

Decision of the Discipline Committee of the Saskatchewan Dental Assistants' Association
Tara Lee Fedak

Discipline Committee:

Barbara von Tigerstrom (Chair and Public Appointee)

Dawn Moncur (Member)

Mary Jane Katz (Member)

Participants:

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

Tara Fedak, appearing on her own behalf

Tammy Fedak, sister of Tara Fedak

Anne Hardy, legal counsel for the SDAA Discipline Committee

Introduction

1. The Discipline Committee convened a hearing at 10:00 a.m. on Saturday, June 1, 2013, the time and date agreed by the parties for the hearing of this matter.
2. At the outset of the hearing, Ms. Tara Fedak 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. Fedak 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. Fedak by the PCC:
That you are 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-4.1, and/or section 14.6.6 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 June 2010 and the 31st day of October 2010 at or near Saskatoon, Saskatchewan, you did steal money being the property of Dr. Ubabuikie Kerry and Circle [Eight] Dental of a value exceeding five thousand dollars contrary to Section 334(a) of the *Criminal Code*; and/or
 - (b) Between the 1st day of June 2010 and the 31st day of October, 2010 at or near Saskatoon, Saskatchewan, you did by deceit, falsehood or other fraudulent means.

defraud Dr. Ubabuikie Kerry and Circle [Eight] Dental of money exceeding five thousand dollars contrary to Section 380(1)(a) of the *Criminal Code*; and/or

- (c) On April 18, 2012 the Honourable Judge D. Lebach of the Provincial Court of the Province of Saskatchewan entered a conviction against you and found that between the 1st day of June 2010 and the 31st day of October, 2010 you did steal money the property of Dr. Ubabuikie Kerry and Circle [Eight] Dental of a value exceeding five thousand dollars contrary to Section 334(a) of the *Criminal Code*; and/or
 - (d) That the member entered into a probation order requiring in part that she pay restitution in the amount of \$10545.65.
4. Prior to the hearing, Ms. Fedak indicated that she intended to plead guilty to these charges.
 5. At the hearing, Ms. Fedak confirmed her guilty plea to the charges outlined in the Notice of Hearing. The hearing then proceeded to consider the matter of 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 written and oral submissions of the PCC and Ms. Fedak, along with the documents tendered as exhibits at the hearing, the Discipline Committee has made this decision.

Facts

7. Ms. Fedak was born on January 18, 1983. She completed her training as a dental assistant in 2003 and has been registered as a member of the SDAA from that time until the end of 2012, with the exception of a gap of several months in 2011 as a result of having insufficient Professional Development credits.
8. Ms. Fedak began work at Circle Eight Dental shortly after becoming registered as a dental assistant. (Ms. Fedak clarified at the hearing that the clinic where the relevant events occurred was incorrectly referred to in the Notice of Hearing and other documents as “Circle Park Dental”.) After working there for approximately six months, she was appointed as the office manager and continued to work in that capacity as well as doing “chair-side” dental assisting.
9. Ms. Fedak stated at the hearing that she was given increasing levels of responsibility by Dr. Kerry during her years at Circle Eight Dental, and she believes she was trusted by Dr. Kerry and by patients. She became close with Dr. Kerry and his family.
10. Ms. Fedak stated at the hearing that in 2009, she separated from her husband, to whom she had been married for eight years. She stated that this was a difficult time for her and her relationship with her family was strained. She further stated that Dr. Kerry noticed she was under significant stress during this time and offered to help, but she was too proud to ask for help.
11. Ms. Fedak stated that around this time she began a relationship with a man she describes as “abusive” and “needy,” and she began to have financial difficulties because she was paying some of his expenses. According to Ms. Fedak’s written and oral submissions, and the media

report regarding her conviction that was tendered as an exhibit at the hearing, this relationship and the debts incurred as a result of it are identified by Ms. Fedak as the reason for her stealing money from Dr. Kerry and Circle Eight Dental.

