

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

PANEL:

Gordon White, Chairperson
Garnett Pryce, Professional Member
Latif Azzouz, Professional Member
Keith Collins, Professional Member

BETWEEN:

COLLEGE OF DENTURISTS OF ONTARIO

REBECCA DURCAN for
College of Denturists of Ontario

- and -

SALVATORE (SAM) LIMA
Reg. No. 450-84

ROZMIN MEDIRATTA for Salvatore
Lima

JORDAN STONE
Independent Legal Counsel

Heard: February 19, 2021

DECISION AND REASONS

This matter came on for an electronic hearing before a panel of the Discipline Committee on February 19th, 2021 via videoconference.

The Allegations

The allegations against Salvatore Lima (the “Member”), as contained in the Notice of Hearing dated April 7, 2020 (marked as Exhibit 1), are as follows:

The Member

1. Salvatore (Sam) Lima (the “Member”) has been a denturist in Ontario since approximately September 2, 1984.

The Client

2. On or about January 29, 2019, the Client had her initial appointment with the Member, where he took impressions for an upper partial denture. At the appointment the Client told the Member that she was happy with her current bridge work and did not want a big change.
3. During the initial appointment, the Member did not take a bite registration.
4. On or about February 26, 2019, the upper partial denture was provided to the Client for her oral surgery on or about February 27, 2019.
5. During the surgery, the upper partial denture could not be seated.
6. On or about February 28, 2019, the Client contacted the Member but was told that he could not see the Client for at least one week. The Patient left information with the Member’s clinic that:
 - a. The denture was not sitting against her palate
 - b. She could not eat with the denture in place
 - c. Her lower jaw was constantly hitting her acrylic teeth; and/or
 - d. She had no range of motion
7. On or about March 5, 2019, the Client returned to the clinic. The Member made a slight adjustment to the denture. During the appointment the Client also informed the Member that she was unhappy with how the teeth were tilted inward. The Member replied ““Your teeth were sticking out so I thought I would change that.” This response upset the Client. The Client asked the Member to make a new denture with a proper bite registration and

placement of teeth. The Member agreed to make a new denture and requested an appointment be scheduled.

8. Subsequent to the Member's offer to make a new denture, the Client advised the Member's clinic that the partial was still not fitting. The Client became frustrated with the Member's staff.
9. On or about March 18, 2019 the Client called the Member's clinic to apologize and asked for a meeting with the Member and office manager.
10. On March 19, 2019, the Client was contacted by the receptionist at the clinic and informed that she would not receive a reimbursement and that the Member would no longer see her.
11. The Member did not remake the new denture.

Acts of Professional Misconduct

12. As a result of the above, it is alleged that the Member engaged in professional misconduct pursuant to s. 51(1)(c) of the Health Professions Procedural Code, which is Schedule II to the Regulated Health Professions Act, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 854/93:
 - a. Failing to maintain the standards of practice of the profession (paragraph 2); and/or
 - b. Discontinuing denturist services to a patient without adequate reason unless,
 - i. the member has entered into an agreement to provide denturist services and the period specified in the agreement has expired, or the member has given the patient five working days' notice of the member's intention to discontinue the services agreed upon,
 - ii. the services are no longer required,
 - iii. the patient requests the discontinuation,
 - iv. the patient has had a reasonable opportunity to arrange for the services of another member, or

- v. alternative services are arranged (paragraph 6); 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).

At the outset of the hearing, counsel for the College requested leave of the panel to withdraw the allegation in paragraph 12(a) of the Notice of Hearing, being the allegation that the Member contravened section 1.2 of Ontario Regulation 854/93 by failing to maintain the standards of practice of the profession. The Panel granted this request.

Agreed Statement of Facts

College counsel provided the Panel with an Agreed Statement of Facts (marked as Exhibit 2), which provides as follows:

The Member

1. Salvatore (Sam) Lima (the “Member”) has been a denturist in Ontario since approximately September 2, 1984. Attached at **Tab “A”** is a copy of the Member’s page of the Public Register of the College.

