

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT, R.S.B.C. 1996, C. 183

BETWEEN:

THE COLLEGE OF DENTAL HYGIENISTS OF BRITISH COLUMBIA

(the "College")

AND:

MANDEEP (MINDY) SAHOTA

(the "Respondent")

Date and place of hearing:

August 27, 2021
By video-conference

Members of the hearing panel of the Discipline Committee:

Carol Williams, Chair
Amber Ariss
Wendy Kelly

Counsel for the Panel:

Jean Whittow, Q.C.

Counsel for the College:

Angela Westmacott, Q.C.
Alandra Harlinton

Counsel for the Respondent:

The Respondent attended in person, without counsel

1. Introduction

1. This hearing panel of the Discipline Committee of the College (the "Panel") conducted a hearing on June 22, 2021, pursuant to section 38 of the *Health Professions Act* (the "HPA").

2. The Respondent did not attend the first stage of this hearing. On proof of service, the Panel directed that the hearing proceed in the absence of the Respondent.

3. In its decision of July 23, 2021 (the "Liability Decision"), the Panel determined that the Registrant had committed professional misconduct by:

(a) engaging in unauthorized practice by providing dental hygiene services and/or direct client care to clients on January 8, 13, 14, 16, and 20, and March 16, 2021, while holding non-practising registration, contrary to section 43(2) of the College's Bylaws; and

(b) holding herself out as qualified and licensed to practice dental hygiene and applying for dental hygiene positions between February 28, 2021 and April 13, 2021, contrary to section 43(3) of the College's Bylaws.

4. The Panel directed that a penalty hearing be convened by video-conference and directed the College to deliver submissions to the Respondent prior to the penalty hearing.

5. The Respondent attended the video-conference penalty hearing on August 27, 2021. At the outset of the penalty hearing, the Respondent confirmed receipt of the College's materials. The College's materials consisted of written submissions and a Book of Documents containing a copy of the Consent Agreement dated March 8, 2019 made between the Respondent and the College pursuant to s. 36 of the HPA (the "Consent Agreement") and the Affidavit #1 of Wendy Gaudet, affirmed July 26, 2021. The Respondent advised that she intended to call no evidence and make no submissions.

6. The College seeks an order that the Respondent's registration is cancelled permanently or alternatively that it is cancelled and the Respondent will not be eligible to reapply for five to seven years and until other conditions are fulfilled. The College also seeks costs and a direction for publication. The Respondent takes no position.

7. As set out more fully below, the Panel orders that the Respondent's registration is cancelled, that she may not seek reinstatement for seven years and until specified conditions are fulfilled and that she must pay costs.

2. Legislative Framework

8. Section 39 of the HPA sets out the actions that the Panel may take if it has made a finding under s. 39(1) of the HPA:

39...(2)If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:

(a) reprimand the respondent;

(b) impose limits or conditions on the respondent's practice of the designated health profession;

- (c) suspend the respondent's registration;
- (d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;
- (e) cancel the respondent's registration;
- (f) fine the respondent in an amount not exceeding the maximum fine established under section 19(1)(w).

...

(5) If the discipline committee acts under subsection (2), it may award costs to the college against the respondent, based on the tariff of costs established under section 19 (1) (w.1).

...

(7) Costs awarded under subsection (5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing.

(8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may

- (a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,
- (b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on
 - i. a date specified in the order, or
 - ii. the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and
- (c) impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.

9. With respect to costs, s. 59.3 and Schedules G and H of the College Bylaws set a framework for a costs claim following investigations and discipline hearings.

10. Section 39.3 of the HPA requires that the discipline committee direct the Registrar to issue public notice of decisions made under s. 39(1) and (2).

3. Principles in the Imposition of Penalty

11. The primary purpose of penalty is to protect the public from acts of misconduct. (*McKee v. College of Psychologists (BC)*, [1994] 9 W.W.R. 374 (BCCA); *Xu (Re)*, 2019 CanLII 131154 (BC CDS) ("*Re Xu*").

12. Counsel for the College referred to numerous authorities which set out the factors to be considered in the imposition of penalty. See for example, *Re Xu*, para. 11-12; *Matheson v. College of Physicians and Surgeons of Prince Edward Island*, 2010 PECA 5 at paras. 130 and 151; and *Jaswal v. Medical Board (Newfoundland)* (1996), 42 Admin L.R. (2d) 233 (Nfld S.C.) ("*Jaswal*") at para. 35.

