

NOTICE OF PUBLICATION BAN

This is notice that the Discipline Committee ordered that no person shall publish, broadcast or otherwise disclose the name of the Client referred to during the hearing or in documents filed at the hearing held on December 7, 2020, or any information that would disclose the identity of the Client.

The order was made pursuant to subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18.

Subsection 93(1) of the Code, which deals with failure to comply with orders of this type, reads in part as follows:

Every person who contravenes an order made under [...] section 45 or 47 [...] is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence

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

**PANEL: Erin Betts, Chair, a public member of Council,
Yvonne Winkle, a public member of Council,
Catherine Ranson, a professional member of Council,
Mary Yeomans, a professional non-Council member, and
Paula Malcomson, a professional non-Council member.**

BETWEEN:

College of Dental Hygienists of Ontario

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

- and -

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)
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)

Kushma Tara Boodoo-Cutbush

)Michelle Gibbs, for the
)Registrant, Kushma Tara
)Boodoo-Cutbush

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)
)Josh Koziembrocki, Independent
)Legal Counsel

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)

) **Heard: December 7, 2020**

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 December 7, 2020.
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, Kushma Tara Boodoo-Cutbush (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 March 20, 2020, which was filed as Exhibit #1, and read as follows:
 1. Ms. Kushma Tara Boodoo-Cutbush (the "Registrant") was at the material times a duly registered dental hygienist in Ontario, holding a certificate of registration in the General class from the College of Dental Hygienists of Ontario (the "College").

The Patient

2. The Registrant married her spouse in or about 1996. They legally separated in or about February 2015.
3. In or about August 2019, the College received information indicating that the Registrant was treating her spouse at a Dental office ("Clinic 1").
4. During the course of the investigation, the Registrant informed the investigator that she only provided treatment to her spouse on four occasions (in 2017 and 2018), after they

separated in February 2015 and that she and her spouse were not in a sexual relationship at the time she provided the treatment.

5. During the course of the investigation, the investigator also obtained records from the Registrant's previous employer ("Clinic 2"). Those records show that the Registrant provided dental hygiene treatment to her spouse at various times at Clinic 2, from in or about 2009 to in or about 2016, contrary to the Registrant's statements to the investigator.
6. It is alleged that the Registrant provided treatment to her spouse while they were engaged in a sexual relationship prior to 2015.

Professional Misconduct Alleged

7. 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, specifically sexual intercourse or other forms of physical sexual relations between the member and the patient); and/or
 - b. Subsection 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:
 - i. Paragraph 2 (contravening or failing to maintain a standard of practice of the profession); and/or
 - ii. Paragraph 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1 and in particular section 14.1 of O. Reg. 218/94); and/or
 - iii. Paragraph 42 (failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate); and/or
 - iv. Paragraph 50 (failure to cooperate with an investigator); and/or
 - v. Paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or

vi. Paragraph 53 (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 allegations:
 1. conduct unbecoming a dental hygienist (paragraph 53 of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*); and
 2. sexual abuse of a patient, specifically sexual intercourse or other forms of physical sexual relations between the member and the patient (clause 51(1)(b.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”).
6. The Registrant, through her counsel, advised the Panel that she consented to the College's request to withdraw the two allegations.
7. The Panel made an order at the hearing, orally, that the allegations with respect to (i) conduct unbecoming a dental hygienist; and (ii) sexual abuse of a patient, specifically sexual intercourse or other forms of physical sexual relations between the member and the patient, be withdrawn.

Agreed Statement of Facts

8. 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:
 1. Kushma Tara Boodoo-Cutbush (the “Registrant”) was at the material times a duly registered dental hygienist in Ontario. The Registrant first obtained a certificate of registration in the General class from the College of Dental Hygienists of Ontario (the “College”) on June 26, 2002.
 2. The Registrant married her spouse in 1996. They legally separated in February 2015.
 3. In August 2019, the College received information indicating that the Registrant was treating her spouse at a dental office (“Clinic 1”).

4. During the course of the investigation, the Registrant informed the investigator that she only provided treatment to her spouse on four occasions (in 2017 and 2018) at Clinic 1, after they had separated in February 2015 and that she and her spouse were not in a sexual relationship at the time she provided the treatment.
5. During the course of the investigation, the investigator also obtained records from the Registrant's previous employer ("Clinic 2"). Those records show that the Registrant provided dental hygiene treatment to her spouse at various times at Clinic 2, from 2009 to 2016, contrary to the Registrant's statements to the investigator. A copy of the spouse's treatment records from Clinic 2 are attached as Exhibit A.
6. It is agreed that the Registrant provided treatment to her spouse at Clinic 2 prior to their separation, more particularly between 2009 and 2014.
7. It is agreed that the Registrant provided inaccurate information to the College's investigator when the Registrant indicated that she only treated her spouse at Clinic 1 and only in 2017 and 2018.
8. It is agreed that the standard of practice of the profession at the material times prohibited dental hygienists 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.
9. 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 and where the sexual relationship is kept entirely out of the office setting.

