

COLLEGE OF ALBERTA DENTAL ASSISTANTS

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, RSA 2000, c H-7

AND IN THE MATTER OF
A HEARING TRIBUNAL HEARING
REGARDING THE CONDUCT OF MADISON HUBER (REGISTRATION NUMBER 12405),
A REGULATED MEMBER OF
THE COLLEGE OF ALBERTA DENTAL ASSISTANTS

**DECISION OF A HEARING TRIBUNAL OF THE
COLLEGE OF ALBERTA DENTAL ASSISTANTS**

Introduction

A Hearing Tribunal of the College of Alberta Dental Assistants (the College), under the authority of the *Health Professions Act* (the Act) met virtually on October 27, 2022.

In attendance on behalf of the Hearing Tribunal were:

Patricia Demchuk, RDA	Chairperson
Caitlin Asel, RDA	Member
James Lees	Public Member
Patricia Matusko	Public Member

In attendance at the hearing were Mr. Taylor Maxston, legal counsel for the Complaints Director; Ms. Susan vander Heide, Complaints Director for the College; and Ms. Kimberly Precht, independent legal counsel to the Hearing Tribunal.

The investigated person, Ms. Madison Huber, was also present and was represented by Mr. Joel Franz.

Allegations

The Allegations were set out in a Notice of Hearing dated July 25, 2022 alleging Ms. Huber engaged in unprofessional conduct with respect to the following matters:

1. On or about May 17, 2021 through to March 31, 2022 you failed to comply with the requirements of the College's Patient Relations Program.
2. On or about October 27, 2021 you made a false declaration on your 2022 Practice Permit Renewal Application by declaring you had passed the Patient Relations Module when you had not done that.
3. On or about January 17, 2022 through March 31, 2022 you failed to respond and/or failed to respond promptly and/or failed to respond meaningfully to communications from the College concerning your completion of the Patient Relations Program, contravening Article 6.2(c) of the College's Code of Ethics and Standard of Practice 6.2(g) of the College's Standards of Practice.

4. On or about February 17, 2022 through March 31, 2022 you failed and/or failed to meaningfully cooperate with an investigator appointed pursuant to Part 4 of the *Health Professions Act*, which contravenes section 63(1) of the *Health Professions Act*.

Preliminary Matters

Each member of the Hearing Tribunal confirmed they were not aware of any conflicts of interest that might prevent them from serving as a member of the Hearing Tribunal. Neither party raised any preliminary matters, and there were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed.

Evidence

At the outset of the hearing, Mr. Maxston advised that Ms. Huber had admitted the allegations in the Notice of Hearing, and the matter would be proceeding as a consent hearing. Ms. Huber confirmed her agreement. The parties jointly requested that the following documents be entered as Exhibits:

- Exhibit 1 Amended Notice of Hearing
- Exhibit 2 Admission of Unprofessional Conduct
- Exhibit 3 Agreed Statement of Facts
- Exhibit 4 Amended Joint Submission Regarding Penalty

Given that the hearing proceeded by agreement, no witnesses were called to testify.

Submissions

Mr. Maxston noted the Notice of Hearing contains four charges. He submitted that for each charge, there were two evidentiary matters that must be dealt with: first, whether the facts that give rise to or underlay the charges are proven; and second, whether the proven facts constitute or rise to the level of unprofessional conduct.

On the first evidentiary issue, Mr. Maxston submitted the facts were not in dispute, as the facts were agreed to by the parties. Mr. Maxston submitted the relevant facts were very straightforward and were clearly proven by the extensive documents and information contained in the Agreed Statement of Facts (Exhibit 3), which could be treated as evidence.

On the second evidentiary issue, Mr. Maxston submitted the agreed facts amounted to unprofessional conduct as defined in the *Health Professions Act*. Specifically, Mr. Maxston submitted the agreed facts showed Ms. Huber had displayed a lack of knowledge or lack of skill or judgment in the provision of professional services (s. 1(1)(pp)(i)), had contravened the *Health Professions Act*, the Code of Ethics or the Standards of Practice (s. 1(1)(pp)(ii)), and had engaged in conduct that harms the integrity of the regulated profession (s. 1(1)(pp)(xii)).

