

DISCIPLINE COMMITTEE
OF THE COLLEGE OF DENTURISTS OF ONTARIO

PANEL: Hanno Weinberger, Chairperson
Anita Kiriakou, Public Member
Bruce Selinger, Professional Member
Robert Gaspar, Professional Member
Noa Grad, Professional Member

BETWEEN:

COLLEGE OF DENTURISTS OF ONTARIO)	REBECCA DURCAN for
)	College of Denturists of Ontario
)	(the “College”)
)	
- and -)	
)	ZAUR AGIVAEV, the Member
)	Self-represented
ZAUR AGIVAEV)	
)	LUISA RITACCA
)	Independent Legal Counsel
)	
)	
)	Heard: April 23, 2019

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on April 23, 2019 at the College of Denturists of Ontario in Toronto, Ontario

The Allegations

The allegations against Zaur Agivaev (the “Member”) as stated in the Notice of Hearing (Exhibit #1) dated November 7, 2018, are as follows.

The Member

1. Zaur Agivaev (the “Member”) became a member of the College of Denturists of Ontario (the “College”) on or about August 26, 2013. On or about May 23, 2018, the Member was suspended for non-payment of fees.

Quality Assurance Program

2. Pursuant to s. 82(1) of the Health Professions Procedural Code (the “Code”) and s. 10 of Regulation 206/94 (the “General Regulation”), members of the College are required to comply with the requirements of the College’s Quality Assurance program.
3. The College’s Quality Assurance Program includes (but is not limited to) completing an annual self-evaluation document which provides a description of the member’s educational and quality improvement activities. Members must advise the College of their continuing professional development (CPD) activity hours of which they must obtain a minimum of 10 CPD hours per year.
4. Pursuant to s. 11 of the General Regulation, the Quality Assurance Committee may appoint an assessor to verify that the member has properly completed the self-evaluation document and to verify that the member has carried out the CPD activities.
5. Pursuant to s. 13 of the General Regulation, a member is required to undergo a practice assessment if an assessor recommends such a course of action under subsection 11(4).

Failure of Member to comply with Quality Assurance Program

6. On or about March 15, 2017, the College wrote to the Member and asked him to report to the College the minimum 10 CPD credits for the 2016-2017 renewal period by the April 17, 2017 deadline. The Member failed to reply.
7. On or about April 18, 2017, the College wrote to the Member and asked him to report to the College the minimum 10 CPR credits for the 2016-2017 renewal period by the new May 19, 2017 deadline. The College asked the Member if he had not completed the minimum 10 CPD credits to submit a letter to the Quality Assurance Committee. The Member failed to reply.
8. On or about May 25, 2017, the College wrote to the Member and asked him to report to the College the minimum 10 CPD credits for the 2016-2017 renewal period by the new June 29, 2017 deadline. The College asked the Member if he had not completed the minimum 10 CPD credits to submit a letter to the Quality Assurance Committee and other tasks. The Member failed to do so.
9. On or about July 20, 2017, the Quality Assurance Committee appointed an assessor to verify that the Member has properly completed the self-evaluation document. The College also asked the Member to report to the College

the minimum 10 CPD credits for the 2016-2017 renewal period by the new August 25, 2017 deadline. The Member failed to reply.

10. On or about October 27, 2017, the Quality Assurance Committee ordered the Member to undergo a Peer and Practice Assessment. The Member was asked to complete a Practice Self-Assessment/Evaluation form to facilitate the Peer and Practice Assessment no later than November 24, 2017. The Member failed to reply.
11. As of October 22, 2018, the Member has not replied to any written communication from the College nor reported to the College the minimum 10 CPD credits for the 2016-2017 renewal period.

Orders to attend oral caution

12. On or about September 22, 2017 the Member was scheduled to attend at the College to receive an oral caution from a panel of the Inquiries, Complaints and Reports Committee (the "ICRC"). The Member did not attend.
13. On or about December 15, 2017 the Member was scheduled to attend at the College to receive the oral caution from a panel of the ICRC originally scheduled to be delivered on September 22, 2017 The Member did not attend.

Duty to update College

14. On or about April 16, 2018 the Member updated the address and/or telephone number of his primary residence.
15. Article 33.08(iii) of the College By-Laws mandates that all members shall notify the College, in writing, of any changes to the address and telephone number of the member's primary residence in Ontario within thirty (30) days of the effective date of the change.
16. It is a term, condition and limitation on a certificate of registration to give the College information as required by the College by-laws.

