

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF DENTAL HYGIENISTS OF ONTARIO**

IN THE MATTER of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER of the *Dental Hygiene Act, 1991*, S.O. 1991, c.22, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER of allegations of professional misconduct/incompetence referred to the Discipline Committee of the College of Dental Hygienists of Ontario by the Inquiries, Complaints and Reports Committee;

BETWEEN:)
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THE COLLEGE OF DENTAL) **Anastasia-Maria Hountalas**
HYGIENISTS OF ONTARIO) for the College of Dental Hygienists of Ontario
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-and-)
)
CHRISTAL ANNE CHUBACK, RDH) **Lindsay Kantor**
) for the Registrant
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) **Josh Koziembrocki**
) Independent Legal Counsel
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) Heard:
) **November 23, 2021**
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Panel Members:

Amit Vig, Chair, Public Member of Council

Michelle Atkinson, Professional Member of Council

Ilga St. Onge, Professional Member of Council

Loree Beniuk, Public Member of Council

Gillian Dunn, Non-Council Committee Member

DECISION AND REASONS FOR DECISION

- [1] A panel of the Discipline Committee of the College of Dental Hygienists of Ontario ("the Panel") heard this matter virtually by Zoom videoconference on November 23, 2021.
- [2] The hearing was uncontested. It proceeded by way of an Agreed Statement of Facts ("ASF") and a Joint Submission on Penalty and Costs, which were jointly proposed by the counsel for the College of Dental Hygienists of Ontario ("the College") and the Registrant, Christal Anne Chuback (the "Registrant").
- [3] At the conclusion of the hearing, the Panel delivered its finding and penalty order orally, with written reasons to follow. These are those reasons.

THE ALLEGATIONS

- [4] The allegations of professional misconduct against the Registrant were listed in the Notice of Hearing, dated July 16, 2019, which was filed as Exhibit #1, and read as follows:
 1. Ms. Christal Chuback ("Ms. Chuback") was initially issued a general certificate of registration from the College of Dental Hygienists of Ontario (the "College") on or about July 18, 2007.
 2. At the material times, Ms. Chuback practised dental hygiene in Toronto, Ontario.
 3. On or about December 19, 2017, the College received information that Ms. Chuback had provided, and was continuing to provide, dental hygiene treatment to her spouse, Mr. L.
 4. Ms. Chuback provided dental hygiene treatment to Mr. L approximately eight (8) times between 2010 and 2017. Ms. Chuback and Mr. L married in June 2015. It is alleged that Ms. Chuback was in a sexual relationship with Mr. L while she was providing dental hygiene treatment to him.
 5. On or about January 3, 2018, the College appointed an investigator to determine

if Ms. Chuback had committed sexual abuse of a patient by treating Mr. L.

6. The investigator made numerous attempts in 2018 to interview Ms. Chuback including issuing a summons to her pursuant to the authority under the *Public Inquiries Act, 2009* and section 76 of the *Regulated Health Professions Act, 1991*.
7. Ms. Chuback has refused to participate in an interview and, through her lawyer, has challenged the legal authority to issue the summons and has taken the position that Ms. Chuback was not required to comply with the summons.
8. Ms. Chuback did not attend the inquiry on November 14, 2018, despite a summons for that date being accepted by her legal counsel.

Professional Misconduct Alleged

9. It is alleged that the above conduct constitutes professional misconduct pursuant to:
 - a. Clause 51(1) (b.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code") (sexual abuse of a patient, more specifically, touching of a sexual nature, of the patient by the member); and/or
 - b. Clause SI(l)(c) of the Code and as defined in one or more of the following paragraphs under section 15 of Ontario Regulation 218/94 made under the *Dental Hygiene Act, 1991*:
 - i. Paragraph 47 (contravening, by act or omission, the Act or the *Regulated Health Professions Act, 1991* (namely section 76 of the *Regulated Health Professions Act, 1991*); and/or
 - ii. Paragraph 48 of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991* (contravening, by act or omission, a provincial law (namely section 33 of the *Public Inquiries Act, 2009*) if the act or omission is relevant to the member's suitability to practise); and/or
 - iii. paragraph 50 of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991* (failing to cooperate with an investigator of the College); and/or
 - iv. paragraph 52 of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991* (disgraceful, dishonourable or unprofessional conduct); and/or

v. paragraph 53 of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991* (conduct unbecoming a dental hygienist).

