



Name of Registrant: - Amanda Gauthier
(referred August 8, 2013)

Dates of Hearing: January 15 and 16, 2014; March 24, 2014

Decision and Reasons

In a hearing held in Toronto on January 15 and January 16, a Panel of the Discipline Committee found Ms. Gauthier guilty of professional misconduct in that she contravened the *Dental Hygiene Act, 1991*, or the regulations thereunder in that she engaged in conduct that was disgraceful, dishonourable or unprofessional in that she falsified a record, signed or issued a misleading document, benefitted from the practice of dental hygiene while under suspension, failed to ensure that information provided to the College is accurate, and engaged in conduct unbecoming a dental hygienist. Findings of misconduct were made against Ms. Gauthier by written order of a Panel signed on January 17, 2014. A hearing on penalty and costs was held in Toronto on March 24, 2014.

Non-attendance of the Registrant at the Hearing

Ms. Gauthier did not attend the hearing. After an appropriate waiting period, the Panel proceeded with the hearing in her absence. When a registrant refuses or fails to appear at a discipline hearing, when duly served, the Discipline Panel 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.

As the Panel proceeded to the hearing room on January 15, 2014, it was brought to its attention that Ms. Gauthier sent an e-mail at 8:27 a.m. that morning, and the e-mail was addressed to an employee of the College, stating she would not be attending the hearing and requesting it be re-scheduled. The Panel decided that Ms. Gauthier's last minute request without supporting evidence was not sufficient to warrant an adjournment of the hearing. The reasons given for not attending were not specific to the date, which she had known about for a long time. Furthermore, Ms. Gauthier had been informed prior to the discipline hearing that she should contact counsel for the College, Ms. Julie Maciura, with whom she had been communicating regarding the discipline hearing, if there were any issues related to the discipline

hearing. There had been no such communication and the Panel determined it was in the public interest to proceed.

Response to the Allegation

Given Ms. Gauthier's failure to attend the hearing, the Panel entered a plea on her behalf of "not guilty" to the allegations of professional misconduct in the Notice of Hearing. The Panel then called upon the College to present its case.

The Evidence and Findings of Fact

The Panel admitted in evidence the following documents tendered by the College:

Exhibit 1: Notice of Hearing

Exhibit 2: Certificate of the Registrar issued under the authority of section 88 of the *Health Professions Procedural Code*, noting certificate of registration suspension for non-payment of fees. Ms. Gauthier's certificate of registration was suspended from February 16, 2010 until January 25, 2011, from February 24, 2012 until September 6, 2012 and from February 19, 2013 to April 9, 2013 for non-payment of fees.

Exhibit 3: Document Brief of L. F., containing day sheets, excerpts from patient charts, copies of insurance claim forms, e-mail correspondence with the Canadian Dental Hygienists Association and a copy of the Standing Order signed by Ms. Gauthier and Dr. R.R.

Exhibit 4: Second Notice to Renew from the College, alerting Ms. Gauthier of her failure to renew status.

Exhibit 5: Notice of Suspension letter from the College, dated February 16, 2010.

Exhibit 6: E-mail correspondence and application form for reinstatement sent to Ms. Gauthier from the College, dated February 24, 2010.

Exhibit 7: E-mail correspondence and application form for reinstatement sent to Ms. Gauthier from the College, dated December 21, 2010.

Exhibit 8: Application for Reinstatement by Ms. Gauthier dated January 5, 2011.

Exhibit 9: Application for Approval of Self-Initiation to the College, dated May 10, 2011.

Exhibit 10: Letter to Ms. Gauthier from the College confirming application for self-initiation was received and processed.

Exhibit 11: Memo dated May 10, 2013 telephone conversation with Ms. Gauthier and the College's Investigations Coordinator about the investigation report sent to Ms. Gauthier on September 6, 2011.

Exhibit 12: Copy of patient day sheet from Dr. M's dental office, Ms. Gauthier's place of employment while under suspension.

Exhibit 13: Copy of Ms. Gauthier's patient day sheet from Dr. P & Dr. W's dental office, Ms. Gauthier's place of employment.

Exhibit 14: Copy of a chart of a client treated by Ms. Gauthier on March 1, 2010 and September 16, 2010, both dates during Ms. Gauthier's suspension of certificate of registration.

Exhibit 15: Copy of a chart for a client treated by Ms. Gauthier on March 8, 2010 and September 15, 2010, both dates during Ms. Gauthier's suspension of certificate of registration.

Exhibit 16: Copy of a chart of a client treated by Ms. Gauthier on July 7, 2010 and Nov 26, 2010, both dates during Ms. Gauthier's suspension of certificate of registration.

Exhibit 17: An e-mail message from Dr. R.R. addressed to the College regarding Ms. Gauthier's personal problems and character.

