

COLLEGE OF ALBERTA DENTURISTS

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
RSA 2000, c. H-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF [REDACTED] DD

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF
ALBERTA DENTURISTS
July 26, 2023**



I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of [REDACTED] DD on June 12, 2023. The members of the Hearing Tribunal were:

Mr. Andrew Otway, Public Member, as Chair;
Ms. Kate Freeman, Public Member;
Ms. Cynthia Sweet, Regulated Member;
Ms. Saba Siddique, Regulated Member;

Mr. Gregory Sim acted as independent legal counsel for the Hearing Tribunal.

2. Appearances:

Mr. Blair Maxston, K.C., legal counsel for the Complaints Director;
Ms. Andrea Snow, Complaints Director
[REDACTED] DD;
Mr. Simon Renouf, K.C., legal counsel for Denturist.
Ms. Andrea Thorrougood, Hearings Director
Ms. Jessica Young, Court Reporter

II. PRELIMINARY MATTERS

3. Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. The Chair confirmed that, pursuant to section 78(1) of the *Health Professions Act*, RSA 2000, c H-7 ("HPA") the hearing was open to the public. No other preliminary matters were raised.
4. The Chair advised that an official record of the Hearing would be created by the Court Reporter, and that no recording of rebroadcasting of the hearing was permitted.

III. ALLEGATIONS

5. The Notice of Hearing listed the following allegations:

1. At the Clinic and on or about October and November of 2021, [REDACTED] failed to have and/or implement appropriate infection prevention and control ("IPC") policies and procedures in place and/or failed to have appropriate IPC training for Clinic employees concerning:

[REDACTED]

- i. Handling and sterilization of dental instruments records;
- ii. Lab equipment and supply use;
- iii. Responsibilities of various roles;
- iv. Cleaning, maintenance, repair schedules and/or log requirements; and/or
- v. Annual review of the IPC Standards to ensure they meet or exceed IPC requirements.

2. At the Clinic and on or about October and November of 2021 [REDACTED] [REDACTED] made sexual, ethnic and/or otherwise inappropriate comments regarding Clinic employees or other persons including:

- i. calling clinic employee VH [REDACTED] "Dirty Knife" or words to that effect;
- ii. interjecting into a conversation between Clinic employee VH and AR to state "Because [AR] likes the long screw. What is wrong with the long screw [VH]?", or words to that effect;
- iii. telling Clinic employee AR's husband to "bring her back pregnant" in reference to Clinic employee AR before AR went on medical leave to have surgery related to fertility issues, or words to that effect;
- iv. openly discussing breast augmentation in the Clinic with Clinic employees; and/or
- v. after employee VH rolled her eyes and gave [REDACTED] excuses to get out of doing a repair, [REDACTED] informed [REDACTED] that "when my daughter gives me this many excuses to get out of work I ask her 'what is your next excuse? That you are just a girl, because I don't accept that.'", or words to that effect.

3. At the Clinic and on or about October and November of 2021 [REDACTED] [REDACTED]

- i. aimed and/or shot two elastics at Clinic employee VH's backside;
- ii. side hugged clinic employee VH;
- iii. touched Clinic employee VH's back; and/or
- iv. attempted to give Clinic employee VH a "wet willy".

IV. EXHIBITS

6. The following Exhibits were entered into evidence during the hearing:

Exhibit 1: Notice of Hearing, Notice to Attend, and Notice to Produce dated June 8, 2023

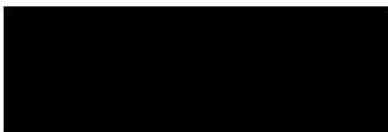


Exhibit 2: Admission of Unprofessional Conduct signed and dated June 7, 2023

Exhibit 3: Agreed Statement of Facts signed and dated June 7, 2023

Exhibit 4: Joint Submission Regarding Penalties signed and dated June 6, 2023

7. At the hearing the parties advised the Hearing Tribunal of typographical errors in the Agreed Statement of Facts and jointly requested their correction.

