

**Name of Registrant / Nom du membre**

Nicole Barnett (referred May 16, 2016 / Renvoyée le 16 mai 2016)

Date of Hearing / Date de l'audience

September 8, 2016 / le 8 septembre 2016

Summary of Hearing / Résumé de l'audience

On September 8, 2016, the Discipline Committee found that Ms. Nicole Barnett had engaged in professional misconduct by: (1) failing to comply with a direction of a College Committee; and (2) practicing while her certificate of registration was suspended, using the title dental hygienist and holding herself out as a dental hygienist. The Discipline Committee issued Ms. Barnett a reprimand, suspended her certificate of registration for three months and ordered that the suspension shall continue until Ms. Barnett successfully completes three courses. She was ordered to pay \$1000 in costs. For more information please read the decision of the Discipline Committee about Ms. Barnett.

A full text copy of the Decision and Reasons follows in English only.

The last page of this document contains the text of the [public reprimand](#) issued by the Discipline Committee to Ms. Nicole Barnett.

Le 8 septembre 2016, le comité de discipline a conclu que Madame Nicole Barnett a commis une faute professionnelle en (1) enfreignant une directive d'un comité de l'Ordre et en (2) exerçant pendant que son certificat d'inscription était suspendu, en utilisant le titre d'hygiéniste dentaire et en se présentant comme une hygiéniste dentaire. Le comité de discipline a prononcé une réprimande à l'endroit de Madame Barnett, a suspendu son certificat d'inscription pour trois mois et ordonné que cette suspension se poursuive jusqu'à ce que Madame Barnett complète avec succès trois cours. Elle a été imposée des coûts de 1 000 \$. Pour en apprendre davantage, veuillez lire la décision du comité de discipline concernant Madame Barnett.

Vous trouverez plus bas en anglais seulement une copie du texte intégral de la décision et des raisons.

La dernière page du présent document contient le texte de la [réprimande publique](#) prononcée par le comité de discipline à l'endroit de Madame Nicole Barnett.



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

BETWEEN:

THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

and

NICOLE BARNETT

PANEL MEMBERS:

**HEATHER BLONDIN, Chair, Professional Member of Council
MICHAEL CONNOR, Public Member of Council
TOTE QUIZAN, Public Member of Council
BEV WOODS, Professional Member of Council**

COUNSEL FOR THE COLLEGE:

ERICA RICHLER

COUNSEL FOR NICOLE BARNETT:

SELF-REPRESENTED

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

ROBERT W. COSMAN

HEARD: SEPTEMBER 8, 2016

DECISION AND REASONS FOR DECISION

A Panel of the Discipline Committee of the College of Dental Hygienists of Ontario heard this matter at Toronto on September 8, 2016. At the conclusion of the hearing, the Panel delivered its finding and penalty order orally and in writing, with written reasons to follow.

THE ALLEGATIONS

It was alleged in the Notice of Hearing that the registrant had committed acts of professional misconduct, firstly, in failing to comply with an ICRC decision dated June 12, 2015, requiring her to successfully complete certain courses in portfolio development, ethics and jurisprudence, and secondly, in practising dental hygiene while her certificate of registration was suspended for non-payment of fees.

The allegations against the registrant are specified in a Statement of Allegations set out in the Notice of Hearing as follows:

Statement of Allegations

1. At the material times, Ms. Nicole Marie Barnett (“Ms. Barnett”) was 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”).

Failure to Comply with ICRC Decision

2. Ms. Barnett was required to submit a completed Professional Portfolio by January 31, 2014 as part of the College’s Quality Assurance program. Ms. Barnett failed to submit her Professional Portfolio as required and the matter was referred to the College’s Inquiries, Complaints and Reports Committee (the “ICRC”) for an investigation.
3. On June 12, 2015, a panel of the ICRC directed Ms. Barnett to receive a written caution and to complete a specified continuing education or remediation program at her own expense. In particular, Ms. Barnett was required to complete the following courses:
 - a. an approved portfolio development course;
 - b. an approved ethics course; and
 - c. the College’s online Jurisprudence Education Module.

