

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

PANEL: **Mike Connor, a public member of Council, Chair**
 Tracy Burke, a professional non-council member
 Amit Vig, a public member of Council
 Roma Czech, a professional member of Council, and
 Gillian Dunn, a professional non-Council member

BETWEEN:

College of Dental Hygienists of Ontario

- and -

Marta Istenes Registration No. 016929

)Erica Richler, for the College of
)Dental Hygienists of Ontario
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)
)Jonah Arnold for
)Marta Istenes
)
)
) Josh Koziebrocki, Independent
) Legal Counsel
)
)
) Heard: September 16-17, 2019

THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

and

MARTA ISTENES

DECISION AND REASONS

A panel of the Discipline Committee of Dental Hygienists of Ontario heard this matter at Toronto on September 16 and 17, 2019.

THE ALLEGATIONS

The allegations against Ms. Istenes as stated in the Notice of Hearing date: February 4, 2019 are as follows:

It is alleged that:

The Registrant

1. At the material times, Natasha Coker, ("Ms. Coker"), and Marta Istenes, ("Ms. Istenes"), were duly registered members of the College of Dental Hygienists of Ontario, (the "College").

Quality Assurance Examination

2. On or about January 22, 2017, Ms. Coker and Ms. Istenes completed the College's online Quality Assurance Test, (the "QA Test").
3. Prior to commencing the QA Test, Ms. Coker and Ms. Istenes acknowledged as part of the "Registrant Statement of Understanding" that the QA Test must be taken individually and without help from any other person.
4. Notwithstanding this acknowledgement, Ms. Coker and Ms. Istenes received assistance from and/or assisted each other, to complete the QA Test.

Professional Misconduct Alleged

5. It is alleged that the above conduct constitutes professional misconduct pursuant to:
 - (a) Clause 51(1)(b.0.1) of the *Health Professions Procedural Code*, being Schedule 2 of the *Regulated Health Professions Act, 1991* (the "Code") (failing to cooperate with the Quality Assurance Committee or any assessor appointed by the committee); 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 30: signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement: and/or

- ii) paragraph 42: failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate
- iii) paragraph 52: engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The College did not seek a finding that the Registrant contravened by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession (Clause 51(1)(c) of the Code, as defined in paragraph 2 of section 15 of O Reg 218/94) as alleged in the Notice of Hearing.

REGISTRANT'S PLEA

Ms. Istenes denied the allegations set out in paragraphs 5 (a) Clause 51(1)(b.0.1), 5(b) Clause 51(1)(c) of the Code, paragraph 30, paragraph 42 and paragraph 52 in the Notice of Hearing.

College Counsel withdrew the allegation of paragraph 2, Clause 51(1)(c) of the Code.

Agreed Statement of Facts

Counsel for the College advised the panel that agreement had been reached on certain, but not all of the facts and introduced an Agreed Statement of Facts as follows:

1. At the material times Natasha Coker ("Ms. Coker") and Marta Istenes ("Ms. Istenes") (collectively the "Registrants") were duly registered members of the College of Dental Hygienists of Ontario (the "College").
2. In 2017, each of the Registrants were independently selected for the Quality Assurance audit. In order to complete the audit, the Registrants had the choice to complete a professional portfolio or complete an online Quality Assurance Examination (the "QA Exam") administered by the National Dental Hygiene Certification Board (the "NDHCB").
3. The Registrants both independently chose to complete the QA Exam.
4. The QA Exam consisted of 75 multiple choice questions and had to be completed within two and a half hours. There are eight different versions of the QA Exam known as "Forms". Each "Form" draws from a pool of 110 questions. The "Forms" are randomly assigned to individuals who attempt the QA Exam.
5. In order to commence the QA Exam, examinees must agree to the "Registrant Statement of Understanding". The Statement of Understanding includes the requirement that "registrants must complete this Quality Assurance Test (QA Test) individually and without help from any other person." A copy of the "Registrant Statement of Understanding" was provided as Exhibit "A".
6. At the completion of the exam, a diagnostic report is generated reviewing the questions that were answered incorrectly. The report provides the correct answer and an explanation for it. The report can be viewed for 30 minutes after the completion of the exam.
7. Individuals who wish to complete the QA Exam must register for the exam and pay the \$125 fee before the QA Exam can be accessed. The QA Exam can be completed at any