V. AGREEMENT AND ADMISSION OF UNPROFESSIONAL CONDUCT

8. The parties presented an Agreed Statement of Facts and Admission of Unprofessional Conduct to the Hearing Tribunal. [REDACTED] admitted that all three allegations were factually true and that his conduct in all three allegations was unprofessional conduct.
9. Relevant excerpts from the Agreed Statement of Facts and Admission of Unprofessional Conduct are set out below:

Agreed Facts Related to Background Matters

1. [REDACTED] has been a regulated member of the College since [REDACTED] [REDACTED] Registration Number [REDACTED]
2. At all times [REDACTED] was the owner of the [REDACTED] clinic located at [REDACTED] Alberta (the "Clinic").
3. Pursuant to the *Health Professions Act of Alberta*, R.S.A. 2000, c. H 7 (the "HPA"), the College is the regulatory body for the profession of denturism in Alberta.

Agreed Facts regarding the Complaint and the Investigation Report

4. On December 2, 2021, the then Complaints Director of the College received a complaint from a former employee of the Clinic, VH, raising concerns about [REDACTED] conduct and the operation of the Clinic (the "Complaint").

[REDACTED]

5. In response to the Complaint, pursuant to Part 4 of the HPA an investigator was appointed to investigate the Complaint and an investigation report was completed. The then Complaints Director of the College referred this matter to a hearing.

Agreed Facts Relating to the Allegations

6. At the Clinic and on or about October and November of 2021, [REDACTED] failed to have and/or implement appropriate infection prevention and control ("IPC") policies and procedures in place and/or failed to have appropriate IPC training for Clinic employees concerning:
- i. Handling and sterilization of dental instruments records;
 - ii. Lab equipment and supply use;
 - iii. Responsibilities of various roles;
 - iv. Cleaning, maintenance, repair schedules and/or log requirements; and/or
 - v. Annual review of the IPC Standards to ensure they meet or exceed IPC requirements.
7. At the Clinic and on or about October and November of 2021 [REDACTED] made sexual, ethnic and/or otherwise inappropriate comments regarding Clinic employees or other persons including:
- i. calling clinic employee VH [REDACTED] "Dirty Knife" or words to that effect;
 - ii. interjecting into a conversation between Clinic employee VH and AR to state "Because [AR] likes the long screw. What is wrong with the long screw [VH]?", or words to that effect;
 - iii. telling Clinic employee AR's husband to "bring her back pregnant" in reference to Clinic employee AR before AR went on medical leave to have surgery related to fertility issues, or words to that effect;
 - iv. openly discussing breast augmentation in the Clinic with Clinic employees; and/or
 - v. after employee VH rolled her eyes and gave [REDACTED] excuses to get out of doing a repair, [REDACTED] informed [REDACTED] that "when my daughter gives me this many excuses to get out of work I ask her 'what is your next excuse? That you are just a girl, because I don't accept that.'", or words to that effect.
8. At the Clinic and on or about October and November of 2021 [REDACTED]
- i. aimed and/or shot two elastics at Clinic employee VH's backside;
- [REDACTED]

- ii. side hugged clinic employee VH;
 - iii. touched Clinic employee VH's back; and/or
 - iv. attempted to give Clinic employee VH a "wet willy".
9. The events described above were also the subject of a complaint by VH to the Alberta Human Rights Commission pursuant to the *Alberta Human Rights Act* (the "AHRC Complaint").
10. As a result of settlement mediated by the Alberta Human Rights Commission between [REDACTED] and employee VH relating to the AHRC Complaint, [REDACTED] agreed to the following:
- a) [REDACTED] would enroll in and attend sexual harassment and diversity and inclusion training and provide confirmation of registration by January 13, 2022;
 - b) [REDACTED] agreed to attend the Alberta Human Rights Commission online training workshop within six months of the settlement;
 - c) [REDACTED] agreed to implement a sexual harassment and anti-bullying policy, along with the introduction of a complaint process at the Clinic within three months of the date of the settlement; and
 - d) [REDACTED] paid VH \$13,750.