4. The panel of the ICRC specified that Ms. Barnett was required to provide proof to the Deputy Registrar that she had commenced the above courses within three months of the date of its decision (i.e., by September 14, 2015) and to provide proof to the Deputy Registrar that she had successfully completed the courses within six months of the date of its decision (i.e., by December 14, 2015).
5. On or about June 19, 2015, Ms. Barnett was provided with a copy of the ICRC's decision, as well as information on how to complete the courses.
6. To date, Ms. Barnett has failed to complete the courses as directed by the ICRC in its June 12, 2015 decision.
7. 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 of a dental hygienist).

Practising While Suspended

8. On or about February 20, 2015, Ms. Barnett's certificate of registration was suspended for non-payment of fees.
9. It is alleged that Ms. Barnett practised dental hygiene while her certificate was suspended for non-payment of fees from on or about February 1, 2016 to on or about February 23, 2016. More particularly, it is alleged that Ms. Barnett provided dental hygiene services at a clinic in London, Ontario to the following clients, on the following dates while her certificate of registration was suspended:
 - a. Client A.B., on or about February 1, 2016;
 - b. Client G.D., on or about February 9, 2016;
 - c. Client A.I., on or about February 2, 2016;
 - d. Client L.T., on or about February 2, 2016; and
 - e. Client D.T., on or about February 9, 2016.
10. 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 38 (receiving a benefit from dental hygiene employment while suspended without prior approval of the Executive Committee); and/or paragraph 47 (contravening, by act or omission, the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, more specifically, practising illegally pursuant to subsection 13(2) of the

Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991 and section 9 of the Dental Hygiene Act, 1991 [no one other than a member shall use the title “dental hygienist” or hold themselves out as a dental hygienist]); and/or paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or paragraph 53 (conduct unbecoming).

RESPONSE TO THE ALLEGATIONS

Ms. Barnett admitted to the allegations of professional misconduct set out in the Statement Allegations in the Notice of Hearing, except for the allegation under paragraph 53 (Conduct unbecoming), which was withdrawn by the College.

THE FACTS

The parties filed with the Panel a Statement of Agreed Facts, which included the following facts and admissions.

AGREED STATEMENT OF FACTS

1. Ms. Nicole Marie Barnett (“Ms. Barnett”) obtained a certificate of registration from the College of Dental Hygienists of Ontario (the “College”) on or about September 30, 2008.
2. On or about February 20, 2015, Ms. Barnett’s certificate of registration with the College was suspended for non-payment of fees. A printout of Ms. Barnett’s Registration History Details from the College’s register is attached as Exhibit “A” [to the Agreed Statement of Facts].

Failure to Comply with ICRC Decision

3. Ms. Barnett was required to submit a completed Professional Portfolio by January 31, 2014 as part of the College’s Quality Assurance program. Ms. Barnett failed to submit her Professional Portfolio as required and the matter was referred to the College’s Inquiries, Complaints and Reports Committee (the “ICRC”) for an investigation.
4. On June 12, 2015, a panel of the ICRC directed Ms. Barnett to receive a written caution and to complete a specified continuing education or remediation program at her own expense. In particular, Ms. Barnett was required to complete the following courses:

Protecting your health and your smile / Nous protégeons votre santé et votre sourire

- a. an approved portfolio development course;
 - b. an approved ethics course; and
 - c. the College's online Jurisprudence Education Module.
5. The panel of the ICRC specified that Ms. Barnett was required to provide proof to the Deputy Registrar that she had commenced the above courses within three months of the date of its decision (i.e., by September 14, 2015) and to provide proof to the Deputy Registrar that she had successfully completed the courses within six months of the date of its decision (i.e., by December 14, 2015). A copy of the ICRC's decision dated June 12, 2015 is attached as Exhibit "B" [to the Agreed Statement of Facts].
 6. On or about June 19, 2015, Ms. Barnett was provided with a copy of the ICRC's decision, as well as information on how to complete the courses. A copy of the College's letter to Ms. Barnett dated June 19, 2015 is attached as Exhibit "C" [to the Agreed Statement of Facts].
 7. To date, Ms. Barnett has failed to complete the courses as directed by the ICRC in its June 12, 2015 decision.
 8. Between April 2013 and December 2015, Ms. Barnett's personal life was disrupted by a change of personal residence, her husband embarking on a new career, and the birth of her second son, who suffered a serious medical illness. Her failure to respond to correspondence from the College and to complete the courses ordered by the ICRC was not intentional, albeit said conduct was unprofessional and failed to meet the expectations of the College.
 9. It is agreed 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 paragraph 52 (disgraceful, dishonourable or unprofessional conduct).