13. Counsel for the College adapted the list of factors set out in *Jaswal* as follows:

- the nature and gravity of the proven allegations,
- the age and experience of the respondent,
- the previous character of the respondent and in particular the presence or absence of any prior complaints or convictions,
- the personal attributes of the complainant or affected person, if any,
- the number of times the offence was proven to have occurred,
- whether the respondent has already suffered other serious financial or other penalties as a result of the allegations having been made,
- the impact of the incident on the complainant or effected person, if any,
- the presence or absence of any mitigating circumstances,
- the need to promote specific and general deterrence and thereby to protect the public and ensure safe and proper practice,
- the need to maintain the public's confidence in the integrity of the profession,
- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct, and
- the range of sentence in other similar cases.

14. The above list is a reasonable summary of the relevant factors and has been considered by the Panel in making this decision.

15. The College also referred to a number of cases in which a discipline panel considered whether the professional who was the subject of the proceedings had demonstrated that they were unable or unwilling to be governed by the regulator. This may occur where there is an extensive discipline history or by the nature, duration and repetitive character of the misconduct. Where a professional is found by the discipline panel to be "ungovernable", the penalty is aggravated, and the professional's licensure may be cancelled or revoked. The rationale for the increased penalty is that the regulator cannot fulfil its duty to protect the public if registrants cannot be relied upon to respect the regulator's authority to regulate the profession. The Panel accepts these principles.

4. The Submissions of the College

16. The orders sought by the College are set out in its written submissions as follows:

“(a) the respondent’s registration is cancelled permanently;

(b) in the alternative, the respondent’s registration is cancelled effective the date of the penalty order and she is not eligible to seek registration with the College in any class for a period of five to seven years from the date of the penalty order;

(c) in the event the respondent’s registration is cancelled under subsection (b), a condition that if she seeks re-instatement:

(i) the respondent must successfully complete any outstanding requirements imposed by the Inquiry Committee prior to the cancellation of her registration before she may be re-instated to practising registration;

(ii) the respondent is required to undergo a fitness to practice assessment with an assessor approved by the College and must comply with any recommendations arising out of that assessment; and

(d) in any event, the respondent be required to pay hearing costs in the amount of \$8,795.34 to the College within sixty (60) days of the Panel’s penalty order.”

17. The College supplemented its written material with oral submissions.

18. The College emphasized the serious nature of the Respondent’s misconduct, and referred to the Panel’s finding in the Liability Decision:

42...The Panel is satisfied that the Respondent’s conduct is particularly egregious. It was prolonged and deliberate and persisted despite repeated warnings. The Respondent was a non-practicing registrant pending remedial steps to correct competency concerns. This adds an element of potential risk to the public. Health colleges must be able to rely upon all registrants to comply with their registration status. The Respondent’s actions undoubtedly warrant a finding of professional misconduct.

19. The College also submitted that there was no evidence of any mitigating factors, such as extenuating personal circumstances or an attempt at rehabilitation.

20. The College submitted that the Respondent met the definition of ungovernability. In that regard, the College referred to the affidavit of Wendy Gaudet, Office Manager of Wave Dentistry, affirmed July 26, 2021. Ms. Gaudet deposes that in July, 2021, the Respondent sought employment at Wave Dentistry as a dental hygienist. On July 12, 2021, the Respondent began a working interview, treating one patient. The Respondent provided Ms. Gaudet with a license number. Ms. Gaudet then found out, by calling the College, that the registration number was valid but did not belong to the Respondent. Ms. Gaudet then cancelled the balance of the working interview.

21. This evidence supports the conclusion that the Respondent is unable or unwilling to modify her behaviour.

22. At the conclusion of the College’s oral submissions, the Respondent was again asked by the Panel if she wished to make submissions, but she declined.