Admission of Unprofessional Conduct

11. That at all times respecting these proceedings I was a Regulated Member of the College.
12. That I hereby admit and acknowledge that I am guilty of unprofessional conduct with respect to the following charges in these proceedings:
- 1. At the [REDACTED] clinic owned and operated by [REDACTED] and located at [REDACTED] Alberta (the "Clinic") and on or about October and November of 2021 and any such dates as may be relevant to the conduct and matters of issue that [REDACTED] failed to have and/or implement appropriate infection prevention and control ("IPC") policies and procedures in place and/or failed to have appropriate IPC training for clinic employees concerning:
 - i) Handling and sterilization of dental instruments records;

[REDACTED]

- ii) Lab equipment and supply use;
 - iii) Responsibilities of various roles;
 - iv) Cleaning, maintenance, repair schedules and/or log requirements; and/or
 - v) Annual review of the IPC Standards to ensure they meet or exceed IPC requirements.
2. At the Clinic and on or about October and November of 2021 [REDACTED] [REDACTED] made sexual, ethnic and/or otherwise inappropriate comments regarding Clinic employees or other persons including:
- i) calling clinic employee VH [REDACTED] "Dirty Knife" or words to that effect;
 - ii) interjecting into a conversation between Clinic employee VH and AR to state "Because [AR] likes the long screw. What is wrong with the long screw [VH]?", or words to that effect;
 - iii) telling Clinic employee AR's husband to "bring her back pregnant" in reference to Clinic employee AR before AR went on medical leave to have surgery related to fertility issues, or words to that effect;
 - iv) openly discussing breast augmentation in the Clinic with Clinic employees; and/or
 - v) after employee VH rolled her eyes and gave [REDACTED] excuses to get out of doing a repair, [REDACTED] informed [REDACTED] that "when my daughter gives me this many excuses to get out of work I ask her 'what is your next excuse? That you are just a girl, because I don't accept that.'", or words to that effect.
3. At the Clinic and on or about October and November of 2021 [REDACTED] [REDACTED]
- i) aimed and/or shot two elastics at Clinic employee VH's backside;
 - ii) side hugged clinic employee VH;
 - iii) touched Clinic employee VH's back; and/or
 - iv) attempted to give Clinic employee VH a "wet willy".

VI. SUBMISSIONS

(a) Complaint Directors' Legal Counsel

10. Mr. Maxston noted that under the HPA, the regulated member is entitled to thirty (30) days' notice of the hearing and particulars of the allegations. In this case, due to ongoing discussion between the parties the Notice of Hearing dated June 8, 2023 was issued less than
- [REDACTED]

30 days prior to the June 12, 2023 hearing date. Mr. Maxston asked Mr. Renouf to confirm that they were waiving the required notice period. Mr. Renouf advised the Tribunal that his client did waive this requirement.

11. Mr. Maxston presented that the Complaints Director has provided proof of the allegations, agreed to by both parties, as outlined in the Agreed Statement of Facts and in the Admission of Unprofessional Conduct. He submitted that [REDACTED] proven conduct was unprofessional conduct according to the following aspects of the HPA's definition of unprofessional conduct:
 - a) HPA s. 1(1)(pp)(ii): contravention of the HPA, or the College's code of ethics, or standards of practice;
 - b) HPA s. 1(1)(pp)(xii): Conduct that harms the integrity of the profession;
12. Mr. Maxston referred the Hearing Tribunal to College Standard of Practice 1(i) and 2(iv). In the College's Code of Ethics he referred the Tribunal to points 4 and 7 under Fundamental Ethics and to point 26 under General Responsibilities.
13. Mr. Maxston further submitted that the Hearing Tribunal could consider the College's Infection Prevention and Control guidelines that were in place at the relevant time to determine whether [REDACTED] proven conduct amounted to unprofessional conduct.
14. Mr. Maxston concluded that from the Complaint's Director perspective the allegations are serious, and that the admissions are supported by the Agreed Statement of Facts and [REDACTED] Admission of Unprofessional Conduct. Mr. Maxston urged the Tribunal to accept the admission of all three allegations and make findings of unprofessional conduct.

(b) [REDACTED] Legal Counsel

15. Mr. Renouf confirmed that both parties are in agreement with respect to the admissions of unprofessional conduct and with respect to all the facts. He acknowledged the Complaints Director's and Mr. Maxston's cooperation in reaching an agreed statement of facts and an admission of unprofessional conduct.