The Panel heard from the following witnesses who formally proved the documents above marked as exhibits, and gave evidence as follows:

Ms. L.F. testified that Ms. Gauthier met her when they both worked at the same dental office in Sudbury. Ms. L.F. testified they developed a social friendship and Ms. Gauthier subsequently worked for Ms. L.F. at a dental hygiene clinic from January 4, 2011 to May 5, 2011. Ms. L.F. testified that Ms. Gauthier told her that she had obtained self-initiation with the College, thus

meeting the regulatory requirement to work in a dental hygiene practice. Ms. L.F. admitted that she never actually saw Ms. Gauthier's self-initiation documentation. By virtue of their being friends, she believed her, and did not follow-up to verify this information with the College. Ms. L.F. confirmed in her testimony that Ms. Gauthier was an employee of her clinic and received a bi-weekly pay cheque.

The second witness was Ms. Anne Wright of the Canadian Dental Hygiene Association (CDHA). She is the Director of Dental Hygiene practice. Ms. Wright confirmed that Ms. Gauthier was not currently a member of the CDHA and there was no record of Ms. Gauthier being an active member from 2010 to present. Ms. Wright did report that there is record of Ms. Gauthier being an active member from 2005 to 2009. The date of birth of Ms. Gauthier on their file is August 11, 1981.

Ms. Eva Rosenstock, CDHO Investigations Coordinator, was the third witness at the discipline hearing. Ms. Rosenstock confirmed that Ms. Gauthier's date of birth on the College database was August 11, 1981. She testified that Ms. Gauthier's certificate of registration was suspended from February 16, 2010 until January 25, 2011, from February 24, 2012 until September 6, 2012, and from February 19, 2013 until April 9, 2013, for non-payment of fees. Ms. Rosenstock verified that Ms. Gauthier was sent a letter for renewal, a second letter of notice of renewal on January 11, 2010 and a Notice of Suspension letter on February 16, 2010. Ms. Rosenstock verified the e-mail correspondence between Ms. Gauthier and Ms. Boucher, from the College registration department, that included an application form for reinstatement on February 24, 2010, and a further e-mail on December 21, 2010 with an application form for reinstatement.

Ms. Rosenstock confirmed Ms. Gauthier's Application for Reinstatement of a General/Specialty Certificate of Registration dated December 21, 2010. Ms. Rosenstock also confirmed Ms. Gauthier's Application for Self-Initiation dated May 10, 2011. She also confirmed the letter sent to Ms. Gauthier stating the self-initiation application was received and processed on May 19, 2011. Ms. Rosenstock confirmed that the information in the memo outlining the telephone conversation between Ms. Rosenstock and Ms. Gauthier was accurate. During the telephone conversation Ms. Gauthier says she did not know her registration was suspended as she had filled out her application form for renewal in 2011 and sent it in, assuming that once she had sent it in, it was accepted and she was therefore registered. Ms. Gauthier also stated

that she was told by the Canadian Dental Hygienists Association (CDHA) that all she needed for self-initiation was a Unique Identification Number (UIN). Ms. Gauthier reported she arranged for this Unique Identification Number over the phone. In this same conversation Ms. Gauthier stated that the “girl” [L.F.] that she worked for (Ms. Gauthier could not recall her name) said she needed a Standing Order and that she should get a UIN. Ms. Gauthier stated she called Dr. R.R. to ask if she had been practicing under a Standing Order. Ms. Gauthier stated that he confirmed that she had and she asked him to sign the Standing Order, estimating the start date as August 15, 2005. Ms. Rosenstock testified that she called the Ontario Dental Hygiene Association (ODHA) to verify if Ms. Gauthier was a member and held liability insurance with the ODHA. The ODHA reported to Ms. Rosenstock that they had no records of Ms. Gauthier ever being a member or Ms. Gauthier having liability insurance.

Ms. Sarah Marceau was the fourth witness at the discipline hearing. She was the investigator hired by the College. Ms. Marceau interviewed Ms. Gauthier and reported that Ms. Gauthier told Ms. Marceau that she was aware of her suspension from February 16, 2010 to Jan 25, 2011. Ms. Gauthier also told Ms. Marceau that she moved and the letters about the suspension of registration from the College were sent to her old address. She also stated that she learned from the CDHA that she was not registered but did not follow-up with the College. She testified that she also told Ms. Marceau that she read the check-off statements wrong on her application for registration reinstatement about working while suspended. Ms. Marceau reported that she visited the dental office of Dr. M. and Dr. P. and reviewed day sheets and client charts that corresponded with the day sheets. These documents confirmed that Ms. Gauthier provided dental hygiene services to clients on various dates during her suspension of registration.

Dr. R.R., the fifth witness at the discipline hearing, testified that he knew Ms. Gauthier and that she was his employee at his dental practice from 2006 to 2008. Dr. R.R. confirmed that the signature on the Standing Order submitted by Ms. Gauthier to the College was in fact his signature. He reported that Ms. Gauthier sent it to him in 2010 because the original copy was lost and he back-dated the form to July 2005. Dr. R.R. confirmed that he met with Ms. Marceau, the investigator who interviewed him. He conceded that the standing order was not accurate. There were no standing orders at the time when Ms. Gauthier was working for him.

