

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

PANEL:

Hanno Weinberger, Chairperson
Mark Fenn, Public Member
Peter Cassano, Professional Member
Damien Hiorth, Professional Member
Bruce Selinger, Professional Member

BETWEEN:

COLLEGE OF DENTURISTS OF ONTARIO)	REBECCA DURCAN for
)	College of Denturists of Ontario
- and -)	
)	No one appearing for
DRAGO VRLJIC)	Drago Vrljic
)	
)	AARON DANTOWITZ
)	Independent Legal Counsel
)	
)	Heard: November 22, 2016

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on November 22, 2016 at Victory Verbatim at 222 Bay St, Toronto.

The Allegations

The allegations against Drago Vrljic, as stated in the Statement of Allegations appended to the Notice of Hearing dated June 21, 2016 (Exhibit 1), are as follows.

IT IS ALLEGED THAT:

1. Drago Vrljic (the "Member") is a registered denturist in Ontario.

2. At the material time, the Member practised denturism at the Etobicoke Denture Clinic at the Cloverdale Mall in Etobicoke, Ontario.
3. On or about July 2, 2014, Patient A attended at the Etobicoke Denture Clinic for an un-scheduled fitting. The Member agreed to see Patient A.
4. Patient A entered the examination room and sat on the examination chair. The Member proceeded to do the following:
 - a. Close the door of the examination room;
 - b. Caress Patient A's face; and
 - c. Tell Patient A that she had a "nice body".
5. The Member proceeded to put his hand on Patient A's upper leg. Patient A told him to stop.
6. The Member proceeded to put his hand under Patient A's shorts and touch her pubic hair. Patient A told him to stop.
7. Patient A became afraid and tried to get out of the examination room. The Member grabbed her wrist. With his other hand, the Member undid his pants, exposed his penis to Patient A and touched his penis. Patient A believed that the Member was attempting to make himself erect.
8. The Member then let go of his penis and grabbed Patient A's other arm. The Member told Patient A to touch his penis. The Member pulled Patient A towards him. Patient A refused and asked the Member to stop.
9. Patient A struggled away from the Member, pushed him away and attempted to leave the examination room.
10. As Patient A moved towards the door the Member put his hand on the door so she could not leave.
11. The Member proceeded to ask Patient A when he could see her again. Patient A said she was not coming back and she would scream. The Member then allowed Patient A to leave the examination room.
12. On or about March 31 2016, as a result of the conduct described in paragraphs 4-11, the Member was convicted by a judge of the Ontario Court of Justice of sexual assault of Patient A contrary to section 271 of the *Criminal Code* and confinement of Patient A contrary to section 279(2) of the *Criminal Code*.
13. On or about April 1, 2016, as a result of the criminal convictions described in paragraph 12, the Member was sentenced. His sentence included a nine month custodial sentence and three year probation.

14. For each of these reasons, the Member engaged in professional misconduct pursuant to:

- a. subsection 51(1)(a) (been found guilty of an offence that is relevant to the member's suitability to practise) of the *Health Professions Procedural Code*; and;
- b. subsection 51(1)(b.1) (sexual abuse of a patient) of the *Health Professions Procedural Code*; and/or
- c. Subsection 51(1)(c) of the *Health Professions Procedural Code*, namely,
 - i. paragraph 2 (failing to maintain a standard of practice);
 - ii. paragraph 4 (abusing a patient verbally or physically) and/or
 - iii. paragraph 47 (disgraceful, dishonourable or unprofessional conduct);of section 1 of Ontario Regulation 854/93, as amended, under the *Denturism Act*, 1991.

Absence of the Member

The Member did not appear and was not represented by counsel. At the outset of the hearing, the panel invited College Counsel to address the issue of the Member's absence. College Counsel led the panel through *Exhibit #2* (Affidavit of Kristina Formosi) which outlined the numerous attempts made by the College via process server, regular mail and email to contact the Member and apprise him of the Notice of Hearing, the hearing date, time and location, as well as the sanctions sought by the College. All letters and emails were sent to the addresses disclosed by the Member and contained on the public register. In a letter dated September 27, 2016 (*Exhibit #2 - tab G*), College Counsel referred to and included previous letters sent to the Member (on July 25th, September 2nd and September 13th) and informed the Member of the date, time and location of the hearing. No response was received from the Member.