Admission of Professional Misconduct

10. By this document, the Registrant admits to the truth of the facts referred to in paragraphs 1 to 9 of the ASF.
11. The Registrant admits that the Agreed Facts constitute professional misconduct pursuant to subsection 51(1)(c) of the *Health Professions Procedural 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:

- a. Paragraph 2 (contravening or failing to maintain a standard of practice of the profession);
- b. Paragraph 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1 and in particular section 14.1 of O. Reg. 218/94);
- c. Paragraph 42 (failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate);
- d. Paragraph 50 (failure to cooperate with an investigator); and
- e. Paragraph 52 (disgraceful, dishonourable or unprofessional conduct).

Registrant's Plea

9. The Registrant admitted the acts of professional misconduct as set out in the ASF.
10. 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

11. 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.
12. Ms. Gibbs, 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

13. 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. In particular,

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*:

- a. Paragraph 2 (contravening or failing to maintain a standard of practice of the profession);
- b. Paragraph 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1 and in particular section 14.1 of O. Reg. 218/94);
- c. Paragraph 42 (failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate);
- d. Paragraph 50 (failure to cooperate with an investigator); and
- e. Paragraph 52 (disgraceful, dishonourable or unprofessional conduct).

Penalty

Joint Submission on Penalty and Costs

14. 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:
 1. The Registrant is required to appear, by electronic means, 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 three (3) 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:
 - a. Within six months of the date of this Order, the Registrant is required to successfully complete in the opinion of the Registrar an individualized course in professional ethics designed to meet the concerns of the Discipline Committee with the Registrant's professional misconduct, subject to the following terms:
 - i. The course provider shall be pre-approved by the Registrar;
 - ii. The Registrant shall provide a copy of the Discipline Committee's decision and reasons to the course provider;
 - iii. The course shall consist of a minimum of two to a maximum of three sessions, as well as assignments developed by the course provider;
 - iv. The course shall be completed at the Registrant's expense;
 - v. Upon the completion of the course, the Registrant shall arrange for the course provider to provide a written report to the Registrar stating that the course has been successfully completed and reporting on the progress of the Registrant with respect to addressing the outlined goals of the course.
4. The Registrant is required to pay to the College costs in the amount of \$3,000.00 within 10 months of the date of this Order.

Submissions on Penalty and Costs

15. The College made submissions to the Panel with respect to why the JSPC was appropriate and should be accepted under the circumstances.
16. Specifically, counsel for the College submitted that the penalty will protect the public and serve as a deterrent for the Registrant and for other members of the College. Ms. Richler outlined some mitigating factors for the Panel to consider including that the Registrant admitted the misconduct and by doing so she demonstrated insight and saved the College the time and cost of a contested hearing. Ms. Richler submitted that an

aggravating factor for the Panel to consider is that the conduct was carried out over the course of a number of years.

17. The College also provided the Panel with a Brief of Authorities ("BOA"), which contained the following cases, for the Panel's consideration:
 1. *Ontario (College of Physicians and Surgeons of Ontario) v Rai*, 2016 ONCPSD 1 (CanLII);
 2. *Ontario (College of Physicians and Surgeons of Ontario) v Irvine*, 2011 ONCPSD 39 (CanLII)
 3. *College of Nurses of Ontario v Walters*, 2017 CanLII 70676 (ON CNO)
18. Ms. Richler acknowledged in her submissions that the cases in the BOA could be distinguished in several significant respects from the case at bar. However, Ms. Richler submitted that the cases have "similar themes" to the present case.
19. In her submissions, Ms. Gibbs, counsel for the Registrant, submitted that the JSPC is fair, appropriate and meets the objectives of a penalty order in disciplinary proceedings. She further submitted that the JSPC is not contrary to the public interest.
20. Ms. Gibbs acknowledged in her submissions that some of the Registrant's conduct goes to the heart of the Registrant's governability, specifically the Registrant's conduct with the investigator. In her submissions, Ms. Gibbs recognized that self-governance is a privilege, not a right, and that maintaining public trust in self-governance is an important factor relevant to the imposition of an appropriate penalty Order.
21. The Panel received and accepted the advice of Independent Legal Counsel that it is under a legal obligation to accept a jointly proposed penalty order unless it is contrary to the public interest and/or would bring the administration of justice into disrepute.

Penalty Decision

22. The Panel carefully considered the JSPC, the cases provided, and the oral submissions of the experienced counsel for each of the parties.

23. The Panel considered the terms of the proposed order and concluded that the proposed order met the needs of this case and addressed the legal principles relevant to making an order.

