;
 - b. Within six (6) months after the date of the Order, Ms. Penano must, at her own expense, successfully complete to the Registrar's satisfaction, a course in ethics, as approved by the Registrar; and
 - c. Within 30 days of completing the course, Ms. Penano must provide proof acceptable to the Registrar that she has completed the course in ethics and submit a summary of the learning outcomes of the ethics course.
4. Ms. Penano is required to pay to the College costs in the amount of \$10,000.00, payable in full no later than six months from the date of the Order.

Penalty Submissions

On behalf of the College, Ms. Durcan outlined the principles to be considered in determining sanction. These included general deterrence (what is necessary to deter others in the profession from engaging in similar conduct), specific deterrence (what would deter the Member from such conduct in future), public protection, instilling public confidence in the profession and rehabilitation of the Member. Ms. Durcan submitted that the proposed penalty addressed all of these issues. She also submitted that the nature of the conduct itself was an aggravating factor (recommending and providing unnecessary treatment undermines public confidence in the profession) but that the fact a hearing was avoided as well as the fact that a partial refund had been made to the complainant were both mitigating factors.

Ms. Durcan submitted that while the panel was not bound to accept the proposed penalty, it ought not to reject it unless it was either overly strict or overly lenient to the point that it fell outside a range of appropriate sanctions such that accepting the joint submission would bring the disciplinary process into disrepute.

Ms. Durcan provided two decisions from the Discipline Committee of the Royal College of Dental Surgeons of Ontario which she submitted were not identical to the case before the panel but which could nonetheless provide some guidance on what the discipline committee of another college had accepted as appropriate in somewhat similar circumstances.

Ms. Nwator agreed with Ms. Durcan's submissions and did not make any further submissions on behalf of the Member.

The panel then received advice from its independent counsel.

Penalty Decision

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

1. Ms. Penano is required to appear before a panel of the Discipline Committee to be reprimanded. (The Member waived her rights of appeal and the reprimand was administered on August 19th)
2. The Discipline Committee shall direct the Registrar to suspend Ms. Penano's certificate of registration for a period of four (4) weeks, to commence on a date set by the Registrar.
3. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on Ms. Penano's certificate of registration:
 - a. The Member must submit proof of registration in a course of ethics, approved by the Registrar, within thirty (30) days of the date of this Order, to the Registrar;

- b. Within six (6) months after the date of the Order, Ms. Penano must, at her own expense, successfully complete to the Registrar's satisfaction, a course in ethics, as approved by the Registrar; and
 - c. Within 30 days of completing the course, Ms. Penano must provide proof acceptable to the Registrar that she has completed the course in ethics and submit a summary of the learning outcomes of the ethics course.
- 4. Ms. Penano is required to pay to the College costs in the amount of \$10,000.00, payable in full no later than six months from the date of the Order.

Reasons for Penalty Decision

The panel concluded that the proposed penalty was reasonable and served the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility for her actions.

In its decision for penalty, the panel was guided by the four pillars that it should consider when deciding the appropriate sanction: (i) general deterrence; (ii) specific deterrence; (iii) public protection and confidence, and (iv) remediation. The panel concluded that the Joint Submission on Penalty addressed all four pillars.

The panel also took into account the mitigating factors in this matter. The Member has plead guilty to the allegations of professional misconduct and agreed to the facts presented in the Agreed Statement of Facts. Doing so meant the patient (EY) did not have to appear in front of the panel and testify. The panel also considered the fact that the Member has provided a partial refund to the EY.

A reprimand is a daunting experience for the Member. It is the panel's opportunity to directly speak 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 this experience as she moves forward in her career.

The four week suspension addresses all four pillars of sanctioning. It is a significant period of time during which the Member is unable to practice her profession. The period of suspension therefore provides the Member with an opportunity to reflect on the conduct that brought her before the Discipline Committee and about the necessary changes she must make to her practice so that she can continue to progress as a health care professional. It also ensures that public confidence in the profession is being maintained.

The required course work in ethics specifically addresses the issue of remediation. The course work in ethics will inform the Member's conduct in her professional interactions with patients. As well, the

completion of the course work will help to ensure that the public has confidence in the regulatory process.

Costs

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, of the costs sought by the College is a recovery of costs incurred.

The panel is satisfied that the Penalty is fair and reasonable, speaks to the four pillars of sanction, and serves and protects the public interest.

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 listed below.

H. A. Weinberger

Hanno Weinberger, Chairperson

Sept. 25/15

Date

Patrick McCabe, Member
Keith Collins, Member
Anita Kiriakou, Public Member
Peter Cassano, Member