12. Sometime between June and October 2010, Ms. Fedak stole sums of money from her employer. At the hearing she explained that she took money in approximately seven or eight separate transactions, through the office debit machine and in cash. She stated that the first time this occurred, she was asked to process a refund of money to a patient who had paid a deposit for work that had not been done. In doing so, she discovered that she could use the debit machine to put money into her own bank account, and subsequently used this technique to steal money several times.
13. Dr. Kerry became aware of unusual or suspicious transactions in the clinic's financial records, and asked Ms. Fedak about them. At that time Ms. Fedak did not admit to Dr. Kerry that she had taken the money.
14. Subsequently, around November 2010, Dr. Kerry dismissed Ms. Fedak and notified the police. After a police investigation, charges were laid in April 2011. Ms. Fedak pled guilty to the criminal charges and a conviction for theft over five thousand dollars was entered against her in March 2012. Her sentence included a 12 month probation order (with conditions, i.e. a curfew and community service) and an order to pay restitution in the amount of \$10,545.65.
15. This matter came to the attention of the SDAA in January 2012 and was referred to the PCC following the conclusion of the criminal proceedings. The PCC investigated the matter and made a report to the Discipline Committee recommending charges of misconduct based on the criminal conviction.
16. Ms. Fedak confirmed at the hearing that \$10,545.65 is approximately the amount of money she stole from Dr. Kerry and Circle Eight Dental.
17. Ms. Fedak stated that for the first few months after she was dismissed (November 2010 to March 2011), she met regularly with Dr. Kerry to help him with issues in his office. However, their relationship then deteriorated.
18. Ms. Fedak continued to hold her license as a member of the SDAA until the end of 2012, and initially sought work as a dental assistant at other dental clinics in Saskatoon after being dismissed by Dr. Kerry. She stated that she was dismissed by her new employers when they became aware of the criminal charges against her. She stated that she has not sought work as a dental assistant since the summer of 2011.
19. Ms. Fedak stated that she has tried to make changes in her life since these events. She has sought and received more support from her family and says that she is very open with her family about any issues she is having. She stated that she has ended some personal relationships with people she saw as "negative," has seen a counsellor, and is involved with her church.
20. Ms. Fedak is not currently employed. She now has a baby daughter and is presently on maternity leave.
21. Ms. Goebel stated for the PCC that Ms. Fedak has been cooperative throughout these proceedings.

Decision on penalty

22. The PCC took the position that the appropriate penalty would be a three-year suspension of Ms. Fedak's license and two conditions: payment of costs in the amount of \$7000 and the successful completion of an accredited course of instruction on ethics. In her submissions, Ms. Fedak agreed to the condition of completing an accredited course of instruction on ethics but disagreed with the suspension and payment of costs. Ms. Fedak and her sister asked that the period of suspension, if any, be retroactive to the date of her dismissal in November 2010.

23. The authority of the Discipline Committee to order a penalty in this matter is grounded in ss. 34 and 35 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.

...

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 offence 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.

24. Ms. Fedak has been convicted of a criminal offence under the *Criminal Code*, the PCC made a report respecting this conviction to the Discipline Committee, the Discipline Committee held a hearing at which it heard the submissions of Ms. Fedak, and Ms. Fedak has pled guilty to the charges of misconduct before the Discipline Committee. The conditions for the Discipline Committee to act under ss. 34 and 35 of *The Dental Disciplines Act* to make an order of penalty have therefore been satisfied.
25. In determining the appropriate penalty, the Discipline Committee has considered the written and oral submissions of the PCC and of Ms. Fedak and her sister, along with the documents tendered as exhibits at the hearing.
26. The Discipline Committee has also considered the following factors (adapted as appropriate to the dental assistant profession), outlined in 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 (at para 49):
 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.
27. With the exception of the third and fourth factors in this list (the third is not relevant in this case and no information was available to the Committee to assess the fourth), the Discipline Committee has considered all of these factors together, giving all of them equal weight insofar as they are applicable, in determining what penalty is appropriate. It has also considered the specific points made in written and oral submissions with reference to particular aspects of the order proposed by the PCC.
28. With respect to the nature and gravity of the misconduct, the Discipline Committee viewed this as a very serious offence given that in stealing from her employer, Ms. Fedak abused a position of trust. She herself stated that she was trusted by her employer and by their

patients. She took advantage of her trusted position as office manager to steal money for her own purposes.