Mr. Maxston confirmed that the Notice of Hearing specifically identified the parts of the Code of Ethics and Standards of Practice that were contravened. Article 6.2(c) of the Code of Ethics provides that dental assistants “communicate with the College and stakeholders in a professional and timely manner. Correspondence, communications and requests from the College and/or other stakeholders are given timely attention and appropriate professional response.” Standard of Practice 6.2(g) provides that dental assistants “respond to requests for information promptly and professionally”.

After reviewing the Agreed Statement of Facts (Exhibit 3) and the Admission of Unprofessional Conduct (Exhibit 2) in detail, Mr. Maxston submitted that both onuses were clearly and equivocally dealt with: the facts were established, and findings of unprofessional conduct were warranted.

Mr. Franz acknowledged Mr. Maxston's fulsome discussion of what had transpired and the documents jointly entered as exhibits, and had no additional comments.

Findings

After hearing Mr. Maxston's submissions, the Hearing Tribunal adjourned to deliberate and review the exhibits. After deliberating, the Hearing Tribunal advised the parties it found each of the four allegations was factually proven and rose to the level of unprofessional conduct.

Charge 1 – On or about May 17, 2021 through to March 31, 2022 you failed to comply with the requirements of the College's Patient Relations Program.

The Hearing Tribunal considered the evidence and determined Ms. Huber failed to comply with the requirements of the College's Patient Relations Program (PRP). On December 1, 2019, Ms. Huber's practice permit was suspended for failure to renew. Ms. Huber was reinstated as a regulated member of the College in May 2021 and was required to complete the PRP in the 2021 registration year. However, Ms. Huber failed to complete the PRP before applying for renewal of her practice permit in October 2021. Although the College made numerous attempts to inform Ms. Huber via email of the requirement to complete the PRP, she failed to do so in the 2021 registration year.

In the circumstances, Charge 1 is factually proven. Further, the Hearing Tribunal finds the proven conduct in Charge 1 constitutes unprofessional conduct. Completing the PRP is an important requirement, aimed at ensuring regulated members recognize and prevent sexual abuse or sexual misconduct toward patients by regulated healthcare professionals. The College is required to implement the PRP and regulated members are required to complete it. Failure to do so, in the circumstances set out in the Agreed Statement of Facts, constitutes unprofessional conduct.

Charge 2 – On or about October 27, 2021 you made a false declaration on your 2022 Practice Permit Renewal Application by declaring you had passed the Patient Relations Module when you had not done that.

Upon submitting her practice permit renewal application in October 2021, Ms. Huber was required to select a checkbox declaring: "I have completed the Patient Relations Module. I fully understand that failure to comply may result in cancellation or suspension of my Registration and/or Practice Permit, and subsequent notification pursuant to statutory requirements." She was also required to select a checkbox declaring: "I certify that the information given and made part of this application is true and correct in every aspect." Ms. Huber selected "Yes" for each of these declarations. However, when the College reviewed its records, it was found Ms. Huber had not completed the PRP. The evidence set out in the Agreed Statement of Facts is consistent with Ms. Huber's admission she made a false declaration on her 2022 Practice Permit Renewal Application.

The Hearing Tribunal finds Charge 2 is factually proven. Given the importance of the PRP, it reflects poorly on the College and the profession when regulated members are cavalier about this requirement. In the circumstances, the proven conduct in Charge 2 constitutes unprofessional conduct.

Charge 3 – On or about January 17, 2022 through March 31, 2022 you failed to respond and/or failed to respond promptly and/or failed to respond meaningfully to communications from the College concerning your completion of the Patient Relations Program, contravening Article 6.2(c) of the College’s Code of Ethics and Standard of Practice 6.2(g) of the College’s Standards of Practice.

In January 2022, the College sent several email reminders advising Ms. Huber of the requirement to complete the PRP, including on January 17 and January 31. As of February 8, Ms. Huber had not responded and had not complied with the requirement to complete the PRP, so the Registrar referred the matter to the Complaints Director as a formal complaint.

The College did not receive a response from Ms. Huber concerning her failure to complete the PRP until after the Complaints Director initiated an investigation of her conduct under section 55 of the *Health Professions Act*. In an email to the Complaints Director on February 28, 2022, Ms. Huber confirmed she had received an email in January 2022 about not completing the PRP. Ms. Huber stated she had not realized she “clicked completed” when submitting her Practice Permit Renewal Application. Ms. Huber indicated she had responded to the January 2022 email stating she was no longer working as a dental assistant as of December 2021. In her February 28, 2022 email, she questioned whether her earlier email had perhaps not reached the College.