5. Analysis

23. The nature and gravity of the proven allegations is very serious.
24. As submitted by the College, the Respondent repeatedly held herself out as validly licensed to provide dental hygiene, and in fact did provide treatment to more than 20 patients over a period of about 3 months. She did so knowing she was in a registration category that prohibited active practice, and knowing that she was in that practice category by virtue of the Consent Agreement which required that she successfully complete a retraining program and other remedial work before seeking active registration.
25. As well, the Respondent continued these activities despite the College's attempts to secure voluntary compliance, and despite signing an undertaking that she would cease her unauthorized activities.
26. The Respondent's activities continued, such that the College obtained an injunction from the BC Supreme Court in June 2021. The affidavit of Wendy Gaudet indicates that, in mid-July 2021 (albeit prior to the release of the Panel's Liability Decision), the Respondent was seeking employment as a dental hygienist, holding herself out as validly licensed, and in fact treating a patient in a working interview before the prospective employer found out the true situation.
27. The Respondent has offered no explanation and no mitigating evidence whatsoever. To the contrary, she has provided false denials and ignored an undertaking and a court order.
28. There is at this point nothing that can give the Panel any confidence that the Respondent will comply with the College's authority or her professional obligations as a registrant. The Panel accepts that the Respondent is ungovernable, as that term is used in the authorities.
29. In order to protect the public and to protect public confidence in the regulation of the profession, the Respondent's registration must be cancelled.
30. The Panel is not prepared to impose a "permanent" prohibition upon the Respondent's eligibility to seek reinstatement. The cases relied upon by the College for this submission were those in which a registrant's license was "revoked", and decided under different legislation. It appears that *revocation* in the relevant legislation is the equivalent to *cancellation* under the HPA.
31. Under the HPA, the most serious action the discipline committee may take is, pursuant to s. 39(2), to "cancel the respondent's registration". Section 39(8) further permits the discipline committee to impose conditions on the former registrant's eligibility to seek reinstatement, either by specifying a period of time that must elapse or conditions that must be met before they may seek reinstatement. Section 39 does not provide for permanent prohibition.
32. While a former registrant whose license is cancelled may *apply* for reinstatement, there is no guarantee that they will in fact be reinstated. Registration may be refused (s. 20(2.1)(a)).
33. In order to be reinstated, the former registrant must, in addition to meeting any conditions set in the discipline process, satisfy the College's Registration Committee that they

meet the criteria set out in the HPA and in the College Bylaws. Broadly speaking, and as set out in the College Bylaws, an applicant for reinstatement must successfully demonstrate good character and fitness, and meet current competency criteria. Former registrants who have been out of practice for extended periods – even those whose registration lapsed by non-payment of fees rather than through a discipline process – must undertake additional education. An applicant whose registration was cancelled by order made under s. 39 of the HPA, in addition, “must provide additional evidence to satisfy the registration committee that reinstatement of the applicant’s registration in the applicable class of registrants will not pose an undue risk to public health and safety”. In this way, and if all these criteria are met, even a former registrant whose registration was cancelled may again be granted the privilege of registration in the profession.

34. The Panel is of the view it is appropriate to stipulate a lengthy period of time before the Respondent will be eligible to apply for reinstatement, and, as well, to supplement the robust requirements in the College Bylaws with conditions that are tailored to the circumstances of this case. Again, as set out above, these orders dictate the Respondent’s eligibility to apply for reinstatement; but, in order to be granted registration, she will have to also satisfy the requirements that are in place under the HPA at the time of her application.

35. In this case, and apart from any other considerations that might arise at the time of any future application, for the Respondent to be able to satisfy the College’s requirements of good character and fitness, she would have to be able to show the Registration Committee that she fully and promptly ceased her unauthorized activities and she could again be relied upon to fulfill her professional obligations.

36. The Panel finds that a period of seven years is a suitable period of prohibition on eligibility to apply for reinstatement. This reflects the seriousness of the misconduct.

37. The first condition sought by the College, that is, that the Respondent successfully complete any outstanding requirements imposed by the Inquiry Committee before she may be re-instated to practising registration, relates to the Consent Agreement. In the Consent Agreement, the Respondent agreed that she would remain a non-practicing registrant until she:

- (a) successfully complete[d], at her cost, a dental hygiene retraining program and such program is to be approved in advance in writing by the Registrar, and to provide documentary evidence to the College confirming that she has successfully completed the program; and
- (b) successfully complete[d] any outstanding requirements imposed by the Quality Assurance Committee as part of her Directed Learning Plan.

