

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

PANEL: Terence Price, Chairperson. Public Member
Derrick Ostner, Professional Member
Andreas Sommer, Professional Member

BETWEEN:

COLLEGE OF DENTAL TECHNOLOGISTS)	Jordan Glick for College
OF ONTARIO)	of Dental Technologists of Ontario
)	
- and -)	
)	
PAUL SMITH)	Paul Smith, self-represented
)	
)	
)	
)	Andrea Gonsalves
)	Independent Legal Counsel
)	
)	Heard: November 29, 2017

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Dental Technologists of Ontario (the “College”) on November 29, 2017, at Toronto.

The Allegations

The allegations against Paul Smith (the “Member”) as stated in the Statement of Allegations appended to the Notice of Hearing dated May 10, 2017 are as follows.

It is alleged that:

1. Mr. Paul Smith (the “Member”) committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Dental Technology Act, 1991*, as amended, and subsections 1(31) (contravening the Act, the *Regulated Health Professions Act, 1991* or the Regulations under either of those acts) and 1(34) (engaging in conduct or performing an act, in the course of practising the profession that, having regard to all the circumstances, would reasonably be regarded by members

as disgraceful, dishonourable or unprofessional) of *Ontario Regulation 798/93*, as amended, in that:

- a. while the Member's certificate of registration was administratively suspended, from in or about November 2014 until in or about November 2016, he designed, constructed, repaired and/or altered dental prosthetics, restorative or orthodontic devices where the technical aspects were not supervised by a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario;
- b. while the Member's certificate of registration was administratively suspended, from in or about November 2014 until in or about November 2016, he operated a laboratory where he employed and/or contracted with bench workers to design, construct, repair and/or alter dental prosthetics, restorative or orthodontic devices where the technical aspects were not supervised by a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario; and,
- c. when the Member was contacted by a representative of the College of Dental Technologists of Ontario regarding supervision of the lab, the Member falsely advised that a retired member of the Royal College of Dental Surgeons of Ontario was supervising when he was not.

Member's Plea

The Member admitted the allegations set out in paragraph 1 (a), (b) and (c) in the Statement of Allegations. The Panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the College and the Member advised the Panel that the parties had reached an agreement on the facts. They introduced an Agreed Statement of Facts, which provided as follows.

The parties agree that the Discipline Committee of the College of Dental Technologists of Ontario (the "**College**") may accept the following facts as true:

EVIDENCE REGARDING THE MEMBER

1. Mr. Paul David Smith ("**Mr. Smith**" or the "**Member**") became a registered member of the College of Dental Technologists of Ontario (the "**College**") in 2010, at which time he was issued a RDT stamp.

2. At all times relevant, Mr. Smith was the owner and operator of Peninsula Dental Laboratory Inc (**the “Lab”**) in St. Catherines, Ontario where he acted as the sole supervising RDT.
3. The Lab produces a variety of dental devices including crowns, bridges, orthodontics and dentures. Additionally, the Lab is a distributor for dental devices that are produced by other entities for sale and distribution to local practitioners within the Niagara and broader Southern Ontario regions.
4. Mr. Smith’s certificate of registration with the College was administratively suspended from November 1, 2014 until November 9, 2016 as a result of his failure to pay annual membership fees.
5. Notwithstanding that Mr. Smith’s certificate of registration was suspended from November 1, 2014 until November 9, 2016, Mr. Smith continued to operate the Lab without retaining either a registered member of the College or a registered member of the Royal College of Dental Surgeons of Ontario eligible to supervise the Lab. In particular, the Member:
 - (a) designed, constructed, repaired, and altered, dental prosthetics, restorative and orthodontic devices where the technical aspects were not supervised by a registered member of the College or the Royal College of Dental Surgeons of Ontario (“**RCDSO**”), contrary to section 32 (1) of the *Regulated Health Professions Act, 1991*; and,
 - (b) operated a laboratory where he employed bench workers who designed, constructed, repaired, and altered dental prosthetics, restorative and orthodontic devices, where the technical aspects were not supervised by a registered member of the College or the RCDSO, contrary to section 32 (2) of the *Regulated Health Professions Act, 1991*;
 - (c) when questioned by the College’s Coordinator of Professional Standards on July 15, 2016, Mr. Smith indicated that a retired dentist and member of the RCDSO was his supervisor during the period of the suspension when he was not.