- time after the exam registration has been completed. Ms. Coker registered for the QA Exam on January 4, 2017. Ms. Istenes registered for the QA Exam on October 12, 2016.
8. According to NDHCB records, Ms. Coker's and Ms. Istenes' QA Exams were completed on January 22, 2017, from the same IP address. According to records obtained from Bell Canada, the IP address at which the QA Exams were completed was registered to Ms. Istenes' residence at 306 Ballinville Circle in Ottawa, Ontario. According to information obtained from Bell Canada, the IP address was not assigned to a particular location or room within the residence. It is agreed that both Ms. Istenes and Ms. Coker completed their QA exams at Ms. Istenes' residence.
 9. Ms. Coker wrote Form 1 of the QA Exam. She began the exam at 1:40 PM (EST) and completed it at 4:11PM (EST), completing the exam in two hours 29 minutes. Ms. Coker received a score of 89.33%.
 10. Ms. Istenes also wrote Form 1 of the QA Exam. She began the exam at 1:52 PM (EST) and completed it at 4:17 PM (EST), completing the exam in two hours and 23 minutes. Ms. Istenes received a grade of 93.33%. The QA Exam data for Ms. Coker and Ms. Istenes were provided by the NDHCB as Exhibit "B".

THE EVIDENCE

Shanna Yee

Ms. Yee is an investigator with Barker and Hutchinson & Associates Ltd. who had been appointed by the College to investigate allegations of professional misconduct against Ms. Coker and Ms. Istenes. Ms. Yee interviewed Ms. Coker by telephone on May 7, 2018 and by a follow up interview on July 23, 2018. Ms. Yee interviewed Ms. Istenes by telephone on May 7, 2018 and August 10, 2018.

In Ms. Yee's interview with Ms. Coker May 7, 2018, Ms. Coker stated that she wrote the QA Exam on January 22, 2017 at her own residence on her living room couch. However, as the interview progressed, Ms. Yee disclosed that the NDHCB had released the IP addresses. After learning this information, Ms. Coker told Ms. Yee that she wrote the QA Exam at Ms. Istenes' residence on January 22, 2017. Ms. Coker stated that she and Ms. Istenes studied on the same day for the QA Exam for approximately two hours in Ms. Istenes' living room. After studying, Ms. Coker stated that she went to the basement of Ms. Istenes' home to write the QA Exam. Ms. Coker stated that she left Ms. Istenes' residence upon completing her QA Exam. During the interview, Ms. Coker stated that later in the day on January 22, 2017, she had discussed some of the exam questions, with Ms. Istenes. Ms. Coker also stated that this was the first time that she and Ms. Istenes had studied together.

In Ms. Yee's interview with Ms. Istenes on May 7, 2018, Ms. Istenes stated that she wrote her QA Exam at her own residence in Ottawa. Ms. Istenes also stated that her husband and daughter were home. Ms. Istenes stated that she studied with Ms. Coker for approximately two hours in the basement. She then decided to write the Exam and went upstairs to write the QA Exam in her bedroom, leaving Ms. Coker alone in her basement. Ms. Istenes testified that she told Ms. Yee that

she did not know at the time if Ms. Coker was writing the Exam or what she was doing in the basement.

Ms. Yee testified during cross-examination that she did not tell Ms. Coker and Ms. Istenes not to guess at answers when answering the interview questions. Ms. Yee testified that she prepared questions in advance of the interviews and took notes on her computer while conducting the telephone interviews. These notes were later incorporated into an investigation report.

