



Name of Registrant: Wendel Washington McFarlane

Date of Hearing: March 18, 2013

Decision and Reasons

In a hearing held on March 18, 2013, a Panel of the Discipline Committee found Mr. Wendel McFarlane guilty of professional misconduct in that he contravened the *Regulated Health Professions Act, 1991*, the *Dental Hygiene Act, 1991*, or the regulations thereunder and engaged in conduct that was unbecoming a dental hygienist, was disgraceful, dishonourable or unprofessional in that he failed to reply appropriately to the College, and failed to comply with a direction of a panel of the College.

The Notice of Hearing contained the following allegations:

1. Mr. McFarlane was a duly registered dental hygienist authorized to practise in Ontario until his certificate of registration was suspended for non-payment of fees on or about February 24, 2012.
2. It was alleged that on or about April 20, 2011, the Quality Assurance Committee of the College directed Mr. McFarlane to submit a personal learning plan or sign an Undertaking not to practise as a dental hygiene educator until a deficiency related to student assessment and evaluation was addressed.
3. It was alleged that Mr. McFarlane failed to comply with the direction of the Quality Assurance Committee and did not respond to further correspondence from the College.
4. It was alleged that on or about August 3, 2011, the Quality Assurance Committee referred Mr. McFarlane to the Inquiries, Complaints and Reports Committee for failing to comply with the Quality Assurance Committee's direction.

5. After investigating the matter, it was alleged that on or about January 26, 2012, the Inquiries, Complaints and Reports Committee ordered Mr. McFarlane to appear before it to be cautioned with respect to his failure to initially comply with the Quality Assurance requirements and his failure to respond to numerous inquiries from the College.
6. It was alleged that on or about March 22, 2012, the Deputy Registrar of the College wrote to Mr. McFarlane advising him of the requirement to appear before the Inquiries, Complaints and Reports Committee for an oral caution, and requested that he confirm that he would attend the caution by April 5, 2012.
7. It was alleged that Mr. McFarlane failed to confirm by April 5, 2012, or at any time thereafter, that he would attend the caution, as requested by the Deputy Registrar.
8. It was alleged that a further letter was sent to Mr. McFarlane on April 25, 2012 reminding him of the upcoming caution on May 3, 2012. Mr. McFarlane failed to respond to that letter.
9. It was alleged that Mr. McFarlane failed to appear before the Inquiries, Complaints and Reports Committee on May 3, 2012 to be cautioned.
10. It was alleged that the conduct described above constituted professional misconduct under Section 15 of Ontario Regulation 218/94, as amended to Ontario Regulation 36/12, under the *Dental Hygiene Act, 1991*, being: paragraph 43 (failed to reply appropriately to the College), and/or paragraph 45 (failure to comply with an order of a panel of the College), and/or paragraph 47 (contravened by act or omission the *Dental Hygiene Act, 1991* or a regulation thereunder), and/or paragraph 52 (disgraceful, dishonourable or unprofessional conduct), and/or paragraph 53 (conduct unbecoming a dental hygienist).

An affidavit of service was filed showing that Mr. McFarlane was duly informed of the date, time and place of the hearing, pursuant to Part IV of the *Dental Hygiene Act, 1991*. After an appropriate interval, the hearing commenced without his presence and/or that of his legal counsel. A plea of “not guilty” was entered, given Mr. McFarlane’s failure to attend upon the hearing. When a registrant refuses or fails to appear at a discipline hearing, when duly served, the Discipline Committee has the jurisdiction to proceed with the hearing in the absence of the registrant. A registrant cannot avoid the discipline process by a failure to respond to the Notice of Hearing.

The College filed a Book of Documents and called witnesses to support the allegations in the Notice of Hearing. The Panel considered the documentary evidence and oral testimony and found that the allegations of fact set out in the Notice of Hearing were supported by the information contained in the Book of Documents and further supported by the testimony of the witnesses. The Committee found specifically that Mr. McFarlane failed to co-operate with the College as required under the Regulations. He did not respond to any of the written or telephone communications from the College and did not comply with the requests of the Inquiries, Complaints and Reports Committee.

The Panel made the following order on penalty and costs:

1. Mr. McFarlane’s certificate of registration shall be revoked.
2. Mr. McFarlane shall pay to the College the amount of \$10,000.00 in costs within 30 days of the Discipline Panel’s Order becoming final.

The revocation Order was appropriate given the seriousness of the misconduct. It was justified as necessary in the circumstances of this case to uphold the College's mandate to protect the public against ungovernable registrants.

By way of general deterrence, the seriousness of the penalty communicates to the profession that such misconduct will not be tolerated. By way of specific deterrence, it tells the registrant that the College will punish acts that disregard the College’s public protection mandate.

The Panel wanted to send a strong message that compliance with the regulatory requirements for dental hygienists was fundamental to the practice of dental hygiene. Cooperation with the College in its public duties and compliance with orders made by the College was expected. Mr. McFarlane's failure to respond to the College, and his failure to comply with a direction of the Quality Assurance Committee and an order of the Inquiries, Complaints and Reports Committee, demonstrated a blatant disregard for the laws that govern dental hygienists in Ontario.

The Panel also considered the following aggravating factors in this case:

- Previous Inquiries, Complaints and Reports Committee decisions regarding Mr. McFarlane's failure to provide updated contact information to the College
- Failure to respond to numerous communications from the College over an extended period
- Disrespect for the legislative mandate of the College
- Conduct that clearly indicated that the registrant was ungovernable
- Failure to respond to the Notice of Hearing.