

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT, R.S.B.C. 1996, C. 183

BETWEEN:

THE COLLEGE OF DENTAL HYGIENISTS OF BRITISH COLUMBIA

(the “College”)

AND:

MANDEEP (MINDY) SAHOTA

(“Ms. Sahota” or the “Respondent”)

Date and place of hearing:

June 22, 2021
By video-conference

Members of the hearing panel of the Discipline Committee:

Carol Williams, Chair
Amber Ariss
Wendy Kelly

Counsel for the Panel:

Jean Whittow, Q.C.

Counsel for the College:

Angela Westmacott, Q.C.
Alandra Harlinton

Counsel for the Respondent:

The Respondent did not attend and was not represented by counsel

1. Introduction

1. This hearing panel of the Discipline Committee of the College (the “Panel”) convened on June 22, 2021, pursuant to section 38 of the *Health Professions Act* (the “HPA”), to hear and determine the issues raised in a citation dated April 26, 2021 (the “Citation”) (Exhibit 1).

2. In summary, the Citation alleges that Mandeep (Mindy) Sahota committed professional misconduct and/or unprofessional conduct by:
 - a. providing dental hygiene services and/or direct client care to clients on January 8, 13, 14, 16, and 20, and March 16, 2021, while holding non-practising registration, contrary to section 43(2) of the College Bylaws; and
 - b. holding herself out as eligible to provide such services, between February 28, 2021 and April 13, 2021, contrary to section 43(3) of the College Bylaws.
3. The College bears the burden of proving the allegations in the Citation on the balance of probabilities (*F.H. v. McDougall*, [2008] 3 S.C.R. 41, para. 40).
4. For the reasons set out more fully below, the Panel orders that the allegations in the Citation are proven on the balance of probabilities and amount to professional misconduct.

2. Proceeding Without the Respondent

5. Due to social distancing and travel restrictions arising from the Covid-19 pandemic, the hearing was conducted by video-conference. The Respondent did not appear at the video-conference hearing.
6. At the outset of the hearing, counsel for the College made an application for the hearing to proceed in the absence of the Respondent.
7. The HPA provides:
 - 38...(5)If the respondent does not attend, the discipline committee may
 - (a)proceed with the hearing in the respondent's absence on proof of receipt of the citation by the respondent, and
 - (b)without further notice to the respondent, take any action that it is authorized to take under this Act.
8. The Affidavit of Service of the process server, dated May 6, 2021 (Exhibit 2), indicated that the Citation was personally served upon the Respondent on May 4, 2021. Personal service is a method of service contemplated by s. 37(2) of the HPA.
9. The Citation sets out the terms of s. 35(8) of the HPA.
10. Counsel for the College advised the Panel that a telephone call had been made to the Respondent and a message left for her on the morning of June 22, 2021, before the application to proceed with the hearing in her absence was made.

11. The Panel also noted that the Zoom link for the hearing video-conference was provided to the Respondent and that there was communication with the Respondent in the weeks leading up to the hearing; for example, the Respondent was notified regarding a pre-hearing conference and a test run on the Zoom platform in advance of the hearing date.
12. The Panel was satisfied that the Citation was received by the Respondent. It was satisfied that the Respondent had ample opportunity to participate in the hearing by video-conference. Therefore, the Panel granted the College's application to proceed in the absence of the Respondent.

3. Legislative Framework

13. As this case concerns unauthorized activities by a College registrant, we start with reference to the legislation underpinning the regulation of the profession.
14. The HPA provides for the self-regulation of specified health professions, including dental hygiene. The *Dental Hygienists Regulation*, B.C. Reg 276/2008 (the "Regulation"), defines dental hygiene as "the health profession in which a person provides the services of (a) assessing the status of teeth and adjacent tissues, and (b) providing therapeutic treatment for teeth and adjacent tissues".
15. The Regulation sets out the activities that may only be performed by a registrant. Of relevance to the facts in this case, the restricted activities include making a dental hygiene diagnosis, and performing dental scaling or debridement. Lastly s. 5(5) of the Regulation prohibits anyone other than a College registrant from performing a restricted activity. The section is set out in full below:

5 (1)A registrant in the course of practising dental hygiene may do all of the following:

(a) make a dental hygiene diagnosis identifying gingivitis or periodontitis as the cause of the signs or symptoms of an individual;

(b) perform scaling, dental debridement or root planing on the surfaces of the teeth for the purpose of preventing or treating an oral health condition;

(c) administer a substance by irrigation for the purpose of preventing or treating an oral health condition;

(d) reduce a complete dislocation of a temporomandibular joint using manual therapy.

