



Saskatchewan Dental Therapists Association

**IN THE MATTER OF THE DENTAL PROFESSIONS ACT, 1997 AND THE BYLAWS
OF THE SASKATCHEWAN DENTAL THERAPISTS ASSOCIATION IN THE MATTER
OF THE COMPLAINT AGAINST KIMBERLY MILLS OF SASKATOON,
SASKATCHEWAN.**

DECISION

of

The Saskatchewan Dental Therapists Association

DISCIPLINE COMMITTEE

Discipline Committee Members:

Darren G. Berg, SDT. - Chairperson
Ellen Dancsok, SDT. - Member
Karman Kawchuk, Consumer Representative

Participants:

Gwen V. Goebel, legal counsel for the SDTA Professional Conduct Committee (PCC).
Kimberly Mills, appearing on her own behalf
Shelly Joyce, legal counsel for the SDTA Discipline Committee (DC)

INTRODUCTION:

The Discipline Committee of the Saskatchewan Dental Therapists Association convened a hearing on Saturday, September 12th, 2009 by telephone conferencing at the time and date agreed to by the parties for the hearing in this matter.

Kimberly Mills (hereinafter referred to as the member) is a member of the Saskatchewan Dental Therapists Association (hereinafter referred to as the SDTA) and at all times material to the complaint against her was a dental therapist registered and licensed to practice in the Province of Saskatchewan.

The Notice of Hearing containing the formal complaint against her alleged that Ms. Mills was guilty of professional misconduct within the meaning of the Dental Disciplines Act, 1997 (hereinafter referred to as the Act) based upon the following:

That the member is guilty of professional misconduct contrary to the provisions of section 27 (a) and/or (b) and/or (c) and or section 35 of The Dental Disciplines Act S.S, 1997, d-4-41, and or section 1 (1) and/or (3) and/or (7) of the Bylaw IV of the Saskatchewan Dental Therapist Association Bylaws (hereinafter referred to as the bylaws) in that:

1. *on or about May 11th, 2007, the member did by deceit, falsehood and or other fraudulent means defraud Packham Avenue Dental of money of the sum of \$1,654.89 by writing herself a cheque contrary to section 380 (1) (b) of the Criminal Code; and/or*
2. *on or about August 20th, 2007, the member did by deceit, falsehood and or other fraudulent means defraud Packham Avenue Dental of money of the sum of \$2,214.96 by writing herself a cheque contrary to section 380 (1) (b) of the Criminal Code; and/or*
3. *on or about September 24, 2008, the Honorable Judge S. Goldstein of the Provincial Court of Saskatchewan did enter a conviction against the member finding her guilty of the allegations provided for at paragraphs (1.1) and (1.2) herein.*

Originally, a hearing was set for 1:00 p.m. on Saturday, September 12th, 2009 at Room 622, SIAST, Wascana Campus, Regina, Sask. for the purpose of hearing this matter.

In advance of the hearing, Ms. Mills communicated her intention to plead guilty to the charges as drafted. As such, the Discipline Committee was informed that the hearing would be for the purposes of reading the charges into the record, having the member enter a formal plea, and determining the appropriate penalty that may be levied by the panel.

Ms. Mills and the PCC requested of the Discipline Committee to have the matter proceed by teleconference to reduce costs to the SDTA, and possibly the member in the event that the payment of costs would be assessed as part of the penalty.

Accordingly, a revised Notice of Hearing was provided to Ms. Mills to proceed by teleconference at 1:15 p.m. the same day. Ms. Mills arranged to meet at the Saskatoon office of the counsel for the PCC to participate in the hearing by teleconference.

In advance of the hearing, a "SUBMISSION TO THE DISCIPLINE HEARING COMMITTEE PENALTY HEARING FOR KIMBERLY MILLS" was prepared by the counsel for the PCC, with some discussion with Ms. Mills, and submitted to the Discipline Committee for their consideration. Ms. Mills had been provided copies of all documents in the possession of counsel for the PCC prior to the hearing.

There was not an "Agreed Statement of Facts & Documents" submitted to the Discipline Committee prior to the hearing, however, Ms. Mills did formally acknowledge the following at the hearing:

1. That she had been served the formal charges as outlined in the Notice of Hearing that was provided to her.
2. That she accepted the allegations as "correct".
3. That she had received a copy of the "SUBMISSION TO THE DISCIPLINE HEARING COMMITTEE PENALTY HEARING FOR KIMBERLY MILLS".
4. That she agreed to the summary of facts and recommendations for penalties as outlined in the "SUBMISSION TO THE DISCIPLINE HEARING COMMITTEE PENALTY HEARING FOR KIMBERLY MILLS".

