



Name of Registrant: - Emily Forbes

Date of Hearing: - February 20, 2009

Decision

In a hearing held on February 20, 2009, a Panel of the Discipline Committee of the College of Dental Hygienists of Ontario found Ms. Emily Forbes guilty of professional misconduct for contravening a condition imposed on her certificate of registration, failing to reply appropriately or within a reasonable time to a written enquiry by the College, contravening the legislation, and disgraceful, dishonourable or unprofessional conduct.

The Notice of Hearing contained the following statement of allegations:

1. Ms. Emily Forbes was a duly registered dental hygienist registered to practise in Ontario.
2. On or about April 15, 2005, Ms. Forbes first became registered with the College of Dental Hygienists of Ontario (the “College”).

Discipline Order

3. On or about December 17, 2007, Ms. Forbes was disciplined by a Panel of the Discipline Committee of the College for conduct involving engaging in the practice of dental hygiene while not being registered with the College, engaging in the practice of dental hygiene without liability insurance and for falsifying documents relating to her liability insurance. The penalty ordered by the Discipline Panel included:
 - a. A reprimand;
 - b. A suspension of her certificate of registration for five weeks;
 - c. The imposition of a term, condition and limitation on her certificate of registration requiring her to successfully complete, within six months of the Panel’s order becoming final, an Ethics and Jurisprudence course;

- d. The imposition of a term, condition and limitation on her certificate of registration requiring her to provide to the Registrar, within 30 days of the Panel's order becoming final, an apology/acknowledgement of her conduct acceptable to the Registrar for publication in the College newsletter;
 - e. The imposition of a term, condition and limitation on her certificate of registration requiring her to provide to the Registrar, at the time of annual renewal of her certificate of registration for the next five years, documentary proof of her liability insurance; and
 - f. Costs to be paid to the College in the amount of \$2500.00 payable at a rate of approximately \$139.00 per month for 18 months beginning the month after the completion of her suspension.
4. It was alleged that Ms. Forbes failed to meet the deadlines relating to the following components of the Discipline Panel's Order:
- i. the preparation of the apology;
 - ii. the completion of the ethics course; and
 - iii. the payment of costs.

Failing to Respond to College Representative

5. On or about March 27, 2008, the College wrote to Ms. Forbes asking her if the wording of the apology, which had been slightly revised by the College, was acceptable to her. Ms. Forbes failed to respond to that letter.
6. On or about April 22, 2008, the College again wrote to Ms. Forbes asking her to confirm whether the wording of the apology was acceptable to her and also asking for an account of the criminal offence with which Ms. Forbes indicated on her annual renewal form she had been charged. Ms. Forbes failed to respond to that letter.

Quality Assurance Portfolio

7. On or about May 14, 2008, Ms. Forbes was advised in writing that she had been selected to submit her professional portfolio to the College for the year 2007. The deadline given to submit her professional portfolio was June 18, 2008.
8. Under the Quality Assurance regulations, registrants of the College are required to comply with the requirements of the College's Quality Assurance Program. Those requirements include the following:
 - a. developing and maintaining a professional portfolio,
 - b. during every year participating in continuing quality improvement activities sufficient to indicate that the member continues to have and to apply in his or her dental hygiene practice the knowledge, skills, judgment and attitudes required to practise dental hygiene in compliance with the College's standards of practice and ethics.
 - c. accurately and completely documenting those activities in the member's professional portfolio, and
 - d. cooperating with an assessment of her professional portfolio, quality improvement activities and practice to evaluate the member's knowledge, skills, judgment and attitudes.
9. Those requirements are set out in ss. 19-23 of Ontario Regulation 218/94, as amended and s. 82 of the *Health Professions Procedural Code*.
10. Ms. Forbes failed to meet the June 18, 2008, deadline for submission of her professional portfolio.
11. On or about July 4, 2008, the College wrote to Ms. Forbes again requesting her professional portfolio and asking her to submit it to the College by July 18, 2008, failing which the matter would be brought to the Registrar's attention.
12. Ms. Forbes failed to meet the July 18, 2008, deadline given to her.
13. It was alleged that Ms. Forbes is ungovernable.