29. The Discipline Committee also took into account as an aggravating factor the fact that Ms. Fedak neglected or refused to ask her employer for help despite his offer of help, choosing instead to obtain the money she needed by dishonest means. Ms. Fedak had worked with Dr. Kerry for many years and had developed a close personal and professional relationship with this individual whom she referred to as a “second father.” Abusing such a relationship is reprehensible.
30. It is also significant that the amount of money stolen by Ms. Fedak is a large sum and was stolen by means of repeated actions over a course of several months. The Discipline Committee viewed this as an aggravating factor. The amount is large compared to other cases to which the Committee was referred and the repeated nature of the misconduct made it more serious; this was not a single spontaneous or impulsive error of judgement on the part of Ms. Fedak but an ongoing pattern of dishonest behaviour that continued until it was eventually discovered.
31. At the time of the misconduct, Ms. Fedak had been a member of the profession for eight years, making her an experienced dental assistant. This was also considered by the Discipline Committee to be an aggravating factor, since her experience gained her the position of trust which she then abused, as well as sufficient maturity to fully realize the seriousness of her misconduct.
32. The Discipline Committee also considered several mitigating factors that weigh in favour of a somewhat lesser penalty. It acknowledges the severe personal stress Ms. Fedak was under when she committed this offence and the role this stress likely played in her decision to steal the money. It also took account of the remorse she has expressed for her actions, the cooperation she has showed throughout these proceedings, and the fact that through the order of restitution made by the Provincial Court, she has repaid the money she stole.
33. The Discipline Committee also took into account that Ms. Fedak 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 (apart from a short lapse due to missing Professional Development credits which was promptly addressed). According to Ms. Fedak, prior to her misconduct, she was a respected and valued member of the profession, and the Committee has seen no evidence to indicate the contrary.
34. Furthermore, the Discipline Committee is sympathetic to the financial difficulties that Ms. Fedak has experienced, including the payment of restitution and her difficulties in finding stable employment. It is particularly concerned that the condition of payment of costs not be so onerous as to operate as an indefinite bar to Ms. Fedak returning to the profession. This led the Committee to decide that an amount somewhat less than was sought by the PCC is appropriate. The Committee recognizes that this means the SDAA and its members will bear a larger share of the costs of these proceedings, but if this is seen as unfair it must be weighed against the potential unfairness of a large cost order that Ms. Fedak cannot pay and that could prevent her from regaining her license.
35. The Discipline Committee also considered the efforts Ms. Fedak has made to improve her personal circumstances, and to address the issues that may have contributed to her

misconduct (e.g. through counselling and changes in her family and personal relationships). These efforts can be considered as mitigating factors and also as relevant to specific deterrence, to the extent that they provide some reassurance that Ms. Fedak is less likely to commit similar acts of misconduct in the future.

36. At the same time, after considering the written and oral submissions by Ms. Fedak, members of the Committee were left with some doubt as to whether she fully takes responsibility for her actions and the serious breach of trust they represent. Although Ms. Fedak did plead guilty to both the criminal and professional misconduct charges, and told the Committee she was ashamed of her actions, some of her statements show a continuing tendency to blame external circumstances and other people for her misconduct rather than taking full responsibility. This suggests that Ms. Fedak does not yet have sufficient insight or maturity to be placed in a position of trust. In the Discipline Committee's view this weighs in favour of a substantial period of suspension as well as conditions that could help to reduce the likelihood that she may commit similar acts of misconduct in the future.
37. General deterrence is also relevant. Given that dental assistants often hold positions of trust in a dental practice, it is important that the penalty send a signal to all members of the SDAA that dishonesty and abuse of trust will not be tolerated. This weighs in favour of a more severe penalty.
38. The Discipline 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.
39. Several cases involving regulated professionals who were disciplined for theft or fraud were brought to the Discipline Committee's attention by the PCC's legal counsel. Only one of these is from Saskatchewan and from a professional subject to *The Dental Disciplines Act*; there are apparently no relevant cases involving dental assistants. The Discipline Committee has reviewed these cases, and considered the penalties imposed as well as the circumstances of the misconduct in each. Direct comparisons are difficult, given that each situation is different and all of the cases involve members of other professions.
40. Considering all of the relevant factors, the Committee concluded that an order of penalty somewhere in the middle of the range represented by these cases is appropriate. The Committee considered and rejected the most severe penalty, permanent expulsion, as being too harsh in this case even though it appears to be a common penalty for members of the legal profession who are guilty of theft or fraud. There may well be valid reasons for harsher penalties in that context that do not apply here. The short periods of suspension imposed in some other cases (6 months), seemed too short in this case, considering the balance of aggravating and mitigating factors and the need for specific and general deterrence.
41. Ms. Fedak, supported by her sister, argued for any period of suspension to be imposed retroactively as of the date Ms. Fedak was dismissed for her misconduct, November 2010, so that most or all of the period of suspension would already have passed. Ms. Goebel argued

on behalf of the PCC that a “retroactive” suspension would not be appropriate in this case, and the Discipline Committee agrees with this submission. At no time prior to the hearing was Ms. Fedak’s membership in the SDAA suspended; the fact that she has not worked as a dental assistant in the interim is due to her own circumstances, i.e. her difficulties in finding an employer willing to hire her and more recently, her maternity leave. There is no justification for treating this time as part of a period of suspension. The suspension ordered below will take effect as of the date of this decision.