The Client

2. On or about January 29, 2019, the Client had her initial appointment with the Member, where he took impressions for an upper immediate partial denture. At the appointment the Client told the Member that she was happy with her current bridge work and did not want a big change.
3. On or about February 26, 2019, the upper immediate partial denture was provided to the Client for her oral surgery on or about February 27, 2019.
4. On or about February 28, 2019, the Client contacted the Member’s clinic and advised that:

- a. The denture was not sitting against her palate
 - b. She could not eat with the denture in place
 - c. Her lower jaw was constantly hitting her acrylic teeth; and
 - d. She had no range of motion.
5. On or about March 5, 2019, the Client returned to the clinic. The Member made a slight adjustment to the denture. During the appointment the Client also informed the Member that she was unhappy with how the teeth were tilted inward. The Member agreed to make a new denture and informed his clinic staff that another appointment was to be scheduled for this purpose.
 6. Prior to and subsequent to the Member's offer to make a new denture, the Client became frustrated with the Member and his staff. The Client used profane language and raised her voice with the Member and his staff.
 7. On or about March 18, 2019 the Client called the Member's clinic to apologize for her behaviour and asked for a meeting with the Member and office manager.
 8. On March 19, 2019, the Client was contacted by the receptionist at the clinic and informed that she would not receive a reimbursement and that effective immediately the Member would no longer see her. If the Member were to testify, he would state that he was not aware of the Client's apology at the time.
 9. Despite the Member's offer to make another denture for the Client, the Member did not do so. The Member did not refer the Client to another dentist. The Member did not document the rationale for his decision to terminate the relationship before providing the new set of dentures.

Guide to Discontinuing Services

10. The College provides a *Guide to Discontinuing Services/Refusing Treatment* to members of the College. The Guide is readily available on the College website. The Guide provides the following four recommendations for discontinuing services and/or refusing treatment:
- a. When services that are needed are discontinued or refused, patients should not be abandoned. Reasonable attempts should be made to arrange for alternative services for the patient
 - b. When a patient has been referred to another practitioner, the Registered Denturist should ensure the timely transfer of the medical record.
 - c. Registered Denturists must inform the patient, verbally and in writing, of the reason for discontinuing services, refusing treatment or turning away a patient.
 - d. In the interest of greater clarity, Registered Denturists are advised to document all relevant information pertaining to the service termination.

A copy of the Guide is provided at **Tab “B”**.

Member’s Prior History

11. This is the first time the Member has been referred to the Discipline Committee.
12. The Member has been the subject of one prior complaint which related to the Member’s interpersonal style, and in which the ICRC took no action.

Admission of Professional Misconduct

13. As a result of the above, it is agreed that the Member engaged in professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code*, which is Schedule II to the *Regulated Health Professions Act*, as set out in the following paragraphs of section 1 of Ontario Regulation 854/93:
- a. **Paragraph 6** - Discontinuing denturist services to a patient without adequate reason unless,

- i. the member has entered into an agreement to provide denturist services and the period specified in the agreement has expired, or the member has given the patient five working days' notice of the member's intention to discontinue the services agreed upon,
 - ii. the services are no longer required,
 - iii. the patient requests the discontinuation,
 - iv. the patient has had a reasonable opportunity to arrange for the services of another member, or
 - v. alternative services are arranged; 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 unethical and unprofessional.