Acts of Professional Misconduct

17. As a result of the above, it is alleged that the Member engaged in professional misconduct pursuant to s. 51(1)(c) of the Code, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 854/93:
 - a. He failed to abide by any term, condition or limitation imposed on the member's certificate of registration (paragraph 1);
 - b. He contravened by act or omission the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts, namely s. 82(1) of the Code and s. 10, 11 and/or 13 of the General Regulation (paragraph 33);
 - c. He failed to attend an oral caution of the Complaints Committee or an oral reprimand of the Discipline Committee (paragraph 39);

- d. He failed to reply appropriately in writing within thirty days to any written communication from the College that requests a response (paragraph 44); and/or
 - e. He engaged in conduct or performed an act, relevant to the practice of denturism that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable unethical or unprofessional (paragraph 47).
18. In addition, it is alleged that the Member engaged in professional misconduct pursuant to s. 51(b.0.1) of the Code as he failed to co-operate with the Quality Assurance Committee.

Member's Plea

The Member plead guilty to the allegations contained in the Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the Member's plea was voluntary, informed and unequivocal.

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 (Exhibit #2) which provided as follows:

The Member

1. Zaur Agivaev ("the Member") became a member of the College on August 26, 2013. On May 23, 2018, the Member was suspended for non-payment of fees.

Failure to Comply with Quality Assurance Program

2. On March 15, 2017, the College wrote to the Member and asked him to report to the College the minimum 10 CPD credits for the 2016-2017 renewal period by April 17, 2017 deadline. It is agreed that the Member failed to reply.
3. On April 18, 2017 the College wrote to the Member and asked him to report to the College the minimum 10 CPD credits for the 2016-2017 renewal period by the new May 19, 2017 deadline. The College asked the Member if he had not completed the minimum 10 CPD credits to submit a letter to the Quality Assurance Committee. It is agreed that the Member failed to reply.
4. On May 25, 2017, the College wrote to the Member and asked him to report to the College the minimum 10 CPD credits for the 2016-2017 renewal period by the new June 29, 2017 deadline. The College asked the Member if he had not completed the minimum 10 CPD credits to submit a letter to the Quality Assurance Committee and other tasks. It is agreed that the Member failed to reply.

5. On July 20, 2017, the Quality Assurance Committee appointed an assessor to verify that the Member had properly completed the self-evaluation document. The College also asked the Member to report to the College the minimum 10 CPD credits for the 2016-2017 renewal period by the new August 25, 2017 deadline. It is agreed that the Member failed to reply.
6. On October 27, 2017, the Quality Assurance Committee ordered the Member to undergo a Peer and Practice Assessment. The Member was asked to complete a Practice Self-Assessment/Evaluation form to facilitate the Peer and Practice Assessment no later than November 24, 2017. It is agreed that the Member failed to reply.
7. It is agreed that the Member has not reported to the College the minimum 10 CPD credits for the 2016-2017 renewal period.

Orders to Attend Oral Caution

8. On September 22, 2017, the Member was scheduled to attend at the College to receive an oral caution from a panel of the Inquiries, Complaints and Reports Committee (the "ICRC") for failing to comply with the Quality Assurance program and for failing to provide a response to College correspondence within thirty days. It is agreed that the Member did not attend.
9. On December 15, 2017, the Member was scheduled to attend at the College to receive the oral caution from a panel of the ICRC originally scheduled to be delivered on September 22, 2017. It is agreed that the Member did not attend.

Duty to Update the College

10. On April 16, 2018, the Member finally updated the address and telephone number of his primary residence despite the fact that he had been residing at the updated address since at least March 2017.
11. It is agreed that the Member failed to notify the College, in writing, of the changes to his address and telephone number of his primary residence in Ontario within thirty days of the effective date of the change, in accordance with Article 33.08(iii) of the College By-Laws.