As set out in the Agreed Statement of Facts, Ms. Huber became a regulated member of the College of Registered Dental Hygienists of Alberta in August 2021, and as of January 2022 was working as a dental hygienist.

The Hearing Tribunal considered Ms. Huber’s communication with the College about the completion of the PRP and found her communications did not meet a professional standard as set out in Article 6.2(c) of the Code of Ethics and Standard of Practice 6.2(g). The Hearing Tribunal finds Charge 3 is factually proven and amounts to unprofessional conduct.

Charge 4 – On or about February 17, 2022 through March 31, 2022 you failed and/or failed to meaningfully cooperate with an investigator appointed pursuant to Part 4 of the *Health Professions Act*, which contravenes section 63(1) of the *Health Professions Act*.

The Registrar referred Ms. Huber’s conduct to the Complaints Director as a formal complaint by letter dated February 8, 2022. By letter dated February 17, 2022, the Complaints Director advised Ms. Huber that an investigation of her conduct had been commenced under section 55 of the *Health Professions Act* and that the Complaints Director would be conducting the investigation. The Complaints Director requested Ms. Huber’s written explanation respecting the matters listed in the Notice of Investigation, which was attached to the Complaints Director’s February 17, 2022 letter. The Complaints Director also advised Ms. Huber that because she still had not completed the PRP, she was now subject to a late charge of \$75.

In Ms. Huber’s email response on February 28, 2022 (referenced above under Charge 3), she indicated she was no longer a practicing dental assistant and would not be renewing her license or paying the late fee. She advised she was prepared to cancel her license if needed.

The Complaints Director responded by email on February 28, 2022, advising Ms. Huber that her options were either to complete the PRP, pay the late fee and keep her practice permit active for the remainder of the 2022 registration year, or to submit a cancellation request effective immediately. However, Ms. Huber would not be cancelling in good standing because she had not completed the PRP. The

Complaints Director requested a response from Ms. Huber by March 4, 2022, indicating which course of action Ms. Huber chose. Ms. Huber did not reply.

Ultimately, Ms. Huber completed the PRP on August 2, 2022. During the hearing, the Complaints Director confirmed Ms. Huber asked for her practice permit to be cancelled in fall of 2022.

Given that section 63 of the *Health Professions Act* authorizes an investigator (or the Complaints Director when conducting an investigation) to require any person to answer relevant questions, and Ms. Huber did not provide a response to the Complaints Director's February 28, 2022 email asking her a direct question, the Hearing Tribunal finds Charge 4 is factually proven.

More generally, the Hearing Tribunal found Ms. Huber's conduct showed a lack of meaningful cooperation, especially in light of the College's repeated efforts to engage with Ms. Huber about the requirement to complete the PRP.

The Hearing Tribunal found Ms. Huber's failure to meaningfully cooperate with the Complaints Director while the Complaints Director investigated Ms. Huber's conduct rose to the level of unprofessional conduct. When regulated members of the College do not meaningfully cooperate during an investigation, or are cavalier in their communication with the College, it harms the integrity of the profession.

Submissions Regarding Penalty

After the Hearing Tribunal advised the parties of its finding that each of the four allegations was factually proven and constituted unprofessional conduct, Mr. Maxston confirmed the parties were making a Joint Submission Regarding Penalty.

Mr. Maxston submitted the Hearing Tribunal has authority under section 82 of the *Health Professions Act* to make three types of orders: (1) general orders; (2) orders requiring the investigated person to pay all or a part of the costs of the investigation and hearing; and (3) fines. The maximum fines that can be imposed are set out in section 158 of the *Health Professions Act*, and section 4 of the Dental Assistants Schedule (\$1,000 per finding, to an aggregate maximum of \$5,000).

Mr. Maxston noted that the Hearing Tribunal was not bound by the Joint Submission Regarding Penalty, but the Joint Submission sets out what both the Complaints Director and Ms. Huber submit are fair and appropriate in the circumstances. Mr. Maxston referred to case law that requires the Hearing Tribunal to show considerable deference to the Joint Submissions Regarding Penalty and only depart from it if it would bring the administration of justice into disrepute or otherwise be contrary to the public interest.