Ms. Marceau was recalled as a witness and reported that she interviewed Dr. R.R. who told Ms. Marceau that the dental hygienists who worked for him did not work using a Standing Order, as he was always present in the office and only gave verbal orders. Ms. Marceau also testified that Dr. R.R. confirmed that Ms. Gauthier worked in his office from 2006 to 2008 and did not work there in 2005, when the Standing Ordered was back-dated to.

Finding

The Panel considered the documentary evidence and oral testimony and found that all but two of the allegations set out in the Notice of Hearing were proved by the exhibits presented by the College, as further supported by the testimony of the witnesses.

The Discipline Committee found that Ms. Gauthier is guilty of professional misconduct pursuant to paragraph 28 (falsifying a record); and paragraph 30 (signing or issuing a false or misleading document); and paragraph 38 (receiving any form of benefit from the practice of dental hygiene while under suspension); and paragraph 42 (failing to ensure that information provided to the College is accurate); and paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and paragraph 53 (conduct unbecoming) of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*.

Reasons for Finding

The evidence amply supports the findings made. The Panel found that the College proved on the balance of probabilities, the above findings of professional misconduct. There was clear evidence that the certificate of registration of Ms. Gauthier had been suspended, that she had been informed by the College of the suspensions, and that she practiced and was paid as a dental hygienist while suspended. The Panel found that she had misrepresented that she was registered, when she was not, and misrepresented that she was authorized to self-initiate, when she was not. Furthermore, the evidence established that there was no standing order by Dr. R.R., under which Ms. Gauthier worked. Despite the fact that Ms. Gauthier sent a back-dated standing order to Dr. R.R. which he signed, the evidence accepted by the Panel was that “he was always there [in his practice] and that none of his staff at the time worked under standing orders”. Ms. Gauthier made a false statement to the College when she stated in her Application for Reinstatement dated December 21, 2010, that she had not been practicing

dental hygiene during her suspension. She made a further false statement to the College when she stated on her Application for Approval for self-initiation dated March 10, 2011, that she had been in continuous clinical practice in a general or periodontal practice in Ontario under a “standing order” or “protocol” for at least two years. Additionally, Ms. Gauthier made a false statement to the College investigator when she stated that she had worked for Dr. R.R. pursuant to a standing order for scaling and root planning. Also, in dealing with her colleague Ms. L.F., in that colleague’s dental hygiene clinic, she misrepresented to L.F. that she was authorized to self-initiate, when she was not. She further misrepresented to L.F. that she had professional liability insurance. Ms. Gauthier provided to Ms. L.F. an undated e-mail from the Canadian Dental Hygienists Association to demonstrate that she had liability insurance during her employment, which was not true for 2010. Her conduct with the College and with a professional colleague included acts relevant to the practice of the profession that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional and as conduct unbecoming a dental hygienist.

Order on Penalty and Costs

The Panel proceeded with the hearing on penalty and costs on March 24, 2014. Again the registrant was not in attendance, although served with the Order on Finding which made it clear that the hearing with respect to penalty and costs would proceed on March 24, 2014, at 9:30 a.m., at the offices of the College, 69 Bloor Street East, in Toronto.

After deliberation the Panel ordered as follows:

1. The Registrar is directed to revoke Ms. Gauthier’s certificate of registration immediately;
2. Ms. Gauthier shall pay to the College the amount of \$26,000.00 in costs payable within 35 days of the Order.

Reasons for Order on Penalty

The College argued that the only reasonable order in this case would be revocation of Ms. Gauthier's certificate of registration. The College outlined three principles of sanction that should be taken into account by the Panel: protection of the public, general deterrence and specific deterrence (counsel for the College argued that all support an order of revocation). After deliberation, the Panel accepted that revocation was the appropriate penalty order in this case.

The member has shown herself to be ungovernable, the findings were serious and took place over an extended period of time, she demonstrated disregard for a professional colleague and she failed to cooperate with the College. Cooperation with a health professional's regulatory college is essential to protect the public. Providing false information to the College is the antithesis of cooperation and undermines the College's ability to protect the public.

The Panel considered it to be an aggravating factor that the registrant showed a blatant disregard for the regulatory process which is intended to protect the public. Other aggravating factors were that Ms. Gauthier engaged in inappropriate conduct over and over, and that she demonstrated serious disregard for her professional obligations and the reputation of her colleague Ms. L.F.

Costs Order and Reasons for Order

The Panel ordered the registrant to pay costs in the amount of \$26,000.00 within 35 days of the discipline order. The Panel acted on the evidence before them. There was no evidence from Ms. Gauthier with respect to Ms. Gauthier's financial status or ability to pay. The Panel gave Ms. Gauthier an opportunity to attend the penalty hearing and she did not. The College informed Ms. Gauthier in advance that they would be seeking 2/3rd of the amount of the costs of the discipline hearing. The Panel could have ordered reimbursement of 100% of the full costs associated with this matter, but exercised its discretion and ordered that she pay 2/3 of those costs. When the misconduct is caused solely by the registrant's action, a requirement that the member pay 2/3 of the cost is fair and reasonable in the Panel's view. This means that 1/3 of the actual costs will be borne by the profession at large.