14. It was further alleged that the above conduct constituted professional misconduct pursuant to paragraph 1 (contravening a term, condition or limitation imposed on the member's certificate of registration); and/or paragraph 30 (failing to reply appropriately or within a reasonable time to a written enquiry by the College); and/or paragraph 42 (contravening the Act, the *Regulated Health Professions Act* or the regulations made under either of those acts); and/or paragraph 47 (disgraceful, dishonourable or unprofessional conduct) of section 15 of Ontario Regulation 218/94, as amended, under the *Dental Hygiene Act, 1991*.

Ms. Forbes did not attend the hearing, although duly served with the Notice of Hearing. An Affidavit of Service was filed with the Panel showing that she was personally served on November 10, 2008. Accordingly, the Panel proceeded with the hearing in her absence. A plea of "not guilty" was entered, given Ms. Forbes' failure to attend the hearing. 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 her/his absence. A registrant cannot avoid the discipline process by a failure to respond to the Notice of Hearing.

The College filed a Book of Documents and called two witnesses to support the allegations in the Notice of Hearing. The Panel considered the documentary evidence and oral testimony and found that the allegations were supported by the information presented and by the testimony of the witnesses. The Panel found that Ms. Forbes exhibited disgraceful, dishonest and unprofessional conduct, by her breach of the terms, conditions and limitations on her certificate of registration, by failing to respond reasonably and appropriately to College correspondence, and for her failure to comply with her obligations under the Quality Assurance Regulation. Additionally, she failed to pay costs as ordered by the Discipline Panel on December 18, 2007 and did not provide any explanation for that failure.

The Panel considered the continued failure to respond to the numerous communications from the College, conduct that clearly indicated that Ms. Forbes was ungovernable and her absence from the hearing and failure to respond to the Notice of Hearing and made the following order on penalty and costs:

1. Ms. Forbes shall be required to appear, on a date to be set by the Registrar, before a Panel of the Discipline Committee to be reprimanded, the fact of which shall be recorded on the register.
2. The Registrar shall suspend the certificate of registration of Ms. Forbes until such time as she has provided proof, acceptable to the Registrar, that she has complied with the original order of the Discipline Committee made December 18, 2007 and that Ms. Forbes has complied with the requirements of the Quality Assurance Program.
3. Ms. Forbes shall pay to the College the amount of \$5,000.00 in costs, payable in accordance with a schedule agreed to in writing between the College and Ms. Forbes, or failing such agreement being reached, within 60 days of the date of this Order.

The Panel was satisfied that the Order made upheld the principles for public protection, general deterrence, and specific deterrence. Ms. Forbes was required to comply with the Quality Assurance Program to ensure public protection. For that and her other failures to comply with the order of a previous Discipline Panel, Ms. Forbes' certificate of registration was suspended until such time as she has established to the satisfaction of the Registrar that she is in compliance.

The penalty satisfies the principle of general deterrence. It sends a message to the profession that such acts of professional misconduct by a registrant will not be tolerated. The principle of specific deterrence is satisfied. A suspension is a serious penalty. It will deter Ms. Forbes from similar misconduct and allow her sufficient time to reflect upon her actions during the period of suspension, which continues until compliance is achieved.

The Panel heard evidence that the cost of the Hearing was approximately \$14,000.00. Ms. Forbes was ordered to pay costs of \$5,000.00 to the College. The Panel believed that the payment of this amount was fair and reasonable. Ms. Forbes failed to comply with the original costs order made at the December 18, 2007 hearing and put the College and therefore the registrants, to the cost of prosecuting her in this matter. A higher cost penalty might have been ordered, but Ms. Forbes' personal circumstances were taken into account.