Admission of Professional Misconduct

12. It is agreed that the above conduct constitutes professional misconduct pursuant to the following:
 - (a) Clause 51(b.0.1) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991 (the "Code") (failing to co-operate with the Quality Assurance Committee); and
 - (b) Clause 51(1)(c) of the Code as set out in the following paragraphs of section 1 of Ontario Regulation 854/93 made under the Denturism Act, 1991:

- i. paragraph 1: Failing to abide by any term, condition or limitation imposed on the member's certificate of registration;
- ii. paragraph 33: Contravening by act or omission the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts, namely s. 82(1) of the Code and s. 10, 11 and/or 13 of the General Regulation;
- iii. paragraph 39: Failing to attend an oral caution of the Complaints Committee;
- iv. paragraph 44: Failing to reply appropriately in writing within thirty days to any written communication from the College that requests a response; and
- v. paragraph 47: Engaging in conduct or performing an act, relevant to the practice of denturism that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable unethical or unprofessional.

Decision and Reasons for Decision

The panel found the Member to have engaged in professional misconduct as set out in the Notice of Hearing and as admitted in the Agreed Statement of Facts.

The panel accepted the Agreed Statement of Facts as the totality of the facts and evidence put before it. The Member admitted that he failed to comply with the Quality Assurance Program, failed to attend an Oral Caution ordered by the ICRC and failed to update the College as to the address of his primary residence and his current telephone number.

The Member's failure to update the College as to his new address appears to have resulted in his failure to respond to the communications from the Quality Assurance Program and the ICRC. This is a clear example why it is important for members to update the College as to any changes in their contact information. The College is tasked with regulating the membership in the public interest. It makes it difficult to do so when the College does not have current information in order to communicate with a member. In this matter, the lack of current contact information resulted in the Member failing to respond to the College's inquiries. Failure to update the College puts the public at risk and calls into question a member's willingness to be regulated.

The Agreed Statement of Facts confirmed for the panel that the allegations found therein constituted Professional Misconduct. Further, the panel was satisfied that the misconduct would reasonably be considered by members of the profession to be unethical or unprofessional.

Penalty

Counsel for the College advised the panel that a Joint Submission as to Penalty and Costs (Exhibit #3) had been agreed upon. The Joint Submission as to Penalty provides as follows:

1. Mr. Agivaev is required to appear before a panel of the Discipline Committee to be reprimanded, immediately following this hearing
2. The Registrar is directed to suspend Mr. Agivaev's Certificate of Registration for a period of four months, on a date to be selected by the Registrar, of which three months shall be suspended if Mr. Agivaev completes the terms, conditions and limitations set out in paragraphs 3(a) and 3(b) of this order within three months of the date of this order.
3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on Mr. Agivaev's Certificate of Registration:
 - a. Requiring Mr. Agivaev to successfully complete, at his own expense, the outstanding QA requirements, within four months of the date of this order;
 - b. Requiring that Mr. Agivaev unconditionally pass, at his own expense, to the satisfaction of the Registrar and at his own expense, the ProBe course in ethics, within four months of the date of this order;
 - c. Requiring that Mr. Agivaev respond to all College communication within fifteen days of delivery (deemed or otherwise); and
 - d. Requiring that Mr. Agivaev advise the College of any change to any contact information within fifteen days of the date of change.
4. For greater certainty, Mr. Agivaev's obligation to comply with the proposed terms, conditions and limitations on his Certificate of Registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. Mr. Agivaev is required to pay to the College costs in the amount of \$4,000.00, where \$2,000.00 is payable within two months and \$2,000.00 is payable within three months of the date of this Order.

Penalty and Cost Decision

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

1. Mr. Agivaev is required to appear before a panel of the Discipline Committee to be reprimanded, immediately following this hearing
2. The Registrar is directed to suspend Mr. Agivaev's Certificate of Registration for a period of four months, on a date to be selected by the Registrar, of which three months shall be

suspended if Mr. Agivaev completes the terms, conditions and limitations set out in paragraphs 3(a) and 3(b) of this order within three months of the date of this order.

3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on Mr. Agivaev's Certificate of Registration:
 - a. Requiring Mr. Agivaev to successfully complete, at his own expense, the outstanding QA requirements, within four months of the date of this order;
 - b. Requiring that Mr. Agivaev unconditionally pass, at his own expense, to the satisfaction of the Registrar and at his own expense, the ProBe course in ethics, within four months of the date of this order;
 - c. Requiring that Mr. Agivaev respond to all College communication within fifteen days of delivery (deemed or otherwise); and
 - d. Requiring that Mr. Agivaev advise the College of any change to any contact information within fifteen days of the date of change.
4. For greater certainty, Mr. Agivaev's obligation to comply with the proposed terms, conditions and limitations on his Certificate of Registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. Mr. Agivaev is required to pay to the College costs in the amount of \$4,000.00 where \$2,000.00 is payable within two months and \$2,000.00 is payable within three months of the date of this Order.

