

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

PANEL:

Gordon White, Chairperson  
Bruce Selinger, Professional Member  
Latif Azzouz, Professional Member

BETWEEN:

COLLEGE OF DENTURISTS OF ONTARIO

REBECCA DURCAN for  
College of Denturists of Ontario

- and -

JAMES KONTOS  
Reg. No. 347-78

No Representation

JORDAN STONE  
Independent Legal Counsel

Heard: February 3, 2021

**DECISION AND REASONS**

This matter came on for an electronic hearing before a panel of the Discipline Committee on February 3<sup>rd</sup>, 2021 via videoconference.

**The Allegations**

The allegations against James Kontos (the “Member”), as contained in the Notice of Hearing dated July 25, 2020 (marked as Exhibit 1), are as follows:

### The Member

1. James Kontos (“the Member”) became a member of the College of Denturists of Ontario (the “College”) in or about January 23, 1978. The Member works at James D. Kontos Denture Clinic.

### The Client

2. It is alleged that on or about September 27, 2018, the Client had her initial appointment with the Member. The Client was seeking a new set of complete dentures. After speaking with the Member, the Client agreed to purchase a complete set of dentures from the Member.

### First Set of Dentures

3. It is alleged that on or about October 16, 2018, the Client’s dentures were completed and delivered to the Client (the First Set of Dentures).
4. It is alleged that the First Set of Dentures did not fit properly and caused the Client pain. It is alleged that the Member attempted to fix the First Set of Dentures but this was not successful.

### Second Set of Dentures

5. It is alleged that on or about November 26, 2018, the Client returned to the Member. The Client asked the Member for a refund as the First Set of Dentures were not satisfactory. The Member refused to provide a refund but agreed to make a second set of dentures (the Second Set of Dentures) for the Client. The Client agreed.
6. It is alleged that the Second Set of Dentures were delivered to the Client in or about December 2018.

7. It is alleged that the Second Set of Dentures did not fit properly and caused pain to the Client.
8. It is alleged that in or about March 2019, the Client returned to the Member. The Client asked the Member for a refund as the Second Set of Dentures were not satisfactory. The Member refused to provide a refund but offered to make her a third set of dentures. The Client refused.
9. It is alleged that the First and/or Second Set of Dentures were not fabricated in accordance with standards of the profession.
10. It is alleged that the Member did not fulfill the terms of his agreement with the Client as the First and/or Second Set of Dentures could not be worn, caused pain, and/or were not fabricated in accordance with standards of the profession.

Acts of Professional Misconduct

11. 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 2:** Failing to maintain the standards of practice of the profession; and/or
  - b. **Paragraph 7:** Failing to fulfil the terms of an agreement with a patient, except in accordance with paragraph 6; and/or
  - 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.

At the outset of the hearing, counsel for the College requested leave of the panel to withdraw the allegation in paragraph 11(b) of the Notice of Hearing, being the allegation that the Member contravened section 1.7 of Ontario Regulation 854/93 by failing to fulfil the terms of an agreement with a patient. 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. James Kontos (“the Member”) became a member of the College of Denturists of Ontario (the “College”) on approximately January 23, 1978. The Member works at James D. Kontos Denture Clinic. Attached at **Tab “A”** is a copy of the Member’s page of the Public Register of the College.
2. As a result of COVID-19, the Member’s clinic was closed for three months in early 2020.

#### The Client

3. On or about September 27, 2018, the Client had her initial appointment with the Member. The Client was seeking a new set of complete dentures. At the time, the Client was 95 years old. The Client stated that she required new dentures as her last pair had been made in 2009. The Client also requested her dentures to be polished, however the Member did not agree to polish the dentures and explained that it would make the dentures fit looser. After speaking with the Member, the Client agreed to purchase a complete set of dentures from the Member.
4. The Client paid \$2,298.00 for the fabrication of the first set of dentures (“First Set of Dentures”). Attached at **Tab “B”** is a redacted copy of the invoice for the First Set of Dentures.

### First Set of Dentures

5. On or about October 23, 2018, the Member completed and delivered the First Set of Dentures to the Client.
6. The Member completed an adjustment to the First Set of Dentures on or about October 31, 2018, November 7, 2018, November 13, 2018 and November 19, 2018. The Client advised the Member that the First Set of Dentures did not fit properly and made the right side of her gum sore. The Client informed the Member that the upper and lower dentures were very slack and would cause her to bite her lips often. The Client also requested that the lower denture be polished, but the Member refused telling her that it would make the fit looser.
7. If the Member were to testify he would state that the Client had been advised to wear her dentures for at least six hours prior to the appointments, however the Client did not attend appointments wearing the First Set of Dentures.
8. On or about November 26, 2018, the Client returned to the Clinic. The Client asked the Member for a refund of the \$2,298.00 she paid for the First Set of Dentures as they were not satisfactory. The Member declined to provide a refund, but agreed to make a second set of dentures (the Second Set of Dentures) for the Client. The Member stated he would reset the teeth to give them more stability and take away fullness. The Client agreed.

### Second Set of Dentures

9. On or about December 12, 2018, the Member delivered the Second Set of Dentures to the Client. The Client complained that the Second Set of Dentures did not fit properly and caused pain to the Client.
10. On or about January 28, 2019, the Client returned to the Clinic for an adjustment of the Second Set of Dentures and complained that the Second Set of Dentures did not fit and

caused her pain. The Client asked for the Member to polish the Second Set of Dentures. Although the Member did not want to do so, he complied with the Client's request.