Based on the evidence presented by College Counsel, the panel accepted that the College had taken sufficient steps to ensure that the Member was deemed to have been served with the Notice of Hearing, and with notice of the date, time and location of the hearing. The panel was satisfied that the Member had received reasonable notice of the hearing in accordance with the *Statutory Powers Procedure Act*, and accordingly, determined that it had the authority to proceed in the Member's absence.

Member's Plea

Because the Member did not appear and was not represented by counsel, the Member was deemed by the panel to have denied the allegations, and the hearing proceeded as if the Member had pleaded not guilty.

Overview

At the time of the alleged incident, the Member, Drago Vrljic was a registered denturist in Ontario. The victim, a young female, had attended the Member's office seeking relief from the pain caused by her dentures.

While the patient was seated in the examination chair, the Member closed the door of the examination room. He then proceeded to caress the patient's face and told her that she had a "nice body". The Member placed his hand on the patient's upper leg. Even though the patient told the Member to stop, he proceeded to put his hand under her shorts and touch her pubic hair. The patient became afraid and attempted to exit the examination room. With one hand, the Member grabbed her wrist and with his other hand undid his pants, exposed his penis and asked the patient to touch it. The patient believed that the Member was trying to make himself erect. The Member then let go of his penis so he could use both hands to pull her toward him. The patient resisted and again told the Member to stop. The patient managed to push him away and attempted to leave the examination room. As she attempted to move toward the door, the Member put his hand on the door to prevent her leaving. The Member then asked the patient when he could see her again. The patient told the Member that she would never come back and that she would scream if the Member did not allow her to leave the room.

On or about March 31, 2016, the Member was convicted on charges of sexual assault and confinement. As a result of these criminal convictions, the Member was sentenced to a nine month custodial sentence and a three year probationary period.

The panel reviewed *Exhibit #5* the Brief of Court Documents which contained a certified trial transcript as well as the patient's impact statement.

The panel found that the Member in having been found guilty of sexual assault and confinement was guilty of professional misconduct. The Member had sexually, physically and verbally abused his patient and thereby had failed to maintain the standards of the profession.

The Evidence and Submissions

College Counsel presented as evidence *Exhibit #5*, the Brief of Court Documents. The Court documents contained the charges and the conviction of sexual assault and confinement against the Member. College Counsel reminded the panel that this conviction was based on finding the allegations to be true beyond a reasonable doubt. In the matter before the panel, College Counsel stated that the threshold was to make a finding on the allegations based on a balance of probabilities. Therefore, College Counsel stated that the allegations in paragraphs 1 - 13 of the Notice of Hearing (*Exhibit #1*) had been proven in light of the documentary evidence contained in the Brief of Court Documents (*Exhibit #5*).

The Member had been found guilty of an offence that is relevant to the Member's suitability to practise. The Member, by being found guilty of a relevant criminal code offence (in this case, sexual assault and confinement) had committed an act of professional misconduct as defined in subsection 51(1)(a) of the *Health Profession Procedural Code*. The evidence contained in the Court Documents clearly outlined the fact that the Member had caressed the patient's face, placed his hand on her upper thigh and proceeded to touch her pubic hair. These acts constituted sexual abuse. Further, there was evidence of the Member making remarks of a sexual nature. The

Member told the patient that she had a nice body, exposed his penis and asked her to touch it and asked when he could see her again.

On the question of whether the Member had failed to maintain a standard of practice of the profession, College Counsel stated that the Member had sexually abused his patient. This is a standard so obviously apparent and so notoriously known that the panel did not need to be advised that members should not sexually abuse their patients.

College Counsel stated that the victim impact statement illustrated how the words and actions of the Member amounted to verbal (comments of a sexual nature) abuse and physical (touching and grabbing the patient) abuse.

By being found guilty of a criminal act (sexual assault and confinement), the Member had failed to maintain the standards of the profession. College Counsel again reminded the panel that its burden of proof was based on a balance of probabilities.

Independent Legal Counsel reminded the panel that the onus of proof rested with the College. The panel must consider the evidence presented and whether the allegations had been proven. If they had, the panel must then determine whether the facts amounted to professional misconduct. Independent Legal Counsel told the panel that it could rely on the facts found in the criminal case as it followed a higher standard of proof. Independent Legal Counsel also confirmed that certain standards of practise were so well known and so notorious that no further evidence was required to make a finding.

