

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

PANEL: **Vinay Jain, Chair, Chair, Public Member of Council
Erin Betts, a Public Member of Council,
Catherine Ranson, a Professional Member of Council,
Trudi Enstrom, a Professional Member of Council, and
Kathleen Feres Patry, a Professional Member of Council**

BETWEEN:

College of Dental Hygienists of Ontario

) **Erica Richler, for the
) College of Dental
) Hygienists of Ontario**

- and -

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Michel Asselin (Registration No. 006369)

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) **Josh Koziembrocki,
) Independent
) Legal Counsel**

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) **Heard: March 20, 2019**

DECISION AND REASONS

This matter came up for hearing before a panel of the Discipline Committee on March 20, 2019 at the College of Dental Hygienists of Ontario ("The College") in Toronto. A previously scheduled hearing in this matter on February 1, 2019, was adjourned on the basis of a message sent to the College's Counsel, by the registrant. Attendance at today's hearing was made pre-emptory on the registrant.

The registrant did not attend today's hearing, nor was any communication sent to the College with respect to his attendance. The Hearing panel adjourned for a further 30 minutes just in case the registrant was delayed, but he did not attend.

The College requested that the matter proceed in his absence. The College presented evidence showing that correspondence had been sent by email and mail, to Mr. Asselin noting the date and time of today's hearing and the fact that today's hearing was pre-emptory on him. The email address to which the correspondence was sent was the same as the address from which an email was sent to the College on March 13, 2019.

The panel has the power to proceed in the absence of the Registrant by virtue of the Statutory Powers and Procedures Act s. 7. The panel is satisfied that the Registrant was aware of today's hearing, and therefore elected to proceed with the hearing in the absence of the Registrant.

The Allegations

The Allegations against Michel Asselin as stated in the Notice of Hearing, dated July 31, 2018 are as follows:

It is alleged that Michel Asselin failed to comply with an Order of the Discipline Committee (dated Aug 17, 2015) by

- a. failing to successfully complete (ie. Obtain an unconditional pass) the Professional Problem Based Ethics Course ("ProBE") offered by the Center for Personalized Education for Physicians no later than August 17, 2016; and
- b. within 30 days of completing the ProBE course, provide proof acceptable to the Registrar that he has successfully completed and received an unconditional pass in the course.

It is alleged that the above conduct constitutes professional misconduct pursuant to the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991: paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College); and/or paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or paragraph 53 (conduct unbecoming a dental hygienist).

Registrant's Plea

As the Registrant did not attend the hearing, he was deemed to deny the allegations.

The Evidence

The College presented the following evidence by way of various Exhibits including the Notice of Hearing, Affidavit of Cristina Gikov, sworn March 13, 2019, Document Brief (Tabs 1 to 13, inclusive), email from Mr. Asselin to Cristina Gikov, dated March 18, 2019, and Certificate of the Registrar with history details with respect to Mr. Asselin, as well as the oral testimony of Eva Rosenstock who is the current Manager, Complaints and Investigations with the College:

1. Mr. Asselin is a duly registered dental hygienist in Ontario holding a certificate of registration in the inactive class from the College of Dental Hygienists of Ontario.
2. On or about August 17, 2015, following a hearing into Mr. Asselin's conduct, a panel of the College's Discipline Committee found that Mr. Asselin committed acts of professional misconduct.
3. At the above noted hearing, the Discipline Committee panel accepted a joint proposal on penalty that was put forward by the College and Mr. Asselin. Among other things, the Discipline Committee panel directed the Registrar to impose the following terms, conditions and limitations on Mr. Asselin's certificate of registration:
 - a. He must, at his own expense, successfully complete (i.e. obtain an unconditional pass) the Professional Problem Based Ethics Course (ProBE) offered by the Center for Personalized Education for Physicians no later than August 17, 2016; and
 - b. He must, within 30 days of completing the ProBE course, provide proof acceptable to the Registrar that he has successfully completed and received an unconditional pass in the course.
4. Mr. Asselin did not complete the ProBE course by August 17, 2016 as required by the Discipline Committee's Order.
5. Mr. Asselin attended the ProBE course in Toronto, Ontario on or about March 23 to March 25, 2018.
6. The conclusion from his Evaluation and Assessment Report from his attendance was as follows:

"The overall assessment is that Michel [sic] Asselin R.D.H., failed the PROBE Program."

