

DISCIPLINE COMMITTEE OF THE COLLEGE OF DENTAL HYGIENISTS

Citation: Ontario (College of Dental Hygienists of Ontario) v. Marino, 2019 ONCDHO 02

THE DISCIPLINE COMMITTEE OF THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

IN THE MATTER OF a hearing directed by the Inquiries, Complaints and Reports Committee of
the College of Dental Hygienists of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of [the Regulated Health Professions Act, 1991](#),
[S.O. 1991, c. 18](#), as amended.

BETWEEN:

THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO
- and -
Jenna Louise Marino (Registration No. 016663)

PANEL MEMBERS:

Michael Connor	Chair, Public Member of Council
Amit Vig	Public Member of Council
Trudi Enstrom	Professional Member of Council
Betty Le	Professional Non-Council Member
Gillian Dunn	Professional Non-Council Member

COUNSEL

Robin McKechney, for the College of Dental Hygienists of Ontario
Valerie Wise, Jenna Louise Marino
Josh Koziobrocki, as Independent Legal Counsel

Hearing Date: May 28, 2019
Decision Date: May 28, 2019
Release of Written Reasons: June 20, 2019

DECISION AND REASONS

[1] A panel of the Discipline Committee of Dental Hygienists of Ontario heard this matter at Toronto on May 28, 2019. At the conclusion of the hearing the Panel delivered its finding and penalty order orally and in writing with written reasons to follow.

THE ALLEGATIONS

[2] The allegations against Jenna Louise Marino as stated in the notice of hearing dated May 28, 2019 are as follows:

1. At the material times Ms. Jenna Louise Marino was a duly registered dental hygienist in Ontario.

Misconduct during a Quality Assurance (QA) Examination

2. On or about April 23, 2017 Ms. Marino along with another Dental Hygienist were together and completed the College's online Quality Assurance Exam.
3. Prior to commencing the QA Test Ms. Marino acknowledged as part of the Registrant's Statement of Understanding that the QA Exam must be taken individually and without help from any other person.

4. Notwithstanding this acknowledgement, Ms. Marino and the other Dental Hygienist assisted each other in completing the QA Exam.
5. It is alleged that the above conduct constitutes professional misconduct pursuant to:
 - a. Clause 51(1)(b.0.1) of the *Health Professions Procedural Code* being Schedule 2 to the *Regulated Health Professions Act, 1991* (failing to cooperate with the Quality Assurance Committee or any assessor appointed by the committee and/or
 - b. Clause 51(1)(c) of the Code and as defined in one of the more of the paragraphs of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*:
 - i. paragraph 2: contravening by act or omission a standard of practice of the profession or failing to maintain the standard of practice of the profession and/or
 - ii. paragraph 30: signing or issuing in the members professional capacity a document that the member knows or ought to know contains a false or misleading statement and/or
 - iii. paragraph 52: engaging in conduct or performing an act relevant to the practice of the profession that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATIONS

- [3] Ms. Marino admitted to the allegations set out in paragraph 5 subsections (a) and (b) in the Notice of Hearing. The panel conducted a plea enquiry and was satisfied that the Registrant's admission was voluntary, informed and unequivocal.

AGREED STATEMENT OF FACTS

- [4] Counsel for the College advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts which provided as follows:
1. At the material times Ms. Marino was a duly registered member of the College of Dental Hygienists of Ontario. Ms. Marino practices in a dental office in Brantford and does not have a history of previous discipline at the College.
 2. In 2017, Ms. Marino was selected for the Quality Assurance audit. In order to complete the audit Ms. Marino had the choice to complete her professional portfolio or complete an online Quality Assurance Examination (the QA Exam) administered by the National Dental Hygiene Certification Board (the NDHCB). Ms. Marino chose to complete the QA Exam.
 3. In order to prepare for the QA Exam, Ms. Marino purchased Practice Exam 2. According to the NDHCB only 4 hygienists who wrote the 2017 exam purchased practice tests.
 4. Ms. Marino completed the practice exam independently and later discussed the results with another registered dental hygienist. Ms. Marino was nervous about certain areas of the exam, in particular those unfamiliar to her personal practice e.g. anesthesia) and it had been some time since they had been in school and in a formal exam-writing environment. She made a decision to write the QA exam in the same room and at the same time as another registered dental hygienist. She felt this would provide moral support for both of them.