ADMISSIONS

6. By virtue of the above conduct, the Member admits to having committed professional misconduct as provided by subsection 51(1)(c) of the *Health Profession Procedural Code* by contravening the following sections of *Ontario Regulation 798/93* of the *Dental Technology Act, 1991*:

- (A) Section 1(31) (contravening the Act, the *Regulated Health Professions Act, 1991* or the Regulations under either of those acts); and
- (B) Section 1(34) (engaging in conduct or performing an act or acts relevant to the practice of dental technology that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional) by virtue of the conduct admitted to in paragraphs 5(a)-(c).

Decision

The Panel finds that the Member committed acts of professional misconduct as alleged in paragraph 1 (a), (b) and (c) of the Statement of Allegations in the Notice of Hearing. As to the allegation that the Member committed professional misconduct under s. 1(34) of O. Reg. 798/93, the Panel finds that the Member engaged in conduct that would reasonably be regarded by members as dishonourable and unprofessional.

Reasons for Decision

The Panel considered the Agreed Statement of Facts and the Member's plea and found that the evidence supports findings of professional misconduct as alleged in the Statement of Allegations.

The allegation that the Member committed professional misconduct under s. 1(31) of O. Reg. 798/93 has two components: first, that he contravened s. 32(1) of the *Regulated Health Professions Act*, and second, that he contravened s. 32(2) of the *Regulated Health Professions Act*.

Subsections 32(1) and (2) of the *Regulated Health Professions Act* provide as follows:

32 (1) No person shall design, construct, repair or alter a dental prosthetic, restorative or orthodontic device unless,

- (a) the technical aspects of the design, construction, repair or alteration are supervised by a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario; or
- (b) the person is a member of a College mentioned in clause (a).

(2) A person who employs a person to design, construct, repair or alter a dental prosthetic, restorative or orthodontic device shall ensure that subsection (1) is complied with.

The allegation that the Member contravened s 32(1) of the *Regulated Health Professions Act* is supported by paragraphs 2, 3, 4, and 5(a) in the Agreed Statement of Facts. Based on the

evidence set out in the Agreed Statement of Facts, the Panel finds that while his certificate of registration with the College was under suspension between November 1, 2014 and November 9, 2016 the Member continued to operate Peninsula Dental Laboratory in St. Catherines without the supervision of either a registered member of the College or a registered member of the Royal College of Dental Surgeons of Ontario. During that period, the Member designed, constructed, repaired, and altered, dental prosthetics, restorative and orthodontic devices where the technical aspects were not supervised by a registered member of the College or the Royal College of Dental Surgeons of Ontario. This constitutes a breach of s. 32(1) of the *Regulated Health Professions Act*.

The allegation that the Member contravened s. 32(2) of the *Regulated Health Professions Act* is supported by paragraphs 2, 3, 4, and 5(b) in the Agreed Statement of Facts. Based on the evidence set out in the Agreed Statement of Facts, the Panel finds that, as noted above, while his certificate of registration with the College was under suspension between November 1, 2014 and November 9, 2016 the Member continued to operate Peninsula Dental Laboratory in St. Catherines without the supervision of either a registered member of the College or a registered member of the Royal College of Dental Surgeons of Ontario. During that period, the Member employed bench workers who designed, constructed, repaired, and altered, dental prosthetics, restorative and orthodontic devices where the technical aspects were not supervised by a registered member of the College or the Royal College of Dental Surgeons of Ontario. This constitutes a breach of s. 32(2) of the *Regulated Health Professions Act*.

