

Decision of the Discipline Committee of the Saskatchewan Dental Assistants' Association

Tanis Martens



Discipline Committee:

Mary Jane Katz (Chair and Member)

Shannon Kehler (Member)

Gillian Isabelle (Member)

Participants:

Tim Hawryluk, legal counsel for the Professional Conduct Committee (PCC) of the Saskatchewan Dental Assistants' Association (SDAA)

Tanis Martens, by telephone

Douglas Heinrichs, QC, legal counsel for Tanis Martens, by telephone

Anne Hardy, legal counsel for the SDAA Discipline Committee

Introduction

1. The Discipline Committee convened a hearing at 10:00 a.m. on Saturday, May 9, 2015, the time and date agreed by the parties for the hearing of this matter. Tanis Martens and her counsel participated by telephone.
2. At the outset of the hearing, Tanis Martens confirmed her identity and acknowledged that she is a member of the SDAA and subject to *The Dental Disciplines Act*, that she is the subject of the complaint, and that she had been served with the Notice of Hearing. Ms. Martens also acknowledged the authority of the Discipline Committee to hear and determine the complaint against her, and that she had no objection to the composition of the Discipline Committee.
3. The Notice of Hearing stated the following charges brought against Ms. Martens by the PCC:
That you are guilty of professional misconduct contrary to the provisions of section 27(a) and/or (b) and/or (c) of *The Dental Disciplines Act* S.S., 1997, d-4.1, and/or section 14.6.1 and/or section 14.6.10 of Bylaw 14 "Discipline Committee" of the Regulatory Bylaws, section 16.3 of Bylaw 16 "Standards of Practice" of the Regulatory Bylaws and the "Dental Jurisprudence" section of Bylaw 15 "Code of Ethics" of the Regulatory [Bylaws] in that:
 - (a) Between the 1st day of November 2012 and the 29th day of August 2013 at or near Swift Current, Saskatchewan, you did fraudulently submit claims for



reimbursement to Manulife Financial in relation to dental work and procedures that had not been performed, without the consent or directly of Dr. David Stock and the Anchor Dental Group;

- (b) Between the 1st day of November 2012 and the 29th day of August 2013 at or near Swift Current, Saskatchewan, you did by deceit, falsehood or other fraudulent means secure and deposit cheques, which were payable from Manulife Financial, as a result of you submitting insurance claims to Manulife Financial for dental work and procedures that had not been performed; and
 - (c) Between the 1st day of May 2013 and the 30th day of May 2013 at or near Swift Current, Saskatchewan, you did unlawfully remove and wrongfully convert gold, the property of Dr. David Stock and the Anchor Dental Group, without the consent or direction of Dr. David Stock and Anchor Dental Group.
4. Prior to the hearing, Ms. Martens indicated through her counsel that she intended to plead guilty to these charges.
 5. At the hearing, Ms. Martens confirmed her guilty plea to the charges outlined in the Notice of Hearing. The hearing then proceeded to consider the evidence and discuss the appropriate penalty to be imposed.
 6. At the conclusion of the hearing, the Discipline Committee indicated that it reserved its decision and that its decision and written reasons would follow. After considering the submissions of the PCC and counsel for Ms. Martens, along with the documents tendered as exhibits at the hearing, the Discipline Committee has made this decision.

Facts

7. Ms. Martens and her counsel signed an Agreed Statement of Facts, a copy of which (without the Exhibits) is attached hereto and forms part of this Decision. A summary of the relevant facts is as follows:
8. Ms. Martens was born on May 21, 1987, and was age 27 at the date of the hearing. She completed her training as a dental assistant in 2006 and was registered as a member of the SDAA from that time to March, 2014.
9. Ms. Martens began work at Anchor Dental Group upon completing her training as a dental assistant. She claims to have been promoted to office manager at some point, and thereafter to have worked in that capacity as well as continuing to work as a dental assistant.
10. On or about March 12, 2014, the SDAA received a written complaint (the "Complaint") from Dr. David Stock and the Anchor Dental Group, respecting the alleged conduct of Ms. Martens. The Complaint related to a theft of gold and a series of fraudulent insurance claims:



Theft of gold

- a. On or about May 1, 2013, Tanis Martens removed gold crowns and other gold products from a storage container at the Anchor Dental Group and then submitted the gold to a gold buyer (KMG) by mail. She received a payment from KMG in the amount of \$845.32.
- b. Tanis Martens subsequently repaid this amount to Dr. David Stock and the Anchor Dental Group, along with an additional amount that would have been paid to Dr. Stock and the Anchor Dental Group had the gold been sold through another gold broker. This additional amount totaled approximately \$574.00.
- c. During Dr. Stock's initial investigation of the "missing gold", Ms. Martens denied any involvement. This resulted in Dr. Stock suspecting other staff members as being responsible.

