

## DISCIPLINE COMMITTEE OF THE COLLEGE OF DENTAL HYGIENISTS

Citation: Ontario (College of Dental Hygienists of Ontario) v. Fernandes, 2019 ONCDHO 04

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

**IN THE MATTER OF** a hearing directed by the Inquiries, Complaints and Reports Committee of  
the College of Dental Hygienists of Ontario  
pursuant to Section 26(1) of the **Health Professions Procedural Code**  
being Schedule 2 of [the \*Regulated Health Professions Act, 1991\*](#),  
[S.O. 1991, c. 18](#), as amended.

#### BETWEEN:

**THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO**  
– and –  
**Candice Fernandes (Registration No. 0018239)**

#### PANEL MEMBERS:

Vinay Jain	Chair, Public Member of Council
Amit Vig	Public Member of Council
Catherine Ranson	Professional Member of Council
Pauline Leroux	Professional Member of Council
Tracy Burke	Professional Non-Council Member

#### COUNSEL

Robin McKechney, for the College of Dental Hygienists of Ontario  
Symon Zucker, for Candice Fernandes  
Josh Koziobrocki, as Independent Legal Counsel

**Hearing Date:** April 17, 2019  
**Decision Date:** April 17, 2019  
**Release of Written Reasons:** July 3, 2019

#### DECISION AND REASONS

- [1] This matter was heard by a panel of the Discipline Committee of the College of Dental Hygienists of Ontario (“The College”) on April 17, 2019 in Toronto.
- [2] The hearing was uncontested. It proceeded by way of an Agreed Statement of Facts. It further proceeded by a Joint Submission on Penalty and Costs, which were jointly proposed by the counsel for the college and counsel for the registrant.
- [3] At the conclusion of the hearing, the Panel delivered its findings and a penalty order orally, with written reasons to follow.

#### THE ALLEGATIONS

- [4] The allegations against Ms. Fernandes as stated in the Notice of Hearing dated May 2, 2018 are as follows.
- [5] It is alleged Ms. Fernandes (the “Registrant”) engaged in professional misconduct pursuant to the following paragraphs of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”):

- 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, more particularly, sexual intercourse or other forms of physical sexual relations between the member and the patient); and/or
- b. Clause 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 by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession; and/or
  - ii. Paragraph 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
  - iii. Paragraph 53: conduct unbecoming a dental hygienist.

#### **REGISTRANT’S PLEA**

[6] The Registrant admitted the allegations that she engaged in professional misconduct pursuant to the following paragraphs of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”):

- 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, more particularly, sexual intercourse or other forms of physical sexual relations between the member and the patient); and/or
- b. Clause 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 by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession; and/or
  - ii. Paragraph 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
  - iii. Paragraph 53: conduct unbecoming a dental hygienist.

[7] A plea inquiry was conducted by the Panel and confirmed that the Registrant’s admission was voluntary, informed and unequivocal

#### **AGREED STATEMENT OF FACTS**

[8] Council for the College advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, dated April 17, 2019. The Agreed Statement of Facts provided as follows:

##### **The Registrant**

1. At all material times Candice Fernandes (the “Registrant”) was a duly registered member of the College of Dental Hygienists of Ontario, practising at Liberty Square Dental and Bal Dental Centre in Toronto.

2. The Registrant was employed at Liberty Square Dental from August 2016 until September 2017 and commenced employment at Bal Dental Center in September 2017.

#### **The Client**

3. Client #1 was a client of the Registrant's and attended for dental hygiene treatment with the Registrant at Liberty Square Dental on or about May 23, 2017. The treatment included scaling, use of the cavitron and flossing. The treatment was provided after hours and Client #1 was not charged for the treatment session.
4. Client #1 attended for dental hygiene treatment with the Registrant at Bal Dental Centre on or about September 11, 2017. The treatment consisted of the application of Zoom Whitening. Client #1 was charged \$120 for this treatment.

