

IN THE MATTER OF *THE DENTAL DISCIPLINES ACT*, SS 1997, c D-4.1  
OF THE PROVINCE OF SASKATCHEWAN

AND IN THE MATTER OF A HEARING BY THE DISCIPLINE COMMITTEE  
OF THE SASKATCHEWAN DENTAL HYGIENISTS ASSOCIATION  
CONCERNING A FORMAL COMPLAINT AGAINST GAURAV SHAH,  
A DENTAL HYGIENIST OF SASKATOON, SASKATCHEWAN

BETWEEN:

THE PROFESSIONAL CONDUCT COMMITTEE,  
established pursuant to *The Dental Disciplines Act*

-and-

GAURAV SHAH

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**DECISION**

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HEARD BY: CHRISTINE DOWNING, RDH – Chairperson  
TANYA SPRINGINATIC, RDH  
RAYMOND SASS (Public Representative)

COUNSEL FOR THE PROFESSIONAL  
CONDUCT COMMITTEE

SEAN SINCLAIR

COUNSEL FOR GAURAV SHAH

JOHN AGIORITIS

COUNSEL FOR THE DISCIPLINE  
COMMITTEE

AMANDA M. QUAYLE, Q.C.

**INTRODUCTION**

- [1] A discipline hearing was held on June 23, 2022 to hear and determine an Amended Formal Complaint concerning Gaurav Shah (the “Respondent”) dated June 17, 2022, as required

by Section 33(3) of *The Dental Disciplines Act*, SS 1997, c D-4.1 (the "Act"). The discipline hearing proceeded by video conference by consent of the parties.

- [2] At all times material to the complaint against him, the Respondent was a member of the Saskatchewan Dental Hygienists' Association ("SDHA") and subject to the Act and the SDHA Bylaws, Code of Ethics and Dental Hygiene Competencies and Standards.

## THE COMPLAINT

- [3] Legal counsel for the Professional Conduct Committee filed the Notice of Hearing and the Amended Formal Complaint, with proof and acknowledgment of service by the Respondent at the hearing. Service of the Notice of hearing and Amended Formal Complaint was acknowledged by counsel for the Respondent.

- [4] The Amended Formal Complaint states<sup>1</sup>:

That Shah, while employed as a dental hygienist at [dental office], Saskatoon, and while providing professional services to a patient identified as M.O., on September 10, 2021, is guilty of professional misconduct as defined in Section 27 of the Act, in that he:

1. Acted in a manner which Shah knew, or ought to have known, was harmful to the best interests of the public and was harmful to the standing of the dental hygienist profession by harassing his patient, M.O.; and
2. Failed to demonstrate professionalism, integrity, and beneficence while providing services, and therefore breached Regulatory Bylaw section 54(1) in that Shah failed to comply with the Code of Ethics and The Dental Hygiene Competencies as set out by the Canadian Dental Hygienists Association and Saskatchewan Dental Hygienists' Association in harassing his patient, M.O.

## EVIDENCE

- [5] An Agreed Statement of Facts was entered into by the parties on or about June 21, 2022. The Agreed Statement of Facts was, with the consent of the parties, provided to the discipline hearing panel (the "Panel") in advance of the hearing. The Agreed Statement of Facts was filed at the hearing and constituted the sole evidence submitted at the hearing. It provides:

1. The Member was granted full registration with a conditional licence with SDHA on November 1, 2016. A conditional licence is granted to applicants that have not satisfied the local anesthesia requirement. Mr. Shah completed the local anesthesia requirement within the required two-year period and obtained full licensure on February 12, 2018. Mr. Shah maintained licensure until November 1, 2019 when he renewed into the non-practicing register. Mr. Shah then obtained full licensure again on June 18, 2020.

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<sup>1</sup> The identity of the complainant and the Respondent's employer have been anonymized in this Decision to protect the privacy of those individuals.