VII. FINDINGS OF UNPROFESSIONAL CONDUCT AND DECISIONS WITH REASONS

16. The Hearing Tribunal carefully considered the Agreed Statement of Facts and the Admission of Unprofessional Conduct which were both agreed to by the parties. The Hearing Tribunal used a two-step process with respect to findings of unprofessional conduct:
 - a) Did the alleged conduct occur?; and if so
 - b) Does the proven conduct meet the level of unprofessional conduct?
17. The first step in this process, as to whether the conduct occurred as alleged in the Notice of Hearing, is clearly supported through the Agreed Statement of Facts. The Agreed Statement of Facts thoroughly set out the necessary facts for the Hearing Tribunal to determine the allegations.
18. With respect to the second step, (whether the conduct meets the level of unprofessional conduct), the HPA defines unprofessional conduct as:

1(1)(pp) "unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonorable:

 - i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
 - ii) contravention of this Act, a code of ethics or standards of practice;
 -
 - xii) conduct that harms the integrity of the regulated profession;

Allegation 1

19. For allegation 1, which related to [REDACTED] failure to have or to implement appropriate infection prevention and control (IPC) policies, procedures and/or training, the Hearing Tribunal finds the alleged actions of [REDACTED] to have been factually proven. The Hearing Tribunal also finds that [REDACTED] proven conduct demonstrated a lack of skill or judgement in the provision of professional services and a contravention of the College's standards of practice and amounted to unprofessional conduct.



20. Meeting professional standards for IPC is a fundamental expectation for Members of the College to ensure the highest levels of patient/client safety. By not meeting such standards (or not being able to document adherence to these standards), [REDACTED] demonstrated a lack of professional skill or judgement in serving [REDACTED] patients/clients.
21. [REDACTED] conduct also failed to meet the requirements of the College's Standard of Practice 1(i) and 2(iv). Standard 1(i) requires regulated members of the College to provide a suitable standard of care based on available up-to-date evidence based information and best practices. Standard 2(iv) provides that regulated members must maintain high levels of safety by adhering to the requirements in the College's IPC Standards document and the Alberta *Occupational Health and Safety Act*, Regulation and Rules. [REDACTED] acknowledged having failed to have and/or implement appropriate IPC policies, procedures and/or training.

Allegation 2

22. For allegation 2, which related to [REDACTED] making sexual, ethnic and/or otherwise inappropriate comments regarding Clinic employees, the Hearing Tribunal finds the allegation to have been factually proven and that [REDACTED] conduct amounts to unprofessional conduct. [REDACTED] proven conduct:
- i) breached the College Code of Ethics; and
 - ii) harms the integrity of the regulated profession.
23. The College of Alberta Denturists Code of Ethics point 7 requires regulated members to uphold the honor and dignity of the profession by maintaining integrity and ethical behaviour. Point 26 requires regulated members to respect the rights, dignity and diversity of all people.
24. [REDACTED] proven conduct did not maintain the integrity or respect the rights, dignity and diversity of Clinic employees. In [REDACTED] role as Clinic owner and employer, [REDACTED] was in a position of power and authority over the Clinic employees. [REDACTED] ought to have recognized the imbalance of power between [REDACTED] and the employees and that [REDACTED] comments would have the effect of sexualizing and demeaning the employees. [REDACTED] conduct harms the integrity of the profession.
- [REDACTED]

Allegation 3

25. For allegation 3, which pertains to inappropriate physical actions or contact by [REDACTED] towards a Clinic employee, the Hearing Tribunal finds the allegation to be factually proven and the actions of [REDACTED]
- (a) a breach of the College Code of Ethics; and
 - (b) harm the integrity of the regulated profession.
26. The College of Alberta Denturists Code of Ethics points 7 and 26 require regulated members to uphold the honor and dignity of the profession by maintaining integrity and ethical behaviour, and to respect the rights, dignity and diversity of all people.
27. [REDACTED] proven conduct amounts to unprofessional conduct because [REDACTED] to maintain integrity and ethical behaviour and to respect the rights and dignity of the Clinic employee VH. [REDACTED] actions towards VH failed to respect [REDACTED] personal integrity and autonomy. [REDACTED] actions would also have the effect of sexualizing and demeaning VH. The Hearing Tribunal concluded that [REDACTED] conduct towards VH in allegation 3 would harm the integrity of the regulated profession.