11. On or about March 1, 2019, the Client returned to the Clinic and asked the Member for a refund as the Second Set of Dentures were not satisfactory. The Member declined to provide a refund but offered to make her a third set of dentures to replicate her original dentures. The Client refused.

#### Dental Assessment

12. On or about November 18, 2019, the College received an Independent Denture Assessment ("Assessment"), which was only completed on the Second Set of Dentures. The Assessment concluded:
  - d. Retention on the lower denture was poor;
  - e. Lower lip support was poor;
  - f. Medium lines were incorrect;
  - g. Overall assessment of lower denture was poor;
  - h. Midline was slightly off and contact is uneven; and
  - i. Upper denture was acceptable.

Attached at **Tab "C"** is a redacted copy of the Assessment.

13. If he were to testify, the Member would state that he is concerned that his agreement to polish the dentures affected the Assessment. The Member also would testify that the Client had significant bone loss which may have also impacted the Assessment. However, the Member concedes that based on the Assessment, the Second Set of Dentures were not fabricated in accordance with the standards of the profession. Attached at **Tab "D"** is a copy of the relevant standards. If he were to testify, the Member would agree that he did not manage the Client relationship in a manner that reflected the standards of the profession. The Member is proud of how he usually manages patient's expectations and does not believe that he did so with the Client.

14. The Member did refund the Client for the cost of the dentures.

Acts of Professional Misconduct

15. 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*:

- j. **Paragraph 2:** Failing to maintain the standards of practice of the profession; and
- k. **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 unprofessional.

Admission of Professional Misconduct

16. By this document, the Member admits to the truth of the facts referred to in paragraphs 1 to 15 above (the “Agreed Facts”).

17. 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;

- 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.

### **Member's Plea**

The Member admitted the allegations contained in paragraphs 11(a) and 11(c) of the Notice of Hearing. With respect to paragraph 11(c), the Member only admitted that his conduct was unprofessional. The panel conducted an oral plea inquiry and considered the acknowledgements in paragraph 17 of the Agreed Statement of Facts and was satisfied that the Member's admissions were voluntary, informed, and unequivocal.

### **Decision**

The panel considered the Member's plea and the Agreed Statement of Facts 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 failed to maintain the standards of practice of the profession, contrary to section 1.2 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 unprofessional.



## 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 James Kontos (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 two weeks, on a schedule set by the Registrar. If the Member successfully completes, to the Registrar’s satisfaction, the specified terms, conditions and limitations set out in paragraph 3 below, no later than two months from the date of the order of the Discipline Committee, two weeks of the suspension will be remitted.
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, a professionalism course, pre-approved by the Registrar, at the Member’s expense, no later than three months of the date of the order of the Discipline Committee; and
  - b. Requiring that the Member write an essay between 1000 and 1500 words in length, and provide it to the Registrar, no later than one month following completion of the professionalism course, that may be published by the College at a time and in a format determined by the Registrar, on the following issues:
    - i. The lessons he learned in completing the professionalism course; and
    - ii. The methods he will incorporate into his practice to ensure compliance with the standards and his obligations as a member of the College.
4. The Member shall pay the College’s costs fixed in the amount of \$1,500.00 on a

scheduled [sic] to be set by the Registrar.

5. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
6. The Member acknowledges and understands and acknowledges [sic] 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 there were a number of mitigating factors in this case, including the Member's plea, his lack of discipline history, and the fact that he refunded the patient. In the College's submission, the only aggravating factor was the conduct of the Member itself.

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); *College of Denturists of Ontario v Irodenko* (2015); *College of Denturists of Ontario v Morgan* (2016); and *College of Denturists of Ontario v Tran* (2017).

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

The Member did not to make submissions on the issue of penalty and costs.

## **Penalty Decision**

The panel accepted the Joint Submission as to Penalty 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 two weeks, on a schedule set by the Registrar. If the Member successfully completes, to the Registrar's satisfaction, the specified terms, conditions and limitations set out in paragraph 3 below, no later than two months from the date of the order of the Discipline Committee, two weeks of the suspension will be remitted.
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, a professionalism course, pre-approved by the Registrar, at the Member's expense, no later than three months of the date of the order of the Discipline Committee; and
  - b. Requiring that the Member write an essay between 1000 and 1500 words in length, and provide it to the Registrar, no later than one month following completion of the professionalism course, that may be published by the College at a time and in a format determined by the Registrar, on the following issues:
    - i. The lessons he learned in completing the professionalism course; and
    - ii. The methods he will incorporate into his practice to ensure compliance with the standards and his obligations as a member of the College.
4. The Member shall pay the College's costs fixed in the amount of \$1,500.00 on a schedule to be set by the Registrar.

## **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.

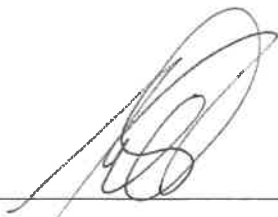
The two-week suspension serves as a specific and general deterrent. It communicates to the profession and the public that conduct of this nature may result in serious consequences.

The terms, conditions, and limitations achieve remediation by requiring the Member to complete a professionalism course and write an essay regarding the lessons he learned in the course and the methods he will incorporate into his practice to ensure compliance with the standards and his obligations as a member of the College. 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 \$1,500. 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.



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Gordon White  
Chairperson



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Date

Gordon White  
Bruce Selinger  
Latif Azzouz