

Discipline Matters Before the College of Dental Hygienists of Ontario (CDHO): A Defence Lawyer's Perspective

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As legal counsel for dental hygienists, we are often asked questions about what happens when a dental hygienist is referred to the Discipline Committee of the College of Dental Hygienists of Ontario (the "CDHO").

The following is the essential information that dental hygienists need to know about the discipline process.

Discipline Referral

After reviewing a complaint or report, the Inquiries, Complaints and Report Committee ("ICRC") of the CDHO may refer the matter to the Discipline Committee if it believes that a dental hygienist has committed an act of professional misconduct or is incompetent.[1]

In such circumstances, the dental hygienist will be given notice of the ICRC decision and will thereafter be provided with a Notice of Hearing that will set out the allegations of professional misconduct.[2] In addition, the dental hygienist will be provided with all relevant documentation in respect of the allegations that are being made.

In certain cases, the dental hygienist will also be presented with an offer to resolve the matter on consent by pleading guilty to the charges of professional misconduct and agreeing to a penalty, which may include one or more of the following: a reprimand, a suspension, completion of courses and the payment of costs.

It is imperative that dental hygienists consult with a lawyer before agreeing to any such offer, as pleading guilty to professional misconduct carries serious implications, including publication of the finding on the public register (which is available on the CDHO website) on an indefinite basis.

After carefully reviewing the case with legal counsel, it would be prudent to canvass the possibility of a resolution with the CDHO.

If a resolution is reached, the parties prepare an Agreed Statement of Facts (which sets out the facts of the case and the admissions made by the dental hygienist) and a Joint Submission on Penalty (which sets out the penalty that has been agreed upon).

If an acceptable resolution cannot be reached, the matter will proceed to a contested hearing.

The Discipline Committee Hearing

A Discipline Committee hearing is a formal legal proceeding that is typically conducted before a Panel of three Discipline Committee members and a court reporter. It can either proceed on consent (i.e. if a resolution has been reached) or via a contested hearing. The CDHO is represented by legal counsel and the dental hygienist typically has his/her own legal counsel as well. The Panel also has its own independent legal counsel who provides assistance regarding legal

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issues that may emerge.

If a hearing proceeds on consent, the Agreed Statement of Facts and the Joint Submission on Penalty are submitted to the Panel for its consideration and approval. In most cases, these documents are accepted, unless the Panel believes that to do so would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

On the other hand, a contested hearing looks very much like a criminal or civil trial, with legal counsel making opening and closing statements and examining and cross-examining witnesses.

Following a hearing, the Panel will issue a Decisions and Reasons, which will set out its findings in respect of a matter. If a dental hygienist is found guilty of professional misconduct, the Panel will also decide upon the appropriate penalty.

A dental hygienist has a statutory right to appeal a decision of the Decision Committee to the Ontario Divisional Court.

Final Comments

A referral to the Discipline Committee is a very serious matter that can result in significant professional consequences. As such, it is imperative that dental hygienists obtain assistance from experienced legal counsel to ensure that their interests are being protected.

About the Author

Lad Kucis is certified by the Law Society of Ontario as a specialist in health law. As part of his practice, he provides advice and representation to dental hygienists and other regulated health professionals regarding the full spectrum of college matters, including complaints, investigations, discipline and appeals/reviews.

[1] this article will only focus on professional misconduct, as the vast majority of referrals to the Discipline Committee involve such allegations.

[2] the fact of the referral and the Notice of Hearing are also posted on the CDHO website.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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