38. These terms were not fulfilled. This underscores the extent of the Respondent’s need for remedial training. Therefore, pursuant to s. 39(8) (a) and (b), the Panel requires that these terms be fulfilled before the Respondent is eligible to apply for reinstatement.

39. The Consent Agreement also provided for continuing supervision, including direct supervision for a period of a year, even after the Respondent completed the remedial work and was reinstated to practicing registration. The Panel will not require supervision as a term of its order, but recommends that the Registration Committee consider and impose supervision requirements as a condition of registration, either in the terms set out in the Consent Agreement or as that Committee finds to be necessary at the time of the Respondent’s application.

40. The College further submits that, prior to reinstatement, the Respondent should be required to undergo a "fitness to practice assessment" and must comply with any recommendations.

41. A fitness to practice assessment is an evaluation of a registrant's or applicant's *capacity* to practice, rather than their competency. It is conducted by a suitable expert, with occupational medical skills. In this Panel's view, the circumstances call for such an assessment, as a further term ordered pursuant to s. 39(8)(a) and (b) of the HPA.

42. The College also seeks an order for costs pursuant to s. 39(5) of the HPA. It has provided a form of Bill of Costs (with no back-up documentation), claiming \$6,823.60 in fees, being 50% of the fees charged by counsel to the College, plus disbursements for service, courier charges and court reporter's fees in the amount of \$1,971.74, for a total of \$8,795.34, payable within sixty (60) days. The amount claimed accords with Schedule H of the College Bylaws.

43. The amount claimed is reasonable given the length of the hearing and the extensive preparation that would have been involved, and given the number of witnesses. The disbursements are also appropriate. As well, the claim was not opposed by the Respondent. Therefore, the Panel approves the claim for costs.

6. Order


44. For the reasons set out above, the Panel orders as follows:

- (a) the Respondent's registration is cancelled effective immediately upon issuance of this decision;
- (b) the Respondent is not eligible to seek registration with the College in any class until September 15, 2028, and until she has fulfilled the following conditions;
- (c) the Respondent must successfully complete any outstanding requirements imposed by the Inquiry Committee prior to the cancellation of her registration, and in particular, she must:
 - (i) successfully complete, at her cost, a dental hygiene retraining program, and such program is to be approved in advance in writing by the Registrar, and to provide documentary evidence to the College confirming that she has successfully completed the program, and
 - (ii) successfully complete any outstanding requirements imposed by the Quality Assurance Committee as part of her Directed Learning Plan;
- (d) the Respondent must, at her cost, undergo a fitness to practice assessment with an assessor approved by the College and must comply with any recommendations arising out of that assessment; and
- (e) the Respondent must pay hearing costs in the amount of \$8,795.34 to the College within sixty (60) days of this decision.

45. The Panel's order does not supersede the authority of the Registration Committee. That is, in addition to the above terms, the Respondent must fulfill the requirements in place at the time of her application, pursuant to the College Bylaws and the HPA or any successor legislation.

46. Pursuant to s. 39.3 of the HPA, the Panel directs the College's Registrar to notify the public of the information required under s. 39.3(2).

47. The Respondent is advised that she has the right to appeal the Panel's order to the BC Supreme Court. Under s. 40(2) of the HPA, an appeal must be commenced within thirty (30) days after the date on which this order is delivered.



Carol Williams, Panel Chair

13 September 2021
Date

Wendy Kelly

Date

Amber Ariss

Date

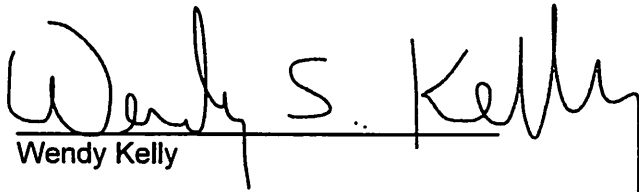
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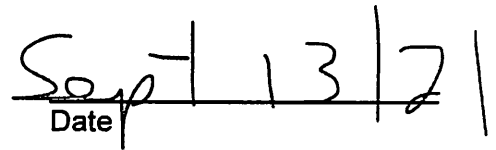
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Carol Williams, Panel Chair

Date




Wendy Kelly



Date



Amber Ariss



Date