Ms. Yee testified that the interviews were conducted by telephone and were done approximately a year and a half after the registrants had written the QA Exam. Ms. Yee testified that the registrants started the QA Exam twelve minutes apart. Ms. Coker started the Exam at 1:40 PM (EST) and finished the Exam at 4:10 PM (EST). Ms. Istenes started the Exam at 1:52 PM (EST) and completed the QA Exam at 4:17 PM (EST).

Ms. Coker's grade was 89.33% and Ms. Istenes' grade was 93.33%. No evidence was provided about whether the same questions were answered incorrectly, or if either candidate took the opportunity to review their Exams upon completion of the QA Exam.

Ms. Yee also obtained cell phone records but they did not show any evidence of communication between Ms. Coker and Ms. Istenes on January 22, 2017. In addition, Ms. Yee testified that to her knowledge, the "Registrant Statement of Understanding" does not prohibit writing of the QA Exam in the same location.

Natasha Coker

Ms. Coker testified that she wrote the QA Exam on January 22, 2017 without assistance. She also testified that she did not provide assistance to anyone else. On November 2017, Ms. Coker received a letter from the College of Dental Hygienists of Ontario informing her of the allegations regarding the QA Exam and providing notice that this matter would be investigated. Ms. Coker testified that she had just had a baby at the time she received the letter and that she did not read the letter carefully. She testified that because the letter arrived shortly after having her baby that she did not take it seriously at the time.

Ms. Coker testified that she read and understood the "Registrants Statement of Understanding" prior to writing the QA Exam. Ms. Coker also acknowledged that her evidence and statements had changed over the course of the investigation. She admitted that she originally had misrepresented to Ms. Yee about where she wrote the QA Exam, stating that she had written the Exam in her own home, in the living room on her couch with her husband at home. In her testimony, Ms. Coker stated that after Ms. Yee disclosed that the College had the IP addresses of where registrants wrote the QA Exam, Ms. Coker corrected her statement and agreed that she actually wrote the Exam in Ms. Istenes' residence. Ms. Coker testified that she and Ms. Istenes studied together in the basement, however, when she was originally interviewed by the investigator Ms. Coker told Ms. Yee that she and Ms. Istenes had studied together in the living room. Ms. Coker also testified that when provided with the opportunity to correct this in the investigation report provided to the College, she did not make this correction.

Ms. Coker testified that she had trouble recalling all the details of the day of the QA Exam. She admitted that she guessed at some of the answers when answering questions during Ms. Yee's investigation. Ms. Coker told the investigator that she spoke with Ms. Istenes after the QA Exam on January 22, 2017 and that they discussed some of the Exam questions. Ms. Coker submitted a response to the College on November 1, 2018 advising that it was her habit from school to discuss exam questions with others. Ms. Coker testified that her phone records did not show that she spoke with Ms. Istenes after the QA Exam. She testified that she probably was confused and spoke with her husband after the QA Exam.

Ms. Coker participated in two interviews with Ms. Yee by telephone on May 7, 2018 and by a follow up interview on July 23, 2018. Ms. Coker also provided a reply to the College when she received the investigation report.

Marta Istenes

Ms. Istenes testified that she wrote the QA Exam on January 22, 2017. She also testified that she did not obtain any assistance nor did she provide anyone else with assistance while writing the QA Exam. Ms. Istenes stated that she and Ms. Coker met in 2015 when she was covering a maternity leave. She testified that in general, she and Ms. Coker did not spend time together outside of work. Ms. Istenes testified that prior to January 22, 2017, she studied with Ms. Coker one or two times. Ms. Istenes explained that on January 22, 2017, Ms. Coker arrived at her residence as the two had made plans to study together. Ms. Istenes testified that they studied in the basement of her home for approximately two hours. She also testified that her husband and her daughter were home. After studying, Ms. Istenes testified that she went upstairs to her bedroom to write the QA Exam. She testified that while she wrote the QA Exam, her daughter was in and out of her bedroom. Ms. Istenes stated that at the time, she did not know if Ms. Coker was also writing the Exam that day. She testified that she only discovered that Ms. Coker had written the QA Exam that day during the course of the investigation into this matter.

