

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

PANEL:

Bruce Selinger, Acting Chair
Lileath Claire
Keith Collins
Robert Gasper
Gordon White

BETWEEN:

COLLEGE OF DENTURISTS OF
ONTARIO

MAYA PEARLSTON
for College of Denturists of Ontario

- and -

ZAUR AGIVAEV

No one appearing for
Zaur Agivaev

JILL DOUGHERTY
Independent Legal Counsel

Heard: May 21, 2020

DECISION AND REASONS

This matter came on for hearing in writing before a panel of the Discipline Committee on May 21, 2020.

In advance of this hearing, College counsel wrote to the panel to request, on consent of both parties, that this hearing proceed in writing due to the restrictions imposed by the COVID-19 pandemic on the ability to proceed with “in person” hearings. The panel received advice from Independent Legal Counsel (which was shared with the parties) regarding its ability to hold the hearing in writing. The Panel decided that it would proceed with the hearing in writing, based on its authority to do so under the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020*, S.o.2020, chapter 5 Schedule 3, the relevant part of which provides as follows:

3 (1) A tribunal may conduct a hearing in person, electronically, in writing or by a combination of any of them, as the tribunal considers appropriate.

(2) For the purposes of subsection (1), a tribunal may make any orders or give any directions that it considers appropriate in the circumstances respecting,

(a) the format of a hearing and its conduct; and

(b) any matters ancillary to the holding of the hearing, including respecting notice of the hearing, the service or filing of materials for the hearing, attendance at the hearing, any recording of the hearing or public access to the hearing.

The above act prevails over the other legislation that governs College Discipline Committee hearings and over the College's current Discipline Committee *Rules of Procedure*. Therefore, the Panel decided that it was appropriate to proceed with this hearing in writing, on consent of both parties and in light of the fact that the parties have entered into an Agreed Statement of Facts, discussed below.

Preliminary Motion to Combine Proceedings

At the outset, the College brought a motion under subsection 9.1(1)(a) of the *Statutory Powers Procedure Act* (the "SPPA"), which provides the Panel with the authority to combine two or more proceedings on consent:

Proceedings involving similar questions

9.1 (1) If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,

(a) combine the proceedings or any part of them, with the consent of the parties
[...]

In particular, the College sought to combine the proceedings in relation to the allegations set out in two Notices of Hearing, dated July 2, 2019 and April 7, 2020. The Panel granted the motion to combine those proceedings, since the parties have reached a global resolution of all of the allegations set out in the two Notices of Hearing and have consented to proceeding in that manner.

The Allegations

The allegations against Zaur Agivaev, as stated in the Statement of Allegations appended to the Notice of Hearing dated July 2, 2019 (Exhibit 1), 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. Between approximately May 23 and November 14, 2018 the Member was suspended for non-payment of fees.

Practising While Suspended

2. While the Member was suspended, it is alleged that he did the following:
 - a. Fit and dispensed removable dentures contrary to s. 4 of the *Denturism Act 1991*;
 - b. Used the title "denturist", a variation or *abbreviation* contrary to s. 8(1) of the *Denturism Act 1991*; and/or
 - c. Held himself out as a person who is qualified to practise in Ontario as a denturist contrary to s. 8(3) of the *Denturism Act 1991*.
3. It is alleged that the Member benefited financially from the practice of denturism while suspended.
4. It is alleged that the Member did not disclose to the College that he intended to practise while suspended and did not obtain prior approval of the Executive Committee.

Acts of Professional Misconduct

5. 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. Contravening by act or omission the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically s. 4 and/or s. 8 of the Act (paragraph 33);
 - b. Directly or indirectly benefiting from the practice of denturism while the member's certificate of registration is suspended unless full disclosure is made by the member to the College of the nature of the benefit to be obtained and prior approval is obtained from the Executive Committee (paragraph 36); and/or
 - c. 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 (paragraph 47).

The allegations against Zaur Agivaev, as stated in the Statement of Allegations appended to the second Notice of Hearing dated April 7, 2020 (Exhibit 2), 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.

Discipline Committee Decision

2. As a result of an order from the Discipline Committee of the College dated April 23, 2019 (the “Order”):

a. The following terms, conditions and limitations, among others, were imposed upon the Member’s certificate of registration:

- i. To successfully complete his outstanding Quality Assurance requirements within four months of the date of the Order; and
- ii. To unconditionally pass the PROBE course in ethics within four months of the date of the Order.

b. The Member was ordered to pay to the College costs in the amount of \$4,000.00, \$2,000.00 of which to be paid within two months of the Order and \$2,000.00 of which to be paid within three months of the Order.