Practising While Suspended

10. At the time of Ms. Barnett's suspension for non-payment of fees in February 2015, her newborn child was in the hospital being treated for a serious illness. Her newborn's health concerns persisted into the summer of 2015. Ms. Barnett ought to have known that she failed to pay her fees and she ought to have known that her certificate of registration was suspended. Her failure to be aware of her suspension amounted to not meeting her professional obligations to the College.

11. On or about February 1, 2016, while her certificate was suspended for non-payment of fees, Ms. Barnett returned to work as a dental hygienist following a maternity leave.
12. It is agreed that Ms. Barnett practised dental hygiene while her certificate was suspended for non-payment of fees from on or about February 1, 2016 to on or about February 23, 2016. More particularly, it is agreed that Ms. Barnett provided dental hygiene services at a clinic in London, Ontario to the following clients, on the following dates while her certificate of registration was suspended:
 - a. Client A.B., on or about February 1, 2016;
 - b. Client G.D., on or about February 9, 2016;
 - c. Client A.I., on or about February 2, 2016;
 - d. Client L.T., on or about February 2, 2016; and
 - e. Client D.T., on or about February 9, 2016.
13. It is agreed 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 38 (receiving a benefit from dental hygiene employment while suspended without prior approval of the Executive Committee); and paragraph 47 (contravening, by act or omission, the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, more specifically, practising illegally pursuant to subsection 13(2) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* and section 9 of the *Dental Hygiene Act, 1991* [no one other than a member shall use the title “dental hygienist” or hold themselves out as a dental hygienist]); and paragraph 52 (disgraceful, dishonourable or unprofessional conduct).

FINDING

The Panel accepted as true the facts set out in the Statement of Agreed Facts and found that Ms. Barnett committed acts of professional misconduct as defined in the following paragraphs of Section 15 pursuant to Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*:

Paragraph 38 (receiving a benefit from dental hygiene employment while suspended without prior approval of the Executive Committee)

Paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College)

Paragraph 47 (contravening, by act or omission, the Act, the *Regulated Health Professions Act*, 1991 or the regulations under either of those Acts, more specifically, practising illegally pursuant to subsection 13(2) of the *Health Professions Procedural Code* being Schedule 2 to the *Regulated Health Professions Act*, 1991 and section 9 of the *Dental Hygiene Act*, 1991 [no one other than a member shall use the title "dental hygienist" or hold themselves out as a dental hygienist])

Paragraph 52 (disgraceful, dishonourable or unprofessional conduct)

REASONS FOR DECISION

The Discipline Panel carefully considered the facts and the oral submissions of the parties.

The Committee accepted that the allegations of professional misconduct were fully supported by the facts set out in the Statement of Agreed Facts.

PENALTY SUBMISSIONS

The parties filed a joint submission with respect to an appropriate penalty and costs order to be made in this case.

PENALTY DECISION

The Discipline Panel carefully considered the Joint Submission on Penalty and Costs, the legal cases cited, and the oral submissions made by the parties.

The Panel understood its legal obligation to accept a jointly proposed penalty order unless it was contrary to the public interest and would bring the administration of justice into disrepute. The Panel considered the terms of the proposed order and concluded that the proposed order met the needs of this case and satisfied the principles appropriate to setting the penalty. Furthermore, the proposed order was in keeping with the penalty decisions in other cases. Accordingly, the Panel accepted the joint submission and made the following order:

1. Ms. Barnett is required to appear 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 Discipline Committee shall direct the Registrar to suspend Ms. Barnett's certificate of registration for a period of three (3) months commencing on the date that Ms. Barnett's certificate of registration with the College is reinstated following the payment of any outstanding fees, which suspension shall continue until Ms. Barnett successfully completes the courses set out in paragraphs 3(a), 3(b) and 3(c) below.
3. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on Ms. Barnett's certificate of registration:
 - a. Ms. Barnett must, at her own expense, successfully complete (i.e., pass unconditionally), in the opinion of the Registrar, the Professional/Problem-Based Ethics Program ("ProBE") offered by the Center for Personalized Education for Physicians;
 - b. Ms. Barnett must, at her own expense, successfully complete (i.e., obtain 100% on all sections), in the opinion of the Registrar, the College's online Jurisprudence Education Module.
 - c. Ms. Barnett must, at her own expense, successfully complete, in the opinion of the Registrar, a Quality Assurance Course pre-approved by the Registrar.
4. Ms. Barnett is required to pay to the College costs in the amount of \$1000.00 within six months of the date of the Discipline Committee's order.