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 paragraph 14 of the Statement of Allegations appended to the Notice of Hearing. In particular, the panel found that the Member engaged in professional misconduct under:

- a. subsection 51(1)(a)(been found guilty of an offence that is relevant to the member's suitability to practise) of the *Health Professions Procedural Code*; and;
- b. subsection 51(1)(b.1) (sexual abuse of a patient) of the *Health Professions Procedural Code*; and/or
- c. Subsection 51(1)(c) of the *Health Professions Procedural Code*, namely,
 - i. paragraph 2 (failing to maintain a standard of practice);
 - ii. paragraph 4 (abusing a patient verbally or physically) and/or
 - iii. paragraph 47 (disgraceful, dishonourable and unprofessional conduct); of section 1 of Ontario Regulation 854/93, as amended, under the *Denturism Act*, 1991.

Reasons for Decision

In reviewing the evidence presented, specifically the Brief of Court Documents (*Exhibit #5*), the panel concluded that the Member had engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable, and unprofessional. The panel clearly understood that the burden of proof in the criminal proceeding was beyond a reasonable doubt whereas, in the matter before the panel, the onus on the College was to convince the panel based on a balance of probabilities. The panel accepted as fact that the Member had caressed the patient's face, placed his hand on her upper thigh and proceeded to touch her pubic hair. Further, the panel found the Member's remarks to be of a sexual nature. The Member told the patient that she had a nice body, asked her to touch his penis after he had exposed it and asked when he could see her again. The Member also used physical force, grabbing her wrist(s) to prevent her leaving the examination room. The panel concluded that these acts clearly constituted sexual abuse as well as verbal and physical abuse of the patient.

It is the opinion of the panel, that these acts of sexual, verbal and physical abuse violate a standard obviously apparent and notoriously known. It is a professional given that members should not be sexually abusing their patients. For the panel, these acts of professional misconduct are egregious.

PENALTY

Submissions on penalty

The College advised the panel that it was seeking revocation of the Member's certificate of registration.

The College provided the panel with a penalty brief highlighting a case from another College where similarly found allegations resulted in revocation. Further, the College drew the panel's attention to the *Health Professions Procedural Code*, under the *Regulated Health Professions Act, 1991 (S.O. 1991, Chapter 18)* subsection 51(5) "...the panel shall do the following...

2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following...

iii. masturbation of the member by, or in the presence of, the patient,".

The College submitted that in this matter revocation was the only reasonable and appropriate penalty.

College Counsel outlined the mitigating and aggravating factors in this matter.

The mitigating factors were that the Member appeared before the Discipline panel for the first time, with no previous discipline history.

The aggravating factors were the conduct itself. The Member committed criminal acts of sexual assault and confinement against a vulnerable patient, even though the patient repeatedly told the Member to stop. The Member's actions broke the implicit trust between a professional and a pa-

tient. The Member had been found criminally guilty, did not appeal his sentence and has yet to return to Canada to serve his sentence. Further, there was also not evidence that the Member had expressed any element of remorse.

Counsel for the College stated that in considering sanctions the panel must look at specific deterrence (speaking to the Member), general deterrence (speaking to the profession as a whole), remediation (when possible) and public confidence. In the realm of public confidence, the sanction must be proportionate and allow the public to have confidence in the College's disciplinary process.

College counsel stated that the Member did not deserve to hold a certificate of registration. He had lost that privilege. Revocation clearly communicates to the Member, the profession and the public that behaviour of this level will not be tolerated by the College and will be dealt with appropriately.

Counsel for the College stated that the reprimand addressed all four principles of sanctioning. It is not a pleasant experience, but an appropriate element of sanctioning. A reprimand can contain a message of remediation, and allows the Member to hear from the profession as well as the public that his actions were unacceptable. The fact of the reprimand also instills public confidence that the College deals effectively and appropriately when its members commit acts of professional misconduct.

A finding of sexual abuse also allows the College to seek reimbursement from the Member should the patient require or seek counselling.

Decision on penalty

The Panel made an order:

1. Directing the Registrar to immediately revoke Mr. Vrljic's certificate of registration.
2. Requiring Mr. Vrljic to appear before the panel to be reprimanded within 30 days of this Order.
3. Requiring Mr. Vrljic to reimburse the College for funding provided for the patient under the program required under s. 85.7 of the *Health Professions Procedural Code*.