3. It is alleged that as of August 23, 2019, the Member failed to comply with the Order as set out in paragraph 2.

Acts of Professional Misconduct

4. As a result of the above, it is alleged that the Member engaged in professional misconduct pursuant to Clause 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, and as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 854/93 under the *Denturism Act, 1991*:

a. Paragraph 1: Failing to abide by any term, condition or limitation imposed on the member’s certificate of registration; and/or

b. 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.

Member's Plea

The Panel notes that paragraph 21 of the Agreed Statement of Facts (the “ASF”, marked as Exhibit #3, discussed below) contains a written plea inquiry wherein the Member states that he has entered the ASF freely and voluntarily and is aware of the consequences of making the admissions contained in the ASF. The Panel is satisfied that the Member's written plea indicates that the admissions in the ASF document are 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 #3) which provided as follows:

The parties hereby agree that the following facts may be accepted as true by the Discipline Committee of the College of Denturists of Ontario (the “College”):

The Member

1. Zaur Agivaev (the “Member”) became a member of the College on August 26, 2013.

Practising While Suspended

2. Between May 23 and November 14, 2018, the Member was suspended for non-payment of fees.
3. Notwithstanding that the Member was suspended, he continued to practise denturism, providing services to approximately 15-20 patients per day between May 23 and November 14, 2018.
4. While the Member was suspended, it is agreed that the Member did the following:
 - (a) Fit and dispensed removable dentures, contrary to section 4 of the *Denturism Act, 1991*;

- (b) Used the title “denturist,” a variation or abbreviation contrary to subsection 8(1) of the *Denturism Act, 1991*; and
 - (c) Held himself out as a person who is qualified to practise in Ontario as a denturist, contrary to subsection 8(3) of the *Denturism Act, 1991*.
5. It is agreed that the Member benefited financially from the practice of denturism while suspended.
6. It is agreed that the Member did not disclose to the College that he intended to practise while suspended and did not obtain prior approval of the Executive Committee.

Professional Misconduct

7. It is agreed that the above conduct constitutes professional misconduct pursuant to Clause 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”), as set out in the following paragraphs of section 1 of Ontario Regulation 854/93 made under the *Denturism Act, 1991*:
- (a) **Paragraph 33:** Contravening by act or omission the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, namely sections 4 and 8 of the *Denturism Act, 1991*; and
 - (b) **Paragraph 36:** Directly or indirectly benefiting from the practice of denturism while the member’s certificate of registration is suspended unless full disclosure is made by the member to the College of the nature of the benefit to be obtained and prior approval is obtained from the Executive Committee; and

- (c) **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.

Failing to Comply with a Discipline Committee Order

Discipline Committee Decision

8. As a result of an order from the Discipline Committee of the College dated April 23, 2019 (the “Order”):

- (a) The following terms, conditions and limitations, among others, were imposed upon the Member’s certificate of registration:
 - i. To successfully complete his outstanding Quality Assurance (“QA”) requirements within four months of the date of the Order (*i.e.*, by August 23, 2019);
 - ii. To unconditionally pass the PROBE course in ethics within four months of the date of the Order (*i.e.*, by August 23, 2019);
 - iii. To respond to all College communication within fifteen days of delivery (deemed or otherwise); and
 - iv. To advise the College of any change to any contact information within fifteen days of the date of change.
- (b) The Member was ordered to pay to the College costs in the amount of \$4,000.00, \$2,000.00 of which to be paid within two months of the Order (*i.e.*, by June 23, 2019) and \$2,000.00 of which to be paid within three months of the Order (*i.e.*, by July 23, 2019).

Attached at **Tab “A”** is a copy of the Order.

9. On April 26, 2019, the College sent the Member a copy of the Order, as well as information on how to complete the PROBE course.
10. It is agreed that as of July 23, 2019, the Member failed to pay a portion of the costs order as set out in paragraph 8(b).
11. It is agreed that as of August 23, 2019, the Member failed to complete his outstanding QA requirements and the PROBE course as set out in paragraph 8(a)(i)-(ii).
12. On September 11, 2019, the College wrote to the Member reminding him of the outstanding elements of the Order. The College requested that the Member respond to the letter by no later than September 26, 2019.
13. On September 13, 2019, the Member advised College staff over the telephone that he had completed his QA requirements. The Member also advised that he would provide confirmation of his enrolment in the PROBE course and pay the remaining portion of the costs order. The Member did not provide this information to the College as indicated.
14. On October 8, 2019, the College wrote to the Member again advising him of the outstanding elements of the Order. The College advised the Member that he was in breach of the Order and that this constitutes professional misconduct. The College requested that the Member provide the College with confirmation of his enrolment in the PROBE course as well as the remaining portion of the costs order by October 11, 2019.
15. On December 3, 2019, the Registrar of the College wrote to the Member to notify him that a Registrar’s Report regarding his failure to comply with the Order had been provided to the Inquiries, Complaints and Reports Committee (the “ICRC”). The Member was given an opportunity to make

written submissions to the ICRC by January 3, 2020. It is agreed that the Member did not provide submissions.