(2) If standards, limits or conditions have been established under section 19 (1) (k) or (l) of the Act respecting the activity, a registrant in the course of practising dental hygiene may, during assessment and for diagnostic or imaging purposes, apply

(a) intra-oral X-rays, or

(b)extra-oral X-rays for the purpose of implementing an authorization, issued by a person who is authorized under the Act to apply extra-oral X-rays, to do so in respect of a named individual.

(3)Subject to subsection (4), a registrant in the course of practising dental hygiene may administer a drug specified in Schedule I or II of the Drug Schedules Regulation for the purpose of

(a)treating an oral health condition, if administration is by topical application or irrigation, or

(b)providing oral local anaesthesia,

(i)if administration is by injection or topical application, and

(ii)if, before providing the service, the registrant has successfully completed a certification program established, required or approved under the bylaws to ensure that registrants are qualified and competent to provide that service.

(4)A registrant in the course of practising dental hygiene may not administer a drug for which a prescription is required under the Pharmacy Operations and Drug Scheduling Act unless the patient has a prescription for the drug.

(5)Only a registrant who is a dental hygienist may provide a service that includes the performance of an activity set out in this section.

16. Pursuant to s. 20 of the HPA, the registration committee of health colleges is responsible for granting registration. Each college may, by bylaw, set categories of registration and determine requirements for admission to that category of registration.

17. In the College's Bylaws, and among other categories of registration, the College provides for non-practicing registration.

18. Section 43 of the College's Bylaws prohibits non-practicing registrants from carrying on the practice of dental hygiene or holding themselves out as eligible to do so:

43...(2) A non-practising registrant must not perform a restricted activity or provide any other direct client care included in the practice of dental hygiene in British Columbia.

(3) A non-practising registrant may use the titles

(a) "non-practising dental hygienist" and "retired dental hygienist", and

(b) "non-practising dental hygiene practitioner" and "retired dental hygiene practitioner", if the registrant has previously qualified for dental hygiene practitioner registration.

4. Evidence presented by the College and Findings of Fact

19. The College called Jennifer Lawrence, Registrar of the College, who testified regarding the Respondent's history with the College. The College called eight additional witnesses regarding their interactions with the Respondent when she made job applications for dental hygienist positions.
20. The College filed a Book of Documents (Exhibit 3) which contained a copy of all the documents referred to by all witnesses.
21. The Panel found all of the witnesses to be credible and reliable, and it accepts the evidence of each of them.

a. Registration History

22. Ms. Lawrence provided the Respondent's registration history:
 - a. Prior to the time period in issue, the Respondent was first registered in July 2009. Her registration later lapsed, was reinstated to non-practicing, then lapsed again.
 - b. In 2016, the Respondent was granted conditional registration.
 - c. On September 26, 2017, on completion of a refresher course, the Respondent was again granted full registration.
 - d. On November 5, 2018, the Respondent resumed non-practicing registration.
 - e. On March 8, 2019, after the College's investigation of a complaint made concerning the Respondent's competence, the Respondent entered a consent agreement made pursuant to s. 36 of the HPA. The Respondent agreed that before seeking to resume practicing registration she must:
 - a) successfully complete, at her cost, a dental hygiene retraining program and such program is to be approved in advance in writing by the Registrar, and to provide documentary evidence to the College confirming that she has successfully completed the program; and,
 - b) successfully complete any outstanding requirements imposed by the Quality Assurance Committee as part of her Directed Learning Plan.
 - f. To Ms. Lawrence's knowledge, the Respondent did not complete the terms set out immediately above, and has not applied to become a practicing registrant. Therefore, the Respondent was at all material times a non-practicing registrant of the College.
23. As a non-practicing registrant, and at all times relevant to this Citation, the Respondent was not authorized to perform dental hygiene or any other direct client care or to represent that she was qualified and licensed to do so.