[5] At the outset of the hearing, counsel for the College advised the Panel that the College sought to withdraw the following allegation:

1. Clause 51(1) (b.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code") (sexual abuse of a patient, more specifically, touching of a sexual nature, of the patient by the member)

AGREED STATEMENT OF FACTS

[6] The parties advised the Panel that the evidence would be provided by way of an ASF, which was filed as Exhibit #2. The ASF provides as follows:

The Registrant

1. Christal Anne Chuback ("the Registrant") was at all material times a duly registered dental hygienist in Ontario. The Registrant was initially issued a general certificate of registration from the College of Dental Hygienists of Ontario (the "College") on or about July 18, 2007.
2. At the material times, the Registrant practised dental hygiene in Toronto, Ontario.

Treatment of the Registrant's Spouse

3. Ms. Chuback married her spouse, Mr. L, in June 2015.
4. On or about December 19, 2017, the College received information that the Registrant had provided, and was continuing to provide, dental hygiene treatment to Mr. L.
5. It is agreed that the Registrant provided dental hygiene treatment to Mr. L on multiple occasions between 2010 and 2017, while they were married.
6. It is agreed that the standard of practice of the profession at the material times prohibited dental hygienists in Ontario from treating their spouses. Between 2010 and 2016 the College sent notices to all registrants to inform the profession that the treatment of spouses was not permitted.

7. On October 8, 2020, a spousal exemption regulation was made under the *Dental Hygiene Act, 1991*. It is now no longer sexual abuse of a patient for a dental hygienist to have a concurrent treating and sexual relationship with a person who meets the statutory definition of “spouse” (of the dental hygienist) under the Health Professions Procedural Code (the “Code”), being Schedule II of the *Regulated Health Professions Act, 1919* (the “RHPA”) and were the sexual relationship is kept entirely out of the office setting.

Failure to Cooperate with the Investigation

8. On or about January 3, 2018, the College appointed an investigator to determine if the Registrant had committed sexual abuse of a patient by treating Mr. L.
9. It is agreed that the investigator made numerous attempts in 2018 to interview the Registrant, including by issuing a summons to her pursuant to the authority under section 33 of the *Public Inquiries Act, 2009* and section 76 of the Code. A copy of the summons is attached as **Tab “A”**.
10. Section 33 of *Public Inquiries Act, 2009* states:

Power to summon witnesses, papers, etc.

- (3) The person or body conducting the inquiry may require any person by summons,
 - (a) to give evidence on oath or affirmation at the inquiry; or
 - (b) to produce in evidence at the inquiry such documents and things as the person or body conducting the inquiry may specify,

relevant to the subject matter of the inquiry and not inadmissible in evidence under subsection (13).

11. Section 76 of the Code states:

Application of *Public Inquiries Act, 2009*

76 (1) An investigator may inquire into and examine the practice of the member to be investigated and section 33 of the *Public Inquiries Act, 2009* applies to that inquiry and examination.

12. In October 2018, counsel for the Registrant accepted service of the above-noted summons which required the Registrant to attend an inquiry on November 14, 2018, but advised that Ms. Chuback would not be attending the inquiry on the basis of legal advice which had been provided to her. It is agreed that, despite receiving the summons, the Registrant did not attend the inquiry on November 14, 2018.
13. It is agreed that the Registrant refused to participate in an interview at any point during the investigation, based on legal advice which had been provided to her.

Findings of Professional Misconduct

14. It is agreed that the conduct set out at paragraphs 1-13 above (the "Agreed Facts") constitutes professional misconduct pursuant to clause 51(1)(c) of the Code and as defined in one or more of the following paragraphs under section 15 of Ontario Regulation 218/94 made under the *Dental Hygiene Act, 1991* (the "Act"):
 - a. **Paragraph 47** (contravening, by act or omission, the Act or the RHPA, in particular section 76 of the Code);
 - b. **Paragraph 48** (contravening, by act or omission, a provincial law, in particular section 33 of the *Public Inquiries Act, 2009*, if the act or omission is relevant to the member's suitability to practise);
 - c. **paragraph 50** (failing to cooperate with an investigator of the College);
 - d. **paragraph 52** (disgraceful, dishonourable or unprofessional conduct); and
 - e. **paragraph 53** (conduct unbecoming a dental hygienist).

ADMISSION OF PROFESSIONAL MISCONDUCT

- [7] By this document, the Registrant admits to the truth of the facts referred to in paragraphs 1 to 13 of the ASF.

REGISTRANT'S PLEA

- [8] The Registrant admitted the acts of professional misconduct as set out in the ASF.
- [9] The Panel received a written plea inquiry that was signed by the Registrant. The Panel

also conducted an oral plea inquiry and was satisfied that the Registrant's admissions were voluntary, informed, and unequivocal.

SUBMISSIONS OF THE PARTIES ON FINDING

[10] Counsel for the College submitted that the facts and admissions contained in the ASF made out all of the acts of professional misconduct admitted to by the Registrant.