Regarding the allegation that the Member committed professional misconduct under s 1(34) of O. Reg 798/93, the Panel finds the Member's actions would reasonably be regarded as both dishonourable and unprofessional because of his serious disregard for his professional responsibilities as required in ss. 32(1) and 32(2) of the *Regulated Health Professions Act*. The requirement that Members of the profession ensure that designing, constructing, repairing, and altering of, dental prosthetics, restorative and orthodontic devices are supervised as required by the *Regulated Health Professions Act* is paramount to ensure the public is protected.

The Member ought to have known that his actions and behaviour falls well below the standards of a Registered Dental Technologist. The Member's total disregard for his professional obligations would reasonably be regarded by Members of the profession as both dishonourable and unprofessional.

Furthermore, based on the evidence set out in the Agreed Statement of Facts the Panel finds that, when the Member was questioned by the College's Coordinator of Professional Standards, he falsely indicated that during the period between November 1, 2014 and November 9, 2016 his Laboratory was supervised by a retired member of the Royal College of Dental Surgeons of Ontario. In respect of s. 1(34) of O. Reg 798/93 the Member's behaviour of providing false information to the College would reasonably be regarded as both dishonourable and unprofessional.

Penalty

Counsel for the College and the Member advised the Panel that the parties had agreed on a Joint Submission as to Order (“Joint Submission”). The Joint Submission requests that this Panel make an order as follows:

1. Directing the Member to appear before the panel to be reprimanded and the fact of the reprimand to be recorded on the Public Register of the College.
2. Directing the Registrar to suspend the Member’s certificate of registration for a period of twelve months, four months of which shall be remitted in the event that the Member complies with paragraphs 3 and 4 of this Order.¹ The first eight months of the suspension shall begin on a day to be chosen by the Member but shall not begin later than December 1, 2017.
3. Directing the Registrar to impose a term, condition and limitation on the Member’s certificate of registration:
 - (i) requiring the Member to receive supervision of his practice for a period of sixteen (16) months following completion of the suspension referred to in paragraph (2) on the following terms:
 - i. the supervisor shall be appointed by the Registrar and shall be a professional member of the College;
 - ii. the supervisor shall visit with the member at least every five (5) months at the Member’s site(s) of practice for a minimum of three (3) supervisory visits. The site visits shall be unannounced;
 - iii. the supervisor shall determine the length of each visit;
 - iv. in conducting site visits, the supervisor shall review the Member’s documentation relating to supervision including, but not limited to, supervisory logs and invoices to ensure compliance with the College’s supervision standard. The supervisor may also engage the Member and his employees relating to supervision at the Member’s lab and measures that have been taken in order to ensure that regulations and standards are being adhered to;
 - v. the supervisor shall prepare a report to the Registrar for every site visit that will be provided directly to the Registrar; and,

¹ In the event that either paragraphs 3 or 4 are not complied with within the timeframe provided, any further period of suspension which is not remitted shall be served beginning sixteen (16) months after the conclusion of the compulsory eight month suspension.

- vi. the Member shall pay the costs of the supervision and report (to a maximum of \$500 per site visit and report) and shall fully reimburse the College for these costs within twenty (20) days of receiving an invoice from the College for the supervision.
4. Directing the Member to draft an essay of no less than 1000 words explaining why it is important for individuals in regulated industries to adhere to all applicable rules and, in particular, the requirement to be registered by a regulatory body before engaging in restricted conduct. The essay must include reference to at least five (5) external sources which may include legislation, policy papers, judicial and quasi-judicial decisions, academic papers and books. The essay must be provided to the Registrar before the completion of the compulsory eight (8) month term of suspension.²
5. Directing the Member to pay the College's costs fixed in the amount of \$12,500 to be paid by certified cheque according to the following schedule and provided that this Joint Submission as to Penalty is accepted in its entirety:
 - (i) \$8,000 to be paid by certified cheque or equivalent on the day of the oral hearing; and,
 - (ii) \$4,500 to be paid within 90 days thereafter.

In the event that the Member does not pay \$8,000 on the date of hearing, the payment of the entire \$12,500 becomes immediately due and enforceable.