PLEA

14. By this document, the Member admits to the truth of the facts referred to in paragraphs 1 to 13 above (the "Agreed Facts").
15. By this document, the Member states that:
- a. He understands fully the nature of the allegations made against him;
 - b. He has no questions with respect to the allegations against him;
 - c. He admits that the admitted facts constitute professional misconduct;
 - d. He understands that by signing this document he is consenting to the evidence as set out in the Agreed Statement of Facts and Admission of Professional Misconduct being presented to the Discipline Committee;
 - e. He understands that by admitting the allegations, he is waiving his right to require the College to prove the allegations against him at a contested hearing on the condition that the panel of the Discipline Committee accepts this Agreed Statement of Facts;

- f. He understands that the decision of the Committee and a summary of its reasons, including reference to his name, will be published in the College's annual report and any other publication or website of the College;
- g. He understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and,
- h. He understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of bribe, and that he has been advised of his right to seek legal advice.

16. 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.

Member's Plea

The Member admitted the allegations contained in paragraphs 12(b) and 12(c) of the Notice of Hearing. With respect to paragraph 12(c), the Member only admitted that his conduct was unethical and unprofessional. The panel conducted an oral plea inquiry and considered the admissions and acknowledgements in the Agreed Statement of Facts and was satisfied that the Member's plea was voluntary, informed, and unequivocal.

Decision

The panel considered the Member's plea, the Agreed Statement of Facts, and the submissions of counsel for the College and the Member and found that the facts and plea supported a finding of professional misconduct and, in particular, found that the Member committed the following acts of professional misconduct: he discontinued denturist services to a patient without adequate reason, contrary to section 1.6 of Ontario Regulation 854/93; and 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 unethical and unprofessional, contrary to section 1.47 of Ontario Regulation 854/93.

Penalty and Costs

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

The College of Denturists of Ontario and Salvatore (Sam) Lima (the “Member”) agree and jointly submit that the Discipline Committee makes an order:

1. Requiring the Member to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member’s Certificate of Registration for a period of four weeks, on a schedule set by the Registrar.
3. The Registrar will remit two weeks of the suspension ordered in paragraph 2 if the Member successfully completes, to the Registrar’s satisfaction, the specified terms, conditions and limitations set out in paragraph 4 below within three months of the date of this order. In any event, the Member must complete the requirements set out in paragraph 4 of this order within six months of the date of this order.
4. Directing the Registrar to impose the following specified terms, conditions and limitations on the Member’s certificate of registration:
 - a. The Member shall successfully complete, to the Registrar’s satisfaction, an ethics and professionalism course(s), pre-approved by the Registrar, at the Member’s expense.
 - b. The Member shall write an essay acceptable to the Registrar, between 250-500 words in length, and provide it to the Registrar on the following issues:
 - i. The proper process for discontinuing services to a patient; and
 - ii. The lessons he learned during the ethics and professionalism course(s) and how his behaviour with the Client was unethical and unprofessional.
5. The Member shall pay the College’s costs fixed in the amount of \$2,500.00 according to

the following schedule:

- a. The Member shall deliver \$1,500.00 to the College within one week of the date of the order of the Discipline Committee; and
 - b. The Member shall deliver the remaining \$1,000 to the College within three months of the date of the order of the Discipline Committee.
6. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
 7. The Member acknowledges and understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress and free of bribe and that he has been advised of his right to seek legal advice.

Penalty Submissions

College counsel advised that because the parties had reached a joint submission, the panel had limited discretion and was obliged to accept the joint submission unless it was of the view that the proposed penalty was so unreasonable it would cause a reasonably informed person to believe that the proper functioning of the discipline process had broken down. College counsel directed the panel to *The Law Society of Upper Canada v Archambault*, 2017 ONLSTH 86 decision, which cited the Supreme Court of Canada's decision in *R v Anthony-Cook*, 2016 SCC 43, as support for this principle.

College counsel submitted that the panel should consider various principles of sanctioning, including deterrence (specific and general), remediation, and proportionality. College counsel submitted that the proposed joint submission achieved all of these principles.

College counsel submitted that there were a number of mitigating factors in this case, including the Member's plea and his lack of discipline history. College counsel submitted that the

aggravating factors were the Member's conduct itself, including not referring the patient to another dentist upon discontinuing services.