FACTS:

1. Ms. Mills graduated in 2006 and was first registered as a member of the SDTA on September 10, 2006.
2. Ms. Mills began practicing at the Packham Avenue Dental clinic? with Dr. Glenda Orr in May, 2006. During the course of her employment, she became dissatisfied with the employment arrangements with Dr. Orr and the relationship between her and her employer became strained.
3. On or about May 11th, 2007, approximately 8 months after becoming a member of the SDTA, she wrote a cheque to herself from her employer in the sum of \$1,654.89.
4. This behavior went unnoticed, and approximately 3 1/2 months later on August 20th, 2007 she wrote another cheque to herself from her employer in the sum of \$2,214.96.
5. In September, 2007, Ms. Mills ceased working for Dr. Orr. Subsequently, Dr. Orr discovered what she had done and reported her behavior to the police and to the SDTA. As a result, by Information #31330878 dated March 12, 2008, Ms. Mills was charged with 2 X Section 380 (1) (b) - Fraud under the Criminal Code of Canada.
6. Ms. Mills pled guilty to the criminal charges and was sentenced on September 24, 2008 by the Honorable Judge Goldstein of the Provincial Court of Saskatchewan. A pre-sentence report was prepared although a copy was not provided to the SDTA. The transcription from the sentencing hearing indicates that the Crown Attorney, Lori Chambers, recommended counseling as part of Ms. Mills's sentence. In so doing Ms. Chambers stated that there appeared to be no reason for her to steal from her employer other than for the personal satisfaction she seemed to get out of it.

7. In making his decision, Judge Goldstein held that the fact that there were two incidents on two separate occasions was a relevant consideration to the sentence:

"If it would have been just the one incident, I would consider the matter of a conditional discharge. I considered that. But since it was on two different occasions, I'm going to order a suspended sentence containing all of the usual statutory provisions. And there will be a requirement for the repayment of the sum of \$3,869.95, payable at the rate of \$200 each month."

8. Restitution was ordered which required Ms. Mills to pay into the Court the sum of \$3,869.95 in trust for Packham Avenue Dental. This Restitution Order has been completed.
9. Ms. Mills has accepted the allegations as "correct" and pled guilty to the charges as outlined above.

LEGISLATION:

The Dental Disciplines Act, 1997 defines professional incompetence and professional misconduct in the following manner:

Professional Incompetence

26 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgement, or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:

- a) continue in the practice of that member's profession; or
- b) provide one or more services ordinarily provided as a part of the practice of that member's profession;

is professional incompetence within the meaning of this Act.

Professional Misconduct

27 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonorable, is professional misconduct within the meaning of this Act if:

- a) it is harmful to the best interests of the public or the members of the association;
- b) it tends to harm the standing of the member's profession;
- c) it is a breach of this Act or the bylaws of that member's association; or
- d) it is a failure to comply with an order of the professional conduct committee, discipline committee or council of that member's association;

The Dental Disciplines Act, 1997 provides the Discipline Committee with the authority to hear and determine a formal complaint that has been referred to it by the Professional Conduct Committee.

Discipline Hearing

33 (3) The discipline committee shall hear a complaint and shall determine whether or not the member is guilty of professional misconduct or professional incompetence, notwithstanding that the determination of a question of fact may be involved, and the discipline committee need not refer to any question to a court for adjudication.

The Dental Disciplines Act, 1997 also provides the Discipline Committee with the authority to impose penalties or sanctions where it finds a member guilty of professional misconduct or professional incompetence.

Disciplinary Powers

34 (1) Where the 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 practice 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, counseling or both;
- e) an order reprimanding the member;
- f) any other order that the discipline committee considers just.

(2) In addition to an order made pursuant to subsection (1), the discipline committee may order:

- a) that the member pay the association within a fixed period;
 - i) a fine in a specified amount not exceeding \$5,000; and
 - ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses; and
- b) where a member fails to make payment in accordance with an order pursuant to clause a), that the member be suspended from the association.

Criminal Conviction

35 The discipline committee may, by order, impose any penalty described in section 34 that to it seems just where:

- a) the member has been convicted of an offense pursuant to the Criminal Code, the Narcotic Control Act (Canada) or the Food and Drugs Act (Canada);
- b) a report of the professional conduct committee is made to the discipline committee respecting the conviction mentioned in clause a);
- c) the discipline committee has given the member mentioned in clause a) an opportunity to be heard; and
- d) the discipline committee finds that the conduct of the member giving rise to the conviction mentioned in clause a) constitutes professional misconduct.

The Dental Disciplines Act, 1997 provides the member with the right to appeal a decision or order of the Discipline Committee when the member has been found guilty of professional misconduct or professional incompetence.