b. Dental Hygiene Services

24. We first review the evidence concerning the Respondent's unauthorized provision of dental hygiene services. This is referenced in paragraphs 4, 5, 6, 8 and 10(a) in the Citation.
25. Amanda Pineau, Treatment Coordinator at Sage Dental Implant and Smile Centre in Langley ("Sage") testified regarding Ms. Sahota's applications for a position as a dental hygienist at Sage. On December 28, 2020, Ms. Sahota first applied for a position as a dental hygienist. Ms. Pineau referred to the resume received from Ms. Sahota and their email exchange and, in particular, the email containing Ms. Sahota's request to set up a working interview. Ms. Pineau then noticed and pointed out to Ms. Sahota that the College website indicated that Ms. Sahota was non-practicing, and the interview process would go no further unless Ms. Sahota verified her practicing status. The Respondent said the website was in "error", but Ms. Pineau did not hear further from Ms. Sahota at that time. Later, on March 19, 2021, Ms. Sahota applied for a position at Sage in response to a second advertisement. On both occasions, Ms. Pineau notified the College.
26. Maria Diaz, the Front Desk Administrator at Metrotown Dental in Burnaby ("Metrotown"), testified as follows: She is responsible for reviewing patient charts when billing and scheduling appointments. The Respondent performed a working interview at Metrotown on January 8, 2021, then worked at Metrotown on January 13, 14, and 20, 2021. Ms. Diaz did not directly observe Ms. Sahota treating patients, but on occasion Ms. Diaz heard Ms. Sahota converse with patients, and was able to see part of the patient's body from the front desk while the patient was in the operatory with Ms. Sahota. Ms. Diaz also spoke with patients Ms. Sahota treated. As well, in her evidence, Ms. Diaz referred to the day sheets which show the 21 patients for whom Ms. Sahota was scheduled to perform hygiene services, and the charts for those patients subsequent to treatment, with Ms. Sahota's notes and initials. Lastly, Ms. Diaz referred to the pay stub for the cheque paid by Metrotown to Ms. Sahota for services provided.
27. Lisa Sarafis, Office Manager at Austin Dental in Coquitlam ("Austin"), testified that Ms. Sahota applied for a position as a dental hygienist on January 3, 2021, and a working interview was scheduled and conducted on January 16, 2021. Ms. Sarafis testified that she heard Ms. Sahota performing dental hygiene services and that, owing to a concern expressed by a patient, Austin did not hire Ms. Sahota. During her evidence, Ms. Sarafis reviewed the clinic records showing that Ms. Sahota provided care to five patients.
28. There was evidence concerning one additional occasion when Ms. Sahota provided direct care to patients. Edna Eberl, a registered dental hygienist at Dr. Terry Mah's office, testified that Ms. Sahota performed a working interview there on March 16, 2021. Ms. Eberl saw Ms. Sahota perform hygiene services for the first patient. Ms. Eberl overheard Ms. Sahota having difficulties in doing x-rays on that patient. Ms. Eberl overheard Ms. Sahota speak loudly to a second patient during treatment, causing offence to the patient such that the patient terminated the appointment. The Respondent was upset and agitated and left the clinic. Ms. Eberl also identified the clinic's records concerning these two patients' treatment by Ms. Sahota.

29. The Panel accepts the evidence of the three witnesses referred to immediately above and is satisfied that the Respondent held herself out as being eligible to provide dental hygiene services and did in fact provide such services to a number of patients, as set out in Schedule B to the Citation as follows:

Clinic	Dates
Metrotown	January 8, 13, 14, 20, 2021
Austin	January 16, 2021
Dr. Terry Mah	March 16, 2021