16. It is agreed that as of January 2020, the Member had not complied with the Order, as directed by the Discipline Committee.
17. It is agreed that on January 17, 2020, the Member enrolled in the PROBE course.
18. It is agreed that on February 10, 2020, the Member paid the remaining portion of the costs order.

Professional Misconduct

19. It is agreed that the above conduct constitutes professional misconduct pursuant to 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*:

- (a) **Paragraph 1:** Failing to abide by any term, condition or limitation imposed on the member's certificate of registration; and
- (b) **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.

20. By this document, the Member admits to the truth of the facts referred to in paragraphs 1 to 19 above (the "Agreed Facts").

21. By this document, the Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he has no questions with respect to the allegations against him;

- (c) he understands that by signing this document he is consenting to the evidence as set out in the Agreed Facts being presented to the Discipline Committee;
- (d) he understands that by admitting the allegations, he is waiving his right to require the College to prove the case against him and the right to have a hearing;
- (e) he understands that the decision of the Discipline Committee and a summary of its reasons, including reference to his name, may be published in the College's annual report and any other publication or website of the College;
- (f) he understands that any agreement between him and the College with respect to any penalty proposed does not bind the Discipline Committee; and
- (g) he understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of inducement or bribe, and that he has been advised of his right to seek legal advice and that he has had the opportunity to receive such advice.

22. In light of the Agreed Facts and Admission of Professional Misconduct, the College and the Member submit that the Discipline Committee should find that the Member has committed professional misconduct.

Decision

The panel found the Member to have engaged in professional misconduct as set out in the Notices 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 panel was satisfied that the facts and misconduct admitted in the ASF, together with the Member's plea

(contained in paragraph 21 of the ASF) were sufficient to support findings of professional misconduct on all allegations contained in the Notices of Hearing.

Joint Submission as to Penalty and Costs

Counsel for the College advised the panel that a Joint Submission as to Penalty and Costs (**Exhibit #4**) had been agreed upon. The Joint Submission as to Penalty provides as follows:

The College of Denturists of Ontario (the “College”) and Zaur Agivaev (the “Member”) agree and jointly submit that the following would be an appropriate order as to penalty and costs in this matter:

1. The Member is required to be reprimanded by the Discipline Committee following the hearing.
2. The Registrar is directed to suspend the Member’s Certificate of Registration for a period of four (4) months, to retroactively commence on March 20, 2020, the date after which Ontario’s Chief Medical Officer of Health directed all healthcare providers, including denturists, to cease all non-essential and elective services in response to COVID-19.
3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on the Member’s Certificate of Registration:
 - (a) Requiring the Member to comply with the outstanding and ongoing terms, conditions and limitations on his Certificate of Registration, as contained in the order of the Discipline Committee of the College dated April 23, 2019, attached at **Tab “A”**, including that the Member must unconditionally pass the PROBE course in ethics;
 - (b) Requiring the Member to successfully complete, to the satisfaction of the Registrar and at his own expense, a pre-

approved ethics course, within four (4) months of the date of this Order;

- (c) Requiring the Member to successfully complete, at his own expense, the College's Jurisprudence Program, within two (2) months of the date of this Order;
- (d) Requiring the Member to attend one (1) meeting, at his own expense, with a regulatory expert, approved by the Registrar, to review the Member's past issues of non-compliance, within four (4) months of the date of this Order;
- (e) Requiring the member to successfully complete, to the satisfaction of the Registrar, an essay to the Registrar setting out what the Member has learned from the investigation, hearing, ethics course, jurisprudence course and meeting with the regulatory expert, within six (6) months of the date of this Order;
- (f) Requiring the Member to respond to all College communication within fifteen days of delivery (deemed or otherwise); and
- (g) Requiring the Member to advise the College of any change to any contact information within fifteen days of the date of change.

4. The Member is required to pay to the College costs in the amount of \$3,000.00, payable in accordance with the following installment plan: \$1,000.00 to be paid on or before October 30, 2020, \$1,000.00 to be paid on or before February 26, 2021, and \$1,000.00 to be paid on or before July 30, 2021.