No evidence was submitted by the Registrant to show that he attended and unconditionally passed any subsequent PROBE program as required by the Discipline Committee's Order (dated August 17, 2015).

Finding and Reasons for Decision

In light of the uncontradicted evidence presented at the hearing and taking into consideration the applicable onus and standard of proof, the panel finds that Michel Asselin failed to comply with an Order of the Discipline Committee (dated Aug 17, 2015). The Panel further finds that Mr. Asselin's conduct and specifically his failure to complete the ProBE course successfully and within the time specified, as previously ordered by a Discipline Committee, constitutes professional misconduct pursuant to the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991: paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College); and/or paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or paragraph 53 (conduct unbecoming a dental hygienist).

The Panel found that Mr. Asselin's failure to comply with an Order of a Discipline Committee and failing an ethics course was relevant to the practice of the profession that, having regard to all of the circumstances, would reasonably be regarded by members as both dishonourable and unprofessional, and conduct unbecoming a dental hygienist.

Penalty Submissions

The College sought revocation of Mr. Asselin's certificate of registration.

The College submitted that revocation was appropriate because Mr. Asselin through his conduct demonstrated that he was not willing to be governed. This was the second time he has been before the Discipline Committee and he ignored the direction of a College Committee after agreeing to the penalty (through a joint submission on penalty). There was no evidence of mitigating factors presented for the Panel to consider.

Penalty Decision

In reaching a decision with respect to penalty, the Panel relies on the case of *Ontario (College of Pharmacists) v. Chabursky*, 2011 ONCPDC 27 (CanLII) ("*Chabursky*"), which, at paragraph 30, refers to the reasons of a prior Panel in *Sabet Ibrahim* (June 7, 2011):

While on its face this may appear to be an administrative case of someone missing a deadline, it is more than that. This is, at its core, a case about someone failing to comply with a prior decision of the Discipline Committee. But, what cannot get lost in this case is that the Member agreed, in his previous

hearing, to attend a range of courses ... Quite simply, decisions of the Discipline Committee of a self regulated profession need to be respected.

At paragraph 31, the Panel in *Chabursky*, refers to an earlier decision in Harold Primmer (June 23, 2005) as recited in the case summary in Pharmacy Connection as follows:

Accountability is crucial for maintaining public confidence as well as College credibility. Without this, the privilege of self-governance could be jeopardized.

The Panel is mindful that its primary role is the protection of the public interest, as well as the following principles: maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance, general deterrence as it applies to the membership as a whole, and specific deterrence.

The Panel considered the following aggravating factors:

- a. Mr. Asselin's discipline history and conduct including:
 - i. his failure to comply with a previous Order of the Discipline Committee by failing to receive an unconditional pass on the Professional Problem Based Ethics Course (ProBE) offered by the Center for Personalized Education for Physicians no later than August 17, 2016;
 - ii. Mr. Asselin's failure to attend the previously scheduled hearing of this matter on February 1, 2019;
 - iii. Mr. Asselin's failure to communicate with the College in any meaningful way during this process; and
- b. Mr. Asselin's certificate of registration was suspended for non-payment of fees at the time of the hearing, which demonstrate Mr. Asselin's disregard of governance.

After considering the caselaw presented by the College, the aggravating factors, the absence of any mitigating factors, and the above noted principles, the Panel was satisfied that revocation of Mr. Asselin's certificate of registration was an appropriate penalty based on the circumstances of this particular case.

Order as to Penalty

Mr. Asselin's certificate of registration is revoked.

Submissions on Costs

The College requested costs payable in the amount of \$12,000.00 which represents approximately 60% of their total costs for this matter inclusive of the adjourned hearing from February 1, 2019 as well as the cost of its investigation and prosecution.

The Panel finds that it is reasonable that a member found guilty of professional misconduct pay a portion of the costs which would otherwise be borne by the profession. The Panel is satisfied that the College's request is reasonable in the circumstances.

Order as to Costs

The Panel orders Mr. Asselin pay the amount of \$12,000.00 in costs. This shall be payable within 30 days of the date of this Order.

Dated in Toronto this 30th day of April, 2019.

A handwritten signature in black ink, appearing to read 'Vinay Jain', written in a cursive style.

Vinay Jain, Chair, Discipline Panel

Discipline Panel Members

Erin Betts, a Public Member of Council,
Catherine Ranson, a Professional Member of Council,
Trudi Enstrom, a Professional Member of Council, and
Kathleen Feres Patry, a Professional Member of Council