



Name of Registrant: - Marlene Mizzau

Date of Hearing: - March 4, 2005

Decision

A Panel of the Discipline Committee of the College of Dental Hygienists of Ontario (CDHO) held a hearing in Toronto on March 4, 2005 to determine whether Ms. Marlene Mizzau committed an act of professional misconduct (sexual abuse) when she developed a personal and sexual relationship with a client.

Sexual abuse of a client is defined in Section 1.(3) of the *Code*, as (a) sexual intercourse or other forms of physical sexual relations between a registrant and a client, (b) touching, of a sexual nature, of a client by a registrant, or (c) behaviour or remarks of a sexual nature by a registrant towards a client.

It was admitted that Ms. Mizzau carried on a sexual relationship with the complainant while he was her client. Sexual intercourse by a dental hygienist with a client constitutes sexual abuse. Therefore, the Panel determined that Ms. Mizzau committed an act of professional misconduct relating to sexual abuse.

The relevant penalty provision of the *Code* in a sexual abuse case is a reprimand and revocation of the dental hygienist's certificate of registration. A dental hygienist whose certificate of registration has been revoked for sexual abuse that includes sexual intercourse cannot make an application for reinstatement earlier than five years after the revocation. The Panel was aware that a challenge had been made to the courts with respect to the mandatory provision for revocation in the event of a finding of serious sexual abuse. The Ontario Court of Appeal in the **Dr. Mussani and College of Physicians and Surgeons of Ontario** case upheld the constitutional validity of that mandatory penalty in the face of a challenge that it violated rights under the Charter of Rights. The Ontario Court of Appeal is the highest court in Ontario, and the Panel understood that its role is to apply the law as determined by the courts.

The Panel was aware that the relationship with the complainant developed into a spousal relationship and that the complaint was made some years later and only after the spousal relationship had ended. Counsel for the College emphasized in his submission that it was not the position of the College that Ms. Mizzau's conduct was predatory. However, he did submit that the conduct was nevertheless a serious violation of boundaries, which all health professionals have been informed by their Colleges is unacceptable. The Panel was of the view that sexual intercourse with a current client, even if not a predatory act, is a serious crossing of boundaries that was unacceptable. The professional relationship with the client must be terminated, if a dental hygienist wishes to embark upon an intimate relationship with that person.

The adoption of zero tolerance policies and mandatory revocation were highlighted by the Court of Appeal in the Dr. Mussani case. The Court summarized a number of important findings and factors. Among the principal factors noted were the following that the Panel considered important in respect to registered dental hygienists, as with other health professionals.

- (1) the general vulnerability of clients in such relationships;
- (2) the power imbalance that almost invariably exists in favour of the health professional, thus facilitating easy invasion of the client's sexual boundaries;
- (3) the breach of trust entailed in such conduct;
- (4) the injury to the victim, both physical and emotional, that often results from sexual abuse, including the harmful effects on future care caused by the victim's inability to place trust in other health professionals;
- (5) the fact that sexual abuse tarnishes public trust in the entire profession.

Although the Court was dealing directly in that case with sexual abuse by a medical doctor, the prohibition of sexual contact by health professionals and their clients applies to all of the health professions in Ontario under the *Code*. Indeed, the Court acknowledged the application of

these principles to all health professions. Furthermore, the CDHO adopted a zero tolerance policy, which was known or should have been known to Ms. Mizzau. The CDHO has published in *Milestones* and other educational brochures and guidelines materials related to the prevention of sexual abuse.

Therefore, the Panel determined:

1. That the Certificate of Registration of Ms. Mizzau be revoked commencing on March 4, 2005.
2. That Ms. Mizzau appear before the Panel to be reprimanded.

The Panel made no order against Ms. Mizzau as to costs.

The Panel recommended that any future panel of the Discipline Committee approve her application for reinstatement provided that she successfully complete a refresher course acceptable to the Registrar within an 18-month period prior to returning to active practice. A future Panel, of course, is not bound by what the Panel recommended, and must itself determine whether it is then appropriate to reinstate her certificate of registration.