c. Applications for Dental Hygienist Positions

30. Evidence was provided concerning the Respondent's continuing applications for a dental hygienist position. This is referenced in paragraph 9 and 10(b) of the Citation. It is set out in chronological order below:
- a. Tianna Armstrong, a certified dental assistant at Dentistry32, testified that, on February 28, 2021, Ms. Sahota applied for a position on-line at Dentistry32, answering "yes" to the on-line question as to whether she was licensed. In a Face Time interview on March 2, 2021, Ms. Sahota told Ms. Armstrong that she had not been practicing because she was working as a manager. A working interview was scheduled at Dentistry32 for March 17, 2021, but cancelled when Ms. Armstrong learned Ms. Sahota was not licensed to practice. Ms. Sahota applied on-line a second time for a dental hygienist position at Dentistry32 on April 10, 2021.
 - b. As set out above, Ms. Pineau testified that Ms. Sahota applied for a second position at Sage on March 19, 2021.
 - c. Ruby Edwards, office manager at Graft Periodontics, testified that, in March, 2021, she posted on the BC Dental Facebook page a position for a dental hygienist with Graft Periodontics. On March 22, 2021, Ms. Edwards received an email from Ms. Sahota applying for the position. Ms. Edwards saw the College's notice that Ms. Sahota was not eligible to practice and so she emailed the College and did not pursue Ms. Sahota's application.
 - d. Sonia Desai, office manager of Seawall Dental, testified that, on March 25, 2021, she received an application from Ms. Sahota for a position as a dental hygienist. Ms. Desai testified that she conducted a telephone interview. Ms. Desai was told by other hygienists in the clinic that Ms. Sahota was not able to practice, and Ms. Desai then reported this to the College the same day. The Respondent was not given the position, but attended Seawall Dental and became so upset and disruptive that Ms. Desai called the RCMP.
 - e. Ellen Moradi, of Evident Dental, testified that on April 13, 2021, Ms. Sahota sent a resume in response to an ad placed on Evident Dental's Facebook page for a dental hygienist. Evident Dental did not respond to Ms. Sahota, but reported this event to the College.

- f. All of the witnesses were seeking a registrant qualified and eligible to provide dental hygiene services. The exhibits include numerous copies of the Respondent's resume, which stated that she is a "dental hygienist".
31. The Panel accepts the evidence of the witnesses set out in paragraph 29 herein and is satisfied that the Respondent held herself out as eligible, that is, qualified and licensed to practice dental hygiene, and applied for such positions at Sage, Dentistry32, Graft Periodontics, Seawall Dental and Evident Dental Care between February 28 and April 13, 2021, as set out in Schedule B to the Citation.

d. Steps Taken by the College

32. Ms. Lawrence testified regarding the College's actions in response to receipt of reports regarding the Respondent's activities:
- a. Beginning in December 2020, a number of complaints and reports were made to the College, including those described above, that the Respondent was applying for jobs and providing dental hygiene services to the public.
 - b. In early January 2021, on receipt of Sage's first report to the College, Ms. Lawrence telephoned the Respondent. The Respondent told Ms. Lawrence that she was applying only for reception positions. Ms. Lawrence at first assumed there had been a miscommunication, but as the reports continued to come in the College's response escalated.
 - c. On January 26, 2021, the College sent a letter to the Respondent telling her to cease and desist these unauthorized activities, and requesting that she sign an undertaking to that effect. The Respondent emailed Ms. Lawrence denying that she was applying for a position as a dental hygienist.
 - d. On February 1, 2021, the Inquiry Committee opened an investigation regarding the allegations of unauthorized practice, and appointed an inspector. The Respondent was notified.
 - e. On February 9, 2021, the College received the signed undertaking, dated February 4, 2021 (the "Undertaking"), in the form previously requested, in which the Respondent undertook to immediately cease submitting applications for employment as a dental hygienist and to refrain from holding herself out as a registered hygienist. A number of the applications and the March 16, 2021 working interview at Dr. Mah's office were contrary to the terms of the Undertaking.
 - f. The College conducted a video-conference with the Respondent on March 5, 2021, and attempted a second video-conference on March 10, 2021, which the Respondent did not attend.

- g. On March 16, 2021, the College posted notice on its website that the Respondent was not authorized to practice. The Registrar notified the Respondent and continued to try to encourage her compliance. While outside the scope of the Citation, Ms. Lawrence testified that there had been numerous additional similar reports regarding the Respondent.
 - h. The Citation was directed by the Inquiry Committee and issued by the Registrar on April 26, 2021.
 - i. The College obtained an order of the BC Supreme Court dated June 4, 2021, enjoining the Respondent's unauthorized practice.
33. In summary, the Panel finds that the facts alleged in the Citation are proven, as described in further detail above, and that the Respondent both held herself out as authorized to provide direct patient care, and did in fact provide patient care.

5. Determination under s. 39 of the *Health Professions Act*

34. Section 39 of the HPA provides:

39 (1) On completion of a hearing, the discipline committee may, by order, dismiss the matter or determine that the respondent

- (a) has not complied with this Act, a regulation or a bylaw,
- (b) has not complied with a standard, limit or condition imposed under this Act,
- (c) has committed professional misconduct or unprofessional conduct,
- (d) has incompetently practised the designated health profession, or
- (e) suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs their ability to practise the designated health profession.