APPEAL

Review by court

38 (1) A member may appeal the decision or any order of the discipline committee to a judge of the court by serving the registrar with a notice of appeal and filing the notice with the local registrar within 30 days after the decision or order where:

(a) the member has been found guilty of professional misconduct or professional incompetence by the discipline committee pursuant to section 33; or the member is subject to an order of the discipline committee pursuant to section 34 or 35.

(2) An appellant shall set out the grounds of appeal in a notice of appeal mentioned in subsection (1).

(3) On receipt of a notice of appeal, the registrar shall file with the local registrar a true copy of:

- (a) the formal complaint and notice served pursuant to section 33 or the report of the professional conduct committee pursuant to section 35;
- (b) the transcript of the evidence presented to the discipline committee;
- (c) the exhibits received in evidence by the discipline committee; and
- (d) the decision and order of the discipline committee.

(4) The appellant or the appellant's solicitor or agent may obtain from the registrar a copy of the documents filed pursuant to subsection (3) on payment of the costs of producing them.

(5) On hearing an appeal the judge may:

- (a) dismiss the appeal;
- (b) quash the finding of guilt;
- (c) direct a new hearing or further inquiries by the discipline committee;
- (d) vary the order of the discipline committee; or
- (e) substitute the judge's own decision for the decision appealed from.

(6) The judge may make any order as to costs that the judge considers appropriate, including an order as to which party shall bear the cost of the transcripts and other material filed with the local registrar pursuant to subsection (3).

SDTA Bylaw IV - CODE OF PROFESSIONAL ETHICS

Section 1 - Code of Professional Ethics

- 1) It is the duty of every dental therapist to uphold the honour and dignity of the profession and adhere to the principles set forth in the Code of Professional Ethics;

- 2) A dental therapist shall not make any statement or declaration or sign any document which the therapist knows, or ought to know, to be untrue, misleading or otherwise improper;
- 3) Every dental therapist shall give whole hearted support to the highest standards of integrity, honesty, competence and devotion to the common good of the profession;

All members of the Association are required to adhere to the provisions of the Act, Bylaws and Professional Code of Ethics.

ANALYSIS:

The formal complaint as outlined by the Professional Conduct Committee alleged that Ms. Mills was guilty of Professional Conduct within the meaning of the Dental Disciplines Act, 1997 and Saskatchewan Dental Therapists Association Bylaws in that:

Charge # 1.1

- on or about May 11th, 2007, the member did by deceit, falsehood and or other fraudulent means defraud Packham Avenue Dental of money of the sum of \$1,654.89 by writing herself a cheque contrary to section 380 (1) (b) of the Criminal Code; and/or

Charge # 1.2

- on or about August 20th, 2007, the member did by deceit, falsehood and or other fraudulent means defraud Packham Avenue Dental of money of the sum of \$2,214.96 by writing herself a cheque contrary to section 380 (1) (b) of the Criminal Code; and/or

Charge #3

- on or about September 24, 2008, the Honorable Judge S. Goldstein of the Provincial Court of Saskatchewan did enter a conviction against the member finding her guilty of the allegations provided for at paragraphs (1.1) and (1.2) herein.

In this case, Ms. Mills has admitted that, on two separate occasions, she defrauded her employer of the amounts of \$1,654.89 and \$2,214.96 and plead guilty at the Discipline Hearing to the charges above.

On September 24, 2008. Mills plead guilty in Provincial Court to the criminal charges as outlined above. It was noted by the court and of concern to the Discipline Committee that there were 2 separate occasions where Ms. Mills chose to defraud her employer. Mills was convicted of the offences and given a suspended sentence and ordered to pay restitution for the full amount of \$3,869.95. The Restitution Order has already been paid in full.

Professional Misconduct , as defined in the Act (and set out above), "is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonorable, is professional misconduct within the meaning of this Act if:

- a) it is harmful to the best interests of the public or the members of the association;
- b) it tends to harm the standing of the member's profession;
- c) it is a breach of this Act or the bylaws of that member's association;"

The Code of Professional Ethics provides guidance for decision-making concerning ethical matters and appropriate conduct of dental therapists in their professional practice. This Code identifies the principles, values and beliefs that all dental therapists must aspire to. The Code of Professional Ethics (as set out above) states that:

- 1) It is the duty of every dental therapist to uphold the honor and dignity of the profession and adhere to the principles set forth in the Code of Professional Ethics;

- 2) A dental therapist shall not make any statement or declaration or sign any document which the therapist knows, or ought to know, to be untrue, misleading or otherwise improper;
- 3) Every dental therapist shall give whole hearted support to the highest standards of integrity, honesty, competence and devotion to the common good of the profession;

Although it is important to note that Ms. Mills has acknowledged her criminal behavior and accepted responsibility for her actions, this alone does not uphold the honor and dignity of the profession or demonstrate the highest standards of integrity and honesty that are expected of members of the dental therapy profession.