2. Mr. Shah is not a member, nor does he have licensure in any other Canadian jurisdiction.
  3. The Member was employed by [employer] and was working as a dental hygienist at [dental office] on or about September 10, 2021.
  4. On or about September 10, 2021, [M.O.] attended [dental office] and was treated by the Member. During this treatment, the Member incorrectly perceived the tenor of comments made by M.O. and, as a result, on more than one occasion, made unwanted and unsolicited remarks and gestures towards M.O. that were inappropriate and unprofessional. This interaction caused M.O. distress, and she felt uncomfortable.
  5. M.O.'s reasonable understanding of the interaction was that the Member was attempting to flirt with her and to obtain her contact information.
  6. The Member's interactions with M.O. on September 10, 2021 constitute harassment of M.O.
  7. M.O. considered the Member's behaviour during and after her appointment on September 10, 2021 to be unwelcome, inappropriate, and unprofessional, and raised her concern with [employer] the same day. Later that day, [employer] terminated the Member's employment.
  8. The Member has not been employed as a dental hygienist since on or about December 30, 2021.
  9. On or about September 24, 2021, the SDHA received a written complaint, dated September 16, 2021, from M.O. against the Member.
  10. The Member admits that he knew, or ought to have known, that his harassment of M.O. on September 10, 2021 was harmful to M.O., the public and the standing of the dental hygienist profession.
  11. The Member admits that he failed to provide services with professionalism, integrity and beneficence and therefore breached Regulatory Bylaw section 54(1) in that the Member failed to comply with the Code of Ethics and The Dental Hygiene Competencies as set out by the Canadian Dental Hygienists Association and Saskatchewan Dental Hygienists' Association in harassing his patient, M.O.
  12. The Member has no prior findings of professional misconduct or professional incompetence.
- [6] The Respondent admits the conduct described in the charges in the Amended Formal Complaint constitutes professional misconduct.

## CONDUCT DECISION

- [7] Upon consideration of the evidence and the admission of guilt by the Respondent, the Panel is satisfied the Respondent is guilty of professional misconduct as defined in Section 27 of the Act in respect of the two charges contained in the Amended Formal Complaint.

## SANCTION DECISION

- [8] With the consent of the parties, the Panel was informed in advance of the hearing that the parties had agreed upon a joint submission as to penalty and legal counsel for the Professional Conduct Committee filed written submissions on the joint submission.
- [9] The joint submission as to penalty is:
- (a) There shall be a suspension of Mr. Shah for a period of 30 days. The 30 days will commence once a decision is made on the joint submission by the Panel;
  - (b) Mr. Shah shall engage in professional boundary training as approved by the Chair of the Discipline Committee;
  - (c) Mr. Shah shall pay the costs of the discipline proceeding in the amount of \$2,000 payable within six months. If Mr. Shah fails to make payment within six months, he will be suspended from the Association;
  - (d) Publication of the decision and sanction on the website of the SDHA.
- [10] In considering the appropriate sanction to be imposed, the Panel acknowledges and has taken guidance from the judicial decision of *Camgoz v. College of Physicians and Surgeons of Saskatchewan*, (1993) 114 Sask. R 161, and the following factors relevant to the imposition of professional discipline sanctions:
- 1. Specific deterrence of the respondent to curtail any future breaches;
  - 2. General deterrence of other members of the profession;
  - 3. Rehabilitation;
  - 4. Punishment;
  - 5. Denunciation;
  - 6. The need to maintain the public's confidence in the profession's ability to self-regulate;
  - 7. Aggravating factors; and
  - 8. Mitigating factors.
- [11] The Panel views a member's harassment of a patient as a serious matter. The penalty ordered should protect the public and enhance public confidence in the ability of the SDHA to regulate its members. This is achieved through a penalty that not only maintains the public's confidence but also addresses specific and general deterrence.
- [12] The leading Saskatchewan decision of the effect of a joint submission on penalty in the context of discipline proceedings is *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 ("*Rault*"). The Saskatchewan Court of Appeal emphasized the importance of a joint submission, as the adoption of a joint submission encourages professionals to make

admissions which they might otherwise dispute at a discipline hearing. Joint submissions are cost effective and encourage certainty.