5. The QA Exam consisted of 75 multiple choice questions and had to be completed within two and a half hours. There are eight different “Forms” of the Quality Assurance test (QA Test). Each “Form” draws from a pool of 110 questions. It is an open book exam.
6. In order to commence the QA Exam, examinees must agree to the “Registrant Statement of Understanding”. The Statement of Understanding includes the requirement that “registrants must complete this Quality Assurance Test (QA Test) individually and without help from any other person.”
7. Ms. Marino completed the QA Exam at the same time as another registered dental hygienist on April 23, 2017 at Ms. Marino’s residence. They sat in the same room and each worked on their own laptop. Ms. Marino and the other hygienist had both agreed to the “Registrant Statement of Understanding” prior to commencing their QA Exam.
8. Ms. Marino and the other hygienist both completed “Form 1” of the QA Exam and both received a mark of 94.67 and both completed the QA Exam in one hour ten minutes.
9. Ms. Marino admitted that before submitting her QA Exam, she and the other hygienist conferred on the questions with which they had difficulty. Ms. Marino estimates that they conferred on approximately eight questions. Other than these 8 questions they did the exam independently.
10. Ms. Marino and the other hygienist submitted their exams at the same time. They were told in advance that the answers would be available for 30 minutes after the submission of their exams, but as evidenced by their simultaneous submission of their tests, they did not take advantage of this opportunity and neither one used the other’s results to boost their individual score.
11. Due to an internal error by NDHCB the practice exam provided by NCHCB had some overlap with the QA Exam. Practice Test 3 (which had been purchased by the other hygienist had a 21% overlap in questions with Form 1 of the QA Exam. Practice Test 2 (which had been purchased by Ms. Marino) had a 25% overlap with Form 1 of the QA Exam.

College Investigation

12. On November 20, 2017, the College notified Ms. Marino that an investigator had been appointed to investigate concerns regarding her QA Exam.
13. On December 11, 2017, the College received a signed letter from Ms. Marino admitting that she inappropriately collaborated on the QA Exam and apologized for her conduct.
14. Ms. Marino cooperated with the investigation and was interviewed by the College investigator. Again, she admitted what she had done.

Admission of Professional Misconduct

15. It is agreed that the above constitutes professional misconduct pursuant to:
 - a. Clause 51(1)(b.0.1) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”) (failing to cooperate with the Quality Assurance Committee or any assessor appointed by the committee); and

- b. Clause 51(1)(c) of the Code and as defined in one or more of the following paragraphs of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*:

paragraph 2: contravening by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession; and

paragraph 30: signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement; and

paragraph 52: engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

16. Ms. Marino stated in the document that:

- a. she understands fully the nature of the allegations against her;
- b. she understands that by admitting the allegations, she is waiving her right to require the College to prove the case against her and the right to have a hearing;
- c. she understands that any agreement between her and the College with respect to penalty does not bind the Discipline Committee;
- d. she understands that the decision of the Committee and a summary of its reasons including reference to her name will be published in the College's annual report and may be reported in the College's Milestones and the website of the College;
- e. she is executing the agreed statement of facts document voluntarily and after receiving legal advice.

DECISION

[5] The Panel accepts as true the facts set out in the Agreed Statement of Fact.

[6] The Panel finds that Ms. Marino is guilty of professional misconduct pursuant to:

- a. Clause 51(1)9b.0.1) of the *Health Professions Procedural Code* being Schedule 2 to the *Regulated Health Professions Act 1991*; and
- b. Clause 51(1)(c) of the *Health Professions Procedural Code* as defined in Section 15 of the Ontario Regulation 218/94.

PENALTY SUBMISSIONS

[7] The parties filed a joint submission with respect to an appropriate penalty and costs order to be made in this case.

[8] The College and the Registrant's counsel made a joint submission on what was an appropriate penalty and cost order.