Ms. Istenes testified that the details of the day were difficult to recall as time had passed between the QA Exam and her interview with Ms. Yee. Ms. Istenes testified that she understood that the QA Exam was to be completed alone and that it was confidential. Ms. Istenes also testified that she had received a letter from the College of Dental Hygienists of Ontario outlining the allegations prior to the investigation.

During the interview with Ms. Yee, Ms. Istenes told the investigator that she had spoken to Ms. Coker a couple of days after the QA Exam. However, she testified at the hearing that she was not entirely sure when she spoke to Ms. Coker about the QA Exam. She testified that they may have spoken a week later at an office gathering.

Josephine Kazmi

Josephine Kazmi is the daughter of Ms. Istenes and testified by video from Montreal. Ms. Kazmi stated that on January 22, 2017 she was at home. She testified that on that day she saw her mother, Ms. Istenes in her bedroom in the afternoon with her computer and books writing a test. Ms. Kazmi

was in the bathroom adjacent to her mother's bedroom, getting ready to go out for about 20 to 30 minutes. Ms. Kazmi did not observe Ms. Istenes during the entire two and a half hours when she wrote the QA Exam. Ms. Kazmi testified that she did not see her father in her home that day. She testified that she assumed that her father was home. She also testified that she did not see Ms. Coker in the home. Ms. Kazmi testified in cross-examination that she had spoken with Ms. Istenes about the allegations in advance of the hearing as they related to the QA Exam written on January 22, 2017.

DECISION

An Agreed Statement of Facts was presented on a portion of the evidence outlined above which were accepted by the panel.

The panel finds that the evidence presented does not support a finding of professional misconduct as alleged in paragraphs 30, 42 and 52 of the Notice of Hearing in that:

(a) Clause 51(1)(b.0.1) of the Health Professions Procedural Code, being Schedule 2 of the Regulated Health Professions Act, 1991 (the "Code") (failing to cooperate with the Quality Assurance Committee or any assessor appointed by the committee); 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 30: signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement: and/or
- ii) paragraph 42: failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate
- iii) paragraph 52: engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

REASONS FOR DECISION

The panel finds that the College has not proven its case on each of the allegations set out in the Notice of Hearing. The College bears the onus to prove that professional misconduct was committed. The panel read and analyzed case law provided by the College counsel. The standard of proof must be met on a balance of probabilities and the totality of the evidence presented to the panel did not sufficiently support the allegations of professional misconduct.

The panel found that Ms. Istenes cooperated with the Quality Assurance Committee and assessors appointed by the committee by participating in the interviews with Ms. Yee, as well as by attending the hearing with legal counsel.

The panel found that the investigation that was conducted by the College failed to provide details and evidence to support the College's case against the member. The panel found that the investigation was not comprehensive or sufficiently conclusive to provide evidence of Ms. Istenes assisting Ms. Coker with the QA Exam or concluding that the questions of the Exam were discussed afterwards. The panel found that the investigation and interviews that were conducted had significant deficiencies which contributed to the lack of clear, cogent evidence to support the allegations of the College.

During her testimony, Ms. Coker acknowledged her initial misrepresentation on the phone to the investigator regarding where she wrote the QA Exam. Despite this concern, the panel found it to be minor and found Ms. Coker on the whole to be a credible witness. The panel also found that the inconsistencies between Ms. Coker's and Ms. Istenes' evidence were minor.

At the hearing, Ms. Coker maintained that the QA questions were not discussed with Ms. Istenes and that she was confused in the phone interview with Ms. Yee. Ms. Istenes' testimony also supported the statement that the Exam was not discussed. Phone records referred to during the hearing did not demonstrate that Ms. Coker and Ms. Istenes communicated on the day of the QA Exam by phone. The panel did not find any other evidence that proved on a balance of probability that Ms. Coker and Ms. Istenes communicated by phone after the QA Exam.