Fraudulent insurance claims

- d. Between the 1st day of November, 2012 and the 29th day of August, 2013, Ms. Martens submitted 97 claims (the "Claims") to Manulife for dental work supposedly performed by the Anchor Dental Group in regards to Ms. Martens, her husband, her daughter and her son. The Claims were made under the insurance policy of Ms. Martens' husband. They were submitted electronically from Anchor Dental Group. The work had not been done.
- e. Concurrent with submitting the Claims, Ms. Martens contacted Manulife and arranged for the payments to be forwarded directly to her, and not to Dr. David Stock or the Anchor Dental Group, as would be usual.
- f. Between November 16, 2012 and August 29, 2013, Ms. Martens made 32 follow up calls to Manulife to confirm either that certain dental procedures had been carried out or that payments were being sent to her home address. In many of these calls, she held herself out as one of her coworkers at Anchor Dental Group. She participated in some of the calls as two persons, both a co-worker and herself.
- g. The total payments paid by Manulife in relation to the Claims totalled \$10,600.00.
- h. Manulife requested that Dr. Stock review a verification report concerning the Claims and compare it to his offices' patient charts and billing ledgers, so as to confirm or deny that the services were rendered. It subsequently directed the Anchor Dental Group to review and confirm all claims submitted to Manulife in relation to Ms. Martens and her family members for a period of two years, to confirm the validity of each claim submitted.
- i. Dr. Stock requisitioned an audit from MNP, to determine whether Ms. Martens had made fraudulent insurance claims in the names of patients other than members of her

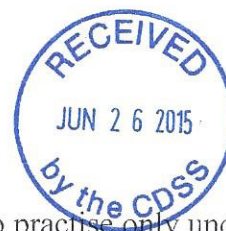


family, and also to comment on his office practices. During her initial interviews with MNP, Ms. Martens suggested that the Manulife submissions had been made in error, and resulted from her training other employees of the Anchor Dental Group on the group's computer system. Ms. Martens subsequently conceded that the Claims were not submitted in error, but were purposefully submitted.

- j. Ms. Martens has made restitution to Manulife for the full amount of the Claims.
11. When questioned by the Chair as to her motivation for the thefts and fraud, Ms. Martens indicated only that she felt frustrated because her employer had asked her to be the office manager, but had given her no increase in pay. She felt that she did not take money directly from her employer in making fraudulent claims to Manulife.
 12. During the hearing, Ms. Martens apologized to the SDAA and to others whom she had hurt. She indicated that she had apologized to Dr. Stock and to some of her former coworkers. Other coworkers refused to talk with her.
 13. Ms. Martens has no prior criminal history or discipline history. She is currently working two days per week at an optical company, at a pay rate of \$20.00 per hour. She and her husband have three young children.

Decision on penalty

14. The PCC suggested that the appropriate penalty would be a suspension of Ms. Martens's license and payment of all costs incurred by the PCC and SDAA to investigate and prosecute this matter. It also noted that Ms. Martens' employer, Dr. Stock, was hoping for an order directing that he be reimbursed for the cost of the audit by MNP. On Ms. Martens' behalf, her counsel acknowledged that she was likely to be suspended and that she would be ordered to pay some costs. He questioned the amount of costs incurred by the PCC and SDAA, and questioned the jurisdiction of the Discipline Committee to direct that Dr. Stock be reimbursed for the cost of the audit.
15. The authority of the Discipline Committee to order a penalty in this matter is grounded in ss. 34 of *The Dental Disciplines Act*:
 - 34(1) Where a discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:
 - (a) an order that the member be expelled from the association and that the member's name be struck from the register;
 - (b) an order that the member be suspended from the association for a specified period;
 - (c) an order that the member be suspended pending the satisfaction and completion of any conditions specified in the order;



(d) an order that the member may continue to practise only under conditions specified in the order, which may include, but are not restricted to, an order that the member:

- (i) not do specified types of work;
 - (ii) successfully complete specified classes or courses of instruction;
 - (iii) obtain medical treatment, counselling or both;
- (e) an order reprimanding the member;
- (f) any other order that the discipline committee considers just.