[9] The Panel accepted the advice of independent legal counsel that it should accept a jointly proposed penalty order unless it is contrary to the public interest and would bring the administration of justice into disrepute.

PENALTY DECISION

[10] The Discipline Committee carefully considered the Joint Submissions on Penalty and Costs, the legal precedents cited and the oral submissions made by Counsel for the College and Counsel for Ms. Marino.

[11] The Panel considered the terms of the proposed order and concluded that the proposed order met the needs of this case and the principles appropriate to setting the penalty. Accordingly the Panel accepted the joint submission and made the following order:

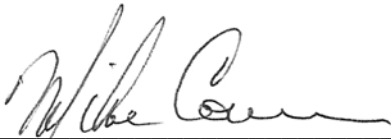
1. Ms. Marino is required to appear before a panel of the Discipline Committee immediately following the hearing of the hearing to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the public register of the College.
2. The Registrar is directed to suspend Ms. Marino's Certificate of Registration for a period of two (2) months commencing immediately.
3. The Registrar is directed to impose the following terms, conditions or limitations on Ms. Marino's Certificate of Registration:
 - a. Within twelve (12) months of the date of the Discipline Committee's order, Ms. Marino must enroll in and successfully complete, at her own expense, an individualized course of instruction pre-approved by the Registrar regarding ethics in the practice of dental hygiene and in Ms. Marino's obligations with the College including ethical behaviour in relation to the Quality Assurance program, subject to the following conditions:
 - i. Ms. Marino will provide to a course provider approved by the Registrar, a copy of the Discipline Committee's decision and reasons in this matter; and
 - ii. Upon review of the documents noted at paragraph (i) above, the course provider will provide to the Registrar, for approval, a syllabus for the proposed course which specifically addresses the Discipline Committee's concerns regarding Ms. Marino's professional misconduct. The syllabus proposed by the course provider shall also specify the length of the course to be undertaken by Ms. Marino, and the assignments to be completed by Ms. Marino.
 - b. within 30 days of completion of the course outlined in (a) above, Ms. Marino shall provide to the Registrar a written report from the course provider stating that Ms. Marino has successfully completed the course and reporting on the progress of Ms. Marino with respect to addressing the outlined goals of the course.
4. Ms. Marino is required to pay to the College costs in the amount of \$1500.00 within four months of the Discipline Committee's order.

REASONS FOR THE ORDER ON PENALTY AND COST

- [12] The panel is of the opinion that the penalty imposed appropriately addresses the principles relevant to the imposition of penalty in disciplinary proceedings.
- [13] Of paramount consideration was maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance.
- [14] Deterrence as it applies to the membership as a whole and specific deterrence as it applies to the member and the member's rehabilitation were major factors in this decision.
- [15] The panel wished to send a clear message that compliance with the Quality Assurance program is fundamental to the obligations of the profession and any attempts to circumvent or established process is unacceptable. The Quality Assurance program is a cornerstone of the operation of the College. It is vital to the principle of self-regulation and protection of the public.

- [16] The Panel accepted that the penalty proposed would serve a specific deterrent to Ms. Marino and as a general deterrent to other registrants in addressing the misconduct arising from failing to complete the examination process in the appropriate manner.
- [17] The Panel did consider the following mitigating factors: Ms. Marino has no prior record of professional misconduct and that she acknowledged her misconduct by pleading guilty. Ms. Marino also cooperated fully with the investigation done by the College and readily admitted her guilt.
- [18] At the conclusion of the hearing Ms. Marino waived her right of appeal and the reprimand was administered by the Panel.
- [19] I, **Michael Connor**, sign this decision and reasons for the decision as Chair of the Discipline Panel and on behalf of the Discipline panel as listed below.

Dated in Toronto this 20th day of June, 2019.

A handwritten signature in black ink, appearing to read 'Michael Connor', written over a horizontal line.

Michael Connor, Chair, Public Member

DISCIPLINE PANEL

Amit Vig, Public Member of Council
Trudi Enstrom, Professional Member of Council
Betty Le, Professional Non-Council Member
Gillian Dunn, Professional Non-Council Member