24. Accordingly, the Panel accepted the joint submission and made the following order (the "Order"):
 1. The Registrant is required to appear, by electronic means, 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 three (3) months commencing on the date of this Order.

 3. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on the Registrant's certificate of registration:
 - a. Within six months of the date of this Order, the Registrant is required to successfully complete in the opinion of the Registrar an individualized course in professional ethics designed to meet the concerns of the Discipline Committee with the Registrant's professional misconduct, subject to the following terms:
 - i. The course provider shall be pre-approved by the Registrar;

 - ii. The Registrant shall provide a copy of the Discipline Committee's decision and reasons to the course provider;

 - iii. The course shall consist of a minimum of two to a maximum of three sessions, as well as assignments developed by the course provider;

 - iv. The course shall be completed at the Registrant's expense;

 - v. Upon the completion of the course, the Registrant shall arrange for the course provider to provide a written report to the Registrar stating that the course has been successfully completed and reporting on the progress of the Registrant with respect to addressing the outlined goals of the course.

4. The Registrant is required to pay to the College costs in the amount of \$3,000.00 within ten (10) months of the date of this Order.

Reasons for Decision on Penalty

25. Although the Panel has discretion to accept or reject a joint submission on penalty, the Panel understands its obligation to accept a joint submission unless doing so would bring the administration of justice into disrepute and/or would otherwise be contrary to the public interest. The JSPC does not do this.
26. The Panel finds that the JSPC is reasonable in the factual context of this case and the penalty imposed appropriately addresses the specific nature of the misconduct admitted in the ASF.
27. The principles relevant to the imposition of an appropriate order in disciplinary proceedings are well established. The protection of the public is the paramount consideration. Other factors include: 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; specific deterrence as it applies to the particular Registrant; and the potential for the Registrant's rehabilitation.
28. The Panel weighed these principles, taking into account the specific facts and circumstances of this case, when deciding whether to accept the joint submission. The Panel also considered the important element of proportionality into its analysis.
29. The Panel recognizes that "[i]t is well settled that consistency in sentencing is as important in professional bodies as in the criminal courts, and that consideration should be given to disciplinary penalties imposed in similar cases": *College of Physicians and Surgeons of Ontario v. Peirovy*, 2018 ONCA 420 at para. 80. To that end, the Panel considered the cases provided by College Counsel but found the cases to be of limited assistance given that the factual scenarios in those cases diverged in several significant

respects from the circumstances of the present case. The Panel considered the differences in conduct and the impact of the conduct, and nevertheless found that the JSPC was proportional.

30. The Panel also considered aggravating and mitigating factors. The aggravating factor in this case was the fact that the conduct was carried out over the course of several years. An aggravating factor that is not present here, that is present in other cases with more severe penalties, is that the Panel has no evidence of a concurrent sexual and professional relationship. 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 does not have a prior record of professional misconduct.
31. Ultimately, the Panel was of the opinion that the Order sought appropriately addresses the principles of public protection, maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance; general deterrence and specific deterrence, and rehabilitation.
32. The principle of specific deterrence is served in this case by the JSPC. The three-month suspension, reprimand, and the terms, conditions or limitations on the Registrant's certificate of registration including the individualized course in professional ethics are intended to ensure that the Registrant's conduct will not be repeated, which, in turn, serves to protect the public and instill public confidence.
33. The principle of general deterrence is also achieved in this case by the JSPC. The significance of the Order, and specifically the three-month suspension, communicates to the Registrant and the profession that such misconduct will not be tolerated and that the Discipline Committee will seek to deter members from engaging in conduct that disregards the College's public protection mandate. The Panel also finds that because this decision will be published on the College's website, other registrants will be aware

of the consequences of this type of professional misconduct, which also serves the principle of general deterrence.

34. The principle of rehabilitation will be realized by the Registrant successfully completing an individualized course in professional ethics. The course will be designed to meet the concerns of the Discipline Committee as it relates to the Registrant's professional misconduct.
35. At the conclusion of the hearing, the Registrant waived her right of appeal and the reprimand was administered orally by the Panel.

I, **Erin Betts**, 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:



Erin Betts
Chair, Discipline Panel

January 4, 2021

Date

**Yvonne Winkle, a public member of Council,
Catherine Ranson, a professional member of Council,
Mary Yeomans, a professional non-Council member, and
Paula Malcomson, a professional non-Council member.**

Summary of Oral Reprimand for KUSHMA TARA BOODOO-CUTBUSH

Delivered: December 7, 2020

The panel has found that you have engaged in professional misconduct in five different ways. They are as follows:

1. Contravening or failing to maintain a standard of practice of the profession;
2. Acting in a professional capacity while in a conflict of interest;
3. Failing to take reasonable steps to ensure that information provided to the College is accurate;
4. Failing to cooperate with an investigator; and
5. Engaging in disgraceful, dishonourable or unprofessional conduct.

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 you 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.