16. Although no criminal charges have been laid against her, Ms. Martens was involved in an extensive and repeated course of criminal activity, directed partly at her employer, and carried out primarily at her workplace. Ms. Martens has pled guilty to the charges of misconduct before the Discipline Committee. The conditions for the Discipline Committee to act under ss. 34 of *The Dental Disciplines Act* to make an order of penalty have therefore been satisfied.

17. In determining the appropriate penalty, the Discipline Committee has considered the oral submissions of the PCC and of Ms. Martens and her counsel, along with the documents tendered as exhibits at the hearing.

18. The Discipline Committee has also considered the following factors (adapted as appropriate to the dental assistant profession), outlined at paragraph 49 of the decision of *Camgoz v College of Physicians and Surgeons (Saskatchewan)* (1993) 114 Sask R 161 (SKQB) as being relevant to a determination of penalty for professional misconduct:

1. The nature and gravity of the proven allegations;
2. The age of the offending physician;
3. The age of the offended patient;
4. Evidence of the frequency of the commission of the particular acts of misconduct within particularly, and without generally, the Province;
5. The presence or absence of mitigating factors, if any;
6. Specific deterrence;
7. General deterrence;
8. Previous record, if any, for the same, or similar, misconduct; the length of time that has elapsed between the date of any previous misconduct and conviction thereon; and, the members (properly considered) conduct since that time;
9. Ensuring that the penalty imposed will ... protect the public and ensure the safe and proper practice of medicine;

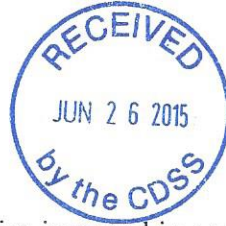


10. The need to maintain the public's confidence in the integrity of the respondent's ability to properly supervise the professional conduct of its members;
11. Ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same or similar acts of misconduct.
19. Consideration of the above factors was approved in two similar recent cases, one involving a Member of the SDAA and the other involving a Member of its sister organization, the Saskatchewan Dental Therapists Association (SDTA). The case involving the SDAA is *Saskatchewan Dental Assistants' Association v. Fedak*, a decision dated June 24, 2013. The case involving the SDTA is *Saskatchewan Dental Therapists Association v. Mills*, a decision dated December 28, 2009.
20. The Discipline Committee has considered all of the factors set out in the list in *Camgoz*, (with the exception of the third factor, which is not relevant) in determining what penalty is appropriate.
21. With respect to the nature and gravity of the misconduct, the Discipline Committee viewed it as extremely serious. Ms. Martens committed both theft and a repeated series of frauds. She misrepresented herself in calls to the insurer. She not only did not admit the misconduct at first, but also implicated other workers. The frauds affected her employer and involved her husband and children. She abused a position of trust with a long term employer.
22. The Discipline Committee took into account as an aggravating factor the fact that Ms. Martens did not approach her employer about a raise when her employment duties changed. Instead, she chose to obtain extra money by dishonest means. Ms. Martens had worked with Dr. Stock for many years and had been moved into a position of considerable trust. Her abuse of this position is reprehensible.
23. It is also a significant aggravating factor that the theft and frauds involved a substantial amount of money, obtained by consistent, repeated, planned actions over a protracted period of time. Aside from stealing gold from her employer, Ms. Martens made 97 fraudulent insurance claims between November, 2012 and May, 2013. She made a number of follow up calls to the insurer, often pretending to be someone else, and sometimes presenting herself as two persons in one call. Her behaviour can only be described as brazen. As in *Fedak*, "this was not a single spontaneous or impulsive error of judgement on the part of [the Member] but an ongoing pattern of dishonest behaviour that continued until it was eventually discovered".
24. At the time of the misconduct, Ms. Martens was in her mid-twenties and had been at the same dental office for 7 years. Her age and experience were considered by the Discipline Committee to be aggravating factors. She should have been sufficiently mature to consider the gravity of her actions. Through her experience, she had gained a position of trust which she then abused.