#### **The Relationship Between the Registrant and Client #1**

5. The Registrant first met Client #1 in April of 2017. When the Registrant provided dental hygiene treatment to Client #1 at Liberty Square Dental on or about May 23, 2017 their relationship was platonic.
6. The Registrant and Client #1 became involved in a sexual relationship with each other commencing in or about June 2017. The sexual relationship consisted of kissing and hugging. This sexual relationship continued during the time that the Registrant provided dental hygiene treatment to Client #1 on or about September 11, 2017.
7. When Client #1 and the Registrant commenced a sexual relationship in June 2017, the Registrant told Client #1 that she could no longer provide dental hygiene treatment to Client #1. The Registrant nonetheless provided dental treatment on or about September 11, 2017, because she believed that Zoom Whitening did not constitute dental hygiene treatment.
8. Based on the expert opinion obtained by the College, it is accepted that the application of the Zoom Whitening procedure constitutes dental hygiene treatment as it involves the application of specific skills and knowledge by the dental hygienist to ensure patient safety and well-being.

#### **Admission of Professional Misconduct**

9. It is admitted 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, more particularly, sexual relations between the member and the patient); and
  - b. Clause 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 by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession;

- ii. Paragraph 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
- iii. Paragraph 53: conduct unbecoming a dental hygienist.

10. 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 her 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;
- e. She is executing this document voluntarily and after receiving legal advice.

[9] In light of the agreed facts and admission of professional misconduct, it was submitted that the Registrant was in a sexual relationship with her patient concurrent with a dental hygiene treatment relationship, which constitutes sexual abuse of a patient and other professional misconduct as alleged under the Code.

#### **DECISION ON FINDING**

[10] The Panel considered the Agreed Statement of Facts and the Registrant's Plea, 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 paragraph 7 of the Notice of Hearing, 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, more particularly, sexual intercourse or other forms of physical sexual relations between the member and the patient); and/or
- b. Clause 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 by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession; and/or
  - II. Paragraph 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
- c. Paragraph 53: conduct unbecoming a dental hygienist.

#### **PENALTY**

[11] The parties submitted a Joint Submission on Penalty and Costs ("JSPC") with respect to the appropriate order in this case, and which provides as follows:

1. The Registrant 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 the text 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 one (1) month, effective July 1, 2019.
3. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on the Registrant's certificate of registration:
  - a. The Registrant shall successfully complete (i.e. an unconditional pass) the ProBE ethics course with proof of such completion to be provided to the Registrar within twelve (12) months of the date of the Discipline Committee's order.
4. The Registrant is required to pay to the College costs in the amount of \$3000, within six (6) months of the date of the Discipline Committee's order.

#### **PENALTY DECISION**

[12] The Panel is of the opinion that the penalty imposed appropriately addresses the misconduct admitted. The Panel does not believe accepting the JSPC would bring the administration of justice in disrepute.

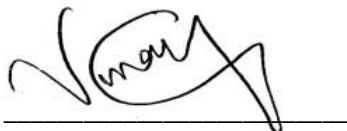
[13] The Panel accordingly orders:

- a. The Registrant 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 the text of the reprimand to appear on the public register of the College.
- b. The Registrar is directed to suspend the Registrant's certificate of registration for a period of one (1) month, effective July 1, 2019.
- c. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on the Registrant's certificate of registration:
  - i. The Registrant shall successfully complete (i.e. an unconditional pass) the ProBE ethics course with proof of such completion to be provided to the Registrar within twelve (12) months of the date of the Discipline Committee's order.
- d. The Registrant is required to pay to the College costs in the amount of \$3000, within six (6) months of the date of the Discipline Committee's order.

[14] At the conclusion of this hearing, the Registrant waived her right to an appeal.

I, **Vinay Jain**, 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.

Dated in Toronto this 3<sup>rd</sup> day of July, 2019.



**Vinay Jain**, Chair, Public Member

**DISCIPLINE PANEL**

Amit Vig, Public Member of Council

Catherin Ranson, Professional Member of Council

Pauline Leroux, Professional Member of Council

Tracy Burke, Professional Non-Council Member