REASONS FOR THE ORDER ON PENALTY AND COSTS

The suspension, reprimand and mandated courses act to ensure that such misconduct will not be repeated. This accomplishes the objective of protection of the public. It also provides specific deterrence to the registrant and general deterrence to the profession.

The Panel considered the following mitigating factors in this case:

- Ms. Barnett has no prior record of professional misconduct
- Ms. Barnett acknowledged her misconduct by pleading guilty
- Ms. Barnett was experiencing some family health issues which were offered as an explanation but not a justification for her conduct.

While the Panel sympathized with her family health difficulties, it noted that dental hygienists, like other health professionals, must abide by their professional obligations, even in trying times, if they wish to continue to practise.

Protecting your health and your smile / Nous protégeons votre santé et votre sourire

Ms. Barnett will only be able to resume the practice of dental hygiene, after her three-month suspension, when she has successfully completed the Professional/Problem Based Ethics Program (“ProBE”), the College’s on-line Jurisprudence Educational Module, and an approved Quality Assurance Course. This will address her failure to submit her portfolio to the Quality Assurance Committee. In this way the public is further protected, and a very clear message is sent that dental hygienists must comply with the requirements of their governing College.

The Panel repeats and supports the words of the ICRC in their decision. Self-regulation is a privilege and registrants who refuse to comply with the Quality Assurance Committee or who fail to respond to the CDHO, demonstrate a lack of respect for the regulation process. This in turn poses a potential risk to public safety.

At the conclusion of the hearing Ms. Barnett waived her right of appeal and the reprimand was administered by the Panel.

I, Heather Blondin, RDH, sign this decision and reasons for the decision as Chair of the Discipline panel and on behalf of the Discipline panel as listed below.

Dated in Toronto this 6th of October, 2016.



Heather Blondin, Chair, Professional Member of Council

Discipline Panel Members:

Michael Connor, Public Member of Council
Tote Quizan, Public Member of Council
Bev Woods, Professional Member of Council

**Name of Registrant / Nom du membre**

Nicole Barnett (referred May 16, 2016 / Renvoyée le 16 mai 2016)

Date of Hearing / Date de l'audience

September 8, 2016 / le 8 septembre 2016

**Reprimand Issued by the Discipline Committee /
Réprimande prononcée par le comité de discipline**

Ms. Barnett, the panel found that you have engaged in acts of professional misconduct in that you failed to comply with a direction of the Inquiries, Complaints and Reports Committee and engaged in illegal practice. Your conduct is of profound concern to the Discipline Committee. By engaging in such behaviour, you let down your clients, the public, and the profession of dental hygiene. You let your personal problems get in the way, and failed to prioritize your professional duties and responsibilities. In pleading guilty to professional misconduct today, and by agreeing to the penalty issued by this panel, you have demonstrated awareness and accountability for your conduct. We expect that you will not appear again before the Discipline Committee.

Madame Barnett, le sous-comité a constaté que vous avez commis une faute professionnelle en ne vous conformant pas à la directive du comité des enquêtes, des plaintes et des rapports et en exerçant une pratique illégale. Votre comportement préoccupe profondément le comité de discipline. En vous comportant ainsi, vous décevez vos clients, le public et la profession d'hygiéniste dentaire. En donnant la priorité à vos problèmes personnels, vous avez négligé vos responsabilités et vos obligations professionnelles. En reconnaissant votre faute professionnelle aujourd'hui et en acceptant la sanction imposée par le sous-comité, vous avez démontré votre sensibilisation et votre responsabilité relativement à votre comportement. Nous espérons que vous ne ferez plus l'objet d'une audience devant le comité de discipline.