

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

PANEL: **Fernand Hamelin, Chair, public member of Council,
Terri Strawn, a professional member of Council, and
Erin Betts, a public member of Council.**

BETWEEN:

College of Dental Hygienists of Ontario

**) Robin McKechney, for the
College of Dental Hygienists of
Ontario**

- and -

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Samantha Wehrle (Registration No. 016197)

**) Carlos Rippell, for the registrant,
Samantha Wehrle**

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

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) Heard: July 24, 2018

DECISION AND REASONS

1. This matter came on for hearing before a panel of the Discipline Committee on July 24, 2018 at the College of Dental Hygienists of Ontario at Toronto.

The Allegations

2. The allegations against Ms. Wehrle as stated in the Notice of Hearing dated May 3, 2017, are as follows:

The Registrant

3. At the material times Samantha Wehrle (the "Registrant") was a duly registered member of the College of Dental Hygienists of Ontario, practicing at Dawson Dental Centre in Guelph, Ontario.

The Client

4. Client #1 was a client of the Registrant's and attended for dental hygiene treatment with the Registrant at Dawson Dental Centre on or about June 5, 2015, November 21, 2015, February 27, 2015 and April 16, 2016.

The Relationship between the Registrant and Client #1

5. The Registrant and Client #1 have been romantically involved for approximately 8 years. They have an intimate sexual relationship that involves sexual intercourse.
6. The Registrant says that when she became a dental hygienist, she understood that she could not treat Client #1 because of the intimate sexual nature of their relationship.
7. The Registrant says that she began treating Client #1 because she mistakenly understood that an exemption had been enacted that allowed dental hygienists to treat their spouses.
8. While they were engaged in a sexual relationship, the Registrant provided dental hygiene treatment to Client #1 at Dawson Dental Centre on or about June 5, 2015, November 21, 2015, February 27, 2015 and April 16, 2016.

Professional Misconduct Alleged

9. It is alleged that the above conduct constitutes professional misconduct pursuant to:
 - (a) Clause 51(1) (b.1) of the *Health Professions Procedural Code*: sexual abuse of a patient; and/or

- (b) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 2: contravening a standard of the profession; and/or
- (c) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s. 15, para. 47: contravening, by act or omission, the Act, the RHPA or the regulations under either of those Acts; and/or
- (d) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 52: engaging in conduct or performing an act, relevant to the practise of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and/or
- (e) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 53: conduct unbecoming a dental hygienist.

Registrant's Plea

- 10. Ms. Wehrle admitted the allegations set out paragraphs numbered 1 to 6 inclusively in the Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the Registrant's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts ("ASF")

- 11. Counsel for the College advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts which provided as follows:

The Registrant

- 12. At the material times Samantha Wehrle (the "Registrant") was a duly registered member of the College of Dental Hygienists of Ontario, practising at Dawson Dental Centre in Guelph, Ontario.

The Client

- 13. Client #1 was a client of the Registrant's and attended for dental hygiene treatment with the Registrant at Dawson Dental Centre on or about June 5, 2015, November 21, 2015, February 27, 2015 and April 16, 2016.

The Relationship between the Registrant and Client #1

- 14. The Registrant and Client #1 have been romantically involved for approximately 8 years. They have an intimate sexual relationship that involves sexual intercourse.

15. The Registrant says that when she became a dental hygienist, she understood that she could not treat Client #1 because of the intimate sexual nature of their relationship. The Registrant says that she began treating Client #1 because she mistakenly understood that an exemption had been enacted that allowed dental hygienists to treat their spouses.
16. The Registrant says that she began treating Client #1 because she mistakenly understood that an exemption had been enacted that allowed dental hygienists to treat their spouses.
17. While they were engaged in a sexual relationship, the Registrant provided dental hygiene treatment to Client #1 at Dawson Dental Centre on or about June 5, 2015, November 21, 2015, February 27, 2015 and April 16, 2016.