Penalty Submissions

College Counsel made submissions in support of the Joint Submission. The Member supported the terms of the requested order by signing the Joint Submission, and he confirmed his agreement at the hearing.

College Counsel submitted that the following features of the proposed penalty serve the goal of specific deterrence:

- the proposed suspension of the Member's certificate of registration;
- the requirement that the Registrar appoint a supervisor who will conduct three unannounced site visits to document the Member's scope of practice and supervision;

² The essay obligation must be fulfilled in a professional manner.

- the requirement that the Member submit to the College an essay explaining the importance for individuals in regulated industries to adhere to all applicable rules; and
- the reprimand delivered by the panel.

College Counsel submitted that features of the proposed penalty serve the goal of general deterrence. The following will demonstrate to other members of the College the significant penalty that will be imposed should they be found to have committed professional misconduct for behaviour similar to that of this Member:

- the proposed suspension of the Member's certificate of registration during which time the Member will be unable to operate as a Registered Dental Technologist; and
- the requirement that the Registrar appoint a supervisor who will conduct three unannounced site visits to document the Member's scope of practice and supervision.

College Counsel submitted that the following features of the proposed penalty serve the goal of rehabilitation of the Member:

- the requirement that the Registrar appoint a supervisor who will conduct three unannounced site visits to document the Member's scope of practice and supervision; and
- the requirement that the Member submit to the College an essay explaining the importance for individuals in regulated industries to adhere to all applicable rules.

College Counsel relied on a decision of the Discipline Committee of this College in the *Charlebois* case. In *Charlebois*, the Discipline Committee found that the member had committed professional misconduct by not supervising or arranging for another registered dental technologist to supervise a dental laboratory. In addition, the member allowed another person to use his stamp and signed documents requested by the College that were false. In this case there was an agreed statement of fact and a joint submission on order. The Discipline Committee's order included a six-month suspension of the Member's certificate of registration, a fine, a reprimand and certain terms and limitations on the Member's certificate that are similar to those sought in the Joint Submission in this case.

In the absence of other similar cases from this College, College Counsel also relied on cases from other tribunals to demonstrate to the Panel that the proposed penalty falls within the range of appropriate penalties. *Muklewicz*, 2016 ONCMTO 9, is a decision of the Discipline Committee of the College of Massage Therapists of Ontario. In that case, the member continued to work as a Registered Massage Therapist for a period of time after his certificate of registration had been suspended, and also provided false information to his College. The case proceeded on the basis of an agreed statement of fact and a joint submission on penalty, which required a suspension of the Member's certificate of registration for seven months, the payment of costs to the College, a reprimand and certain terms relating to publication of the Discipline Committee's findings.

College Counsel also relied on *Law Society of Upper Canada v Khan*, 2017 ONLSTH 83, a decision of the Law Society Tribunal Hearing Division. In that case, the lawyer practised while under suspension, failed to prevent or facilitated the unauthorized practice of law or delivery of legal services by an unlicensed person, and failed to supervise. The Law Society Tribunal suspended the lawyer for twelve months and ordered the lawyer to participate in a practice review.

After the conclusion of the hearing, it was brought to the parties' attention that paragraph 4 of the Joint Submission, as written, would be outside the Discipline Committee's jurisdiction to make an order after a finding of professional misconduct as set out in s. 51(2) of the *Health Professions Procedure Code*, Schedule 2 to the *Regulated Health Professions Act, 1991*. While the intention of the Joint Submission is clear, due to an apparent drafting error, the Panel would not be able to make an order with paragraph 4 as written. Both parties advised the Panel of their consent to revise paragraph 4 to provide that the Panel make an order directing the Registrar to impose the essay requirement as a term, condition and limitation on the Member's certificate.