College counsel directed the panel to the following decisions to demonstrate that the proposed penalty was similar to prior penalties ordered in similar circumstances: *College of Denturists of Ontario v Ang* (2009); and *College of Denturists of Ontario v Tran* (2017).

College counsel submitted that the costs order was not part of the penalty.

Counsel for the Member submitted that the Member had learned from the experience, had cooperated with the College, and that the joint submission fulfilled all the relevant principles of sanctioning.

Penalty Decision

The panel accepted the Joint Submission as to Penalty and Costs and made an order:

1. Requiring the Member to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's Certificate of Registration for a period of four (4) weeks, on a schedule set by the Registrar. The Registrar will remit two (2) weeks of the suspension ordered if the Member successfully completes, to the Registrar's satisfaction, the specified terms, conditions and limitations set out in paragraph 3 below within three months of the date of this order. In any event, the Member must complete the requirements set out in paragraph 3 of this order within six months of the date of this order.
3. Directing the Registrar to impose the following specified terms, conditions and limitations on the Member's certificate of registration:
 - a. The Member shall successfully complete, to the Registrar's satisfaction, an ethics and professionalism course(s), pre-approved by the Registrar, at the Member's expense.

- b. The Member shall write an essay acceptable to the Registrar, between 250-500 words in length, and provide it to the Registrar on the following issues:
 - i. The proper process for discontinuing services to a patient; and
 - ii. The lessons he learned during the ethics and professionalism course(s) and how his behaviour with the Client was unethical and unprofessional.
4. The Member shall pay the College's costs fixed in the amount of \$2,500.00 according to the following schedule:
 - a. The Member shall deliver \$1,500.00 to the College within one week of the date of the order of the Discipline Committee; and
 - b. The Member shall deliver the remaining \$1,000 to the College within three months of the date of the order of the Discipline Committee.

Reasons for Penalty Decision

The panel concluded that the proposed penalty is reasonable and in the public interest. The Member co-operated with the College and, by agreeing to the facts and a penalty, has accepted responsibility for his actions. The panel was satisfied that the penalty in the joint submission achieved the principles of sanctioning in discipline hearings and would serve and protect the public interest.

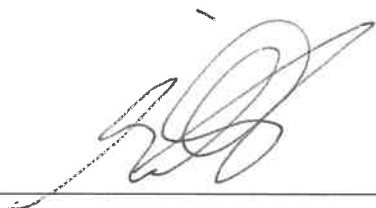
The reprimand is a specific deterrent, as it provides the panel the opportunity to express its concerns with the Member's conduct directly to him. The reprimand also acts as a general deterrent, as the fact the reprimand was given will be public.

The four-week suspension serves as a specific and general deterrent. It communicates to the profession and the public that conduct of this nature may result in serious consequences.

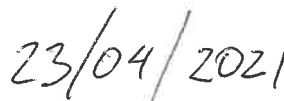
The terms, conditions, and limitations achieve remediation by requiring the Member to complete an ethics and professionalism course and write an essay regarding the lessons he learned in the course. The panel is satisfied that this aspect of the order will help ensure that the issues leading to the Member's misconduct will not be repeated.

The panel agrees that this is an appropriate case to order costs in the amount of \$2,500. In ordering costs, the panel recognizes that costs are not a penalty and are a way for the College to recoup some of the costs required to investigate and prosecute discipline matters. The panel is satisfied that the costs are reasonable and appropriate in the circumstances.

The panel also recognizes that its role in assessing a joint submission is limited. The panel was satisfied that accepting the joint submission would not bring the administration of justice into disrepute or cause a reasonably informed person to believe that the proper functioning of the discipline process had broken down. The panel was aided in this conclusion by the fact that similar penalties had been ordered in similar circumstances, based on the case law provided by College counsel.



Gordon White
Chairperson



Date

Gordon White, Chairperson
Garnett Pryce, Professional Member
Latif Azzouz, Professional Member
Keith Collins, Professional Member