Reasons for Decision on penalty

The panel is satisfied that the penalty is fair, considered and serves to promote public confidence in the profession. In its deliberations, the panel considered the four principles of sanctioning in reaching its decision. Those principles are general deterrence, specific deterrence, remediation and protecting the public interest and maintaining public confidence in the profession. The panel also considered the mitigating and aggravating factors as presented in this matter.

The panel's decision to order revocation of the Member's certificate of registration was the result of considered and thorough deliberations. The panel determined it was the appropriate sanction given the facts of this case.

The Member's actions broke the implicit trust between a professional and a patient.

The panel concluded that these acts clearly constituted sexual abuse as well as verbal and physical abuse of the patient. Further, the panel was of the opinion that by exposing his penis to the patient and asking her to touch his penis, the Member was in fact committing an act of masturbation. The victim herself, felt the Member was trying to make himself erect by touching his penis and asking her to touch it.

The panel referred to the wording contained in the *Health Professions Procedural Code*, subsection 51(5)

"...the panel shall do the following...

2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,...

iii. masturbation of the member by, or in the presence of, the patient,"

Having made the finding that the conduct described above did in fact constitute an act of masturbation, the panel determined that revocation was not only appropriate but mandated by the wording in the *Health Professions Procedural Code*, subsection 51(5).

The findings of professional misconduct are egregious. The Member does not deserve to hold a certificate of registration. Revocation provides a specific deterrent to the Member, a general deterrent to the profession as a whole and sends an important message to the public. Revocation clearly communicates to the Member, the profession and the public that the College will act appropriately and will not tolerate conduct of this nature. The public's confidence in the profession is further bolstered by a strong and decisive penalty decision.

The reprimand allows the Member to hear from the profession as well as the public that his actions were unacceptable. The fact of the reprimand also instills public confidence that the College deals effectively and appropriately when its members commit acts of professional misconduct.

The panel finds that the sanctions ordered are appropriate, proportionate and send a clear message to the Member, the profession and the public.

COSTS

Decision on costs

The panel ordered Mr. Vrljic to pay a portion of the College's legal costs and expenses incurred in investigating this matter and conducting the hearing in the amount of \$7,000 payable within six (6) months of the date of the order.

Reasons for Decision on costs

The panel received affidavit evidence from the College, setting out the costs of the investigation and the costs of the proceedings (*Exhibit #7*).

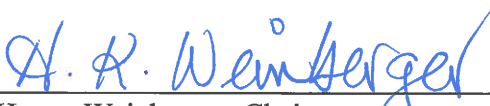
In awarding costs, the panel was cognizant that costs are not meant to be punitive, and that they should be reasonable and reflective of the actual work done and the costs associated with the investigation and hearing of a matter. The panel relied on the Affidavit of Dr. Glenn Pettifer (*Exhibit #7*) submitted by College Counsel.

College Counsel submitted that the total cost of this matter was \$11,777.68. This amount was reflective of the length and breadth of the work done and the expenses associated with bringing this matter to a hearing.

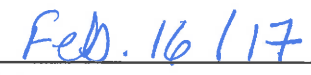
The panel understands it has the authority to award costs and that in prior decisions, the courts have indicated that an award of costs representing not more than two thirds of actual costs is appropriate. The panel also recognizes that cost recovery is a necessary strategy in smaller colleges like this College, and while the Member has the right to a thorough investigation and the right to a hearing, he also bears some responsibility for the overall costs. The costs of the investigative and discipline process cannot solely be the onus of the rest of the College's membership. The amount of \$7,000.00 ordered by the panel, represents somewhat less than two-thirds of the costs incurred by the College. It allows the College to offset a significant chunk of the costs that would otherwise be carried by the relatively small membership of the College of Denturists of Ontario.

The panel is satisfied that the penalty is fair, considered and appropriate. It speaks to all four principles of sanctioning and ensures the public's trust in the profession, the College and the College's disciplinary process.

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:



Hanno Weinberger, Chairperson



Date

Mark Fenn, Public Member
Peter Cassano, Professional Member
Damien Hiorth, Professional Member
Bruce Selinger, Professional Member

