



**Name of Registrant:** - Karen Allen  
(referred May 2, 2014)

**Date of Hearing:** November 27, 2014

**Decision and Reasons**

The Discipline Committee of the College of Dental Hygienists of Ontario (“the Panel”) heard this matter at Toronto on November 27, 2014. 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 Ms. Allen committed acts of professional misconduct under:

paragraph 51(1) (b.0.1) of the *Code*; and/or paragraph 43 (failing to reply appropriately to the College); and/or paragraph 45 (failure to comply with an order or direction of a Committee of the College); and/or paragraph 47 (contravening by act or omission the *Dental Hygiene Act, 1991* (the “RHPA”) or a regulation thereunder); and/or paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or paragraph 53 (conduct unbecoming a dental hygienist), of section 15 of Ontario Regulation 218/94, as amended to Ontario Regulation 382/08, under the *Dental Hygiene Act, 1991*, S.O. 1991, c.22.

## **NON-ATTENDANCE OF THE REGISTRANT AT THE HEARING**

The registrant Ms. Allen did not attend the hearing despite the fact that she was duly served with the Notice of 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.

## **RESPONSE TO THE ALLEGATIONS**

Given Ms. Allen’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.

## **FINDING**

After hearing evidence and deliberating, the Panel of the Discipline Committee found that Ms. Allen is guilty of professional misconduct pursuant to paragraph 51(1) (b.0.1) of the *Code*; paragraph 43 (failing to reply appropriately to the College); paragraph 45 (failure to comply

with an order or direction of a Committee of the College); paragraph 47 (contravening by act or omission the *Dental Hygiene Act, 1991*, the RHPA or a regulation thereunder); paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and paragraph 53 (conduct unbecoming a dental hygienist), of Section 15 of Ontario Regulation 218/94, as amended to Ontario Regulation 36/12, under the *Dental Hygiene Act, 1991*.

## **REASONS FOR FINDING**

The Panel found that the allegations set out in the Statement of Allegations had been proved by the College through the testimony of witnesses called and documents filed as exhibits at the hearing.

In particular, the Committee made the following findings of fact that substantiated the allegations in the Notice of Hearing. The facts and relevant provisions of the legislation are set out:

1. Karen Allen ("Ms. Allen") is and, at all material times, was a duly registered dental hygienist in Ontario.
2. Pursuant to the *Health Professions Procedural Code* (the "Code"), being Schedule 2 to the *Regulated Health Professions Act, 1991* (the "RHPA") and the Quality Assurance regulation under the *Dental Hygiene Act, 1991*, members of the College of Dental Hygienists of Ontario (the "College") are required to comply with the requirements of the College's Quality Assurance program. Those requirements include the following:
  - a. participating every year in self-assessment, continuing education activities and professional development activities;
  - b. accurately and completely documenting those activities in the member's professional portfolio;
  - c. cooperating with peer and practice assessments; and
  - d. complying with specified continuing education or remediation programs ordered by the Quality Assurance Committee.
3. Those requirements are set out in sections 17 through 20 of Ontario Regulation 218/94, as amended, and sections 80.2 through 82 of the *Code*.
4. On January 19, 2012, the Quality Assurance Committee ("QAC") of the College directed Ms. Allen to submit her professional portfolio for 2012, as well as portions of her 2010 and 2011 portfolios, namely Forms 6 and 7 - the learning goals and activities. Ms. Allen was asked to submit this material between January 1 and 31, 2013.