42. Ms. Fedak and her sister also disputed the amount of the costs attributed to the investigation and hearing of this matter. 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. The Committee did acknowledge that in pleading guilty to the charges and cooperating throughout this process, Ms. Fedak has done what she can to minimize the cost of these proceedings, and took this into account in making its order.
43. Ms. Fedak also objected to the condition suggested by the PCC that she be required to disclose her record of conviction to any future employer within the scope of her employment as a dental assistant. The Discipline Committee was sympathetic to her concern that this would make it difficult for her to obtain employment as a dental assistant, but it did not accept her suggestion that this condition amounted to a permanent bar to practising her profession. Furthermore, this condition is necessary to protect the public and the integrity of the profession. It is quite possible that, without such order, a dentist might employ Ms. Fedak without being aware of her past misconduct and place her in a position of trust that might again be abused. In order to protect such potential employers and their patients, and the confidence they have in members of the SDAA, it is important to ensure this cannot occur.

Order


44. The Discipline Committee therefore makes the following order of penalty against Ms. Fedak:
1. The Member shall be suspended as a member of the Association for a period of 2 years and pending the satisfaction and completion of the following conditions:
 - (a) Reimbursement of a portion of the expenses incurred by the Association during the course of the investigation and hearing into the Member’s conduct in the fixed sum of \$5000;
 - (b) The successful completion at the Member’s expense of an accredited course of instruction dealing with professional ethics, such course to be approved by the Executive Director of the SDAA;
 - (c) Demonstration by the Member that she has sought and received an assessment by a professional counsellor (e.g. a registered psychologist, social worker, or other individual with advanced professional training in counselling) chosen by her and approved by the Executive Director of the SDAA, and followed the recommendations of such counsellor with respect to counselling services that in the opinion of the counsellor are required; and

- (d) A written undertaking by the Member that, upon reinstatement as a member of the Association, she will disclose her record of conviction to any future employer proposing to employ her as a dental assistant.
2. The Executive Director of the Association shall monitor the Member's compliance with these conditions as follows:
- (a) The Executive Director is directed to record all payments made by the Member toward the order of costs until they are paid in their entirety. Once they are paid, the Executive Director shall provide the Member with written confirmation that they have been paid in full;
- (b) The Member shall propose one or more accredited course of instruction dealing with professional ethics for the Executive Director's approval. Upon a course being approved, the Member shall participate in and complete the course at her own expense and shall file with the Executive Director proof of the successful completion of the course.
- (c) The Member shall propose one or more professional counsellors for the Executive Director's approval. Upon a counsellor being approved, the Member shall submit to an assessment by the counsellor and attend counselling sessions as recommended by that counsellor, at her own expense or the expense of a third party other than the Association, and shall file with the Executive Director proof of compliance with the assessment and recommendations.
- (d) The Member shall provide to the Executive Director the written undertaking regarding disclosure of her record of conviction to employers, and the Executive Director shall ensure that a record of the undertaking be maintained in the records of the Association.
3. Subsequent to the expiration of the 2 year suspension and upon confirmation that the conditions have been satisfied, the Member shall be entitled to be reinstated as a member of the Association, provided that she pays any registration fees and is in compliance with the Professional Development requirements of the Association.

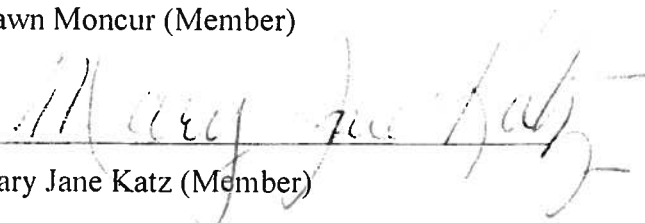
This decision dated as of June 24, 2013.



Barbara von Tigerstrom (Chair and Public Appointee)



Dawn Moncur (Member)



Mary Jane Katz (Member)