Penalty Decision

The Panel accepts the Joint Submission with paragraph 4 revised on consent of the parties, and makes the following order:

1. The Member shall appear before the panel to be reprimanded and the fact of the reprimand will be recorded on the Public Register of the College.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of twelve months, four months of which shall be remitted in the event that the Member complies with paragraphs 3 and 4 of this Order.³ The first eight months of the suspension shall begin on a day to be chosen by the Member but shall not begin later than December 1, 2017.
3. The Registrar is directed to impose a term, condition and limitation on the Member's certificate of registration:
 - (i) requiring the Member to receive supervision of his practice for a period of sixteen (16) months following completion of the suspension referred to in paragraph (2) on the following terms:
 - i. the supervisor shall be appointed by the Registrar and shall be a professional member of the College;

³ In the event that either paragraphs 3 or 4 are not complied with within the timeframe provided, any further period of suspension which is not remitted shall be served beginning sixteen (16) months after the conclusion of the compulsory eight month suspension.

- ii. the supervisor shall visit with the member at least every five (5) months at the Member's site(s) of practice for a minimum of three (3) supervisory visits. The site visits shall be unannounced;
 - iii. the supervisor shall determine the length of each visit;
 - iv. in conducting site visits, the supervisor shall review the Member's documentation relating to supervision including, but not limited to, supervisory logs and invoices to ensure compliance with the College's supervision standard. The supervisor may also engage the Member and his employees relating to supervision at the Member's lab and measures that have been taken in order to ensure that regulations and standards are being adhered to;
 - v. the supervisor shall prepare a report to the Registrar for every site visit that will be provided directly to the Registrar; and,
 - vi. the Member shall pay the costs of the supervision and report (to a maximum of \$500 per site visit and report) and shall fully reimburse the College for these costs within twenty (20) days of receiving an invoice from the College for the supervision.
4. The Registrar is directed to impose a term, condition and limitation on the Member's certificate of registration requiring the Member to draft an essay of no less than 1000 words explaining why it is important for individuals in regulated industries to adhere to all applicable rules and, in particular, the requirement to be registered by a regulatory body before engaging in restricted conduct. The essay must include reference to at least five (5) external sources which may include legislation, policy papers, judicial and quasi-judicial decisions, academic papers and books. The essay must be provided to the Registrar before the completion of the compulsory eight (8) month term of suspension.⁴
5. The Member shall pay the College's costs fixed in the amount of \$12,500 to be paid by certified cheque according to the following schedule:
 - (i) \$8,000 to be paid by certified cheque or equivalent on the day of the oral hearing; and,
 - (ii) \$4,500 to be paid within 90 days thereafter.

In the event that the Member does not pay \$8,000 on the date of hearing, the payment of the entire \$12,500 becomes immediately due and enforceable.

⁴ The essay obligation must be fulfilled in a professional manner.

Reasons for Penalty Decision

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate dental technologists. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The Panel also considered the penalty in light of the principle that joint submissions should be respected unless they fall so far outside the range of an appropriate sanction that they would bring the administration of justice at the College into disrepute, or are otherwise contrary to the public interest.

The Panel concludes that the proposed order is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed order, has accepted responsibility. The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

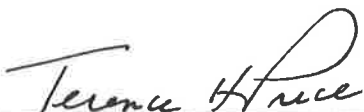
The penalty will serve as a general deterrent to the profession as it sends a clear message regarding the consequences of professional misconduct by registered dental technologists in Ontario. In this case the Member will be unable to practise as a registered dental technologist in Ontario for a significant period of time and, when he returns to practice after his suspension, he will be monitored by another member of the College. Those terms also have a specific deterrent effect. The Panel is also of the opinion that the rehabilitation and remediation of the Member is sufficiently addressed through the oral reprimand, the supervision of the Member's practice, and the requirement that the Member submit an essay to the Registrar on why it is important for individuals in regulated industries to adhere to all applicable rules.

The panel agrees that the order related to costs is appropriate in this case.

Reprimand

At the conclusion of the hearing, the Member indicated that he was prepared to receive the reprimand ordered by the Panel. The Member signed a written waiver of appeal. Accordingly, the Panel delivered the reprimand.

I, Terence Price, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Terence Price, Chairperson
Derrick Ostner
Andreas Sommer



Date