35. Paragraph 10 of the Citation alleges that the Respondent committed professional misconduct and/or unprofessional misconduct by:

“a. engaging in unauthorized practice by providing dental hygiene services and/or direct client care to clients on January 8, 13, 14, 16, and 20 and March 16, 2021 as set out in paragraph 1 of Schedule B of the citation while holding non-practising registration contrary to section 43(2) of the College bylaws; and

b. holding herself out as qualified and licensed to practice dental hygiene and applying for dental hygiene positions between February 28, 2021 and April 13, 2021 as set out in paragraph 2 of Schedule B of the citation contrary to section 43(3) of the College bylaws.”

36. As set out above, as alleged in paragraph 10(a) of the Citation, the Respondent provided dental hygiene services to patients while she was a non-practicing registrant. This was contrary to s. 43(2) of the College's Bylaws, which expressly prohibits a non-practicing registrant from performing dental hygiene services as defined in the Regulation and providing direct client care.

37. Further, as alleged in paragraph 10(b) of the Citation, the Respondent applied for numerous positions as a dental hygienist, each time holding herself out as such. This was contrary to s. 43(3) of the College's Bylaws, which requires that non-practicing registrants specify their limited registration.
38. The Respondent's conduct was also contrary to the terms of the consent agreement and the Undertaking that she provided to the College dated February 4, 2021.
39. The College brought to the Registrant's attention that she was acting contrary to the College's Bylaws on numerous occasions, and the Respondent must have known that her denials were untrue.
40. Section 26 of the HPA contains the following definitions:

"professional misconduct" includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession;

"unprofessional conduct" includes professional misconduct.
41. In submissions, the College did not differentiate between those terms, but submitted that the conduct amounts to professional misconduct.
42. Professional misconduct is generally defined as conduct that harms the standing of the profession or is a significant departure from acceptable professional standards¹. It is employed in health college discipline cases to connote serious disciplinary violations by a registrant. The Panel is satisfied that the Respondent's conduct is particularly egregious. It was prolonged and deliberate and persisted despite repeated warnings. The Respondent was a non-practicing registrant pending remedial steps to correct competency concerns. This adds an element of potential risk to the public. Health colleges must be able to rely upon all registrants to comply with their registration status. The Respondent's actions undoubtedly warrant a finding of professional misconduct.

6. Conclusion

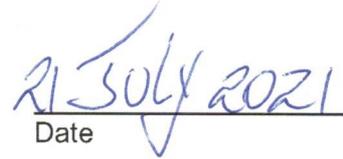
43. The Panel finds that the Respondent committed professional misconduct by:
 - a. engaging in unauthorized practice by providing dental hygiene services and/or direct client care to clients on January 8, 13, 14, 16, and 20, and March 16, 2021, while holding non-practising registration, contrary to section 43(2) of the College's Bylaws; and
 - b. holding herself out as qualified and licensed to practice dental hygiene and applying for dental hygiene positions between February 28, 2021 and April 13, 2021, contrary to section 43(3) of the College's Bylaws.

¹ See, for example, *College of Dental Hygienists of BC v. Pavle Djordjevic*, March 19, 2020, para. 60-62.

44. Given this Panel's decision that the Respondent has committed professional misconduct, the hearing will be reconvened, by video-conference, to address penalty, costs, and publication. The Panel directs that the College deliver its written submissions and any other materials upon which it intends to rely to the Respondent two weeks prior to the date scheduled for the hearing. The Panel asks that the parties be prepared to set a one-half day hearing in August, 2021.
45. The Respondent is advised that she has the right to appeal the Panel's order to the BC Supreme Court. Under section 40(2) of the HPA, an appeal must be commenced within 30 days after the date on which this order is delivered.



Carol Williams, Panel Chair



Date

Wendy Kelly

Date

Amber Ariss

Date

44. Given this Panel's decision that the Respondent has committed professional misconduct, the hearing will be reconvened, by video-conference, to address penalty, costs, and publication. The Panel directs that the College deliver its written submissions and any other materials upon which it intends to rely to the Respondent two weeks prior to the date scheduled for the hearing. The Panel asks that the parties be prepared to set a one-half day hearing in August, 2021.
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Carol Williams, Panel Chair

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Wendy Kelly



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Carol Williams, Panel Chair

Date

Wendy Kelly

Date

CAriss

Amber Ariss

July 21, 2021

Date