In the Joint Submission Regarding Penalty, the parties identified the factors relevant in determining appropriate penalty orders, including: the nature and gravity of the proven allegations, the age and experience of the member, the presence or absence of any prior complaints or findings of unprofessional conduct; the number of times the unprofessional conduct was proven to have occurred, the member's role in acknowledging what occurred, any serious financial or other penalties the member has already suffered as a result of the allegations, the impact of the incident on the complainant, the presence or absence of any mitigating circumstances, the need to promote specific deterrence 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 conduct was outside the range of permitted conduct, and the range of sentences in similar cases.

Applying a number of these factors, the parties jointly submitted that Ms. Huber should be required to pay a fine of \$250 and a portion of the investigation and hearing costs in the amount of \$1,000, to be

paid in monthly installments over a two year period commencing one month from the date of the Hearing Tribunal's decision, failing which her practice permit would be automatically suspended until she paid the fine and costs in full, and that the Hearing Tribunal's decision be published on the College's website with Ms. Huber's name. In response to questions from the Hearing Tribunal, the parties amended the Joint Submission Regarding Penalty to clarify the consequences in the event Ms. Huber did not pay the fine and costs as required, in light of the fact Ms. Huber had cancelled her practice permit and registration in fall of 2022.

Orders

The Hearing Tribunal adjourned to deliberate and advised the parties it accepted the Joint Submission Regarding Penalty, as amended.

The Hearing Tribunal recognizes that any penalty orders it makes must be fair, reasonable and proportionate taking into account the facts of this case. The Hearing Tribunal carefully considered the evidence before it and the orders jointly proposed by the parties, and carefully reviewed its authority under the *Health Professions Act* concerning the making of penalty orders.

The Hearing Tribunal makes the following orders:

1. Ms. Huber shall pay a fine of \$250.00;
2. Ms. Huber shall pay the amount of \$1,000.00 representing a portion of the investigation and hearing costs;
3. The aforesaid fine and costs are to be paid in monthly instalments without interest over a two (2) year time period commencing one (1) month from the date of the Hearing Tribunal's written decision, provided, however, that if Ms. Huber should fail to make a monthly payment, the entire balance of the aforesaid fine and costs shall become immediately due and payable and
 - a. if Ms. Huber has an active practice permit with the College, Ms. Huber's practice permit shall be automatically suspended until such time as the aforesaid fine and costs are paid in full, or
 - b. if Ms. Huber does not have an active practice permit with the College, Ms. Huber shall not be eligible to apply for reinstatement of her practice permit until such time as the aforesaid fine and costs are paid in full.
4. Pursuant to the College's Bylaws, the College shall publish the Hearing Tribunal's written decision on its website with Ms. Huber's name.

In making the above orders, the Hearing Tribunal agrees with the parties that Ms. Huber's conduct was below the required ethical standards for Dental Assistants in Alberta, showed a lack of judgment and professionalism, and was harmful to the integrity of the profession. The Hearing Tribunal also agrees it is a significant mitigating factor that Ms. Huber has taken responsibility for her actions by admitting her unprofessional conduct and proceeding by agreement in this hearing is a significant mitigating factor, and that this is the first time Ms. Huber has faced professional disciplinary proceedings. The Hearing Tribunal is satisfied that the orders set out above are in line with the range of sanctions imposed in similar cases, and send a clear message to Ms. Huber, other members of the profession, and the public that such conduct is not tolerated within the profession. Dental Assistants must comply with requirements such as completing the PRP, must be responsive to and communicate professionally with the College, and must meaningfully cooperate with an investigator when facing professional conduct proceedings under Part 4 of the *Health Professions Act*.

At the conclusion of the hearing, after the Hearing Tribunal advised the parties of its decision regarding penalty, Ms. Huber made a brief statement to the Hearing Tribunal. She expressed her remorse for her conduct and assured the Hearing Tribunal this was an important lesson for her that she would take with her as a professional.

Dated at the City of Edmonton, in the Province of Alberta, on Monday, the 19 day of December 2022.

Signed on Behalf of the Hearing Tribunal
by its Chairperson



Ms. Patricia Demchuk, RDA