In conclusion:

28. The Hearing Tribunal finds that the conduct in all three allegations has been proven. Further, the Hearing Tribunal finds that the proven conduct in all three allegations meets the level of unprofessional conduct.

VIII. JOINT SUBMISSION REGARDING PENALITIES

Complaints Director's Legal Counsel

29. Mr. Maxston described the types of orders the Hearing Tribunal could make under section 82(1) of the HPA and then indicated that the Joint Submission Regarding Penalties was the result of careful negotiations between both parties, and both parties urge the acceptance of this submission.
30. Mr. Maxston then discussed the factors the Tribunal could take into account in weighing the Joint Submission Regarding Penalties. Mr. Maxston highlighted the following factors:



1. The admission and acknowledgement of responsibility by [REDACTED]
[REDACTED] Generally, a less severe punishment should be imposed on an individual who generally recognizes that [REDACTED] conduct was wrong. [REDACTED] has made such admission and acknowledgment.
 2. The number of times that the member has faced disciplinary hearings, including severity and frequency. This was the first instance of disciplinary findings for [REDACTED]
 3. Counsel holds that it is important to set fair, reasonable and proportionate penalties with regard to all the circumstances in this case professional misconduct. Counsel noted the significant penalties and consequences for [REDACTED] arising from the Alberta Human Rights Commission settlement.
31. In relation to the range of sanctions in other cases, Mr. Maxston explained that no sufficiently similar cases were identified that could be presented to the Tribunal for comparison.
 32. Mr. Maxston reviewed the Joint Submission on Penalties and submitted that the joint submission for [REDACTED] to pay costs of \$2,000 reflects that [REDACTED] should bear some costs, but not a substantial indemnity of the College.
 33. Regarding the order for publication of a summary of the Hearing Tribunal's decision without [REDACTED] name, Mr. Maxston submitted that the Complaints Director and [REDACTED] do not believe there would be value in publishing [REDACTED] name.
 34. Mr. Maxston then referred the Hearing Tribunal to the 'public interest test' for deference to the Joint Submission on Penalties. The Hearing Tribunal should defer to the jointly submitted penalty orders unless those orders would be contrary to the public interest or would undermine the administration of justice. Mr. Maxston also acknowledged [REDACTED] and Mr. Renouf's cooperation throughout the process.

Submission from [REDACTED] Counsel

35. Mr. Renouf agreed with Mr. Maxston's submissions and then outlined to the Tribunal that:

1. [REDACTED] has been a practitioner member of the College for [REDACTED]
[REDACTED]
[REDACTED]

2. [REDACTED] has been very active in the profession and has no prior disciplinary hearings.
 3. Importantly, there has been no suggestion of harm to any patient or member of the public.
 4. The sanctions [REDACTED] undertook and the payments made under the mediated Alberta Human Rights Commission process were a significant financial penalty. Further significant financial penalties by the Tribunal would be disproportionate and unnecessary.
 5. [REDACTED] enrolled and attended a sexual harassment and diversity and inclusion training program in 2022.
 6. [REDACTED] attended the Alberta Human Rights Commissions' online training workshop.
 7. [REDACTED] agreed to implement and has implemented a sexual harassment and anti-bullying policy along with the introduction of a complaints process at the Clinic.
 8. The recognition of unprofessional conduct has led to concrete actions by [REDACTED] to meet the standards of the profession.
36. In summary, Mr. Renouf asked the Tribunal to accept the Joint Submission on Penalty.