Penalty and Costs Decision

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

1. The Member is required to be reprimanded by the Discipline Committee following the hearing.
2. The Registrar is directed to suspend the Member's Certificate of Registration for a period of four (4) months, to retroactively commence on March 20, 2020, the date after which Ontario's Chief Medical Officer of Health directed all healthcare providers, including denturists, to cease all non-essential and elective services in response to COVID-19.
3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on the Member's Certificate of Registration:
 - (a) Requiring the Member to comply with the outstanding and ongoing terms, conditions and limitations on his Certificate of Registration, as contained in the order of the Discipline Committee of the College dated April 23, 2019, attached at **Tab "A"**, including that the Member must unconditionally pass the PROBE course in ethics;
 - (b) Requiring the Member to successfully complete, to the satisfaction of the Registrar and at his own expense, a pre-approved ethics course, within four (4) months of the date of this Order;
 - (c) Requiring the Member to successfully complete, at his own expense, the College's Jurisprudence Program, within two (2) months of the date of this Order;
 - (d) Requiring the Member to attend one (1) meeting, at his own expense, with a regulatory expert, approved by the Registrar, to

review the Member's past issues of non-compliance, within four (4) months of the date of this Order;

- (e) Requiring the member to successfully complete, to the satisfaction of the Registrar, an essay to the Registrar setting out what the Member has learned from the investigation, hearing, ethics course, jurisprudence course and meeting with the regulatory expert, within six (6) months of the date of this Order;
- (f) Requiring the Member to respond to all College communication within fifteen days of delivery (deemed or otherwise); and
- (g) Requiring the Member to advise the College of any change to any contact information within fifteen days of the date of change.

4. The Member is required to pay to the College costs in the amount of \$3,000.00, payable in accordance with the following installment plan: \$1,000.00 to be paid on or before October 30, 2020, \$1,000.00 to be paid on or before February 26, 2021, and \$1,000.00 to be paid on or before July 30, 2021.

Reasons for Penalty and Costs Decision

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 of a second reprimand, the Panel is satisfied that the penalty addresses the issues of governability, which is critical in self-governance, but is also consistent with 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. If the member's conduct continues to raise governability issues in future, that may warrant a more severe penalty.

The Panel agrees that a suspension (four months), coupled with the terms, conditions or limitations noted above, was reasonable and appropriate. The Panel believes that a suspension of four months is 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 agrees that it is appropriate to require the Member to comply with the outstanding and ongoing terms, conditions and limitations on his Certificate of Registration, as contained in the order of the Discipline Committee of the College dated April 23, 2019, attached at **TAB 'A'**, including that the Member must unconditionally pass the PROBE course in ethics. In addition, the Panel is of the view that the other terms, conditions and limitations included in the penalty are appropriate and will serve to protect the public and remediate the Member.

The Panel also agrees that it is appropriate to require the Member to pay the College costs in the amount of \$3,000.00, payable in accordance with the following installment plan: \$1,000.00 to be paid on or before October 30, 2020, \$1,000.00 to be paid on or before February 26, 2021, and \$1,000.00 to be paid on or before July 30, 2021.

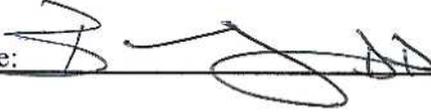
In awarding costs, the Panel is cognizant that costs are not meant to be punitive but are intended as an indemnity, to help defray the costs incurred by the College in prosecuting allegations of misconduct. Costs are appropriate and often necessary in smaller Colleges, since the full costs of discipline proceedings would otherwise have to be paid by all the other members of the College. 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

The Panel decided to deliver its reprimand, following the hearing, in writing in the form as set out at Schedule "A" attached to these reasons.

I, **Bruce Selinger**, 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:

Date: July 23RD / 20

Signature: 

SCHEDULE "A"
WRITTEN REPRIMAND

Mr. Agivaev, as part of its penalty order this Discipline panel has ordered that you be given a written reprimand. You agreed to this term of the 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.

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; as well working while suspended
- 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 escalating concern to this panel that you have engaged in these forms of professional misconduct for the second time. You have demonstrated a clear disregard for the College's regulatory mandate, further eroding the public's confidence in the profession and showing a distinct lack of respect for the profession's other members as well as yourself. The governability of a member is a hallmark of self-regulation and we note with displeasure that you continue to demonstrate a lack of understanding when it comes to this principle and the responsibility self-governance carries.

Once again, we must be clear in stating that your conduct is unacceptable. You also should understand that while the panel feels the penalty posed is fair that a far more significant penalty would be imposed should another discipline panel find you have engaged in professional misconduct a third time.