- [13] Although the Panel is not bound by a joint submission, if it chooses to reject the recommendation, it must give good or cogent reasons as to why the joint submission is inappropriate. Generally, a discipline committee should only reject a joint submission on penalty where that joint submission is unreasonable, unfit, contrary to the public interest or falls outside the range of sentences in like cases: *Rault* at paragraph 28.
- [14] The Panel has considered the joint submissions of the parties on penalty and accepts that the recommendation is appropriate, it falls within the range of sentences for similar misconduct, and is in the public interest.
- [15] With respect to the ordinary range of sentences, there are few cases to consult for comparison, including no decisions from the SDHA.
- [16] The most similar case is the decision of a discipline hearing panel of the Law Society of Saskatchewan in *Law Society of Saskatchewan v. Hale*, 2021 SKLSS 5. In that case, a lawyer plead guilty to a charge of "conduct unbecoming" in that he sexually harassed his client, B.H. The member was representing the client in a criminal law matter and, during court, began running his hands up and down the client's thighs and made various suggestive remarks to the client. The penalty was (1) a reprimand, (2) suspension of six months with five months having considered to have already been served given that the member was not practicing law after having been fired from his employment, (3) completion of a course regarding workplace harassment and (4) costs in the amount of \$2,000.
- [17] The Respondent in this case did not have physical contact with his patient, and in that manner, this case is somewhat dissimilar to the member's conduct in *Hale*. Otherwise, the cases are very similar. Both cases involve a professional not recognizing appropriate boundaries and harassing a client/patient. In both cases, inappropriate remarks were made to the victims which made them feel uncomfortable.
- [18] In considering sanction, the Panel has taken into account the following mitigating factors:
1. The Respondent has plead guilty, which avoids the complainant from having to testify. The guilty plea also avoids a contested hearing where the outcome of the hearing is unknown;
  2. The Respondent has no previous discipline history;
  3. The employment of the Respondent was terminated as a result of his misconduct. As a result, the Respondent has already suffered some degree of penalty. The Panel notes that the Agreed Statement of Facts says that the Respondent has not been employed as a dental hygienist since or about December 30, 2021. The Panel has given no weight to the fact the Respondent has been unemployed as a dental hygienist since that time as there is no evidence as to the reasons for such unemployment.
  4. The Respondent cooperated throughout these proceedings, saving time and costs for all parties involved;

5. The Respondent has acknowledged and admitted his actions were wrong. He indicated through his legal counsel that he regrets his actions and is remorseful. The Respondent was present at the hearing, demonstrating his acceptance of responsibility for his actions.

[19] In terms of aggravating factors, the Panel has taken into account the following:

- (a) The conduct is serious and effects the patient; and
- (b) The Respondent, as a professional, is in a position of trust in relation to the patient and he violated that trust.

[20] With the objectives of denunciation, specific deterrence, general deterrence and maintenance of public confidence in the ability of the SDHA to self-regulate in mind, and given the mitigating factors and the aggravating factors, the Panel endorses the parties' joint submission as to penalty in this case, with one minor addition. The Respondent is to complete professional boundary training within 6 months from the date it is approved by the Chair of the Discipline Committee.

[21] The Panel has an additional comment in respect of the costs order. As noted, there are no previous SDHA decisions on penalties for professional misconduct by any of its members, including on costs. Further, there was no evidence adduced by the parties as to the actual costs incurred in respect of this proceeding. While the Panel has endorsed the joint submission of the parties on costs it notes that another discipline hearing panel of the SDHA may decide costs differently in another case on different facts, including evidence about the actual costs incurred in the proceeding.

#### **ORDER AS TO PENALTY**

[22] The Panel hereby orders as follows:

1. That the Respondent shall be suspended for a period of 30 days, commencing on the date of this Decision;
2. That the Respondent shall engage in professional boundary training within six months from the approval of such training by the Chair of the Discipline Committee;
3. That the Respondent shall pay the costs of the discipline proceeding in the amount of \$2,000 payable within six months. If the Respondent fails to make payment within six months, he will be suspended from the SDHA; and

4. That the Decision of the Discipline Committee will be published on the website of the SDHA.

Dated this 29<sup>th</sup> day of June, 2022.

**Christine Downing**

Christine Downing, RDH – Chairperson

**Tanya Springinatic**

Tanya Springinatic, RDH

**Raymond Sass**

Raymond Sass (Public Representative)

Signature: Christine Downing  
Christine Downing (Jun 29, 2022 09:41 MDT)  
Email: [REDACTED]

Signature: Tanya Springinatic  
Tanya Springinatic (Jun 29, 2022 09:49 MDT)  
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