Professional Misconduct Alleged

18. It is alleged that the above conduct constitutes professional misconduct pursuant to:
 - (a) Clause 51(1)(b.1) of the *Health Professions Procedural Code*: sexual abuse of a patient; and/or
 - (b) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 2: contravening a standard of the profession; and/or
 - (c) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s. 15, para. 47: contravening, by act or omission, the Act, the RHPA or the regulations under either of those Acts; and/or
 - (d) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 52: engaging in conduct or performing an act, relevant to the practise of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and/or
 - (e) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 53: conduct unbecoming a dental hygienist.
19. By this document, the Registrant states that:
 - (a) she understands fully the nature of the allegations against her;
 - (b) she understands that by admitting the allegations, she is waiving his right to require the College to prove the case her and the right to have a hearing;
 - (c) she understands that any agreement between her and the College with respect to

penalty does not bind the Discipline Committee;

(d) she understands that the decision of the Committee and a summary of its reasons including reference to her name will be published in the College's annual report and may be reported in the College's publication *Milestones* and the website of the College; and

(e) she is executing this document voluntarily and after receiving legal advice.

Analysis

20. In considering this matter, the panel has considered the analysis in the decision of the Committee, *College of Dental Hygienists of Ontario v. Alexandru Tanase* 2018. That case was also decided by an Agreed Statement of Facts and is very similar to the facts in this case. In *Tanase* the panel found at paragraphs 29 and 30 the following:

29. The Registrant argues that his circumstances are different from *Sliwin* (the Divisional Court decision of *Sliwin v. College of Physicians and Surgeons, 2017 ONSC 1947* ("*Sliwin*")) because he would have qualified for the spousal exemption had it been passed. I would agree with the College on this point that whether or not the Registrant would have qualified for a spousal exemption is irrelevant as the legislature has not, to date, passed such an exemption.

30. For these reasons, I am of the view that there has not been a significant change in circumstances to warrant deviating from the decisions in *Mussani* and *Sliwin* (the Court of Appeal decision of *Mussani v. College of Physicians and Surgeons of Ontario, 2004* ("*Mussani*") and the Divisional Court decision of *Sliwin v. College of Physicians and Surgeons, 2017 ONSC 1947* ("*Sliwin*")).

21. The panel agrees with the analysis in *Tanase* and agrees that the decisions in *Mussani* and *Sliwin* are still binding on this panel. Further, the Panel notes that at the time of this decision the legislature has still not passed any exemption for the College regarding a potential spousal exemption.

Decision

22. The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that the Registrant committed an act of professional misconduct as alleged in paragraphs 1 to 6 inclusively of the Notice of Hearing in that her conduct constitutes professional misconduct pursuant to:

(a) Clause 51(1)(b.1) of the *Health Professions Procedural Code*: sexual abuse of a patient; and/or

(b) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 2: contravening a standard of the profession; and/or

- (c) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s. 15, para. 47: contravening, by act or omission, the Act, the RHPA or the regulations under either of those Acts; and/or
- (d) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 52: engaging in conduct or performing an act, relevant to the practise of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and/o
- (e) Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, s.15, para 53: conduct unbecoming a dental hygienist.

Reasons for Decision

- 23. Upon accepting the Agreed Statement of Facts, the Panel find that the facts constitute professional misconduct pursuant to subsection 51(b.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*; and pursuant to Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*, section 15, paragraphs 2,47, 52, and 53.

Penalty

- 24. The College of Dental Hygienists of Ontario and Samantha Wehrle agreed and jointly submitted a joint submission on penalty and costs to the Panel. They submitted that the following would be an appropriate order as penalty and costs:
 - Ms. Wehrle 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.
 - The Discipline Committee shall direct the Registrar to revoke Ms. Wehrle's Certificate of Registration effective immediately.
 - Ms. Wehrle is required to pay to the College costs in the amount of \$ 1,000.00 within six months of the date of the Discipline Committee's order.

Penalty Decision

- 25. The panel accordingly orders:

- That, Ms. Wehrle 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

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- That, the Discipline Committee shall direct the Registrar to revoke Ms. Wehrle's Certificate of Registration effective immediately.

26. With respect to costs, the panel orders:

- That, Ms. Wehrle is required to pay to the College costs in the amount of \$750.00 within six months of the date of the Discipline Committee's order because of special circumstance on the day of the hearing beyond the control of the registrant, in this case Ms. Wehrle.

"I, **Fernand Hamelin**, 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:



Fernand Hamelin
Chair, Discipline Panel



Date

**Fernand Hamelin, a public member of Council,
Terri Strawn, a professional member of Council,
Erin Betts, a public member of Council.**