The panel found that the time that elapsed between the QA Exam and the investigation may have led to minor inconsistencies of the witnesses' evidence. The panel also found that the investigation failed to provide specific details that may have been important evidence in determining whether professional misconduct was committed. For instance, no evidence was provided from other witnesses, apart from Ms. Kazmi, that were present and had communication with Ms. Coker and Ms. Istenes on the day of QA Exam. Having conducted the interviews by telephone may not have been the most effective way to obtain an accurate representation of the events. Recording the telephone interviews would have been beneficial to ensure accuracy of what was said during the interviews and better capturing the details of the evidence.

Phone records were referred to during the hearing however they were not produced as evidence to the panel. It was not clear to the panel whether these records included all means of electronic communications that may have occurred between Ms. Coker and Ms. Istenes after the QA Exam. While the phone records were not made exhibits, the evidence from the College investigator Ms. Yee suggested that the phone records obtained by Bell Canada did not show that there was communication between Ms. Coker and Ms. Istenes after the QA Exam on January 22, 2017.

Ms. Istenes testified that she and Ms. Coker wrote the QA Exam at her residence on January 22, 2017. Ms. Istenes also testified that she wrote the Exam separately from Ms. Coker without providing each other with any assistance. Apart from the IP addresses to verify that Ms. Istenes and Ms. Coker did write the QA Exam at the same location, the IP address does not specify rooms within the house where the QA Exams were written, nor does it provide clear evidence that any support or communication occurred between Ms. Istenes and Ms. Coker during the QA Exam. Ms. Istenes testified that they did not discuss the Exam afterwards and no cogent evidence exists to demonstrate otherwise.

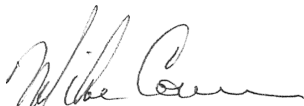
The panel found that the IP addresses demonstrated that the registrants both wrote the QA Exam at Ms. Istenes' residence. The panel also found that the "Registrant's Statement of Understanding" does not specifically state that registrants cannot write the QA Exam at the same location.

There was no evidence provided to the panel at the hearing about the breakdown of QA Exam questions. There was no evidence at the hearing about whether Ms. Coker and Ms. Istenes had any of the same QA Exam questions incorrect.

The IP address and evidence from the witnesses confirmed that Ms. Coker and Ms. Istenes both wrote the QA Exam in Ms. Istenes' residence. The panel found that there was not sufficient evidence to demonstrate that there was communication between Ms. Coker and Ms. Istenes during the course of the QA Exam. Both Ms. Coker and Ms. Istenes took longer than the average time to write their tests. They each took very close to the maximum allotted time of two and a half hours. However the panel could not conclude from this that Ms. Coker and Ms. Istenes assisted one another during the QA Exam. Both Ms. Coker and Ms. Istenes testified that there was no assistance from each other. Ms. Kazmi, Ms. Istenes' daughter, testified that she saw Ms. Istenes writing the QA Exam alone in her bedroom that day and that she did not see Ms. Coker in her home on January 22, 2017. The panel found that there was not sufficient evidence to find that Ms. Coker and Ms. Istenes communicated or provided assistance to one another during the QA Exam. There was no evidence from Ms. Istenes' husband who was reported to be at the home where the QA Exam was taken on January 22, 2017.

The panel considered the witness' evidence and weighed this credibility assessment on the balance of probability. The totality of the evidence was determined to be insufficient to conclude that the registrants wrote the QA Exam together and assisted one another. The panel concluded that they did not have sufficient evidence to support any of the findings of professional misconduct of Marta Istenes as alleged by the College.

"I, Mike Connor, 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:



Mike Connor

January 16, 2020

Chair, Discipline Panel

Date

**Mike Connor, a public member of Council, Chair
Tracy Burke, a professional non-council member
Amit Vig, a public member of Council
Roma Czech, a professional member of Council, and
Gillian Dunn, a professional non-Council member**