Reasons for Penalty and Costs Decision

The panel understands that it should not interfere with a joint proposal on penalty unless accepting it would bring this discipline process into disrepute or otherwise be contrary to the public interest. Here, the panel had no trouble concluding that the proposed penalty and costs order was well within the public interest.

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.

The reprimand is a specific deterrent and provides an opportunity for the panel on behalf of the profession and the public, to express its concern and disappointment to the Member for his misconduct. The fact of the reprimand acts as a general deterrent to the profession. It communicates to the profession that similar misconduct will result in similar sanctions. In this instance, the reprimand also addresses the principle of remediation. Further, the fact of the reprimand reassures the public that professional misconduct is taken seriously by the College and its disciplinary process.

The panel agreed that a suspension (a minimum of one month to a maximum of four months, subject to the Member addressing the terms, conditions or limitations) was reasonable and appropriate. The panel felt that a suspension of at least one month was not insignificant. A suspension of that length, with the attendant financial hardship, as a result of not being able to work in one's chosen profession, will serve to remind the Member that his behaviour was professional misconduct and in particular, that others in the profession would reasonably regard his behaviour as unethical or unprofessional. The suspension also informs the profession as well as the public that conduct of this nature will be taken seriously by the College.

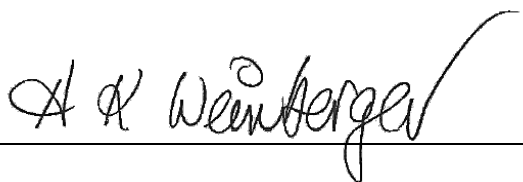
The panel agreed that the ProBE course addresses all four principles of sanctioning. The tailored course provides a remedial opportunity that will allow the Member to reflect on the conduct that brought him to this point and provide guidance and education as he continues to advance his practice. This remediation speaks to the profession as a whole as well as assuring the public that its confidence in the profession is well placed.

In awarding costs, the panel was cognizant that costs are not meant to be punitive but are appropriate and often necessary in smaller Colleges. 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 cost. The panel is satisfied that the costs ordered are fair and appropriate.

The Reprimand

At the end of the hearing, the panel received a written waiver of appeal from the Member and confirmed orally that he was prepared to receive his reprimand immediately following the hearing. In light of the waiver, the panel delivered its reprimand, in the form as set out at Schedule "A" attached to these reasons.

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

May 14, 2019

Date

Anita Kiriakou, Public Member
Bruce Selinger, Professional Member
Robert Gaspar, Professional Member
Noa Grad, Professional Member

Schedule A

COLLEGE OF DENTURISTS OF ONTARIO – Reprimand

Mr. Agivaev, as part of its penalty order this Discipline panel has ordered that you be given an oral reprimand. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing.

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

Although you will be given an opportunity to make a statement at the end of the reprimand, this is not an opportunity for you to review the decision made by the Discipline panel, nor a time for you to debate the merits of our decision.

The panel has found that you have engaged in professional misconduct in different ways. They are as follows:

- i) failing to comply with the Quality Assurance Program;
- ii) failing to attend an Oral Caution ordered by the ICRC; and
- iii) failing to update the College as to your current address and telephone number.

It is a matter of concern to this panel that you have engaged in these forms of professional misconduct. By doing so, you have brought discredit to the profession and to yourself. Public confidence in this profession has been put in jeopardy. Moreover, the result of your misconduct is that you have let down the public, the profession, and yourself.

We need to make it clear to you that your conduct is unacceptable.

We also want to make it clear to you that while the penalty that this panel has imposed is a fair penalty, a more significant penalty will be imposed by another Discipline panel in the event that you are ever found to have engaged in professional misconduct again.

As previously stated, this is not an opportunity for you to review the decision or debate the correctness of the decision.

Do you have any questions, or do you wish to make any comments?

Thank you for attending today.