[11] Ms. Kantor, counsel for the Registrant, submitted that she echoed College Counsel's submissions namely that the facts admitted in the ASF support a finding of professional misconduct as set out therein.

DECISION ON FINDING

[12] The Panel carefully considered the ASF and the Registrant's plea, and finds that the facts support a finding of professional misconduct as set out in the ASF. The Panel finds that the Registrant committed the following acts of professional misconduct pursuant to the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991:

1. paragraph 47 (contravening, by act or omission, the Act or the RHPA, in particular section 76 of the Code);
2. paragraph 48 (contravening, by act or omission, a provincial law, in particular section 33 of the Public Inquiries Act, 2009, if the act or omission is relevant to the member's suitability to practise);
3. paragraph 50 (failing to cooperate with an investigator of the College);
4. paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and
5. paragraph 53 (conduct unbecoming a dental hygienist).

PENALTY

Joint Submission on Penalty and Costs

[13] The parties submitted a Joint Submission on Penalty and Costs ("JSPC") with respect to the appropriate order in this case, which was filed as Exhibit #3 and provides as follows:

The College of Dental Hygienists of Ontario (the "College") and Christal Anne Chuback (the "Registrant") agree and jointly submit that the following would be an appropriate order as to penalty and costs:

1. The Registrant is required to appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and a summary of the reprimand to appear on the public register of the College.

2. The Registrar is directed to suspend the Registrant's certificate of registration for a period of four (4) months commencing on the date of the Discipline Committee's Order.
3. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on the Registrant's certificate of registration:
 - i) The Registrant is required to successfully complete in the opinion of the Registrar the PROBE ethics course, at her own expense, within six (6) months of the date of the Discipline Committee's Order.
4. The Registrant is required to pay to the College costs in the amount of \$5,000.00 within thirty (30) days of the date of the Discipline Committee's Order.

Submissions on Penalty and Costs

- [14] The College made submissions to the Panel with respect to why the JSPC was appropriate and should be accepted under the circumstances.

Reasons for Decision on Penalty

- [15] The panel gave consideration to the joint submission on penalty and whether accepting the submission would bring the administration of justice into disrepute and/or would otherwise be contrary to the public interest. The JSPC does not bring the administration of justice into disrepute.
- [16] Upon consideration of the submissions, the panel finds the JSPC is a reasonable penalty to address the misconduct admitted in the ASF.
- [17] The panel gave consideration to the principles relevant to disciplinary hearings: protection and confidence of the public in their integrity and reputation of the profession. The penalty provides general deterrents to the members of the profession, informing them what can happen when College policies are ignored and specific deterrent to the Registrant with appropriate remediation discouraging repetitive behaviour in the future, serving to protect the public. The panel found the proposed penalty satisfies these principles.
- [18] The panel reviewed the case law; Ontario (College of Physicians and Surgeons of Ontario) v. Irvine, 2011 ONCPSD 39 and College of Dental Hygienists of Ontario vs. Kushma Tara Boodoo-Cutbush, 2020, and the disciplinary penalties imposed. Considering the similarities and differences in the facts and circumstances of each, the panel found the JSPC was appropriate.
- [19] The Panel considered the aggravating and mitigating factors presented in this case. The aggravating factors include the fact that the conduct was carried out over the course of

several years. The Registrant also did not cooperate with the investigator from the College by participating in an interview and also did not attend the inquiry on November 14, 2018. The panel gave consideration to the fact that this was based on legal advice provided to the Registrant at that time.

The mitigating factors include the following:

1. the Registrant admitted the allegations against her, saving the College the time and money of a contested hearing; and
2. the Registrant has been a Dental Hygienist for 15 years and does not have a prior record of professional misconduct.

[20] The Registrant waived her right of appeal and the reprimand was administered at the conclusion of the hearing, orally by the Panel.

I, Amit Vig, sign this Decision and Reasons for the Decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel as listed below.



Amit Vig, Chair, Public Member of Council

January 6, 2022

Date

Discipline Panel Members:

Michelle Atkinson, Professional Member of Council

Ilga St. Onge, Professional Member of Council

Loree Beniuk, Public Member of Council

Gillian Dunn, Non-Council Committee Member

**Summary of Reprimand Issued by Discipline Committee to Christal Chuback, RDH on
November 23, 2021**

Ms. Chuback, the panel has found that you have engaged in professional misconduct in five different ways.

It is a matter of profound 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 your clients, the public, the profession of dental hygiene and yourself.

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

Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you have engaged.

We also want to make it clear to you that while the penalty this panel has imposed upon 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.

That concludes the oral reprimand Ms. Chuback