Questions of the Tribunal

37. In response to a question about whether concerns regarding IPC policies, procedures and training would be adequately addressed by the Joint Submission on Penalties, Mr. Maxston said that the Complaints Director is satisfied that appropriate measures have been and will be taken. Mr. Renouf indicated that the new processes and IPC technology in place in the Clinic predate the conclusion of the investigation and the issues of concern to the College have been addressed.
38. In response to a question about not publishing [REDACTED] name, Mr. Maxston described that the College would seek to publish the name when publishing is merited for punishment or deterrence. In this case the penalties incurred by [REDACTED] in the Alberta Human Rights Commission process together with the jointly submitted penalty orders are appropriate and adequate punishment. With respect to deterrence, the findings of the Tribunal will be published on the College's website. These will be adequate to alert other regulated members of the College to the consequences of similar unprofessional conduct without the need to include [REDACTED] name. Mr. Renouf agreed with Mr. Maxston's rationale.
- [REDACTED]

IX. ORDERS

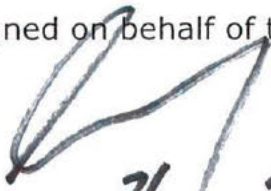
39. The Hearing Tribunal carefully considered the Joint Submission on Penalty and submissions by both counsel.
40. In reviewing these matters, the Hearing Tribunal recognizes that there are two broad categories of unprofessional conduct admitted to by [REDACTED]
41. The first of these is with respect to noncompliance with IPC Standards at the Clinic. The Tribunal is satisfied that these deficiencies have been rectified through changes in technology, processes, policies and training, and that the jointly submitted penalty orders will adequately deter [REDACTED] and others from similar unprofessional conduct in the future.
42. The second broad category is that of interactions by [REDACTED] with Clinic staff. The Tribunal acknowledges that [REDACTED] has incurred obligations to rectify the same issues in the Alberta Human Rights Commission process and that those obligations have been fulfilled. The Tribunal is satisfied that when considered along with the Alberta Human Rights Commission obligations on [REDACTED] the jointly submitted penalty orders are proportionate and will adequately deter [REDACTED] and others from similar unprofessional conduct in the future. The Tribunal is satisfied that publishing [REDACTED] name is not necessary to protect the public interest.
43. While recognizing that [REDACTED] has addressed concerns in terms of IPC and staff interaction going forward, the Tribunal recognizes the serious nature of proven unprofessional conduct by [REDACTED] in this case. [REDACTED] is a senior, experienced member of the denturist profession. [REDACTED] professional obligations were well-known to [REDACTED] conduct occurred over a period of time and was not an isolated incident.
44. The Tribunal has also considered that [REDACTED] has had many years of service to [REDACTED] profession with no prior findings of unprofessional conduct. [REDACTED] cooperated with the Complaints Director, including through [REDACTED] admissions in this hearing which saved witnesses from testifying and considerably shortened and simplified this hearing and through [REDACTED] Joint Submission on Penalties.
45. The Tribunal is satisfied that the Joint Submission on Penalties will maintain public confidence in the proper regulation of the profession. The Joint Submission on Penalties is in the public interest and

[REDACTED]

imposing it will not undermine the administration of justice. The Tribunal therefore accepts the Joint Submission on Penalties as appropriate for the nature of the action and proportionate to the severity of the proven unprofessional conduct. As such, the Tribunal orders the following:

1. [REDACTED] shall be formally reprimanded for [REDACTED] unprofessional conduct. The Hearing Tribunal's written decision will constitute the reprimand.
2. [REDACTED] will pay a fine of \$250.00 for each finding of unprofessional conduct, resulting in total fines of \$750.00. The fines are payable within twelve (12) months of June 12, 2023, failing which the Registrar of the College can immediately and without the necessity of any further steps suspend [REDACTED] practice permit until the balance of the fees are paid in full.
3. [REDACTED] will pay costs in the amount of \$2,000.00 concerning the investigation and the hearing. The costs are payable within six (6) months of June 12, 2023, failing which the Registrar of the College can immediately and without the necessity of any further steps suspend [REDACTED] practice permit until the balance of the costs are paid in full.
4. A summary of the Hearing Tribunal's findings and penalties will be published on the College website without [REDACTED] name.

Signed on behalf of the Hearing Tribunal by the Chair:



26 JULY

Dated this 26 day of JULY, 2023.