5. On January 30, 2013, Ms. Allen sought, and was granted, an exemption from the requirement to submit her 2010 learning goals and activities. Ms. Allen was also granted an extension of the deadline to submit her 2011 learning goals and activities and her 2012 portfolio, until March 29, 2013. Ms. Allen was warned that failure to meet the March 29, 2013, deadline would result in her being referred to the Inquiries, Complaints and Reports Committee. Ms. Allen did not meet the March 29, 2013 deadline.
6. On May 22, 2013, the QAC referred Ms. Allen to the Inquiries, Complaints and Reports Committee ("ICRC") for failing to comply with the QAC's direction.
7. On June 14, 2013, a College representative wrote to Ms. Allen, by Express Mail, requesting that she provide an explanation to the ICRC regarding her failure to comply with the QAC's direction, and asked her to respond by July 5, 2013. Ms. Allen did not respond by that deadline.
8. On July 11, 2013, a College representative spoke with Ms. Allen by telephone and Ms. Allen claimed not to have received the College's June 14, 2013 letter. The June 14, 2013 letter was sent to Ms. Allen again, by email, on July 11, 2013, giving her until July 19, 2013 to make submissions. Ms. Allen did not make any submissions by that deadline.
9. On July 31, 2013, a College representative telephoned Ms. Allen again and left a message asking her to call back. Ms. Allen did not return the call.
10. On August 6, 2013, a College representative sent an email to Ms. Allen asking Ms. Allen to contact her. Ms. Allen did not respond to that email.
11. On September 16, 2013, a College representative sent by Express Mail a letter to Ms. Allen advising her that an investigator had been appointed to investigate her conduct.
12. By email dated September 26, 2013, the investigator asked Ms. Allen to cooperate with an interview, asking Ms. Allen to respond with her availability by October 2, 2013.
13. By email dated October 1, 2013, Ms. Allen responded to the investigator stating that she had been away and that her sister had died that day. Ms. Allen stated that she would contact the investigator when things had "settled".
14. By email dated October 4, 2013, the investigator asked Ms. Allen to contact her as soon as possible. Ms. Allen did not respond to that email.
15. By further email dated October 23, 2013, the investigator repeated her request that Ms. Allen contact her in order to arrange an interview, asking Ms. Allen to respond by October 29, 2013. Ms. Allen did not respond to that email.
16. By further email dated November 6, 2013, the investigator repeated her request that Ms. Allen contact her in order to arrange an interview, asking Ms. Allen to respond by November 13, 2013. Ms. Allen did not respond to that email.

17. The results of the investigation were sent to Ms. Allen by regular mail and email on November 25, 2013, and she was given until December 27, 2013, to make submissions to the ICRC. Ms. Allen did not make submissions by that deadline or at any time thereafter.
18. By further letter, sent by regular mail and email, dated January 2, 2014, Ms. Allen was again encouraged to make written submissions to the ICRC and was given until January 16, 2014 to do so. Ms. Allen did not make submissions by that deadline or at any time thereafter.
19. By further letter dated January 27, 2014, which was sent by Express Mail and email, Ms. Allen was asked to make submissions, or to advise that she would not be making submissions, by February 10, 2014. She did not respond by that deadline or any time thereafter.
20. By February 27, 2014, Ms. Allen had still not complied with the QAC's direction.
21. On or about February 27, 2014, the ICRC referred allegations against Ms. Allen to discipline.

## **ORDER ON PENALTY AND COSTS**

After deliberation the Panel ordered as follows in a written order released to the parties:

1. The Registrar is directed to revoke Ms. Allen's certificate or registration effective immediately.
2. Ms. Allen shall pay to the College the amount of \$10,000.00 in costs by December 27, 2014.

## **REASONS FOR THE ORDER ON PENALTY AND COSTS**

The Panel is of the opinion that the penalty imposed appropriately addresses the principles governing penalty, which include public protection, general deterrence and specific deterrence.

Ms. Allen's noncompliance with the requirements of the QAC and her failure to co-operate with the ICRC demonstrated a clear disregard for the College's mandate to govern its members. As a result, the Panel found Ms. Allen to be ungovernable.

Given the seriousness of the misconduct, the revocation order is appropriate. The Panel finds revocation to be necessary in order to uphold the College's mandate to protect the public against ungovernable registrants.

Compliance with the Quality Assurance Program and the regulatory requirements for dental hygienists is very important and directly linked to safe and effective client care. It is a fundamental obligation of the profession.

The seriousness of the penalty should serve as a general deterrent to the profession. It sends a message that such misconduct will not be tolerated. The unprofessional behavior of failing to respond to regulatory requirements and communications from the College is a serious breach of the fundamental duties of a dental hygienist and will not be tolerated.

By way of specific deterrent, the penalty demonstrates to the registrant that the College will punish any breaches or acts of blatant disregard for the laws that govern dental hygienists in Ontario.

The Panel considered the following aggravating factors in determining the appropriate penalty order in this case:

- Ms. Allen was provided with reasonable extensions for the submission of her portfolio and yet she failed to respond
- She failed to respond to numerous communications from the College over an extended period of 2 years
- She failed to respond to the Notice of Hearing
- She demonstrated disrespect for the legislative mandate of the College
- She engaged in conduct that clearly indicated that she was ungovernable.

With respect to costs, the Panel heard evidence regarding the actual costs of the investigation and hearing borne by the College. The Panel decided it was fair and appropriate that the registrant pay to the College a portion of those costs, in the amount of \$10,000.00.