Defrauding an employer is criminal behavior that clearly undermines the honor and dignity of the profession and may more appropriately be called "unprofessional conduct".

The Discipline Committee must denounce in the strongest terms that this type of criminal and unprofessional behavior is unacceptable to our profession.

The Discipline Committee finds that the member is guilty of said breaches to the Dental Disciplines Act and Saskatchewan Dental Therapists Bylaws and is guilty of professional misconduct.

Penalty

There are a number of factors that have been established by the courts that disciplinary bodies should consider in coming to a conclusion about an appropriate penalty when there is a finding of professional incompetence or professional misconduct, including:

- a) the nature and gravity of the proven allegations;
- b) the age and professional experience of the offending member;
- c) the frequency of the commission of the acts of misconduct;
- d) previous record, if any, for the same or similar misconduct;
- e) the presence or absence of mitigating circumstances;

- f) whether the member acknowledged what occurred;
- g) the impact of the misconduct on the complainant;
- h) the need to promote specific deterrence to the member and general deterrence to the membership;
- i) the need to maintain the public's confidence in the integrity of the Association and its ability to properly supervise the conduct of its members;
- j) ensuring that the penalty is not disparate with penalties previously imposed for the same or similar act of misconduct;
- k) ensuring that the penalty imposed will, as mandated in the Act, protect the public and ensure safe and proper practice of the profession.

In this case, the Discipline Committee has taken into account the evidence before it in relation to the above factors. Although there was not a joint submission as to the penalty, the committee did have the benefit of a "SUBMISSION TO THE DISCIPLINE HEARING COMMITTEE PENALTY HEARING FOR KIMBERLY MILLS" that was prepared by the counsel for the PCC, which was agreed to by Ms. Mills. Although not binding, this submission is important for the Discipline Committee to consider. The Discipline Committee acknowledges that Ms. Mills:

- has no prior discipline record or subsequent complaints made against her.
- immediately accepted responsibility for the misconduct;
- has already faced legal proceedings and sanctions within the criminal justice system;
- has fulfilled the requirements of the Restitution Order and resolved outstanding issues between herself and her employer.
- pled guilty to the charges brought forward by the Association;
- agreed that the Sentencing Hearing could proceed by teleconference call, which resulted in a reduction of the overall costs of determining the charges against her;
- has expressed her love for the profession and apologized to the Association for the harm that her actions may have caused to the profession.

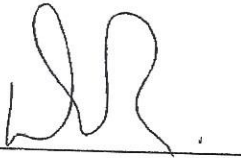
It is important to note that, in its deliberation, the Discipline Committee has been significantly challenged to identify directly applicable courses for dental therapists that may be ordered for members, such as Ms. Mills who have been found guilty of breaches of ethical conduct.

DECISION:

In consideration of the evidence and the above analysis, in accordance with Sections 34 and 35 of the Dental Disciplines Act, 1997, the Discipline Committee makes the following orders:

- 1. That the Practicing Membership of Kimberly Mills be suspended effective January 18th, 2010 and remain suspended until the subsequent orders have been satisfied;*
- 2. That while Kimberly Mills' Practicing Membership is suspended, she shall complete, at her own expense, an on-line course in dental ethics from the American College of Dentists entitled Course On-line Dental Ethics available at <https://www.dentalethics.org/index.shtml>. This course will be monitored by and completed to the satisfaction of the Executive Director of the Saskatchewan Dental Therapists Association;*
- 3. That Kimberly Mills shall reimburse in full the costs of the Saskatchewan Dental Therapists Association related to the investigation and hearing into her conduct as outlined in the complaints against her. The costs to investigate and hear this matter have been determined to be \$10,431.78.*

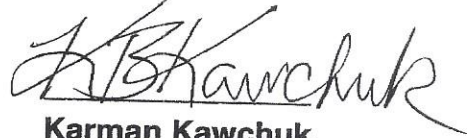
This decision and above orders dated on December 28th, 2009.



**Darren G. Berg,
Chairperson**



**Ellen Dancsok,
Member**



**Karman Kawchuk,
Consumer Representative**

Saskatchewan Dental Therapists Association Discipline Committee Members

Copy: Ms. Kimberly Mills - Subject of the Complaint

C.C. Patricial Gottselig, Chairperson - Professional Conduct Committee
Shirley Mathieson, SDTA President
Cindy G. Reed, SDTA Executive Director