25. The Discipline Committee also considered several mitigating factors. Ms. Martens has no prior criminal history. She eventually confessed to the theft of gold and to making the fraudulent insurance claims. She made restitution for all misappropriations that were uncovered. She has apologized for her actions.
26. The Discipline Committee took into account that Ms. Martens has not previously been found guilty of any misconduct as a member of the SDAA and has been a member in good standing for a number of years.
27. At the same time, after considering the documents and the oral submissions by Ms. Martens, members of the Committee were left with considerable doubt as to whether she fully takes responsibility for her actions and their effect on her employer, her coworkers and her family. Ms. Martens showed a disturbing sense of entitlement in deciding to steal from her employer, rather than approaching him for a raise. She confessed to the theft of gold only after implicating coworkers. Although she acknowledged having received money from the insurer for nonexistent claims, she tried to minimize her behaviour in discussions with the insurer and with MNP. Even in all of the letters to her employer and the SDAA and in her remarks during the hearing, she continually referred to her activity as ‘making mistakes’. She does not appear to recognize that she did not make an unintentional error, as suggested by the word ‘mistake’, but carried out a deliberate, systematic plan to steal and defraud. Because the fraudulent claims were made at her workplace, they could have jeopardized her employer’s ability to submit legitimate claims to the insurer, and could have jeopardized her husband’s insurance coverage. The Committee is of the view that Ms. Martens does not have sufficient judgment to be placed in a position of trust.
28. General deterrence is also relevant. Dental assistants often hold positions of trust in dental practices. It is important that the penalty in this case, as in the *Fedak* case, send a signal to all members of the SDAA that dishonesty and abuse of trust will not be tolerated.
29. The Discipline Committee adopts the following passage from the *Fedak* case:

“the Committee considers that a significant penalty is required in this case to ensure that the public is protected and that confidence is maintained in the SDAA’s ability to supervise the conduct of its members. If employers and members of the public are to trust dental assistants, especially when they act as office managers, any abuse of their position must be subject to severe sanction. We hope to demonstrate through this decision that the SDAA takes misconduct in general, and this matter in particular, very seriously, and will impose significant penalties where necessary to protect the public and the integrity of the profession”.
30. The Discipline Committee has reviewed both the *Mills* and the *Fedak* cases, which appear to be the only Saskatchewan cases involving professionals who were subject to *The Dental Disciplines Act* and who were disciplined for theft or fraud. The Discipline Committee has

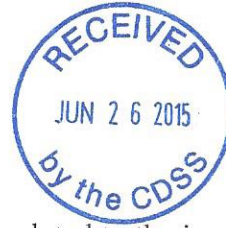


considered the circumstances of the misconduct and the penalties imposed in each of those cases.

31. The Discipline Committee considers Ms. Martens' conduct to be even more reprehensible than the conduct of either Ms. Mills or Ms. Fedak. Ms. Mills forged two cheques from her employer to herself. Ms. Fedak used the refund function on her employer's debit machine to transfer money into her own account, initially denying the frauds. Both women were charged and convicted of criminal offences. Ms. Mills was suspended until such time as she completed a course in dental ethics, and was ordered to reimburse the full costs of the SDTA for the investigation and hearing into her conduct. Ms. Fedak was suspended for a period of 2 years, and pending completion of a course in professional ethics, an assessment and payment of costs fixed at \$5000.00. Ms. Martens carried out substantially more instances of theft or fraud over a longer period of time. The investigation into her conduct was exponentially more complicated than the investigations in either the *Mills* or *Fedak* cases.
32. Considering all of the relevant factors, the Committee concluded that a penalty more severe than the penalties in either the *Mills* or *Fedak* case is appropriate. The Committee considered and rejected the most severe penalty, permanent expulsion, as being too harsh. However, it also rejected a short period of suspension, considering the balance of aggravating and mitigating factors and the need for specific and general deterrence.
33. The Discipline Committee has reviewed the Affidavit of Susan Anholt (Executive Director of the SDAA) summarizing the costs assessed and estimated as costs of these proceedings, and is satisfied that the costs have been properly incurred by the SDAA in complying with its statutory responsibilities in the conduct of this matter.
34. The Discipline Committee is sympathetic to the wish of Dr. Stock to be reimbursed for the cost of the audit carried out by MNP. However, it feels that making an order that a Member reimburse expenses incurred by a third party is inappropriate, particularly since the audit requisitioned by Dr. Stock served the function of identifying weaknesses in his office practices, as well as determining whether Ms. Martens filed fraudulent claims in the names of patients other than members of her family. Making a civil claim against Ms. Martens would be a more appropriate means of determining the extent of her liability for this expense.

Order

35. The Discipline Committee therefore makes the following order of penalty against Ms. Martens:
 1. The Member shall be expelled from the Association and her name shall be struck from the register;
 2. The Member shall be prohibited from reapplying for membership in the Association for a period of 5 years;



3. The member shall reimburse in full the costs of the SDAA related to the investigation and hearing into her conduct, such costs being determined to be \$24,733.25. Such costs must be paid before she is reinstated as a member of the Association.

This decision dated as of June 17, 2015

Mary Jane Katz
Mary Jane Katz, Chair and Member

Shannon Kehler
Shannon Kehler, Member

Gillian Isabelle
Gillian Isabelle, Member

